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January 10, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000907-TP (Level 3 Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Post-Hearing Brief, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Patrick W. Turner
Patrick W. Turner *(PW)*

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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**CERTIFICATE OF SERVICE
Docket No. 000907-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
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Patrick W. Turner
(PW)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)	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.)	
<hr style="width: 35%; margin-left: 0;"/>)	Filed: January 10, 2001

POST-HEARING BRIEF OF BELL SOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") submits this post-hearing brief in support of its positions on the issues submitted to the Commission for arbitration in accordance with Section 252 of the Telecommunications Act of 1996. 47 U.S.C. § 252. Considering the evidence and applicable law, the Commission should adopt BellSouth's position on each of the issues which remain in dispute.

I. INTRODUCTION

This arbitration proceeding was initiated by Level 3 Communications, LLC ("Level 3").¹ BellSouth has been negotiating the terms of a new interconnection agreement with Level 3 since February 2000. Although BellSouth and Level 3

¹ Level 3 filed its Petition for Arbitration on July 20, 2000, raising certain disputed issues concerning the parties' proposed interconnection agreement. BellSouth filed its Response to the Petition on August 14, 2000, and the Commission heard this matter on December 6, 2000. During the hearing, the Commission heard the testimony of Level 3 witnesses Gregory L. Rogers, Anthony Sachetti, and Timothy J. Gates, and it heard the testimony of BellSouth witness Cynthia K. Cox. A transcript of this hearing, which consists of 527 pages and 17 exhibits was prepared.

were able to reach agreement on a number of issues, five issues remain unresolved (Issues Nos. 1, 2, 3, 6, and 7).²

II. STATUTORY OVERVIEW

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.³ After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.⁴ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.⁵ The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties."⁶ A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.⁷ The 1996 Act

² The parties have resolved three of the issues originally in dispute (Issues Nos. 4, 5, and 8).

³ 47 U.S.C. § 251(c)(1).

⁴ 47 U.S.C. § 252(b)(2).

⁵ *See generally*, 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).

⁶ 47 U.S.C. § 252(b)(2).

⁷ 47 U.S.C. § 252(b)(3).

limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁸

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval.⁹

III. ISSUES AND POSITIONS

ISSUE 1: How should the parties designate the Interconnection Points (IPs) for their networks?

SUMMARY OF BELLSOUTH'S POSITION

*** While Level 3 can have a single Point of Interconnection in a LATA if it chooses, it remains responsible to pay for the facilities necessary to carry calls originated by BellSouth customers in distant local calling areas to that single Point of Interconnection. ***

DISCUSSION

It would be ironic if a law designed to promote a market-driven economy in local telephony service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants. *U.S.*

⁸ 47 U.S.C. § 252(b)(4).

⁹ 47 U.S.C. § 252(a).

West Communications, Inc. v. Jennings, 46 F.Supp.2d 1004, 1021 (D. Ariz. 1999).

This issue addresses calls that originate in one BellSouth local calling area and are intended to be terminated in that same local calling area, but that have to be routed out of that local calling area because of Level 3's network design. BellSouth believes Level 3 should be responsible for the costs BellSouth incurs in hauling these calls outside the local calling area in which they originate to a Point of Interconnection Level 3 has designated in a distant local calling area. (See Tr. Vol. 1, p. 135). Level 3, on the other hand, believes that BellSouth should be responsible for these costs. (See Tr. Vol. 1, p. 134-35).¹⁰

To illustrate the nature of the issue, assume that a particular LATA is shaped like a rectangle and that there are 20 equally-sized local calling areas within that LATA. Local Calling Area No. 1 is at the top left corner of the LATA, and Local Calling Area No. 20 is at the bottom right corner of the LATA. Assume further that Level 3 establishes a single Point of Interconnection in the LATA, and that the single Point of Interconnection is located in Local Calling Area No. 1. (See Tr. Vol. 1, pp 73-77).

Consider what must happen in order for a BellSouth end user in Local Calling Area No. 20 to call a Level 3 end user who is also located in Local Calling Area No.

¹⁰ Level 3 acknowledges that BellSouth has agreed to deliver BellSouth's originating traffic to one interconnection point in each local calling area. (see Tr. Vol. 1, p. 125). Level 3, therefore, acknowledges that it has no dispute with BellSouth regarding Issue No. 1 when the BellSouth end user, the Level 3 end user, and the Point of Interconnection designated by Level 3 are all physically located

20. That call must be hauled outside of Local Calling Area No. 20 and across several other local calling areas to the Level 3 Point of Interconnection in Local Calling Area No. 1. (See Tr. Vol. 1, p. 76). Level 3 will then turn around and haul the call all the way back to Local Calling Area No. 20 (where it originated), and terminate it to its end user. (See *Id.*)

Level 3 acknowledges that when a BellSouth end user in Local Calling Area No. 20 tries to call a BellSouth end user in Local Calling Area No. 1, BellSouth will not deliver that call unless the end user placing the call pays toll charges. (See Tr. Vol. 1, p. 130). Level 3, however, is unwilling to compensate BellSouth for hauling the call described above from Local Calling Area No. 20 to Local Calling Area No. 1. (See Tr. Vol. 1, p. 77). Instead, Level 3 contends that BellSouth should bear the costs of hauling the call from the BellSouth end user in Local Calling Area No. 20 all the way across the LATA to Local Calling Area No. 1, just so Level 3 can turn around and haul the call right back to the same local calling area in which it originated. (*Id.*) The question this Commission must decide, therefore, is when Level 3 deliberately, and for its own purposes, chooses to have a single Point of

within the same BellSouth local calling area. (See Tr. Vol. 1, p. 129).

Interconnection in a LATA as discussed above, who should pay for the consequences of that decision.¹¹

- A. Two federal courts have rejected the arguments Level 3 presents in support of its position on Issue No. 1, and one of those courts has expressly stated that a state Commission may require an ALEC to compensate an incumbent for costs resulting from an inefficient interconnection.**

Level 3 notes that 47 U.S.C. §251(c)(2) requires an ILEC to provide interconnection "at any technically feasible point within the carrier's network," (see Tr. Vol. 1, p. 71), and it claims that "the only permissible consideration for BellSouth and the Commission in determining whether the [Point of Interconnection] location is acceptable is whether [it] is technically feasible" (See Tr. at 71). Level 3 contends that this Commission may not consider any economic factors in determining whether BellSouth must deliver all of its originating traffic – without charge – to a single Point of Interconnection designated by Level 3. (*Id.* at 71-72).

¹¹ Level 3's position presents another interesting dilemma that bears some consideration. BellSouth's position, obviously, is that its network is made up of a number of local networks. (See Direct Testimony of BellSouth witness Cynthia Cox at 6). Level 3's position, on the other hand, is that once it interconnects with BellSouth at any point, it needs to do nothing else to be able to exchange local traffic anywhere in the LATA. Under this theory, however, what will happen when BellSouth obtains interLATA relief and the LATA boundaries evaporate? The logical extension of Level 3's position in this arbitration is that because the barrier posed by the LATA boundaries no longer exists, BellSouth should deliver all of its traffic originating in Florida to a single Point of Interconnection in the state. If Level 3's position were accepted, BellSouth could be financially responsible for hauling a call from one of its subscribers in Jacksonville that is destined to the Level 3 subscriber across the street in Jacksonville all the way to a Point of Interconnection Level 3 has designated in Miami. Where is the equity in such a position?

Level 3's argument is similar to an argument the FCC raised before a federal court in Oregon. In *US West v. AT&T Communications*, 31 F.Supp.2d 839, 852 (D. Or. 1998), reversed in part, vacated in part *sub nom. US West v. AT&T*, 224 F.3d 1049 (9th Cir. 2000),¹² the Court acknowledged the FCC's argument that the Act only requires a CLEC to establish one Point of Interconnection. *Id.* At 852. The Court then expressly rejected the FCC's argument, stating that "[i]n the end, the FCC's interpretation of the statute collapses under the weight of its own contradictions." *Id.* at 852 (emphasis added). The Court explained that with regard to Section 251(c), the concept of "[t]echnical feasibility answers the question of whether a CLEC may interconnect at a given point, but it does not answer the question of how many points of interconnection a CLEC must have." *Id.* (emphasis in original). The Court, therefore, concluded that a state Commission may order a CLEC to establish more than one Point of Interconnection. *Id.*

Subsequently, the United States District Court for the District of Arizona also concluded that a state Commission may order a CLEC to establish more than one Point of Interconnection. *See US West v. Jennings*, 46 F.Supp.2d 1004, 1021 (D. Az. 1999). In that case, the Court reviewed the Arizona Commission's decisions

¹² US West appealed several aspects of the Oregon Public Utility Commission's decisions in arbitration proceedings between US West and AT&T, MCI, and Sprint to the federal district court. *Id.* at 843. The FCC participated in the proceeding before the district court as *amicus curiae*. *Id.* After the district court rendered the decision discussed in this brief, some of the parties appealed that decision to the United States Court of Appeals for the Ninth Circuit. The district court's decision on the point of interconnection issue discussed in this brief, however, was not raised on appeal, thus it was not disturbed by the Ninth Circuit's decision.

on the Point of Interconnection issue in ten consolidated arbitration proceedings. The Arizona Commission acknowledged that in at least one of those ten proceedings, it had considered “only whether interconnection was physically possible at the requested location.” *Id.* at 1021. The Arizona Commission “ignored other factors such as the cost to [the incumbent] of establishing only a single point of interconnection, because the [Commission] assumed it could not consider those factors.” *Id.* The Court, however, ruled that

In determining whether a CLEC should establish more than one point of interconnection in Arizona, the [Arizona Commission] may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another.

Id.

Significantly, the Arizona court further ruled that “[a]s an alternative, the [Arizona Commission] may require a CLEC to compensate [the incumbent] for costs resulting from an inefficient interconnection.” *Id.* The Court concluded its discussion of this issue by noting that “[i]t would be ironic if a law designed to promote a market-driven economy in local telephone service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants.” *Id.* at 1022.

During the hearing, Level 3’s witness was asked whether Level 3 incurs “higher termination costs for calls to its customers located outside the local calling area than it would versus calls to customers located within the local calling area.”

(See Tr. Vol. 3, p. 372). The response is instructive: “it seems clear to me that if Level 3 has to transport the call to that other exchange, that the costs would be higher than they would otherwise.” (*Id.*)(emphasis added). The reverse is equally clear – if BellSouth has to transport a call to a Point of Interconnection located in a different local calling area, the costs would be higher than they would if BellSouth transported the call to a Point of Interconnection located within the local calling area in which it originated. Level 3, however, is unwilling to compensate BellSouth for these additional costs it has caused BellSouth to incur. Instead, Level 3 wants BellSouth, and BellSouth alone, to bear those costs and thereby subsidize Level 3’s operations. As the federal court in Arizona ruled, the Act neither requires nor permits such a result.

- B. Under the logic of the FCC’s *TSR Wireless* Order, an incumbent only is required to deliver its originating traffic, without charge, to a Point of Interconnection that is located within the local calling area in which the traffic originated.**

After these two federal court decisions were released, the FCC released an Order addressing the Point of Interconnection issue. See Memorandum Opinion and Order, *In the Matter Of TSR Wireless, LLC. v. US West*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 (June 21, 2000). In *TSR Wireless*, a CMRS provider took the position that an incumbent was required to deliver its originating traffic to the CMRS provider’s Point of Interconnection without charge. As the FCC noted, two FCC rules bear on this position. The first is 47 CFR §51.702(b), which provides that “a LEC may not assess charges on any other

telecommunications carrier for local telecommunications traffic that originates on the LEC's network."¹³ The second is 47 CFR §51.701(b)(2), which defines "local telecommunications traffic" to which reciprocal compensation obligations apply as "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area¹⁴"

In the *TSR Wireless* Order, the FCC read these two rules together to determine the extent of an incumbent's obligation to deliver its originating traffic to a CMRS provider without charge. Specifically, the FCC ruled that:

Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated

TSR Wireless Order at ¶31 (emphasis added). An incumbent, therefore, is required to deliver its originating traffic, without charge, to a CMRS provider's Point of Interconnection located within the same MTA in which the traffic originates. Absolutely nothing in the *TSR Wireless* Order suggests that an incumbent is required to deliver its originating traffic, without charge, to a Point of Interconnection located in an MTA other than the MTA in which the traffic originated.

¹³ As the attorney who testified on behalf of Level 3 acknowledged, this rule "applies only to local telecommunications traffic." (See Tr. Vol. 1, p. 79).

¹⁴ As explained below, a Major Trading Area (MTA) is the CMRS equivalent of a local calling area in a wireline environment.

The logic of the *TSR Wireless* decision applies with equal force to traffic between two LECs. The definition of "local telecommunications traffic" for LEC-to-LEC calls is traffic "that originates and terminates within a local service area established by the state commission." See 47 CFR §51.701(b)(1).¹⁵ As Level 3's witness acknowledged,

An MTA is what determines a local calling area in the CMRS environment. A local service area is what determines a local calling area in the wire line or non-CMRS environment.

(See Tr. Vol. 3, p. 85). Applying the logic of the FCC's decision in the TSR Order to the LEC-to-LEC traffic that is at issue in this arbitration, therefore, leads to the inescapable conclusion that BellSouth must deliver its originating traffic, without charge, to a Level 3 Point of Interconnection that is located anywhere within the local calling area in which the traffic originated. BellSouth, however, is not required to deliver traffic that originates in one local calling area to a Point of Interconnection Level 3 has designated in another local calling area without charge to Level 3. As Level 3's witnesses stated in the following exchange:

- Q. And the FCC is saying that the LEC does, in fact, have to deliver without charge traffic to that CMRS provider, right?
- A. Correct.
- Q. As long as it delivers it anywhere within the major trading area which is, basically, the local calling area, right?
- A. That would be similar to the local calling area in a wire line environment, correct.

¹⁵ Level 3 agrees that this definition of "local telecommunications traffic" applies to calls between BellSouth and Level 3. (See Tr. Vol. 1, p. 80).

(See Tr., Vol. 3, p. 84).

- C. Adopting BellSouth's proposal would not force Level 3 to build facilities to every BellSouth local calling area, but instead it would require Level 3 to be financially responsible for the facilities necessary to carry calls from distant local calling areas to a Point of Interconnection designated by Level 3.**

Part of Level 3's argument is that adopting BellSouth's proposal would force Level 3 to build facilities to every BellSouth local calling area. (See e.g., Gates Direct at 13). That is absolutely inaccurate. BellSouth acknowledges that Level 3 can establish a physical Point of Interconnection with BellSouth at any technically feasible point, and if it chooses to have only a single such point in a LATA, that is Level 3's choice. Level 3 can, however, lease facilities from BellSouth or any other entity to collect traffic from local calling areas outside of the local calling area in which its Point of Interconnection is found. (See Tr. Vol. 3, pp. 471-73). Nothing in BellSouth's proposed solution to this issue would require Level 3 to build another (or the first) foot of cable devoted to local service in Florida beyond that required to establish a single Point of Interconnection in the LATAs Level 3 chooses to serve.

Finally, BellSouth is not challenging Level 3's ability to designate a single Point of Interconnection for its originating traffic in each LATA. (See Tr. Vol. 3, p. 470). Nor is BellSouth challenging Level 3's ability to design its network as it sees fit. (See Tr. Vol. 3, p. 456). BellSouth is, however, challenging Level 3's ability to avoid the costs that result from its own network design decisions by requiring BellSouth and its customers to bear those costs. BellSouth, therefore, requests the Commission to conclude that while Level 3 can have a single Point of

Interconnection in a LATA if it chooses, it remains responsible to pay for the facilities necessary to carry calls originated by BellSouth customers in distant local calling areas to that single Point of Interconnection. That is the fair and equitable result.

ISSUE 2: Under what circumstances is Level 3 entitled to symmetrical compensation for leased facility interconnection?

SUMMARY OF BELLSOUTH'S POSITION

*** Unless and until Level 3 files costs studies which prove that it is entitled to asymmetrical compensation under the FCC's rules, Level 3 should pay BellSouth the same rate for a local channel facility as BellSouth charges Level 3 for a local channel facility. ***

This issue addresses the rates a party to the agreement must pay if and when it leases facilities on the other party's network to transport traffic originated by its own end users from the Point of Interconnection to a point on the other party's network. While the parties obviously disagree about certain aspects of this issue, there are some aspects of the issue that are not in dispute. Before discussing the parties' disagreement, BellSouth will first address the aspects of this issue that are not in dispute.

First, the definitions of the facilities addressed by this issue are not in dispute. One of the attachments to the Petition Level 3 filed with the Commission is a draft copy of the parties' interconnection agreement.¹⁶ As Level 3 explains in Paragraph 7 of its Petition for Arbitration, Level 3 identified disputed language in

¹⁶ For ease of reference, BellSouth has attached a portion of the draft agreement that was attached to Level 3's petition – the portion that is labeled "Attachment 3 Network Interconnection" – as an Attachment 1 to this brief.

this draft interconnection agreement by either underlining or striking through such disputed language.¹⁷ If language in the proposed agreement is in regular text, therefore, the language is not in dispute. *Id.* This Attachment contains the definitions of "local channel" facility, (*see* Attachment, page 4, §1.2.3), "serving wire center," (*id.* §1.2.4), and "dedicated interoffice transport" facility. (*Id.* at §1.2.5). These definitions appear in regular text and, therefore, they are not in dispute in this arbitration. (*See also* Tr. Vol. 3, p. 519-20).

Second, the manner in which BellSouth has labeled the facilities addressed by Issue No. 2 is not in dispute. On cross examination, Level 3's network witness carefully reviewed the network diagram which was admitted into evidence as BellSouth's Cross Examination Exhibit No. 5. (*See* Tr. Vol. 1, pp. 123-129). This witness agreed with BellSouth's designation of certain facilities on that diagram as local channel facilities, (*see, e.g.,* Tr. Vol. 1, p. 126) and he agreed with BellSouth's designation of other facilities on that diagram as dedicated interoffice transport facilities. (*See, e.g.,* Tr. Vol. 1, p. 128).¹⁸ In fact, after reviewing the diagram in detail, (*see* Tr. Vol. 1, pp. 124-129), Level 3's Senior Director, Network Planning and Interconnection Services testified that he saw nothing on Exhibit 5 that was mislabeled. (*See* Tr. Vol. 1, p. 129).

¹⁷ In its Response, BellSouth admitted the allegations set forth in Paragraph 7 of Level 3's petition. *See* Response at ¶7.

¹⁸ Additionally, Level 3 witness Gates agreed with BellSouth's description of a dedicated interoffice transport facility as "a distance-sensitive charge . . . for transport between two wire centers." (*See* Tr. Vol. 3 at 365).

Finally, the parties do not dispute the fact that the facilities addressed by this issue would be used by one party to transport traffic originated by its own end users from the Point of Interconnection to a point on the other party's network. Level 3's witness, for instance, acknowledges that the type of interconnection addressed in Issue No. 2 is "a form of transport." (Direct Testimony of Timothy Gates at 6). Level 3's witness also acknowledges that Issue No. 2 arises when "Level 3 customers are originating traffic that is terminated on the BellSouth network," (Gates Direct at 8), or "when BellSouth originates traffic that terminates on the Level 3 network." (*Id.* at 9). Moreover, Level 3 obviously is seeking "symmetrical compensation" for these facilities which transport traffic that must be terminated to BellSouth customers, (*see* Petition at p. 9), and Level 3 relies on the FCC's "symmetrical compensation principles" in support of its position. (*Id.* at ¶18).

What is in dispute is the rate of compensation that applies when one party leases the facilities described above from the other party. The FCC's reciprocal compensation rules "apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers," *see* 47 CFR §51.701(a), and they define a "reciprocal compensation arrangement" as one in which "each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier." *Id.*, §51.702(e). As noted above, Level 3 acknowledges that

the type of interconnection addressed in Issue No. 2 is a “form of transport.” (Gates Direct at 6). These FCC’s reciprocal compensation rules, therefore, govern the resolution of Issue No. 2.

In general, these rules provide that “[r]ates for transport and termination of local telecommunications traffic shall be symmetrical” *Id.*, §51.711(a).

Symmetrical rates, in turn,

are rates that [Level 3] assesses upon [BellSouth] for transport and termination of local telecommunications traffic equal to those that [BellSouth] assesses upon [Level 3] for the same services.

Id., §51.711(a)(1).¹⁹ (See also Tr. Vol. 2 at p. 368)(Level 3 Witness Gates states that under this rule, “reciprocal compensation should be symmetrical; that is, the rates paid for terminating traffic should be based on the costs of the ILEC, and they would be the same whether it’s being terminated by BellSouth or being terminated by Level 3.”). Thus, if BellSouth leases Level 3 network facilities that are the subject of this issue, BellSouth must pay Level 3 the same rate for those facilities as Level 3 would be required to pay BellSouth for the same facilities.

Level 3 acknowledges that in light of the manner in which Level 3 has chosen to design its network, there are no dedicated interoffice transport facilities on Level 3’s side of the Point of Interconnection. (See, e.g., Exhibit 5; Gates Direct at 9). Instead, there are only local channel facilities. (*Id.*). If BellSouth

¹⁹ As discussed in more detail below, a state Commission may establish asymmetrical rates if a non-incumbent carrier proves that symmetrical rates do not cover the non-incumbent’s costs. See 47 CFR §51.711(b). Level 3, however, has made no such showing in this arbitration.

were to lease these local channel facilities from Level 3, the FCC's reciprocal compensation rules provide that BellSouth should pay Level 3 the same rates for these local channel facilities as Level 3 would pay BellSouth for local channel facilities. Whether the total amount of compensation paid by Level 3 equals the total amount of compensation paid by BellSouth has no bearing on this issue because, as Level 3's witness acknowledges, "symmetrical compensation provides for the same rate for compensation but not necessarily for the same level [of compensation]." (See Tr. Vol. 3 at p. 368).

Level 3, however, is not satisfied with receiving the same rates for a local channel facility as it pays BellSouth for a local channel facility. Instead, Level 3 wants to charge BellSouth higher rates. During the hearing, Level 3's witness testified that "generally I would agree with [the following] characterization:

What I understand the issue here to be is that when the call goes from the Level 3 end user to the BellSouth end user, Level 3 has to pay call transport for the red line²⁰ that's marked local channel and then has to, assuming its dedicated transport, has to pay call transport for the red line marked DIT.

But when the call goes from the BellSouth end user number one to the Level 3 end user, BellSouth only pays Level 3 an amount equal to the red line between the [Point of Interconnection] and the Level 3 switch marked LC. And Level 3 says those two amounts are different, and that's unfair.

(See Tr. Vol. 2, pp. 297-98). To be more precise, Level 3 is asking this Commission to rule that when BellSouth leases a local channel facility from Level

²⁰ The lines and designations refer to the lines and designations that appear on Exhibit 5. (See Tr. Vol. 2, p. 296).

3, BellSouth must pay Level 3 a combination of both local channel facility rates plus dedicated interoffice transport facility rates for that local channel facility. (See Tr. Vol. 2, pp. 301-05). (See also Tr. Vol. 2, p 257)(Level 3 witness Gates testifies that "Level 3 should be allowed to charge BellSouth whatever it is that BellSouth charges Level 3 in order to have symmetrical rates.").

As noted above, however, Level 3 agrees that the facility at issue is a local channel facility. Section 51.711(a)(1) of the FCC's Rules, therefore, plainly requires Level 3 to charge BellSouth the same rate for that local channel facility as BellSouth would charge Level 3 for that local channel facility. Level 3's attempts to charge BellSouth a higher – or asymmetrical – rate for these facilities, therefore, should be rejected.

Level 3 claims that "it just requests that its costs be recovered, too, through a symmetrical rate design so that they can recover their costs as well." (See Tr. Vol 2, p. 312). Level 3 also claims that "those definitions [in the agreement] don't help Level 3 in terms of cost recovery." (See Tr. Vol. 2, p. 322). If Level 3 believes that the symmetrical rates BellSouth proposes to charge Level 3 for a local channel facility are less than Level 3's cost of providing a local channel facility, the FCC's rules afford Level 3 a remedy. These rules provide that

A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC . . . proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§51.505 and 51.511 that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC . . . exceed the

costs incurred by the incumbent LEC . . . and, consequently, that such that (sic) a higher rate is justified.

47 CFR §51.711(b)(emphasis added). Thus, as Level 3's witness acknowledges, if Level 3 believes that its costs of providing a local channel facility are greater than BellSouth's costs of providing a local channel facility, Level 3 may ask the Commission for asymmetrical compensation. (See Tr. Vol. 3 at 373).

If it chooses to seek asymmetrical reciprocal compensation, however, Level 3 must file a cost study to prove its contention. Level 3, however, has filed no such cost study in this arbitration. The Commission, therefore, should order Level 3 to pay BellSouth the same rate for a local channel facility as BellSouth charges Level 3 for a local channel facility.

ISSUE 3: Should each party be required to pay for the use of interconnection trunks on the other party's network? If so, what rates should apply?

SUMMARY OF BELLSOUTH'S POSITION

*** The parties should be required to pay for interconnection trunks on the other party's network if those trunks are used to deliver traffic to a Point of Interconnection which is outside the local calling area which the traffic originated. The rates for interconnection established in Docket No. 990649-TP should apply.

As noted above, Level 3 acknowledges that BellSouth has agreed to deliver BellSouth's originating traffic to one interconnection point in each local calling area. (See Tr. Vol. 1, p. 125). Thus when a BellSouth customer in a given local calling area calls a Level 3 customer in the same local calling area, BellSouth has agreed to provide the trunks necessary to deliver that call to a Point of Interconnection located in the same local calling area at its own expense. Level 3, therefore,

acknowledges that when the calling party, the called party, and the Point of Interconnection are all located within the same local calling area, there is no dispute with regard to Issue No. 3. (See Tr. Vol. 3, pp. 332-33).

The dispute regarding Issue No. 3, therefore, arises when a BellSouth end user in a given local calling area calls a Level 3 end user in the same local calling area, but the Point of Interconnection designated by Level 3 is located in a different local calling area. In that case, BellSouth's position is that Level 3 should pay BellSouth for the costs it incurs in establishing the trunks that are necessary to deliver the call from the boundary of the local calling area in which the call originates to the Point of Interconnection in the other local calling area. (See Tr. Vol. 3, pp 333-335). Level 3's position, on the other hand, is that BellSouth should bear the costs of establishing these trunks.

This issue, therefore, is simply an extension of Issue No 1. In fact, Level 3's position on Issue No. 3 is that

[I]f you have a single [Point of Interconnection] per LATA, that's what it means. You have one interconnection point, and . . . BellSouth brings all that traffic to that single interconnection point. If BellSouth through the contract somehow forces Level 3 to build facilities out hub-and-spoke kind of like its existing network, then it violates the principle of a single [Point of Interconnection] by forcing Level 3 and other new entrants, in fact, to almost duplicate the existing network of BellSouth.

(See Tr. Vol. 3, p. 332). This position is nearly identical to Level 3's position on Issue No. 1. It is not surprising, therefore, that when asked whether Issue No. 3 "should go away" if the Commission decides Issue No. 1 in BellSouth's favor, Level

3's witness testified that "[t]hey are certainly related issues." (See Tr. Vol. 3, p. 336).

As explained in detail above, the Commission should rule in BellSouth's favor on Issue No. 1. Because Issue No. 3 is simply an extension of Level 3's position on Issue No. 1, the Commission should also rule in BellSouth's favor on Issue No. 3. BellSouth, therefore, requests the Commission to conclude that while Level 3 can have a single Point of Interconnection in a LATA if it chooses, it remains responsible to pay for the facilities – including trunks – necessary to carry calls from distant local calling areas to that single Point of Interconnection.

Level 3 also has objected "to paying what it understands to be tariffed recurring and nonrecurring charges for co-carrier trunks." See Petition for Arbitration at ¶22. BellSouth, however, has not proposed to charge Level 3 tariffed rates for trunks. Instead, BellSouth has proposed to charge Level 3 the rates that appear in the pricing schedule for trunks, (see Tr. Vol. 3, p. 479), and Level 3 has not objected to paying the trunk charges set forth in the pricing schedule. Moreover, BellSouth has stated that these rates in the pricing schedule are subject to true-up pending the Commission's decision in the generic UNE docket. (See Tr. Vol. 3, p. 520). Finally, although Level 3 apparently feared that BellSouth is over-recovering the costs of such trunks by charging Level 3 for both

trunking facilities and reciprocal compensation, BellSouth witness Cox explained that this simply is not the case.²¹

ISSUE 6:²² For purposes of the interconnection agreement between Level 3 and BellSouth, should ISP-bound traffic be treated as local traffic for the purposes of reciprocal compensation, or should it be otherwise compensated?

SUMMARY OF BELLSOUTH'S POSITION

*** No, but if the Commission treats such calls as local, it should require the parties to track traffic to ISPs and retroactively make any required inter-carrier compensation payments consistent with future FCC rulings or with the result of the generic docket the Commission has initiated to address this subject. ***

Issue No. 6 addresses whether the parties must pay reciprocal compensation on calls placed to enhanced service providers, including Internet Service Providers ("ISPs"). As Level 3 acknowledges, this Commission has opened a generic docket to consider this issue. (See Tr. Vol. 3, p. 346). In the meantime, BellSouth is tracking traffic to ISPs. (See Tr. Vol. 3, p. 491). Level 3's witness testified that "the carriers just need to be treated the same," (*Id.* at p. 349), and that "it might make some sense" for the Commission to treat Level 3 as it has treated other carriers in the past by ordering BellSouth to track reciprocal compensation to ISPs

²¹ On redirect, BellSouth witness Ms. Cox explained that if Level 3 purchases dedicated interoffice transport facilities, Level 3 would not pay common transport charges. (See Tr. Vol. 3 at p. 522). Ms. Cox concluded by stating that she could not think of any situation in which BellSouth would double-bill Level 3 for trunks. (*Id.*).

²² As explained above, the parties have settled Issues No. 4, 5, and 8. In this brief, however, BellSouth has used the Issue Numbers that appear in proc order the Order Establishing Procedure.

“with the intention of paying it once the FCC rules or not paying it once the FCC rules based on that decision” (*Id.* at 347).

BellSouth, of course, believes that calls to ISPs are not local calls and, therefore, no reciprocal compensation is due for such calls. (Cox Direct at 21). If this Commission decides that such calls are local calls, however, it should require the parties to track traffic to ISPs and retroactively make any required inter-carrier compensation payments consistent with future FCC rulings or with the result of the generic docket the Commission has initiated to address this subject. (See Tr. Vol. 3, p. 491).

Additionally, the Commission should consider several aspects of Level 3’s testimony during the generic proceeding. Level 3’s witness, for instance, acknowledged that the current rate for reciprocal compensation in Florida spreads all of the costs associated with transporting and terminating a call over an average call duration of 2.708 minutes. (*Id.* at 352). Thus when the duration of a call from a BellSouth end user to an ISP served by Level 3 is greater than 2.708 minutes, Level 3’s actual costs of transporting and terminating that call are lower than the amount of reciprocal compensation BellSouth would pay Level 3 for that call. (*Id.* at 354). This is particularly important in light of Level 3’s testimony that “ISP-bound calls generally tend to have longer holding times than do average local calls.” (*Id.* at 352), because it means the amount of reciprocal compensation Level 3 collects from BellSouth for calls to ISPs generally exceeds Level 3’s costs of transporting and terminating those calls.

This is, of course, is problematic in light of Level 3's acknowledgement that reciprocal compensation is a cost recovery mechanism. (*Id.* at 274). In fact, Level 3's witness admits that the inter-carrier compensation mechanism recently adopted by the Wisconsin Commission²³ "is one way to fix the problem" because, under that mechanism, "you're not going to have the problem with overrecovery or underrecovery." (*Id.* at 370). There are, of course, other methods of fixing the problem, and the Commission should carefully consider these methods in the generic docket.

ISSUE 7: Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Level 3 based upon the physical location of Level 3's customers?

SUMMARY OF BELLSOUTH'S POSITION

*** Regardless of the telephone number Level 3 assigns to its customer, Level 3 is not entitled to reciprocal compensation when a BellSouth customer in one local calling area calls a Level 3 customer in a different local calling area. ***

Reciprocal compensation obligations apply only to "local telecommunications traffic," which is defined as traffic that "originates and terminates within a local service area established by the state commission." See 47 CFR §51.701. If a BellSouth customer in Jupiter calls a Level 3 customer in Miami (or New York), the call originates in one local calling area and terminates in a different local calling area. The call, therefore, is not a local call, and BellSouth does not owe Level 3 reciprocal compensation for the call.

²³ Generally, the Wisconsin Commission adopted a compensation mechanism which recovers the costs associated with setting up a call once per call (in the first minute) and which recovers the costs to maintain the circuit and transmit the content of the call throughout the duration of the call. (*See Tr. Vol. 3 p. 369-70*).

Level 3 seeks to alter this result by merely assigning a telephone number associated with the Jupiter local calling area to the same Level 3 customer that is physically located in Miami (or in New York). Level 3 argues that when it assigns such a number to its customer, Level 3 is entitled to reciprocal compensation when the BellSouth customer in Jupiter dials that number to call the Level 3 customer that is physically located in Miami (or in New York). Regardless of the telephone number the BellSouth customer dials, however, the call still originates in Jupiter and it still terminates in Miami (or in New York). The call, therefore, still is not a local call, and BellSouth still is not required to pay reciprocal compensation for the call.

When the North American Numbering Plan Administrator (NANPA) gives Level 3 an NPA/NXX code, Level 3 must assign that NPA/NXX code to a rate center. (See Cox Direct at p. 23). All other carriers use this assignment information to determine whether calls originated by their customers to a number in that NPA/NXX code are local or long distance calls. (*Id.*). There is no dispute that when a BellSouth customer located in a given local calling area calls a Level 3 customer physically located in the same local calling area, BellSouth owes reciprocal compensation to Level 3 for transporting and terminating the call. (*Id.* at p. 24).

As Level 3 acknowledges, however, Level 3 can give an NXX code to customers who are not physically located in the rate center to which the NXX code has been assigned. (Gates Direct at p. 59). This type of arrangement is

sometimes called a "Virtual NXX" because "the customer assigned to the telephone number has a 'virtual' presence in the associated local calling area." (*Id.*) This presence, however, is just a virtual presence, not a physical one. As Level 3's witness explained,

Virtual NXXs are often used by carriers to provide a local number to customers in calling areas in which the customer is not physically located. Customers who are physically located (both the ILEC and ALEC customers) in that area are then able to place local calls to the virtual NXX customer without incurring toll charges.

(Gates Direct at p. 61-62)(emphasis added). Level 3 acknowledges that among the "many customers [that] use a virtual NXX to provide a presence in another exchange" could be "a law firm who wants a presence in another exchange . . . , or it could be a car dealership or a chiropractor or anybody who would want a virtual presence there." (See Tr. Vol. 2 at p. 285).

Level 3 acknowledges that when a BellSouth customer places a call to a Level 3 customer that has been given such a "Virtual NXX" number, BellSouth is responsible for getting the call to the Point of Interconnection, and "Level 3 is responsible for terminating the call." (Gates Direct at 69) (emphasis added). Thus when a BellSouth customer places a call to a "Virtual NXX" number, the call originates at the physical location of the BellSouth customer, and it terminates at the physical location of the Level 3 customer. As Level 3's witness notes, Level 3 uses virtual NXXs "to provide a local number to customers in calling areas in which the customer is not physically located." (Gates Direct at p. 61-62). Calls to

“Virtual NXX” numbers, therefore, typically originate in one local calling area and terminate in a different local calling area. In this proceeding, Level 3 argues that BellSouth should be obligated to pay reciprocal compensation for all calls to numbers with NXX codes associated with the same local calling area, even when such calls originate and terminate in different local calling areas.

BellSouth’s concerns regarding Issue No. 7 are best explained at pages 23-25 of the direct testimony of BellSouth witness Cynthia Cox. As Ms. Cox notes, Level 3 may assign a telephone number that is associated with the Jupiter local calling area (561-336-3000, for instance) to a Level 3 customer physically located in Miami.²⁴ (Cox Direct at p. 24). When a BellSouth customer in Jupiter calls this “Virtual NXX” number to reach the Level 3 customer, “[t]he end points of the call are in Jupiter and Miami, and, therefore, [the call] normally would be a long distance call. (*Id.*). Similarly, Level 3 may assign a telephone number that is associated with the Jupiter local calling area (803-336-4000, for example) to a Level 3 customer physically located in New York. (*Id.*). As Ms. Cox notes, “[u]nder Level 3’s proposal, BellSouth would pay reciprocal compensation on those calls from Jupiter to Miami or from Jupiter to New York, which are clearly long distance calls and not subject to reciprocal compensation.” (*Id.* at 24-25).

²⁴ Level 3’s witness acknowledged that “we have to assume that it could be done, that you could have a virtual NXX number in another NPA.” (See Tr. Vol. 2 at 328). He also acknowledged we must assume that a virtual NXX number could be assigned to a customer in another state. (*Id.*). When asked if Level 3 would expect reciprocal compensation for calls BellSouth customers place to such numbers, Level 3’s witness acknowledged that Level 3 “would request reciprocal compensation for that call which is interstate in nature.” (*Id.* at p. 329).

A. The FCC's rules provide that reciprocal compensation is due only when traffic originates and terminates within the same local calling area

The FCC's rules that govern this dispute are straight-forward. First, it is clear that the FCC's reciprocal compensation rules "apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers." 47 CFR §51.701(a) (emphasis added). It is equally clear that telecommunications traffic is local, and thus subject to reciprocal compensation, only if it originates and terminates within the same local calling area. *See id.*, §51.701(b)(1) ("For purposes of this subpart, local telecommunications traffic means: (1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission)(emphasis added).²⁵

As Level 3's witness correctly notes, BellSouth simply seeks contractual language "defining local calls as only those calls originating and terminating to customers located physically within the same local calling area." (Gates Direct at p. 67). This is entirely consistent with the plain language of the FCC's rules. This Commission, therefore, should adopt BellSouth's position on this issue.

B. This Commission and other state commissions have ruled that calls to "Virtual NXX" numbers are not local calls if they originate in one local calling area and terminate in a different local calling area.

²⁵ The remainder of this subsection, which defines local traffic between a LEC and a CMRS provider, is not relevant to this proceeding.

This Commission recently addressed this "Virtual NXX" issue in an arbitration proceeding between BellSouth and Intermedia. In that proceeding, this Commission ruled that "[i]f Intermedia intends to assign numbers outside of the areas with which they are traditionally associated, Intermedia must provide information to other carriers that will enable them to properly rate calls to those numbers." Final Order On Arbitration, *In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.*, Docket No. 99-1854-TP, Order No. PSC-00-1519-FOF-TP (August 22, 2000) at 43. This Commission also ordered that "the parties shall be required to assign numbers within the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided." *Id.*

This Commission's decision in the Intermedia arbitration is consistent with the Illinois Commerce Commission's decision in a recent arbitration proceeding between Level 3 Communications and Ameritech Illinois. The Illinois Commission concluded that if a call would not be local but for the assignment of a "Virtual NXX" number to the called party, no reciprocal compensation is owed. Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with*

(August 30, 2000), at 10.²⁶ The Illinois Commission explained that:

The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701 (a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as "virtual NXX," which Level 3 uses, or as "FX," which [Ameritech Illinois] prefers, this service works a fiction. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller's perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation.

* * *

On the basis of the record, the agreement should make clear that if [a Virtual] NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

Arbitration Decision at 9-10 (emphasis added).

Other state Commissions also have considered the "Virtual NXX" issue and have rendered decisions that are consistent with BellSouth's position in this docket and contrary to Level 3's position in this docket:

The Maine Public Utilities Commission found that a "Virtual NXX" service similar to that described by Level 3 constitutes "an interexchange service, not a local exchange service." Order, *In re: Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a/ Brooks Fiber*, Docket No. 98-758 (Me. P.U.C. June 30, 2000), at p. 12.²⁷

²⁶ A copy of this decision is attached as Attachment 2.

²⁷ A copy of this order is attached as Attachment 3.

The Texas Public Utility Commission determined that when calls to "Virtual NXX" numbers do not terminate within a mandatory local calling area, they are not subject to reciprocal compensation. Arbitration Award, *In re: The Federal Telecommunications Act of 1996, Docket No. 21982* (July 14, 2000), at [WESTLAW *8].²⁸

The Georgia Public Service Commission ruled that an ALEC is allowed "to assign its NPA/NXX codes in accordance with the establishment of its local calling areas, provided that it furnish the necessary information to BellSouth and all other telecommunications carriers so that they may identify local and toll traffic and provide for the proper routing and billing of calls." Order, *Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement with Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act of 1996* (July 5, 2000) at 13.²⁹

Each of these decisions is consistent with this Commission's ruling on the "Virtual NXX" issue in the Intermedia arbitration.

Moreover, Level 3's implicit suggestions that its "Virtual NXX" offering is similar to BellSouth's FX offering do not alter the inescapable conclusion that reciprocal compensation is not owed on calls to Virtual NXX numbers. Even assuming Level 3's suggestion were true,³⁰ the fact remains that when a BellSouth customer in Jupiter dials a "Virtual NXX" telephone number to reach a Level 3 customer in Miami or in New York,

²⁸ A copy of this award is attached as Attachment 4.

²⁹ A copy of this order is attached as Attachment 5.

³⁰ As BellSouth witness Cox explains, "FX service is clearly a long distance service and the FX customer compensates the carrier through FX charges." (Cox Direct at p. 23) (emphasis added). Thus while BellSouth does not collect toll charges from the subscriber who calls an FX number, BellSouth does collect these charges from the FX subscriber. Nothing in the record suggests that Level 3 intends to collect such charges from its end users to whom it gives "Virtual NXX" telephone numbers. When Level 3 assigns telephone numbers to a customer in a way that allows callers to make a long distance call to that customer but not be charged for a long distance call, Level 3 may recover its costs from the customer

that call simply does not originate and terminate in the same local calling area. Level 3, therefore, is not entitled to reciprocal compensation for such a call. Instead, such a call is a toll call, and it should be treated as such.

BellSouth has collected reciprocal compensation for traffic to BellSouth's FX customers, (see Tr. Vol. 3 at 502),³¹ and there are instances when BellSouth clearly could be entitled to collect reciprocal compensation for such calls.³² The fact that BellSouth has collected reciprocal compensation for such calls in the past, however, is simply moot. As set forth in BellSouth's Late-Filed Exhibit No. 13, BellSouth is implementing a process to ensure that no reciprocal compensation is charged for any calls to BellSouth's FX customers. In Phase 1 of this process, which will be completed prior to February 1, 2001, BellSouth will load all of its existing FX numbers into the database that is currently kept for ISPs and which is used to prevent the billing of reciprocal compensation to ALECs whose customers call ISPs served by BellSouth. *Id.* This will prevent billing of reciprocal compensation on calls to BellSouth FX numbers. *Id.* In Phase 2 of this process, which

who is benefiting. Level 3, however, may not try to recover those costs from BellSouth.

³¹ If an FX number is assigned to an ISP, however, BellSouth is not billing reciprocal compensation for calls to that FX number. (See Tr. Vol. 3, p. 502).

³² An ALEC is allowed to designate the local calling area for calls originated by the ALEC's customers. Accordingly, there are situations in which BellSouth clearly could be entitled to collect reciprocal compensation for calls placed to its FX customers. Assume, for example, that an ALEC has designated an entire LATA as the local calling area for calls originated by its customers. If an ALEC customer located in that LATA calls an FX number and reaches a BellSouth FX customer located in the same LATA, that call originates and terminates within the same local calling area designated by the ALEC. The call, therefore, would be a local call, and

will be completed by April 28, 2001, BellSouth will build a database of all existing BellSouth FX numbers and will have in place programming that will immediately place newly assigned FX numbers into the database. *Id.* This database will be used to prevent billing of reciprocal compensation on calls to BellSouth FX numbers. *Id.*

In conclusion, the parties should not be required to pay reciprocal compensation for calls to "Virtual NXX" numbers if the calls originate in one local calling area and terminate in a different local calling area. Moreover, each party should provide the other party with the information necessary to allow it to determine whether its originated traffic is local or toll. Level 3, therefore, should separately identify any number assigned to a Level 3 end user whose physical location is outside the local calling area associated with the NPA/NXX assigned to that end user so that BellSouth will know whether to treat the call as local or long distance for inter-carrier billing purposes.

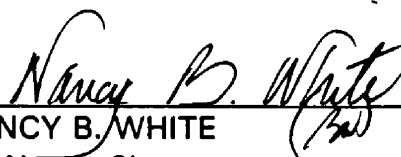
BellSouth would be entitled to collect reciprocal compensation from the ALEC for transporting and terminating that call to the BellSouth FX customer.

CONCLUSION

For the reasons set forth above, BellSouth requests that the Commission adopt BellSouth's position on each issue enumerated above.

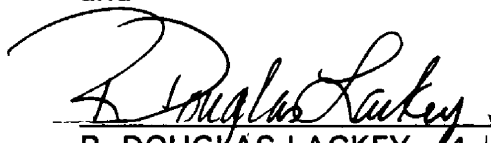
Respectfully submitted this 10th day of January, 2001.

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Attachment 1

Attachment 3
Network Interconnection

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The Parties shall provide interconnection with each other's networks for the transmission and routing of telephone exchange service (local) and exchange access (intraLATA toll and switched access) on the following terms:

1. Network Interconnection

All negotiated rates, terms and conditions set forth in this Attachment pertain only to the provision of network interconnection where Level 3 owns and provides its switch(es).

1.1 Network Interconnection for call transport and termination will be provided by BellSouth at any technically feasible point. Requests to BellSouth for interconnection at points other than as set forth in this Attachment may be made through the Bons Fide Request/New Business Request process set out in General Terms and Conditions.

1.1.1 An Interconnection Point (IP) is the physical telecommunications equipment interface that performs the interconnection function for BellSouth and Level 3. Each Party is financially and operationally responsible for providing the network on its side of the IP. Furthermore, the IP must be located within the LATA in which Local Traffic is originating. The IP determines the point at which the originating Party shall pay the terminating Party for the call transport and termination of that traffic.

1.1.1.1 Pursuant to the provisions of this Attachment, ~~Level 3 each Party as an originating Party may establish Interconnection Point(s) for the exchange delivery of its originated local and intraLATA toll traffic with BellSouth to the other Party for call transport and termination by the terminating Party, except when the Parties mutually agree to utilize two-way interconnection trunk groups for the exchange of local and intraLATA toll traffic between each other, the Parties shall mutually agree to the location of Interconnection Point(s).~~

1.1.1.2 Level 3 Alternative 1: At such time as the calls exchanged between Level 3 and BellSouth originating from and terminating to a specific tandem serving area (an access tandem and subtending end offices) meet or exceed an OC12 level, Level 3 and BellSouth shall establish an additional IP via any technically feasible means (including, but not limited to, collocation) at the access tandem serving that area.

Level 3 Alternative 2: BellSouth may choose to establish IPs for its originating traffic at Level 3 collocation arrangements previously established with BellSouth or at Level 3's switching location(s) in the LATA, or at any other negotiated point.

1.2 Interconnection via Leased Dedicated Transport Facilities

~~1.1.1~~ 2.1 Subject to Section 1.2.6, the originating Party may purchase Local Channel facilities from the terminating Party, at the cost-based prices identified in Exhibit A to this Attachment, from the Interconnection Point to the originating Party's serving wire center. The portion of Local Channel facilities utilized for Local Traffic shall be determined based upon the application of the Percent Local Facility (PLF) Factor as defined in this Attachment. Additionally, the charges applied to the portion of the Local Channel used for Local Traffic as determined by the PLF are as set forth in Exhibit A to this Attachment. This factor shall be reported in addition to the switched dedicated transport jurisdictional factors specified in the BellSouth intrastate and interstate switched access tariffs.

~~1.1.2~~ 2.2 Additionally, subject to Section 1.2.6, either Party may purchase, at the cost-based prices identified in Exhibit A to this Attachment, Dedicated Interoffice Transport facilities from its designated serving wire center to the other Party's first point of switching. The portion of Dedicated Interoffice Transport facilities utilized for Local Traffic shall be determined based upon the application of the Percent Local Facility (PLF) Factor as defined in this Attachment. Additionally, the charges applied to the portion of the Dedicated Interoffice Transport used for Local Traffic as determined by the PLF are as set forth in Exhibit A to this Attachment. This factor shall be reported in addition to the switched dedicated transport jurisdictional factors specified in the BellSouth intrastate and interstate switched access tariffs.

1.2.3 For the purposes of this Attachment, **Local Channel** is defined as a switch transport facility between the Interconnection Point and the originating Party's serving wire center.

1.2.4 For the purposes of this Attachment, **Serving Wire Center** is defined as the wire center owned by one Party from which the other Party would normally obtain dial tone for its Interconnection Point.

1.2.5 For the purposes of this Attachment, **Dedicated Interoffice Transport** is defined as a switch transport facility between a Party's serving wire center and the first point of switching on the other Party's common (shared) network.

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

1.3 Fiber Meet

- 1.3.1 **Fiber Meet is an interconnection arrangement whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at which one Party's facilities, provisioning, and maintenance responsibility begins and the other Party's responsibility ends (i.e. Interconnection Point).**
- 1.3.2 **If Level 3 elects to interconnect with BellSouth pursuant to a Fiber Meet, Level 3 and BellSouth shall jointly engineer and operate a Synchronous Optical Network ("SONET") transmission system by which they shall interconnect their transmission and routing of local traffic via a Local Channel facility at either the DS0, DS1, or DS3 level. The Parties shall work jointly to determine the specific transmission system. However, Level 3's SONET transmission must be compatible with BellSouth's equipment in the BellSouth Interconnection Wire Center. The same vendor's equipment and software version must be used, and the Data Communications Channel (DCC) must be turned off.**
- 1.3.3 **BellSouth shall, wholly at its own expense, procure, install and maintain the agreed upon SONET equipment in the BellSouth Interconnection Wire Center ("BIWC").**
- 1.3.4 **Level 3 shall, wholly at its own expense, procure, install and maintain the agreed upon SONET equipment in the Level 3 Interconnection Wire Center ("Level 3 Wire Center").**
- 1.3.5 **The Parties shall mutually designate an IP outside the BIWC as a Fiber Meet point and BellSouth shall make all necessary preparations to receive, and to allow and enable Level 3 to deliver, fiber optic facilities into the Interconnection Point with sufficient spare length to reach the fusion splice point at the Interconnection Point. BellSouth shall, wholly at its own expense, procure, install, and maintain the fusion splicing point in the Interconnection Point. A Common Language Location Identification ("CLLI") code will be established for each Interconnection Point. The code established must be a building type code. All orders shall originate from the Interconnection Point (i.e., Interconnection Point to Level 3, Interconnection Point to BellSouth).**
- 1.3.6 **Level 3 shall deliver and maintain such strands wholly at its own expense. Upon verbal request by Level 3, BellSouth shall allow Level 3 access to the Fiber Meet entry point for maintenance purposes as promptly as possible.**
- 1.3.7 **The Parties shall jointly coordinate and undertake maintenance of the SONET transmission system. Each Party shall be responsible for maintaining the components of their own SONET transmission system.**
- 1.3.8 **Each Party will be responsible for (i) providing its own transport facilities to the Fiber Meet, and (ii) the cost to build-out its facilities to such Fiber Meet.**

- 1.3.9 Neither Party shall charge the other for its portion of the Fiber Meet facility used exclusively for non-transit local traffic (i.e. the Local Channel). Charges incurred for other services including dedicated transport facilities will apply. Charges for Switched and Special Access Services shall be billed in accordance with the applicable Access Service tariff (i.e. the BellSouth Interstate or Intrastate Access Services Tariff).
2. **Interconnection Trunk Group Architectures**
- 2.1 BellSouth and Level 3 shall establish interconnecting trunk groups and trunk group configurations between networks including the establishment of one-way or two-way trunks in accordance with the following provisions set forth in this Agreement. For trunking purposes, traffic will be routed based on the digits dialed by the originating end user and in accordance with the Local Exchange Routing Guide (LERG).
- 2.2 Level 3 shall establish an interconnection trunk group(s) to at least one BellSouth access tandem within the LATA for the delivery of Level 3's originated local and intraLATA toll traffic and for the receipt and delivery of Transit Traffic. To the extent Level 3 desires to terminate local and intraLATA toll traffic to BellSouth and Transit Traffic to third parties subtending other BellSouth access tandems within the LATA, other than the one Level 3 has established interconnection trunk groups to, Level 3 shall order Multiple Tandem Access, as described in this Attachment, to such other BellSouth access tandems or order interconnection trunk groups to such other BellSouth access tandems.
- 2.2.1 Notwithstanding the forgoing, Level 3 shall establish an interconnection trunk group(s) to all BellSouth access and local tandems in the LATA where Level 3 has homed (i.e. assigned) its NPA/NXXs. Level 3 shall home its NPA/NXXs on the BellSouth tandems that serve the Exchange Rate Center Areas to which the NPA/NXXs are assigned. The specified association between BellSouth tandems and Exchange Rate Centers is defined in the national Local Exchange Routing Guide (LERG). Level 3 shall enter its NPA/NXX access and/or local tandem homing arrangement into the LERG.
- 2.3 Switched Access traffic will be delivered to and by Interexchange Carriers (IXCs) based on Level 3's NXX Access Tandem homing arrangement as specified by Level 3 in the Local Exchange Routing Guide (LERG).
- 2.4 Any Level 3 interconnection request that deviates from the interconnection trunk group architectures as described in this Agreement -that affects traffic delivered to Level 3 from a BellSouth switch that requires special BellSouth switch translations and other network modifications will require Level 3 to submit a Bona Fide Request/New Business Request via the Bona Fide Request/New Business Request Process set forth in General Terms and Conditions.
- 2.5 ~~Charges, both non-recurring and recurring, associated with interconnecting trunk groups between BellSouth and Level 3 are set forth in Exhibit A. To the extent a rate~~

~~associated with the interconnecting trunk group is not set forth in Exhibit A, the interim rate shall be as set forth in the appropriate BellSouth tariff for Switched Access services. Once a cost-based rate is established by BellSouth, the interim tariff rate shall be turned up and the cost-based rate will be applied retroactively to the effective date of this agreement. No charges shall apply for the provision of interconnection trunk groups for the exchange of local and intraLATA Traffic with the other Party.~~

- 2.6 ~~For two-way trunk groups that carry both Parties' local and IntraLATA Toll traffic only, excluding trunk groups that carry Transit Traffic, the Parties shall be compensated for the nonrecurring and recurring charges for dedicated transport trunks and facilities at 50% of the applicable contractual or tariff rates for the services provided by each Party. Level 3 shall be responsible for ordering and paying for any two-way trunks carrying Transit Traffic.~~
- 2.7 All trunk groups will be provisioned as Signaling System 7 (SS7) capable where technically feasible. If SS7 is not technically feasible multi-frequency (MF) protocol signaling shall be used.
- 2.8 In cases where Level 3 is also an IXC, the IXC's Feature Group D (FG D) trunk group(s) must remain separate from the local interconnection trunk group(s).
- 2.9 Unless in response to a blocking situation or for a project, when either Party orders interconnection trunk group augmentations, a Firm Order Confirmation (FOC) shall be returned to the ordering Party within four (4) business days from receipt of a valid error free ASR. The party receiving an ASR will review each ASR for all errors within two (2) business days of receipt. If an ASR contains an error, the Party receiving the ASR will notify the ordering Party of all errors within two (2) business days of receipt. A project is defined as a new trunk group or the request of 96 or more trunks on a single or multiple trunk group(s) in a given local calling area. Blocking situations and projects shall be managed through the BellSouth Interconnection Trunking Project Management group and Level 3's equivalent trunking group.
- 2.10 Intervals. For augmentation orders of up to ninety-six (96) trunks in a given local calling area, BellSouth will turn up trunks within fifteen (15) business days of receipt of the ASR (or receipt of the FOC where BellSouth places the order). For new trunk group orders or augmentation orders of 96 trunks or greater, BellSouth will turn up those trunks within twenty-two (22) business days of receipt of the ASR (or receipt of the FOC where BellSouth places the order). In the case of blocking situations, each Party will turn up interconnection trunks to relieve blocking within five (5) business days of receipt of the ASR or FOC, as applicable.
- 2.11 **Interconnection Trunk Groups for Exchange of Local, IntraLATA Toll and Transit Traffic**

2.11.1 If the Parties' originated local and/or intraLATA toll traffic is utilizing the same two-way trunk group, the Parties shall mutually agree to use this type of two-way interconnection trunk group with the quantity of trunks being mutually determined and the provisioning being jointly coordinated. Furthermore, the Interconnection Point(s) for two-way interconnection trunk groups transporting both Parties local and/or intraLATA toll shall be mutually agreed upon. Level 3 shall order such two-way trunks via the Access Service Request (ASR) process in place for Local Interconnection upon determination by the Parties, in a joint planning meeting, that such trunk groups shall be utilized. BellSouth will use the Trunk Group Service Request (TGSR) to request changes in trunking. Both Parties reserve the right to issue ASRs, if so required, in the normal course of business. Furthermore, the Parties shall jointly review such trunk performance and forecasts on a periodic basis. The Parties use of two-way interconnection trunk groups for the transport of local and/or intraLATA toll traffic between the Parties does not preclude either Party from establishing additional one-way interconnection trunks for the delivery of its originated local and/or intraLATA toll traffic to the other Party.

2.11.2 BellSouth Access Tandem Interconnection Architectures

BellSouth Access Tandem Interconnection provides intratandem access to subtending end offices. BellSouth Multiple Tandem Access (MTA), described later in this Agreement, may be ordered using any of the following access tandem architectures.

2.11.2.1 Basic Architecture

2.11.2.1.1 In this architecture, Level 3's originating Local and IntraLATA Toll and originating and terminating Transit Traffic is transported on a single two-way trunk group between Level 3 and BellSouth access tandem(s) within a LATA. This group carries intratandem Transit Traffic between Level 3 and Independent Companies, Interexchange Carriers, other CLECs and other network providers with which Level 3 desires interconnection and has the proper contractual arrangements as may be required with the third party. This group also carries Level 3 originated intertandem traffic transiting a single BellSouth access tandem destined to third party tandems such as an Independent Company tandem or other CLEC tandem. BellSouth originated Local and IntraLATA Toll traffic is transported on a single one-way trunk group terminating to Level 3. Other trunk groups for operator services, directory assistance, emergency services and intercept may be established if required. The LERG should be referenced for current routing and tandem serving arrangements. The Basic Architecture is illustrated in Exhibit B.

2.11.2.1 One-Way Trunk Group Architecture

2.11.2.1.1 In this architecture, the Parties interconnect using two one-way trunk groups. One one-way trunk group carries Level 3-originated local and intraLATA toll traffic destined for BellSouth end-users. The other one-way trunk group carries

BellSouth-originated local and intraLATA toll traffic destined for Level 3 end-users. A third two-way trunk group is established for Level 3's originating and terminating Transit Traffic. This group carries intratandem Transit Traffic between Level 3 and Independent Companies, Interexchange Carriers, other CLECs and other network providers with which Level 3 desires interconnection and has the proper contractual arrangements as may be required with the third party. This group also carries Level 3 originated intertandem traffic transiting a single BellSouth access tandem destined to third party tandems such as an Independent Company tandem or other CLEC tandem. Other trunk groups for operator services, directory assistance, emergency services and intercept may be established if required. The LERG should be referenced for current routing and tandem serving arrangements. The One-Way Trunk Group Architecture is illustrated in Exhibit C.

2.11.2.2 Two-Way Trunk Group Architecture

2.11.2.2.1.1 The Two-Way Trunk Group Architecture establishes one two-way trunk group to carry local and intraLATA toll traffic between Level 3 and BellSouth. In addition, a two-way transit trunk group must be established for Level 3's originating and terminating Transit Traffic. This group carries intratandem Transit Traffic between Level 3 and Independent Companies, Interexchange Carriers, other CLECs and other network providers with which Level 3 desires interconnection and has the proper contractual arrangements as may be required with the third party. This group also carries Level 3 originated intertandem traffic transiting a single BellSouth access tandem destined to third party tandems such as an Independent Company tandem or other CLEC tandem. Other trunk groups for operator services, directory assistance, emergency services and intercept may be established if required. The LERG should be referenced for current routing and tandem serving arrangements. The Two-Way Trunk Group Architecture is illustrated in Exhibit D.

2.11.2.3 Supergroup Architecture

2.11.2.3.1 In the Supergroup Architecture, the Parties (local and IntraLATA Toll and Level 3's Transit Traffic) are exchanged on a single two-way trunk group between Level 3 and BellSouth. This group carries intratandem Transit Traffic between Level 3 and Independent Companies, Interexchange Carriers, other CLECs and other network providers with which Level 3 desires interconnection and has the proper contractual arrangements as may be required with the third party. This group also carries Level 3 originated intertandem traffic transiting a single BellSouth access tandem destined to third party tandems such as an Independent Company tandem or other CLEC tandem. Other trunk groups for operator services, directory assistance, emergency services and intercept may be established if required. The LERG should be referenced for current routing and tandem serving arrangements. The Supergroup Architecture is illustrated in Exhibit E.

2.11.3 Multiple Tandem Access Service

- 2.11.3.1 BellSouth Multiple Tandem Access (MTA)** provides for LATA wide BellSouth transport and termination of Level 3-originated intraLATA-toll and local traffic, that is transported by BellSouth, by establishing an interconnection trunk group(s) at a BellSouth access tandem with routing through multiple BellSouth access tandems as required. However, Level 3 must still establish an interconnection trunk group(s) at all BellSouth access tandems where Level 3 NXXs are "homed". If Level 3 does not have NXXs homed at a BellSouth access tandem within a LATA and elects not to establish an interconnection trunk group(s) at such BellSouth access tandem, Level 3 can order MTA in each BellSouth access tandem within the LATA where it does have an interconnection trunk group(s) and BellSouth will terminate traffic to end-users served through those BellSouth access tandems where Level 3 does not have an interconnection trunk group(s). MTA shall be provisioned in accordance with BellSouth's Ordering Guidelines.
- 2.11.3.2** MTA does not include switched access traffic that transits the BellSouth network to an Interexchange Carrier (IXC). Switched Access traffic will be delivered to and by IXCs based on Level 3's NXX Access Tandem homing arrangement as specified by Level 3 in the national Local Exchange Routing Guide (LERG).
- 2.11.3.3** For Level 3-originated local and intraLATA toll traffic that BellSouth transports but is destined for termination by a third Party network (Transit Traffic), BellSouth MTA is required if multiple BellSouth access tandems are necessary to deliver the call to the third Party network.
- 2.11.3.4** When Level 3 purchases MTA, the Parties agree that compensation for the BellSouth transport and/or termination of Level 3's local and intraLATA toll traffic will be billed on a statewide basis at the applicable rates specified in Exhibit A to this Attachment for local traffic and at the BellSouth intrastate switched access tariff rates for intraLATA toll traffic (in the case of intraLATA toll transit traffic).
- 2.11.3.5** To the extent Level 3 does not purchase MTA in a calling area that has multiple access tandems serving the calling area as defined by BellSouth, Level 3 must establish an interconnection trunk group(s) to every access tandem in the calling area in order to serve the entire calling area. To the extent Level 3 does not purchase MTA and provides intraLATA toll service to its customers, it may be necessary for it to establish an interconnection trunk group(s) to additional BellSouth access tandems that serve end offices outside the local calling area. To the extent Level 3 routes its traffic in such a way that utilizes BellSouth's MTA service without properly ordering MTA service, Level 3 agrees to pay BellSouth the associated transport and termination charges.

2.11.4 Local Tandem Interconnection

- 2.11.4.1** Local Tandem Interconnection arrangement allows Level 3 to establish an interconnection trunk group(s) at BellSouth local tandems for: (1) the delivery of Level 3-originated local traffic transported and terminated by BellSouth to BellSouth end offices within the local calling area as defined in BellSouth's General Subscriber Services Tariff (GSST), section A3 served by those BellSouth local tandems, and (2) for local Transit Traffic transported by BellSouth for third party network providers who have also established an interconnection trunk group(s) at those BellSouth local tandems.
- 2.11.4.2** When a specified local calling area is served by more than one BellSouth local tandem, Level 3 must designate a "home" local tandem for each of its assigned NPA/NXXs and establish trunk connections to such local tandems. Additionally, Level 3 may choose to establish an interconnection trunk group(s) at the BellSouth local tandems where it has no codes homing but is not required to do so. Level 3 may deliver local traffic to a "home" BellSouth local tandem that is destined for other BellSouth or third party network provider end offices subtending other BellSouth local tandems in the same local calling area where Level 3 does not choose to establish an interconnection trunk group(s). It is Level 3's responsibility to enter its own NPA/NXX local tandem homing arrangements into the Local Exchange Routing Guide (LERG) either directly or via a vendor in order for other third party network providers to determine appropriate traffic routing to Level 3's codes. Likewise, Level 3 shall obtain its routing information from the LERG.
- 2.11.4.3** Notwithstanding establishing an interconnection trunk group(s) to BellSouth's local tandems, Level 3 must also establish an interconnection trunk group(s) to BellSouth access tandems within the LATA on which Level 3 has NPA/NXXs homed for the delivery of Interexchange Carrier Switched Access (SWA) and toll traffic, and traffic to Type 2A CMRS connections located at the access tandems. BellSouth shall not switch SWA traffic through more than one BellSouth access tandem. SWA, Type 2A CMRS or toll traffic routed to the local tandem in error will not be backhauled to the BellSouth access tandem for completion. (Type 2A CMRS interconnection is defined in BellSouth's A35 General Subscriber Services Tariff).
- 2.11.4.4** BellSouth's provisioning of local tandem interconnection assumes that Level 3 has local interconnection agreements, where they may be required, with the other third party network providers subtending those local tandems as required by the Act.
- 2.11.5 Direct End Office-to-End Office Interconnection**
- 2.11.5.1** Direct End Office-to-End Office one-way or two-way interconnection trunk groups allow for the delivery of a Party's originating local or intraLATA toll traffic to the terminating Party on a direct end office-to-end office basis.

- 2.11.5.2** The Parties shall utilize direct end office-to-end office trunk groups under the following conditions:
- 2.11.5.2.1 Tandem Exhaust** - If a tandem through which the Parties are interconnected is unable to, or is forecasted to be unable to support additional traffic loads for any period of time, the Parties will mutually agree on an end office trunking plan that will alleviate the tandem capacity shortage and ensure completion of traffic between Level 3 and BellSouth's subscribers.
- 2.11.5.2.2 Traffic Volume** -To the extent either Party has the capability to measure the amount of traffic between a Level 3 switching center and a BellSouth end office, either Party shall install and retain direct end office trunking sufficient to handle actual or reasonably forecasted traffic volumes, whichever is greater, between a Level 3 switching center and a BellSouth end office where the traffic exceeds or is forecasted to exceed a single DS1 of local traffic during the time consistent busy hour (as measured utilizing the day-to-day variation and peakedness) per month over a period of three (3) consecutive months. Either Party will install additional capacity between such points when overflow traffic between Level 3's switching center and BellSouth's end office exceeds or is forecasted to exceed a single DS1 of local traffic during the time consistent busy hour (measured utilizing the day-to-day variation and peakedness) per month. In the case of one way trunking, additional trunking shall only be required by the Party whose trunking has achieved the preceding usage threshold.
- 2.11.5.2.3 Mutual Agreement** - The Parties may install direct end office trunking upon mutual agreement in the absence of conditions (1) or (2) above and agreement will not unreasonably be withheld.

2.11.6 Transit Traffic Trunk Group

- 2.11.6.1** Transit Traffic trunks can either be two-way trunks or two one-way trunks ordered by Level 3 to deliver and receive local and intraLATA toll Transit Traffic from third parties, such as Independent Companies and other CLECs, via BellSouth access tandems (or BellSouth local tandems for local traffic), and Switched Access traffic to and from Interexchange Carriers via BellSouth access tandems pursuant to the Transit Traffic section of this Attachment. Establishing Transit Traffic trunks at BellSouth access and local tandems provides intratandem access to the third parties also interconnected at those tandems.
- 2.11.6.2 Toll Free Traffic**
- 2.11.6.2.1** If Level 3 chooses BellSouth to handle Toll Free database queries from its switches, all Level 3 originating Toll Free traffic will be routed over the Transit Traffic Trunk Group.

- 2.11.6.2.2 All originating Toll Free Service (Toll Free) calls for which Level 3 requests that BellSouth perform the Service Switching Point ("SSP") function (i.e., perform the database query) shall be delivered using GR-394 format over the Transit Traffic Trunk Group. Carrier Code "0110" and Circuit Code (to be determined for each LATA) shall be used for all such calls.
- 2.11.6.2.3 Level 3 may handle its own Toll Free database queries from its switch. If so, Level 3 will determine the nature (local/intraLATA/interLATA) of the Toll Free call based on the response from the database. If the query determines that the call is a BellSouth local or intraLATA Toll Free number, Level 3 will route the post-query local or IntraLATA converted ten-digit local number to BellSouth over the local or intraLATA trunk group. If the query determines that the call is a third party (ICO or other CLEC) local or intraLATA Toll Free number, Level 3 will route the post-query local or intraLATA converted ten-digit local number to BellSouth over the Transit Traffic Trunk Group. In such case, Level 3 is to provide a Toll Free billing record when appropriate. If the query reveals the call is an interLATA Toll Free number, Level 3 will route the post-query interLATA call (Toll Free number) directly from its switch for carriers interconnected with its network or over the Transit Traffic Trunk Group to carriers not directly connected to its network but are connected to BellSouth's access tandem. Calls will be routed to BellSouth over the local/intraLATA and Transit Traffic Trunk Groups within the LATA in which the calls originate.
- 2.11.6.2.4 All post-query Toll Free Service (Toll Free) calls for which Level 3 performs the SSP function, if delivered to BellSouth, shall be delivered using GR-394 format for calls destined to IXCs, and GR-317 format for calls destined to end offices that directly subtend the BellSouth access tandem.

3. Network Design And Management For Interconnection

- 3.1 Network Management and Changes. Both Parties will work cooperatively with each other to install and maintain the most effective and reliable interconnected telecommunications networks, including but not limited to, the exchange of toll-free maintenance contact numbers and escalation procedures. Both Parties agree to provide public notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks. Notice of such changes shall be provided in accordance with FCC or Commission rules or industry standards, as applicable. For changes which impact service to end users, BellSouth will work cooperatively with Level 3 to address such changes.
- 3.2 Interconnection Technical Standards. The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria. Interconnecting facilities shall conform, at a minimum, to

the telecommunications industry standard of DS-1 pursuant to Bellcore Standard No TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. Facilities of each Party shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling number ID (Calling Party Number) when technically feasible.

- 3.3 **Quality of Interconnection.** The local interconnection for the transmission and routing of telephone exchange service and exchange access that each Party provides to each other will be at least equal in quality to what it provides to itself and any subsidiary or affiliate, where technically feasible, or to any other Party to which each Party provides local interconnection.
- 3.4 **Network Management Controls.** Both Parties will work cooperatively with each other to apply sound network management principles by invoking appropriate network management controls (e.g., call gapping) to alleviate or prevent network congestion.
- 3.5 **Common Channel Signaling.** Both Parties will provide LEC-to-LEC Common Channel Signaling ("CCS") to each other, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification ("ANI"), originating line information ("OLI") calling company category, charge number, etc. All privacy indicators will be honored, and each Party will cooperate with each other on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate full interoperability of CCS-based features between the respective networks. Neither Party shall alter the CCS parameters, or be a party to altering such parameters, or knowingly pass CCS parameters that have been altered in order to circumvent appropriate interconnection charges.
- 3.6 **Signaling Call Information.** BellSouth and Level 3 will send and receive 10 digits for local traffic. Additionally, BellSouth and Level 3 will exchange the proper call information, i.e. originated call company number and destination call company number, CIC, and OZZ, including all proper translations for routing between networks and any information necessary for billing.
- 3.7 **Non-binding Forecasting for Trunk Provisioning**
- 3.7.1 Within six (6) months after execution of this agreement, and each quarter thereafter, Level 3 shall provide an interconnection trunk group forecast for each LATA that it shall provide service within BellSouth's region. Upon receipt of Level 3's forecast,

the Parties shall schedule and participate in a joint planning meeting to develop a joint interconnection trunk group forecast. Each forecast provided under this Section shall be deemed "Confidential Information" under the General Terms and Conditions - Part A of this Agreement.

- 3.7.1.1 At a minimum, the forecast shall include the projected quantity of Transit Trunks, Level 3-to-BellSouth one-way trunks ("Level 3 Trunks"), BellSouth-to-Level 3 one-way trunks ("Reciprocal Trunks") and/or two-way interconnection trunks, if the Parties have agreed to interconnect using two-way trunking to transport the Parties' local and intraLATA toll. The quantities shall be projected for a minimum of six months in advance and shall include the current year plus next two years total forecasted quantities. Considering Level 3's provided forecast, the Parties shall mutually develop Reciprocal Trunk and/or two-way interconnection trunk forecast quantities for the time periods listed and to be included within the initial forecast.
- 3.7.1.2 Additionally all forecasts shall include, at a minimum, Access Carrier Terminal Location ("ACTL"), trunk group type (local/intraLATA toll, Transit, Operator Services, 911, etc.), A location/Z location (CLLI codes for Level 3 location and BellSouth location where the trunks shall terminate), interface type (e.g., DS1), Direction of Signaling, Trunk Group Number, if known, (commonly referred to as the 2-6 code) and forecasted trunks in service each year (cumulative).
- 3.7.1.3 At Level 3's specific written or electronic mail request to provide the information identified in this section, BellSouth shall provide Level 3 written confirmation that it has received Level 3's forecasts and included such information in its own network planning. As part of this confirmation, BellSouth shall also provide Level 3 with a description of major network projects anticipated within the following six (6) months that could affect its ability to respond to Level 3's forecasts. Major network projects include trunking or network rearrangements, anticipated tandem exhaust, anticipated end office exhaust, or other activities that are reflected by a significant increase or decrease in trunking demand over that six (6) month period. BellSouth will also provide, as part of this confirmation, notice of any network expansions, software and hardware upgrades, and other network changes that are likely to preclude BellSouth from completing trunk orders submitted by Level 3 during that six (6) month period.
- 3.7.2 Each Party shall exercise its best efforts to provide the quantity of interconnection trunks mutually forecasted. However, the provision of the forecasted quantity of interconnection trunks is subject to trunk terminations and facility capacity existing at the time the trunk order is submitted. Furthermore, the receipt and development of trunk forecasts does not imply any liability for failure to perform if capacity (trunk terminations or facilities) is not available for use at the forecasted time.
- 3.7.3 The submitting and development of interconnection trunk forecasts shall not replace the ordering process in place for local interconnection trunks.

3.7.4 Once initial interconnection trunk forecasts have been developed, Level 3 shall continue to provide interconnection trunk forecasts on a quarterly basis or at otherwise mutually agreeable intervals. Level 3 shall use its best efforts to make the forecasts as accurate as possible based on reasonable engineering criteria. Interconnection trunk forecasts shall be updated and provided to BellSouth on an as needed basis, but no less frequently than quarterly and no more frequently than monthly. Upon receipt of Level 3's forecast, including forecast updates, the Parties shall confer to mutually develop BellSouth Reciprocal Trunk and/or two-way interconnection trunk forecasted quantities for the listed time periods within such subsequent forecasts.

3.8 Trunk Utilization

3.8.1 During the first month of each calendar quarter, Level 3 shall provide a forecast pursuant to Section 3.7 which sets forth in good faith Level 3's trunking requirements for the quarter following the quarter during which the forecast is provided. Each forecast will set forth with specificity, in accordance with the requirements of Section 3.7.1.2, the forecast for each LATA within BellSouth's territory within which Level 3 provides service, or plans to provide service. Subject to Section 3.7.2, where such forecasts are provided as specified in this Section, BellSouth shall use its best efforts to order, or to provide based upon Level 3's orders, the designated number of trunks at locations identified by Level 3 within the time frames specified by Level 3. Nothing in this Section shall be construed as a guarantee on the part of BellSouth that trunks will be made available pursuant to Level 3's forecasts.

3.8.2 BellSouth and Level 3 shall monitor traffic on each interconnection trunk group that is installed pursuant to the initial interconnection trunk requirements and subsequent quarterly forecasts. At any time after the end of a calendar quarter, based on a review of the capacity utilization during such quarter for installed Reciprocal Trunk groups and/or two-way interconnection trunk groups, subject to the provisions of this Section 3.8, after fifteen (15) business days advance written notice to Level 3, BellSouth may disconnect any Underutilized Reciprocal Trunk(s) and/or request Level 3 to disconnect any Underutilized two-way interconnection trunk(s) if BellSouth has determined that the trunk group is not being utilized at eighty-five percent (85%) during the time consistent busy hour utilization level over a three (3) month period (utilizing the day-to-day variation and peakedness), provided that the Parties have not otherwise agreed. Underutilized trunks are defined as the trunks not being utilized as a result of a time consistent busy hour utilization of less than 85% (using the day-to-day variation and peakedness on the given trunk group).

3.8.3 To the extent that BellSouth has not ordered or provided, as applicable, trunks in the amount specified by Level 3 in each quarterly forecast within the time frame specified in that forecast within a given LATA, the utilization requirements set forth in Section 3.8.2 for determining whether a trunk group is Underutilized shall not apply to trunks ordered or provided pursuant to that quarterly forecast until such time as all trunks (or equivalent

capacity at the tandem subtended by the end office in which the shortfall in trunks has occurred) are ordered or provided by BellSouth, as applicable, pursuant to that quarter's Level 3 forecast. If, however, BellSouth's failure to order or provide, as applicable, the forecasted amount of trunks in a LATA in a given quarter is caused by Level 3's inability to accept such trunks, Level 3 shall be held to the utilization requirements set forth in Section 3.8.2 for the trunk groups in that LATA ordered or provided pursuant to that quarterly forecast. In the event that BellSouth fails to order or provide, as applicable, trunks in the amount specified by Level 3 in its quarterly forecast within the time frames specified in that forecast within a given LATA, and Level 3 is also unable to accept the trunks specified in its quarterly forecast during that quarter, the utilization requirements set forth in Section 3.8.2 for determining whether a trunk group is Underutilized shall not apply to trunk groups in that LATA ordered or provided pursuant to that quarterly forecast until such time as all trunks (or equivalent capacity at the tandem subtended by the end office in which the shortfall in trunks has occurred) are ordered or provided by BellSouth, as applicable, pursuant to that quarter's Level 3 forecast.

- 3.8.4 Each quarter's forecasted amount of trunks shall be measured independently for purposes of identifying Underutilized trunks pursuant to Section 3.8.2. Level 3's ability to forecast and obtain trunks in each quarter shall be independent of any utilization requirements applied to trunks ordered or provided during prior quarters or trunks ordered or provided additional to the quarterly forecasted amounts. To the extent that Level 3 asks BellSouth to order or provide additional trunks (other than those specified in each quarter's forecasts as provided by Level 3), BellSouth shall measure such additional trunks independently of any quarterly forecasts to determine whether such additional trunks are Underutilized pursuant to the terms of Section 3.8.2. The provisions of Section 3.8.3 shall not apply to such additional trunks that are not specified in the Level 3 quarterly forecast.
- 3.8.5 Within ten (10) business days following the disconnection notice prescribed in Section 3.8.2 above, Level 3 may request that BellSouth not disconnect or not request disconnection for some or all of the Underutilized Trunks, in which event BellSouth shall keep the trunks in service and may invoice Level 3 for, and Level 3 shall pay, all applicable recurring and nonrecurring trunk and facility unbundled network element charges for the Underutilized Trunks. The charges shall be applied from the date of the disconnection notice and continue until such trunks are disconnected, or to the extent Level 3 requests that such trunks remain in service, until the trunk group reaches an eighty-five percent (85%) time-consistent busy hour utilization level (using the day-to-day variation and peakedness on the given trunk group). In addition, Level 3 shall reimburse BellSouth for any nonrecurring and/or recurring charges BellSouth may have paid to Level 3 for the Underutilized Trunks and for any trunk installation expense BellSouth incurred. This expense shall equal the nonrecurring installation charge for trunks in Exhibit A. Furthermore, the Level 3 forecasts for each subsequent forecast period shall be automatically reduced by the number of Reciprocal Trunks and/or two-way interconnection trunks that have been determined to be subject to disconnection pursuant to the foregoing procedures.

4. Local Dialing Parity

- 4.1 BellSouth and Level 3 shall provide local and toll dialing parity to each other with no unreasonable dialing delays. Dialing parity shall be provided for all originating telecommunications services that require dialing to route a call. BellSouth and Level 3 shall permit similarly situated telephone exchange service end users to dial the same number of digits to make a local telephone call notwithstanding the identity of the end user's or the called party's telecommunications service provider.

5. Interconnection Compensation**5.1 Compensation for Call Transportation and Termination for Local Traffic**

- 5.1.1 For reciprocal compensation between the Parties pursuant to this Attachment, Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other local calling area associated with the originating exchange as defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which the Party's customers may make calls which that Party rates as "local" in its customer tariffs.

- 5.1.1.1 ~~As clarification of this definition and for reciprocal transport and termination compensation, Local Traffic does not include traffic that originates from or is directed to or through an enhanced service provider or information service provider. Local traffic under this Agreement shall include calls originating from or terminating to an enhanced service provider, including an Internet service provider.~~

- 5.1.1.2 Local Traffic does not include, and the Parties shall not bill or pay reciprocal compensation for, calls where a Party willfully sets up a call, or colludes with a third party to set up a call, to the other Party's network for the primary purpose of receiving reciprocal compensation, and not for the purpose of providing a telecommunications service to an End User in good faith.

- 5.1.2. The Parties shall provide for the mutual and reciprocal recovery of the costs for the elemental functions performed in transporting and terminating local traffic on each other's network. The Parties agree that charges for transport and termination of calls on their respective networks are as set forth in Exhibit A to this Attachment.

- 5.1.3. For the purposes of this Attachment, Common (Shared) Transport is defined as the transport of the originating Party's traffic by the terminating Party over the terminating Party's common (shared) facilities between the terminating Party's tandem switch and end office switch and/or between the terminating Party's tandem switches.

- 5.1.4. For the purposes of this Attachment, **Tandem Switching** is defined as the function that establishes a communications path between two switching offices through a third switching office (the Tandem switch). For purposes of Interconnection Compensation, Level 3's switch shall be considered a Tandem Switch if the Parties agree that Level 3's switch meets the criteria as set forth in the FCC's rules. To the extent the parties do not agree upon this determination, either Party may seek dispute resolution pursuant to the provisions of this Agreement.
- 5.1.5. For the purposes of this Attachment, **End Office Switching** is defined as the function that establishes a communications path between the trunk side and line side of the End Office switch.
- 5.1.6. If Level 3 utilizes a switch outside the LATA and BellSouth chooses to purchase dedicated or common (shared) transport from Level 3 for transport and termination of BellSouth originated traffic, BellSouth will pay Level 3 no more than the airline miles between the V & H coordinates of the Interconnection Point within the LATA where Level 3 receives the BellSouth-originated traffic and the V & H coordinates of the BellSouth Exchange Rate Center Area that the Level 3 terminating NPA/NXX is associated in the same LATA. For these situations, BellSouth will compensate Level 3 at either dedicated or common (shared) transport rates specified in Exhibit A and based upon the functions provided by Level 3 as defined in this Attachment.
- 5.1.7. Neither Party shall represent Switched Access Traffic as Local Traffic for purposes of payment of reciprocal compensation.

~~5.1.8. Pursuant to the definition of Local Traffic in this Attachment, and for the purpose of delivery of BellSouth originating traffic to Level 3, BellSouth shall pay to Level 3 reciprocal compensation for Local Traffic delivered to Level 3 end users physically located within the local calling area in which the call originated and within which the Level 3 end user's NPA/NXX is assigned. If Level 3 assigns NPA/NXXs to specific BellSouth rate centers within the local calling area and assigns numbers from those NPA/NXXs to Level 3 end users physically located outside of that local calling area, BellSouth traffic originating from within the local calling area where the NPA/NXXs are assigned and delivered to a Level 3 customer physically located outside of such local calling area, shall not be deemed Local Traffic, and no compensation from BellSouth to Level 3 shall be due therefor. Further, Level 3 agrees to identify such traffic to BellSouth and to compensate BellSouth for originating and transporting such inter-LATA traffic to Level 3 at BellSouth's switched access tariff rates.~~

~~5.1.9. If Level 3 does not identify such inter-LATA traffic to BellSouth, to the best of BellSouth's ability BellSouth will determine which whole Level 3 NPA/NXXs on which to charge the applicable rates for originating network access service as reflected in BellSouth's Access Service Tariff. BellSouth shall make appropriate billing adjustments if Level 3 can provide sufficient information for BellSouth to determine whether or not said traffic is Local Traffic.~~

- 5.2 **Percent Local Use.** Each Party shall report to the other a Percent Local Usage ("PLU"). The application of the PLU will determine the amount of local minutes to be billed to the other Party. For purposes of developing the PLU, each Party shall consider every local call and every long distance call, excluding Transit Traffic. Each Party shall update its PLU on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than 30 calendar days after the first of each such month based on local usage for the past three months ending the last day of December, March, June and September, respectively. Requirements associated with PLU calculation and reporting shall be as set forth in BellSouth's Percent Local Use Reporting Guidebook, as it is amended from time to time. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PLU factor, shall at the terminating Party's option be utilized to determine the appropriate local usage compensation to be paid.
- 5.3 **Percent Local Facility.** Each Party shall report to the other a Percent Local Facility ("PLF"). The application of the PLF will determine the portion of switched dedicated transport to be billed per the local jurisdiction rates. The PLF shall be applied to multiplexing, local channel and interoffice channel switched dedicated transport utilized in the provision of local interconnection trunks. Each Party shall update its PLF on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than 30 calendar days after the first of each such month to be effective the first bill period the following month, respectively. Requirements associated with PLU and PLF calculation and reporting shall be as set forth in BellSouth's Percent Local Use/Percent Local Facility Reporting Guidebook, as it is amended from time to time.
- 5.4 **Percent Interstate Usage.** Each Party shall report to the other the projected Percent Interstate Usage ("PIU"). All jurisdictional report requirements, rules and regulations for Interexchange Carriers specified in BellSouth's Intrastate Access Services Tariff will apply to Level 3. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU and PLF factors will be used for application and billing of local interconnection. Each Party shall update its PIUs on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than 30 calendar days after the first of each such month, for all services showing the percentages of use (PIUs, PLU, and PLF) for the past three months ending the last day of December, March, June and September.
- 5.5 **Audits.** On thirty (30) days written notice, each Party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic. BellSouth and Level 3 shall retain records of call detail for a minimum of nine months from which a PLU, PLF and/or PIU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the Party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year.

Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit, and be conducted pursuant to the confidentiality provisions of this Agreement. The PLU and/or PIU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, to the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit. If, as a result of an audit, either Party is found to have overstated the PLU and/or PIU by twenty percentage points (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit.

5.6 Rate True-up

This section applies only to Tennessee and other rates that are interim or expressly subject to true-up under this attachment.

5.6.1 The interim prices for Unbundled Network Elements and Other Services and Local Interconnection shall be subject to true-up according to the following procedures:

5.6.2 The interim prices shall be true-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission which final order meets the criteria of (3) below. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with interim prices for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties agree that the body having jurisdiction over the matter shall be called upon to resolve such differences, or the Parties may mutually agree to submit the matter to the Dispute Resolution process in accordance with the provisions of Section 12 of the General Terms and Conditions and Attachment 1 of the Agreement.

5.6.3 The Parties may continue to negotiate toward final prices, but in the event that no such agreement is reached within nine (9) months, either Party may petition the Commission to resolve such disputes and to determine final prices for each item. Alternatively, upon mutual agreement, the Parties may submit the matter to the Dispute Resolution Process set forth in the General Terms and Conditions of the Agreement, so long as they file the resulting Agreement with the Commission as a "negotiated agreement" under Section 252(e) of the Act.

5.6.4 A final order of this Commission that forms the basis of a true-up shall be the final order as to prices based on appropriate cost studies, or potentially may be a final order in any other Commission proceeding which meets the following criteria:

- (a) BellSouth and CLEC are entitled to be full Parties to the proceeding; and
- (b) It shall apply the provisions of the federal Telecommunications Act of 1996, including but not limited to Section 252(d)(1) (which contains pricing standards) and all then-effective implementing rules and regulations.

5.7 Compensation for IntraLATA Toll and 8XX Traffic

5.7.1 IntraLATA Toll Traffic. IntraLATA Toll Traffic is defined as any telephone call that is not local or switched access per this Agreement.

5.7.2 Compensation for intraLATA toll traffic. For terminating its intraLATA toll traffic on the other company's network, the originating Party will pay the terminating Party that party's current and effective Commission- or FCC-filed intrastate or interstate, whichever is appropriate, terminating switched access tariff rates as set forth in BellSouth's or Level 3's Intrastate or Interstate Access Services Tariff. The appropriate charges will be determined by the routing of the call. If Level 3 is the BellSouth end user's presubscribed interexchange carrier or if the BellSouth end user uses Level 3 as an interexchange carrier on a 101XXXX basis, BellSouth will charge Level 3 the appropriate BellSouth tariff charges for originating switched access services.

5.7.3 Compensation for 8XX Traffic. Each Party shall compensate the other pursuant to the appropriate switched access charges, including the database query charge as set forth in the BellSouth intrastate or interstate switched access tariffs.

5.7.4 Records for 8XX Billing. Each Party will provide to the other the appropriate records necessary for billing intraLATA 8XX customers. The records provided will be in a standard EMI format.

5.7.5 8XX Access Screening. BellSouth's provision of 8XX TFD to Level 3 requires interconnection from Level 3 to BellSouth 8XX SCP. Such interconnections shall be established pursuant to BellSouth's Common Channel Signaling Interconnection Guidelines and Bellcore's CCS Network Interface Specification document, TR-TSV-000905. Level 3 shall establish CCS7 interconnection at the BellSouth Local Signal Transfer Points serving the BellSouth 8XX SCPs that Level 3 desires to query. The terms and conditions for 8XX TFD are set out in BellSouth's Intrastate Access Services Tariff as amended.

5.8 Mutual Provision of Switched Access Service

5.8.1 Switched Access Traffic. Switched Access Traffic is described as in the Act and/or relevant and applicable FCC and Commission rules and orders described in the BellSouth Access Tariff. Additionally, any Public Switched Telephone Network interexchange telecommunications traffic, regardless of transport protocol method, where the physical location of the calling party and the physical location of the called party are in different LATAs, or are in the same LATA and the Parties' Switched Access services are used for the origination or termination of the call, shall be considered Switched Access Traffic.

5.8.2 When Level 3's end office switch, subtending the BellSouth Access Tandem switch for receipt or delivery of switched access traffic, provides an access service connection to or from an interexchange carrier ("IXC") by either a direct trunk group to the IXC utilizing BellSouth facilities, or via BellSouth's tandem switch, each Party will provide its own access services to the IXC and bill on a multi-bill, multi-tariff meet-point basis. Each Party will bill its own access services rates to the IXC with the exception of the interconnection charge. The interconnection charge, if applicable, will be billed by the Party providing the end office function. Each party will use the Multiple Exchange Carrier Access Billing (MECAB) guidelines to establish meet point billing for all applicable traffic. Thirty (30)-day billing periods will be employed for these arrangements. For tandem routed traffic, the tandem company agrees to provide to the Initial Billing Company as defined in MECAB, at no charge, all the switched access detail usage data, recorded at the access tandem, within no more than sixty (60) days after the recording date. The Initial Billing Company will provide the switched access summary usage data, for all originating and terminating traffic, to all Subsequent Billing Companies as defined in MECAB within 10 days of rendering the initial bill to the IXC. Each Party will notify the other when it is not feasible to meet these requirements so that the customers may be notified for any necessary revenue accrual associated with the significantly delayed recording or billing. As business requirements change data reporting requirements may be modified as necessary.

5.8.3 In the event that either Party fails to provide switched access detailed usage data to the other Party within 90 days after the recording date and the receiving Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the Party failing to send the data as specified herein shall be liable to the other Party in an amount equal to the unbillable or uncollectible revenues. Each company will provide complete documentation to the other to substantiate any claim of unbillable access revenues and a negotiated settlement will be agreed upon between the Parties.

5.8.4 Each Party will retain for a minimum period of sixty (60) days, access message detail sufficient to recreate any data which is lost or damaged by their company or any third party involved in processing or transporting data.

5.8.5 Each Party agrees to recreate the lost or damaged data within forty-eight (48) hours of notification by the other or by an authorized third party handling the data.

5.8.6 Each Party also agrees to process the recreated data within forty-eight (48) hours of receipt at its data processing center.

5.8.7 All claims should be filed with the other Party within 120 days of the receipt of the date of the unbillable usage.

5.8.8 The Initial Billing Company shall keep records of its billing activities relating to jointly-provided Intrastate and Interstate access services in sufficient detail to permit the Subsequent Billing Party to, by formal or informal review or audit, to verify the accuracy and reasonableness of the jointly-provided access billing data provided by the Initial billing Party. Each Party agrees

to cooperate in such formal or informal reviews or audits and further agrees to jointly review the findings of such reviews or audits in order to resolve any differences concerning the findings thereof.

5.8.9 Level 3 agrees not to deliver switched access traffic to BellSouth for termination except over Level 3 ordered switched access trunks and facilities.

5.9 Transit Traffic Service

5.9.1 BellSouth shall provide tandem switching and transport services for Level 3's Transit Traffic. Transit traffic is traffic originating on Level 3's network that is switched and/or transported by BellSouth and delivered to a third party's network, or traffic originating on a third Party's network that is switched and/or transported by BellSouth and delivered to Level 3's network. Rates for local Transit Traffic shall be the applicable call transport and termination charges as set forth in Exhibit A to this Attachment. Rates for intraLATA toll and Switched Access Transit Traffic shall be the applicable call transport and termination charges as set forth in BellSouth's or Level 3's Commission or FCC-filed and effective Interstate or Intrastate Switched Access tariffs. Switched Access Transit Traffic presumes that Level 3's end office is subtrending the BellSouth Access Tandem for switched access traffic to and from Level 3's end users utilizing BellSouth facilities, either by direct trunks with the IXC, or via the BellSouth Access Tandem. Billing associated with all Transit Traffic shall be pursuant to Multiple Exchange Carrier Access Billing (MECAB) guidelines. Pursuant to these guidelines, the Initial Billing Company shall provide summary usage data, for all originating and terminating Transit Traffic, to all Subsequent Billing Companies. Traffic between Level 3 and Wireless Type 1 third parties shall not be treated as Transit Traffic from a routing or billing perspective. Traffic between Level 3 and Wireless Type 2A or UNE-CLEC third parties shall not be treated as Transit Traffic from a routing or billing perspective until BellSouth and the Wireless carrier or UNE-CLEC third party have the capability to properly meet-point-bill in accordance with MECAB guidelines.

5.9.2 The delivery of traffic which transits the BellSouth network and is transported to another carrier's network is excluded from any BellSouth billing guarantees and will be delivered at the rates stipulated in this Agreement to a terminating carrier. BellSouth agrees to deliver this traffic to the terminating carrier; provided, however, that Level 3 is solely responsible for negotiating and executing any appropriate contractual agreements, where required with the third party, with the terminating carrier for the receipt of this traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier or to Level 3. Level 3 agrees to compensate BellSouth for any charges or costs for the delivery of Transit Traffic to a connecting carrier on behalf of Level 3. Additionally, the Parties agree that any billing to a third party or other telecommunications carrier under this section shall be pursuant to MECAB procedures.

6. Frame Relay Service Interconnection

- 6.1 In addition to the Local Interconnection services set forth above, BellSouth will offer a network to network Interconnection arrangement between BellSouth's and Level 3's frame relay switches as set forth below. The following provisions will apply only to Frame Relay Service and Exchange Access Frame Relay Service in those states in which Level 3 is certified and providing Frame Relay Service as a Local Exchange Carrier and where traffic is being exchanged between Level 3 and BellSouth Frame Relay Switches in the same LATA.
- 6.2 The Parties agree to establish two-way Frame Relay facilities between their respective Frame Relay Switches to the mutually agreed upon Frame Relay Service point(s) of interconnection ("POI(s)") within the LATA. All POIs shall be within the same Frame Relay Network Serving Areas as defined in Section A40 of BellSouth's General Subscriber Service Tariff except as set forth in this Attachment.
- 6.3 Upon the request of either Party, such interconnection will be established where BellSouth and Level 3 have Frame Relay Switches in the same LATA. Where there are multiple Frame Relay switches in one central office, an interconnection with any one of the switches will be considered an interconnection with all of the switches at that central office for purposes of routing packet traffic.
- 6.4 The Parties agree to provision local and IntraLATA Frame Relay Service and Exchange Access Frame Relay Service (both intrastate and interstate) over Frame Relay interconnection facilities between the respective Frame Relay switches and the POIs.
- 6.5 The Parties agree to assess each other reciprocal charges for the facilities that each provides to the other according to the Percent Local Circuit Use Factor (PLCU), determined as follows:
- 6.5.1 If the data packets originate and terminate in locations in the same LATA, and consistent with the local definitions of the Agreement, the traffic is considered local. Frame Relay framed packet data is transported within Virtual Circuits (VC). For the purposes of this Agreement, if all the data packets transported within a VC remain within the LATA, then consistent with the local definitions in this Agreement, the traffic on that VC is local ("Local VC").
- 6.5.2 If the originating and terminating locations of the two way packet data traffic are not in the same LATA, the traffic on that VC is interLATA ("InterLATA VC").
- 6.5.3 The PLCU is determined by dividing the total number of Local VCs, by the total number of VCs on each Frame Relay facility. To facilitate implementation, Level 3 may determine its PLCU in aggregate, by dividing the total number of Local VCs in a given LATA by the total number VCs in that LATA. The Parties agree to renegotiate the method for determining PLCU, at BellSouth's request, and within 90 days, if

BellSouth notifies Level 3 that it has found that this method does not adequately represent the PLCU.

- 6.5.4 If there are no VCs on a facility when it is billed, the PLCU will be zero.
- 6.5.5 BellSouth will provide the circuit between the Parties' respective Frame Relay Switches. The Parties will be compensated as follows: BellSouth will invoice, and Level 3 will pay, the total non-recurring and recurring charges for the circuit based upon the rates set forth in BellSouth's Interstate Access Tariff, FCC No. 1. Level 3 will then invoice, and BellSouth will pay, an amount calculated by multiplying the BellSouth billed charges for the circuit by one-half of Level 3's PLCU.
- 6.6 The Parties agree to compensate each other for Frame Relay network-to-network interface (NNI) ports based upon the NNI rates set forth in BellSouth's Interstate Access Tariff, FCC No. 1. Compensation for each pair of NNI ports will be calculated as follows: BellSouth will invoice, and Level 3 will pay, the total non-recurring and recurring charges for the NNI port. Level 3 will then invoice, and BellSouth will pay, an amount calculated by multiplying the BellSouth billed non-recurring and recurring charges for the NNI port by Level 3's PLCU.
- 6.7 Each Party agrees that there will be no charges to the other Party for its own subscriber's Permanent Virtual Circuit (PVC) rate elements for the local PVC segment from its Frame Relay switch to its own subscriber's premises. PVC rate elements include the Data Link Connection Identifier (DLCI) and Committed Information Rate (CIR).
- 6.8 For the PVC segment between the Level 3 and BellSouth Frame Relay switches, compensation for the PVC charges is based upon the rates in BellSouth's Interstate Access Tariff, FCC No. 1.
- 6.9 Compensation for PVC rate elements will be calculated as follows:
- 6.9.1 If Level 3 orders a VC connection between a BellSouth subscriber's PVC segment and a PVC segment from the BellSouth Frame Relay switch to the Level 3 Frame Relay switch, BellSouth will invoice, and Level 3 will pay, the total non-recurring and recurring PVC charges for the PVC segment between the BellSouth and Level 3 Frame Relay switches. If the VC is a Local VC, Level 3 will then invoice and BellSouth will pay, the total nonrecurring and recurring PVC charges billed for that segment. If the VC is not local, no compensation will be paid to Level 3 for the PVC segment.
- 6.9.2 If BellSouth orders a Local VC connection between a Level 3 subscriber's PVC segment and a PVC segment from the Level 3 Frame Relay switch to the BellSouth Frame Relay switch, BellSouth will invoice, and Level 3 will pay, the total non-recurring and recurring PVC and CIR charges for the PVC segment between the

BellSouth and Level 3 Frame Relay switches. If the VC is a Local VC, Level 3 will then invoice and BellSouth will pay the total non-recurring and recurring PVC and CIR charges billed for that segment. If the VC is not local, no compensation will be paid to Level 3 for the PVC segment.

- 6.9.3 The Parties agree to compensate each other for requests to change a PVC segment or PVC service order record, according to the Feature Change charge as set forth in the BellSouth access tariff BellSouth Tariff FCC No. 1.
- 6.9.4 If Level 3 requests a change, BellSouth will invoice and Level 3 will pay a Feature Change charge for each affected PVC segment.
- 6.9.4.1 If BellSouth requests a change to a Local VC, Level 3 will invoice and BellSouth will pay a Feature Change charge for each affected PVC segment.
- 6.9.5 The Parties agree to limit the sum of the CIR for the VCs on a DS1 NNI port to not more than three times the port speed, or not more than six times the port speed on a DS3 NNI port.
- 6.9.6 Except as expressly provided herein, this Agreement does not address or alter in any way either Party's provision of Exchange Access Frame Relay Service or interLATA Frame Relay Service. All charges by each Party to the other for carriage of Exchange Access Frame Relay Service or interLATA Frame Relay Service are included in the BellSouth access tariff BellSouth Tariff FCC No. 1.
- 6.10 Level 3 will identify and report quarterly to BellSouth the PLCU of the Frame Relay facilities it uses, per section 8.5.3 above.
- 6.11 Either Party may request a review or audit of the various service components, consistent with the provisions of section E2 of the BellSouth State Access Services tariffs or Section 2 of the BellSouth FCC No.1 Tariff.
- 6.12 If during the term of this Agreement, BellSouth obtains authority to provide interLATA Frame Relay in any State, the Parties agree to renegotiate this arrangement for the exchange of Frame Relay Service Traffic within one hundred eighty (180) days of the date BellSouth receives interLATA authority. In the event the Parties fail to renegotiate this Section 8 within the one hundred eighty day period, they will submit this matter to the appropriate State commission(s) for resolution.
7. **Operational Support Systems (OSS)**
The terms, conditions and rates for OSS are as set forth in Section 2.14 of Attachment 2.

Basic Architecture

Exhibit B

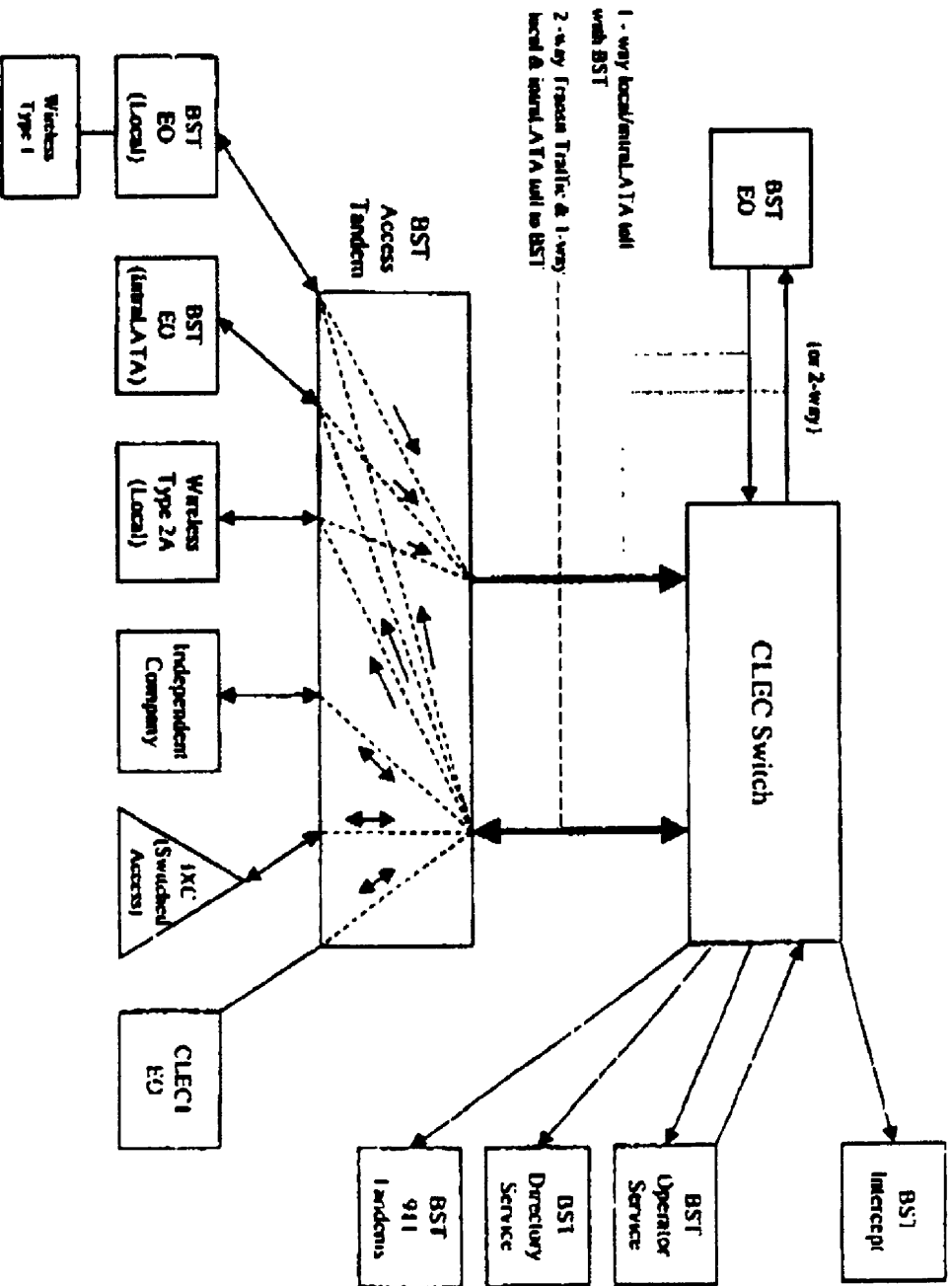


Exhibit C

One-Way Architecture

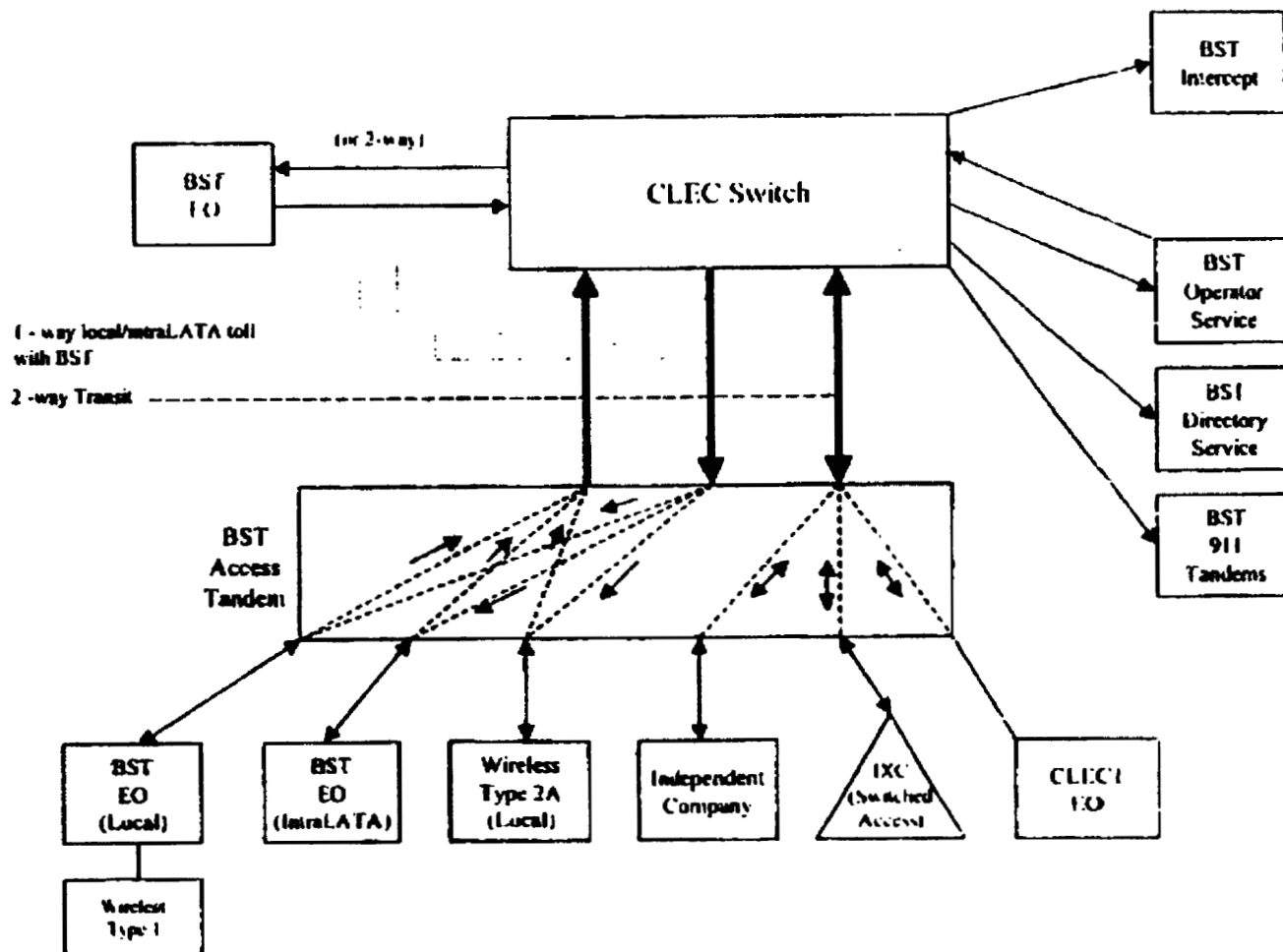
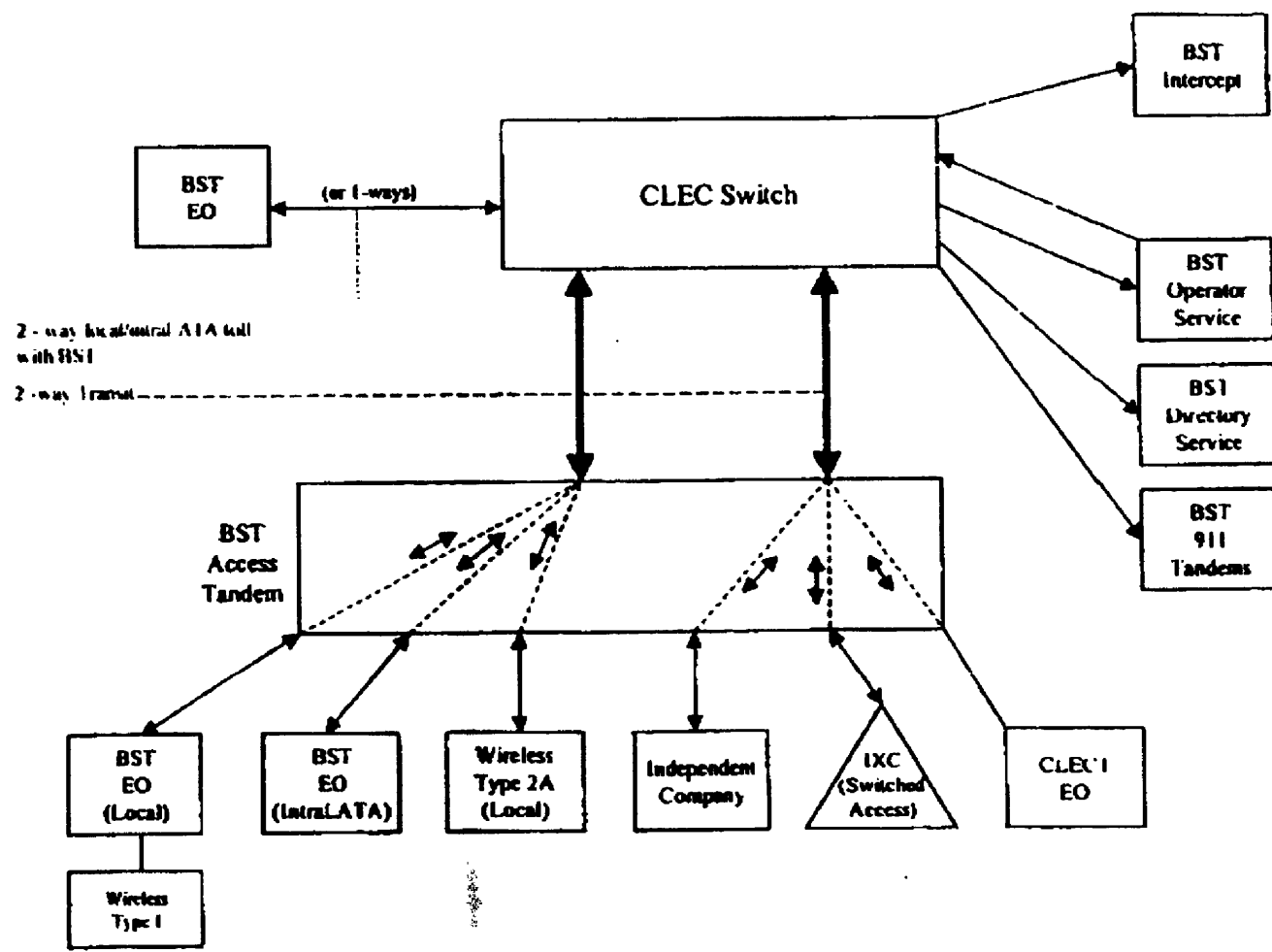
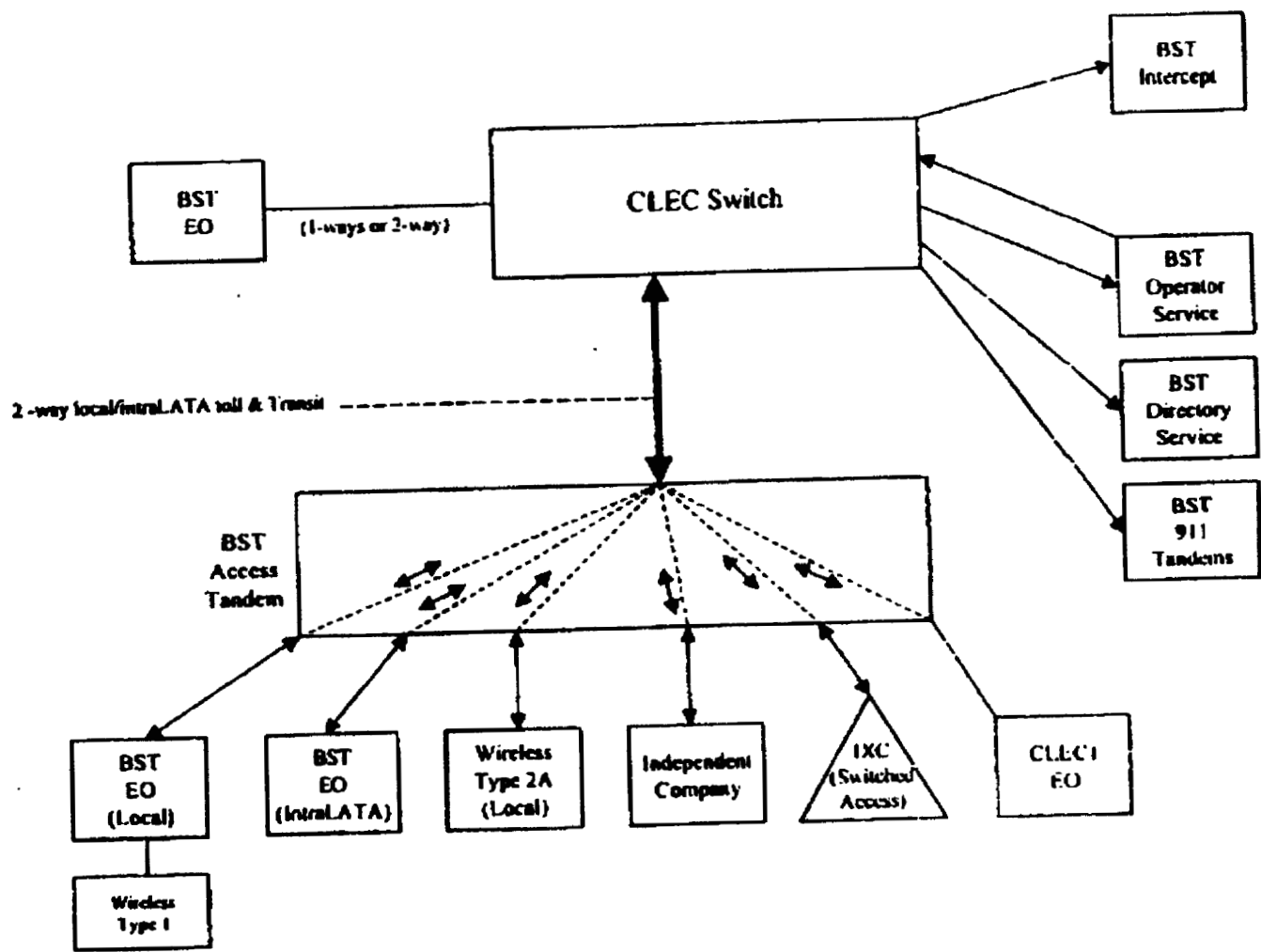


Exhibit D

Two-Way Architecture



Supergroup Architecture



Attachment 2

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Level 3 Communications, Inc. :
 :
Petition for Arbitration Pursuant to : 00-0332
Section 252 (b) of the Telecommunications :
Act of 1996 to Establish an Interconnection :
Agreement with Illinois Bell Telephone :
Company d/b/a Ameritech Illinois. :

ARBITRATION DECISION

DATED: August 30, 2000

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Level 3 Communications, Inc. :
 :
Petition for Arbitration Pursuant to : 00-0332
Section 252 (b) of the Telecommunications :
Act of 1996 to Establish an Interconnection :
Agreement with Illinois Bell Telephone :
Company d/b/a Ameritech Illinois. :

ARBITRATION DECISION

By the Commission:

I. JURISDICTIONAL STATEMENT

When the parties are unable to reach accord on an interconnection agreement through negotiations either party may ask a state commission to arbitrate any open issues. Section 252 (b) of the federal Telecommunications Act of 1996 ("the Act") sets out the procedures for the arbitration of agreements between incumbent local exchange carriers ("ILECs") and other telecommunications carriers requesting interconnection. It prescribes the duties of the petitioning party, provides an opportunity for the non-petitioning party to respond, and includes the time frames for each action. Section 252 (b) (4) limits a state commission's consideration to the issues set forth in the petition and the response, and further provides that a state commission will resolve each issue by imposing appropriate conditions upon the parties to the agreement as required to implement subsection (c), i.e., Standards for Arbitration. Section 252 (d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic charges and wholesale prices.

In resolving, by arbitration, any open issues and imposing conditions upon the parties to the agreement, a state commission is required to apply the following Section 252 (c) standards:

- (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations it prescribed pursuant to Section 251;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d); and

- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

II. BACKGROUND AND PROCEDURAL HISTORY:

On November 30, 1999, Level 3 Communications, LLC ("Level 3") and Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois" or "AI"), a subsidiary of SBC Communications, Inc., began negotiations for an interconnection agreement.

The instant proceeding arises out of a Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, which was filed by Level 3 on May 8, 2000. This pleading identified 37 open issues which the parties were unable to resolve through their negotiations and also set out their respective positions on each of those issues. On June 5, 2000, AI filed a response to the Petition.

Pursuant to proper notice, a pre-hearing conference was held on May 16, 2000, before duly authorized Hearing Examiners at the Illinois Commerce Commission's ("Commission") offices in Chicago, Illinois. Appearances were entered by respective counsel on behalf of Level 3, AI and the Staff of the Commission ("Staff"). On this date a schedule was set for further filings and evidentiary hearings.

At the evidentiary hearings held on July 14 and 17, 2000, admitted into evidence were the verified statements of Andrea Gavalas, Timothy Gates, and William Hunt, III, on behalf of Level 3; Robert Harris, Craig Mindell, Eric Panfil, Timothy Oyer, Debra Aron, and Michel Silver on behalf of AI; and Tortsen Clausen, Bud Green, and Sanjo Omoniyi on behalf of Staff. At the close of cross-examination of the witnesses on July 17, 2000, the record was marked "Heard and Taken."

As the parties continued to negotiate throughout the pendency of this proceeding, several additional issues were resolved. Post-hearing briefs were filed by Level 3, AI, and Staff on July 31, 2000. At the time of these filings, only 20 of the original 37 issues remained for arbitration.

On August 7, 2000, the Hearing Examiners' Proposed Arbitration Decision was served on the parties. Level 3, AI and Staff filed Exceptions to the Proposed Arbitration Decision. Those arguments are considered herein.

III. ISSUES SUBJECT TO ARBITRATION

Level 3 initially sought arbitration of 37 issues. During the pendency of this proceeding, Level 3 and AI settled issues 3, 4, 8, 9, 11-13, 15-17, 21, 26, 28-30, and 35-37. By our count, the parties' briefs reflect that there are 20 issues which remain to be resolved through arbitration. We review each of these in order and as numbered by the parties.

1. Reciprocal Compensation

(a) Definition of "Local Calls"

Should ISP traffic be treated as local for the purposes of reciprocal compensation?

Level 3's Position

Internet service provider ("ISP") traffic is local for the purposes of reciprocal compensation. The concept of reciprocal compensation was to pay carriers for terminating the local traffic of other carriers. ISP traffic falls into that category and is indistinguishable from local traffic for that purpose. The matter has previously been considered by this Commission, and the Seventh Circuit Court upheld the Commission's decision that it was local.

The Federal Communications Commission ("FCC") issued an order declaring ISP traffic to be interstate but that ruling was overturned by the D.C. Circuit Court. Of the state commissions that have ruled on this issue, 33 of 37 have found this to be subject to reciprocal compensation. Level 3 agrees to be bound by any findings of a generic docket on reciprocal compensation.

There is no real difference between local and ISP calls. All of the LECs use the same facilities to transport and terminate calls. The methods and the suggestion that ISP calls be separated from local calls are impractical.

Ameritech's Position

AI's proposal excludes ISP-bound traffic from the definition of local calls. Local calls actually must originate and terminate with parties physically located within the same local calling area. Reciprocal compensation is applicable only for the voice portion of local calls. Internet calls are not subject to reciprocal compensation under this agreement or the Act.

In its brief on exceptions, AI excepts that the rate is excessive based upon Level 3's cost. Level 3 would be allowed to collect up to seven times the cost of the call based upon; (1) the length of an ISP call versus a local call; (2) its advanced "soft

switched" technology which results in a lower cost for delivering to network traffic; and (3) some of its customers collocate with Level 3.

Analysis and Conclusion

Most recently this issue was visited by this Commission in Docket 00-0027, In the Matter of Focal. We determined, after considering the same issues, that ISP traffic is local for the purposes of reciprocal compensation. There is no evidence in this record that would change our opinion at this time.

Consistent with our finding in Focal, the companies should take note that the Commission may subject this reciprocal compensation rate to an adjustment, including a possible true-up or retroactive payment, based on its ultimate conclusion reached in its generic reciprocal compensation proceeding (ICC Docket 00-0555). Should the Commission order an adjustment to this reciprocal compensation rate, including a possible true-up or retroactive payment, it will not apply to any period prior to the approval of this interconnection agreement.

(b) Eligibility for Tandem Compensation

At what level should Level's 3's switches qualify for tandem compensation? Should the switches be required to perform the same functions as AI's or merely be able to cover the same geographic area?

Level 3's Position

Level 3 proposes language allowing any one of its switching entities to qualify for tandem compensation if it meets the criteria regarding geographic coverage set forth in Section 51.711 of the FCC's rules.

Ameritech's Position

Level 3 should not receive the rate for either tandem or transport elements of termination unless and until the following conditions are satisfied: (i) it proves that its switch serves a geographic area comparable to that served by AI's tandem switch and (ii) it proves that its switch performs the same functions on behalf of AI as AI's tandem performs. To satisfy the second of those two conditions, Level 3 must show that (a) it gives AI the option to connect directly to Level 3's end office function and thus avoid payment of the tandem rate (perhaps also the transport rate) if it so chooses, and (b) it defines its switches and offers interconnection on a nondiscriminatory basis for both the termination of local traffic by other LECs and the termination of toll traffic by long distance interexchange carriers.

AI's brief on exceptions states that resolution of the tandem compensation question cannot be deferred because it involves all traffic for Level 3. It is not likely that the Commission will consider this issue in the generic docket. However, AI suggests that the issue could be deferred to such time as when Level 3 applies for compensation, by holding them to the requirements of Section 51.711(a)(3) applied consistently with paragraph 1090 of FCC's First Report and Order (FCC-96-325) in Docket 96-98.

Analysis and Conclusion:

This issue has not come to fruition as yet, because Level 3 is not claiming it is entitled to charge the tandem rate as of today. (Tr. 247). Rather, the parties' have asked the Commission to decide what language should appear in Section 1.1.29.2 of the General Terms and Conditions of the agreement to define the circumstances under which Level 3 will be entitled to charge the tandem rate in the future.

The issue of eligibility for tandem compensation is not limited to ISP traffic; rather, it pertains to any and all local traffic that originates on AI's network and terminates on Level 3's network, i.e., any and all traffic that is subject to reciprocal compensation. In light of the foregoing, Issue 1B should not be deferred to the generic ISP proceeding given that issue is not part of that proceeding.

We agree with the parties that this Decision should provide some language for the parties' agreement concerning the test Level 3 will eventually have to pass in order to qualify for the tandem rate. To be clear, the Commission is not ruling on whether Level 3's switch qualifies for the tandem rate today. Indeed, there is no evidence in the record to make such a ruling.

Therefore, we agree with the Section 1.1.29.2 language offered by AI, which states:

“A Level 3 switch will be classified as a Tandem Switch when and to the extent that it meets the requirements of 47 C.F.R. section 51.711(a)(3) applied consistently with paragraph 1090 of the FCC's First Report and Order (FCC 96-325) in CC Docket No. 96-98.”

It is in that regulation and that paragraph of the First Report and Order that the FCC has set forth that test for eligibility to charge the tandem rate. When Level 3 believes that its network has developed to the point that it qualifies to charge the tandem rate, Level 3 will take the matter up with AI, and the parties will either agree or disagree. If they disagree, the Commission will be called upon to decide the matter ***based on the totality of the evidence presented.***

2. Deployment of NXX Codes

- a. Whether Level 3 should be required to compensate AI for interexchange transport and switching associated with its FX/virtual NXX service.
- b. Whether an FX or NXX call that would not be local based on the distance it travels, is subject to reciprocal compensation.
- c. Whether the parties' agreement should include Appendix FGA.

Level 3's Position

Level 3 would delete Appendices FX and FGA and related language included elsewhere in the contract that require it to pay AI for the use of unspecified facilities at unidentified tariffed rates for FX, FX-like, FGA and FGA-like services. Level 3 claims that AI has not defined "FX-like" or "FGA-like" services nor has it demonstrated that any additional compensation should be paid based on customer location. It opposes the suggestion that it pay some undefined amount for the facilities and services AI ostensibly provides in getting calls to virtual NXX customers.

Level 3 also takes issue with AI's Section 2.7 of the Appendix, Reciprocal Compensation, which specifies that Level 3 cannot receive reciprocal compensation when its customer is physically located outside the local calling area of the calling party.

Ameritech's Position

AI should not have to provide free interexchange transport and switching to subsidize Level 3's competing Foreign Exchange ("FX") services. It proposes contract language that would require each party to be compensated for the portion of the FX service it actually provides. Level 3 should not be permitted to charge reciprocal compensation on FX calls because such calls are, by definition, not local exchange calls. Level 3 also must have some revenue-sharing arrangement in place for Feature Group A ("FGA") service and it has offered no alternative to the Appendix FGA.

Discussion

NXX codes (the first three digits of a seven-digit number) are assigned to specific geographic areas. Carriers' billing systems will classify a call as toll or local by comparing the caller's NXX with the terminating party's NXX. FX service allows a customer physically located in one exchange to have a telephone number with an NXX code that is associated with a different exchange in a different geographic area. In giving a customer a number with an NXX code from a distant geographic area, FX service allows callers from that distant area to reach the FX customer for the price of a

local call. To a billing system, such a call appears to be within a single NXX area, while in reality it travels a distance which would normally require toll charges. FX service is attractive to customers, such as ISPs, that want persons located in various geographic locations to reach them for the price of a local call.

Both AI and Level 3 provide FX services. AI asserts that the need for the Appendix FX and specific inter-carrier compensation arrangements with respect to FX services arises from the manner in which Level 3 is able to obtain an undue financial advantage through use of this service. AI explains that when it provides an FX service, its FX customer pays for the transport and switching costs incurred in carrying the call from the caller's rate center to the FX customer's physical location. In contrast, when Level 3 provides FX service, AI provides the very same interexchange transport and switching to carry the call from the caller's rate center to Level 3's point of interconnection ("POI"). Unlike AI's FX customer, however, neither Level 3 nor its customer pays anything for use of AI's network. As a result, AI maintains, Level 3 enjoys a "free ride" on AI's interexchange network which gives it an unearned cost advantage because it can offer its customers a rate with no interexchange transport or switching costs whereas AI must recover those costs from its FX customer. Even more egregiously, AI contends, Level 3 charges AI reciprocal compensation on calls to Level 3's FX customers, on the theory that these are "local" calls.

AI indicates, for example, that a call from an AI customer in Elgin to downtown Chicago travels a distance of some 40 miles and would normally constitute an intra-LATA toll call. If, however, the recipient of the call in Chicago is an FX customer assigned to the same NXX code as the originating caller in Elgin, the originating Elgin caller would be billed only for a local call because AI's billing systems recognize an intra-NXX call as a local call.

AI maintains that allowing a competitive local exchange carrier ("CLEC") this "free ride" distorts all of its incentives to invest and undermines the integrity of the competitive process. AI also contends that nothing in its proposals prevents Level 3 from providing FX service to whomever it wants. It simply would require Level 3 to pay something for its use of AI's network in providing this service. AI's witness explained that, if CLECs do not have to compensate AI for the use of its network in providing FX services, Level 3 will have little or no incentive to construct its own transport facilities. So too, AI maintains, other CLECs competing with Level 3 in the provision of FX services would face a competitive disadvantage vis-a-vis Level 3 unless they also took advantage of the free ride on AI's network instead of constructing their own facilities. Accordingly, facilities-based competition would be further reduced.

AI further points out that at least two state commissions have agreed with AI's position in their recent decisions and cites to relevant language on the issue set out by the Maine Public Service Commission on June 30, 2000, and the California Public Utility Commission on September 8, 1999. Both of these state commissions agreed, in

essence, that reasonable interexchange intercarrier compensation is warranted for the routing of FX traffic.

Level 3 argues that AI's position that virtual NXX calls are actually toll calls was rejected by this Commission in the Focal arbitration. Also, according to Level 3, a Michigan Arbitration Panel concluded that virtual NXX calls are "local" and rejected provisions proposed by AI to impose additional transport costs on CLECs.

Level 3 contends that AI is responsible only for carrying a virtual NXX call to the Level 3 POI - just as it does for every other local call. Once AI delivers the call to the POI, it is Level 3's responsibility to terminate the call wherever the customer may be physically located, such that there is no additional transport based upon the customer's location. As such, Level 3 sees no difference between physical local calls and virtual or FX calls.

Level 3 contends that putting the focus on the location of the called party is meaningless to a determination of how much responsibility each carrier actually bears in transporting a given call. It claims that customer location will not cause AI's costs or function to differ in the context of a call placed by an AI customer.

Level 3 maintains that AI's costs are the same whether the call terminates to a virtual or physical NXX customer served by Level 3. When one looks at how calls are always delivered to the POI irrespective of customer location, there is no "free ride" according to Level 3.

Level 3 opposes AI's efforts to restrict or inhibit the assignment of NXX codes by referring to customers' physical locations. It claims that AI's proposal would permit AI to avoid payment of reciprocal compensation to Level 3 by reclassifying these calls as toll and preventing its own customers from placing local calls.

According to Level 3, if AI succeeds in impairing Level 3 or any other CLEC from providing virtual NXXs by actually making CLECs pay AI for such calls, not only would AI customers no longer be able to reach their ISPs by dialing a local number but, because calls to the ISP effectively would be reclassified as toll calls, AI no longer would be obligated to pay the reciprocal compensation associated with local calls.

Analysis and Conclusion

(a.) The record indicates that FX service was developed in the context of a single-provider environment. In such times, the cost of an incoming call to the FX customer simply would be recovered from the FX customer. Now, however, with the opening of the local exchange market to competition, the carrier providing the FX service may differ from the carrier of the party calling the FX customer. That is the very situation in this case and AI is proposing that inter-carrier compensation, such as is commensurate

with each carrier's degree of participation in the provisioning of FX or FX-like service (NXX), be required.

We note that AI's proposal in this case is different from that presented in the Focal arbitration. In that case, our finding was based on the question of whether Focal should be required to establish a POI within 15 miles of the rate center for any NXX code that it uses to provide FX service and our consideration of the Focal evidence as to the number of POIs being established. Here, AI is asserting that the lack of POIs requires it to carry a call long distances with no compensation for the haul.

From the evidence presented, we note a number of economic and policy perspectives that drive AI's proposal. While Level 3 does not address these concepts directly it has set out its own policy-based arguments. In particular, it maintains that through the use of virtual NXX assignments, Level 3 and other CLECs provide a valuable service which allows ISPs to provide low-cost advanced services to their customers who can gain Internet access by dialing a local number. Neither party tells us enough about the technological and economic underpinnings in the NXX or FX situation, such as were afforded the California Public Utilities Commission, Decision No. 99-09-029 (September 2, 1999).

Level 3 opposes paying AI any additional compensation for calls based on customer location. It maintains that when an AI customer originates a call, AI's responsibility for the call ends when it delivers the call to the POI it has established with the CLEC. Once the call is handed off at the POI, the CLEC is responsible for the costs of delivering the call to the terminating number.

In other words, Level 3 tells us that AI is providing transport in the NXX situation no different from that which it is otherwise legally obligated to provide. On balance, AI offers policy considerations of some merit. Some of those concerns, Level 3 observes, will fall away given our findings in Issue 27 below. We agree. Moreover, Level 3 maintains, the FCC's "rules of the road" as set out in TSR Wireless, LLC v. U.S. West Communications, Inc., Memorandum Opinion and Order, FCC 00-194 (June 21, 2000) make clear that the originating carrier is responsible for the cost of delivering the call to the network of the co-carrier who will terminate the call. On the basis of this legal authority, and the limited record before us, we find in favor of Level 3 on the first of the three questions before us.

(b.) The reciprocal compensation portion of the issue is straightforward. The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701 (a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as "virtual NXX," which Level 3 uses, or as "FX," which AI prefers, this service works a fiction. It allows a caller to believe that he is making a local call

and to be billed accordingly when, in reality, such call is travelling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller's perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation. Moreover, we are not alone in this view. The Public Utility Commission of Texas recently determined that, to the extent that FX-type calls do not terminate within a mandatory local calling area, they are not eligible for reciprocal compensation. See, Docket No. 21982, July 13, 2000. On the basis of the record, the agreement should make clear that if an NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

(c.) Finally, with respect to Appendix FGA, the only proposal on the table is that of AI, and Level 3 has not apprised us fully as to the specifics of its objections. Hence, on the understanding that the FCC requires such action, which Level 3 does not dispute, the AI language should be adopted subject to the deletion of "FGA-like" language and replacing the language with "FGA."

3. (Resolved)

4. (Resolved)

5. **Charges for CLEC Name Changes**

Who should bear the costs for changes to the records, systems and data bases if the CLEC changes its name during the course of the agreement?

Level 3's Position:

AI should not be able to charge Level 3 on an individual case basis for processing name changes. To the extent that AI absorbs the cost of processing customer name changes as a cost of business in the retail context, Level 3 maintains that there is no principled reason for it to impose the costs of processing name changes on its wholesale customers. Level 3's brief on exceptions asks this Commission to adopt a ruling by the Texas Commission and a proposed ruling by the California Commission that name change costs should be borne by AI as a cost of doing business. Level 3 is like any other large corporate client and should be treated the same.

Ameritech's Position:

AI incurs actual costs to implement a CLEC's change and it should have the right to charge appropriate non-recurring, cost-based rates, as is already covered by tariffs. More than just changing the master database may be involved. A CLEC can require the changing of the individual customers to reflect the correct CLEC information. Why should AI be financially responsible for changes occasioned by the actions of the CLEC? There are real costs involved in making all these changes and the burden should be on the party requesting the changes. AI responds to Level 3 in its reply brief that free individual name changes are more than it provides for its corporate customers.

Analysis and Conclusion

When a CLEC seeks to change its name there are associated costs. AI contends that some of the costs are borne by the ILEC to change the records in its Operation Support Systems ("OSS") and the costs are not part of OSS administration. (AI brief at 6.) Level 3 asserts that AI changes names every day without charging its customers and to charge a wholesale customer, which happens to be its competitor, is discriminatory.

The question is, are name changes merely a cost of doing business as Level 3 asserts or are they a burden unfairly imposed on AI? Level 3 asserts that hundreds of customers a day required changes which AI processes without charge. The CLEC's customers, therefore, should not be treated any differently. AI's charge is based solely on the fact that Level 3 is a wholesale customer. This argument is persuasive to the extent that Level 3's customers are entitled to the same service as AI's customers. The sheer number of accounts AI changes should not matter. The argument that Level 3 causes the name change is no different than saying that the individual customers also cause the change. To that extent AI should bear any costs of making changes to its master billing accounts of the CLECs.

AI points out that, at the CLEC's direction, it must update the accounts of each of the CLEC's customers in the database to reflect the correct information. That service is not normally provided to other customers. Therefore, any additional services requested other than changing the master billing database should be paid for by the requesting party.

The Texas Commission case cited by Level 3, Southwestern Bell Arbitration PUC docket No. 21791, determined that each party to the agreement shall be responsible for the cost of name changes as a result of corporate restructuring. Further, MCIW is SWBT's customer under that agreement and should be treated as such. AI has agreed to make the necessary changes to its master data base. As AI points out, Level 3 could require them to make additional changes, which indicates that this is a non-essential additional service. Level 3 does not challenge this assertion. AI

also points out that this is not something it does for its business customers. AI is required to give only the same service on the same level as it gives to its own customers. Anything more appears to be a premium service and should be paid for, no matter how nominal the cost.

6. Term of Agreement (GT&C 5.2)

When should the instant agreement expire?

Level 3's Position:

Level 3 would have the agreement expire after three years.

A three-year term would provide certainty and cost savings. According to Level 3, requiring it to renegotiate all relevant interconnection terms at intervals of less than three years would make it difficult for the entity to effectuate a stable long-term plan for entry and development of operations in Illinois. It maintains that there is no need to throw out the entire contract after one year simply because changes in law or technology might occur within the next year or so.

Ameritech's Position:

AI would have the agreement expire after one year.

A one-year term is appropriate given the frequent changes in technology and regulatory schemes. AI maintains that it is reasonable to allow for shorter term interconnection agreements so that parties can keep pace with and renegotiate in light of changed market conditions. It points out that negotiation increases costs and uncertainty for both parties such that the incentive to renegotiate is minimal absent any changed market conditions. In the final analysis, AI indicates that it is amenable to a two-year term.

Analysis and Conclusion

We believe that a company cannot implement its business plan efficiently if the contracts on which it relies expire within a short time interval. We further recognize that there are significant costs to negotiating and/or arbitrating a new agreement in terms of time, money and human resources. On the other hand, the telecommunications field is changing so rapidly that contract provisions which are reasonable under the law and circumstances at one point in time may be rendered obsolete, ineffective or burdensome under the law and circumstances which develop at a later point in time.

Level 3 states that the undisputed intervening law clause of the contract, i.e., Section 21, provides that if a change in the law affects a contract provision, the parties

“shall” renegotiate the affected provision. Likewise, Level 3 maintains, changes in technology can be addressed through renegotiations and amendment. AI, however, raises the point that while the parties are entirely free to negotiate amendments to the agreement if there are changes in the market or technology, this is no guarantee that “both parties will be willing” to renegotiate. Only a shorter term will ensure that terms that have become onerous or outdated due to market changes are renegotiated.

In balancing all of these interests, we agree with Level 3 and find the proposal of a three-year term reasonable.

7. Deposits, Billing and Payments

The debate surrounding Issue #7 is twofold: First, whether Level 3 should be required to post a deposit at the onset of the agreement, absent a satisfactory credit history, and if so under what conditions, terms and amounts. Secondly, the method that shall be employed to handle legitimate disputed amounts between the parties.

Level 3's Position

Level 3's position is that it should not be required to provide to each Ameritech affiliated ILEC an initial cash deposit ranging from two to four months of projected average monthly billings as a precondition for Ameritech's furnishing of resale services or UNEs. It proposes to delete the entire deposit section because AI has not shown Level 3 to be a credit risk such that protection against nonpayment is needed.

Level 3 also claims that Ameritech's deposit requirement is subjective and subject to error. With respect to the subjective nature of Ameritech's deposit requirement, Level 3 implies that if the section were modified to set out objective criteria, that could not be manipulated, to identify when a deposit would be required, it might agree to a deposit reference being in the Agreement. Level 3 also criticizes Ameritech's proposal, which is based on delinquency notices, because the notices can be sent out in error or when Level 3 submits a good faith billing dispute.¹

Furthermore, Level 3 faults Ameritech's deposit requirement because it is significantly different than the standard Ameritech uses for business customers. Thus, according to Level 3, Ameritech is discriminating against CLECs.

Level 3 claims that the bill due date is an insufficient time period in which to determine the magnitude of disputed amounts. Regarding legitimate disputed amounts between parties, Level 3 argues that (a) the burden of proving the amount should not rest with Level 3, (b) the payment portion should be reciprocal (i.e., AI should pay interest on late payments as well), and (c) it is unreasonable for Ameritech to increase the deposit or suspend service if Level 3 fails to pay within five days of the due date.

¹ Level 3, Initial Brief at 51.

Ameritech's Position

It is AI's position that CLEC's without a satisfactory credit history should be required to provide an initial deposit before obtaining resale services and UNEs. AI also maintains that CLEC's should provide notice of billing disputes before the bill due date so that the disputed charges may be resolved within a reasonable time.

According to AI, the Commission first must decide whether (as AI maintains) CLEC's without a satisfactory credit history should be required to make a deposit (which earns interest and will be returned if the CLEC pays its bills) before obtaining resale services or UNEs from AI. If the Commission agrees that a deposit is appropriate, it must decide whether AI's suggested amount is proper. Finally, it must also resolve disagreements concerning details of the contract language that will excuse Level 3 (and other CLEC's) from the deposit requirement.

AI contends that it is common business practice to obtain a form of security when extending credit. AI claims that it is extending credit to a CLEC because its services or UNEs are provided before a bill is rendered and the CLEC is not obliged to pay the bill until 30 days after the bill is rendered. Ameritech also provided evidence which showed that Level 3 had considerable past due amounts with Ameritech on May 10, 2000, and July 10, 2000.² These past due amounts, according to Ameritech, shows that Level 3's ability to pay its bills has no bearing on whether Ameritech will, indeed, be paid.

Ameritech also urges the Commission to approve its proposed amount as a deposit requirement, which is based on "two (2) to four (4) months of projected average monthly billings." (Where Ameritech Illinois has been doing business with the CLEC at the time the deposit is to be made, the "projected average monthly billings" are based on actual historical billings.)³ Ameritech contends that this is a reasonable approach because it secures payment for the amount of credit Ameritech is actually extending to the CLEC and is proportional to the CLEC's projected purchases.⁴ Ameritech also supports its deposit requirement by pointing out that Level 3 would not be required to make a deposit if it had a satisfactory credit history and that Level 3 will be refunded the deposit, with interest, if it pays its bills in a timely fashion.⁵

AI also objects to the provision that Level 3 need not put disputed amounts in escrow unless there are more than two disputes within a 12-month period.

² Silver Direct at 11, Silver Rebuttal at 2-3.

³ Tr. 556; 566-67.

⁴ Ameritech Brief at 32-33.

⁵ *Id.* at 33.

Staff's Position

Staff views an initial deposit to be commercially acceptable, but recommends that the amount of such deposit be based on objective criteria, fairly applied, and related to the credit history of the CLEC. Staff avers that Ameritech's demand for a deposit would need to be examined based upon a standard of reasonableness and whether the imposition of an initial deposit would be onerous and/or a barrier to competition.⁶ According to Staff, requiring a substantial deposit based upon AI's delivery of a delinquency notice in a twelve-month period is subject to error and abuse.

Staff recommends a notice period of 30 days to commence after the bill due date for notice of disputed amounts and payments of deposits. In instances of payment disputes (where no deposit is made), Staff would recommend that, at the least, a 15 day notice be given (after failure to pay deposit when due) prior to disconnection.

In its exceptions to the HEPAD, Staff proposed language which would, according to Staff, clarify the following issues: (a) whether or not an initial deposit is required for a new or recently established CLEC, and if so, the amount of the deposit and (b) the criteria for determining whether a CLEC is "late in paying."⁷

Analysis and Conclusion:

It is common business practice for a party to protect its interest by requesting some type of security in the form of a deposit. The criteria for determining who is required to post a deposit should not be based on the party's ability to pay but whether a party is promptly paying its bills. Other jurisdictions have determined that a deposit by a CLEC is appropriate where the CLEC's credit history is either non-existent, inadequate, or poor. However, Ameritech has failed to show that CLEC's pose any greater (or lesser) risk than does any other business customer. Additionally, the amounts Ameritech has claimed as losses due to CLEC nonpayment are meaningless unless they relate to overall charges or similar risks with other customers. Ameritech merely quoting dollar amounts without providing necessary context to these numbers (i.e., percentage of business losses) is not sufficient evidence to show that non-payment by CLECs is an acute problem, as opposed to a regular business occurrence.

Level 3 correctly points out in its argument⁸ that the terms of this agreement with respect to deposits are different than the standard Ameritech uses for its own business customers. The Commission is concerned by this inconsistency. The Commission is also concerned by the resulting outcome of applying Ameritech's deposit requirement for its business customers to CLECs. As Level 3 points out, one of the standards for establishing credit for Ameritech's business customers is by paying a deposit in an

⁶ Staff Brief at 6.

⁷ See Staff Brief on Exceptions at 3-4.

⁸ Level 3 Brief at 52.

amount not to exceed four months of the customer's estimated monthly billing.⁹ By applying this standard to CLECs, and allowing Ameritech to arbitrarily determine how many months worth of deposits should apply, Ameritech's deposit requirement would remain subjective and open to abuse. Unlike business customers who may be able to choose a competitor to Ameritech for provisioning business services, due to the monopoly nature of UNEs, CLECs are limited to either abiding by Ameritech's terms or not providing service via UNEs (which could have an adverse impact on competition in Illinois). Thus, the Commission can not endorse a proposal that provides Ameritech the ability to impede competition.

In light of this concern, the Commission concludes that the method by which Ameritech determines the necessity for a deposit for its business customers, as established in Ameritech's retail local services tariff, is reasonable for this agreement - with a slight modification. Instead of relying on Ameritech to determine the amount of the deposit, we base the number of months of deposit on the number of months the CLEC is late in paying. For example, if Level 3 is late in paying three times in a 12-month period, a deposit equal to two month's projected average monthly billings would apply. Similarly, four late payments by the CLEC in a 12-month period justify three months deposit, and five late payments or more in a 12-month period justify four months deposit. For a new or recently established CLEC that does not have a 12-month payment history with AI (or any SBC affiliate), the initial deposit will be based on 2 months of projected monthly billings, as recommended by Staff.¹⁰ As Staff correctly points out, Section 7.4 of the General Terms and Conditions, as amended in accordance with the above conclusions, will permit Ameritech to increase the initial deposit (in accordance with the above terms) if the CLEC fails to maintain timely compliance with its payment obligations.

The Commission also agrees with Staff's recommendation that the criteria for determining whether a CLEC is "late in paying" should be clearly specified. First and foremost, the Commission concludes that in accordance with usual business practices, a payment is considered late if it is received five days or more after the payment due date. However, we agree with Staff's proposal that, after the five-day grace period lapses, a ten-day notice shall be sent to the CLEC by AI before suspending service in order that the CLEC may seek to correct the deficiency. Furthermore, as suggested by Staff and adopted by the Commission, a CLEC should not be deemed to be "late in paying" if (i) disputes regarding payment delinquency were the product of ILEC error or, as of the effective date of the interconnection agreement, had been resolved against the ILEC; or (ii) the CLEC is disputing any payments in compliance with the procedures set forth in the interconnection agreement. Thus, the revisions to Sections 7.1, 7.2.3, and 7.2.4, as proposed by Staff in its Brief on Exceptions (pp. 3-4) are accepted.

The Commission's approach with regard to determining deposits is reasonable for several reasons. First, this requirement will not be onerous or serve as a barrier to

⁹ *Ibid.*

¹⁰ Staff Brief on Exceptions at 2.

entry, since (a) the CLEC will receive a refund of the deposit amount, with interest, after a history of prompt payment has been established and (b) it will result in a deposit that is proportional to the size of the CLEC in question. Second, it removes the potential for Ameritech to abuse this requirement by basing the deposit on the CLECs history of prompt payment rather than an arbitrary amount determined by Ameritech. It is important to recognize that Level 3 did not necessarily object to a deposit requirement that is based on unambiguous criteria that Ameritech could not manipulate.¹¹ The above requirement mitigates Level 3's concern in this regard. Third, the requirement does not base deposits on delinquency notices, thereby removing the potential of Ameritech error from determining the deposit requirement. Likewise, the language proposed by Staff and adopted by the Commission will hold Level 3 harmless in the case that Ameritech incorrectly finds that Level 3 is late in paying its bills.

Despite Level 3's claims that it will not have enough time to properly examine its bills and resolve disputes by the bill's due date, it should be able to determine that a dispute does exist within that time frame. It is not unduly burdensome on Level 3 to give notice within the 30-day period that it is disputing the bill. Further, within another 30 days after the bill is due, Level 3 shall pay all undisputed amounts to Ameritech and further identify what the nature of the dispute is and the amount disputed. An escrow deposit of the disputed amount shall not be required unless the number of disputes exceeds two per 12-month period. Further, to protect Ameritech from frivolous disputes, if Level 3 fails to substantiate 75% of the disputed amount of any disputed billing period it shall constitute a late payment. Although Level 3 correctly points out that Ameritech possesses the records needed to prove disputed bills, Level 3's argument is invalid for two reasons. First, AI does not gain any advantage by issuing an erroneous billing. Second, if an erroneous billing does occur, by the Commission not requiring a deposit in escrow unless there are more than two disputes per 12-month period, the Commission has put in place the necessary safeguards to protect the CLEC.

The Commission further concludes that there is no reason that payment of interest should not be reciprocal for both parties.

8. (Resolved)

9. (Resolved)

10. Third- Party Intellectual Property Rights

¹¹ See Level 3 Brief at 50.

In addition to AI being required to use its “best efforts” to obtain third-party intellectual property rights for Level 3 to and for the use of interconnection, network elements, functions, facilities, products and services, should AI required to indemnify Level 3 against any claims or losses?

Level 3's Position:

At issue, according to Level 3, is the extent to which AI is required to obtain any consents, authorizations, or licenses to or for any third-party intellectual property rights that may be necessary for Level 3's use of interconnection, network elements, functions, facilities, products and services furnished under the agreement. AI must use its “best efforts” to obtain intellectual property rights for Level 3, as required by the FCC and as defined in Level 3's proposal. Level 3 further claims that the terms and conditions proposed by AI discriminate against it in violation of the Act and the FCC's direction, because they would require Level 3 to indemnify AI if its interconnection with AI or its use of AI's UNEs or services infringe upon any third-party intellectual property right.

Ameritech's Position

AI must use its “best efforts” to obtain intellectual property rights for Level 3 as required by the FCC and as defined in AI's proposal. AI, however, cannot be required to indemnify Level 3 against claims or losses arising from Level 3's use of such intellectual property.

Analysis and Conclusion

We believe it to be settled that AI will use its “best efforts” to obtain third-party intellectual property rights for CLECs to use AI's UNEs, OSS and interconnection. Indeed, under the FCC's Intellectual Property Order, as AI recognizes, an ILEC must use its “best efforts” to obtain such intellectual property licenses.

The question might remain, however, whether AI should be required to indemnify Level 3 against any “claims or losses for actual or alleged infringement of any intellectual property right or interference with or violation of any contract right.” (GT7C 14.5.3). On this point, which Level 3 does not address, AI refers us to the FCC's recent pronouncement that its Intellectual Property Order did not require ILECs to indemnify CLECs for any intellectual property liability associated with their use of UNEs. (See, Texas 271 Order)

Level 3 also maintains that the FCC requires the ILEC to use its best efforts to obtain co-extensive rights for CLEC use of UNEs. To this end, Level 3 suggests a flaw in AI's latest proposal to the extent it states that AI has no obligation to seek rights for CLECs “to use any unbundled network element in a different manner than used by

[Ameritech]”. According to Level 3, the CLEC is entitled to the panoply of rights obtained by AI - not merely those that AI uses in its network.

In its Third Party IP Ruling, the FCC clarified an ILEC’s obligations to provide non-discriminatory access to network elements, and its Order includes these directives:

- Section 251(c)(3) requires only that the intellectual property rights provided to a requesting carrier will entitle that carrier to use the element for the same uses as the ILEC (para. 16)
- To the extent that the requesting carrier intends to use the element in a different manner (e.g. in combination with some other element not contemplated by the ILEC’s particular license) the requesting carrier is solely responsible for obtaining this right from the vendor. (para. 16).
- in order to limit its use to that contemplated by the contract, a competing carrier needs to know the extent to which the ILEC is entitled to use a particular element, such that parties need to negotiate a reasonable means of conveying this information while honoring the terms of confidentiality. (para. 17),

We see that each of these directives is reflected in the latest version of AI’s Section 14.5 and that the FCC’s Order is itself referenced therein. To the extent that Level 3 perceives itself subject to infringement claims simply because it is not using UNEs in exactly the same manner as AI, we direct its focus to the language in paragraph 16 of the Third Party IP Ruling. This provision provides guidance relevant to its concerns.

In response to Level 3’s complaint, AI tells us that use of the phrase “commercially reasonable terms” (Section 14.5.1.1) does nothing to diminish its obligation to use its best efforts to obtain co-extensive rights for Level 3. It merely makes clear that AI is not obligated to obtain co-extensive rights from third parties under wholly unlawful terms and conditions. While Level 3 would have AI’s language be replaced with some other wording to reflect more accurately the FCC’s order it offers no language of its own.

In the final analysis, we find no legal infirmity in AI’s language and would further note that Level 3 provides no substitute language for our consideration and review.

11. (Resolved)

12. (Resolved)

13. (Resolved)**14. Assignment**

Should both parties be required to seek prior written approval of assignments and transfers of the agreement? What notice should be required?

Level 3's Position

Level 3 proposes that both parties be required to seek prior written approval of assignments and transfers of the agreement, including sales and exchanges. In its view, the parties should not unreasonably withhold consent of assignments. It also proposes that 30-days' advance notice of assignments, rather than AI's proposed 90 days, is sufficient.

Ameritech's Position

A CLEC may not assign or transfer its agreement to third persons without the prior written consent of AI; except that a CLEC may assign or transfer its agreement to an affiliate by providing ninety days' prior written notice of such assignment or transfer.

AI believes that this Order does not address the following issues; (1) a right to approve the assignment of interconnect agreements to affiliates, who have existing agreements with AI, (2) an agreement on charges prior to any actual valve charges; and (3) the required days' notice of assignment.

Analysis and Conclusion

Level 3 and AI both want the other parties to seek prior approval of the transfer or assignment of this agreement to another party. However, AI objects, stating that this is not a symmetrical situation and it should not be required to get the approval of CLECs to transfer or assign agreements.

The purpose of seeking this type of approval is to assure the parties that in the event of transfer or assignment they will not receive anything less than what they bargained for. We agree with AI's position. As the ILEC, it bears most of the burdens in these transactions. It is almost certain that, should it transfer or assign any rights, it will be to an equal or superior status. The same cannot be true of all CLECs. As the IIEC, AI is here to stay; any transfer or assignment to another company would involve close scrutiny by many regulatory bodies before it took effect. However, a CLEC transfer could occur in a short time and compel the ILEC to do business on terms which it normally would not accept. For that reason we believe that it is necessary for Level 3 to seek approval from AI prior to transfer or assignment of its rights under the agreement. We do not hold that the same is necessary for AI.

We find that AI has a legitimate concern when a CLEC seeks to transfer to an affiliate. First, AI is entitled to determine that the affiliate has the same ability to pay for the services provided. Secondly, an affiliate that has a prior agreement may now have two agreements. We expect AI not to delay a transfer for any reason other than to make the determination of the affiliate's means. The second sub-issue is a little less clear; AI does not propose any language to solve that problem, nor does Level 3. The affiliate therefore, would have the option after approval of the transfer by AI, either to opt into or merge the Level 3 agreement into its own. The reason for allowing this election is to ensure that AI's decision is based solely upon the criteria in its first sub-issue.

We agree with AI that the example posed by Level 3 is different from this situation. As posed by AI there are certain physical things that may be required to be done prior to transfer. However, we conclude that 60 days would be an adequate time to effectuate these acts. It would be unfair to impose an unduly long interval constraint on Level 3 to accomplish a transfer.

15. (Resolved)

16. (Resolved)

17. (Resolved)

18. **Combinations of UNEs Generally**

Should Level 3 be given the ability to combine Unbundled Network Services with tariffed services other than access services?

Level 3's Position

In Appendix UNE, Section 2.9.8, AI would prohibit Level 3 from combining UNEs with any AI-tariffed service offering except collocation. Level 3 proposes amending the language of Section 2.9.8 to read "Unbundled Network Elements may not be connected to or combined with Ameritech Illinois Access Services."

Ameritech's Position

Section 2.9.8 should include the language proposed by AI which prohibits UNEs from being combined with AI access services or other AI-tariffed services, except for tariffed collocation services.

According to AI, the Act does not require it to allow combinations of UNEs with tariffed services other than tariffed collocation services. Therefore, the issue here is whether the agreement should bar Level 3 from combining UNEs with other AI-tariffed services.

To the extent that Level 3 relies on 47 C.F.R. 51.309(a), which states that an ILEC may not restrict the use of UNEs in a manner that would "impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends," AI maintains its proposed language does not violate the rule.

AI maintains that there is nothing in the Act or FCC rules which entitles Level 3 to combine UNEs and tariffed services. Moreover, AI contends that Level 3 has not shown that its present, future or potential business plans would in any way be affected by an inability to combine UNEs and services.

Staff's Position

Staff recommends that Section 2.9.8 read as follows: "Unbundled Network Elements may not be connected to or combined with Ameritech Illinois access services."

Analysis and Conclusion

In this issue, Level 3 seeks the ability to combine UNEs with tariffed services other than access services. To that end, Level 3 seeks to limit the language of Appendix UNE, Section 2.9.8 to preclude only combination of UNEs with access services. AI asserts that the Act does not require it to allow combinations of UNEs and tariffed services other than tariffed collocation services. We agree that Level 3 is barred from combining UNEs with other tariffed services.

AI notes that when the FCC addressed loop-transport UNE combinations, that agency discussed three options through which CLECs could meet the conditions to lease such a combination. In each option, the FCC stated that "[t]his option does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services." *Supplemental Order Clarification*, para. 22(a), (b), and (c). The plain meaning of this language, repeated in each option presented to the CLECs, is that UNEs are not to be combined with tariffed services. Although the *Supplemental Order*

Clarification discusses this issue in terms of EELs, Level 3 does not offer evidence that the principle set forth by the FCC should not apply to other UNEs.

So too, we are directed to paragraph 28 of the Supplemental Order Clarification wherein the FCC states that "...the co-mingling determinations that we make in this order do not prejudice any final resolution on whether unbundled network elements may be combined with tariffed services." (emphasis added). Given this particular choice of words, the FCC appears to tell us that, as of now, UNEs may not be combined with tariffed services.

Level 3 relies on Section 251(c)(3), *codified at 47 C.F.R. 51.309(a)*, which states that an ILEC may not restrict UNEs in a manner that would "impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends." (Level 3 brief at 59.) We agree that, inasmuch as Level 3 could not identify any existing or hypothetical situation where it seeks to combine a UNE and a tariffed service, it is not "impair[ed]" in its ability "to offer a telecommunications service in the manner the requesting carrier intends." Intent requires a certain degree of specificity in determining a business plan or strategy. When an organization lacks any concrete example or desired outcome, as is the situation here, it cannot then argue that it is hampered in pursuing its strategy or service offering.

19. Enhanced Extended Loops ("EELs")

Should a CLEC be allowed to count ISP traffic as local for the purposes of qualifying for EELs?

Is a CLEC required to use AI's standard certification form? What, if any, termination and nonrecurring charges must Level 3 pay AI to perform such special access conversions?

Level 3's Position

ISP traffic should be counted as local traffic for the purpose of obtaining EELs. The ICC's current position is that ISP traffic is local. Level 3 should not be required to use AI's certification form. All the FCC requires is a letter setting out the request and the basis under which Level 3 would qualify. The AI form goes beyond the FCC requirements and would hinder market competition. Level 3 should not be required to pay termination and recurring charges for the implementation of EELs.

AI is entitled only to forward-looking non-recurring charges for any functions actually performed for special access conversions.

Ameritech's Position

Level 3 should use AI's standard certification form; cannot treat ISP-bound traffic as local for these purposes; and must pay applicable termination and nonrecurring charges.

Staff's Position

Staff contends that the "practical method of self-certification" adopted by the FCC is all that should be required of a CLEC. Thus, a CLEC should be required only to send a letter to the ILEC indicating under what usage option the requesting carrier seeks to qualify. Staff maintains that AI's requirement for Level 3 to pay applicable termination charges for special access converted to EELs is consistent with FCC rules. Any termination penalties, however, must be reasonable and comply with the Uniform Commercial Code and common law. Similarly, Staff believes that AI's requirement that Level 3 pay applicable service ordering charges and other administrative charges when it converts special access service to EELs is reasonable, provided that the service ordering charges are themselves reasonable and reflect the costs AI actually incurred.

Analysis and Conclusion

AI has a standard certification form that it requires for seeking a special access conversion. Level 3 avers that all the FCC requires is a letter setting forth a request and the local usage option under which the requesting carrier seeks to qualify. Staff has filed an opinion on this issue which essentially agrees with Level 3.

Under the FCC rules a letter is all that is required and is sufficient for the purposes of this agreement. AI's certification goes beyond the FCC requirements and would tend to hinder, not promote CLEC growth. Would AI be able to deny an EEL if a party failed to fill out part of the form but in all other respects complied with the FCC requirements? The additional requirements are surplus and should be voluntary.

In accordance with our decision in the Focal case, ISP traffic should be regarded as local for the purposes of EELs. There we expressly stated, "based upon the totality of the circumstances, we conclude that, for the purposes of the self-certification requirement, Focal should be allowed to count ISP traffic as local." However, the CLEC must state clearly in its letter on which of the three grounds it is seeking certification.

The FCC and various state commissions have held consistently that the CLEC should remain responsible for termination fees. There is no reason at this point to take a fresh look at termination charges. We agree with AI that if the FCC felt a fresh look were mandated or appropriate it would have said so in its UNE remand.

We also agree that AI is entitled to non-recurring charges for special access conversions. As it points out, these reimbursements are to compensate for the actual costs involved in the conversion. However, those charges should reflect the actual costs incurred on a TELRIC Basis

20. Local Loop Definition

Should AI be required to notify Level 3, within 60 days of deployment, of the availability of untariffed high capacity loops?

Level 3's Position

Level 3 seeks to have AI provide it with notice of the availability of new untariffed high capacity loops within 60 days of deploying such loops in its network. According to Level 3, AI's testimony indicates that it will provide Level 3 with notice when it is deploying a tariffed high capacity loop, but it is unknown if all loop offerings will be tariffed. Level 3 contends that if a high capacity loop offering is not tariffed, it will have no way of knowing whether such loops have been deployed. Hence, it requests some type of written notification to that effect.

Ameritech's Position

AI should not be required to provide notice to CLECs of the availability of higher capacity loops after they are deployed in its network other than the notice already provided via tariff filing. AI's proposed language in Appendix UNE 7.1 faithfully implements ILEC obligations under the FCC's UNE Remand Order and, therefore, this language should be adopted. The notice Level 3 requests should not be required.

Analysis and Conclusion

This dispute centers on whether AI should be required to give notice to Level 3 of the availability of untariffed new high capacity loops within 60 days of deployment. We view this "notice" request as reasonable and believe that, for the convenience of both parties, such notice requirement can best be satisfied by a posting on AI's website.

21. (Resolved)

22. Dedicated Transport

Is AI required to provide unbundled dedicated transport not only to locations required by FCC Rule 319 but also between AI and another carrier where Level 3 has a presence? Is AI required to give notice to Level 3 within 60 days of the deployment of high capacity dedicated transport in the AI network?

Level 3's Position

Level 3 maintains that it should be able to order unbundled transport from AI to a point of presence it maintains in a third-party carrier's office where such transport exists. Further, AI should provide Level 3 with notice of the availability of new untariffed high capacity transport offerings within 60 days of deploying such transport in its network.

Ameritech's Position

Unbundled dedicated transport is required only between the locations designated by the FCC in Rule 319 (d)(1)(I), and offices owned by third parties do not fall within this definition. There is no reason why Level 3 should receive notice of new facilities in a form any different than any other CLEC.

Analysis and Conclusion

Just as Level 3 has pointed out that the FCC requires only a letter rather than a form for certification, the FCC's Rule 319 has designated dedicated transport obligations to locations "owned" by the requesting carrier or the ILEC. We agree with AI that it does not have an obligation to provide dedicated transport to the third party locations even if Level 3 has a presence there. That there is another method available does not diminish AI's argument; in fact, it actually enhances the argument. Level 3 is not foreclosed from obtaining the transport, but may obtain it by having the third party order the dedicated transport and then Level 3 could obtain access through a cross connect. This would be in accord with the FCC's position on this matter. While it may not be the most efficient method, it still is the one mandated by the rules.

It is AI's position that it is sufficient to post notice on its web site (AI brief at 57). We agree that this is a proper method that affords all CLECs an equal opportunity to obtain such notice. While the original method of posting as part of its tariff tended to divert attention from the announcement, the web site is readily available to all CLECs. AI is directed to post within 60 days, at its web site TCNET.Ameritech.com, high capacity transport offerings and updates.

23. Payload Mapping

Is Level 3 entitled to payload mapping in the same manner and extent as AI treats itself and other CLEC's?

Level 3's Position

AI should be required to provide Level 3 with payload mapping in any technically feasible manner.

Ameritech's Position

AI will provide payload mapping to Level 3 to the same extent that it provides payload mapping to itself or to any other CLEC. Specifically, AI will provide Dedicated Transport as a point-to-point circuit dedicated to the CLEC at the following speeds: DS1 (1.544 Mbps); DS3 (44.736 Mbps); OC3 (155.52 Mbps); OC12 (622.08 Mbps); and OC 48 (2488.32 Mbps). AI will provide higher speeds to CLECs as they are deployed in its network.

Analysis and Conclusion

It appears that all Level 3 wants is to be treated the same way AI treats itself and other carriers. To this end, we believe it reasonable and hereby direct AI to provide payload mapping to Level 3 to the same extent that it provides payload mapping to itself or to any other CLEC in Illinois.

24. Dark Fiber

What percentage of spare dark fiber should a CLEC be allowed in a requested segment?

Level 3's Position

Level 3 seeks to obtain access to up to 50% of AI's spare dark fiber. Level 3, like any carrier, contends that it needs to access enough fiber along any given route to ensure adequate redundancy in the provision of services. Level 3 agrees with AI's definition of spare parts that already excludes maintenance spares, defective fibers, and fibers reserved for AI's forecasted growth from the fiber that will be available to CLECs. Therefore, relatively few fibers may be available to CLECs in any given segment and the 25% limitation AI proposes could prevent a CLEC from obtaining necessary redundancy along that route.

Level 3 wants to ensure that the Order provides for redundancy if it requires more than 25% of AI's spare dark fiber.

Ameritech's Position

AI maintains that Level 3, and all other CLECs, should be permitted to obtain access to up to 25% of AI's spare dark fiber. Given that the supply of dark fiber in AI's network is limited, as even Level 3 concedes, it is appropriate to place reasonable limits on the amount that any one CLEC may request.

AI further points out that there is no support for Level 3's assertion that it requires up to 50% of the spare dark fiber, or that 50% somehow constitutes a "practical quantity." Finally, AI claims that there is no conceivable reason for granting Level 3 access to 50% while other CLECs are limited to 25%.

Analysis and Conclusion

Level 3 points out that the only time that 50% of available fiber is significant is when only a few fibers remain and it needs whatever additional fiber is available. It then seems that 25% is acceptable for most situations. In light of the fact that there are other CLECs who will be making demands on AI, it appears that 25% is the appropriate level. However, when the smallest amount of available fiber in a segment is greater than 25%, Level 3 shall be entitled to the next available percentage of fiber necessary to achieve redundancy. This should address the concerns of Level 3 and ensure that AI has available fiber for other CLECs.

25. Diversity

Should diversity be made available at specifically defined TELRIC rates or can they be negotiated by the parties on a cost recovery basis?

Level 3's Position

Upon Level 3's request, and where such interoffice facilities exist, AI should be required to provide physical diversity for unbundled dedicated transport at rates compliant with the Act. Level 3 asserts that diversity should be made available at specifically defined TELRIC rates in accordance with Section 251(d) whereas AI would price diversity on an individual case basis because diversity could involve both equipment and transport. If diversity is provided using any of the unbundled dedicated transport offerings priced in the agreement, those prices should apply.

Ameritech's Position

AI has no legal obligation to provide individual CLECs physical diversity that does not already exist on its network. If Level 3 requests such diversity, it is reasonable for the parties to negotiate appropriate rates that will allow AI to recover its costs for providing such additional service. While Level 3 would strike language to that effect, it offers no legal, technical or policy basis for its position. To the extent that

Level 3 suggests that it might be willing to pay TELRIC rates, AI maintains that diversity is not a UNE or form of interconnection and thus is not subject to the FCC's TELRIC rules. According to AI, if it provides diversity for a CLEC on request, it may incur significant additional costs for the additional facilities, equipment, and work needed to achieve such diversity and, hence, must be allowed recovery of those costs. This is what AI's proposed Section 9.4.2 of Appendix UNE would require.

Analysis and Conclusion

"Diversity" is the general term for network arrangements that allow a call to be completed over an alternative route if, for some reason, the primary or usual route is not available. Routing diversity involves alternative physical arrangements designed to ensure service continuity where, for example, a fiber optic cable is inadvertently severed during digging operations. Physically diverse routing is particularly valuable in serving customers, such as financial institutions, needing extremely reliable communications capabilities that will survive all types of physical disasters or potential disruptions.

The parties agree that AI will provide Level 3 with routing diversity where requested and where required facilities exist. The disputed issue concerns the proper pricing of this diverse routing.

AI is correct in maintaining that diversity is not a UNE or a form of interconnection and, therefore, is not subject to the FCC's TELRIC rules. Nevertheless, we believe it proper that, to the extent individual components of a diverse routing arrangement constitute a UNE, these should be priced at TELRIC. Specifically, the UNE components of diverse routing (such as interoffice transport) should be priced at TELRIC levels. Any other non-UNE components, such as additional required equipment, should be priced at rates negotiated between the parties.

26. (Resolved)

27. Point of Interconnection

After having established a POI in each local access and transport area ("LATA") in which Level 3 provides local exchange service, at what level of traffic should Level 3 be required to establish a POI at the AI access tandems?

Level 3's Position:

Level 3 believes that it should be permitted to establish a single POI in each LATA in which it provides local exchange service. An additional POI should be established at an AI access tandem once the traffic exchanged between Level 3 and AI, with respect to that AI access tandem and subtending end offices, meets or exceeds an OC-12 level.

Ameritech's Position

Given that Level 3 initially will establish a single POI in each LATA in which it provides local exchange service, it should be required to establish an additional POI at each AI access tandem once the traffic exchange between Level 3 and AI with respect to that tandem and its subtending offices meets or exceeds a DS-3 level.

Staff's Position

Staff maintains that the requirement for a new POI at the OC-12 level is reasonable and would encourage deployment of efficient competitive fiber networks as the traffic volume grows.

Analysis and Conclusion

Level 3 currently has one POI in the Chicago LATA, which is located in downtown Chicago at the Wabash Tandem. From there, Level 3 traffic is routed to its switch about eight blocks away. AI has eight tandems located throughout the Chicago Area. NXX calls are transported by AI to the POI downtown and then by Level 3 to its switch. AI wants Level 3 to establish POIs at the tandems around the area. Once transferred to a POI, Level 3 would bear the cost of the transport. The closer to the initial call the POI is the less AI has to pay for transport. Each of the parties has suggested a level of traffic at which a POI should be installed.

AI suggests a DS-3 level or 672 calls being transmitted simultaneously. Level 3 suggests an OC-12 level or 8064 simultaneous call paths occurring simultaneously over the network. Staff agrees that OC-12 is an acceptable level. A DS-3 represents about 0.5% at a tandem, while OC-12 is about 5.7% lines behind the tandem. Level 3 admits that 95% of its traffic is ISP. The rapid continuous growth of the internet suggests that it is only a matter of time before Level 3 will have to install additional POIs in the Chicago LATA.

The installation of POIs affects other issues in this and future arbitrations. With a POI installed in a tandem the issue of the cost of regular and virtual NXX number transport all but disappears. The question then is, what is the appropriate level of traffic?

The average tandem in the Chicago area services about two to three hundred thousand terminus sites. At 672 peak calls, POI installation would be accelerated but would place an unfair burden on CLECs. Once again, the purpose of the Act was to encourage and foster CLEC competition through various protective schemes. To set the figure too high would place an extra burden on the ILECs and discourage fiber and technical growth in the Chicago LATA.

Further, the FCC has determined that a CLEC need have one only POI per LATA. The FCC in an amicus curiae brief filed in AT& T v. Hix states, "CPUC (Colorado Public Utility Commission) erroneously relied upon economic considerations in requiring additional points of interconnection. The 1996 Act "bars considering costs in determining technically feasible points of interconnect access." (FCC Order 199.) If it were the desire of the FCC or the legislature to require more than one POI per LATA, that could have been expressed in the statutes. AI has only unsubstantiated statement that only one POI will affect service and presumably make a higher level technically infeasible. Some commissions have recognized the potential need for additional POIs. Level 3 has agreed to place other POIs in the Chicago LATA. However, we have already rejected the distance argument AI posed in Focal, as well as its free ride argument. The suggestion of OC-12 is reasonable under the circumstances, a level with which Staff agrees, and which does not pose any hardship for AI.

We feel that the threshold should be set at an optical carrier level. The FCC requires a CLEC to have only a single POI per LATA where technically feasible and multiple switching access charges have no bearing on technical feasibility. Both Level 3 and Staff have stated that OC-12 is an applicable standard. Level 3 should be afforded every opportunity to establish itself in the Chicago LATA and to progress at a speed that is commensurate with sound economic growth. By allowing sufficient time and traffic to build up before requiring a POI to be established would accomplish this end and further ensure that Level 3 would be able to supply up-to-date technology. We agree that OC-12 represents the appropriate threshold level of traffic before requiring a POI to be established.

28. (Resolved)

29. (Resolved)

30. (Resolved)

31. Forecasting

Is Level 3 entitled to written confirmation from AI that it has received Level 3's forecasts and has included such information in its own forecast?

Level 3's Position:

Level 3 asks to receive written confirmation from AI stating that it has received Level 3's forecast and has included such information in its own forecast. According to Level 3, if AI uses such forecasts in its own planning, it may help AI to meet its obligations for provisioning trunks to Level 3. Further, Level 3 believes that AI should be obligated to provide notice of tandem exhaust situations and, pursuant to FCC rules, notice of any network expansions, software and hardware upgrades or other network changes that would preclude AI from completing Level 3's orders. Such information is critical, Level 3 claims, to its planning process and reasonably related to improving its ability to serve its customers and add new customers to its network.

Ameritech's Position

AI's brief indicates that this matter is resolved.

Analysis and Conclusion

The particular notices which Level 3 seeks are, in our view, both reasonable and necessary. To be sure, each of these measures is intended to improve Level 3's ability to serve its customers and add new customers to its network. To the extent this may impose any undue burden on AI, we have not been so informed and will not speculate. Level 3's request is granted.

32. Trunk Blocking

Should the trunk-blocking objective be set at .5% or 1%?

Level 3's Position

Level 3 has requested a blocking objective of 0.5% for all trunk groups measured during peak usage.

Ameritech's Position

AI proposes a blocking objective of 1% for all trunk groups measured during peak usage. It asserts that there is no legal or policy basis for Level 3's request that the Commission require AI, whose network functions at the industry standard and long-established 1% blockage level, to redesign its network in order to achieve the 0.5% level that Level 3 desires. AI states that its network is designed so that during the busiest hour of an average day in the busiest month, 10 out of every 1,000 calls will be

blocked because no trunk is available to carry them. According to AI, this 1% blockage rate is standard in the industry and has been the accepted norm in Illinois for years.

Staff's Position

Staff recommends that AI's blocking objective of 1% for all trunk groups, as measured during peak usage, be adopted because it is consistent with the standards set out in the Administrative Code.

Analysis and Conclusion

Staff witness Green concurs that the telecommunications industry has for decades engineered its trunking facilities at a P.01 and P.02 level of service which equates to one or two calls in 100 being blocked in the busy hour. His testimony shows that AI should be required to provide only the standards set out in the Administrative Code and not the higher standards requested by Level 3 which would force AI either to enhance the current network that it provides to itself and to other CLECs or to build a separate network just for Level 3. According to Staff, both of these measures would require AI to incur substantial costs with little or no benefit to telecommunications services in Illinois. We are convinced by the evidence and the underlying analysis here presented that AI's position is correct, reasonable, and should be followed.

33. Trunk Utilization

Should Level 3 be allowed to order additional trunks at 50% utilization or 75% as requested by AI?

Level 3's Position

Level 3 would like to have the ability to order additional trunks, based on trunk forecasts, when its existing trunks are at the 50% utilization level. In Section 8.4 of Appendix ITR, however, AI proposes to restrict orders for additional trunks until Level 3 has reached a 75% utilization level.

Ameritech's Position

Level 3 should be permitted to order additional trunks, based on trunk forecast, when its existing trunks are at a 75% utilization level. When Level 3's existing trunks reach a 50% utilization level, AI would like to accommodate projected increases in Level 3 traffic by (1) increasing Level 3's utilization of existing trunks to 75% and (2) allowing Level 3 to order new trunks when its utilization reaches 75%.

Analysis and Conclusion

The issue is whether Level 3's trunks are to be configured for 50% utilization, as Level 3 proposes, or 75% utilization, as AI proposes. Level 3 argues that a 75% utilization level would give AI a competitive advantage and restrict Level 3's ability to add high volume customers to its network. Additionally, Level 3 argues that AI's proposal would require Level 3 to plan carefully in several ways and on several levels to be sure that additional trunks will be ordered in time to be turned up within AI's provisioning intervals. AI maintains that its proposal encourages Level 3 to make efficient use of the network without imposing inefficient buildout costs for new trunks before they are necessary.

A utilization level set at 50% would require AI to install new trunks even though Level 3 would have to double its total traffic volume before the existing trunks of Level 3 were fully used. The ability of AI to reclaim unused trunks does not eliminate this problem as there are no assurances that AI would be able to put those trunks to use and AI would thereby wind up with stranded installation costs. In our view, requiring Level 3 to be more efficient, i.e., plan carefully, outweighs having AI incur unnecessary cost. Thus, AI's position will prevail on this issue.

34. Indemnity

AI seeks specific protection for any unauthorized misuse of its OSS that is achieved via Level 3's systems.

Level 3's Position

The agreement already protects AI adequately and Level 3 should not be held responsible for the actions of other parties beyond its control.

Ameritech's Position

AI needs additional protection from the unauthorized misuse of its OSS by Level 3's users or employees. AI asserts that it should not be liable for the acts of others.

Analysis and Conclusion

While AI's concerns regarding the potential dangers to its OSS may be valid, it is unreasonable to require Level 3 to indemnify for the acts of others. The fact that a Level 3 customer causes harm to AI's OSS is not Level 3's responsibility. It is the equivalent of asking Level 3 to vouch for the good conduct and behavior of all its subscribers. This would amount to a near impossibility. Even employers are not required to vouch for the certain conduct of their employees unless they knew or should have known of their propensities.

AI's indemnity argument is flawed. The language seems to imply that Level 3 should indemnify AI for all claims regardless of fault. There is not any justification for that kind of language. As Level 3 points out in its brief, AI has recourse based upon the general provisions of the agreement.

35. (Resolved)

36. (Resolved)

37. (Resolved)

IV. COMPLIANCE WITH ARBITRATION STANDARDS

Pursuant to Section 252(c), state commissions are required to apply three standards when resolving open issues and imposing conditions upon parties to an Interconnection agreement in arbitration. The first standard requires the agency to ensure compliance with Section 251 and any rules promulgated thereunder. The Commission has reviewed each of the conclusions reached herein and finds that they are in compliance with the relevant statutes and rules. Under the second standard, the state agency is required to establish rates according to Section 252(d). The third standard requires the state agency to provide a schedule for implementation of the terms and conditions by the parties.

As a final implementation matter, the parties shall file, no later than fifteen calendar days from the date of service of this arbitration decision, the complete interconnection agreement for Commission approval pursuant to Section 252(e) of the Act.

By Order of the Commission this 30th of August, 2000.

Chairman

Attachment 3

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

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

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

ORDER DISAPPROVING
PROPOSED SERVICE
(PART 2)

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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I. SUMMARY OF DECISION

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

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

II. BACKGROUND

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

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

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

III. RECLAIMING NXX CODES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cal. Order at 32.

And:

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

Cal. Order at 36.

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

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

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

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

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

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

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

D. Conclusion to Part III: Reclaiming NXX Codes

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

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

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

FCC *Delegation Order* at ¶ 20 (footnote omitted).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. REJECTION OF BROOKS'S PROPOSED RX SERVICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Service Description and Requirement; Rates

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Retail Pricing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Compensation Among ILECs

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

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

It also stated:

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

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

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

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

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

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

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

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

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

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

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

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

D. Other Issues

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

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

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

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

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

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

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

VII. CONCLUSION

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

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

Ordering Paragraphs

Accordingly, we

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

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

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

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

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

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

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

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

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

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

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

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

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

Attachment 4

DOCKET NO. 21982

PROCEEDING TO EXAMINE § PUBLIC UTILITY COMMISSION
RECIPROCAL COMPENSATION §
PURSUANT TO SECTION 252 OF THE § OF TEXAS
FEDERAL TELECOMMUNICATIONS §
ACT OF 1996 §

ARBITRATION AWARD
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DOCKET NO. 21982

PROCEEDING TO EXAMINE § PUBLIC UTILITY COMMISSION
RECIPROCAL COMPENSATION §
PURSUANT TO SECTION 252 OF THE § OF TEXAS
FEDERAL TELECOMMUNICATIONS §
ACT OF 1996 §

ARBITRATION AWARD

This Arbitration Award (Award) approves permanent rates for inter-carrier compensation relating to the transport and termination of local traffic between Southwestern Bell Telephone Company (SWBT) and certain competitive local exchange carriers (CLECs). Specifically, these rates provide reciprocal compensation for the inter-office transport, end-office switching, and tandem switching of local traffic. For purposes of this Award, a call to an Internet service provider (ISP) is subject to these reciprocal compensation rates to the extent that such a call originates and terminates within the same local calling area.

SWBT and any CLEC that has requested arbitration of the issue of inter-carrier compensation in this proceeding¹ pursuant to § 252 of the federal Telecommunications Act of 1996² shall incorporate the rates approved in this Award in any interconnection agreement which is subject to the outcome of this proceeding. If the CLEC has formally notified the Commission of its election of either the first or third option regarding reciprocal compensation for local traffic in Attachment 12 of the Texas 271 Agreement (T2A)³, then a true-up of the applicable bill-and-keep period shall be performed using the inter-carrier rates approved in this Award.⁴

¹ Order No. 3 required CLECs to file petitions seeking arbitration of the issue of inter-carrier compensation in this proceeding by February 3, 2000. Order No. 3 at 1 (Jan. 25, 2000).

² Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

³ *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market*, Project No. 16251, Order No. 55 (Oct. 13, 1999). The T2A is a standardized interconnection agreement available from SWBT through October 13, 2003. See Project No. 16251, Order No. 55, Attachment 12 at ¶ 4.1; Docket No. 16251, SWBT Letter Agreeing to Extend T2A (July 7, 2000). Attachment 12 to the T2A addresses the issue of reciprocal compensation, providing an electing CLEC with three options from which to choose. Under the first option, after January 22, 2000, SWBT and the electing CLEC shall operate under a bill-and-keep arrangement for all wireline traffic, including ISP-bound traffic, during periods of negotiation and/or

I. JURISDICTION

If an incumbent local exchange carrier (ILEC) and CLEC cannot successfully negotiate rates, terms and conditions in an interconnection agreement, FTA § 252(b)(1) provides that either of the negotiating parties "may petition a State commission to arbitrate any open issues." The Commission is a state regulatory body responsible for arbitrating interconnection agreements approved pursuant to the FTA.

II. PROCEDURAL HISTORY

On January 13, 2000, the Commission initiated this proceeding for the purpose of consolidating requests to arbitrate the issue of reciprocal compensation for the transport and termination of local traffic. This proceeding addresses only this single issue; other issues for which arbitration is requested by the carriers participating in this docket are addressed in separate arbitration proceedings relating to specific interconnection agreements. The Commission limited participation in this docket to only those parties arbitrating the issue of reciprocal compensation in this proceeding, *i.e.*, SWBT and interconnecting CLECs,⁵ consistent with P.U.C. SUBST. R. 22.305(e).⁶

arbitration. The second option permits the parties to operate under a bill-and-keep arrangement for the duration of their agreement. Under the third option, commencing on the date that the CLEC opts into the T2A, SWBT and the electing CLEC seeking to negotiate and/or arbitrate the issue of compensation shall operate under a bill-and-keep arrangement for all wireline traffic, including ISP-bound traffic, during periods of negotiation and/or arbitration. The bill-and-keep arrangements under both the first and third options are subject to true-up. The Commission concludes that the true-up period under the first and third options ends upon the Commission's approval of an interconnection agreement incorporating the inter-carrier compensation rates approved in this Award.

⁴ After a CLEC files notification of its intent to opt into the T2A, in whole or in part, the Commission issues a letter of acknowledgement.

⁵ See generally Order No. 3 (Jan. 25, 2000). GTE Southwest, Inc. and other ILECs did not seek to expand the scope of this proceeding to arbitrate reciprocal compensation issues for purposes of their interconnection agreements.

⁶ This rule allows only the parties to the interconnection agreement to participate as parties in the arbitration proceeding.

The parties in this proceeding are: Adelpia Business Solutions of Texas, LLP (Adelpia), Allegiance Telecom of Texas, Inc. (Allegiance), AT&T Communications of the Southwest, Inc. (AT&T), CCTX, Inc. D/B/A Connect! (Connect), the CLEC Coalition⁷ (the Coalition), e.spire Communications, Inc. (e.spire), Focal Communications Corp. (Focal), Level 3 Communications (Level 3), MCI Worldcom Communications, Inc. (WCOM), Southwestern Bell Telephone Company (SWBT), and Taylor Communications Group, Inc. (Taylor Comm.).⁸

The parties engaged in discovery through April 4, 2000. Direct testimony was filed on March 15, 17, and 20, 2000; rebuttal testimony was filed on March 31, 2000. The hearing on the merits was held on April 4 and 5, and May 18, 2000.

III. RELEVANT STATE AND FEDERAL PROCEEDINGS

A. RELEVANT COMMISSION DECISIONS

Mega-Arbitrations

The FTA became effective in February 1996. Soon thereafter, several proceedings—collectively referred to as the Mega-Arbitrations—were initiated and consolidated for the purpose of arbitrating the first interconnection agreements in Texas under the new federal statute. A focal issue in these proceedings revolved around establishing “reciprocal compensation” rates. “Reciprocal compensation” refers to the statutorily mandated arrangement between two carriers

⁷ The CLEC Coalition includes: Time Warner Telecom, L.P. (TW), KMC Telecom, Inc. (KMC), GST Telecom, Inc. (GST), NEXTLINK Texas, Inc. (NEXTLINK), Intermedia Communications, Inc. (Intermedia), ICG Choicecom, L.P. (ICG), Teligent, Inc. (Teligent), Winstar Wireless of Texas, Inc. (Winstar), and Reliant Energy (Reliant).

⁸ With the exception of WCOM and Taylor Comm., the CLECs participating in this docket filed requests to arbitrate the reciprocal compensation issue in this proceeding. WCOM and Taylor became parties to this proceeding by virtue of the severance of the issue of reciprocal compensation from other arbitration proceedings and the consolidation of such severed issue into this proceeding. *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom Communications, Inc., Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21791, Order No. 6 (Jan. 26, 2000); *Petition of Taylor Communications Group, Inc. for Arbitration with Southwestern Bell Telephone Company Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21754, Order No. 7 (Jan. 24, 2000).

by which each carrier receives compensation for the transport and termination on its network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.⁹

In November 1996, the Commission issued the First Mega-Arbitration Award in Docket No. 16189,¹⁰ which established inter-carrier compensation rates, on an interim basis, for end-office switching, tandem switching, and inter-office transport. The reciprocal compensation rates adopted in the First Mega-Arbitration Award applied to calls that originated and terminated within SWBT's mandatory single- or multi-exchange local calling areas, including areas encompassed by mandatory Extended Area Service (EAS) arrangements. During the first nine months after the date upon which the first commercial call terminated between SWBT and a CLEC, however, the Commission designated "bill-and-keep"¹¹ as the arrangement by which reciprocal compensation would be accomplished.

The Second Mega-Arbitration Award in Docket No. 16189,¹² issued December 1997, approved cost studies for SWBT and established permanent inter-carrier compensation rates. These permanent rates appear in Attachment A to this Award.

Pursuant to FTA § 252(i), many CLECs subsequently opted into the reciprocal compensation provisions in the interconnection agreements approved in the Mega-Arbitration proceedings. Neither the First nor Second Mega-Arbitration Award, or the interconnection

⁹ See FTA §§ 251(b)(5), 252(d)(2). The FCC has construed the reciprocal compensation requirement in the FTA to apply to *local* telecommunications traffic only. 47 C.F.R. § 51.701(e) (1998).

¹⁰ *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al*, Award (Nov. 8, 1996) (First Mega-Arbitration Award).

¹¹ FTA §252(d)(2)(B)(i) permits "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."

¹² *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al*, Award (Dec. 19, 1997) (Second Mega-Arbitration Award).

agreements resulting from those proceedings, specifically addressed the issue of whether an ISP-bound call is subject to reciprocal compensation.

Docket No. 18082

The reciprocal compensation provisions in the interconnection agreements approved in the Mega-Arbitration proceedings were initially disputed in Docket No. 18082.¹³ In October 1997, Time Warner Communications of Austin L.P., Time Warner Communications of Houston, L.P., and FIBRcom (collectively, TW Comm) filed a complaint pursuant to Subchapter Q of the Commission's procedural rules, alleging that SWBT had breached its interconnection agreement with TW Comm. Specifically, the controversy centered on compensation for calls connecting SWBT customers to TW Comm customers that are ISPs. SWBT had refused to compensate TW Comm for such calls according to the reciprocal compensation rates in the interconnection agreement, based on its contention that those calls were not "local" in nature.

The Commission rejected SWBT's position and concluded that the calls in controversy were subject to the interconnection agreement's provisions relating to reciprocal compensation for the transport and termination of local traffic. In reaching this conclusion, the Commission first examined the nature of an ISP-bound call. It found that a call over the Internet consists of two components: (1) the information service component, which is the content of the call, and (2) the telecommunications service component, which is the carrier-to-carrier and carrier-to-end-user transmission of the call. With respect to the latter, the Commission concluded that when a person calls an ISP within a local calling area, the traffic carried on the call's transmission path is local in nature, with the telecommunications service component of the call terminating at the ISP.¹⁴

¹³ *Complaint and Request for Expedited Ruling of Time Warner Communications*, Docket No. 18082, Order (Feb. 27, 1998).

¹⁴ In finding that such traffic is local in nature, the Commission rejected SWBT's end-to-end analysis of an ISP-bound call, which viewed the call as terminating at the website or websites ultimately accessed by the calling party, rather than at the ISP.

Having reached this conclusion, the Commission then found that the scope of the definition of “local traffic” in the interconnection agreement included ISP traffic. The interconnection agreement’s definition stated that, for reciprocal compensation purposes, “local traffic” includes (1) a call that originates and terminates in the same SWBT exchange area, or (2) originates and terminates within different SWBT exchanges that share a common mandatory calling area, *e.g.*, mandatory EAS, mandatory extended local calling service (ELCS), or any other service with a mandatory expanded local calling scope. The definition did not distinguish types of calls (*i.e.*, Internet versus voice), but rather focused upon the area in which the call originated and terminated. Therefore, if a call to an ISP originated and terminated within the same exchange or mandatory calling area, the traffic terminating at the ISP constituted “local traffic” and, consequently, was subject to the reciprocal compensation rates for such traffic, as specified in the interconnection agreement.

Other Post-Interconnection Agreement Disputes—Other post-interconnection agreement disputes between ILECs, including SWBT, and CLECs involving the same issue arose after the Commission’s ruling in Docket No. 18082. In those subsequent proceedings interpreting specific interconnection agreements, the Commission applied the precedent established in Docket No. 18082 in finding that the transport and termination of calls to ISPs is subject to reciprocal compensation.¹⁵

¹⁵ See *Petition of Waller Creek Communications, Inc. for Arbitration with Southwestern Bell Telephone Company*, Docket No. 17922, Order Approving Interconnection Agreement (April 28, 1998); *Complaint of Taylor Communications Group, Inc. Against Southwestern Bell Telephone Company*, Docket No. 18975, Order No. 3 (May 4, 1998); *Complaint and Request for Expedited Ruling of Golden Harbor of Texas, Inc.*, Docket No. 19160, Arbitrator’s Decision (June 30, 1998); *Petition for Arbitration Pursuant to FTA § 252(b) to Establish Interconnection Agreement with GTE Southwest Incorporated*, Docket No. 20028, Arbitration Award (Feb. 22, 1999); *Complaint of MFS Against GTE Southwest, Inc. Regarding GTE’s Nonpayment of Reciprocal Compensation*, Docket No. 21706, Preliminary Order (April 13, 2000).

B. RELEVANT FEDERAL COMMUNICATIONS COMMISSION DECISIONS*Declaratory Order and Notice of Proposed Rulemaking*

The issue of whether ISP traffic is subject to reciprocal compensation also arose in other states. In response to formal and informal requests to clarify whether a carrier is entitled to receive reciprocal compensation for traffic delivered to an ISP, the Federal Communications Commission (FCC) issued a declaratory ruling and notice of proposed rulemaking in early 1999.¹⁶

The FCC's declaratory ruling concluded that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate in nature. In reaching this conclusion, the FCC rejected the notion that a call to an ISP is divisible into two separate parts, the information service component and the telecommunications service component. Rather, it focused upon the end-to-end nature of the communication, the approach traditionally used by the agency in determining whether a communication is intra- or interstate in nature. Finding that "[a]n Internet connection does not have a point of 'termination' in the traditional sense," the FCC found that a call to an ISP does not terminate at the ISP, but instead continues to its ultimate destination of an Internet website that is often located in another state or country. As a result of these conclusions, the FCC determined that FTA § 251(b)(5) does not *impose* any reciprocal compensation requirement for ISP-bound traffic.

Despite this statutory interpretation, however, the FCC stated that its conclusion did not, in and of itself, preclude the application of reciprocal compensation to the transport and termination of ISP-bound traffic. The FCC observed that parties to interconnection agreements may have agreed to the payment of reciprocal compensation for ISP-bound traffic, or that state commissions may have concluded that such compensation is due for such traffic in arbitration

¹⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Declaratory Ruling; *Inter-Carrier Compensation of ISP-Bound Traffic*, CC Docket No. 99-68, Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (Feb. 26, 1999).

and other proceedings conducted pursuant to FTA § 252. Until it addressed the matter of appropriate inter-carrier compensation for ISP-bound traffic further in a rulemaking proceeding, the FCC stated that interconnecting parties continued to be bound by their existing agreements, as interpreted by state commissions, with respect to the issue of reciprocal compensation in the context of ISP-bound traffic.

Finally, the FCC expressed its desire that carriers, in the first instance, establish inter-carrier compensation for ISP-bound traffic based on interconnection agreement negotiations. In view of the need to further develop the record for the purpose of adopting a rule regarding inter-carrier compensation for ISP-bound traffic, the FCC solicited comments on two alternative proposals to govern carriers' negotiations on this issue.¹⁷

C. RELEVANT COURT DECISIONS

Judicial Appeal of Docket No. 18082: Southwestern Bell Telephone Company v. Public Utility Commission of Texas (U.S. District Court; Western District, Texas; Midland/Odessa Division)

SWBT appealed the Commission's order in Docket No. 18082 to federal district court, seeking declaratory and injunctive relief.¹⁸ The federal district court affirmed the Commission's decision. After discussing the interstate characteristics of the Internet and the FCC's unique regulatory treatment of the Internet, the federal district court concurred in the Commission's two-component analysis of an ISP-bound call, and characterized the call terminating at the ISP as local traffic. The federal district court further concluded that the Commission relied upon substantial evidence to conclude that the SWBT/Time Warner interconnection agreement

¹⁷ The comments filed by the Commission in response to this notice of proposed rulemaking agreed with the FCC's position that commercial negotiations are the optimal means for establishing interconnection agreements. Furthermore, the Commission stated that the resolution of the reciprocal compensation issue is best determined under the aegis of the FCC and FTA §§ 251 and 252. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Inter-Carrier Compensation of ISP-Bound Traffic*, CC Docket No. 99-68, Comments of the Public Utility Commission of Texas (April 8, 1999).

¹⁸ *Southwestern Bell Telephone Company v. Public Utility Commission of Texas*, No. MO-98-CA-43, 1998 U.S. Dist. LEXIS 12938 (W.D. Tex., June 16, 1998).

required the originating carrier to pay reciprocal compensation for calls to ISPs within the same local calling area.

Judicial Appeal of Docket No. 18082: Southwestern Bell Telephone Company v. Public Utility Commission of Texas (U.S. Court of Appeals, Fifth Circuit)

SWBT subsequently appealed the federal district court's decision to the Fifth Circuit court of appeals.¹⁹ The court of appeals affirmed the lower court's decision. After denying SWBT's challenges to the Commission's exercise of jurisdiction in Docket No. 18082, the federal appellate court concluded that the Commission's decision in Docket No. 18082 did not conflict with the FTA, FCC rules, or FCC rulings. Citing language from the FCC's declaratory ruling on ISP-bound traffic, it found that a state commission may lawfully interpret an interconnection agreement as requiring reciprocal compensation for ISP-bound traffic, particularly given the FCC's past policy of treating ISP traffic as if it were local traffic in other contexts. Furthermore, the federal district court held that the Commission properly interpreted the SWBT/Time Warner interconnection agreement to impose reciprocal compensation obligations for calls to ISPs within a local calling area.²⁰

Judicial Appeal of FCC's Declaratory Order: Bell Atlantic Telephone Companies v. Federal Communications Commission (U.S. Court of Appeals, D.C. Circuit)

Bell Atlantic and a group of CLECs appealed the FCC's declaratory ruling to the District of Columbia (D.C.) Circuit court of appeals.²¹ The appellate court vacated the FCC's decision and remanded the proceeding to the federal agency for want of reasoned decision-making. The appellate court concluded that the FCC failed to adequately explain why an end-to-end analysis, which the federal agency has traditionally used to determine the jurisdictional nature of a

¹⁹ *Southwestern Bell Telephone Company v. Public Utility Commission of Texas*, 208 F.3d 475 (5th Cir. 2000).

²⁰ Throughout its opinion, the court of appeals cited extensively to another federal appellate court's decision on the same issues in support of its conclusions. See *Illinois Bell Telephone Company v. Worldcom Techs., Inc.*, 1790 F.3d 566 (7th Cir. 1999).

²¹ *Bell Atlantic Telephone Companies v. Federal Communications Commission*, 206 F.3d 1 (D.C. Cir. 2000).

communication, made sense in the context of the reciprocal compensation issue, in terms of both the FTA and FCC rules. Specifically, it found that “[the FCC] has yet to provide an explanation why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.”²²

In remanding the matter to the FCC, the court of appeals made several observations about the fallacies in the FCC’s reliance on the end-to-end analysis in addressing the reciprocal compensation issue. The appellate court noted that a call to an ISP appears to fit within the definition of “termination” in the FCC’s rules, that is, the traffic is switched by the carrier whose customer is the ISP and then delivered to the ISP.²³ The FCC, however, failed to apply or mention this definition in its declaratory ruling, instead relying on an end-to-end analysis previously applied in contexts that the appellate court characterized as different and distinct from the context of Internet communications. The appellate court also criticized the contradiction in the FCC’s application of the end-to-end analysis to characterize ISP-bound traffic as interstate traffic in view of the FCC’s prior rulings exempting ISPs and other interactive computer services from access charges. Finally, the court of appeals pointed out the lack of satisfactory explanation offered by the FCC as to how its conclusions with regard to ISP-bound traffic accord with the statutory definitions of “exchange access” and “telephone exchange service”.²⁴

In June 2000, the FCC issued a notice seeking comments in response to the remand by the D.C. Circuit court of appeals.²⁵ The notice requested comment on the jurisdictional nature of

²² *Id.* In view of the grounds for remand, the court of appeals did not reach the issue raised by Bell Atlantic with respect to whether FTA § 251(b)(5) preempts state commissions from compelling reciprocal compensation payments for ISP-bound traffic.

²³ *Id.* The relevant FCC rule defines “termination” as “the switching of traffic that is subject to section 251(b)(5) at the terminating carrier’s end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party’s premises” 47 C.F.R. 51.701(d).

²⁴ *See* 47 U.S.C. §§ 153(16), 153(47) (2000).

ISP-bound traffic; the scope of the reciprocal compensation requirement in FTA § 251(b)(5); and the relevance of terms such as “termination”, “telephone exchange service”, “exchange access service”, and “information access” to the issue of reciprocal compensation in the context of ISP-bound traffic. Furthermore, the notice requested comment on any new or innovative inter-carrier compensation arrangements for ISP-bound traffic that are currently under consideration or that have been adopted through negotiation or arbitration.

IV. INTER-CARRIER COMPENSATION RATES

The inter-carrier compensation rates approved in the Mega-Arbitrations, as reflected in Attachment A to this Award, form the basis of the inter-carrier compensation rates approved in this Award pursuant to FTA § 252(d)(2). The inter-office transport and tandem switching rates approved in the Mega-Arbitration proceedings are re-adopted in this Award. For the calculation of the bifurcated end-office switching rate approved in this docket, the Commission relies upon the local switching cost studies approved in the Mega-Arbitrations and the Basic Network Function (BNF) cost studies approved in Project No. 16657.²⁶ For purposes of the methodology approved in this Award for calculating a blended tandem switching rate, the tandem switching and inter-office transport rates approved in the Mega-Arbitrations are elements in the methodology, as well as the bifurcated end-office switching rate approved in this Award.

Consistent with the First Mega-Arbitration Award,²⁷ the T2A²⁸, and Section V.A. of this Award, the following definition of “Local Traffic” will apply to the inter-carrier rates approved in this Award and shall be incorporated in affected interconnection agreements:

²⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; and *Inter-Carrier Compensation of ISP-Bound Traffic*, CC Docket No. 99-68, Public Notice (June 23, 2000).

²⁶ *Southwestern Bell Telephone Company's Application for Approval of LRIC Studies for Basic Network Access Channel Nonstandard 4-Wire, Type O, et al., Pursuant to P.U.C. SUBST. R. 23.91*, Order No. 8 (Nov. 12, 1997).

²⁷ First Mega-Arbitration Award at ¶58 (Nov. 8, 1996).

²⁸ Docket No. 16251, Order No. 55, Attachment 12 at ¶ 1.1.

Calls originated by [CLEC's] end users and terminated to SWBT's end users (or vice versa) will be classified as "Local Traffic" under this Agreement and subject to reciprocal compensation if the call: (i) originates and terminates in the same SWBT exchange area; or (ii) originates and terminates within different SWBT exchanges, or within a SWBT exchange and an independent ILEC exchange, that share a common mandatory local calling area, e.g., mandatory extended area service (EAS), mandatory extended local calling service (ELCS), or other types of mandatory expanded local calling scopes. For the purposes of reciprocal compensation, a call to an Internet Service Provider is classified as "Local Traffic" if it meets either requirement in (i) or (ii).

V. DISCUSSION OF DPL ISSUES

This proceeding address the four issues in Joint Decision Point List (DPL) filed by the parties on February 22, 2000:

DPL Issue No. 1: What traffic should be subject to reciprocal compensation?

DPL Issue No. 2: What method should be used to determine inter-carrier compensation?

DPL Issue No. 3: What is the appropriate rate or rates (e.g., symmetrical/asymmetrical) at which compensation should be made?

DPL Issue No. 4: What is the appropriate method by which to bill for this traffic?

A. DPL ISSUE NO. 1: WHAT TRAFFIC SHOULD BE SUBJECT TO RECIPROCAL COMPENSATION?

(a) *SWBT's Position*

SWBT asserts that the FCC has determined that the FTA's reciprocal compensation requirement applies to the exchange of local traffic only. It defines "local traffic" as traffic that is either within a single exchange or traffic that is between exchanges subject to mandatory local calling; in either instance, such traffic falls within the "basic/local" retail calling scope of an exchange customer.²⁹ SWBT contends that ISP-bound traffic, however, does not originate and terminate within any such calling scope and is largely interexchange in nature. Consequently, SWBT avers that ISP-bound traffic is not subject to reciprocal compensation. It argues that a

²⁹ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 6.

call placed to an ISP has end-to-end connectivity to almost anywhere in the world--in other words, such a call is not terminated locally but rather to some point on the World Wide Web.³⁰ In support of this argument, SWBT relies upon the FCC's declaratory ruling addressing the nature of ISP-bound traffic as it relates to reciprocal compensation.³¹

SWBT also states that all local traffic originated through unbundled network elements (UNEs) is eligible for reciprocal compensation. SWBT explains that the manner in which a CLEC decides to originate its customers' calls is irrelevant as to whether reciprocal compensation applies to those calls, given that the CLEC's method of doing business does not affect SWBT's cost to terminate the traffic.³² SWBT contends, however, that the following types of traffic are not eligible for reciprocal compensation:

- Traffic terminated through Internet Gateways, which generally are not used to originate traffic, but rather serve to receive traffic for purposes of routing that traffic to an ISP local server: SWBT contends that this type of traffic is not "local" in nature and that the traffic flow is inherently "one-way," *i.e.*, there is no exchange of originating and terminating traffic between the carriers.³³
- Transit carriers: SWBT asserts that such a carrier (*i.e.*, the second or intermediate carrier) neither originates nor terminates the call, but simply directs the call to its destination, and is only entitled to recover the cost for transiting the call across its network.³⁴
- FX-type traffic, which is traffic that originates in one local exchange area and is delivered to a telephone number that is assigned to that same local exchange area, although the physical premises for that telephone number and the customer are located in another local exchange area³⁵: SWBT states that, but

³⁰ SWBT Ex. No. 5, Direct Testimony of Robert Jayroe at 5.

³¹ *In the Matter of the Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, Declaratory Ruling; *Inter-Carrier Compensation of ISP-Bound Traffic*, CC Docket No. 99-68 Notice of Proposed Rulemaking (Feb. 25, 1999).

³² SWBT Ex. No. 8, Rebuttal Testimony of D. Randy Long at 21.

³³ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 7-9.

³⁴ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 12.

³⁵ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 10.

for the retail FX arrangement, the call would be an interexchange, intraLATA long-distance call.³⁶

- 8YY traffic, which is traffic consisting of those calls which use “800”, “877”, or “888” as the area code.³⁷ SWBT posits that such calls are generally not subject to reciprocal compensation requirements and may be considered “local” for reciprocal compensation purposes only if the call originates and terminates in the same SWBT exchange area or within exchanges that share a common mandatory calling area.³⁸

(b) CLECs' Position

The Coalition argues that all traffic originated by the customer of a carrier that is delivered by a terminating carrier pursuant to the calling party's request should be subject to reciprocal compensation.³⁹ The Coalition asserts that the Commission should re-affirm its precedent treating calls to ISPs as local calls subject to reciprocal compensation in accordance with FTA § 251(b)(5). In view of the D.C. Circuit court of appeals' criticism of the FCC's use of an end-to-end analysis to conclude that ISP-bound traffic is interstate in nature,⁴⁰ the Coalition posits that it is unlikely that the FCC, on remand, will develop a convincing analogy between ISP-bound traffic and long-distance traffic on remand to justify its declaratory ruling.⁴¹ Even absent the federal appellate court's remand, the Coalition argues that the segregation of ISP traffic for reciprocal compensation purposes is not justified by any cost differences between ISP-bound traffic and other local traffic, given that the two types of calls use the public switched

³⁶ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 10.

³⁷ The originating party using one of these area codes is not charged for the call. The carrier terminating the call typically pays for 8YY calls.

³⁸ SWBT Ex. No. 8, Rebuttal Testimony of D. Randy Long at 22.

³⁹ Coalition Ex. No. ICG-3, Direct Testimony of Don J. Wood at 7.

⁴⁰ *Bell Atlantic Telephone Companies v. Federal Communications Commission*, 206 F.3rd 1 (D.C. Cir. 2000).

⁴¹ Coalition Ex. No. ICG-4, Rebuttal Testimony of Don J. Wood at 4-10.

telephone network in identical ways.⁴² Furthermore, the Coalition contends that there is no cost basis for any such differentiation because the cost driver for both types of calls is the same.⁴³

The Coalition also asserts that the Commission should reject SWBT's effort to parse out different forms of terminating arrangements for serving ISPs by exempting certain arrangements such as "virtual FX" and "Internet Gateways" from reciprocal compensation. First, the Coalition argues that SWBT's effort to carve out such exemptions is unfounded, both as a matter of technology and as a matter of economic policy.⁴⁴ With respect to the so-called Internet Gateway issue, the Coalition contends that the Commission's determination of when reciprocal compensation is due should be technology-neutral. The Coalition believes given the rapid development of new technologies and the consumer demand for Internet access, the Commission should not take any action that would have the effect of dictating how a carrier deploys new technology or designs its networks to serve its customers.⁴⁵

Second, with respect to the so-called virtual FX issue, the Coalition contends that the CLEC service described by SWBT is also provided by SWBT in essentially the same manner. The Coalition believes that any exemption afforded a CLEC's virtual FX traffic would result in discrimination against CLECs and provide a competitive advantage to SWBT's own similar offerings.⁴⁶

AT&T avers that the most efficient and effective approach to addressing the reciprocal compensation issue is to adopt a cost-based rate structure covering all traffic exchanged between AT&T and SWBT which originates and terminates within the same LATA.⁴⁷ AT&T states that

⁴² Coalition Ex. No. ICG-3, Direct Testimony of Don J. Wood at 7.

⁴³ Coalition Ex. No. ICG-3, Direct Testimony of Don J. Wood at 7; Coalition's Initial Brief at 15-16 (April 19, 2000).

⁴⁴ Coalition Ex. No. CLEC-1, Direct Testimony of William Page Montgomery at 23-24.

⁴⁵ Allegiance Ex. No. 1, Direct Testimony of Richard Anderson at 2.

⁴⁶ Coalition Ex. No. CLEC-2, Rebuttal Testimony of William Page Montgomery at 37-39.

the one exception to its proposal is AT&T's Feature Group D access traffic, which is generated via its long-distance network.⁴⁸ Furthermore, AT&T agrees with the Coalition that ISP-bound traffic is local traffic, possessing all the cost and technical characteristics of a local call.⁴⁹ AT&T argues that a CLEC should be compensated for any costs that it incurs in terminating a call from a SWBT customer because SWBT avoids having to incur those costs.⁵⁰

With regards to 8YY traffic, AT&T asserts that an 8YY call that originates on one carrier's network and terminates on another's network without the need for any interexchange carrier (IXC) transport is carried on local interconnection trunks and, therefore, is subject to reciprocal compensation.⁵¹ AT&T further argues that virtual FX traffic and Internet Gateway traffic should not be treated differently from other local traffic. It states that there are no underlying routing or geographic characteristics that uniquely distinguish such traffic from other types of local calls. AT&T observes that, depending upon the physical boundaries of a customer's pre-defined local calling area, a local call may well traverse more central offices and route miles than a given toll call.⁵² Moreover, AT&T contends that SWBT's position regarding Internet Gateway traffic would discriminate based on a CLEC's technology and network architecture and would be anti-competitive.⁵³

(c) Commission Decision

The Commission is again not persuaded by SWBT's argument that it should treat ISP-bound traffic differently for purposes of reciprocal compensation. The Commission has

⁴⁷ AT&T Initial Post-Hearing Brief at 5 (April 19, 2000).

⁴⁸ AT&T Ex. No. 5, Direct Testimony of Maureen A. Swift at 12.

⁴⁹ AT&T Initial Post-Hearing Brief at 11 (April 19, 2000).

⁵⁰ *Id.* at 12.

⁵¹ AT&T Ex. No. 5, Direct Testimony of Maureen A. Swift at Direct at 12.

⁵² AT&T Ex. No. 4, Rebuttal Testimony of Patricia D. Kravtin at 20.

⁵³ *Id.*

previously concluded that ISP-bound traffic is local in nature and reaffirms that such traffic is eligible for reciprocal compensation in this proceeding. Its prior rulings remain viable from technological, policy, and legal standpoints, and they are now supported by the federal appellate court decisions in Southwestern Bell Telephone Co. v. Public Utility Commission of Texas and Bell Atlantic Telephone Companies v. Federal Communications Commission. Moreover, designating ISP-bound traffic as local traffic is not inconsistent with any action taken by the FCC on the matter. Even if the designation of ISP-bound traffic as local is subject to future challenge at the FCC and/or in the courts, the Commission finds independently that it is reasonable to compensate such traffic as local traffic. Finally, the Commission concludes that there are no compelling policy reasons for establishing a reciprocal compensation mechanism that would require the separation and/or measurement of ISP-bound traffic.

The Commission also reaffirms its previous determination that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SWBT exchanges and the mandatory EAS/ELCS areas comprised of SWBT exchanges and exchanges of independent ILECs.⁵⁴ The Commission finds that to the extent that FX-type and 8YY traffic do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation. The Commission reiterates that this Award does not preclude CLECs from establishing their own local calling areas or prices for purpose of retail telephone service offerings.⁵⁵

Finally, the Commission agrees with SWBT that transit traffic should not be eligible for reciprocal compensation. The Commission addresses transit traffic in its discussion of DPL Issue No. 4.

⁵⁴ See First Mega-Arbitration Award at ¶58; Project No. 16251, Order No. 55, Attachment 12 at ¶ 1.1. See also Evaluation of the Public Utility Commission of Texas, *In the Matter of Application of SBC Communications Inc., and Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. D/B/A/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region*, CC Docket No. 00-4, at 88 (Jan. 31, 2000); Project No. 16251, Final Staff Report on Collaborative Process at 103-104 (Nov. 18, 1998).

⁵⁵ See First Mega-Arbitration Award at ¶59.

B. DPL ISSUE NO. 2: WHAT METHOD SHOULD BE USED TO DETERMINE INTER-CARRIER COMPENSATION?

The parties' positions regarding DPL Issue No. 2 are separated into three areas: the rate symmetry issue, the tandem issue, and the rate structure issue.

I. Rate Symmetry Issue

(a) CLECs' Position

The Coalition states that inter-carrier compensation rates must be symmetrical.⁵⁶ AT&T proposes symmetric reciprocal compensation on a LATA-wide basis.⁵⁷ Based on its own cost study, Taylor Comm. proposes asymmetric rates that are almost twice those approved for SWBT in the Mega-Arbitration proceedings.

(b) SWBT's Position

SWBT argues that inter-carrier compensation rates should be set symmetrically at the total element long-run incremental cost (TELRIC) of a fully efficient competitor.⁵⁸ SWBT avers that there should be a single TELRIC study to measure the forward-looking economic cost of an efficient firm.⁵⁹ SWBT also asserts that there are efficiency consequences of establishing a rate based on costs higher than those of the low-cost provider because when the high-cost provider remains in the market, resources are wasted.⁶⁰

⁵⁶ Coalition's Initial Brief at 34 (April 19, 2000).

⁵⁷ AT&T Initial Brief at 5 (April 19, 2000).

⁵⁸ SWBT Ex. No. 14, Direct Testimony of William Taylor at 5.

⁵⁹ *Id.* at 22.

⁶⁰ *Id.* at 5.

(c) *Commission Decision*

Parties brought two versions of asymmetric rates before the Commission. The first, as proposed by Taylor Comm., involves asymmetric rates between carriers. The second is implicit in SWBT's proposal to segregate ISP-bound traffic from voice traffic.

The Commission adopts the recommendation put forth by the CLEC Coalition for symmetric rates across carriers. The Commission finds that symmetric rates place the interconnected parties, ILEC and CLEC alike, in a position of parity. The Commission further recognizes that symmetrical rates derived from one source--here, the rates set in the Mega-Arbitrations-- are administratively easier to manage than asymmetric rates based on carriers' individual costs. (See additional discussion regarding rates under DPL Issue No. 3.)

Furthermore, the Commission rejects the adoption of different inter-carrier compensation for voice and ISP-bound traffic. At present, the Commission is not persuaded that the methodologies used by SWBT to identify and segregate voice traffic from ISP-bound traffic are reliable or consistent. In reaching this conclusion, the Commission recognizes that voice traffic varies both in call duration and distance, and that any attempt to segregate voice and ISP traffic for the purposes of assessing asymmetric rates would be problematic, at best. Moreover, the Commission does not accept minutes-of-use (MOU), number tracking, or billing records as accurate discriminators of voice and ISP-bound traffic.

2. *Tandem Issue*

The FCC's Local Competition Order dedicates two paragraphs to the so-called "tandem issue."⁶¹ In its discussion, the FCC found that telecommunications carriers can incur additional costs when calls are terminated through a tandem switch. The FCC concluded that states may

⁶¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 at ¶¶1090-1091 (Aug. 8, 1996) (Local Competition Order).

establish transport and termination rates that vary according to whether the traffic is routed through a tandem switch or directly to the end-office. In setting such rates, the FCC indicated that states must also consider whether new technologies perform functions similar to those performed by an ILEC's tandem switch and whether some or all calls terminating on the new entrants' network should be priced the same as the sum of transport and termination via the ILEC's tandem switch. The FCC also concluded that where the interconnecting carrier's switch serves a geographic area comparable to that of the ILEC's tandem switch, the appropriate proxy for the additional costs incurred is the ILEC's tandem interconnection rate. The resulting FCC rule, 47 C.F.R. 51.711(a)(3), however, only includes comparability to the area served by the ILEC's tandem switch as a precondition for receiving compensation for tandem switching. The FCC also states that the appropriate rate for the carrier other than an ILEC is the ILEC's tandem interconnection rate.

In addressing the tandem issue, the parties devoted considerable effort discussing the New York Public Service Commission (NYPSC) decision concerning reciprocal compensation (NYPSC Order).⁶² The NYPSC's inquiry into reciprocal compensation grew out of the unanticipated development of the substantial imbalance in traffic flows and revenue streams between ILECs and some CLECs with a preponderance of customers, such as ISPs, that receive far more calls than they originate.⁶³ The NYPSC order refers to such traffic as "convergent". The NYPSC order determined that once the ratio of incoming to outgoing traffic reaches 3:1, the inference of predominantly convergent traffic becomes stronger and implies greater efficiency and lower costs in the termination of traffic. The NYPSC order indicates that the inference of lower costs cannot be disregarded if compensation is to be cost-based, but is not conclusive enough to have a definitive effect on rates. Consequently, the NYPSC concluded, in part, that the inference of lower costs could be addressed by a rebuttable presumption allowing a CLEC to

⁶² *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, Opinion and Order Concerning Reciprocal Compensation*, State of New York Public Service Commission Opinion and Order Concerning Reciprocal Compensation, Opinion No. 99-10, Case 99-C-0529 (Aug. 26, 1999) (NYPSC Order).

⁶³ *Id.* at 1.

show that its network and service are such as to warrant tandem rate compensation for all traffic.⁶⁴

In this regard, the NYPSC developed a rate structure using a 3:1 ratio of incoming to outgoing traffic as the point after which end-office rates alone would apply. The NYPSC allowed CLECs wishing to collect the tandem rate for traffic above the 3:1 ratio, however, to rebut the presumption that traffic above the ratio costs less to serve by showing that its network and service warrant tandem-rate compensation for all traffic. The NYPSC identified several network design factors that may be used to make such a showing:

- The number and capacity of central office switches;
- The number of points of interconnection offered to other local exchange carriers;
- The number of collocation cages;
- The presence of SONET rings and other types of transport facilities; and
- The presence of local distribution facilities such as coaxial cable and/or unbundled loops.

The NYPSC stated that the presence of some or all of these network components in substantial quantities would demonstrate that the carrier in question was investing in a network with tandem-like functionality, designed to both send and receive customer traffic.⁶⁵

(a) SWBT's Position

SWBT cautions the Commission that customer dispersion should be a consideration when comparing CLEC and ILEC service areas. SWBT witness Mr. Jayroe states that when SWBT serves a wide area but a CLEC serves only a dense downtown area to the exclusion of customers dispersed throughout SWBT's area, the CLEC fails the geographic area comparability test.⁶⁶ SWBT witness Mr. Wynn contends that if a CLEC serves a comparable geographic area

⁶⁴ *Id.* at 59.

⁶⁵ *Id.* 60-61.

⁶⁶ Tr. at 484 and 485 (May 5, 2000).

and incurs additional costs, then it may qualify for the tandem served rate. But given that 92% of traffic are not using a fiber ring but instead using a loop facility, the equivalent of a line facility, there are no additional costs incurred; just as CLECs are serving an end customer.⁶⁷ SWBT deduces that since CLECs have nearly 92% of their traffic go to ISPs, their network must be designed to maximize that revenue instead of designed efficiently to serve voice traffic.⁶⁸ SWBT reports that Taylor states that almost 80% of its ISP customers are collocated and 73% of Allegiance's ISP customers are collocated.⁶⁹

SWBT urges the Commission to adopt a functionality test in addition to the FCC's comparability standard. SWBT observes that there are functional differences between a tandem office switch and an end office switch. A tandem office connects end offices to other end offices, other ILECs, and interexchange carriers, while an end office connects to end-users. Moreover, according to SWBT, a tandem office does not need to record user billing information, supply electric power to the equipment at the end of the line, or convert between analog and digital signals.⁷⁰ Given this difference in functionality, the tandem rate paid by an originating carrier to the terminating carrier is in addition to the end-office rate.

SWBT attests that a CLEC can bypass paying SWBT the tandem rate because SWBT gives all carriers the option to interconnect at either a tandem office switch, end office switch, or both.⁷¹ SWBT calculated that approximately 58% of all CLEC trunks interconnected to SWBT are interconnected to end offices.⁷² SWBT requests that CLECs provide it the same choices for interconnection so that it can control its own costs by bypassing the tandem rates. SWBT

⁶⁷ Tr. at 523, 524 (May 5, 2000).

⁶⁸ Tr. at 556 (May 5, 2000).

⁶⁹ SWBT Ex. No. 16, Direct Testimony of Ed Wynn at 8.

⁷⁰ SWBT Ex. No. 5, Direct Testimony of Robert Jayroe at 13.

⁷¹ ICG witness Mr. Starkey confirmed that CLECs have the option to interconnect with SWBT at both tandem and end office level, and acknowledged that SWBT does not have that same option. *See* Tr. at 543-544 (May 5, 2000).

contends that such choice is not possible from most CLECs, which generally operate switches that perform both tandem and end office functions.

As an initial step, SWBT proposed that the Commission conduct a needs-based test ascertaining whether the revenues CLECs receive from ISPs recover their appropriate costs.⁷³ SWBT also proposed various functionality tests: a "parity of function" test⁷⁴; a facility-based reasonableness test based on a CLEC's incurrence of additional costs⁷⁵; a test addressing whether a CLEC offers SWBT the choice of delivering traffic at a point designated as the CLEC's tandem or at a point designated as the CLEC's end office⁷⁶; and a test requiring proof that the CLEC's network architecture is designed for the mutual exchange of local voice traffic and that the switch is serving end users in a geographic area comparable to a SWBT tandem.⁷⁷

SWBT admits that it also operates switches that perform both a tandem and end office functions, but claims that the two functions are separated in a manner that the tandem portion of the switch carries only trunk-to-trunk traffic.⁷⁸ SWBT witness Mr. Jayroe states that while SWBT may perform its tandem switching and end office switching functions in the same building, it does not collocate with end customers. SWBT avers that function rather than location is relevant; even if the called customer is located across the street from the tandem switch, a tandem function and an end office function could still be performed for that call.⁷⁹

⁷² SWBT Ex. No. 5, Direct Testimony of Robert Jayroe at 14-16.

⁷³ SWBT Ex. No. 16, Direct Testimony of Ed Wynn at 23.

⁷⁴ SWBT Ex. No. 5, Direct Testimony of Robert Jayroe at 14 and 15.

⁷⁵ Tr. at 472, 473, 494 (May 5, 2000).

⁷⁶ SWBT Position Statement at 2 (May 16, 2000).

⁷⁷ *Id.* at 3.

⁷⁸ SWBT Ex. No. 5, Direct Testimony of Robert Jayroe, at 14.

⁷⁹ Tr. at 474-475 (May 5, 2000).

While asserting that the tandem rate should never apply to ISP-bound traffic,⁸⁰ SWBT generally agrees that all of the factors noted by the NYPSC have at least some value as indicia of tandem functionality vis-à-vis non-ISP-bound traffic. SWBT singles out one of the factors as far more significant than the others: the number of points of interconnection offered to other local exchange carriers.⁸¹

Finally, SWBT proposes a streamlined standard for determining CLEC tandem functionality that does not involve any Commission activity.⁸² As an alternative, SWBT proposes an expedited 45-day qualification procedure involving affidavits and certification by the Commission.⁸³

(b) CLECs' Positions

ICG believes that the reciprocal compensation rate paid by the originating carrier should be based on the *capability* that the terminating carrier's network provides, rather than the latter's network design and arrangement.⁸⁴ ICG witness Mr. Starkey further avers that CLEC switches only need to be capable of serving a comparable area, but need not actually serve a comparable area in order for a particular reciprocal compensation to apply.⁸⁵ ICG asserts that this capability should be measured by geographic service area because the networks of most CLECs are built to take advantage of the decreasing costs of transport relative to switching facilities and to efficiently implement new switching technologies. ICG asserts that a reciprocal compensation mechanism that focuses on the underlying equipment used, rather than functionality provided,

⁸⁰ SWBT Position Statement at 2 (May 16, 2000).

⁸¹ *Id.*

⁸² *Id.* at 3.

⁸³ *Id.*

⁸⁴ Coalition Ex. No. ICG-3, Direct Testimony of Don Wood at 28.

⁸⁵ Tr. at 444 (May 5, 2000).

would penalize network designs that are more efficient than their competitor.⁸⁶ Additionally, ICG witness Mr. Wood avers that CLECs connect to SWBT end offices to avoid SWBT's high blocking rate,⁸⁷ rather than to avoid paying the tandem rate.

The Coalition maintains that, to recognize the development of various CLEC network architectures, the Commission should not look beyond the area comparability test.⁸⁸ The Coalition believes that functionality tests are ultimately circular. Coalition witness Mr. Montgomery maintains that it is difficult for a regulator to develop or apply a functionality test in any non-discriminatory fashion because it is difficult to take into account individual CLECs' characteristics in formulating a general rule that is viable. Mr. Montgomery asserts that an area comparability test, on the other hand, is much clearer than any functionality test.⁸⁹

The Coalition also criticizes SWBT's proposal of requiring CLECs to establish multiple points of interconnection, asserting that it is unworkable from a network perspective.⁹⁰ The Coalition asserts that implementation of such a proposal would require a wasteful re-engineering of CLEC's networks because additional points of interconnection to the same switch would waste ports and switching capacity on the CLEC network.⁹¹

Coalition witness Mr. Wood contends that the NYPSC's factors related to network design should not be applied by the Commission in this docket because they fail to identify the relevant functionality provided by a CLEC network.⁹² He contends that regardless of the number of switches, as long as a CLEC can terminate traffic over an ILEC tandem serving area through one

⁸⁶ Coalition Ex. No. ICG-3, Direct Testimony of Don Wood at 28.

⁸⁷ Tr. at 546 (May 5, 2000).

⁸⁸ Coalition Ex. No. CLEC-1, Direct Testimony of William Page Montgomery at 35, 36.

⁸⁹ *Id.* at 36-38.

⁹⁰ Coalition's Reply Brief on Issues Identified by the Commission at 2 (June 1, 2000).

⁹¹ *See generally* Coalition's Reply Brief on Issues Identified by the Commission at 3 (June 1, 2000).

⁹² Coalition Ex. No. 41, Supplemental Testimony of Don J. Wood at 9.

point of interconnection, then the CLEC is providing tandem functionality.⁹³ Mr. Wood also argues that numerous collocation arrangements do not necessarily indicate tandem functionality because they may not enable an ILEC to deliver its traffic to a comparable geographic area through a given point of interconnection. Indeed, he states that a CLEC with fewer collocation arrangements may be able to provide tandem functionality.⁹⁴ Furthermore, Mr. Wood contends that SONET rings and local distribution facilities may not be necessary to provide tandem functionality, given that a CLEC may choose to use wireless distribution facilities.⁹⁵

The Coalition submits that the record in this docket is sufficient for the Commission to order application of the tandem served rate in this proceeding, arguing that it would be a waste of resources to re-create a record in additional proceedings to further address this matter.⁹⁶ The Coalition also offers a process for Commission determinations of CLEC eligibility for the tandem rate.⁹⁷

WCOM notes that FCC's Local Competition Order makes no mention of requiring the same capacity or the performance of similar functions in order for the tandem rate to apply.⁹⁸ Therefore, WCOM concludes that geographic area comparability is the only test to use in making such a determination. WCOM also notes that since SWBT's Project Pronto will move SWBT's network away from the traditional hub-and-spoke architecture to architecture employing more fiber rings. CLECs' non-traditional architecture should be recognized as an innovation to be encouraged rather than penalized. Furthermore, WCOM witness Mr. Price states that the kind of hierarchy that exists in a typical ILEC's architecture is not duplicated in a

⁹³ *Id.*

⁹⁴ *Id.* at 11.

⁹⁵ *Id.*

⁹⁶ Coalition Statement of Position at 1 (June 16, 2000).

⁹⁷ *Id.* at 2.

⁹⁸ WCOM Ex. No. 1, Direct Testimony of Don Price at 30-32.

CLEC's network.⁹⁹ WCOM also submits that numerous point of interconnection should not be a requirement for a CLEC to meet the geographic comparability test.¹⁰⁰ WCOM urges the Commission to reject SWBT's proposal to establish rules requiring any migration from tandem to end office trunks.¹⁰¹

e.spire witness Mr. Falvey argues that, due to carriers' different architecture arrangements, the FCC has clearly found that a switch architecture analysis, which partitions a CLEC switch into an end office switch and a tandem office switch, is irrelevant for purposes of determining when the CLEC qualifies for a tandem rate.¹⁰²

Intermedia witness Mr. Jackson states that many ILECs require CLECs to route traffic directly to end offices after a certain level of traffic has occurred. But, he observes, overflow traffic from end office trunks can be directed to a tandem switch, if the ILEC chooses to do so. Consequently, Mr. Jackson does not view the overflow of traffic to a SWBT tandem switch as a "privilege" to connect to the tandem switch. Rather, Mr. Jackson views such a situation as a failure of SWBT to provide sufficient information to allow CLECs to set up more direct end office trunking.¹⁰³

AT&T witness Mr. Zubkus posits that the only relevant consideration in determining if the tandem rate applies is whether the CLEC's switch is capable of serving the ILEC's tandem area.¹⁰⁴ AT&T also submits that none of the factors outlined by the NYPSC contain a bright-line threshold for rebutting the presumption that the tandem rate is not due.¹⁰⁵ Furthermore, AT&T

⁹⁹ Tr. at 492 (May 5, 2000).

¹⁰⁰ SWBT's Supplemental Brief on the "Blended Rate" Issue at 6 (May 26, 2000).

¹⁰¹ WCOM's Brief on Issues Raised in the May 18th Hearing at 2 (May 26, 2000).

¹⁰² Tr. at 492 (May 5, 2000).

¹⁰³ Tr. at 549, 550 (May 5, 2000).

¹⁰⁴ Tr. at 439, 442 (May 5, 2000).

¹⁰⁵ AT&T Ex. No. 12, Direct Testimony of Javier Rodriguez at 8.

argues that those factors appear to be ILEC-centric. For example, the number of points of interconnection offered to other exchange carriers “suggests a tendency to look at requiring CLECs to mirror the ILEC’s tandem/end office architecture.”¹⁰⁶ AT&T believes that it is entitled to the full tandem rate and observes that the standard for qualification of tandem interconnection rate is “the Commission will know it when they see it.”¹⁰⁷ AT&T believes that it is entitled to the tandem switching element because its switches provide the functionality and geographic scope of SWBT’s tandems.¹⁰⁸

(c) Commission Decision

The Commission acknowledges that the relevant language in the FCC's Local Competition Order (§1090, 1091) does not precisely match the language in 47 C.F.R. 51.711(a)(3). Given the FCC's discussion in the First Report and Order, the Commission concludes that a terminating carrier shall be compensated for the “additional costs” incurred when using tandem functions to terminate traffic.

The Commission disagrees with the CLECs' assertion that the FCC's rules require only a showing that the terminating carrier's switch has the capability of serving the same geographic area as the ILEC's tandem switch. The Commission concludes that in order for a CLEC that does not have a hierarchical, two-tier switching system to receive reciprocal compensation for performing tandem functions, the CLEC must demonstrate that it is actually serving the ILEC tandem area using tandem-like functionality, instead of just demonstrating the capability to serve the comparable geographic area. In making this functionality determination, the Commission shall consider a number of network design factors, which include, but are not limited to:

- 1. the number and capacity of central office switches;*

¹⁰⁶ Coalition Ex. No. 41, Supplemental Testimony of Don J. Wood at 8.

¹⁰⁷ AT&T's Supplemental Brief on Tandem Issue at 12 - 13 (May 26, 2000).

¹⁰⁸ AT&T Ex. No. 7, Direct Testimony of Jon A. Zubkus at 7.

2. *the number of points of interconnection offered to other local exchange carriers;*
3. *the number of collocation cages;*
4. *the presence of SONET rings and other types of transport facilities;*
5. *the presence of local distribution facilities such as coaxial cable and/or unbundled loops; or*
6. *any other indicia reliably demonstrating that the LEC is transporting a significant volume of traffic to a geographically dispersed area.*

These factors are similar to those employed by the NYPSC in addressing the tandem issue and incorporate the FCC's geographic area test. Because a carrier's proof of actual tandem functionality will be fact-driven, a LEC may demonstrate such functionality either in an arbitration proceeding or other appropriate proceeding designated by the Commission. As noted in Section V.B.3 of this Award, however, a CLEC that does not have a hierarchical, two-tier switching system must demonstrate actual tandem-like functionality only at the point the ratio of its terminating-to-originating traffic reaches a certain threshold. Up to that point, it is presumed that the CLEC is actually performing tandem functions to the same degree as SWBT.

3. *Rate Structure*

Throughout the proceeding, parties discussed various options for reciprocal compensation, ranging from the adoption of bill-and-keep, rate caps, the Mega-Arbitration rate structure, and a staff proposal.

(a) Staff Proposal

Commission Staff proposes the adoption of a "tandem blended rate" employing the following rate structure: end office rate + (tandem rate x % SWBT tandems used) + (transport x % SWBT tandems used). In the proposal, the resulting rate would apply to all traffic up to a specified cap.¹⁰⁹

¹⁰⁹ See Order Nos. 8 and 9 (May 19 and 22, 2000).

(b) CLECs' Position

WCOM emphasizes that the relevant components of the Mega-Arbitration rate structure for inter-carrier compensation include end office switching, tandem switching and interoffice common transport.¹¹⁰ To the extent that the Commission considers a ratio or a blended rate, WCOM's prefers a blended rate that rewards CLECs that utilize a high percentage of direct end office trunking.¹¹¹

Taylor Comm. proposes asymmetric per minute rates between carriers. It proposes to pay SWBT at SWBT's cost, while SWBT would pay Taylor Comm. at Taylor Comm.'s cost.¹¹² Under Taylor Comm.'s proposal, SWBT would pay Taylor Comm. rates in excess of what Taylor Comm. would pay SWBT. Additionally, Taylor Comm. equates bill-and-keep to a very efficient bartering arrangement that makes sense only when traffic is in balance between the two carriers. Taylor Comm. argues that if traffic is not in balance, however, one carrier performs all the work and the other carrier gets a free ride if a bill-and-keep compensation scheme is adopted.¹¹³

The Coalition maintains that the Commission should adopt the existing Mega-Arbitration rate structure.¹¹⁴ Coalition witness Mr. Montgomery explains that the bill-and-keep method was historically an informal process used typically between a larger ILEC and a smaller ILEC in a monopoly environment. Mr. Montgomery stresses that LECs agreed to such arrangements when they exclusively served service areas and did not compete with each other. He contends that today, in a competitive environment, there is a need for an arm's-length mechanism by which carriers compensate each other for the termination of calls.¹¹⁵

¹¹⁰ WCOM Ex. No. 1, Direct Testimony of Don Price at 4.

¹¹¹ WCOM's Brief on Issues Raised in the May 18th Hearing, at 2 (May 26, 2000).

¹¹² See generally Taylor Comm. Ex. No. 1, Direct Testimony of August H. Ankum and Taylor Comm. Ex. No. 5, Supplemental Testimony of Dr. August Ankum.

¹¹³ Tr. at 167 (April 4, 2000).

¹¹⁴ Coalition Ex. No. CLEC-1, Direct Testimony of William Page Montgomery at 25.

The Coalition further states that “[it] does not quarrel with certain of the intended results of the tandem blended rate approach.”¹¹⁶ The Coalition acknowledges that the tandem blended rate is simple to administer and may eliminate many disputes, and also recognizes that such a rate recognizes the CLECs’ legal right to receive compensation for tandem switching and transport costs. The Coalition also appreciates that the proposal requires that symmetric rates be based on ILEC costs. The Coalition “strongly objects”, however, to the proposal, due to the elements in its rate formula and the consequences of its implementation.¹¹⁷ It indicates that the level of CLEC direct trunking to SWBT end offices is not a meaningful proxy by which to reduce SWBT’s or a CLEC’s rates for terminating another carrier’s traffic. The Coalition further argues that the formula mistakenly assumes that less use of a tandem by a CLEC equals less tandem functionality. Moreover, it contends that the proposed tandem blended rate’s use of a specific percentage is flawed because the use of tandem versus direct end-office switching is constantly changing.¹¹⁸ Finally, the Coalition avers that the proposed tandem blended rate will either under- or over-compensate most CLECs most of the time.

The Coalition also strongly urges the Commission to avoid imposing separate rates for individual CLECs.¹¹⁹ The Coalition proposes a default rate, that is, the end office switching rate plus the tandem-switching rate, without the transport rate. Nevertheless, under the Coalition’s proposal, a CLEC is still given a choice to receive compensation for transport if it demonstrates that it terminates traffic beyond the footprint of an ILEC’s end office.¹²⁰

Allegiance states that it is not opposed to the concept of a tandem blended rate as long as it is applied symmetrically, to all local traffic and without any ratio or cap. Allegiance further

¹¹⁵ Tr. at 154-155 (April 4, 2000).

¹¹⁶ Coalition’s Brief on Issues Identified by the Commission at 6 (May 26, 2000).

¹¹⁷ SWBT’s Supplemental Brief on the “Blended Rate” Issue at 6 (May 26, 2000).

¹¹⁸ *Id.* at 7.

¹¹⁹ *Id.* at 8.

¹²⁰ *Id.* at 11.

states that such a blended rate would facilitate billing and avoid disputes over eligibility for the tandem rate.¹²¹ Finally, Allegiance contends that the imposition of the tandem blended rate will not encourage or require CLECs to build inefficient networks, given that many of the first generation of interconnection agreements provide for use of blended reciprocal compensation rates.¹²²

AT&T proposes symmetric rates for reciprocal compensation on a LATA-wide basis.¹²³ Under this LATA-wide proposal, in instances in which AT&T purchases UNEs from SWBT, AT&T proposes the use of a bill-and-keep compensation scheme.¹²⁴ In support of its proposal, AT&T concludes that nothing in the FTA prohibits a state from expanding the definition of "local traffic" beyond "mandatory EAS" for the purposes of § 251(b)(5).¹²⁵ AT&T states that there are "laudable" aspects of Staff's tandem blended rate proposal, but the problems with the proposal far outweigh its potential benefits.¹²⁶ AT&T contends that the proposed tandem blended rate will improperly encourage network deployment based on reciprocal compensation.¹²⁷ Because it seeks to configure a network architecture to interconnect only at SWBT tandems, AT&T avers that the tandem blended rate would be grossly unfair to it, given that other CLECs may choose to interconnect more often at SWBT end offices.¹²⁸

¹²¹ Allegiance Post 5-18-2000 Hearing Brief, at 4 (May 26, 2000).

¹²² *Id.* at 6.

¹²³ See AT&T Ex. No. 5, Direct Testimony of Maureen A. Swift at 4; AT&T Initial Post-Hearing Brief at 5 (April 19, 2000). In its pending arbitration proceeding with SWBT, Docket No. 22315, AT&T has proposed an interconnection architecture in which AT&T is responsible for delivering traffic to SWBT's tandems and SWBT is responsible for delivering traffic to AT&T's own switches. If this interconnection architecture is not adopted, then AT&T will pay SWBT according to levels of switching offices connected, while SWBT will pay AT&T the three-part tandem rate. *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 22315 (pending).

¹²⁴ AT&T Ex. No. 5, Direct Testimony of Maureen A. Swift at 10.

¹²⁵ *Id.* at 9.

¹²⁶ AT&T's Supplemental Brief on Tandem Issues at 4, 5 (May 26, 2000).

¹²⁷ *Id.* at 5.

(c) *SWBT's Position*

SWBT suggests two methods for minimizing what it characterizes as the CLECs' over-recovery of compensation related to the termination of ISP-bound traffic: (1) a cap on the total amount of inter-carrier compensation that a CLEC receives for terminating ISP-bound traffic, which limits the amount of such compensation to two times the amount of compensation the CLEC pays to the ILEC, or (2) the use of a proxy for the appropriate costs incurred by CLECs in providing services to ISPs.¹²⁹

Anticipating that CLECs may allege that it is difficult to track voice versus ISP-bound traffic, SWBT proposes that the existing TELRIC-based reciprocal compensation rate would apply to traffic that is relatively in balance between SWBT and the CLEC. More specifically, SWBT states that these rates will apply for traffic that is in balance at a 2:1 terminating-to-originating ratio between SWBT and a CLEC.¹³⁰ Under this proposal, if traffic "exceeds" this 2:1 ratio, SWBT indicates that it is appropriate to presume that the excess is ISP-bound traffic. Despite this presumption, however, SWBT concedes that CLECs would be given the opportunity to prove that the traffic in excess of this 2:1 ratio is voice traffic and subject to compensation using existing TELRIC-based rates.¹³¹ With regard to traffic in excess of the 2:1 ratio that the CLEC does not demonstrate to be voice traffic, SWBT asserts that only the tandem switching rate should apply to the termination of such traffic.¹³² SWBT declines to characterize its

¹²⁸ *Id.* at 6.

¹²⁹ SWBT Ex. No. 16, Direct Testimony of Ed Wynn at 26.

¹³⁰ *Id.* at 27.

¹³¹ SWBT substantiates this 2:1 ratio by a traffic study, which spans from 1997 to 1999. During this time period, SWBT terminated 1.5 billion local non-ISP minutes of use (MOUs) to the CLECs participating in this proceeding, while these same CLECs terminated to SWBT 1.2 billion MOUs. Based on this data, SWBT claims that the balance of traffic that is truly local would be 1.32:1. SWBT recommends using this ratio as a surrogate for distinguishing ISP traffic. *See* SWBT Ex. No. 16, Direct Testimony of Ed Wynn at 27.

¹³² *Id.* at 28.

proposal as effectively akin to a bill-and-keep methodology, stating that ISP-bound traffic has a different compensation scheme due to the FCC's ISP exemption relating to access.¹³³

SWBT states that it does not have significant objections to the use of Staff's tandem blended rate in certain contexts, provided that concrete trunking rules are also adopted to ensure that CLECs move traffic from SWBT's tandem trunks to direct end office trunks when specific traffic volume limits are exceeded.¹³⁴ SWBT emphasizes that if the Commission adopts a tandem blended rate, then it should clarify that CLECs are limited as to the volume of traffic they may deliver to SWBT's tandem before being required to establish direct trunking to end offices.¹³⁵ Regarding the imposition of a cap, SWBT states that "a two to one ratio would work; a three to one would also be within the permissible."¹³⁶ However, SWBT states that any over-compensation "could be mitigated by setting an absolute cap at a two-to-one, rather than a three-to-one, imbalance."¹³⁷ SWBT states that, due to the administrative ease in using such a tandem blended rate, it could have significant advantage over any multi-factor functional test such as that adopted by the NYPSC.¹³⁸

SWBT rejects the Coalition's "compromise" proposal, arguing that it will over-compensate for ISP-bound traffic, violates federal law, and is administratively burdensome.¹³⁹ Also, SWBT maintains that AT&T's LATA-wide proposal goes beyond what is allowed under state and federal law.¹⁴⁰ SWBT believes that AT&T's LATA-wide proposal in effect reduces AT&T's costs of serving a concentrated base of business customers and ISPs without also

¹³³ Tr. at 102-106 (April 4, 2000).

¹³⁴ SWBT's Supplemental Brief on the "Blended Rate" Issue at 3 (May 26, 2000).

¹³⁵ *Id.* at 4.

¹³⁶ Tr. at 619 (May 18, 2000).

¹³⁷ SWBT's Supplemental Reply Brief on the "Blended Rate" Issue at 6 (June 1, 2000).

¹³⁸ SWBT's Supplemental Brief on the "Blended Rate" Issue at 5-6 (May 26, 2000).

¹³⁹ SWBT's Supplemental Reply Brief On the "Blended Rate" Issue at 6-7 (June 1, 2000).

serving geographically dispersed residential customers.¹⁴¹ SWBT further contends that AT&T's proposal cannot possibly be cost-based if it sets the same rate for local, toll, and access traffic terminated within an entire LATA.¹⁴² Because AT&T terminates less traffic than it originates, SWBT argues that AT&T would be over-compensated under its proposal, while at the same time avoiding payment of appropriate access charges related to interexchange traffic.¹⁴³

(d) Commission Decision

The Commission prefers the bill-and-keep method over any of the other proposals reviewed in this proceeding. While the Commission hopes that bill-and-keep will become a viable option as the market matures, it nevertheless recognizes that current volumes of traffic between carriers do not support adoption of the bill-and-keep method as a general rule at this time.

The Commission has long viewed the minute-is-a-minute approach as a goal by which to base compensation between carriers. AT&T's LATA-wide proposal, however, has implications for ILEC revenue streams, such as switched access, that have not been fully examined in this proceeding. Consequently, the Commission declines to adopt AT&T's LATA-wide proposal because it has ramifications on rates for other types of calls, such as intraLATA toll calls, that are beyond the scope of this proceeding.

The Commission applauds the introduction and application of advanced technologies. The Commission finds, however, that the current means by which reciprocal compensation is accomplished has contributed to a significant imbalance of traffic between originating and terminating carriers. In other words, the current scheme has created perverse economic

¹⁴⁰ SWBT Post-Hearing Brief at 38-39 (April 19, 2000).

¹⁴¹ *Id.* at 39.

¹⁴² SWBT Ex. No. 8, Rebuttal Testimony of Randy Long at 17.

¹⁴³ *Id.* at 19.

incentives that result in an imbalance in revenues between certain interconnected carriers, in favor of the termination carrier.

The Commission concludes that the use of a threshold traffic ratio is an equitable device by which an originating carrier's costs can be mitigated and the efficient delivery of traffic maintained. The Commission finds that the "tandem blended rate" approach is appropriate up to a 3-1 (terminating traffic to originating traffic) threshold imbalance.¹⁴⁴ As stated below, this tandem blended rate reflects that only a percentage of the calls switched use tandem functions and are terminated in a geographically dispersed area. The record in this docket supports these conclusions. When a carrier exceeds that 3-1 ratio threshold, it is reasonable to presume that predominately convergent traffic is occurring and the "excess" traffic should be compensated using the end office rate only. The Commission notes that this presumption, however, is rebuttable. The terminating carrier may demonstrate "actual tandem-like functionality" in the delivery of this "excess" using various network design factors adopted in Section V.B.2 of this Order.

The Commission concludes that it is not equitable to allow the full tandem rate to be assessed by a terminating carrier on every call. For some calls, tandem switching is undisputedly involved, while for others, only end-office switching is used. The Commission determines that the "tandem blended rate" shall include a rate factor that corresponds to 42% of the sum of the tandem switching and interoffice transport costs. That factored amount shall be added to the end office rate to arrive at the total "tandem blended rate". The Commission encourages a diverse interconnected network as a matter of policy and does not seek to impose or dictate an ILEC's network configuration upon CLECs. Because FCC rules require that the reciprocal compensation rates be based upon an ILEC's forward-looking costs, it is equitable to use the SWBT percentage (42%) as a proxy for the determination of the "tandem blended rate".

With respect to a hierarchical or two-tier switch network, the Commission finds that the actual use of tandem switching facilities is easily discernible. If only an end office switch is

employed to terminate traffic, then only the end office rate shall be applied. If a tandem switch is used for the termination of traffic, then the tandem rate shall apply.

In summary, the Commission adopts the following rate structure as the mechanism for payment of reciprocal compensation:

- 1. For traffic terminated by a LEC with two-tier or hierarchical switches, i.e., separate switches performing tandem and end office functions:*
 - When tandems are used, the originating LECs pay the tandem rate (end office switching + tandem switching + interoffice transport).*
 - For purposes of the tandem served rate, the end office rate is a bifurcated rate (set-up per call and duration), and the tandem switching and interoffice transport rates are the Mega-Arbitration rates previously adopted by the Commission.*
 - When tandems are not used, the originating LECs pay the end office rate only.*
- 2. For traffic terminated by a LEC that does not have two-tier or hierarchical switches:*
 - A tandem blended rate (end office switching + % of [tandem switch + interoffice transport]) applies.*
 - For purposes of this tandem blended rate, the end office rate is a bifurcated rate (set-up per call and duration); the tandem and transport rates are the rates adopted in the Mega-Arbitrations; and the % is an average percentage of tandems used by CLECs on SWBT's network (42%).*
 - This tandem blended rate applies until a 3:1 ratio (terminating to originating traffic) threshold is reached.*
 - After the 3:1 ratio threshold is reached, only the end office rate applies, unless the terminating carrier demonstrates actual tandem functionality.*
 - Upon a demonstration of actual tandem functionality, the terminating carrier will receive the tandem blended rate for all traffic.*
 - LECs may demonstrate actual tandem functionality either in an arbitration proceeding or other proceeding designated by the Commission.*

¹⁴⁴ The Commission notes that a carrier without any originating traffic cannot, as a practical matter, qualify for the tandem blended rate and will receive the bifurcated end office rate.

C. DPL ISSUE NO. 3 - WHAT RATES SHOULD APPLY?

All parties agree that the TELRIC principles drive the determination of rates in this docket. TELRIC requires that a cost study employed to set such rates be forward-looking in nature; use an efficient network and engineering framework; and not use embedded costs.¹⁴⁵ Taylor Comm. is the only CLEC in this docket that presented its own cost study. The other parties rely on cost studies previously approved by the Commission.

*I. Taylor Comm. Cost Study, Request for Carrier-Specific Rates, and Asymmetric Rates**(a) Taylor Comm.'s Position*

Taylor Comm. contends that it should receive higher reciprocal compensation rates than SWBT because its costs to terminate calls are higher. Since its business plan results in a customer base that is disproportionately comprised of ISPs, Taylor Comm. asserts that its cost structure is different from that of SWBT and other companies.¹⁴⁶ Taylor Comm. proposes a minutes of use (MOU) rate structure to recover its compensation from SWBT.¹⁴⁷

Taylor Comm. notes that most of its costs are volume sensitive, and that it is capable of identifying its incremental costs very efficiently.¹⁴⁸ As proof that its costs are different from those of other carriers, Taylor Comm. submitted a cost study (the QSI study) that initially calculated its cost for call termination as roughly \$0.004431 per minute.¹⁴⁹ Taylor Comm. claims that the QSI study is consistent with TELRIC principles. Specifically, Taylor Comm.

¹⁴⁵ See 47 C.F.R. § 51 Subpart F.

¹⁴⁶ Taylor Comm. Ex. No. 4, Rebuttal Testimony of Charles Land at 20.

¹⁴⁷ Tr. at 356 (April 5, 2000). Because the costs to terminate a call are not constant through the duration of a call, this type of recovery mechanism requires an assumption about the average call length. Taylor Comm. has not disclosed how it determined the average call time in its cost study, or even what it is.

¹⁴⁸ Taylor Comm. Ex. No. 4, Rebuttal Testimony of Charles Land at 20.

¹⁴⁹ See Taylor Comm. Ex. No. 1-11, Taylor Switching Cost Study.

indicates that no adjustments are needed in the study because the study assumes only efficiently located, state-of-the-art facilities. Further, Taylor Comm. avers that the most recent actual traffic data represent Taylor Comm.'s total company-wide demand for switching.

According to Taylor Comm., the study is designed to capture expenses and outputs as they may be expected to occur on an ongoing basis. Taylor Comm. further explains that the study identifies all necessary facilities for providing switching functions and assigning costs as either traffic sensitive or non-traffic sensitive. In this regard, Taylor Comm. confirms that only the traffic sensitive costs of switches are included in the study.¹⁵⁰ The QSI study uses as inputs: capital switching costs,¹⁵¹ costs of connections to end-users from Taylor Comm.'s central offices, and trunking costs to reach SWBT switching facilities. The QSI study also assumes the economic life of a switch to be 18 years.¹⁵²

The QSI study links general and administrative costs to MOU based upon the demands on labor for each element. The QSI allocates the overhead costs based on headcount so the expenses follow labor costs, *e.g.*, if a person is assigned to retail related activities, then office and supply related expenses are proportionally assigned to retail activities. Taylor Comm. witness Dr. Ankum states that costs associated with “service to end-users have no place in a study for switching costs.”¹⁵³ However, when asked about a specific line of costs labeled “end-user T-1s” in the Taylor Comm. cost study, Dr. Ankum states that these connections were usually to Taylor Comm.'s ISP customers, therefore demonstrating that costs associated with service to end-users are included in the QSI study.¹⁵⁴

¹⁵⁰ Taylor Comm. Ex. No. 1, Direct Testimony of Dr. August Ankum at 36-40.

¹⁵¹ All switching equipment in the QSI study is leased from Siemens. *See* Taylor Comm. Ex. No. 1-11, Taylor Switching Cost Study at 8. The lease is for a five-year period. *See* Tr. at 417 (April 5, 2000).

¹⁵² Taylor Comm. Ex. No. 1-11, Taylor Switching Cost Study at 9.

¹⁵³ Taylor Comm. Ex. No. 1, Direct Testimony of August H. Ankum at 49.

¹⁵⁴ Tr. at 365-366 (April 5, 2000).

After the initial hearing on the merits, Taylor Comm. amended the QSI study inputs and revised its proposed rate from \$0.004431 per minute to \$0.002858 per minute, a 35% reduction.¹⁵⁵ In its revised cost study, Taylor Comm. addresses two issues raised in hearing: fill factors and return to capital.¹⁵⁶ Dr. Ankum changed the cost study to conform the Commission-approved rates of return used in the Mega-Arbitrations and modified the trunk utilization factor from 55% to the Commission-approved 75%. Dr. Ankum also increased the annual traffic estimate to 3.2 billion MOU in the revised cost study.¹⁵⁷

(b) SWBT Position

SWBT believes that the inter-carrier compensation rate should be set symmetrically at the TELRIC of a fully efficient competitor.¹⁵⁸ SWBT declares, therefore, that different assumptions about traffic volumes, depreciation lives, fill factors, or cost of capital should not matter if the forward-looking economic cost of terminating traffic is measured using the parameters of an efficient firm. SWBT warns that there are efficiency consequences of establishing a rate based on costs higher than those of the low-cost provider and states that when high-cost supplier remains in the market, resources are wasted.¹⁵⁹

SWBT contends that Taylor Comm.'s cost study does not follow TELRIC principles. SWBT states the QSI cost study is a snapshot of Taylor Comm.'s current situation and is not necessarily indicative of future switch capacity and the ability to change capital expenditure.¹⁶⁰

¹⁵⁵ Taylor Comm. Ex. No. 5, Supplemental Testimony of Dr. August Ankum at 16; Post-Hearing Brief at 29-31 (April 19, 2000).

¹⁵⁶ Tr. at 320-324, 361-365, and 419-427 (April 5, 2000). SWBT also criticized Taylor Comm.'s utilization and its inclusion of return on capital in the QSI study. *See* SWBT Ex. No. 15, Rebuttal Testimony of William Taylor at 5 and 17-18.

¹⁵⁷ Taylor Comm. Ex. No. 5, Supplemental Testimony of Dr. August Ankum at 15.

¹⁵⁸ SWBT Taylor Direct, at 5.

¹⁵⁹ *Id.*

¹⁶⁰ SWBT Ex. No. 15, Rebuttal Testimony of William Taylor at 14-16.

SWBT disagrees with Taylor witness Dr. Ankum's assertion that CLECs experience higher costs due to lower switch utilization levels and lack of scale economies.¹⁶¹ SWBT states that manufacturers sell small switches and that CLECs can purchase switching capacities according to their demand. SWBT also argues that extra capacities can be added in the form of small a number of lines and, therefore, CLECs should not experience lower switch utilization levels. SWBT submits that lower costs are an important advantage resulting from economies of scale that SWBT should be encouraged to explore. According to SWBT, customers should not have to pay more, directly or indirectly, simply because a small firm has higher costs.¹⁶²

SWBT also argues that Taylor Comm.'s cost study wrongly includes a return on capital for leased switches. SWBT contends that lease payments are expenses, not capital investments. SWBT states that since Taylor Comm. has no capital investments in the leased switches, the opportunity costs and the normal profit from the switches is zero.¹⁶³ SWBT concludes that by using the current lease expenses in the QSI model, the cost study becomes one based on embedded costs, rather than forward-looking costs. SWBT contends that the QSI cost study computes switching costs with similar logic. The QSI cost study divides current lease payments by the current number of minutes to arrive at the switching costs per minute. This, by definition, makes the QSI cost study a short-term rather than long-run study, according to SWBT. SWBT maintains that the lease payments also appear to be higher than the capital costs of the same equipment, thus overstating Taylor Comm.'s costs.¹⁶⁴

Finally, SWBT alleges that the QSI study does not incorporate overhead expenses, including entertainment costs and recycling fees in a proper way.¹⁶⁵

¹⁶¹ *Id.* at 5.

¹⁶² *Id.* at 6.

¹⁶³ *Id.* at 17-18.

¹⁶⁴ *Id.* at 13-14.

¹⁶⁵ Tr. at 529-530 (May 18, 2000).

(c) **Commission Decision**

The Commission finds that Taylor Comm.'s cost study does not follow TELRIC principles and, therefore, cannot be used to determine reciprocal compensation rates. The Commission acknowledges the adjustments that Taylor Comm. made to the QSI study but notes that the revised rate of \$0.002858 per minute is still significantly higher than the end office rate of \$0.001507 approved in the Mega-Arbitrations. While the FCC allows a CLEC to petition for higher reciprocal compensation rates than those of the ILEC, the CLEC must show that it is using the most cost-effective, forward-looking method possible to serve customers.¹⁶⁶ Taylor Comm. failed to meet this burden.

Taylor Comm.'s inclusion of the costs of connecting its end-use customers to its switches is the most fundamental flaw of the QSI cost study. The Commission agrees with SWBT that those costs should not be included in the calculation of reciprocal compensation. The Commission concludes that Taylor Comm.'s inclusion of these costs results in a significant overestimation of costs by the QSI cost study. The Commission suspects that if these elements were deleted from the study, Taylor Comm.'s rates would be much closer to those approved in the Mega-Arbitration proceedings.

The Commission also agrees with SWBT that the QSI study should use switch capacity rather than actual demand. The Commission concludes that the use of actual demand violates TELRIC principles.

Further, although Taylor Comm. states that only traffic-sensitive elements should be included in reciprocal compensation rates, it assigns the majority of costs associated with elements such as recycling fees and entertainment to the traffic-sensitive portion of the QSI cost study. The Commission finds that Taylor Comm.'s failure to sufficiently explain the relationship between these elements and the number of minutes terminated in its switch further undermines the cost study's results.

2. *Southwestern Bell Cost Study and ISP-Specific Reciprocal Compensation Rates*

(a) *SWBT Position*

SWBT supports the use of the Mega-Arbitrations' local switching UNE cost study to determine the appropriate rates for the termination of local voice traffic. The cost study includes the investment necessary for call set-up, call termination, and vertical services. SWBT contends, however, that ISP-bound traffic does not require the use of all of these functions and argues that the total costs in that study should not be attributed to ISP-bound traffic. SWBT also indicates that the average hold times are approximately three minutes for voice calls as compared to 29 minutes for Internet calls.¹⁶⁷ SWBT notes that a principal reason that it is less costly to terminate an ISP-bound call than a voice call is the longer average hold time. SWBT explains that a comparison of one 29-minute ISP-bound call to the equivalent minutes of voice calls yields nine additional call set-ups for the voice calls. Moreover, SWBT states that the stable and longer ISP-bound call does not require as many network resources as calls that have a much shorter average holding time. SWBT concludes that each time a call is set-up and torn down, additional network resources are used compared to a call that is more stable.¹⁶⁸

SWBT relies on its ISP-bound traffic (IBT) cost study to demonstrate that ISP-bound traffic is fundamentally different from voice traffic and should not be subject to reciprocal compensation, although SWBT does not propose that the cost study be used to set rates.¹⁶⁹ SWBT's IBT cost study measures costs associated only for dial-up, 56 kilobit Internet calls. SWBT contends that the difference in call duration between voice and ISP-bound traffic justifies separating the traffic for rate purposes, with ISP-bound traffic costing approximately 20% the cost of voice traffic. In addition to using a 29-minute average hold time for ISP-bound traffic,

¹⁶⁶ 47 C.F.R. 51.711(b).

¹⁶⁷ SWBT Ex. No. 16, Direct Testimony of Ed Wynn at 7.

¹⁶⁸ SWBT Ex. No. 5, Direct Testimony of Robert Jayroe at 6.

¹⁶⁹ SWBT Ex. No. 13, Rebuttal Testimony of Barbara Smith at 6-7.

SWBT states that the IBT cost study assumes that the switches terminating the ISP-bound traffic have no vertical services, which it contends are unnecessary for ISP-bound calls, and are the absolute minimum necessary to complete the ISP connection.¹⁷⁰ SWBT explains that its voice traffic study, however, does not make these assumptions, but rather includes the programming of vertical and other services into the switch, thereby increasing the switching costs for voice traffic, regardless of the call duration. Despite these differences in the cost studies, SWBT admitted on cross-examination that ISP-bound traffic uses the same switches and the same network as voice traffic.¹⁷¹

The peak traffic hour in the SWBT IBT study is assumed to be the peak hour for ISP traffic. SWBT asserts that this peak hour increases costs because it requires more switching resources to accommodate increased usage at the peak hour. SWBT also contends that the switches must be engineered in a manner to handle all traffic, not just a subset of traffic.¹⁷²

(b) CLECs' Positions:

Taylor Comm. avers that the costs associated with the termination of ISP traffic are the same as that for traditional voice traffic. Taylor Comm. contends that the SWBT IBT cost study erroneously concludes that the costs associated with terminating ISP-bound traffic are a fraction of those approved in the Mega-Arbitrations. Taylor Comm. also argues that the SWBT IBT cost study does not follow TELRIC principles and is not representative of CLEC costs.¹⁷³ According to Taylor Comm., SWBT's assumption of a host/tandem architecture is not accurate for most CLECs and underestimates CLEC costs. Taylor Comm. states that although the host/tandem architecture allows switches to share functionality and, therefore, lower their costs, CLECs do

¹⁷⁰ SWBT Ex. No. 13, Rebuttal Testimony of Barbara Smith at 3-4 and SWBT Ex. No. 19, SWBT IBT Cost Study at SWBT200005.

¹⁷¹ Tr. at 199-204 (April 4, 2000).

¹⁷² SWBT Ex. No. 15, Rebuttal Testimony of William Taylor at 10-11.

¹⁷³ Taylor Comm. Ex. No. 1, Direct Testimony of August H. Ankum at 52-53, 55; Taylor Comm. Ex. No. 4, Rebuttal Testimony of Charles Land at 13-14.

not use this type of architecture because they have yet to achieve the size of ILECs such as SWBT.¹⁷⁴

WCOM and ICG state that reciprocal compensation rates should be symmetric and should include ISP-bound traffic.¹⁷⁵ These CLECs contend that symmetric rates promote efficiency and low-cost methods for terminating calls because they allow exceptionally efficient carriers a higher profit.¹⁷⁶

Given that ISP-bound traffic uses the same public switched telephone network as voice traffic, AT&T argues it is incorrect to separate ISP-bound traffic for costing purposes. By example, AT&T contends that consideration of only ISP-bound traffic in the SWBT IBT study misstates the peak hour usage of the network and asserts that all traffic should have been considered in making this estimation.¹⁷⁷ AT&T further argues that the SWBT IBT cost study is an incremental cost study inconsistent with the TELRIC framework.¹⁷⁸ In support of this argument, AT&T cites the inability to accurately separate ISP traffic from voice traffic, the exclusion of tandem switching costs, and the exclusion of many components of end-office switching costs, *i.e.*, Signal System 7 (SS7) capability.¹⁷⁹ Additionally, AT&T advocates the minute-is-a-minute approach in determining network costs, asserting there should be no differentiation in costs by types of traffic.¹⁸⁰

¹⁷⁴ Taylor Comm. Ex. No. 1, Direct Testimony of August H. Ankum at 61-63, 65.

¹⁷⁵ WCOM Ex. No. 1, Direct Testimony of Don Price at 4; Coalition Ex. No. ICG-3, Direct Testimony of Don Wood at 8.

¹⁷⁶ WCOM Ex. No. 1, Direct Testimony of Don Price at 4.

¹⁷⁷ AT&T Ex. No. 3, Direct Testimony of Lee L. Selwyn at 15-17.

¹⁷⁸ AT&T Ex. No. 1, Direct Testimony of Daniel P. Rhinehart at 14.

¹⁷⁹ *Id.* at 7.

¹⁸⁰ *Id.* at 9.

Finally, AT&T argues that the 90% processor utilization factor used in the SWBT IBT cost study is too high and underestimates true costs. AT&T points out that the 90% rate was approved in the Mega-Arbitration proceedings for a slightly different purpose, noting that no unit cost figures based on the 90% processor utilization value were used to establish local switching rates in those proceedings. Questioning the propriety of using the 90% processor utilization factor, AT&T observes that the range of resulting cost calculations can vary as much as 100-fold when the assumptions employed vary between 0% utilization to 100% utilization.¹⁸¹

AT&T offers a counter method for setting reciprocal compensation rates that treats traffic within an entire LATA as local traffic. The rates proposed by AT&T are largely based on costs determined in the Mega-Arbitrations, with small changes in certain assumptions. For example, AT&T assumes that the average mileage for transport is longer than that assumed in the Mega-Arbitrations in view of the inclusion of more rural, less dense areas in a LATA. The AT&T method also includes use of the tandem switch charge.¹⁸² The AT&T proposal results in a blended rate of \$0.0024654 per minute.¹⁸³

The Coalition, like AT&T and ICG, contend that the SWBT IBT cost study is faulty. Coalition witness Mr. Montgomery supports the testimony of AT&T witness Mr. Rhinehart and ICG witness Mr. Wood setting forth the flaws in the SWBT IBT cost study.¹⁸⁴ The Coalition is also critical of the SWBT IBT's use of two usage studies. It asserts that the first usage study attempts to separate ISP-bound traffic and measure the number of minutes that fit criteria established by SWBT as indicators of an Internet dial-up call, including the number of incoming calls and the duration of those calls. With regard to the second study, which counts the minutes of voice and data traffic for two SWBT central offices, the Coalition argues there is no scientific or logical reason for using those specific central offices. According to the Coalition, the data

¹⁸¹ *Id.* 17-20.

¹⁸² AT&T Ex. No. 7, Direct Testimony of Jon A. Zubkus at Attachment 1.

¹⁸³ AT&T Ex. No. 7, Direct Testimony of Jon A. Zubkus at 5.

¹⁸⁴ Coalition Ex. No. CLEC-2, Rebuttal Testimony of William Page Montgomery at 11-12.

obtained from the two offices differ from each other significantly and, consequently, cannot be used to determine any traffic patterns.¹⁸⁵

(c) Commission Decision

All parties agree that the SWBT IBT cost study should not be used to set reciprocal compensation rates. The Commission concludes that the SWBT IBT cost study is not a TELRIC study and also cannot be used to justify differentiating ISP-bound traffic and voice traffic for costing purposes. At this time, the Commission declines to distinguish voice from ISP-bound traffic for purposes of setting reciprocal compensation rates.

The Commission has rejected AT&T's proposed LATA-wide calling scope and also rejects AT&T's LATA-wide blended rate. See discussion in DPL Issue No. 2.

3. The Bifurcated Rate

During the initial hearing on the merits, there was considerable discussion of the development of a bifurcated local switching rate that would address the three-minute average voice call length used in the approved Mega-Arbitration local switching rate and the 29-minute average ISP-bound call length used in the SWBT IBT study.¹⁸⁶ The Commission expressed interest in a two-part rate that separates call set-up from call duration costs, which would mitigate any over-compensation resulting from the rate structure adopted in the Mega-Arbitrations, which is predicated upon call duration only.

(a) Parties' Positions

After the initial hearing on the merits, AT&T witness Mr. Rhinehart initiated discussions with SWBT witness Ms. Smith regarding the possibility of calculating a two-part local switching

¹⁸⁵ Coalition Ex. No. CLEC-1, Direct Testimony of William Page Montgomery at 53-57.

¹⁸⁶ See Tr. at 231-275 (April 4, 2000) and 427-431 (April 5, 2000).

rate consisting of a per-message set-up charge and a per-minute-of-use charge that would be consistent with the local switching and reciprocal compensation rates for local switching adopted in the Mega-Arbitrations.¹⁸⁷ Ms. Smith and Mr. Rhinehart agreed that the appropriate surrogate for separating set-up and duration costs can be based on an approved SWBT local service basic network function (BNF) cost study that identified local switching investment on a set-up and duration basis.¹⁸⁸ Ms. Smith and Mr. Rhinehart developed a ratio using both interoffice and intraoffice calling investments.¹⁸⁹ Although their calculations were performed independently, Ms. Smith and Mr. Rhinehart both calculated rates of \$0.0010887 per call and \$0.0010423 per minute for end-office switching.¹⁹⁰ Ms. Smith indicated that she participated in several conference calls with AT&T and other CLEC petitioners to revise, clarify and explain the methodology and calculations based on input from other CLEC cost witnesses.¹⁹¹

SWBT, WCOM, AT&T, ICG, and the Coalition indicate that the bifurcated rate concept is acceptable.¹⁹² Taylor Comm. opposes the bifurcated rate because its network is not limited in capacity by a call set-up function and argues that such a rate would not compensate Taylor Comm. for legitimate costs incurred in terminating SWBT's ISP-bound traffic.¹⁹³ Level 3, KMC, and Adelphia oppose implementation of the bifurcated rate, citing a lack of evidentiary

¹⁸⁷ AT&T Ex. No. 11, Affidavit of Daniel P. Rhinehart.

¹⁸⁸ See *Southwestern Bell Telephone Company's Application for Approval of LRIC Studies for Basic Network Access Channel Nonstandard 4-Wire, Type O, et. al., Pursuant to PUC SUBST. R. 23.91*, Docket No. 16657.

¹⁸⁹ SWBT Ex. No. 28, Affidavit of Barbara Smith; AT&T Ex. No. 11, Affidavit of Daniel P. Rhinehart.

¹⁹⁰ Tr. at 519-524 (May 18, 2000). The computation begins with the approved Mega-Arbitration local switching rate, which is a blended per-minute rate based upon an average call of 2.34 minutes. The BNF studies in Docket No. 16657 were computed with independent set-up (per call) and duration (per minute) components. The ratio of the two is used to compute rates based upon Mega-Arbitration inputs. Jointly, SWBT witness Mr. Smith and AT&T witness Mr. Rhinehart agree that a 75% large offices/25% small offices mix is appropriate for this computation.

¹⁹¹ SWBT Ex. No. 28, Affidavit of Barbara Smith.

¹⁹² Tr. at 241-255 (April 4, 2000).

¹⁹³ Taylor Comm. Post-Hearing Brief at 32 (April 19, 2000).

support.¹⁹⁴ Intermedia, Focal, Winstar, TW, NEXTLINK, and Allegiance express concern over the costs associated with administration and billing of a two-part rate.¹⁹⁵ Finally, SWBT rejects application of the bifurcated rate to ISP-bound traffic.¹⁹⁶

(b) Commission Decision

While the parties argue against the implementation of the bifurcated end-office rate at this time, those parties, with one exception, nevertheless agree that the bifurcated rate independently calculated by Mr. Rhinehart and Mr. Smith is reasonable. The Commission is not persuaded that the costs of implementation, administration, and billing outweigh the benefits of this cost-based rate, which more specifically accounts for the structure of the costs incurred. Moreover, the Commission finds that there is sufficient evidence in the record to support adoption of the bifurcated end-office rate. Furthermore, the Commission finds that this two-part end-office rate minimizes the debate about average call length. The Commission concludes that the two-part end-office rate, consisting of (1) a per call charge for the compensation of setup costs (\$0.0010887 per call) and (2) a per minute charge (\$0.0010423 per minute) for the compensation of volume-sensitive costs, shall be applied to all local traffic, including ISP-bound traffic.

The Commission re-adopts the inter-office transport and tandem switching rates adopted in the Mega-Arbitrations. The bifurcated end-office rate, the tandem switching rate, and the inter-office transport rates approved in this Order shall be applied to the rate structures approved under DPL Issue No. 2.

¹⁹⁴ Post Hearing Reply Brief of KMC at 3 (April 26, 2000), Level 3 Post Hearing Brief at 32 (April 19, 2000) and Reply Brief of Adelpia and CCCTX, Inc. D/B/A Connect! at 8 (April 26, 2000).

¹⁹⁵ Initial Brief of Focal at 13 and Initial Brief of Allegiance at 18 (April 19, 2000); Reply Brief of Winstar at 5, Reply Brief of TW at 6, NEXTLINK's Reply Brief at 4, and Intermedia Reply Brief at 4 (April 26, 2000).

¹⁹⁶ SWBT's Supplemental Brief on "Blended Rate" Issue at 8 (May 26, 2000).

D. DPL ISSUE NO. 4: WHAT IS THE APPROPRIATE METHOD BY WHICH TO BILL FOR THIS TRAFFIC?

(a) *The Current Billing System*

SWBT and CLECs currently calculate, verify, and bill for reciprocal compensation using a combination of originating records, terminating records, and factoring systems. In some instances, the companies are using a bill-and-keep system. Since 1994, SWBT has used an originating records system to bill for access compensation for LEC-carried intraLATA toll, local, extended area service (EAS), and transit traffic.¹⁹⁷ Throughout this proceeding, is system has been referred to as the “92 records” system, the “Primary Carrier” System (PCS), or the “92-99” records system.¹⁹⁸

Today, if either an ILEC or a facilities-based CLEC routes a call over SWBT facilities, billing is processed using the 92 originating records process.¹⁹⁹ The 92 process registers usage at the point at which the call enters or originates on the network and identifies the company that receives the call.²⁰⁰ The originating company then provides the records to the terminating company, which verifies and uses the records to bill the originating company for reciprocal compensation.²⁰¹ If a third-party customer places a call to a CLEC customer, and SWBT transports the call over its network, then the originating company provides records to both the transiting carrier, SWBT, and the terminating CLEC. SWBT and the terminating CLEC verify the records and use them to bill the originating company for reciprocal compensation.²⁰²

¹⁹⁷ SWBT Ex. No. 10, Direct Testimony of Joe B. Murphy at 4-5; Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 6.

¹⁹⁸ In this Award, SWBT’s originating records exchange and billing system is referred to as the “92 originating records process” or the “92 process.” This Award will refer to the originating records used in this process as “92 records.”

¹⁹⁹ SWBT Ex. No. 10, Direct Testimony of Joe B. Murphy at 4.

²⁰⁰ SWBT Ex. No. 1, Direct Testimony of Paul L. Cooper at 9-10.

²⁰¹ SWBT Ex. No. 10, Direct Testimony of Joe B. Murphy at 7.

²⁰² *Id.*

Currently, SWBT and AT&T exchange records using the 92 originating records process when AT&T delivers its customer's calls to SWBT using AT&T 4E and 5E switches. However, where the 4E switch is used, AT&T and SWBT exchange records for verification purposes only and use a separate process for billing. For calls traversing AT&T's 4E switch, SWBT bills AT&T at the access rate. AT&T then applies a SWBT approved factoring process to credit the overcharged rate on AT&T's access bill.²⁰³ For SWBT originated calls that traverse AT&T's 4E switch, AT&T and SWBT exchange records and bill via the 92 originating records process.²⁰⁴ Where AT&T's 5E switches are used, AT&T and SWBT exchange records for verification purposes to test the 92 originating records exchange process. During this period, the companies use bill-and-keep.²⁰⁵ When AT&T uses a SWBT unbundled switch element (UNE), the companies exchange records and bill via the 92 originating records process.²⁰⁶ In such an instance, however, SWBT sends Category 11 records to AT&T for purposes of verifying these calls.²⁰⁷ The 92 process is also used when AT&T operates as an unbundler.²⁰⁸

SWBT uses the Carrier Access Billing System (CABS) to bill for access compensation when calls are passed over interexchange carrier (IXC) facilities. This system uses "Category 11" terminating records,²⁰⁹ the CLECs' preferred alternative. Category 11 terminating records are call records collected by the carrier that terminates the call. The two types of records contain similar information.²¹⁰

²⁰³ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 7.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 8.

²⁰⁶ *Id.*

²⁰⁷ Tr. at 646 (April 5, 2000).

²⁰⁸ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 6.

²⁰⁹ SWBT Ex. No. 10, Direct Testimony of Joe B. Murphy at 4.

²¹⁰ This Award refers to the terminating record exchange and billing system as the "terminating records process." It refers to the terminating records used in this process as "Category 11 records."

(b) *CLECs' Positions*

The CLECs present a number of arguments for abolishing the current 92 originating records process. ICG identifies the incentive that occurs when originating carriers instruct the terminating carrier on the amount of reciprocal compensation that the originating carrier must pay as one problem with the current system.²¹¹ ICG believes that it should be compensated by SWBT using a terminating records process similar to that used in the competitive interLATA marketplace.²¹² WCOM opposes the collection of data needed to render the bill by the carrier that will ultimately pay the bill.²¹³ e.spire argues that the Commission should audit SWBT to identify the origin and types of traffic directed onto e.spire's network.²¹⁴

Some CLECs note that they are unable to verify the records created by the 92 originating records process.²¹⁵ Consequently, AT&T and SWBT use a factoring process to bill for these calls.²¹⁶ Since AT&T is still working to implement the process for its 5E switches, AT&T and SWBT are using bill-and-keep.²¹⁷ Taylor Comm. exchanges records and bills SWBT using the 92 originating records process, but is unable to verify the accuracy of the records.²¹⁸

Several parties have experienced discrepancies between their own terminating records and SWBT's originating records. ICG testifies that its discrepancy is significant, but is unable to determine its exact cause.²¹⁹ ICG believes that its own terminating records are inherently more

²¹¹ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 16.

²¹² *Id.* at 17.

²¹³ WCOM Ex. No. 1, Direct Testimony of Don Price at 32.

²¹⁴ e.spire Post Hearing Brief at 32 (April 19, 2000).

²¹⁵ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 6.

²¹⁶ *Id.* at 7.

²¹⁷ *Id.* at 8.

²¹⁸ Taylor Comm. Ex. No. 3, Direct Testimony of Charles D. Land at 26.

reliable than originating records.²²⁰ ICG concurs that SWBT transports and terminates third party traffic to ICG, and that those third parties (including wireless carriers that do not participate in the 92 records process) do not provide billing records to ICG.²²¹ ICG also notes that terminating companies may not have a terminating recording method that identifies all third party traffic.²²²

AT&T prefers terminating records for calls involving unbundled switch elements (UNE-p) and local number portability (LNP).²²³ ICG notes that, when a carrier using a SWBT UNE-p switch port, additional processing is required for the 92 records process to identify the originating company.²²⁴ LNP further complicates the 92 records process by making it even more difficult for the terminating carrier to identify the originating carrier.²²⁵ WCOM concurs that there are shortcomings with the 92 records exchange process for UNE-p and LNP calls.²²⁶

A number of parties object to the 92 originating records process in part because it is not an industry standard, pointing out that, the National Ordering and Billing Forum (OBF) has not approved the 92 originating records process.²²⁷ ICG points out, and WCOM and AT&T concur, that while the 92 process uses some information that could be considered standard billing data, many fields in the 92 record are not standard and are modified from state to state within SWBT's operating territory.²²⁸

²¹⁹ Coalition Ex. No. ICG-7, Direct Testimony of Kenneth D. Davis at 4, 8; CLEC Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 9.

²²⁰ Coalition Ex. No. ICG-7, Direct Testimony of Kenneth D. Davis at 9.

²²¹ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 15.

²²² Coalition Ex. No. ICG-10, Rebuttal Testimony of William J. Warinner at 4.

²²³ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 8.

²²⁴ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 12.

²²⁵ *Id.*

²²⁶ WCOM Ex. No. 1, Direct Testimony of Don Price at 32.

²²⁷ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 10.

Some CLECs believe that the 92 originating records process is a duplicative and unnecessary financial burden. AT&T states that it already collects terminating records which, if used for billing, would eliminate the cost of the 92 process.²²⁹ AT&T asserts that it can bill for reciprocal compensation using a terminating records process when using its own network, so long as SWBT sends complete call detail with the call.²³⁰ AT&T asserts that it can also bill reciprocal compensation using a terminating records process for local, EAS, and intraLATA traffic.²³¹ ICG believes that the 92 originating records process itself is complex and expensive to implement and maintain.²³²

The CLECs also object to the 92 originating records process in part because it was not originally intended for use in a competitive environment. ICG points out that SWBT originally designed this process for use in the Missouri Primary Toll Carrier Plan implemented prior to the commencement of local and intraLATA toll competition.²³³ The Coalition believes that the LECs for whom SWBT designed the system may not have been as sensitive to the system accuracy as CLECs.²³⁴ In addition, the Coalition notes that the system was designed for much smaller volumes of traffic than it currently experiences.²³⁵

Several CLECs propose alternatives to the 92 originating records process. ICG proposes that reciprocal compensation settlements be based on each carrier's measurement of traffic that terminates on its own network.²³⁶ ICG contends that these recordings would be taken at either

²²⁸ *Id.* at 9; WCOM Ex. No. 1, Direct Testimony of Don Price at 32; and AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 5.

²²⁹ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 9.

²³⁰ AT&T Ex. No. 10, Rebuttal Testimony of Shannie Marin at 5.

²³¹ *Id.*

²³² Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 5.

²³³ *Id.* at 16.

²³⁴ Coalition Ex. No. CLEC-1, Direct Testimony of William Page Montgomery at 60.

²³⁵ *Id.*

the tandem or end office and would provide a usage record from which to bill the originating carrier directly for reciprocal compensation.²³⁷ ICG notes that Category 11 records are consistent with OBF standards.²³⁸

AT&T and WCOM recommend that Category 11 terminating records be used to bill for reciprocal compensation.²³⁹ AT&T suggests that, so long as SWBT sends complete call detail with each call, including “to” and “from” numbers and the originating company number (OCN), it can bill from terminating records.²⁴⁰ AT&T notes that the “to” and “from” numbers are available in the call signaling and the OCN can be obtained using the LERG database.²⁴¹ WCOM also notes that its switches are able to record terminating records for billing purposes.²⁴² In addition, CLECs note that, if the Commission decides to implement a tandem compensation rate, the CLECs would be able to gather the information needed to bill for the tandem rate using the proposed terminating records system.²⁴³

ICG proposes billing SWBT for all minutes that it terminates to ICG over SWBT trunk groups, even if this traffic originated with another carrier--a process similar to payment arrangements between IXCs and ILECs.²⁴⁴ ICG clarified, and AT&T concurred, that it does not propose to bill the transiting company for reciprocal compensation, but only wishes to bill the originating carrier. ICG prefers that when SWBT transports a call over its network, SWBT bill

²³⁶ Coalition Ex. No. ICG-8, Direct Testimony of Roger L. Arnold at 3; Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 16.

²³⁷ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 16.

²³⁸ Tr. at 626 (April 5, 2000).

²³⁹ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 3; WCOM Ex. No. 1, Direct Testimony of Don Price at 33.

²⁴⁰ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 4.

²⁴¹ Tr. at 662-663 (April 5, 2000).

²⁴² WCOM Ex. No. 1, Direct Testimony of Don Price at 33.

²⁴³ Tr. at 651 (April 5, 2000).

²⁴⁴ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 17.

the originating carrier for reciprocal compensation.²⁴⁵ The CLECs note that Category 11 terminating records do not identify all of the carriers within a call path, but can only identify one transiting carrier.²⁴⁶

ICG and AT&T suggest that SWBT recover the costs of transiting traffic from the carriers whose traffic it transports.²⁴⁷ In the alternative, ICG proposes that the Commission ensure SWBT's cooperation in providing all necessary information to identify the carriers that are transporting calls over its network. ICG then proposes to use its own terminating records to establish the correct amount of reciprocal compensation due from SWBT.²⁴⁸

The CLECs note that they are capable of using terminating records to bill the originating carrier for UNE-p and ported calls by using the location routing number, passed along in switching, and the Local Exchange Routing Guide (LERG) to determine who owns the calling number.²⁴⁹ AT&T states that Pacific Bell is able to provide the OCN of any carrier operating with an unbundled switch, ensuring accurate billing to all parties.²⁵⁰

(c) SWBT's Position

SWBT prefers to continue using the 92 originating records process for a number of reasons, primarily because it is currently in use and it is the only process that provides the information needed to compensate all companies for use of their facilities.²⁵¹ SWBT further

²⁴⁵ Tr. at 629, 636 (April 5, 2000).

²⁴⁶ *Id.* at 575-576.

²⁴⁷ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 17; AT&T Ex. No. 10, Rebuttal Testimony of Shannie Marin at 6; Tr. at 575 (April 5, 2000)

²⁴⁸ Coalition Ex. No. ICG-9, Direct Testimony of William J. Warinner at 17.

²⁴⁹ Tr. at 658 (April 5, 2000).

²⁵⁰ AT&T Ex. No. 9, Direct Testimony of Shannie Marin at 4.

²⁵¹ SWBT Ex. No. 10, Direct Testimony of Joe B. Murphy at 5.

indicates that by using originating records, the 92 process avoids the problem of billing a carrier for third party traffic that merely transits its network.²⁵² SWBT does not believe that this proceeding is an appropriate forum for addressing billing and records exchange processes because a change in any process would affect all the ILECs and facilities-based CLECs in Texas.²⁵³ SWBT notes, and AT&T's witness agrees, that the CLECs do not agree on an alternative records exchange and billing process.²⁵⁴

SWBT discusses at length the Connecting Network Access Recording (CNAR[®]) and AcceSS7[®] systems used on their network and their ability to make terminating recordings.²⁵⁵ Although the AcceSS7[®] system does record terminating usage and SWBT is currently testing it for use as a billing system, SWBT nonetheless contends that the AcceSS7[®] system is not ready for use as billing system.²⁵⁶ In addition, SWBT currently has not installed the CNAR[®] system, which creates a terminating record, on all of its switches.²⁵⁷ SWBT notes that, if the Commission were to mandate a terminating records process, it could use the 92 records process to verify bills received for reciprocal compensation.²⁵⁸ Until SWBT is able to generate terminating recordings, ICG notes that it can continue to give SWBT originating records for traffic that it terminates onto SWBT's network.

SWBT counters criticisms regarding accuracy by pointing out ICG's testimony indicating that the terminating records from ICG switches are unable to identify the originating party on all recorded traffic.²⁵⁹ SWBT also notes that ICG's method of using the Local Exchange Routing

²⁵² SWBT Ex. No. 11, Rebuttal Testimony of Joe B. Murphy at 14.

²⁵³ *Id.* at 7.

²⁵⁴ *Id.* at 20; Tr. at 583 (April 5, 2000).

²⁵⁵ Coalition Ex. No. ICG-8, Direct Testimony of Roger L. Arnold.

²⁵⁶ Tr. at 588, 590, 644 (April 5, 2000).

²⁵⁷ *Id.* at 609, 600.

²⁵⁸ *Id.* at 667.

Guide (LERG) to identify traffic that is originated on SWBT's network does not work for calls involving local number portability (LNP). SWBT further points out that the 92 originating records process identifies the originating caller for LNP calls and calls that involve unbundled switch elements.²⁶⁰ Finally, SWBT notes that CLECs, with whom ICG has not negotiated reciprocal compensation and records exchange agreements, could be sending traffic to ICG customers.²⁶¹

SWBT strongly opposes any alternative that results in CLECs billing SWBT for third party traffic carried over SWBT's network, asserting that the CLECs are responsible for establishing agreements with third-party carriers.²⁶² SWBT believes that companies that terminate traffic should bill the originating carriers directly.²⁶³ SWBT notes that its interconnection agreements address this issue.²⁶⁴ SWBT further notes that the FTA does not obligate SWBT to perform a third-party billing and collection function.²⁶⁵

SWBT points out that the terminating records process proposed by AT&T and supported by other parties has limitations. Category 11 terminating records require SWBT to send complete call detail information already provided by the 92 originating records process.²⁶⁶ In addition, SWBT notes that Category 11 records do not contain the information needed to identify all the parties on the call path, making it difficult for the terminating carrier to bill all the carriers involved in completing the call.²⁶⁷ Finally, SWBT does not believe that moving to terminating

²⁵⁹ SWBT Ex. No. 11, Rebuttal Testimony of Joe B. Murphy at 4.

²⁶⁰ *Id.*

²⁶¹ *Id.* at 16.

²⁶² *Id.* at 3.

²⁶³ *Id.* at 2; WBT Ex. No. 10, Direct Testimony of Joe B. Murphy at 7.

²⁶⁴ SWBT Ex. No. 11, Rebuttal Testimony of Joe B. Murphy at 3.

²⁶⁵ *Id.* at 15.

²⁶⁶ *Id.* at 17.

records will solve the data problems discussed in this proceeding unless all companies' exchange records.²⁶⁸

(d) Commission Decision

The Commission acknowledges that the lack of agreement of the parties with respect to billing issues extends to the national level. Moreover, the Commission notes that the common practice in our economy is to generally rely upon the records of the party that remits a service (e.g. the terminating carrier) and submits a bill to the recipient of that service (e.g., the originating carrier). Therefore, the Commission concludes that, where technically feasible, the terminating carrier's records shall be used to bill originating carriers (excluding transiting carriers) for reciprocal compensation, unless both the originating and terminating carriers agree to use originating records. The Commission further concludes that where a terminating carrier is not technically capable of billing the originating carrier (excluding transiting carriers) through the use of terminating records, the terminating carrier shall use any method agreed upon between the parties. The Commission finds that the use of terminating records among the parties to bill for reciprocal compensation is a more efficient and less burdensome method to track the exchange of traffic. Terminating records impose less cost upon the terminating carriers than the previous regulatory scheme that used SWBT's 92/99 originating records to bill for reciprocal compensation.

The Commission notes SWBT's concerns regarding transiting traffic and concludes that terminating carriers shall be required to directly bill third parties that originate calls and send traffic over SWBT's network. Transiting carriers shall bill the originating carrier using terminating or originating records based upon existing contract terms between the originating and transiting carrier.

²⁶⁷ *Id.* at 6, 17, 19. Parties noted that Category 11 terminating records do not identify all of the carriers within a call path, but can only identify one transiting carrier. Parties also agreed that while 92 originating records can identify up to eight parties within the call path, Category 11 records can only identify one transiting party. *See* Tr. at 563, 575-577 (April 5, 2000).

²⁶⁸ SWBT Ex. No. 11, Rebuttal Testimony of Joe B. Murphy at 19.

The Commission recognizes that there may be disagreement over the content and/or accuracy of a carrier's termination records and expects that such disputes will be settled among the parties. The Commission notes, however, that when a balance in the traffic between originating and terminating carriers eventually occurs, a bill-and-keep system could be adopted that would eliminate the need for exchange of terminating records.

SIGNED AT AUSTIN, TEXAS the _____ day of July, 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER

BRETT A. PERLMAN, COMMISSIONER

Staff Arbitration Advisors

Jingming Chen, Katherine Farroba, Steve Davis, Mark Gladney, Adriana Gonzales, Todd Kimbrough, Anne McKibbin, Donna Nelson, Meena Thomas, Pamela Whittington, Patricia Zacharie, and Diana Zake.

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ATTACHMENT A

**DOCKET NO. 21982
ARBITRATION AWARD
ATTACHMENT A**

Mega Arbitration Interconnection Rates¹	
Rate Element	Rate
Tandem Switching	\$0.000794/MOU
Blended Transport	\$0.000399/MOU
Term. Zone 1(Rural)	\$0.000144/MOU
Term. Zone 2 (Suburban)	\$0.000135/MOU
Term. Zone 3 (Urban)	\$0.000123/MOU
Term. Zone 4 (Interzone)	\$0.000187/MOU
Term. Statewide Average	\$0.000135/MOU
Fac. Mi. Zone 1 (Rural)	\$0.0000101/MOU
Fac. Mi. Zone 2 (Suburban)	\$0.0000032/MOU
Fac. Mi. Zone 3 (Urban)	\$0.0000011/MOU
Fac. Mi. Zone 4 (Interzone)	\$0.0000033/MOU
Fac. Mi. Statewide Average	\$0.0000021/MOU
End Office Switching	\$0.001507/MOU

Bifurcated End Office Switching Rate²	
Rate Element	Rate
Set-up	\$0.0010887/call
Duration	\$0.0010423/MOU

¹ Docket No. 16189, *et al*, Second Mega-Arbitration Award (Dec. 19, 1997).

² See AT&T Ex. No. 11, Affidavit of Daniel P. Rhinehart and SWBT Ex. No. 28, Affidavit of Barbara A. Smith.

Attachment 5



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EXECUTIVE SECRETARY
G.P.S.C.

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

HELEN O'LEARY
EXECUTIVE SECRETARY

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DOCKET# 11644
DOCUMENT# 41841

Docket No. 11644-U

In Re: Petition of BellSouth Telecommunications, Inc. For Arbitration of an
Interconnection Agreement With Intermedia Communications, Inc. Pursuant To
Section 252(b) of the Telecommunications Act Of 1996.

ORDER

Appearances

On behalf of Intermedia Communications, Inc.
Charles V. Gerkin, Jr., Attorney

On behalf of BellSouth Telecommunications, Inc.
Fred McCallum, Attorney
Meredith E. Mays, Attorney

On behalf of the Commission Staff
Thomas K. Bond, Attorney

BY THE COMMISSION:

On December 7, 1999, BellSouth Telecommunications, Inc. ("BellSouth" or "BST") petitioned the Commission to arbitrate certain unresolved issues in the interconnection negotiations between BellSouth and Intermedia Communications, Inc. ("Intermedia"). The Commission issues this Order to resolve the issues still remaining between the BellSouth and Intermedia (the "Parties").

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GENERAL COUNSEL-
GEORGIA

I. JURISDICTION AND PROCEEDINGS

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

On or about July 1, 1996, Intermedia entered into a voluntarily negotiated interconnection agreement with BellSouth. The two-year interconnection agreement expired on July 1, 1998, but was subsequently extended by mutual agreement between Intermedia and BellSouth to December 31, 1999.

By letter dated June 28, 1999, BellSouth requested the negotiation of a new interconnection agreement, and proposed a starting point for negotiations between the Parties. The Parties agreed that these negotiations would be deemed to have started on July 1, 1999. The Parties have agreed to operate under the terms of their existing interconnection agreement until a new interconnection agreement is approved.

On December 7, 1999, BellSouth filed a petition for arbitration with the Commission, which initiated this proceeding. BellSouth's petition set forth only ten disputed issues, but indicated that several other issues had been raised by Intermedia prior to the expiration of the arbitration window. Intermedia filed its answer and new matter to BellSouth's petition on January 3, 2000, specifying the 38 additional issues that were in fact outstanding between the parties at the time BellSouth filed its petition. Pre-filed testimony was filed, discovery was permitted, and the hearing in this matter was held on May 9, 2000.

On May 26, 2000, the parties filed briefs on the following unresolved issues:

Issue 2(a): Should the definition of "local traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act include the following: Subissue 2(a): ISP traffic?

Issue 3: Should Intermedia be compensated for end office, tandem, and transport elements, for purposes of reciprocal compensation?

Issue 6: For the purposes of collocation, should intervals be measured in business days or calendar days?

Issue 8: Is BellSouth's interval for responding to Intermedia's bona fide collocation requests appropriate?

Issue 9: Is BellSouth's interval for physical collocation provisioning appropriate?

Issue 10: Are BellSouth's policies regarding conversion of virtual to physical collocation reasonable?

Issue 12: What is the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b)?

Issue 13: Should BellSouth be required to: (a) provide access to enhanced extended links ("EELs") at UNE rates; and (b) allow Intermedia to convert existing special access services to EELs at UNE rates?

Issue 18: Should BellSouth be required to provide access on an unbundled basis in accordance with, and as defined in, the FCC's UNE Remand Order, to the following: Subissue 18(c): packet switching capabilities?

Issue 22: Should BellSouth be required to offer nondiscriminatory access to interoffice transmission facilities in accordance with, and as defined in, the FCC's UNE Remand Order?

Issue 25: Should BellSouth be required to furnish access to the following as UNEs: (i) User to Network Interface ("UNI"); (ii) Network-to-Network Interface ("NNI") and (iii) Data Link Control Identifiers ("DLCI"), at Intermedia-specified committed information rates ("CIR")?

Issue 26: Should parties be allowed to establish their own local calling areas and assign numbers for local use anywhere within such areas, consistent with applicable law?

Issue 29: In the event Intermedia chooses multiple tandem access ("MTA"), must Intermedia establish points of interconnection at all BellSouth access tandems where Intermedia's NXXs are "homed"?

Issue 30: Should Intermedia be required to: (a) designate a "home" local tandem for each assigned NPA/NXX, and (b) establish points of interconnection to BellSouth access tandems within the LATA on which Intermedia has NPA/NXXs homed?

Issue 31: For purposes of compensation, how should IntraLATA Toll Traffic be defined?

Issue 32: How should "Switched Access Traffic" be defined?

Issue 33: Should BellSouth and Intermedia be liable to each other for lost switched access revenues due to lost or damaged billing data?

Issue 37: Should all framed packet data transported within a VC that originate and terminate within a LATA be classified as local traffic?

Issue 38: If there are no VCs on a frame relay interconnection facility when it is billed, should the parties deem the Percent Local Circuit Use to be zero?

Issue 39: What are the appropriate charges for the following: (a) interconnection trunks between the Parties' frame relay switches; (b) frame relay network-to-network interface points; (c) permanent virtual circuit ("PVC") segments (i.e., Data Link Connection Identifier ("DLCI") and Committed Information Rates ("CIR")); (d) requests to change a PVC segment or PVC service order record?

Issue 48: Should the parties adopt the performance measures, standards and penalties imposed by the Texas Public Utility Commission on Southwestern Bell Telephone?

II. FINDINGS AND CONCLUSIONS

The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision. The Commission makes the following findings of fact, conclusions of law and statements of regulatory policy on the remaining unresolved issues between the parties:

Issue 2(a): Should the definition of "local traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act include the following: Subissue 2(a): ISP traffic?

BellSouth argues that calls to ISPs should not be included in the definition of "local traffic" for purposes of the parties' reciprocal compensation obligations. In support of its argument, BellSouth asserts that the FCC has found this traffic to be jurisdictionally interstate on several occasions. In addition, BellSouth states that it requiring payment of reciprocal compensation for such traffic is not good public policy, and does not make good business sense. BellSouth Brief, pp 7-9.

Intermedia, on the other hand, argues that reciprocal compensation should apply to calls originated by BellSouth and transported and terminated by Intermedia to its ISP customers, and vice versa. Intermedia asserts that both the law and good public policy dictate that reciprocal compensation should be paid for ISP traffic. Intermedia Brief, pp. 6-13.

The Commission Staff has recommended, consistent with previous decisions of this Commission, that reciprocal compensation should apply to calls terminated to ISP customers. Staff also recommended that, in the event the FCC establishes some other mechanism for

compensation for such calls, the parties may petition the Commission to revisit this issue at that time. The Commission adopts Staff's recommendation.

The Commission has previously found that it has the authority under Section 252 of the Federal Act to order a provision in the arbitration agreement that reciprocal compensation be due for ISP-bound traffic. Commission Docket 10854-U; see Declaratory Ruling¹ Paragraph 25 (State commissions "may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.")² As the FCC has stated, the FCC's own policy of "treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation suggest that such compensation is due for that traffic." Id. ILECs and CLECs should be compensated for costs imposed on their systems, including costs for transport and delivery of ISP-bound calls. Consistent with the previous decisions of the Commission, the Commission requires the Parties to pay reciprocal compensation for calls to ISPs.

Issue 3: Should Intermedia be compensated for end office, tandem, and transport elements, for purposes of reciprocal compensation?

BellSouth's argues that the Commission should deny Intermedia's request for tandem switching compensation. BellSouth asserts that Intermedia failed to prove that its switch is actually performing tandem switching and failed to prove that its switch serves a geographic area comparable to BellSouth's switch. BellSouth Brief, pp. 9-16. Intermedia states that it has fully satisfied the requirements of FCC rule 51.711(a)(3) and is therefore entitled to receive reciprocal compensation at the tandem interconnection rate. Intermedia Brief, 13-21.

¹ The FCC's Declaratory Ruling was vacated by the District of Columbia Circuit Court of Appeals for "want of reasoned decision-making" with regard to the FCC's use of the "end-to-end" analysis. Bell Atlantic Tel. Co. v. FCC, - F.3d --, No. 99-1094, 2000 WL 273383, at *2 (D.C. Cir. Mar. 24, 2000). The District of Columbia Circuit's order removed the clarity that the Declaratory Ruling had appeared to provide regarding the jurisdictional nature of ISP traffic. Thus, at least for the time being, the jurisdictional nature of ISP traffic is once again an open question and this Commission once again finds that such traffic is intrastate in nature. Indeed, the Bell Atlantic decision makes the same distinctions between providers of telecommunication services and information services that this Commission had previously relied on in its prior ISP cases. Bell Atlantic Tel. Co. v. FCC, 2000 WL 273383, at *6-7. In any event, as discussed in footnote 2, supra, even assuming arguendo that such traffic is interstate in nature, the Commission is still authorized to address this matter and would still find that reciprocal compensation is due for such traffic.

² As the District Court for the Northern District of Georgia noted when it affirmed the prior ISP orders issued by this Commission, "the FCC unambiguously stated [in the Declaratory Ruling] that '[a] state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding - or a subsequent state commission decision that those obligations encompass ISP-bound traffic - does not conflict with any Commission rule regarding ISP-bound traffic.'" BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc., et al., In the United States District Court for the Northern District of Georgia, Civil Action No. 1:99-CV-0248-JOF, May 4, 2000 Order, p. 27. The fact that the Declaratory Ruling was vacated for want of reasoned decision-making with regard to its use of the "end-to-end" analysis does not necessarily mean that the FCC's conclusion that state commission's are authorized to require payment of reciprocal compensation for ISP traffic even if such traffic is interstate in nature is invalid. Id. at n. 13.

Staff recommends that the Commission find that Intermedia has demonstrated that its switches perform tandem switching functions and that it serves a geographic area comparable to the area served by BellSouth; therefore, Staff recommends that the Commission find that the tandem rate element for reciprocal compensation is applicable.

47 C.F.R. § 51.711(a)(3) provides:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

If a CLEC switch "covers a geographic area comparable to that covered by a tandem switch . . . this alone provides sufficient grounds for a finding that the appropriate rate for the [switch] is the tandem switch rate." U.S. West Communications, Inc. v. Minnesota Public Utilities Commission, 55 F. Supp. 2d 968, 979 (D. Minn. 1999). Based on the evidence presented in this matter, the Commission finds that Intermedia's switch covers a geographic area comparable to that covered by a BellSouth tandem switch. Accordingly, the tandem rate element for reciprocal compensation is appropriate.

BellSouth argues that in addition to serving a geographic area comparable to the area served by the incumbent LEC's tandem switch, Intermedia must show that "its switch is actually performing tandem switching." BellSouth Brief, p. 16. The FCC directed state commissions that establish "transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch" to "consider whether new technologies (e.g., fiber ring or wireless network) perform functions similar to those performed by an incumbent LEC's tandem switch and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." First Report and Order, ¶ 1090. First, the Commission notes that the FCC did not state that state commissions should consider whether the switch performs "the same" functions as a tandem switch. Instead, the FCC stated that state commissions should consider whether the switch performs "similar" functions as a tandem switch. Based on the evidence presented in this matter, the Commission finds that Intermedia's switch performs functions similar to BellSouth's tandem switches. In any event, the FCC went on to state that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." Id. As previously discussed, the Commission finds that Intermedia's switch covers a geographic area comparable to that covered by a BellSouth tandem switch.

Issue 6: For the purposes of collocation, should intervals be measured in business days or calendar days?

Issue 8: Is BellSouth's interval for responding to Intermedia's bona fide collocation requests appropriate?

Issue 9: Is BellSouth's interval for physical collocation provisioning appropriate?

BellSouth states that it uses business days in order to measure collocation intervals because of its reliance upon skilled contractors and governmental personnel. Also, as the competition in Georgia increases, the number of collocation applications received by BellSouth increased. Therefore, BellSouth argues maintaining the current intervals is vital in order to properly respond to the volume of applications received. If calendar days are used to measure collocation intervals, then BellSouth submits that its actual provisioning intervals would require modification. BellSouth Brief, pp. 16-18. Intermedia argues that the collocation provision intervals in the parties' agreement should be expressed in calendar days rather than business days. Intermedia Brief, pp. 21-24.

Staff recommends that the intervals be measured in calendar days; that the interval for responding to Intermedia's bona fide collocation requests be 30 calendar days; and, the interval for physical collocation provisioning be 90 calendar days under ordinary circumstances and 120 calendar days under extraordinary circumstances. The Commission adopts Staff's recommendation.

Issue 10: Are BellSouth's policies regarding conversion of virtual to physical collocation reasonable?

BellSouth states that the terms and conditions that should apply for converting virtual collocation to physical collocation should be consistent with the terms and conditions of the assessment and provisioning of physical collocation because BellSouth evaluates both of these applications in the same manner. If a collocator makes a request for conversion from virtual to physical collocation, the collocator should be responsible for any cost incurred. BellSouth would allow conversion of virtual collocation to physical without requiring the relocation of the equipment where three conditions are met: 1) that there is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement; 2) that the conversion of the virtual collocation arrangement would not cause the equipment or the results of that conversion to be located in the space that BellSouth has reserved for its own future needs; and 3) that due to the location of the virtual collocation arrangement the converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities. BellSouth Brief, pp. 18-19.

Intermedia argues that it should be allowed to convert its virtual collocation arrangements to physical collocation arrangements without requiring the relocation of its equipment. Intermedia further argues that this should be done in a timely manner. Intermedia does not disagree with BellSouth that it should be able to reserve space for future use, so long as it is

reasonable. Intermedia states that it is willing to accept the proposition that "in place" conversion of virtual collocation to physical collocation may not be permitted where the conversion would cause the arrangement to be located in the area reserved for BellSouth's future growth. Intermedia is also willing to agree that "in place" conversion will be allowed if (a) Intermedia does not increase the amount of space it occupies, and (b) any changes to the arrangement can be accommodated by existing power, HVAC, and other requirements. Intermedia also states that the application fee should not be the same as the application fee for a new request for physical collocation (\$3850) as not many of the same tasks are required and further that the 90 day turnaround on such an application is unreasonable. Intermedia Brief, pp. 24-26.

The Staff recommends that virtual collocation may be converted to "in place" physical collocation according to the following criteria: 1) that there is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement; 2) that the conversion of the virtual collocation arrangement would not cause the equipment or the results of that conversion to be located in the space that BellSouth has reserved for its own future needs; 3) that due to the location of the virtual collocation arrangement the converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities; (4) that any changes to the arrangement can be accommodated by existing power, HVAC, and other requirements; (5) that under normal circumstances the conversion be handled by BellSouth in 60 calendar days (this is the same interval previously approved by the Commission for cageless collocation); and (6) that the interim application fee for such conversion from virtual to physical be \$1,000 (the normal physical collocation application fee is \$3850; however, the costs of many of the tasks/functions that comprise that fee are not applicable to in place conversion), until such time as BellSouth shall file with this Commission a cost study for the conversion of virtual collocation to physical collocation and same is adopted by this Commission. The Commission adopts Staff's recommendation.

Issue 12: What is the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b)?

BellSouth states that it will provide combinations to Intermedia at cost-based rates if the elements are already combined and providing service to a particular customer at a particular location. BellSouth, however, acknowledges that on this issue the Commission had ordered that "currently combined" means "ordinarily combined" within BellSouth's network in Docket No. 10692-U and in Docket No. 10767-U. BellSouth Brief, pp. 19-20. Intermedia argues that the Commission should require BellSouth to provide Intermedia with access to combinations of UNEs that are already physically combined and to combinations of UNEs that are typically combined. Intermedia Brief, pp. 27-28. The Staff recommends that, consistent with its decisions in other dockets, the Commission find that BellSouth is obligated to provide to Intermedia combinations of UNE that it ordinarily combines in its network. See Docket Nos. 10692-U, 10767-U, and 10854-U. The Commission sees no reason to depart from its previous determinations.

The Commission addressed this issue in the context of Dockets 10692-U, 10767-U, and 10854-U. The Commission's Order in 10692-U included the following language:

Rule 315(b), by its own terms, applies to elements that the incumbent 'currently combines,' not merely elements which are 'currently combined.' In the FCC's First Report and Order, the FCC stated that the proper reading of 'currently combines' is 'ordinarily combined within their network, in the manner which they are typically combined.' First Report and Order, ¶ 296. In its Third Report and Order, the FCC stated that it was declining to address this argument at this time because the matter is currently pending before the Eighth Circuit. Third Report and Order, ¶ 479.³ Accordingly, the only FCC interpretation of 'currently combines' remains the literal one contained in the First Report and Order. The Commission finds that 'currently combines' means ordinarily combined within the BellSouth's network, in the manner which they are typically combined. Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed.

As further explained by the Commission in Docket No. 10692-U, adopting BellSouth's proposed "currently combined" interpretation would only make the process more cumbersome for the CLEC; it would not prevent the CLEC from obtaining and using the same UNE combinations. Based on the FCC's Third Report and Order, CLECs can purchase services such as special access and resale even when the network elements supporting the underlying service are not physically connected at the time the service is ordered. At the point when the CLEC begins to receive such service, the underlying network elements are necessarily physically connected. The CLECs can then obtain such currently combined network elements as UNE combinations at UNE prices. Third Report and Order, ¶¶ 480, 486. The Commission finds that even assuming arguendo that "currently combines" means "currently combined," rather than go through the circuitous process of requiring the CLEC to submit two orders (e.g., one for special access followed by another to convert the special access to UNEs) to receive the UNE combination, the process should be streamlined to allow CLECs to place only one order for the UNE combination.

Issue 13: Should BellSouth be required to: (a) provide access to enhanced extended links ("EELs") at UNE rates; and (b) allow Intermedia to convert existing special access services to EELs at UNE rates?

³ While the FCC declined to address this argument again in its Third Report and Order, significantly the FCC did not disavow the position it took in the First Report and Order. BellSouth argues that "the FCC made clear that 'currently combined' elements are those elements physically combined as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes basis.'" BellSouth's Brief on Impact of Third Report and Order, p. 5. The FCC, however, was not stating that Rule 51-315(b) is limited only to currently combined elements. Instead, the FCC was stating that since, at the least, Rule 51-315(b) includes currently combined elements, and since when a CLEC purchases special access the elements are currently combined, that even under the more restrictive "currently combined" interpretation, CLECs would be able to convert special access to loop-transport combinations at UNE rates. Third Report and Order ¶ 480.

BellSouth argues that, "except to the extent where currently combined elements in BellSouth's network that comprise an EEL are located, BellSouth currently has no obligation to provide CLECs with the EEL." BellSouth Brief, pp. 20-21. BellSouth notes that the FCC declined to define the EEL as a separate network element in its UNE Remand Order. UNE Remand Order, ¶ 478. BellSouth further argues that until the UNE Remand Order is complete, the FCC has made clear that carriers may not convert special access services to combinations of unbundled network elements unless the carrier uses combinations of network elements to provide significant amount of local exchange service, in addition to exchange access service to a particular customer. November 24, 1999 Supplemental Order, ¶¶ 2 and 4. Intermedia argues that BellSouth is obligated by law to provide access to EELs, and to allow the conversion of special access service to EELs, at UNE rates. Intermedia Brief, pp. 28-30.

As with issue 12 above, the Staff recommended that the Commission remain consistent with its prior decisions regarding UNE combinations and the EEL. See Docket Nos. 10692-U and 10767-U. In those prior decisions, the Commission determined that CLECs were entitled to purchase at cost-based rates, combinations of UNEs that BellSouth ordinarily combines in its network. In regards to converting existing special access services to EELs at UNE rates, the Commission stated as follows:

On November 24, 1999, the FCC issued a Supplemental Order to its Third Report and Order. In this Supplemental Order, the FCC modified its conclusion in paragraph 486 of the Third Report and Order to now allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service. Supplemental Order, ¶ 4. IXC's may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXC's self-provide entrance facilities, unless the IXC uses the combination "to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." *Id.* at ¶ 5. Accordingly, the Commission finds that in order for a CLECs to use a loop/transport combination to provide special access service, the CLEC must provide a significant amount of local exchange service over the combination. Further, loop/transport combinations must be connected to a CLEC switch and must be used in the provision of circuit switched telephone exchange service. Such CLECs must "self-certify that they are providing a significant amount of local exchange service over combinations of unbundled loops and transport network elements" in order to convert special access facilities to UNE pricing. *Id.* at footnote 9. The FCC did not find it to be necessary for ILECs and requesting carriers to undertake auditing processes to monitor whether requesting carriers are using UNEs solely to provide exchange access service. *Id.* The Commission finds that BellSouth shall not make auditing a precondition to converting special access to UNEs; thus the conversion of facilities will not be delayed. The Commission finds, however, that BellSouth shall be allowed to audit CLEC records in order to verify the type of traffic being transmitted over EELs. If, based on its audits, BellSouth concludes that a CLEC is not providing a

significant amount of local exchange traffic over the facilities, BellSouth may file a complaint with this Commission.

Docket 10692-U, Supplemental Order, pp. 1-2. The Commission sees no reason to depart from its previous determinations.

Issue 18: Should BellSouth be required to provide access on an unbundled basis in accordance with, and as defined in, the FCC's UNE Remand Order, to the following: Subissue 18(c): packet switching capabilities?

BellSouth states that the FCC empowered state commissions to unbundle specific network elements used to provide frame relay (e.g. packet switching), but only to the extent that a competing carrier convinces the State Commission that it is impaired without access to those elements. BellSouth states that there is absolutely no evidence indicating that Intermedia is impaired in its packet switching capabilities; therefore, it asserts that this Commission should reject Intermedia's request to require BellSouth access to packet switching on an unbundled basis. While the FCC declined "to unbundle specific packet switching technologies incumbent LECs may have deployed in their networks," UNE Remand Order, ¶ 311, BellSouth acknowledges that the FCC adopted an exception to that determination in Rule 51.319(c)(5). BellSouth asserts, however, that each of the conditions set forth in the FCC's Rule do not exist in BellSouth's network. BellSouth Brief, pp 21-23.

Intermedia argues that the Commission should require BellSouth to provide access to packet switching capabilities, including frame relay elements, at UNE rates. Alternatively, Intermedia argues that, at a minimum, the Commission should require that BellSouth include in the Parties agreement a definition of the packet switching capability UNE and the FCC's language setting forth the conditions under which BellSouth might have to provide the packet switching UNE in the Parties agreement. Intermedia Brief, pp. 30-36. The FCC has found that an ILEC must provide nondiscriminatory access to unbundled packet switching capability where: (a) the ILEC has deployed digital loop carrier ("DLC") systems, including integrated digital loop carrier or universal digital loop carrier systems, or has developed any other system in which fiber optic facilities replace copper facilities in the distribution section; (b) there are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer; (c) the ILEC has not permitted a requesting carrier to deploy a DSLAM in the remote terminal, pedestal or environmentally controlled vault of other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points; and (d) the ILEC has deployed packet switching capability for its own use. See UNE Remand Order, ¶ 313; 47 C.F.R. § 51.319(c)(5).

Staff recommends that the Commission find that Intermedia has not demonstrated that it is impaired; thus, BellSouth is not required to provide packet switching capabilities to Intermedia on an unbundled basis unless all four of the conditions in Rule 51.319(c)(5) are met. Consistent with Staff's recommendation, the Commission finds that Intermedia has not demonstrated that it is impaired. In the event all four of the conditions in Rule 51.319(c)(5) are met, however,

BellSouth would be required to provide packet switching capabilities to Intermedia. Accordingly, the Parties agreement should reflect this contingency.

Issue 22: Should BellSouth be required to offer nondiscriminatory access to interoffice transmission facilities in accordance with, and as defined in, the FCC's UNE Remand Order?

BellSouth states that it has agreed to provide nondiscriminatory access to interoffice facilities in accordance with the FCC's UNE Remand Order. BellSouth requests that this Commission adopt the rates submitted as BellSouth Exhibit 2 as the appropriate TELRIC-based rates for these facilities. BellSouth Brief, p. 23. Intermedia states that BellSouth is required by law to provide access to all types of unbundled transport at cost-based rates. Intermedia states that it does not object to the adoption of BellSouth's proposed rates as interim rates subject to a true-up. Intermedia Brief, pp. 36-37.

The Staff recommends that BellSouth provide access to interoffice transmission facilities in accordance with the FCC's UNE Remand Order at the Interim Rates filed by BellSouth in this docket, until such time as this Commission establishes permanent rates for such services. Such interim rates shall be subject to true-up. The Commission adopts Staff's recommendation.

Issue 25: Should BellSouth be required to furnish access to the following as UNEs: (i) User to Network Interface ("UNI"); (ii) Network-to-Network Interface ("NNI") and (iii) Data Link Control Identifiers ("DLCI"), at Intermedia-specified committed information rates ("CIR")?

BellSouth states that each of the elements (UNI, NNI, DLCI, and CIR) is a part of frame relay packet switching. As in Issue 18(c) the FCC declined to unbundle the packet switching functionality, except in limited circumstances. BellSouth asserts that these circumstances do not apply. Accordingly, BellSouth requests that this Commission find that BellSouth is not required to provide access to these elements at TELRIC-based rates. Intermedia argues that the Commission should require BellSouth to provide access to packet switching capabilities, including frame relay elements, at UNE rates.

As in Issue 18(c), Commission finds that Intermedia has not demonstrated that it is impaired. In the event all four of the conditions in Rule 51.319(c)(5) are met, however, BellSouth would be required to provide packet switching capabilities to Intermedia. Accordingly, the Parties agreement should reflect this contingency.

Issue 26: Should parties be allowed to establish their own local calling areas and assign numbers for local use anywhere within such areas, consistent with applicable law?

BellSouth argues that Intermedia should use its NPA/NXXs in such a way that BellSouth can distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth

originated traffic. BellSouth states that it is indifferent to the manner in which Intermedia defines its local calling areas for its own end users. BellSouth asserts that Intermedia must designate a "home" local tandem for its NPA/NXX codes and interconnect at that tandem. BellSouth, pp. 24-26. Intermedia asserts that it should be allowed to assign its numbering resources and establish its calling areas as it sees fit. Intermedia Brief, pp. 37-39.

The Staff recommends that Intermedia be allowed to assign its NPA/NXX codes in accordance with the establishment of its local calling areas, provided that it furnish the necessary information to BellSouth and all other telecommunication carriers so that they may identify local and toll traffic and provide for the proper routing and billing of calls. The Commission agrees.

Issue 29: In the event Intermedia chooses multiple tandem access ("MTA"), must Intermedia establish points of interconnection at all BellSouth access tandems where Intermedia's NXXs are "homed"?

BellSouth asserts that the CLEC must interconnect with BellSouth's network at each access tandem where the CLEC's NPA/NXX codes home. All telecommunications carriers, including BellSouth, must know where Intermedia's NPA/NXX codes are homed. If not, required translations and routing of calls will not be possible and calls will not be completed. BellSouth Brief, p. 26. Intermedia argues that it should not be required to establish points of interconnection at each and every BellSouth access tandem in the event it chooses multiple tandem access. Intermedia Brief, pp. 39-40.

The Staff recommends that the Commission require Intermedia to interconnect with BellSouth's network at each access tandem where its NPA/NXX codes home. The homing of the NPA/NXX codes will be as directed by the Commission in Issue # 26 in this Arbitration. The Commission adopts Staff's recommendation.

Issue 30: Should Intermedia be required to: (a) designate a "home" local tandem for each assigned NPA/NXX; and (b) establish points of interconnection to BellSouth access tandems within the LATA on which Intermedia has NPA/NXXs homed?

BellSouth states that Intermedia must establish one or more of the BellSouth local tandems as a home local tandem for its NPA/NXXs and establish interconnection to the BellSouth local tandem(s) on which Intermedia homed its NPA/NXXs. BellSouth also states that Intermedia may interconnect its network to BellSouth's network at one or more access tandems in the LATA for delivery and receipt of its access traffic. BellSouth Brief, pp. 26-27. Intermedia states that it should not be required to designate a "HOME" local tandem for each assigned NPA/NXX and to establish points of interconnection to each access tandem where NPA/NXXs are homed. Intermedia Brief, p. 40.

The Staff recommends that the Commission require Intermedia to interconnect with BellSouth's network at each access tandem where its NPA/NXX codes home. The homing of the NPA/NXX codes will be as directed by the Commission in Issue # 26 in this Arbitration. The Commission adopts Staff's recommendation.

Issue 31: For purposes of compensation, how should IntraLATA Toll Traffic be defined?

BellSouth states that IntraLATA toll traffic should be defined as any telephone call that is not local or switched access per this Agreement. (Tr. at 49). Intermedia asserts that the term "IntraLATA Toll Traffic" should not be defined in the parties' agreement to exclude data calls. Intermedia proposes that "IntraLATA Toll Traffic" be defined as "all basic intraLATA message service calls other than Local Traffic."

The Staff recommended that the Commission adopt Intermedia's definition of "IntraLATA Toll Traffic", i.e. "all basic intraLATA message service calls other than Local Traffic." The Commission agrees, and adopts Staff's recommendation.

Issue 32: How should "Switched Access Traffic" be defined?

BellSouth states Switched Access Traffic should be defined by reference to the BellSouth Access Tariff. Additionally, BellSouth states that IP telephony traffic should be considered switched access traffic. (Tr. at 50). BellSouth argues that IP telephony is simply a method of completing a telephone call and is a telecommunications service. The word "Internet" in Internet Protocol telephony refers to the name of the protocol; it does not mean that the service necessarily uses the World Wide Web and has nothing to do with the transmission medium. Intermedia states that BellSouth's definition of "Switched Access Traffic" must be rejected because, among other things, IP telephony is not access traffic. IP telephony is an information service.

The Staff recommends that the Commission adopt Intermedia's definition of "Switched Access Traffic", i.e. "Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Telephone Toll Service. Switched Access Traffic includes the following types of traffic: Feature Group A, Feature Group B, Feature Group D, 800/888 access and 900 access and their successors or similar Switched Exchange Access Services." However, Staff recommends that the Commission defer ruling on the issue of whether IP telephony is subject to access charges until it has had an opportunity to consider the issue further. While the FCC has not made any definitive rulings on the issue, it did suggest in its April 10, 1998 Report to Congress that some forms of IP Telephony might be telecommunications services rather than information services.⁴ The Commission adopts Staff's recommendation.

⁴ Under federal law, "Telecommunications services" means "offering of telecommunications for a fee directly to the public regardless of the facilities used." 47 U.S.C. § 153(46). "Telecommunications" means "the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or

Issue 33: Should BellSouth and Intermedia be liable to each other for lost switched access revenues due to lost or damaged billing data?

BellSouth states that it is willing to accept Intermedia's proposed language with one exception: BellSouth does not wish to place a cap on the liabilities of the parties. (Tr. at 54). Intermedia argue that in the event of a lost of data, both parties must cooperate to reconstruct the lost data and, where reconstruction is not possible, use a reasonable estimate of the lost data. In the event the estimated billing is not accepted for payment by the affected Access Service Customer(s), the responsible party will be liable to the other party for any resulting lost revenue up to a maximum of \$10,000 in the aggregate and in any one-month period.

The Staff recommends that the Commission adopt Intermedia's proposed language as noted above with the removal of the cap on the liabilities as requested by BellSouth. The Commission adopts Staff's recommendation

Issue 37: Should all framed packet data transported within a VC that originate and terminate within a LATA be classified as local traffic?

BellSouth proposed the following language on this issue:

Frame Relay framed packet data is transported within Virtual Circuits ("VC"). If all the data packets transported within a VC originate and terminate within the LATA, then for purposes of establishing interconnections between the Parties, such traffic will be treated the same as local circuit switched traffic ("Local VC"). This traffic will not be treated as Local Traffic for any other purpose under this Agreement, including but not limited to reciprocal compensation. (Tr. at 56)

Intermedia asserts that IntraLATA data packets traversing a virtual circuit are local traffic and subject to reciprocal compensation. Intermedia further believes that there is a great deal of local frame relay traffic in Georgia, particularly because of the size of the Atlanta local calling area. Intermedia has proposed that BellSouth's definition be utilized with the deletion of the last sentence. Intermedia has also proposed that the Commission require the Parties to consult with each other and arrive at an acceptable arrangement for the treatment of local frame relay traffic, submitting the result to the Commission on a date certain, perhaps 30 days from the decision. If this is not possible, both parties should be required to submit separate recommendations in writing within 5 days thereafter.

content of the information as sent and received." 47 U.S.C. § 153(43). "Information services" means "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications . . . but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20).

The Staff recommends that the Commission adopt Intermedia's position on this issue. The Commission agrees and finds that the Parties shall consult with each other and arrive at an acceptable arrangement for the treatment of local frame relay traffic, submitting the result to the Commission on 30 days from the effective date of this order. If the parties can reach agreement, both parties shall submit separate recommendations in writing within 5 days thereafter.

Issue 38: If there are no VCs on a frame relay interconnection facility when it is billed, should the parties deem the Percent Local Circuit Use to be zero?

BellSouth states that the appropriate PLCU for frame relay interconnection facilities, where there are no Virtual Circuits, should be zero. In the alternative, BellSouth offered to apply the same PLCU to all Local VCs in a given LATA, even if there are no Virtual Circuits on a particular frame relay interconnection facility when it is initially turned up for service. Intermedia asserts that the PLCU should be 100%. Any other percentage could unreasonable impose higher rates on Intermedia, even though BellSouth would not be incurring higher costs in providing the facility.

The Staff recommends that the Commission adopt BellSouth's alternative and apply the same PLCU to all Local VCs in a given LATA, even if there are no Virtual Circuits on a particular frame relay interconnection facility when it is initially turned up for service.

Issue 39: What are the appropriate charges for the following: (a) interconnection trunks between the Parties' frame relay switches; (b) frame relay network-to-network interface points; (c) permanent virtual circuit ("PVC") segments (i.e., Data Link Connection Identifier ("DLCI") and Committed Information Rates ("CIR")); (d) requests to change a PVC segment or PVC service order record?

Each of the items listed above in this issue are components of Frame Relay. As discussed under Issues 18(c) and 25, Intermedia has not demonstrated that it is impaired; thus, BellSouth is not required to provide packet switching capabilities to Intermedia on an unbundled basis unless all four of the conditions in Rule 51.319(c)(5) are met. In the event these four conditions are met, Intermedia shall pay the Access Tariff charge, with a true-up, until such time the Commission sets UNE rates for frame relay interconnection trunks.

Issue 48: Should the parties adopt the performance measures, standards and penalties imposed by the Texas Public Utility Commission on Southwestern Bell Telephone?

BellSouth argues that there is absolutely no reason that this Commission should disregard the well-established performance measurements adopted in Georgia for an entirely new set of guidelines set forth by the Texas Public Utility Commission. Intermedia argues that the Commission should consider adoption of additional measures and enforcement provisions to

ensure BellSouth's performance. The Staff recommends that the Commission direct that the parties incorporate the performance measures, standards, and penalties to be set by the Commission in Docket 7892-U. The Commission adopts Staff's recommendation.

III ORDERING PARAGRAPHS

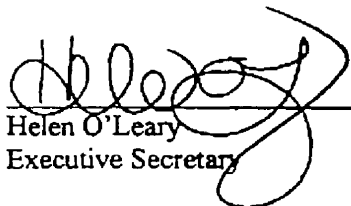
The Commission determines that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.


WHEREFORE IT IS ORDERED, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 5th day of July, 2000.


 Helen O'Leary
 Executive Secretary


 Bob Durden
 Chairman

09/26/00
 Date

09/26/00
 Date