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April 19, 2001

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Ms. Blanca S. Bayo, Director
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Tallahassee, Florida 32399-0850

Re: Docket No. 000075-TP

Dear Ms. Bayo:

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

1. Original and fifteen copies of the Prefiled Rebuttal Testimony of Timothy J. Gates; 4904-01 and

2. Original and fifteen copies of the Prefiled Rebuttal Testimony of William P. Hunt, III. 04905-01

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 19th day of April, 2001:

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By: ____________________
KENNETH A. HOFFMAN, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate Methods to compensate carriers for Exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.	)	Docket No. 000075-TP – Phase II

REBUTTAL TESTIMONY OF

TIMOTHY J. GATES

ON BEHALF OF
LEVEL 3 COMMUNICATIONS, LLC

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April 19, 2001

Its Attorneys

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

A: My name is Timothy J Gates. I am a Senior Vice President of QSI Consulting. My business address is 15712 W. 72nd Circle, Arvada, Colorado 80007.

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

A: Yes, I am.

Q: ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?

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

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of this rebuttal testimony is to respond to the testimonies of Verizon and BellSouth on Issues 14 and 15.

Q: PLEASE SUMMARIZE THE CONCLUSIONS IN YOUR TESTIMONY.

A: Level 3's position on Issue 14 is straight-forward and consistent with the Telecommunications Act ("Act") and the rules and orders of the Federal Communications Commission ("FCC") implementing the Act. Alternative local exchange carriers ("ALECs") are allowed to have only one point of interconnection ("POI") per LATA and it is the financial and operational responsibility of each carrier – both ALECs and incumbent local exchange carriers ("ILECs") - to get all of their own originating traffic to the POI. The

ILECs' proposals – to narrowly define "local calling area" and to require the ALECs to pick up the originating traffic in the local calling area – is not consistent with the Act or the FCC rules and orders, and should be rejected. The ILEC proposals – if accepted – would serve only to increase the costs of entry for the ILEC rivals to the detriment of consumers and the development of competition.

Level 3's position on Issue 15 is that calls between customers with telephone numbers in the same local calling area have been, and should continue to be, local traffic in all respects, including routing, retail billing, and intercarrier billing. The ILEC positions on this issue are inconsistent with the way they treat their own services, such as Extended Reach Service, Remote Call Forwarding and FX service. BellSouth's proposed FX database is not appropriate for several reasons. First, it was developed unilaterally with no Commission oversight or order. Second, the database is limited to FX numbers and does nothing to solve the same problem with Extended Reach Service and Remote Call Forwarding. Finally, if such a solution were to be imposed on the ALECs, it would unfairly and unnecessarily impose unknown costs on new entrants and delay their entry into the Florida market. The ILEC proposals are anticompetitive, not in the public interest, and should be rejected. So-called virtual NXX or FX-type calls should continue to be treated as local calls for all purposes, including reciprocal compensation.

Q: PLEASE DESCRIBE THE QUESTIONS POSED BY THE COMMISSION FOR EACH OF THE ISSUES YOU INTEND TO ADDRESS.

A: The question associated with Issue 14 has two subparts, and asks:

> **(a) What are the responsibilities of an originating local carrier to transport its traffic to another local carrier?**
>
> **(b) For each responsibility identified in part (a), what form of compensation, if any, should apply?**

The question associated with Issue 15 also has two subparts, and asks:

> **(a) Under what conditions, if any, should carriers be permitted to assign telephone numbers to end users outside the rate center in which the telephone number is homed?**
>
> **(b) Should the intercarrier compensation mechanism for calls to these telephone numbers be based upon the physical location of the customer, the rate center to which the telephone number is homed, or some other criterion?**

ISSUE 14 – (a) What are the responsibilities of an originating local carrier to transport its traffic to another local carrier?

(b) For each responsibility identified in part (a), what form of compensation, if any, should apply?

Q: PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THESE POINTS.

A: The dispute on this issue relates to an originating carrier's responsibility for getting traffic from the originating customers to the point of interconnection for hand-off to the terminating carrier. Under federal law, the ALEC has the right to designate the location of POIs with the ILEC. Indeed, the FCC has found that an ALEC is entitled under the Act to establish one POI to cover each LATA in which it operates.[1] To give ILECs the right to designate their own POIs, or to undermine an ALEC's right to designate a POI by requiring them to duplicate the ILEC network by building or buying transport into every local calling area, would undermine the purpose of giving the ALEC the right to designate the POI in the first instance, and would contradict the carefully defined interconnection obligations of ILECs under the Act.

Despite what federal law requires, two of the three ILECs in this proceeding suggest that ALECs should pick up traffic in the local calling area where the traffic originates – essentially establish a POI in each local calling area – as opposed to the ILEC delivering originating traffic to a POI outside the local calling area.

Q: WHAT ARE THE ILECs IN THIS CASE SAYING WITH RESPECT TO WHERE POIs MUST BE ESTABLISHED?

A: Sprint's witness Mr. Hunsucker agrees with Level 3's position that (1) federal law grants the ALEC the right to select the POI for the exchange of traffic and (2) it is the responsibility of the originating carrier to deliver its traffic to

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[1] In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Texas; **MEMORANDUM OPINION AND ORDER,** CC Docket No. 00-65; Released: June 30, 2000; at para. 78 (*Texas 271 Order*).

the POI selected by the ALEC. (Mr. Hunsucker Direct at 12-13). Verizon and BellSouth both disagree with Sprint and with the ALECs.

Verizon suggests that there are three options for interconnecting and exchanging traffic, but upon review, each is equally flawed in ignoring the terms of the Act and the policy of the FCC, and in mandating inefficient entry by competitors. Under the first option, the *originating* carrier provides the transport facilities *within* the local calling area to the carrier serving the user to whom the call is destined. (Dr. Beauvais Direct, at 10). All other transport facilities would then be the responsibility of the terminating carrier. Under the second option, the *receiving* carrier provides the transport facilities within the local calling area (as well as all facilities outside of the local calling area) from which the call originates. (Id.). The third option suggested by Verizon is that the interconnecting local exchange carriers could agree to a meet-point with each carrier providing its own facilities to the agreed upon point. (Id. at 11). However, Dr. Beauvais makes clear that under all three options, it is Verizon's position that the ILEC should not bear financial responsibility for any facilities outside of the local calling area in which its customer's call originated. Similarly, BellSouth suggests, through the testimony of Mr. Ruscilli, that ALECs are responsible for picking up BellSouth's originating traffic in each of BellSouth's local calling areas. (See, for instance, Ruscilli Direct, at 24).

Q: WHAT IS YOUR REACTION TO VERIZON'S PROPOSED THREE OPTIONS?

A: While carriers can always negotiate for a variety of different interconnection options depending upon what they are willing to bargain and exchange, the Act and FCC orders are very specific on the obligations of the parties. Thus, the three "options" presented by Verizon – while perhaps something parties can consider in individual negotiations – do not answer the fundamental question of what is required by law. Furthermore, in reviewing the specific options Verizon presents, it is not clear what Verizon means by interconnection in a given "local calling area." If Dr. Beauvais is referring to his definition of "local calling area" at page 8 of his testimony, then he is referring to the local calling scope as reflected in the local exchange tariffs. With that definition in mind, the first option – to have the originating carrier provide the transport facilities within the local calling area (but no farther than the boundaries of the local calling area) to the terminating carrier – is insufficient.

Q: PLEASE EXPLAIN.

A: It is the responsibility of the originating carrier to get the traffic to the POI of the terminating carrier wherever that POI is in the LATA. As the FCC noted in implementing Section 251 of the Act, Section 251(c)(2) gives ALECs the right to choose the most efficient point at which to exchange traffic.[2] The FCC has reiterated this point and noted specifically that ALECs can choose a single POI per LATA:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.[3]

The FCC's intent was to give ALECs a clear, low cost path of entry into the local market. The ILECs' position misleadingly appears to comply with the FCC's standards -- by saying that the single POI is not in dispute. But by imposing additional costly restrictions on the single POI, the ILECs' proposals are at odds with FCC regulations, and, if accepted, would essentially bar the efficient entry for new entrants that the FCC envisioned.

Q: DOES THE VERIZON PROPOSAL ADD COSTLY RESTRICTIONS TO THE SINGLE POI DEPLOYED BY SOME ALECS?

A: Yes. Verizon suggests that the originating carrier would only be responsible for providing the transport "within the local calling area" and not to the terminating carrier's POI if it happens to be outside the local calling area in question. Thus, in only one instance – when the POI happens to be in the

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[2] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket Nos. 96-98 and 95-185; **FIRST REPORT AND ORDER**; Released August 8, 1996; at ¶ 172; hereinafter referred to as the *Local Competition Order*.

[3] *Texas 271 Order* at ¶ 78.

local calling area from which the call originates – would Verizon's first "option" be consistent with FCC rules. Under this first "option," it seems that Verizon is requiring the ALECs to build or buy facilities to pick up the originating traffic at the boundary of each local calling area instead of at the designated POI.

Q: DO THE SECOND AND THIRD OPTIONS PROPOSED BY VERIZON SUFFER FROM SIMILAR FLAWS?

A: Yes. The second option would have the terminating carrier provide the transport within the local calling area, and, presumably, the transport from the local calling area to the POI as well. It is unclear in this case what responsibility, if any, the originating carrier would bear in that case for originating its own customers' traffic. The third option would split the difference between the two carriers by use of a meet-point, but it would still require the terminating carrier to transport traffic on the originating carrier's side of the POI. In both cases, Verizon is proposing to shift responsibility for carrying its originating calls on its side of the POI to the ALEC – thereby effectively shifting the location of the POI itself. Again, while carriers can negotiate any of these three "options" or any other interconnection architecture they deem appropriate, the goal of this proceeding is to determine the standards for what is required by law – the "rules of the road" as the FCC has put it – for interconnection of competing LECs' networks. The relevant standards are those set forth in the Act and FCC orders – that the

ALEC has the right to designate a POI at any technically feasible point on the ILEC's network, that traffic is exchanged at that POI, and that each carrier bears the responsibility of bringing its own originating traffic to the designated POI.

Q: DOES THE ILEC HAVE THE SAME RIGHT AS ALECs TO DESIGNATE POIs FOR ITS TRAFFIC?

A: No. That right is limited to new entrants and does not extend to ILECs. As I explained in my Direct Testimony, the FCC determined Congress did not grant ILECs such a right precisely because the ILEC would be able to use the placement of the POI to discriminate against its competitor.

Q: HAS THE FCC CLARIFIED ITS ORDERS ON THE RESPONSIBILITY OF ILECs TO BRING TRAFFIC TO THE POI?

A: Yes. Specifically, as I noted in my direct testimony, the FCC's *TSR Order* is directly on point. It states:

> The *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation.[4] (footnotes omitted)

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[4] In the Matter of TSR Wireless, LLC, et al, Complainants, v. U S WEST Communications, Inc., et. al., Defendants; **MEMORANDUM OPINION AND ORDER**; File Nos. E-98-13; E-98-15, E-98-16, E-98-17, E-98-18; Released: June 21, 2000; at ¶ 34; hereinafter referred to as the *TSR Order.*

By this reasoning, Level 3 should not have to pay Verizon or BellSouth to transport ILEC-originated traffic from the local calling area to the Level 3 POI.

Q: DO THE FCC'S RULES LEAVE OPEN THE POSSIBILITY THAT VERIZON OR BELLSOUTH COULD CHARGE FOR THE CARRIAGE OF TRAFFIC TO A SINGLE POI?

A: No. The FCC was careful to make clear elsewhere in the *TSR Order* that ILECs may not charge ALECs for either "facilities" or "traffic" on the ILEC side of the POI:

> The Metzger Letter correctly stated that the Commission's rules prohibit LECs from charging for facilities used to deliver LEC-originated traffic, in addition to prohibiting charges for the traffic itself.[5] (footnotes omitted)

Q: HAVE OTHER PARTIES SUGGESTED THAT THE LOCAL CALLING AREA IS THE LIMIT OF THEIR TRANSPORT RESPONSIBILITY?

A: Yes. Like Verizon, BellSouth claims that each of its local calling areas is a separate network to which the Act and FCC interconnection requirements apply. (Ruscilli Direct, at 16). To the best of my knowledge, BellSouth is the only ILEC to suggest that each local calling area is an individual network. Mr. Ruscilli's statement that "BellSouth has a number of distinct functional networks. For example, BellSouth has local networks, long distance

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[5] *TSR Order* at ¶ 25.

networks, packet networks, signaling networks, E911 networks, etc." is grossly misleading and incorrect. These "networks" do not exist on a stand-alone basis, they are completely interdependent. They use layered intelligence and have different functions, but work together in providing various services. In short, BellSouth's network is an integrated network capable of providing many different telecommunications services. BellSouth's executives have also suggested that the network is interconnected and integrated, as opposed to being a system of separate, distinct networks.[6]

Q: WHY WOULD VERIZON AND BELLSOUTH TAKE THE POSITION THAT ALECs MUST COLLECT ORIGINATING TRAFFIC FROM A SEPARATE NETWORK IN EACH LOCAL CALLING AREA?

A: Verizon and BellSouth are attempting to impose costs on their rivals, with the likely intent of maintaining their monopoly in the local market. Specifically, the ILECs are attempting to make ALECs carry the ILECs' own originating traffic -- for which the ILECs are financially and operationally responsible -- from every local calling area to the POI. In short, the ILECs are acknowledging that the ALEC can designate a single POI, and then arguing in the next breath to render this right meaningless. One can see the ILECs'

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6 See the Remarks of Duane Ackerman at the Goldman Sachs 2000 Communicopia IX Conference, October 4, 2000. Mr. Ackerman notes that the network is "...not about a series of stand-along internet data centers," but, "about an integrated e-business network platform, available to all of our customers wherever they are."

incentives here – this is a financial issue for the ILECs (see, for instance, Ruscilli Direct, at 17, lines 23-25), and it also generates inefficient costs for their competitors as they enter new markets in Florida. The ILECs' unsupported cries as to the costs they incur in taking calls to a single POI, however, have no place in this proceeding. The cost of a single POI per LATA could vary a lot depending on the facilities being used to transport traffic to the POI, the traffic volumes, and mileage. Even if the ILECs provided cost data to show that the specific distance and the specific amount of traffic involved in a given case was imposing some excessive and unreasonable cost on them (and they have not done so here), the FCC has mandated that the designation of technically feasible POIs should not include a consideration of cost.[7] Thus, to the extent this is a financial issue for the ILECs – a point they readily acknowledge – their cost concerns may not be considered under binding FCC rules.

Q: DO YOU FORESEE ANY PRACTICAL PROBLEMS THAT WOULD ARISE IF THE VERIZON OR BELLSOUTH PROPOSALS WERE MANDATED?

A: Yes. Most ILECs offer customers the ability to purchase local service that includes a larger calling scope, for instance, extended area service plans, than the traditional local calling area. However, not all of the ILEC customers

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[7] *Local Competition Order* at ¶ 199.

subscribe to such plans. If, under the Verizon/BellSouth theory, ILECs are required to hand off a call within the local calling area of the originating end user, their obligation to transport calls to ALECs could vary customer by customer. I believe this would be difficult, if even possible, to implement, and points out the absurdity of their position.

Q: DID THE FCC RECOGNIZE THAT NEW ENTRANTS WOULD LIKELY DEVELOP THEIR NETWORKS WITH ONLY ONE POI PER LATA?

A: Yes. The FCC recognized that most, if not all, new entrants would initiate service with a single POI per LATA. (*See, supra, Texas 271 Order* at ¶ 78). Consistent with the FCC's approach, and recognizing that many LATAs in BellSouth's network are served by more than one access tandem, this Commission has found that it is technically feasible to require a single POI per LATA at a BellSouth tandem (as requested by Sprint).[8]

Q: BUT DO THE ILECs HERE PROPOSE TO HAVE ALECs ESTABLISH A POI IN EVERY LOCAL CALLING AREA?

A: While the ILECs claim they are not requiring ALECs to build to a POI in every local calling area, in practice they are requiring ALECs to duplicate the

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[8] Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for Arbitration with BellSouth Telecommunications, Inc Concerning Interconnection Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996, Docket No. 961150-TP, **Final Order on Arbitration,** Order No. PSC-97-0122-FOF-TP, at 9 (Feb. 3, 1997).

ILEC network by either building or buying facilities to reach every local calling area – no matter how much or how little traffic is being exchanged and no matter how close or how far a given local calling area is from the POI. BellSouth witness Ruscilli suggests that ALECs are not required to build out their networks because they can "...lease facilities from BellSouth or any other provider to bridge the gap between its network (that is, where it designates its Point of Interconnection) and each BellSouth local calling area." (Ruscilli Direct, at 14, 24-25). Dr. Beauvais also posits that ALECs may build out a network or use the network of the ILEC. (Beauvais Direct, at 10-11). While these options are presented as if they offer cost savings to the ALEC, this is not the case. To the contrary, these proposals increase the costs of entry and line the pockets of the ILECs in the process. It is true that it is easier to lease facilities in many cases than build them from scratch, but the point is that BellSouth and Verizon's position would increase the cost for new entrants in conflict with the clear guidelines and orders of the FCC. Notably, this position would not only drive up competitors' costs by making them pay for transport before even beginning to provide service in any given local calling area, but it would also result in ALECs paying ILECs – their primary competitors in the local market – for this leased transport. The options BellSouth and Verizon identify – leasing facilities or building facilities – would only create financial barriers to competitive entry that were not intended by the FCC. In each instance, Level 3 would be faced with the prospect of incurring inefficient costs in order to provide service to Florida consumers. As Mr. Jones of Verizon acknowledges, "Verizon is a longstanding incumbent carrier of last resort, and its network is ubiquitous." (Jones Direct, at 2). Competitors should not be compelled to develop their networks – whether leased or owned – along the same lines as the network deployed by a "longstanding incumbent carrier" who received years of monopoly rents to put that network into place. If ALECs face the prospect of having to build or buy transport into every local calling area from day one of market entry – even before the first customer is won or service is turned up – the rational ALEC will be deterred from providing service in a wide scope of local calling areas. ALECs will limit their entry initially for fear of not being able to attract enough customers to support the dedicated transport costs associated with extending the ALEC network into each local calling area.

Q: DIDN'T THE COMMISSION REJECT A SIMILAR BELLSOUTH COMPENSATION PROPOSAL IN LEVEL 3'S ARBITRATION?

A: Yes. In the Level 3 arbitration (Docket No. 000907-TP), the Commission determined that BellSouth had failed to meet its burden of proof that interconnecting at a single POI per LATA caused BellSouth to incur uncompensated costs. For instance, BellSouth failed to explain why it interconnected at a single POI per LATA with Level 3 under the parties' old agreement but didn't submit any record evidence to show that this was "expensive." BellSouth also failed to prove that its local rates did not cover its costs of delivering its end users' calls to Level 3's selected POI. And, even if the ILECs could show that their local rates fail to recover their costs of originating calls, their remedy would be to petition this Commission for a rate adjustment, not to recover those costs from the terminating ALEC. Nor did BellSouth submit cost studies to substantiate the "per se higher cost" argument both Verizon and BellSouth are making in this proceeding. Finally, the Commission was not persuaded by the argument that requiring ILECs to deliver local traffic to a single POI in the LATA violated the FCC's *TSR Order*.

Neither Verizon nor BellSouth has submitted cost evidence in this proceeding to substantiate their claims. Instead, they are asking the Commission to assume, without reviewing any cost evidence, that they should be relieved of their 251(c)(2) duty to interconnect and their FCC Rule 51.703(b) duty to deliver traffic to the POI selected by the ALEC. Again, without submitting any cost evidence, they also argue they are entitled to require ALECs to either build facilities to each ILEC local calling area or they are entitled to an unspecified amount of compensation for some facility that they want ALECs to lease from them into each of their local calling areas. Adopting the Verizon/BellSouth position would make the FCC's single POI per LATA rule meaningless. I therefore believe that the Commission should find, as it did in the Level 3 arbitration with BellSouth, that absent a cost case that complies with Section 252(d)(1) of the Act, binding FCC rules prohibit an ILEC from charging for dedicated facilities used to haul the ILEC's traffic from the local calling area to the POI selected by the ALEC.

Q: ARE THERE OTHER NEGATIVE CONSEQUENCES OF THESE PROPOSALS THAT THE COMMISSION SHOULD CONSIDER?

A: Yes. In addition to the inefficiencies of requiring ALECs to build or lease dedicated facilities on a flat-rated, non-traffic sensitive basis even when little, if any, traffic actually flows over such facilities, the ILEC proposals here could lead to facilities exhaust.

Specifically, the problem with multiple POIs grows if the ILEC does not have additional capacity in place to lease dedicated facilities to each ALEC. In the case of facility exhaust, the ALEC would either have to build its own facilities or forego entering the market in the local calling area where facilities are exhausted. As the Commission knows, the business of laying fiber is a tedious process that requires permitting, tears up streets, and delays the provisioning of service for months. Verizon and BellSouth have failed to address the costs their proposals would impose on the public switched telephone network and the manner in which their proposals may delay the introduction of competition in Florida local exchange markets. The Commission should weigh these problems carefully in considering this issue.

Q: BUT WOULDN'T FAILURE TO ADOPT THE ILEC POSITION HERE INCENT ALECs TO KEEP A SINGLE POI IN PLACE?

A: Not necessarily. First, as Verizon notes, carriers can always agree to additional POIs by looking to various market and engineering factors and building upon the baseline requirement of a single POI in each LATA. Indeed, Level 3 has entered into such agreements on a negotiated basis with the former Bell Atlantic side of Verizon, with SBC, and even with BellSouth. Level 3 was able to do so in part because it had experience in these markets and, therefore, it had a better sense of anticipated levels of traffic and where to expect traffic in relation to its customer base. Other ALECs that have been in business for several years have multiple POIs per LATA as well. While such additional POIs are not required, the ALECs and ILECs have agreed to deploy additional POIs when sound engineering principles dictate such deployment. Level 3's concern is that if multiple POIs are mandated, without reference to traffic volumes, market topography, or customer base development, the requirement to establish multiple POIs upon market entry, one in every ILEC local calling area, would impose a barrier to entry and deter competitors from serving a broader cross-section of the consumer and business customers in the ILEC territory.

Q: DOESN'T MR. RUSCILLI STATE AT THE OUTSET THAT BELLSOUTH DOES NOT OBJECT TO AN ALEC DESIGNATING A

SINGLE POINT OF INTERCONNECTION? (RUSCILLI DIRECT, AT 13).

A: Yes, but again the devil is in the details. BellSouth's position that it does not object to interconnecting at a single point on the network is tied to an additional restriction: if Level 3 interconnects at a single point, BellSouth would have Level 3 bear any "additional costs" that arise from bringing traffic to the single POI with Level 3's network. In Mr. Ruscilli's view, bearing the costs of the facilities on BellSouth's side of the POI would unfairly burden BellSouth. Foisting these additional charges on Level 3 for choosing a technically feasible interconnection point, however, would constitute as much a barrier to entry as requiring Level 3 to establish multiple POIs. Indeed, if BellSouth's proposal were accepted, BellSouth traffic originated by BellSouth customers would get a free ride to the POI because Level 3 would be required to pay for those facilities.

Q: IF THE COMMISSION ACCEPTED THE ILECs' PROPOSAL TO FORCE ALECs TO PAY FOR THE TRANSPORT OF ORIGINATING LOCAL TRAFFIC TO THE POI, WHAT WOULD BE THE RESULT?

A: The result would be one of two scenarios – uneconomic duplication of the ILEC networks, and/or, elimination of competition caused by artificially increasing the costs of new entrants. Imposing the cost of interconnecting different network designs solely on ALECs defeats the policy of encouraging network innovation and ignores the fact that the ILECs' own customers cause the ILEC to incur the cost of delivering traffic to ALECs. The ILECs should not be allowed to use their historic network design as an excuse to prevent ALECs from selecting a technically feasible POI. If Verizon and BellSouth are permitted to require a POI in each ILEC local calling area, or even to require that ALECs build or lease facilities to each ILEC local calling area, the Commission would be undermining Congressional and FCC intent to promote competition and innovation in network design.

Q: PLEASE SUMMARIZE YOUR POSITION ON ISSUE 14.

A: The Act and the FCC's rules and orders implementing the Act are very clear – ALECs are allowed to have only one POI per LATA and it is the financial and operational responsibility of the ILEC to get all of its originating traffic to the POI. The ILECs' proposals – to narrowly define "local calling area" and to require ALECs to pick up the originating traffic in the local calling area – are not consistent with the Act or FCC rules and orders, and should be rejected. The ILEC proposals – if accepted – would serve only to increase the costs of entry for the ILEC rivals to the detriment of consumers and the development of competition.

ISSUE 15 – (a) Under what conditions, if any, should carriers be permitted to assign telephone numbers to end users outside the rate center in which the telephone number is homed?

(b) Should the intercarrier compensation mechanism for calls to these telephone numbers be based upon the

physical location of the customer, the rate center to which the telephone number is homed, or some other criterion?

Q: PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THIS POINT.

A: The two issues in dispute are (1) whether carriers should be allowed to assign a telephone number to a customer not physically located in the rate center to which the telephone number is homed, and (2) what is the proper basis for intercarrier compensation for calls utilizing such number assignment methods, typically referred to as virtual NXX or FX-type service. From what I understand, there is no dispute between the parties as to whether telephone numbers can be used in this manner. Rather, the dispute is over how the parties will compensate one another in exchanging such calls.

Q: WHAT IS VERIZON'S POSITION ON THESE ISSUES?

A: Verizon argues that the use of virtual NXX calling undermines the rating of a call and denies Verizon compensation for the transport costs it incurs to deliver calls to the ALECs. (Haynes Direct, at 8).

Q: DO YOU AGREE WITH VERIZON THAT THE USE OF A VIRTUAL NXX UNDERMINES THE RATING OF CALLS?

A: No. Witness Haynes recognizes that the routing of the call is not impacted by the use of a virtual NXX. (Haynes Direct, at 7). The use of virtual NXX codes is not unlawful or in any other way improper. Verizon, itself, provides several similar services, such as FX and Cyber DS1 service, to its customers in Florida, including ISPs. Indeed, nobody complained about such uses of

NXX codes until ALECs had some success in attracting ISP customers and the ILECs began looking for ways to avoid compensating them for serving and terminating calls to ISPs.

Q: COULD YOU PLEASE EXPLAIN THE NATURE OF THE DISPUTE WITH RESPECT TO COMPENSATION FOR THESE CALLS?

A: Yes. There really are two "subparts" to the compensation issue. First, the ILECs object to paying ALECs any compensation for terminating the so-called FX-type or virtual NXX call placed by the ILEC customer. Second, the ILECs instead demand compensation from the ALEC for the apparent bother of serving their customer to originate the call. In both respects, the ILECs' arguments fail because they are contrary to the historical manner in which calls have been rated, the manner in which calls continued to be rated at retail today, and the manner in which the calls are routed between the carriers.

Q: WOULD YOU PLEASE ADDRESS THE FIRST ILEC ARGUMENT – THAT THEY NEED NOT COMPENSATE THE TERMINATING CARRIER FOR THE TRANSPORT AND TERMINATION OF SUCH CALLS?

A: Verizon is obligated to pay inter-carrier compensation for all calls originated by Verizon customers to ALEC telephone numbers with "NXX" codes associated with the calling party's local calling area. Calls are conventionally rated and routed throughout the U.S. telephone industry based upon the NXX codes of the originating and terminating numbers. Even under the proposals of BellSouth and Verizon, these calls would continue to be rated as local for retail purposes. (As far as I know, no ILEC is proposing to impose toll charges on its own customers even though it claims that these calls are toll for inter-carrier compensation purposes.) Moreover, these calls are routed to the POI established by the parties for local traffic and handed off just as any other local call would be. Given that the calls are routed as local and would continue to be rated as local at retail, calls between an originating and terminating NXX associated with the same local calling area should be rated as local for inter-carrier compensation purposes as well.

Q: WOULD YOU PLEASE ADDRESS THE SECOND PART OF THIS COMPENSATION DISPUTE – WHETHER ILECs SHOULD RECEIVE COMPENSATION FOR ORIGINATING THESE CALLS?

A: The second "sub-issue" in dispute is whether ILECs should be allowed to impose per-minute originating switched access charges for carrying such calls to the parties' POI. Access charges have never been imposed on locally-dialed calls. Under any scenario involving a locally-dialed call, the only costs an ILEC incurs are the transport and switching charges required to bring traffic to the POI between the ILEC and the ALEC. These costs do not change based upon the location of ALEC customers, so there is no economic justification for treating these calls differently from any other locally-dialed call. Further, it would be inconsistent and anti-competitive to allow the ILECs to evade their inter-carrier compensation obligations and, at the same time, to charge an ALEC originating switched access charges for calls going to a particular NXX code. Not only would the ILEC double-recover its costs (once through local rates paid by its customer and again through access charges paid by the ALEC) for carrying the traffic over local interconnection facilities to a POI, but it would be compensated for costs it does not even incur and be given a free ride on the ALEC's network on top of that. Each of the issues, when considered individually, would put new entrants such as Level 3 at an extreme disadvantage in the marketplace if the ILECs were to prevail. Taken together, the requirement to pay the ILEC access charges on these locally-dialed calls, and to forego recovery of expenses for terminating ILEC calls, would be detrimental to Level 3 in its bid to offer competitive local exchange service in Florida.

Q: MR. HAYNES SAYS THAT THE ALECS ARE "...USING THE ILECS' NETWORKS FREE OF CHARGE TO TRANSPORT TOLL CALLS." (HAYNES DIRECT, AT 14). PLEASE COMMENT.

A: Verizon is suggesting that the virtual NXX calls are somehow impacting it differently than other local calls. This is simply not the case. There is no additional cost or activity imposed on Verizon as a result of virtual NXX calls.

Q: CAN YOU EXPLAIN WHY THERE IS NO ADDITIONAL COST TO VERIZON IN ORIGINATING A LOCALLY-DIALED "VIRTUAL NXX" CALL?

A: Yes, but let me first explain how a call to a customer with a physical presence is routed. Assuming a Verizon customer originates a call to a Level 3 customer, Verizon is financially and operationally responsible for getting the call to Level 3's POI. The legal and policy bases for this proposition were discussed extensively in my discussion of Issue 14. Verizon switches and transports the call to the POI over its own network facilities. From the POI, Level 3 is responsible for terminating the call for Verizon – again, switching and transporting the call to the called party, wherever that party might be located. In return, Verizon pays Level 3 for terminating the call. The originating carrier is compensated for its portion of the call through local rates, vertical features (i.e., call waiting, call forwarding, caller ID, anonymous call rejection and other star code type services), extended area service arrangements, subscriber line charges and other subsidies, such as universal service support where applicable, and access charges for both intraLATA and interLATA toll, that support local rates. The routing and compensation responsibilities are reversed if a Level 3 customer calls a Verizon customer.

Q: HOW DOES THIS DIFFER FOR A CALL PLACED TO A CUSTOMER WITH A VIRTUAL PRESENCE?

A: It doesn't. Verizon routes the call to the POI in exactly the same manner.

Q: DOES THE USE OF VIRTUAL NXX CODES IMPACT THE HANDLING OR PROCESSING OF A CALL TO AN ALEC CUSTOMER?

A: No. Verizon would always be responsible for carrying the call to the POI on its own network and then paying Level 3 to transport and terminate the call from that point. The use of a virtual NXX does not impact Verizon's financial and/or operational responsibilities such that it would be able to avoid compensating the terminating LEC, or justify collecting additional compensation.

Mr. Haynes admitted that all traffic from Verizon customers to ALEC customers – regardless of the type of traffic – is routed in the same manner. Specifically, he states, "This means that all calls originated by Verizon's customers to a CLEC's customers, whether local or toll, are routed to the same CLEC switch." (Haynes Direct, at 8).

Q: VERIZON CLAIMS THAT IT INCURS ADDITIONAL COSTS BY HAVING TO TRANSPORT ALEC TRAFFIC ALL OVER THE STATE WHEN ALECs USE VIRTUAL NXX ARRANGEMENTS. (HAYNES DIRECT, AT 19). HOW DO YOU RESPOND TO THAT CLAIM?

A: Verizon is wrong, and it is really mixing up two different issues here. Mr. Haynes' concerns about where ILECs have to transport a call relate to the location of the POI, not the location of customers behind the POI. As discussed above, under the Act and existing FCC rulings and regulations, ALECs are permitted to establish a single POI per LATA to exchange traffic with an ILEC. Verizon is therefore obligated to transport traffic to the ALEC POI in a given LATA regardless of the location of the ALEC customer behind the ALEC switch.

Virtual NXX calls are not handled or treated any differently than other local calls. Despite the fact that Verizon cannot tell the difference between virtual NXX and other local calls, and despite the fact that Verizon's costs don't change for handling such calls, Verizon's solution is to have ALECs terminate Verizon customer calls for free. This is not equitable, fair or consistent with the way Verizon treats its own FX or FX-like services.

Q: VERIZON CLAIMS THAT BECAUSE VIRTUAL NXX CALLS TERMINATE IN A DIFFERENT EXCHANGE, THEY ARE NOT LOCAL. (HAYNES DIRECT, AT 7, 11). ARE THERE INTEREXCHANGE CALLS THAT ARE TREATED AS LOCAL?

A: Yes. EAS calls immediately come to mind, but there are many different types of services that provide interexchange calling but are treated as local for reciprocal compensation purposes. BellSouth offers Metro Area Calling ("MAC") in some states, such as Tennessee. Let me provide an example of how MAC calling works. If I lived in Nashville, I would have local calling within the county in which I reside and within all counties that are immediately adjacent to (contiguous to) my county. All of these calls – even though they cross what have historically been considered exchange boundaries – are local calls. As such, reciprocal compensation would apply when a carrier terminates these calls for another carrier. Another interexchange service that is treated as local is BellSouth's Extended Reach Service. Remote Call Forwarding also provides interexchange calling but the calls are treated as local. Indeed, many areas along state boundaries have interstate local calling.

Q: YOU MENTIONED THAT SOME INTERSTATE CALLS ARE LOCAL CALLS FOR PURPOSES OF RECIPROCAL COMPENSATION. PLEASE EXPLAIN.

A: There are many areas in the United States that have communities of interest that cross state boundaries. In Florida, for instance, in the northern part of the state, calls between Florida and Alabama -- in the city of Florala -- are local. In Tennessee, calls to and from Memphis, Tennessee and West Memphis, Arkansas are local calls. In Mississippi, you can make interstate calls to two different states on a local basis. For instance, you can make local calls from Southaven, Mississippi to Memphis, Tennessee and to West Memphis, Arkansas. Calls between Louisville, Kentucky and Jeffersonville, Indiana are local as well. These are just a few examples of interstate local calling.

All of these calls would be treated as local calls for purposes of reciprocal compensation.

Q: YOU MENTIONED THAT ILECs OFFER REMOTE CALL FORWARDING AND EXTENDED REACH SERVICE. DO ILECs CHARGE RECIPROCAL COMPENSATION ON SUCH CALLS?

A: Yes, at least in the case of BellSouth. As such, it is completely inconsistent for ILECs to deny reciprocal compensation to ALECs for similar traffic when an ALEC terminates ILEC calls to its customers.

Q: IF ILECs CHARGE ALECs RECIPROCAL COMPENSATION FOR CALLS TO FX, REMOTE CALL FORWARDING AND EXTENDED REACH CUSTOMERS, DOES THAT MEAN ILECs CONSIDER THESE CALLS TO BE LOCAL CALLS FOR PURPOSES OF RECIPROCAL COMPENSATION?

A: Yes. These examples expose the inconsistent nature of the ILECs' position in this case. ILECs cannot have it both ways; they cannot charge ALECs reciprocal compensation for such calls and then deny the same compensation to ALECs when ALECs terminate such calls for ILECs.

Q: MR. RUSCILLI CLAIMS THAT SINCE FEBRUARY 23, 2001, BELLSOUTH NO LONGER CHARGES RECIPROCAL COMPENSATION FOR CALLS TO BELLSOUTH FX CUSTOMERS. (RUSCILLI DIRECT, AT 34). PLEASE COMMENT.

A: Since early last summer BellSouth has been talking about the database it was going to develop to prevent charging of reciprocal compensation on calls to its FX customers. BellSouth initiated this "fix" after it became obvious in hearings that its position on virtual NXX calls was inconsistent with its own business practices.

BellSouth claims that it made the change to be consistent with FCC rules, but those rules have been in place for many years. Only now, when ALECs are using virtual NXX to provide a needed service for customers, has it implemented this FX database.

Q: DOES THE FX DATABASE PROPOSED BY BELLSOUTH APPLY TO JUST FX CUSTOMERS AND NUMBERS OR TO ALL SERVICES THAT PROVIDE THIS FUNCTIONALITY TO CONSUMERS?

A: BellSouth's plan only applies to its FX service. There is evidently no attempt on the part of BellSouth to use this "fix" to prevent its billing system from charging ALECs for interstate local calls or calls to EAS numbers, MAC calling areas, Remote Call Forwarding numbers, or Extended Reach Service customers. It appears that BellSouth is focusing on its FX service because virtual NXX and FX-type calls are a successful competitive response to that particular service. As such, the plan is anticompetitive and discriminatory.

Q: HAS ANY COMMISSION EVER OPINED ON THE ACCURACY OR EFFECTIVENESS OF THE BELLSOUTH FX DATABASE?

A: No. As I noted above, BellSouth did this unilaterally with no Commission oversight or order. The parties have never investigated the veracity of BellSouth's claims on the accuracy, cost or effectiveness of the database.

Q: WHAT WOULD IT COST ALECs TO IMPLEMENT A SIMILAR SYSTEM?

A: We have no idea what it would cost each ALEC to develop a similar system. We do know that BellSouth has spent months and many hours developing the database. We do know that ALECs do not have the resources that BellSouth has – fewer people, fewer dollars and fewer resources. We also know that ALECs operate in more regions of the country than the BellSouth region. To the extent BellSouth prevails on this issue, then ALECs may have to develop and maintain different internal systems for BellSouth as compared to the rest of the country.

Q: IN CLOSING, AND IN RESPONSE TO THE POINTS RAISED BY VERIZON, CAN YOU CONTRAST THE POSITIONS OF THE PARTIES ON THIS REMAINING ISSUE?

A: Yes. Let's look at the pros and cons of utilizing virtual NXX codes in Florida, and continuing to treat those calls as local. The pros of treating such calls as local are as follows: (1) provides LEC customers with a local presence in additional local calling areas; (2) allows business expansion in the short-run while businesses build-out their facilities over time; (3) provides ISPs with a cost-effective way to provide local dial-up Internet service to customers throughout the state without having to have offices in every local calling area; (4) provides consumers – both ILEC and ALEC customers – with efficient, low-cost dial-up access to the Internet; (5) treats these calls as local consistent with the way Verizon and BellSouth appear to treat their own FX service, EAS, MAC calling, Remote Call Forwarding, Extended Reach Service, and certain interstate local calls; and (6) provides a competitive alternative to the FX services provided by the ILECs.

Q: WHAT ARE THE NEGATIVE CONSEQUENCES OF PROVIDING VIRTUAL NXX SERVICE IN FLORIDA?

A: I don't believe there are any negative consequences associated with providing this service. The ILECs have not provided any evidence – and in fact, they cannot provide any evidence – that these calls cost any more to deliver than other local calls. Further, the ILECs have not shown that the use of virtual NXX codes is improper, illegal or in any way harmful to the public interest. As such, there is no justification for denying ALECs reciprocal compensation for these calls, nor is there any justification for charging originating access charges.

Verizon's position in this case derives from the fact that ALECs have been successful in attracting customers with this service. Verizon can compete for these customers as well. The Commission should not allow ILECs to use the regulatory process to impede the development of competition in the local market.

Q: ARE THERE NEGATIVE CONSEQUENCES OF ADOPTING THE ILEC PROPOSAL FOR TREATMENT OF THESE CALLS?

A: Yes. Denying intercarrier compensation and imposing access charges would make it uneconomic for ALECs to offer this service. Consequently, if the ALEC and the ISP continue to serve areas currently served through virtual NXX arrangements, the cost of Internet access would increase for consumers. ISPs would more likely decide not to use ALECs and would likely use ILEC services -- thereby eliminating competition in this area of the local market. These results -- increased costs for consumers and eliminating competitive alternatives -- are not in the public interest.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes, it does.