

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

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

**PREFILED REBUTTAL TESTIMONY**  
**LEVEL 3 COMMUNICATIONS, LLC**  
**WITNESS WILLIAM P. HUNT, III**

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

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

Russell M. Blau  
Tamar E. Finn  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
(202) 945-6917 (Tel.)  
(202) 424-7645 (Fax)  
e-mail: [tefinn@swidlaw.com](mailto:tefinn@swidlaw.com)

Its Attorneys

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FPSC-RECORDS/REPORTING

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

3       **A:**    My name is William P. Hunt, III. I am Vice President for Public Policy for  
4       Level 3 Communications, Inc., the parent company of Level 3  
5       Communications, LLC (“Level 3”). My business address is 1025 Eldorado  
6       Boulevard, Broomfield, CO, 80021.

7       **Q:    ARE YOU THE SAME MR. HUNT WHO SUBMITTED DIRECT**  
8       **TESTIMONY IN THIS DOCKET ON MARCH 12, 2001?**

9       **A:**    Yes.

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

11      **A:**    I am responding to the testimony submitted by BellSouth’s witness Mr.  
12      Ruscilli and Sprint’s witness Mr. Hunsucker regarding Issue 16 (definition  
13      of and compensation for Internet Protocol (“IP”) telephony).

14      **Q:    DO YOU AGREE WITH MR. RUSCILLI’S AND MR. HUNSUCKER’S**  
15      **RECOMMENDATIONS REGARDING ISSUE 16?**

16      **A:**    No. Mr. Ruscilli’s recommendation that phone-to-phone IP telephony be  
17      subject to access charges (Ruscilli at 47, 49) ignores FCC precedent and is  
18      based on a simplistic description of a single application of phone-to-phone  
19      IP telephony. Mr. Hunsucker recommended that IP telephony be defined as  
20      services that “enable real-time voice transmission using Internet protocols.”  
21      (Hunsucker at 15-16) Referencing selected paragraphs of the FCC Report to  
22      Congress, Mr. Hunsucker recommended that both phone-to-phone and  
23      computer-to-phone IP telephony be subject to access charges. (Hunsucker at

1 17-19) I believe his recommended definition and compensation mechanism  
2 are also based on a faulty description of these services and a selective reading  
3 of the FCC Report to Congress.

4 **Q: PLEASE PROVIDE AN EXAMPLE OF THE FACTUAL**  
5 **INACCURACIES IN THEIR DESCRIPTIONS OF IP TELEPHONY.**

6 **A:** Mr. Ruscilli testified that the characteristics of phone-to-phone IP telephony  
7 include use of traditional telephone sets instead of computers. However, as  
8 Ms. Geddes testified for Verizon, an “IP phone” may be designed to look and  
9 work just like a conventional phone but include the functionalities of a  
10 personal computer. (Geddes at 11) In other words, phone-to-phone IP  
11 telephony may not use traditional telephone sets.

12 **Q: MR. HUNSUCKER DEFINED IP TELEPHONY AS SERVICES THAT**  
13 **“ENABLE REAL-TIME VOICE TRANSMISSION USING INTERNET**  
14 **PROTOCOLS.” (HUNSUCKER AT 15-16) DO YOU AGREE WITH**  
15 **HIS DEFINITION?**

16 **A:** No. First of all, Mr. Hunsucker’s definition is too broad. Although Mr.  
17 Hunsucker testified that his definition of IP telephony includes three classes  
18 of services, computer-to-computer, computer-to-phone, and phone-to-phone,  
19 he proposed that only the latter two be subject to access charges. Yet he  
20 never defined each class or explained why two of those classes should be  
21 subject to traditional access charges. His recommendation also contradicts  
22 the FCC’s Report to Congress. As FCC Commissioner Ness advised the

1 International Telecommunication Union’s (“ITU”) IP Telephony Forum, in  
2 the Report to Congress, the FCC:

3 preserved the unregulated status of IP telephony,  
4 although we noted that we would determine on a case-  
5 by-base basis whether certain phone-to-phone IP  
6 telephony – as opposed to computer-to-computer IP  
7 telephony configurations – may be properly classified  
8 as telecommunications services. Our decision to  
9 adopt a case-by-case approach, rather than make  
10 definitive pronouncements in the absence of a  
11 complete record on specific offerings, was prudent  
12 due to the nascent state of the technology. As in other  
13 instances, the FCC recognized the dynamism of the  
14 Internet and the need to consider whether any  
15 tentative definition of IP telephony would be quickly  
16 overcome by technological changes.<sup>1</sup>

17 Although the FCC proposed a tentative definition of phone-to-phone IP  
18 telephony in the Report to Congress, it refused to classify that service as  
19 telecommunications. Neither Mr. Ruscilli nor Mr. Hunsucker acknowledged  
20 that portion of the FCC’s Report to Congress in their testimony and neither  
21 of them suggested adopting the FCC’s tentative definition.

22 As Mr. Gillan testified, IP telephony encompasses a continuum of  
23 services. (Gillan at 2) The evolving nature of IP applications makes it  
24 difficult if not impossible to adopt a definition that will not be overcome by  
25 changes in technology. In contrast, Congress has adopted definitions of  
26 “telecommunications service” and “information service” and the FCC has

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<sup>1</sup> Remarks of Commissioner Susan Ness (as prepared for delivery), Information Session - WTPF (March 7, 2001) (emphasis added) (“Ness Remarks”).

1 established precedent for applying those definitions on a case-by-case basis  
2 to classify particular services. According to FCC Chairman Powell,  
3 classifying IP telephony as subject to traditional regulatory regimes is:

4 probably the \$64 billion question, literally. Part of the  
5 answer to that depends on a pretty fact specific  
6 evaluation of whether IP telephony can fairly be  
7 evaluated and categorized as a telecommunications  
8 service as defined by Congress... If the factual  
9 analysis were to suggest it was something else, for  
10 example an information service – or as many of the  
11 Internet services have been categorized – it would  
12 largely fall outside of at least the traditional  
13 application of those kinds of subsidy programs.<sup>2</sup>

14  
15 **Q: PLEASE PROVIDE AN EXAMPLE OF THE MISAPPLICATION OF**  
16 **THE FCC’S ENHANCED SERVICES TEST.**

17 **A:** Part of the problem with Mr. Ruscilli’s testimony is that he made conclusory  
18 statements that were not supported by the fact-specific, case-by-case analysis  
19 of services required under the FCC’s rules. For instance, at page 45 of his  
20 testimony, Mr. Ruscilli stated that “Phone-to-Phone IP Telephony is  
21 telecommunications service that is provided using Internet Protocol for one  
22 or more segments of the call.” At page 46 of his testimony, he stated that a  
23 characteristic of phone-to-phone IP telephony is that it is basic  
24 telecommunications, not enhanced. However, Mr. Ruscilli never backed up  
25 these conclusory statements with an analysis of whether phone-to-phone IP

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<sup>2</sup> *Agenda and Plans for Reform of the FCC: Hearing before the Telecommunications and Internet Subcommittee of the House Energy and Commerce Committee, 107th Cong. 24, Testimony of Chairman Powell (March 29, 2001) (“Powell Congressional Testimony”).*

1           telephony meets the definition of “telecommunications service” or instead  
2           qualifies as an “information service” under the Act and FCC rules.

3           **Q:   DIDN'T MR. RUSCILLI DESCRIBE THE MECHANICS OF A**  
4           **PHONE-TO-PHONE IP TELEPHONY CALL AND SHOW THAT IT**  
5           **FAILS THE FCC'S ENHANCED SERVICES TEST? (RUSCILLI AT**  
6           **45-46)**

7           **A:**   No. Mr. Ruscilli described the mechanics of a single, hypothetical phone-to-  
8           phone IP telephony application and argued that it fails the FCC's enhanced  
9           services test because there is no net change in protocol. Mr. Ruscilli ignored  
10          the second and third prongs of the test under which a service may also qualify  
11          as enhanced. (*See* Hunt Direct at 22) Mr. Ruscilli also tried to draw a broad  
12          generalization that all so-called phone-to-phone IP telephony services fail the  
13          net protocol test. However, his broad generalization does not withstand  
14          scrutiny. In the case of IP phones, for instance, phone-to-phone IP telephony  
15          may undergo a net protocol change from IP format to traditional circuit-  
16          switched format, or vice versa.

17                   His example shows why the Commission should not adopt a  
18                   definition of IP telephony that treats all services using a particular technology  
19                   (whether it be so-called phone-to-phone IP telephony or computer-to-phone  
20                   IP telephony) as telecommunications, no matter how the service operates or  
21                   what information processing features it may incorporate. It is possible that  
22                   some IP telephony services are not enhanced, but that does not justify a

1 conclusion that all such services, or even a subset of such services, are never  
2 enhanced. As Mr. Gillan noted in his direct testimony (at 9), any service that  
3 combines an information capability with telecommunications (so-called  
4 hybrid services) is classified as an information service. Under Mr.  
5 Hunsucker's broad definition, hybrid services could be subject to access  
6 charges because they enable, among other things, real-time voice  
7 transmission. Thus Mr. Hunsucker's definition could violate the FCC's  
8 hybrid services rule. Likewise, under Mr. Ruscilli's approach, even if a  
9 particular service met the Act's definition of an information service, it could  
10 nevertheless be subject to access charges if it could also be classified as  
11 phone-to-phone IP telephony. Because any attempt to define IP telephony  
12 runs the risk of conflicting with definitions in the Act, I urge the Commission  
13 to apply the Act's definitions to particular services rather than creating a new  
14 definition that tries to capture the evolving continuum of IP telephony.

15 **Q: MR. RUSCILLI STATED THAT "THE FCC HAS PROVIDED NO**  
16 **EXEMPTION FROM ACCESS CHARGES WHEN IP TELEPHONY**  
17 **IS USED TO TRANSMIT LONG DISTANCE**  
18 **TELECOMMUNICATIONS." (RUSCILLI AT 48) PLEASE**  
19 **COMMENT.**

20 **A:** Mr. Ruscilli's statement does not support his recommendation. While it is  
21 correct that the FCC has not exempted telecommunications services from  
22 access charges, it is also true that the FCC has exempted information services

1 from access charges. The important question is whether IP telephony is a  
2 telecommunications service or an information service. If IP telephony is a  
3 telecommunications service, it is subject to access charges; if it is an  
4 information service, it is not. I cannot emphasize enough the importance of  
5 the statutory definitions.

6 **Q: BOTH MR. RUSCILLI AND MR. HUNSUCKER EQUATED IP**  
7 **TELEPHONY WITH THE “MATURE” CIRCUIT-SWITCHED LONG**  
8 **DISTANCE INDUSTRY. (RUSCILLI AT 47, HUNSUCKER AT 17)**  
9 **DO YOU AGREE WITH THEIR CHARACTERIZATION?**

10 **A:** No. Their characterization is not borne out by an analysis of where IP  
11 telephony is today. As Ms. Geddes (at 13) and Dr. Beauvais (at 15) testified,  
12 IP telephony is a nascent technology and service. Level 3 believes that IP  
13 telephony usage will some day catch up with and surpass conventional,  
14 circuit-switched long distance usage. However, today IP telephony usage  
15 does not come close to matching traditional long distance usage. As  
16 Commissioner Ness told the ITU IP telephony forum, IP telephony “still  
17 constitutes a minute fraction of global voice traffic – close to one percent of  
18 that traffic, at best.”<sup>3</sup> FCC Chairman Powell testified that:

19 [o]ne of the reasons I tend to resist prematurely  
20 intervening in a context of IP telephony is because it  
21 is engaged in a wonderful period of innovation,

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<sup>3</sup> Ness Remarks at 1.



1                    experimentation ... and consumers are really reaping  
2                    the benefit of its deployment.<sup>4</sup>

3  
4                    I recommend that this Commission, like the FCC, resist any urge to intervene  
5                    in the market for IP telephony by imposing outdated regulations designed for  
6                    circuit-switched telecommunications services on these new and developing  
7                    services.

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

9                    **A:    Yes, it does.**

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<sup>4</sup>                    Powell Congressional Testimony at 24.