BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000075-TP (PHASE II)

In the Matter of

INVESTIGATION INTO APPROPRIATE METHODS TO COMPENSATE CARRIERS FOR EXCHANGE OF TRAFFIC SUBJECT TO SECTION 251 OF THE TELECOMMUNICATIONS ACT OF 1966.
_______________________________/

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VOLUME 5

Pages 748 through 921

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE: Friday, July 6, 2001

TIME: Commenced at 9:00 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services

FPSC Division of Commission Clerk and Administrative Services

Appearances: (As heretofore noted.)

DOCUMENT NUMBER-DATE

 08864 JUL 20 01

FPSC-COMMISSION CLERK

I N D E X

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
19	TJG-1	752	920
CERTIFICATE OF REPORTER			921

P R O C E E D I N G S

TIMOTHY J. GATES

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

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q Have you been sworn, Mr. Gates?

A Yes, I have.

Q Good afternoon. Could you please state your name and business address?

A Yes. My name is Timothy J. Gates. My business address is 15712 West 72nd Circle in Arvada, A-R, V as in Victor, A-D-A, Colorado 80007.

Q By whom are you employed?

A I am employed by QSI Consulting as Senior President and partner.

Q On whose behalf are you testifying in this proceeding?

A Level 3 Communications.

Q Have you prepared and caused to be filed 43 pages of prefiled direct testimony in this proceeding?

A Yes, I have.

Q Do you have any changes or revisions to your prefiled testimony?

A No, I do not.

Q If I asked you the same questions set forth in your prefiled direct testimony today, would your answers be the same?

A Yes, they would.

MR. HOFFMAN: Mr. Chairman, I would ask that Mr. Gates' prefiled direct testimony be inserted into the record as though read.

CHAIRMAN JACOBS: Without objection, show Mr. Gates' prefiled direct testimony is entered into the record as though read.

MR. HOFFMAN: Thank you.

BY MR. HOFFMAN:

Q Mr. Gates, you have also attached Exhibit TJG-1, a summary of your qualifications to your prefiled direct testimony?

A Yes, sir.

MR. HOFFMAN: Mr. Chairman, I would ask that Exhibit TJG-1 be marked for identification.

CHAIRMAN JACOBS: Show it marked as Exhibit 19.

MR. HOFFMAN: Thank you.

(Exhibit 19 marked for identification.)

BY MR. HOFFMAN:

Q Mr. Gates, you have also prepared and caused to be filed 33 pages of prefiled rebuttal testimony in this case?

A Yes, I have.

Q Any changes or revisions to your prefiled rebuttal testimony?
A No, no changes or revisions.
Q If I asked you the same questions contained in your prefiled rebuttal testimony today, would your answers be the same?
A Yes, they would.
MR. HOFFMAN: Mr. Chairman, I would ask that Mr. Gates' prefiled rebuttal testimony be inserted into the record as though read.
CHAIRMAN JACOBS: Without objection, show the prefiled rebuttal testimony is entered into the record as though read.
MR. HOFFMAN: Thank you.

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 as follows: 15712 W. 72nd Circle, Arvada, Colorado 80007.

Q: WHO EMPLOYS YOU?

A: I am employed by QSI Consulting, Inc., ("QSI")

Q: PLEASE DESCRIBE QSI AND IDENTIFY YOUR POSITION WITH THE FIRM.

A: QSI is a consulting firm specializing in the areas of telecommunications policy, econometric analysis and computer aided modeling. I currently serve as Senior Vice President.

Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?

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

Q: PLEASE DESCRIBE YOUR EXPERIENCE WITH TELECOMMUNICATIONS POLICY ISSUES AND YOUR RELEVANT WORK HISTORY.

A: Prior to joining QSI I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MWCOM for 15 years in various public policy positions. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MWCOM's use of external consultants. I testified on behalf of MWCOM more than 150 times in 32 states and before the FCC on various public policy issues ranging from costing, pricing, local entry and universal service to strategic planning, merger and network issues. Prior to joining MWCOM, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. I also worked at the Bonneville Power Administration as a Financial Analyst doing total electric use forecasts and automating the Average System Cost methodology while I attended graduate school. Prior to doing my graduate work, I worked for ten years as a forester in the Pacific Northwest for multinational and government organizations. Exhibit __ (TJG-1) to this testimony is a summary of my work experience and education.

Q: HAVE YOU EVER TESTIFIED IN FLORIDA?

A: Yes. I filed testimony in the Commission's Investigation into IntraLATA Presubscription (Docket No. 930330-TP). That testimony was filed on behalf of MCI Telecommunications Corporation in 1994. I also filed testimony in recent arbitrations for US LEC (Docket No. 000084-TP) and Level 3 (Docket No. 000907-TP).

Q: WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A: The purpose of my testimony is to address certain issues identified at the Commission Staff's January 24, 2001 Issue Identification Meeting. Specifically, I will address issues 13, 14 and 15.

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

A: The question associated with Issue 13 asks:

> **How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?**

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?**

Q: HOW IS YOUR TESTIMONY ORGANIZED?

A: My testimony is organized by issue. The various discussions of the issues can be found on the following pages:

Issue 15 Page 25

Q: PLEASE SUMMARIZE THE CONCLUSIONS YOU REACH IN YOUR TESTIMONY.

ISSUE 13 – The Commission should establish a policy that calls are "local" by comparing the NXX codes of the calling and called numbers. There are several benefits to this approach. First, this proposal continues the status quo. The industry has used this process to determine the treatment of calls for many decades. Central office switches – of both ILECs and ALECs – have this processing ability in them today. No feature or hardware development will be required. As such, there will be no additional expenses for the industry or delays in implementing this proposal. Second, this proposal will work for all providers regardless of their local calling area definition. Comparing NPA/NXX codes will provide a consistent and fair method of determining whether a call is local. Finally, this proposal avoids consumer confusion by maintaining existing conventions in rating and routing calls.

ISSUE 14 – The FCC has established rules of the road that govern LECs' interconnection obligations. The first rule is that the ALEC may select the Point of Interconnection ("POI") for the exchange of traffic. Congress and the FCC gave ALECs the right to select the POI because ILECs would have the incentive and ability to impose unnecessary costs on their competitors if they had the right to unilaterally designate POIs. The second rule is that each LEC is responsible for delivering its traffic to the POI and paying the other

LEC reciprocal compensation for accepting the traffic at the POI and delivering it to the called party. Because a LEC recovers the costs of originating traffic through the rates it charges its end users, the FCC prohibits LECs from assessing other carriers for the costs of delivering the LEC's traffic to the POI. As the Commission found in Docket 000907-TP, taken together, these two rules establish that each LEC must deliver its traffic to the POI selected by the ALEC and each LEC recovers the cost of delivering its traffic to the POI from its end users, not its competitors.

ISSUE 15 – Level 3, other ALECs, and ILECs currently assign NXX codes to customers who are not physically located in the exchange area associated with a particular NXX. These calls have been and are currently treated as local calls. For example, BellSouth has offered "foreign exchange service" ("FX") with this capability for many years. This practice has many benefits to the public, including allowing consumers and small businesses, especially those in isolated or rural areas of the state, efficient, reasonably priced access to Internet service providers ("ISPs") and other businesses that otherwise would be impossible if such calls were treated as toll calls or anything other than local.

There is no economic, engineering, factual or policy basis for making intercarrier compensation depend on the actual location of the terminating carrier's customer. Indeed, from the standpoints of both cost and functionality, the physical location of the terminating carrier's customer is irrelevant. Historically, the telecommunications industry has compared NXX codes to determine the appropriate treatment of calls as local or toll. Calls to a given NXX code use the same path and the same equipment to reach the POI and the terminating carrier's switch regardless of the location of the terminating customer. To single out a class of calls and to suggest that no compensation should be paid for carrying those particular calls is not equitable and ignores the simple economic and engineering reality that both kinds of calls are functionally identical and should be subject to the same intercarrier compensation framework that the parties have negotiated. Such treatment would also be inconsistent with the overarching goals and objectives of the Telecommunications Act, and would violate existing FCC rules and Orders. The intercarrier compensation mechanism should be based on the rate center to which the telephone number is homed.

ISSUE 13 – How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?

Q: PLEASE DEFINE A LOCAL CALLING AREA IN GENERAL TERMS.

A: Newton's Telecom Dictionary defines "Local Service Area" as "The geographic area that telephones may call without incurring toll charges." That same dictionary defines a "local call" as "Any call within the local service area of the calling phone."[1] In an older reference, "Engineering and Operations in the Bell System," it states, "A local calling area, or exchange area, is a geographic area within which a strong community of interest exists (that is, heavy calling volume among customers within the area). It may be served by several central offices."[2]

Q: FOR PURPOSES OF THIS PROCEEDING, HOW SHOULD THE COMMISSION DEFINE LOCAL CALLING AREA?

A: A concise definition is difficult because of the many different types of local calling currently available to consumers and businesses. When people subscribe to local service they are frequently provided with may different service types to choose from – all of which might be considered local calling.

Q: PLEASE PROVIDE SOME EXAMPLES.

A: A person might select flat rate service or measured service. Flat rate service results in unlimited calling within the local calling area. Local measured service has a charge per unit of telephone usage – either a per minute or per call charge. Mandatory local measured service – without the option of flat rate service – is rare because of the distributional effects on certain classes of customers (i.e., elderly, poor). Frequently a local measured service option is available for those who can only afford limited use of the telephone.

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1 Newton, Harry; Newton's Telecom Dictionary; 16th Edition; Telecom Books; 2000.

2 Engineering and Operations in the Bell System, Second Edition, AT&T Bell Laboratories, Murray Hill, NJ; 1984; at 56.

Depending upon where the person is relative to other areas, he or she may select extended area service or other local calling plans which would be in addition to the basic service but which would extend their local calling area. Such plans can be one-way (i.e., from calling area A to calling area B, but not from calling area B to calling area A), two-way, optional or mandatory.

Q: ARE YOU SUGGESTING THAT THE DEFINITION OF LOCAL CALLING AREA CAN BE DIFFERENT FOR DIFFERENT CONSUMERS IN THE SAME AREA?

A: Yes. It is entirely possible that five people in a cul-de-sac would have very different local calling areas based upon their calling patterns, community of interest, income, age, interests, etc. Indeed, the local calling area might be different based upon the ALEC selected by the consumer or business.

Q: CAN AN ALEC HAVE DIFFERENT LOCAL CALLING AREAS THAN THE ILEC?

A: Yes, it can. While this varies from state to state, it is not uncommon for regulatory commissions to allow ALECs to define their local calling areas in a different geographic configuration from that of the ILEC. Indeed, an ALEC may use this difference in local calling scope as a way to distinguish its service from that of the incumbent. With the introduction of competition at the local level, carriers will seek to differentiate their service from the incumbent and other ALECs. Such differentiation can take the form of additional features, reduced prices, different pricing schemes, and expanded local calling areas. Depending upon calling characteristics, an expanded local calling area could be an important service feature in the minds of discerning consumers. I have heard of examples where some ALECs have offered LATA-wide local calling. I also understand that BellSouth maintains intercarrier compensation arrangements with some LECs that define the local calling area, as between carriers, as the entire LATA.

Q: MR. GATES, YOU HAVE SUGGESTED THAT ALECS MIGHT USE DIFFERENT LOCAL CALLING AREAS AS A MARKETING TOOL. WOULD DIFFERENT LOCAL CALLING AREAS BE CONFUSING FOR CONSUMERS?

A: Yes, they might. And for that reason, most ALECs choose to have their local calling areas coterminous with those of the ILEC. Nevertheless, sophisticated consumers and business users may make good use of such local calling area disparities.

Q: HOW ARE LOCAL CALLING AREAS ESTABLISHED BY LOCAL EXCHANGE COMPANIES – EITHER ILECS OR ALECS?

A: Local exchange companies do not unilaterally establish local calling areas. Local calling area boundaries are usually established through tariffs on file with the regulatory commission. The LEC recommends a local calling area and associated rates and the commission – frequently with input from other parties, including consumer groups – reviews the filing. Calling patterns, network considerations, communities of interest, future growth and numerous other issues impact the ultimate boundaries. The approved local calling areas are then tariffed and made available to consumers.

Q: YOU HAVE DISCUSSED DIFFERENT SIZES AND TYPES OF LOCAL CALLING AREAS. CAN LOCAL CALLING AREAS TRANSIT STATE BOUNDARIES?

A: Yes. In fact, interstate local calling is relatively common. Let me provide some examples. There are many areas in the United States that have communities of interest that cross state boundaries. In Tennessee, for example, calls to and from Memphis, Tennessee and West Memphis, Arkansas are local calls. Another example is Bristol. The state line goes right through the middle of Bristol, so there are many local calls that go between Tennessee and Virginia that are actually interstate. Calls from Louisville, Kentucky to Jeffersonville, Indiana are local. In Mississippi, you can make interstate calls to two different states on a local basis. You can make local calls from Southaven, Mississippi to Memphis, Tennessee and to West Memphis, Arkansas. There is also county wide local calling permitted in DeSoto County, Mississippi so that consumers can reach Hernando (the county seat) without having to dial a toll call. There are probably examples of interstate local calling in Florida, but I am not aware of them at this time.

Q: HOW DOES A LEC DETERMINE WHETHER A CALL IS LOCAL OR TOLL?

A: When a customer makes a call, the switch in the central office receives the dialed digits. The dialed digits – specifically, the NPA/NXX of the dialed number – are used to determine whether the call is to be treated as local or toll.

Q: BEFORE CONTINUING YOUR DISCUSSION OF HOW TO DETERMINE LOCAL VERSUS TOLL CALLS, PLEASE EXPLAIN WHAT YOU MEAN BY NPA/NXX.

A: The NPA is known as the area code. NXX codes are the fourth through sixth digits of a ten-digit telephone number. For example, in my office telephone number, (303) 424-4433, the NPA is "303," and the NXX code is "424". The NXX code is also known as the central office code.

Q: HOW ARE CUSTOMERS ASSIGNED AN NXX CODE?

A: Carriers, like Level 3 and BellSouth, request and are assigned blocks of telephone numbers by the numbering administrator. The carriers then assign numbers to their customers as requested.

Q: GIVEN THAT UNDERSTANDING OF NPA/NXX CODES, HOW DOES THE LEC DETERMINE WHETHER A CALL IS LOCAL OR TOLL?

A: The LEC central office switch compares the number of the calling party with the number of the party being called to determine whether the call is local or toll. Standard industry procedure provides that each NXX code is associated with a particular rate center.[3] A single rate center may have more than one NXX code, but each code is assigned to one and only one rate center. The NXX uniquely identifies the central office switch serving the NXX code, so that each carrier that is routing a call knows to which end office switch to send the call.

Comparing NXX codes establishes the routing and rating of the call. If the NXX code of the called number is not found in the translation table of the central office switch, the call is routed to the tandem for additional information and routing.

The translation tables may also have additional information on the routing of the call based on the dialed digits. The switch may have specific instructions on how to route and bill certain calls to certain NXX codes.

Q: IS IT POSSIBLE TO ASSIGN NXX CODES TO CUSTOMERS WHO DO NOT PHYSICALLY RESIDE IN THE RATE CENTER NORMALLY ASSIGNED TO THE NXX?

A: Yes. It is not uncommon for NXX codes to be assigned to customers who are not physically located in the rate center where the NXX is "homed." When an ILEC provides this arrangement, it typically is called foreign exchange or FX service. This type of arrangement also may be referred to as "Virtual NXX" because the customer assigned the telephone number has a "virtual"

[3] A rate center is a geographic location with specific vertical and horizontal coordinates used to determine mileage, for rating local or toll calls.

presence in the calling area associated with that NXX. Calls to these customers are still routed to the end office switch associated with the NXX code, but then are routed within the terminating carrier's network to the called party's actual physical location. The virtual NXX issue is discussed in detail in response to Issue 15.

Q: GIVEN THE DISPARITY IN THE TREATMENT OF CALLS AS YOU'VE DESCRIBED ABOVE, HOW DO YOU PROPOSE TO DEFINE A LOCAL CALLING AREA?

A: The Commission should establish a policy that calls are determined to be "local" by comparing the NXX codes of the calling and called numbers. The only time this traditional and existing convention should be violated is when the Commission has approved local calling areas – such as interstate or extended area service local calls – which cannot readily conform to this process. The translation tables of the central offices switches will be programmed to treat these special calls as local – just as they are today.

Q: WHAT ARE THE BENEFITS OF YOUR DEFINITION OF LOCAL CALLING AREA?

A: There are several benefits to this approach. First, this proposal continues the status quo. The industry has used this process to determine the treatment of calls for many decades. Central office switches – of both ILECs and ALECs – have this processing ability in them today. No feature or hardware development will be required. As such, there will be no additional expenses for the industry or delays in implementing this proposal. Second, this proposal will work for all providers regardless of their local calling area definition. As illustrated above, there are a wide variety of local calling scenarios being offered by carriers today. The physical locations of the calling and called parties is not sufficient to determine the correct treatment of calls. Comparing NPA/NXX codes will provide a consistent and fair method of determining whether a call is local. Finally, this proposal avoids consumer confusion by maintaining existing conventions in rating and routing calls. The industry is moving towards simpler calling plans because consumers have been harmed by misleading or confusing plans in the past. To introduce a new method of determining what is local and what is toll would be a step backwards for consumers.

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: ARE LECs' TRAFFIC EXCHANGE RESPONSIBILITIES ESTABLISHED BY THE ACT AND THE FCC?

A: Yes. The Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), identifies specific responsibilities of both ILECs and ALECs, and the FCC has implemented those guidelines in its orders and rules. The FCC has adopted "rules of the road" governing LECs' interconnection responsibilities. The first rule is that an ALEC may select the POI where the parties will exchange traffic. (Mr. Hunt addresses the legal basis for the first rule in his testimony.) The second rule is that each LEC is responsible for delivering its originating traffic to the POI and paying the other LEC reciprocal compensation for terminating such traffic. As the Commission found in Docket 000907-TP, together, these two rules establish that each LEC must deliver its traffic to the POI selected by the ALEC and each LEC recovers the cost of delivering that traffic from its end users, not its competitor.

Q: ARE THERE ECONOMIC CONSIDERATIONS THAT UNDERLIE THE FIRST RULE OF THE ROAD?

A: Yes. As the FCC noted in implementing Section 251 of the Act:

> Section 251(c)(2) gives *competing carriers* the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.[4]

The location and number of POIs is determined based on financial and engineering parameters. Each carrier needs to install transmission facilities and equipment to deliver its originating traffic to each POI, and to receive

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[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98*, First Report and Order, 11 FCC Rcd 15499, ¶ 209 (1996) (*"Local Competition Order"*) (emphasis added).

terminating traffic from other carriers. Of course, ILECs in Florida already have ubiquitous networks throughout their service territories and can use existing facilities to transport the traffic they exchange with ALECs. Thus, if the volume of traffic originating from and/or terminating to a particular ILEC tandem or local calling area is low, it is more efficient for such traffic to be carried on the incumbent's common network capacity than to establish dedicated capacity that would be used solely to carry traffic between the ILEC and ALEC. In most instances, the ILEC has been in the local exchange business for over 100 years and has built ubiquitous facilities to transport traffic throughout its service area during that period of time. Since the ILEC already has facilities in place to carry this traffic, and therefore benefits from certain economies of scale, its costs to switch and transport traffic it exchanges with an ALEC are relatively low. Both parties benefit from these economies of scale, the ILEC for its originating traffic and the ALEC for its terminating traffic. On the other hand, new entrants like Level 3 must construct facilities. This requires obtaining local permits, digging up streets, etc., or leasing or acquiring entirely new facilities for access to each POI. Therefore, the selection of POIs has significant competitive implications.

The ILEC should not be permitted to impose interconnection requirements that require ALECs to duplicate the ILEC's legacy network architecture. Rather, new entrants should be free to deploy least cost, forward-looking technology, such as the combination of a single switching entity with a fiber ring to serve an area that the ILEC may serve through a hub-and-spoke, switch-intensive architecture. Initial interconnection at the tandem level and at a single POI per LATA is crucial to providing new entrants this flexibility. For a new entrant to begin service, it requires a single connection capable of handling all of its calls, including local, toll, and access traffic. However, as Mr. Hunt discusses, Level 3 agrees that sound engineering principles may eventually dictate that Level 3 add additional POIs.

Q: HAS THE FCC EXPLAINED WHY IT IS IMPORTANT THAT ALECs BE PERMITTED TO SELECT POIs FOR THE EXCHANGE OF TRAFFIC?

A: Yes. At paragraph 172 of the Local Competition Order the FCC notes that Section 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carrier's cost of, among other things, transport and termination of traffic." As Mr. Hunt explains, this Commission has also found that the POI is where the exchange of traffic takes place.

The FCC explained, in part, why the right to select POIs is provided to ALECs, and not ILECs, at paragraph 218 of the Local Competition Order:

> Given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself.

Further, economics literature regularly discusses the fact that a firm, such as an ILEC, may benefit from strategic behavior that raises its rivals' costs.[5]

Q: MIGHT AN ILEC USE THE ABILITY TO ESTABLISH POIs TO IMPEDE COMPETITION?

A: Yes, it might. The FCC recognized that one of the goals of competition was to eliminate this ILEC ability. At paragraph four of the Local Competition Order the FCC states:

> Competition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of local services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition. Under section 251, incumbent local exchange carriers (LECs), including the Bell Operating Companies (BOCs), are mandated to take several steps to open their networks to competition, including providing interconnection, offering access to unbundled elements of their networks, and making their retail services available at wholesale rates so that they can be resold.

It is clear that ALECs such as Level 3 do not have the ability – by virtue of existing bottleneck facilities – to impede free market competition. Indeed, companies such as Level 3 have no monopoly markets or captive customers that would give them market power sufficient to harm the public interest. It is for that reason that ALECs have the right to designate POIs but ILECs do not.

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[5] See, Carlton and Perloff, Modern Industrial Organization, Third Edition, Addision-Wessley, 2000.

Q: ARE THERE PUBLIC POLICY REASONS TO DENY AN ILEC THE ABILITY TO ESTABLISH POIs FOR TRAFFIC IT ORIGINATES?

A: Yes. If an ILEC were allowed to identify POIs for originating traffic it would be able to disadvantage ALECs by imposing additional and unwarranted costs on new entrants. Such a result is not in the public interest and would severely impede the development of competition. If an ILEC were allowed such discretion, it may force ALECs to essentially duplicate the incumbent's network. The traffic volumes and business that new entrants are able to attract as they enter a market would never support the wholesale duplication of an ILEC's network. Indeed, a requirement to build or lease facilities to each ILEC local calling area would discourage ALECs from ever entering new markets until they could secure a customer base large enough to justify such an investment.

An ILEC's desire to identify POIs for its originating traffic is understandable, especially given its incentives discussed above, but it is not in the public interest. Granting ILECs such an ability would force new entrants like Level 3 to build facilities to each ILEC local calling area or to pay the ILEC for transport of ILEC-originated traffic from the local calling areas to Level 3's POI. Such a result would be inconsistent with the goals of the Local Competition Order and the Act. Simply because an ILEC's network has been in place for decades does not mean that it is the most efficient network. New entrants utilizing new technology and information should not be limited or hampered by the decisions of ILEC network planners who established switch locations and local calling areas decades ago under a legal and regulatory regime which permitted a monopoly local exchange market. Rather, the promotion of efficient markets should dictate that new entrants such as Level 3 only be required to interconnect in a specific area where traffic volumes and customer demand justify investment in facilities needed to reach that area.

Q: COULD YOU PLEASE EXPLAIN THE SECOND RULE OF THE ROAD CONCERNING EACH LEC's OBLIGATION TO DELIVER ITS TRAFFIC TO THE POI?

A: Yes. Each carrier is responsible, financially and operationally, to deliver traffic to the POI.

Q: HAS THE FCC ISSUED ANY RECENT OPINIONS ON THE RESPONSIBILITIES OF LECs IN THIS REGARD?

A: Yes, it has. There has been some debate about rule 51.703(b), which states, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." In a recent case before the FCC, several incumbent LECs argued that this rule would apply only to "traffic," and would not prevent a carrier from charging an interconnecting carrier for the cost of "facilities" used in originating traffic. The FCC flatly rejected that argument:

> Defendants argue that section 51.703(b) governs only the charges for "traffic" between carriers and does not prevent LECs from charging for the "facilities" used to transport that traffic. We find that argument unpersuasive given the clear mandate of the *Local Competition Order*. 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. Since the traffic must be delivered over facilities, charging carriers for facilities used to deliver traffic results in those carriers paying for LEC-originated traffic and would be inconsistent with the rules. Moreover, the Order requires a carrier to pay for dedicated facilities only to the extent it uses those facilities to deliver traffic that it originates. Indeed, the distinction urged by Defendants is nonsensical, because LECs could continue to charge carriers for the delivery of originating traffic by merely re-designating the "traffic" charges as "facilities" charges. Such a result would be inconsistent with the language and intent of the Order and the Commission's rules.[6]

This Commission also rejected a similar argument raised by BellSouth in its arbitration with Level 3 - Docket 000907-TP. It is clear that each LEC bears the responsibility of operating and maintaining the facilities used to transport and deliver traffic on its side of the POI. This responsibility extends to both the facilities as well as the traffic that transits those facilities. Likewise, an interconnecting LEC will bear responsibility for the facilities on its side of

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[6] *TSR WIRELESS, LLC, et al, Complainants, v. US WEST COMMUNICATIONS, INC. et al, Defendants*, **MEMORANDUM OPINION AND ORDER**; File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, ¶25 (rel. June 21, 2000) (*TSR Order*) (footnotes omitted, emphasis in original).

the POI, but then recover the costs of transporting and terminating traffic over those facilities from the originating LEC.

Q: DID THE FCC FURTHER EXPLAIN ITS LOGIC FOR REQUIRING THE ORIGINATING CARRIER TO BEAR THE COSTS OF DELIVERING ORIGINATING TRAFFIC TO THE TERMINATING CARRIER?

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

> According to Defendants, the Local Competition Order's regulatory regime, which requires carriers to pay for facilities used to deliver their originating traffic to their co-carriers, represents a physical occupation of Defendants property without just compensation, in violation of the Takings Clause of the Constitution. We disagree. The *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[7] (emphasis added) (footnotes omitted)

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[7] Id. at ¶ 34.

If an ALEC is forced to deploy or lease facilities from an ILEC's local calling areas to the POI, the ILEC will be getting a free ride. Not only would the ALEC have to provide facilities on its side of the POI, but it would also have to provide (or pay for) facilities on the ILEC side of the POI. Such a proposal is not equitable or consistent with this Commission's or the FCC's interconnection principles.

Q: IN THE PAST, BELLSOUTH HAS ARGUED THAT IT MAY CHARGE ALECs NOT ONLY FOR THE FACILITIES FROM EACH LOCAL CALLING AREA TO THE POI, BUT ALSO FOR THE TRUNKS OR "LANES" ON THOSE FACILITIES. IS IT APPROPRIATE TO IMPOSE ANY CHARGES FOR LOCAL INTERCONNECTION TRUNKS?

A: No. It is inappropriate to impose any charges for local interconnection trunks. These are co-carrier trunks provided for the mutual benefit of the parties in exchanging customer traffic, and both parties must deploy matching capacity on each side of the POI. It is each carrier's financial and operational responsibility to provide facilities on its side of the POI to deliver traffic to the terminating carrier.

Q: WHAT DO YOU MEAN WHEN YOU SAY THE TRUNKS ARE FOR THE "MUTUAL BENEFIT" OF THE PARTIES?

A: The interconnection trunks are as valuable to BellSouth as they are to Level 3 or any ALEC. They are used by BellSouth to ensure that calls between its customers and Level 3 customers are completed; without such trunks, BellSouth would not be able to provide the level of services demanded by its own customers.[8] Second, it is not as if Level 3 bears no cost in interconnecting with BellSouth. To the contrary, for every trunk that BellSouth sets up to handle Level 3 traffic, Level 3 must ensure that the appropriate level of capacity is available on its own side of the POI so that calls coming over the BellSouth trunks can then flow over the Level 3 network to their intended destination (and vice versa). Thus, it is in both carriers' interest (or at least in both carriers' customers' interest) to have an adequate amount of co-carrier trunks in place. Requiring each carrier to pay the other for co-carrier trunks is therefore inappropriate and contrary to the principles underlying cooperative reciprocal interconnection. It also conflicts with the principles of interconnection compensation, since the focus should only be on the carriage of traffic by one carrier for another carrier, rather than the facilities used to carry that traffic.

Q: CAN YOU PLEASE CLARIFY WHAT CHARGES ARE APPROPRIATE FOR THE TERMINATION OF TRAFFIC EXCHANGED AT THE POI?

A: Yes. Once an ALEC hands its originating traffic to an ILEC at the POI, the ALEC must pay the ILEC reciprocal compensation for the terminating

[8] By "level of service," I am referring to the amount of blocking experienced by consumers.

functions the ILEC performs. The same principle applies when the ILEC hands traffic off to the ALEC at the POI for termination. BellSouth, like most ILECs, has developed elemental, per minute of use rates for tandem switching, common transport, and end office switching. However, all three rates do not always apply. For instance, some ALECs may determine that the traffic volume to a particular end office justifies purchasing dedicated transport to that end office. In such instances, the appropriate dedicated transport rates would apply in addition to the end office switching rate. However, since the dedicated transport is used to carry the traffic in lieu of tandem-switched transport, the tandem switching and common transport elemental rates would not apply. In either case, as illustrated above, trunk charges are not appropriate.

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: WHY WOULD CUSTOMERS WANT A TELEPHONE NUMBER WITH A NXX CODE OUTSIDE OF THEIR LOCAL CALLING AREA?

A: Customers want to use these so-called virtual NXX codes because it allows them to take advantage of state-of-the-art, currently available technologies that allow consumers to reach their businesses without the disincentive of a toll call. It also allows businesses and organizations to provide service in other areas before they actually have facilities or offices in those areas. Absent such calling plans, consumers would have to wait for carriers to build out their networks – which could take years and millions of dollars. For instance, so-called virtual NXX arrangements enable ISPs, among other customers, to offer local dial-up numbers throughout Florida, including to more isolated, rural, areas of the State. Access to the Internet is affordable and readily available in all areas of the state because these NXX arrangements allow ISPs to establish a small number of points of presence ("POPs") that can be reached by dialing a local number regardless of the physical location of the Internet subscriber. Small businesses in rural areas in particular, benefit from low-cost Internet access and increasingly depend on such access to remain competitive. Thus, virtual NXX arrangements allow for widespread affordable Internet access which benefit Florida's consumers while promoting economic development.

Other organizations, such as the Florida State government, may also want to make use of virtual NXX arrangements to allow residents to contact state agencies – which may actually reside in Tallahassee – without incurring the cost of a toll call. Such an arrangement would allow the state to provide services in rural areas without building or renting space in those localities and without relocating employees.

Carriers use virtual NXX codes because they allow them to respond to customer demand for new and innovative services. In 1997 and 1998, there was considerable discussion about the benefits expected from competition in the local exchange market. Among the more important expected benefits were that competition would drive competitors to develop and utilize networks efficiently in order to gain competitive advantages, by allowing them to serve customers at lower cost. Prohibiting all carriers from using virtual NXXs would constitute an artificial impediment to this natural progression of a developing competitive market, and would deny Florida residents the associated benefits.

Q: IS THIS NXX CODE ISSUE SIMPLY AN ASPECT OF THE ISP COMPENSATION ISSUE?

A: No. Although many ISPs do use virtual NXX arrangements, these services are also used by other businesses and organizations that want to maintain a local telephone number in some community where they do not have a physical presence. This issue therefore affects ordinary local voice telephone calls as well as ISP traffic.

Q: IS THE FEATURE PROVIDED WITH VIRTUAL NXX A SERVICE THAT NEEDS TO BE TARIFFED OR OTHERWISE APPROVED BY THE FLORIDA COMMISSION?

A: No. Virtual NXX is not a service per se; it is a network functionality. However, a LEC may have its own name for a service that is meant to address this functionality, such as Foreign Exchange.

Q: IS IT UNLAWFUL OR AGAINST ANY RULES FOR ALECs TO PROVIDE VIRTUAL NXXS TO THEIR CUSTOMERS?

A: No. The use of virtual NXX codes is not unlawful or in any other way improper. ILECs provide several virtual NXX services, such as FX service, to their customers, 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. From what I understand, there is no dispute between the parties as to whether codes can be used in this manner -- rather; the dispute is over how the parties will compensate one another in exchanging such calls.

Q: IF THE COMMISSION PROHIBITED USE OF VIRTUAL NXXs, WOULD THAT MEAN THAT EXTENDED AREA SERVICE ("EAS") CALLS WOULD NO LONGER BE CONSIDERED LOCAL?

A: Depending upon how the Commission chooses to address this issue, it could. Any call that this Commission currently considers local, but that transits an exchange boundary, could be considered a toll call. In the mid to late 80's – when interexchange competition was just starting to develop – the LECs requested that commissions change certain toll traffic into local traffic through EAS arrangements. Now that competition is starting to develop for local traffic, the LECs want the commission to change the treatment of certain local traffic back to toll.

Q. IN OTHER PROCEEDINGS, BELLSOUTH AND OTHER ILECs HAVE ARGUED THAT VIRTUAL NXX IS MORE LIKE 800 SERVICE THAN FX SERVICE. DO YOU AGREE?

A. No. Most importantly, unlike virtual NPA/NXX's, 8XX NPAs are not associated with a particular geographic area – callers from many geographic areas can thus place a toll-free call to an 8XX NPA. In contrast, for a virtual NXX customer, only those callers located within the rate center with which the customer's NXX is associated can reach them without incurring a toll charge. Additionally, an 800 call is and has always been a toll call. The dialing pattern – 1-8XX-NXX-XXXX – is clearly a toll-dialing pattern. When the call is dialed, the local switch recognizes the call as a toll call (because of the 1+ toll indicator) and routes the call to the access tandem for additional routing instructions. In addition to being routed through the access tandem, the call requires a database dip. The call uses the Line Information

Database or LIDB, over the SS7 network, to get additional routing and billing instructions. The LIDB provides the long distance carrier and the actual terminating number for the call. In essence, the 1-800 number is converted to the "real world"telephone number for terminating the call. 1-800 service is generally used for intraLATA, interLATA or inter-state calling, not for local calling. There are also many different terminating options available to the customer. Calls may be terminated to a PBX, over dedicated lines, on a time sensitive basis to different locations across the country (i.e., for airline reservations), or on a call-by-call basis to different geographic areas. There are also many different billing plans for 1-800 service that are not available for standard local calling or FX/virtual NXX service. Extensive call details can be provided to help the customer understand geographic demand for its services.

Q. ARE VIRTUAL NXX CALLS ROUTED IN A SIMILAR MANNER TO 8XX CALLS?

A. No. Virtual NXX calls are routed like all other local calls. They use standard seven or ten-digit dialing and they do not go through the access tandem. Database dips are not required and the number does not have to be translated to yet another number for termination. Plus, there are no special billing or termination plans for virtual NXX service.

Q: IS VIRTUAL NXX MORE SIMILAR TO ILEC FX SERVICE?

A: Yes. Virtual NXX and FX calls are similarly provisioned and provide the same function to end-users.

Q: DOES BELLSOUTH CHARGE ALECs LIKE LEVEL 3, RECIPROCAL COMPENSATION WHEN AN ALEC CUSTOMER MAKES A CALL TO THE BELLSOUTH FX CUSTOMER?

A: Yes, it does. BellSouth also provides other services, such as Remote Call Forwarding and Extended Reach Service that provide a similar functionality. BellSouth charges ALECs reciprocal compensation for these services as well.

Q: IF BELLSOUTH IS CHARGING ALECS RECIPROCAL COMPENSATION FOR CALLS TO FX, REMOTE CALL FORWARDING AND EXTENDED REACH CUSTOMERS, DOES THAT MEAN BELLSOUTH CONSIDERS THESE CALLS TO BE LOCAL CALLS FOR PURPOSES OF RECIPROCAL COMPENSATION?

A: Yes. Further, I expect other ILECs in Florida also treat these calls as local and subject to reciprocal compensation.

Q: PLEASE DESCRIBE THE IMPACT OF PROHIBITING VIRTUAL NXX NUMBER ASSIGNMENT IN MORE DETAIL.

A: Prohibiting LECs from assigning customers virtual NXX numbers would have at least three significant negative impacts in Florida. First, ILECs would be able to evade the intercarrier compensation arrangements they have negotiated with ALECs. Second, and contrary to one of the fundamental goals of the 1996 Act, such restrictions would have a negative impact on the competitive deployment and use of affordable dial-up Internet services in Florida. This negative impact would result from the increase in costs to both consumers and providers. Finally, applying such a restriction to virtual NXXs but not FX and other traditional ILEC services that offer the same function would give ILECs a competitive advantage over ALECs.

Q: HOW WOULD AN ILEC EVADE ITS INTERCARRIER COMPENSATION OBLIGATIONS TO AN ALEC BY LIMITING COMPENSATION TO CALLS TERMINATING TO A CUSTOMER WITH A PHYSICAL PRESENCE IN THE SAME LOCAL CALLING AREA AS THE ORIGINATING CALLER?

A: Deviating from the historical practice of rating a call based upon the NXX codes of the originating and terminating number would give ILECs the ability to arbitrarily re-classify local calls as toll calls. This is because it would be nearly impossible and much more economically burdensome for Level 3 (or any other ALEC in a similar situation) to utilize virtual NXXs in the provision of service to its customers.

As discussed above, Virtual NXXs are used by carriers to provide a local number to customers in calling areas in which the customer is not physically located. If the Commission allows ILECs to avoid rating calls based on the NXX of the originating and terminating numbers, calls to "virtual NXX" customers would effectively be reclassified as toll calls (at least in the intercarrier environment, if not in the retail environment), and ILECs would no longer be obligated to compensate ALECs for terminating what for decades have been rated as simple local calls.

Indeed, BellSouth, and likely other ILECs, has always treated its FX service as local in nature and has billed other carriers reciprocal compensation for calls terminating to BellSouth FX customers. Revenues from FX service are booked as local revenues by BellSouth. I understand BellSouth may be changing this policy, in a belated attempt to support its own efforts to have similar ALEC services treated as toll in nature.

Q: DO THE COSTS INCURRED BY LECs IN ORIGINATING VIRTUAL NXX CALLS JUSTIFY ADDITIONAL CHARGES?

A: No. First, as mentioned elsewhere in my testimony, LECs are not allowed to impose charges for the delivery of local traffic to a POI. Nevertheless, and despite this specific prohibition, there is no additional cost incurred by an ILEC when a virtual NXX is provided to an ALEC customer, because the ILEC carries the call the same distance (to the POI) and incurs the same costs (in terms of local interconnection facilities used) regardless of the physical location of the "virtual NXX" customer. Therefore, the ILECs obligations and costs are the same in delivering a call originated by one of its customers, regardless of whether the call terminates at a so-called "virtual" or "physical" NXX behind the ALEC switch.

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

A: No. The ILEC would always be responsible for carrying the call to the POI on its own network and then paying the ALEC to transport and terminate the call from that point. The use of a virtual NXX does not impact the ILEC's financial and/or operational responsibilities such that it should be able to avoid compensating the terminating LEC or collect additional compensation. Indeed, the customer has a presence in the local calling area of the originating caller; it is a virtual presence, not a physical one, but the way the call is handled is the same from the originating LEC's perspective.

Q: DO YOU THINK ACCESS CHARGES WOULD PROVIDE AN APPROPRIATE MEANS OF COST RECOVERY FOR THIS TRAFFIC?

A: Not at all. Setting aside the fact that intercarrier compensation for local traffic is governed by the reciprocal compensation rules of the FCC,[9] and that access charges are imposed on traffic other than local traffic, access charges are not cost-based, and it has been federal and state policy in recent years to drive access charges down to forward-looking economic cost. It makes no sense to impose an out-dated compensation regime on an artificial category

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[9] FCC Rule 51.703(b) states, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."

of traffic. At a time when regulators and the industry are looking to move to more competitive market models by eliminating implicit subsidies in telecommunications rates and intercarrier payments, it would seem contrary to that movement to suddenly foist originating switched access charges on a certain type of local traffic. The costs of originating this traffic do not differ from any other local call, and thus there is absolutely no economic or policy justification for imposing switched access charges on virtual NXX and FX traffic.

Q: ARE ILECs COMPENSATED FOR CARRYING THE TRAFFIC ORIGINATED BY ITS CUSTOMERS TO THE ALEC POI?

A: Yes. The FCC's *TSR Order* is directly on point. Although I quoted it in Issue 14, it bears repeating:

> According to Defendants, the *Local Competition Order's* regulatory regime, which requires carriers to pay for facilities used to deliver their originating traffic to their co-carriers, represents a physical occupation of Defendants property without just compensation, in violation of the Takings Clause of the Constitution. We disagree. <u>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</u>. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. <u>Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network</u>. The originating carrier recovers the costs of these facilities through the rates it charges its own

> customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[10] (emphasis added) (footnotes omitted)

Q: THIS QUOTE SAYS THAT A LEC WOULD RECOVER ITS COSTS THROUGH THE RATES IT CHARGES ITS OWN CUSTOMERS. DO LOCAL RATES COVER THE COST OF CARRYING VIRTUAL NXX AND FX TRAFFIC TO THE POI?

A: The FCC has clearly stated that a LEC's rates cover these costs. Let me point out, however, that in my opinion this reference is not just to the basic local rates. Local revenues include not only the basic local rate, but other revenues from subscriber line charges, vertical services (i.e., call waiting, call forwarding, anonymous call rejection and other star code features), universal service surcharges, extended area service charges and contribution from access charges for intraLATA and interLATA toll.

Q: IF A LEC IS ESSENTIALLY INDIFFERENT FROM A COST PERSPECTIVE, WHY DO YOU SUPPOSE THAT ILECs CONTEST THIS ISSUE?

A: I cannot speak for what motivates ILECs to end practices they have employed for years. However, I believe it is likely that ILECs understand the importance of this issue as it relates to new entrants' such as Level 3's ability

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[10] *TSR Wirelss, LLC v. US West Communications*, Memorandum Opinion and Order, ¶ 34 (June 21, 2000) (hereafter referred to as "TSR Order").

to compete. Level 3 has been, and would likely continue to be, successful in attracting new customers in Florida. This success is often at the expense of ILECs, since many of the customers won by Level 3 were once served by ILECs. Therefore, although the ILECs incur no additional costs through the virtual NXX arrangement, I believe their concern has more to do with the opportunity costs associated with losing a customer that Level 3 is able to serve through virtual NXX. Total market dominance is a valuable asset, although it is not necessarily in the public interest. It would make sense for an ILEC to protect and preserve its monopoly by proposing language that would make it uneconomic for Level 3 to chip away at its monopoly market share.

Q: IT APPEARS THAT YOU HAVE PLACED SPECIAL EMPHASIS ON THE NEGATIVE IMPACTS ON RURAL AREAS OF THE STATE ASSOCIATED WITH RESTRICTING THE ASSIGNMENT OF NXX CODES. WHY WOULD RURAL AREAS BE PARTICULARLY IMPACTED?

A: One of the most significant advantages of incumbency is the ubiquitous network of the ILEC. For the most part, this network was bought and paid for by ILEC customers over time at little or no risk to the ILEC, and ILECs had rates approved that would allow them to recover the costs of network deployment. Providers such as Level 3 are in some cases, constrained from offering services on a widespread basis because they do not have the advantage of having the ratepayer financed ubiquitous network that ILECs do. Therefore, market entry is often confined to the more densely populated areas. Reciprocal compensation for virtual NXX service helps to equalize these inherent inequities, at least for some customers, by allowing ALECs to offer service state-wide, even to the more lightly populated areas of Florida. Without this competitive equalization, ALECs would only be able to reach such areas at some point in the future, if at all, thereby denying rural residents and businesses the benefits of competition.

These comments should not be construed as ALECs asking for special treatment because they are new competitors. Indeed, Level 3's position, supported by the economic and technical arguments I have put forth above, would be just as compelling if Level 3 were an ILEC. I only raise the competitive ramification issue here to illustrate the negative impact of restricting ALEC's assignment of virtual NXXs.

Q: HOW WOULD THE EFFICIENT DEPLOYMENT OF NETWORK FACILITIES IN FLORIDA BE IMPACTED IF THE COMMISSION RESTRICTED THE ASSIGNMENT OF VIRTUAL NXXs?

A: The overarching goal of the Telecommunications Act is to promote competition in the local exchange market. It is recognized that such competition would lead to, among other things, the efficient deployment of network facilities. However, restricting number assignment, or basing intercarrier compensation on physical customer location, may have the impact of leading to inefficient network facilities deployment. Level 3 would have to reconsider providing local services if other LECs are allowed a free ride on Level 3's network for terminating calls. Even more egregious is the additional cost of paying access charges on calls originated by ILEC's customers as BellSouth proposed in its arbitration with Level 3. BellSouth's proposal greatly reduces the incentive for ALECs to provide service in the state.

Q: WOULD RESTRICTING NXX ASSIGNMENT OR CHANGING CURRENT INTERCARRIER COMPENSATION ULTIMATELY VIOLATE THE TELECOMMUNICATIONS ACT?

A: Yes. Not only would it lead to negative incentives for network facilities deployment, the proposal would be in direct conflict with the 1996 Act, in that the Act calls for consumers in all regions of the Nation, including those in rural, insular, and high cost areas, to have access to telecommunications and information services at just, reasonable, and comparable rates. (Sec. 254(b), 47 U.S.C. § 254(b)). Moreover, increasing the cost of Internet access and other local calls provided through a virtual NXX, through the introduction of access charges and the denial of intercarrier compensation, would be inconsistent with the Act's mandate for Internet services. More specifically, Section 230(b)(2) (47 U.S.C. 230) of the Act states "It is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or state regulation." To the extent ILEC proposals to distinguish Internet usage and virtual NXX calls from other local usage increases the cost and depresses demand for Internet usage, it is not in the public interest.

Q: WOULD BELLSOUTH'S PROPOSED COMPENSATION ARRANGEMENT GIVE IT A COMPETITIVE ADVANTAGE IN THE ISP MARKET?

A: Yes. BellSouth competes with new entrants like Level 3. By precluding Level 3 from receiving intercarrier compensation for these services, and then imposing access charges on each call, BellSouth would create an economic barrier to other carriers providing local services, and would give itself a significant competitive advantage. This clear advantage for BellSouth would not only stifle the ability of ALECs such as Level 3 to provide service in Florida, but would essentially eliminate the prospect for competition in this market.

Q: CAN YOU PLEASE SUMMARIZE THE BENEFITS OF PERMITTING VIRTUAL NXX NUMBER ASSIGNMENT AND MAINTAINING EXISTING COMPENSATION ARRANGEMENTS BASED ON THE COMPARISON OF NXX CODES?

A: Yes. The pros are as follows, (1) it provides ALEC customers with a local presence in additional local calling areas; (2) it allows business expansion in the short-run while businesses build-out their facilities over time; (3) it 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) it provides consumers, especially those in lightly populated areas, with efficient, low-cost dial-up access to the Internet; (5) it treats these calls consistently with the way BellSouth treats its FX, Remote Call Forwarding and Extended Reach services; and (6) it provides a competitive alternative to the FX and FX-like services provided by 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. These calls cost ILECs no more to deliver to Level 3 than other local calls. Further, the use of virtual NXX codes is not improper, illegal or in any way harmful to the public interest. As such, there is no justification for denying LECs intercarrier compensation for these calls and there is no justification for charging originating access charges. It is indisputable that the terminating LEC is providing the originating LEC a service by terminating such calls.

ILECs are complaining to the Commission because ALECs have been successful in attracting customers with this service. ILECs 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 CHANGING COMPENSATION ARRANGEMENTS FOR THESE CALLS?

A: Yes. Denying intercarrier compensation and imposing access charges would make it economically impractical for ALECs to offer this service. As such, if Level 3 and the ISP continued to serve areas currently served through virtual NXX arrangements, the cost of Internet access would increase for consumers. ISPs may likely decide to use BellSouth's services rather than Level 3's, thereby eliminating competition in this area of the local market. These results, namely increased costs for consumers and eliminating competitive alternatives, are not in the public interest.

Q: PLEASE SUMMARIZE YOUR POSITION ON ISSUE 15.

A: ILECs should be required to compensate ALECs for all calls to numbers with NXX codes associated with the same local calling area. Because these local calls are routed to the interconnection point for local traffic and handed off just as any other local call, such calls should continue to be rated and routed as local. Allowing ILECs to limit the compensation paid to ALECs to calls terminated to a customer with a physical presence in the same local calling area would allow ILECs to evade their intercarrier compensation obligations, inhibit the provision of affordable dial-up Internet services in Florida, and give ILECs an anti-competitive advantage over ALECs in the ISP market.

There is no economic justification for ILECs to treat calls differently based on the physical location of an ALEC's customers. Because the physical location of the customer is irrelevant to the costs incurred by the ILEC, it would not be justified in assessing originating charges for calls terminated to certain customers with a virtual local presence.

If ALECs are prohibited from receiving intercarrier compensation for virtual NXX calls to prospective and current customers, ISPs would either have to establish multiple POPs in order to allow their subscribers to access the Internet via a local number, or to contract with the ILEC and subscribe to the ILECs ISP products. Because each POP requires a significant investment in hardware, non-recurring charges and leased line connections, and because provisioning services in new areas may cause significant delays in ISP service offerings, the ability to offer ISP customers local dial-up and single POP capability is a critical competitive consideration. More importantly, forcing ISPs and ALECs to deploy these facilities – when such deployment is not at all necessary – would encourage inefficiency and a wasteful allocation of an ALEC's limited resources. Only an ILEC, with its ubiquitous network of central offices developed with the support of decades of subsidies, could likely offer ISPs the kind of presence required in each local calling area to avoid the demonstrated need for virtual NXX services.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes, it does.

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

[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.

BY MR. HOFFMAN:

Q Mr. Gates, have you prepared a summary of your prefiled direct and rebuttal testimony?

A Yes.

Q Could you provide your summary at this time?

A Yes, I will. Thank you.

Good afternoon, Mr. Chairman and Commissioners. My testimony addresses three issues today, Issues 13, 14, and 15. Issue 13 seeks comments on the definition of local calling areas for purposes of reciprocal compensation. Issue 14 addresses the responsibility of the originating carrier to transport traffic to another LEC. And Issue 15 deals with foreign exchange type services and the appropriate treatment of such calls with respect to reciprocal compensation.

Because Issues 13 and 15 are related, I will start my summary with Issue 14, which are the interconnection responsibilities of the carriers. These responsibilities have been very specifically outlined by the Telecom Act, by the FCC, and by this Commission. The Act says that an ILEC must allow an ALEC to interconnect at any technically feasible point.

One of the FCC's first orders implementing the Act found that under this statute the ALEC may select a point of interconnection, or the POI, for the exchange of traffic. The FCC's rules of the road say that incumbents are required to deliver their traffic to that point and to pay the ALEC for terminating those calls. In fact, this Commission specifically found in the Level 3/BellSouth arbitration that the competitive LEC has the authority to designate the POI and that the incumbent must deliver its originating traffic to that POI without charging the ALEC.

The Commission also found that BellSouth does not have the right to designate its own points of interconnection for originating traffic either in the LATA or in local calling areas within the LATA. The AT&T order that was released last week reached similar conclusions.

The incumbents' proposals here that they be allowed to alternatively identify points of interconnection in every local calling area or make ALEC pay facilities charges to the ILECs to reach into every local calling area are anticompetitive and they have the effect of dismantling the one POI per LATA rule. Because of the barriers to entry that such a proposal would create here in Florida, the incumbents must be required to bring their originating traffic across their ubiquitous networks to the ALEC's designated POI.

Issues 13 and 15 are related as discussed in my testimony. Issue 13 addresses how the local calling areas should be defined for intercarrier compensation purposes, while Issue 15 addresses whether calls to customers who are not physically located in the exchange normally associated with their telephone number should be treated as either local or toll. In both cases the incumbents here seek to change the way they themselves have for years handled calls.

We heard today that Mr. Haynes said that they have been using NPA/NXX routing for 30 or 40 years. The incumbents' proposals are contrary to the way these calls are routed between carriers today and in the past. The foreign exchange type calls compete with foreign exchange service that the incumbents have offered for decades. It is because of this competition and not because of any engineering, economic, or public policy reasons that the incumbents are attempting to reclassify these calls as toll calls. Treating these calls as anything other than local would be inconsistent with the way these calls have been treated in the past and indeed are treated today.

The so-called virtual NXX calls are locally-dialed calls. They are treated as local at retail by the ILECs. They are routed as local over interconnection facilities, specifically the local interconnection trunks. The ILEC has no more responsibility for originating these calls than it does for any other local call, yet the ILECs want to deny the ALECs reciprocal compensation for these calls, and to add insult to injury, want to charge the ALECs originating access charges, as well. As such, carriers such as Verizon would get a free ride on Level 3's network and pay nothing to Level 3 for terminating the calls that were originated by Verizon's customers.

The imposition of access charges is particularly troubling. Access charges have not and should not apply to locally-dialed calls as they have nothing to do with the costs associated with routing locally-dialed calls. These virtual NXX calls are local, they do not increase the incumbents' costs one iota, and they provide a valuable service to consumers. Incumbents should pay reciprocal compensation on all locally dialed calls.

Now, Verizon argues that virtual NXX calls have a negative impact on numbering resources. Such is not the case. But if virtual NXX calls did impact the availability of numbers, then the incumbents' FX, extended reach, Cyber DS-1, and other systems have for decades also impacted the numbering resources of the state. So there is nothing unique about the virtual NXX services that would require any special treatment or result in any special concern by this Commission.

Thank you.

Q Does that conclude your summary?

A Yes, it does.

MR. HOFFMAN: Mr. Chairman, Mr. Gates is available for cross.

CHAIRMAN JACOBS: Let's see. Mr. Lamoureux. Mr. Moyle.

MR. MOYLE: No questions.

CHAIRMAN JACOBS: Mr. McGlothlin.

MR. McGLOTHLIN: No questions.

CHAIRMAN JACOBS: Mr. Melson.

MR. MELSON: No questions.

CHAIRMAN JACOBS: Mr. Edenfield.

MR. EDENFIELD: Just getting my last minute information there.

CHAIRMAN JACOBS: All right.

CROSS EXAMINATION

BY MR. EDENFIELD:

Q Good afternoon, Mr. Gates.

A Good afternoon.

Q How are you?

A I'm fine, thank you.

Q All right. Let's talk -- I really wanted to just talk about the virtual NXX issue, but you said something in your summary that caused me some concern, and that was are you truly saying that for a Commission to allow BellSouth to charge an ALEC for transport costs, that that would be condoning anticompetitive behavior?

A Well, I'm certain I didn't say that in my summary the way you are suggesting it.

Q Well, you said it was anticompetitive. You did say it was anticompetitive to do that, right?

A It is anticompetitive for the ILECs to charge access charges, or to not pay the ALECs reciprocal compensation for the virtual NXX calls. Or are you talking about the POI issue?

Q I'm sorry, I'm talking about the POI issue.

A Okay. Could you ask the question a little more specifically.

Q I thought in your summary you made the comment it was anticompetitive for the ILECs to charge the ALECs transport out of the local calling area, the ILEC's local calling area, when it had to route a call to the ALEC's point of presence in another local calling area. Did you say that was anticompetitive?

A Yes, it is anticompetitive, and it certainly does not comport with the existing rules for the one POI per LATA.

Q So are you suggesting then that to the extent a state commission such as this one, South Carolina, and North Carolina have allowed the ILEC to charge transport costs in that situation that they are condoning anticompetitive behavior?

A I would never make that characterization about a commission, per se, but I think the result is, yes, that it is anticompetitive because it will eliminate or prevent competition from developing from ALECs. Yes, absolutely it is anticompetitive, it is not in the public interest, and it certainly will not help consumers in the long-run.

Q All right. Let's talk about the virtual NXX issue. As I understand this, and you are representing Level 3 in this proceeding?

A Yes, sir.

Q And you have, I guess, represented them in most of their arbitrations that you had with BellSouth?

A Yes, I think I did.

Q Okay. In this instance, Level 3 wants to be able to assign NPA/NXXs to end users that are not located in the rate center to which a block of numbers has been assigned by the numbering administration?

A I would quibble a little bit with your characterization, but, yes. And I don't think there is any dispute about a carrier's ability to do that in terms of, you know, whether they can. I think we all agree that they can.

Q And BellSouth does not have a problem with you assigning NPA/NXXs anywhere in the LATA you want to assign them.

A Great.

Q Then the issue here has become if you are going to assign an NPA/NXX outside of the rate center to which it was assigned, that in that instance you are still wanting BellSouth to pay you reciprocal compensation. Is that your understanding of the issue between us?

A Yes. That is exactly the point. Because those are locally-dialed calls just like BellSouth's FX service, or extended reach service, or even remote call forwarding. Those are locally dialed and treated as local calls.

Q Okay. Mr. Meza is going to be handing you a copy of Mr. Ruscilli's Exhibit JAR-1, which is a set of network diagrams. If you would, turn to -- let's find a good one to use -- turn to Page 2 of 3, if you don't mind. And what I would like for you to do is you see the Lake City local calling area?

A Yes.

Q Do you see the BST end user A?

A Yes.

Q Draw a circle around that guy.

A Okay.

Q Go down to the Jacksonville local calling area. Do you see the ALEC end user B, kind at the bottom of that oval?

A Yes.

Q Draw a circle around that guy.

A Okay.

Q These are the two folks we are going to be talking about here for the next few minutes, all right?

A Okay.

Q Will you agree with me -- well, let me make one other assumption here. Assume that the Lake City local calling area has been assigned by the numbering administration, assume it is just a single rate center there, and the number assigned is 905-111, okay? That is the NPA/NXX for Lake City, all right?

A Well, actually you just gave me an NXX and a station code, 905-1111?

Q No, 905-111, and then there would be just whatever the next four digits would be.

A Okay, fine. Thank you.

Q 905 a being the NPA, 111 being the NXX.

A Great.

Q Okay. And that is the NPA/NXX for the folks in Lake City in that calling area, okay?

A Okay.

Q Now, let's go to the Jacksonville local calling area, and the NPA/NXX for the folks in there are going to be 905-222, okay?

A Okay.

Q Are you with me?

A Yes.

Q All right. And those are the numbers, the NPA/NXXs that have been assigned by the numbering administration, all right, at least for purposes of my hypothetical?

A Yes. Well, I assume you requested those NPAs and NXXs from the numbering administrator and you assigned them as you a saw fit.

Q Correct.

A Okay.

Q Those are the numbers that the numbering administrator has assigned.

A Okay.

Q All right. BellSouth end user A is going to make a call to the ALEC end user B, the two folks we have circled there. And let's assume for purposes of this discussion that the NPA/NXXs that are assigned to those ones are the ones that I have written here. In other words, you have got the 905-222 assigned to ALEC end user B, and that is the one that the plan assigned to that rate center, and you have got BST end user A is assigned 905-111, and that is the NPA/NXX assigned by the numbering administrator for that rate center. Are you with me?

A Yes, I'm with you.

Q All right. Would you agree with me that when BellSouth end user A calls ALEC end user B and it travels from one local calling area to the other, that traditionally that would be a toll call?

A Traditionally I would agree. Assuming there is no other local calling plans like EAS, or the extended optional EAS plan. If we are just talking about traditional calling, that is correct.

Q Right. Lake City is its own basic local calling area and Jacksonville is its own basic local calling area, and there is no overlap.

A Okay.

Q All right. In that instance you would agree with me that this is a toll call?

A The way you have described it, this is a toll call, yes.

Q In this instance, the call goes from the BellSouth end office to the BellSouth tandem. If you look at the point of interconnection in the switching as set forth in this diagram, the call is handed off to the ALEC, the ALEC then routes it to its switch, and then the ALEC on a loop or whatever facility takes it down to ALEC end user B.

A Well, actually I guess I have to disagree with this drawing, because if this were a toll call then you would have to deal with the PIC, the intraLATA PIC.

Q I will get to that in a second.

A Well, the way you have described it, it really is a local call and not a toll call. Because it's going to the ALEC for termination and there is no interexchange carrier involved here.

Q Well, let's assume that the same ALEC who is terminating the call is the toll carrier. Why don't we just say Level 3, this ALEC end user B is a Level 3 customer and Level 3 is also the BellSouth end user's toll carrier.

A Okay. Well, in that case, the call would be routed to the point of presence for Level 3, but it would also be generating, and that is the BellSouth access tandem would be generating an access record. It would go through the carrier access billing system so it would start a billing record for that toll call. So it would have to go into the tandem, figure out who the carrier is based on the translation tables, set up the CABs bill and then forward to Level 3 for termination.

Q Sure. And here let's say it has done that.

A Okay.

Q And you would agree with me that in this scenario this call originates in the local calling area for Lake City and this call terminates in the local calling area for Jacksonville?

A Yes, we have established that.

Q Okay. Now, let's assume that this is no -- and in that instance Level 3 would be paying BellSouth originating access for this call?

A Yes, it would.

Q Okay. Now, let's take this same scenario, and as I understand what you guys are wanting to do is instead of having the 905-222 number assigned to this ALEC end user B, you are wanting to assign a 905-111 to this ALEC end user B, and that would be the virtual NXX that we are talking about, right?

A Yes, it could be done that way so that the BellSouth end user A would be calling a local number to get to that same customer, but not paying the toll charges. But, of course, then that call would be handled and routed completely different. It would not go through the access tandem, there would be no CABs billing required, you wouldn't have to set up the access charge bill at all, and it would be routed over local interconnection trunks. So there is a very distinct difference in the way that call would be routed and billed and handled by BellSouth.

Q And the routing is a function of the code, correct? In other words, whenever the switch, BellSouth end user A picks up its phone and dials a number, the switch says, okay, this is a local number, therefore, it is routed one way, or this is a long distance call or a toll call, therefore, it is routed a different way. So the routing is actually determined by the number that is being dialed?

A It is determined by the NPA/NXX, that is the way it has been done for 40 years.

Q Okay.

COMMISSIONER JABER: Mr. Gates, may I ask you a question. One of the concerns I have had the last couple of days relates to being careful not to send a wrong incentive of allowing a company to establish a virtual NXX to avoid toll charges. Is that a legitimate concern of mine?

THE WITNESS: No, I don't think so.

COMMISSIONER JABER: Can you --

THE WITNESS: Yes. Could I expand just a little bit, Commissioner.

COMMISSIONER JABER: I would like that.

THE WITNESS: Okay, thank you. The companies are providing virtual NXX as a service to customers, it is demanded by the customers. It is a competitive response to the foreign exchange service that the incumbents have been providing for decades.

Now it is provided a little bit differently from a technology perspective, and that is because the networks are so different. If you look at BellSouth's network, or Verizon's network, they do have end offices in every local exchange, okay. When they provide an FX service, they provide a private line from the home exchange, let's say, to the foreign exchange and they charge that to the customer, that private line.

Well, Level 3 and other ALECs don't have central offices in every exchange. It is physically impossible for them to offer a private line between the exchanges. They are doing it via the number assignment, hence the virtual NXX. It's really a much more efficient way to provide the service because you don't have to tack up, or nail up, as they say, a private line. It is solely dedicated.

COMMISSIONER JABER: Okay. So what I hear you saying is if this Commission were to agree with your position that any NXX, virtual NXX type call is local because it is originates and terminates within the same calling area, that there is --

THE WITNESS: I'm sorry. That is not our position. We are saying it is local because of the comparison of the NPA and NXXs, which is the way the industry has traditionally rated calls.

COMMISSIONER JABER: All right. I understand that, and that there isn't a difference in the work performed in delivering that call versus the traditional local call.

THE WITNESS: Yes. And it is because of the different network architecture.

COMMISSIONER JABER: And if we were to accept that and agree with you, what I hear you saying is there is no potential for the ALECs to game the system, so to speak, by establishing virtual NXXs?

THE WITNESS: Oh, no. It is not toll avoidance at all. It is simply providing an FX service for the customer in competition with the FX services that are being provided by the incumbents. And just like the FX service provided by the incumbents, it is locally dialed. And because it is locally dialed that NPA/NXX, I mean, it is routed through local interconnection trunks just like every other local call and there is no -- there is no toll type treatment. There is no CABs billing, there is no having to look up the one plus to find out who the carrier is. It is simply a locally dialed call and it should be treated as a locally dialed call.

COMMISSIONER DEASON: Excuse me. Who is responsible for covering the cost of the transport of that call?

THE WITNESS: The transport is provided by the ALEC, by Level 3. The responsibility of BellSouth and Verizon does not change. It's just like every other local call. They take it from the originating caller to the POI and that's it. And then regardless of where that terminating call is, it is the ALEC's responsibility, Level 3's responsibility to transport that call and terminate that call.

BY MR. EDENFIELD:

Q Let me see if I understand what you are telling me. In fact, we will go back to a couple of things. The diagram you are looking at here said this is a more traditional -- how a local call would be routed, is that what you told me a minute ago, this diagram we are looking at?

A Yes. Because I don't see the IXC point of presence, I don't see the BellSouth access tandem. I assume that is a local tandem.

Q All right. In this instance, what transport is it that you are offering to pay, what is the transport in this diagram, assuming the call is coming over from the ALEC switch on that dotted line down to end user B, what transport are you offering to pay?

A Well, it's really the way this diagram is done that it makes it a little bit confusing. If this is a virtual NXX call, BellSouth customer EUA goes off hook, makes the call, Dials 905-111, and then a station code, okay. BellSouth then routes that call through the central office and to the POI. From that point -- and if you say the POI is over here where the BellSouth tandem is, we can assume that for purposes of this example.

Q Sure.

A From that point, Level 3 takes the call, takes it to its switch, and it is that transport between the POI and the switch that BellSouth is paying reciprocal compensation for, and then from the switch it is Level 3's responsibility to terminate that call to the ALEC end user B.

Q Well, let me ask you this, Mr. Gates. If that call continued from the ALEC's switch on back into the Lake City local calling area, which would truly make it a local call, you would still be paying the transport from the point of interconnection to the ALEC switch. That is your responsibility on your side of the point of interconnection whether it's a virtual NXX arrangement or not. You are not offering to pay for anything extra because of this, are you?

A No, that is what BellSouth would pay in terms of reciprocal compensation, that is what that rate covers. But Level 3 would carry it from the point of interconnection to the ALEC switch for which they would be compensated by BellSouth in terms of reciprocal compensation, then Level 3 would terminate it back to the Lake City local calling area.

Q All right. Let me make sure I'm following this. If the call were to actually come back into the Lake City local calling area, BellSouth in that instance would be paying Level

3 reciprocal compensation for terminating that local call in the form of the transport from Level 3's point of interconnection to Level 3's switch?

A That's right.

Q Now, what you are saying is if you make this into a virtual NXX call and the call is actually terminating at ALEC end user B, you are not going to charge BellSouth reciprocal compensation for that call?

A No, I didn't say that at all. Reciprocal compensation would still apply, we would just terminate it. We, Level 3, would terminate it to a different location.

Q So I'm still paying you reciprocal compensation whether it goes back into the local calling area as a local call or whether it stays in the Jacksonville local calling area as a virtual NXX call, I'm still having to pay you reciprocal compensation for your transport from your point of interconnection to your switch, which is the same thing -- I'm paying the same thing either way?

A That's right. And you are not paying a penny more for the transport regardless of where it terminates. And these are both local calls and that is the key point. It doesn't increase or decrease your costs one iota.

Q But, in essence, what you have done is you have taken a call -- well, let me ask you this. You would agree that when BST end user A picks up the phone and calls ALEC end user B that we are talking about, the two that we circled in the beginning?

A Yes.

Q And that call originates in the Lake City local calling area and that call terminates in the Jacksonville local calling area, right?

A Yes, it does.

Q Okay. And you would agree with me that when a call originates in one local calling area and terminates in another local calling area -- and I think this is what Doctor Selwyn was saying -- that that is a toll call?

A Well, not in every case. I mean, if BellSouth were providing an FX service from BellSouth end user A to the Jacksonville local calling area, that would be an FX service and it would be treated as local. Now, I understand that you have your FX database that you put in place in February. That notwithstanding, there are many different situations where calls that are interexchange in nature are local calls and they have been treated that way for decades. EAS, your extended optional EAS, FX calls, remote call forwarding calls. If you were to use your example literally, all of those would be toll calls and you would end up paying access charges on all of those calls.

Q Assuming BellSouth is the toll carrier?

A No, assuming your customer originates the call and you are going to pay to terminate those toll calls to another carrier.

Q Well, it's the toll carrier, whoever the toll carrier is pays originating access and terminating access?

A Yes, that is correct.

Q So you are assuming in that instance that BellSouth is the toll provider?

A Yes.

Q And that is not always the case, now is it?

A No, it's not.

Q All right. So what I'm trying to get to is forget the EAS, forget all the extended area plans, what I'm talking about is good old fashion Lake City is a local calling area unto itself, a basic local calling area, and Jacksonville is a basic local calling area unto itself. There is no overlap between the two. Would you agree that if this call originates in Lake City and terminates in Jacksonville that that is a toll call?

A That is one way to make that call. You could also use your BellSouth FX service and that would be a local call, or you could use Level 3's virtual NXX service and that would be a local call, or you could use remote call forwarding, or extended reach service and that would still be a local call, or even Verizon's DS-1, Cyber DS-1 service and that would be a local call.

COMMISSIONER DEASON: Let me interrupt just a second.

THE WITNESS: Yes.

COMMISSIONER DEASON: If this call were completed using a BellSouth FX arrangement, you said that is a local call?

THE WITNESS: Yes, sir.

COMMISSIONER DEASON: I thought earlier the definition -- if I understood Doctor Selwyn correctly -- is a local call is when there is no additional charge for the call, correct? But I thought with an FX service while the end use customer may not have an additional cost or charge for calling that, the customer that enables that to happen is paying something extra because BellSouth is not going to do it out of the goodness of their heart, they are getting additional revenue. It is from the customer that wants -- the end use customer, in this example end use customer B in Jacksonville, wants their customer in Lake City to be able to call them toll free so they can conduct business.

So there is an additional charge by someone. So that still makes it a local call because the end user which originated the call is not paying anything extra? Explain it to me. And if that were the case, an 800 number, when you would call an 800 number that would be a local call because the end use customer is not paying anything extra. The extra revenue is coming from the person who is subscribing to the 800 service.

THE WITNESS: Yes. 1-800 calls are clearly toll calls. The toll indicator, the 1 tells you that it is a toll call and they have always been treated as toll calls. They are separately and distinct. But you raise a good point, Commissioner Deason, because we have been talking today a lot about some pricing issues, and pricing issues really have nothing to do with how you determine whether a call is local or toll.

Now, BellSouth with its FX service, they have chosen to charge for that private line between the two exchanges. That is a pricing decision. Level 3 doesn't have private line circuits between exchanges, we have talked about that, because the network just doesn't exist. So they are using the virtual NXX codes. Now, they may or may not decide to charge for that additional transport. But those are pricing issues and pricing issues have nothing to do with the way you determine whether a call is local or toll. The way we have done that historically and the way we still do it today is by NPA/NXX codes.

COMMISSIONER DEASON: And the reason it was done that way historically is because it was assumed that those NPA/NXX codes were a geographic indicator which was a surrogate for saying this is a call originating in local calling area A and terminating in another local calling area, i.e., it is a toll call, correct?

THE WITNESS: Yes, that is correct. Historically it was done that way and then the network and consumer demands became a little more sophisticated, and we ended up developing things like extended area service, and optional local calling plans, and things like foreign exchange, and remote call forwarding. And all of these features now that let your phone follow you wherever you go around the country.

But these are still locally dialed, they are still treated as local by these incumbents. That's the way the revenues are booked in their accounting system, that is the way the costs are booked. These are local, not toll calls. And they are handled differently. Because they are routed by NPA/NXX, they do go over local interconnection trunks, they don't go to the access tandem.

And as I mentioned earlier, there is no access charge bill. You don't use the carrier access billing system. You don't go in and look up tables and find out who the interexchange carrier is. Why, because it's a local call, because of the NPA/NXX. Now, does it transit more than one exchange? Yes, it does. Does BellSouth and Verizon, do their FX services transit more than one exchange? Yes, they do.

This is a competitive response. A very creative, innovative, very much more efficient way to provide FX service than what the incumbents are providing today. But it is dialed as a local call and it needs to be treated as a local call.

The only reason that BellSouth developed their FX database is because the ALECs had some success with this virtual NXX service.

You heard Doctor Selwyn say that the FX rates have not gone down, haven't moved perceptively in five years. There is no competition for FX service, not until now. Not until the ALECs figured out a creative way, a very innovative and efficient way to make a competitive offering.

And now that they are making some inroads, getting some of those customers, now they are saying, oh, those aren't local calls, those are toll calls. You know, we not going to pay you reciprocal compensation. Oh, and by the way, you owe us access charges. I mean, that is just an attempt to prevent any competition in an area where heretofore there has been no competition. Now this is a wonderful benefit to consumers who need a competitive alternative to the BellSouth and Verizon FX service.

COMMISSIONER DEASON: So what I hear you saying is the determining factor is not geography, it's the dialing pattern.

THE WITNESS: It is. And that is the way the network is set up. That is the way all the switches work. All the CLEC switches, the ALEC switches, all of the ILEC switches, that is way they work. You heard Mr. Ruscilli and you heard Verizon witnesses say that, you know, we can't tell if these are virtual NXX calls. They need to tell us if they are.

The reason they can't tell is because that is just the way the system works. It's locally dialed, therefore, they treat it as a local call. And if you try to change that like they have suggested here, you are going to get absurd results. Kind of the results that BellSouth is trying to point out. They are trying to show kind of this inconsistency. I could draw some wonderful diagrams for you, I would be happy to do that, showing that if we do it the way they suggest then what really is a local call is going to look like a toll call and it is going to be billed like a toll call.

So our suggestion is this, let's not change all of the systems and all of the switches and the switching architecture that has been deployed in the United States and internationally. That's what would be required. Let's just keep the status quo. Yes, there are some calls, NPA/NXX type calls, virtual NXX that kind of look like toll calls, but they are not. They are just a competitive response to FX.

Let's keep it the way it is, allow some competition and see where it goes. I mean, we haven't seen any harm. Nobody has shown in this docket that BellSouth is going broke because of these virtual NXX calls. They have admitted in the testimony and in discovery that there is no additional expense whatsoever, not a penny of additional expense because of these calls. So if there is no additional cost, if BellSouth isn't being hurt, why would you want to deny consumers a competitive response to a heretofore monopoly offered service? Let's give them a chance. Let's give these ALECs an opportunity to provide a creative competitive response to FX service. Let's not penalize them by trying to apply access charges to a locally dialed call. That is completely inappropriate.

BY MR. EDENFIELD:

Q Mr. Gates, let me ask you, you would agree that the FX database that you referenced was put in place predominately to ensure that BellSouth was not billing you recip comp for traffic that is obviously access?

A Well, I think it was put in place -- first of all, let me point out that your witnesses said they did that because they realized that these were not local calls. Well, those rules that your witnesses referred to have been in place for four years, and they just decided eight months ago or ten months ago that these were local calls and they needed to do something about it? It wasn't because of that. They have known all along how these calls were treated. The only reason it is being done is because they are trying to prevent competition for developing for this FX product which has never had competition in the past.

Q Was that yes, no, or I don't know?

A I think I disagreed with your premise.

Q Okay. So that would have been a no, okay.

Now, let me ask you this. You also indicate that BellSouth, if I understood your discussion with Commissioner Deason, that BellSouth intends for these calls to be local, these virtual NXX calls. Are you suggesting that if ALEC end user B was assigned the number that the numbering administrator had given him, the NPA/NXX assigned to that rate center, in other words, 905-222, that BellSouth would be billing that call as a local call, as well?

A No. What I'm saying is if you -- if your BellSouth end user A customer had your FX service, that would be a local call. I'm not disputing the fact that you could turn that into a toll call, sir. I'm not disputing that. There are ways that that would look the like a traditional toll call. But what I am saying is that just like your FX service, ALECs are providing a competitive response to that FX service and making that a local call.

Q All right. All I'm trying to get to is you seem to suggest that the jurisdiction of a call should be determined based on the NPA/NXX instead of the originating and terminating points?

A Yes, as it always has been.

Q Your position is that the FCC has historically determined the jurisdiction of a call based on NPA/NXX and not the originating and termination points?

A Well, in fact, the FCC has never used the origination and termination points. It has been --

Q Yes or no, and then you can explain. Please, just answer yes or no and then you can explain.

A I will try. Would you ask one more time.

Q Yes. Are you suggesting that the FCC makes jurisdictional determinations based on the end points of a call or on the NPA/NXX of a call?

A Both. Both. I think it's obvious that the end-to-end analysis is used for jurisdictional determinations, that is pretty obvious for interstate calling. But you can also do it with the NPA/NXX. And, in fact, that is the way the FCC does it. They don't go out and get V&H coordinates for precise locations. They use rate centers based on the NPA/NXX. That is how they do their end-to-end analysis.

Q So under that scenario then I take it if -- we will use Verizon as the example since they don't need interLATA relief in Florida. If a Verizon customer picks up the phone and calls a customer in New York City, and that customer in New York City has, because of the virtual NXX situation, has a 905-111 NPA/NXX, I guess under your theory then that would be a local call, a call from Tampa to New York.

A Well, my daughter lives in Tampa --

Q Yes or no and then explain, please.

MR. HOFFMAN: I'm going to object. First of all, I think the question is confusing, because I think we may have thrown in an extra city. Second of all, I think that Mr. Edenfield needs to let Mr. Gates respond to the question once the question is asked.

MR. EDENFIELD: My apologies. I thought the prehearing order said the witnesses are instructed to answer yes or no and then explain. Certainly that is the practice of the Commission.

CHAIRMAN JACOBS: Let's do this. Restate your question, and I think he was giving a preliminary to his answer. But yes or no as a preliminary rule would be the best thing, and then give your answer.

THE WITNESS: Sure. Thank you, Mr. Chairman.

BY MR. EDENFIELD:

Q I'm sorry. The question is this, assume that the customer -- and I will correct the three-city issue -- that the end user A here that has the circle around him sitting in Lake City, assume we don't have LATA issues. This person picks up the phone, calls a Level 3 customer in New York City, and that Level 3 customer in New York City has a 905-111 NPA/NXX assigned to him.

Under your theory, then, since the NPA/NXX that is assigned to the customer in New York City would make it look like a local call to the switch, then I assume you would contend that that is a local call, as well?

A Yes, I would, because -- and let me point out that it is somewhat a ridiculous hypothesis, but it is technically possible to do that. But if that call did occur, BellSouth's -- or let's say Verizon's responsibilities wouldn't change. Your technical and financial responsibilities would end at the POI in Tampa, or, excuse me, in this Lake City example, and Level 3, for whatever reason, I don't know why they would ever do this, but Level 3 would be responsible for terminating that call 1500 miles to New York City.

Now is that technically feasible? I think it might be. Would it ever happen? I can't imagine how or why. I have asked the company that because this example comes up every once in awhile, like every hearing. And they don't offer it in that manner. Usually these are intraLATA offerings. And they have other services that they offer for 1500 miles of transport, and it's not local calling.

COMMISSIONER JABER: Mr. Gates, this relates back to the question I was asking you also about gaming the system. What you are saying -- clarify for me what BellSouth's responsibility in that hypothetical, or Verizon, what the ILEC's responsibility would be for transport, where it ends?

THE WITNESS: Okay. That call, the person, let's say it's my daughter in Tampa. I guess we are using -- let's use your example here.

COMMISSIONER JABER: Lake City to New York.

THE WITNESS: Yes, Lake City to New York. The

BellSouth end user A customer would go off hook, would dial a local number, okay, BellSouth would route the call through its end office to the Level 3 POI, just like it would a local call that stayed within the Lake City or, you know, one of these local call areas, okay. From the POI then Level 3 would be responsible for terminating the call. Now, Level 3 would terminate that call all the way to New York, the 1500 miles. What Level 3 would receive for that, however --

COMMISSIONER JABER: So from Level 3's switch to New York Level 3 would be responsible. So the only distance that BellSouth is responsible for would be within the Lake City calling area?

THE WITNESS: Right, just to the POI. Just like any other local call, they just take that call to the POI. From there it goes to the Level 3 switch as you suggested. Now, would BellSouth have to pay Level 3 any more money for the call to New York? No, not a dime. All Level 3 would get is the reciprocal compensation that they would normally get for any local call. And that again is for getting that call from the POI to the switch. That is all they would get.

Now, if Level 3 then wanted to transport that call 1500 miles, I guess that is Level 3's decision if they want to go broke and do that type of business. It's very unlikely that it would occur.

COMMISSIONER JABER: So this morning -- I think it was this morning when I was asking questions about distance and why it matters to BellSouth with respect to terminating a virtual NXX call, I understood that testimony to be that even though it is a local dialing pattern, that the ILEC has to route the call a longer distance.

THE WITNESS: Oh, no, not at all.

COMMISSIONER JABER: And you would disagree with that?

THE WITNESS: No. And I'm sure if you asked that witness that question again, that he would clarify that. BellSouth and Verizon's responsibilities end at the POI regardless of the ultimate destination of that call.

BY MR. EDENFIELD:

Q You are not suggesting our financial responsibility ends at the POI, because we have to pay you recip comp to carry the call from the POI to your switch, right?

A Yes, but that is the same for any local call. It has nothing to do with the distance. If it is ten feet, or 1500 miles, or 20,000 miles, that recip comp rate that you pay Level 3 doesn't change.

Q Why not?

A Because you are not terminating the call, Level 3 is terminating the call. The recip comp that you pay to the ALEC is just for getting that call from the POI to the switch. That is the termination and transport, that's it, and your responsibility ends.

Q Is the transport mileage sensitive?

A You know, I'm not certain, but it is just from the POI to the switch. Which is, you know, a lot of times it's feet and not miles, so regardless. It doesn't change, is the point, whether it is -- if the call is a two-mile termination or a 1500-mile termination, your costs don't change. All local cost you the same in terms of your reciprocal compensation.

Q Well, what if Level 3 decides to have a single switch in the BellSouth region? In this instance, would you be asking BellSouth to pay you for switching and transport costs from the point of interconnection here in Jacksonville?

Suppose you had a switch located in Charlotte that was serving the whole region. Would you be asking us to pay you reciprocal compensation for hauling that call to Charlotte to your switch?

A Well, I can't agree with that characterization. I mean, Level 3 is not just going to close down all of its switches and just have one in the middle of the country. That makes no sense. But it's POI per LATA, and that is the rule, that is what Level 3 is doing, that is what other ALECs are doing. And, yes, you bring that traffic to that single POI. But that doesn't change depending on the terminating location of the call.

Q Do you think -- I don't know if I asked you this or not. I was thinking of asking you and I'm not sure if I did. Do you think that the FCC would agree with your analysis that a call that originated in Lake City and terminated in New York City would be a local call because you have assigned a virtual NXX to it?

A Well, yes, in one sense. If they didn't, then all of your FX -- your, BellSouth FX calls, remote call forwarding calls, your extended reach calls, the Cyber DS-1 calls, all of those would have to be toll calls as well if they weren't local. So, I mean, we just have to be consistent in the way we treat the calls.

Q You talk about the cost that BellSouth is incurring, let's talk to about what BellSouth would be giving up. Traditionally this would be a toll call, and if BellSouth was the -- let's say BellSouth is not the toll carrier, and in this instance Level 3 is the toll carrier. Traditionally, BellSouth would be receiving originating access from Level 3 for a call that originates in one local calling area and terminates in another, right?

A If Level 3 was the toll provider for the originating consumer?

Q Right. They are the PIC.

A That is correct.

Q And so what BellSouth would be giving up in this instance by you assigning a virtual NXX would be that we are no longer receiving originating access in that situation and, in fact, in addition to no longer receiving originating access, we are now going to be required to pay you reciprocal compensation under your theory?

A That is correct. Just exactly the way you have given up originating access charges on all of your FX, EAS, and extended reach services.

MR. EDENFIELD: I've got nothing further.

CHAIRMAN JACOBS: Ms. Caswell.

CROSS EXAMINATION

BY MS. CASWELL:

Q Good afternoon, Mr. Gates. I'm Kim Caswell with Verizon.

A Good afternoon.

Q Every time you want virtual NXX capability in a particular calling area, you would need to request a new NPA/NXX code from the numbering administrator, is that right?

A No, not necessarily. If you have codes already available you can use those codes, as was discussed this morning. If you had a thousand block set of numbers, it doesn't have to be 10,000 numbers, by the way. But if you had a thousand, and you had 950 of those for normal NXX type calling, and then you could assign 50 for virtual NXX calling.

Q Let's say it is the first time you want to assign a number in an area, and you want to assign a virtual NXX number.

You would have to get an NPA/NXX, correct?

A Well, that's true about providing service anywhere. Anywhere you want to provide service you have to have NXXs, that is correct.

Q And there are 10,000 numbers in an NXX block?

A No. We now have -- especially in jeopardy situations, we can get thousand block numbers. And depending on the capabilities of your central switches, you can even break those down into 500 and 100 number blocks. But frankly that is pretty uncommon. But, no, you do not have to order 10,000 numbers. That is clearly wrong.

Q But that is only where, say, number pooling is in effect or something like that where you would be able to get a 1,000 block, correct? Where there would be a jeopardy situation, is that right?

A Yes, generally that is true.

Q Okay.

A So it's not an issue. If you are not in a jeopardy situation, yes, you can get 10,000 numbers, and that is the way companies grow their business.

Q And how many NXX codes have you obtained in Florida to provide virtual NXX service?

A I'm sorry, I don't have that information for Level 3.

Q Do you have any idea?

A No, I don't. But as was pointed out this morning, if

NXX codes aren't used over a six-month period, they need to be turned back in to the number administrator for reassignment.

Q And not used means that the carrier is not terminating traffic to an exchange within six months, right?

A Well, that they have never been assigned. That the 10,000 number block or the thousand number block has not been contaminated by the assignment of numbers.

Q Don't the central office code assignment guidelines require termination of traffic to an exchange or else you need to return those numbers?

A Well, I think we are saying the same thing, yes. I mean, once they are assigned, I think you have to assume that there is some traffic or you wouldn't assign them, so, yes.

Q But a carrier can't terminate calls in an exchange it doesn't have any customers physically located there, can it?

A Well, you could with a virtual NXX or an FX service you certainly could, yes.

Q You would call that call termination in an exchange just because you assigned an NXX code?

A Well, I'm not sure if you are -- you may be talking about a technicality that I'm not familiar with. But what I'm saying is that you can without a physical presence have calls routed from an exchange to your presence. Now, whether that meet your technical definition that you are referring to, I'm not sure because I'm not -- I don't know what you are reading from or referring to.

Q Do you know how the central office code assignment guidelines define call termination or consider call termination?

A Not specifically, no.

Q Okay. Are you aware that this Commission has received authority from the FCC to direct the numbering administrator to reclaim NXXs that have not been activated in a timely manner?

A I have heard that, and most states act on that, as well. And that is a good way to manage the resource.

Q I think that you said earlier that if there is a number conservation issue with regard to virtual NXX service then that same issue exists with regard to the ILEC's FX service. But it's not true that when an ILEC wants to offer FX service it needs to request a new NPA/NXX, is it?

A Well, it would be true if you hadn't been providing service there. That is the difference between an incumbent and a new entrant. The incumbent already has a presence in these local calling areas, they have NXXs available generally. They do add to those NXXs, though, just like the ALECs request new NXXs to enter a local calling area.

I might add that in all of my years working with numbering issues in various states around the country, no one has ever raised the issue of foreign exchange calls, or remote call forwarding, or virtual NXX as an issue that is harming the numbering resource. It has never been raised in any meeting that I have attended.

Q Have you been to Illinois?

A I have been to Illinois. I have --

Q Then you have seen -- I'm sorry, go ahead.

A I have been there many times.

Q So you are not familiar with the discussions that Mr. Haynes spoke about earlier?

A No, I was not involved in those numbering issues in Illinois.

Q And you have seen the Maine decision, where Maine called the virtual NXX practice an extravagant use of numbering resources?

A Yes, and I really disagree with that. It is no more extravagant, if you want to use that word, than FX service. I mean, it is the same type of offering. And to the extent they consider virtual NXX to be an extravagant use of numbers, so is FX, and so are all the other services that companies are offering that are similar to that.

COMMISSIONER JABER: If in some future date this Commission were to find that FX service is anti-number conservation, would that also be true for virtual NXX service?

THE WITNESS: Yes, it would.

BY MS. CASWELL:

Q Level 3's interconnection agreement with Verizon defines local traffic for the purposes of interconnection and mutual compensation, doesn't it?

MR. HOFFMAN: I'm going to object, and ask if counsel is going to ask questions concerning that interconnection agreement that the witness be provided a copy.

CHAIRMAN JACOBS: Do you have a copy of that, Counsel?

MS. CASWELL: Yes, I have a copy here. But it is the only one, though.

BY MS. CASWELL:

Q Do you know if Level 3 has adopted the AT&T interconnection agreement with Verizon?

A No, I don't.

Q Can you just assume that that is true, subject to check? Because what I have handed you is the AT&T agreement that Level 3 adopted?

A I can except that subject to check, but I have never seen an interconnection agreement that wasn't at least two inches thick, and this is three pages.

Q I have just got the definitions there, I have just got the local traffic definition.

A Okay.

Q And I think it is down at the bottom of one of the pages. Can you read what that says?

A At the bottom of which page?
Q I don't have the page with me, but I have it underlined, and it says -- I think it says local traffic.
A Okay. Would you like for me to read that sentence?
Q Well, either that, or can you verify that local traffic for purposes of mutual compensation means that a call originates and terminates in the same GTE exchange area?
A Well, let me just read it. It says, "Local traffic for purposes of interconnection and mutual compensation under the agreement means traffic, (1), that originates and terminates in the same GTE exchange area or, (2), originates and terminates in different GTE exchange areas that share a common mandatory local calling area, such as mandatory extended area service. Local traffic does not include optional EAS, which are those arrangements where the originating end user has a choice between rate plans, one rate plan which does not include the identified route, and one rate plan which does not include the identified route within the end user's flat rate calling area."
Q Virtual NXX calls don't originate and terminate in the same ILEC local exchange area, do they?
A Well, they do from the perspective of the switch. Because of the NPA/NXX commonality, the switch believes that those originate and terminate in the same local calling area, just like FX service.

Q But physically they don't originate and terminate in the same calling area, correct?

A That is correct.

Q And that is how we have traditionally defined local and toll calls, correct? I think you --

A No, I wouldn't agree with that generally just because of all the exceptions we have to that general statement. But certainly some toll calls or toll calls do originate and terminate in different exchanges.

Q Yes. And I think you agreed earlier with Mr. Edenfield that traditionally it would be a toll call if an end user in Lake City called an end user in Jacksonville?

A Sure. If you didn't have an FX service or an FX type service that would certainly be the case.

Q But you seem to think that reciprocal compensation is due for virtual NXX calls, but that is not consistent with the parties' interconnection agreement, is it?

A Well, it is certainly -- well, I don't know. But I do know it is consistent with the way Verizon treats its FX service. How can you charge Level 3 access charges for a call and then charge -- and then, you know, charge ALECs like Level 3 recip comp on your FX service? I mean, that is totally inconsistent. You can't have it both ways.

Q Well, if you look at that interconnection agreement it means that you don't get reciprocal compensation for virtual

NXX calls, does it?

MR. HOFFMAN: I'm going to object at this point. You know, the question of what an interconnection agreement means or should be interpreted to mean, as this Commission knows, can often be a function of a number of different circumstances arising out of the actions and intent of the two parties to that agreement. And for this witness to speculate on that is inappropriate.

MS. CASWELL: All that I asked him was what the local calling definition said in the agreement, but I will go on.

BY MS. CASWELL:

Q Have you attempted to charge Verizon reciprocal compensation for virtual NXX calls?

A I don't know. I just don't have that information.

Q Does Level 3 serve primarily ISPs?

A No, I think that would be incorrect.

Q Does it carry any voice traffic at all?

A It is carrying voice traffic, that is a service that it is rolling out.

Q So it's not carrying it?

A They are carrying voice traffic today. They offer about 29 different services. I don't know how those are split up amongst various types of customers.

Q When you say they are rolling it out, does that mean you are providing it now or you are just starting to provide it?

A I know that Level 3 is offering voice services, I don't know if they are offering them today in Florida. I know it is still, you know, still in its infancy.

Q I would like for you to take a look at your rebuttal testimony at Page 23, Lines 1 through 3. You state that even under the proposals of BellSouth and Verizon, these calls -- and I believe you are referring to virtual NXX calls -- would continue to be rated as local for retail purposes. Where has Verizon made such a proposal?

A Well, your FX service is rated as local.

Q But Verizon hasn't proposed any use of virtual NXX codes, right?

A It's the same thing. It is the exact same functionality you are providing to your customer. The virtual NXX service that the ALECs are providing, as I think Doctor Selwyn said this morning, that is really physically the only way that they can provide a competitive response to your FX service. Absent going out and building central offices in every local exchange where Verizon has a central office, I mean, that is the only way that ALECs would be able to physically provide that service in the same manner as Verizon. So instead of duplicating your network, the ALECs are using virtual NXX to provide the same functionality and service to consumers.

Q And an ILEC charges the FX subscriber for that service, correct?

A Yes, it does. And that is a pricing issue, that has really nothing to do with the technical issue or whether or not it is a local or toll call. That is simply pricing and has no place in this proceeding.

COMMISSIONER DEASON: Well, let me interpret just a second. I may have misunderstood Doctor Selwyn, but I thought that he said that is precisely how you define what is toll. I mean, he referred us to United States Code, and I didn't get a copy of the language, I wish I had it in front of me, but I tried to make notes and I may be mistaken because I don't have the language, but basically a definition of toll service is when you pay -- there is a charge to customers more than what they get with their basic. And if they are charged for that, well, then that makes it not local, which makes it toll.

THE WITNESS: Well, that is one way to look at it. I mean, there are carriers today that are charging a flat rate for all calling statewide. Local, whatever you would consider to be traditional toll, internet access, all of it for a flat rate.

And let's look at, for example, the extended optional EAS that BellSouth is offering. Now, they are charging an additional amount for that, okay, for LATA-wide calling. That is not toll, that is local. Those calls are rated as local and they are booked as local on the books of the company. That is not a toll call.

COMMISSIONER DEASON: So how does it fit in the definition under -- what is it, Section 47, United States Code, Mr. Hoffman?

THE WITNESS: Yes. I think Mr. Hoffman might have that.

MR. HOFFMAN: 47 USC 153, Paragraph 48. I can give the witness my copy.

THE WITNESS: And that might be one definition of toll. I used to always think of toll as having a toll indicator like the 1 or a 0.

COMMISSIONER DEASON: Could you just look at that, 47 USC Section 153(48).

THE WITNESS: Yes.

COMMISSIONER DEASON: If it is not too terribly long, can you read it?

THE WITNESS: Yes, I would be happy to. It says, "Telephone toll service. The term 'telephone toll service,' means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."

COMMISSIONER DEASON: So under that definition, how does -- what is FX service under that definition?

THE WITNESS: Well, under this definition FX service as provided by BellSouth would be a toll service, because there is an additional charge for that private line between the exchanges. The inconsistency there is that they have always treated it as a local service. Despite what they have said in this proceeding, if you go back a year or two and you look at their tariffs and you look at their books, these are local services. They are not charging toll rates for FX service. They are charging, yes, for that private line, but it has always been booked as local. And they have always charged us -- until they did their FX database, they have always charged us reciprocal compensation meaning --

COMMISSIONER DEASON: Now, are you saying just because they have done it that way that makes it right?

THE WITNESS: Well, I'm just trying to point out that this definition which is probably, you know, dates from divestiture, may not apply today. I think in the next five years or so you are going to see a huge convergence of usage where local and toll really isn't going to mean anything anymore.

You are probably just going to buy some access and you are going to get a certain amount of bandwidth. And you can use that bandwidth for whatever you consider local calling, traditional toll, video streaming, and we are not going to have a description on your bill anymore that is going to say local, EAS, toll. I mean, I think it is all going to be thrown in there and it's going to be a real convenience, I think.

Now, will that raise a lot of problems for us as regulators? Oh, boy, yes, it will. It will be tough, and it will be a difficult transition. But once we do and there is competition, then it will be much more efficient and easier to understand. Because we are not talking about -- mileage doesn't mean much anymore, as we have discussed over the last couple of days. Transport is so cheap, 300 miles of transport is only 1.6/10,000ths of a penny according to BellSouth's rates, 300 miles of a DS-3. I mean, that is de minimis.

COMMISSIONER DEASON: Let me ask you this: How does Level 3's virtual NXX service, under the definition that you just read, how would that service be classified?

THE WITNESS: I don't know how Level 3 charges for that. I know they consider it a local service. I don't know how they charge for it, so I don't know if there is an additional charge for the transport. But that is really why you can't look at pricing. Pricing really doesn't help you determine whether it is local versus toll with the existing technology today.

COMMISSIONER DEASON: So your bottom line is that the references which Doctor Selwyn gave us in the United States Code doesn't help us in today's environment?

THE WITNESS: Well, I think they are helpful. That is the traditional definition that, you know, I have been talking with today with BellSouth's counsel. Yes, that is a traditional definition. It may not help you going forward. All we are suggesting here is let's not change the status quo, and the status quo is rating calls based on NPA/NXX. Let's not change that now because competition is coming. You know, let's not force all of those costs on ILECs and ALECs alike just to stop competition.

Let's just continue to use the status quo, the existing technology, and encourage new entrants like Level 3 to provide services like this. Let's not charge them, or tax them, or penalize them for trying to figure out a new and efficient way to provide a competitive response to BellSouth's or Verizon's FX service. I mean, it is clearly a local service. It is dialed as a local call.

And this is perhaps the most important point, which I probably should have brought up 25 minutes ago. We need to look at this from the consumers' perspective. Let's not look at the switches, let's not look at the rates, let's not look at the service descriptions, but what does it look like to the consumer. Now, when someone picks up the phone and they dial seven digits, they expect that to be a local call. They don't know if whoever they are calling, they don't know if they are next door, they don't know if they are ten miles away or 1500 miles away. But they know they are dialing a local call. The switch sees it as a local call, therefore it should be treated as a local call just as it has been over the years.

And that is consistent with the way that Verizon and BellSouth have treated their FX, extended reach, RCF, all of these other services, that is the way they treat them today. So let's not change that. Let's not change it just because there is competitive entry.

COMMISSIONER DEASON: Well, I agree that the customer initiating the call considers it local. But the customer subscribing to the FX, they may want the customer originating the call to think it is local, but when they get their bill every month they know it is not local because they are paying dearly for that.

THE WITNESS: They are paying extra. And Level 3 may choose to charge extra for that, as well. But since they don't provide the private line, it's going to be more of a competitive pricing response as opposed to a specific, you know, facility price or cost. But I just think it's wrong to focus on prices when you are trying to determine whether a call is local or toll. That really shouldn't enter into it.

COMMISSIONER DEASON: So we should look at dialing patterns?

THE WITNESS: Yes, sir.

COMMISSIONER JABER: And, Mr. Gates, just to take that one step further, in preparing for a competitive marketplace we shouldn't be looking at costs anyway, but that competitive pricing pattern.

THE WITNESS: Well, we have to look at costs in the interim because we still have the vestiges of a monopoly in the incumbents. We have to make sure that they aren't gouging new entrants and preventing competitive entry by imposing additional costs, unwarranted costs on the new entrants. So for awhile we have still got to look at costs to make sure that the rates are TELRIC-based, you know, a competitive sort of rate so that the competitors don't end up subsidizing the incumbent.

COMMISSIONER JABER: Well, then in that regard, might the transition, might a fair transition be the bill and keep methodology?

THE WITNESS: Bill and keep only works if the balance -- or the traffic is roughly in balance. That is the only time it works. Otherwise you end up having the new entrant paying costs that the incumbent never has to pay, even if they are imputed. So bill and keep will work if the traffic is in balance, and that's the key. And that is your dilemma, I think.

COMMISSIONER JABER: Were you here earlier when I asked that question about other states?

THE WITNESS: Yes, ma'am, I was.

COMMISSIONER JABER: I will take this opportunity to try to ask you these questions then. Are you aware of any other states that have implemented a bill and keep methodology?

THE WITNESS: I'm not sure -- I'm aware of one state, my home state of Colorado, that ordered bill and keep for ISP traffic only. That seems now to be, you know, null and void given the FCC's ruling, but it was never implemented. Of course it was appealed. So I'm not aware of any states that have implemented bill and keep.

COMMISSIONER JABER: Do you know if Iowa has implemented a bill and keep methodology for all traffic?

THE WITNESS: I don't know. I'm sure the lawyers though in the briefs will fill us all in on that.

COMMISSIONER JABER: I think the layers can tell me if Iowa has done that too, perhaps.

BY MS. CASWELL:

Q I just want to go back to the statement of yours about a proposal of Verizon. I just wanted to be clear that you agree with me that Verizon has never proposed that virtual NXX calls would continue to be rated as local. Verizon hasn't made such a proposal, has it?

A No, you have never made the proposal that virtual NXX calls would be rated as local. But you continue to rate and price your own FX service as local. So, I mean, we need to be consistent. You can't treat your competitors one way and then continue to treat your own service in another.

Q But your statement deals specifically with virtual

NXX calls, correct?

A Yes. Virtual NXX, which is identical from a consumer's perspective and from a provisioning -- well, not exactly provisioning, but from the consumer's perspective it is identical to your FX service.

Q You won't be entitled to reciprocal compensation for any virtual NXX calls unless the Commission buys your notion that dialing patterns determine whether a call is local, correct? They have got to accept that before you do reciprocal compensation for virtual NXX calls?

A I would agree with that generally.

Q And that's a break with what they have traditionally done with regard to determining whether a call is local or toll, correct?

A No, I don't agree with that at all. They have certainly approved all of the other similar FX type services that the incumbents are providing today. So I think it would be very consistent with the decades old policy of this Commission to go ahead and say that virtual NXX calls are local calls.

Q Don't Verizon's tariffs approved by this Commission define its local calling areas?

A I'm sure your local calling areas are defined by the Commission.

Q And hasn't the Commission assessed whether something is local or toll based on the location of the calling party and the called party?

A Oh, not in every case. I mean, I hate to be redundant, but you have to keep looking back to your own services.

Q So, again, you're going to talk about the FX service, correct?

A Yes.

Q And that would be the only reason that you believe the Commission hasn't traditionally looked at the location of the customers to determine whether something is local or toll?

A The Commission has always relied on the industry practice, which is to use the NPA/NXX codes to determine whether something is local or toll. Now, there are unique situations, such as EAS. And the companies deal with those unique situations by going into the translation tables in the switches and making that change.

So when that customer makes a call, not only can they tell whether they have call forwarding, call waiting, you know, last number redial, all of those things are in the translation tables, but also the EAS routing, that is in the translation table. So it tells that switch if that call goes from one NXX to this one other NXX, which is within the EAS zone, to treat that as local and not toll.

Q When Level 3 uses virtual NXX assignments, does it pass any information to the ILEC to allow the ILEC to determine whether that call should be rated as toll or local under the ILEC's tariffs?

A No, of course not.

Q And you don't think they --

A Just like Verizon doesn't pass any information to Level 3 when it bills us reciprocal compensation for FX calls.

Q Do you know that this Commission found that in an arbitration between Intermedia and BellSouth that Intermedia should pass such information if it wanted to use virtual NXX assignments?

A I am generally familiar with that. I don't have any personal -- I don't think I have read that order completely, but I think I am familiar with that.

MS. CASWELL: That's all I've got. Thank you, Mr. Gates.

THE WITNESS: Thank you.

CHAIRMAN JACOBS: Ms. Masterton. Commissioners. Staff.

MS. BANKS: Yes, Mr. Chairman, staff has a few questions.

CROSS EXAMINATION

BY MS. BANKS:

Q Good afternoon, Mr. Gates.

A Good afternoon.

Q I wanted to know if you know if Level 3 presently has customers in all exchanges to which Level 3 has assigned its NXX numbers in Florida?

A I don't personally know the answer to that question, but I would assume that they do or they wouldn't have deployed those numbers. But I don't know.

Q Okay. Changing gears a little bit, there has been a lot of discussion about what calls are treated as local calls. And the FCC has stated that calls to ISPs are local, is that correct?

A They are not local?

Q Yes, they are not local.

A Yes, I think the new ruling calls them exchange access or something that I think is not very well defined yet, but they are not local.

Q Okay. Originally wouldn't you say that was because the seven digit ISP call terminates at a distant website, according to the FCC's declaratory ruling?

A The declaratory ruling was remanded back to the FCC which resulted in the remand order. So are you asking me a question about the declaratory ruling?

Q Yes.

A Okay. I'm sorry, what was it again?

Q Basically, the seven-digit ISP call termination at a different website, has it originally been determined that this seven-digit ISP call terminates, when it terminates at a distant website, according to the FCC's declaratory ruling, correct?

COMMISSIONER JABER: Felicia, one more time. I didn't hear your question.

COMMISSIONER DEASON: More slowly, please.

THE WITNESS: Yes, please.

BY MS. BANKS:

Q You stated earlier that the FCC has stated that calls to ISPs are not local, correct?

A Yes, based on the recent ruling. Which I know has been appealed, but it's there, so.

Q Okay. Well, notwithstanding that, if the FCC didn't consider -- and let's just changing it a little bit -- if the FCC didn't consider a seven-digit call to ISPs a local call because it terminates at a distant website, why would the FCC consider a seven-digit call from Lake City to New York a local call as you mentioned earlier?

A I think the FCC concluded -- I don't know what to think of the FCC. I don't know how they came to their conclusions.

COMMISSIONER DEASON: Welcome to the club.

THE WITNESS: All I know is they really like footnotes, you know. But I don't know if I can answer that, I'm sorry. I think -- I don't know. I just can't answer that.

I think it was because of the multiple terminations of those calls to ISPs. I mean, I think they discussed it at some length that they are not just terminating at the ISP, that there is actually multiple calls to the URLs. And they concluded that it was more like a toll call than a local call.

BY MS. BANKS:

Q Let's see if this might help. If I could clarify, Mr. Gates. If a seven-digit call to an ISP is not local, why would the other seven-digit call outside the local calling area be considered local?

A Well, because for the same reason that FX calls and all the other examples we have been talking about today are local. There are exceptions to the originating and terminating point analysis that the FCC has done, those exceptions have existed for decades, and we just need to be consistent. We can't treat virtual NXX calls as toll calls and then treat Verizon and BellSouth's FX service as local. That would be inconsistent. We are just trying to maintain the status quo here on a very unique subset of calls.

CHAIRMAN JACOBS: You were given a hypothetical earlier which had a virtual NXX in, like, New York?

THE WITNESS: Yes.

CHAIRMAN JACOBS: And you said that was technically feasible. Is it feasible both for virtual NXXs and FX?

THE WITNESS: Yes, it is. The FX service and the customer, according to BellSouth, then would buy a private line between Lake City and New York City.

CHAIRMAN JACOBS: Thank you.

BY MS. BANKS:

Q Just curious, Mr. Gates. Kind of along those same lines of what is considered to be local versus not local. If a LEC carries traffic on a particular route on a seven or ten-digit basis, and that IXCs carry traffic on the same route on a one plus ten-digit basis, should this route be considered local or toll for purposes of ILEC/ALEC intercarrier compensation?

A No, I wouldn't characterize the route as local or toll, because it's really the originating customer that determines whether it is local or toll. For instance, in my cul-de-sac we have five people, and depending on which calling plan you choose, you could complete the same call in a number of different ways.

Now, a customer may inadvertently dial a toll call when they could have made it on an EAS basis, so the customer could have gone to their local exchange carrier and said, BellSouth, I want EAS between these two exchanges. But if they don't do that, then when they dial they have to dial a toll call. So the same route could technically be treated as local in one scenario and toll in the other.

Q So if I understand correctly, it could depend on the exchange area?

A Well, no, it depends on the way you dial it and the package that you purchased. If you have purchased FX service, it would be a local call. If you haven't purchased FX, or EAS, or remote call forwarding, or one of those others, then it would be a toll call. Because when you tried to dial it on a seven-digit basis, it wouldn't go through. You would get some sort of an intercept and they would say you have to dial one before making this call.

So, again, it boils down to whether it is local or toll depends on how you dial it, which is the comparison of the NPA/NXX codes.

Q If this Commission were to weigh the number conservation concerns with competitive flexibility afforded to the ALECs by use of virtual NXX, would a viable resolution be to allow the use of virtual NXX only where there is number pooling?

A No, I don't think so. I think we are seeing a sky-is-falling sort of scenario here. There has been no proof that virtual NXX or even FX service for that matter has impacted the numbering resource in Florida. So I think it would be wrong to try and limit the availability of a service based on a fact that is not in evidence.

I think we need to go ahead and allow the service to be offered, just like FX and the other services. And then if there is a numbering issue then we need to look at all the services, not just one particular offering.

MS. BANKS: Thank you, Mr. Gates. That concludes staff's cross.

THE WITNESS: Thank you.

COMMISSIONER JABER: One final question, Mr. Chairman. Mr. Gates, just focusing again on what you were saying. In a competitive marketplace you eventually get away from costs and perhaps even the definition of toll and access and all of that. And, again, keeping in mind what the purpose of this docket is, which is to look at how to treat reciprocal compensation, if we do, going forward.

THE WITNESS: Sure.

COMMISSIONER JABER: Might it be appropriate for the Commission to consider encouraging the parties to just come up -- as another provision in the interconnection agreements, to just come up with a fee for delivery of virtual NXX codes? I asked you about bill and keep earlier, let's set that aside.

If that is not appropriate because we don't know if the traffic is roughly balanced, then as an alternative should we just encourage the parties to come up with a one-time fee that can be negotiated in the interconnection agreement for delivery of all of the virtual NXX traffic?

THE WITNESS: Okay. Good question, Commissioner. I think when you ask me that question I say to myself, well, what is that fee for? What are you paying BellSouth for, what does the fee represent? We know based on the evidence in this case that virtual NXX doesn't increase their costs one penny. Not a dime, nothing. There is no additional cost. The only costs that I have seen or heard people talk about is the opportunity cost of perhaps losing an FX customer to a virtual NXX offering. I don't think you want to subsidize or guarantee revenues to the incumbent local exchange carrier. I think that is wrong when you are trying to encourage competition. So, unless --

COMMISSIONER JABER: But, see, isn't that the same theory behind looking at whether traffic is roughly balanced? I mean, why should I care about that? Isn't that, in effect, a subsidy for whichever side, whoever has got the lesser of the traffic?

THE WITNESS: Well, if the traffic is in balance, then no one is being disadvantaged because the costs are relatively the same because you are terminating the same amount here on this side as you are on this side. But absent balance, then you have to have reciprocal compensation. Otherwise one carrier is going to get a free ride on the facilities of the other carrier. And that's why the FCC said that you have to have this rough balance.

But you can't impose a charge on a new entrant for offering a service that is a competitive response to an existing service. Why would you do that? Why would you tax a new entrant for making a competitive offering? I mean, if I were to counsel the ALECs that I work for and there was a $50,000 charge in Florida for entering each NXX or each local calling area in the state, I would say that's crazy, you can't tax people for providing a competitive offering. And forgive me, I didn't mean to suggest your idea was crazy.

COMMISSIONER JABER: That's okay, it wouldn't be the first time.

THE WITNESS: But I just think it's wrong to charge a fee that is not cost-based in an era when we are trying to get away from subsidies. We are trying to drive access charges to cost. We are trying to get the UNE prices down to cost so that people can compete on a facilities basis. Why would we then impose an artificial tax or charge on new entrants just because they are offering a competitive service?

I just think that's wrong. I don't think there is any need. There is no harm. The companies, Verizon and BellSouth aren't being harmed by this offering other than the fact that they might lose a customer to a competitive response. But we are not increasing their costs.

COMMISSIONER JABER: And that's because you think the true cost, which is the cost of delivering the call to at least their POI, is already covered?

THE WITNESS: Yes. It's already there, it's already covered, yes.

MR. EDENFIELD: Chairman Jacobs, before we do redirect, Ms. Banks asked a question that gave rise to just one single question I would like to ask if that is okay.

CHAIRMAN JACOBS: One question.

FURTHER CROSS EXAMINATION

BY MR. EDENFIELD:

Q Other than a number shortage situation, why would you even want to use virtual NXX except to avoid toll?

A You use virtual NXX because Level 3 and other ALECs don't have end offices in the exchanges where they want to provide an FX type service. They physically don't have the facilities there. So in order to provide an FX type service they use the virtual NXX capability to provide the same functionality. It's not toll avoidance. Level 3 offers toll.

COMMISSIONER DEASON: I've got a question, a follow-up to your answer to Commissioner Jaber's question. And I believe you indicated that in a bill and keep environment it is important that the traffic be roughly balanced, because if it is not balanced someone is getting a free ride. Can you give me an example of how that would happen?

THE WITNESS: Yes. Say, for instance, in Lake City -- and this is a very probable type of example. Suppose BellSouth customers are calling Level 3 customers, and there are many more obviously BellSouth customers than Level 3 customers. So let's say there is 100,000 minutes of use going to Level 3 customers, okay. Level 3 is required to terminate that traffic for BellSouth. Without reciprocal compensation in a bill and keep scenario, Level 3 would get nothing for terminating those calls.

Now, if Level 3 was originating 10,000 minutes on its side, okay, and terminating that to the BellSouth customers, 100,000 here, 10,000 here, there is 90,000 minutes where Level 3 would not be compensated for terminating calls that were originated by BellSouth customers. So BellSouth would get a free ride, a free termination of those calls originated by their customers on the Level 3 network. Now, if that traffic --

COMMISSIONER DEASON: But your customers are getting the benefit of having people call them, correct? I mean, apparently there must be a reason for those calls to take place. In fact, historically, given the ISP arrangement, there has been an incentive in place for companies to go and solicit that business and get the flow of traffic to go in one direction, correct?

THE WITNESS: Well, for that particular customer class that may be true. But the real benefit is from the caller who makes the call. Some people would argue that receiving calls is not a benefit, especially with telemarketers. A lot of calls I don't want to receive. But the point is --

COMMISSIONER DEASON: All you have got to do is hang-up, and then there maybe was just one second of reciprocal compensation -- I mean, one second of cost of terminating that call.

THE WITNESS: But all of the compensation when BellSouth originates those 100,000 minutes, BellSouth is being compensated by those originating callers for making those calls, okay.

Now, when those calls are terminated, there is no compensation there. BellSouth is keeping all of that revenue to itself. It's not passing a dime on to Level 3, and yet Level 3 has to terminate all 100,000 minutes. So if the traffic is not in balance, the revenues don't match and the costs get way out of whack.

COMMISSIONER DEASON: What is the incremental cost of terminating that traffic?

THE WITNESS: Well, there is switching and transport costs.

COMMISSIONER DEASON: The transport costs you have testified is nil, nonexistent.

THE WITNESS: Well, it is nil --

COMMISSIONER DEASON: And how much is switching, that can't be very much, either.

THE WITNESS: Switching is expensive relative to transport. But if Level 3 has to use the facilities of BellSouth to terminate the call, because Level 3 doesn't have local loops out there, so you have to either get, you know, UNE platform or buy UNEs in order to terminate the call, it can be expensive. The termination is expensive. And, you know what, even if the termination only costs ten cents, if you have no revenue to offset the ten cents, it's still a loss and you can't stay in business if you are losing money.

COMMISSIONER DEASON: Well, I have another question for you. You indicated that BellSouth has a lot more customers than you, therefore there is a likelihood you are going to have to terminate more traffic and maybe give BellSouth a free ride. But it seems to me the logic is just as valid in the reverse. You may have fewer customers, but there is a whole lot more potential of customers out there for them to call that are BellSouth customers, so it seems to me that --

THE WITNESS: But you don't get revenue.

COMMISSIONER DEASON: I'm sorry, let me finish the question.

THE WITNESS: Yes, please.

COMMISSIONER DEASON: If there is no distortions like ISPs out there, that if you go and you solicit business from just the general body the ratepayers and you get the ones that you can, and BellSouth, they keep the ones that they can, you are going to have the same basic array of customers. You just may have a smaller sample of the larger population, and that the traffic should be roughly the same in either direction.

THE WITNESS: Well, I think you raise a good point, and I think the point is that depending on the type of customers you attract, depending on where you are, what type of business is there, whether it is residential, whether it's rural, the calling patterns are going to be very different. I think we would agree on that.

So what we don't have here are the facts. You and I both can come up with different scenarios that either harm, or hurt, or benefit various carriers under different scenarios. We just don't have any facts in this case to know whether the traffic is in balance or not.

But I think before you order something like bill and keep, you have to have the facts in place to make sure that you comport with the FCC rules so that there is no competitive harm.

COMMISSIONER DEASON: How do we go about doing that?

THE WITNESS: Well, we would have to request that data from the carriers. Especially now after the ISP order, the FCC order on remand, now that those calls have been taken out of the equation, the traffic scenarios are going to look very different than they did in the past. So you would have to ask for that data from the carriers. And I'm not a lawyer, but then I think we have the notice issue. That was never noticed in the case, we don't have any testimony on it. Someone suggested that might be Phase III.

COMMISSIONER DEASON: Well, shouldn't there be some type of preliminary showing that would indicate that there is some reason out there other than the ISP distortion why the customers that you sign up are going to be terminating a lot more traffic than make calls that are terminated on BellSouth's network?

THE WITNESS: I think the rebuttable presumption is that the traffic is not in balance because of the incumbent nature versus the new entrant. I think if you are going to go to bill and keep then you have to make a showing, you know, a showing based on a record that the traffic is roughly in balance.

COMMISSIONER DEASON: So you assume it's out of balance and someone is going to have to prove it is in balance?

THE WITNESS: I would, and that's the way the rules read. The rules say you can use bill and keep if it is roughly in balance. So you have to show, you have to be able to have some data to show that there will be no competitive harm in order to use bill and keep. That's the way I read it, but I'm not a lawyer, so.

COMMISSIONER JABER: Are you saying in, like in balanced, I-N.

THE WITNESS: Yes, roughly balanced, in balance.

COMMISSIONER DEASON: In balance, two words.

THE WITNESS: In balance, yes. In other words, if you are going to use bill and keep --

COMMISSIONER DEASON: In balance, two different words. They are balanced. Is that what you are saying or are you saying one word, I-M-B-A-L-A-N-C-E, imbalance?

THE WITNESS: Well, it depends on how I used it, I guess. Let me restate the position.

COMMISSIONER JABER: But that is important.

THE WITNESS: Oh, it is a very important point. What I'm saying is if you are going to order bill and keep, you have to have data to show that the traffic is roughly in balance, I-N, okay. Because I think the assumption has to be without that data that the traffic is not going to be in balance.

COMMISSIONER DEASON: Why would you assume it is out of balance?

THE WITNESS: Just because of the nature of a new entrant. New entrants don't offer a panoply of service, they offer a limited variety. Now I said Level 3 offers 29 services, but I bet two or three of them make up the majority of their offerings. So they tend to be concentrated. Whereas the ILEC, the incumbent, offers hundreds of services. So it has a little different dispersion of traffic. So, I mean, I don't know, I think that's why you need the data. I think if you are going to go to bill and keep, where you put new entrants at risk, in order to prevent harm to the competitive process you have got to have some data to do that.

COMMISSIONER DEASON: Historically, haven't you had an incentive to sign up those customers who were going to be terminating more calls than they originate?

THE WITNESS: I don't think so.

COMMISSIONER DEASON: All right. You just said you don't think so. All right. Given that is the situation, why shouldn't we assume that everything is balanced and then someone has the burden to come in and prove that they are out of balance?

THE WITNESS: Because you don't know what the traffic patterns are for various carriers. You just don't have those facts before you. You can't assume that the traffic is in balance just because of the different nature of new entrants versus incumbents. And I'm not saying that it's not, it might be, it might not. I'm just saying that you need facts in the record in order to make sure because you need to make sure you don't harm new entrants when we have this nascent sort of competitive entry going on.

COMMISSIONER DEASON: So why is it that you believe that your particular customers and the services that you offer are going to result in you having to terminate more traffic than your customers originate?

THE WITNESS: I don't know that. I don't know that.

All I'm saying is that if you are going to do something other than -- if you have reciprocal compensation, you know that everybody is going to get paid for terminating that traffic. Whether it is one minute or 50 million minutes, everyone is going to get paid.

But if you go to bill and keep there is a risk that you are not going to get paid. And if you are going to do that and risk harming any carrier, not just the ALEC, but the ILEC alike. BellSouth also has a risk. So if you are going to go to bill and keep, you need to have the facts in place to make sure that the traffic truly is roughly in balance. I just think the risk to the public interest is too great to go to a scenario like that without any facts.

COMMISSIONER JABER: Mr. Chairman, if I could ask staff a clarifying question. Do you want to take a break?

CHAIRMAN JACOBS: Otherwise I'm going to lose my court reporter over here. We are going to take a ten-minute break and come back.

(Recess.)

CHAIRMAN JACOBS: Back on the record. Commissioner, you had a question?

COMMISSIONER JABER: Just one clarifying question of staff. Mr. Gates' testimony, Beth, created a question in my mind with respect to bill and keep as being an option that we could exercise in this docket. And I'm not saying any of us are going to go there. Obviously we need to go back and read the record. But if we wanted to explore the bill and keep methodology, do you agree that this Commission has to go through another proceeding that takes evidence with respect to whether traffic is roughly balanced between companies?

MS. KEATING: I think that kind of actually gets to the questions that both you and Commissioner Deason had asked earlier. And we talked with the parties at the lunch break, and I think that is the general consensus is that if you are really looking at bill and keep as an option, particularly in view of the FCC's remand order on reciprocal compensation, that you would probably need to take testimony on the levels of traffic.

COMMISSIONER DEASON: Why can't we require bill and keep, and if a party feels they are aggrieved come in an demonstrate by evidence that their traffic is not in balance?

MS. KEATING: Well, the rule does provide that a state commission can presume that traffic is roughly in balance, but it is a rebuttable presumption. And my read is that the parties would have to be allowed to at least attempt to rebut that presumption.

COMMISSIONER JABER: So we can make it PAA?

COMMISSIONER DEASON: No, I'm talking about on a case-by-case basis. Until you try it, you might like it. And then you don't like it, come in and demonstrate why you are being harmed. And if you can make your case, so be it. What is wrong with that? Does that meet FCC muster?

MS. KEATING: That may be an option. I would be interested in hearing what some of the other -- what the other side of the fence thought of that.

COMMISSIONER DEASON: Just a thought.

CHAIRMAN JACOBS: Yes. We probably should at least get the recommendation before we start --

COMMISSIONER JABER: Yes. But that's why I'm asking, Beth, is for purposes of this is docket, though, as we explore methods of dealing with reciprocal compensation, do you all have -- does staff have enough to explore bill and keep as a possible option, or does that contemplate another proceeding? And we certainly don't have to have an answer today.

The only reason I'm asking, Chairman Jacobs, is as the prehearing officer of the case, I don't recall a specific issue that deals with this. We did, though, require parties to file briefs informing us of what they believe the impact of the new FCC decision is on this docket. Now, maybe this can be incorporated somehow, I don't know.

CHAIRMAN JACOBS: Have we gotten any guidance about implementing that decision from the FCC?

MS. KEATING: Well, if I could back up just a little bit, and this may -- well, let me address maybe perhaps Commissioner Jaber's question and then that would lead me, I think, into your question, Mr. Chairman.

I think in view of the way the issues were set up for this phase, in particular, we just don't have a whole lot of information on bill and keep. So I'm getting a lot of nods, or shakes of the head, actually, from staff as to whether they feel like they would have enough information to give you a real strong recommendation.

COMMISSIONER DEASON: But I thought that was one of the purposes we were going to this hearing was to fully explore that. I guess we didn't give enough precise direction as to what we were hoping to accomplish. I mean, I thought that was one of the reasons -- I remember a while back when we were discussing that we needed to have some type of generic proceeding on reciprocal compensation that we needed to answer some basic questions, and I thought one of the things we talked about then was whether a bill and keep was an appropriate approach, whether there were problems with it, explore it. And now we're saying, sorry, this is not -- we are going to have to have another proceeding.

MS. KEATING: Well, actually, no. You're right, Commissioner, that is one thing that we were going to be looking at, and we did look at it in Phrase I in particular. But that dealt a lot or mainly with traffic going to ISPs. So now with the FCC's order, since it has come into play that sort of changed the landscape a little bit. So that's why we are sort of at a loss.

COMMISSIONER JABER: What we are lacking is the data that would allow us to determine whether the traffic is roughly balanced. That's what we don't have.

MS. KEATING: Correct.

MS. CASWELL: I would just like to point out that we did submit testimony both in Phase I and Phase II on bill and keep because we realized it was a potential option. And our view, I think, would be consistent with Commissioner Deason's, that we don't need that factual information here, and that it would be a case-by-case presumption, or a case-by-case determination as to whether the traffic was not in balance, a rebuttable presumption. And you can make a generic decision as to bill and keep without having that factual information.

MR. MOYLE: The question, as I thought I understood it, I think there are really two distinct issues, and if I recall -- and the record will speak for itself, but I think the testimony in the first phase with respect to bill and keep largely was that there is not a balance, therefore bill and keep would not be appropriate. Now, that is subject to check with respect to the testimony. But, again, I think that was with the ISP question factored in.

Now, with the FCC decision sort of removing that ISP equation, it seems to me that is a whole new issue with respect to that factual matter. As I understand it you have to have a factual predicate before you can make the decision. So, you know, I think Mr. Gates was talking -- I'm just not sure there is a sufficient factual record to establish bill and keep. And I think if you had the factual record with respect to the testimony that was in Phase I, that largely was that there is not a balance, so it would actual already take you in a different direction.

CHAIRMAN JACOBS: Well, it occurs to me in reading the rule that either we would have, number one, had to in this docket do our presumption and then have parties present evidence rebutting the Commission's presumption, or we would have had to undertake an evidentiary process to establish the relative balance of traffic amongst the parties. It sounds like we would have to do one of those two options in this proceeding.

MS. KEATING: I'm sorry, Mr. Chairman, I missed the very first part of your --

COMMISSIONER DEASON: In Subsection C it says we can by our own presumption indicate that we think traffic is roughly in balance, but that a party has the opportunity to rebut our presumption. So it sounds like we would have had to have done that in this, exercise our presumption in this docket, and then parties should have had an opportunity to provide evidence to rebut that presumption in this docket, if we were going to impose it.

Alternatively, we could have declared that as an issue in this docket and taken evidence as to the relative balance of traffic amongst the parties in this docket also before we would impose bill and keep. Is that consistent with your reading of this rule?

MS. KEATING: That is an argument that could be made. I'm really mainly trying to point out the two sides of the argument. I think Verizon has indicated that they feel like that you could go ahead and make that decision in this phrase. But particularly on the break, I heard a little bit more vehement reaction from the --

CHAIRMAN JACOBS: Before we move from that, I want to understand the argument. Because if I read the rule correctly, we -- there is not -- we don't have unfettered discretion to put in bill and keep, and that seems to be what I'm hearing. We can do bill and keep, we just have to do it on a case-by-case basis. And I don't read this rule to say that.

COMMISSIONER JABER: I don't, either. I think we have two choices. Under B we can impose bill and keep after we make a finding that traffic is roughly balanced. Under C we can impose bill and keep with an opportunity for parties to rebut the presumption that we have made that traffic is roughly balanced. And that's why I half-jokingly said PAA.

I mean, suppose even in this case we could find bill and keep, but somehow offer an opportunity for parties to rebut the presumption. Would you agree with that?

MS. KEATING: We have done that actually in cases, had PAA issues in post-hearing decisions.

COMMISSIONER JABER: I think that is what Chairman Jacob was saying. The statute seems to give us two choices, would you agree with that?

MS. KEATING: Uh-huh, I do think that --

COMMISSIONER JABER: If that is the understanding, I don't think there is anything more to be done on my concern. I just -- that had not occurred to me until I heard Mr. Gates' testimony.

CHAIRMAN JACOBS: I think I cut Ms. Caswell off.

MS. CASWELL: I just want to make one additional observation. It seems to me that you would have to make a determination of traffic balance on a case-by-case basis. Because as between pairs of carriers, your traffic balance is going to be different. So I don't see how you could -- even if you took evidence in this proceeding, how you could determine that on a generic basis traffic is balanced. It has to be a case-by-case basis, it seems to me.

CHAIRMAN JACOBS: Less we belabor this point too long, Commissioner, you had begun this, did you want to -- okay.

COMMISSIONER DEASON: No, I have stirred things up enough.

CHAIRMAN JACOBS: I'm wondering whether or not it would be useful to -- I don't know how you get to this. Under a generic docket, I don't know how you get to it.

COMMISSIONER JABER: Right. How about we let staff think about it. And if they need to come see me or the Chairman later on, you all -- and talk to the parties about it.

MS. KEATING: Well, I think that, again, you all had brought it up earlier about a briefing on the issue of what other states have done, how they have -- what compensation mechanisms they have implemented when they were moving to bill and keep. And another issue that we had talked about on the break is whether or not the three-to-one ratio in the FCC's order indicates that as a matter of law any traffic flow that is less than three-to-one ratio is, by its very nature, roughly balanced. And if that were the case, then perhaps a decision could be made. I would suggest maybe that that be included in the briefs.

CHAIRMAN JACOBS: Okay.

COMMISSIONER DEASON: Well, if we are going to be including things in the brief, I think that we should -- I want to know what the parties feel our discretion is under the rule. I mean, I read the rule, and I think right now based upon my reading it seems to me that we have some discretion here. But if someone feels like we don't have much discretion, I want to know about it before we make a decision. We still may make the decision, but then we will know how thin the ice is we are treading.

CHAIRMAN JACOBS: So it sounds like we have at least two issues to add to the brief. One is what is the range of our discretion to implement bill and keep pursuant to this authority under 51.713.

And then the other is an analysis of actions by other commissions implementing bill and keep for reciprocal compensation.

MR. EDENFIELD: Chairman Jacobs, if I may, can I add maybe one issue to that and maybe we want to consider. This is something that Beth and I had talked about a little bit during the break is after the FCC order, really the state commission is left with the ability to set rates on traffic that is a three-to-one ratio or less. And I think something else you may want to consider is whether as a matter of policy, or as a matter of Commission discretion, or whatever you would call it, you may determine as a matter of law that a three-to-one ratio is balanced. Because your ratios, given the FCC ruling, that is really what is left. Because anything above a three-to-one ratio is presumed to be ISP traffic.

So you may decide as a matter of course that a three-to-one ratio is, in fact, balanced. And that is something else we may want to try to comment on. Mr. Melson and I talked about that for a little while, and maybe add that to what we are going to brief.

COMMISSIONER JABER: That's in the FCC order anyway, right?

MR. EDENFIELD: It is. But all I'm saying is --

COMMISSIONER JABER: Well, aren't you already going to talk about the FCC order in the brief?

Beth, wasn't that the order --

CHAIRMAN JACOBS: Not for Phase II, I thought, for Phase I.

MR. EDENFIELD: We had filed the supplemental briefs, and we are talking about just a briefing in this as Phase II.

COMMISSIONER JABER: You're saying you did not include that discussion in your supplemental brief that you already filed?

MR. EDENFIELD: Correct. We did not discuss the three-to-one and the possibility for that being considered as a matter of law being balanced by the Commission. At least that is not something that I addressed. I didn't really think of it.

MR. MELSON: Commissioner Jacobs, my sense is the Commission is interested in knowing what the range of options is on bill and keep and what other states have done. And to me just a single issue where we address all of these factors, you know, what is your discretion, what have other states done, what does this record say, do you or don't you need, should you or shouldn't you take more policy testimony, what impact, if any, does a three-to-one ratio have, to me that is a single discussion of the single bill and keep issue.

CHAIRMAN JACOBS: With that understanding then, that will become a discussion that we ask for in the briefs. Okay.

COMMISSIONER DEASON: We may need to increase the number of pages in the brief.

MR. MELSON: Lawyers paid by the page never object to that.

CHAIRMAN JACOBS: Now that we have gotten over that simple question by Commissioner Jaber.

COMMISSIONER JABER: I'm sorry.

CHAIRMAN JACOBS: Commissioner Palecki.

COMMISSIONER PALECKI: Mr. Gates, I'm going to ask you a question to kind of find out what the importance of some of these issues are in relation to each other. But if you were negotiating with an ILEC and you had an opportunity to negotiate an arrangement where your definition of toll versus local was accepted, but in exchange you would have to accept a bill and keep arrangement on reciprocal comp, would you take the deal?

THE WITNESS: You know, I don't have the information to be able to answer that question. I have not been involved in the Level 3 negotiations. For instance, I know that with BellSouth, Level 3 has LATA-wide local calling, and they also have, you know, free trunks and single POI issues. But, you know, there are literally dozens, perhaps hundreds of trade-offs. And I don't know, I don't know what value those are to the company.

COMMISSIONER PALECKI: But based on your testimony it sounds to me as if the issue regarding what is local versus what is toll and that it not be determined based on geography is extremely important to you with regard to opening competition in the State of Florida.

THE WITNESS: It really is for that one competitive offering for FX service, that is true.

COMMISSIONER PALECKI: And I'm sure you understand that a bill and keep arrangement because of the simplicity of administration is attractive to us up here as regulators. I was just really wondering whether you could take the one in exchange for the other.

THE WITNESS: Well, I can't commit the company one way or another, but I could speculate on that. And I would also note that just because it's easy doesn't mean it is the best way to go. I mean, I understand --

COMMISSIONER PALECKI: I would like to hear the speculation.

THE WITNESS: Okay. The beauty of bill and keep is that it is easy to administer. Which one they would take? I would expect that their virtual NXX traffic is probably a smaller percentage of their total traffic, but I don't know that. So I don't know which one they would take. I honestly, Commissioner, can't -- I just couldn't make that opinion as to which is more important to them.

COMMISSIONER PALECKI: But if we offered the ALECs a virtual NXX traffic, certainly that could result over a period of time with the ILECs and the ALECs coming into balance, especially in a much more expeditious manner.

THE WITNESS: Well, now that ISP traffic has been eliminated from this virtual NXX offering, I don't know how much traffic there really is. I know it's not just for ISPs, I know other -- you know, florists and other companies obviously use FX type service, but I just don't know. I can't tell you how important that is vis-a-vis bill and keep versus, you know, versus reciprocal compensation. I just don't know. I can't answer that.

COMMISSIONER PALECKI: Well, it would certainly offer consumers a very attractive choice.

THE WITNESS: Which would, virtual NXX?

COMMISSIONER PALECKI: Virtual NXX.

THE WITNESS: Oh, it would.

COMMISSIONER PALECKI: They would have a much larger local calling area, and that would be a competitive choice that could be offered by the ALECs, I would think, to scoop up a large number of customers.

THE WITNESS: Yes, sir. I don't know how big the FX market is compared to the total local market, I don't know. But it is a valuable service to consumers. And it is in demand, that is true.

COMMISSIONER PALECKI: Thank you.

COMMISSIONER DEASON: Let me ask staff a question. Where do we determine -- if there is to be reciprocal compensation, where do we determine what the rate is?

MS. KEATING: I think that would be determined in individual arbitrations.

COMMISSIONER DEASON: It's within each individual arbitration?

MS. KEATING: I don't believe -- if they could negotiate the specific rate, or if they can't come to a rate, it would be determined within the context of an arbitration.

COMMISSIONER DEASON: Supposedly is it cost-based?

MS. KEATING: That is my understanding.

COMMISSIONER DEASON: And we leave it to them to arbitrate. And if they cannot agree, then we determine what that rate is?

MS. KEATING: It's in the UNE docket, actually.

COMMISSIONER DEASON: I thought it was somewhere where we were going to be determining that. Have we determined that in the UNE docket for BellSouth?

MS. KEATING: Yes.

COMMISSIONER DEASON: So we still have yet to do that for Sprint and for Verizon?

MS. KEATING: Yes, we have still got to go through those two, as well.

COMMISSIONER DEASON: Okay. What rates did we determine for BellSouth? Were they low? Because it seems to me the lower the rate the closer you are to bill and keep anyway.

MS. KEATING: David is saying yes. And he is also saying that if elemental rates are the ones that are going to apply for purposes of reciprocal compensation, they have been set. If something else was going to apply, then it would have to be done through arbitration proceedings is my take on it. But otherwise, for Bell they have been set.

COMMISSIONER DEASON: But obviously we are not doing it here.

MS. KEATING: No, Commissioner, not in this phase.

COMMISSIONER DEASON: Okay.

CHAIRMAN JACOBS: Now, any other questions? We are to redirect, I believe, right?

MR. HOFFMAN: Thank you, Mr. Chairman.

REDIRECT EXAMINATION

BY MR. HOFFMAN:

Q Mr. Gates, let me just sort of quickly work my way through about three or four topics. FX service that you discussed, in your experience in the industry is an FX call viewed to be a local call or a toll call?

A That is a local call.

Q Okay. And FX calls have historically been treated by BellSouth and Verizon as local calls or toll call?

A They have been treated as local calls.

Q All right. Going back to the federal definition that I discussed with Doctor Selwyn, and Commissioner Deason discussed with you, which is the definition of toll telephone service at 48 USC, Section 153, Paragraph 48. If you read that definition and view it from the perspective of the calling party, does virtual -- would a virtual NXX call fit the definition of toll telephone service?

A No, it would not. It would be a local call, especially from the consumer's perspective making the call.

Q All right. And if you again viewed it from the perspective of the calling party, would your answer be the same if I substituted FX service for virtual NXX service in my question?

A Yes, it would.

Q Okay. Just a point of clarification. On Mr. Edenfield's diagram, if you still have that?

A Yes, I have it.

Q Okay. In the Jacksonville local calling area there, do you see where the point of interconnection for the ALEC is located?

A Yes.

Q And then you see the ALEC switch?

A Yes.

Q Okay. Reciprocal compensation is intended to recover the costs of transport and termination from the point of interconnection to the switch, correct?

A That is correct.

Q Okay. Now, moving to the somewhat extended discussion of bill and keep. If you had an imbalance of traffic such that the ALEC was receiving or terminating significantly more minutes than the ILEC, how would that affect the ALEC's ability to recover its transport and termination costs in that situation?

A Under a bill and keep scenario?

Q Yes.

A And if the traffic was not balanced?

Q Correct.

A They could not recover those costs.

Q Okay. Now, there also was some discussion about the FCC rules which it looks as though the parties will be briefing. And there was some discussion on Part C of 51.713. And I know you don't have it in front of you, let me just read it to you. It says, "Nothing in this section precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so unless a party rebuts such a presumption." Did you follow that?

A Yes.

Q Okay.

A So it sounds like the Commission then can presume that the traffic is in balance unless someone shows otherwise. That is the way I would read that.

Q What this rule says is nothing in this section would preclude the Commission from doing so, agreed?

A Yes.

Q Would you recommend that the Commission follow that approach?

A No, I would not, for all the reasons that Commissioner Deason and I discussed. If one were to do that, you would be putting the burden on, I would assume, the new entrant, which is always a risky prospect, given their shaky financial situation. The ALEC market has lost over half a trillion dollars in value in the last 15 months. We have lost dozens of competitive new entrants to bankruptcy. I can say that because they still owe me money, and I probably won't get it. But, no, I don't think it's a good idea to put the burden on the new entrants if that is what the result would be using that presumption.

MR. HOFFMAN: No further questions. Thank you, Mr. Gates.

THE WITNESS: Thank you.

COMMISSIONER DEASON: Well, the new entrants certainly have -- they can afford four of the finest attorneys in Tallahassee. They must be doing something right.

THE WITNESS: Well, when you're desperate, you have got to spend the money to make money, I guess.

COMMISSIONER DEASON: And I didn't include Mr. Lamoureux, because -- Mr. Lamoureux, you don't reside in Tallahassee, do you?

MR. LAMOUREUX: I do not.

MR. HOFFMAN: We were silently trying to determine which four you meant.

MR. EDENFIELD: Mr. Lamoureux has got the same problem I have, we're on salary.

MR. HOFFMAN: Mr. Chairman, I would move Exhibit 19.

CHAIRMAN JACOBS: Without objection, show Exhibit 19 is admitted.

(Exhibit 19 admitted into the record.)

CHAIRMAN JACOBS: Thank you, Mr. Gates. You are excused.

THE WITNESS: Thank you.

(The transcript continues in sequence with Volume 6.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

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

DATED THIS 20TH DAY OF JULY, 2001.

Jane Faurot

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