ATTACHMENT 2

ASAP Pre-filed Testimony

ASAP Exh. 9 (Gaetjen Dir.)
ASAP Exh. 10 (Goldstein Dir.)
ASAP Exh. 43 (Goldstein Reb.)
ASAP Exh. 44 (Gaetjen Reb.)

SOAH DOCKET NO. 473-02-2503
PUC DOCKET NO. 25673

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COMPLAINT, REQUEST FOR	§	
EXPEDITED RULING, REQUEST	§	BEFORE THE
FOR INTERIM RULING, AND	§	
REQUEST FOR EMERGENCY ACTION	§	PUBLIC UTILITY COMMISSION
OF ASAP, INC.	§	
AGAINST CENTURYTEL OF	§	OF TEXAS
SAN MARCOS, INC.	§	

PRE-FILED DIRECT TESTIMONY OF TED GAETJEN

INTRODUCTION AND BACKGROUND

Q: PLEASE STATE YOUR NAME, TITLE AND EMPLOYER.

A: My name is Ted Gaetjen. I am President of ASAP Paging, Inc. ("ASAP"), the Complainant in this case.

Q: PLEASE DESCRIBE ASAP.

A: ASAP is a Commercial Mobile Radio Service ("CMRS") carrier. We are authorized by the FCC to provide "interconnected" one-way CMRS services, typically called "paging." We have been assigned spectrum with associated authorized service areas in several parts of Texas, and in particular the Austin LATA. We provide retail paging services directly to users, and we also provide bulk paging services to entities such as large companies or public organizations who assign them to employees for their use. In addition we provide bulk paging service to resellers, who in turn market service directly to users. While some of the resellers are themselves CMRS providers in some markets, many of the resellers are not CMRS licensees. We obtain the license, construct the network and obtain the interconnection; they market and sell at retail. I note that the regulations for CMRS providers are different than for LECs. Neither CMRS providers nor resellers are regulated at the state level. Resellers do not require FCC licensure; only the facilities-based carriers are licensed. On the interconnection side, while some of the rules are the same for CMRS and CLECs (for example CMRS interconnection is covered by part 51 of the FCC's rules, which also apply to CLECs), there are additional regulations for CMRS interconnection in parts 20 and 22 of the FCC rules.

ASAP EXHIBIT 9

Q: CAN YOU PLEASE PROVIDE SOME BACKGROUND INFORMATION ABOUT ASAP?

A: I started ASAP in November of 1989 when I saw a need for paging coverage in rural areas that was not being satisfied by the major national carriers. The major national carriers were focusing on the big metropolitan markets where there is a larger customer base. ASAP started operations with one transmitter in Shiner Texas that enabled us to offer coverage in Lavaca County.

ASAP was incorporated in 1990. Almost immediately ASAP discovered that the second most important thing after service itself is wide coverage. We initiated a joint effort with carriers throughout Texas who used the same frequency. In May of 1991, TAPS – the Texas Association of Paging Services – was born. ASAP was a founding charter member and was named as a director. The association enabled TAPS members to share resources, information and be technically responsive to each other's needs and problems. These companies are locally owned by Texas citizens. They are not large national or multi-national corporations. We live in the communities we serve, and we are very interested in providing a customer-focused high-quality service to our friends and neighbors. We have a policy of giving pagers to people who are waiting for a transplant, organ donation or adoption. ASAP also provides contributions to charitable organizations for special events. We have donated pagers on a temporary basis to:

Hill Country Ride for Aids
Fiddlers Frolic-Knights of Columbus, Hallettsville
Hallettsville Volunteer Fire Department
Lavaca County Junior Livestock Show
Smithville Jamboree

ASAP grew one transmitter at a time. We were on a *pay as you grow* budget and all profits were used to purchase more equipment and expand our coverage area. We had no grants or subsidies or low interest loans and did not have the "history" to apply for any large loans. So we bought used equipment, re-furbished it at night, serviced customers in the daytime and installed equipment when we could (generally at night). We were able to add transmitters

1 (coverage) at the rate of about one a month, since that was all we could afford. We extended our
2 coverage north to Giddings, Northeast to Bryan, and Northwest to the edge of Travis County.
3 ASAP was in danger of losing our coverage in the Austin area and purchased an existing
4 transmitter from Crystal Clear Paging that covered the Austin metropolitan area. Crystal Clear
5 Paging was the TAPS member from San Antonio and when they became mired down in
6 expansion problems they indicated they would have to turn off the Austin transmitter due to
7 monetary concerns. ASAP bought the Austin site from Crystal Clear in the spring of 1993 and
8 we proceeded to extend our coverage, one transmitter at a time, to Georgetown, Taylor, Dripping
9 Springs, Buda and San Marcos. We still had no grants, subsidies, or low interest loans. There
10 were no vacations, no new cars: nothing but 50 to 60 hour weeks and a dream.
11 In June of 1993 the TAPS membership sought coverage in West Texas and ASAP
12 decided to place a transmitter in Midland. Again we continued building an area of coverage one
13 transmitter at a time, using equipment we refurbished, on a pay as you grow, no vacations,
14 subsidies or low interest loans basis. We just worked 50 to 60 hour weeks to build up a business.
15 We got blindsided by the TIF tax in 1995. Neither ASAP nor any of the other TAPS
16 members were aware of the TIF tax until it was in place. We joined a grassroots coalition to
17 prevent the TIF tax from going into effect until the tax rates were more balanced. The wireline
18 carriers (ILECs) evidently had more input into the formation of the TIF legislation than the
19 wireless carriers and – as originally written – the wireless carriers were going to have to pay
20 eight times the rate the wireline carriers were assessed. The coalition was successful and the TIF
21 tax to wireless carriers was reduced to the same level as that applicable to wireline carriers.
22 The TIF is used to fund eligible projects and entities' use of telecommunications. We
23 were shocked to find, however, that while wireless and wireline carriers were taxed; only
24 wireline carriers were eligible to participate in the funding programs. Even though, in many
25 instances, we were the only carrier offering paging in some of the affected rural areas, only
26 wireline carriers and not wireless carriers could receive any of the grant funds from recipients.
27 The Legislature justified imposing the TIF tax on wireless carriers because of wireless carrier's
28 ability to connect to the PSTN (see PURA § 57.041). Wireline carriers, of course, entirely

depend on the PSTN and similarly benefit from it. It appears that we still were not successful in eliminating the unequal treatment between wireline and wireless carriers in the TIF legislation.

We also discovered that we were required to contribute to the universal service fund. This was accomplished by deeming wireless carriers to be "telecommunications providers" in PURA § 51.002(10)(A)(iv), and then imposing the USF tax on "telecommunications providers" under § 56.022. At first, wireless providers were again required to pay, but ineligible for funding, but this changed in a subsequent session. A CMRS provider can now qualify as an ETC and ETP in the state USF rules.

About this time Congress was legislating the 1996 amendments to the Communications Act and we found out we were again deemed Telecommunications Providers or Carriers, and were going to be taxed by the federal USF. We decided to further investigate the result of being a provider of telecommunications service under federal and state law. In the fall of 1997 we began to get a fuller understanding.

Prior to the 1996 amendments, we had been treated as "customers" of the telephone company, and had to pay them for connections to the PSTN. We had to pay them when their customers called our paging customers. The prices were set in large part by reference to state access charges, which were among the highest in the nation. This lead to high operational costs, and of course, required us to charge our users accordingly. A series of rulings by the FCC, however, led to some significant changes in our status, rights and costs of doing business. Under the Act and roughly contemporaneous FCC rulings, ASAP is now a "co-carrier" or a "peer," not a customer, of the ILEC. We provide a valuable service to an ILEC when we terminate traffic its users originate. The ILECs, however, still did not did not appreciate the service we provided. The ILECs in general and SWBT in particular refused to pay us reciprocal compensation to terminate the traffic they originated, even though the FCC had directly ruled that they must. The ILECs in general, and SWBT in particular continued to try to charge us for the facilities they use to hand traffic off to us for termination, even though the FCC had expressly ruled they could not do so. SWBT, for example insisted that we sign a "voluntary" interconnection agreement that required us to waive many of our rights. The only alternative was an expensive arbitration proceeding, which was beyond our means.

1 Q: CAN YOU PROVIDE AN OVERVIEW OF THE MAIN ISSUES IN THIS CASE?

2 A: ~~The ILECs – including CenturyTel here – seem to think they have some divine right to~~
3 ~~tax any competing carrier that has "access" to their customers, and to charge excessive access~~
4 ~~rates when we attempt to enter their market and compete with them for any service. They are~~
5 ~~even willing to punish their own customers for having the temerity to call one of our users. They~~
6 ~~blatantly ignore clear rules and rulings by the FCC on the issue of where one can interconnect~~
7 ~~and who must bear the cost of delivering a call originated by ILEC customers, since they know~~
8 ~~we lack the resources to challenge their every unreasonable act.~~

9 The FCC has ruled that, as Telecommunications Providers or Carriers, we may use our
10 interconnection facilities with our peers to provide other services that were not only allowed but
11 also encouraged by the 1996 amendments. CMRS carriers can provide "incidental" or
12 "auxiliary" services under FCC rules. The FCC has indicated that for so long as we use
13 interconnection trunks to provide telecommunications service, we can also provide information
14 service. The FCC also held that providing connections to ISPs is not a "local service" but is
15 instead "interstate information access."[1] At the same time, however, carriers are supposed to
16 route calls to ISPs like local calls, since ISPs are treated as end use customers and not IXCs.

17 We invested in our infrastructure to provide new and innovative services. We purchased
18 a Telco switch to take advantage of the new technology being offered by the industry. We
19 upgraded our paging switches and purchased new software and systems to enable us to send and
20 receive *wireless data* via the Internet. Our customers indicated a desire for more and varied
21 services such as paging via the internet, receiving email via alphanumeric pagers, alarm
22 notification via pager and/or email and the ability to receive weather alerts, stock market news,
23 sports news and information.[2] The fact that most of these incidental services were available via

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[1] There appears to be some legitimate inquiry into whether the service provided to ISPs is "telephone exchange service," "exchange access service" or "information access" under the federal Act. It is also unclear whether "information access" is distinct from telephone exchange service and exchange access, or a subset of one or both of them. What is clear, however, is that it is an interstate service even if the calls are rated "local" in terms of the allowed retail charges to the calling party.

[2] The FCC recently issued *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 7th Report, FCC 02-179 (Rel. Jul. 3, 2002), available at

or involves use of the Internet encouraged us to pursue all avenues which were available and encouraged by telecommunication "deregulation" and the public desire for increased competition.

SWBT wanted us to interconnect at their access tandem. SWBT even refused to provide certain features and functions unless we interconnected at the access tandem. FCC rules and the 1996 amendments allow us to choose where we could take our interconnection, either from the end office or the tandem. Depending on the particular circumstances we chose the tandem in some cases and the end office in others. In the Austin LATA we chose to interconnect at the tandem, as we are allowed to do under applicable FCC rulings.

~~We have paid our taxes, filled out the forms and complied with a myriad of new regulations. We are attempting to stay competitive, but the ILECs continue to contest our right to interconnect and our status as co-carriers, and they consistently attempt to force us to choose between waiving rights and bringing costly enforcement actions. The amount of time and resources devoted to defending our rights and privileges afforded to us, even encouraged, by the 1996 amendments is an onerous situation that we should not have to bear. The ILECs appear to have unlimited funds and resources, all being used in an attempt to force ASAP to comply with their skewed interpretation of the law. This may very well force ASAP out of business or even into bankruptcy which is probably the intent of the ILECs in their intentional protracted refusal to comply with past rulings of the PUC and FCC in this issue.~~

~~The ILECs must be required to follow the rules and the law, and they must be required to interconnect with us, and route local traffic to us without charging us access or their users' toll. We began to stand up for our rights by refusing to pay for the interconnection facilities we had with the ILECs, since the FCC ruled several times we did not have to pay for them. The ILECs sent demand letters, and reported us to credit bureaus, but they did not disconnect the circuits.~~

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http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-179A1.doc. In the report, the FCC extensively discussed provision of Internet-related services by CMRS carriers. In several places, the FCC indicated how CMRS carriers access the PSTN in order to provide Internet-related services to their wireless users. CenturyTel and SWBT appear to be trying to prevent CMRS carriers from using interconnection trunks for this purpose, or to at least make it extremely costly and cumbersome to do so. CenturyTel has sold its CMRS licenses to another carrier. Now that it is only wireline, it has every incentive to hobble its CMRS competitors. SBC owns a part of Cingular and Cingular is a big player in the move to wireless Internet, so its recent actions in Texas really do not make much sense to me.

1 CenturyTel has now taken this to a new level by attempting prevent its San Marcos users
2 from being able to dial our Lockhart numbers unless they dial 1+ and pay a toll. The issue really
3 boils down to whether Extended Local Calling between two towns with a community of interest
4 works only when both calling and called parties are customers of an incumbent. CenturyTel and
5 SWBT are basically attempting to establish the regime where calls to customers of competitors
6 are long distance, but calls to customers of incumbents are local and no toll applies. Obviously
7 insurgents will not be able to compete with incumbents under this arrangement.
8 Q: DOES CENTURYTEL HAVE A PROBLEM WITH THE FACT THAT YOU
9 PROVIDE CONNECTIONS TO ISPs?
10 A: That is hard to say. At the interim hearing, CenturyTel said it did not matter whether
11 traffic was destined to an ISP, so long as they were able to route the calls on "ELCS trunks."
12 They have since that time been asking a number of questions related to my ISP customers. This
13 does not surprise me. San Marcos Internet is located in San Marcos, and if we cannot provide
14 service to them, they have only CenturyTel, SWBT Verizon or Grande to choose from. I suspect
15 they are paying significantly more to whoever is presently providing them with San Marcos
16 connectivity than what they paid us. We are competing with CenturyTel for this customer and
17 other inbound data only customers. CenturyTel has the incentive and ability to prevent us from
18 providing a competitive service in San Marcos.
19 Q: PLEASE DESCRIBE THE PARTICULAR SITUATION REGARDING YOUR
20 NUMBERS THAT YOU CONTEND SHOULD BE LOCAL TO SAN MARCOS.
21 A: ASAP is interconnected with SWBT's two Austin LATA access tandems (Greenwood
22 and Homestead). ASAP's switch is in downtown Austin and services all of our Austin LATA
23 operations. The direct interconnection with both of the access tandems provides for connectivity
24 to every SWBT end office in the LATA, independents such as Central Telephone Company and
25 Verizon and most of the competitive carriers that operate in the LATA. CenturyTel is also
26 interconnected with SWBT's Greenwood access tandem.
27 ASAP has obtained several NXX blocks from the National Numbering Plan
28 Administrator ("NANPA"). The ones in issue in this case, and the associated rate center to

which they are assigned in the Local Exchange Routing Guide ("LERG") are: 512-265 (Fentress), 512-580 (Kyle) and 512-384 (Lockhart). Each of these numbers is associated with rate centers that are "local" or "extended local" to San Marcos. Fentress and Kyle are both Verizon exchanges. Verizon's Fentress end office is a remote switch, served by a host in Martindale. The Martindale host subtends SWBT's Greenwood access tandem. Verizon's Kyle end office also subtends SWBT's Greenwood access tandem. Lockhart is a SWBT exchange, and subtends the Greenwood access tandem. We therefore have the ability to collect calls from each of these towns through our type 2 interconnection with SWBT.

Under FCC rules, CMRS carriers are entitled to interconnect at the access tandem, using type "2A" interconnection and connect to the end offices that subtend or are connected to the access tandem. That is what we have done in Austin. Since San Marcos is in the Austin LATA, and CenturyTel routinely sends traffic to SWBT's Greenwood tandem, CenturyTel should route calls to ASAP's Kyle, Fentress and Lockhart numbers to SWBT for transit to ASAP. This is clearly technically feasible, since CenturyTel has been doing this since November of 2001. Further, given the applicable dialing parity rules, CenturyTel should not require users to dial 1+ or pay toll for calls to ASAP's Kyle, Fentress and Lockhart numbers, since Kyle, Fentress and Lockhart are all "local" to San Marcos under the PUC's ELCS decisions.

I will discuss these points in further detail below as I go through the issues identified by the Commission in its Preliminary Order. The Commission has indicated it wants evidence on 7 issues. I will address them in the order used by the Commission.

Issue 1. Was ASAP in violation of certification and/or registration requirements pursuant to PURA and/or the commission's substantive rules when it provided service to San Marcos Internet in the manner described in the complaints?

Q: IS ASAP CERTIFICATED BY THE TEXAS PUC?

A: No.

Q: HAS ASAP REGISTERED WITH THE TEXAS PUC AS A NONDOMINANT PROVIDER?

A: Not for the traffic in issue. Although ASAP may choose at some point to register as a nondominant IXC if and when it decides to offer intrastate long distance service, ASAP is not

1 acting as a nondominant IXC with regard to calls from San Marcos to Kyle, Fentress or
2 Lockhart. The traffic in issue is between NXXs that are within a single mandatory local calling
3 area as defined by the Texas Commission and for purposes of reciprocal compensation pursuant
4 to 47 C.F.R. § 51.701. Under PUC Subst. R. 26.5(107), (117), (118) and (125) these calls are not
5 long distance and are local.

6 Q: DOES ASAP HAVE TO BE CERTIFICATED TO PROVIDE ITS CMRS SERVICES?

7 A: I am not a lawyer, nor am I fluent in regulatory-speak. My understanding, however, is
8 that the Texas Legislature expressly provided that CMRS providers do not need to obtain a
9 certificate or register with the Commission even if they provide a service that otherwise requires
10 certification. I also understand that Congress precluded states from regulating entry or exit of
11 CMRS providers in the 1996 amendments to the Communications Act. This is so even though
12 CMRS carriers provide can and do provide "telephone exchange service." If they did not, then I
13 see no reason for Congress to have created "CMRS" exceptions in §§ 153(26), 253(f) and
14 271(c)(1)(A) of the federal Act, which address telephone exchange service.

15 To be fair, the PUC does not appear to be concerned with our CMRS services in general.
16 Rather, the Commission has focused more on the services we provided to San Marcos Internet,
17 an ISP. It looks like they believe that ASAP may be providing "local exchange service, basic
18 local telecommunications service or switched access service" to San Marcos Internet, and that
19 the service San Marcos Internet received was not "CMRS." Again, while I am not a lawyer and
20 regulatory-speak is not my native language, my understanding is that the FCC has allowed
21 CMRS carriers to provide "ancillary" or "auxiliary" services, and I believe that what we
22 provided to San Marcos Internet falls in that category. I also understand that the FCC has ruled
23 that "ancillary" or "auxiliary" services are still "CMRS." (Indeed, CenturyTel has filed
24 comments at the FCC taking that position and urging that the FCC rule not be changed. See
25 Gaetjen Direct Testimony Exh. 1.) Logic tells me, therefore, that if what we provided to San
26 Marcos Internet is "CMRS" and if "CMRS" services are not and cannot be subject to
27 certification obligations, then ASAP was not in violation of any state regulations.

28 There are two other reasons why we believe ASAP can use its interconnection trunks to
29 provide the ability for people to call an ISP using 7 digits. First, I am informed that when a

carrier such as CenturyTel, SWBT or ASAP provide PSTN connectivity to an ISP, the service has been deemed to be "interstate information access." Even though the call to the ISP can be "local" or "not toll" to the calling party, the service provided to the ISP is interstate, not intrastate. (CenturyTel has asserted this position in at least one PUC filing. See Gaetjen Direct Testimony Exh. 2.) I understand that state commissions do not have jurisdiction or the power to impose entry or exit regulation on purely interstate services. Second, the FCC has ruled that once a carrier uses an interconnection arrangement to provide a telecommunications service, it may also use that arrangement to provide "information service." Internet access is an information service, which is not regulated at the state level.

The specific services we provided to San Marcos Internet did not meet the plain English definition of the type of services that require certification in any event. For example, ASAP did not provide "Local exchange telephone service" as defined in § 51.002(5) since San Marcos Internet did not receive "tone dialing, directory assistance or connections to a long distance carrier." San Marcos Internet was able to only receive inbound traffic directed to the numbers that it used. The service received by San Marcos Internet was more like a "customized service" under subsection (5)(D) and a "non-voice data transmission service offered as a separate service" under subsection (5)(H). I understand further that the PUC ruled in the *Western Wireless* case[3] that CMRS providers are not required to be certificated even if they do provide "Local exchange telephone service." In the *Western Wireless* case the Commission understood, indeed it required, that Western Wireless would be providing connections to ISPs. Yet it did not have to get a certificate.

San Marcos Internet also did not receive "switched access" based on my understanding of the meaning of that phrase. San Marcos Internet could not originate telephone toll calls. While San Marcos Internet could receive long distance calls, neither it nor any other carrier pay a

[3] PUC Docket 22289; SOAH Docket 473-00-1167, *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418*, Preliminary Order, pp. 8-9.

separate fee for this ability or for individual calls.[4] In any event, to the extent that San Marcos Internet did receive switched access service, it was interstate switched access if I correctly understand the regulatory rules.

Finally, ASAP has not offered its "ancillary" or "auxiliary" services to the "public" at uniform and consistent prices. We carefully and individually select the customers to whom the services will be provided. They must desire the ability to only receive "data" or non-voice calls. They cannot need or rely on the service for 9-1-1, and they cannot use it to obtain directory assistance or for outbound long distance. The terms are individually negotiable, and they vary. ASAP does not offer service to the public at large, or even a large number of customers. ASAP offers inbound capability only to a select few entities of a discrete character. ASAP makes individualized decisions, in particular cases, whether and on what terms to deal in its provision of incidental communications services. This is not the type of entity that I believe the Texas Commission has traditionally required to obtain a certificate or to register.

Many legal and regulatory concepts are beyond me, since we are not a LEC and are not regulated by the PUC. But what I do know is that I provide a valuable service to many customers in Central Texas. My customers who carry a pager receive a reasonably priced and important service, and that service increasingly involves use of the Internet. Other customers, such as San Marcos Internet, were able to connect to the PSTN at significantly lower prices than are charged by ILECs such as CenturyTel. And we did not "subsidize" those lower prices by "arbitraging" "reciprocal compensation" from SWBT or CenturyTel. We have not charged either SWBT or CenturyTel for reciprocal compensation for any traffic, even though we are clearly entitled to do so under several FCC rulings.

We provide competitive services to Texas citizens, just like the Legislature and Congress intended. Our services are authorized by law. ~~The ILECs simply do not like the competition and~~

[4] ~~During the period that CenturyTel was requiring its users to pay long distance charges, those charges at least implicitly included recovery of both originating and terminating switched access rates. As far as we can tell, however, no carrier – including CenturyTel – paid terminating access charges for the 1+ calls that were made. If CenturyTel was the intraLATA toll provider, then it profited handsomely from each of the calls made during that period. CenturyTel refused to respond to discovery questions addressing this issue, so we do not know how much money it overcharged its users.~~

~~are trying to eliminate it by refusing to follow the rules. They are attempting to make interconnection extraordinarily difficult and expensive. They want their users to pay a tax to reach us, or they want us to pay a tax to be available to their users. That cannot be in the public interest. They seek to impose unnecessary and costly regulatory burdens on us and force us to look, act and be treated like LECs, when that is not what we are, do or want to be.~~

ISSUE 2. To the extent ASAP is a CMRS provider for paging services, are calls from CenturyTel customers in San Marcos to ASAP paging customers with a 512-384 paging number eligible for ELCS? If so,

a. May ASAP designate the calling path the traffic takes before termination?

b. If ASAP does designate the path, does the manner in which it designates the calling path impact the ELCS eligibility of the traffic?

c. Is CenturyTel in violation of the Commission's order in Project No. 13267, which established ELCS between Lockhart and San Marcos?

d. Is CenturyTel in violation of its Texas General Exchange tariff?

Q: IS 512-384 A "LOCKHART" NUMBER?"

A: Yes. We associated 512-384 with the Lockhart rate center when we received the NXX block from NANPA. We took care to advise the PUC of that assignment, and our NXX is listed in the Commission's list of "Lockhart" numbers that is available on the web at http://www.puc.state.tx.us/telecomm/areacodes/512cp.cfm. Calls to this number should be local, or at least "non-toll" from all areas that are local or extended local to Lockhart. San Marcos is extended local to Lockhart.

Q: IS ASAP ATTEMPTING TO DESIGNATE THE CALLING PATH THE TRAFFIC TAKES BEFORE TERMINATION?

A: Not at all. ASAP does not care how the call gets to the Greenwood access tandem, so long as it ends up at the Greenwood access tandem, the end user is not required to dial 1+ or pay toll charges to call our numbers, and the traffic supports 64 Kbps data speeds.[5] It is CenturyTel that has raised routing issues, and it is CenturyTel that has said that it should be able to charge its users toll for local calls if it routes over "the toll network" instead of "ELCS trunks." ASAP

[5] I will address ISDN later in my testimony.

1 believes that each carrier is responsible for choosing the routing of a call so long as it is delivered
2 to the terminating carrier at the routing destination stated in the LERG. But quality cannot not be
3 diminished, there can be no discrimination, and if a call is between NXXs that are in the same
4 mandatory local calling area then 7 digit dialing parity must be maintained and no toll or access
5 may be charged.

6 Q: DOES ROUTING DETERMINE RATING?

7 A: It should not. The particular path a call takes to get from one carrier to another carrier
8 should not determine the charges to either end users or between the carriers. Calling path should
9 not affect whether a call is "ELCS" or not.

10 Q: IS CENTURYTEL VIOLATING ELCS RULES?

11 A: I am not a lawyer. But it seems to me that the Commission should be careful to ensure
12 that all "Lockhart," "Kyle" and "Fentress" numbers are "local" to San Marcos, or else ELCS will
13 be an exclusive arrangement between incumbents, and ILECs will be able to charge long
14 distance to competitive carriers that are attempting to provide service to smaller towns like Kyle,
15 Fentress and Lockhart. If ELCS is exclusive to incumbents, then there will be no competition in
16 small towns that have obtained ELCS to larger cities. Allowing CenturyTel to refuse to route
17 "local" calls to other carriers' Lockhart numbers will only lead to less competition in Lockhart
18 since no competitive carrier will be able to offer a comparable service to that offered by SWBT
19 unless it has expensive direct connections to CenturyTel[6] and is interconnected to SWBT. It will
20 also reduce competition in San Marcos, since no competitive carrier will be able to offer service
21 in San Marcos, unless the carrier has direct interconnection to CenturyTel and is interconnected
22 with SWBT. The same thing applies to Kyle, Fentress and the other towns that are ELCS to San
23 Marcos.

24 Q: WHAT DOES CENTURYTEL'S GENERAL EXCHANGE TARIFF SAY ABOUT
25 CALLS TO LOCKHART?

26 A: I have attached excerpts from CenturyTel's tariff and SWBT's intraLATA LDMTS tariff
27 (which Century concurs with and adopts in its tariff; see Section 12, sheet 1) as Gaetjen Direct

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6 CenturyTel claims it is exempt from § 251(c) of the federal Act,. If this is correct, then ASAP cannot obtain UNEs at cost based prices. The alternative is access, which is not cost based and is quite expensive.

Testimony Exh. 3. Relevant terms defined in the Glossary excerpt I have attached are "Exchange," Exchange Service," Extended Area Service," "IntraLATA," "Local Calling Area," "Local Exchange Service," "Local Message," "Local Service," "Local Service Charge," "Long Distance Message Telecommunications Service," "Toll Message" and "Toll Service."

Section 3.2.1 says that payment of the residence or business rate entitled CenturyTel's customers to make unlimited calls "within the local calling area." In addition, CenturyTel's customers are assessed $0.39 per month to be able to send and receive calls from Kyle, Fentress, Lockhart, Lytton Springs and Dale. The additional mandatory assessment includes those towns within the calling scope of San Marcos. The tariff does not limit the calling scope to only SWBT or GTE customers; it says they can call those "exchanges." An exchange is roughly synonymous with "rate center" as used in the LERG. (See SWBT LDMTS Tariff Section 1, Sheet 12 ¶ 18.1.) ASAP has NXXs associated with the Lockhart, Kyle and Fentress rate centers or "exchanges."

I read the tariff provisions to mean that CenturyTel's customers have the right to call Lockhart NXXs, including ASAP's Lockhart NXXs. From April 2nd to April 19th (and apparently afterwards), CenturyTel billed its users long distance for calls from San Marcos to Lockhart. The bills themselves referenced a call "to Lockhart" even though "Lockhart" is listed in the list of exchanges that are part of ELCS. (See Gaetjen Direct Testimony Exh. 4.) It appears to me that CenturyTel did not follow its tariff.

ISSUE 3. Did CenturyTel properly switch the trunking arrangement from ELCS to intraLATA toll?

Q: DO YOU KNOW HOW CENTURYTEL ROUTED CALLS BETWEEN EARLY NOVEMBER AND APRIL 2nd AND THEN AFTER APRIL 2nd?

A: No. CenturyTel insists that it tried to route calls to ASAP's Lockhart NXX over "ELCS" trunks but they did not complete, so it instead routed calls over the "toll network" to get the calls to complete. We have no way to verify that claim. We also have inconsistent and incomplete information about whether the "ELCS" trunks physically go through SWBT's Greenwood access tandem and if they are switched by that tandem. CenturyTel has not answered the questions we asked about this. SWBT has also not told us definitely about the

physical route of the trunks or whether it is switched. We do not know whether CenturyTel changed trunking, or whether they merely retranslated their switch to require 1+ dialing.

What we do know is that Lockhart is local to San Marcos, and calls from San Marcos numbers to Lockhart numbers should not be dialed 1+ or charged as toll. Regardless of routing, CenturyTel should rate the calls as "local."

ISSUE 4. Is CenturyTel being charged for the use of that trunk? If so, by whom and at what rate?

Q: DO YOU KNOW WHETHER CENTURYTEL IS BEING CHARGED BY ANY CARRIER FOR USE OF EITHER "ELCS" TRUNKS OR "TOLL" TRUNKS?

A: No. Both CenturyTel and SWBT indicated that CenturyTel and SWBT have a meet-point somewhere, probably at the exchange boundary. This implies to me that there are no charges to the other for traffic on either side of the meet point, but we do not know for sure. CenturyTel testified that it does not have an express agreement with SWBT. We suspect that SWBT is not charging CenturyTel for calls from CenturyTel to ASAP's Lockhart NXX, but CenturyTel refused to answer our discovery question on this point so we do not know for sure.

ISSUE 5. Whose responsibility is it to complete the ELCS call?

Q: WHAT RESPONSIBILITIES DO YOU BELIEVE CENTURYTEL, SWBT AND ASAP HAVE IN RELATION TO ELCS CALLS?

A: CenturyTel should hand calls off to SWBT at whatever meet point exists, using the facilities that the two ILECs choose. But the calls must be routed to our LERG routing destination so that they complete using 7 digit dialing with no toll charge to the calling party. SWBT should then transit the call to ASAP at the Greenwood access tandem. ASAP will take the call and send it to the appropriate destination.

ISSUE 6. Are CenturyTel's actions anticompetitive in violation of PURA § 52.108(3)?

Q: DO YOU BELIEVE CENTURYTEL HAS ACTED IN AN ANTICOMPETITIVE FASHION?

1 A: Most certainly. PURA § 52.108(3)[7] refers to, among other sections, 53.003,[8] and
2 55.006.[9] CenturyTel gave preferential treatment to customers with SWBT's Lockhart NXXs in
3 relation to ASAP's Lockhart NXXs and discriminated against ASAP's customers with Lockhart
4 numbers, since CenturyTel never required 1+ dialing or imposed toll charges on calls to SWBT
5 customers in Lockhart. It also gave a preference or advantage to SWBT's Lockhart customers,
6 and unreasonably prejudiced ASAP and its customers with Lockhart NXXs. It tried to impose an
7 unreasonable preference concerning rates when it required its San Marcos users to dial 1+ and
8 pay toll when they tried to call ASAP's customers with Lockhart NXXs.

9 CenturyTel is also threatening to do the same thing with our Fentress and Kyle numbers.
10 Those are Verizon exchanges. We are certain that CenturyTel is not requiring its users to dial 1+
11 and pay toll to reach Verizon.

12 Requiring 1+ dialing and imposing toll puts ASAP at an extreme disadvantage. People
13 will not call a paging customer nearly as often if they must dial extra digits or pay toll. If my
14 service results in toll charges, but another company (such as CenturyTel's paging operation) has
15 an offering that does not, then that company is very much advantaged. Similarly, it is well
16 known that Internet users avoid an ISP if they must pay long distance to get to the ISP since it

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[7] The pertinent part of § 52.108 reads:
Sec. 52.108. OTHER PROHIBITED PRACTICES.
The commission may enter any order necessary to protect the public interest if the commission finds after notice and hearing that a telecommunications utility has:
...
(3) engaged in a pattern of preferential or discriminatory activities prohibited by Section 53.003, 55.005, or 55.006; ...

[8] Section 53.003(c) provides:
(c) A public utility may not:
(1) grant an unreasonable preference or advantage concerning rates to a person in a classification;
(2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates; or
(3) establish or maintain an unreasonable difference concerning rates between localities or between classes of service.

[9] **Sec. 55.006. DISCRIMINATION AND RESTRICTION ON COMPETITION.**
A public utility may not:
(1) discriminate against a person who sells or leases equipment or performs services in competition with the public utility; or
(2) engage in a practice that tends to restrict or impair that competition.

significantly increases the cost of Internet access. ~~The Texas Legislature recognized this when it passed PURA § 58.263~~. CenturyTel's actions basically prevent its users from accessing any ISP, unless that ISP gets local service from SWBT, Verizon, CenturyTel or Grande. CenturyTel users cannot select an ISP outside of San Marcos unless the ISP takes service from SWBT or Verizon. This severely inhibits competition in general and ASAP in particular.

Q: DO YOU KNOW IF CENTURYTEL HAS AFFORDED MORE FAVORABLE TREATMENT TO ANY OTHER CARRIERS?

A: We do not know for sure. We asked CenturyTel a series of questions designed to determine what arrangements, if any, they have with other carriers, but they refused to answer them. There are other carriers with Fentress, Kyle and/or Lockhart numbers. Grande has a Kyle NXX (they also have a Lytton Springs NXX, and Lytton Springs is ELCS to San Marcos), ATS Telecommunications has two Kyle NXXs, Central Texas Technologies has two Kyle NXXs, Dobson Cellular has a Lockhart NXX. Tex-Link has a Lockhart NXX. CenturyTel will not tell us whether they require its users to dial 1+ and pay toll to reach each of these non-ILEC NXXs. If they do not, then CenturyTel is favoring the carrier. If they do, then CenturyTel is, in my opinion, not honoring ELCS as it is supposed to exist in the age of local competition.

ISSUE 7. Is CenturyTel in violation of the equal access dialing parity provisions in PURA § 55.009(c) and/or P.U.C. SUBST. R. § 26.275?

Q: IS CENTURYTEL REQUIRING ITS USERS TO DIAL MORE DIGITS TO CALL YOUR LOCKHART NXX THAN IT DOES WHEN THEY CALL A SWBT LOCKHART NXX?

A: From early November until April 2nd, no. Beginning April 2nd, they did until the ALJ required them to stop. In addition to requiring the users to dial 1+, they also imposed long distance charges from April 2nd until they were required to stop.

Q: HAVE YOU READ PURA § 55.009(c) AND PUC SUBST. R. § 26.275?

A: I have read them. They appear to be directed to toll calls, not "local." They do not seem to apply, since ASAP contends the calls in issue are not toll calls. However, I would point out that even though the state "dialing parity" rules do not apply, there is still a state issue. While I

1 am not a lawyer, it appears to me that CenturyTel's actions do not pass muster under a plain
2 English reading of PURA § 60.161, especially subsections (1)-(4) and (6).[10]
3 Q: ARE THERE OTHER EXPRESS REQUIREMENTS FOR LOCAL DIALING
4 PARITY?
5 A: Yes. Dialing parity is just as important, if not more important, when it comes to calls that
6 are not toll. There are federal rules applicable to local dialing parity. Section 153(15) of the Act
7 defines dialing parity.[11] Section 251(b)(3) requires all LECs (including CenturyTel) "to provide
8 dialing parity to competing providers of telephone exchange service and telephone toll service,
9 and the duty to permit all such providers to have nondiscriminatory access to telephone numbers,
10 operator services, directory assistance, and directory listing, with no unreasonable dialing
11 delays." The FCC made it clear that CMRS providers are entitled to local dialing parity.[12]
12 **OTHER ISSUES**
13 Q: ARE THERE ANY OTHER ISSUES YOU WISH TO ADDRESS?
A: Yes. First, I wish to discuss end to end ISDN. When end users who subscribe to
CenturyTel's ISDN service attempt to link up with ISPs behind our switch, they cannot connect
16 at 64Kbps. Although we are not sure, we believe that SWBT ISDN users in Lockhart can

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[10] **Sec. 60.161. INCUMBENT LOCAL EXCHANGE COMPANY REQUIREMENTS.**
An incumbent local exchange company may not unreasonably:
(1) discriminate against another provider by refusing access to the local exchange;
(2) refuse or delay an interconnection to another provider;
(3) degrade the quality of access the company provides to another provider;
(4) impair the speed, quality, or efficiency of a line used by another provider;
...
(6) refuse or delay access by a person to another provider.

[11] (15) DIALING PARITY.--The term "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

[12] FCC 96-333, CC Docket No. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* and CC Docket No. 95-185, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Second Report and Order and Memorandum Opinion and Order (Rel. Aug. 8, 1996) ¶¶ 64-65. As the FCC indicates, LECs must provide dialing parity within each state defined local calling area, and CMRS providers are entitled to dialing parity.

connect to ISPs who obtain ISDN based PSTN connectivity from CenturyTel, including CenturyTel's affiliated ISP. In addition, we believe that CenturyTel ISDN users in San Marcos can connect at 64 Kbps to ISPs who obtain ISDN connectivity from SWBT in Lockhart. This disparity in speed puts ASAP at a competitive disadvantage.

Q: DO YOU KNOW THE REASON FOR THE DIFFERENCE IN SPEED?

A: No. We asked CenturyTel several questions related to this issue, but they refused to answer. We do not know whether the reason is that the alleged "ELCS trunks" support 64 Kbps clear channel signaling but the alleged "toll trunks" do not, or if there is some other cause. All I know is that the quality of interconnection is degraded. The PUC requires ILECs to provide "end to end digital connectivity" in the ISDN rule.[13] Further, as noted above, PURA § 60.161 prohibits degraded or inferior access. CenturyTel must ensure that the traffic it sends to ASAP supports 64 Kbps traffic.

Q: IS THERE OTHER ISSUES YOU WISH TO ADDRESS?

A: Yes. First, the ALJ issued Order No. 3 granting ASAP's request for emergency relief on April 18, 2001. CenturyTel indicated to ASAP that it would comply effective April 19, at 10:00 a.m. ASAP has learned, however, that CenturyTel apparently continued to assess toll charges to at least some of its customers for calls to ASAP's Lockhart NXX after that date. Gaetjen Direct Testimony Exh. 4 is a redacted bill from CenturyTel to one of its users. The bill shows toll charges for calls from San Marcos to ASAP's Lockhart NXX on several dates subsequent to April 19. CenturyTel appears to have violated the ALJ's order. ~~If there was indeed a violation, then appropriate sanctions should be assessed, and the Commission should order refunds.~~

Second, if the Commission finds that CenturyTel wrongly imposed toll charges from April 2nd through April 19th, then we believe the users should receive refunds. ~~As far as we can determine, CenturyTel did not pay any other carrier access charges or any other compensation for any of this traffic, so it should refund the entire amount it wrongly charged its users.~~ CenturyTel refused to produce any information related to toll revenues or whether it paid any access charges. As a result, I cannot provide totals. In the alternative, CenturyTel should be ordered to pay ASAP terminating access charges for the "long distance" calls it completed. We

1 believe the calls were "local" and access does not apply but CenturyTel should not profit from its
2 malfeasance. The end users should get a refund, or we should be paid access charges.
3 Q: DO YOU HAVE ANYTHING ELSE TO ADD?
4 A: Yes. We have asked a number of questions that CenturyTel has refused to answer.
5 ASAP's motion to compel is pending. I reserve the right to supplement this direct testimony
6 after the ALJ has ruled on our motion to compel. While some of the information we need could
7 be used in rebuttal, some of it is more properly part of ASAP's direct case.
8 Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?
9 A: Subject to any supplement, yes. Thank you.

[13] PUC Subst. R. 26.142.

EXHIBIT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Year 2000 Biennial Regulatory Review	)	
Amendment of Part 22 of the	)	WT Docket No. 01-108
Commission's Rules to Modify or	)	
Eliminate Outdated Rules Affecting	)	
the Cellular Radiotelephone Service	)	
and other Commercial Mobile Radio	)	
Services	)	

Comments of CenturyTel Wireless, Inc.

CenturyTel Wireless, Inc. ("CenturyTel"), through its undersigned counsel, hereby submits its comments in the above-referenced proceeding[1] in which the Commission has proposed various revisions to Part 22 of its Rules, governing cellular radiotelephone service.

Based on population equivalents, CenturyTel is the 8th largest wireless company in the United States. CenturyTel's subsidiaries and partnerships operate cellular systems, governed by Part 22 of the Commission's Rules, in six states: Wisconsin; Michigan; Mississippi; Arkansas; Texas; and Louisiana. CenturyTel's markets are largely rural in nature, and all of CenturyTel's cellular systems provide Advanced Mobile Phone Service ("AMPS") analog service. Thus, the Commission's proposed revisions to its rules governing cellular service have a direct impact on CenturyTel's operations.

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[1] Year 2000 Biennial Regulatory Review - Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 01-108 (released May 17, 2001) ("NPRM").

I. Introduction

CenturyTel supports a number of the Commission's proposals to modify or eliminate various Part 22 Rules as outdated and superfluous. CenturyTel applauds Commission efforts to reduce unnecessary regulation, particularly when it hampers carrier flexibility.

However, CenturyTel disagrees with the Commission suggestion to entirely eliminate its original narrowband analog channelization plan. Narrowband analog facilities and systems must still be coordinated with digital systems, and CenturyTel has found the existing channelization plan provides an important legal guideline for protecting its narrowband analog systems from interference from neighboring wideband digital systems.

CenturyTel also believes that the Commission's proposal to eliminate its requirement that cellular carriers provide analog service rules is premature. Subscribers who travel in rural areas rely upon the "universal" wireless service provided by existing analog networks. In the interest of the roaming public, CenturyTel recommends that the analog service rules be maintained until an alternate wireless service is available nationwide.

With respect to the Commission's proposal to eliminate its electronic serial number ("ESN") rules, CenturyTel wishes to alert the Commission that many carriers' billing and authentication systems rely on the broadcast ESN. If handsets are no longer required to incorporate ESNs, carriers such as CenturyTel will be required to replace their billing and authentication systems, at considerable expense, to recognize non-ESN handsets. Smart-card technology may certainly be an attractive innovation, but only so long as these cards utilize ESNs that can be recognized by all cellular systems.

The Commission should also maintain its regulation governing incidental Public Mobile Radio Services. While the Commission has provided CMRS Part 22 service providers increased

flexibility in the provision of additional services, the incidental services rule still plays a role in demonstrating the permissibility of novel, advanced services utilizing Part 22 frequencies.

II. Elimination of the Analog Channelization Rule is Premature

In its NPRM, the Commission proposes removing Rule 22.905, which specifies the channels over which analog systems must operate. The Commission suggests that "analog service is well established nationwide," and that "removing the plan from the rules would not pose any risk of decreased cellular technical compatibility."

CenturyTel respectfully disagrees with the Commission's position, because, based on its own experience, narrowband analog carriers that coordinate with wideband digital systems rely on the channelization rule as a benchmark for the scope of their primary interference protection. Because wideband digital carriers are not constrained, as narrowband analog carriers are, to the 30 kHz channels specified in the channelization plan, it is important for narrowband analog carriers to be able to point to a specific legal basis for frequency protection of their system operations. CenturyTel therefore proposes that the Commission maintain its channelization rule, perhaps modifying it to make clear that the rule only governs the provision of narrowband service.

III. Elimination of the Analog Cellular Compatibility Standard is Premature

The Commission has also proposed eliminating its requirement that cellular systems provide AMPS or analog service. CenturyTel believes that the Commission's proposal is premature. Subscribers who travel in rural areas rely upon the "universal" wireless service provided by existing analog networks. In the interest of the roaming public, CenturyTel

recommends that the analog service rules be maintained until an alternate wireless service is available nationwide.

For those customers that desire nationwide roaming, access to analog cellular service while roaming is still the only true option. Across the country, PCS systems are still being constructed and expanded without a common digital standard, and thus PCS service is not yet truly ubiquitous. Even in urban areas, where PCS licensees have met substantial service requirements, there are still rural parts of these market that are being built out. Smaller and rural markets, of course, have even less PCS coverage. Certainly, new PCS systems are coming on line or adding additional coverage every week, but complete PCS coverage, permitting true nationwide roaming, will not be available for some time.

Another function that permits nationwide roaming is the availability of dual-mode cellular handsets with both digital and analog capability. Because TDMA, CDMA, and GSM digital technologies are not yet interoperable, a customer with a TDMA handset cannot roam in a GSM cellular market unless his or her handset also has analog capability. Although the Commission correctly recognizes that triple-mode handsets will overcome this problem, these handsets should not be the sole option by which customers can obtain nationwide roaming.

A day will come when analog service will have fulfilled its current purpose of providing nationwide service to customers who value the ability to roam. Until viable nationwide roaming options are more widely available, however, the Commission should not act in haste by eliminating its narrowband service requirements.

IV. Complete Elimination of All Electronic Serial Number Requirements May Have a Costly Impact on Cellular Carriers

The Commission proposes to eliminate Section 22.919 of its Rules, containing its ESN requirements for cellular handsets, to permit the proliferation of smart card technology. (Smart cards contain the end user's account information and can be transferred from handset to handset.) Under the Commission's current Rules, ESNs are unique numbers that are implanted in every cellular handset and that cannot be altered. In the NPRM, the Commission states that hard-wired ESNs have served their purpose of preventing cellular "cloning" fraud by which ESNs could be captured and duplicated in handsets to charge calls to the accounts of unsuspecting customers.

While *hardened* ESNs certainly are intended to prevent cellular fraud, ESNs also serve another purpose: they are used by cellular systems as a means for handset authentication as well as a billing identifier. CenturyTel and other carriers have installed expensive billing and authentication systems which are based on the ESN. CenturyTel is concerned that if the Commission eliminates its ESN requirements entirely, CenturyTel will be forced to replace its authentication system and billing systems, in order to recognize non-ESN handsets, at great expense.

CenturyTel therefore proposes that if the Commission wishes to encourage "smart-card" technology, the Commission should make clear that such smart cards must include an ESN. While the expansion of the handset market may be a laudable goal, it should not occur at the expense of carriers, such as CenturyTel, who have incurred large costs in reliance on the Commission's Rules.

V. The Commission Should Maintain its Rule Governing Provision of Incidental Services by Part 22 Public Mobile Radio Service Carriers

The Commission has suggested that it should eliminate Section 22.323 of its Rules, regulating the provision of incidental services over Part 22 Public Mobile Radio Service frequencies. CenturyTel respectfully disagrees with the Commission's proposal, and requests that the rule remain in some form. While it is true that the Commission has provided cellular carriers increased flexibility to provide fixed services, for example, the incidental services rule still plays a role in affirmatively supporting the provision of novel services over all Part 22 frequencies. The Commission may wish to modify this Rule to remove some of the conditions currently included, but the Rule should be retained as confirmation that the Commission permits such services and that they are accorded the same regulatory treatment as other CMRS offerings.

VI. CenturyTel Supports the Commission's Proposals to Relax or Eliminate Additional Rules Governing Cellular Service

The Commission has proposed relaxing its wave polarization standard; privatizing the issuance of System Identification Numbers ("SIDs"); and eliminating or modifying a variety rules governing commencement of service, financial qualifications, trafficking in cellular licenses, and holding interests in multiple applications for new cellular systems. CenturyTel supports each of these Commission proposals.

CenturyTel concurs with the Commission's suggestion to relax the wave polarization standard in Section 22.367(a)(4) of its Rules. Cellular carriers should have the flexibility to use cross-polarized antennas in the cellular service frequencies.

CenturyTel also agrees with the Commission proposal to permit the assignment of system identification numbers (SIDs) by private entities such as CIBERNET. CenturyTel also proposes

that all SIDs be publicly posted, or available in published lists to requesting carriers, to assist carriers in system design.

In addition, CenturyTel supports the Commission's planned modification of the Commission Rules governing the commencement of cellular service and the deadlines for construction in Section 22.946 of the Commission's Rules. Given the state of deployment of cellular service, service commencement requirements for the first 90 markets are no longer necessary. CenturyTel also agrees that there is no need for the prohibition on serving only roaming customers; given the state of competition in the provision of wireless service, this requirement is no longer needed.

CenturyTel concurs with the Commission that its financial qualification and anti-trafficking rules in Sections 22.937 and 22.943 are no longer relevant in their present form. CenturyTel agrees that the financial qualification requirements for cellular licensees in Section 22.937 are not needed except in comparative renewal proceedings. Prohibitions on trafficking in cellular licenses (in Section 22.943) are also unnecessary except with respect to licenses for unserved areas.

The Commission should also eliminate Section 22.945 of its Rules, prohibiting interests in multiple applications for new cellular systems in the same market. This Rule is indeed obsolete in light of the Commission's provision for competitive bidding (and prohibition on lotteries) for awarding cellular licenses.

VII. Conclusion

CenturyTel supports many of the Commission's proposals to modify or eliminate unnecessary, outdated cellular service rules. However, with respect to its Rules governing the channelization of analog cellular service, the inclusion of ESNs in handsets, and the requirement that cellular carriers provide AMPS analog service, the Commission should carefully review all of the repercussions of eliminating these Rules so as not to unduly harm cellular carriers. While CenturyTel certainly supports deregulation in most of its forms, certain regulations still serve a purpose, and the Commission should fully understand the degree to which customers obtain, and carriers provide, cellular service in reliance on these Rules.

Respectfully submitted,

Nancy Killien Spooner

Nancy Killien Spooner
Counsel for CenturyTel Wireless, Inc.

Swidler Berlin Shereff Friedman
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

EXHIBIT 2

DOCKET NO. 24771

RECEIVED
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JOINT APPLICATION OF CENTURYTEL OF LAKE DALLAS, INC., CENTURYTEL OF SAN MARCOS, INC., CENTURYTEL OF PORT ARANSAS, INC., AND STATE TELEPHONE TEXAS FOR APPROVAL OF INTERCONNECTION AGREEMENT UNDER THE TELECOMMUNICATIONS ACT OF 1996	§ § § § § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

JOINT APPLICATION OF CENTURYTEL OF LAKE DALLAS, INC., CENTURYTEL OF SAN MARCOS, INC., CENTURYTEL OF PORT ARANSAS, INC., AND STATE TELEPHONE TEXAS FOR APPROVAL OF INTERCONNECTION AGREEMENTS UNDER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 AND THE PUBLIC UTILITY REGULATORY ACT OF 1995

INDEX

	Page(s)	File Name
Joint Application	2-4	Appl.doc (MS Word)
Affidavit of CenturyTel Representative	5-7	Appl.doc (MS Word)
Interconnection Agreements	8-16	[Addendum]

DOCKET NO. _____

JOINT APPLICATION OF CENTURYTEL OF LAKE DALLAS, INC., CENTURYTEL OF SAN MARCOS, INC., CENTURYTEL OF PORT ARANSAS, INC., AND STATE TELEPHONE TEXAS FOR APPROVAL OF INTERCONNECTION AGREEMENT UNDER THE TELECOMMUNICATIONS ACT OF 1996	§ § § § § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

JOINT APPLICATION OF CENTURYTEL OF LAKE DALLAS, INC., CENTURYTEL OF SAN MARCOS, INC., CENTURYTEL OF PORT ARANSAS, INC., AND STATE TELEPHONE TEXAS FOR APPROVAL OF INTERCONNECTION AGREEMENTS UNDER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 AND THE PUBLIC UTILITY REGULATORY ACT OF 1995

TO THE HONORABLE COMMISSION:

CenturyTel of Lake Dallas, Inc., CenturyTel of San Marcos, Inc., and CenturyTel of Port Aransas, Inc., (hereafter referred to as the "CenturyTel Companies") and State Telephone Texas ("State") file this Joint Application for Approval of Interconnection Agreement, pursuant to the Telecommunications Act of 1996 ("FTA 96") and the Public Utility Regulatory Act, to request Commission approval of the agreement, and in support thereof would show the following:

I.

The attached interconnection agreement, titled "Interconnection and Reciprocal Compensation Agreement," has been jointly entered into between the CenturyTel Companies and State. The agreement is a negotiated contract between the CenturyTel Companies and State of the terms of interconnection for local exchange services. The agreement provides for interconnection and exchange of traffic between the respective end-user customers of the CenturyTel Companies and State.

II.

State is the holder of Service Provider Certificate of Operating Authority No. 20638 issued by the Commission in Project 20638. State's representative is:

Harry Thieleppe
804 Elkins Lake
Huntsville, Texas 77340
Tel: (936) 435-1400
Fax: (936) 293-8522

III.

The parties to the agreement request that the Commission approve it as filed. The parties further represent that they have negotiated the agreement in good faith, that the agreement is consistent with the public interest, convenience and necessity, and that the agreement does not discriminate against any telecommunications provider. By this agreement, State opts into the terms of the agreement between Golden Harbor of Texas, L.L.C., and CenturyTel of Lake Dallas, Inc., approved in Docket 20838.

IV.

The agreement is the result of negotiation and compromise. For this reason, the parties request that the Commission approve it without modification or change.

CONCLUSION

For the above reasons, the CenturyTel Companies and State respectfully pray that the Commission issue notice as required, expeditiously approve the agreement, and grant all further relief to which the parties may be entitled.

Respectfully submitted,

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701
Tel: (512) 495-6000
Fax: (512) 495-6093

By: Brook Brown
Brook Bennett Brown
State Bar No. 03094560

ATTORNEYS FOR
CENTURYTEL OF LAKE DALLAS, INC.,
CENTURYTEL OF SAN MARCOS, INC.,
AND CENTURYTEL OF PORT ARANSAS, INC.

STATE OF LOUISIANA §

PARISH OF OUACHITA §

AFFIDAVIT OF CENTURYTEL REPRESENTATIVE CARRICK B. INABNETT

BEFORE ME, the undersigned authority, on this the 25th day of September, 2001, personally appeared Carrick B. Inabnett for CenturyTel of San Marcos, Inc., CenturyTel of Port Aransas, Inc., and CenturyTel of Lake Dallas, Inc., (the "CenturyTel Companies"), who, being by me duly sworn, on his oath deposed and said:

1. "My name is Carrick B. Inabnett. I am over the age of 21 years, of sound mind and competent to testify as to the matters stated herein.

2. I am employed by CenturyTel Service Group, L.L.C., in the position of Corporate Manager–Carrier Relations. In this capacity, I have personal knowledge of and personally participated in the negotiations leading to the signing of the interconnection agreement between the CenturyTel Companies and State Telephone Texas ("State"). Under this agreement, State opts into the terms of the Service Resale Agreement between Golden Harbor of Texas, Inc., and CenturyTel of Lake Dallas, Inc., approved in Docket 20838.

3. The interconnection agreement is the result of negotiation and compromise. The parties to the agreement have resolved all issues and there are no outstanding issues that require mediation or arbitration.

4. The interconnection agreement is consistent with the public interest, convenience and necessity. The agreement permits the interexchange of traffic between the CenturyTel

Companies and State, which in turn permits further telecommunications competition within the State of Texas, provides additional diversity in providers, and increases customer choices for telecommunication services.

5. The interconnection agreement does not discriminate against any telecommunications carriers. The terms of the agreement are available to any similarly-situated provider negotiating a similar agreement.

6. The proposed interconnection agreement establishes terms, conditions, and rates for interconnection of traffic between the customers of the CenturyTel Companies and State.

7. This agreement will be in effect for the same period as the Golden Harbor agreement which expires June 1, 2002.

8. The agreement, as outlined above, is further consistent with the public interest, because it permits interconnection of a competing carrier with the public local switched network in a manner that allows customers to utilize fully the services of the competitive carrier, thereby providing Texas customers with competitive alternatives and fostering the continued development of a competitive telecommunications environment.

9. The rates are consistent with the competitive safeguards referenced in PURA.

10. The agreement is not discriminatory, and the terms of the agreement are available to any other similarly-situated provider negotiating a similar agreement.

11. The CenturyTel Companies are currently involved in interconnection negotiations with other local exchange carriers and consequently will send direct notices to the following entities: Trans National Telecommunications, Inc., dPi Teleconnect, LLC, and CoServ Communications, LLC."

Further, Affiant sayeth not.

Carrick B. Inabnett

SWORN TO AND SUBSCRIBED BEFORE ME on this the 25th day of September, 2001, to certify which witness my hand and seal of office.

Notary Public
State of Louisiana

SEAL:

g:\c\century.tel\state tel texas\pleadings\affidavit-inabnett.doc

P.O. Box 4065
Monroe, LA 71211-4065
Tel 318 388 9000

January 9, 2001

State Telephone Texas
Attention: Harry Thielepape
804 Elkins Lake
Huntsville, TX 77340
Telephone number: (936) 435-1400
Facsimile number: (936) 293-8522

Dear Mr. Thielepape:

CENTURYTEL OF LAKE DALLAS, INC.("CENTURYTEL") has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), STATE TELEPHONE TEXAS ("STATE TELEPHONE TEXAS ") wishes to adopt the terms of the Interconnection Agreement between Golden Harbor of Texas, LLC ("Golden Harbor") and CENTURYTEL that was approved by the Texas Public Service Commission as an effective agreement in the State of Texas in Docket No. 20838 (the "Terms"). This letter shall confirm that you have a copy of the Terms. Please note the following with respect to your adoption of the Terms.

By your countersignature on this letter, you hereby represent and commit to the following:

1. STATE TELEPHONE TEXAS adopts the Terms of the Golden Harbor agreement for interconnection with CENTURYTEL and in applying the Terms, agrees that STATE TELEPHONE TEXAS shall be substituted in place of Golden Harbor in the Terms wherever appropriate.

2. STATE TELEPHONE TEXAS requests that notice to STATE TELEPHONE TEXAS as may be required under the Terms shall be provided as follows:

   To: State Telephone Texas
   Attention: Harry Thielepape
   804 Elkins Lake
   Huntsville, TX 77340
   Telephone number: (936) 435-1400
   Facsimile number: (936) 293-8522

3. **STATE TELEPHONE TEXAS represents and warrants that it is a certified provider of local telecommunications service in the State of Texas, and that its adoption of the Terms will cover services in the State of Texas only.**

4. STATE TELEPHONE TEXAS's adoption of the Golden Harbor Terms shall become effective upon CENTURYTEL's filing of this letter with the Texas Public Service Commission and shall terminate pursuant to the Golden Harbor Terms. The Golden Harbor agreement is currently scheduled to expire on June 1, 2002.

5. As the Terms are being adopted by you pursuant to your statutory rights under Section 252(i), CENTURYTEL does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by CENTURYTEL of the Terms does not in any way constitute a waiver by CENTURYTEL of any position as to the Terms or a portion thereof, nor does it constitute a waiver by CENTURYTEL of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of STATE TELEPHONE TEXAS's 252(i) election.

6. The Terms shall be subject to any and all applicable laws, rules, or regulations that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, or regulation, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, or regulation.

7. CENTURYTEL reserves the right to deny STATE TELEPHONE TEXAS's adoption and/or application of the Terms, in whole or in part, at any time:

(A) when the costs of providing the Terms to STATE TELEPHONE TEXAS are greater than the costs of providing it to Golden Harbor;

(B) if the provision of the Terms to STATE TELEPHONE TEXAS is not technically feasible; and/or to the extent STATE TELEPHONE TEXAS already has an existing interconnection agreement (or existing 252(i) adoption) with CENTURYTEL and the Terms were approved before the date of approval of the existing interconnection agreement (or the effective date of the existing 252(i) adoption); and

(C) when Non-Recurring charges applicable to Resale or in CENTURYTEL's local tariff apply without discount.

8. As noted above, pursuant to Rule 809, the FCC gave ILECs the ability to deny 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. CENTURYTEL never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based. With this in mind, CENTURYTEL opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Terms that might be interpreted to characterize traffic destined for Internet as local traffic or requiring the payment of reciprocal compensation.

9. Should STATE TELEPHONE TEXAS attempt to apply the Terms in a manner that conflicts with the provisions set forth herein, CENTURYTEL reserves its rights to seek appropriate legal and/or equitable relief.

Please indicate your agreement to the provisions of this letter by signing this letter on the space provided below and return it to the undersigned.

Sincerely,

CENTURYTEL OF LAKE DALLAS, INC.

Carrick B. Inabnett
Corporate Manager-Carrier Relations

Reviewed and countersigned:

STATE TELEPHONE TEXAS

(SIGNATURE)

Harry Thielepape
(print name)

Owner
(print title)

P.O. Box 4065
Monroe, LA 71211-4065
Tel 318 388 9000

January 9, 2001

State Telephone Texas
Attention: Harry Thielepape
804 Elkins Lake
Huntsville, TX 77340
Telephone number: (936) 435-1400
Facsimile number: (936) 293-8522

Dear Mr. Thielepape:

CENTURYTEL OF PORT ARANSAS, INC.("CENTURYTEL") has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), STATE TELEPHONE TEXAS ("STATE TELEPHONE TEXAS ") wishes to adopt the terms of the Interconnection Agreement between Golden Harbor of Texas, LLC ("Golden Harbor") and CENTURYTEL that was approved by the Texas Public Service Commission as an effective agreement in the State of Texas in Docket No. 20844 (the "Terms"). This letter shall confirm that you have a copy of the Terms. Please note the following with respect to your adoption of the Terms.

By your countersignature on this letter, you hereby represent and commit to the following:

1. STATE TELEPHONE TEXAS adopts the Terms of the Golden Harbor agreement for interconnection with CENTURYTEL and in applying the Terms, agrees that STATE TELEPHONE TEXAS shall be substituted in place of Golden Harbor in the Terms wherever appropriate.

2. STATE TELEPHONE TEXAS requests that notice to STATE TELEPHONE TEXAS as may be required under the Terms shall be provided as follows:

   To: State Telephone Texas
   Attention: Harry Thielepape
   804 Elkins Lake
   Huntsville, TX 77340
   Telephone number: (936) 435-1400
   Facsimile number: (936) 293-8522

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4. STATE TELEPHONE TEXAS's adoption of the Golden Harbor Terms shall become effective upon CENTURYTEL's filing of this letter with the Texas Public Service Commission and shall terminate pursuant to the Golden Harbor Terms. The Golden Harbor agreement is currently scheduled to expire on June 1, 2002.

5. As the Terms are being adopted by you pursuant to your statutory rights under Section 252(i), CENTURYTEL does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by CENTURYTEL of the Terms does not in any way constitute a waiver by CENTURYTEL of any position as to the Terms or a portion thereof, nor does it constitute a waiver by CENTURYTEL of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of STATE TELEPHONE TEXAS's 252(i) election.

6. The Terms shall be subject to any and all applicable laws, rules, or regulations that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, or regulation, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, or regulation.

7. CENTURYTEL reserves the right to deny STATE TELEPHONE TEXAS's adoption and/or application of the Terms, in whole or in part, at any time:

(A) when the costs of providing the Terms to STATE TELEPHONE TEXAS are greater than the costs of providing it to Golden Harbor;

(B) if the provision of the Terms to STATE TELEPHONE TEXAS is not technically feasible; and/or to the extent STATE TELEPHONE TEXAS already has an existing interconnection agreement (or existing 252(i) adoption) with CENTURYTEL and the Terms were approved before the date of approval of the existing interconnection agreement (or the effective date of the existing 252(i) adoption); and

(C) when Non-Recurring charges applicable to Resale or in CENTURYTEL's local tariff apply without discount.

8. As noted above, pursuant to Rule 809, the FCC gave ILECs the ability to deny 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. CENTURYTEL never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based. With this in mind, CENTURYTEL opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Terms that might be interpreted to characterize traffic destined for Internet as local traffic or requiring the payment of reciprocal compensation.

9. Should STATE TELEPHONE TEXAS attempt to apply the Terms in a manner that conflicts with the provisions set forth herein, CENTURYTEL reserves its rights to seek appropriate legal and/or equitable relief.

Please indicate your agreement to the provisions of this letter by signing this letter on the space provided below and return it to the undersigned.

Sincerely,

CENTURYTEL OF PORT ARANSAS, INC.

Carrick B. Inabnett
Corporate Manager-Carrier Relations

Reviewed and countersigned:

STATE TELEPHONE TEXAS

(SIGNATURE)

Harry Thielepape
(print name)

Owner
(print title)

P.O. Box 4065
Monroe, LA 71211-4065
Tel 318 388 9000

January 9, 2001

State Telephone Texas
Attention: Harry Thielepape
804 Elkins Lake
Huntsville, TX 77340
Telephone number: (936) 435-1400
Facsimile number: (936) 293-8522

Dear Mr. Thielepape:

CENTURYTEL OF SAN MARCOS, INC.("CENTURYTEL") has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), STATE TELEPHONE TEXAS ("STATE TELEPHONE TEXAS ") wishes to adopt the terms of the Interconnection Agreement between Golden Harbor of Texas, LLC ("Golden Harbor") and CENTURYTEL that was approved by the Texas Public Service Commission as an effective agreement in the State of Texas in Docket No. 20839 (the "Terms"). This letter shall confirm that you have a copy of the Terms. Please note the following with respect to your adoption of the Terms.

By your countersignature on this letter, you hereby represent and commit to the following:

1. STATE TELEPHONE TEXAS adopts the Terms of the Golden Harbor agreement for interconnection with CENTURYTEL and in applying the Terms, agrees that STATE TELEPHONE TEXAS shall be substituted in place of Golden Harbor in the Terms wherever appropriate.

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   Attention: Harry Thielepape
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Sincerely,

CENTURYTEL OF SAN MARCOS, INC.

Carrick B. Inabnett
Corporate Manager-Carrier Relations

Reviewed and countersigned:

STATE TELEPHONE TEXAS

(SIGNATURE)

Harry Thielepape
(print name)

Owner
(print title)

EXHIBIT 3

GLOSSARY

ENTRANCE FACILITIES

Facility extending from the point entrance on private property to the premises on which service is furnished.

EXCHANGE

A unit established by the Company for the administration of telecommunications service in a specified area for which a separate local rate schedule is provided. The area usually embraces a city, town, or village its environs. It consists of one or more central offices, together with associated plant facilities used in furnishing telecommunications services in that area.

EXCHANGE ACCESS LINES

See " Access Line."

EXCHANGE AREA

The area within which the Company furnishes complete telephone service from one specific exchange at the exchange rates applicable within that area.

EXCHANGE LINE

Any circuit connecting an exchange access line with a central office.

EXCHANGE SERVICE

Exchange service is a general term describing as a whole the facilities for local intercommunications, together with the capability to send and receive a specified or an unlimited number of local messages at charges in accordance with the provisions of the Local Exchange Tariff.

(a) Flat Rate Service: A classification of exchange service furnished a customer under tariff provisions, for which a stipulated charge is made, regardless of the amount of use. (D)

(D)

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GLOSSARY

(D)

(D)

EXTENDED AREA SERVICE

A type of telephone service furnished under tariff provisions where by customers of a given exchange may complete calls to and/or may receive calls from one or more exchanges without the application of long distance message telecommunications charges.

FACILITIES

All the plant and equipment of the Company and all instrumentalities owned, licensed, used, controlled, furnished, or supplied for or by the Company, including any construction work in progress allowed by the Public Utility Commission of Texas.

FAMILY

A group of two or more persons related by blood, marriage or adoption and residing together. A primary family consists of the head of a household and all (one or more) other persons in the household related to the head. A secondary family comprises two or more persons such as guests, lodgers, or resident employees and their relatives, living in a household or quasi-household (other than the negligible number of such groups among inmates or institutions) and related to each other.

FLAT RATE SERVICE

A classification of exchange service furnished a customer under tariff provisions for which a stipulated charge is made regardless of the amount of use.

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GLOSSARY

INTERFACE

(a) The junction or point of interconnection between two systems or equipments having different characteristics which may differ with respect to voltage, frequency, speed of operation, type of signal and/or type of information coding including the connection of other than Company-provided facilities to exchange facilities provided by the Company. N

(b) The point of interconnection between Company equipment and communications facilities on the premises of the Customer. Also referred to as Demarcation Point. N

INTERFACE EQUIPMENT

Equipment provided by the Company at the interface location to accomplish the direct connection of facilities provided by the Company with facilities provided by other than the Company. M T M

INTERLATA

Long Distance Message Telecommunications Service where point locations are in a different Local Access and Transport Area (LATA). N

INTRALATA

Long Distance Message Telecommunications Service where service point locations are within the same Local Access and Transport Area (LATA). N

INTRAEXCHANGE CHANNEL SERVICE

Channel connecting two or more "Primary Terminations" in the same exchange. M M

INTRAEXCHANGE SERVICE

Telecommunications service confined wholly within a single exchange. N N

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GLOSSARY

JACK

A modular outlet designed to permit the establishment of a connection between the local exchange facilities and terminal equipment with cords ending in plugs. M T M T

LABELING

Registered terminal equipment and/or registered protective circuitry shall have prominently displayed on an outside surface information providing the registration number, the ringer equivalence number, the grantee's names, model number and serial number or date of manufacture. N N

LINE

See "Access Line." M M

LOCAL ACCESS AND TRANSPORT AREA (LATA)

Denotes a geographic area established for the administration of telecommunications service. It encompasses designated local operating Telephone Company exchanges which are grouped to serve common social, economic, and miscellaneous purposes. N N

LOCAL CALLING AREA

See "Local Service Area." M M T

LOCAL CHANNEL

Applies to that portion of a channel which connects a station to the interexchange channel or to a channel connecting two or more exchange access lines within an exchange area. M M T

LOCAL EXCHANGE SERVICE

Provides for telephone communication within local service areas in accordance with the provisions of the General Customer Services Tariff, including the use of exchange facilities required to establish connection between exchange access line. M T T

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GLOSSARY

LOCAL MESSAGE

A communication between two exchange access lines within the local service area of the calling telephone. M T

LOCAL MESSAGE CHARGE

The charge that applies for a completed message that is made when the calling exchange access line and the called exchange access line are both within the same local calling area where a local message charge is applicable. N

LOCAL SERVICE

The intercommunication (by means of facilities connected with the Company central office or offices and under the provisions of the Company) between exchange access lines located in the same exchange or in different exchanges between which no toll rates apply. M T T

LOCAL SERVICE AREA (LOCAL CALLING AREA)

The area within which telephone service is furnished customers under a specific schedule of exchange rates (flat or measured) and without toll charges. A local service area may include one or more exchange areas under extended area service arrangement. N

LOCAL SERVICE CHARGE

The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local service area. This local service calling area may include one or more exchange areas. N

LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE

Facilities furnished by means of wire, radio or a combination thereof for telecommunications between access lines in different local service areas in accordance with the regulations and system of charges specified by the Company. The toll service charges specified are in payment for all service furnished between the calling and called access lines. M T M T

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GLOSSARY

TERMINATION OF SERVICE

The discontinuance of service or facilities provided by the Company, either at the request of the customer or by the Company under its regulations concerning cancellation for cause. M T M

TIE LINE

A circuit connecting two switching systems (PBX and/or Automatic Call Distribution Systems) for the purpose of intercommunicating between the stations connected. M T M

TOLL MESSAGE

A communication between two exchange access lines, the called access line being outside of the local or service area of the access line from which the message originates. M T T M T

TOLL RATE

The initial period charge prescribed for a toll message usually based upon a minimum initial period and distance between exchanges. N N

TOLL SERVICE

That part of the total telephone service rendered by the Company which is furnished between different local service areas in accordance with the rates and regulations specified in the Long Distance Message Telecommunications Tariff as may be issued or concurred in by the Company. M T T M T

TOUCH-PHONE SERVICE

A classification of exchange service furnished from the central offices, whereby calls are originated through the use of push-button tone pad instruments in lieu of a rotary dial instrument. M T T T M T

TRANSIENT MOBILE UNITS

A mobile unit communicating through a foreign base station. M M

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BASIC LOCAL EXCHANGE SERVICE

3.2 MONTHLY LOCAL EXCHANGE SERVICE RATES

3.2.1 Local Flat Rate Component

The following schedule of rates entitles customers to an unlimited number of local calls within the local calling area as indicated in Section 3.1.1 of this tariff. *

ACCESS LINE

CLASS OF SERVICE	RATE
BUSINESS SERVICE	
INDIVIDUAL	$12.50
KEY/HUNTING	$13.10
PBX	$19.70
RESIDENCE SERVICE	
INDIVIDUAL	$ 5.70
KEY/HUNTING	$ 6.30

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* Rates for Local Exchange Service do not include a charge for an instrument or other Customer Premises Equipment.

(1) Promotion: (N)

Non-recurring charges will be waived for residential and single-line business customers who install an additional line at the same premises during the promotional period from May 1, 2002 through May 31, 2002. (N)

BASIC LOCAL EXCHANGE SERVICE

3.2 MONTHLY LOCAL EXCHANGE SERVICE RATES (Continued)

3.2.1.a Expanded Toll-Free Local Calling Service (Continued)

B. ELCS is a non-optional service subject to the rate specified below. This monthly rate additive is assessed on a per access line basis to all customers in the San Marcos Exchange and is intended to recover the lost toll and added expenses of implementing ELCS, per Substantive Rule §23.49(c). The rate is in addition to the basic local exchange rate as specified in this tariff. This rate will apply as of the date of implementation ordered by the Commission and until CenturyTel of San Marcos, Inc.'s next general rate case.

C. The following exchanges are within the San Marcos ELCS calling scope:

	Monthly Rate
Kyle, Texas Fentress, Texas Lockhart, Texas Lytton Springs, Texas Dale, Texas	
Expanded Toll-Free Local Calling Service (ELCS) (per access line)	$ 0.39

(D)

(D)

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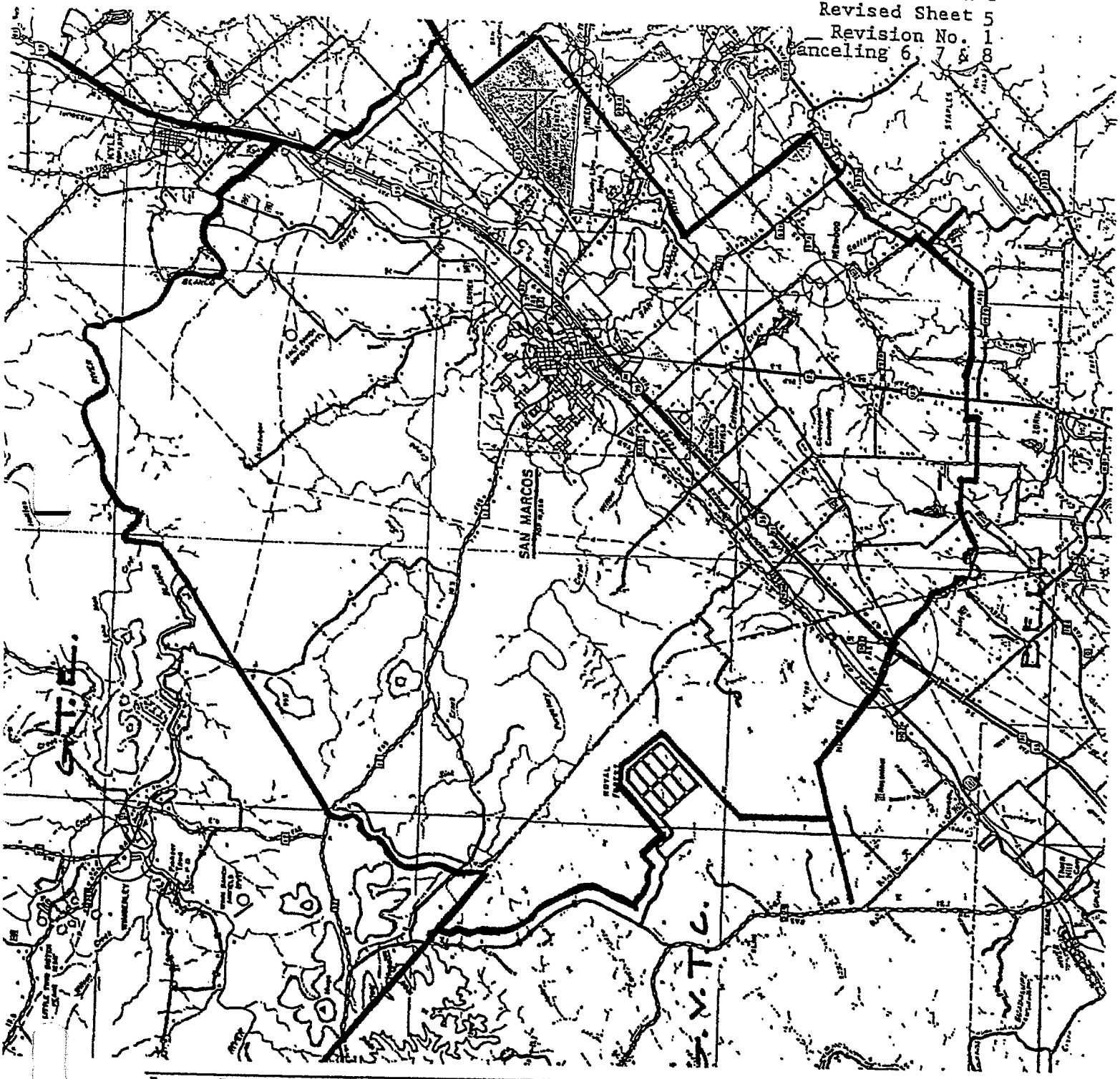
GENERAL CUSTOMER SERVICES TARIFF

SAN MARCOS TELEPHONE COMPANY, INC.

Section 3
Revised Sheet 5
Revision No. 1
Canceling 6, 7 & 8



James J. Pendergast, Jr.
President

Effective: December 31, 1987

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

INTEREXCHANGE SERVICES

12.1 LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE (LDMTS)

SAN MARCOS TELEPHONE COMPANY, INC., concurs in the Long Distance Message Telecommunications Service Tariff for IntraLATA Toll Service filed by Southwestern Bell for the Local Exchange Carriers of Texas. This concurrence includes the rates, charges, rules and regulations governing the IntraLATA Toll Service, including all amendments, revisions or successive issues thereof. SAN MARCOS TELEPHONE COMPANY, INC., makes itself a party to such rates, charges, rules and regulations until this concurrence is revoked or cancelled by either company. Subject to the jurisdiction of the Public Utility Commission of Texas, SAN MARCOS TELEPHONE COMPANY, INC., expressly reserves the right to cancel this statement of concurrence when it appears that such cancellation is appropriate.

D
D

12.2 WIDE AREA TELECOMMUNICATIONS SERVICE

SAN MARCOS TELEPHONE COMPANY, INC., concurs in the Wide Area Telecommunications Service Tariff for IntraLATA WATS filed by Southwestern Bell for the Local Exchange Carriers of Texas. This concurrence includes the rates, charges, rules and regulations governing the IntraLATA WATS Service, including all amendments, revisions or successive issues thereof. SAN MARCOS TELEPHONE COMPANY, INC., makes itself a party to such rates, charges, rules and regulations until this concurrence is revoked or cancelled by either company. Subject to the jurisdiction of the Public Utility Commission of Texas, SAN MARCOS TELEPHONE COMPANY, INC., expressly reserves the right to cancel this statement of concurrence when it appears that such cancellation is appropriate.

D
D

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REGULATIONS

15. **Application of Construction Charges**

When special construction for individual customers is necessary, special construction charges may apply as set forth in Section 9 of the General Exchange Tariff.

16. **Time and Charges**

Time and charges on long distance messages may be quoted upon request from the customer. Name association with time and charge details will be provided where facilities permit. SWBT reserves the right to determine the facility used where there are multiple facilities.

17. **Connections of Terminal Equipment and Communications Systems**

17.1 **General Provisions**

Terminal equipment and communications systems may be connected at the customer's premises to LDMTS furnished by SWBT where such connections are made in accordance with the provisions of Section 8 of the General Exchange Tariff.

18. **Method of Applying Rates**

18.1 LDMTS rates between points (cities, towns or localities) are based on the air line distance between rate centers. In general, each point is designated as a rate center; certain small towns or localities are adjacent rate centers with which they are closely associated for communication purposes or by community of interest.

18.2 For the purpose of determining air line mileages, vertical and horizontal grid lines have been established across the United States and Canada. The spacing between adjacent vertical grid lines and between horizontal grid lines represents a distance of one coordinate unit. This unit is the square root of 0.1, expressed in statute miles. A vertical (V) and a horizontal (H) coordinate is computed for each rate center from its latitude and longitude location by use of appropriate map projection equations. A pair of V-H coordinates locates a rate center, for determining air line mileages, at a particular intersection of an established vertical grid line with an established horizontal grid line. The distance between any two rate centers is the air line mileage computed as explained in 18.3, following, with fractional miles being considered full miles.

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REGULATIONS

18. Method of Applying Rates (Cont'd)

18.3 Determination of Air Line Mileages

To determine the rate distance between any two rate centers proceed as follows:

(A) Obtain the "V" and "H" coordinates for each rate center.

(B) Obtain the difference between the "V" coordinates of the two rate centers. Obtain the difference between the "H" coordinates.

Note: The difference is always obtained by subtracting the smaller coordinate from the larger coordinate.

(C) Divide each of the differences obtained in (B) by three, rounding each quotient to the nearer integer.

(D) Square these two integers and add the two squares.

If the sum of the squares is greater than 1777, divide the integers obtained in (C) by three and repeat step (D). Repeat this process until the sum of the squares obtained in (D), is less than 1778.

(E) The number of successive divisions by three in steps (C) and (D) determines the value of "N". Multiply the final sum of the two squares obtained in step (D) by the multiplier specified in the following table for this value of "N", preceding:

N	Multiplier	Minimum Rate Mileage
1	0.9	----
2	8.1	41
3	72.9	121
4	656.1	361
5	5,904.9	1,081
6	53,144.1	3,241

(F) Obtain square root of product in (E) and, with any resulting fraction, round up to next higher integer. This is the message rate mileage except that when the mileage so obtained is less than the minimum rate mileage shown in (E), preceding, the minimum rate mileage corresponding to the "N" value is applicable.

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LOCAL ACCESS AND TRANSPORT AREAS

2. List of Local Access and Transport Areas (Cont'd)

2.2 **AMARILLO LATA (556)** (Cont'd)

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES (Cont'd)

Nazareth	Spearman	Turpin, Okla.
Oklahoma Lane	Stevens	Tyrone, Okla.
Panhandle	Stratford	Umbarger
Parmer	Summerfield	Vega
Perryton	Sunray	Wellington
Pleasant Hill	Texhoma, Okla.	Westway
Quitaque	Texline	Wheeler
Sanford	Tharp	White Deer
Silverton	Turkey	Wildorado
South Texhoma		

2.3 **AUSTIN LATA (558)**

ADAMSVILLE	LAMPASAS	ROCKDALE
AUSTIN	LIBERTY HILL	SMITHVILLE
BASTROP	LOCKHART	TAYLOR
ELGIN		

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES

Bertram	Georgetown	McDade
Briggs	Granger	Milano
Buchanan Dam	Hutto	Paige
Buda	Jarrel	Rocky Creek
Burnet	Kempner	San Gabriel
Coupland	Kyle	San Marcos
Dale	Lometa	Thorndale-Thrall
Dripping Springs	Lytton Spring	Wimberley
Fentress	Martindale	

2.4 **BEAUMONT LATA (562)**

BEAUMONT	KOUNTZE	SOUR LAKE
BRIDGE CITY	LaBELLE	SOUTH VIDOR
BUNA	LUMBERTON	SPURGER
CHINA	MAURICEVILLE	VIDOR
DEWEYVILLE	NEDERLAND-PORT NECHES	WARREN
EVADALE	ORANGE	WESTBURY
FANNETT	PORT ARTHUR	WILDWOOD
JASPER	SABINE PASS	WOODVILLE
KIRBYVILLE	SILSBEE	

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES

Anahuac	Fairmount	Newton
Bon Wier	Hamshire	Nome
Bronson	Hankamer	Pineland
Burkeville	Hemphill	Smith Point
Colmesneil	High Island	Wallisville
Double Bayou	Milam	Winnie

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
MAR 11 '92 DOCKET
CONTROL # 10928
TARIFF CLERK

EXHIBIT 4

CENTURYTEL

ACCOUNT NUMBER 512-393-
BILLING DATE 05/25/02

ITEM	DATE	CALLED FROM	CALLED TO		TIME	TYPE	MINS	AMOUNT
01	05-01	AUSTIN	TX				1	.20
02	05-01	AUSTIN	TX				4	.80
03	05-03	AUSTIN	TX				1	.20
04	05-04	AUSTIN	TX				7	1.01
05	05-11	AUSTIN	TX				2	.29
	ITEMIZED CHARGES FOR 512-393-					2.50		
06	05-09	LOCKHART	TX	512-384-	4:56PM	A	1	.10
	ITEMIZED CHARGES FOR 512-393-					.10		
07	05-21	AUSTIN	TX		4:55PM	A	1	.20
08	05-21	AUSTIN	TX	-	4:56PM	A	1	.20
09	05-23	LOCKHART	TX	512-384-	12:31PM	A	1	.10
10	05-23	LOCKHART	TX	512-384-	12:31PM	A	1	.10
11	05-23	LOCKHART	TX	512-384-	12:32PM	A	1	.10
12	05-23	LOCKHART	TX	512-384-	12:33PM	A	1	.10
13	05-23	LOCKHART	TX	512-384-	12:34PM	A	1	.10
14	05-23	LOCKHART	TX	512-384-	12:34PM	A	1	.10
	ITEMIZED CHARGES FOR 512-393-					1.00		
15	05-04	LOCKHART	TX	512-384-	10:10AM	A	1	.06
16	05-21	LOCKHART	TX	512-384-	1:45PM	A	1	.10
	ITEMIZED CHARGES FOR 512-393-					.16		
17	04-30	LOCKHART	TX	512-384-	11:03AM	A	1	.10
18	05-07	LOCKHART	TX	512-384-	3:41PM	A	1	.10
	ITEMIZED CHARGES FOR 512-393-					.20		
	TOTAL OF ITEMIZED CALLS			28.0 MINUTES				3.96
	FEDERAL TAX					7.27		
	STATE TAX					16.36		
	TEXAS UNIVERSAL SERVICE					9.10		
	COUNTY SALES TAX					1.31		
	CITY SALES TAX					3.93		
	9-1-1 AND POISON SURCHARGE					.02		
	911 SERVICE SURCHARGE					5.50		
	CITY FRANCHISE TAX					5.83		
	TOTAL OF TAXES							49.32
	TOTAL CenturyTel							850.66

TYPE:
A-DIRECT DIAL
T-TIMED NUMBER
B-CALLING CARD
O-OPERATOR HANDLED
C-COLLECT
P-PERSON TO PERSON

CENTURYTEL

@ 2.05 MAY 08	2.05		
MISC CHGS/ADJS FOR 512-393-5409		9.15	
EXPANDED LOCAL CALLING SERVICE	.39		
BRI SW DATA "B" CHAN-BUS	13.37		
TOTAL LOCAL EXCHANGE SERVICES		13.76	
MONTHLY SERVICE AMOUNT FOR 512-393-		13.76	
ADD CEN OFF LINE CHARGE-BUS			
@ 3.60 MAY 08	3.60		
ADD LINE CONN CHARGES BUS			
@ 3.50 MAY 08	3.50		
MISC CHGS/ADJS FOR 512-393-		7.10	
EXPANDED LOCAL CALLING SERVICE	8.97		
FEDERAL UNIV SRV CHG PRI	1.85		
PRI ACCESS LINE	824.00		
TOTAL LOCAL EXCHANGE SERVICES		834.82	
SUBSCRIBER LINE CHARGE - INTER		46.00	
ISDN LINE PORT PRI	23.51		
TOTAL OPTIONAL FEATURES/SERVICES		23.51	
MONTHLY SERVICE AMOUNT FOR 512-395-		904.33	
TOTAL MONTHLY SERVICE AMOUNT			965.09
TOTAL MISC CHGS/ADJS			107.58

Long Distance Detail

ITEM	DATE	CALLED FROM	CALLED TO		TIME	TYPE	MINS	AMOUNT
01	05-07	LOCKHART	TX	512-384-	11:00AM	A	1	.10
02	05-07	LOCKHART	TX	512-384-	11:01AM	A	6	.50
03	05-07	LOCKHART	TX	512-384-	11:13AM	A	6	.50
04	05-07	LOCKHART	TX	512-384-	11:20AM	A	6	.50
05	05-07	LOCKHART	TX	512-384-	11:32AM	A	6	.50
		ITEMIZED CHARGES FOR 512-393-				2.10		
06	05-07	LOCKHART	TX	512-384-	10:47AM	A	1	.10
07	05-07	LOCKHART	TX	512-384-	10:48AM	A	1	.10
08	05-07	LOCKHART	TX	512-384-	10:58AM	A	1	.10
		ITEMIZED CHARGES FOR 512-393-				.30		
		TOTAL OF ITEMIZED CALLS			28.0 MINUTES			2.40
		9-1-1 AND POISON SURCHARGE				.01		
		911 SERVICE SURCHARGE				1.00		
		CITY FRANCHISE TAX				1.06		

TYPE:
A-DIRECT DIAL
B-CALLING CARD
C-COLLECT
D-PERSON TO PERSON

SOAH DOCKET NO. 473-02-2503
PUC DOCKET NO. 25673

02 JUL 10 PM 3:05

COMPLAINT, REQUEST FOR EXPEDITED RULING, REQUEST FOR INTERIM RULING, AND REQUEST FOR EMERGENCY ACTION OF ASAP PAGING, INC. AGAINST CENTURYTEL OF SAN MARCOS, INC.	§ § § § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

DIRECT TESTIMONY OF FRED GOLDSTEIN

Q: Please state your name, occupation and job responsibilities.

A: My name is Fred Goldstein. I am a Senior Consultant in the Communications, Information Technology and Electronics practice of TIAX LLC, formerly the Technology and Innovation line of business of Arthur D. Little Inc. I advise companies on technical, regulatory and business issues related to the telecommunications and Internet industries, especially in areas where the two overlap.

Q: What is your education and training background?

A: I hold a Bachelor of Arts degree from Skidmore College. I am also a Senior Member of the IEEE. I hold three patents in the area of Asynchronous Transfer Mode technology, including two for methods of congestion control and avoidance, and one for a LAN-oriented ATM switching system. I have been a member of the faculty of the State-of-the-Art Program at Northeastern University, and have taught courses on ISDN, Frame Relay, ATM, telecommunications transmission, and OSI and TCP/IP protocols. I also have taught several satellite courses on ATM, Frame Relay and ISDN for National Technological University.

Q: What is the purpose of your testimony?

A: ASAP Paging, Inc. ("ASAP") has requested me to provide testimony on some of the technical and regulatory issues involved in this case.

Q. Was CenturyTel following industry practice when it attempted to route ASAP's Lockhart calls to the Southwestern Bell Lockhart switch, LCKHTXLKDS1?

A. No. The Southwestern Bell Lockhart switch is an end office. It should only provide dial tone to its own subscribers. ASAP is a different carrier, not a subscriber to Southwestern Bell.

Q. Are there other end offices with Lockhart numbers?

ASAP EXHIBIT NO. 10

A. Yes, there are. The Southwestern Bell switch is not the only one with Lockhart numbers, and because it is an end office, it cannot connect other terminating carriers' calls, such as ASAP's, to the proper switch. Besides ASAP Paging's 512-384 prefix, Dobson Cellular's 512-995 prefix, AT&T's 512-855 prefix and Tex-Link Communications' 512-729 prefix are assigned to Lockhart. According to the North American Numbering Plan Administration (NANPA) database, Dobson's prefix is served from its Bastrop site, while ASAP, AT&T and Tex-Link are served through switches in Austin.

Q. How does an end office differ, functionally, from a tandem office?

A. A tandem office performs trunk to trunk switching. That is, it has the ability to take calls that arrive on intermachine trunks (also called IMTs) from one switching office and route them to another switching office. It is thus the midpoint of a call between two other offices.

An end office, in contrast, lacks this capability. Trunks to an end office are only for the benefit of subscriber lines which terminate within that end office; connections are not normally made between IMTs. An end office always has trunks to at least one tandem office. It may also have Direct End Office Trunks (DEOTs) to other end offices, for calls that go directly between subscribers served by those two end offices. However, such DEOTs are normally only installed when traffic levels warrant it. Local calls may thus go through the tandem if conditions so warrant, and, if traffic warrants, toll calls may go directly between end offices.

The point is that a carrier does not send traffic to an end office switch if the call is destined to another carrier's switch. CenturyTel improperly tried to use SWBT's Lockhart end office as a tandem.

Q. Has this always been standard practice in the telephone industry?

A. No. Before the 1980s, outside of metropolitan areas, "local" calls were almost always directly routed between end offices. Indeed, in order to add extended local calling, telephone companies typically needed to construct physical trunk facilities directly between the two offices. There were also toll offices, which carried only toll traffic, and which frequently performed the data collection needed for toll call billing. Tandem switches were used for local calls in some larger metropolitan areas. But in rural areas, where direct control switches prevailed, dialing "1" typically seized a trunk to a toll switch, and the call would be billed as toll. So there were separate "local" and "toll" trunks leaving an end office, typically with different destinations.

Q. How did this change during the 1980s?

A. A number of changes were effected during the 1980s. For example, as a result of the AT&T divestiture and the establishment of LATAs and Equal Access, a system of Access Tandems was created. These provided interexchange carriers with a small set of interconnection points in each LATA. The five-level hierarchy of switches previously used for Direct Distance Dialing (Regional, Sectional, Primary, Toll and Local, hence the term "Class 5" for end offices) was also discontinued. The local exchange carriers' LATA networks became a two-level hierarchy (end office and tandem) with every end office homed on a tandem.

As this was happening, digital switches were replacing analog ones. Many smaller end offices were also replaced by remote switching modules attached to larger digital Host switches. As a general rule, remote modules do not need IMTs; they only have trunks to the host or, in some cases, other remotes of the same host. This has further simplified the network. But it has also led to a wider difference between tariff concepts of "local" and the physical network topology. A small end office that is replaced by a remote usually keeps its rate center designation, and its local calling area. Calls within the same host-remote cluster may be toll, while ELCS calls are routed via the host.

With the universal adoption of stored program control, as the last electromechanical switches were phased out, all switches gained sufficient capability to be able to route calls based upon a table lookup of the area code – prefix ("NPA/NXX") code combination. This allowed a "first and final" routing system to be adopted for local calls, wherein a first-choice DEOT trunk group, for instance, could be used if available, with overflow calls going by way of a tandem. Before that, many switches, particularly step-by-step and similar direct control switches, literally routed calls on a digit by digit basis, a rather less flexible arrangement.

Q. What changes occurred as a result of the Telecom Act?

A. The Telecom Act introduced local competition to all states. It essentially created a peer relationship between local carriers, which allows multiple carriers in each rate center. So there can no longer be an expectation that a given rate center is served by only one carrier. In general, the ILEC still determines the tandem homing relationship for a given rate center. Carriers who serve that rate center need to be reachable via the same tandems as the ILEC. The exact details of interconnection are typically negotiated, arbitrated, or set by regulators within Federal guidelines.

Q. Does any given tandem always carry both local and toll traffic?

A. Usually, but not always. As tandem switches congest due to traffic growth, ILECs have multiple relief options. One method is to divide the tandem-served area, with some switches being rehomed onto a new tandem. Another method is to move Switched Access traffic onto a separate Access tandem from that used for intraLATA traffic. It is even possible to separate originating from terminating Access traffic. IntraLATA toll traffic would generally, in such cases, remain with local traffic. Such decisions are always published well in advanced by the LEC who operates the tandem, and are reflected in the LERG.

Q. Does a carrier switch always have direct trunks to the ILEC end offices in the rate centers it serves?

A. No. Carrier switches always have connections to at least one tandem. They may also have direct end office trunks. That is usually based on a traffic engineering standard. This standard may be set forth in an interconnect agreement, or set at a state level, and typically varies from state to state. If traffic between the CLEC and a given ILEC end office is below some *de minimis* level, then all traffic to that end office may be routed via the tandem. DEOTs are generally installed when traffic exceeds that threshold. If DEOTs are installed but congested, traffic can still overflow via the tandem; that is what first-and-final routing does.

Q. Do CMRS carriers operate the same way as CLECs?

A. Not exactly. CMRS carriers are governed by separate federal rules, not CLEC interconnect agreements. It is my understanding that a CMRS carrier can request tandem-only interconnection, without the requirement to install DEOTs even when traffic levels are relatively large. The CMRS carrier connects to the tandem that serves the rate center to which the NXX is associated. Here, ASAP is connected to SWBT's Greenwood tandem, because that tandem serves the NXXs in issue, including the Lockhart rate center. This is why all the carriers – ASAP, AT&T and Dobson connect there. Similarly, Tex-Link, which is a CLEC, also connects to SWBT's Greenwood tandem to receive calls dialed to its Lockhart NXX.

Q. Then what is the remaining relationship between the local/toll billing dichotomy and the way calls are routed?

A. Technically, none. Billing is based on tariff, while routing is typically an engineering decision. The "toll office" of yore no longer exists; tandem coverage is universal and is available for local calls.

Q. Are trunking arrangements always reflected in the way transmission plant is installed?

A. No. Interoffice transmission plant design is based on yet another set of decisions. Because of the low incremental cost of fiber optic bandwidth, bandwidth may be most economically derived from relatively indirect routes. Common industry practice nowadays is to install SONET rings among groups of offices. Thus a trunk facility will be derived from bandwidth that may traverse one ring, or multiple rings, as needed.

Q. What is meant by "Type 1" wireless interconnection?

A. Type 1 wireless interconnection between a CMRS carrier and an ILEC is made to an ILEC end office, as if the wireless carrier were a subscriber of the serving ILEC's retail service. There has been some ambiguity over time around the use of the terms "Type 1" and "Type 2" connections. The Ordering and Billing Forum has, however, adopted a set of definitions for the industry to standardize on[1].

> Wireless Type 1 interconnection
>
> Type 1 interconnection offers a trunk-side connection from an End Office (EO) to a Wireless Services Provider (WSP). This trunk-side connection has a Trunk With Line Treatment (TWLT) feature, or its equivalent, that offers trunk-side signaling and supervision but treats the connection as a line for recording purposes. With a Type 1 interconnection, the WSP can establish connections to valid NXX codes in the LATA.

This replaces the older "Type 1" that referred to a line-side connection, which is technically obsolete. A Direct Inward Dialing trunk to a PBX is similar to this. The number block is that of the serving carrier's switch, not that of the CMRS carrier. Thus a CMRS company would not use Type 1 signaling with its own prefix codes.

Q. What is meant by "Type 2" wireless interconnection?

A. Type 2 interconnection is more of a peer interconnection between carriers, using trunk connections. The Ordering and Billing Forum specifies two subsets of Type 2 interconnection:

> Wireless Type 2A interconnection
>
> Type 2A interconnection is a trunk-side connection to the access or local tandem. The WSP functions like an EO. The tandem homing arrangements are specified in the Local Exchange Routing Guide (LERG)
>
> Wireless Type 2B interconnection

[1] Ordering and Billing Forum, Issue Number 1782, November 19, 1999.

> Type 2B interconnection is a trunk-side connection to an EO and functions exactly like a high usage trunk. It is intended to be used with a Type 2A connection in situations where the WSP has large traffic quantities to and from NXX codes within a specific EO. The first choice route is the Type 2B connection with overflow allowed via the Type 2A connection. With the Type 2B connection, the WSP can establish connections only to valid NXX codes in the EO providing the Type 2B connection.

Type 2A is precisely the type of connection that ASAP uses. Each of ASAP's prefix codes is listed in the LERG. Homing is defined in the LERG. The OBF definition recognizes that either an access or local tandem can be used. SWBT's Greenwood tandem is a combined local/access tandem. It connects various end offices for local, intraLATA and interLATA traffic. Other ILECs, CLECs, CMRS carriers and IXCs all interconnect there to obtain connectivity to the end offices it serves.

Type 2B is used to supplement Type 2A when traffic from a given end office is high enough to warrant a high usage trunk. Calls sent on a Type 2B link cannot be extended to a third switch, because it is an End Office, not tandem, connection. It is important to note that a Type 2B connection coexists "with a type 2A connection", not in lieu of one. A high usage trunk is *not* engineered for the desired grade of service, because overflow traffic flows to the "final" route, which is the Type 2A connection. Thus the Type 2A connection must correctly handle the prefix codes; a Type 2B connection only exists to optimize network cost or bypass tandem congestion.

Q. ASAP Paging's Lockhart rate center is served out of a switch in Austin. Why isn't the competitive carrier's switch usually located within the same exchange area as its rate center, like the ILECs'?

A. First off, ILECs do not always put their switches within the rate center's own service area. Small rate centers are served by remote switching units, or even in some cases just line concentrators or multiplexors, which do not have trunk interfaces.

CMRS providers do not use the loop at all, and therefore have a single switch to serve a regional radio network. Radio waves do not respect wireline rate centers and exchange area boundaries.

Q. Shouldn't CLECs put switches in the same places as the ILECs?

A. CLECs, being smaller than ILECs, are unlikely to have enough subscribers in most end offices to warrant a dedicated switch. CLECs are also subject to restrictions that force them to use a different network architecture from ILECs. A CLEC needs to collocate equipment in order

to gain access to the local loop, but collocation is generally limited to equipment needed to access the loop. The FCC and court interpretations of the Telecom Act that were in effect for the first few years after the passage of the Act did not allow any "switches" to be put into a collocation node; even remote switch modules were controversial, because, some ILECs insisted, lower-functioning multiplexors *could* be used instead. More recent interpretations allow CLECs to install switches *if* the switch takes up no more floor space than a multiplexor would; this rules out traditional switches, but does not ban switching functions from modern multifunctional equipment.

So for a wireline CLEC, the traditional function of "switch" is really disaggregated into two functions. One, referred to in ITU-T standards as the "Exchange Terminator" (ET), includes common control, trunk interfaces, and most switching functions. The other, the "Line Terminator" (LT), includes line interface and multiplexing functions, and sometimes limited switching of calls within the LT. The ET and LT *must*, in general, go into separate places; the LT goes at the ILEC collocation node while the ET is centralized for a metropolitan area, at the CLEC's own premise or at another non-ILEC "carrier hotel".

So for example, if a CLEC had Lockhart numbers, and served local loops in Lockhart, it would need to put an LT into Southwestern Bell's Lockhart wire center. But the trunks would be delivered to the ET, which could, for instance, be in Austin, closer to the tandem.

Q. How is this different than how a CMRS carrier interconnects?

A. Again, CMRS carriers do not usually serve access lines to customers. They typically only interconnect with LECs under §§ 152, 201, 251 and 332(c)(1)(B) of the federal Act. They rarely need UNEs or collocation (although they can obtain them if they wish). They have no need to have a physical presence in every local calling area. It is more efficient for all concerned if they interconnect at a tandem and then derive DEOTs (Type 2B) to high volume end offices.

Q. What should happen if a carrier were to deliver a call to the ILEC's switch in a given rate center, rather than to the actual serving carrier's switch?

A. The ILEC switch should reject the call, because it was clearly misrouted. Likewise, the CMRS carrier or CLEC should reject calls dialed to ILEC numbers, unless their switches happen to also be designated as tandems, in which case the CMRS carrier or CLEC should route to the ILEC according to the instructions in the LERG.

Q. A CMRS carrier does not necessarily have an interconnect agreement. How then does the ILEC know how to route calls to it?

A. The Local Exchange Routing Guide (LERG) should be definitive. For every prefix code, the LERG lists the carrier, and provides the location of the serving switch, as well as rate center assignments and tandem homing arrangements. Various additional technical information is also included to help insure that calls are properly completed.

Q. How do rating point and routing point differ?

A. Rating point is a billling construct; it is essentially the same as the Rate Center applied to a given call. Here is a standard definition taken from an interconnect agreement:[2]

> 1.49. "Rating Point" means the vertical and horizontal ("V&H") coordinates assigned to a Rate Center and associated with a particular telephone number for rating purposes. The Rating Point must be in the same LATA as the Routing Point of the associated NPA-NXX as designated in the LERG, but need not be in the same location as that Routing Point.

Routing is basically an engineering parameter. It determines how calls get from one phone to another. From the same interconnect agreement:

> 1.50. "Routing Point" means the V&H coordinates that a Telecommunications Carrier has designated as the destination for traffic inbound to services provided by that Telecommunications Carrier that bear a certain NPA-NXX designation. The Routing Point need not be the same as the Rating Point, but it must be in the same LATA as the Rating Point. Central Office Switches are Routing Points for traffic to end users identified by numbers drawn from NPA-NXX designations, as stated in the LERG. Where Carrier has not established Routing Points for its Dedicated NPA-NXXs in its own network, the Routing Point shall be the Telco Tandem Switch where traffic to Telco NXXs in the same NPA is homed.

Note that both definitions affirm that they need not refer to the same point as the other; the rating point need not be the routing point, and vice-versa. They need merely be in the same LATA. Also it is important to note in the above definition that the default routing point for the non-ILEC Carrier is specified as the ILEC tandem switch.

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[2] CELLULAR/PCS INTERCONNECTION AGREEMENT by and between Dobson Cellular Systems, Inc.and Southwestern Bell Telephone Company; Illinois Bell Telephone Company, d.b.a. Ameritech Illinois; Michigan Bell Telephone Company, d.b.a. Ameritech Michigan; Wisconsin Bell, Inc., d.b.a. Ameritech Wisconsin; and the Ohio Bell Telephone Company, d.b.a. Ameritech Ohio. December, 2000.

As I noted before, competitive carriers do not put switches in every rate center. Thus there are generally many more rating points than routing points within a competitive carrier's network. ILECs hand off traffic on the basis of these routing points. Sending the call to another carriers' switch whose *routing point* happens to be the same as the desired number's *rating point* is, I dare say, pointless. Yet this appears to be exactly what CenturyTel was doing when it attempted to send ASAP's Lockhart numbers to SWBT's Lockhart switch! SWBT's Lockhart switch presumably may have a routing point in Lockhart, but that is irrelevant to ASAP's numbers, because they are not served by Type 1 interconnection to SWBT's Lockhart switch. They have their own routing point, in Austin.

Q. What is local dialing parity, and why is it so important?

A. Local dialing parity means that calls made to every carrier's numbers assigned to a given rate center should be dialed identically. Thus in this example, if a CenturyTel subscriber in San Marcos can dial an SWBT number in Lockhart by dialing seven digits, then local dialing parity would require seven-digit dialing to ASAP and any other carrier's Lockhart numbers. The definition of a number as being in any given rate center, such as Lockhart, should be according to the LERG. The FCC enshrines this in their Regulations:

> Sec. 51.207 Local dialing parity
>
> A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

The FCC expressly included CMRS carriers in the class of carriers entitled to local dialing parity when it adopted this regulation. CenturyTel therefore must allow its users to dial 7 digits to get to ASAP's Lockhart NXX, since Lockhart is in the same local calling area as San Marcos.

Q. Should a carrier be able to "pick and choose" which other carriers' numbers are within its ELCS area?

A. No; carriers should not be allowed to discriminate among other carriers in setting up local calling areas. Again, the LERG assignments of rate centers should be definitive. Subscribers, for instance, need to know which calls are local and which are not. If an ILEC charges tolls to call a CLEC or CMRS number in a rate center that is local for ILEC-ILEC calls, then the CLEC or CMRS provider will have a harder time signing up subscribers, and the ILEC's subscribers

will find themselves with unexpected toll charges if they call "local" numbers served by other carriers.

This is not to say that every carrier's local calling area needs to be the same. Local calling area is an *originating* line's characteristic. There are instances of cities with multiple optional calling plans. This is not as pronounced in Texas as in some other places. For example, in the Boston area, Verizon, the ILEC, offers at least six residential "local" calling plans, which often differ in what constitutes a "local" call. Costlier plans, such as "metropolitan" and "circle", have a wider local calling area than lower-priced plans such as "contiguous". And other carriers' local calling plans do not necessarily match any of Verizon's. But all carriers normally respect each others' rate center assignments.

So, for example, if a Verizon "contiguous" subscriber in Brookline calls a CLEC's number which is assigned to the Jamaica Plain rate center, then it is local, because Jamaica Plain is in Brookline's contiguous area, even though the CLEC's switch is almost certainly not within the Jamaica Plain exchange area. Indeed, the switch that Verizon uses to serve Jamaica Plain itself is *not* within the Jamaica Plain exchange area. Jamaica Plain is served by Verizon's Roxbury switch, mostly over long feeder cables. Verizon has divided its several of its rate centers even more finely than it has divided its physical (wire center serving area) network. Rate centers are, after all, a retail pricing artifact, not an engineering definition.

Q. Do you have any concluding remarks?

A. Yes. CenturyTel should follow the industry practice and route calls to ASAP's NXXs according to the LERG. It should not have attempted to send calls to ASAP's Lockhart NXX to SWBT's end office. Competitive carriers quite often do not have equipment or even a physical presence in an area where they provide service, and ASAP has followed accepted practices in setting up its network. CenturyTel's attempt to require 1+ dialing and impose toll on its users who dial ASAP's NXXs violate public policy and is anticompetitive.

Q. Does this conclude your direct testimony?

A. For now. ASAP has some discovery questions that are still outstanding. If CenturyTel provides answers I may supplement this Direct. Thank you for the opportunity to present this testimony.

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PUC DOCKET NO. 25673

COMPLAINT, REQUEST FOR EXPEDITED RULING, REQUEST FOR INTERIM RULING, AND REQUEST FOR EMERGENCY ACTION OF ASAP, INC. AGAINST CENTURYTEL OF SAN MARCOS, INC.	§ § § § § § §	**BEFORE THE** **PUBLIC UTILITY COMMISSION** **OF TEXAS**

PRE-FILED REBUTTAL TESTIMONY OF FRED GOLDSTEIN

Q: Please state your name.

A: Fred Goldstein.

Q: Are you the same Fred Goldstein who submitted Direct Testimony on behalf of ASAP?

A: Yes.

Q. Please state the purpose of this testimony.

A. I am rebutting the testimony of CenturyTel of San Marcos witnesses Wesley Robinson, John Navarrette, and Susan Smith in PUC Docket 25673 concerning the ability of ASAP Paging to receive local calls from San Marcos subscribers. I also rebut Staff witness Kelsaw's testimony on ELCS.

Q. Does ASAP Paging resell or lease its paging numbers to Internet Service Providers?

A. No. ASAP Paging assigns directory numbers to ISPs, just as it assigns numbers to pagers, and other carriers assign numbers to their subscribers. The actual quantity of telephone numbers used for ISPs is small, compared to the quantity of pager numbers. Thus the impact of ISPs on the numbering plan is minimal by any measure. Assigning numbers to ISPs using vacant numbers in a CMRS "paging" NXX block – which is not portable or subject to thousands-block pooling – is an excellent and efficient use of numbers. ISPs only need one number in an NXX block. They need a number anyway, so why not use a resource that would otherwise lie fallow?

Q. Then does ASAP have a need for all of its NXX codes?

A. ASAP has two options for providing pager customers with non-toll numbers. One is to use its reverse-billed prefix, in which case it bears a usage charge. This service is provided by SBC and CenturyTel, but could be withdrawn in the future, which would leave paging customers without local service. The other option is to use NXX codes assigned to areas where its paging

ASAP EXHIBIT NO. 43

subscribers might be located; for example, it has paging coverage in areas local to Lockhart, Kyle and Fentress. This way, a paging subscriber would select the local calling area it needs.

CenturyTel witness Robinson erroneously states (at 8), "It appears that ASAP has not established a physical presence or interoffice trunking in the geographic areas where these NPA-NXXs are 'designated'..." ASAP, a wireless carrier, has paging transmitters which service these areas. Even CenturyTel witness Navarrette concedes the same (Navarrette at 7) when he states, "I understand that ASAP has a transmitter in the San Marcos exchange." The value of a paging company's service, of course, is increased when its radio coverage area increases. As ASAP has added transmitters, it has made its service more attractive to potential local subscribers in these areas.

Q. Is the Maine situation analogous?

A. No. Robinson (at 9) alludes to the Maine PUC's rejection of Brooks Fiber's Virtual NXX service. However, there is no valid analogy here. First, the Maine decision was an outlier; most states, including Texas, have allowed VNXX service. Second, Brooks was acting as a state-certificated CLEC, not as an FCC-licensed CMRS provider. Third, Brooks assiduously refused to have any physical presence in Maine outside of the Portland local calling area, unlike ASAP which has paging coverage over a much broader area, which means that its NXX codes are not even "virtual". Fourth, Brooks' state certification was limited to the Portland area; unlike some states, Maine requests that CLECs state in advance what exchanges they will be serving. Brooks received NXX codes in areas it had not obtained permission to serve. Thus Brooks had a *relatively* weak case. It is simply not a valid analogue to ASAP. I also note that several states such as Texas, Illinois and Michigan have either expressly disagreed with Maine or very much limited the effect of the Maine decision.

Q. Does Robinson correctly characterize the service that ASAP provides to ISPs?

A. No. He opines (at 23) that "the only 'service' ASAP provides to ISPs is the resale of its CMRS numbers and the resale of its interconnection trunks." Both numbers and trunks are essential elements of telecommunications service. They are necessary, but not sufficient. ASAP adds value and other things to the transaction. It is not reselling numbers *per se*; rather, it is providing a service using those input elements, and adds additional services or functions, including switching and the connection to the ISP. Simply put, ASAP adds outputs and value

beyond the ILEC-supplied inputs.. Using Mr. Robinson's method of characterization, a rancher hauling his cattle to market is merely reselling milo feed grain.

ASAP's offering of collocation to its ISP customers is not a "sham transaction". Rather, it is a valuable service that allows ISPs to save on the cost of local loop facilities between the switching system and their modem banks. Many CLECs offer a similar service, which is one reason why they are more attractive to ISPs than ILECs.

Q. Is ASAP providing an "8YY" service as Robinson and Smith claim?

A. Not at all. ASAP does permit its ISP subscribers to have foreign-exchange numbers, to the limited extent that the modems are not physically located in the served rate center. This to some extent resembles Virtual NXX, a fairly popular method for providing rural subscribers with Internet connectivity, or to traditional foreign exchange service. But it bears no real similarity to "8YY" reversed-charge service. For one thing, an 8YY service would use a single number throughout a company's service territory, which could be nationwide. It would make use of a database dip for number portability, compared to ASAP's CMRS prefix codes which are not portable. In areas that have measured local service, FX and VNXX both have local usage charges, while 8YY is free to the caller. These are just some of the differences. The Texas Commission has already rejected the comparison of FX-like to 8YY, as has Illinois.

Q. Is ASAP providing a service that is "identical to the service offerings of IXCs, and subject to access charges", as Robinson states (at 23)?

A. Not at all. The service offered by an IXC is precisely the opposite of that offered by ASAP. An IXC offers a transit service that accesses the entire worldwide telephone network as its open end; ASAP is offering a terminating service that accesses its own subscribers. An IXC carries calls in both directions; ASAP does not originate calls, either for its paging or ISP customers. An IXC does not issue directory numbers to its subscribers; ASAP does. An IXC receives the originating leg of calls from any exchange in the regions it serves, without regard to local calling radius; ASAP's numbers, other than the special 512-222 prefix, are meant to be accessible without toll charges only from their designated local calling areas.

CenturyTel is essentially taking one narrow aspect of ASAP's service and using that aspect to analogize the service to something totally different. The narrow aspect is that ASAP's service allows some calls to be made, from some areas, to terminating numbers that may physically be outside of the local calling area. Specifically, the modem banks for San Marcos

1 Internet and other ISPs can be collocated at ASAP's Austin location, without incurring the toll
2 charges needed to call most Austin numbers. Of course there are no toll charges incurred in
3 calling ordinary voice Foreign Exchange numbers whose open end is in a local rate center. FX is
4 probably the closest analogy to ASAP's service, not toll and this is what Texas and Illinois have
5 both found.

6 Q. Where do calls to San Marcos Internet made via ASAP actually go?

7 A. The FCC has held that ISP-bound calls do not actually "terminate", in the usual sense, at
8 the modem bank. Rather, they terminate all over the world, on the global Internet, and are thus
9 subject to interstate jurisdiction. However, they are not treated as "exchange access" calls;
10 rather, they are for the time being in a special class of "information access" calls which are
11 specifically exempted from switched access charges. This FCC ruling essentially moots the
12 location of the modem bank as a consideration factor in the rating of a call "to the Internet." The
13 important factor is the two NXXs. The ISP customers of ASAP that actually receive most of the
14 San Marcos-originated calls, such as San Marcos Internet, are actually based in San Marcos, and
15 have their own servers there. The Internet backbone providers are in Austin, which makes it a
16 logical place to put the modems, though the modem location is primarily determined by
17 proximity to ASAP's switch. When a San Marcos user calls San Marcos Internet and uploads
18 his mail, he is actually communicating with a computer in his local calling area. If San Marcos
19 Internet had to put its modems in San Marcos proper, or in the San Marcos local calling area,
20 then its transmission costs would be higher. CenturyTel's costs, however, would be no different.

21 Q. How much intrastate Switched Access revenue is CenturyTel losing when ISP-bound
22 calls terminate on an ASAP subscriber whose modem is in Austin?

23 A. None. The plain fact of the matter is that there is no market for Internet Service Provider
24 access over intrastate toll. ISP access is almost always provided on a local basis, due to the ISP
25 Exemption. In those cases when a subscriber cannot access an ISP locally, or cannot access
26 locally an ISP to which he is a subscriber, then the only alternative is *interstate* 800 service.
27 Interstate service is used for two reasons. One is that the switched access rate, and thus the retail
28 toll and 800 rate, is generally lower on interstate than intrastate toll. The second reason is that
29 ISP modems provide access to the worldwide Internet, so a centralized nationwide 8YY-
30 numbered modem pool is functionally adequate, for calls that cannot be dialed locally. But 8YY

is not the same as FX; it is an expensive alternative that is used only when nothing else will work.

Most intrastate switched access revenues attributable to ISP-bound calls are probably for *mistaken* tolls. That is, when a subscriber dials a phone number that he *thinks* is local, but is not, then tolls are incurred. This is typically corrected upon the arrival of the first bill!

Thus if ISPs could not use a centralized modem pool behind a switch such as ASAP's, then the ISPs would simply not serve the same local areas. An ISP might lease ILEC PRIs in its own home community, but not provide service to surrounding areas. Residents of small local calling areas would thus lose access to most of the ISPs that they can now choose. In some cases they might have only toll/800 (interstate) access, while in others the ILEC would have a local-call monopoly with its "captive" service. I note that CenturyTel does offer a captive Internet service in San Marcos; ASAP's service makes it easier for other ISPs to compete with it. Certainly given the choice of making an intrastate long-distance call or using CenturyTel's local ISP service, the bulk of San Marcos users would opt for the latter.

Q. What is a "CMRS Rate Center"?

A. Robinson states (at 25) "no ELCS petition has sought calling to a CMRS rate center." To the best of my experience, which consists of approximately 25 years working with the telecommunications industry, there is no such thing as a "CMRS Rate Center." Rate centers are defined in state tariffs and identified nationally in the Local Exchange Routing Guide. LERG Table 8 identifies rate centers; it lists over 20,000 in the United States and Canada. Over a thousand are in Texas. One of them is Lockhart. When a CMRS provider, or a LEC for that matter, receives an NPA-NXX code, it assigns that code to a rate center. Nothing in LERG 8 distinguishes between wireline and wireless rate centers. It is far more logical to consider all carrier assignments to a given rate center as being subject to equal ELC treatment. Were this not the case, then new competitors entering a market would not have equivalent service to incumbents. Even though only one exchange petitions for ELCS to the second one, both exchanges benefit. This must be without regard to the identity of the terminating carrier if there is to be any competition.

Q. Is ASAP's use of NXX codes in violation of ATIS Central Office Code Assignment Guidelines, as Robinson implies (at 32)?

A. No. Mr. Robinson's accusations are disingenuous. He cites two different portions of the Guidelines, either of which is sufficient to justify assignment of a code, and then implies that the carrier needs to meet *both* of these at the *same* time. In logic terms, he is inferring an "and" when an "or" will do. And even then, he is taking sentences out of context.

Section 2.13 of the Guidelines, cited by Robinson, includes the words "to provide service to customer's premises physically located in the same rate center that the CO Codes/blocks are assigned." But he conveniently omits the next sentence: "Exceptions exist, for example tariffed services such as with the exception of foreign exchange service." While I can't praise the wordsmithing grammar skills of the Guidelines' authors, it is clear that they acknowledge that FX and FX-type services exist which create exceptions to the sentence that Robinson cites. And by using the words "for example", they acknowledge that tariffed FX services are not the sole exception; ASAP's non-tariffed FX-like services seem to fit clearly within the spirit of this exception. In any event, he also omits the first part of the first sentence, which recognizes that this guideline does not apply to wireless. Even if ASAP had no ISP customers, it would still need these prefix codes for wireless use, which should render moot the question of code assignment.

Robinson also implies that ASAP is even violating Section 4.1 of the Guidelines when they provide wireless services to customers who carry a pager. He states (at 33) that "[i]n regard to the Kyle, Fentress and Lockhart rate centers, ASAP has not established any switching entities or POIs in these rate centers and therefore violated existing industry guidelines when it applied for NPA-NXX codes with these rate center designations for even its wireless service customers." With regard to pagers, even the "FX-like" exception is not necessary: ASAP has physical paging coverage, and can service local customers, in areas that are local to the Kyle, Fentress and Lockhart rate centers. CMRS networks do not require POIs in every local calling area or rate center, as made clear from the TSR decision, nor would it be practical to put a switch or POI in each such area. Mr. Robinson is essentially implying that wireless networks should mimic the wireline networks of the 1950s, before remote switch modules or loop carrier, when separate little switches dotted the landscape and open-wire trunk lines criss-crossed the landscape. This is not even technically feasible or, if it were, in any way sensible. FCC regulations recognize this and allow a centralized POI for CMRS networks with various NXXs associated with those rate centers where local calling is most needed homing to the POI.

1 Robinson repeats this assertion in his response 2.8 to ASAP's second RFI. He states, "As
2 detailed in Section 3.1 of the Central Office Code Assignment Guidelines, ASAP must have a
3 'Switching Entity' or 'Point of Interconnection' that it owns or controls within the Lockhart rate
4 center to obtain a Central Office Code rate centered in Lockhart, not a 'live' customer." This is
5 not correct, although as noted below the Guidelines are not the final answer. All this sentence
6 means is that an NXX must be associated with a switching entity or POI so that other carriers
7 will know how to direct calls to it. Section 3.1 does not either expressly or implicitly require that
8 there be a POI or switch within the geographic area comprising the rate center. There are two
9 reasons. First, the Guidelines themselves recognize that the rate center point, the POI and the
10 switch can each have different coordinates. Second, Mr. Robinson's opinion is simply
11 inconsistent with the way the industry has operated for several years. Disparate rating and
12 routing points are the norm for competitive providers. And these alternative providers are not
13 scofflaws as a result of this practice. Mr. Robinson is trying to use the Guidelines to overrule the
14 FCC's express holdings that carriers can have a single point of interconnection in a LATA, and
15 CMRS carriers have the right to choose Type 2A (tandem) interconnection and associate NXXs
16 with rate centers throughout the tandem served area in order to permit "local" calling to their
17 customers. Mr. Gaetjen discusses the FCC holdings in his testimony.
18 Section 4.1.1 of the Guidelines states, "[t]he applicant must submit an NXX request form
19 certifying that a need exists for an NXX assignment to a point of interconnection or a switching
20 entity due to routing, billing, regulatory, or tariff requirements". [Emphasis added.] In this case,
21 the NXX meets billing, regulatory and tariff requirements, which collectively summarize the
22 concept of "rating" a call, in contrast to "routing" a call to a POI. CMRS providers routinely
23 have multiple rate centers on a single POI. The Guidelines state, in Section 6.2.2, "Each
24 switching center, each rate center, and each POI may have unique V&H coordinates." This
25 makes clear that rating and routing are separable.
26 The Florida Public Service Commission was recently asked by BellSouth to issue a
27 Declaratory Statement to prohibit CMRS providers from assigning an NPA-NXX code to a rate
28 center (rating point) that was different from its routing point, "because it would result in

BellSouth providing virtual designated exchange service outside of BellSouth's exchange territory" [1] The Florida Commission refused this request, noting:

> In its Petition for Declaratory Statement, BellSouth has asked an apparently simple question - whether loading Sprint PCS' NXXs will violate BellSouth's General Subscriber Services tariff - but the question belies the real complexity of the issues surrounding it, and a simple answer to the question resolves very little, if anything. As described in the recitation of the facts above, there are several material factual disputes between BellSouth and the intervenors over whether the NXXs in question are "virtual NXXs," whether inequities of compensation will occur if this practice continues, whether mobile carriers will be required to interconnect with all local companies in a LATA to serve the exchanges in their territory and at what cost, and whether local and toll charges will be accurately assessed. ...

Some of CenturyTel's CLEC interconnect agreements recognize the distinction between rating point and routing point. I note this clause from the agreement between CenturyTel of the Midwest-Kendall and Bayland Communications Inc. in Wisconsin [emphasis added]:

> Bayland will also designate a Routing Point for each assigned NXX code. Bayland may designate one location within each Rate Center as a Routing Point for the NPA-NXX associated with that Rate Center; alternatively Bayland may designate a single location within one Rate Center to serve as the Routing Point for all the NPA-NXXs associated with that Rate Center **and with one or more other Rate Centers** served by Bayland within an existing CenturyTel exchange area and LATA.

This agreement clearly recognizes the acceptability to CenturyTel of a centralized routing point.

Q. Has CenturyTel itself signed contracts allowing it to provide FX-like service in other ILECs' territories?

A. In fact, at least one of CenturyTel's corporate affiliates seems to agree with us, and has permission to provide such a service in a different ILEC's territory. I note the following paragraph from the Interconnect Agreement between SBC's Ameritech-Wisconsin and CenturyTel Solutions LLC. The latter appears to be CenturyTel's own CLEC affiliate.

> 3.1 For SBC-13STATE territory, neither Party shall be prohibited from designating different rating and routing points for the delivery of telephone calls for purposes of providing customers a local presence within a foreign exchange.

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[1] See http://www.psc.state.fl.us/agendas/02080604.html, initial paragraph of "Case Background".

> In such cases, calls shall be rated in reference to the rate center of the assigned NXX prefix of the calling and called parties' numbers. For applicable reciprocal compensation charges associated with the termination of FX traffic refer to Appendix Reciprocal Compensation.

ASAP Paging is not requesting reciprocal compensation from CenturyTel for any calls.

The same agreement has an interesting definition of FX service. In addition to what it calls "line haul" FX, in which the service is physically hauled from a switch in the foreign exchange (e.g., a Lockhart number hauled, for a leased-line fee, to a customer in Austin), it offers an alternative:

> 2.2.3 Alternatively, under a "dedicated prefix" arrangement, the customer's ordinary access line is assigned a prefix within its serving wire center which is dedicated to functioning as a prefix in a foreign exchange. The serving wire center routes the customer's traffic over dedicated or switched facilities to a switch or switches in the foreign exchange whereby it is connected to telephone numbers in the foreign exchange.

That sounds like a very good explanation of how so-called Virtual NXX service works! Thus, even if ASAP's service were Virtual NXX, which we do not believe to be an accurate description, we see ample precedent within CenturyTel to consider it to be a valid instance of Foreign Exchange service, with multiple rating points sharing a routing point and even a single switch.

Clearly the issues are not as simple as CenturyTel would have us believe. Indeed these issues are presently before the FCC and the industry is heavily divided over the issue. While Mr. Robinson and I each have our opinions, the FCC will ultimately decide the issue, since it has primary jurisdiction over numbering. CenturyTel should not distract the Texas Commission from the key issue before them, the need to for CenturyTel to recognize ELC for calls made to carriers other than ILECs.

Q. Are the Guidelines determinative in determining how central office codes may be issued?

A. The Guidelines that Robinson cites are published by an industry committee, the ATIS Industry Numbering Committee. As such they are merely, as the title implies, guidelines; they are trumped by FCC Regulations and the Telecom Act itself. The wording of the Guidelines is thus not subject to the same degree of scrutiny as statutory wording; if an interpretation of the Guidelines is at odds with an FCC ruling, then the FCC's ruling would be determinative.

This is important because the FCC has expressly ruled that CMRS providers are entitled to numbering resources *and* to efficient Type 2 interconnection at the tandem. You cannot have efficient Type 2 interconnection without local numbers in those rate centers where your customers need local calling.

Q. Does it appear that CenturyTel would be satisfied if the location of the POI were local to San Marcos?

A. Mr. Navarrette states (at 9), "we now believe that CenturyTel is not obligated to treat calls dialed to 512/384 as ELCS calls." His position appears not to recognize the industry norm that *rating* and *routing* are two different concepts, and that the physical location of ASAP's switch in Austin impacts routing but should not impact rating. He implies that CenturyTel has an *entitlement* to toll or Switched Access revenue based on what ASAP, or other carriers, do on their own side of the POI. This is not about cost recovery, then; it is either about an imaginary pot of Switched Access revenue, or about keeping all competition out of San Marcos.

Q. Has the FCC made any ruling of its own on Virtual NXX?

A. Yes. In a Memorandum Opinion and Order issued July 17, 2002, pitting Cox-Virginia and AT&T against Verizon in CC Docket 00-218, the FCC held:

> 301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.
>
> 302. Verizon proposed, late in this proceeding, that the petitioners should conduct a traffic study to develop a factor to account for the virtual FX traffic that appears to be "local" traffic. However, Verizon's contract fails to lay out such a mechanism in any detail. Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.
>
> 303. Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations. As discussed earlier, the Maine Commission found that a competitive LEC there was receiving NPA-NXXs for legacy rate centers throughout the state of Maine although it served no customers in most of those rate centers. To the extent that Verizon sees equivalent

> abuses in Virginia, it can petition the Virginia Commission to review a competitive LEC's NPA-NXX allocations.

[FCC DA 02-1731 Memorandum Opinion and Order, CC Dockets 00-218, 00-249 and 00-251; notes omitted]

This is notable for several reasons. For one, it specifically makes NPA-NXX assignment more determinative than the end user's geographical location. The FCC also correctly notes the limited scope of the *Brooks* decision in Maine, which CenturyTel proffers as a model for the indictment of Virtual NXX. Brooks offered *no* services *in* the exchange areas for which it had been issued NXX codes. In contrast, ASAP Paging has actual paging coverage within the local calling areas in question.

Q. What is the difference between "toll facilities" and other "facilities"?

A. Mr. Navarrette states (at 14) that "[t]he only facilities we have that will carry those calls to Austin from San Marcos are toll facilities." Indeed he recites (at 15) a list of types of toll calls that go through the tandem, and notes that CMRS carrier traffic may use the tandem under an agreement. But the distinction between "toll" and "local" is one of pricing, not one of transmission engineering. A fiber optic cable, or for that matter any other type of physical facility, does not distinguish between calls based on rate. While the facilities between San Marcos and Greenwood may be primarily used for toll calling, they are certainly capable of carrying other calls as well.

Mr. Robinson admitted (deposition at 157-158) that there is no difference in cost between a toll or ELCS trunk, if they have the same meet point. Mr. Navarrette admitted (deposition at 26, 27) that the meet point with SWBT for both toll and ELCS facilities is the same SWBT-owned hut, located within CenturyTel's exchange area roughly two miles from their central office. So in practice, CenturyTel is never hauling any calls out of its exchange area; it is handing off calls, whether local or toll, to SWBT at the same meet point.

Robinson also states (at 16), in response to a question about ISDN connectivity, that "[s]ince the route from San Marcos to Austin is a toll route, the customer would have to locate an interexchange carrier that has interexchange ISDN capability to meet such a request." Again, this implies that the call is a toll call, when it should be rated as local. If it were handed off to an IXC, then it probably would be a toll call. A call is only handed to an IXC if it is properly rated as toll.

1 Q. If ISDN connectivity were to be provided, would every trunk have to be configured for
2 ISDN, as Mr. Navarrette states (at 17)?
3 A. No. ISDN calls contain a Bearer Capability information element in the SETUP message
4 that initiates them. If the Bearer Capability is 3.1 kHz Audio or Speech, then the call goes over
5 ordinary voice trunks. If the Bearer Capability is 64000 kbit/second unrestricted digital data,
6 then the call can only be routed over a clear-channel facility. Carriers often provision a small
7 trunk group, based on traffic requirements, for such data calls. Routing of ISDN-originated calls
8 is typically based on Directory Number *and* Bearer Capability, so data calls can easily be routed
9 separately from voice calls to the same destination.
10 Q. Does ISDN normally require special arrangements to be made in order to call between
11 exchanges?
12 A. No. Mr. Navarrette states (at 18), "Special arrangements would have to be made to
13 establish an ISDN service between exchanges." But this implies that CenturyTel's ISDN is not
14 properly configured in the first place, because ISDN calls are simply a form of PSTN call, and
15 should not require prior arrangement.
16 Q. Do calls terminate at a switch?
17 A. No; they are switched there, en route to the termination. That's why it's called a switch.
18 This should be obvious, but Mr. Navarrette seems to be confusing these issues when he answers
19 (at 15) about where calls *terminate* by saying that they are "routed to ASAP's Austin switch". In
20 the case of ISP-bound calls, the nature of the word "terminate" is, alas, muddied by the FCC's
21 declaration that an ISP's modem bank is also an intermediate point in a call. But this shouldn't
22 matter; CenturyTel should route calls to the designated POI and rate them on the designated rate
23 center.
24 Q. CenturyTel claims to be a "rural" telephone company and therefore exempt from certain
25 obligations under § 251(c) of the Act. Does this seem appropriate?
26 A. No. CenturyTel of San Marcos is hardly rural, let alone a small company. CenturyTel
27 has a curious corporate structure wherein its different exchanges within a state are incorporated
28 separately, although the same personnel, such as Mr. Navarrette, work for more than one of
29 them. The FCC has already held in the *Local Competition Order* at ¶ 1264 that it is the size of
30 the parent company, not a local subsidiary, that determines whether the rural exemption matters.
31 CenturyTel ILECs in Texas now serve more than 50,000 lines, according to Mr. Navarrette's

testimony. CenturyTel had more than 1,795,180 access lines nationwide as of 6/30/02, according to its web site; on that date, they had 49,675 in Texas. One day later (July 1), they added approximately 300,000 additional lines, acquired from Verizon in Alabama. On August 31, they acquired an additional 354,000 lines from Verizon in Missouri. Even if CenturyTel does not have less than 2% of the access lines in the USA, it is a major carrier, not some "mom and pop" country telco.

Regardless of whether CenturyTel's nationwide percent makes it eligible for "rural" treatment, San Marcos is no typical "rural" market. It is the urban center of its area. While not a large city, the San Marcos central office serves a larger population than most rural central offices and is more typical of a large suburban exchange. As such, its costs are hardly typical of a "rural" company. ~~While I do not have access to CenturyTel's books, I was able to make estimates based on the FCC's Benchmark Cost Proxy Model (BCPM), version 3.1. This model, while admittedly imperfect and based on data that is several years old, provides approximations of loop and other cost pricing.~~[2]

~~In the case of San Marcos, BCPM estimates an average "capped total loop cost" of $1,036.21 per loop, based on an estimate of 25,311 "total working lines served in grid"~~[3] ~~and a total loop investment of $26,227,409. This is a "forward-looking" number based on one particular methodology and using census data, not actual lines, for its inputs, so I will not argue its precision, but this number seems to be a reasonable guess for an exchange of this size.~~

~~For comparison, BCPM estimated that in the Dallas wire center DLLSTXMS (Mesquite), 36,574 lines are served with an average forward-looking loop investment of $827.48. This seems typical of an urban or built-up suburban area. As an example of a rural exchange, Verizon's Telephone, Texas wire center TEPHTXXA has an estimated investment of $8,291.10 for its 621 working lines spread over 133.55 square miles. San Marcos seems in this respect quite a bit closer to Dallas than to Telephone; CenturyTel's property thus seems little deserving of special "rural" treatment.~~

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2 ~~BCPM was an attempt to model the TELRIC methodology's "green field" hypothetical network, using current design techniques. Embedded network costs will differ, but in either case, higher density urban areas have lower loop costs than rural areas, and loop costs are the largest single portion of an ILEC's plant investment.~~

3 ~~CenturyTel witness Navarrette testified that CenturyTel of San Marcos serves approximately 33,000 access lines at present.~~

Q. Does CenturyTel route toll calls between end office, or local calls through a tandem?

A. In my direct testimony, I noted that LECs *may* route calls directly or via a tandem, as they choose, based upon network efficiency. However, CenturyTel need not choose to do so, and does not do so in Texas. I note however that CenturyTel of San Marcos is an unusual operation in that it consists of only a single central office.[4] Thus there are no toll routes entirely within their territory.

The "rating" distinction between "local" and "toll" is a tariff convention that does not always reflect cost characteristics. I recently testified in a case in a different state, wherein the ILEC operated a single host-remote cluster within the LATA. The host was subtended by three remotes which were within the local calling area of the host, and by three other remotes which formed a different single local calling area. All six remotes used, as their trunks, host-remote links to the host. Calls between remotes went via the host. There were no routing distinctions made between local and toll calls within the cluster. But there were major rating distinctions: calls between the two local calling areas were rated as toll, even though they never even left the switch cluster. This sort of arrangement is actually quite common. Verizon New Hampshire, for example, serves eighteen rate centers out of its Keene host and its remotes. Contiguous rate centers are local to one another; noncontiguous rate centers are usually toll routes. Thus many of the intracluster trunks carry a mix of local and toll traffic, with all call routing to the host but rating to one or another rate center.

Q. Based on Ms. Smith's statements, does it appear to really matter to CenturyTel if the routing point and rating point were the same, with the handoff of calls to ASAP within the San Marcos local calling area?

A. No. Ms. Smith makes clear that in her opinion, CenturyTel feels entitled to receive tolls or at least switched access payments for calls that fail to meet any aspect of a complex, multi-part test. The routing point is one aspect of that test. But in the *Further Response to ASAP Paging's Second RFI* (at 2.30), she notes that *even if* the called pager has an NPA-NXX that is local to San Marcos and *even if* the pager is physically located within San Marcos, the call fails

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[4] CenturyTel's San Marcos end offices acts as the host to several remotes. In some respects a host end office acts like a tandem when it comes to traffic between the remotes.

the locality test because the paging *terminal* is in Austin, and because the coverage area of the paging *network* extends beyond the local calling area:

> It is only a coincidence that a "Lockhart" number is answered by a paging customer in Lockhart under the existing network arrangement. Second, ASAP has not arranged for local calling between its "Lockhart" rate center and CenturyTel's San Marcos exchange. As a consequence, there is no agreement to treat a call to a paging customer that may actually be in the Lockhart rate center at the time the call is placed as a local call.

I think it a bit of a stretch that the assignment of a Lockhart number to its own local area is only a "coincidence"; most paging customers, I should think, would want paging numbers local to their own areas. As noted elsewhere in this Rebuttal, I also dispute that ASAP's "'Lockhart' rate center" is distinct from SWBT's Lockhart rate center. A rate center is a geographic entity that was initially defined by the ILEC and is now shared among all carriers.

And finally, she is ignoring the FCC position that CMRS calls within an MTA should be rated as local. This is reiterated in the *ISP Remand Order*:

> 47. We note that the exchange of traffic between LECs and commercial mobile radio service (CMRS) providers is subject to a slightly different analysis. In the Local Competition Order, the Commission noted its jurisdiction to regulate LEC-CMRS interconnection under section 332 of the Act but decided, at its option, to apply sections 251 and 252 to LEC-CMRS interconnection. At that time, the Commission declined to delineate the precise contours of or the relationship between its jurisdiction over LEC-CMRS interconnection under sections 251 and 332, but it made clear that it was not rejecting section 332 as an independent basis for jurisdiction. The Commission went on to conclude that section 251(b)(5) obligations extend to traffic transmitted between LECs and CMRS providers, because the latter are telecommunications carriers. The Commission also held that reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA). ...

Q. Is ISP-bound traffic "telecommunications service"?

A. Yes. CenturyTel witness Smith is engaging in a disingenuous denial of the obvious. Traffic bound for an ISP is "telecommunications". Service provided to ISPs is a "telecommunications service". It is *also* "information access", according to the FCC, but that is not a mutually-exclusive term; rather, it is a special category of telecommunications service which has interstate jurisdictional components. The data going to the ISP is the *payload* of the

1 telecommunications; at the bottom of the stack is a telephone call. The fact that a phone call is
2 made to an ISP doesn't change the fact that it's a phone call, although it does apparently have
3 some jurisdictional impact.
4 Q. Can information service providers interconnect under Section 251? Does this impact
5 ASAP?
6 A. To begin with, ASAP Paging is not claiming to be a CLEC and thus is not dependent
7 upon the same rules as CLECs. But Ms. Smith's statement that "...information service providers
8 may not interconnect under Section 251..." is both literally true and off point. Information
9 service providers *per se*, such as ISPs, do not have rights of interconnection that are normally
10 granted to telecommunications providers. But ASAP is an FCC licensed CMRS
11 telecommunications carrier which also provides information services. Its *customers* include
12 among them some information service providers. CenturyTel's customers also include some
13 information service providers. While calls to information service providers are jurisdictionally
14 interstate or at least mixed, and calls to, say, pizza parlors are jurisdictionally intrastate, they are
15 both instances of telecommunications service.
16 Q. Do telecommunications carriers have a federally-created legal obligation to interconnect
17 with each other for the delivery of ISP-bound calls?
18 A. Of course they do. Ms. Smith questions this, but if one were to follow Ms. Smith's
19 argument, then there could be no dial-up Internet at all, because LECs would not need to connect
20 their networks to ISPs! Clearly that was not the FCC's intent, either in its 1988 *ISP Exemption*,
21 which requires calls to ISPs to be rated as local, or in its more recent rulings. And clearly it was
22 not the intent of the D.C. Circuit court in its May, 2002 ruling in *WorldCom Inc. v. Federal*
23 *Communications Commission*, which Ms. Smith cites out of context, to shut down local-rated
24 dial-up to ISPs. Ms. Smith's footnote 6 quotes the operative phrase. "Indeed, the Commission
25 does not even point to any pre-Act, federally-created obligation for LECs to interconnect to each
26 other for ISP-bound calls." She stretches this to infer something that it most certainly does not
27 mean to imply. The *WorldCom* decision questions the FCC's use of Section 251(g) as a
28 rationale for excluding ISP-bound calls from reciprocal compensation. Section 251(g) left intact
29 pre-1996 Access tariffs, so that the flow of Access revenues would not be interrupted pending
30 post-Act FCC action on intercarrier compensation. Now to be sure, the FCC did not *point to* a
31 *pre-Act* obligation for LEC interconnection for ISP-bound traffic. But the FCC most certainly

did not deny a *post-Act* obligation for such interconnection, and the Court did not find that the lack of a *pre-Act* precedent meant that such interconnection is not required. The context of the sentence she quoted can better be understood from the paragraph surrounding it [emphasis added]:

> We will assume without deciding that under § 251(g) the Commission might modify LECs' pre-Act "restrictions" or "obligations," pending full implementation of relevant sections of the Act. The Fifth Circuit appeared to make that assumption in *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), where it implicitly relied on § 251(g) (by quoting language from an Eighth Circuit case, *Competitive Telecom. Ass'n v. FCC*, 117 F.3d 1068, 1072 (8th Cir. 1997)), in sustaining modifications of pre-Act regulations governing the access charges paid to LECs by inter-exchange carriers ("IXCs"). 265 F.3d at 324-25. But this assumption is not enough to justify the Commission's action here, as it seems uncontested--and the Commission declared in the Initial Order--that there had been no pre-Act obligation relating to intercarrier compensation for ISP-bound traffic. See Initial Order, 14 FCC Rcd at 3695, p. 9; see also *id.* at 3690, p. 1, 3707-3710, pp. 28-36. The best the Commission can do on this score is to point to pre-existing LEC obligations to provide interstate access for ISPs. See, e.g., Remand Order, 16 FCC Rcd at 9164, p. 27; *In the Matter of MTS & WATS Market Structure*, 97 F.C.C.2d 682, 711-15, pp. 77-83 (1983). Indeed, the Commission does not even **point to any pre-Act**, federally created obligation for LECs to interconnect to each other for ISP-bound calls. And even if this hurdle were overcome, there would remain the fact that § 251(g) speaks only of services provided "to interexchange carriers and information service providers"; LECs' services to other LECs, even if en route to an ISP, are not "to" either an IXC or to an ISP."

Ms. Smith goes on to claim that "the delivery of Internet-bound traffic to an ISP does not constitute a telecommunications service." (Smith at 8) Of course this is wrong: The delivery of the traffic *to* the ISP is a telecommunications service; what the ISP does with it is not. Information Access, as the FCC defined ISP-bound calling, is merely a form of telecommunications service. To be sure, its specific legal status is still being determined by the FCC and courts because of the pending further remand but the court did not rule that telecommunications is not telecommunications just because one end of the call is to an ISP's number! Since this entire thread of logic is based on a false premise, Ms. Smith's other conclusions that are drawn from it are also null and void.

Q. Does Ms. Smith mis-state ASAP Paging's coverage area?

A. Apparently she does; she states (at 10), "ASAP has not shown that any of these pages are received within the local calling scope of CenturyTel of San Marcos." I merely point out that Mr. Gaetjen of ASAP Paging has addressed this, stating clearly that ASAP's paging coverage does indeed cover the San Marcos local calling area; indeed it has customers in San Marcos and surrounding communities. Because of this detail alone, it would be inappropriate to describe ASAP's NXX codes as "virtual".

Q. Are all landline telecommunications services "subject to both state rate and entry regulation and interconnection requirements", as Ms. Smith states (at 12)?

A. Not necessarily; many services are under interstate jurisdiction. The key state-jurisdictional question here is whether or not CenturyTel can charge tolls to its own subscribers for calls to ASAP Paging numbers whose NPA-NXX codes are assigned to rate centers that are defined in CenturyTel's tariff as local. CMRS is not the only federally-licensed telecommunications. I note that before the Telecommunications Act required all states to permit landline competition, the FCC authorized Competitive Access Providers (CAPs) to operate, based on the interstate jurisdiction of their landline calls. CAPs as such in Texas were required to register with the PUC, but were not regulated as LECs. While ASAP Paging is not engaging in "exchange access service" and is not a CAP, it is engaging in federally regulated wireless service and, incidentally, "information access." The information access service is interstate although individual calls from basic users are "rated" as local. This is the result of the "ISP Exemption." This is not unique. End users are allowed to call a "local" number to reach IXCs or other switched access customers if the access customer purchases either switched access Feature Group A or Feature Group B.

Q. Is the *TSR Wireless Order* cited by Ms. Smith (at 11) justification for requiring ASAP to either enter into a wide-area calling plan or have its customers pay toll, as Ms. Smith implies?

A. Both *TSR* and the similar *Mountain* orders deal with networks that have substantial differences from ASAP's, and in any case arrive at a rather different conclusion than implied by Ms. Smith. In both cases, the paging companies in question, TSR and Mountain, utilized Type 1 interconnection into ILEC switches, and used dedicated transport facilities to haul these circuits into their single point of interconnection. Type 1 interconnection is, in a technical sense, fundamentally the same as a Direct Inward Dialing circuit such as might be delivered into a PBX. The circuits interconnecting them with the paging terminal are technically equivalent to

traditional Foreign Exchange service, essentially a leased line between the user port on a switch and the user's location. The Commission held in both cases that if the CMRS carriers wanted to use this arrangement, they would have to compensate the ILEC for the cost of this bandwidth.

> We agree with Qwest that, pursuant to the TSR Wireless Order, if Mountain wants to avoid having callers to its customers pay such charges to access Mountain's network, it may enter into a wide area calling arrangement with Qwest. Mountain has effectively entered into such an arrangement with Qwest by requesting dedicated toll facilities to transport calls made to DID numbers provided to Mountain's customers, free of charge to Qwest's customers.

Mountain at 13.

These cases stand for the proposition that when an ILEC customer dials an NXX that is not "local" to the ILEC customer, then the ILEC can assess long distance charges. The paging company has the opportunity to negotiate with the ILEC if it is interested in "buying down" the end user's "otherwise applicable" toll charges. In our case, however, calls between San Marcos and Lockhart, Fentress or Kyle are local (in other words not "otherwise toll") to San Marcos, so a buy down is simply not necessary.

If the paging company chooses to design its network so that the ILEC has to haul traffic outside of its local calling area over dedicated trunks, then the ILEC can charge the paging company for the dedicated transport. In our case, CenturyTel is not hauling traffic outside of its local calling area, or even San Marcos. Remember also that the Mountain case involved dedicated trunk (T1) charges. CenturyTel is not attempting to charge ASAP for dedicated trunks. Instead, it wants to assess per minute of use charges on either the end user or ASAP.

I reiterate: the end users are dialing numbers that are "local" and CenturyTel is not transporting outside of San Marcos. CenturyTel is misquoting the *TSR* and *Mountain* decisions. While those cases provide guidance on some points, they simply do support the proposition asserted by CenturyTel since the facts, the costs and the rating are completely different.

The Type 1 plus dedicated-transport arrangement used by Mountain and TSR differs markedly from the Type 2 arrangement used by ASAP. With Type 2 interconnection, ASAP actually owns its own switch, so it interconnects to the network as a peer, not like a PBX. There is no interexchange transport facility dedicated to ASAP; rather, it simply attaches to the tandem with the same type of Type 2A interconnection used by most cellular providers. This has a very different cost structure from Mountain or TSR. ASAP's calls from CenturyTel are carried, along

with other carriers' calls, on SWBT's high-bandwidth common (not dedicated) facilities to a large tandem switch which is subtended by many other central offices in the Austin LATA.

Q. If San Marcos Internet can receive calls on a toll-free basis in San Marcos from Kyle, Fentress and Lockhart, using CenturyTel's local exchange service, why would it use an ASAP "Lockhart" number?

A. Ms. Smith speculates (at 14) that "the only purpose is to utilize ASAP's CMRS advantages to get free transport for these calls to its internet backbone in Austin". While I have had no personal contact with San Marcos Internet and can only offer up my own speculations, I note some other possible advantages. For one thing, CenturyTel's PRI service is unusually expensive, on the order of $1,500/month per PRI, roughly four times the price charged by ASAP and about twice SWBT's typical price. Price competition is always something that a monopolist wishes not to see. ASAP also provides a number aggregation service, by which calls to any of its numbers, local or foreign exchange, go to the same modem pool. This helps save on modems. (While this is one of the features of Virtual NXX, ILECs also sometimes offer to aggregate local and foreign exchange service on the same ISDN PRI circuit under the name "call by call service selection".) The actual backbone link cost savings, while non-zero, are relatively small, because an access ISP's backbone bandwidth is a fraction of its PRI incoming bandwidth. A typical dialup ISP, assuming no other traffic, needs roughly ten times as many DS-1 circuits for its incoming PRIs as it does for its outgoing backbone link.

Q. Ms. Smith notes (at 15) that "Among ILECs in Texas, ELCS requires each LEC to furnish its own facilities to an agreed upon meet point. What ASAP seeks here is that CenturyTel provide the traffic to it at its switch." Is this correct?

A. Not really – CenturyTel hands off the ASAP-bound calls to SWBT at a meet point in San Marcos, and SWBT hauls the traffic to its own tandem and then to ASAP's switch. I do not believe that SWBT is charging CenturyTel for this transit. In any case, I note that she said "[a]mong ILECs". ASAP is not an ILEC. Unlike ILECs, it does not have bulk outside plant crossing a franchised territory, and it does not have the traffic density typical of ILECs.

Q. How do carriers normally interconnect with one another for the provision of local service? How was it done in the past, and how has the public network architecture changed?

A. This matters because the model of interconnection that CenturyTel seems to favor is out of date by some decades. The telephonic map is divided into exchange areas, each

corresponding to a rate center. Outside of metropolitan areas, more often than not, rate centers have corresponded to the location of central office buildings (wire centers), most of which were established in the late 19th and early 20th centuries. Major cities, such as Austin, often have more than one wire center within a rate center. Sometimes a single wire center will be shared by more than one rate center. But in the San Marcos area, it appears that wire centers and rate centers have a 1:1 correspondence.

Telephone companies laid out their wire centers based on the economics of the day. Local loops always terminated at a wire center, so more wire centers meant shorter loops, but more switches, trunks and real estate. Switches were, until the 1960s, entirely electromechanical; the last electromechanical switches were only removed from the network within the past few years. Interoffice trunk facilities were also rather expensive; it was only the coming of fiber optics in the 1980s that reduced the incremental cost of bandwidth by orders of magnitude. Toll calls required operator intervention or special automated ticketing equipment (Automatic Message Accounting); it was not economical to put "Local" AMA in most small wire centers, so toll ticketing was done at regional Toll Switches, using Centralized AMA. There was thus a discrete toll network. Extended Local Calling – local calls between exchanges – used dedicated trunks which did not need AMA; sometimes the trunks were built by concatenating loop plant at the junction of the two exchanges. That would have been the logical way, for example, to connect San Marcos to Lockhart, had ELC been established in, say, 1960.

CenturyTel's current claims make some sense if one imagines that the network looks like it did a few decades ago, where "long distance" was expensive to produce and incremental mileage was a high-cost effort. But of course it doesn't. The network has evolved dramatically, such that the regulatory and business models do not accurately map to the engineering model.

One important change is the existence of host and remote switches. While all pre-1970s switching systems were essentially self-contained, the digital switches that began to be deployed in the late 1970s facilitated a new level of the network hierarchy. The common control and trunk interfaces are part of the *host*, which typically although not always contains the largest number of line interfaces as well. Smaller central offices are set up as *remotes*, which typically have limited processing capability of their own and most often do not contain trunk interfaces. (Some remotes, like the Lucent 5RSM, are theoretically capable of terminating interoffice trunks. Others, like the Nortel RLCM, are not.) The links from the host to the remote are vendor-

proprietary. The Bell companies and other large ILECs have used remotes to replace the old "community dial office" (CDO) and other types of small electromechanical switch. So while a wire center with, say, 1,000 subscribers might have had a CDO with its own toll trunks and perhaps ELC trunks, today it is usually provisioned as a remote of a larger switch, which could be fifty miles or farther away. So intercarrier connections are normally routed via the host, wherever that might be.

Host-remote switching causes many ELC routes to be longer than before, in terms of actual transmission mileage, but this is not really a problem, because *fiber optics* have completely changed the economics of bandwidth provisioning. Again, in the networks of a few decades ago, transmission paths were often short and direct. Every type of trunk carrier facility required repeaters at some regular spacing, such as the six thousand foot repeater spacing in the once-popular T1 carrier, the oldest type of digital transmission facility. Nowadays, however, the main cost is in bringing fiber to the wire center. Once it's there, incremental bandwidth costs very little, because a single fiber optic system (typically two strands of fiber in service with two in standby) can carry huge amounts of bandwidth, such as the popular OC-48 (2.488 Gbps, which, if configured only for telephony, could carry 32,256 simultaneous calls). Repeaters are rarely needed. So fiber optic links aren't necessarily routed via the most direct path; rather, an optimal fiber optic network is one that touches all of the wire centers in a region with minimal total mileage. Common practice is to use SONET rings, which provide redundant routes into each site on the ring.

Another innovation is the Digital Loop Carrier (DLC). This is a field-mounted multiplexor which terminates subscriber lines. The DLC allows local loops to be shorter. A Telcordia guideline called Carrier Service Area (CSA) suggests that local loops should not be longer than 12,000 feet, and that a local distribution network of DLCs should be used instead. This is the basis of the "green field" design used in the FCC's benchmarks such as the Hybrid Cost Proxy Model (HCPM). Mr. Navarrette states that CenturyTel uses this technology within San Marcos.

When a DLC is used in conjunction with a host-remote cluster, it is often more desirable to attach the DLC to the host, not the nearest remote. Not all remotes are capable of connecting to DLCs in the efficient "integrated" manner. Both the DLC and the remote exist for the purpose of creating local line terminations. A remote is generally larger than a DLC, though today's

1 larger DLCs are larger than many remotes. So in such cases, the wire center itself becomes
2 irrelevant, except as a kind of large DLC serving subscribers within a 12,000 foot radius!
3 Forward-looking network architecture, outside of metropolitan areas, thus consists of large
4 regional host switches supporting an array of remote terminals, classified either as remote
5 switches or DLCs based primarily on size, linked by SONET rings.

6 Another major evolution concerns the interoffice switching network. Before the AT&T
7 divestiture, AT&T maintained a network of Toll Offices, while metropolitan areas had local
8 tandems. The Bell Operating Companies, as well as some independents, typically operated
9 "Class 4" toll offices, while AT&T Long Lines operated Class 3, 2 and 1 backbone switches.
10 After divestiture, LATAs were organized, and each LATA had at least one, and sometimes
11 several, switches designated as Access Tandems. These provided places for interexchange
12 carriers to exchange traffic with the LECs. Most of them are also capable of switching local
13 traffic as well, although a large amount of local traffic flows on Direct End Office Trunks. With
14 the coming of local competition, CLECs as well as CMRS providers have been allowed to
15 interconnect at tandems, although Direct End Office Trunks (in the CMRS context referred to as
16 Type 2B) are considered a desirable supplement when traffic is high enough to justify their use.

17 With this modern network architecture, existing local vs. toll distinctions, at least within a
18 LATA, are preserved only as a matter of price. They do not reflect actual carrier costs. Their
19 main purpose is to generate revenue which is used to hold down monthly local service rates; i.e.,
20 a cross-subsidy. Thus when CMRS carriers interconnect at a tandem, they are not creating high
21 costs that must be recovered via tolls. In fact, they are interconnecting in a manner that is most
22 efficient to all the affected parties from a network perspective. The real question is whether, and
23 if so, how much can an ILEC bill either the user of the CMRS carrier?

24 Q. How does a CMRS network compare to the host/remote arrangement you described?

25 A. The two are quite similar, because both recognize that a single switching entity covers a
26 larger geographic area than a wire center. Thus the routing point – the host or a more centralized
27 POI – serves multiple rating points. CMRS switches typically cover an ever larger area than a
28 host or even a tandem, but in either case the precedent is well established that the rating point
29 can be and quite often is different from the routing point.

30 Q. How are NPA-NXX (prefix) codes established in a central office switch?

A. Prefix codes are loaded into the memory of central office switches. For outgoing calls, switches have tables in memory which associate each area code or prefix with a destination route, or a list of routes that is tried in order (first and final routing). These tables also determine whether or not, for instance, it is necessary to dial 1 before a call, or if is necessary to dial 7 or 10 digits. Thus it is only a matter of typing a few "translations" into the switch and the route that a call takes can change.

For incoming calls, numbers can be assigned quite flexibly. With number portability, a single switch can service numbers from many prefix codes; an NPA-NXX code that is marked as "portable" no longer definitively identifies the destination switch, merely the rate center. CLECs pick up customers this way; their switches almost always cover a larger geographic area than an ILEC switch, so it's common for CLEC-served lines to be served out of a switch in a different rate center. CMRS providers like ASAP, on the other hand, do not currently participate in number portability; thus the NPA-NXX of a CMRS carrier's switch identifies the switch as well as which rate center the call should be rated to for purposes of retail and wholesale compensation.

In an ILEC host-remote cluster, the same rule applies; any number within the range served by the host can appear on any port of the switch or remote. Mr. Navarrette testified in deposition CenturyTel does this in San Marcos for its users so they do not have to change numbers if they move within San Marcos: "CenturyTel chose to not inconvenience the customer by changing their number every time you moved across town." (Navarrette deposition at 56) While ILECs typically assign numbers based on geography, a foreign exchange circuit to a different rate center *served by the same host-remote cluster* can be implemented merely by changing the translation for the "closed" end to have a prefix code in the desired "open end" rate center NPA-NXX block. This is not "Virtual NXX" as typically defined for the simple reason that an ILEC has actual subscribers in the foreign exchange. But then ASAP also has real paging subscribers physically in the San Marcos local calling area. Virtual NXX in the strict sense was apparently invented after CLECs installed regional host switches with multiple prefix codes to serve customers in multiple rate centers, and who then set the foreign exchange service and call-by-call service selection prices at or near a level commensurate with cost, namely, zero. Some other CLECs, focused on the ISP business, merely specialized further in the FX aspect of the

1 business, without their own local subscribers in the non-local rate centers for which they had
2 prefix codes.

3 None of this is a crime punishable by imposition of a toll. It serves the public interest
4 because it allows for competition and therefore innovative pricing that makes
5 telecommunications services and Internet access more affordable to users. It certainly does not
6 cost CenturyTel anything more or different, since CenturyTel's cost is exactly the same if it
7 sends any given call to a SWBT or Verizon user, an ASAP Kyle, Fentress or Lockhart user "who
8 carries a pager" or an ASAP ISP customer.

9 CenturyTel's complaint is about "lost toll" to which it simply is not entitled. If ASAP
10 did not exist and these calls went to a customer of SWBT or Verizon, the call would not be toll
11 and the cost would be the same. CenturyTel's revenue would be the same. CenturyTel is both
12 revenue and cost indifferent to whether these calls go to ASAP or SWBT or Verizon, or any
13 other terminating carrier.

14 For this reason, Mr. Robinson's assertion that ASAP will create pressure for CenturyTel
15 to raise its ELCS surcharge is simply wrong. While it is true that higher traffic volume could
16 theoretically raise the ELCS "revenue requirement" that is the case regardless of the identity of
17 the carrier that terminates the traffic.[5] CenturyTel's problem is not the identity of the ELCS co-
18 carrier; its problem is that these ELCS calls are made. CenturyTel wants to keep the traffic
19 within its San Marcos network, between CenturyTel customers. It does not want any truck with
20 co-carriers.

21 I anticipate that CenturyTel will make much of the "physical location" of the ISPs and
22 argue that they are not "in" Kyle, Fentress or Lockhart. To the extent this matters or is true,
23 there are good reasons for this and society benefits from the result. Dial-up calling is only cost-
24 effective for the customer if the cost of the call is not time sensitive. So if there were no "local"
25 ISP numbers, users would be deprived of the benefits of affordable Internet access that the vast
26 majority of Americans enjoy. So the relevant question becomes one of methodology. How can
27 an ISP establish a local presence? What can a telecom company do to facilitate this?

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[5] CenturyTel's ELCS "per access line" revenue requirement was based in approximately 6,000 fewer access lines than CenturyTel presently serves. It could be that CenturyTel's ELCS surcharge is too high.

Dial-in modem facilities today must be provided using digital interfaces into digital central office switches. That is a requirement of the now-standard V.90 modem protocol; server-side modems with analog interfaces are limited to 33.6 kbps, while digital interfaces can go up to 53 kbps. In addition, as a practical matter, only digital interfaces of DS1 or larger make any sense for an ISP. These go into a Remote Access Server (RAS), which integrates the modem and access-router functions. While small (one-PRI) RAS systems exist, it is generally more economical and easier to manage larger ones; current high end systems, such as the Nortel Networks CVX-1800, can support 2,688 modems in a single cabinet that fits into a quarter of a standard rack. It is unrealistic for an ISP to rent closets behind drugstores in small towns in order to put a dozen analog modems with "local" phone numbers, when a Virtual NXX or FX service allows modern high-performance RAS equipment to be installed in a proper ISP server environment.

In a typical Internet Access Service Provider ("ISP") environment, the data bandwidth to the retail ISP data center is roughly 1/10 to 1/15 of the ISDN PRI or channelized T1 PSTN bandwidth going in to the RAS, because the average modem uses only 4,000-6,000 bps during a session. An ISP Point-of-Presence might thus have a T1 of data bandwidth going back to the ISP for every 200-350 modems. And a typical ISP will provision one modem for every 8-15 subscribers, depending on average usage. So a PoP needs to have, say, 1,600 to 5,000 dial-up subscribers just to make efficient use of the first T1 of Internet bandwidth. An ISP will typically, however, provision at least two T1 circuits, for redundancy, or use a high-bandwidth data transport service such as ATM (which is generally not available, at least at reasonable cost, in rural areas). This sets the parameters for what could realistically be considered a minimum-sized Access ISP. ISPs typically operate this type of setup in rural areas, using either CLEC FX-like or ILEC FX service to aggregate sufficient territory.

Some local calling areas are too small to sustain a physically local ISP on this basis. The Kyle area appears to have (based on FCC estimates) about 2,500 telephone lines. Fentress has about 400; Lockhart about 7,000. Should an ISP be expected to rent real estate in Kyle, Fentress <u>and Lockhart</u> simply to provide "local" service when, *at no additional cost to CenturyTel*, the ISP could collocate at a regional PoP, such as Austin? There are significant additional costs involved in ISPs establishing a local presence in every rate center where they have customers. This cost must be passed on to customers, or the ISP will simply not offer service in rural areas.

1 essentially upholds an entitlement that ILECs claim to toll revenue. When ELCS is created, the
2 surcharge not only covers costs, but also replaces lost toll revenues, which themselves are
3 typically well above cost. ILEC basic monthly rates, however, are often below cost, so they
4 depend on the cross-subsidy from toll, ELCS and other exogenous surcharges. In this case,
5 however, CenturyTel's ELCS revenue requirement will not change depending on the identity of
6 the terminating carrier. Its ELCS surcharge will remain the same regardless of whether ASAP
7 terminates the call or SWBT does.

8 Non-ILEC rates are not regulated. ASAP can essentially set its prices for whatever the
9 market will bear, and they will almost always be lower than the incumbent. That is certainly the
10 case here. It is not subject to basic rate regulation, so it has no need for surcharges. If it incurs
11 costs for ELCS, then it can simply factor these into its rates. In effect its rates are more honest
12 than those of ILECs, who can advertise a low basic rate and then apply surcharge upon
13 surcharge, citing any number of excuses.

14 Q. How does CenturyTel's position with regard to ISP-bound calls comport with the
15 industry-wide view, and how has this changed?

16 A. CenturyTel appears to be taking part in a multi-carrier initiative to fight "Virtual NXX"
17 wherever it occurs. But this is just one salvo in a long-running battle between ILECs and ISPs.
18 Because the Powell FCC has made several pro-ILEC rulings, the ILECs feel that the momentum
19 is theirs and that they can begin to push on to try to shut down the independent ISP sector, as
20 well as the competitive carriers who support them.

21 In 1996, Bell Atlantic and SBC both made ex parte presentations to the FCC, "white
22 papers", which called for the repeal of the "ISP Exemption". The dial-up Internet was growing
23 very rapidly, about 5% a month in my experience (at the time, I was performing dial-in traffic
24 analysis for a client who was supporting the country's largest retail ISP). ILEC *terminating*
25 switching systems whose local calling areas were desirable to ISPs were themselves becoming
26 congested; ILECs were not accustomed to rapid growth and were ill-prepared to handle it. Some
27 ISPs also ordered analog circuits from ILEC switches, whose operational cost per minute was
28 very high, but whose tariff rates were often lower than digital circuits. In essence, the ILECs
29 pricing policies were causing cost and service problems. They forecast "doom and gloom" for
30 their networks if nothing was done. Their response was to try to put the brakes on the Internet in
31 a hurry by making all calls to ISPs subject to toll access charges.

1 This did not happen, of course. The Telecom Act came out just in time. CLECs stepped
2 in and picked up a large share of ISP dial-in traffic. They did this by using high-traffic-capacity
3 switches, centrally located in metropolitan areas. They relieved the choke points, the switches
4 serving terminating modems. And in the process, the CLECs basically invented Virtual NXX[6].
5 But the ILECs had miscalculated. In the months following the passage of the Telecom Act, they
6 anticipated that CLECs would originate more traffic than they terminate. So they demanded
7 high reciprocal compensation rates. A Bell Atlantic submission even blasted the CLEC's request
8 for bill and keep as "bilk and keep", and stated that if the rate were too high, then CLECs would
9 seek out mostly-incoming customers such as ISPs. They apparently miscalculated and probably
10 thought that it was a bluff.

11 So as the Internet grew, CLECs became the net recipients of reciprocal compensation. In
12 the 1998 time frame the ILECs then started an intense fight against reciprocal compensation for
13 ISP-bound calls. Most, not all, states (including Texas) sided with the CLECs, and the Kennard
14 FCC issued only ambiguous compromise rulings. By 2001, however, the balance of power at the
15 FCC had changed, and the rules were changed to favor the ILECs; bill and keep is becoming the
16 norm.

17 The ILECs are now pushing harder. Having rolled back the tide on reciprocal
18 compensation, they are attacking Virtual NXX. I note, for example, the recent presentation to
19 the National Association of Regulatory Utility Commissioners (NARUC) by Mike Reed of TDS,
20 calling on regulators to help stamp out VNXX. I also saw a recent call for a consultant to make
21 an anti-VNXX presentation to an ILEC meeting this coming winter. And I note many anti-
22 VNXX initiatives being taken by ILECs around the country, state by state. They have filed
23 petitions in several states, including a recent one in Oregon.

24 Unmetered Internet dialup access itself seems to be in jeopardy, first in rural and small
25 markets, and then nationwide, as the ILECs continue to dream about rolling back the ISP
26 exemption. The ILECs want a metered Internet via their captive ISP. No CLECs or alternative
27 telecommunications service providers. No independent ISPs. All toll. This, in my opinion
28 would be a Bad Thing. CenturyTel's efforts in this case are another skirmish in the coordinated

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[6] I note, however, that Southern New England Telephone, SBC's Connecticut ILEC, operates an "offload" switch of its own, in New London, which provides, in effect, virtual NXX service to the entire state. This service has been quite competitive; CLECs have a smaller share of the ISP business in Connecticut than in nearby states.

1 ILEC scheme to control the Internet and eliminate telecommunications competition. But it is
2 vitally important to ASAP and to its customers.
3 Q. Do you have any concluding remarks?
4 A. I have shown in this Rebuttal that CenturyTel's claim that it should be allowed to assess
5 its users toll charges or require ASAP to enter a reverse billing arrangement is inconsistent with
6 industry practice and regulatory precedent. I have also explained that the services provided by
7 ASAP to both customers "who carry a pager" and to ISPs should not be subject to punishment by
8 imposition of a toll. ASAP's services fulfill a public need and advance the public interest.
9 ASAP's network configuration and indirect interconnection with CenturyTel do not impose
10 unreasonable costs on CenturyTel in relation to the cost if some other ILEC provides service to
11 the called party. ASAP's network configuration and present interconnection are efficient to all
12 concerned. CenturyTel's actions and positions in the face of these facts are typical: outlaw
13 competition using any means possible; failing that, render it noncompetitive by forcing payment
14 of taxes in the form of non-cost based charges.
15 The Commission should rule that CenturyTel must route calls to ASAP's Lockhart, Kyle
16 and Fentress NXXs and honor the rating as published in the LERG, thereby allowing San Marcos
17 callers the ability to reach ASAP's customers without paying long distance.
18 Q. Does this conclude your Rebuttal Testimony?
19 A. Yes.

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COMPLAINT, REQUEST FOR EXPEDITED RULING, REQUEST FOR INTERIM RULING, AND REQUEST FOR EMERGENCY ACTION OF ASAP, INC. AGAINST CENTURYTEL OF SAN MARCOS, INC.	§ § § § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

PRE-FILED REBUTTAL TESTIMONY OF TED GAETJEN

Q: PLEASE STATE YOUR NAME, TITLE AND EMPLOYER.

A: My name is Ted Gaetjen. I am President of ASAP Paging, Inc. ("ASAP"), the Complainant in this case.

Q: ARE YOU THE SAME TED GAETJEN THAT PROVIDED DIRECT TESTIMONY IN THIS CASE?

A: Yes.

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: I will address several issues discussed by CenturyTel's witnesses who filed Direct Testimony and Staff witness Kelsaw. In summary, I will show that CenturyTel's position is in large part based on wholesale misstatements or misunderstanding of the pertinent facts. Once the Commission understands the true nature of the issues, and focuses on the most important issue that it can resolve, it will be clear that CenturyTel is simply wrong. The debate ultimately devolves into a very simple question: is ELCS available only when an ILEC customer calls another ILEC customer? In other words, are customers who choose to use alternative providers or call customers of alternative providers going to pay extra? If using an alternative provider necessarily results in higher charges than when ILECs provide both ends of a call, there will be no competition. Extended local calling cannot be limited to the ILECs. CenturyTel is essentially claiming it can charge its users long distance when they call a user of any non-ILEC even if the number the CenturyTel user dials is "local" to San Marcos and both the calling and called party are physically located in San Marcos.[1]

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[1] To understand this, imagine an ASAP customer with a Lockhart NXX who lives in San Marcos paging herself from her home phone. CenturyTel insists it can impose toll for this call.

ASAP EXHIBIT NO. 44

1 ASAP is not seeking a preference. ASAP is not engaging in arbitrage. ASAP is not
2 doing anything that is wrong or illegal. We are merely trying to compete and provide important
3 communications services. The PUC must continue to enforce its pro-competitive policies and
4 require CenturyTel to accept ASAP as a co-carrier for "local" ELCS calls to ASAP's Lockhart,
5 Kyle Fentress and San Marcos NXXs.

6 Q: IS ASAP A REAL PAGING CARRIER?

7 A: CenturyTel's testimony seems to imply that ASAP is not a "real" CMRS carrier.[2] To the
8 extent CenturyTel intended to do so, this is simply untrue. ASAP has paging licenses. We
9 operate an extensive network in the Austin LATA, with approximately 25 transmitters. We have
10 many retail or wholesale paging customers, including governmental entities, doctors and large
11 corporations. The great majority of the customers to whom we assign the NXXs in issue are
12 physically located in San Marcos, Kyle, Lockart and/or Fentress at least some of the time, or
13 have some legitimate reason to need a pager with a number that is "local" to those towns. Mobile
14 service is mobile, yet CenturyTel is basically attempting to turn mobile service into long distance
15 so that it can charge either access or toll to those who have the temerity to call someone who has
16 contract with a competitor of CenturyTel. The FCC, however, has already ruled that mobile
17 service is not long distance service. The FCC has already ruled that CMRS providers are co-
18 carriers and are not IXCs.[3] The FCC has ruled that calls within an MTA are "local" for inter-

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[2] CenturyTel witness Robinson, to his credit, expressly disclaimed any such implication during his deposition.

[3] Memorandum Opinion and Order, *In the Matter of MTS and WATS Market Structure*, FCC 84-36, ¶¶ 145-149, CC Docket 78-72, 97 FCC2nd 834, 882-883 (Feb. 1984):

> 146. In neither the *Access Charge Order* nor the *Reconsideration Order* did we explicitly address the status of RCCs under Part 69. A review of these *Orders* and the access charge rules, however, makes clear that we did not intend that access charges filed in compliance with Part 69 be imposed upon RCCs providing cellular mobile services in particular, or two-way mobile and paging services generally. This conclusion is applicable to all carriers in the public mobile services.
>
> ...
>
> 149. The remaining question is whether RCCs are interexchange carriers for purposes of Part 69. The RCCs provide "exchange service" under Sections 2(b) and 221(b) of the Communications Act, and we have consistently treated the mobile radio services provided by RCCs and telephone companies as local in nature. (citations omitted). Like wireline telephone companies, RCCs provide interstate services only to the extent that thaeir facilities may be used to originate or

1 carrier purposes and that calls between NXXs that are both associated with the same local calling
2 area are "local" for retail purposes, especially when the ILEC does not transport the call outside
3 of the originating area. Only if the calling user dials an NXX that is not "local" can it be
4 assessed toll. If the ILEC transports the call outside of the local calling area, it can recover the
5 transport costs.[4]

6 We have a substantial amount of traffic that no one – even CenturyTel – could credibly
7 claim is not local for both retail and inter-carrier purposes if you look at the physical location of
8 the calling and called parties. We have traffic from San Marcos to users who are indisputably
9 physically present in San Marcos, Lockhart, Kyle and/or Fentress. ASAP is a real carrier, with
10 real facilities and real customers.[5] While there may be some legitimate dispute over the "ISP
11 issue" no one can assert in good faith that ASAP is a "sham" CMRS carrier.

12 ~~ILECs are prone to falsely claim that a competitor is not a "real" carrier when that carrier~~
13 ~~is successful and procures business the ILEC otherwise would have.~~ In this case, CenturyTel
14 may be claiming that ASAP is not a "real carrier" because ASAP managed to provide service to
15 an ISP that CenturyTel used to serve. If ASAP is not a real carrier because it provides
16 connections to ISPs, then CenturyTel is subject to the same charge. The fact that ASAP may
17 provide connections to ISPs, however, does not in any way detract from the fact that ASAP is
18 licensed to – and does – provide paging service to a number of "real" customers "who carry a
19 pager" in Fentress, Kyle, Lockhart and San Marcos.

20 The issue is not whether ASAP is "real"; apparently ASAP is "real" enough to have
21 drawn CenturyTel's ire. The issue is whether ILECs can use their continued dominance and
22 larger customer base as a tool to bludgeon and harm nascent competition. CenturyTel provides

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terminate toll calls. We conclude that they are not and should not be treated as interexchange carriers under Part 69.

4 *See*, 47 C.F.R. § 51.701(b)(2) (intraMTA calls are "local" for intercarrier compensation purposes); *TSR* ¶¶ 30-31; *Mountain Order* ¶ 11; *Mountain Order on Review* ¶ 6 (If "LEC end user makes a call from one local calling area to a paging customer whose number is assigned to a central office in another local calling area of the LEC, the LEC may assess the caller the appropriate toll").

5 For example, ASAP has 88 numbers in use in the Lockhart NXX. Of these only 5 are used by ISPs. The remaining 83 are for or in support of persons who "carry a pager." We would have 35 more of these numbers in use, except that we had to move those customers over to our "LATA-wide" 222 NXX in order to keep them as customers when CenturyTel began charging toll on April 1, 2002.

1 basic service to most of the people who call my customers (and even a good number of my
2 customers). CenturyTel can make life difficult for me and my customers by taxing *its* customers
3 when they call my customers. The real issue, therefore, is whether an ILEC can charge toll on its
4 own users when they call a number associated with a rate center that is "local" or ELCS to its
5 customers. CenturyTel is essentially claiming it can charge toll because ASAP is not an ILEC.
6 Q: BUT DOESN'T CENTURYTEL SAY ASAP HAS ALTERNATIVES THAT WILL
7 AVOID RETAIL TOLL CHARGES FOR CALLS TO YOUR KYLE, FENTRESS AND
8 LOCKHART NUMBERS?
9 A: They make this claim, but careful examination shows that these "alternatives" are largely
10 illusory and are in any event purposely costly, inefficient and do not account for the fact that we
11 are a wireless carrier with a different kind of network. Further CenturyTel forgets that the FCC
12 has already ruled that CMRS providers, not ILECs, have the right to determine their network
13 design and the way that they interconnect with the PSTN.[6] CenturyTel forgets that the FCC has
14 ruled that CMRS providers are co-carriers and are not subject to access charges for calls that
15 originate and terminate in a local calling area. CenturyTel ignores the FCC's explicit recognition
16 that wireless carriers can get "local" numbers based on, among other things, the business or

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[6] Memorandum Opinion and Order, *In the Matter of William G. Bowles Jr. P.E. d/b/a Mid Missouri Mobilfone, Complainant, v. United Telephone Company of Missouri*, File No. E-96-04, DA 97-1441 ¶ 5 (Rel. July, 1997); Memorandum Opinion and Order, *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Service*, FCC 86-65, 59 Rad. Reg. 2d (P&F) 1275, Appendix B: FCC Policy Statement on Interconnection of Cellular Systems:

> 2. ...A cellular carrier is entitled to reasonable interconnection, the form of which depends upon the cellular system design and other factors; in some cases the interconnection of a cellular system as an end office (Type 2) may be most appropriate, and in others, interconnection as a PBX (Type 1) may be best. 86 FCC2d at 496. A cellular system operator is a common carrier, rather than a customer or end user, and as such is entitled to interconnection arrangements that "minimize unnecessary duplication of switching facilities and the associated costs to the end user." Id. Underlying these policies, the Commission stated, was the goal of interconnection arrangements most favorable to the end user.
>
> 3. Both Telocator-Cellular and CTIA take the position that the cellular carrier should be permitted to choose the type of interconnection, Type 2 or Type 1, and that a telephone company should not refuse to provide the type of interconnection requested. We agree.

The FCC expressly applied the *Policy Statement* to paging service in the same proceeding in a Memorandum Opinion and Order on Reconsideration, FCC 89-60, ¶¶ 43-47, 4 FCC Rcd 2369, 2375-76 (Rel. Feb. 1989).

1 residence of the wireless customer and thereby ensure that end users calling those numbers do
2 not pay toll.[7]

3 I will go through each of the supposed alternatives in a moment, but a single example
4 most clearly demonstrates my point. CenturyTel witness Robinson asserts on page 8 and
5 elsewhere in his testimony that ASAP "has no physical presence or interoffice trunking in the
6 geographic areas where these NPA-NXXs are 'designated'." He is simply wrong on several
7 counts.

8 First, ASAP has customers in each of those areas. CenturyTel may be claiming that since
9 I can't prove that customer A was physically present in San Marcos when a San Marcos caller
10 paged him, then CenturyTel has the right to impose toll. This is simply not the rule. Does the
11 phone company get to charge long distance if I call a user's home and that user happens to be
12 physically absent from the local area at the time? No. In fact, CenturyTel is not saying the user
13 has to be physically present in the local calling area. It is saying the device that answers does. I
14 cannot demonstrate that each of my "pagers" is physically present in the area at any particular
15 moment, but that is the nature of "paging" service. Unlike cell phone service, paging units do
16 not intercommunicate with transmitters, so it is not possible to locate the unit at any time. The

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7 Notice of Proposed Rulemaking, *In the Matter of Numbering Resource Optimization*, FCC 99-122, ¶¶ 111-112, note 174, 14 FCC Rcd. 1032210370-71 (Re. Jun. 1999):

> 111. Rate centers are telephone company-designated geographic locations which are assigned vertical and horizontal coordinates within an area code. (note 171) Historically, telephone numbers are assigned on an NXX code basis, and associated with a particular switch. For call rating purposes, each switch is associated with a particular rate center. For most carrier billing systems, the rate centers associated with the switches serving the calling and called parties are used to determine whether a call is local or toll and to compute the air mile distance for rating the toll call. Thus most carrier billing systems rely on NPA-NXX code information for rating calls.
>
> 112. Because it is typically necessary for each facilities-based service provider to be assigned an NXX code for each rate center in which it provides service, the rate center structure places a great strain on numbering resources. Moreover, although wireless carriers require fewer NXX codes for the wireless service, they often must request as many NXX codes as are required to permit wireless customers to be called by wireline customers on a local basis. (note 174)
>
> Note 171. ... Incumbent local exchange carriers chose to establish the rate center structure as part of their network design for billing and pricing functions and no regulatory mandate requires its existence.
>
> Note 174. (citation omitted) Wireless carriers, however, often require fewer NXX codes than wireline carriers because they have larger local service areas. (citation omitted) We note that, to enable the rating of incoming wireline calls as local, wireless carriers typically associate NXXs with wireline rate centers that cover either the business or residence of end-users. ...

1 FCC obviously knows this, but it has never held that because one cannot locate the unit all calls
2 to it are assumed to be toll. Yet that is the result of CenturyTel's position.

3 Second, ASAP has a physical presence in each of those areas. ASAP has a carrier
4 network. We have transmitters in each area, and connections to them. This is presence.
5 CenturyTel's position appears to be that it can charge toll unless the co-carrier is an incumbent
6 with a wholly wireline network. This is not the rule.

7 Third, Mr. Robinson clarified in his deposition that his testimony really meant that ASAP
8 must have a point of interconnection, paging terminal or switch in each of these areas in order to
9 qualify for "local" calling.[8] But wireless networks don't need a switch in every local calling
10 area. A single switch or paging terminal can easily support many local calling areas. ASAP's
11 network does. The location of the switch does not determine rating. CenturyTel's demand that
12 we have duplicative switching equipment and extensive landline connections is gratuitously anti-
13 competitive. The demand for a POI as an alternative has no purpose other than to increase
14 alternative carriers' costs, contrary to the FCC rules.

15 CenturyTel's focus on the point of interconnect is similarly misplaced. In the first place,
16 as will be discussed below, CenturyTel is wrong about the location of the POI between
17 CenturyTel and ASAP.[9] But regardless of the theoretical location of this point, the POI does not
18 determine the rating for a call. The routing does not determine the rating of a call. The location
19 of a switch does not determine the rating of a call. The industry has always used the originating
20 and terminating NXXs to determine rating. And CenturyTel consistently ignores the fact that the
21 FCC has said a carrier can have a single point of interconnect in the LATA. CMRS carriers can
22 use Type 2A or "tandem" interconnection. A tandem serves many end offices, and it is usual for

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[8] He bases this on an interpretation of the CO Code Guidelines. He essentially says a carrier can only get NXXs for a particular rate center if it has a switch or POI physically present in that rate center. Mr. Goldstein will address the Guidelines, but I must point out that ILECs are not the "NXX cops." They lost number administration responsibility because they had the incentive and potential to, and did, use control over numbers to discriminate against competitors.

[9] If the POI between CenturyTel and ASAP is or were to be located in San Marcos, I suspect CenturyTel would strongly object to rating calls to <u>all</u> of ASAP's NXXs (*i.e.*, even those associated with rate centers that are not local to San Marcos such as ASAP's Austin, Bastrop, Burnet, Georgetown, Jerrell, Milano, Smithville, Taylor, Paige and Wimberly) as local. But that would be the result of the default suggested by Ms. Smith at page 10 of her testimony and Mr. Robinson at page 16 of his testimony.

several of those end offices to be in different rate centers. It is not possible to have a single point of interconnect in a LATA and still have a POI in every local calling area in that LATA. Type 2A by definition provides a single point of interconnect at the tandem for all end offices that subtend the tandem, even those that are in other local calling areas. Mr. Robinson explains this by saying Type 2A interconnection only gets a CMRS carrier "local" calling in the rate center that contains the tandem and ILEC end users in distant exchanges must pay toll to reach the CMRS carrier. He is wrong. CenturyTel itself has several agreements that expressly provide for disparate rating and routing points, as Mr. Goldstein's Rebuttal Testimony points out.

Finally, why is CenturyTel so concerned with what goes on after a call leaves its network? That does not affect its costs one iota. What it does seem to affect is CenturyTel's notion of entitlement. CenturyTel feels that it is entitled to recover above-cost access charges or long distance revenues unless a strict set of limited and rigid (indeed impossible) criteria are met. But few, if any, of these criteria are relevant to today's technology and the multiple platforms over which services are delivered. CenturyTel is an antiquated monopolist scrambling mightily to maintain monopoly rents from its users or its competitors. It is like a buggy whip vendor seeking protection from the automobile. I thought the 96 Act was supposed to end that.

Q: PLEASE DISCUSS THE ALTERNATIVES OFFERED BY CENTURYTEL?

A: Yes. CenturyTel says:

1. ASAP can allow CenturyTel to impose toll charges. This, of course, is no alternative at all. People are very reluctant to pay long distance charges to page someone or call an ISP on a routine basis. Paging customers expect and demand "local numbers" so that people who page them from within a community of interest not have to pay long distance. The same is true for ISP service. Toll charges essentially render our service non-competitive.

2. ASAP can "buy down" toll charges. This is expensive. CenturyTel wants to charge ASAP its switched access rate for each call. Switched access rates are significantly above cost and excessive and unreasonable. This whole case is about whether ASAP has to pay access for calls that are within the same extended local calling area. The FCC cases that discuss "buy-down" all address it in the context of a call that would otherwise be toll, *i.e.*, between NXXs that are not "local" to each other, or when the ILEC must provide dedicated transport out of the local

calling area. But San Marcos is "local" to Kyle, Fentress and Lockhart, so CenturyTel cannot "otherwise" charge toll. Similarly, CenturyTel is not providing transport out of San Marcos.

I find it interesting that the Staff (page 12) expresses concern that ASAP may have a competitive advantage if it does not *impose* an ELCS surcharge on its users, but apparently has no problem with the extreme competitive disadvantage ASAP and its customers face when CenturyTel is not required to rate these as local calls.

3. ASAP can (a) get certificated as a CLEC and then (b) establish a meet-point with CenturyTel. This "option" is both illusory and meaningless. In the first place, no party has claimed that ASAP is required to be certificated in order to provide CMRS service to "people who carry a pager." CenturyTel has not said it will do a meet point if ASAP does not obtain a certificate for the calls to people "who carry a pager." What CenturyTel is saying, therefore, is that CMRS providers cannot participate in ELCS. This is just plain wrong. ~~Second, with regard to traffic to ISPs even if ASAP were to become certificated, CenturyTel apparently will still claim it has no obligation to route "Internet" traffic.[10] The purported offer to do a meet-point is pure prevarication.~~

When CenturyTel routes a call from one of its subscribers to an ASAP NXX, the call goes to the current meet point between SWBT and CenturyTel.[11] SWBT takes the call from there and transits it to ASAP. CenturyTel has no involvement past its meet point with SWBT. The fact of the matter is that ASAP and CenturyTel already have a meet point (or at least a POI) of sorts: the current meet point between CenturyTel and SWBT.

This is significant. First, this means that CenturyTel is not required to deliver traffic outside of its local area and therefore does not bear any cost burden past that point.[12] This also means that CenturyTel is not transporting the call outside of its area, so the *TSR* and *Mountain*

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[10] ~~*See* Susan Smith Direct Testimony, pp. 7-8. *See also*, CenturyTel Response to Petition for Arbitration by Level 3, PUC Docket 26431.~~

[11] According to Mr. Navarrette, the meet point is within San Marcos, inside CenturyTel's exchange boundary.

[12] CenturyTel complains about "routing" outside of its local calling area, but very carefully has not asserted it has transport or switching or any other cost burden outside of the local calling area. "Routing" is merely when the switch translations tell the switch which trunk to put a call on. For CenturyTel this all occurs inside San Marcos. It is correct they are routing to a point outside San Marcos, but they do this for all calls to Lockhart, Kyle and Fentress, regardless of the identity of the terminating carrier.

1 cases Mr. Robinson cites do not apply. Second, using the current meet point with SWBT means
2 that CenturyTel does not have to incur the significant expense of constructing new facilities to a
3 brand new meet point with ASAP. CenturyTel saves money under the current arrangement since
4 the incremental cost is much less than constructing new facilities. Third, if you apply the
5 "default" rule suggested by Mr. Robinson and Ms. Smith, considering that the POI is in San
6 Marcos, then all calls to ASAP's Austin LATA NXXs (and not just those for Lockhart, Fentress
7 and Kyle) must be rated as local.

8 Q: DOES ASAP PROVIDE "VIRTUAL NXX SERVICE?"

9 A: No. It is true that the ISP customers' main business offices are not physically located in
10 Kyle, Fentress or Lockhart. One is physically located in *San Marcos*. This ISP performs
11 authentication, Domain Name Service, mail service and other functions in San Marcos. The
12 traffic can fairly well be said to go back through San Marcos, where the calls from CenturyTel
13 originated. Therefore, for calls that CenturyTel users make to this ISP customer, both the
14 originating and terminating location are fairly arguably in San Marcos. I will further address the
15 nature of the services ASAP provides to ISPs below.

16 The service we provide to the customers who carry a pager is absolutely not Virtual
17 NXX. The FCC has said that "Virtual NXX codes are central office codes that correspond with a
18 particular geographic area that are assigned to a customer located in a different geographic
19 area."[13] My customers who carry a pager are "located" in the same geographic area to which
20 the number they receive corresponds. CMRS service is not subject to any of the criticisms
21 typically made of Vitrual NXX. CMRS carriers have facilities in the area (we have transmitters
22 and connections to them); CMRS carriers have customers there; and, unlike in the Maine
23 decision cited by Mr. Robinson, ASAP is authorized to provide service in Lockhart, Kyle and
24 Fentress.

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13 This definition comes from note 188 of the FCC's *Unified Carrier Compensation* NPRM, FCC 01-132.

1 The Virtual NXX definition looks to the whole NXX block (10,000 numbers). To be
2 considered Virtual NXX, no individual number can be used by a customer in the rate center.
3 Since we do assign numbers to people in the geographic area, the NXX block is not "Virtual."[14]
4 ASAP is also authorized to provide service in San Marcos. And, as noted previously,
5 many of ASAP's customers "who carry a pager" are in San Marcos, and one of the ISP
6 customers is in San Marcos. ASAP had a San Marcos NXX, but returned it to assist in number
7 conservation. Now, CenturyTel asserts that ASAP is wasting numbers because it does not have a
8 10,000 number San Marcos NXX block to serve the San Marcos ISPs and the customers "who
9 carry a pager" in San Marcos.
10 Q: PLEASE DESCRIBE THE SERVICE YOU PROVIDE TO ISPs.
11 A: ASAP at present provides connections to five information service providers (ISPs) who
12 use numbers within ASAP's Fentress, Kyle or Lockhart NXXs. They each use <u>one</u> number in the
13 10,000 number NXX block. All five of these connections are serviced via ASAP's switch in
14 Austin. Calls to these ISPs originate from any carrier's end office that has trunks to SWBT's
15 Greenwood tandem, and the tandem routes the calls to our switch. ASAP's switch then routes
16 the call to the ISP. The ISP is connected to our switch over ISDN PRI DS1 trunks. ASAP hands
17 the ISP a DS1 circuit. The ISP can collocate equipment at our switch site (for an additional
18 price) or it can bring in a circuit obtained from another carrier and connect it to the DS1. Where
19 the traffic goes from there is up to the ISP.
20 Q: WHERE IS THE ISP PHYSICALLY LOCATED?
21 A: The argument over the "location" of an ISP has become a theoretical debate that
22 continues to take many strange twists and turns. The ILECs first strongly asserted that the
23 "location" of the ISP is irrelevant because the ISP is merely an intermediate switching point in an
24 entire "end to end" communication between the ISP customer and the Internet, with its hundreds
25 of million "destinations" all over the world. CLECs disputed this claim; they said the "call" ends

[14] Mr. Robinson had a different definition of "Virtual NXX" in the wireless context. To him, a wireless carrier with no switch or POI in the rate center (as opposed to <u>customers</u> in the FCC definition) is using a "Virtual NXX. Robinson Deposition, pp. 41-42. He simply disagrees with the FCC's definition, but he has to if CenturyTel is to prevail. I suggest that the FCC should be allowed to define these terms, and not the ILECs. If the FCC definition is used, ASAP does not have Virtual NXXs.

1 at the ISP's modem, where the "telecommunications service" ended and the "information
2 service" began. Many states, including Texas, agreed with the CLECs and required ILECs to
3 pay reciprocal compensation for calls from ILEC users to CLEC ISP customers. The FCC,
4 however, ruled with the ILECs.[15] The FCC has indicated that the ISP's location is irrelevant for
5 jurisdictional purposes since it is merely "intermediate switching" in an end to end "Internet
6 call." The FCC directly held that providing a connection to an ISP is not local service, but is
7 instead "interstate information access." It is for this reason that ASAP asserts that states cannot
8 impose entry/exit or rate jurisdiction over an entity that does nothing but provide connections to
9 ISPs.[16] I note that as recently as September 12, CenturyTel asserted in a pleading filed at the
10 Texas Commission that "the FCC has made it clear that ISP-bound traffic should be regulated as
11 interstate and has taken all authority over ISP-bound traffic away from the state commissions."[17]
12 The purpose of the "find the ISP" exercise is really over how to rate the call made by the
13 end user; in this case CenturyTel's customers in San Marcos. CenturyTel asserts that the ISPs
14 are in Austin and since a call from San Marcos to Austin is toll, it can assess toll charges on its
15 users. ASAP believes that the location of the ISP is irrelevant under the FCC rulings: what
16 controls is whether a call between two NXXs (and the rate centers to which they are associated)
17 is toll. ASAP claims that the calls are between two NXXs that are local to each other because of
18 ELCS and therefore CenturyTel cannot impose toll charges on its users.

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15 *ISP Declaratory Ruling*, FCC 99-38, CC Docket 96-98, ¶¶ 10-13 (Feb. 1999); *ISP Remand Order*, ¶¶ 57-58. For example, in ¶ 59 of the *ISP Declaratory Ruling*, the FCC stated:

> 59. The "communication" taking place is between the dial-up customer and the global computer network of web content, e-mail authors, game room participants, databases, or bulletin board contributors. Consumers would be perplexed to learn regulators believe they are communicating with ISP modems, rather than the buddies on their e-mail lists. The proper focus for identifying a communication needs to be the user interacting with a desired webpage, friend, game, or chat room, not on the increasingly mystifying technical and mechanical activity in the middle that makes the communication possible. ISPs, in most cases, provide services that permit the dial-up Internet user to communicate directly with some distant site or party (other than the ISP) that the caller has specified.

16 ASAP does, of course, also provide CMRS service, but no party to this case has claimed that ASAP must be certificated to provide CMRS service.

17 CenturyTel response to Level 3 Petition for Arbitration, p. 6.

1 Assuming this exercise is useful in any sense, it is important to understand that it is no
2 easy task, especially in the wireless world. The industry has devised conventions and practices
3 over the years to determine location. They sometimes use the customer's "premises" (or more
4 precisely, the demarcation point between the carrier's network and a customer's inside wiring).
5 They also use the "access line" that runs from the end office switch to the customer premises. Of
6 course, the customer is not always at home; he or she could be next door and can still answer the
7 phone if it is cordless. The customer may call forward to a cell phone and be anywhere, but the
8 call to the customer is still rated as local to the calling party.[18] Cellular providers can determine
9 location sometimes because the cell site has two way communication with the user and a carrier
10 can see what cell cite is communicating with the phone; the carrier can now even locate the
11 mobile user in the cell served area with reasonable certainty by triangulation. This is important
12 for 9-1-1 and emergency response.

13 But paging units do not talk back to the transmitter. All my transmitters fire
14 simultaneously with the same information. My mobile user could be anywhere. In the paging
15 world the industry has always used the originating and terminating NXXs to determine rating. If
16 the NXXs are "local" to each other, then no toll applies. The FCC has recognized this convention
17 several times as I already indicated. The industry uses NXXs and their rate centers. CenturyTel
18 has no other solution, except imposition of toll on everything.

19 ELCS expands a "local calling area" and so San Marcos NXXs are "local" to Lockhart,
20 Fentress and Kyle NXXs. CenturyTel's retail tariff uses originating and terminating NXX to
21 determine whether a call is "toll." It distinguishes between calls to access lines that are both in
22 the "exchange" or "local service" area and access lines that are not in the same local service area.
23 The access lines are identified by the number associated with them. The local service area for
24 CenturyTel's users includes Kyle, Fentress and Lockhart.

25 With regard to the ISP, there a number of ways to "locate" the customer. It could be the
26 ISP's premise or business office. It could be the place where the owner happens to be at any

[18] The called party may pay long distance if the call forward is to a number that is not rated as local to his home, or if the called party is physically outside the MTA at the time the cell phone rings. The calling party, however, does not pay toll regardless of the physical location of the called party. This is because the industry rates the call based on the rate center associated with the calling and called NXXs.

given point or where the checks are written to pay for service. It could be where the modems are that "answer" the call. It could be the place where the ISP performs authentication for log on, where the "IP" address for the user's computer is assigned for purposes of communicating over the Internet, or where the email servers are or where DNS administration occurs. It could be the demarcation point or the functional equivalent.[19] Each of these locations as arbitrary as the others. CenturyTel has a lot of incentive to "locate" the ISP outside of its retail calling scope so it can argue that the calls are toll. We, of course, have the incentive to put the ISP where the call is local. With regard to San Marcos Internet there is a fairly compelling argument that the call goes back to San Marcos before it routes to the Internet. I'll reiterate, however, that ASAP really thinks the entire exercise is irrelevant and a waste of time and CenturyTel cannot have it both ways. The ISP's location cannot be both irrelevant for purposes of "jurisdiction" and determinative for purposes of rating.[20] We believe that the "find the ISP" hunt serves no useful purpose. There are really good reasons for them to meet with us in Austin and still provide local calling availability in the smaller towns in the Austin LATA. Mr. Goldstein addresses these reasons in his Rebuttal Testimony.

Q: IS ASAP ACTING AS A COMMON CARRIER WHEN IT PROVIDES THESE SERVICES TO ISPs?

A: ASAP initially took the position that it was not acting in a common carrier role. We have since that time reviewed what we believe to be the applicable authority and have concluded that it is common carrier, and always was regardless of whether we "held out" as a common carrier. There appear to be two basic reasons, but I do not profess to fully understand them. First, I

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[19] Mr. Robinson expressed a preference for using the demarcation point or its equivalent in his deposition.

[20] ASAP is not being inconsistent by claiming the service it provides to ISPs is interstate but the calls to the ISPs are local. Our position has nothing to do with the ISP's location. End users pay a mandatory monthly fee to ILECs for access to the interstate network. There are several examples where an end user can call an interstate access customer but the call is rated as local. Two examples are switched access Feature Group A and switched access Feature Group B (line side). Under the federal rules, ISPs obtaining service from ILECs can choose between buying their interstate information access service out of the ILEC's local tariff or out of the ILEC's interstate switched access tariff. In both cases, the call from the ILEC's end user is rated as local. The FCC did this because it recognized that end users will not pay per minute long distance charges to reach an ISP. Indeed, ELCS in Texas has been praised because it allows rural users to reach ISPs in larger communities without paying toll. ELCS makes affordable Internet access more available. *See,e.g.*, http://arxiv.org/ftp/cs/papers/0109/0109113.pdf.

1 understand that telecommunications service is by definition common carrier. What we provide
2 to ISPs is interstate information access, a telecommunications service. Therefore, it is common
3 carrier activity. Second, in similar fashion, if a service is CMRS – either incidental or part of the
4 primary service that uses the licensed spectrum – it is common carrier as a matter of statute.
5 Incidental services are CMRS under FCC rules, and therefore the services we provide to ISPs is
6 common carrier. This appears to be a purely legal question.

7 Q: ARE THERE SOME SERVICES YOU PROVIDE WHICH ARE NOT COMMON
8 CARRIER?

9 A: I'm going to leave the answer to the lawyers, but ASAP does provide what I understand
10 to be "information service" to both its customers who carry a pager and to ISPs. The FCC has
11 generally indicated that information service provision is not common carrier activity; it has not,
12 to my knowledge, ever specifically ruled on whether information services provided by CMRS
13 carriers is common carrier activity under § 332(c)(1) of the Act. I do know the FCC has strongly
14 encouraged CMRS carriers to provide information service, and has repeatedly emphasized their
15 attempts to do so.

16 Q: WHAT INFORMATION SERVICES DO YOU PROVIDE TO CUSTOMERS THAT
17 CARRY A PAGER?

18 A: When a person who calls one of our NXXs assigned to a "customer who carries a pager"
19 that person has the choice of either causing the calling party number to be transmitted to the
20 paging customer or to leave a recorded voice message. If the latter, the paging customer receives
21 a page that tells the paging customer a message is waiting. The paging customer then calls his or
22 her own number and is able to retrieve the message.[21] I understand that voice messaging has
23 been deemed to be an information service.

24 We also provide text messaging. Someone can send an email over the Internet to our
25 customers who carry a pager, and the text message is forwarded to the pager. ASAP is connected
26 to the Internet and emails come in to our server. We change the content (some of the header

[21] When the paging customer calls in and retrieves the message, there is no use of the spectrum. Mr. Robinson is therefore wrong when he says interconnection is not available to CMRS carriers when the spectrum is not used with every call.

information is deleted) and the message is then stored and forwarded to the customer's pager. This is therefore an information service, at least in part. I do not know whether this is common carrier.

I have to note that there is a growing interrelationship between the Internet and paging service. CenturyTel makes like the two have no connection other than ASAP's use of interconnection trunks and a switch to direct calls to customers who carry a pager or to ISPs. ASAP, however, uses the Internet as a significant part of its CMRS network; you cannot separate the two. This is why we believe that providing connections to ISPs is incidental. The Internet and paging service are intertwined and the joining will continue. They are related and complementary and at some point may wholly join.

Q: CAN ASAP USE THE INTERCONNECTION TRUNKS IT HAS OBTAINED AS A RESULT OF ITS CMRS AUTHORITY TO ALSO PROVIDE INFORMATION SERVICE?

A: I believe so. FCC rule 51.100 says:

> (a) Each telecommunications carrier has the duty:
> (1) To interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
> (2) To not install network features, functions, or capabilities that do not comply with the guidelines and standards as provided in the Commission's rules or section 255 or 256 of the Act.
> (b) A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

This rule requires an ILEC to directly or indirectly interconnect[22] and the requesting carrier can use the interconnection to offer information service if it also provides telecommunications service. ASAP clearly offers telecommunications service to both its customers "that carry a pager" and to its ISP customers. ASAP can therefore also use those trunks to provide information service.

[22] CenturyTel and ASAP are indirectly interconnected via SWBT.

1 Q: CAN ASAP USE THE INTERCONNECTION TRUNKS IT OBTAINED AS PART OF
2 ITS CMRS AUTHORITY TO ALSO PROVIDE CONNECTIONS TO ISPs?
3 A: Yes. First, ASAP contends that the service is CMRS because it is incidental. However,
4 even if that is not correct, ASAP is not aware of any regulatory rule or principle holding it cannot
5 use the same trunks for both. Both are telecommunications service and ASAP is entitled to
6 CMRS interconnection under §§ 201 251, 332 and Parts 20 and 51 of the FCC's rules. Those
7 rules do not prohibit a CMRS carrier from providing "non CMRS" services using those trunks.
8 Requiring segregated trunks or an entirely different interconnection would be wasteful and
9 duplicative for all concerned. The only rules that distinguish between "voice" and "Internet" are
10 for compensation purposes, not physical interconnection purposes. Depending on CenturyTel's
11 election, under the FCC rules while ASAP is entitled to compensation for the "voice" traffic, it
12 may not be entitled to compensation for calls to ISPs. ASAP, however, has chosen to not seek
13 reciprocal compensation from the ILECs for calls to customers who carry a pager or the ISPs.
14 There is therefore no difference. Any attempt by CenturyTel to force different arrangements
15 would be only to make it difficult and expensive for ASAP to compete with CenturyTel.
16 Q: DID ASAP UNDERSTAND IN SEPTEMBER AND OCTOBER OF 2001 THAT
17 CENTURYTEL WAS OPENING ASAP's KYLE, FENTRESS AND LOCKHART NXXS ON
18 ONLY A "30 DAY" TEMPORARY BASIS PENDING NEGOTIATION AND EXECUTION
19 OF A WRITTEN AGREEMENT?
20 A: Absolutely not. I was very surprised to read that claim in Mr. Navarrette's direct
21 testimony. The only discussion of "30 days" related to when CenturyTel would open the code.
22 Mr. Barker indicated to me by email on October 8, 2001 that the codes would be opened in 30
23 days. CenturyTel did offer by separate letter a temporary arrangement on October 8, but it
24 required a written interim agreement to which ASAP did not agree. It also would have lasted up
25 to 135 days, not 30 days. I responded by email on October 10 and expressed disappointment that
26 after considerable delay there would be an additional 30 day delay. CenturyTel actually opened
27 the codes in its switch within a few days after my October 10 email. If Mr. Barker meant to
28 authorize opening these codes for only a 30 day period, that was not my understanding, it was
29 never communicated to me and ASAP did not agree to a time limitation.

1 Q: DID YOU KNOW THAT CENTURYTEL WAS GOING TO UNILATERALLY
2 RETRANSLATE ITS END OFFICE SO THAT CALLS TO ASAP's KYLE, FENTRESS AND
3 LOCKHART NXXs WOULD NO LONGER BE DIALABLE ON A 7-DIGIT "LOCAL"
4 BASIS ON APRIL 2, 2002?
5 A: No. Not at all. Absolutely not. To the contrary, I believed that the parties were going to
6 discuss a traffic exchange agreement. In fact, on April 3 (the day after CenturyTel began
7 imposing toll) Gary Barker wrote me that retranslations to requite 1+ dialing and impose toll
8 would not occur until May 6. CenturyTel acted unilaterally and jumped the gun and is now
9 engaging in revisionist history.
10 Let me go through the time line.
11 * May, 2001. ASAP requested that CenturyTel open the codes to allow local calling to its
12 Lockhart, Kyle and Fentress NXXs. This was an oral request to CenturyTel's switch engineer in
13 San Marcos.
14 * September, 2001. ASAP ultimately reaches Mr. Barker at CenturyTel. Mr. Barker states a
15 written agreement is a required prerequisite to them opening the code.
16 * September 27, 2001. ASAP sent a FAX to Mr. Barker indicating that no agreement was
17 required before CenturyTel had to honor extended calling between San Marcos and Lockhart,
18 Kyle and Fentress.
19 * October 2, 2001. CenturyTel responded by reiterating that an agreement on compensation was
20 required.
21 * October 3-4. ASAP and CenturyTel exchange information about the NXXs in issue.
22 * October 10, 2001. CenturyTel indicated it was opening the codes in 30 days. CenturyTel
23 also sends separate letter offering a temporary arrangement pending a final arrangement to be
24 negotiated within 135 days. There is no indication the code opening was limited to 30 days.
25 * October 10, 2001. ASAP responded to the October 2 and 10 communications by email and
26 letter. ASAP objected to an additional 30 day delay in opening the codes. ASAP did not agree to
27 the temporary arrangement, and indicated no agreement was necessary.
28 * October 11, 2001. Mr. Barker sends email indicating the codes have been opened for 7-digit
29 local dialing.

1 * November 2, 2001. ASAP queries on status and Mr. Barker indicates that "the process is
2 done." ASAP considers the matter resolved.
3 * March 1, 2002. CenturyTel sends letter indicating the traffic is processing over toll trunks, not
4 ELCS trunks and asserting that CenturyTel can impose toll on its users when they call ASAP's
5 Lockhart NXX. CenturyTel says ASAP must enter a reverse billing arrangement with
6 CenturyTel by March 31, 2002 or CenturyTel will begin to assess toll some time thereafter.
7 * March 4, 2002. ASAP responds to March 1 letter and reiterates that no agreement is
8 necessary, but indicates a willingness to discuss an agreement. ASAP provides notice it will not
9 give up its rights to indirect interconnection. ASAP indicates it is not interested in reciprocal
10 compensation at this time, even though it is entitled to such compensation.
11 * March 8, 2002. CenturyTel sends a reply to March 4 ASAP letter but this reply has little
12 substance. This letter does not threaten to impose toll on any particular date. ASAP concludes
13 that CenturyTel understood ASAP's indication of a willingness to have a traffic exchange
14 agreement.
15 * April 3, 2002. CenturyTel sends another letter stating a reverse billing arrangement is required
16 to avoid toll on calls between San Marcos and Lockhart. The letter states that "(i)f the parties
17 cannot execute a reverse billing arrangement by May 6, 2002, CenturyTel will be forced to begin
18 assessing toll to the affected end users." Of course, by this time someone in San Marcos has
19 already performed the translations to assess toll, without any previously given final notice or
20 deadline to ASAP.
21 Q: WERE YOU SURPRISED WHEN CENTURYTEL PERFORMED THESE
22 TRANSLATIONS EFFECTIVE APRIL 1, 2002?
23 A: Surprised is a mild term. I learned from my local reseller and from San Marcos Internet.
24 We soon thereafter filed this case. I certainly would have filed a complaint before April 1 had I
25 known CenturyTel was going to do what it did on April 2 rather than discuss compensation
26 under the guiding regulatory principles. CenturyTel simply will not recognize those principles or
27 negotiate around them, however. Its position from the beginning was that ASAP had to enter a
28 reverse billing arrangement and pay access for these local calls. To CenturyTel, "negotiate"
29 means "sign here."

1 Q: ARE YOU INTERCONNECTED WITH SWBT UNDER ITS CELLULAR TARIFF?
2 A: No. We are interconnected with SWBT under the federal Act. We do obtain reverse
3 billing from SWBT for the 512-222 NXX and that service is offered under the tariff. The
4 purpose of that is to be able to collect calls in areas where we do not have an NXX. Where there
5 is a local NXX, we are trying to move away from giving a 512-222 number to our customers.
6 CenturyTel's action has frustrated that effort. I have to note again that SWBT does not assess
7 toll or impose reverse billing when the originating and terminating NXXs are associated in the
8 same rate center as the 512-222 NXX. The 512-222 NXX is associated with Austin rate center.
9 We do not pay reverse billing for calls originating in Austin that go to the 512-222 NXX.
10 CenturyTel, however, insists on charging reverse billing for all calls to any "reverse billing"
11 NXX regardless of the rate center.
12 Q: DO YOU ASSESS AN ELCS FEE OR SURCHARGE ON YOUR CUSTOMER THAT
13 USE KYLE, FENTRESS OR LOCKHART NUMBERS?
14 A: No, but if the Commission wants me to raise prices by $.30 cents like CenturyTel then I
15 might consider that to address Mr. Kelsaw's concern. But considering the price CenturyTel
16 charges to ISPs for a PRI trunk is over four times what we charge, and about twice what SWBT
17 charges, this $.30 will not make any difference. The presence or lack of this charge has
18 absolutely no impact on our competitive position, or that of the ISPs we serve.
19 Staff witness Kelsaw appears to be concerned with whether an "Austin" ISP will have a
20 competitive advantage over a "Lochart" ISP. Mr. Goldstein explains why ISPs have to
21 consolidate their activities in larger towns in order to efficiently serve rural areas. Staff seems to
22 believe that it is better to require ISPs to have analog modems in each local area rather than
23 consolidated digital equipment that allows them to provide cost effective and higher quality
24 service to a large body of customers – both urban and rural. As Mr. Goldstein points out, this
25 line of thinking is what has caused the digital divide. Any state that requires an ISP to adopt this
26 network arrangement is only doing to protect the ILEC. I cannot understand how someone
27 interested in making affordable and modern Internet access available to rural areas would force
28 ISPs to locate slow-speed and antiquated analog modems within each local calling area.

ASAP does not have an ELCS "revenue requirement." We do not provide intraLATA toll, and there are therefore no intraLATA toll charges we forego. Because of the way our network operates, our costs are essentially the same regardless of the number we assign. We have no "ELCS costs" or "foregone toll." And, more important, CenturyTel is indifferent to whether we provide the Lockhart service or SWBT does. CenturyTel has the same cost and lost revenue whether it hands a call to SWBT for termination to a SWBT caller or hands a call to SWBT for transit to ASAP.

Q: ARE YOU AMENABLE TO ENTERING AN ELCS ARRANGMENT WITH CENTURYTEL?

A: I don't have to do that and I should not have to do that. This "ELCS arrangement on same terms" argument is simply an excuse by CenturyTel. First, CenturyTel has no "ELCS arrangement" with either SWBT or Verizon. There is no document. For the Lockart ELCS there is a meet-point with SWBT within CenturyTel's boundary. It is the same meet point as is used for "toll trunks." The traffic flows in the same fiber group. CenturyTel is cost-indifferent to whether it hands calls to SWBT for delivery in Lockhart or for transit to ASAP. I believe CenturyTel would strongly object to building new fiber from its wire center to the current meet point just to meet-point with ASAP. CenturyTel has already made it clear it does not feel obligated to do a meet point with CMRS carriers for ELCS traffic.

In any event it is insane to suggest that the parties should do a fiber meet for less than a DS3's worth of traffic when there is clearly sufficient capacity on the existing SWBT-CenturyTel meet-point. This whole argument is a sham and is designed to delay and deter.

Q: HAS CENTURYTEL IMPOSED TOLL ON ITS END USERS WHO CALLED ISPs SERVED BY ALTERNATIVE CARRIERS USING EXTENDED AREA CALLING NUMBERS IN OTHER STATES?

~~A: Yes. It did so in 1999 in Michigan. The Michigan Commission rejected several of the same excuses offered by CenturyTel in this case and fined CenturyTel $500 per day for violating its tariff and discriminating against the end user involved and the alternative carrier. A copy of the decision is attached to this testimony as Gaetjen Rebuttal Exhibit 1.~~

Q: ~~YOU SAY THE MICHIGAN COMMISSION FINED CENTURYTEL FOR VIOLATING ITS TARIFF.~~ WHAT DOES CENTURYTEL's TEXAS TARIFF SAY?

A: Excerpts of CenturyTel's Texas tariff are attached to this testimony as Gaetjen Rebuttal Exhibit 2. That tariff does not distinguish between providers; when it comes to ELCS, the tariff speaks to "exchanges." CenturyTel's tariff does not distinguish between ILEC numbers or alternative provider numbers, including the definition of "exchange." I do not think that CenturyTel's tariff can reasonably be read to allow it to discriminate between non-ILEC carriers for ELCS purposes, nor does it allow CenturyTel to impose toll charges on its customers when they dial a number associated with an ELCS area just because the terminating carrier is not an ILEC. I believe CenturyTel violated its tariff by requiring 1+ dialing and imposing toll between April 2 and April 19. I also believe that CenturyTel engaged in unreasonable discrimination against ASAP (and CenturyTel's own users), and further that it did so for anticompetitive reasons.

My Direct Testimony included a bill from CenturyTel charging toll to one of its users after April 19 for calls that went to ASAP's Lockhart NXX. I note that CenturyTel's bill represents that the call went to "Lockhart." Despite all of its disclaimers and prevarications and attempts to cloud the issue, CenturyTel told one of its users that the user had to pay toll to call "Lockhart." This is a tariff violation, just like the Michigan Commission found.

Q: ARE THERE ANY OTHER DECISIONS OR PENDING CASES YOU BELIVE PROVIDE GUIDANCE?

A: As I said in my Direct, I am not fluent in regulatory-speak and try to avoid this stuff. But several cases deserve mention. First, the Texas Commission rejected many of CenturyTel's arguments in Docket 24015, the so-called "FX Docket" which concerned CLECs and ILECs. The PUC found that FX-like service was not illegal, that access charges did not apply and the inter-carrier compensation was bill and keep. ~~The Illinois Commission ruled the same way in a similar case this summer.~~[23] This is essentially the result advocated by ASAP although there are

[23] ~~*Essex Telcom, Inc. vs. Gallatin River Communications, LLC; Complaint & Request for Dispute Resolution of Essex Telcom, Inc. Against Gallatin River Communications, LLC Pursuant to § 13-514 & § 13-515 of the Public Utilities Act*, Illinois Commerce Commission, Docket No. 01-0427 (Il. C.C., July 24, 2002), 2002 Ill. PUC LEXIS 703 at *18-*19 (emphasis added).~~

certain adjustments that must be made to reflect the fact that we are CMRS and there is no interconnection agreement between CenturyTel and ASAP.

~~The Missouri Commission recognized that ILECs cannot assess access charges on CMRS carriers for calls that originate and terminate within the MTA.[24] CenturyTel has put a twist in the attempt by the independents in that case, but the end result is the same:~~ CenturyTel's reverse billing agreement would require ASAP to pay access charges for all calls, even those that both originate and terminate in the MTA, and even those that go to users who are physically in the local calling area (San Marcos or an ELCS city). CenturyTel is attempting to charge ASAP access for local calls and this it cannot do.

~~Iowa recently recognized and rejected the "we can't be forced to route/transport outside of our local area" claim.[25] The IUB found that the independents in that case did not transport outside of their area, and could be required to route calls to a tandem operated by a third party carrier for transit to a wireless carrier.~~ As I have said before, CenturyTel hands off traffic to SWBT at a meet-point within San Marcos.

~~Oklahoma recently rejected the "Virtual NXX" assertion as it pertained to wireless and required independents to route traffic to a tandem operated by a third party carrier. (Issues 8 and 9.E.2).[26]~~

Finally, I have to observe that many of the issues addressed by Mr. Robinson are presently before the FCC in its Docket 01-92. Sprint has filed a Petition for Declaratory Ruling and the independents and a few of the RBOCs raised virtually every claim Mr. Robinson addressed other than the certification and ELCS issues. I have attached the FCC request for comments as Exhibit 3. JSI, Mr. Robinson's employer, submitted comments that essentially mirror his testimony. ASAP believes the FCC is the proper forum for all of the issues presently

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~~24 *In the Matter of Alma Telephone Company's et al Filing to Revise Access Service Tariffs*, Case No. TT-99-428, Amended Report and Order (April 9, 2002). Available at http://168.166.4.147/orders/04099428.htm.~~

~~25 *In Re Exchange of Transit Traffic*, Docket No. SPU-00-7, TF-00-275 (DRU-00-2) Order Denying Application for Rehearing (May 3, 2002). Available at http://www.state.ia.us/government/com/util/_private/Orders/2002/0503_spu0007.pdf.~~

~~26 *In the Matter of Application of Southwestern Bell Wireless LLC et al for Arbitration Under the Telecommunications Act of 1996*, Cause No. PUD 200200149, Interlocutory Order, Order No. 466613 (August 9, 2002).~~

1 "teed up" at the FCC. ~~Florida recently refused to issue a decision in a case brought by Bell-~~
2 ~~South because of the pending FCC proceeding.~~ I note that as late as Monday September 30,
3 2002, the FCC requested comments on another issue related to those addressed by Mr. Robinson.
4 I have attached their request for comments as Exhibit 4. The FCC should answer these
5 questions; meanwhile the PUC should address whether ASAP must be certificated and whether
6 CenturyTel must route and rate local calls as local calls.
7 Q: DO YOU HAVE ANY CONCLUDING REMARKS?
8 A: Yes. As I said before, CenturyTel has tried very hard to divert attention from the real
9 issue in this case. The real issue is whether CenturyTel's San Marcos customers should have to
10 pay a toll to call a customer who happens to be served by a non-ILEC carrier.
11 CenturyTel is about to put me out of business. I have spent more money on this case than
12 I did on my switch or any of my transmitters. I cannot dedicate the time I need to provide service
13 to my customers because this proceeding is simply eating me alive. I don't have corporate deep
14 pockets or ratepayer money to fund this fight. I don't understand why this case has taken so long
15 or cost so much.
16 When we started, our goal was to provide an important communications service to folks
17 who needed and wanted an alternative to what the ILECs chose to provide. The folks who "carry
18 a pager" rely on me to get their pages to them at a reasonable price. They demand a local number
19 to do that, so the people who call them do not pay a toll to reach them. Similarly, the ISPs I
20 serve provide a valuable service to their customers. The Lockhart, Kyle and Fentress numbers
21 the ISPs use allow them to offer affordable Internet access to rural areas at the same time, and at
22 the same price, as in metropolitan areas. I really don't think that what I do is a bad thing. To the
23 contrary, it is a good thing, and it helps the citizens of Texas because it allows them to have a
24 competitive choice. I believed that the state and federal policy was that folks should have a
25 choice. I made a significant investment of my own money in reliance on the promise that
26 Congress and the state Legislature made that consumer choice would prevail over ILEC self
27 interest.

1 CenturyTel, however, still seems to think that it is the gatekeeper for all communications
2 from San Marcos, and no one should have the right or opportunity to call a customer of a non-
3 ILEC unless CenturyTel receives a toll or access charges.
4 The single question that must be made is whether customers of an ILEC can be required
5 to dial 1+ and pay toll when they call a customer of an alterative provider. CenturyTel has
6 blown a lot of smoke and it has engaged in a lot of prevarication. I hope and pray that the
7 Commission will see through all of this and do what is right. If it does not, then there will be no
8 competition in smaller towns, and competitive and affordable access to the Internet will be
9 limited to large towns. Lockhart, Kyle and Fentress will be able to connect only through the
10 ILEC's captive ISP. This will not be a good result.
11 When I was young, my family could have any color phone we wanted – so long as it was
12 black and rotary. If there was phone service at all. Society today requires much more.
13 CenturyTel's whole case, however, is a plea that the Commission take us back to those same
14 days when the telephone company could decide if and when and how a customer connected to
15 the world. Make no mistake. CenturyTel is essentially saying that the FCC's decisions on
16 wireless interconnection are wrong. They are saying that Congress was wrong in 1996 when it
17 authorized competition. They are saying that telephone companies are more important than the
18 consumers they serve.
19 I reject their theory. And I hope the Commission does too.
20 Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?
21 A: Subject to any supplement, yes. Thank you.

REBUTTAL TESTIMONY OF TED GAETJEN

~~EXHIBIT 1~~

In the matter of the complaint of GLENDA BIERMAN against CENTURYTEL OF MICHIGAN, INC., d/b/a CENTURYTEL

Case No. U-11821

MICHIGAN PUBLIC SERVICE COMMISSION

1999 Mich. PSC LEXIS 118

April 12, 1999

[*1] PRESENT: Hon. John G. Strand, Chairman; Hon. David A. Svanda, Commissioner

OPINION: At the April 12, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On October 16, 1998, Glenda Bierman filed a complaint against CenturyTel of Michigan, Inc., (CenturyTel) alleging that, in violation of its tariff, the company had billed her more than $ 2,500 in toll charges for local calls placed from her home in CenturyTel's Newport Exchange to the Monroe Exchange. The complaint also alleged that, in violation of the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq.; MSA 22.1469(101) et seq., CenturyTel had discriminated by treating other calls to the Monroe Exchange as local.

On November 5, 1998, a prehearing conference was held before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). At a prehearing conference on November 24, 1998, the ALJ granted the petition for leave to intervene filed by BRE Communications L.L.C., d/b/a Phone Michigan, (Phone Michigan). The Commission Staff (Staff) also participated in the case.

Evidentiary hearings were held on January 19 and 20, 1999. The record consists of four [*2] volumes of transcripts totaling 368 pages and 15 exhibits. The complainant, CenturyTel, the Staff, and Phone Michigan filed briefs and reply briefs.

On March 12, 1999, the ALJ issued a Proposal for Decision (PFD). On March 19, 1999, CenturyTel, the Staff, and Phone Michigan filed exceptions. By March 26, 1999, the complainant, CenturyTel, the Staff, and Phone Michigan filed replies to exceptions.

II.

DISCUSSION

Local Calls

Ms. Bierman resides in Newport, Michigan, where CenturyTel provides basic local exchange service. She purchased Internet service from MSEN, an Internet service provider (ISP), in July 1998. From July 27 to August 21, 1998, Ms. Bierman accessed MSEN at the number (734) 349-8100, which is assigned to Phone

Michigan in the Monroe Exchange. Ms. Bierman's phone bill dated August 16, 1998 showed 11,323 minutes of toll calls, most to MSEN, at a cost of $ 2,038.14. Exhibit S-2. Ms. Bierman's phone bill dated September 16, 1998 showed another 3,010 minutes of toll calls, most to the same number, at a cost of $ 541.80. Exhibit S-2. Ms. Bierman testified that she has made numerous calls from Newport to Monroe and, except for the calls to MSEN, has never been [*3] assessed toll charges. She also testified that when she signed up with MSEN, she was advised that the calls would be local. After receiving the bills with toll charges, Ms. Bierman returned to her former ISP.

Ms. Bierman argues that CenturyTel violated its tariff, which shows the local calling area for the Newport Exchange as including Monroe. Exhibit S-1. She also argues that the average customer looking at the information in the telephone directory would conclude that service between Newport and Monroe is local, particularly because most customers are not sufficiently informed to know the meaning of the NXX n1 listings in the directory. Exhibit R-9. Ms. Bierman asserts that it is a violation of Section 502 of the MTA for CenturyTel to fail to inform its customers of the toll charges and to mislead customers into believing that all calls to the Monroe Exchange will be treated as local. Ms. Bierman also argues that it is a violation of Section 305 of the MTA for CenturyTel to discriminate by treating calls to Ameritech Michigan's customers in Monroe as local.

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n1 NXX refers to the first three digits of the telephone number.

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[*4]

The Staff argues that the MTA, prior Commission orders, and CenturyTel's tariff do not permit the exclusion of any customer from the designated local calling area and that CenturyTel's tariff provides that the local calling area for the Newport Exchange includes both the Newport and Monroe exchanges. Exhibit S-1. The Staff says that CenturyTel's omission of Phone Michigan's NXX from the list of local NXXs in the telephone directory does not mean that toll rates should apply. The Staff also denies that the 11 digit dialing arrangement imposed by CenturyTel for calls to Phone Michigan's NXX means that toll rates should apply. The Staff argues that the 11 digit dialing requirement is an inferior interconnection prohibited by Section 305 of the MTA and Section 251(b)(3) of the federal Telecommunications Act of 1996, *47 USC 251*(b)(3).

The Staff denies that the termination of the calls to MSEN, a customer whose equipment is collocated at Phone Michigan's switch in Flint, means the calls must be treated as toll. The Staff argues that the calls should be rated based on termination in the Monroe NXX for several reasons. First, calls are traditionally rated on the basis of the NXX. Second, [*5] treating all calls to a particular NXX as toll is an overly broad solution to the claimed problem that some of the calls to that NXX are routed to a customer located elsewhere. Third, some calls to Ameritech Michigan's customers with Monroe NXXs are routed beyond Monroe but CenturyTel rates those calls as local.

Finally, the Staff argues that the status of interconnection arrangements between CenturyTel and Phone Michigan is irrelevant to whether CenturyTel must rate the calls as local. The Staff argues that the routing and rating of a call are separate matters. The Staff argues that although the Commission has reviewed and approved the terms and conditions under which local or toll rates apply, it

has seldom if ever specified the routing of a call. The Staff also argues that interconnection may be provided by tariff or agreement and that, when an agreement is used, the Commission has not required any particular agreement. The Staff asserts that CenturyTel and Ameritech Michigan are providing EAS pursuant to tariff and that the existing tariffs, which are available to any provider, are adequate to permit Phone Michigan to complete EAS calls from Newport to Monroe.

Phone Michigan argues [*6] that CenturyTel's tariff does not specify that the EAS offered between Newport and Monroe applies only to calls to Ameritech Michigan's customers. Phone Michigan argues that there is no reference in the tariff to the 1962 or 1985 EAS agreements between CenturyTel and Ameritech Michigan and, in any event, those agreements have been terminated and do not require CenturyTel to rate the calls to Phone Michigan's NXX as toll. It also argues that CenturyTel's actions are anticompetitive and discriminatory because Ameritech Michigan receives preferential treatment in the rating of calls to its customers.

CenturyTel argues that calls to MSEN terminate in Flint and are not local as defined by Section 102(o) of the MTA or its tariff and that its tariff must be interpreted on the basis of the Commission's 1962 order in Case No. U-846, which found a community of interest between the adjacent exchanges of Newport and Monroe, not Newport and Flint. It also argues that Phone Michigan lacks authority to provide basic local exchange service in the Monroe Exchange because it has not filed the required maps and tariffs defining the geographic area served. As a result, CenturyTel argues that Phone Michigan's [*7] Monroe Exchange is not legitimate and cannot be treated as part of the local calling area for Newport. It further asserts that toll rates must apply until Phone Michigan has an EAS agreement with it. On the other hand, CenturyTel expresses sympathy for Ms. Bierman's situation and is willing to reduce the toll charges to $ 30.00, the cost for two months of service under the Adjacent Exchange Toll Calling Plan (AETCP).

The ALJ found that CenturyTel's tariff failed to inform customers that calls from the Newport Exchange to the Monroe Exchange would be rated as toll calls when Phone Michigan serves the party being called. Further, the ALJ found that there was no notice in the tariff that toll charges would apply unless the provider serving the called party had an interconnection arrangement. Rather, he noted that the tariff shows Monroe as within the local calling area for Newport. In addition, he noted the MTA defines the local calling area as "a geographic area encompassing 1 or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission." MCL 484.2102(o); MSA 22.1469(102)(o).

The ALJ rejected the argument that the calls were not [*8] local because they were routed to Flint. He agreed with the Staff's assessment that the routing of a call is separate from the rating of a call. He also noted that the disputed phone bills show Monroe as the city called. He concluded that the calls originated in Newport and terminated in Monroe, just as calls to Ameritech Michigan's customers that are similarly routed outside of the Monroe Exchange are considered local. In that context, he acknowledged that Ameritech Michigan pays Feature Group A charges to CenturyTel for those calls but, again, noted that the tariff does not disclose that arrangement.

Finally, the ALJ rejected the argument that information in the telephone directory determines whether a call is local. First, he noted that the listing of local calling areas in a telephone directory is not required by the statute. Rather, the MTA required maps, tariffs, and rate schedules to be filed with and

approved by the Commission. Second, he noted that the telephone directory, unlike a tariff, cannot be kept current to include new NXXs and NXXs for which the rating may change. The ALJ concluded that the tariff rather than the directory governed and the calls must be billed as [*9] local.

CenturyTel excepts to the ALJ's conclusion.

The Commission concludes that the complaint must be resolved by reference to the tariff under which CenturyTel provides basic local exchange service to its customers. That tariff defines the local calling area for the Newport Exchange as including the Monroe Exchange. CenturyTel argues, notwithstanding the language of the tariff and a long tradition of local calling to the Monroe Exchange, that calls to only certain customers of certain providers with certain NXXs are local calls and that the customer must determine for herself, at the risk of receiving an unexpected bill for thousands of dollars, whether a particular call will be treated as local or toll. The plain language of the tariff does not support CenturyTel's position. Nevertheless, CenturyTel offers several reasons that its tariff should not be implemented as written.

CenturyTel argues that the Commission's order in Case No. U-846 authorized CenturyTel's predecessor to offer EAS to the Monroe Exchange only in conjunction with Ameritech Michigan and only pursuant to the EAS agreement that was before the Commission. CenturyTel misunderstands the order. The Commission did not [*10] conclude that the "community of interest" between Newport and Monroe, which justified the offering of EAS, depended to any extent on the identity of the providers of basic local exchange service in either exchange, a fact that CenturyTel implicitly acknowledges by its exercise of the authority granted to a predecessor company to offer EAS in the Newport Exchange. Furthermore, the Commission did not approve any particular manner of providing that service. Although the parties had placed an agreement before the Commission, the order did not require that EAS be provided only under that agreement, another fact that CenturyTel implicitly acknowledges by having entered into a new agreement with Ameritech Michigan in 1985 and continuing to offer EAS after Ameritech Michigan terminated that agreement. The tariff properly reflects the Commission's decision that CenturyTel is to offer EAS to its customers regardless of the identity of the provider serving the customers in the Monroe Exchange.

CenturyTel argues that its telephone directory specifies the NXXs to which EAS is offered and the list does not include the NXX for Phone Michigan. Information provided in a telephone directory cannot [*11] prevail over the language of the tariff, at least when it is detrimental to customers. Furthermore, the argument proposes an entirely unworkable system. CenturyTel is willing to provide EAS for calls to Ameritech Michigan's customers (or at least most of them), but if Ameritech Michigan were to obtain a new NXX in the Monroe Exchange, this argument presumably means that CenturyTel would not permit EAS for calls to customers with the new NXX until CenturyTel published a new directory. Likewise, the argument means that CenturyTel would not permit EAS for calls to customers of a new provider until it published a new directory. The argument is even more untenable in light of CenturyTel's position that EAS is not available for calls to all customers with an NXX assigned to the Monroe Exchange, but only for calls that terminate in the exchange. n2 Its argument means that it would have to determine on a number-by-number basis which of the telephone numbers in the Monroe Exchange would be treated as local, its directory (and directory assistance) would have to be kept current with that information, customers would have to periodically consult that list or risk paying toll charges, and CenturyTel [*12] would be able to change the status of

a number only as often as it published a new directory. The proposal is entirely unworkable as well as inconsistent with the tariff.

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n2 CenturyTel views it as improper for an EAS call from Newport to Monroe to be forwarded outside the Monroe Exchange. 4 Tr. 362.

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CenturyTel argues that calls to MSEN required the dialing of 11 digits, which informed the customer that the calls would be treated as toll calls. Again, the argument is inconsistent with the tariff and is unworkable. With the proliferation of NXXs, area code splits, and new providers, dialing arrangements do not determine whether a call is local or toll. Further, the argument is unpersuasive because CenturyTel determined for its own reasons that customers would be required to dial 11 digits for calls to the NXX assigned to Phone Michigan. There is no technical reason for that dialing arrangement. 4 Tr. 349.

CenturyTel argues that MSEN does not have a physical presence within the Monroe Exchange because the calls are terminated [*13] to equipment in Flint. Again, the tariff does not specify that an EAS call must terminate within the exchange, and the argument ignores the fact that routing and rating need not be the same. In fact, the bills sent to Ms. Bierman show the calls as made to Monroe, not Flint, despite the routing and termination of the calls. In any event, the rating for the calls was determined not by the routing but by CenturyTel. 4 Tr. 337. Furthermore, the argument is a red herring because CenturyTel would rate calls to Phone Michigan's customers as toll even if the customers had a presence within the Monroe Exchange. 4 Tr. 313-314. Its position is that until it has an acceptable interconnection agreement with Phone Michigan, it will not rate the calls as local regardless of where the customers are located. n3

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n3 It is likely that CenturyTel is discriminating against Phone Michigan. Although the record is not conclusive, it is doubtful that CenturyTel has tried to determine on a line-by-line basis where calls to Ameritech Michigan's customers terminate or to rate calls on the basis of the presence (or lack thereof) of Ameritech Michigan's customers. 4 Tr. 303-308.

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[*14]

CenturyTel argues that Phone Michigan does not have an interconnection agreement with it. Again, the tariff does not state that requirement, and CenturyTel and Ameritech Michigan do not have an interconnection agreement that governs EAS. Their 1962 agreement was replaced by a 1985 agreement, and Ameritech Michigan gave notice, as it had the right to do, that it was terminating that agreement. Further, if there were an agreement in place today, Ameritech Michigan would be required to file it for Commission approval. It has not done so. While it may be true that the same facilities are in use as in 1962, that does not mean the agreement is still in effect. In any event, CenturyTel concedes that the important matter of interconnection rates is governed by tariff, not by the terminated interconnection agreements. 4 Tr. 317-318.

In short, none of these arguments can overcome the effect of the plain language of the tariff that governs CenturyTel's relationship to its customers. Consequently, the disputed calls were local calls and must be billed as such. There is no basis for CenturyTel's suggestion that it be permitted to bill the complainant for two months of AETCP service, which is not [*15] available for calls from the Newport Exchange to the Monroe Exchange. Exhibit S-7. The Commission therefore orders CenturyTel to rebill Ms. Bierman on the basis that the calls were local and to provide 90 days for her to pay any amount still due after the recalculation of her bill.

Interconnection

It is apparent that the root cause of the filing of this complaint is a dispute between CenturyTel and Phone Michigan. CenturyTel argues that Phone Michigan does not have the interconnection agreement needed to permit CenturyTel's customers to complete EAS calls from the Newport Exchange to Phone Michigan's Monroe Exchange and is not currently authorized to provide service in the Monroe Exchange. It is not apparent why CenturyTel let that disagreement become a reason to bill one of its own customers in violation of its tariff.

The ALJ concluded that Section 303 of the MTA requires an interconnection agreement between CenturyTel and Phone Michigan. The ALJ did not agree with the Staff's position that interconnection may also be accomplished by tariff. The ALJ acknowledged that Ameritech Michigan had provided notice that it was canceling its EAS agreement with CenturyTel (although CenturyTel [*16] disputed the effectiveness of that notice) and might therefore no longer have an agreement with CenturyTel. He nevertheless concluded that Phone Michigan needed an interconnection agreement because he found a distinction between Ameritech Michigan having once had an interconnection agreement and Phone Michigan never having had such an arrangement.

Phone Michigan excepts and argues that Section 303 does not require it to have an interconnection agreement because it is not providing basic local exchange service to customers in CenturyTel's Newport Exchange. It says that CenturyTel and Ameritech Michigan provide EAS pursuant to tariff and that it seeks to do the same. It says that interconnection occurred, because the disputed calls were successfully completed, and that compensation should occur pursuant to tariff, as is done between CenturyTel and Ameritech Michigan.

The Staff also excepts and argues that the MTA permits the provision of interconnection services pursuant to tariff (in fact, requires the filing of such tariffs because interconnection services are regulated), that almost all incumbent local exchange carriers and most competitive local exchange carriers have such tariffs, [*17] that the terms of those tariffs must be available to all providers on a nondiscriminatory basis, that the services provided under the tariffs of CenturyTel and Ameritech Michigan and the interconnection agreement between Phone Michigan and Ameritech Michigan are adequate to permit Phone Michigan to complete EAS calls to its customers, that Ameritech Michigan completes EAS calls from CenturyTel's customers in the Newport Exchange pursuant to tariff, and that the same tariff must be made available to Phone Michigan without any requirement that it negotiate an agreement with CenturyTel.

The Commission agrees with the Staff that interconnection can be accomplished by agreement or tariff. It may be true, as CenturyTel asserts, that there are many issues that must be addressed to arrive at a proper interconnection arrangement and that the tariff primarily addresses the issue of pricing, but it cannot be disputed that the technical arrangements needed to complete the calls are functional because Ms. Bierman's calls were completed. If CenturyTel is

dissatisfied with the arrangement available under the tariffs, there are lawful remedies available through negotiation, arbitration, or the filing [*18] of an application or complaint. Failing to comply with its basic local exchange tariff, which requires that it provide EAS to the Monroe Exchange for its customers, is not a lawful response to its dispute with Phone Michigan.

Discrimination

CenturyTel argues that it has not discriminated against Phone Michigan or its customers because discrimination requires that similarly situated persons be treated differently. CenturyTel argues that Phone Michigan and Ameritech Michigan are not similarly situated for the following reasons: (1) calls to Ameritech Michigan's customers originate and terminate in the Newport and Monroe exchanges; (2) Ameritech Michigan has entered into interconnection arrangements with CenturyTel; (3) the Commission has approved an EAS arrangement for the customers of CenturyTel and Ameritech Michigan in the Newport and Monroe exchanges; and (4) Ameritech Michigan pays Feature Group A toll access revenues to CenturyTel for calls from the Newport Exchange that do not terminate in the Monroe Exchange.

The ALJ agreed that CenturyTel had not discriminated against Phone Michigan.

The Staff excepts and notes that if a CenturyTel customer in the Newport Exchange calls [*19] an Ameritech Michigan customer in the Monroe Exchange, the customer dials seven digits and the call is rated as local. If the customer calls a Phone Michigan customer instead, the customer must dial 11 digits and the call is rated as toll. The Staff says that this discrimination is not permissible. It also notes that CenturyTel permits Ameritech Michigan to provide EAS under a tariff, but will not let Phone Michigan do the same.

Phone Michigan also excepts and says that CenturyTel has discriminated by failing to deliver traffic to Phone Michigan's customers without toll charges when it delivers the same traffic to Ameritech Michigan's customers without toll charges.

The Commission concludes that CenturyTel has discriminated by requiring 11 digit dialing to the NXX assigned to Phone Michigan's Monroe Exchange. There is no reason based on technology to subject Phone Michigan or its customers to that disadvantage. The reason appears to be based more on an intent to single out a competitor and to disadvantage it and its customers by a less convenient dialing pattern and to avoid payment of charges that apply only to local calls. Further, the fact that CenturyTel and Ameritech Michigan [*20] once had an interconnection agreement does not justify CenturyTel's position that it may discriminate against Phone Michigan, Phone Michigan's customers, and its own customers who call Phone Michigan's customers in the Monroe Exchange.

The Commission also concludes that Phone Michigan's failure to file tariff sheets defining the boundary of its Monroe Exchange, while a violation of the MTA, does not prevent the Commission from finding that CenturyTel has discriminated. n4 Phone Michigan's failure to file tariff sheets is not a violation of a criminal or penal statute, is not a causal factor in CenturyTel's discrimination, is not as serious as CenturyTel's discrimination, and does not remove Phone Michigan or Century Tel's own customers from the protections of the MTA against discriminatory and anticompetitive conduct.

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n4 CenturyTel relies on the "wrongful conduct" rule in *Orzel v Scott Drug Co, 449 Mich 550; 537 NW2d 208(1995)*, which bars relief to a plaintiff whose own wrongdoing contributes to the injury.

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[*21]

Remedies and Penalties

The Commission finds it appropriate in this case to fine CenturyTel for assessing toll charges on local calls in violation of its tariff and for discriminating by requiring 11 digit dialing to the NXX assigned to Phone Michigan. CenturyTel's conduct in the first instance was aimed at an innocent party with whom it has no dispute and in both instances is inconsistent with the competitive purposes of the MTA. Because each of the two violations was continuing and most directly affected those with whom it has no dispute, the Commission will assess a fine of $ 500 per day for each violation for the 26 days that the record shows CenturyTel to have been in violation. The Commission also finds it appropriate to require CenturyTel to pay the reasonable attorney fees and costs of the complainant and Phone Michigan.

The Commission FINDS that:

a. Jurisdiction is pursuant to *1991 PA 179*, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; *1969 PA 306*, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. CenturyTel violated its tariff when it assessed toll charges [*22] for local calls.

c. CenturyTel discriminated by requiring 11 digit dialing for call to the NXX assigned to Phone Michigan.

THEREFORE, IT IS ORDERED that:

A. CenturyTel of Michigan, Inc., shall rebill Glenda Bierman on the basis that the disputed calls are local calls and shall permit her 90 days to pay any amount due upon rebilling.

B. CenturyTel of Michigan, Inc., shall make refunds consistent with the findings of this order to each of its similarly situated customers.

C. CenturyTel of Michigan, Inc., shall cease and desist from violating the Michigan Telecommunications Act by rating local calls as toll calls and discriminating against competitive local exchange carriers and their customers.

D. CenturyTel of Michigan, Inc., shall pay a fine of $ 26,000 for the violations of the Michigan Telecommunications Act established on this record.

E. CenturyTel of Michigan, Inc., shall pay the reasonable attorney fees and costs of Glenda Bierman and BRE Communications L.L.C., d/b/a Phone Michigan.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice [*23] of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

By its action of April 12, 1999.

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REBUTTAL TESTIMONY OF TED GAETJEN

EXHIBIT 2

GLOSSARY

"0-" CALL (N)

A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

"0+" CALL

A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number. (N)

ACCESS LINE

A central office line which provides access to the telephone network for local and long distance telephone services.

AIR LINE MEASUREMENT

The shortest distance between two points. A measurement for computation of mileage charges between termination points.

ANSWERING EQUIPMENT

Equipment that will automatically answer incoming calls and make an announcement. It may also be equipped to record messages.

APPLICANT

Any person, partnership, corporation, or any combination thereof requesting affirmative service or action from the Company.

AUTHORIZED PROTECTIVE CONNECTING MODULE

A protective unit approved by the Company which is manufactured in accordance with the design set forth in Part 68 of the Federal Communications Commission's Rules and Regulations.

AUTHORIZED USER

A person, firm or corporation (other than the customer) who has been authorized by the Company to communicate over a private line or channel according to the terms of the tariff and (1), on whose premise a station of the private line service is located or (2), who receives from or sends to the customer over such private line or channel communications relating solely to the business of the customer.

AUTOMATIC IDENTIFICATION OUTWARD DIAL

Provides the capability of automatically identifying the number being called and the number from which the call originates.

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GLOSSARY

AUTOMATIC NUMBER IDENTIFICATION (ANI) (N)

The automatic transmission by the local switching system of the originating telephone number to an interexchange or other communications carrier or to the operator of a 911 system.

BASE STATION (N)

Terminal facilities for the provision of mobile telephone service.

BUILDING (Same)

A structure under one roof, or two or more structures under separate roofs but connected by passageways, in which the wires or cables of the Company can be safely run provided the plant facility requirements are not appreciably greater than would normally be required if all structures were under one roof. In those cases where there are several structures under separate roofs but connected by passageways and the plant facility requirements for furnishing telephone service are appreciably greater than would normally be required if all the structures were under one roof, the term "Same Building" applies individually to each of the separate structures.

BUSINESS SERVICE

Telecommunications service furnished to customers where the primary or obvious use is of a business, professional or occupational nature.

CALL

An attempted communication, whether completed or not.

CALL AGGREGATOR (N)

Any person or entity that owns or otherwise controls telephones intended to be utilized by the public. For the purposes of this definition, a person or entity controls a telephone if that person or entity has the authority to post notices and/or unblock access.

CALLING AREA (N)

See Local Service Area.

CANCELLATION CHARGES

A charge applicable under certain conditions when application for service and/or facilities is canceled in whole or in part prior to the completion of the work involved or before contract period is completed.

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GLOSSARY

CENTRAL OFFICE

A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for the terminating and interconnecting of exchange lines and trunks or trunks only. There may be more than one central office in a building or exchange. M T T

CENTRAL OFFICE AREA

The area within which the customer's lines are connected to the central office operating unit, or units, established by the Company.

CENTRAL OFFICE BUILDING

A building or portion of a building containing one or more central offices. There may be more than one central office building in an exchange, and one central office building may service more than one exchange.

CENTRAL OFFICE LINE

See Access Line.

CENTREX SERVICE

Centrex service is a form of dial exchange service where primary station users are assigned an individual telephone number from the serving exchange and internal and external communications may be processed automatically. The switching equipment may be installed either on the customer or Company's premise. T

CHANNEL

A path, or combination of paths, for communication between two or more stations or Company offices and furnished in such a manner as the Company may elect, whether by wire, radio or a combination thereof and whether or not be means of a single physical facility or route. T M

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GLOSSARY

CIRCUIT

A channel used for the transmission of energy in the furnishing of telephone and other communication services further described as:

(a) Two-wire circuit: A circuit using one transmission path, which may be one carrier pair or one pair (two wires) of metallic conductors.

(b) Four-wire circuit: A circuit using two one-way transmission paths, which may be two carrier paths or two pairs (four wires) of metallic conductors.

CLASS OF SERVICE

A description of telecommunications service furnished a customer which denotes such characteristics as nature of use (business or residence) or type of rate (flat or message rate).

COMMISSION

The Public Utility Commission of Texas.

COMMUNICATIONS SYSTEMS

Channels and other facilities which are capable, when not connected to exchange telecommunication service, of 2-way communication.

COMPANY

San Marcos Telephone Company, Incorporated.

COMPLEX SERVICE

The provision of a circuit requiring special treatment, special equipment or special engineering design.

CONDUIT

A tubular runway for cable facilities.

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FEB 5 '88 DOCKET
CONTROL # 7739
TARIFF CLERK

GLOSSARY

CONNECTING COMPANY

A corporation, association, firm or individual owning and operating a toll line or one or more central offices and with whom traffic is interchanged. M M

CONNECTION

Denotes the establishment of telephone service. A move of existing service to a different premises requires a connection. N N

CONNECTION CHARGE

See "Service Charge." N N

CONSTRUCTION CHARGE

A separate initial charge made for construction of pole lines, circuits, facilities, etc., in excess of that contemplated under the rates quoted in the local exchange tariff. M M T

CONTINUOUS PROPERTY

The plot of ground, together with any building thereon, occupied by the customer, which is not divided by public highways or separated by property occupied by others. Where a customer occupies property on both sides of a street, alley, highway, body of water, railroad right-of-way, etc., and the properties would otherwise be continuous , such properties are treated as continuous property, provided local wire or cable facilities are used and the customer furnishes all local distribution pole line facilities or underground conduit required in connection therewith. M T M T

CONTRACT

The service agreement between a customer and the Company under which service and facilities for communication between specified locations for designated periods and for the use of the customer and the authorized users specifically named are furnished in accordance with the provisions of this tariff. M M

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CONTROL # 7739
TARIFF CLERK

GLOSSARY

CONTRACT PERIOD

The length of time for which a customer is responsible for the charges associated with the services, facilities and equipments under contract.

COST OR COST BASIS

Cost of equipment and materials provided or used plus the cost of installation including engineering, labor, supervision, transportation, rights-of-way and other items which are chargeable. This also denotes the actual expense incurred by the Company relating to the call-out of Company personnel.

CUSTOMER

Any person, firm, partnership, corporation, municipality, cooperative organization or governmental agency furnished communication service by the Company under the provisions and regulations of this tariff and is responsible for the payment of charges and compliance with the rules and regulations of the Company.

(D)

CUSTOMER PREMISES INSIDE WIRE (D)

All wire within a customer's premises, including connectors, jacks and miscellaneous materials associated with the wire's installation. Premises inside wire is located on the customer's side of the Company's premises protector. By definition, customer premises inside wire excludes house, riser, buried and aerial cable.

CUSTOMER-PROVIDED TERMINAL EQUIPMENT

Devices or apparatus and their associated wiring, provided by a customer, which may be connected to the communications path of the Company's exchange network either electrically, acoustically or inductively.

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APPROVED
SEP 12 '97 DOCKET 17238
CONTROL # _____
TARIFF CLERK

GLOSSARY

CUSTOMER TROUBLE REPORT

Any oral or written report from a customer or user of telecommunications service received by the Company relating to a physical defect or to difficulty or dissatisfaction with the service provided by the Company's facilities. One report shall be counted for each oral or written report received even though it may duplicate each telephone reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause. N N

DEMARCATION POINT

The point of interconnection between Telephone Company communications facilities and the terminal equipment, protective apparatus or wiring at a customer's premises. The Demarcation Point is located on the customer's side of the Telephone Company's protector or equivalent. M M T

DETACHED ACCESS LINE

An additional circuit connected to an access line either directly or through a switching device which uses Company facilities. M M

DIRECT BURIAL

The installation of cables or conductors directly in the earth and not in conduit or duct. M M

DIRECT CONNECTION

Connection of terminal equipment to the Company's exchange facilities by means other than acoustic and/or inductive coupling. N N

DIRECT ELECTRICAL CONNECTION

A physical connection of the electrical conductors in the communications path. M M

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

GLOSSARY

DIRECTORY

A book which alphabetically lists each telephone customer with his service location telephone number.

DIRECTORY ASSISTANCE SERVICE

Directory Assistance Service is furnished to supplement the information available in the Company published directory and to furnish telephone numbers to users who are not able to find the listing in their directory.

DIRECTORY LISTING

The publication of the Company's directory and/or directory assistance records, of information relative to a customer's telephone number, by which telephone users are enabled to ascertain the call number of a desired party.

DISCONNECT NOTICE

The written notice sent to a customer following billing, notifying the customer that service will be disconnected if charges are not satisfied by the date specified on the notice.

DISCONNECTION OF SERVICE

An arrangement made at the request of the customer or initiated by the Company for violation of tariff regulations by the customer, for a permanent interruption of telephone service. A "final" bill would be rendered showing moneys owed to the Company as of the date the service was disconnected.

DOMINANT CERTIFICATED TELECOMMUNICATIONS UTILITY (DCTU) (N)

As defined in Substantive Rule 23.3, relating to Definitions. (N)

DROP WIRE

Wires used to connect the aerial, buried or underground distribution facilities to the point where connection is made with a customer's premises.

END USER CHOICE (N)

A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes. (N)

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
JUL 22 '96 DOCKET
CONTROL # 16067
TARIFF CLERK

GLOSSARY

ENTRANCE FACILITIES

Facility extending from the point entrance on private property to the premises on which service is furnished.

EXCHANGE

A unit established by the Company for the administration of telecommunications service in a specified area for which a separate local rate schedule is provided. The area usually embraces a city, town, or village its environs. It consists of one or more central offices, together with associated plant facilities used in furnishing telecommunications services in that area.

EXCHANGE ACCESS LINES

See " Access Line."

EXCHANGE AREA

The area within which the Company furnishes complete telephone service from one specific exchange at the exchange rates applicable within that area.

EXCHANGE LINE

Any circuit connecting an exchange access line with a central office.

EXCHANGE SERVICE

Exchange service is a general term describing as a whole the facilities for local intercommunications, together with the capability to send and receive a specified or an unlimited number of local messages at charges in accordance with the provisions of the Local Exchange Tariff.

(a) Flat Rate Service: A classification of exchange service furnished a customer under tariff provisions, for which a stipulated charge is made, regardless of the amount of use. (D)

(D)

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
SEP 12 '97 DOCKET 17238
CONTROL # _____
TARIFF CLERK

GLOSSARY

(D)

(D)

EXTENDED AREA SERVICE

A type of telephone service furnished under tariff provisions where by customers of a given exchange may complete calls to and/or may receive calls from one or more exchanges without the application of long distance message telecommunications charges.

FACILITIES

All the plant and equipment of the Company and all instrumentalities owned, licensed, used, controlled, furnished, or supplied for or by the Company, including any construction work in progress allowed by the Public Utility Commission of Texas.

FAMILY

A group of two or more persons related by blood, marriage or adoption and residing together. A primary family consists of the head of a household and all (one or more) other persons in the household related to the head. A secondary family comprises two or more persons such as guests, lodgers, or resident employees and their relatives, living in a household or quasi-household (other than the negligible number of such groups among inmates or institutions) and related to each other.

FLAT RATE SERVICE

A classification of exchange service furnished a customer under tariff provisions for which a stipulated charge is made regardless of the amount of use.

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
SEP 12 '97 DOCKET 17238
CONTROL # _____
TARIFF CLERK

GLOSSARY

FOREIGN EXCHANGE SERVICE

M

Exchange Service furnished under tariff provisions by means of a circuit connecting a customer's premises with a central office of an exchange other than that which regularly serves the exchange area in which the customer is located. T

M

GENERAL EXCHANGE SERVICES

N

Services furnished by the Company connected to or associated with primary Local Exchange Service.

N

GRANDFATHERED COMMUNICATIONS SYSTEMS

N

All communications systems (including their equipment, premises wiring and protective circuitry, if any) lawfully connected at the customer's premises which are considered to be grandfathered under Part 68 of the Federal Communications Commission's Rules and Regulations because such systems were connected to the telecommunications network prior to January 1, 1980, and are of a type of system which was directly connected (i.e., without Company-provided connecting arrangements) to the telecommunications network as of June 1, 1978.

N

GRANDFATHERED CONNECTIONS OF COMMUNICATIONS SYSTEMS

N

All lawful connections via Company-provided connecting arrangements of customer-provided communications systems (including their equipment and premises wiring) at the customer's premises which are considered to be grandfathered under Part 68 of the Federal Communications Commission's Rules and Regulations because such connections to the telecommunications network were made via Company-provided connecting arrangements prior to January 1, 1980, and such connecting arrangements are of a type of connecting arrangement connected to the telecommunications network as of June 1, 1978.

N

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

GLOSSARY

GRANDFATHERED CONNECTIONS OF TERMINAL EQUIPMENT

N

All connections via Company-provided connecting arrangements of customer-provided terminal equipment lawfully connected at the customer's premises which are considered to be grandfathered under Part 68 of the Federal Communications Commission's Rules and Regulations because such connections to the telecommunications network were made via Company-provided connecting arrangements prior to July 1, 1979, and such connecting arrangements are the same type of connecting arrangement connected to the telecommunications network as of October 17, 1977.

GRANDFATHERED TERMINAL EQUIPMENT

All terminal equipment (including protective circuitry, if any) lawfully connected at the customer's premises which are considered to be grandfathered under Part 68 of the Federal Communications Commission's Rules and Regulations because such terminal equipment was connected to the telecommunications network prior to July 1, 1979, and is of a type of terminal equipment which was directly connected (i.e., without Company-provided connecting arrangements) to the telecommunications network as of October 17, 1977.

HARM

Electrical hazards to Company personnel, damage to Company equipment, malfunctions of Company billing equipment, and degradation of service to persons other than the user as well as the calling or called party.

N

HOUSEHOLD

M

A household comprises all persons who occupy a dwelling unit, that is, a house, an apartment or other group of rooms or a room that constitutes separate living quarters. A household includes the related persons (the head of the household and others in the dwelling unit who are related to the head) and also the lodgers and employees, if any, who regularly live in the house. A person living alone or a group of unrelated persons sharing the same dwelling unit as partners is counted as a household.

M

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7724

GLOSSARY

HUNTING LINE SERVICE M T

A central office service arrangement whereby a called busy line in a specified line group will automatically advance until an idle line or trunk is found. M T

IDENTIFICATION NUMBER M T

An identifying number of a particular model of "Conforming Device" attested by a manufacturer or supplier to comply with the standards and procedures set forth in the Federal Communications Commission's Part 68. M T

INITIAL NONRECURRING CHARGE M T

A nonrecurring charge made for the furnishing of telephone services, which may apply in addition to service connection charges. M T

INITIAL SERVICE PERIOD M T

The minimum period of time for which service is provided. M T

INSTALLATION CHARGE N

A nonrecurring charge associated with optional service features and may sometimes be called an "initial" charge, and may apply in addition to Service Connection Charges. N

INTERCEPT SERVICE N

A service arrangement provided by the Company whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, or discontinued, or changes to another number or that calls are received by another telephone.

INTEREXCHANGE PRIVATE LINE

A communication path between two or more exchanges, and not connected for exchange telephone service. N

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

GLOSSARY

INTERFACE

(a) The junction or point of interconnection between two systems or equipments having different characteristics which may differ with respect to voltage, frequency, speed of operation, type of signal and/or type of information coding including the connection of other than Company-provided facilities to exchange facilities provided by the Company.

(b) The point of interconnection between Company equipment and communications facilities on the premises of the Customer. Also referred to as Demarcation Point.

INTERFACE EQUIPMENT

Equipment provided by the Company at the interface location to accomplish the direct connection of facilities provided by the Company with facilities provided by other than the Company.

INTERLATA

Long Distance Message Telecommunications Service where point locations are in a different Local Access and Transport Area (LATA).

INTRALATA

Long Distance Message Telecommunications Service where service point locations are within the same Local Access and Transport Area (LATA).

INTRAEXCHANGE CHANNEL SERVICE

Channel connecting two or more "Primary Terminations" in the same exchange.

INTRAEXCHANGE SERVICE

Telecommunications service confined wholly within a single exchange.

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739
TARIFF CLERK

GLOSSARY

JACK

A modular outlet designed to permit the establishment of a connection between the local exchange facilities and terminal equipment with cords ending in plugs. M T M T

LABELING

Registered terminal equipment and/or registered protective circuitry shall have prominently displayed on an outside surface information providing the registration number, the ringer equivalence number, the grantee's names, model number and serial number or date of manufacture. N N

LINE

See "Access Line." M M

LOCAL ACCESS AND TRANSPORT AREA (LATA)

Denotes a geographic area established for the administration of telecommunications service. It encompasses designated local operating Telephone Company exchanges which are grouped to serve common social, economic, and miscellaneous purposes. N N

LOCAL CALLING AREA

See "Local Service Area." M M T

LOCAL CHANNEL

Applies to that portion of a channel which connects a station to the interexchange channel or to a channel connecting two or more exchange access lines within an exchange area. M M T

LOCAL EXCHANGE SERVICE

Provides for telephone communication within local service areas in accordance with the provisions of the General Customer Services Tariff, including the use of exchange facilities required to establish connection between exchange access line. M T M T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

GLOSSARY

LOCAL MESSAGE

A communication between two exchange access lines within the local service area of the calling telephone. M T M

LOCAL MESSAGE CHARGE

The charge that applies for a completed message that is made when the calling exchange access line and the called exchange access line are both within the same local calling area where a local message charge is applicable. N N

LOCAL SERVICE

The intercommunication (by means of facilities connected with the Company central office or offices and under the provisions of the Company) between exchange access lines located in the same exchange or in different exchanges between which no toll rates apply. M T T M

LOCAL SERVICE AREA (LOCAL CALLING AREA)

The area within which telephone service is furnished customers under a specific schedule of exchange rates (flat or measured) and without toll charges. A local service area may include one or more exchange areas under extended area service arrangement. N

LOCAL SERVICE CHARGE

The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local service area. This local service calling area may include one or more exchange areas. N

LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE

Facilities furnished by means of wire, radio or a combination thereof for telecommunications between access lines in different local service areas in accordance with the regulations and system of charges specified by the Company. The toll service charges specified are in payment for all service furnished between the calling and called access lines. M T M T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

GLOSSARY

MAINTENANCE SERVICE CHARGE N

A nonrecurring maintenance charge where service difficulty or trouble results from the use of customer-provided equipment or inside wiring.

MESSAGE N

A communication between two exchange access lines. Messages may be classified as local or toll. M T

MILEAGE M

The measurement (airline, route, etc.,) upon which a charge for the use of part or all of a circuit furnished by the Company is based. M T

MINIMUM CONTRACT PERIOD M

The minimum length of time for which a customer is obligated to pay for service, facilities and equipment, whether or not retained by the customer for such minimum length of time. N

MISCELLANEOUS COMMON CARRIERS N

Communications common carriers which are not engaged in the business of providing either a public landline message telephone service or a public message telegraph service. M

MOBILE TELEPHONE SERVICE M

Telecommunications service provided by means of radio frequencies through a land radio-telephone base station. Connections may be established between a wire access line and a mobile or fixed unit or between two mobile or fixed units. M T

MODULAR OUTLET N

See "Jack." N

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7729

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
SEP 12 '97 DOCKET 17238
CONTROL # _____
TARIFF CLERK

GLOSSARY

NETWORK CONTROL SIGNALING

The transmission of signals used in the telecommunications system which perform functions such as supervision (control, status and charging signals), address signaling (e.g., dialing), calling and called number identification and audible tone signals (call progress signals indicating recorder or busy conditions, alerting coin denominations, coin collect and coin return tones) to control the operation of switching machines in the telecommunications system.

NETWORK CONTROL SIGNALING UNIT

The terminal equipment furnished, installed and maintained by the Company for the provisions of network control signaling.

NETWORK INTERFACE

See "Interface."

NONPUBLISHED TELEPHONE NUMBER

A telephone associated with an exchange access line which, at the request of the customer, is not listed in the telephone directory and is not made available to the general public by the Company.

NONRECURRING CHARGE.

A one-time charge associated with certain installation, changes or transfers of services, either in lieu of or in addition to recurring monthly charges.

ONE PARTY SERVICE

An exchange access line designed for the provision of exchange service to one premise.

OPERATOR SERVICE

Any service using live operator or automated operator functions for the handling of telephone service, such as toll calling via collect, third number billing, and calling card services. The transmission of "1-800 and 1-888" numbers, where the called party has arranged to be billed, is not operator service.

OPERATOR SERVICE PROVIDER (OSP)

Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. (D)

(D)

ORIGINATING LINE SCREENING (OLS)

A two digit code passed by the local switching system with the ANI at the beginning of a call that provides information about the originating line.

GLOSSARY

OTHER COMMON CARRIER (OCC)

This term denotes Specialized Common Carriers, Domestic and International Record Carriers and Domestic Satellite Carriers engaged in providing services authorized by the Federal Communications Commission.

OTHER COMMON CARRIER TERMINAL LOCATION

A discrete operational and equipment location of the OCC from which the OCC furnishes and administers common carrier communications services to its patrons.

OUTLET

See "Jack." (D)

PAYPHONE SERVICE (D) (C)

Includes lines to which coin, coinless, card reader or a combination of coin/card reader telephones may be attached. (C) (D)

PERMANENT DISCONNECT (D)

A discontinuance of service in which the facilities used in the service are immediately made available for use for another service.

PERSON

Includes individuals, partnerships, corporations, governmental bodies, associations and any other such entity.

PREMISES (D)

The same premises consists of:

a) the building or buildings, together with the surrounding land occupied as or used in the conduct of one establishment, business, residence or a combination thereof, and not intersected by a public road or by properly occupied by the others;

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
SEP 12 '97 DOCKET 17238
CONTROL #
TARIFF CLERK

GLOSSARY

PREMISES (Cont'd)

(b) the portion of the building occupied by the customer, either in the conduct of his business or residence, or a combination thereof, and not intersected by a public corridor or by space occupied by others.

(c) the continuous property operated as a single farm whether or not intersected by a public road.

M M

PREMISES WIRING

All wire within a customer's premises, including connectors, jacks and miscellaneous materials associated with the wire's installation. Premises inside wire is located on the customer's side of the Telephone Company's premises protector. By definition, Customer Premises Inside Wire excludes riser, buried and aerial cable.

N N

PREASSIGNED NUMBER

A telephone number preassigned before service is actually established.

N N

PREWIRING

Any inside wiring done at the location of a residence or business prior to the initial installation of telephone service.

N N

PRIMARY SERVICE

The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer, the move of an existing customer to a new premise or the change of a telephone number.

M M T T T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

GLOSSARY

PRIMARY TERMINATION

Applies to channels which extend beyond the continuous property of a customer or the confines of a single building housing the premises of more than one customer. Also, denotes the first termination of such a channel at a station or PBX on the continuous property of a customer. When more than one customer's premises is located within the same building, the first termination of such a channel at that building constitutes a "Primary Termination." For purpose of this definition, the location of a "Primary Termination" for channel services associated with "Switching System Services" is considered to be at the "Switching System Services" serving central office. When the "Switching System Services" serving central office is not in the same exchange as the main location, the "Mileage Service Area" center for the main location will be used in lieu of the "Switching System Services" serving central office. M T M

PRINCIPAL CENTRAL OFFICE

Refers to the central office in a single office exchange or to that office (usually the toll office) of a multi-office exchange which is designated as such for the purpose of measuring local and interexchange channel mileages. M E M

PRIVATE BRANCH EXCHANGE LINE

A channel connecting the PBX station or other terminal equipment with the PBX switching equipment. M T M

PRIVATE BRANCH EXCHANGE TRUNKS

Trunks connecting a Private Branch Exchange System with a central office for communication with the general exchange network and for long distance message telecommunications service. M T M T

PRIVATE LINE

A circuit provided to furnish dedicated communication between two or more directly connected locations and not having connection with central office switching equipment. M T M T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7729

GLOSSARY

PRIVATE LINE SERVICE

The channels furnished to a customer for communication between specified locations.

(D)

(D)

PROTECTIVE CONNECTING ARRANGEMENT

Equipment provided by the Company for electrical protection when facilities provided by other than the Company are connected with facilities provided by the Company.

PROVIDER OF PAY TELEPHONE SERVICE

A subscriber to COPTS, an incumbent local exchange company providing pay telephone service, and any other entity provide PTS.

(D)

(D)

PUBLIC THOROUGHFARE

A road, street, highway, lane or alley under the control of and kept by the public.

PUBLISHED TELEPHONE NUMBER

A number which appears in the current telephone directory, or is scheduled to appear in a forthcoming telephone directory, and which also appears in the information records for general public information.

RATE CENTER

A specified geographical location within an exchange area from which mileage measurements are determined for the application of rates between exchange areas.

RATE INFORMATION

All charges ultimately charged to the PTS provider, including any surcharges, fees and any other form of compensation charged by the PTS provider on behalf of the call aggregator.

REFERENCE LISTING

The listing of a generally accepted name of a firm or corporation followed by a reference to another listing.

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
SEP 12 '97 DOCKET 17238
CONTROL #

GLOSSARY

REGISTERED PROTECTIVE CIRCUITRY

Separate, identifiable and discrete electrical circuitry designed to protect the telephone network from harm, which is registered in accordance with Part 68 of the FCC Rules and Regulations.

REGISTERED TERMINAL EQUIPMENT

Terminal equipment which is registered in accordance with Part 68 of the FCC Rules and Regulations.

RESIDENCE EXCHANGE ACCESS LINE

An exchange access line used to provide exchange telephone service to a residence customer.

RESIDENTIAL SERVICE

Telecommunications service furnished to customers when the actual or obvious use is for domestic purposes.

ROTARY DIAL SERVICE

A service arrangement whereby calls are originated through the use of a telephone equipped with a rotary dial instead of push-button tone pad.

ROUTE MEASUREMENT

The physical length of a circuit between two points.

SAME BUILDING

See "Building"

(D)

(D)

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
SEP 12 '97 DOCKET 17238
CONTROL # _____
TARIFF CLERK

GLOSSARY

SERVICE CALL N

A visit to a customer's premises in connection with a service difficulty. See also Maintenance Service Charge. N

SERVICE CHARGES M T

A nonrecurring charge applying to the provisions of telephone service. M

SERVICE DROP N

Facilities used to connect buried, aerial or underground distribution facilities to the point of entrance to the building where connection is made with the inside wires of a customer's telephone. N

SERVING CENTRAL OFFICE M

The central office from which a customer's telephone service is normally provided. M

SIGNAL CONDITIONING EQUIPMENT M

That equipment connected to a channel to condition signals generated by data terminal equipment. M

SINGLE CHANNEL (Half Duplex) M

A channel with the capability of transmission alternately in either direction, or for transmission in one direction only. M

STATION EQUIPMENT M

Customer-owned equipment connected to a channel to transmit and/or receive voice communications and/or data signals. T M T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

GLOSSARY

SUPERSEDURE OF SERVICE

An applicant who otherwise qualifies for the immediate establishment of service may supersede the service of a customer discontinuing that service when the applicant is to take service on the premise where that is being rendered if a notice to that effect from both the customer and the applicant is presented to the Company and if an arrangement, acceptable to the Company, is made to pay outstanding charges against the service. The Company may require such notice to be in writing. M E M

SUPPLEMENTAL CONTRACT

A contract for service, equipment or facilities in addition to that provided for under the original contract. M M

SUSPENSION OF SERVICE

An arrangement made at the request of the customer or initiated by the Company, for temporarily interrupting service. During the period of suspension there is no reduction in local service charges. M T M

TARIFF

The schedule of the Company containing all rates, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the Company stated separately by type or kind of service and the customer class as filed with the Public Utility Commission of Texas. N N

TELECOMMUNICATIONS SERVICES

The various services offered by the Company as specified in this tariff. M M T

TELEPHONE NUMBER

A numerical designation assigned to a customer for convenience in operation and identification. The telephone numbers include the number prefix of a central office, which is termed "Central Office Designation." M T T M T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7729
TARIFF CLERK

GLOSSARY

TELEPHONE OR TELECOMMUNICATIONS NETWORK

The local telephone exchange and long distance message telecommunications facilities, or network; both inter and intrastate. N

TEMPORARY DISCONNECTION

See "Suspension of Service." N

TEMPORARY SERVICE

The provision of service definitely known to be required for a short period of time (generally less than twelve consecutive months) such as service furnished to building contractors, service to a convention, and service for seasonal business including resorts. N

TERMINAL EQUIPMENT ACCESSORIES

Devices, apparatus and their associated wiring, provided by a customer, which do not constitute a communications system and which, when connected to the telecommunications system of the Company are connected either electrically, acoustically or inductively. N

TERMINATION AGREEMENT

An agreement between the Company and the customer to provide or furnish certain lines or equipment representing a comparatively high investment or in lieu of a contribution to construction for temporary service whereby the customer agrees to compensate the Company in case the service is discontinued prior to the date specified in the agreement. N

TERMINATION CHARGE

A charge made to liquidate a customer's obligations for termination of service prior to the expiration of the initial contract period. M T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739

GLOSSARY

TERMINATION OF SERVICE

The discontinuance of service or facilities provided by the Company, either at the request of the customer or by the Company under its regulations concerning cancellation for cause. T M

TIE LINE

A circuit connecting two switching systems (PBX and/or Automatic Call Distribution Systems) for the purpose of intercommunicating between the stations connected. M T M

TOLL MESSAGE

A communication between two exchange access lines, the called access line being outside of the local or service area of the access line from which the message originates. M T T M T

TOLL RATE

The initial period charge prescribed for a toll message usually based upon a minimum initial period and distance between exchanges. N N

TOLL SERVICE

That part of the total telephone service rendered by the Company which is furnished between different local service areas in accordance with the rates and regulations specified in the Long Distance Message Telecommunications Tariff as may be issued or concurred in by the Company. M T T M T

TOUCH-PHONE SERVICE

A classification of exchange service furnished from the central offices, whereby calls are originated through the use of push-button tone pad instruments in lieu of a rotary dial instrument. M T T T M T

TRANSIENT MOBILE UNITS

A mobile unit communicating through a foreign base station. M M

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET

GLOSSARY

TRUNK LINE N

A telephone communication channel between a central office and a PBX, PABX, or a Key System for the common use of all calls of one class between its two terminals. N

UNDERGROUND SERVICE CONNECTION N

A drop wire or cable which is run underground from a pole line or an underground distributing cable. N

VOICE GRADE FACILITY M

A communications path typically used in the telecommunications industry for the transmission of voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hertz between two points comprised of any form or configuration of physical plant capable of transmitting and receiving these frequencies. M T

WATS M

See "Wide Area Telecommunications Service." M

WIDE AREA TELECOMMUNICATIONS SERVICE M

A service designed to meet the needs of customers who make or receive substantial volumes of long distance telephone calls. This service is only provided on an inward or outward basis. M

WIRE CENTER M

A central office location where telephone feeder and distribution cables are terminated. T M T

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET

RULES AND REGULATIONS

2.6 LIABILITY OF THE COMPANY (Cont'd)

2.6.2 Use of Facilities of Other Connecting Carriers

When suitable arrangements can be made, facilities of other connecting carriers may be used in conjunction with the Company's facilities in establishing connections to points not reached by those facilities. Neither this Company nor any connecting carrier participating in a service shall be liable for any act or omission of any other company or companies furnishing a portion of such service.

2.6.3 Indemnifying Agreement

The Company shall be indemnified and saved harmless by the customer against; claims for libel, slander, or the infringement of copyright arising directly or indirectly from the material transmitted over Company facilities or the use thereof, claims for infringement of patents arising from combing facilities furnished by the Company connection with, apparatus and systems of the customer and all other claims arising out of any act or omission of the customer in connections with the facilities provided by the Company.

2.6.4 Defacement of Premises

The Company is not liable for any defacement or damage to the premises of a customer resulting from the furnishing of service or the installation, attachment, or removal of the facilities furnished by the Company on such premises, when such defacement or damage is not the result of the sole negligence of the Company or its employees.

2.6.5 Service and Facilities in Explosive Atmospheres

A. The Company does not guarantee nor make any warranty with respect to service and facilities provided by it for use in an explosive atmosphere. The customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by the customer or by any other

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET
CONTROL # 7739
TARIFF CLERK

BASIC LOCAL EXCHANGE SERVICE

3.2 MONTHLY LOCAL EXCHANGE SERVICE RATES

3.2.1 Local Flat Rate Component

The following schedule of rates entitles customers to an unlimited number of local calls within the local calling area as indicated in Section 3.1.1 of this tariff. *

ACCESS LINE

CLASS OF SERVICE	RATE
BUSINESS SERVICE	
INDIVIDUAL	$12.50
KEY/HUNTING	$13.10
PBX	$19.70
RESIDENCE SERVICE	
INDIVIDUAL	$ 5.70
KEY/HUNTING	$ 6.30

PUBLIC UTILITY COMMISSION OF TEXAS
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APR 19 '02 DOCKET 2578
CONTROL # 2578
TARIFF CLERK

* Rates for Local Exchange Service do not include a charge for an instrument or other Customer Premises Equipment.

(1) Promotion:

Non-recurring charges will be waived for residential and single-line business customers who install an additional line at the same premises during the promotional period from May 1, 2002 through May 31, 2002. (N)

BASIC LOCAL EXCHANGE SERVICE

3.2 MONTHLY LOCAL EXCHANGE SERVICE RATES (Continued)

3.2.1.a Expanded Toll-Free Local Calling Service (Continued)

B. ELCS is a non-optional service subject to the rate specified below. This monthly rate additive is assessed on a per access line basis to all customers in the San Marcos Exchange and is intended to recover the lost toll and added expenses of implementing ELCS, per Substantive Rule §23.49(c). The rate is in addition to the basic local exchange rate as specified in this tariff. This rate will apply as of the date of implementation ordered by the Commission and until CenturyTel of San Marcos, Inc.'s next general rate case.

C. The following exchanges are within the San Marcos ELCS calling scope:

	Monthly Rate
Kyle, Texas Fentress, Texas Lockhart, Texas Lytton Springs, Texas Dale, Texas	
Expanded Toll-Free Local Calling Service (ELCS) (per access line)	$ 0.39

(D)

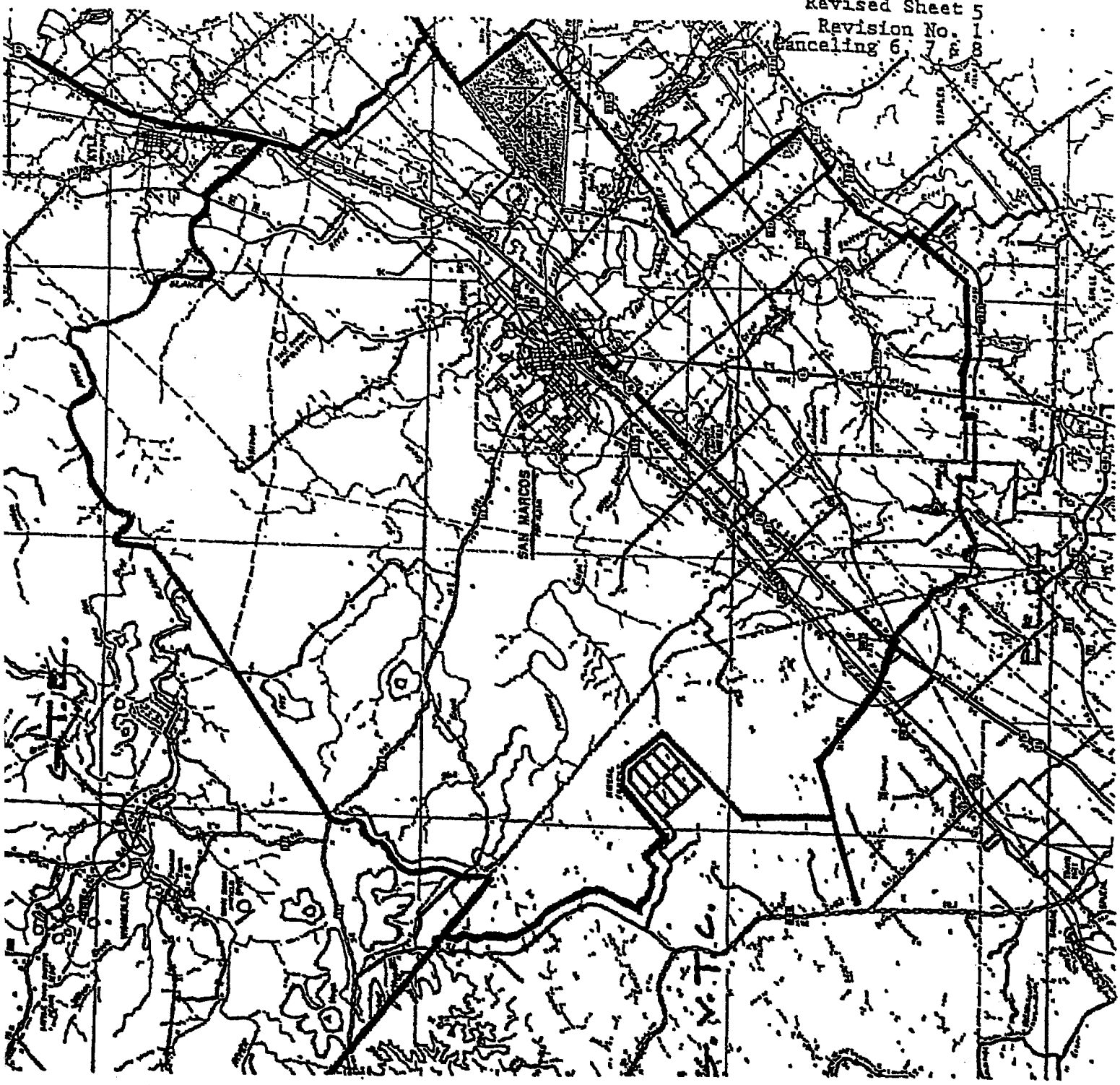
(D)

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
MAR 19 '02 DOCKET 24463
CONTROL # _____

GENERAL CUSTOMER SERVICES TARIFF

SAN MARCOS TELEPHONE COMPANY, INC.

Section 3
Revised Sheet 5
Revision No. 1
Canceling 6, 7 & 8



James J. Pendergast, Jr.
President

Effective: December 31, 1987

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
FEB 5 '88 DOCKET

INTERXCHANGE SERVICES

12.1 LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE (LDMTS)

SAN MARCOS TELEPHONE COMPANY, INC., concurs in the Long Distance Message Telecommunications Service Tariff for IntraLATA Toll Service filed by Southwestern Bell for the Local Exchange Carriers of Texas. This concurrence includes the rates, charges, rules and regulations governing the IntraLATA Toll Service, including all amendments, revisions or successive issues thereof. SAN MARCOS TELEPHONE COMPANY, INC., makes itself a party to such rates, charges, rules and regulations until this concurrence is revoked or cancelled by either company. Subject to the jurisdiction of the Public Utility Commission of Texas, SAN MARCOS TELEPHONE COMPANY, INC., expressly reserves the right to cancel this statement of concurrence when it appears that such cancellation is appropriate.

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D

12.2 WIDE AREA TELECOMMUNICATIONS SERVICE

SAN MARCOS TELEPHONE COMPANY, INC., concurs in the Wide Area Telecommunications Service Tariff for IntraLATA WATS filed by Southwestern Bell for the Local Exchange Carriers of Texas. This concurrence includes the rates, charges, rules and regulations governing the IntraLATA WATS Service, including all amendments, revisions or successive issues thereof. SAN MARCOS TELEPHONE COMPANY, INC., makes itself a party to such rates, charges, rules and regulations until this concurrence is revoked or cancelled by either company. Subject to the jurisdiction of the Public Utility Commission of Texas, SAN MARCOS TELEPHONE COMPANY, INC., expressly reserves the right to cancel this statement of concurrence when it appears that such cancellation is appropriate.

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PUBLIC UTILITY COMMISSION OF TEXAS
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JUL 23 '91 DOCKET 10002
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TARIFF CLERK

REGULATIONS

15. Application of Construction Charges

When special construction for individual customers is necessary, special construction charges may apply as set forth in Section 9 of the General Exchange Tariff.

16. Time and Charges

Time and charges on long distance messages may be quoted upon request from the customer. Name association with time and charge details will be provided where facilities permit. SWBT reserves the right to determine the facility used where there are multiple facilities.

17. Connections of Terminal Equipment and Communications Systems

17.1 General Provisions

Terminal equipment and communications systems may be connected at the customer's premises to LDMTS furnished by SWBT where such connections are made in accordance with the provisions of Section 8 of the General Exchange Tariff.

18. Method of Applying Rates

18.1 LDMTS rates between points (cities, towns or localities) are based on the air line distance between rate centers. In general, each point is designated as a rate center; certain small towns or localities are adjacent rate centers with which they are closely associated for communication purposes or by community of interest.

18.2 For the purpose of determining air line mileages, vertical and horizontal grid lines have been established across the United States and Canada. The spacing between adjacent vertical grid lines and between horizontal grid lines represents a distance of one coordinate unit. This unit is the square root of 0.1, expressed in statute miles. A vertical (V) and a horizontal (H) coordinate is computed for each rate center from its latitude and longitude location by use of appropriate map projection equations. A pair of V-H coordinates locates a rate center, for determining air line mileages, at a particular intersection of an established vertical grid line with an established horizontal grid line. The distance between any two rate centers is the air line mileage computed as explained in 18.3, following, with fractional miles being considered full miles.

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REGULATIONS

18. Method of Applying Rates (Cont'd)

18.3 Determination of Air Line Mileages

To determine the rate distance between any two rate centers proceed as follows:

(A) Obtain the "V" and "H" coordinates for each rate center.

(B) Obtain the difference between the "V" coordinates of the two rate centers. Obtain the difference between the "H" coordinates.

Note: The difference is always obtained by subtracting the smaller coordinate from the larger coordinate.

(C) Divide each of the differences obtained in (B) by three, rounding each quotient to the nearer integer.

(D) Square these two integers and add the two squares.

If the sum of the squares is greater than 1777, divide the integers obtained in (C) by three and repeat step (D). Repeat this process until the sum of the squares obtained in (D), is less than 1778.

(E) The number of successive divisions by three in steps (C) and (D) determines the value of "N". Multiply the final sum of the two squares obtained in step (D) by the multiplier specified in the following table for this value of "N", preceding:

N	Multiplier	Minimum Rate Mileage
1	0.9	----
2	8.1	41
3	72.9	121
4	656.1	361
5	5,904.9	1,081
6	53,144.1	3,241

(F) Obtain square root of product in (E) and, with any resulting fraction, round up to next higher integer. This is the message rate mileage except that when the mileage so obtained is less than the minimum rate mileage shown in (E), preceding, the minimum rate mileage corresponding to the "N" value is applicable.

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LOCAL ACCESS AND TRANSPORT AREAS

2. List of Local Access and Transport Areas (Cont'd)

2.2 AMARILLO LATA (556) (Cont'd)

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES (Cont'd)

Nazareth
Oklahoma Lane
Panhandle
Parmer
Perryton
Pleasant Hill
Quitaque
Sanford
Silverton
South Texhoma
Spearman
Stevens
Stratford
Summerfield
Sunray
Texhoma, Okla.
Texline
Tharp
Turkey
Turpin, Okla.
Tyrone, Okla.
Umbarger
Vega
Wellington
Westway
Wheeler
White Deer
Wildorado

2.3 AUSTIN LATA (558)

ADAMSVILLE
AUSTIN
BASTROP
ELGIN
LAMPASAS
LIBERTY HILL
LOCKHART
ROCKDALE
SMITHVILLE
TAYLOR

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES

Bertram
Briggs
Buchanan Dam
Buda
Burnet
Coupland
Dale
Dripping Springs
Fentress
Georgetown
Granger
Hutto
Jarrel
Kempner
Kyle
Lometa
Lytton Spring
Martindale
McDade
Milano
Paige
Rocky Creek
San Gabriel
San Marcos
Thorndale-Thrall
Wimberley

2.4 BEAUMONT LATA (562)

BEAUMONT
BRIDGE CITY
BUNA
CHINA
DEWEYVILLE
EVADALE
FANNETT
JASPER
KIRBYVILLE
KOUNTZE
LaBELLE
LUMBERTON
MAURICEVILLE
NEDERLAND-PORT NECHES
ORANGE
PORT ARTHUR
SABINE PASS
SILSBEE
SOUR LAKE
SOUTH VIDOR
SPURGER
VIDOR
WARREN
WESTBURY
WILDWOOD
WOODVILLE

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES

Anahuac
Bon Wier
Bronson
Burkeville
Colmesneil
Double Bayou
Fairmount
Hamshire
Hankamer
Hemphill
High Island
Milam
Newton
Nome
Pineland
Smith Point
Wallisville
Winnie

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
MAR 11 '92 DOCKET
CONTROL 10028

REBUTTAL TESTIMONY OF TED GAETJEN

EXHIBIT 3

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 02-1740
Released July 18, 2002

COMMENT SOUGHT ON SPRINT PETITION FOR DECLARATORY RULING REGARDING THE ROUTING AND RATING OF TRAFFIC BY ILECs

Pleading Cycle Established

CC Docket No. 01-92

Comments Due: August 8, 2002
Reply Comments Due: August 19, 2002

On May 9, 2002, Sprint Corporation (Sprint), on behalf of its wireless division, filed a petition for declaratory ruling seeking confirmation that: (1) an incumbent local exchange carrier (ILEC) may not refuse to load telephone numbering resources of an interconnecting carrier, and (2) an ILEC may not refuse to honor the routing and rating points designated by that interconnecting carrier.[1]

According to Sprint, when it applies for a new NPA-NXX code[2] from the North American Numbering Plan Administrator (NANPA), Sprint is required to provide all relevant call rating and routing information for that NPA-NXX code. This call routing information includes not only the mobile switching center (MSC), but also includes the local access and transport area (LATA) tandem switch. The LATA tandem switch information is particularly important because few carriers interconnect directly with each other; rather, they connect to the public switched telephone network (PSTN) at a LATA tandem switch. According to Sprint, when a call is placed, the originating carrier routes the call to an end-user via the LATA tandem switch, which is generally operated by a regional Bell operating company (RBOC). The LATA

[1] *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92, Petition of Sprint (filed May 9, 2002) (Sprint Petition).

[2] The term NPA-NXX (numbering plan area code and central office code) refers to the first three digits (NPA) and the second three digits (NXX) of a ten-digit telephone number in the form NXX-NXX-XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9. *See* 47 C.F.R. §§ 52.7(a) and (c).

tandem switch then forwards the call to the subtending MSC operated by the mobile carrier so that the call can terminate at the called party's mobile phone.[3]

The source of Sprint's concern is its contention that, in certain circumstances, BellSouth has signaled its intention to refuse to program its LATA tandem switches with Sprint's NPA-NXXs. In particular, where Sprint wishes to associate an NPA-NXX with a rate center of an ILEC other than BellSouth, and the rating and routing points are different (*e.g.*, the routing point could be Sprint's MSC, but the rating point would be an independent ILEC's rate center), Sprint contends that BellSouth's position is to refuse to load its LATA tandem switch with Sprint's call routing and rating information.[4]

According to Sprint, BellSouth effectively would require Sprint to interconnect directly with the independent ILEC, whose rate center Sprint wishes to be associated with, rather than directly with the BellSouth LATA tandem switch serving the independent ILEC's end office.[5] Sprint asserts that it cannot economically justify the costs of a direct connection with the independent ILEC.[6] The Sprint Petition also raises the obligation of the BellSouth to route calls to *existing* CMRS NPA-NXX codes that meet these same criteria.

On May 22, 2002, BellSouth filed an opposition to the Sprint Petition.[7] According to BellSouth, it is currently loading NPA-NXXs that Sprint acquires. BellSouth also contends that it is not currently adversely affecting the routing of any Sprint traffic. In its opposition BellSouth states that it believes that the rating and routing arrangements described above result in inappropriate intercarrier compensation, claiming that "[v]arious forms of intercarrier compensation, including reciprocal compensation, access charges, and inter-company settlements could apply to this traffic."[8] According to BellSouth, when a CMRS carrier does not interconnect directly with the independent ILEC and BellSouth transits calls with rate centers within the independent ILEC's calling area, but with routing points within BellSouth's calling area, the following questions need to be resolved: (1) does BellSouth provide Sprint with the equivalent of a virtual NPA-NXX,[9] (2) does BellSouth have to modify its tariff, or (3) does a

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[3] Sprint Petition at 4-5

[4] Sprint Petition at 2, 6-7.

[5] Sprint Petition at 2, 7, 15-16.

[6] Sprint Petition at 11.

[7] The opposition was filed by BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth). On June 6, 2002, Nextel Communications, Inc. and Triton PCS License Company, L.L.C. filed replies to the BellSouth opposition, and ALLTEL Communications, Inc. filed comments in support of Sprint's request.

[8] BellSouth Opposition at 2.

[9] Virtual NPA-NXX codes are central office codes that correspond with a particular geographic area that are assigned to a customer located in a different geographic area. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, para. 155 n.188 (2001).

new interconnection arrangement need to be defined and the appropriate charges be associated therewith.[10] BellSouth contends that the issue underlying these questions is whether, in routing traffic outside of its exchange area, BellSouth is acting in a manner that is inconsistent with its state certificate of authority.[11] According to BellSouth, all of these questions are appropriate matters for state commissions to resolve.[12]

We seek comment on the practices and issues raised in Sprint's petition and BellSouth's opposition, including the appropriate intercarrier compensation applicable to the traffic described above, both under our existing rules and prospectively.

Sprint's Petition and BellSouth's Opposition raise interconnection and intercarrier compensation issues under consideration in CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*.[13] Accordingly, we ask that parties file their pleadings in CC Docket No. 01-92. The petition and other pleadings will be incorporated into CC Docket No. 01-92.

Pursuant to sections 1.415 and 1.419 of the Commission's rules,[14] interested parties may file comments on or before August 8, 2002, and reply comments on or before August 19, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[15]

Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your email address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at http://www.fcc.gov/e-file/email.html.

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[10] BellSouth Opposition at 2, 3.

[11] BellSouth Opposition at 3 n.2.

[12] BellSouth Opposition at 3.

[13] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[14] 47 C.F.R. §§ 1.415, 1.419.

[15] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (1998).

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, Wireline Competition Bureau, and Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, S.W., Washington, D.C. 20554, and will be placed on the Commission's Internet site.

This proceeding will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.[16] Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.[17] Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. In addition, interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554, and serve with three copies each: Pricing Policy Division, Wireline Competition Bureau, Attn: Victoria Schlesinger, and Policy Division, Wireless Telecommunications Bureau, Attn: Gregory Vadas, 445 12th Street, S.W., Washington, D.C. 20554. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893.

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[16] 47 C.F.R. § 1.1206.

[17] *See* 47 C.F.R. § 1.1206(b)(2).

For further information, contact Steve Morris or Victoria Schlesinger, Pricing Policy Division, Wireline Competition Bureau, (202) 418-1530, or Gregory Vadas, Policy Division, Wireless Telecommunications Bureau, (202) 418-1798.

- FCC-

REBUTTAL TESTIMONY OF TED GAETJEN

EXHIBIT 4

PUBLIC NOTICE

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DA 02-2436
Released: September 30, 2002

COMMENT SOUGHT ON PETITIONS FOR DECLARATORY RULING REGARDING INTERCARRIER COMPENSATION FOR WIRELESS TRAFFIC

Pleading Cycle Established

CC Docket No. 01-92

Comments Due: October 18, 2002
Reply Comments Due: November 1, 2002

The Commission hereby seeks comment on two petitions that request rulings regarding the intercarrier compensation regime applicable to certain types of wireless traffic.

T-Mobile Petition. On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications, Inc., and Nextel Partners, Inc. (CMRS Petitioners) filed a petition for declaratory ruling in the above-referenced docket requesting that the Commission "reaffirm that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements" between local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers.[1] According to CMRS Petitioners, a CMRS carrier typically will interconnect indirectly with a rural ILEC (*i.e.*, traffic will be exchanged through an intermediate carrier.) CMRS Petitioners state that indirectly interconnecting carriers often exchange traffic pursuant to a bill-and-keep arrangement, rather than an interconnection agreement, at least for mobile-to-land traffic. CMRS Petitioners state that some rural LECs recently have filed state tariffs as a mechanism to collect reciprocal compensation for the termination of intra-MTA traffic originated by CMRS carriers. The CMRS Petitioners assert that compensation for such traffic should be paid only when the LEC and CMRS carrier have entered into an interconnection agreement under section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In the absence of such an agreement, they state that traffic should be exchanged on a bill-and-keep basis. The CMRS Petitioners request that the Commission direct ILECs to withdraw any wireless termination tariffs in existence today or, alternatively, to declare such tariffs unlawful, void and of no effect. The CMRS Petitioners

[1] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Petition for Declaratory Ruling of T-Mobile USA, Inc., *et al.* (filed Sept. 6, 2002).

state that the Commission has authority to issue the requested ruling pursuant to sections 332(c)(1) and 201 of the Communications Act.

US LEC Petition. On September 18, 2002, US LEC Corp. filed a petition for declaratory ruling asking the Commission to "issue a ruling reaffirming that LECs are entitled to recover access charges from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers."[2] US LEC states that industry practice is for IXCs to pay access charges to LECs for this traffic, but that recently one IXC has declined to pay these charges. US LEC states that a requirement that IXCs pay access charges to LECs for traffic to or from a CMRS carrier is fully supported by Commission precedent. US LEC asserts that grant of the petition is necessary to eliminate controversy and avoid future challenges regarding this issue.

Pursuant to sections 1.415 and 1.419 of the Commission's rules,[3] interested parties may file comments regarding the T-Mobile Petition or the US LEC Petition in CC Docket No. 01-92 on or before October 18, 2002, and reply comments on or before November 1, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[4]

Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your email address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at http://www.fcc.gov/e-file/email.html.

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[2] Petition of US LEC Corp. for Declaratory Ruling Regarding LEC Access Charges for CMRS Traffic (filed Sept. 18, 2002). The petition will be placed in the record of CC Docket No. 01-92.

[3] 47 C.F.R. §§ 1.415, 1.419.

[4] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (1998).

location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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For further information, contact Steve Morris or Victoria Schlesinger, Pricing Policy Division, Wireline Competition Bureau, (202) 418-1530, or Gregory Vadas, Policy Division, Wireless Telecommunications Bureau, (202) 418-1798.

- FCC-

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[5] 47 C.F.R. § 1.1206.

[6] *See* 47 C.F.R. § 1.1206(b)(2).

ATTACHMENT 3

Level 3/CenturyTel Texas Arbitration

Arbitration Award
Level 3 Motion for Reconsideration

Control Number: 26431

Item Number: 56

Addendum StartPage: 0

RECEIVED
2004 MAR 11 AM 11:08
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FILING CLERK

PUC DOCKET NO. 26431

PETITION OF LEVEL 3 COMMUNICATIONS, LLC, FOR ARBITRATION PURSUANT TO 47 U.S.C. §252 OF INTERCONNECTION RATES, TERMS, AND CONDITIONS WITH CENTURYTEL OF LAKE DALLAS, INC. AND CENTURYTEL OF SAN MARCOS, INC.	§ § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD

TABLE OF CONTENTS

I. DISCUSSION OF DPL ISSUES 4

A. DPL ISSUE NO. 1: IS ISP-BOUND TRAFFIC SUBJECT TO DIFFERENT INTERCONNECTION REQUIREMENTS THAN LOCAL TRAFFIC UNDER FEDERAL LAW SUCH THAT IT SHOULD BE HANDLED BY SEPARATE AGREEMENTS? 5
1. Level 3's Position *5*
2. CenturyTel's Position *8*
3. Arbitrators' Decision *12*

B DPL ISSUE NO. 2: WHAT IS THE PROPER DEFINITION OF LOCAL TRAFFIC? 14
1. Level 3's Position *14*
2. CenturyTel's Position *17*
3. Arbitrators' Decision *21*

C. DPL ISSUE NO. 3: WHAT IS THE PROPER TREATMENT OF FOREIGN EXCHANGE (FX) OR "VIRTUAL NXX" TRAFFIC FOR INTERCARRIER COMPENSATION PURPOSES? 23
1. Level 3's Position *23*
2. CenturyTel's Position *28*
3. Arbitrators' Decision *33*

D. DPL ISSUE NO. 4: HOW SHOULD THE PARTIES DEFINE BILL-AND-KEEP COMPENSATION TO IMPLEMENT THE FCC'S *ORDER ON REMAND*? 35
1. Level 3's Position *35*
2. CenturyTel's Position *36*
3. Arbitrators' Decision *37*

II. CONCLUSION 39

III. POST-AWARD PROCEDURAL SCHEDULE 39

56

Attachment A - Background and Reference Information

I. JURISDICTION **42**

II. PROCEDURAL HISTORY **42**

III. RELEVANT STATE AND FEDERAL PROCEEDINGS **43**

A. RELEVANT COMMISSION DECISIONS 43
1. Mega-Arbitrations *43*
2. Docket No. 18082 ..... *45*
3. Other Post-Interconnection Agreement Disputes *46*
4. Docket No. 21982 ..... *46*
5. Docket No. 24015 ..... *47*
B. RELEVANT FEDERAL COMMUNICATIONS COMMISSION DECISIONS 48
1. Declaratory Ruling *48*
2. ISP Remand Order *49*
C. RELEVANT COURT DECISIONS 51
1. Bell Atlantic Telephone Companies v. FCC *51*

Attachment B - DPL Decision Matrix

PUC DOCKET NO. 26431

PETITION OF LEVEL 3 COMMUNICATIONS, LLC, FOR ARBITRATION PURSUANT TO 47 U.S.C. §252 OF INTERCONNECTION RATES, TERMS, AND CONDITIONS WITH CENTURYTEL OF LAKE DALLAS, INC. AND CENTURYTEL OF SAN MARCOS, INC.	§ § § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD

This Arbitration Award addresses interconnection for ISP-bound FX-type traffic.[1] The Arbitrators were faced with a primary issue for determination:

1.) whether Level 3 Communications, L.L.C.'s (hereafter Level 3) ISP-bound traffic was subject to different interconnection requirements under federal regulation such that a separate agreement was required subject to federal jurisdictional standards.

The Arbitrators were then required to:

2.) determine the appropriate definition of "local" traffic;

3.) determine the proper inter-carrier compensation treatment for Foreign Exchange (FX) and "Virtual NXX" traffic; and, finally,

4.) determine the appropriate definition of Bill-and-Keep compensation for implementation of the FCC's *ISP Order on Remand.*

The Arbitrators have concluded that ISP-bound traffic is not subject to interconnection requirements different from those for local traffic and therefore does not require a separate interconnection agreement. However, non-local ISP-bound traffic is not entitled to reciprocal compensation under an interconnection agreement.

Level 3 has confirmed throughout this arbitration that all of its current FX traffic is ISP-bound. The Arbitrators have concluded that ISP-bound traffic is not subject to the same inter-carrier compensation as local traffic, and that ISP-bound traffic is therefore subject to the FCC's *ISP Order on Remand* Bill-and-Keep requirements. However, the Arbitrators have also concluded that the design of Level 3's network, as discussed throughout this Arbitration, does not include a local presence (modem banks) for termination of Level 3's ISP traffic and, therefore, requires appropriate compensation be made to CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc. (hereafter CenturyTel), in the form of either special access or switched access arrangements employed in the interconnection agreement. The Arbitrators' decisions, explained in greater detail in this Award and the attached Issue Matrix (*Attachment B, Docket No. 26431 - DPL Decision Matrix*), consider the decisions of the FCC and this commission and is based upon the requirement that ISP-bound traffic must be segregated for billing purposes and is subject to separate compensation procedures pursuant to a case by case evaluation. In this specific case, Level 3 traffic, though ISP-bound, does not terminate within the local service area boundaries of CenturyTel but transits the public switched network (PSN) to distant exchanges without providing compensation to CenturyTel in either the form of special access arrangements or the usual switched access arrangements and charges.

CenturyTel and Level 3 shall incorporate the decisions approved in this Award in any interconnection agreement which is subject to the outcome of this proceeding.

I. Discussion of DPL Issues

This proceeding addresses the four issues in the parties' revised final joint DPL filed on October 15, 2002:

- **DPL Issue No. 1: Is ISP-bound traffic subject to different interconnection requirements than Local traffic under federal law such that it should be handled by separate agreements?**

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[1] Background and reference information (such as jurisdiction, procedural history, and summaries of relevant State and federal proceedings), can be found in Attachment A to this Arbitration Award.

(Art. I, paragraph 1; Art. II, Secs. 1.43 and 1.49(a); Art. V., Secs. 1, 3.1, 3.2, 4.2, and 4.3; and Art. VIII, Sec. 3)

- **DPL Issue No. 2: What is the proper definition of Local traffic?**
  (Art. II, Sec. 1.58)
- **DPL Issue No. 3: What is the proper treatment of Foreign Exchange (FX) or "Virtual NXX" traffic for intercarrier compensation purposes?**
  (Art. II, Sec. 1.58; and Art. V, Sec. 3.2)
- **DPL Issue No. 4: How should the parties define Bill-and-Keep compensation to implement the FCC's *Order on Remand*?**
  (Art. II, Sec. 1.11; and Art. V., Sec 3.2)

A. DPL Issue No. 1: <u>Is ISP-bound traffic subject to different interconnection requirements than Local traffic under federal law such that it should be handled by separate agreements?</u>

1. Level 3's Position

Level 3's position has always been that the commission has jurisdiction over its Petition pursuant to FTA §252 and P.U.C. PROC. R. 22.305[2] and that this arbitration should be resolved pursuant to the standards of 47 U.S.C. §§251 and 252.

Level 3 has stated that it does not contest that its ISP-bound traffic is subject to different inter-carrier compensation rules than local traffic pursuant to federal regulations. However, Level 3 noted that the FCC had made clear its intention to maintain applicable interconnection rules and that ISP-bound traffic should remain subject to the same interconnection terms as local traffic. Level 3 noted that the FCC had clarified at the time of its decision in the *ISP Remand Order* that the decision only affected inter-carrier compensation applicable to delivery of ISP-bound traffic and that it did not alter carriers' other obligations under Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements.[3]

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[2] The Arbitrators observe that Subchapters P, Q, and R (which include provisions such as §§ 22.305 regarding arbitration of interconnection agreements) have very recently been repealed and replaced by new 16 TEX. ADMIN. CODE Ch. 21. This Arbitration Award refers to and applies the Chapter 22 provisions.

[3] *Petition for Arbitration of Level 3 Communications, L.L.C*, August 7, 2002, pp. 9-11.

Level 3's *Legal Brief*, filed September 23, 2002, discussed its position regarding this initial issue in greater detail. Level 3 made four arguments to support the commission's jurisdiction over this interconnection dispute[4]:

a.) §§251 and 252 of the FTA impose the interconnection obligation upon the ILECs and grant the state commissions the authority to approve, reject, mediate and arbitrate all interconnection agreements and disputes;

b.) §251(b)(5) was preempted by the FCC only for the purpose of establishing FCC authority over inter-carrier compensation for ISP-bound traffic;

c.) the scope of §§251 and 252 is not limited to intrastate services or intrastate matters, and historically the FCC has affirmed a hybrid approach such that carriers requesting to use unbundled network elements to provide exchange access services were subject to state commissions' reviews; and

d.) if the commission should fail to assert jurisdiction it would disfavor an architecture that would directly compete with CenturyTel for ISP connectivity, thus failing the public interest.

Level 3 stated that CenturyTel misinterpreted federal law and that FTA §§251-252 governs interconnection without limitation between carriers.[5] Level 3 also asserted that the FCC and court decisions only preempt states on the discrete issue of setting the inter-carrier compensation. Level 3 re-emphasized the *ISP Remand Order's* "footnote 149" language, which stated that the FCC's decision:

> "affects only the intercarrier compensation (*i.e.*; rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection."

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[4] Level 3 Communications, L.L.C., *Legal Brief*, September 23, 2002, pp 1-12.

[5] *Direct Testimony of Michelle Krezek on Behalf of Level 3 Communications*, L.L.C., October 10, 2002, p.6.

Level 3 reasoned that the language in this footnote does not indicate that the FCC intended to treat ISP-bound traffic differently for all purposes.[6] Indeed, Level 3 argued, had the FCC intended to remove ISP-bound traffic from existing interconnection agreement terms it would have established alternative interconnection rules for this purpose just as it established alternative inter-carrier compensation rules.[7]

Level 3 differentiated between the FCC's intention to treat ISP-bound traffic intercarrier compensation separately and its intentions regarding treatment of ISP-bound traffic with regard to interconnection terms and conditions. Level 3 argued that the separate IATA proposed by CenturyTel to govern ISP-bound traffic is unwarranted because it treats ISP-bound traffic as if local interconnection with the public switched network should operate differently from any local traffic interconnection.[8]

Level 3 asserted that CenturyTel's IATA would result in Level 3 having to trunk to each CenturyTel end office in a serving area at special access rates. Level 3 further asserted that this would result in anticompetitive delays and a rate structure at odds with the FCC's cost-based obligations.[9] In addition, according to Level 3, the IATA imposes unspecified originating usage charges on ISP-bound calls, thus violating the FCC's directive in the *ISP Remand Order* to apply bill-and-keep to such calls. In Level 3's analysis, the IATA proposed by CenturyTel is discriminatory because, she asserted, CenturyTel serves its own ISP customers using local service tariff terms and rates.[10]

In its *Post Hearing Reply Brief,* Level 3 re-asserted its position regarding the FCC's intent as expressed in footnote number 149 of the *ISP Remand Order*. Level 3 noted that the FCC clearly indicated in its footnote to the Order that it did not intend to preempt the state's jurisdiction over interconnection and that CenturyTel had never addressed this crucial matter in its Briefs. Level 3 reasoned that CenturyTel ignores the FCC's footnote 149 implication, as well

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[6] *Id.* at 7.

[7] *Id.* at 8

[8] *Id.*

[9] *Reply Testimony of Michelle Krezek on Behalf of Level 3Communications, L.L.C,* October 16, 2002, p. 4.

[10] *Id.* at 6.

as numerous other state commissions' decisions that assert state jurisdiction in this matter.[11] Further, Level 3 argued that the only state commission arbitration decision upon which CenturyTel relies has yet to be approved and is fraught with legal errors, primarily disregard of the crucial footnote 149.[12] Level 3 noted that a recent decision in Wisconsin addressed each of the three issues that must be determined in this arbitration and concluded that the jurisdiction over this dispute was clearly the State's.[13] Level 3 further noted that in that Wisconsin decision, the arbitrator concluded that footnote 149 explicitly stated that the FCC had not altered carriers' obligations to transport ISP-bound traffic to points of interconnection, that the D.C. Circuit opinions rejected §251(g) as a basis for interstate jurisdiction over internet traffic, and that state regulation may overlap interstate regulation pursuant to the broad nature of §252.

2. CenturyTel's Position

CenturyTel maintained that this issue was a threshold matter because it determined whether the commission had jurisdiction over the transport and termination of ISP-bound traffic. CenturyTel asserted that the FCC, under its FTA §201 authority, had made it clear that ISP-bound traffic was interstate in nature and that it had taken the authority over ISP-bound traffic away from state commissions.[14] CenturyTel stated that this was made clear in the *ISP Remand Order* at footnote 69 which references the jurisdictionally interstate nature of ISP-bound traffic. CenturyTel asserted that the FCC concluded that local traffic was defined by an "end to end analysis" and that ISP-bound traffic's jurisdiction was determined "by the end points of the communication". Therefore, CenturyTel concluded that the FCC had determined that ISP traffic was under its jurisdiction, not the States', pursuant to FTA §201 authority.[15]

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[11] *Post Hearing Reply Brief of Level 3 Communications, LLC*, December 13, 2002, pp. 1-3.

[12] *Id.* at 3. Level 3 refers to Colorado's arbitration decision as fraught with factual and legal errors. Level 3 relies upon the decisions made in Minnesota, North Dakota, Washington and Wisconsin.

[13] *Id.* at 4-5.

[14] See *Response to Level 3 Petition for Arbitration*, September 3, 2002, pp. 5-8.

[15] *ISP Remand Order* ¶40.

Further, CenturyTel noted that the D.C. Circuit had made clear that the FCC's *ISP Order on Remand* eliminated the state commissions' jurisdiction under FTA §252(e)(1) regarding the resolution of interconnection issues when ISP-bound traffic was at issue.[16]

On the basis of these citations, CenturyTel concluded the commission had no authority to arbitrate ISP-bound issues and that Level 3 must accept either a separate interstate agreement for its purposes or purchase the required services via tariff (*i.e.*; 800 access service or special access provisions).

In addition, CenturyTel asserted it had no obligation to transport or terminate Level 3's ISP-bound traffic. Aside from its position that ISP-bound traffic was clearly excluded from the interconnection obligations of FTA §251(c)(a), CenturyTel noted that FTA §251(a) only obliges CenturyTel to link its network with Level 3, not to transport or terminate ISP-bound traffic. CenturyTel stated that even if the FCC did not intend its *ISP Order on Remand* to "alter carriers' other obligations," as asserted by Level 3, there was "no evidence to support the conclusion that CenturyTel was ever obligated to interconnect with Level 3 in the first instance."[17]

CenturyTel elaborated upon this position by noting that FTA §251(c)(2) imposes a duty upon ILECs to provide interconnection for the purpose of transmission and routing of telephone service and exchange access service and was further interpreted by the FCC in its *Local Competition Order* to mean "all carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (i.e., non-interexchange calls)." Because Level 3's ISP-bound traffic does not originate and terminate in the same telephone exchange, CenturyTel emphasized it had no obligation to interconnect with Level 3. CenturyTel asserted that interconnection does not impose an obligation to transport or terminate traffic despite Level 3's reference to the footnote in the *ISP Order on Remand* because the obligation to transport ISP-bound traffic to points of interconnection with information service providers (ISPs) never existed under FCC Part 51 rules.[18]

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[16] *WorldCom Inc. v. FCC,* No. 01-1218, slip. op. at 3 (D.C. Cir. May 3, 2002).

[17] See *CenturyTel Response to Level 3 Request for Arbitration,* p. 9.

[18] *Id.* at

Finally, CenturyTel referred the arbitrators to the D.C. Circuit decision which questioned whether LECs even have an obligation to interconnect with other LECs for ISP-bound calls. CenturyTel noted that the D.C. Circuit affirmed that a carrier was not compelled to interconnect under FTA §201 unless the FCC invokes certain procedures. Because a hearing and determination of the public interest has not occurred at the FCC, and an order has not been issued to mandate Level 3's interconnection with CenturyTel, CenturyTel concluded that there is no obligation to interconnect in this instance.

CenturyTel indicated that a separate *Information Access Traffic Exchange Agreement* (IATA), specifically designed for ISP-bound traffic interconnection, is the methodology by which it prefers to handle ISP traffic issues. CenturyTel has offered such an agreement to Level 3, which has rejected it, and CenturyTel concluded that the state commission has no authority to review ISP related matters.

In its *Brief on Issue 1*, CenturyTel urged the commission to determine by preliminary order whether ISP-bound traffic was within its jurisdiction. CenturyTel cited the recent *Arbitration Award* in Docket No. 24015, in which the arbitrators declined to address ISP-bound traffic because it is no longer governed by §251(b)(5) but by §201.[19] CenturyTel insisted that Level 3 was seeking an arbitration of interconnection for ISP-bound traffic in which the same standards that are applied to non-ISP traffic, pursuant to FTA §252, are applied. CenturyTel argued that this goal is strictly denied by the FCC's *ISP Remand Order* because the traffic for which Level 3 seeks this interconnection agreement is primarily, if not entirely, ISP-bound according to all information provided by Level 3. Further, CenturyTel noted that the *ISP Remand Order* states that the "opt-in" provision of FTA §252 "applies only to agreements arbitrated pursuant to Section 252" and "has no application in the context of an intercarrier compensation regime set by this Commission pursuant to Section 201".

CenturyTel interprets this to mean that ISP-bound traffic has been wholly removed from the arbitration provisions of the FTA and state commissions no longer have such authority. The obligation of a LEC to transport and terminate ISP-bound traffic has clearly been rejected by the FCC, according to CenturyTel, and, therefore, the interconnection rules applicable to local traffic do not apply despite Level 3's appeal to footnote 149 of the *ISP Order on Remand.* CenturyTel

asserted that the FCC was simply limiting its interim regime, the phase out of compensation paid for ISP-bound traffic, to the delivery of ISP-bound traffic, and clarifying that its decision did not alter carriers' obligations to transport telecommunications traffic to POIs[20] or alter existing interconnection agreements.

Finally, in its *Brief on Issue 1*, CenturyTel asserted that its companies are "rural" by federal definition, FTA 47 U.S.C. §153(37), and are exempt from the obligations of FTA §251(c) by virtue of FTA §251(f). FTA §251(f) exempts rural companies until the state commission terminates the exemption under a proceeding proscribed by FTA §251(f) (1) (B). Because such a proceeding has not taken place, CenturyTel continues to possess its rural exemption. CenturyTel reiterates that its exemption only applies to FTA §251(c) so that, if Level 3 seeks interconnection for traffic, other than that which is ISP-bound, the exemption would apply.

CenturyTel described the history of this dispute as one in which it became aware that Level 3 was not seeking to engage in the exchange of local telecommunications traffic, but proposing instead to exchange only ISP-bound traffic.[21] When CenturyTel realized this, it proposed the IATA for Level 3's ISP-bound traffic. CenturyTel maintained its position that ISP-bound traffic is not subject to the jurisdiction of the state.[22]

In its *Reply Brief*, CenturyTel asserted its opinion that Level 3 attempts to use footnote 149 of the FCC's *ISP Remand Order* to evade the application of legitimate interexchange access charges. CenturyTel reasoned that Level 3's argument that the *ISP Remand Order* applied 47 C.F.R. §51.703(b), which bans originating access on telecommunications traffic, to all ISP-bound traffic, regardless of whether the traffic is local or interstate in nature, is logically flawed. If this reasoning is applied, CenturyTel asserted it would result in the elimination of access charges for *all* ISP-bound calls, including those that are completed via 1+ dialed toll or 800 services. CenturyTel argued that Level 3's interpretation is based on an erroneous premise because C.F.R. §51.703(b) never applied to ISP-bound traffic or interexchange traffic. Further, CenturyTel argued that C.F.R. §51.701(b) defines the telecommunications traffic referenced in

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[19] See Docket No. 24015 *Arbitration Award* at p. 31 and *Brief of CenturyTel on Issue 1* pp. 3-5.

[20] POIs – Points of Interconnection.

[21] *Direct Testimony of Susan W. Smith on Behalf of CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.*, October 10, 2002, p.7

§51.703(b) as telecommunications traffic exchanged between a LEC and a telecommunications carrier, other than a CMRS provider, *"except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access. (See FCC 01-131, paragraphs 34, 36, 39, 42-43)."*[23] CenturyTel asserted that these latter citations refer to the FCC's *ISP Remand Order* and that these paragraphs are to be relied upon to determine the meaning of the definition for telecommunications traffic. CenturyTel reasoned that these same terms are used in FTA §251(g) to define traffic which is excluded from reciprocal compensation rules. CenturyTel cited paragraph 36 of the *ISP Remand Order* which stated that ISP-bound traffic fell within at least one of the three categories of §251(g).[24]

3. Arbitrators' Decision

The Arbitrators note that Level 3 seeks an interconnection agreement with CenturyTel exclusively for ISP-bound traffic services in this docket.[25] *Although Level 3 advises it may enlarge its scope of business to local traffic services, it has no schedule in place for this purpose, nor are any such services involved in the required decisions in this arbitration.*[26]

The FCC expressed its concern in the ISP Remand Order that LECs that are intent on exclusive ISP service are driven by regulatory opportunities that disconnect the costs of the service from end- user market decisions.[27] *Thus carriers compete not on the basis of quality and efficiency but on the basis of their ability to shift costs to other carriers, "a troubling distortion that prevents market forces from distributing limited investment resources."*[28] *Level 3's current business plan appears to defy the intention of FTA '96, and subsequent FCC Orders, as well as*

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[22] *Id.* at 6-7.

[23] *Post Hearing Reply Brief of CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.*, December 13, 2002, pp. 4-6.

[24] *Id.* at 7.

[25] Tr. at 9-20.

[26] Level 3 acquired its Service Provider Certificate of Operating Authority (SPCOA No. 60161) in Docket No. 18598 on April 1, 1998. P.U.C. SUBST. R. 26.114 (Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs)) provides certain criteria by which a CLEC's SPCOA may be determined to be subject to revocation or suspension. The grounds for initiating an investigation under this rule include "[n]on-use of approved certificate for a period of 48 months, without re-qualification prior to the expiration of the 48-month period." P.U.C. SUBST. R. 26.114(c)(1)(A). The Arbitrators note that Level 3 appears to have exceeded 48 months of non-use of its SPCOA.

[27] *ISP Remand Order* ¶5

Substantive Rule §26.114 (the Rule), all of which encourage the establishment of competitive LECs with the goal of providing the benefits of competition in local telecommunications markets.

Notwithstanding these FCC concerns, the Arbitrators agree with Level 3's contention that the FCC made clear its intention to maintain applicable interconnection rules and terms for ISP-bound traffic in its ISP Remand Order.

The FCC clarified within the ISP Remand Order that its decision only affected inter-carrier compensation applicable to delivery of ISP-bound traffic and that it did not alter carriers' other obligations under Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements. The much debated ISP Remand Order's "footnote 149" does not specifically address the issue of other areas which would affect interconnection for the purposes of ISP-bound traffic exchange. The Arbitrators are of the opinion that the FCC, if it had intended that a separate process be instituted for the purposes of ISP-bound traffic interconnection, would note this in its Order and establish either the requirements or a proceeding to address such requirements. Finally, the Arbitrators concur with Level 3's conclusion that FTA §§251 and 252 grant the state commission the authority to arbitrate all interconnection agreements and disputes and that this broad mandate has not been amended to exclude the circumstances of the arbitration at hand in this docket. The Arbitrators conclude that the FCC has not limited the State commissions' authority over intrastate services and issues.

Therefore, the Arbitrators disagree with CenturyTel's interpretation that Level 3's interconnection agreement is no longer governed by FTA §251(b)(5) and that all ISP-bound services are now governed by FTA §201. Although the Arbitrators acknowledge the Award issued in Docket No. 24015, they do not reach the conclusion argued by CenturyTel that the decision in that docket excludes an examination of ISP-bound traffic services. Rather, the Arbitrators believe that the decision in Docket No. 24015 correctly excludes the commission's involvement in a determination of the reciprocal compensation for ISP-bound traffic. The FCC has clearly stated its intention that ISP-bound traffic compensation is within its purview and has established an interim process and an additional Notice of Proposed Rulemaking (NPRM) to address the compensation issues.

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[28] *Id.* at ¶4.

This proceeding examines the appropriate interconnection terms and conditions that apply to a carrier currently providing service solely to ISP customers and indicating some future business plan that includes local service provision (whether this will be in the form of a local presence for its ISP customer or the addition of local services is unknown). Whatever decision is reached regarding the remaining issues in this arbitration, Level 3 requires an interconnection agreement with CenturyTel to provide appropriate service to its customers.

Therefore, the Arbitrators conclude that this arbitration is within the Commission's FTA §252 and P.U.C. PROC. R. 22.305 authority and that the standards of 47 U.S.C. §§251 and 252 apply to this proceeding.

CenturyTel asserts that FTA 47 U.S.C. §153(37) exempts the company from obligations of Section 251(c) by virtue of 251(f) because CenturyTel is a rural carrier. Level 3 does not dispute CenturyTel's rural carrier status but argues that it need not seek to terminate the CenturyTel exemption for its purposes in this arbitration. Pursuant to the provisions of §251(f)(1)(B) the state commission must terminate the rural carrier's exemption if it is to be required to meet the obligations of § 251(c).

The Arbitrators conclude that further action on the part of Level 3 with regard to the provisions of the service model proposed in this arbitration will require a proceeding consistent with §251(f)(1)(B) unless CenturyTel should determine that it waives its right under this statute.

The Arbitrators have determined the appropriate contract language for each of the sections affected by this issue decision and note that "Attachment B, Docket No. 26431 - DPL Decision Matrix" contains these decisions in a compact format as well as the balance of the Award decisions regarding contract language related to the issues discussed below.

B DPL Issue No. 2: <u>What is the proper definition of Local Traffic?</u>

1. Level 3's Position

Level 3 claimed that it concurred with CenturyTel's definition of local traffic to the extent that it is defined as traffic calls originating from an end user of one party and terminating

to the end user of the other party, with reference to existing ILEC calling areas. However, Level 3 noted that CenturyTel excludes FX type, or Virtual-NXX type, traffic from this definition and limited the definition with respect to "internet," "900-976," and "Internet Protocol based long distance telephony." Thus, Level 3's concern with regard to the definition of local traffic is directed at the exclusions proposed by CenturyTel. It is Level 3's position that none of these limitations is justifiable under applicable law and they should therefore be rejected.

In responding to CenturyTel's arguments regarding segregation of local traffic from ISP-bound traffic and its definition of local traffic with regard to VNXX service.[29] Level 3 addressed the argument made by CenturyTel that the terms "Internet" and "Internet Protocol based long distance telephony" be included in a definition of those services that are not a part of local traffic as well as CenturyTel's reference to FX and Virtual NXX service as exclusions from the category of "local" service.[30] Level 3 argued that the terms proposed by CenturyTel in its definition of "local" service are vague.[31] Furthermore, Level 3 argued that CenturyTel's definition allows an over-broad interpretation of Level 3's services by CenturyTel, and exceeds the scope of this arbitration because it requires a determination of new policy.[32]

In its November 27, 2003 *Initial Post Hearing Brief*, Level 3 asserted its position that the definition of "local traffic" should be determined on a case by case basis and not, as proposed by CenturyTel, in "vague" exclusionary terms adopted for the interconnection agreement.[33] Level 3 found CenturyTel's proposed wording problematic and indicated that its adoption would set in motion continued disputes regarding its application. Further, Level 3 argued that CenturyTel's proposed language serves the purpose of providing an over-broad definition of excluded services to force a factual determination of the appropriate regulatory treatment for such services.[34] Level 3 argued again that the FCC has declined to make such determinations absent a complete

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[29] *Reply Testimony of Michelle Krezek on Behalf of Level 3Communications, L.L.C.*, October 16, 2002, p.16

[30] *Direct Testimony of Susan W. Smith on Behalf of CenturyTel of Lake Dallas and CenturyTel of San Marcos, Inc.*, October 10, 2002, p. 13 and *Direct Testimony of Wesley Robinson on Behalf of CenturyTel of Lake Dallas and CenturyTel of San Marcos, Inc*, October 20, 2002, p. 7.

[31] *Reply Testimony of Michelle Krezek on Behalf of Level 3Communications, L.L.C.*, October 16, 2002, p.16

[32] *Id.* at 12

[33] See *Initial Brief of Level 3Communications, LLC*, November 27, 2003, at p. 17-18.

[34] *Id.* at 19-20.

record and urged the commission to maintain this cautious approach.[35] Level 3 asserted that the approach advocated by CenturyTel raised discrimination and due process concerns because it would allow this arbitration, without benefit of a record open to all service providers, to establish the set of "exclusions" from the definition of "local traffic".[36]

Level 3's *Post-Hearing Reply Brief*, December 13, 2002, further refined Level 3's arguments. Level 3 stated that there were two matters of concern involved in the proposed language of CenturyTel.[37] The first is the exclusion of "Information Access Traffic," including "Enhanced Service Provider (ESP)" and "Internet Service Provider (ISP)," "Internet," "900-976," and "Internet based long distance telephony." The second is the exclusion of traffic to or from an end user not within the local calling area. Regarding the first set of exclusions, Level 3 asserted that CenturyTel's witness did not support this exclusion on examination and instead acknowledged that a cautious approach was preferable.[38] Regarding the second issue, Level 3 asserted that CenturyTel's support of the proposed exclusion was wrong as a matter of law because it excludes FX type traffic (Issue No. 3 in this arbitration). Level argued that CenturyTel has not supported its position that Level 3 seeks to provide originating interexchange service and reiterates that the service being provided is FX-type and indistinguishable from the services arbitrators found to be "local" in Docket No. 24015.[39] In the Award in Docket No. 24015, Level 3 noted that the arbitrators conclude that FX and FX type services are no different from a customer perspective whether provided by an ILEC or a CLEC and that ILECs do not subject the traffic on their own FX services to access charges.[40] Further, Level 3 argued that the differences between its "FX-type" service and 800 or other "toll free" services are not slight. Rather, Level 3 reasoned, toll free services originate in multiple exchanges while Level 3's service will originate in a single exchange, and Level 3's service does not result in a separate subscriber charge.[41] Level 3 reminded the arbitrators that, in *Bell Atlantic*, the D.C. Circuit

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[35] *Id.* at 19-21.

[36] *Id.* at 21-23.

[37] *Level 3 Post Hearing Reply Brief*, December 13, 2002, p. 10.

[38] Tr. at 795:10-796:8

[39] *PostHearing Brief of Level 3 Communications, L.L.C.*, p. 12.

[40] *Id.* at 12-13.

[41] *Id.* at 13-14.

rejected the FCC's characterization of ISP-bound traffic as exchange access or information access noting that it looks like local traffic.[42]

2. *CenturyTel's Position*

CenturyTel asserted that the exclusions within its definition of local traffic are reasonable and, based upon the FCC's explicit discussion of these services, not local in nature.[43] Again, CenturyTel noted that ISP-bound traffic is not local because it does not originate and terminate within the local area, and, in this case, Level 3's ISP customers are not located in the local calling area.

CenturyTel further argued that the definition of local traffic does not address FX traffic at all and that Level 3's assertion that its proposed service is similar to FX service is erroneous. CenturyTel noted that the FCC has defined FX traffic and that Level 3's proposed service offering differs significantly from the FCC's definition because Level 3 does not propose to purchase a dedicated line.[44] It is CenturyTel's firm belief that Level 3 only seeks to define its service as FX-type in an effort to avoid the payment of transport, switching and other access charges which would be associated with an 800-type service. CenturyTel asserted that Level 3's service is most like 800 service.[45]

In addition, CenturyTel asserted it had no obligation to transport or terminate Level 3's ISP-bound traffic. Aside from its position that ISP-bound traffic was clearly excluded from the interconnection obligations of FTA §251(c)(a), CenturyTel noted that FTA §251(a) only obliges CenturyTel to link its network with Level 3, not to transport or terminate ISP-bound traffic. CenturyTel elaborated upon this position by noting that FTA §251(c)(2) imposes a duty upon ILECs to provide interconnection for the purpose of transmission and routing of telephone service and exchange access service and was further interpreted by the FCC in its *Local Competition Order* to mean "all carriers (including those traditionally classified as IXCs) may

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[42] *Id.* at 18 re: *Bell Atlantic*, 206 F.3d at 6.

[43] CenturyTel proposes that FX, Virtual FX, Information Access, Internet, 900-976, and Internet Protocol traffic be excluded from the definition of local traffic because these do not originate and terminate within the same local calling area.

[44] An FX arrangement requires a dedicated line between the originating Central Office (also known as an End Office) and the called customer's Central Office.

[45] *Post Hearing Brief of Level 3Communications, L.L.C,* pp. 14-15.

obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (i.e., non-interexchange calls)." Because Level 3's ISP-bound traffic does not originate and terminate in the same telephone exchange, CenturyTel emphasized it had no obligation to interconnect with Level 3 for the exchange of this traffic. CenturyTel asserted that interconnection does not impose an obligation to transport or terminate traffic despite Level 3's reference to the footnote in the *ISP Remand Order* because the obligation to transport ISP-bound traffic to points of interconnection with information service providers (ISPs) never existed under FCC Part 51 rules.[46] Thus, CenturyTel supported its position regarding the definition of "local" traffic as in accord with the federal regulations related to ISP-bound traffic.

In further support of its position regarding the definition of "local" traffic, CenturyTel noted that Level 3's traffic will not be local because it will not originate and terminate within the same local calling area, and that Level 3's proposed methodology for transporting its traffic does not meet the definition of FX Service, which requires a dedicated connection between the customer's premise (ISP) in one exchange and the (CenturyTel) end office in the foreign exchange.[47] CenturyTel contended that the fact that the Level 3 service is designed to be inward calling only makes the service most closely resemble 800 Service because FX service is generally a two-way service.[48]

CenturyTel reiterated its argument that the service proposed by Level 3 does not meet the FCC definition of FX service because there is no dedicated connection between the subscriber's premises and the distant end office.[49] CenturyTel argued again that not only do Level 3 and its customer ISP avoid any appropriate FX charges but, by providing these "local" numbers from a wholly new set of NPA-NXX assignments, a secondary issue arises regarding contributing to the problem of telephone number exhaustion.[50] The assignment of multiple numbers within a large geographic area for the purpose of routing calls to a distant ISP mirrors

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[46] *Id.* at

[47] *Direct Testimony of Susan W. Smith on Behalf of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.*, October 10, 2002, pp. 11-12.

[48] *Id.* at 11.

[49] *Direct Testimony of Wesley Robinson on Behalf of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.*, October 10, 2002, p. 11.

and increases the problem currently experienced with 800 Service offerings by additionally threatening the exhaustion of NPA numbers, leading to new area codes. CenturyTel's conclusion is that a call cannot be local when its termination is not local, and that treating Level 3's ISP-bound traffic as local traffic will result in discriminatory treatment against other carriers and a negative revenue impact upon CenturyTel.

CenturyTel's position is that the issue at hand is entirely dial up ISP-bound traffic and it disagreed with Level 3's characterization regarding voice and internet telephony policy implications, stating that Level 3 has not deployed voice services or local services and that, in any case, the presumption of the end user's modem being located within the same local calling area as the ISP would not apply, therefore the traffic proposed by Level 3 is interexchange in nature.[51] CenturyTel interprets the FCC's *ISP Remand Order as* merely adding "local" ISP-bound traffic to its existing authority under FTA §201 and determined that Bill-and Keep was the appropriate compensation mechanism for such traffic.[52] In CenturyTel's view "local" ISP-bound traffic under the analysis of the FCC was that which terminated to the ISP located within the local calling service area

In its *Post Hearing Brief*, CenturyTel claimed that Level 3's proposed language would leave open the status of internet protocol-based services. CenturyTel asserted in its *Brief* that the core of Issue No. 2 is what compensations should apply to Level 3's ISP-bound traffic. CenturyTel insisted that the fact that the ISP end user customer is not located in the local calling area makes the traffic interexchange and that Level 3's proposed approach would logically lead to legitimate interexchange services, because they are ISP-bound, subject to bill-and-keep compensation rather than appropriate access charges.[53] Thus, according to CenturyTel, the proposed approach of Level 3 is discriminatory because it treats CLECs serving ISPs differently from the way it treats IXCs serving ISPs.

In the opinion of CenturyTel, the only differences between Level 3's service and 800 service are the use of a seven digit instead of a ten digit number and the lack of a public switched

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[50] *Id.* at p. 12.

[51] *Reply Testimony of Wesley Robinson on Behalf of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.*, October 16, 2002, pp. 6-8.

[52] *Id.* at 20.

data dip to identify the ISP. CenturyTel noted that Level 3 had admitted no distinction between a seven digit and ten digit approach to dialing the call and that it makes its own data dip to identify the destination ISP.[54] CenturyTel also cited Docket No. 24015 in defense of its position, stating that the arbitrators had found that the location of the end user originating and the end user to whom the call terminates determines whether or not the call is local or toll, not the rate center to which the NPA-NXX is assigned. CenturyTel insisted that the *ISP Remand Order* had excluded ISP-bound traffic from the obligation of reciprocal compensation and there is no prohibition upon CenturyTel's application of access charges to Level 3 for the origination of such traffic.[55] CenturyTel based its analysis of Issue No. 2 upon the determination of whether access charges should apply and concluded that access charges do apply, therefore, the exclusions set out by CenturyTel should be incorporated into the interconnection agreement.

In addition, CenturyTel viewed Level 3's use of VNXXs as inconsistent with the Central Office Assignment Guidelines which require NXXs be used to provide service to a customer's premise physically located in the same rate center that the CO codes/blocks are assigned.[56] Because Level 3 has stated it does not offer local services, and does not have an FX tariffed offering (Tr. pp.9, 26, 71) Level 3 violates the provisions of the Central Office Assignment Guidelines and negates the purpose of the guidelines by using all assigned numbers to provision FX service. In CenturyTel's opinion, Level 3 attempts to pass off as innovative its attempt to utilize NPA NXX assignments to avoid the assessment of access charges.[57]

CenturyTel objected to Level 3's use of VNXXs in what it views as a violation of the Central Office Code Assignment Guidelines. Because the ISP customers are not physically located within the rate center CenturyTel reasoned that this created the opportunity for regulatory arbitrage discussed by the arbitrators in the Award in Docket No. 24015.[58] Level 3 currently has over 1,340,000 VNXXs in Texas according to CenturyTel which subjects a significant amount of traffic to misclassification and, in CenturyTel's estimation, belies Level 3's argument that it has

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[53] *Post Hearing Brief of CenturyTel*, November 27, 2002, pp. 11-12.

[54] *Id.* at 12 re: Tr. at P. 524, Ins. 15-19.

[55] *Id.* at 15.

[56] *Id.* at 19-20. re: Robinson Direct, Ex. WR-5, Code Assignment Guidelines, p. 8, ¶2.13

[57] *Id.* at 21.

the numbers for the purpose of terminating calls to its customers' locations. In fact, CenturyTel argued, obtaining 134 NPA-NXXs (10,000 numbers in each) indicates that the intent of Level 3 is that calls originating to the ISP customers will be rated as local calls.[59] This outcome defeats the purpose of the Guideline because it eliminates the reasonable presumption that the physical location of the customer is within the calling area to which the NPA-NXX is homed and therefore, CenturyTel concluded that Level 3's cooperation with the state's number conservation efforts does not solve the problem.[60]

In its December 13, 2002, *Reply Brief*, CenturyTel further asserted that Level 3's approach to the definition of local traffic does not achieve the goal that Level 3 has argued, that a case by case approach is necessary in evaluation of the treatment of "information access" and IP telephony services.[61] Instead, argued CenturyTel, all traffic transmitted to the ISP becomes ISP-bound traffic and therefore subject to bill-and-keep provisions thus circumventing the supposed ability to address such traffic on a case by case basis. CenturyTel concluded that its own language proposal is the only means feasible of ensuring that such traffic matters will be examined on a case by case basis.[62]

3. Arbitrators' Decision

Although the Arbitrators are not fully persuaded by CenturyTel's arguments that the ISP-bound traffic proposed by Level 3 is most like 800 inter-exchange service, CenturyTel's argument that the proposed service is not local traffic is persuasive. The FCC and the commission have defined local traffic as that which originates and terminates within the local exchange service area. In the Arbitration Award in Docket No. 24015, the locations of the originating and terminating end users were found to determine whether or not the call was local or toll in nature. As a result, any call may be local if its origination and termination occurs within the same local exchange service area. In the instance where an ISP interconnects at the CLEC's POI, via a modem bank, a call placed within the local exchange service area and

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[58] *Id.* at 25 re: Docket No. 24015 Award at p. 36.

[59] *Id.* at 26.

[60] *Id.* at 26 re: CT 2, p. 35.

[61] *CenturyTel Reply Brief*, December 13, 2002, p 11.

[62] *Id.* at 12.

terminating to this ISP at the CLEC's POI within that service area is a local call. The Arbitrators also agree with CenturyTel's reasoning that categorizing Level 3's proposed traffic as local discriminates against IXCs serving ISP customers.

FX (or FX-like or VNXX) calls are not local calls, though they appear so to the end-user making the call. But neither are they treated strictly as toll calls. The purpose of the FX arrangement is to handle a high volume of calls between two points (an end-user customer exchange serving area and the business' exchange service area) as if the calls were local (thus, transparent to the end-users). The Arbitrators do not agree with CenturyTel's argument that the service more closely resembles 800 exchange service because the calls are primarily, or totally, inward. It may also be argued that, historically, FX service has been constituted primarily of inward dialed calls. This observation will affect the Arbitrators' decisions on the two remaining points in this Arbitration Award.

The Arbitrators take into account the FCC's overall position with regard to ISP-bound traffic. The FCC states in its ISP Remand Order that it does not want to limit innovation and expansion of internet services despite its desire to assign the costs of internet services to the end users of those services. The FCC's interim bill-and-keep provision for local ISP-bound traffic affords the commission additional time to gather information for an informed decision regarding the final disposition of compensation. The FCC also states that it wants to examine ISP traffic issues on a case by case basis. The Arbitrators conclude that the FCC may conceive of a broadened definition in the future for the term "Local Traffic" or a specific methodology related to ISP-bound traffic rates, terms or conditions.

The Arbitrators conclude that at this time the ISP-bound traffic proposed by Level 3 is not local traffic because Level 3's ISP customers have no presence in the local service exchange area and therefore the calls made to those customers do not meet the recognized standard definition of local traffic.

The impact of Level 3's proposed service plan upon numbering resources, although it was not specifically or separately addressed in the issues included in this arbitration, is related to the issue of whether or not Level 3's service offering is "local" because number blocks are obtained by LECs for the provision of local service. The Arbitrators conclude that CenturyTel's

concern regarding Level 3's use, and current non-use, of these numbers is legitimate.[63] *Although there is no evidence at this time that the use proposed by Level 3 will necessitate relief for any Numbering Plan Area, and, despite the fact that procedures are in place at the commission to monitor the use of numbering resources, this is an issue the commission may address in another proceeding. Level 3 has stated it will cooperate in any endeavor to conserve numbers.*

At this time, the Arbitrators conclude that the assignment of NPA-NXX's to ISP customers is not an issue in this arbitration, although it may be a matter to be addressed in another proceeding.[64]

C. DPL Issue No. 3: What is the proper treatment of Foreign Exchange (FX) or "Virtual NXX" traffic for intercarrier compensation purposes?

1. Level 3's Position

Level 3 argued that Virtual NXX (FX-type) traffic had been regarded as a functional equivalent to FX service by other commissions and should not be regarded as interexchange traffic for intercarrier compensation purposes as proposed by CenturyTel. Moreover, the commission should conclude, according to Level 3, that ISP-bound Virtual-NXX or FX-type traffic intercarrier compensation has been settled by the FCC and is therefore outside of the commission's scope. Primary to its position is Level 3's concern that CenturyTel proposes to assess access charges which have no basis in law or fact, according to Level 3, because the cost of originating a call to a Level 3 customer does not differ based upon the Level 3 customer's physical location. CenturyTel's responsibility for originating locally dialed traffic will always end at the point of interconnection (POI) with Level 3 regardless of where Level 3's terminating

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[63] Tr. at 65-68. Level 3 possesses 134 blocks of 10,000 numbers each according to testimony and has assigned very few.

[64] *For the present, the Arbitrators conclude that Level 3's proposal for assignment of NPA-NXXs to its ISP customers for access by the ISP customers' customers does not harm the numbering system. This does not preclude the Commission from re-visiting this issue* at *a later date if harm is occurring or in another proceeding if a review warrants.*

end customer is located. Therefore, Level 3 reasoned CenturyTel's cost is always the same. In addition, under current law, with the application of Bill-and-Keep, CenturyTel does not incur any charge for termination.[65] Level 3 does not regard CenturyTel's claim to entitlement of additional compensation as legitimate.

Level 3 reasoned that the language in the FCC's *ISP Remand Order,* footnote no. 149, does not indicate that the FCC intended to treat ISP-bound traffic differently for all purposes.[66] Indeed, Level 3 argued, had the FCC intended to remove ISP-bound traffic from existing interconnection agreement terms it would have established alternative interconnection rules for this purpose just as it established alternative intercarrier compensation rules. Further Level 3 argued that CenturyTel's effort to collect originating access charges is explicitly prohibited by 47 C.F.R. §51.703(b) which states, "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC network."[67]

Level 3 implored the arbitrators to reject CenturyTel's position because it encourages a discriminatory result, noting that enhanced service providers (ESPs), of which ISPs are a subset, often purchase local service from the ILECs and the ILECs do not establish separate networks to handle ISP-bound calls from ESP customers. Instead, Level 3 asserted, the ILECs route ISP-bound and local traffic over the same network facilities and they do this as well for other ILECs with no evidence of separate interconnection agreements being involved. By demanding that Level 3 adopt a separate and more expensive approach to handle its ISP-bound traffic a dis-service is done to Level 3 and future CLECs routing ISP-bound traffic. In the process, Level 3 concluded, CenturyTel grants itself and other ILECs a preference in the exchange of ISP-bound traffic.

Level 3 interpreted the *Direct Testimonies* on behalf of CenturyTel to be largely focused upon the third DPL issue regarding FX and Virtual NXX. This issue concerns the dispute over what is appropriate intercarrier compensation when a CenturyTel customer makes a call (usually PC modem dialed) to a Level 3 end user ISP and that ISP does not have a physical presence in

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[65] *Petition of Level 3 for Arbitration with CenturyTel,* August 7, 2002, pp. 14-18.

[66] *Direct Testimony of Michelle Krezek on Behalf of Level 3 Communications,* L.L.C., October 10, 2002, p.7.

the CenturyTel customer's local traffic calling scope. CenturyTel maintained that Level 3's service was analogous to interexchange "800 service" and Level 3 argued that the provision of service to a customer outside of the local rate center has been commonly provided by ILECs.[68] Level 3 argued that the commission's decision in Docket No. 24015, which "refused to treat AT&T's proposed service as FX"[69], did not apply to Level 3 because Level 3 did not seek reciprocal compensation with CenturyTel and therefore the commission's reasoning in Docket No. 24015 related to regulatory arbitrage did not apply in this arbitration.

Finally, Level 3 concluded that CenturyTel's proposal to apply per-minute origination charges to the ISP-bound traffic was discriminatory and anti-competitive. Level 3 argued that bill and keep is the appropriate compensation methodology for Level 3's ISP traffic pursuant to the FCC's *ISP Order on Remand.* Level 3 noted that ISP-bound traffic that originates in CenturyTel's service area and is routed to another ILEC's service area is not treated as access traffic because the traffic is simply passed off to the other ILEC.[70] Level 3 concluded that CenturyTel must apply the same conditions to Level 3's ISP-bound traffic.

Level 3 also asserted that CenturyTel was attempting to create a "distinction without a difference with respect to Level 3's service."[71] Level 3 claimed that its service is in fact a competitive response to CenturyTel and other ILEC FX services. Level 3 maintained that the only difference between its proposed service and that of the ILECs is a different technology for the offering of the service and the fact that Level 3's customers (ISPs) are more distantly located. Otherwise, Level 3 concluded, the functionality of the service is the same as that provided by the ILECs for ISP-bound traffic. Level 3 regarded CenturyTel's proposal to apply access charges to Level 3's service as punitive and not related to actual costs.

Level 3 suggested that several mechanisms already exist which provide similar service to end users, such as remote Call Forwarding (RCF), Extended Calling Service (ECS), Extended Area Service (EAS), Extended Local Calling (ELC), Foreign Exchange (FX) and others, that do

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[67] *Id.* at p. 8 and footnote 4.

[68] *Id.* at p.15

[69] *Id.* at p.20

[70] *Id.* at 32-33.

not "rate," or produce toll charges for, the end user. The customer's billing is not the issue, argued Level 3, and CenturyTel does not incur any additional costs for originating the customer's call, rather Level 3 bears the additional cost, if any, in transporting the call to its distant, ISP, customer.[72] Because CenturyTel merely transports the call to the same POI as any local call, CenturyTel does not bear any responsibility or cost associated with FX or FX-type service. Level 3 intends to locate POIs in each CenturyTel calling area; therefore, CenturyTel will have no task, perform no function, and have no expense beyond transporting the call to the POI.[73]

Level 3 also discussed in further detail similar offerings of Virtual NXX service being made by other ILECs and by CenturyTel. Level 3 noted that CenturyTel does not appear to demand that other carriers identify the physical locations of their customers nor does it even inquire if those customers are ISPs.[74] Level 3 concluded that CenturyTel's concern about Level 3's service offering was also applicable to the previously mentioned services of other ILECs, and of other retail services (like RCF and FX) and that CenturyTel's focus of effort in opposing Level 3 is clearly discriminatory. In addition, CenturyTel does not pay access charges for its own services to other ILECs, nor should it, reasoned Level 3, because these toll free services benefit the end users. Despite the fact that access charges were developed with the intention of keeping local rates low, the access rate structure has hampered the development of competition, Level 3 therefore concluded that CenturyTel's proposed approach for ISP traffic, if applied to Level 3, will result in reduced earnings for Level 3, additional charges for Level 3's ISP customers, and, ultimately, increased costs and reduced choices for the consumers.[75]

Level 3 also responded to CenturyTel's arguments regarding segregation of local traffic from ISP-bound traffic, its definition of local traffic, its position with regard to Virtual NXX services and its refusal to define "bill-and-keep".

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[71] *Direct Testimony of Timothy J. Gates on Behalf of Level 3Communications, L.L.C.*, October 10, 2002, p.6.

[72] *Reply Testimony of Timothy J. Gates on Behalf of Level 3 Communications, L.L.C.*, October 16, 2002, pp. 5-6.

[73] *Id.* at 5.

[74] *Id.* at 8.

[75] *Id.* at 11-12.

Level 3's *Post Hearing Brief*, reiterated its two primary points with regard to this issue; first, that the FCC bans origination charges applied to ISP-bound services by virtue of 47 C.F.R. §51.701(b)(1) and §51.703(b) definitions, and second, that Level 3's service is functionally equivalent to ILEC FX and FX-type services and should be treated in a like manner. With regard to this second point, Level 3 asserted that the FCC's intercarrier compensation rules ban origination charges and exempt this traffic from access charges.[76] Level 3 also addressed CenturyTel's argument that the service it proposes resembles the AT&T proposal in Docket No. 24015 and denies this claim because Level 3 does not seek reciprocal compensation, as AT&T did for its service offering, and therefore the concern of regulatory arbitrage addressed in that arbitration do not apply.[77] Level 3 concluded in its *Brief* that CLECs should not be confined to the same ILEC network architecture or ILEC serving areas, but allowed to develop innovative approaches.[78] To conclude, as CenturyTel argues, that the Level 3 offering differs from ILEC similar FX offerings and therefore does not qualify for the same rate treatment, would result in discrimination against the CLECs and, in Level 3's opinion, hamper competition by enforcing outdated regulatory constructs.

Level 3's *Post Hearing Reply Brief*, December 13, 2002, re-stated its positions regarding this issue. Level 3 emphasized that the calls placed to its ISP customers are locally dialed calls. Therefore, CenturyTel's arguments regarding comparisons to toll calls are immaterial. Further, Level 3 asserted that it is seeking the commission's acknowledgment of the FCC's decision to adopt bill and keep as the appropriate compensation mechanism for these calls on the basis of the fact that the calls are locally dialed ISP-bound traffic. Level 3 argued that CenturyTel confuses the issue by asserting that the commission is making an independent decision regarding the rate treatment for ISP-bound traffic rather than applying the existing FCC decisions to this traffic.[79] Level 3 refuted the CenturyTel claim that FX service was a "two-way service" by noting that the CenturyTel witness has admitted that FX service was not always two-way in nature and that the

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[76] *Level 3 Post Hearing Brief*, pp. 27-29.

[77] *Id.* at 34.

[78] *Id.* at 36.

[79] *Level 3 Post Hearing Reply Brief*, p. 23.

arbitrators in Docket No. 24015 had concluded that FX service was "primarily characterized by high volumes of in-bound calls."[80]

2. CenturyTel's Position

CenturyTel asserted that Virtual NXX, FX-type, calls should be properly classified as interexchange and subject to originating access charges. Likewise, CenturyTel claimed that other state commissions had concluded that access charges were being avoided. CenturyTel described Level 3's service as the assignation of three-digit prefixes, associated with CenturyTel's local calling areas, to its ISP customers, who have no physical presence in CenturyTel's area. CenturyTel stated that the distinction avoided by Level 3 regarding the end to end nature of the communication is the very issue regarded as more significant by the courts and FCC than the type of facilities employed to complete the communication.[81]

CenturyTel equated Level 3's proposed service as functionally equivalent to 800 service. In exchange for the ability to receive calls without incurring costs to the callers, the 800 service customer pays a usage fee to the interexchange carrier (IXC) who then pays access charges to the ILEC for access to their network. CenturyTel concluded that to permit Level 3's FX-type/Virtual NXX proposal would allow Level 3 to provide its ISP customers with 800 service without requiring the payment of necessary access charges. CenturyTel noted finally that it is unclear where Level 3 intends to interconnect with the CenturyTel network facilities and therefore it is difficult to determine which costs incurred by CenturyTel might be left unrecovered. In its opinion, Level 3's assertion that there is no additional cost to CenturyTel to transport and switch its end user calls to the Level 3 POI is premature at best.[82]

CenturyTel reasoned that Level 3's service is the same as 800 Service because Level 3 acquires a local exchange number, which customers then dial to reach an ISP located some distance away from the local exchange without incurring toll or long distance charges. The call proceeds to the local CenturyTel end office, where it is switched to an IXC facility, from there

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[80] *Id.* at 22 re: Tr.574:18-22, 575:9-11, 576:10-21 and Docket No. 24015, *Revised Arbitration Award* p. 56 n.289.

[81] *CenturyTel Response to Level 3's Petition* at 17.

the call will be switched to Level 3's switch, located in Dallas, and, finally, from Level 3's switch, the call is terminated to the ISP who is Level 3's customer. CenturyTel advised it does not believe that Level 3 will have a local switch or end office presence in the CenturyTel local service areas.[83] CenturyTel noted that the traffic is not local, does not originate and terminate within the same local calling area, and that the methodology does not meet the definition of FX Service, which requires a dedicated connection between the customer's premise (ISP) in one exchange and the (CenturyTel) end office in the foreign exchange.[84] The fact that the Level 3 service is designed to be inward calling only makes the service most closely resemble 800 Service because FX service is generally a two-way service, in the opinion of CenturyTel.

Therefore, CenturyTel concluded that Level 3 has mischaracterized its service offering as "FX-like" to avoid paying CenturyTel rightful compensation for its provision of the switching and loop facilities at the "Open End."[85] Level 3's service will therefore compete with traditional 800 Service without paying appropriate access charges, a discriminatory outcome, in CenturyTel's opinion.[86] CenturyTel also noted that the fact that 800 Service incurs access charges does not result in companies using such service applying toll charges to the end users that contact them.

In addition, CenturyTel reiterated its arguments and again noted that the service proposed by Level 3 does not meet the FCC definition of FX service because there is no dedicated connection between the subscriber's premises and the distant end office.[87] CenturyTel cited the *Revised Arbitration Award* in Docket No. 24015, wherein the arbitrators expressed concern over rate arbitrage resulting from the assignment of NPA-NXX with no correlation to the geographic location of the party.[88] The *Revised Arbitration Award* noted that the Commission had rejected a

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[82] *Id.* at 19-20.

[83] *Direct Testimony of Susan W. Smith on Behalf of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.*, October 10, 2002, pp. 8-10.

[84] *Id.* at pp. 11-12.

[85] *Id.* at pp. 14-15

[86] *Id.* at pp. 16-17.

[87] *Id.* at pp. 11.

[88] *Id.* at pp. 16

proposal in Docket No. 21982[89] because of its effect upon the ILEC revenue stream and avoidance of access charges.[90] CenturyTel concluded that a call cannot be local when its termination is not local, and that treating Level 3's ISP-bound traffic as Local traffic will result in discriminatory treatment against other carriers and a negative revenue impact upon CenturyTel.

CenturyTel also disagreed with Level 3's argument that Level 3's service was similar to ILEC FX, RCF, ELCS, etc..., services and asserted instead that the service most closely resembles that of IXCs, in particular, 800 Service. CenturyTel re-affirmed its position that the issue at hand is entirely dial up ISP-bound traffic and disagreed with the Level 3 characterizations regarding voice and internet telephony policy implications, stating that Level 3 has not deployed voice services or local services and that in any case the presumption of the end user's modem being located within the same local calling area as the ISP would not apply, therefore the traffic is interexchange in nature.[91] CenturyTel asserted that the FCC's *ISP Remand Order* merely added "local" ISP-bound traffic to its existing authority under FTA §201 and determined that bill-and keep was the appropriate compensation mechanism for such traffic.[92] CenturyTel claimed that the FCC had not modified the access charge regime for ISP-bound traffic that originates and terminates outside of a single calling area. Whether Level 3's traffic falls under the definition of exchange access or information access traffic as defined in §251(g), CenturyTel concluded the local interconnection requirements of §251 are not applicable, because either way the Level 3 traffic falls into §201 jurisdiction.[93]

CenturyTel concentrated upon the definition of Level 3's traffic, a comparison of that traffic with existing traffic modes, and the effect of Level 3's proposal upon the public switched network. CenturyTel argued that Level 3's proposed VNXX service avoids compensation to CenturyTel for the use of its local network unlike any other existing service that transmits a call

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[89] Docket No. 21987, *Proceeding to Examine Reciprocal Compensation Pursuant to Sect. 252 of the Federal Telecommunications Act of 1996.*

[90] Docket No. 24015, *Revised Arbitration Award*, August 28, 2002, p. 36.

[91] *Reply Testimony of Wesley Robinson on Behalf of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.*, filed October 16, 2002, pages 6-8.

[92] *Id.* at 20.

[93] *Id.* at 21.

from the local network to an area outside of the local serving area[94]. CenturyTel compared the Level 3 proposed traffic scenario with 800 service, FX service, and ECS (expanded calling services) and concluded that there was no difference in outcome among these traffic servicing provisions aside from the avoidance of compensation in Level 3's proposal.[95] CenturyTel asserted that it is dependent upon access revenues to build and maintain the local network and that the Level 3 proposal will result in a shift in existing regulatory policy such that local end users in the CenturyTel network will suffer the consequences.[96]

CenturyTel's *Post Hearing Brief*, November 27, 2002, emphasized the importance of a decision regarding appropriate compensation for the ISP-bound traffic Level 3 proposes. CenturyTel asserted that bill-and-keep compensation is not appropriate because it does not adequately compensate the company and that appropriate compensation for this traffic is solely under FCC jurisdiction pursuant to the terms of the *ISP Remand Order*. CenturyTel surmised that the determination of whether the Level 3 traffic is closer in analogy to FX or 800 service will determine the appropriate compensation. CenturyTel asserted that §251(g) of the FTA indicates that the nature of the interconnection determines compensation. Following the logic of Level 3 would result in all traffic of an ISP-bound nature being billed via bill-and-keep and CenturyTel argued this is clearly undesirable.

CenturyTel interpreted Level 3's position as one in which by arguing that its traffic was comparable to FX traffic it would then be able to classify the traffic as local which in turn would subject it to bill-and-keep provisions pursuant to the recent FCC *Order*.[97] CenturyTel argued that the definition of toll service in 47 C.F.R. §51.5, "telephone service between stations in different exchange areas for which there is a separate charge not included in contracts with subscribers for exchange service", fits the proposal for Level 3 traffic. CenturyTel asserted that Level 3's claim that its service is FX accomplishes one end, the avoidance of applicable charges.[98]

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[94] *Id.* at 7-8.

[95] *Reply Testimony of Ms. Smith on Behalf of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.*, October 16, 2002, p. 9-13.

[96] *Id.* at 9-13.

[97] CenturyTel *Post Hearing Brief* pp. 18-19.

[98] *Id.* at 20.

CenturyTel noted that an FX service requires the LEC to be compensated for the "open end" of the circuit and that Level 3 has not offered to do this despite the fact that it insists its service is FX in nature.[99] Finally, in its *Brief*, CenturyTel commented again that the service offered by Level 3 is not comparable to that offered by AT&T in Docket No. 24015. CenturyTel asserted that the difference between Level 3's service in this arbitration and AT&T's service in the arbitration in Docket 24015 is that AT&T offered local service to a customer in one exchange that reached a customer in another distant exchange. In this docket, in the opinion of CenturyTel, Level 3's service is strictly an inward-bound, interexchange, toll-free calling service, differentiated from 800 service only in that it uses a seven digit number instead of a ten digit number and it makes its data dip at the Level 3 switch rather than within the public network switch.[100]

In its *Post-Hearing Reply Brief of December 13, 2002,* CenturyTel summarized its position and emphasized its previous arguments. First, CenturyTel stated that Level 3's proposed service is functionally equivalent to 800 service and that docket No. 24015 had distinguished between FX type services and 800 services. Therefore, Level 3's service offering does not meet the Docket No. 24015 standard. On this point, CenturyTel noted that the Award in Docket No. 24015 relied upon the definition of FX service contained in Subst. R. §26.5(86)[101] and also stated that "FX does not in and of itself facilitate the provisioning of toll calls beyond the two affected exchange service areas."[102]

CenturyTel re-stated its conclusion that if Level 3 insists upon its service being FX in nature then the usual special access/private line charges and usage based charges should apply. Finally, CenturyTel addressed Level 3's accusation that opposition to its service offering is discriminatory and thwarts innovation. CenturyTel stated that the Level 3 service, "Connect Modem", will consist of VNXXs and leased facilities. Therefore, in CenturyTel's assessment, Level 3's service is not innovative.

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[99] *Id.* at 21, re: Tr. at pp 507-509.

[100] *Id.* at 21-22.

[101] "exchange service furnished by means of a circuit connecting a customer's station to a primary service office of another exchange"

[102] *Post Hearing Reply Brief of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc,, p.* 14.

Level 3's claim that CenturyTel is operating its own ISP "roaming service" without payment of access charges and, therefore, discriminating against Level 3 by proposing to impose access charges in this instance is completely unfounded in CenturyTel's opinion.[103] CenturyTel noted that no showing has been made that the affiliate CenturyTel offering ISP-bound services does not pay access charges to the underlying LECs.

CenturyTel maintained that it seeks consistent treatment of like carriers, thereby preserving the integrity and stability of its tariffs, whether appropriate charges are for interexchange traffic (access charges) or FX type service (FX related charges). Further, Level 3 has never shown that the obligation to pay such charges would render its services non-compensatory, therefore there is no evidence that appropriate application of charges would prevent the service from being offered.[104]

3. Arbitrators' Decision

The Arbitrators refer to the ISP Remand Order and the FCC's exception to the interim bill-and-keep compensation provisions developed therein. In its Order the FCC noted that the Eighth Circuit observed that pre-existing regulatory treatments of services (access charges) were not expected to move to a cost based pricing structure immediately and that those services enumerated under §251(g) are therefore "carved out" from the purview of §251(b).[105] *The FCC further reasoned, from this observation of the Eighth Circuit, that services equivalent to two LECs providing access service to an ISP's end-users fall within the §251(g) standards.*[106] *Finally, the FCC stated that such services were subject to FCC or state jurisdiction whether those obligations implicated pricing policies or reciprocal compensation.*[107] *This latter conclusion is pertinent to the Arbitration at hand.*

The Arbitrators do not find persuasive Level 3's argument that 47 C.F.R. §51.703(b) prohibits CenturyTel from collecting originating access charges for ISP-bound services in all

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[103] *Id.* at 24.

[104] *Id.* at 24.

[105] *ISP Remand Order*, ¶38, re: *Comptel*, 117 F 3d at 1073.

[106] *Id.* at ¶39.

circumstances. The Arbitrators believe that, although ISP traffic has not been defined as access traffic, it has now been defined by the FCC as interstate traffic. Though it would be easier for the parties and the Arbitrators if all aspects of the terms, conditions, and rates for ISP-bound service had been decided and made available by the FCC, the reality is that this is an area which is being defined within the marketplace and through laborious policy decisions in both jurisdictions.

As noted by CenturyTel, it is unclear where Level 3 intends to interconnect with the CenturyTel network facilities and, therefore, it is difficult to determine which costs incurred by CenturyTel might be left un-recovered. Level 3's assertion that there is no additional cost to CenturyTel to transport and switch its end-user calls to the Level 3 POI is indeed premature, as noted by CenturyTel. However, based upon the information provided in this arbitration, Level 3 proposes a service, inter-exchange and possibly interstate in nature, employing an FX style architecture, which evades existing regulatory treatment with regard to jurisdictional compensation.

As posited by Level 3, the proposed service most closely resembles that of FX service. It allows ISP end-user customers to avoid payment of toll charges. Therefore, special access charges applicable to other FX customers appear legitimate.

As discussed during the Hearing, FX customers typically pay originating LEC interoffice channel mileage, a local channel charge and a local minute of usage charge.[108] *Between the originating LEC end office and the terminating LEC end office, the FX customer typically pays an IXC for interoffice channel mileage and the IXC makes payment to the LEC for appropriate tariffed rates for interconnection to its network.*

Level 3 contends that the ISP-bound nature of its traffic serves alone to exempt its service offering from jurisdictional compensation and, in the opinion of the Arbitrators, this view constitutes an over-broad interpretation of the FCC's ISP Remand Order. The FCC's Order did not recharacterize interexchange ISP-bound traffic to be free from intercarrier compensation despite originating and terminating in different local exchange service area. The FCC sought to eliminate the incentive for CLECs to cater strictly to such ISP-bound traffic, reaping profits from

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[107] *Id.* at ¶39.

the LEC and the ISP customer, and subsidizing internet usage at the expense of the general ratepayer. Clearly, to accept Level 3's position, that it is exempt from the usual inter-exchange compensation of either special access or switched access charges, results in the same imbalance that the FCC sought to correct in its Order.

The Arbitrators conclude that the proper treatment of Foreign Exchange (FX) or "Virtual NXX" traffic for inter-carrier compensation purposes is that afforded all FX customers, the application of appropriate tariffed charges for the interconnection. To do otherwise discriminates against the balance of FX customers, including LEC to LEC FX arrangements, and lays aside existing regulatory compensation prematurely.

Level 3 may meet this decision's requirement by either purchasing FX service from CenturyTel's (and any other affected carrier's) tariff, or by negotiating special access arrangements with CenturyTel (and any other affected carrier) as required to establish its service.

D. DPL Issue No. 4: How should the parties define Bill-and-Keep compensation to implement the FCC's *Order on Remand*?

1. Level 3's Position

Level 3 proposes the adoption of the FCC's definition of bill-and-keep as it appears in the *ISP Remand Order*. According to this definition, each party is responsible for looking to its own end users for recovery of costs. In addition, Level 3 proposed that ISP-bound traffic be treated in accordance with the *ISP Remand Order* and language appropriate to this approach be adopted in the interconnection agreement at Article V, Section 3.2.

Level 3 also opines that CenturyTel's IATA imposes unspecified originating usage charges on ISP-bound calls, thus violating the FCC's directive in the *ISP Remand Order* to apply bill-and-keep to such calls. In Level 3's analysis, the IATA proposed by CenturyTel is

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[108] Tr. at 700 at 9-25.

discriminatory because CenturyTel serves its own ISP customers using local service tariff terms and rates.[109]

Level 3's *Post Hearing Brief and Reply Brief* argued that CenturyTel's position regarding the application of bill-and-keep billing methodology for ISP-bound traffic is actually and argument suited to Issues 2 and 3 of this arbitration. CenturyTel's argument, that the location of the ISP modem banks is critical, is absurd in Level 3's estimation, because if the location of the modem banks does not matter with regard to reciprocal compensation and jurisdictional issues then an argument that it matters with regard to CenturyTel's compensation does not follow.[110] Similarly, CenturyTel's argument ignores the fact that the FCC determined that the jurisdiction of the traffic is dependent upon the fact that the traffic is destined for the internet not where the modem banks are placed. In its *Reply* Level 3 urged the arbitrators to adopt its language for Section 3.2.2 (Bill-and-Keep), of the interconnection agreement but stated that should the arbitrators determine that the additional language related to examples of traffic other than local traffic, is disputable that the abbreviated revision eliminating these items is acceptable.[111]

2. CenturyTel's Position

CenturyTel maintained that the *ISP Remand Order* only addresses the termination of calls made to an ISP within the customer's local calling area. CenturyTel cites to the *Remand Order* ¶13 which acknowledges that the FCC sought to answer the question of "whether reciprocal compensation obligations apply to the delivery of calls from one LEC end-user customer to an ISP in the same local calling area that is served by a competing LEC". CenturyTel noted that the D.C. Circuit interpreted this as applying only to calls made to ISPs located within the caller's local calling area. Therefore, CenturyTel reasons that neither the FCC nor the D.C. Circuit contemplated ISP-bound traffic obligations directed to an ISP located outside of the local calling area as would apply to all of Level 3's traffic and bill-and keep does not apply.

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[109] *Id.* at 6.

[110] *Post Hearing Brief of Level 3Communications, L.L.C.* at 47.

[111] *Id.* at 26.

CenturyTel asserted that it did not object to adoption of the definition for bill-and keep proposed by Level 3 provided that the term "Local" is inserted in the first sentence between the words "terminating" and "traffic."

In its *Post Hearing Brief* and *Reply Brief* CenturyTel re-asserted its position that the *ISP Remand Order* imposes bill-and-keep for the termination of calls made to an ISP located within the local calling area. CenturyTel argued that the language proposed by Level 3 would exclude ISP-bound traffic from any imbalance calculation, and extend bill-and-keep to "internetwork facilities" (an undefined term) access traffic, and wireless traffic although none of these services have been raised as issues in this arbitration.[112]

In its *Reply* CenturyTel disagreed with Level 3's assertion that the proposed definition of bill-and-keep is that used by the FCC's *ISP Remand Order* at footnote 6. However, CenturyTel did agree with Level 3's position that the jurisdictional nature of the ISP-bound traffic is determined by the fact that the internet is the destination of the traffic.[113] CenturyTel asserted that this is the core issue upon which the FCC has based the assertion of its authority over ISP-bound traffic and therefore the FCC is the proper authority to determine whether bill-and-keep applies when a carrier interconnects to provide an interexchange service to ISPs. Again, CenturyTel concluded that the commission should decline to address this issue, as it did in its decision in the Award for Docket No. 24015.

3. Arbitrators' Decision

In the context of this arbitration and the Arbitrators' previous Issue decisions, the Arbitrators conclude that the FCC's bill-and-keep provisions for ISP-bound traffic do not apply to a service offering such as that proposed by Level 3. The Arbitrators conclude that Level 3's proposed traffic will not be local ISP-bound traffic because it does not originate and terminate within the local exchange service area. The FCC's concern regarding inappropriate reciprocal compensation measures does not apply.

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[112] *Post Hearing Brief of CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.*, pp. 22-23.

[113] *Level 3 Communications, L.L.C. Brief* p. 51.

As noted in the Revised Arbitration Award, in Docket No. 24015, FX service is a value-added service offered to customers who are interested in creating a "local" presence in a foreign exchange. The Arbitrators in that docket considered a value-added service to be a service that a customer pays a premium for in order to derive additional economic or other benefits. From the perspective of the end-user located in the foreign exchange, the FX customer appears to be "local" and all calls made to that customer are treated as local. While FX service has traditionally been offered by LECs for many decades,[114] *the evidence in the record in Docket No. 24015 indicated that the competitive market for FX service is in its infancy and will grow in the future.*[115] *The Arbitrators in Docket No. 24015 found that it was critical that the wholesale compensation mechanism for FX service support the development of an efficient and viable market so that FX customers will receive accurate retail price signals from carriers competing on the basis of the quality and efficiency of the services they provide. The current Arbitrators concur with this judgment.*

The Arbitrators in Docket No. 24015 also noted that the primary focus of the ISP Remand Order was to appropriately classify and develop a compensation mechanism for ISP-bound traffic. In that context, the FCC had deleted references to "local" traffic. However, the Arbitrators in Docket No. 24015 concluded, and the current Arbitrators agree, that the FCC did not abandon the concept of a local call or a local calling area, nor did it pre-empt state commissions from defining a local calling area. In fact, in explaining the lack of an analogy between ISP-bound traffic and local calls, the FCC affirmed that local calls are communication between two parties that remain squarely in the same local calling area.[116] *The Arbitrators also note that the ISP Remand Order did not invalidate this Commission's holding in Docket No. 21982 that the geographic location of the end user, rather than the assignment of an NPA-NXX, is the appropriate standard for defining a local calling area. LIke the Arbitrators in Docket No. 24015, we conclude that an important factor in the classification of FX service for purposes of compensation is the geographic location of the end user rather than the network costs of the service. As a result of their analysis in Docket No. 24015, the Arbitrators concluded*

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[114] SWBT's FX tariffs date back to 1919 (Docket No. 24015 Tr. at 107 (July 2, 2001))

[115] Docket No. 24015, Tr. at 333-338 and 650-651(July 2, 2001)

[116] *ISP Remand Order* ¶63.

that LECs must segregate ISP-bound traffic according to jurisdiction for the purposes of compensation.

The Arbitrators here conclude that the definition of bill-and-keep should include the term "local" before the word "traffic" and that bill-and-keep provisions should apply to any Level 3 ISP-bound traffic where the Level 3 ISP customer's presence and the ISP customer's customer are both in the local exchange calling area.

II. CONCLUSION

The Arbitrators conclude that the decisions outlined in the Award as well as any conditions imposed on the parties by these decisions, meet the requirements of FTA § 251 and any applicable regulations prescribed by the FCC pursuant to FTA § 251.

III. POST-AWARD PROCEDURAL SCHEDULE

As requested by the parties, the Arbitrators have made determinations regarding the proper definition of Level 3's ISP-bound traffic, whether it required a separate interconnection agreement, appropriate inter-carrier compensation for this traffic and the proper definitions of local service and bill-and-keep compensation pursuant to the FCC's *ISP Remand Order.*

Parties proposed language in the Revised DPL submitted on October 15, 2002, and the arbitrators have developed specific language, presented in the Final Arbitration DPL attached as Attachment B, to address each issue resolved in this Award.

However, Level 3 has not concluded the network design of its interconnection with CenturyTel. To ensure that the policy decisions made herein are appropriately incorporated into the parties' interconnection agreements, Level 3 is directed to develop a network design that reflects the contract language approved in this Award, and the parties are to submit their final interconnection agreement, with clarification of any language that differs from that previously reviewed by the Arbitrators, to the Arbitrators for final review. To the extent that such language is not agreed-upon, the Arbitrators will make language recommendations consistent with the

policy decisions contained herein. The table below sets forth the procedural schedule that will be in effect unless and until superceded:

ACTIVITY	DATE
AWARD FILED	March 12, 2003
DEADLINE FOR FILING OF: (1) INTERCONNECTION AGREEMENT LANGUAGE, OR (2) DISPUTED CONTRACT LANGUAGE	April 9, 2003

Additional procedural deadlines will be established as required when the parties make their interconnection agreement filing on April 9, 2003.

SIGNED AT AUSTIN, TEXAS the 11th day of March 2004.

FTA §251 PANEL

ROGER STEWART
ARBITRATOR

JANIS ERVIN
ARBITRATOR

Staff team member:
Katherine Farrell

ATTACHMENT A
BACKGROUND AND REFERENCE INFORMATION

I. JURISDICTION

If an incumbent local exchange carrier (ILEC) and a competitive local exchange carrier (CLEC) cannot successfully negotiate rates, terms and conditions in an interconnection agreement, pursuant to § 252 of the federal Telecommunications Act of 1996 (FTA),[117] specifically FTA § 252(b)(1), provides that either of the negotiating parties "may petition a State commission to arbitrate any open issues." The Commission is a state regulatory body responsible for arbitrating interconnection agreements approved pursuant to the FTA.

II. PROCEDURAL HISTORY

On August 8, 2002, Level 3 filed a petition for arbitration, pursuant to FTA 252(b), against CenturyTel requesting resolution of numerous issues related to ISP-Bound FX-Type traffic.

A prehearing conference was held on September 6, 2002 where the parties jointly proposed a procedural schedule. Parties agreed to file initial briefs on September 23, 2002 regarding their first issue, whether ISP-bound traffic should be handled by a separate agreement. Discovery was initiated on September 13, 2002 and concluded on September 27, 2002. On October 1, 2002, Parties requested an extension of the original September 30, 2002 deadline for filing an initial joint Decision Point List (DPL). On October 2, 2002 Order No. 3, *Extending Decision Point List Deadline*, granted the parties' request and extended the deadline for the DPL to October 7, 2002. On October 7, 2002, the parties filed a joint DPL. On October 15, 2002, parties filed a further negotiated joint DPL (hereinafter referred to as the *Final DPL*).

Level 3's *Motion for a Protective Order* was filed on September 24, 2002. Level 3 advised that Parties had agreed to use the Protective Order in Docket No. 25188, *Petition of El Paso Networks, LLC for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company*, for the review of responses to requests for information. On October 15,

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

Order No. 4, *Issuing Protective Order and Requiring Responses to Requests for Information be Filed with the Commission,* was issued, formally adopting the Protective Order.

Direct testimony was filed on October 11, 2002 and rebuttal testimony was filed on October 16, 2002. The hearing on the merits was held on October 21, October 22, and October 23, 2002.

Parties filed a letter on November 4, 2002, requesting an extension of the time limits established in FTA §252(b)(4)(C) for this proceeding and stating that they would file statements in which they agreed not to seek reversal of any award pursuant to FTA §252(b)(4)(C) should the Arbitrators grant their request. Parties proposed that Initial Briefs be due on November 27, 2002, and Reply Briefs be due on December 13, 2002 and that the deadline for the final decision in this arbitration be extended accordingly. On November 8, 2002, Order No. 5, *Extending Briefing Schedule and Requiring Statement Addressing FTA §252(b)(4)(c) Deadlines*, was issued.

On November 13, 2002, both Parties filed Statements regarding the extension of the schedule and the impact of FTA §252(b)(4)(c) upon any subsequent request for reversal that Parties might seek based upon the statute's established time line. On November 27, 2002, Initial Post Hearing Briefs were received and on December 13, 2002, Post Hearing Reply Briefs were received.

III. RELEVANT STATE AND FEDERAL PROCEEDINGS

A. Relevant Commission Decisions

1. Mega-Arbitrations

The FTA became effective in February 1996. Soon thereafter, several proceedings, collectively referred to as the Mega-Arbitrations, were initiated and consolidated for the purpose of arbitrating the first interconnection agreements in Texas under the new federal statute. A focal issue in these proceedings revolved around establishing "reciprocal compensation" rates. "Reciprocal compensation" refers to the statutorily mandated arrangement between two carriers by which each carrier receives compensation for the transport and termination on its network

facilities of telecommunications traffic that originates on the network facilities of the other carrier.[118]

In November 1996, the Commission issued the First Mega-Arbitration Award in Docket No. 16189[119] which established inter-carrier compensation rates, on an interim basis, for end-office switching, tandem switching, and inter-office transport. The reciprocal compensation rates adopted in the First Mega-Arbitration Award applied to "calls that originate and terminate within the mandatory single- or multi-exchange local calling area of SWBT, including the mandatory Extended Area Service (EAS) areas served by SWBT."[120] During the first nine months after the date upon which the first commercial call terminated between SWBT and a CLEC, however, the Commission designated "bill-and-keep"[121] as the arrangement by which reciprocal compensation would be accomplished.

The Second Mega-Arbitration Award in Docket No. 16189[122] issued December 1997, approved cost studies for SWBT and established permanent inter-carrier compensation rates for SWBT interconnection agreements.

Pursuant to FTA § 252(i), many CLECs subsequently opted into the reciprocal compensation provisions in the interconnection agreements approved in the Mega-Arbitration proceedings. Neither the First nor Second Mega-Arbitration Award, or the interconnection agreements resulting from those proceedings, specifically addressed the issue of whether a call bound for an Internet service provider (ISP) is subject to reciprocal compensation. In addition, neither Award addressed the definition of ISP-bound traffic that does not terminate in the local

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

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

[120] *Id.* ¶58.

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

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

exchange area but is routed to the CLEC for transport to an ISP located outside of the local exchange area.

2. Docket No. 18082

The reciprocal compensation provisions in the interconnection agreements approved in the Mega-Arbitration proceedings were initially disputed in Docket No. 18082.[123] In October 1997, Time Warner Communications of Austin L.P., Time Warner Communications of Houston, L.P., and FIBRcom (collectively, TW Comm) filed a complaint pursuant to Subchapter Q of the Commission's procedural rules, alleging that SWBT had breached its interconnection agreement with TW Comm.

Specifically, the controversy centered on compensation for calls connecting SWBT customers to TW Comm customers that are ISPs. SWBT had refused to compensate TW Comm for such calls according to the reciprocal compensation rates in the interconnection agreement, based on its contention that those calls were not "local" in nature.

The Commission rejected SWBT's position and concluded that the calls in controversy were subject to the interconnection agreement's provisions relating to reciprocal compensation for the transport and termination of **local** traffic. In reaching this conclusion, the Commission first examined the nature of an ISP-bound call. It found that a call over the Internet consists of two components: (1) the information service component, which is the content of the call, and (2) the telecommunications service component, which is the carrier-to-carrier and carrier-to-end-user transmission of the call. With respect to the latter, the Commission concluded that when a person calls an ISP within a local calling area, the traffic carried on the call's transmission path is local in nature, with the telecommunications service component of the call terminating at the ISP.[124]

Having reached this conclusion, the Commission then found that the scope of the definition of "local traffic" in the interconnection agreement included ISP traffic. The

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

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

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

3. Other Post-Interconnection Agreement Disputes

Other post-interconnection agreement disputes between ILECs, including SWBT, and CLECs involving the same issue arose after the Commission's ruling in Docket No. 18082. In those subsequent proceedings interpreting specific interconnection agreements, the Commission applied the precedent established in Docket No. 18082 in finding that the transport and termination of calls to ISPs is subject to reciprocal compensation.[125]

4. Docket No. 21982

In Docket No. 21982,[126] the Commission approved permanent rates for inter-carrier compensation relating to the transport and termination of local traffic between SWBT and certain CLECs. Specifically, the rates provided reciprocal compensation for the inter-office transport, end-office switching, and tandem switching of local traffic. The Commission determined that a

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

[126] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996,* P.U.C. Docket No. 21982 [Revised Arbitration Award (Aug. 31, 2000); Final Order (March 5, 2001)].

call to an ISP is subject to reciprocal compensation rates to the extent that such a call originates from and terminates to end-users, including ISPs, within the same local calling area.

The Commission reaffirmed its previous determination that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SWBT exchanges and the mandatory EAS/ELCS areas comprised of SWBT exchanges and exchanges of independent ILECs.[127] Consistent with this precedent, the Commission concluded that optional EAS traffic was not subject to reciprocal compensation.[128] The Commission also found that to the extent that FX-type and 8YY traffic did not terminate within a mandatory local calling scope, they were not eligible for reciprocal compensation. However, the Commission held that its findings with regard to optional EAS and FX-type traffic did not preclude the parties affected by the Award from negotiating and/or arbitrating appropriate compensation related to such traffic in other proceedings in which interconnection agreements may be addressed.[129] The Commission reiterated that its Award in Docket No. 21982 did not preclude CLECs from establishing their own local calling areas or prices for purpose of retail telephone service offerings.[130]

5. Docket No. 24015

Docket No. 24015,[131] determined that "all ISP-Bound traffic, whether provisioned via an FX/FX-type arrangement or not, is subject to the compensation mechanism contained in the FCC's *ISP Remand Order*".[132] The Arbitrators reiterated that "all ISP-bound traffic is subject to

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

[128] *First Mega-Arbitration Award* ¶59.

[129] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996,* Docket No. 21982, Revised Arbitration Award, at 18, footnote 59 (Aug. 31, 2000).

[130] *First Mega-Arbitration Award* ¶59.

[131] *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company.*

[132] *Arbitration Award* pp. 30-31, Docket No. 25188.

the FCC's *ISP Remand Order*" in the Revised Arbitration Award issued on August 28, 2002. The Revised Arbitration Award noted that the Commission had limited the scope of its review with regard to FX traffic compensation in previous Awards, allowing subsequent proceedings to examine the particulars of whether or not traffic was originating and terminating within a mandatory local calling scope. Further, the Arbitrators noted that the Commission "declined to address the question of compensation for FX traffic that did not meet the requirements being applied to all other types of local traffic".[133] The Award and Revised Award conclude that it is necessary to segregate and track FX traffic, whether ISP-bound or not, from all other traffic, using a ten digit screening methodology, to ascertain appropriate compensation.

It is important to note that, neither the Award in Docket No. 21982 or in Docket No. 24015 addresses the impact of FX-type traffic wherein there is no local exchange calling area ISP presence and which allows the CLEC to collect the ISP-bound traffic in the local exchange calling area to transport to ISPs located outside of the local service area boundaries.

B. Relevant Federal Communications Commission Decisions

1. Declaratory Ruling

In 1999, in conjunction with a notice of proposed rulemaking, the Federal Communications Commission (FCC) issued a Declaratory Ruling concluding that "ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate."[134] However, in the absence of a federal rule regarding the appropriate inter-carrier compensation for this traffic, the FCC concluded that parties should be bound by their existing interconnection agreements, as interpreted or imposed by state commissions under their authority to arbitrate interconnection disputes under FTA §252.[135]

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[133] *Revised Arbitration Award*, memorandum p. 3, Docket No. 24015.

[134] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 at ¶1 (rel. Feb. 26, 1999) (Declaratory Ruling).

[135] *Id.*

The FCC concluded that the ISP traffic does not terminate at the ISP's local server but instead continues to the ultimate destination(s), often an Internet website in another state.[136] The FCC declined to separate ISP-bound traffic into two components: an intrastate telecommunications service, and an interstate information service.[137] In so doing, the FCC analyzed ISP traffic for jurisdictional purposes as a continuous transmission from the end user to a distant Internet site.[138]

The FCC found that a state commission's decision to impose reciprocal compensation obligations upon ISP-bound traffic in an arbitration proceeding does not conflict with any FCC rule regarding ISP-bound traffic.[139] The FCC noted that FTA §252(b)(5), and FCC rules promulgated thereunder, concern inter-carrier compensation for local telecommunications traffic. However, in so noting, the FCC concluded that ISP-bound traffic is non-local interstate traffic.[140] Pending completion of the rulemaking initiated as a part of the *Declaratory Order*, the FCC found that state commissions were not precluded from determining that reciprocal compensation is an appropriate interim inter-carrier compensation rule, pursuant to contractual principles or other legal or equitable considerations.[141]

2. ISP Remand Order

On April 27, 2001, the FCC released an Order reconsidering the proper treatment for purposes of inter-carrier compensation of telecommunications traffic delivered to ISPs.[142] The FCC modified its analysis in the *Declaratory Order* to conclude that Congress excluded traffic identified in FTA §251(g), including traffic destined for ISPs, from the definition of "telecommunications" traffic subject to reciprocal compensation.[143] Accordingly, although for different reasons than set out in the *Declaratory Order*, the FCC found that the provisions of

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136 *Id.* ¶12.

137 *Id.* ¶13.

138 *Id.*

139 *Id.* ¶26.

140 *Id.*; *also* fn. 87.

141 *Id.* ¶27.

142 *In the Matter of Intercarrier Compensation for ISP-Bound Traffic,* CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) (*ISP Remand Order*).

143 *Id.* ¶1.

FTA §251(g) do not extend to ISP-bound traffic, reaffirmed its previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to FTA §201, and established a cost recovery mechanism for the exchange of ISP-bound traffic.[144] In effect, the FCC concluded that ISP bound traffic was not local traffic but predominantly interstate traffic. Thus, a national policy was required. In particular, the FCC initiated a 36-month transition towards a complete bill-and-keep recovery system.[145]

Based upon the record before it, the FCC determined that bill-and-keep appears to be the preferable cost recovery mechanism for ISP-bound traffic because it eliminates a substantial opportunity for regulatory arbitrage.[146] The FCC noted that its goal is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users.[147] This goal reflects the FCC's concern regarding two troubling effects of the classic regulatory arbitrage caused by Internet usage. First, it created incentives for inefficient entry of LECs intent on serving ISPs exclusively and not offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act. And secondly, the large one-way flows of cash made it possible for LECs serving ISPs to afford to pay their own customers to use their services, potentially driving ISP rates to consumers to uneconomical levels.[148] The FCC found unpersuasive arguments proffered by CLECs that requiring them to recover more of their costs from their ISP customers will render it impossible for CLECs profitably to serve ISPs or will lead to higher rates for Internet access. Moreover, the FCC observed that there is no public policy to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access.[149]

Finally, the FCC noted that the Eighth Circuit observed that pre-existing regulatory treatments of services (access charges) were not expected to move to a cost based pricing immediately and that those services enumerated under §251(g) are therefore "carved out" from

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144 *Id.*

145 *Id.* ¶7.

146 *Id.* ¶6.

147 *Id.* ¶7.

148 *Id.* ¶21.

149 *Id.* ¶87.

the purview of §251(b).[150] The FCC further reasoned, from this observation of the Eight Circuit, that services which when analyzed are equivalent to two LECs providing access service to an ISP's end-users fall within the §251(g) standards.[151] The FCC then noted that such services were subject to FCC or state jurisdiction whether those obligations implicated pricing policies or reciprocal compensation.[152] This latter conclusion of the FCC's *ISP Remand Order* is pertinent to the Arbitration at hand.

C. Relevant Court Decisions

1. Bell Atlantic Telephone Companies v. FCC

On March 24, 2000, the District of Columbia Circuit Court vacated the FCC's *Declaratory Order* regarding inter-carrier compensation for ISP-bound traffic.[153] The court remanded the FCC decision to the federal commission because the FCC did not properly explain why ISP-bound traffic should not be subject to reciprocal compensation. The court found that the FCC's ruling was premised on its decision to employ an end-to-end analysis traditionally used for jurisdictional purposes in determining whether particular traffic is interstate.[154] The FCC utilized the end-to-end analysis to demonstrate why ISP-bound traffic is interstate traffic, not terminating local telecommunications traffic and why the traffic is "exchange access" rather than "telephone exchange service."[155] The court went on to examine the FCC's statutory and policy justifications regarding its ISP-bound traffic finding. Ultimately, the court found that the FCC had not explained why the end-to-end analysis "is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs."[156] Consequently, the court vacated the *Declaratory Order* and remanded the case to the FCC. After the federal court's ruling, the FCC issued the *ISP Remand Order* discussed above.

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[150] *ISP Remand Order*, ¶38 re: *Comptel*, 117 F 3d at 1073.

[151] *Id.* at ¶39.

[152] *Id.* at ¶39.

[153] *Bell Atl. Tel. Companies v. FCC*, 206 F.3d 1 (D.C.Cir. 2000).

[154] *Bell Atl. Tel.*, 206 F.3d at 5.

[155] *Bell Atl. Tel.*, 206 F.3d at 4, 5.

[156] *Bell Atl. Tel.*, 206 F.3d at 5; *ISP Remand Order* at ¶¶16, 25, and 53.

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators' Contract Language	Arbitrators' Position
1. ISP-Bound Traffic: interconnection requirements under federal law Petition # 1.	Article I (paragraph 1) Article II 1.43 Article II 1.49(a) Article V,1.1	Article I (paragraph 1) Pursuant to this Agreement, and to the extent required by the Act and other applicable provisions of federal and state law, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of Local Traffic between their respective end-user customers. **Article II, 1.43** **Information Access Traffic (IAT)** **Information Access Traffic means the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of an Information Service Provider ("ISP"), as defined in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, FCC 01-131, Order on Remand and Report and Order (2001). Information Access is governed by Section 251(g) and is excluded from Section 251(b)(5) of the Act.** ***Article 1.49(a)*** *CenturyTel would strike Level 3 Language.* **Article V, 1.1** This Article governs the provision of inter-network facilities (i.e., physical	Article I (paragraph 1) Pursuant to this Agreement, and to the extent required by the Act and other applicable provisions of federal and state law, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end-user customers. ***Article II, 1.43*** *Level 3 proposes to strike the section in its entirety.* **Article 1.49(a)** Traffic originated by a customer of one Party to this Agreement that is delivered to an ISP served by the other Party. **Article V, 1** This Article governs the provision of	ISP-bound traffic is not within the jurisdiction of a state commission. Under its Section 201 authority, the FCC has taken all authority over ISP-bound traffic away from the state commissions. CenturyTel has no obligation to transport or terminate Level 3's ISP-bound traffic under Section 251(a) of the Communications Act of 1934, as amended. Furthermore, CenturyTel has no obligation to interconnect with Level 3 under Section 251(c) of the Act. Interconnection and intercarrier compensation arrangements related to ISP-bound traffic must be addressed in an agreement separate from a Section 251-252 interconnection agreement. Alternatively, while these issues can be addressed in an interconnection agreement, the state may not review ISP-related issues as a part of its Section 252 review of the interconnection agreement.	Level 3 does not contest that pursuant to federal law, ISP-bound traffic is subject to different intercarrier compensation rules than local traffic. However, in promulgating its new intercarrier compensation rules with respect to ISP-bound traffic, the FCC made clear that it did not intend to change in any respect the interconnection rules that apply. Therefore, even if the contract's intercarrier compensation terms need to be different, ISP-bound traffic remains subject to the same interconnection rules as local traffic and should be handled under an agreement applying the same interconnection terms as for local traffic.	**Article I (paragraph 1)** Pursuant to this Agreement, and to the extent required by the Act and other applicable provisions of federal and state law, the Parties will extend **specified** arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end-user customers. ***Article II, 1.43*** *Strike the section in its entirety.* ***Article 1.49(a)*** *Strike Level 3 Language.* **Article V, 1.1** This Article governs the provision of inter-network facilities (i.e., physical interconnection services & facilities), Meet-Point Billing (MPB) by CenturyTel to Level 3 or by Level 3 to CenturyTel and the transport and termination and billing of Local Traffic. **Article V,1.1.1** New Service Requests - Level 3 initiates orders for trunk-side interconnection services by sending an ASR to CenturyTel. The ordering process is described in the CenturyTel Guide. The ASR will be reviewed by CenturyTel for validation and correction of errors. Errors will be referred back to LEVEL 3. LEVEL 3 then will correct any errors that CenturyTel has identified and resubmit the request to CenturyTel through a supplemental ASR.	*The Arbitrators have concluded that the FCC's ISP Remand Order applies to intercarrier compensation applicable to the delivery of ISP-bound traffic and that it does not alter other carrier obligations. However, the Arbitrators are not persuaded by Level 3's logic that the interconnection rules of local traffic will necessarily apply. The Arbitrators conclude that a more specific review of contested contract language will be required when Level 3 provides the specific network design to CenturyTel for development of interconnection agreement terms. Therefore, the DPL language decisions reached here are based upon the information provided to date in this arbitration proceeding.*

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
		interconnection services & facilities), Meet-Point Billing (MPB) by CenturyTel to Level 3 or by Level 3 to CenturyTel and the transport and termination and billing of Local Traffic.	inter-network facilities (i.e., physical interconnection services and facilities), Meet-Point Billing (MPB) by CenturyTel to Level 3 or by Level 3 to CenturyTel and the transport and termination and billing of Local Traffic **and ISP Bound Traffic, EAS, ECC, and IntraLATA Toll, optional EAS traffic and jointly provided Interexchange Carrier (IXC) access between CenturyTel and Level 3.**			**Article V, 3** Transport and Termination of **Traffic.**	
	Article V,1.1.1	**Article V,1.1.1** New Service Requests - Level 3 initiates orders for trunk-side **Local Traffic** interconnection services by sending an ASR to CenturyTel. The ordering process is described in the CenturyTel Guide. The ASR will be reviewed by CenturyTel for validation and correction of errors. Errors will be referred back to Level 3. Level 3 then will correct any errors that CenturyTel has identified and resubmit the request to CenturyTel through a supplemental ASR.	**Article V,1.1.1** New Service Requests - Level 3 initiates orders for trunk-side interconnection services by sending an ASR to CenturyTel. The ordering process is described in the CenturyTel Guide. The ASR will be reviewed by CenturyTel for validation and correction of errors. Errors will be referred back to LEVEL 3. LEVEL 3 then will correct any errors that CenturyTel has identified and resubmit the request to CenturyTel through a supplemental ASR.			**Article V, 3.1** The Parties shall reciprocally terminate **telecommunications traffic** originating on each other's networks utilizing either Direct or Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume	
	Article V, 3	**Article V, 3** Transport and Termination of **Local** Traffic.	**Article V, 3** Transport and Termination of **Traffic.**			**Article V, 3.2.1** The Parties shall compensate each other for the exchange of **Traffic** originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can	
	Article V, 3.1	**Article V, 3.1** The Parties shall reciprocally terminate Local Traffic, (or other traffic the Parties agree to exchange) originating on each other's networks utilizing either Direct or	**Article V, 3.1** The Parties shall reciprocally terminate Local Traffic, **ISP-Bound Traffic, EAS, ECC, IntraLATA Toll,**				

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators' Contract Language	Arbitrators' Position
		Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).	optional EAS and jointly provided IXC traffic (or other traffic the Parties agree to exchange) originating on each other's networks utilizing either Direct or Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).			be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.	
	Article V, 3.2.1	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. ***CenturyTel would strike the Level 3 Additional language***	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. **Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in**			**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. **Article V, 4.2** The Parties agree to the following compensation for internetwork facilities, depending on facility type. Only Local Traffic will be used for calculation of this	

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
	Article V, 3.2.2	**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. ***CenturyTel would strike the Level 3 Additional language***	**accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.** **Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. **Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2 except as set forth in**			compensation **Article V, 4.3.1** The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, and 911 routing switches. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of Local Traffic or either Party may elect to provision its own one-way trunks for delivery of Local Traffic to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks. **Article V, 4.3.2** LEVEL 3 shall make available to CenturyTel trunks over which CenturyTel shall terminate to end-users of Level 3 -provided Exchange Services and Local Traffic, and intraLATA toll or optional EAS traffic originated from end-users of CenturyTel-provided Exchange Service. **Article V, 4.3.3** Level 3 and CenturyTel shall, where applicable, make	

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators' Contract Language	Arbitrators' Position
			Section 3.1 above.			reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Level 3 and CenturyTel will support the provisioning of trunk groups that carry combined or separate Local Traffic and intraLATA toll and optional EAS traffic.	
	Article V 4.2,	Article V, 4.2 The Parties agree to the following compensation for internetwork facilities, depending on facility type. Only Local Traffic will be used for calculation of this compensation	Article V, 4.2 The Parties agree to the following compensation for internetwork facilities, depending on facility type. Only Local Traffic, ISP-Bound Traffic and IntraLATA Toll Traffic will be used for calculation of this compensation.			Article V, 4.3.5 Level 3 and CenturyTel will reciprocally provide Percent Local Usage (PLU) factors to each other on a semi-annual basis to identify the proper percent of Local Traffic carried on local interconnection trunks. If either Party does not provide to the other Party an updated PLU, the previous PLU will be utilized. The parties agree to the initial PLU factor as set forth in Appendix A.	
	Article V 4.3.1	Article V, 4.3.1 The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, and 911 routing switches. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of Local Traffic or either Party may elect to provision its own one-way trunks for delivery of Local Traffic to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks.	Article V, 4.3.1 The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, and 911 routing switches. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of Local Traffic and ISP-Bound Traffic or either Party may elect to provision its own one-way trunks for delivery of Local Traffic and ISP-Bound Traffic to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks.			Article VII, 3. Strike this section's language in its entirety	
	Article V, 4.3.2	Article V, 4.3.2 LEVEL 3 shall make available to CenturyTel trunks over which CenturyTel shall terminate to end-users of Level 3 - provided Exchange Services and Local Traffic, and intraLATA toll or optional EAS traffic originated from end-users of CenturyTel-provided Exchange Service.	Article V, 4.3.2 Level 3 shall make available to CenturyTel trunks over which CenturyTel shall terminate to end-users of Level 3-provided Exchange Services Local Traffic, ISP-Bound Traffic and intraLATA toll or optional EAS traffic originated from end-users of CenturyTel-provided Exchange Service.				
	Article V,		Article V, 4.3.3				

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
	4.3.3 Article V, 4.3.5 ArticleVII, 3.	Article V, 4.3.3 Level 3 and CenturyTel shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Level 3 and CenturyTel will support the provisioning of trunk groups that carry combined or separate Local Traffic and intraLATA toll and optional EAS traffic. Article V, 4.3.5 Level 3 and CenturyTel will reciprocally provide Percent Local Usage (PLU) factors to each other on a semi-annual basis to identify the proper percent of Local Traffic carried on local interconnection trunks. If either Party does not provide to the other Party an updated PLU, the previous PLU will be utilized. The parties agree to the initial PLU factor as set forth in Appendix A. Article VII, 3. Information Access Traffic. **Information Access Traffic will be negotiated in a separate agreement.**	Level 3 and CenturyTel shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Level 3 and CenturyTel will support the provisioning of trunk groups that carry combined or separate Local Traffic, **ISP-Bound Traffic**, and intraLATA toll and optional EAS traffic. Article V, 4.3.5 Level 3 and CenturyTel will reciprocally provide Percent Local Usage (PLU) factors to each other on a semi-annual basis to identify the proper percent of Local Traffic and **ISP-Bound Traffic** carried on local interconnection trunks. If either Party does not provide to the other Party an updated PLU, the previous PLU will be utilized. The parties agree to the initial PLU factor as set forth in Appendix A. Article VII, 3. ***Level 3 proposes to strike CenturyTel's language in its entirety.***				
2. Definition of Local Traffic Petition # 2.	Article II 1.58	1.58 **Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local calling area, including mandatory local calling arrangements. Traffic to or from an end user not within CenturyTel's local calling area will be**	1.58 **Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an**	CenturyTel's definition of Local Traffic is appropriate. All Information Access Traffic, Internet, 900-976, and Internet Protocol based long distance telephony fall outside of the definition of Local Traffic. To the extent that Level 3 maintains its proposed service is similar to FX, CenturyTel disagrees. CenturyTel maintains that Virtual NXX traffic is not Local Traffic because it does not	Article II §1.58 Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or	1.58 **Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an**	*The Arbitrators have concluded that ISP-bound traffic is not local in nature. However, Level 3's proposed definition does not enlarge the scope of the term "Local Traffic" beyond stating that ISP-*

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators' Contract Language	Arbitrators' Position
		subject to access charges to the extent it does not constitute Information Access Traffic. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Local Traffic excludes Information Access Traffic, including but not limited to Enhanced Service Provider (ESP) and Internet Service Provider (ISP) traffic, Internet, 900-976, etc., and Internet Protocol based long distance telephony.	**arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling areas (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Pursuant to applicable law, Local Traffic excludes ISP-Bound Traffic for purposes of intercarrier compensation.**	originate and terminate within the same local calling area. CenturyTel believes that Information Access Traffic should be defined as described in the *ISP Order on Remand*. In addition, the term Internet Service Provider should be deleted, and the term Information Service Provider should be defined instead.	Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling areas (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS CT and Level 3 appear to agree that Local Traffic should be defined as traffic that originates from an end user of one Party and terminates to the end user of another Party, with reference to CenturyTel's established local calling areas. However, CenturyTel's proposed definition improperly excludes foreign exchange-type or so-called "Virtual NXX" traffic (which is dealt with separately in Issue 3), as well as adding limitations with respect to undefined terms such as "Internet" and "Internet Protocol based long distance telephony." None of those limitations are justified under applicable law, and all are too ambiguous to warrant adoption in this case.	**arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling areas (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Pursuant to applicable law, Local Traffic excludes ISP-Bound Traffic for purposes of intercarrier compensation**	*bound traffic is excluded from the definition for purposes of intercarrier compensation. In the Arbitrators' opinion this accomplishes the FCC's policy goals of fostering innovation and expansion of ISP-bound services while reserving decisions regarding intercarrier compensation for such traffic for the FCC.*
3. Proper Treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes. Petition # 3.	**Article V, 3.2.1**	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties'	CenturyTel believes that "Virtual NXX" traffic is interexchange traffic, similar to 800 service, and should be subject to access charges. Level 3's use of Virtual NXX codes allows it to avoid paying transport, switching and other access charges that are typically associated with 800 traffic.	Level 3 believes that the Commission should follow the majority of state commissions to consider this question, and conclude that so-called "Virtual NXX" traffic should be considered a functional equivalent to Foreign Exchange Traffic, and should not be considered interexchange in nature for intercarrier compensation purposes. Moreover, for Virtual NXX traffic or Foreign Exchange Traffic that is also ISP-bound in nature, the Commission should conclude that intercarrier compensation for ISP-bound traffic has been settled by the FCC such that different rules cannot be adopted for such traffic here.	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for	The Arbitrators have concluded that the FCC reserved, in its ISP Remand Order, the right to determine appropriate intercarrier compensation for ISP-bound traffic. Because Level 3 has not yet determined the nature of its network design, the Arbitrators conclude that the language proposed by level 3 most closely tracks the Award in that it notes the exception for this traffic. However, the possibility exists that Level 3's ultimate network design may require more specifically crafted language. Therefore the Arbitrators encourage the parties to re-examine the application of this section at

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
		transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. ***CenturyTel would strike the Level 3 Additional language***	respective intrastate or interstate access tariffs, as appropriate. **Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.**			the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. **Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes (ISP bound traffic) shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.**	the time an interconnection agreement is negotiated and, if agreement has not been reached, the Arbitrators will re-evaluate this section in their review of the final agreement.
4. Definition of Bill-And-Keep Petition # 4.	Article II 1.11	**Article II, 1.ll** A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.	**Article II, 1.11** A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange in which **neither of the Parties charges the other for terminating Traffic that originates on the other network. Instead, each Party recovers from its own end users the cost of both the originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.**	Bill and Keep is not an appropriate compensation structure for Level 3's proposed ISP-bound traffic. The *ISP Order on Remand* imposes Bill and Keep only for the termination of calls made to an ISP located within the customer's local calling area. Level 3 proposes traffic that will terminate outside the CenturyTel customer's calling area; thus, Bill and Keep is not appropriate for such traffic.	The Parties should define "Bill-and-Keep" as that term is specifically defined in the ISP Order on Remand, and should include definitions of ISP-Bound Traffic and Information Service Provider.	**Article II, 1.ll** A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange. **Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies	The Arbitrators have concluded that the definition of bill-and-keep should include the term "local traffic" and that bill-and-keep provisions should apply to any Level 3 traffic which terminates within the local exchange. Again, the exact nature of Level 3's network arrangements , when determined may require re-examination of this language decision.

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
	Article V, 3.2.2	**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. ***CenturyTel would strike the Level 3 Additional language***	**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. **Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2, except as set forth in Section 3.1above.**			ndicate otherwise. Accordingly, he Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed.	

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
1. ISP-Bound Traffic: interconnection requirements under federal law Petition # 1.	Article I (paragraph 1) Article II 1.43 Article II 1.49(a) Article V,1.1	Article I (paragraph 1) Pursuant to this Agreement, and to the extent required by the Act and other applicable provisions of federal and state law, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of Local Traffic between their respective end-user customers. **Article II, 1.43** **Information Access Traffic (IAT)** **Information Access Traffic means the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of an Information Service Provider ("ISP"), as defined in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, FCC 01-131, Order on Remand and Report and Order (2001). Information Access is governed by Section 251(g) and is excluded from Section 251(b)(5) of the Act.** ***Article 1.49(a)*** *CenturyTel would strike Level 3 Language.* **Article V, 1.1** This Article governs the provision of inter-network facilities (i.e., physical	Article I (paragraph 1) Pursuant to this Agreement, and to the extent required by the Act and other applicable provisions of federal and state law, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end-user customers. ***Article II, 1.43*** *Level 3 proposes to strike the section in its entirety.* **Article 1.49(a)** Traffic originated by a customer of one Party to this Agreement that is delivered to an ISP served by the other Party. **Article V, 1** This Article governs the provision of	ISP-bound traffic is not within the jurisdiction of a state commission. Under its Section 201 authority, the FCC has taken all authority over ISP-bound traffic away from the state commissions. CenturyTel has no obligation to transport or terminate Level 3's ISP-bound traffic under Section 251(a) of the Communications Act of 1934, as amended. Furthermore, CenturyTel has no obligation to interconnect with Level 3 under Section 251(c) of the Act. Interconnection and intercarrier compensation arrangements related to ISP-bound traffic must be addressed in an agreement separate from a Section 251-252 interconnection agreement. Alternatively, while these issues can be addressed in an interconnection agreement, the state may not review ISP-related issues as a part of its Section 252 review of the interconnection agreement.	Level 3 does not contest that pursuant to federal law, ISP-bound traffic is subject to different intercarrier compensation rules than local traffic. However, in promulgating its new intercarrier compensation rules with respect to ISP-bound traffic, the FCC made clear that it did not intend to change in any respect the interconnection rules that apply. Therefore, even if the contract's intercarrier compensation terms need to be different, ISP-bound traffic remains subject to the same interconnection rules as local traffic and should be handled under an agreement applying the same interconnection terms as for local traffic.	**Article I (paragraph 1)** Pursuant to this Agreement, and to the extent required by the Act and other applicable provisions of federal and state law, the Parties will extend **specified** arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end-user customers. ***Article II, 1.43*** *Strike the section in its entirety.* ***Article 1.49(a)*** *Strike Level 3 Language.* **Article V, 1.1** This Article governs the provision of inter-network facilities (i.e., physical interconnection services & facilities), Meet-Point Billing (MPB) by CenturyTel to Level 3 or by Level 3 to CenturyTel and the transport and termination and billing of Local Traffic. **Article V,1.1.1** New Service Requests - Level 3 initiates orders for trunk-side interconnection services by sending an ASR to CenturyTel. The ordering process is described in the CenturyTel Guide. The ASR will be reviewed by CenturyTel for validation and correction of errors. Errors will be referred back to LEVEL 3. LEVEL 3 then will correct any errors that CenturyTel has identified and resubmit the request to CenturyTel through a supplemental ASR.	*The Arbitrators have concluded that the FCC's ISP Remand Order applies to intercarrier compensation applicable to the delivery of ISP-bound traffic and that it does not alter other carrier obligations. However, the Arbitrators are not persuaded by Level 3's logic that the interconnection rules of local traffic will necessarily apply. The Arbitrators conclude that a more specific review of contested contract language will be required when Level 3 provides the specific network design to CenturyTel for development of interconnection agreement terms. Therefore, the DPL language decisions reached here are based upon the information provided to date in this arbitration proceeding.*

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
		interconnection services & facilities), Meet-Point Billing (MPB) by CenturyTel to Level 3 or by Level 3 to CenturyTel and the transport and termination and billing of Local Traffic.	inter-network facilities (i.e., physical interconnection services and facilities), Meet-Point Billing (MPB) by CenturyTel to Level 3 or by Level 3 to CenturyTel and the transport and termination and billing of Local Traffic **and ISP Bound Traffic, EAS, ECC, and IntraLATA Toll, optional EAS traffic and jointly provided Interexchange Carrier (IXC) access between CenturyTel and Level 3.**			**Article V, 3** Transport and Termination of **Traffic.** **Article V, 3.1** The Parties shall reciprocally terminate **telecommunications traffic** originating on each other's networks utilizing either Direct or Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume **Article V, 3.2.1** The Parties shall compensate each other for the exchange of **Traffic** originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can	
	Article V,1.1.1	**Article V,1.1.1** New Service Requests - Level 3 initiates orders for trunk-side **Local Traffic** interconnection services by sending an ASR to CenturyTel. The ordering process is described in the CenturyTel Guide. The ASR will be reviewed by CenturyTel for validation and correction of errors. Errors will be referred back to Level 3. Level 3 then will correct any errors that CenturyTel has identified and resubmit the request to CenturyTel through a supplemental ASR.	**Article V,1.1.1** New Service Requests - Level 3 initiates orders for trunk-side interconnection services by sending an ASR to CenturyTel. The ordering process is described in the CenturyTel Guide. The ASR will be reviewed by CenturyTel for validation and correction of errors. Errors will be referred back to LEVEL 3. LEVEL 3 then will correct any errors that CenturyTel has identified and resubmit the request to CenturyTel through a supplemental ASR.				
	Article V, 3	**Article V, 3** Transport and Termination of Local Traffic.	**Article V, 3** Transport and Termination of **Traffic.**				
	Article V, 3.1	**Article V, 3.1** The Parties shall reciprocally terminate Local Traffic, (or other traffic the Parties agree to exchange) originating on each other's networks utilizing either Direct or	**Article V, 3.1** The Parties shall reciprocally terminate Local Traffic, **ISP-Bound Traffic, EAS, ECC, IntraLATA Toll,**				

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators' Contract Language	Arbitrators' Position
		Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).	optional EAS and jointly provided IXC traffic (or other traffic the Parties agree to exchange) originating on each other's networks utilizing either Direct or Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).			be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.	
	Article V, 3.2.1	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. ***CenturyTel would strike the Level 3 Additional language***	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. **Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in**			**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. **Article V, 4.2** The Parties agree to the following compensation for internetwork facilities, depending on facility type. Only Local Traffic will be used for calculation of this	

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
			accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.			compensation	
	Article V, 3.2.2	**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. ***CenturyTel would strike the Level 3 Additional language***	**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. **Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2 except as set forth in**			**Article V, 4.3.1** The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, and 911 routing switches. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of Local Traffic or either Party may elect to provision its own one-way trunks for delivery of Local Traffic to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks. **Article V, 4.3.2** LEVEL 3 shall make available to CenturyTel trunks over which CenturyTel shall terminate to end-users of Level 3 -provided Exchange Services and Local Traffic, and intraLATA toll or optional EAS traffic originated from end-users of CenturyTel-provided Exchange Service. **Article V, 4.3.3** Level 3 and CenturyTel shall, where applicable, make	

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
			Section 3.1 above.				
	Article V 4.2,	**Article V, 4.2** The Parties agree to the following compensation for internetwork facilities, depending on facility type. Only Local Traffic will be used for calculation of this compensation	**Article V, 4.2** The Parties agree to the following compensation for internetwork facilities, depending on facility type. Only Local Traffic, **ISP-Bound Traffic and IntraLATA Toll Traffic** will be used for calculation of this compensation.			reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Level 3 and CenturyTel will support the provisioning of trunk groups that carry combined or separate Local Traffic and intraLATA toll and optional EAS traffic.	
	Article V 4.3.1	**Article V, 4.3.1** The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, and 911 routing switches. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of Local Traffic or either Party may elect to provision its own one-way trunks for delivery of Local Traffic to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks.	**Article V, 4.3.1** The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, and 911 routing switches. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of Local **Traffic and ISP-Bound Traffic** or either Party may elect to provision its own one-way trunks for delivery of Local Traffic and **ISP-Bound Traffic** to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks.			**Article V, 4.3.5** Level 3 and CenturyTel will reciprocally provide Percent Local Usage (PLU) factors to each other on a semi-annual basis to identify the proper percent of Local Traffic carried on local interconnection trunks. If either Party does not provide to the other Party an updated PLU, the previous PLU will be utilized. The parties agree to the initial PLU factor as set forth in Appendix A. **Article VII, 3.** Strike this section's language in its entirety	
	Article V, 4.3.2	**Article V, 4.3.2** LEVEL 3 shall make available to CenturyTel trunks over which CenturyTel shall terminate to end-users of Level 3 - provided Exchange Services and Local Traffic, and intraLATA toll or optional EAS traffic originated from end-users of CenturyTel-provided Exchange Service.	**Article V, 4.3.2** Level 3 shall make available to CenturyTel trunks over which CenturyTel shall terminate to end-users of Level 3-provided Exchange Services Local Traffic, **ISP-Bound Traffic** and intraLATA toll or optional EAS traffic originated from end-users of CenturyTel-provided Exchange Service.				
	Article V,		Article V, 4.3.3				

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
	4.3.3 Article V, 4.3.5 ArticleVII, 3.	**Article V, 4.3.3** Level 3 and CenturyTel shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Level 3 and CenturyTel will support the provisioning of trunk groups that carry combined or separate Local Traffic and intraLATA toll and optional EAS traffic. **Article V, 4.3.5** Level 3 and CenturyTel will reciprocally provide Percent Local Usage (PLU) factors to each other on a semi-annual basis to identify the proper percent of Local Traffic carried on local interconnection trunks. If either Party does not provide to the other Party an updated PLU, the previous PLU will be utilized. The parties agree to the initial PLU factor as set forth in Appendix A. **Article VII, 3.** Information Access Traffic. **Information Access Traffic will be negotiated in a separate agreement.**	Level 3 and CenturyTel shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Level 3 and CenturyTel will support the provisioning of trunk groups that carry combined or separate Local Traffic, ISP-Bound Traffic, and intraLATA toll and optional EAS traffic. **Article V, 4.3.5** Level 3 and CenturyTel will reciprocally provide Percent Local Usage (PLU) factors to each other on a semi-annual basis to identify the proper percent of Local Traffic and ISP-Bound Traffic carried on local interconnection trunks. If either Party does not provide to the other Party an updated PLU, the previous PLU will be utilized. The parties agree to the initial PLU factor as set forth in Appendix A. **Article VII, 3.** ***Level 3 proposes to strike CenturyTel's language in its entirety.***				
2. Definition of Local Traffic Petition # 2.	Article II 1.58	**1.58** **Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local calling area, including mandatory local calling arrangements. Traffic to or from an end user not within CenturyTel's local calling area will be**	**1.58** **Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an**	CenturyTel's definition of Local Traffic is appropriate. All Information Access Traffic, Internet, 900-976, and Internet Protocol based long distance telephony fall outside of the definition of Local Traffic. To the extent that Level 3 maintains its proposed service is similar to FX, CenturyTel disagrees. CenturyTel maintains that Virtual NXX traffic is not Local Traffic because it does not	Article II §1.58 Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or	**1.58** **Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an**	*The Arbitrators have concluded that ISP-bound traffic is not local in nature. However, Level 3's proposed definition does not enlarge the scope of the term "Local Traffic" beyond stating that ISP-*

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
		subject to access charges to the extent it does not constitute Information Access Traffic. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Local Traffic excludes Information Access Traffic, including but not limited to Enhanced Service Provider (ESP) and Internet Service Provider (ISP) traffic, Internet, 900-976, etc., and Internet Protocol based long distance telephony.	**arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling areas (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Pursuant to applicable law, Local Traffic excludes ISP-Bound Traffic for purposes of intercarrier compensation.**	originate and terminate within the same local calling area. CenturyTel believes that Information Access Traffic should be defined as described in the *ISP Order on Remand*. In addition, the term Internet Service Provider should be deleted, and the term Information Service Provider should be defined instead.	Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling areas (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS CT and Level 3 appear to agree that Local Traffic should be defined as traffic that originates from an end user of one Party and terminates to the end user of another Party, with reference to CenturyTel's established local calling areas. However, CenturyTel's proposed definition improperly excludes foreign exchange-type or so-called "Virtual NXX" traffic (which is dealt with separately in Issue 3), as well as adding limitations with respect to undefined terms such as "Internet" and "Internet Protocol based long distance telephony." None of those limitations are justified under applicable law, and all are too ambiguous to warrant adoption in this case.	**arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling areas (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Pursuant to applicable law, Local Traffic excludes ISP-Bound Traffic for purposes of intercarrier compensation**	*bound traffic is excluded from the definition for purposes of intercarrier compensation. In the Arbitrators' opinion this accomplishes the FCC's policy goals of fostering innovation and expansion of ISP-bound services while reserving decisions regarding intercarrier compensation for such traffic for the FCC.*
3. Proper Treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes. Petition # 3.	Article V, 3.2.1	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties'	CenturyTel believes that "Virtual NXX" traffic is interexchange traffic; similar to 800 service, and should be subject to access charges. Level 3's use of Virtual NXX codes allows it to avoid paying transport, switching and other access charges that are typically associated with 800 traffic.	Level 3 believes that the Commission should follow the majority of state commissions to consider this question, and conclude that so-called "Virtual NXX" traffic should be considered a functional equivalent to Foreign Exchange Traffic, and should not be considered interexchange in nature for intercarrier compensation purposes. Moreover, for Virtual NXX traffic or Foreign Exchange Traffic that is also ISP-bound in nature, the Commission should conclude that intercarrier compensation for ISP-bound traffic has been settled by the FCC such that different rules cannot be adopted for such traffic here.	**Article V, 3.2.1** The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Appendix A. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. Charges for	The Arbitrators have concluded that the FCC reserved, in its ISP Remand Order, the right to determine appropriate intercarrier compensation for ISP-bound traffic. Because Level 3 has not yet determined the nature of its network design, the Arbitrators conclude that the language proposed by level 3 most closely tracks the Award in that it notes the exception for this traffic. However, the possibility exists that Level 3's ultimate network design may require more specifically crafted language. Therefore the Arbitrators encourage the parties to re-examine the application of this section at

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
		transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. ***CenturyTel would strike the Level 3 Additional language***	respective intrastate or interstate access tariffs, as appropriate. **Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.**			the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. **Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes (ISP bound traffic) shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.**	the time an interconnection agreement is negotiated and, if agreement has not been reached, the Arbitrators will re-evaluate this section in their review of the final agreement.
4. Definition of Bill-And-Keep Petition # 4.	Article II 1.11	**Article II, 1.11** A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.	**Article II, 1.11** A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange **in which neither of the Parties charges the other for terminating Traffic that originates on the other network. Instead, each Party recovers from its own end users the cost of both the originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.**	Bill and Keep is not an appropriate compensation structure for Level 3's proposed ISP-bound traffic. The *ISP Order on Remand* imposes Bill and Keep only for the termination of calls made to an ISP located within the customer's local calling area. Level 3 proposes traffic that will terminate outside the CenturyTel customer's calling area; thus, Bill and Keep is not appropriate for such traffic.	The Parties should define "Bill-and-Keep" as that term is specifically defined in the ISP Order on Remand, and should include definitions of ISP-Bound Traffic and Information Service Provider.	**Article II, 1.11** A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange. **Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies	The Arbitrators have concluded that the definition of bill-and-keep should include the term "local traffic" and that bill-and-keep provisions should apply to any Level 3 traffic which terminates within the local exchange. Again, the exact nature of Level 3's network arrangements , when determined may require re-examination of this language decision.

Issue DPL NO.	Appendix/ Section	CENTURYTEL's Proposed Contract Language	Level 3's Proposed Contract Language	CENTURYTEL's Position	Level 3's Position	Arbitrators'Contract Language	Arbitrators' Position
	Article V, 3.2.2	**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. ***CenturyTel would strike the Level 3 Additional language***	**Article V, 3.2.2** Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed. **Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2, except as set forth in Section 3.1above.**			indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed.	

Control Number: 26431

Item Number: 57

Addendum StartPage: 0

Before the
PUBLIC UTILITY COMMISSION
OF TEXAS

In the Matter of Complaint of Level 3 Communications, LLC, Against CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.	Docket No. 26431

MOTION FOR RECONSIDERATION OF LEVEL 3 COMMUNICATIONS, LLC

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31 March 2004

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/57

TABLE OF CONTENTS

	PAGE
BACKGROUND	2
I. Although the Arbitrators Concluded that ISP-Bound Traffic Is Subject to the Same Interconnection Requirements as Local Telecommunications Traffic Under Federal Law, They Failed to Apply Their Conclusion Elsewhere in the Award or in their Chosen Contract Language	5
A. Level 3's ISP-Bound Traffic Is Subject to the Same Interconnection Rules as Other Telecommunications Traffic	6
B. The Arbitrators Impermissibly Distinguished between "Local" ISP-Bound Traffic and "Non-Local" ISP-Bound Traffic	7
C. The Arbitrators Misapplied to Level 3 the FCC's Unrelated Concerns About Regulatory Arbitrage Arising from Usage-Sensitive, Per-Minute Reciprocal Compensation	8
II. By Characterizing Level 3's ISP-Bound Traffic as Interstate or "Non-Local," the Arbitrators Ignored FCC and Judicial Statements to the Contrary and Violated the Ban on Origination Charges for Any Telecommunications Traffic	10
A. The Arbitrators Mistakenly Characterized ISP-Bound Traffic as Exclusively Interstate Traffic	11
B. The Arbitrators Failed to Apply § 51.703(b) of the FCC's Rules, Which Prohibits LECs From Charging Other Telecommunications Carriers for Originating Telecommunications Traffic and Carrying that Traffic to the POI	12
C. The Arbitrators' Characterization of Level 3's ISP-Bound Traffic as "Non-Local," Due to a Lack of Physical Presence or a POI in Every CenturyTel Local Calling Area, Is Inconsistent with Federal and Texas Law	15
III. The Arbitrators Erred in Refusing to Adopt the FCC's Definition of "Bill-and-Keep"	18
IV. The Arbitrators Failed to Comply with the Commission's Compulsory Arbitration Rules	20
CONCLUSION	21

Before the
PUBLIC UTILITY COMMISSION
OF TEXAS

In the Matter of Complaint of Level 3 Communications, LLC, Against CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc.	Docket No. 26431

MOTION FOR RECONSIDERATION OF LEVEL 3 COMMUNICATIONS, LLC

Pursuant to §§ 21.75 and 21.95(w) of the Commission's substantive rules,[1] Level 3 Communications, LLC ("Level 3"), hereby moves for reconsideration of the Arbitration Award filed by the arbitrators in the above-captioned arbitration between Level 3 and CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc. (collectively, "CenturyTel"), on the grounds that the Arbitration Award is inconsistent with federal law.[2] Commission reconsideration of the Arbitration Award is imperative both as a procedural and substantive matter, as the arbitrators failed to issue a Proposal for Award or to entertain exceptions from the parties to such a proposed award, as the Commission's rules otherwise required them to do.[3]

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1 P.U.C. SUBS. RULES 21.75 and 21.95(w).

2 *See* Arbitration Award, PUC Docket No. 26431 (filed Mar. 11, 2004).

3 *See* P.U.C. SUBS. RULE 21.95(t)(1)-(3).

BACKGROUND

Level 3 seeks to interconnect with CenturyTel to offer competitive Internet service provider ("ISP") services to Texas consumers living in CenturyTel's service areas. Level 3 has agreed to interconnect with CenturyTel in every CenturyTel local calling area in which Level 3 will be offering service.[4] Level 3 will incur the cost of taking the traffic from the CenturyTel local calling area back to the Level 3 switch, and then on to Level 3's ISP customers. The Arbitration Award, however, undermines the availability of competitive Internet service provider ("ISP") services in Texas, particularly its rural areas, by allowing CenturyTel to discriminate in favor of its own ISP customers. Unless modified, the Arbitration Award would allow CenturyTel to impose on Level 3's ISP-bound traffic origination charges that are illegal under federal law.

Functionally, Level 3 seeks to provide the same service to ISPs that CenturyTel does: carrying traffic between local service customers and ISPs who purchase local service or foreign-exchange ("FX") type service from CenturyTel itself.[5] Yet, the arbitrators' award perpetrates a regulatory anomaly by subjecting this connectivity to ISPs to separate interconnection requirements, notwithstanding protestations to the contrary in deciding Issue 1 in the arbitration. By subjecting CenturyTel's own ISP-bound traffic to the same interconnection requirements as local telecommunications traffic, while subjecting Level 3's ISP-bound traffic (which originates with a CenturyTel customer and is exchanged with Level 3 within the CenturyTel local calling area in which the call originated and is then transported and terminated by Level 3) to separate

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[4] Level 3 is unable to provide specific point of interconnection ("POI") information because the Parties' engineering and network personnel have not discussed those locations, and such discussions won't take place until an intercon agreement is approved by this Commission.

[5] *See* Initial Post-Hearing Brief of Level 3 Communications, LLC, Docket No. 26431, at 28-32 (filed Nov. 27, 2002) ("Level 3 Initial Post-Hearing Brief").

interconnection requirements, including payment of access charges or tariffed FX rates to CenturyTel, the Arbitration Award precludes Level 3 from competing in the ISP market in the CenturyTel service area. Unless reconsidered and modified, the Arbitration Award would inflate the costs for any ISP that is served by Level 3, because—for the ISPs that CenturyTel serves directly—CenturyTel pays no access charges and therefore need not pass through any such charges to its customers.[6] It would also otherwise permit CenturyTel to charge Level 3 for call origination even though it is Level 3, rather than CenturyTel, that will provide the FX-like service to the Level 3 ISP customer—a practice clearly and correctly prohibited by the Federal Communications Commission ("FCC").[7]

The FCC has stated that the ban on origination charges—codified in § 51.703(b) of its rules—ensures that the costs of delivering telecommunications traffic to the point of interconnection ("POI") are borne by the originating carrier as the originating carrier recovers its costs through the rates it charges to its own customers for making calls.[8] CenturyTel, like other local exchange carriers ("LECs"), provides connectivity to other network operators and charges a monthly fee to its customers for doing so, recovering its costs and earning a profit. So CenturyTel's carriage of its customers' traffic to the POI with Level 3 is not a case of Level 3

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[6] *See id.* at 41-45.

[7] 47 C.F.R. § 51.703(b) (stating that "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."). *See also* Tr. 288:10-12 (where Level 3 witness Gates testified that Level 3 will provide the FX-like service to Level 3 customers).

[8] *Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc. and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission, Memorandum Opinion and Order*, 17 FCC Rcd. 27,039, 27,065 ¶ 52 (Wireline Comp. Bur. 2002) ("*Virginia Arbitration Order*") (stating that "to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic").

5

imposing costs on CenturyTel to the sole benefit of Level 3.[9] To the contrary, as the D.C. Circuit has noted, the ban on origination charges ensures that LECs such as CenturyTel do not "game the system" by forcing interconnecting carriers such as Level 3 to pay for dedicated facilities that LECs such as CenturyTel could conveniently carry at their own expense.[10] Moreover, the physical location of Level 3's ISP customers impose on CenturyTel any additional costs, as Level 3 will carry the traffic exchanged with CenturyTel from the POI back to its' switch and customer location.[11]

The arbitrators made four principal legal errors in the Arbitration Award. *First*, in deciding Issues 2, 3, and 4 and adopting language for the proposed interconnection agreement, the arbitrators failed to apply their conclusion with respect to Issue 1, namely, that ISP-bound traffic is subject to the same interconnection requirements as local telecommunications traffic. *Second*, by characterizing Level 3's ISP-bound traffic as interstate or "non-local," the arbitrators ignored FCC and judicial statements to the contrary and violated the FCC's local competition rules, particularly the ban on origination charges for any telecommunications traffic, including ISP-bound traffic. *Third*, the arbitrators erred in refusing to adopt the FCC's definition of "bill-and-keep." Consequently, Level 3 requests that the Commission remedy these legal errors on reconsideration by deciding Issues 2, 3 and 4 in Level 3's favor and by adopting Level 3's proposed interconnection agreement language, as set forth in Attachment B to the Arbitration

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9 *See, e.g.*, Arbitration Award at 12.

10 *Qwest Corp. v. FCC*, 252 F.3d 462, 467 (2001) ("*Qwest*"), affirming *TSR Wireless, LLC et al. v. U S West Communications, Inc., Memorandum Opinion and Order*, 15 FCC Rcd. 11,166 (2000) ("*TSR Wireless*").

11 Hearing Tr. 479:22-480:2 (Level 3 witness Gates pointing out that CenturyTel agreed it would not incur any additional costs depending on the Level 3 customer location).

6

Award.[12] *Fourth,* the arbitrators erred by failing to comply with the Commission's rules for compulsory arbitrations in interconnection disputes, rendering the Arbitration Award invalid unless reconsidered and modified by the Commission.

I. ALTHOUGH THE ARBITRATORS CONCLUDED THAT ISP-BOUND TRAFFIC IS SUBJECT TO THE SAME INTERCONNECTION REQUIREMENTS AS LOCAL TELECOMMUNICATIONS TRAFFIC UNDER FEDERAL LAW, THEY FAILED TO APPLY THEIR CONCLUSION ELSEWHERE IN THE AWARD OR IN THEIR CHOSEN CONTRACT LANGUAGE

Although the arbitrators correctly concluded that ISP-bound traffic is not subject to different interconnection requirements than local telecommunications traffic under federal law, they nonetheless erred as a matter of law by refusing to apply those federal interconnection requirements to Level 3's ISP-bound traffic as they chose interconnection agreement language. In deciding Issue 1, the arbitrators correctly found that the FCC's *ISP Order on Remand* did not alter the interconnection requirements applicable to ISP-bound traffic.[13] Nevertheless, the arbitrators concluded that they "are not persuaded by Level 3's logic that the interconnection rules of local traffic will necessarily apply."[14] Consequently, the arbitrators' purported decision on Issue 1—agreeing with Level 3 that ISP-bound traffic is not subject to separate interconnection requirements under federal law—does not square with the interconnection agreement language actually adopted by the arbitrators with respect to Issue 1.[15]

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[12] Arbitration Award, Attachment B – Decision Point List Matrix ("Decision Matrix").

[13] Arbitration Award at 12-14. *See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 16 FCC Rcd. 9151 (2001) ("*ISP Order on Remand*"), *remanded WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("*WorldCom*").

[14] *See* Decision Matrix, Issue 1, Arbitrators' Position (Arbitration Award at 52).

[15] *See id.*, Arbitrators' Contract Language (striking Level 3's language for Article II, § 1.49(a) and adopting CenturyTel's language for Article V, §§ 1.1, 3.2.1, 3.2.2, 4.2, 4.3.1, 4.3.2, 4.3.3, and 4.3.5 so as to subject Level 3's ISP-bound traffic to interconnection requirements different from those of "local" telecommunications traffic).

7

A. Level 3's ISP-Bound Traffic Is Subject to the Same Interconnection Rules as Other Telecommunications Traffic

Level 3's ISP-bound traffic is subject to the same FCC interconnection rules as other telecommunications traffic. Footnote 149 of the FCC's *ISP Order on Remand*, in which the FCC clarified that its interim intercarrier compensation regime for ISP-bound traffic, stated that the FCC's preemption:

> affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.[16]

The FCC stated that it was "unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic."[17] The FCC sought to prevent incumbent LECs such as CenturyTel from manipulating the system to collect more advantageous charges for ISP-bound traffic.[18] Thus, the FCC stated clearly and unambiguously that it was not otherwise altering interconnection obligations with respect to ISP-bound traffic or precluding state-commission jurisdiction to arbitrate and enforce those interconnection obligations.

Level 3 has sought interconnection with CenturyTel under FTA §§ 251(a) and 251(b), and under § 251(c)—to the extent that CenturyTel is not a rural telephone company with an

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[16] *ISP Order on Remand*, 16 FCC Rcd. at 9187 ¶ 78 n.149. *See also id.* at 9152 ¶ 1 (noting that "[i]n this Order, we reconsider the proper treatment *for purposes of intercarrier compensation* of telecommunications traffic delivered to Internet service providers (ISPs)." (emphasis added)).

[17] *Id.* at 9194-95 ¶ 90.

[18] *Id.* at 9193 ¶ 89 (noting that "[b]ecause we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to 'pick and choose' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier.").

exemption pursuant to FTA § 251(f)(1)—for purposes of exchanging calls placed by CenturyTel's end user customers to Level 3's end user ISP customers.[19] Consequently, the FCC rules governing interconnection under FTA §§ 251(a), (b), and (c) govern the proposed interconnection agreement between Level 3 and CenturyTel, including the proposed exchange of ISP-bound traffic.

B. The Arbitrators Impermissibly Distinguished between "Local" ISP-Bound Traffic and "Non-Local" ISP-Bound Traffic

Although the arbitrators appeared to agree with the proposition that ISP-bound traffic is subject to the same interconnection requirements as other telecommunications traffic,[20] the arbitrators impermissibly attempted to distinguish between "local" ISP-bound traffic and "non-local" ISP-bound traffic.[21] This distinction has no basis in the FCC's rules or in judicial decisions interpreting those rules. Nowhere has the FCC attempted to single out a subset of "non-local" ISP-bound traffic and subject it to separate interconnection requirements under FTA § 251.

Consistent with the admonishments of the courts, the FCC has clarified that *all* ISP-bound traffic that is subject to the FCC's interconnection rules also apply to local telecommunications traffic. Indeed, the D.C. Circuit vacated and remanded the FCC's initial conclusion that LEC traffic terminated to ISPs was not treated in the same manner as local.[22] In doing so, the court confirmed the hybrid nature of ISP-bound traffic. On the issue of whether ISP-bound traffic is local or long-distance, the court stated that "[n]either category fits clearly."[23]

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[19] *See* Level 3 Arbitration Request at 1.

[20] Arbitration Award at 13.

[21] *Id.*; Decision Matrix, Issue 1, Arbitrators' Position (Arbitration Award at 52).

[22] *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1, 9 (D.C. Cir. 2000) ("*Bell Atlantic*").

[23] *Id.* at 5.

> Calls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a continuation, in the conventional sense, of the initial call to the ISP.[24]

Responding to the D.C. Circuit's vacatur and remand in *Bell Atlantic*, the FCC in its *ISP Order on Remand* simply abandoned the application of its "end-to-end" analysis as a basis for carving ISP-bound traffic out of the intercarrier compensation regime it applies to other telecommunications traffic, noting that it had "erred in focusing on the nature of the service (*i.e.*, local or long distance)" in interpreting § 251(b)(5).[25] The FCC even deleted the word "local" from its definition of "telecommunications traffic."[26] Thus, the FCC has made clear that the relevant question for interconnection purposes is not whether the traffic is local or long-distance, but whether it is telecommunications traffic that is not otherwise exempted from the FCC's ban on origination charges, as discussed further in part II below.

C. The Arbitrators Misapplied to Level 3 the FCC's Unrelated Concerns About Regulatory Arbitrage Arising from Usage-Sensitive, Per-Minute Reciprocal Compensation

In stating that Level 3 intended to defy Congress's intentions in the FTA and engage in regulatory arbitrage, the arbitrators misapplied the FCC's conclusions regarding usage-sensitive, per-minute reciprocal compensation.[27] In fact, the FCC's regulatory arbitrage concerns have no bearing on the present arbitration dispute.

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[24] *Id.*

[25] *ISP Order on Remand*, 16 FCC Rcd. at 9164 ¶ 26.

[26] *ISP Order on Remand*, 16 FCC Rcd. at 9173-74 ¶ 46. Likewise, the FCC has consistently described ISP-bound traffic as containing both intrastate and interstate components. *Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd. 3689, 3705 ¶ 25 (1999) ("*ISP Order*"), *vacated and remanded Bell Atlantic*, 206 F.3d at 1.

[27] *See, e.g.*, Arbitration Award at 12, 34-35. The arbitrators' concerns about Level 3's compliance with Substantive Rule § 26.114 are likewise mistaken and misplaced. Level 3

In the *ISP Order on Remand* and the initial *ISP Order*, the FCC expressed concern about competitive LECs over-recovering for the costs of their services through traffic-sensitive, per-minute charges for terminating reciprocal compensation.[28] The FCC feared regulatory arbitrage, where competitive LECs would seek out customers with huge one-way traffic volumes, recovering their costs from incumbent LECs rather than their customers, and even reaping a windfall.[29]

Here, however, there are no traffic-sensitive per-minute terminating reciprocal compensation charges or windfalls, as Level 3 has not sought to collect per-minute, terminating reciprocal compensation charges from CenturyTel.[30] And the arbitrators' conclusion that Level 3 would "reap profits" only underscores that the arbitrators misunderstood both the FCC's policy concerns in the *ISP Order on Remand* and the very nature of "bill-and-keep" arrangements (as discussed further in relation to Issue 4 below), which do not generate traffic-sensitive windfalls.[31] To the contrary, the proposed interconnection arrangements between Level 3 and

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currently relies on its certificate from the Commission to provide service as a competitive LEC in Texas, particularly in the service areas of the Southwestern Bell Telephone Company. As for the CenturyTel service areas, it is unsurprising that Level 3 has not yet been able to provide service there, given Level 3's inability to conclude an interconnection agreement with CenturyTel . Level 3 first entered into interconnection negotiations with CenturyTel in early 2002, and filed its petition for arbitration in August 2002. *See* Petition of Level 3 Communications, LLC, for Arbitration Pursuant to 47 U.S.C. § 252 of Interconnection Rates, Terms and Conditions with CenturyTel of Lake Dallas, Inc., and CenturyTel of San Marcos, Inc., Docket No. 26431 (filed Aug. 8, 2002) ("Level 3 Petition").

[28] *See ISP Order on Remand*, 16 FCC Rcd. at 9181-84 ¶¶ 68-71; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; ISP Order*, 14 FCC Rcd. at 3707 ¶ 28.

[29] *ISP Order on Remand*, 16 FCC Rcd. at 9182-83 ¶¶ 69-70.

[30] *See* Letter from Rogelio E. Peña, Counsel for Level 3 Communications, LLC, to Harvey Perry, CenturyTel, Inc., General Counsel (Mar. 1, 2002) ("Level 3 Arbitration Request"), *attached as* Exhibit A to Level 3 Petition.

[31] *See* Arbitration Award at 34-35.

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CenturyTel raise concerns about CenturyTel's compliance with the FCC's ban on origination charges, which requires that the originating carrier (*i.e.*, CenturyTel) bear the costs of facilities used to deliver telecommunications traffic to the POI and recovers those costs through the rates it charges to its own customers for making calls.[32]

II. BY CHARACTERIZING LEVEL 3'S ISP-BOUND TRAFFIC AS INTERSTATE OR "NON-LOCAL," THE ARBITRATORS IGNORED FCC AND JUDICIAL STATEMENTS TO THE CONTRARY AND VIOLATED THE BAN ON ORIGINATION CHARGES FOR ANY TELECOMMUNICATIONS TRAFFIC

The arbitrators' decision to characterize ISP-bound traffic alternatively—and inconsistently—as interstate or "non-local" traffic ignores FCC and judicial findings to the contrary and violates the FCC's ban on origination charges for any telecommunications traffic. The arbitrators' erroneous characterization of ISP-bound traffic as "non-local" led the arbitrators to decide in CenturyTel's favor with respect to interrelated Issues 2 and 3.[33] With respect to Issue 2, the arbitrators relied on legally impermissible and inconsistent rationales—that Level 3's ISP-bound traffic is, alternatively, either exclusively interstate in nature, or "non-local" because Level 3 lacks a physical presence in every one of CenturyTel's local calling areas—to find that the interconnection agreement must exclude ISP-bound traffic from the definition of "local" traffic.[34] With respect to Issue 3, the arbitrators erroneously found that the interconnection agreement must require Level 3 to pay access charges or tariffed rates for traffic originated by CenturyTel customers and transported by CenturyTel to the POI with Level 3—thereby ignoring

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[32] *See Virginia Arbitration Order*, 17 FCC Rcd. at 27,064 ¶ 52; 47 C.F.R. § 51.703(b).

[33] Oddly, the arbitrators adopted Level 3's proposed interconnection agreement language for Issues 2 and 3, on the theory that their conclusion with respect to Issue 1—that Level 3's ISP-bound traffic is not "local"—ensures that Level 3's proposed language for Issues 2 and 3 in no way qualifies Level 3's ISP-bound traffic for treatment as "local" traffic or exempts it from access charges or tariffed FX rates imposed by CenturyTel. *See* Decision Matrix, Issues 2 and 3, Arbitrators' Position (Arbitration Award at 57-59).

[34] *See* Arbitration Award at 14-23.

the FCC's ban on origination charges for ISP-bound traffic.[35] This characterization also underscores the arbitrators' failure to adopt interconnection agreement language consistent with their conclusions on Issue 1 (as discussed in part I above) and their unwillingness to adopt the FCC's definition of "bill-and-keep" in resolving Issue 4 (as discussed in part III below).

A. The Arbitrators Mistakenly Characterized ISP-Bound Traffic as Exclusively Interstate Traffic

The arbitrators' assertion that the FCC has defined ISP-bound traffic as exclusively interstate both misreads the relevant FCC and court statements to the contrary and is wholly inconsistent with the arbitrators' decision that the Commission has jurisdiction to arbitrate interconnection disputes and enforce interconnection agreements involving ISP-bound traffic.[36] To the contrary, the FCC and the courts have long characterized ISP-bound traffic as a hybrid, thereby enabling the shared jurisdiction under §§ 251 and 252 as described by the FCC.

As noted in part I.B above, the D.C. Circuit confirmed the hybrid nature of ISP-bound traffic as it vacated the FCC's previous attempts to draw a local/non-local distinction, stating that "[n]either category fits clearly."[37] Consistent with this approach, the Eleventh Circuit, sitting *en banc*, affirmed the Georgia Public Service Commission's decision to treat ISP-bound traffic as local under the interconnection agreement between BellSouth and MCImetro.[38]

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[35] *See id.* at 23-35. The Arbitration award also ignores the fact that Level 3, rather than CenturyTel, will provide Level 3's ISP customers with an FX-like service. Tr. 288:10-12; Tr. 291:5-9; Tr. 293:8-16.

[36] *See* Arbitration Award at 34. The arbitrators made this erroneous conclusion in discussing Issue 3, although it is more appropriately addressed in the context of Issue 2 and the meaning of "local."

[37] *Bell Atlantic*, 206 F.3d at 5. *See also* Level 3 Initial Post-Hearing Brief at 11-12.

[38] *BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services, Inc.*, 317 F.3d 1270 (11th. Cir. 2003).

B. The Arbitrators Failed to Apply § 51.703(b) of the FCC's Rules, Which Prohibits LECs From Charging Other Telecommunications Carriers for Originating Telecommunications Traffic and Carrying that Traffic to the POI

The arbitrators failed to apply § 51.703(b) of the FCC's rules, which prohibits LECs from charging other telecommunications carriers for originating telecommunications traffic—*including ISP-bound traffic*—and carrying that traffic to the POI. Rather than examine the language of the FCC's rules or its *TSR Wireless* decision—affirmed in two appellate court decisions—the arbitrators stated summarily that they did not find Level 3's arguments regarding § 51.703(b) "persuasive."[39] Nevertheless, the plain language of the FCC's rules—which the arbitrators failed to parse—provides that ISP-bound traffic is telecommunications traffic subject to § 51.703(b).

Section 51.703(b) provides that "[a] LEC may not assess charges on any other telecommunications carrier for *telecommunications traffic* that originates on the LEC's network."[40] The FCC determined that such origination charges are not permissible reciprocal compensation charges for purposes of FTA §251(b)(5), and the FCC therefore prohibited LECs from assessing them.[41] As the rule's language makes clear, this prohibition is a general one,

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[39] Arbitration Award at 33-34.

[40] 47 C.F.R. § 51.703(b) (emphasis added).

[41] Although the FCC has preempted the states' ability to set reciprocal compensation rates for ISP-bound traffic, this preemption in no way alters or limits the § 51.703(b) ban on origination charges. *See, e.g., Arbitrator's Recommended Decision, In the Matter of the Petition of Level 3 Communications, LLC, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Communications*, Minnesota PUC Docket No. P5733,421/IC-02-1372, Decision No. 3-2500-15076-2 (Nov. 1, 2002) (finding that footnote 149 of the *ISP Order on Remand* "supports Level 3's argument that, despite the change in the rates for reciprocal compensation for ISP-bound traffic, the *ISP Remand Order* does not alter an ILEC's obligation under § 51.703(b) to transport this traffic to the point of interconnection."), *adopted in Order Accepting the Arbitrator's Recommendation and Requiring Filed Interconnection Agreement*, Minnesota PUC Docket No. P5733,421/IC-02-1372, Decision No. 3-2500-15076-2 (Dec. 23, 2002) (noting that in the *ISP Order on*

applying to *any other telecommunications carrier* and to *all* telecommunications traffic. Section 51.703(b) is "unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions."[42] Section 51.703(b) also covers any and all charges for traffic or facilities, as the FCC made clear in *TSR Wireless*.[43]

ISP-bound traffic falls within this category of "telecommunications traffic," as defined in § 51.701(b)(1), which states that for purposes of 47 C.F.R. Subpart H (including § 51.703(b)), "telecommunications traffic" means:

> Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.[44]

Nowhere did the arbitrators conclude that Level 3's ISP-bound traffic fell within any of these exceptions. To the contrary, the arbitrators noted that "ISP traffic has not been defined as access traffic."[45]

Instead, the arbitrators attempted to exempt ISP-bound traffic from the requirements of §§ 51.701(b)(1) and 51.703(b) by interpreting those provisions to encompass exclusively local telecommunications traffic. Such a reading is prohibited by the FCC's rules following the D.C.

Remand, the FCC stated that it was unwilling to take any action that would establish separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic. Qwest's recommendation would do just that. For ISP-bound traffic, Qwest would have the Commission ignore FCC Rule 51.703(b) and shift to Level 3 all the costs of carrying Qwest's originating traffic over Qwest's network to the POI, while for voice traffic, Qwest would bear all the costs of transporting traffic originating on its network to the POI." (footnote omitted)).

[42] *See MCImetro Access Transmission Servs. v. BellSouth Telecomms, Inc.*, 352 F.3d 872, 881 (4th Cir. 2003) ("*MCImetro*").

[43] *See TSR Wireless*, 15 FCC Rcd. at 11,181 ¶ 25.

[44] 47 C.F.R. § 51.701(b)(1).

[45] Arbitration Award at 34.

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Circuit's vacatur and remand in *Bell Atlantic*, in which the court rejected the FCC's "end-to-end" jurisdictional analysis.[46] In the *ISP Order on Remand*, the FCC subsequently abandoned its local/non-local distinction and deleted the word "local" from this definition of telecommunications traffic in § 51.701(b)(1).[47] Consequently, the FCC's prohibition on origination charges in § 51.703(b) and *TSR Wireless* applies to *all* telecommunications traffic, unless it falls within one of enumerated exceptions.

The FCC made clear its rationale for these rules in the *TSR Wireless* and *Virginia Arbitration* orders. In each of these orders, the FCC stated that § 51.703(b) ensures that the costs of delivering telecommunications traffic to the POI are to be borne by the originating carrier, on the grounds that those costs relate to the originating carrier's network, and the originating carrier recovers those costs through the rates it charges to its own customers for making calls.[48]

CenturyTel may already recover from its own customers the costs of carrying traffic to Level 3's POI from its own customers, and indeed profit from such recoveries. Level 3, like other LECs, provides connectivity to other network operators and charges a monthly fee to its customers for doing so. The services at issue in this case are but a source of revenue for CenturyTel. So this is not a case of Level 3 imposing costs on CenturyTel to the sole benefit of Level 3. In no way would CenturyTel subsidize Level 3's costs for providing service to its customers. To the contrary, as the D.C. Circuit noted in upholding *TSR Wireless*, § 51.703(b) ensures that LECs such as CenturyTel do not "game the system" by forcing interconnecting

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[46] *See Bell Atlantic*, 206 F.3d at 6.

[47] *See ISP Order on Remand*, 16 FCC Rcd. at 9173-74 ¶ 46.

[48] *See TSR Wireless*, 15 FCC Rcd. at 11,177-78 ¶ 21; *Virginia Arbitration Order*, 17 FCC Rcd. at 27,064 ¶ 52.

carriers such as Level 3 to pay for dedicated facilities that LECs such as CenturyTel could conveniently carry at their own expense.[49]

C. The Arbitrators' Characterization of Level 3's ISP-Bound Traffic as "Non-Local," Due to a Lack of Physical Presence or a POI in Every CenturyTel Local Calling Area, Is Inconsistent with Federal and Texas Law

By characterizing Level 3's ISP-bound traffic as "non-local"—based on what the arbitrators saw as Level 3's inability to confirm that its network would have a physical presence or POI in each of CenturyTel's local calling areas—the arbitrators acted contrary to federal law. The arbitrators simply asserted—without any quotation or citation to an FCC or Commission rule or judicial decision interpreting either—that they relied on "recognized standard definition of local traffic."[50] Yet the FCC and the courts have rejected as inconsistent with § 51.703(b) various incumbent LEC arguments that a lack of physical presence or POI within a local calling area renders telecommunications traffic "non-local" or subject to origination charges. The FCC has never relied on a LEC's physical presence in a local calling area as a basis for determining the jurisdictional nature of a particular class of traffic or the regulatory obligations for that class of traffic.

Most recently, the D.C. Circuit found that the location of the POI between a LEC and another telecommunications carrier is irrelevant when assessing payments from one carrier to the other.[51] Consistent with § 51.703(b) and *TSR Wireless*, the court found that if a caller dials a number associated with the same local calling area, the LEC is barred from charging the other

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[49] *Qwest*, 252 F.3d at 467.

[50] Arbitration Award at 22.

[51] *Mountain Communications, Inc. v. FCC*, 355 F.3d 644, 645-49 (D.C. Cir. 2004).

telecommunications carrier for the cost of transporting the call, even if the POI is located outside of the local calling area.[52]

Likewise, the Fourth Circuit recently found in *MCImetro* that an MCImetro-BellSouth interconnection agreement approved by the North Carolina Utilities Commission violated FTA § 251 and § 51.703(b) of the FCC's rules by permitting BellSouth to charge MCImetro for transporting BellSouth-originated traffic to MCImetro's distant point of interconnection, "even though that POI might be hundreds of miles away."[53] The Fourth Circuit therefore concluded that "we are left with an unambiguous rule [*i.e.*, § 51.703(b)], the legality of which is unchallenged, that prohibits the charge that BellSouth seeks to impose."[54]

The Fourth Circuit in *MCImetro* followed the FCC's reasoning in the *Virginia Arbitration Order*, where the FCC rejected the efforts of Verizon to charge competitive LECs for transporting Verizon-originating traffic to a POI outside of Verizon's local calling area.[55] Verizon had attempted to require a competitive LEC to bear Verizon's costs of delivering Verizon-originating traffic between the Verizon-specified financial demarcation point the POI with the competitive LEC.[56] The competitive LECs sought a "bill-and-keep" arrangement, whereby each party would bear the cost of delivering its originating traffic to the POI

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[52] *See id.*

[53] *MCImetro*, 352 F.3d at 877. *See also id.* at 881 (holding that "[b]ecause the interconnection agreement allows BellSouth to charge MCI for traffic originating on the BellSouth network, it violates the 1996 Act as implemented by the FCC's current rules. Accordingly, we reverse the district court's grant of summary judgment in favor of BellSouth on this issue, and direct the district court to enter summary judgment in favor of MCI on this issue.").

[54] *Id.*

[55] *See id.*; *Virginia Arbitration Order*, 17 FCC Rcd. at 27,064-65 ¶¶ 52-53; Level 3 Initial Post-Hearing Brief at 28.

[56] *See Virginia Arbitration Order*, 17 FCC Rcd. at 27,064-65 ¶ 53.

designated by the competitive LEC.[57] The FCC adopted the competitive LEC's approach, finding that it was "more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point."[58] The arbitrators' decision in the present case is therefore wholly inconsistent with the FCC's approach, as the Arbitration Award would require Level 3 to bear CenturyTel's costs of delivering CenturyTel-originating traffic between the CenturyTel-specified financial demarcation point (*i.e.*, the limit of CenturyTel's local calling area) and the POI.

The arbitrators' decisions on Issues 2 and 3 are plainly inconsistent with these FCC and judicial pronouncements, which state clearly that a telecommunications carrier such as Level 3 need not have a physical presence or POI in the local calling area in order to avail themselves of the FCC's interconnection rules, including § 51.703(b). So long as Level 3's ISP-bound traffic does not fall within one of § 51.703(b)'s enumerated exceptions—and the D.C. Circuit's findings in *Bell Atlantic* make plain that it would not—CenturyTel is prohibited from collecting origination charges from Level 3, and the Commission is precluded from adopting an interconnection agreement that would enable such charges.

Indeed, the arbitrators' findings are wholly inconsistent with the findings in Commission Docket 24015, in which the arbitrators found that lack of a physical presence in the local calling area does not necessarily allow for the imposition of origination charges:

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[57] *See id.*

[58] *Id.* at 27,065.

> While the Arbitrators recognize that FX and FX-type services are provisioned differently, due to differences in ILEC and CLEC network architectures and local calling scopes, the Arbitrators are not persuaded that the differences in provisioning methods should mandate different classification and/or compensation.[59]

Finally, these FCC and judicial pronouncements clarify that the arbitrators' request for further Level 3 network design information is irrelevant for purposes of deciding the arbitration issues or choosing contract language.[60] The arbitrators' continuing attempts to determine Level 3's physical presence in CenturyTel's service areas have no bearing on the question of whether to allow or prohibit CenturyTel's origination charges. The FCC's rules simply preclude CenturyTel from assessing origination charges against any ISP-bound traffic, including Level 3's ISP-bound traffic.

III. THE ARBITRATORS ERRED IN REFUSING TO ADOPT THE FCC'S DEFINITION OF "BILL-AND-KEEP"

The arbitrators inexplicably erred in refusing to adopt the FCC's definition of "bill-and-keep," as stated in the *ISP Order on Remand*, for the proposed interconnection agreement

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[59] *Revised Arbitration Award, Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution re Inter-Carrier Compensation for "FX-Type" Traffic Against Southwestern Bell Tel. Co.*, PUC Docket No. 24015, at 30 (filed Aug. 28, 2002). *See also* Level 3 Initial Post-Hearing Brief at 28-37.

[60] *See, e.g.*, Arbitration Award at 14; Decision Matrix, Issue 1, Arbitrators' Position (Arbitration Award at 52). Given CenturyTel's status as a rural telephone company with a valid § 251(f) exemption exempts CenturyTel from the single POI requirement of FTA § 251(c)(2), Level 3 has agreed that it will "pick up" all traffic at a POI within each CenturyTel serving area by building or leasing transport to that point. Tr. 27:10-14, Tr. 147:17-20, Tr. 196:25-197:9, Tr. 295:24-296:2, Tr. 431-23:432:4. But this arrangement in no way alters the nature of Level 3's ISP-bound traffic as telecommunications traffic subject to § 51.703(b) of the FCC's rules.

between Level 3 and CenturyTel.[61] The FCC itself has chosen a "bill-and-keep" regime as the interim compensation regime for ISP-bound traffic—a regime that remains in effect.[62]

First, the arbitrators persist in characterizing Level 3's proposed services as "non-local" ISP-bound traffic that somehow falls outside the FCC's interconnection requirements for telecommunications traffic. As noted in parts I and II above in relation to Issues 1, 2, and 3, the arbitrators have made an impermissible distinction between "local" and "non-local" ISP-bound traffic, asserting that the former category is subject to the same FCC interconnection requires as local telecommunications traffic, whereas the latter category is not. The arbitrators' assertion that the FCC has maintained a concept of "local call" or "local calling area" in its rules regarding origination charges and reciprocal compensation[63] is flatly contradicted by the FCC's revision of the definition of "telecommunications traffic" in § 51.701(b)(1)[64] and by the repeated applications by the FCC and the courts of § 51.703(b) to prohibit origination charges for traffic transported to a POI outside of the local calling area.[65]

Second, the arbitrators mischaracterize the Revised Arbitration Award in Docket No. 24015. In Docket No. 24015, the arbitrators rejected SWBT's argument—which the arbitrators appear to have endorsed in this proceeding[66]—that the *ISP Order on Remand* applies only to ISP-bound traffic that originates and terminates in the same local calling area: "[A]ll ISP-bound traffic, whether provisioned via an FX/FX-type arrangement or not, is subject to the

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[61] *See* Arbitration Award at 37-39.

[62] *See ISP Order on Remand*, 16 FCC Rcd. at 9153 n.6 (defining "bill-and-keep"), 9187 ¶ 78 (establishing interim regime).

[63] Arbitration Award at 38.

[64] *See* parts I.B, II.B above.

[65] *See* part II.C above.

[66] *See* Arbitration Award at 38.

compensation mechanism contained in the FCC's *ISP Order on Remand*."[67] Thus, the arbitrators' conclusions regarding Texas law are likewise erroneous.

IV. THE ARBITRATORS FAILED TO COMPLY WITH THE COMMISSION'S COMPULSORY ARBITRATION RULES

The Arbitration Award also merits reconsideration by the Commission because the arbitrators failed to comply with the Commission's rules for compulsory arbitrations in interconnection disputes.[68] Section 21.95(t)(1) of the Commission's substantive rules requires the arbitrators to issue a Proposal for Award based on the record of the arbitration hearing.[69] Section 21.95(t)(2) grants to the parties 10 days from the issuance of the Proposal for Award to file exceptions to that Proposal for Award, specifying any alleged ambiguities or errors.[70] Only within 10 days of the receipt of any exceptions may the arbitrators then issue an Arbitration Award.[71]

In the instant arbitration, however, the arbitrators simply issued a final Arbitration Award, ignoring the provisions in §§ 21.95(t)(1) and (2) and depriving Level 3 of the opportunity to address the arbitrators' ambiguities and errors in the Arbitration Award.[72] Without reconsideration and modification by the Commission, the Arbitration Award is therefore invalid under the Commission's own rules.

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[67] *Docket 24015 Revised Arbitration Award* at 31.

[68] *See* P.U.C. SUBS. RULE 21.95.

[69] P.U.C. SUBS. RULE 21.95.(t)(1).

[70] P.U.C. SUBS. RULE 21.95(t)(2).

[71] P.U.C. SUBS. RULE 21.95(t)(3).

[72] *See* Arbitration Award at 1. Level 3's motion for reconsideration remains proper, however, as it objects to the arbitrators' Arbitration Award. *See* P.U.C. SUBS. RULES 21.75 (permitting motions for reconsideration of a final Arbitration Awards), 21.95(w) (prohibiting motions for reconsideration of a Proposal for Award).

CONCLUSION

For the reasons stated above, this Commission should reconsider and modify the Arbitration Award to conform the Arbitration Award and interconnection agreement language to the requirements of federal and Texas law.

Respectfully submitted,

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31 March 2004

CERTIFICATE OF SERVICE

I hereby certify that the original and 19 copies of the foregoing *Motion for Reconsideration of Level 3 Communications, LLC in Docket No. 26431*, was filed via hand-delivery on this 31st day of March, 2004, addressed to the following:

Filing Clerk, Central Records
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78701

and I hereby certify that I have this day sent this document, via regular U.S. Mail, postage pre-paid on this 31st day of March, 2004, and/or via hand-delivery on this 31st day of March, 2004, addressed to the following:

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Jennifer Powers by aw

Jennifer Powers

ATTACHMENT 4

ASAP Exh. 35

CenturyTel Proposed Reverse Billing Rate

Access rates that would apply to Memorandum - Wide Area Calling - As proposed 9/2001

Orig. - CCL	$ .01
Local Switching	$ .0096
Local Transport	
$ .00032 per min per mile	
Local Transport Term	$ .008055

ASAP 45