Attachment A

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ATTORNEYS AT LAW

February 3, 2005

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 99-68, 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

Dear Ms. Dortch:

On behalf of Level 3 Communications LLC, I am writing to respond to several recent *ex parte* filings regarding the use of "virtual NXX" arrangements. As the Commission is aware, a "virtual NXX arrangement" provides an end user customer with a local telephone number for an exchange in which the customer does not have a physical presence. Some parties, notably Verizon[1] and BellSouth,[2] ask the Commission to declare that virtual NXX traffic is interexchange traffic subject to access charges. But the ILECs' arguments in support of their request merely perpetuate the same myths and misconceptions that underlie their views of intercarrier compensation reform generally. In particular, the ILECs' arguments rely on an improperly circumscribed construction of Section 251(b)(5) of the Telecommunications Act of 1996 (the "1996 Act").

This *ex parte* therefore begins by summarizing the reasons why Section 251(b)(5), properly understood, applies to all traffic that does not fall under Section 251(g). Against this backdrop, it is clear that the ILECs' specific arguments regarding virtual NXX are incorrect. Virtual NXX traffic, like all other traffic that does not fall under Section 251(g), is subject to the reciprocal compensation provisions of Section 251(b)(5).

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[1] *See* Letter from Donna Epps, Verizon, to Marlene H. Dortch, Federal Communications Commission, CC Docket Nos. 99-68 and 01-92 (filed Dec. 6, 2004) ("*Verizon Dec. 6 ex parte*"); *see also* Letter from Donna Epps, Verizon, to Marlene H. Dortch, Federal Communications Commission, CC Docket Nos. 99-68 and 01-92 (filed Jan. 7, 2005) ("*Verizon Jan. 7 ex parte*").

[2] *See* Letter from Glenn T. Reynolds, BellSouth, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 01-92 (filed Jan. 12, 2005) ("*BellSouth ex parte*").

I. Section 251(b)(5) Applies to All Traffic That Does Not Fall under Section 251(g).

As a threshold matter, it is important to recognize that the vast majority of virtual NXX traffic is bound for an ISP. Thus, any analysis of the appropriate compensation due for the transport and termination of ISP-bound traffic must begin with an analysis of the compensation due for the transport and termination of ISP-bound traffic.

Verizon[3] and BellSouth[4] both contend that the Commission's *ISP Remand Order*[5] only applies to traffic delivered to ISPs within the same local calling area as the called party, which would preclude its application to virtual NXX traffic. However, as Level 3 previously explained to the Commission, this revisionist assertion is not only flatly wrong, it is contradicted by the express terms of the *ISP Remand Order* itself.[6] In the *ISP Remand Order,* the Commission reconsidered whether Section 251(b)(5), by its terms, applies to ISP-bound communications. The Commission repudiated its earlier ruling from the *Local Competition Order* that the provision is limited to the termination of "local" telecommunications, finding that it had "*erred* in focusing on the nature of the service (*i.e.,* local or long distance)...for purposes of interpreting the relevant scope of section 251(b)(5)," rather than looking to the language of the statute itself.[7] Specifically, the Commission found that, "[o]n its face," Section 251(b)(5) requires "local exchange carriers...to establish reciprocal compensation arrangements for the transport and termination of *all* 'telecommunications' they exchange with other telecommunications carriers, without exception."[8] The Commission emphasized that, "[u]nless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic – *i.e.,* whenever a local exchange carrier exchanges telecommunications traffic with another carrier.[9]

Of course, the Commission went on to find that Section 251(b)(5) is "subject to further limitation" – specifically, that certain types of traffic enumerated in Section 251(g) are "carve[d] out" of Section 251(b)(5). That conclusion did not, however, affect the Commission's determination as to the scope of Section 251(b)(5) absent the "limitation" that the Commission believed to be imposed by Section 251(g). Indeed, the D.C. Circuit's decision in *WorldCom v. FCC* confirms that Section

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[3] *See Verizon Jan. 7 ex parte* at 1, 7; *Verizon Dec. 16 ex parte* at 8.

[4] *BellSouth ex parte* at 8.

[5] *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 Remand Order*").

[6] *See See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-96 and 99-68, Sections 251(b)(5) and Section 252(d)(2) Govern ISP-Bound Traffic and Are Not Limited to "Local" Termination (*ex parte* submission of Level 3 Communications, LLC) (filed June 23, 2004).

[7] *ISP Remand Order,* 16 FCC Rcd at 9164 (¶ 26) (emphasis added).

[8] *Id.* at 9165-66 (¶ 31) (emphasis in original).

[9] *Id.* at 9166 (¶ 32)

251(b)(5) means what it says.[10] In *WorldCom*, the court found that Section 251(g) permits only "continued enforcement" of pre-1996 Act requirements, rather than conferring independent authority on the Commission to adopt new intercarrier compensation rules inconsistent with Section 251(b)(5). As a result, the D.C. Circuit did not cast any doubt on the Commission's express finding that Section 251(b)(5) applies, "on its face," to *all* telecommunications traffic, whether local or otherwise.[11]

In short, the *ISP Remand Order* reconciled Sections 251(b)(5) and 251(g): traffic that does *not* fall within Section 251(g) is governed by Section 251(b)(5).[12] And *WorldCom* clarified that ISP-bound traffic does not fall within Section 251(g) because there are no pre-1996 Act rules that Section 251(g) could possibly preserve. The same analysis is equally applicable to virtual NXX traffic bound for an ISP, for which there was also no pre-1996 Act rule governing the exchange of traffic between LECs. Accordingly, the ILECs' claim that ISP-bound traffic which does not originate and terminate within the same local calling area falls outside the scope of Section 251(b)(5) is inconsistent with both the *ISP Remand Order* and judicial interpretations of the 1996 Act.[13]

Further, the terms "originate" and "terminate" in Sections 251(b)(5) and 252(d)(2) do not exclude traffic delivered to non-local end-points. Verizon and BellSouth would have the Commission add a new limitation to Sections 251 and 252: "*within the same local calling area.*" By their plain terms, however, Sections 251 and 252 contain no such limitation on the geographic scope of calls. They refer simply to the "transport and termination of telecommunications" and the "transport and termination...of calls."[14] As AT&T explained to the Commission, Congress chose the broad term "telecommunications" and not the much narrower term "telephone exchange service" to describe the

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[10] 288 F.3d 429 (D.C. Cir. 2002).

[11] Verizon incorrectly asserts that the D.C. Circuit maintained that the *ISP Remand Order* was limited to calls to ISPs within the caller's local calling area. *See Verizon Dec. 16 ex parte* at 8; *Verizon Jan. 7 ex parte* at 2, 8. The language cited by Verizon was simply dicta in the court's decision, and has no legal effect.

[12] *See ISP Remand Order*, 16 FCC Rcd at 9169-70 (¶ 39).

[13] The changes adopted by the Commission in the *ISP Remand Order* further demonstrate that the *Order* rejected the Commission's earlier view that Section 251(b)(5) applies only to "local" termination of telecommunications. In the *ISP Remand Order*, the Commission amended its reciprocal compensation rules (47 C.F.R. Part 51, Subpart H) in two key respects. First, it eliminated the word "local" in each place that it appeared. Second, the Commission expanded the scope of "telecommunications traffic" under the reciprocal compensation rules to cover *all* "telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider" except for traffic "that is interstate exchange access, information access, or exchange services for such access" – the specific categories of traffic enumerated in Section 251(g).

[14] 47 U.S.C. §§ 251(b)(5), 252(d)(2)(A)(i).

scope of the LECs' termination obligations under Section 251(b)(5).[15] And nothing in the *ISP Remand Order* or the Commission's rules limit reciprocal compensation payments to traffic exchanged within the same calling area. Indeed, while Verizon relies on background statements in the *ISP Remand Order* that discuss ISPs "typically" establishing points of presence in the same local calling area, the Commission's decision was in no way dependent upon the geographic location of the ISP.[16] To the contrary, the Commission concluded that ISP-bound traffic was interstate based on its end-to-end analysis of the entire media stream – all the way to the server on which the actual content was located – and then asserted its Section 201 authority to establish rates for ISP-bound traffic without limitation.[17]

Finally, the D.C. Circuit's decision in *Bell Atlantic v. FCC* rejected the end-to-end analysis of ISP-bound traffic[18] upon which BellSouth relies to argue that virtual NXX calls should be subject to access charges and not reciprocal compensation.[19] As the D.C. Circuit explained in *Bell Atlantic,* the end-to-end analysis is used to determine the *jurisdiction* of a call, not the compensation that is due. Whether a call is interstate or intrastate has no bearing on whether a call is "exchange access," "information access," or "exchange services for such access." Thus, when the FCC relied on the "end-to-end" analysis to determine that ISP-bound traffic is not "local," the D.C. Circuit reversed and remanded the decision. And on remand, the FCC did not explain how the end-to-end analysis was relevant to determining the appropriate compensation model; instead, as discussed above, it relied on Section 251(g) to carve out certain traffic from the reciprocal compensation provisions of Section 251(b)(5). As a result, Verizon and BellSouth cannot rely on the end-to-end analysis to determine which form of intercarrier compensation (access or non-access) should apply to virtual NXX traffic bound for an ISP.

II. The Commission Should Reject the ILECs' Scattershot Array of Additional Arguments for Excluding Virtual NXX Traffic from the Scope of Section 251(b)(5).

BellSouth and Verizon advance a whole collection of novel arguments for excluding virtual NXX traffic from the scope of Section 251(b)(5). These arguments, however, are incorrect.

Contrary to the ILECs' assertions, virtual NXX service is not exchange access.[20] The 1996 Act defines exchange access as "the offering of access to telephone exchange services or facilities for

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[15] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Section 251(b)(5) Applies to ISP-Bound Traffic, at 2 (*ex parte* submission of AT&T Corp.) (filed May 28, 2004).

[16] *See Verizon Dec.16 ex parte* at 8.

[17] *See ISP Remand Order,* 16 FCC Rcd at 9186-9193 (¶¶ 77-88).

[18] 206 F.3d 1 (D.C. Cir. 2000).

[19] *See BellSouth ex parte* at 8.

[20] *See Verizon Jan. 7 ex parte* at 4-6; *BellSouth ex parte* at 10-11.

purposes of origination and termination of telephone toll services."[21] "Telephone toll service" is defined as "telephone service between stations in different areas for which there is a separate charge not included in contracts with subscribers for exchange service."[22] Verizon and BellSouth, however, point to no "separate charge" levied by CLECs that offer virtual NXX service. The statutory definition plainly contemplates a traditional interexchange call, in which an interexchange carrier charges the end user for interexchange transport separately from that end user's local service. CLECs offering virtual NXX services, however, offer these services as part of their tariffed local service offerings, such as Direct Inward Dialing service. Further, when an end user calls a virtual NXX number, that end user is not billed for making a toll call, and neither is the called party. As a result, there is no "separate charge not included in contracts with subscribers for exchange access" and calls to virtual NXX numbers cannot satisfy the definition of exchange access.

Virtual NXX arrangements for ISP-bound traffic also do not result in toll bypass, as ILECs allege.[23] Very few – if any – customers of a dial-up ISP would intentionally place a toll call to reach that ISP. Thus, in the absence of a virtual NXX arrangement, an ISP will undertake one of two courses of action.

First, the ISP could buy private lines and interconnect those private lines to PRIs to create a point of presence located within each ILEC-defined local calling area, even if the servers remained centralized. But forcing an ISP to purchase transport links simply to mimic the ILEC's historical network architecture needlessly introduces inefficiency that raises the ISP's costs (and resulting rates) to provide dial-up Internet access to its end user customers. This result would be particularly silly if the CLEC provided PRIs. Under such an arrangement, the ILEC would carry the traffic to its Point of Interconnection ("POI") with the CLEC, the CLEC would carry the traffic back to the local calling area to reach the private line, and the traffic would then be routed to the ISP server. Virtual NXX arrangements, by contrast, eliminate the CLEC's duplicate transport back to the local calling area, while at the same time imposing no greater obligation on the ILEC – *i.e.*, the ILEC must carry traffic to the same POI regardless of where the traffic is routed after it reaches the POI.

Second, in many rural areas, it would not be cost effective for the ISP to purchase transport links in each ILEC exchange, so, in the absence of VNXX, the ISP will not maintain a local presence. Indeed, low-price Internet services provide little margin to absorb the increased cost of placing servers in rural areas. As a result, ILEC attempts to apply access charges to virtual NXX arrangements will limit the availability of affordable Internet access for end user customers and reduce Internet usage in rural communities.[24]

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[21] 47 U.S.C. § 153(16).

[22] 47 U.S.C. § 153(48).

[23] *See BellSouth ex parte* at 8-10, *Verizon Jan. 7 ex parte* at 6, *Verizon Dec. 16 ex parte* at 2-3.

[24] *See* Letter from John T. Nakahata to Marlene H. Dortch, CC Docket Nos. 99-68 and 01-92 (filed Nov. 23, 2004).

Significantly, virtual NXX arrangements do not generate additional costs for ILECs beyond those associated with interconnection for any other ISP-bound traffic.[25] All traffic generated by ILEC end users and CLEC end users is exchanged between the ILEC network and the CLEC network at a POI within a LATA. Each LEC has an obligation to bring its traffic to the POI, regardless of where it originated within the LATA. From that point, the CLEC is responsible for all the transport associated with delivering the call to the called party. Thus, the ILEC's transport cost is solely determined by the location of the POI at which the ILEC hands off the traffic to the CLEC, and not at all by whether the ISP server is located within the ILEC's local calling area or in a different local calling area or state. Importantly, CLECs such as Level 3 are *not* seeking any *additional* compensation from the ILEC for transport and termination when the ISP's server is not located in the calling party's local calling area. Thus, to the extent that ILEC's have complaints about transport costs, that is an issue related to the single POI per LATA rule, not the intercarrier compensation for ISP-bound virtual NXX traffic.

Nor do virtual NXX arrangements increase transport costs for rural ILECs.[26] As Level 3 previously explained to the Commission, in areas subject to the rural exemption in Section 251(f)(1), CLECs serving ISPs interconnect with the rural ILEC within the rural ILEC's local calling areas, usually at the rural ILEC's end office.[27] In this situation, the ILEC does not incur any additional interoffice transport costs if the ISP's server is located outside the rural ILEC's local calling area. In areas where the Section 251(f)(1) exemption has been lifted, it has generally been Level 3's experience that it still ends up transporting traffic from the rural ILEC service territory.[28]

III. Virtual NXX Arrangements Promote Affordable Internet Access.

As Level 3 previously explained to the Commission, virtual NXX arrangements create economies of scale and scope for both CLECs and ISPs.[29] This, in turn, reduces the cost of, and promotes competition for, dial-up Internet access in all areas of the country, especially – but not only – in rural areas. First, as discussed above, virtual NXX arrangements allow ISPs to serve an entire LATA from a single server (or even multiple LATAs or multiple states), reducing the costs of serving rural areas by allowing those areas to share economies of scale and scope. Second, virtual NXX arrangements enable CLECs to consolidate switching into regional switching centers that allow CLECs to take advantage of the decreased cost of processing calls. This is vastly different from ILEC networks,

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[25] *See Verizon Dec. 16 ex parte* at 2, Attachment A at 1-2.

[26] *See id.* at 4-5.

[27] *See* Letter from John T. Nakahata to Marlene H. Dortch, CC Docket Nos. 99-68 and 01-92 (filed Nov. 23, 2004).

[28] Likewise, virtual NXX traffic does not "burden" ILEC shared transport facilities. A common feature of interconnection agreements is the requirement that, above a specified traffic threshold (often two DS1s), the CLEC will groom traffic for direct transport to the ILEC end office. These provisions limit any "burden" on ILEC shared transport by excluding higher call volumes.

[29] *See* Letter from John T. Nakahata to Marlene H. Dortch, CC Docket Nos. 99-68 and 01-92 (filed Nov. 23, 2004).

which have multiple switches in small rate centers because they were largely constructed in a monopoly environment that guaranteed a profit on investment. Efficient distribution enables more consumers to benefit from low-priced dial-up Internet access, expanding the availability and usefulness for those Americans who are not ready to make the jump to broadband or for whom broadband is not yet affordable.

ILEC requests to apply access charges to ISP-bound virtual NXX traffic will force ISPs to divide their operations according to the antiquated system of geographic exchange boundaries. Indeed, if ILECs had their way, the only way to operate a dial-up Internet access service would be to forego regional servers, and locate a server in every ILEC calling area. This type of backward-looking industrial policy would particularly harm consumers in the rural portions of a LATA by depriving those consumers of low-priced dial-up Internet access offerings now available in the urban parts of a LATA.

Accordingly, Level 3 urges the Commission to ignore ILEC pleas to treat ISP-bound virtual NXX traffic differently than all other ISP-bound traffic. Instead, the Commission should declare that ISP-bound virtual NXX traffic, like all other ISP-bound traffic, is subject to the reciprocal compensation provisions of Section 251(b)(5).

Sincerely,

/s/
John T. Nakahata
Counsel for Level 3 Communications, LLC

Enclosure

Myths and Facts About Virtual NXX Traffic

Myth: **Section 251(b)(5) of the 1996 Act applies only to "local" traffic that originates and terminates within the same local calling area.**

Fact: **Section 251(b)(5) applies to all traffic that does not fall under Section 251(g).**

Before 2001, the FCC used the term "local traffic" to identify calls that were subject to reciprocal compensation under Section 251(b)(5). However, the FCC removed the word "local" from its reciprocal compensation rules in the *ISP Remand Order*. The FCC redrafted the rules specifically to make clear that Section 251(b)(5) applies to *all* telecommunications traffic that is not subject to Section 251(g).

Further, the D.C. Circuit's decision in *WorldCom v. FCC,* 288 F.3d 429 (D.C. Cir. 2002), confirms that Section 251(b)(5) means what it says. In *WorldCom*, the court found that Section 251(g) permits only "continued enforcement" of pre-1996 Act requirements, rather than conferring independent authority on the Commission to adopt new intercarrier compensation rules inconsistent with Section 251(b)(5). *WorldCom* therefore clarified that virtual NXX traffic does not fall within Section 251(g), because there were no relevant pre-1996 Act rules applicable to such traffic that Section 251(g) could possibly preserve. Consequently, virtual NXX arrangements are subject to Section 251(b)(5) compensation arrangements, including the *ISP Remand Order*, pending the FCC's remand proceedings.

Myth: **The Commission determines the appropriate compensation due for any given call based on the end points of the communication.**

Fact: **The end-to-end analysis of traffic is limited to determining jurisdiction, not compensation**.

The Commission has traditionally used the end-to-end analysis of a communication to determine *jurisdiction* over a call, *i.e.*, whether it is interstate or intrastate. However, whether a call is interstate or intrastate has no bearing on the whether the call is "exchange access," "information access," or "exchange access for such services" – the categories of traffic subject to access charges under Section 251(g). Indeed, when the FCC relied on the traditional end-to-end jurisdictional analysis to conclude that ISP-bound traffic is not "local," the D.C. Circuit reversed and remanded that decision on the ground that the FCC had failed to explain why the end-to-end jurisdictional analysis was relevant to determining which intercarrier compensation mechanism (access or non-access) would apply. *See Bell Atlantic v. FCC,* 206 F.3d 1 (D.C. Cir. 2000). The Commission cannot, therefore, rely on the end-to-end analysis to determine what form of intercarrier compensation should apply to virtual NXX traffic bound for an ISP.

Myth: **A virtual NXX arrangement is identical to exchange access, so access charges are due.**

Fact: **Virtual NXX arrangements do not meet the statutory definition of exchange access.**

The 1996 Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for purposes of origination or termination of telephone toll services." 47 U.S.C. §153(16). "Telephone toll service" is "telephone service between stations in different exchange areas for which there is a separate charge not included in contracts with subscribers for exchange service." 47 U.S.C. § 153(48). The statutory definition plainly contemplates a traditional interexchange call, in which an interexchange carrier charges the end user for interexchange transport separately from that end user's local service. CLECs offering virtual NXX services, however, offer these services as part of their tariffed local service offerings, such as Direct Inward Dialing service. Further, when an end user calls a virtual NXX number, neither the calling party nor the called end user is billed for making a toll call. Therefore, there is no "separate charge not included in contracts with subscribers for exchange access" so calls to virtual NXX numbers cannot satisfy the definition of exchange access.

Myth: **Virtual NXX arrangements result in toll bypass.**

Fact: **ISP-bound traffic would not be rated as toll traffic in the absence of virtual NXX arrangements.**

Virtual NXX arrangements allow consumers to use locally dialed numbers to reach dial-up Internet access providers. In the absence of a virtual NXX arrangement, an ISP will be forced to place a point of presence in every ILEC local calling area. This is because the vast majority of customers will not incur a toll charge to connect to an ISP. However, because low-price Internet access services provide little margin to absorb the increased cost of placing a point of presence or – under some ILEC theories – servers in rural local calling areas, ISPs are unlikely to extend their offerings to rural communities. The net effect is that rural communities will face higher prices and reduced competition for dial-up Internet access if access charges are imposed on virtual NXX arrangements.

Myth: **Virtual NXX arrangements impose increased transport costs on ILECs.**

Fact: **Virtual NXX arrangements do not generate additional cost for ILECs beyond that associated with interconnection for local calls.**

The location of an ISP's server – whether it is located in the ILEC's local calling area, a different LATA, or even a different state – has no bearing on the ILEC's transport costs. The ILEC's transport cost is entirely determined by the location of the Point of Interconnection ("POI") at which the ILEC hands local traffic off

to the CLEC, and not at all by whether the ISP's server is physically located within the local calling area or remote from it. In short, transport arrangements on the originating LEC's side of the call are identical regardless of the terminating LEC's customer. It simply makes no difference whatsoever where the terminating LEC's customer is located behind the LEC's switch.

Myth: **Virtual NXX arrangements are the equivalent of 800 and toll-free services.**

Fact: **Virtual NXX arrangements are dialed, routed, and billed like other *local* calls.**

Level 3's virtual NXX arrangements differ greatly from 800 and "toll-free" services, which are dialed as other toll calls are dialed. Toll-free service may originate in thousands of exchanges rather than just one exchange. Toll-free service is routed to an access tandem for additional routing and billing instructions. Toll-free service requires a database dip and number conversion. And extensive call detail is available for toll-free service. All of these elements of a toll-free call contribute to the cost of the call. By contrast, virtual NXX arrangements lack each and all of these characteristics. Instead, virtual NXX and other FX-type services are dialed, routed, and billed like other *local* calls.

Myth: **CLEC virtual NXX arrangements have no economic or technical value, and are simply uneconomic arbitrage.**

Fact: **CLEC virtual NXX arrangements reflect the merging technological environment in which services are geographically independent of end user location, and IP technologies enable greater economies of scale and scope.**

As Sanford Bernstein recently recognized in a report on VoIP, softswitch technology is far less capital intensive than traditional switching, and is relatively location insensitive. Like many other advanced networks, Level 3 uses its softswitch technology to serve regions of the country, not just individual ILEC-defined central office boundaries. Concentrating the switching and cross-connect functions into regional centers permits Level 3 and its customers to take advantage of the Moore's Law-driven increases in processing capacity and decreases in the price of computing power. In addition, as Bernstein observed generally with respect to VoIP, "multiple markets can be served by a single softswitch installation, installed and serviced by one team of trained technicians," creating additional operational cost savings as well.

CLEC softswitch platforms allow providers of IP-enabled services and applications to offer those services from their own regional or national locations, using the power of the Internet and IP technology. In Level 3's experience, ISPs provide their services from the locations that they select, and are frequently selecting locations that allow the ISPs also to take advantage of the dramatic

improvements in and economies of scale and scope with respect to processing power and storage.

CLECs invest in and provide all of the substantial facilities necessary to carry traffic from (and in the case of VoIP, to) its point (or points) of interconnection with the ILEC to the points designated by their ISP customers. In some cases, that may be a short distance, while in other cases, that may be a longer distance and may be provided to the ISP in conjunction with information services, such as protocol conversions and Internet backbone services. Verizon's repeated characterizations of ISPs as always, or substantially always, collocated with CLECs are misleading in the extreme.

Attachment B

BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF LEVEL 3 COMMUNICATIONS, LLC'S PETITION FOR ARBITRATION PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, AND THE APPLICABLE STATE LAWS FOR RATES, TERMS, AND CONDITIONS OF INTERCONNECTION WITH SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC ARKANSAS

DOCKET NO. 04-099-U

PUBLIC HEARING HELD ON DECEMBER 1, 2004

BEFORE ARTHUR H. STUENKEL, PRESIDING OFFICER

APPEARANCES:

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COPY

TAKEN BEFORE Dennis L. Pierce, Certified Court Reporter, Certificate No. 638, Bushman Court Reporting, 620 West Third Street, Suite 201, Little Rock, Arkansas 72201, on December 1, 2004, at the Arkansas Public Service Commission, 1000 Center Street, Little Rock, Arkansas, commencing at 10:03 a.m.

I N D E X

FCC, --
A. Yes.
Q. -- right?
A. Yes.
Q. Do you recognize Exhibit 5 as that forbearance petition?
A. Yes.
Q. And do you recognize Exhibit 6 as Comments of SBC Communications which you've seen before in an FCC inquiry into IP-enabled services?
A. I've seen them in the IP-Enabled Services docket and several arbitrations.
Q. And the same for Exhibit 7?
A. Yes.
MR. FRIEDMAN: We at this time then move into the record Exhibits 5, 6 and 7, Your Honor.
MR. NORTON: No objection.
MR. STUENKEL: They're admitted.
BY MR. FRIEDMAN:
Q. Mr. Hunt, I think that you said during your direct examination, in connection with the corrections to your testimony, that -- that SBC had offered -- had made an offer, as contemplated by the FCC, to exchange all traffic, both ISP-bound traffic and 251(b)(5) traffic at the FCC rate of .0007. Did I hear you right?

A. Well, I didn't use those words. What I said was -- we had proposed a .0005 rate that existed.
Q. Right.
A. SBC's proposal had been .0007, which is the rate in fact that resulted in the ISP --
Q. And you now understand that SBC is entitled to insist on that rate for ISP-bound traffic and 251(b)(5) traffic?
A. Yes. If SBC elects -- wants the lower rate for ISP-bound traffic it has to offer the same rate for all other traffic, all other local traffic.
Q. And you understand that SBC has in fact confirmed that, is that correct?
A. I do believe that's correct, yes.
Q. Has Level 3 accepted or declined Level 3's -- I'm sorry -- SBC's offer to exchange all traffic at the .0007 rate or has it not yet responded?
A. Well, I think SBC hasn't accepted -- we have a disagreement on that because we believe ISP services traffic falls under 251(b)(5), the IP to PSTN traffic. And that's one of the things that we are in disagreement. If I understand your question correctly.
Q. Let's back up just a step.
A. Okay.
Q. As you understand it, SBC is entitled to insist on

the rate of .0007 for ISP-bound traffic so long as SBC indicates a willingness to exchange all traffic that would be otherwise subject to 251(b)(5) at that same .0007 rate?
A. I guess the part, Mr. Friedman, where I get hung up on is the 251(b)(5), because I'm trying to think back to the mirroring rule of the FCC's order. They talk about all local traffic, they talk about wireless traffic, any local traffic, so if we agree on the definition of all that falls under 251(b)(5), then yes.
Q. As you understand it, has SBC made the offer that the FCC contemplates SBC making?
A. Yes.
Q. Has Level 3 accepted that offer?
A. Well, we're now saying we agree to that -- to that rate.
Q. Okay.
A. I think the disagreement has been which traffic it applies to.
Q. Okay. Do you remember that immediately before your direct examination Mr. Norton pointed out that Section 251(a)(1) of the '96 Act requires direct and indirect interconnection?
A. That's correct.
Q. Now, you were familiar with 251(a)(1) before you heard him mention that, right?

A. Yes.
Q. And it was already your understanding that 251(a)(1) requires indirect interconnection?
A. Yes. The act -- The Act says what it says.
Q. And in your view that somehow supports Level 3's contention that it is entitled to transiting from SBC under the '96 Act?
A. We believe it's one of the -- yes.
Q. And you still believe that even though you see that under Section 251(c)(1), which identifies the duty that an incumbent local exchange carrier has an obligation to negotiate, the duties imposed by 251(a) are not included?
A. Do you have a copy of the Act?
Your question was whether reciprocal compensation was included in 251(c)?
Q. No.
A. No. Okay.
Q. Do you still believe that 251(a)(1) supports your position on transiting even after seeing, as you are now seeing, that the duties imposed by Section 251(a) are not among the duties that are subject to negotiation under 251(c)?
A. There's nothing -- nothing's changed from my original testimony.
Q. Okay. That's all I have.

SAN FRANCISCO, CALIFORNIA, OCTOBER 25, 2004 - 9:03 A.M.

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ADMINISTRATIVE LAW JUDGE YACKNIN: We will be on the record.

This is the time and place for the hearing in A.04-06-004, the petition of Level 3 Communications for arbitration pursuant to the Telecommunications Act of 1996 for conditions of interconnection with Pacific Bell Telephone Company doing business as SBC California.

I'm Hallie Yacknin the Administrative Law Judge in this proceeding, I'll be arbitrating the matter. Commissioner Brown is the assigned Commissioner.

I have some preliminary matters just to address some housekeeping first. Number one, we will be running from 9:00 until 3:30, that is my expectation for this week. We will be taking a one-hour break for lunch and having a morning and afternoon recess.

Also, just for my housekeeping, I want to dispose of pending motions just for the record. For the record, we have a motion dated August 18th, 2004, by Level 3 and Pacific Bell for acceptance of the joint matrix of disputed issues, that motion is accepted, is granted.

We also have a September 2nd, 2004, motion by Level 3 Communications to substitute testimony for testimony filed with the petition for arbitration, that motion is granted.

interconnect -- by an interexchange carrier -- and we respectfully insist that it doesn't -- but even if it had that power, it still couldn't change terms and conditions found in a federal tariff. It simply lacks the jurisdiction to do that wholly apart from the 1996 Act.

Given the time, I think we're going to deal on cross-examination briefly on UNEs, and I'll pass the baton on intercarrier compensation to my partner, Mr. Binnig.

STATEMENT OF MR. BINNIG

MR. BINNIG: Good morning, your Honor.

I'm Chris Binnig on behalf SBC California.

I am going to briefly address the most significant contract dispute relating to intercarrier compensation which is compensation for traffic -- parties' exchange of communications traffic that uses a transmission technology known as Internet Protocol, or IP.

IP is a digital packetized transmission technology that can support a number of higher-level services, higher-level-communications applications like Voice over Internet Protocol.

But before I get into some of the facts relating to IP transmission, I'd like to quickly address the question Why are we here?

It's a simple question, but I think it's an important question, because this is an arbitration

proceeding under Section 252 of the Federal Telecommunications Act of 1996.

And as an arbitration proceeding under TA96, that shapes what this proceeding is about and what this Commission's role is in this proceeding.

This proceeding is not about changing the law, it's not about creating new law, it's not about implementing new regulatory policies on issues of national concern or on policy issues that the FCC already has before it and is considering in pending dockets; rather, the purpose of this proceeding is to resolve open issues between the parties relating to the implementation through a contract of the rights and obligations specified in Sections 251(b) and 251(c) of the 1996 Act, to resolve those open contractual issues in accordance with existing federal law.

Now, if I heard Mr. Thayer correctly, Level 3 purports to have the same objective, so I think what the issue boils down to is what does the existing law require.

The intercarrier compensation issues in this case concerning the parties' change of traffic that uses IP transmission technology are ultimately legal issues that involve the application of the existing law to the facts. And to better understand these legal issues, it helps to know a little bit about IP technology, how it differs from circuit-switch technology, and the three principal types of IP traffic.

Briefly, IP technology is a computer-driven technology that organizes and sends communications in digital packets.

The packets of communication each contain headers that provide addressing, routing, and sequencing information, and those packets are routed, collected, and organized by one or more computers that are referred to as packet switches, routers, or packetized soft switches.

IP transmission is a form of transmission used for delivering communications to and from the Internet once those communications are no longer on the public switch telecommunications network.

The public switch telecommunications network, or PSTN, is the network made up of all the local telephone networks in this country that are used to connect people's landline or wireline phones to each other and to other networks.

The PSTN generally doesn't use IP transmission technology; it generally uses a switching and routing technology that's often referred to as circuit switching.

Now, circuit switches are computers, too, these days, but instead using IP transmission technology, they use a different kind of transmission technology and transmission protocol called TDM, or time division multiplexing.

In order for traffic to be exchanged between

the TDM-based network and IP-based network, it has to be converted from one transmission protocol into the other.

And this is also true in the wireless realm.

Wireless traffic these days, with the wireless phone, come in a variety of transmission protocols. Some are TDM-based, but many are based on a different protocol called CDM or CDMA, code division multiplexing, or in the protocol called GSM.

The wireless communications, in order to talk to a PSTN that's TDM-based, also have to be converted from a protocol, a CDM or GSM protocol to TDM.

Now, there are three basic types of IP-based traffic:

First there is what SBC refers to as IP-to-IP traffic, and that is where the communication is sent by a user in IP format and it remains in that format all the way to the destination of the call; and it's received by the destination in IP format as well.

And an example I could give of IP-to-IP traffic would be where two people with cable-modem access to the Internet do instant messaging through their cable modem.

That traffic never touches the PSTN. And I think all the parties here agree, because it doesn't involve the PSTN, there's no intercarrier-compensation issue in this case.

The second form of traffic is often referred to as IP-in-the-middle traffic, or PSTN-to-IP-to-PSTN

traffic. And an example would be where a person, let's say, in Reno, Nevada, uses his landline phone to call a person in San Francisco. The call originates on the PSTN in Reno, terminates on the PSTN in San Francisco, but in between the two local exchanges it is converted back into -- it is converted into and then back from an IP transmission format.

So between the two PSTNs it is transmitted in an IP format.

This is the type of traffic that was subject to AT&T's petition for declaratory ruling at the FCC, which the FCC earlier, in April this year, confirmed was traffic that was subject to access charges because that traffic made use of and imposed costs on the PSTN just like interexchange traffic that was transmitted using TDM technology.]

Now, I believe based on some additional proposed contract language that Level 3 offered in Illinois and I assume will be offering here in California as well, I don't think there's a reciprocal compensation issue with respect to this type of IP traffic here. I think both parties agree that this type of traffic is subject to access charges.

This brings us to the third principal type of IP traffic which is known as IP to PSTN; or conversely, PSTN to IP traffic. This is traffic that either originates on the PSTN, it's converted to IP format after it leaves the PSTN and is delivered to the call

destination in IP format; or conversely, traffic that originates in IP format, is sent out over the Internet that then is converted to TDM format and terminated to the call destination on the PSTN in TDM format.

An example would be someone with a cable modem using an Internet phone device or Internet phone software to make and receive phone calls through his or her computer to the landline phones of his or her friends and relatives.

IP PSTN traffic makes use of the PSTN on the PSTN side of the call, either the originating side or the terminating side, just like a traditional circuit switched TDM-based interexchange phone call.

Because of this fact, SBC has proposed contract language that applies to current law and regulatory rules, which is that interexchange traffic that originates or terminates on the PSTN is subject to access charges unless and until the FCC changes those current rules. That is all SBC seeks here.

And, by the way, SBC is not suggesting that IP PSTN services be made subject to traditional common carrier regulation. We're not suggesting that such services be subject to any tariffing requirements or be subject to any pricing regulation. Instead, SBC's position is that when it comes to access charges, IP to PSTN traffic should be treated in the same manner as any other interexchange traffic.

Again, a comparable example would be wireless

traffic that originates or terminates on the PSTN. Wireless services are essentially unregulated; yet, when they originate or terminate on the PSTN, they're still subject to access charges if they are interexchange calls.

Now, Level 3 asserts that SBC is seeking to change existing access charge rules and that Level 3's proposed language merely preserves those rules.

We believe that Level 3 is wrong as a matter of law. And the fact that Level 3 has pending right now before the FCC a petition asking the FCC to forbear from applying its existing access charge rules to IP PSTN traffic speak volumes about what those current rules require. In fact, Level 3's proposal that IP PSTN should be subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act represents a radical departure from existing law. That is because Section 251(b)(5) does not apply to interstate information services traffic, and that is precisely what Level 3 says PSTN to IP traffic is. They say it's interstate information services traffic.

Accordingly, if the Commission desires to adopt contract language on this issue that complies with existing law, it should reject Level 3's proposed language and adopt SBC's.

Thank you, your Honor.

ALJ YACKNIN: Thank you.

I'm going to take the liberty of asking a

ALJ YACKNIN: Again, because it's been filed, it's, to that effect, in the record. I suppose it could be subject to motions to strike, but we'll go ahead and proceed with cross.

MR. LEVIN: Thank you.

MR. LIVINGSTON: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. LIVINGSTON:

Q Good morning, Mr. Hunt.

A Good morning.

Q My name is Ted Livingston. We weren't formally introduced. I'm one of the lawyers representing SBC California in this matter.

I'm working off a draft that might predate your errata of last Thursday. So, I have a copy here --

A Okay.

Q -- so my page or line references might be a little off.

A Okay.

Q So bear with me on that.

On page 31 of your testimony --

A Yes.

Q -- at line 18, you state that Level 3 and SBC agree that VoIP services are information services; is that right?

A That's correct.

Q And that's your view?

A Yes.

Q Could -- let me ask this. Starting at page 33, you discuss the point of interconnection issue, single point of interconnection you label it?

A Yes.

Q Is it your understanding that that issue has essentially be settled?

A Yes.

Q Is it true that Level 3 currently has a point of interconnection at each tandem in SBC California's territory behind which it has open NXX codes?

A I believe that's correct.

Q And is it also true that you've established two separate trunk groups from Level 3's switch to each of those tandems at which you've established a point of interconnection?

A I believe we have local interconnection facilities for the exchange of the local traffic. And we have the meet point facilities where we terminate that interexchange traffic that's directed to us when we don't have a direct interconnection with the interexchange carriers.

Q Those meet point trunk groups are intended to carry and actually carry interLATA traffic; is that right?

A I believe so, correct.

Q And am I correct that you aren't asking the Commission in this case to permit you to change that; that is, that you're okay with having two separate trunk

groups: local interconnection trunk to exchange traffic with SBC and meet point trunk groups to carry interLATA traffic?

A We want to be able to terminate all of the traffic that we receive on our local interconnection trunks.

Q Do you want to eliminate the meet point trunks?

A That would be a question for an engineering group.

The way I understand the meet point trunks, Mr. Livingston, is that generally this is traffic that comes to us from a carrier that we may or may not have a -- we will not have a direct interexchange relationship, and gets routed through the RBOC, whether it's SBC, Qwest, Verizon. That may be the only way that some of this traffic can get to us.

Q Were you present in Indiana last week?

A Yes, I was.

Q Do you remember Mr. Wilson making a presentation on behalf of Level 3?

A I was not in the room for Mr. Wilson's -- much of Mr. Wilson's presentation.

Q Are you aware that Mr. Wilson represented that Level 3 will always provision meet point trunk groups and that has been found to be acceptable with SBC, so the question of meet point trunk groups is really off the table?

A I have no reason -- yeah. I think that agrees with what I just said, Mr. Livingston, that there ought to be some carriers, that the only way for us to terminate traffic or receive traffic is through a meet point trunk.

Q So with respect to those tandems at which you've established the two trunk groups, local interconnection to exchange traffic between your customers and our customers and meet point trunk groups as you've described them, Level 3 is okay with maintaining that situation?

A Yes.

Q Could you please refer to page 43 in your testimony.

I believe I've got the right line. And the question at lines 1 through 3 is: Will Level 3 pay SBC's switched access charges for traditional circuit switched phone-to-phone interLATA toll traffic?

Did read that correctly?]

A That is correct.

Q You say that when Level 3 is acting as an interexchange carrier Level 3 will pay access charges for traditional circuit switched phone-to-phone intraLATA toll traffic; is that right?

A That is correct.

Q Just so I'm clear about what you are saying there, if one of your customers places a long distance call to an SBC end user here in San Francisco, and Level

3 is the interexchange carrier that brings that call to SBC's access tandem in San Francisco, are you saying that Level 3 will pay terminating access charges to SBC?

A Um, not in the call flow that you've outlined, because if it is a Level 3 end user, it is going to originate in an IP format and the call is going to go protocol conversion. And under the SBC exemption, that traffic will be exempted from access charges, and we pay recip comp to terminate it. And that is kind of -- one of the issues in this proceeding is that we can put that traffic on the local trunks.

What this refers to by traditional phone-to-phone traffic is what your cocounsel referenced in his opening remarks of one-plus dial traffic for an SBC end user. SBC dials one plus, the call gets routed to your interexchange carrier, their interexchange carrier may use Level 3 as their transport provider in the middle, may take the traffic to somebody else and terminate directly to, say in Boston, or hand it off to another carrier in Boston. This call flow, as an example, would be a traditional one-plus dial traffic, not traffic that originates on a Level 3 network in an IP format.

Maybe it would help if I can draw a call flow diagram?

Q Let me ask one question, just so I'm clear. Today no IP-enabled traffic originates on your network, you don't have any retail customers, correct?

A No, we do originate in IP traffic.
Q You do?
A Yes.
Q For your wholesale customers?
A For our customers, yes.
Q Now, I understand that we have a debate here over whether the IP to phone network and phone network to IP traffic is subject to the access charge regime, right?
A I think it is fair to say that SBC doesn't agree with Level 3 on that.
Q We have a debate on that. I'm going to defer that subject matter to my cocounsel who is much more knowledgeable than I am. He will ask you questions about that.
A Sure.
Q I guess what I'm trying to understand here is you say when you are acting as an interexchange carrier you will of course pay access charges.
A That is correct.
Q So there is a situation that you envision where you are an interexchange carrier for interLATA traffic where you pay originating and terminating access to us?
A It is not a large part of the business plan or where we would go forward. Where it might be is we have a product called 3 Voice Termination, and that is where we hand traffic off, we aggregate traffic for carriers

such as MCI, maybe SBC Long Distance, I don't quite know who all the carriers that we have that we provide traffic to. We transport the traffic to an IP across the country. We don't have a Feature Group D network, so we have to hand the traffic off to somebody else to terminate that traffic.

If we bought a Feature Group D trunk and established an interexchange relationship with SBC and brought the traffic to that trunk group, then we would pay the terminating access. And, again, maybe it is helpful if I walk through and draw some call flows, because a lot of this depends upon the number you dial and how the traffic gets routed in the network. I think if you see that you can see the distinctions.

ALJ YACKNIN: I'll leave that to SBC's counsel if they want to pursue that.

MR. LIVINGSTON: It might be more instructive when you get into the debate on the difference between what we are talking about --

A I think, Mr. Livingston, if Level 3 purchases switched access services from SBC out of its tariff provisions to Feature Group D, then we are paying the access charges.

Q Now, am I correct from what you just said that in order to deliver an interexchange call from SBC for termination to one of its local customers, if you were acting as a traditional interexchange carrier you would have to deliver that on a Feature Group D trunk, is that

what you said?

A What I said is if we purchased switched access services from SBC, and I believe SBC requires you to purchase a Feature Group D trunk to terminate that traffic from phone to phone, one-plus dial traffic, then that is what we will do.

Q That is a requirement in the access -- switched access tariff?

A Yes.

Q The Feature Group D trunk?

A Whatever is in the switched access charge, yes.

Q Now, there are two kinds of access, there is both interstate access and intrastate access, correct?

A Yes.

Q And when Level 3, acting as an interexchange carrier, to use your terminology, were to purchase access service, switched access service for an intrastate call, say Los Angeles to San Francisco, would the terms and conditions of that access be governed by a tariff on file with the Commission here in California?

A For a circuit switched one-plus call or toll call?

Q Yes.

A Yes, but we don't have any circuit switches in our network.

Q Maybe you can clarify, what situation are you talking about when you talk about Level 3 acting as an

are, what it was like in that environment, how difficult it was to exchange any traffic. And that the original MCI plan was to be able to just transport traffic between Chicago and St. Louis. I think most of the truckers.

So the ESP exemption, which is really crucial, wasn't in place in 1970s.

Q But if it that had been in place in 1970s, MCI wasn't an ESP, was it?

A I don't know.

Q Let's move on to page 23. Here you begin describing -- I'm looking at line 4.

A So you said page 23, line 4?

Q 23, line 4.

A Yes.

Q On my copy it begins with the question: Please describe the Level 3 forbearance petition.

A Yes.

MR. BINNIG: What we're waiting for, Mr. Hunt, is to get a copy of that.

I'd like to have marked as SBC cross-examination 6, Level 3 Forbearance Petition, dated September 23, 2003.

(Exhibit No. 6 was marked for identification).

MR. BINNIG: Q Now Mr. Hunt, do you recognize what's been marked for identification as SBC Cross-Examination Exhibit 6 as the forbearance petition

that Level 3 filed on December 23rd, 2003?

A Yes, I do.

Q And this is the petition you're describing here in your testimony beginning on page 23, line 4?

A That's correct.

Q And you state there that the company in the Level 3 forbearance petition, the company has asked the FCC to reaffirm that reciprocal compensation arrangements continue to apply to the exchange of IP-enabled services specifically VoIP traffic. Do you see that?

A Yes, sir.

Q And this is a document that you appear as one of the submitting attorneys on; isn't that right?

A That's correct.

Q As a technical matter, Mr. Hunt, isn't what Level 3 is asking in this petition is for the FCC to forbear from applying 47 U.S.C. 251(g), Rule 51701(b)(1) and Rule 69.5(b)(2), IP to PSTN VoIP traffic?

A There's a step missing, basically.

What we're asking the FCC to do is reaffirm that the ESP exemption, which has been in effect since 1983, already covers the traffic, this IP to PSTN traffic, because it goes through a protocol conversion and is the type of traffic that would be exempt under the ESP exemption. If they decide that it doesn't, then we're asking them to take the next step and to go ahead and forbear from imposing access charges on this

traffic.

Q And you'll agree with me that the document itself, cross-examination Exhibit 6 specifies exactly what Level 3 is asking the FCC to do?

A Yes.

Q Now, the next sentence here in your testimony reads:

> Historically, VoIP traffic generally defined as that which under goes a protocol conversion has been exempt from interstate or intrastate access charges under the ESP exemption.
>
> Do you see that?

A Yes, sir.

Q Can you identify for me a specific FCC rule where the FCC has said VoIP traffic is exempt from interstate or intrastate access charges under the ESP exemption?

A Not using the words that you've just said. What the ESP exemption does is it doesn't cover a certain -- it does cover a class of traffic. It says if traffic goes through, if certain things are met, such as the protocol conversion, then that traffic is exempt from access charges.

ESPs can buy local lines to provide that service and they are exempt from paying access charges on those services. Then in Stevens report, the FCC gave

us rules, the most clear guidance that says such VoIP would be exemption from access charges.

Q And it's your position here today that in the Stevens report, the FCC specifically addressed the issue of whether IP to PSTN VoIP protocol traffic was subject to or exempt from access charges?

A It's a test. And one of the tests -- the prongs of that test is traffic undergoes a protocol conversion. And they raise it as being -- falling under the ESP exemption and would result in exemption from access charges. You have to look at the traffic. I mean, the protocol conversion is one of the things you look at to impose -- to figure out whether the ESP exemption applies.

Q Okay. But the FCC also said -- I mean, the fact that traffic might undergo a net protocol conversion, that's not dispositive of whether the traffic is information services traffic or --

Let me rephrase that.

That's not dispositive of the question of whether or not the traffic falls under the ESP exemption so that the ESP can purchase its connectivity with its customers under the local business tariffs of the ILEC, is it?

A I'm sorry. I did not understand the question.

Q Well, let me do it in pieces then.

A Yeah.

Q Your understanding of the ESP exemption is

that if you meet the ESP test, okay, but the ESP now, Level 3 -- you already told me Level 3 LLC is not an ESP. But an ESP who meets that test, okay, buys its connectivity with its customers through local retail business tariffs of the ILEC; isn't that right?

A It buys local business lines, yes. Local lines.

Q And the fact that there might be a net protocol conversion of traffic is not dispositive of whether that traffic and in particular the carrier who's providing that service is entitled to the ESP exemption?

A The protocol conversion is one of the prongs that is dispositive as to whether the traffic is information service.

Q By itself, it's not dispositive; isn't that right?

A No. If I remember correctly, the test -- there are four parts. If you meet any one of the four, then you would qualify as an information service. It's not an all-four --

Q Let me posit the following hypothetical, Mr. Hunt.

I'm a wireless provider, okay. I provide wireless service and I provide it using a GSM transmission protocol. In order for calls to be completed to an ILEC's customers and the ILEC using a TDM-based technology, I have to do a net protocol conversion from GSM to TDM.

A Mm-hmm.
Q Does that make my wireless service an information service?
A I would not attempt to tell you what the wireless carrier's -- what position they would take, but I think they could argue that.
Q Do you have an opinion on that one way or the other?
A Not that would be relevant to this proceeding.
Q Okay. And isn't it correct, Mr. Hunt, the FCC has said that not only do you have to look at the question of whether the service that's being addressed is an enhanced service, but you also have to look at whether the access charge exemption applies to the particular configuration that the ESP is using to provide the service?
A Well, if you have an FCC rule or something we can look at. But I don't recall that.
Q Okay.
A I do recall in Indiana last week that you made some reference to a Northwestern Bell -- Northwest Bell case that seemed to predate divestiture, so --
Q Have you reviewed that case?
A No.
Q Would you accept subject to check that it doesn't predate divestiture, that it's dated 1987?
A I know the date that the FCC dealt with it. I don't know when that case started.

Q But, just to be clear, a TDM transmitted interexchange call that both originates and terminates to the PSTN has to pay access charges on both sides, doesn't it?

A I'm sorry?

Q An interexchange call that uses TDM based transmission technology, that originates on the PSTN and terminates on the PSTN, it has to pay access charges both on the originating end and the terminating end of that call?

A I'll tell you my understanding. In that scenario, somebody picks up the phone and makes a long distance phone call, go back to dial one, they are not in Chicago, the call goes to their interexchange carrier who pays originating access to the originating ILEC, there is going to be a transport piece by an interchange carrier who will hand it off for termination to the LEC or CLEC on the other end, and there would be access charges paid them, assuming both ends are TDM, phone to phone.

Q So --

A Just like normal phone calls.

Q So access charges on both ends?

A Yes.

Q The IP PSTN, if access charges were imposed, it would only be on the PSTN side, one side?

A They would actually be imposed on what I believe would be the local telecommunication service,

which is when the IP, or information service, where it enters the network.

There is also the issue of having to track access charges. SBC and Level 3 agree that it is very difficult to figure out where these calls terminate, also especially because of all the enhanced functionalities involved.

Yes, I understand that SBC would be requiring us to somehow figure out how to impose access charges in that scenario and to bill that. I think we have a disagreement as to whether that even can be done.

Q Well, if the traffic were all put on Feature Group D trunks, there wouldn't be that issue, would there?

A That is the beauty of Feature Group D trunks, they put access on everything.

Q Right.

Could you turn to page 7 of your testimony, Mr. Hunt?

A Yes, sir.

Q At lines 7 through 12 there you state:

> That Level 3 believes that this Commission should follow the same evolutionary path by imposing the existing rules according interconnection obligations and intercarrier compensation.

A Correct.

Q And then in the last sentence in this paragraph you say should -- then you go on to say the broader policy impact should be set aside for resolution, and you say should that proceeding or any subsequent require Level 3 and SBC to perform the agreement, the parties can do so through the appropriate change of law.

A That is correct.

Q I'm going to ask you a hypothetical, Mr. Hunt, and I want you to assume the following: I want you to assume that the FCC's existing access charge rules don't distinguish among interexchange traffic that is subject to access charges based on the type of transmission technology that is used.

I also -- I want you to also assume that the FCC's existing access charge rules require that any interexchange call that originates or terminates on the PSTN is subject to access charges.

This is a hypothetical, so I'm just asking you to assume, I'm not asking you to agree with me.

A Existing rules that any call -- access charges apply --

Q Any interchange call that originates or terminates on the PSTN. That is currently true, with the exception of ESP exemption; isn't that right?

MR. LEVIN: I thought this was a hypothetical? I mean, are we answering in the real world or are we answering your hypothetical?

MR. BINNING: I just asked the second question. I'll withdraw that for now. We will keep it a hypothetical.

Q You've got the two components of the hypothetical?

A Yes.

Q If that were the case, isn't it equally true that if the IP-enabled services proceeding, or any subsequent proceeding, required Level 3 and SBC to perform the agreement, that the parties could do so through appropriate change-of-law provisions in the agreement?

A Yes.

Q Now, getting out of the hypothetical world for a second, the second one I gave you, which was -- second condition which was that the FCC's existing access charge rules say that any interchange call that originates or terminates on the PSTN is subject to access charges, in fact, Mr. Hunt, isn't that what the FCC's access rules provide with the exception of the exemption for ESP traffic?

A Well, the rules speak for themselves when you say who the carriers pay access charges and end users don't.

Q Fair enough. I'll withdraw the question.

Let's move on now to --

ALJ YACKNIN: Mr. Binning, we will need to take a break shortly. Is this a good time, or do you want to

continue for a few minutes?

MR. BINNING: If we could continue for five minutes I will be at a better breaking point.

Q Let's move now to -- actually, I can skip that. This would be a good point.

ALJ YACKNIN: We will be in recess until 2:30.

(Recess taken)

ALJ YACKNIN: We will be on the record.

MR. BINNING: Thank you, your Honor.

Q Mr. Hunt, I would like you to turn back to page 27 of your testimony, and beginning at lines 13 there is a question relating to the ISP remand order. And you begin to describe your views on how the ISP remand order is relevant to this traffic?

A Yes, sir.

Q And you would agree that the ISP remand order relates to what the FCC has termed ISP-bound or Internet service provider-bound traffic; is that right?

A Yes.

Q You would agree that the FCC views ISP-bound traffic as being something different than voice over Internet protocol traffic?

A Well, in the ISP remand it doesn't address VoIP. But there is -- so I don't disagree with that statement. They didn't address it in the ISP remand.

Q Okay. And what they did address in the ISP remand order though was traffic that was being delivered over local dialup to an ISP from retail customers of

that ISP; is that correct?

A That is correct.

Q And that would be traffic that was delivered over the local access lines that the ISP had purchased under the retail business tariffs of the incumbent LEC; is that correct?

A In the ISP remand? No. Maybe I'm confused on the question. Were you asking about the traffic flow in the ISP remand or the ESP exemption?

Q ISP remand.

A Okay.

Q Okay.

A The issue in the ISP remand.

Q Let me ask the question. The traffic that was addressed in the ISP remand order was traffic from an ISP's retail end user customers to the ISP for local dialup?

A Yes. The traffic that terminates at the local exchange carrier that is providing the connectivity for the ISP.

Q Then you also refer to -- going down to line 22 through 24, the forbearance petition filed by Core Communications, right?

A That is correct.

Q And I think you eluded to this earlier, but the FCC recently came out with a decision on that forbearance petition; is that right?

A That is correct.

Q They granted a petition with respect to two aspects of the ISP remand rules, that is the growth caps and the new markets, but they denied it with respect to the other two pieces of the ISP remand rules?

A Yes.

Q Why don't you move to page 9 of your testimony, I'm looking at line 13. There is a question here:

> How should this Commission resolve the issues raised by the intercarrier compensation proceeding with respect to virtual central office codes.
>
> Do you see that?

A Yes.

Q You say the Commission should follow the holding of the Virginia arbitration order issued by the FCC's Wireless Competition Bureau. Do you see that?

A Yes.

Q I think later in your testimony you suggest that this is an order of the FCC, it is not, is it?

A The Virginia arbitration order?

Q Right.

A No, it is. The State of Virginia doesn't hear arbitrations, and they are deferred to the FCC.

Q This order is an order from the Wireless Competition Bureau of the FCC not from the Commissioners themselves; isn't that correct?

A That is correct, that is a good point.
Q In fact, the Commissioners have never adopted the arbitration order entered by the Wireless Competition Bureau?
A I don't know that they would have to.
Q By the Wire Line Competition Bureau, excuse me.
A No, I don't know if they would have to. If the Commissioners gave it to the bureau on delegated authority.
Q But they haven't adopted it to the best of your knowledge?
A The Commissioners?
Q Correct.
A I'll agree it has not been voted on by the five Commissioners.]
Q Turn to page 30 of your testimony, Mr. Hunt.
And beginning at line 12 you have a sentence entitled Burden of Proof and the Public Interest Test; do you see that?
A Yes.
Q And then you go on to quote from Section 7(a) of the Act; is that right?
A That's correct.
Q And is that Section 7(a) of the Federal Communications Act of 1934?
A It's 157. No, it's not in the original Communications Act. It's Section 157.

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF LEVEL 3 COMMUNICATIONS, LLC'S PETITION FOR ARBITRATION PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, AND THE APPLICABLE STATE LAWS FOR RULES, TERMS, AND CONDITIONS OF INTERCONNECTION WITH INDIANA BELL TELEPHONE COMPANY D/B/A SBC INDIANA	)))))))))	CAUSE NO. 42663-INT-01

TRANSCRIPT OF ARBITRATION

Arbitration heard on October 21, 2004, at 8:30 a.m. (EST) in Room TC-10 of the Indiana Government Center South, Indianapolis, Indiana, before Arbitrator John Kern.

Reporter: Debbi S. Austin Pages: 1 to 193

team get one point on the other side.

It has to be -- it has to be done

carefully; and I think that's why the FCC has spent a long time looking at this issue, that we have a lot of issues like geography that's now different. We have two different networks, like football and soccer; and we want to make sure that one side doesn't get three points and the other side get one point.

And with that, I will turn it over to Mr. Hunt.

MR. HUNT: I appreciate the opportunity to respond to some of the comments of SBC. And while Hank is getting the slide that I want, just a couple quick points I want to make.

Just as a threshold language, a lot of the contract language is in the contract because we feel we have to respond to SBC's proposal that access charges apply to all traffic.

Inherent in what Mr. Zinman said, though, is that if access charges apply any time you use SBC's network and you -- and a call originates on the IP network is that per minute of use access charges will apply to local traffic.

Here's example. Level 3 has an ESP customer. It could be a broadband company. It could be Vonage, whoever. Maybe he uses a

broadband connection provided by somebody else. But Level 3 is providing two-way connectivity to

the PSTN. We're providing the local telecommunications service.

I agree with Mr. Zinman. This is -- this part right here is local telecommunications service. There's no doubt about that.

What happens, though, on this part of the network is the traffic goes through a protocol conversion. And let's walk through a call flow both ways.

The Vonage customer picks up their phone, dials the phone, comes over their broadband connection to the internet address that it has, gets routed, in effect, to the IP address on the Level 3 network. This is all IP.

We take the call in its IP format, and we convert it into TDM. This is an information service on this side of the point of interconnection, and we convert it into TDM.

What Mr. Zinman's presentation completely ignores is the 1998 Stevens test in which the FCC told in a report to Congress that we believe that ESP -- this traffic that goes through a net protocol conversion is in effect -- and I'm

summarizing -- local traffic that is not going -- that is exempt from interstate and intrastate access charges.

In the Stevens test, they were specifically asked the question by the Congress; and their response was the ESP exemption is valid. It applies to VoIP traffic, and the application is

traffic is exempt from access charges.

Now, we're going to have a call from this end user; and this is all going to be in a calling area in Indianapolis. So you're calling home maybe to find out what's for dinner or something. It comes through the Level 3 network, goes to the end office, gets terminated here.

Level 3 pays SBC the local recip comp rate that applies to terminate that call. SBC is compensated for the use of their network; and if that call terminates in the same local calling area, it's a local call.

Under Mr. Zinman's analysis -- I'm sorry -- SBC's analysis that access charges apply because this is a telecom service and this is inherently interstate, that local call, SBC is going to charge I guess Level 3 -- I'm not really sure

where the interexchange carrier is here because this is all a locally dialed call that came across local interconnection trunks -- access charges. So maybe it's this customer up here has to pay per minute of access charges.

Is that the model that we really want? If calls from a new technology on an IP network have to pay access charges for a local phone call, you kill voice-over IP. And I think it's kind of inherent, if you look at the economics in that call, that VoIP is a competitive response to SBC's local service. So they want

to put access charges on a main revenue stream or competing stream.

Now, let's take a call coming the other way that's on the ESP on the SBC network. SBC is providing local connectivity to their ESP customer; and a call comes through maybe the internet, broadband connection, whatever aggregation point is in place; comes to the ESP aggregation point, takes it to SBC. SBC routes it to Level 3, and SBC would pay Level 3 the local recip comp rate to terminate this call in the same calling area or wherever this IP address is located.

The ESP exemption is fundamentally about ESP's purchase and can use local phone lines to send and receive traffic. There is absolutely no support anywhere in any of the cases out there for SBC's contention that it's one-way traffic only. You will not find an express prohibition that it's one-way traffic only.

And in light of the Stevens test, the only result you get to again is that voice-over IP traffic is to continue to be exempt from access charges. That is how the FCC is interpreting the rules.

Just a couple of quick points. SBC made the point that the ESP exemption was for the fledgling ESP industry. We're on the verge of a fledgling voice industry. We're on the verge of an industry where we're actually going to

finally see the benefits of the Telecom Act, which is competition in the local voice market; and there's no reason not to keep the exemption going. I think it's interesting that when it is voice, we want to pull the exemption back.

One other thing. I think SBC's analysis has the effect of making that all -- anything that touches its network is a toll road. You

know, we have an interstate system, highway system. You can go from Indianapolis to Chicago on it, and you can also go across Indianapolis; and you can go intrastate, one road. And it's open highway, and you go where you need to go.

That is what we are trying to do with our interconnection proposal and where we see the world going. SBC has acknowledged the long-term view. But their proposal for putting access charges on anything on their side of the point of interconnection would, in effect, turn everything into a toll road; and I don't think that's what we want to do.

I'm going to leave a few minutes for Mr. Gates, who wants to address some economic issues. We appreciate your time and look forward to your guidance on how we can exchange this traffic.

MR. GATES: Thank you, Bill. Just two minutes really. If we could go back to slide 10. Oh, quick. Thank you.

Mr. McPhee addressed this briefly in his

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

-oOo-

In re Petition of Level 3 Communications, LLC for arbitration of an Interconnection Agreement with Nevada Bell Telephone Company, d/b/a SBC Nevada, pursuant to Section 252 of the Telecommunications Act of 1996.	)	DOCKET No. 04-5032

TRANSCRIPT OF PROCEEDINGS

VOLUME 1

HEARING

10:02 a.m., Wednesday
January 12, 2005

Offices of the Public Utilities Commission
Hearing Room A
1150 East William Street
Carson City, Nevada

Reported by: JERRY J. SILVEN, CCR #55

WILLIAM P. HUNT, III

ROGIER DUCLOO

TIMOTHY J GATES

called as panel witnesses on behalf of Level 3 Communications, LLC, being first duly sworn, were examined and testified as follows:

MR. TACKES: And then I would just have the witnesses identify themselves before we do the presentation as we would ordinarily with the testimony, which will follow the presentation

DIRECT EXAMINATION

BY MR. TACKES:

Q But, Mr. Hunt, could you please spell your name and identify your business position.

A It's William, W-i-l-l-i-a-m. The middle initial's P. Hunt, H-u-n-t.

I'm Vice President of Public Policy for Level 3 Communications.

DIRECT EXAMINATION

BY MR. TACKES:

Q And, Mr. Ducloo, could you spell your name and identify your business position.

A Yes. My name is Rogier Ducloo. It's spelled R-o-g-i-e-r, last name D-u-c-l-o-o

I'm Director of Interconnection Services at Level 3 Communications.

DIRECT EXAMINATION

BY MR. TACKES:

Q And, Mr. Gates, if you could please identify yourself as well.

A Yes. My name is Timothy J Gates. T-i-m-o-t-h-y. J without a period, it's just a letter.

819 Huntington Drive, Highlands Ranch, Colorado 80126.

I'm a Senior Vice President with QSI Consulting appearing on behalf Level 3 Communications.

MR. TACKES: Thank you. Commissioner, the presentation is in three pieces. Each of the witnesses will take a piece, so it should be very well-defined and easy to follow.

With that, I would ask Mr. Hunt to begin with the presentation.

MR. McVEE: Mr. Tackes, do you want to introduce their testimony prior to the recitation?

MR. TACKES: What I was thinking we would do is we could call each one to the stand after presentation is done, introduce their testimony and offer them for cross, if that's okay.

COMMISSIONER LINVILL: That's fine.

LEVEL 3 PRESENTATION BY WILLIAM P. HUNT, III

MR. HUNT: Good morning.

On behalf of Level 3, I'd like to thank Commissioner Linvill, the Staff and SBC for conducting this hearing today.

During the next hour I hope to help provide some context into how -- what the issues are that are in dispute in this interconnection agreement between Level 3 and SBC. Provide a little information and context on the overarching federal issues that you've addressed in your opening questions, and really talk to you about this proceeding, is that it really is part of an evolutionary shift from the traditional telecommunications regulations model that we've had to a new world of IP-based networks and voice override IP.

I think this is ninth show, or road show we've had with SBC, and so it's always good to see them back in different parts of the country; and some of the witnesses are in or out, but we're starting to feel like -- they're starting to feel like they're part of my staff. You know, I don't have to pay them at least, which is probably good.

There's no doubt that VoIP is becoming a catalyst that is forcing us to examine the outdated and

antiquated regulatory regime that's been in place for the last hundred years. And that's not to say that the current regime has failed us; in fact, the fact that we have such ubiquitous access to telephone service shows that it has worked.

However, that model has been based upon a certain technology and upon market regulation of the incumbent provider. And it's been based on some very simple economic theories that access in that network was a scarce resource that had to be allocated and it had to be rationed; and we did that based on time and distance.

And on top of that we layered in a number of social policy goals that we wanted to meet such as 911, TRS access. And then we added the layers of our federal and state government model who has jurisdiction over the various parts of the calls.

But what society gave up in that model from competition was innovation; because we certainly know that it's taken a long time to see a lot of great progress or innovation in the market.

And now we're on the cusp of a new environment, an environment that came in '96 when Congress said: We're going to inject competition into the local market.

At the same time as the introduction of

that competition we moved to a new technology: The Internet, IP-based networks and optical transmission.

So today we live in a very, very different world.

We're not here today to debate the old model. We're really here just to talk about how we're going to deal with the transition to a new world.

Now, as we stand here today, SBC and Level 3 actually agree on what the world will look like three, four, five, six years from now.

There were nine companies that put in a proposal for a group called the Intercarrier Compensation Forum that addressed intercarrier compensation, moving all traffic to bill and keep; setting default rules for interconnection, that would reduce the number of interconnection obligations on carriers; performs universal service so that the system stays fungible and will continue to work in a new environment going forward.

Put in place protections for the rural carriers by establishing a third revenue stream to help make up for some of the decrease in the access charge.

Level 3 and SBC agree about what the future looks like, and it's in the Intercarrier Compensation Forum.

And as I have said a number of times, I've

said it in every state, I commend SBC for staying in that effort. They're the only RBOC in the effort. It was hard negotiations. It was 18 months. It was difficult times. But they're in that group, and we agree on the future.

But we're here today because we don't agree on how to get from today to the future.

And the contract that we put in place is one that represents -- we're trying to -- the issues we're working out in this negotiation are what we see will get us to the future.

This is probably a good time for me introduce a little bit more of the team. Rogier Ducloo, who will talk about our network issues, he's an engineer with Level 3 and he's the director of our Interconnection Services Group.

And then Mr. Gates will talk about our economic issues. He is a consultant with QSI Consulting, has many years in telecommunications with MCI; and prior that was on the staffs of the Oregon and Texas commissions.

So Mr. Gates has been around the industry for a long time, is very familiar with many of the issues.

As I said, why this procedure is important

in Level 3? Our network is clearly solely Internet protocol based. All of our revenues are derived from Internet services. We are one of the three largest Internet backbone providers in the world.

On any day we could be the largest, depending on the amount of traffic that we carry.

This is our network. We built it in a little under three years, and at one point it stretched to Hong Kong and Asia. We sold off the Asian network a number of years ago and have focused on North America and Europe.

In the many ways the contract and the issues in this proceeding are about how we're going to bridge the authority to communicate between SBC's traditional phone network and the Internet.

A lot of the issues in the case, especially when it comes down to interconnection and intercarrier compensation really kind of boil down to the ESP exemption and this IP-enabled traffic and the rules that have been in place for the last 20 years.

Really, what we're asking this Commission to do is just to keep those rules in place. Keep the ESP exemption in place and allow the parties to exchange the traffic, just as was envisioned when the ESP exemption first came out.

You asked in your earlier questions about what Vonage did and how it impacted this proceeding. I think the important thing to remember, as I worked this presentation, is that Vonage is an ESP; and that's what the FCC said, they are an ESP

And they basically said, among other things: We're not going to treat them like a telecommunications carrier, require to get them to get a certificate, file tariffs and offer emergency services. That Vonage is not a local exchange carrier. They don't hold a certificate from any state. And without a certificate, you can't interconnect with the regional.

Bell operating companies under the Telecom Act, a fundamental requirement, because if you're a local, you have to be a local exchange carrier before you can interconnect with the obligations and the rights entitled under the Telecommunications Act.

So in many ways, while the Vonage decision's about a traffic -- not even a traffic, the IP application that rides on a network, this proceeding is about the network that that's going to ride on.

Let's go back to the map I had earlier of our network. Every network has value. But its value's increased every time they can interconnect with another network and communicate.

And PSTN and the wireless networks would not be as valuable if they were vulcanized.

If a wireless network could only talk to wireless consumers, and a PSTN network could only talk to the PSTN consumers, that would not be a good thing for the economy and there would not be efficient communications networks.

One of the underlying themes of the Telecom Act was that we didn't have CLECs building networks that only CLECs' customers could talk to. We want people to interconnect. We want people to exchange traffic. This is about exchanging traffic.

I think one issue I can take off the table a little bit, we'll address it more in the briefs later, but this case really isn't about UNEs. Level 3 doesn't use any UNEs with SBC. We're not using a single one.

Mr. Ducloo can address that if we are in another state. We certainly aren't here in Nevada. And we don't really have the intentions of probably using those going forward until the rules are more clear.

And that's why our petition, or our position is much more reasonable given the fact that we're waiting for the FCC rules to come out.

And this Commission has its own proceeding or complaint case going on with what to do with these UNE

rules. This is really about interconnection.

Prior to the Telecommunications Act, the FCC in the late '70s, early '80s, seeing the potential growth for data networks and enhanced services created an ESP exemption.

They in effect said that if you're an ESP providing services that meet their tests, you could buy local lines from the RBOC, the local provider, and you'd be able to provide your services and not pay access charges.

And the FCC said: We think this is interstate traffic, we have jurisdiction, we have our rules, but for purposes of this, the ESP will be treated as the end user and they'll be allowed to buy local business lines.

So prior to 1996, an ESP, maybe it was a stock quote company or an early Internet provider, would go to the RBOC, would buy a local business line and a consumer would make a local call, come through the SBC network - this doesn't necessarily reflect all of the SBC network, it's compressed a little - and be able to access the ESP. So the ESP buys local lines, people can call in, make a local phone call, there's no access charges on that.

In 1996 the dynamic changed a little bit

when Congress introduced competition.

In this case -- and one correction I would point out, making the original -- the map on my testimony has more than 200 lines, but I think the actual count here for SBC in this state is about 420,000 access lines.

But the purpose of this slide is to show how the ESP exemption works in a competitive environment, and then to show what SBC's position would do.

So in the environment today now, the ESP has two choices of providers: Level 3 or SBC.

ESP, AOL, for example, ISPs are a subset of ESPs. A Vonage may go to Level 3. It would buy the local business lines from Level 3. And there would be some access charges that Level 3 would have.

And they'd also be providing a local telecommunications service business line, a local phone number.

This end user would pick up the phone, he would call, go through the SBC network, would come to Level 3, we'd hand it off to the ESP. Locally dialed number. Expectation of a local call.

And the transfer of the traffic would take place on a local interconnection trunk telecommunications network upon which the IP application rides.

Vice versa, if one of the ESP customers

wanted to make a call to an SBC customer, they would dial the local number, it would come through the Level 3 network, and be terminated, Level 3 would pay reciprocal compensation to terminate that call.

And if the ESP customers were going to communicate with each other, they could do that.

The ESP exemption, when it was established, the FCC was very clear: ESPs can send and receive phone calls using the local business lines that they get.

What SBC would like this Commission to do is say: That doesn't apply. It's not what Congress meant. It's not what the FCC meant when they wrote the ESP exemption.

And now we posit from a policy perspective: Congress knew the ESP exemption existed when they wrote the Telecom Act, they could have taken it out of existence and they didn't. They kept all of the preexisting rules in place.

So I think it was very much the intent that if you offered a local service, you could offer that local service to other carriers, other customers of other ESPs

SBC's argument is that that ESP-type exemption is only designed for calls from the ESP's customer within the SBC network.

SBC wants to vulcanize the networks, so that an ESP would have to buy services from Level 3, from SBC, from a fourth CLEC, a fifth CLEC. Anybody providing service in that interconnection area would have to -- ESP would have buy to services from them in order to be able to offer these services. In effect, they can only reach the users within the networks.

And that's completely counterintuitive to what the policy goals of the Telecommunications Act has been.

If SBC's position was adopted and you had a choice of: Well Level 3 has 25, 50, a hundred, a thousand end users; SBC 420,00 users, if you're the ESP where are you're going to buy your services from?

And the market will tip. It will tip back.

So at the end of the day, I think one of the things that layered in Vonage was: What are the obligations from a regulatory perspective for this provider, what do they have to do with respect to the retail services they offer when Vonage still replies: Nothing's changed. That they still buy their services from a licensed telecommunications provider. They receive a local phone number and they can exchange traffic.

This proceeding is about how Level 3 and

instance we have the federal government that has said, the FCC has said with respect to that traffic, it's interstate in nature and we're going to put in place a compensation regime, but we're going to leave it to the states to negotiate and to deal with -- not negotiate, but deal with the issues with respect to network interconnection which come up under 251 and 252.

It's a split jurisdiction.

IP traffic, IP-enabled traffic in this proceeding is much like this.

The ESP exemption has really said: This is the compensation that you have -- that goes in place under the ESP exemption. And SBC has chosen the compensation.

Remember, under the ISP remand, they have to offer the same rate for all local termination of traffic, 0007; SBC's choice in order to take the benefits of the ISP remand

Under our proposal, that's the rate that would apply to IP-enabled traffic in large part because it's established by the FCC, and SBC has chosen it.

Those are the simple rules that are in place today that we're asking us to move forward with.

Now you asked about the other states.

The other four states that we've got

decisions in, and I use the word decisions, is that we've got proposed orders, I mean they are in the various process of where they're going, have all recognized the federal jurisdiction aspect of IP-enabled traffic.

But at the same time they have all split. I believe two said: Bill and keep on this traffic. Two said against being compensated at the 0007 rate.

Both parties, I'm sure, will get into that deeply into their briefs, and we will include in our briefs a matrix all of the decisions, or proposed decisions that are out, so you'll be able to compare what the states have done. We will provide that as part of our final submission.

One of the other really core things, and this goes back to the existing rules that we want to see, is nondiscriminatory interconnection. That's SBC's obligation under the Act. Nobody here disputes that interconnection has to be nondiscriminatory, and that's what we're asking for, is the ability to interconnect our network in a nondiscriminatory manner and apply the rules and exchange the traffic.

One of the really unique functions about IP-enabled traffic is the geographic independence of a phone number on an IP network.

A phone number is really a mediation device

to an IP address. For every phone number we assign to a customer, we've got to put another IP address behind it so we know where to send it once it hits our network.

All traffic that hits the Level 3 network goes through a net protocol conversion: TDM, IP, we're all IP, and there's usually interaction with stored data.

We can walk down all of the steps that are involved, the things that our customers add to the application.

We on our network don't really know where traffic will terminate, because our customers can change IP addresses. They can change servers. They can control the functionality on their side.

We know we have an IP address to send it to. We may know where it is on day one, but on day two they may have moved it.

That's a very important thing to remember, because SBC would have you say under the ESP exemption that access charges have got to apply if that IP address is across a LATA boundary or a state boundary. There's no LATA boundaries on my network, there's no state boundaries on our side of the network. The Internet doesn't recognize those exchange boundaries that we have under the regulatory regime.

And my point here is, that's really one of

the differences of the new technology, and SBC recognizes that.

In the IP-enabled services docket, SBC said, it would be a waste of time to make the industry develop billing systems that can locate the end point of an IP-enabled call. They said, we have better things to do with our money, better things to do in providing these services and we don't think we should have to locate the end point.

However, in this state, and in the other states, they're asking for that. They want access charges on virtual NXX traffic that terminates to the Internet, and they agreed at the federal level, but you can't really figure out where that is.

And I think we've just seen today that even their switches here in this state, they can't do that.

So, my last point to wrap this all up is an argument that's come up in the past and I want to be really clear about this.

The economics that would apply to an IP-enabled call apply to both parties.

If Level 3 terminates a call on its network from SBC, SBC will pay Level 3 the lower recip comp rate to terminate that call.

If it comes across a meet-point trunk, our

half of the service that's billed will be billed at the lower recip comp rate.

The compensation rates go both ways under the ESP exemption. That's been a little confusing for us in the some of the previous proceedings and I want to take that off the table today.

Hopefully in the last hour we've kind of given you an overview of our case and what the issues are; but also kind of what we think is a reasonable transition to the future.

Level 3 and SBC agree with the rules like five or six years from now, but we're here today for a two or three year contract that's going to help govern our relationship as we move forward.

And we think by adopting Level 3's positions, this Commission will put in place a clear path forward that provides for a reasonable transition and will allow the parties to exchange traffic, offer VoIP services and then adjust as the rules and the law changes.

We thank you very much and look forward to the rest of the proceeding.

COMMISSIONER LINVILL: Okay, thank you.

The Commission's intention, or my intention in this proceeding is to hold our questions for the

THE WITNESS: Thank you.

COMMISSION QUESTIONS

COMMISSIONER LINVILL: I've just got one question for you.

BY COMMISSION LINVILL:

Q Could you explain to me what the service digital voice is exactly?

A Sure, to the best of my knowledge. With Vonage you get a terminal adapter or you're getting a zip -- what they call a zip phone which is a specialized phone that deals in packets; or you get an adapter that you can plug into your traditional phone.

And you plug that either into you cable modem or to your DSL connection on the wall. You go to your Web site and you authorize your service, and they give you the phone number that you have. And then you can make phone calls on using that phone over that line.

So, the way would it would normally work is Vonage would buy the local business lines from maybe Level 3 or maybe, you know, PaeTec or one of the other CLECs out there, Focal or whoever.

And in effect, you would dial your number. It would go across the broadband connection, whether it's provided by the cable company, whether it's provided by SBC or another carrier, and it would go to the DSLAM, it

gets pulled off, it's data at that point, it gets routed to an IP address in the Internet cloud.

And if Level 3 was the underlying provider, the call would then get routed to Level 3 where we would take it to the gateway, where we're supposed to terminate that phone call. Convert it from IP to TDM, and hand it off to SBC. And in that instance we would pay SBC recip comp to terminate that call.

And then if the person from the Vonage customer was going to receive a call, and say it was for an SBC end user, it just works in the opposite direction.

It comes through the SBC network. They hand it to Level 3. They pay Level 3 recip comp to terminate that call. We would point the phone number to the IP address, which is associated with the BOCs or the end user. The call works its way through the networks and it terminates to the end user.

So it originates half on the Internet, the other half on the PSTN.

Q And digital voice could be a local call or not a local call?

A That's right. One of the things the FCC talks about with digital voice is the ability to get what they call geographically independent phone numbers.

So, what many people will do is they'll

say: I want my service here in Carson City, but my folks live in Dallas, so give me a Dallas phone number.

And I got my brother in Seattle, give me a Seattle phone number. So your phone -- you go to your brother in Seattle and say: Dial my Seattle number if you want to call me. The call routes through the QUEST Network, comes to a Level 3 point of interconnection in QUEST's territory, looks just like a local phone call.

And we transport it, you know, to the point of inter -- we transport it from our point of the interconnection across our network, hand it off to the Internet, whatever arrangement we have to do to get it. And then it would terminate back through the DSLAM to the customer here.

Your brother making the call had made a locally dialed call, he's not paying access charges for a long distance call.

The FCC said, this is really one of the benefits of IP traffic.

Your parents in Dallas, if that was the situation, they would call the Dallas phone number and it would look like a local phone call for them.

Q Okay. So the data that's being transported in this case is voice data, that data transmission?

A Packets that contain voice, yes.

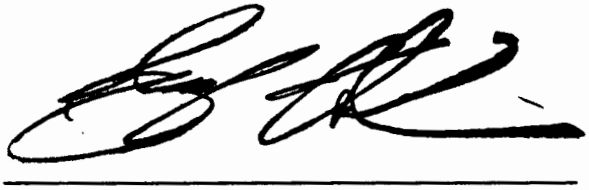
STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, JERRY J. SILVEN, Certified Court Reporter #55, do hereby certify:

That on Wednesday, January 12, 2005 at 10:02 a.m., at 1150 East William Street, Hearing Room A, Carson City, Nevada, I was present and took stenotype notes of the hearing held before the Public Utilities Commission of Nevada in the within-entitled matter, and thereafter transcribed the same as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said hearing.

Dated at Reno, Nevada, this 18th day of January 2005.



Jerry J. Silven, CCR #55

Attachment C

APPENDIX ITR
(Interconnection Trunking Requirements)

TABLE OF CONTENTS

APPENDIX ITR
(Interconnection Trunking Requirements)

1. INTRODUCTION

1.1 This Appendix sets forth terms and conditions for Interconnection provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and **CLEC**.

1.2 Definitions of terms used in this Appendix are contained in the General Terms and Conditions, except as specifically identified herein. The following definitions from the General Terms and Conditions are legitimately related to this Appendix: **SBC-13STATE, SBC-SWBT, PACIFIC, NEVADA, SNET, SBC-AMERITECH**.

1.3 This Appendix provides descriptions of the trunking requirements between **CLEC** and **SBC-13STATE**. All references to incoming and outgoing trunk groups are from the perspective of **CLEC**. The paragraphs below describe the required and optional trunk groups for local, IntraLATA toll, InterLATA "meet point", mass calling, E911, Operator Services and Directory Assistance traffic.

1.4 Local trunk groups may only be used to transport traffic between the parties End Users.

1.5 Transit traffic is originated by or terminated to the **CLEC** End User from or to other networks and not to **SBC-13STATE** End Users.

1.6 **"Network Interconnection Methods"** (NIM) which designates facilities as established by the Parties are contained in Appendix NIM.

2. ONE-WAY AND TWO-WAY TRUNK GROUPS

2.1 A one-way trunk group for ancillary services (e.g. OPS/DA, mass calling, 911) can be established between a **CLEC** Tandem or End Office switch and an **SBC-13STATE** Tandem. This trunk group will utilize Signaling System 7 (SS7) or multi-frequency (MF) signaling protocol, with SS7 signaling preferred whenever possible. **CLEC** will have administrative control of one-way trunk groups from **CLEC** to **SBC-13STATE** (**CLEC** originating).

2.2 Two-way trunk groups for local, IntraLATA and InterLATA can be established between a **CLEC** switch and an **SBC-13STATE** Tandem or End Office switch. This trunk group will utilize Signaling System 7 (SS7) or multi-frequency (MF) signaling protocol, with SS7 signaling preferred whenever possible. Two-way trunking will be jointly provisioned and maintained. For administrative consistency **CLEC** will have control for the purpose of issuing Access Service Requests (ASRs) on two-way

groups. **SBC-13STATE** will use the Trunk Group Service Request (TGSR), as described in Section 7.3.1 of this Appendix, to request changes in trunking. Both Parties reserve the right to issue ASRs, if so required, in the normal course of business.

2.2.1 **SBC-13STATE** shall not impose any restrictions on **CLEC**'s ability to combine local and IntraLATA toll traffic with InterLATA traffic on the same (combined) trunk group. To the extent SBC does not currently combine its own InterLATA Toll, IntraLATA Toll, and/or Local Traffic, this should in no way inhibit **CLEC**'s ability to combine such traffic.

2.2.1.1 **CLEC** intends to measure and accurately identify InterLATA, IntraLATA and Local traffic on the combined trunk group.

2.2.1.2 When **CLEC** is not able to measure traffic, the Parties will make a best effort to apportion the traffic among the various jurisdictions, or, in the alternative, **CLEC** shall provide a percentage of jurisdictional use factors that will be used to apportion traffic.

2.2.1.3 **SBC-13STATE** may audit the development of **CLEC**'s actual usage or the development of the jurisdictional usage factors, as set forth in the Audit provisions of the General Terms and Conditions of this Agreement.

2.2.1.4 In instances where **CLEC** combines traffic as set forth in this Section 2.2, it shall not be precluded by **SBC-13STATE** in any way from using existing facilities procured in its capacity as an interexchange carrier. In this circumstance, **CLEC** will preserve the compensation scheme for each jurisdiction of traffic that is combined. **CLEC**'s failure to preserve this scheme and compensate **SBC-13STATE** accordingly would constitute a violation of this Agreement.

2.3 The Parties agree that two-way trunking shall be established when possible and appropriate for a given trunk group. However, in the **SBC-AMERITECH** and **SNET**, certain technical and billing issues may necessitate the use of one-way trunking for an interim period. The Parties will negotiate the appropriate trunk configuration, whether one-way or two-way to accommodate the present billing and technical limitations.

2.4 The Parties agree to exchange traffic data on two-way trunks and to implement such an exchange within three (3) months of the date that two-way trunking is established and the trunk groups begin passing live traffic, or another date as agreed to by the Parties. Exchange of traffic data will permit each company to have knowledge of the offered and overflow load at each end of the two-way trunk group, and thereby

enable accurate and independent determination of performance levels and trunk requirements. The parties agree to the electronic exchange of data.

2.5 The Parties recognize that embedded one-way trunks may exist for Local/IntraLATA toll traffic via end-point meet Interconnection architecture. The parties agree to negotiate a transition plan to migrate the embedded one-way trunks to two-way trunks via any Interconnection method as described in Appendix NIM. The Parties will coordinate any such migration, trunk group prioritization, and implementation schedule. **SBC-13STATE** agrees to develop a cutover plan and project manage the cutovers with **CLEC** participation and agreement.

3. TANDEM TRUNKING AND DIRECT END OFFICE TRUNKING

3.1 **SBC-13STATE** deploys in its network Tandems that switch local only traffic (local Tandem **SBC-SWBT** only), Tandems that switch IntraLATA and InterLATA traffic (Access Tandem) and Tandems that switch both local and IntraLATA/InterLATA traffic (local/Access Tandem). In addition **SBC-13STATE** deploys Tandems that switch ancillary traffic such as 911 (911 Tandem), Operator Services/ Directory Assistance (OPS/DA Tandem), and mass calling (choke Tandem). Traffic on Tandem trunks does not terminate at the Tandem but is switched to other trunks that terminate the traffic in End Offices and ultimately to End Users.

3.2 When Tandem trunks are deployed, **CLEC** shall route appropriate traffic (i.e. only traffic to End Offices that subtend that Tandem) to the respective **SBC-13STATE** Tandems on the trunk groups defined below. **SBC-13STATE** shall route appropriate traffic to **CLEC** switches on the trunk groups defined below.

3.2.1 When transit traffic through the **SBC-13STATE** Tandem from **CLEC** to another Local Exchange Carrier, **CLEC** or wireless carrier requires 24 or more trunks **CLEC** shall establish a direct End Office trunk group between itself and the other Local Exchange Carrier, **CLEC** or wireless carrier, unless the Parties agree otherwise. **CLEC** shall route Transit Traffic via **SBC-13STATE**'s Tandem switches, and not at or through any **SBC-13STATE** End Offices. This trunk group will be serviced in accordance with the Trunk Design Blocking Criteria in Section 6.

3.3 While the Parties agree that it is the responsibility of **CLEC** to enter into arrangements with each third party carrier (ILECs or other CLECs) to deliver or receive transit traffic, **SBC-13STATE** acknowledges that such arrangements may not currently be in place and an interim arrangement will facilitate traffic completion on an interim basis. Accordingly, until the earlier of (i) the date on which either Party has entered into an arrangement with third-party carrier to exchange transit traffic to **CLEC** and (ii) the date transit traffic volumes exchanged by **CLEC** and third-party carrier exceed the volumes specified in Section 3.2.1, **SBC-13STATE** will provide

CLEC with transit service. **CLEC** agrees to use reasonable efforts to enter into agreements with third-party carriers as soon as possible after the Effective Date.

3.4 Direct End Office trunks terminate traffic from a **CLEC** switch to an **SBC-13STATE** End Office and are not switched at a Tandem location. The Parties shall establish a two-way direct End Office trunk group when End Office traffic requires twenty-four (24) or more trunks or when no local or local/Access Tandem is present in the local exchange area. Overflow from either end of the direct End Office trunk group will be alternate routed to the appropriate Tandem.

3.5 All traffic received by **SBC-13STATE** on the direct End Office trunk group from **CLEC** must terminate in the End Office; i.e. no Tandem switching will be performed in the End Office. Where End Office functionality is provided in a remote End Office of a host/remote configuration, the Interconnection for that remote End Office is only available at the host switch. The number of digits to be received by the **SBC-13STATE** End Office shall be mutually agreed upon by the Parties. This trunk group shall be two-way.

3.6 Trunk Configuration

3.6.1 Trunk Configuration – **SBC-SWBT**, **SBC-AMERITECH** and **SNET**

3.6.1.1 Where available and upon the request of the other Party, each Party shall cooperate to ensure that its trunk groups are configured utilizing the B8ZS ESF protocol for 64 kbps Clear Channel Capability (64CCC) transmission to allow for ISDN interoperability between the Parties' respective networks. Trunk groups configured for 64CCC and carrying Circuit Switched Data (CSD) ISDN calls shall carry the appropriate Trunk Type Modifier in the CLCI-Message code. Trunk groups configured for 64CCC and not used to carry CSD ISDN calls shall carry a different appropriate Trunk Type Modifier in the CLCI-Message code.

3.6.2 Trunk Configuration – **PACIFIC** and **NEVADA**

3.6.2.1 When Interconnecting at **PACIFIC/NEVADA**'s digital End Offices, the Parties have a preference for use of Bipolar 8 Zero Substitution Extended Super Frame (B8ZS ESF) two-way trunks for all traffic between their networks. Where available, such trunk equipment will be used for LI trunk groups. Where AMI trunks are used, either Party may request upgrade to B8ZS ESF when such equipment is available.

3.6.2.2 When Interconnecting at **PACIFIC**'s DMS Tandem(s), 64K CCC data and voice traffic may be combined on the same B8ZF ESF

facilities and 2-way trunk group. 64 CCC data and voice traffic must be separate and not combined at **PACIFIC**'s 4E Tandems. A CLEC establishing new trunk groups to carry combined voice and data traffic from **PACIFIC**'s DMS Tandems may do so where facilities and equipment exist. Where separate voice and data Interconnection trunking already exists **CLEC** may transition to combined voice and data trunking as a major project, subject to rules, timelines and guidelines set forth in the CLEC handbook, which is not incorporated herein refer to the appropriate ILEC's website. In all cases, **CLEC** will be required to disconnect existing voice-only trunk groups as existing 64K CCC trunk groups are augmented to carry both voice and data traffic. For both the combined and the segregated voice and data trunk groups, where additional equipment is required, such equipment will be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job which **PACIFIC** does for IXC's, CLEC's, or itself for 64K CCC trunks.

4. TRUNK GROUPS

4.1 The following trunk groups shall used to exchange various types of traffic between **CLEC** and **SBC-13STATE**.

4.2 Local & IntraLATA Interconnection Trunk Group(s) in Each Local Exchange Area: **SBC-SWBT**.

4.2.1 A two-way local trunk group shall be established between **CLEC** switch and each **SBC-SWBT** local Tandem in the local exchange area. Inter-Tandem switching is not provided.

4.2.2 Where traffic between a **CLEC** switch and an **SBC-SWBT** end office switch is sufficient (i.e. 24 or more trunks), a local trunk group shall also be established between a **CLEC** switch and an **SBC-SWBT** end office switch, as described in Sections 3.4 and 3.5.

4.2.3 A local trunk group shall be established from a **CLEC** switch to each **SBC-SWBT** End Office in a local exchange area that has no local Tandem.

4.2.4 Each Party shall deliver to the other Party over the Local Trunk Group(s) only such traffic that originates and terminates in the local exchange area.

4.2.5 When **SBC-SWBT** has a separate local Tandem and Access Tandem in the local exchange area, a two-way IntraLATA toll trunk group in addition to a two-way local trunk group shall be established from **CLEC** switch to the **SBC-SWBT** Access Tandem(s).

4.2.6 When **SBC-SWBT** has a combined local/Access Tandem in a local exchange area, local and IntraLATA toll traffic shall be combined on a combined local/IntraLATA trunk group.

4.2.7 When **SBC-SWBT** has more than one combined local/Access Tandem in a local exchange area, local and IntraLATA toll traffic shall be combined on a combined local/IntraLATA trunk group to each **SBC-SWBT** Tandem.

4.3 Local and IntraLATA Interconnection Trunk Group(s) in Each LATA: **SBC-AMERITECH**, **PACIFIC**, and **NEVADA**

4.3.1 Tandem Trunking - Single Tandem LATAs

4.3.1.1 Where **PACIFIC, NEVADA**, **SNET**, or **SBC-AMERITECH** has a single Access Tandem in a LATA, IntraLATA Toll and Local traffic shall be combined on a single Local Interconnection Trunk group for calls destined to or from all End Offices that subtend the) Tandem. This trunk group shall be two-way and will utilize Signaling System 7 (SS7) signaling.

4.3.2 Tandem Trunking – Multiple Tandem LATAs

4.3.2.1 Where **PACIFIC**, **NEVADA**, **SNET**, or **SBC-AMERITECH** has more than one Access Tandem in a LATA, IntraLATA Toll and Local traffic shall be combined on a single Local Interconnection Trunk Group at every **PACIFIC**, **NEVADA**, **SNET** or **SBC-AMERITECH** Tandem for calls destined to or from all End Offices that subtend each Tandem. These trunk groups shall be two-way and will utilize Signaling System 7 (SS7) signaling.

4.3.3 Direct End Office Trunking

4.3.3.1 The Parties shall establish direct End Office primary high usage LI trunk groups for the exchange of IntraLATA Toll and Local traffic where actual or projected traffic demand is or will be twenty four (24) or more trunks, as described in Sections 3.4 and 3.5.

4.4 InterLATA (Meet Point) Trunk Group: **SBC-13STATE**

4.4.1 InterLATA traffic shall be transported between **CLEC** switch and the **SBC-13STATE** Access or combined local/Access Tandem over a "meet point" trunk group separate from local and IntraLATA toll traffic. However, as set forth in Section 2.2.1 above, **SBC-13STATE** shall not impose any restrictions on **CLEC's** ability to combine local and IntraLATA toll traffic with InterLATA traffic on the same (combined) trunk group. Until such time

as **CLEC** combines such traffic, InterLATA trunk group will be established for the transmission and routing of exchange access traffic between **CLEC**'s End Users and inter exchange carriers via a **SBC-13STATE** Access Tandem.

4.4.2 InterLATA trunk groups shall be set up as two-way and will utilize SS7 signaling, except multifrequency ("MF") signaling will be used on a separate "Meet Point" trunk group to complete originating calls to switched access customers that use MF FGD signaling protocol.

4.4.3 When **SBC-13STATE** has more than one Access Tandem in a local exchange area or LATA, **CLEC** shall establish an InterLATA trunk group to each **SBC-13STATE** Access Tandem where **CLEC** has homed its NXX code(s). If the Access Tandems are in two different states, **CLEC** shall establish an InterLATA trunk group with one Access Tandem in each state.

4.4.4 **CLEC** will home its NPA-NXXs to the Access Tandem that serves the geographic area for the V&H coordinate assigned to the NXX.

4.4.5 FOR **PACIFIC** ONLY: **CLEC** will home new codes serving a particular community on the Tandem serving that community, as defined in SCHEDULE CAL.P.U.C. NO. l75—T, Section 5.7.3, Tandem Access Sectorization (TAS). **CLEC** is not required, however, to home codes by the sector designations. **CLEC** also agrees to locate at least one Local Routing Number (LRN) per home Tandem if **CLEC** ports any telephone numbers to its network from a community currently homing on that Tandem.

4.4.6 **SBC-13STATE**: For each NXX code used by either Party, the Party that owns the NXX must maintain network facilities (whether owned or leased) used to actively provide, in part, local Telecommunications Service in the geographic area assigned to such NXX code. If either Party uses its NXX Code to provide foreign exchange service to its customers outside of the geographic area assigned to such code, that Party shall be solely responsible to transport traffic between its foreign exchange service customer and such code's geographic area.

4.4.7 **SBC-13STATE** will not block switched access customer traffic delivered to any **SBC-13STATE** Tandem for completion on **CLEC**'s network. The Parties understand and agree that InterLATA trunking arrangements are available and functional only to/from switched access customers who directly connect with any **SBC-13STATE** Access Tandem that **CLEC**'s switch subtends in each LATA. In no event will **SBC-13STATE** be required to route such traffic through more than one Tandem for connection to/from switched access customers. **SBC-13STATE** shall have no responsibility to ensure that any switched access customer will accept traffic that **CLEC** directs to the switched access customer. **SBC-13STATE** also agrees to

furnish **CLEC**, upon request, a list of those IXCs which also Interconnect with **SBC-13STATE**'s Access Tandem(s).

4.4.8 **CLEC** shall provide all SS7 signaling information including, without limitation, charge number and originating line information ("OLI"). For terminating FGD, **SBC-13STATE** will pass all SS7 signaling information including, without limitation, CPN if it receives CPN from FGD carriers. All privacy indicators will be honored. Where available, network signaling information such as transit network selection ("TNS") parameter, carrier identification codes ("CIC") (CCS platform) and CIC/OZZ information (non-SS7 environment) will be provided by **CLEC** wherever such information is needed for call routing or billing. The Parties will follow all OBF adopted standards pertaining to TNS and CIC/OZZ codes.

4.5 800/(8YY) Traffic: **SBC-13STATE**

4.5.1 If **CLEC** chooses **SBC-13STATE** to handle 800/(8YY) database queries from its switches, all **CLEC** originating 800/(8YY) traffic will be routed over the InterLATA meet point trunk group. This traffic will include a combination of both Interexchange Carrier (IXC), 800/(8YY) service and **CLEC** 800/(8YY) service that will be identified and segregated by carrier through the database query handled through the **SBC-13STATE** Tandem switch.

4.5.2 All originating Toll Free Service (800/8YY) calls for which **CLEC** requests that **SBC-13STATE** perform the Service Switching Point ("SSP") function (e.g., perform the database query) shall be delivered using GR-394 format over the Meet Point Trunk Group. Carrier Code "0110" and Circuit Code (to be determined for each LATA) shall be used for all such calls.

4.5.3 **CLEC** may handle its own 800/8YY database queries from its switch. If so, **CLEC** will determine the nature (local/intra-LATA/inter-LATA) of the 800/8YY call based on the response from the database. If the query determines that the call is a local or IntraLATA 800/8YY number, **CLEC** will route the post-query local or IntraLATA converted ten-digit local number to **SBC-13STATE** over the local or intra-LATA trunk group. In such case, **CLEC** is to provide an 800/8YY billing record when appropriate. If the query reveals the call is an InterLATA 800/8YY number, **CLEC** will route the post-query inter-LATA call (800/8YY number) directly from its switch for carriers Interconnected with its network or over the meet point group to carriers not directly connected to its network but are connected to **SBC-13STATE**'s Access Tandem. Calls will be routed to **SBC-13 STATE** over the local/IntraLATA and inter-LATA trunk groups within the LATA in which the calls originate.

4.5.4 All post-query Toll Free Service (800/8YY) calls for which **CLEC** performs the SSP function, if delivered to **SBC-13STATE**, shall be delivered using GR-394 format over the Meet Point Trunk Group for calls destined to IXCs, or shall be delivered by **CLEC** using GR-317 format over the local Interconnection trunk group for calls destined to End Offices that directly subtend the Tandem.

4.6 E911 Trunk Group

4.6.1 A dedicated trunk group for each NPA shall be established to each appropriate E911 switch within the local exchange area or LATA in which CLEC offers exchange service. CLEC will have administrative control for the purpose of issuing ASRs on this one-way trunk group. This trunk group shall be set up as a one-way out-going only and use MF-CAMA signaling or, where available, SS7 signaling. Where the Parties use SS7 signaling and E911 network has the technology available, only one E911 trunk group shall be established to handle multiple NPAs within the local exchange area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established for each NPA in the local exchange area or LATA. CLEC shall provide a minimum of two (2) one-way outgoing channels on E911 trunks dedicated for originating E911 emergency service calls from the POI to the SBC-13STATE E911 switch.

4.6.2 **CLEC** will cooperate with **SBC-13STATE** to promptly test all 9-1-1 trunks and facilities between the **CLEC** network and the **SBC-13STATE** 9-1-1 Tandem to assure proper functioning of 9-1-1 service. **CLEC** will not turn-up live traffic until successful testing is completed by both Parties.

4.7 High Volume Call In (HVCI) / Mass Calling (Choke) Trunk Group: **SBC-13STATE**

4.7.1 A dedicated trunk group shall be required to the designated Public Response HVCI/Mass Calling Network Access Tandem in each serving area. This trunk group shall be one-way outgoing only and shall utilize MF signaling or SS7 signaling (once SBC-13STATE utilizes SS7 signaling for its own operation). As the HVCI/Mass Calling trunk group is designed to block all excessive attempts toward HVCI/Mass Calling NXXs, it is necessarily exempt from the one percent blocking standard described elsewhere for other final local Interconnection trunk groups. **CLEC** will have administrative control for the purpose of issuing ASRs on this one-way trunk group.

4.7.2 This group shall be sized as follows:

Number of Access Lines Served	***Number of Mass Calling Trunks***
0 – 10,000	*2*
10,001 – 20,000	*3*

20,001 – 30,000	*4*
30,001 – 40,000	*5*
40,001 – 50,000	*6*
50,001 – 60,000	*7*
60,001 – 75,000	*8*
75,000 +	*9 maximum*

4.7.3 If **CLEC** should acquire a HVCI/Mass Calling customer, i.e. a radio station, **CLEC** shall notify **SBC-13STATE** of the need to establish a one-way outgoing SS7 or MF trunk group from the **SBC-13STATE** HVCI/Mass Calling Serving Office to the **CLEC** customer's serving office and **SBC-13STATE** shall establish this trunk group.

4.7.4 If **CLEC** finds it necessary to issue a new choke telephone number to a new or existing HVCI/Mass Calling customer, **CLEC** may request a meeting to coordinate with **SBC-13STATE** the assignment of HVCI/Mass Calling telephone number from the existing choke NXX. In the event that **CLEC** establishes a new choke NXX, **CLEC** must notify **SBC-13STATE** a minimum of ninety (90) days prior to deployment of the new HVCI/Mass Calling NXX. **SBC-13STATE** will perform the necessary translations in its End Offices and Tandem(s) and issue ASR's to establish a one-way outgoing SS7 or MF trunk group from the **SBC-13STATE** Public Response HVCI/Mass Calling Network Access Tandem to **CLEC**'s choke serving office.

4.7.5 Where **SBC-13STATE** and **CLEC** both provide HVCI/Mass Calling trunking, both parties' trunks may ride the same DS-1. MF and SS7 trunk groups shall not be provided within a DS-1 facility; a separate DS-1 per signaling type must be used.

4.8 Operator Services/Directory Assistance Trunk Group(s)

4.8.1 If **SBC-13STATE** agrees through a separate appendix or contract to provide Inward Assistance Operator Services for **CLEC**, **CLEC** will initiate an ASR for a one-way trunk group from its designated operator services switch to the **SBC-13STATE** OPERATOR SERVICES Tandem utilizing MF signaling. Reciprocally, **SBC-13STATE** will initiate an ASR for a one-way MF signaling trunk groups from its OPERATOR SERVICES Tandem to **CLEC**'s designated operator services switch.

4.8.2 If **SBC-13STATE** agrees through a separate appendix or contract to provide Directory Assistance and/or Operator Services for **CLEC** the following trunk groups are required:

4.8.2.1 Directory Assistance (DA):

4.8.2.1.1 **CLEC** may contract for DA services only. A segregated trunk group for these services will be required to the appropriate **SBC-13STATE** OPERATOR SERVICES Tandem in the LATA for the NPA **CLEC** wishes to serve. This trunk group is set up as one-way outgoing only and utilizes Modified Operator Services Signaling (2 Digit Automatic Number Identification (ANI)). **CLEC** will have administrative control for the purpose of issuing ASR's on this one-way trunk group.

4.8.2.2 Directory Assistance Call Completion (DACC):

4.8.2.2.1 **CLEC** contracting for DA services may also contract for DACC. This requires a segregated one-way trunk group to each **SBC-13STATE** OPERATOR SERVICES Tandem within the LATA for the combined DA and DACC traffic. This trunk group is set up as one-way outgoing only and utilizes Modified Operator Services Signaling (2 Digit ANI). **CLEC** will have administrative control for the purpose of issuing ASR's on this one-way trunk group.

4.8.2.3 Busy Line Verification/Emergency Interrupt (BLV/EI):

4.8.2.3.1 When **SBC-13STATE**'s operator is under contract to verify the busy status of the **CLEC** End Users, **SBC-13STATE** will utilize a segregated one-way with MF signaling trunk group from **SBC-13STATE**'s Operator Services Tandem to **CLEC**'s switch. **CLEC** will have administrative control for the purpose of issuing ASR's on this one-way trunk group.

4.8.2.4 Operator Assistance (0+, 0-):

4.8.2.4.1 This service requires a one-way trunk group from the **CLEC** switch to **SBC-13STATE**'s OPERATOR SERVICES Tandem. Two types of trunk groups may be utilized. If the trunk group transports DA/DACC, the trunk group will be designated with the appropriate traffic use code and modifier. If DA is not required or is transported on a segregated trunk group, then the group will be designated with a different appropriate traffic use code and modifier. Modified Operator Services Signaling (2 Digit ANI) will be required on the trunk

group. **CLEC** will have administrative control for the purpose of issuing ASR's on this one-way trunk group.

4.8.2.5 Digit-Exchange Access Operator Services Signaling:

4.8.2.5.1 **CLEC** will employ Exchange Access Operator Services Signaling (EAOSS) from the equal access End Offices (EAEO) to the OPERATOR SERVICES switch that are equipped to accept 10 Digit Signaling for Automatic Number Identification (ANI).

4.8.2.6 OS QUESTIONAIRE

4.8.2.6.1 If **CLEC** chooses **SBC-13STATE** to provide either OS and/or DA, then **CLEC** agrees to accurately complete the OS Questionnaire prior to submitting ASRs for OS and DA trunks.

5. FORECASTING RESPONSIBILITIES: SBC-13STATE

5.1 **CLEC** agrees to provide an initial forecast for establishing the initial Interconnection facilities. **SBC-13STATE** shall review this forecast and if it has any additional information that will change the forecast shall provide this information to **CLEC**. Subsequent forecasts shall be provided on a semi-annual basis, not later than January 1 and July 1 in order to be considered in the semi-annual publication of the **SBC-13STATE** General Trunk Forecast. This forecast should include yearly forecasted trunk quantities for all appropriate trunk groups described in this Appendix for a minimum of three years. Parties agree to the use of Common Language Location Identification (CLLI) coding and Common Language Circuit Identification for Message Trunk coding (CLCI-MSG) which is described in TELCORDIA TECHNOLOGIES documents BR795-100-100 and BR795-400-100 respectively. Inquiries pertaining to use of TELCORDIA TECHNOLOGIES Common Language Standards and document availability should be directed to TELCORDIA TECHNOLOGIES at 1-800-521-2673. Analysis of trunk group performance, and ordering of relief if required, will be performed on a monthly basis at a minimum (trunk servicing).

5.2 The semi-annual forecasts shall include:

5.2.1 Yearly forecasted trunk quantities (which include measurements that reflect actual Tandem local Interconnection and InterLATA trunks, End Office Local Interconnection trunks, and Tandem subtending Local Interconnection End Office equivalent trunk requirements) for a minimum of three (current and plus 1 and plus 2) years; and

5.2.2 A description of major network projects anticipated for the following six months. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, orders greater than four (4) DS1's, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecasting period.

5.2.3 The Parties shall agree on a forecast provided above to ensure efficient utilization of trunks. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment becomes available. Parties shall make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available.

5.3 **CLEC** shall be responsible for forecasting two-way trunk groups. **SBC-13STATE** shall be responsible for forecasting and servicing the one way trunk groups terminating to **CLEC** and **CLEC** shall be responsible for forecasting and servicing the one way trunk groups terminating to **SBC-13STATE**, unless otherwise specified in this Appendix. Standard trunk traffic engineering methods will be used by the parties as described in Bell Communications Research, Inc. (TELCORDIA TECHNOLOGIES) document SR TAP 000191, Trunk Traffic Engineering Concepts and Applications.

5.4 If forecast quantities are in dispute, the Parties shall meet to reconcile the differences.

5.5 Each Party shall provide a specified point of contact for planning, forecasting and trunk servicing purposes.

6. TRUNK DESIGN BLOCKING CRITERIA: SBC-13STATE

6.1 Trunk requirements for forecasting and servicing shall be based on the blocking objectives shown in Table 1. Trunk requirements shall be based upon time consistent average busy season busy hour twenty (20) day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (use Medium day-to-day Variation and 1.0 Peakedness factor until actual traffic data is available).

TABLE 1

Trunk Group Type	Design Blocking Objective
Local Tandem	1%
Local Direct End Office (Primary High)	ECCS*
Local Direct End Office (Final)	2%
IntraLATA	1%
Local/IntraLATA	1%
InterLATA (Meet Point) Tandem	0.5%

911	1%
Operator Services (DA/DACC)	1%
Operator Services (0+, 0-)	1%
Busy Line Verification-Inward Only	1%

*During implementation the Parties will mutually agree on an ECCS or some other means for the sizing of this trunk group.

7. TRUNK SERVICING: SBC-13STATE

7.1 Orders between the Parties to establish, add, change or disconnect trunks shall be processed by using an Access Service Request (ASR). **CLEC** will have administrative control for the purpose of issuing ASR's on two-way trunk groups. In **SBC-AMERITECH** and **SNET** where one-way trunks are used (as discussed in section 2.3), **SBC-AMERITECH** and **SNET** will issue ASRs for trunk groups for traffic that originates in **SBC-13STATE** and terminates to **CLEC**. The Parties agree that neither Party shall alter trunk sizing without first conferring the other party.

7.2 Both Parties will jointly manage the capacity of Local Interconnection Trunk Groups. Both Parties may send a Trunk Group Service Request (TGSR) to the other Party to trigger changes to the Local Interconnection Trunk Groups based on capacity assessment. The TGSR is a standard industry support interface developed by the Ordering and Billing Forum of the Carrier liaison Committee of the Alliance for Telecommunications Solutions (ATIS) organization. TELCORDIA TECHNOLOGIES Special Report STS000316 describes the format and use of the TGSR. Contact TELCORDIA TECHNOLOGIES at 1-800-521-2673 regarding the documentation availability and use of this form.

7.3 In A Blocking Situation:

7.3.1 In a blocking final situation, a TGSR will be issued by **SBC-13STATE** when additional capacity is required to reduce measured blocking to objective design blocking levels based upon analysis of trunk group data. Either Party upon receipt of a TGSR in a blocking situation will issue an ASR to the other Party within three (3) business days after receipt of the TGSR, and upon review and in response to the TGSR received. **CLEC** will note "Service Affecting" on the ASR.

7.4 Underutilization:

7.4.1 Underutilization of Interconnection trunks and facilities exists when provisioned capacity is greater than the current need. This over provisioning is an inefficient deployment and use of network resources and results in unnecessary costs. Those situations where more capacity exists than actual usage requires will be handled in the following manner:

7.4.1.1 If a trunk group is under 75 percent (75%) of CCS capacity on a monthly average basis, for each month of any three (3) consecutive months period, either Party may request the issuance of an order to resize the trunk group, which shall be left with not less than 25 percent (25%) excess capacity. In all cases grade of service objectives shall be maintained.

7.4.1.2 Either party may send a TGSR to the other Party to trigger changes to the Local Interconnection Trunk Groups based on capacity assessment. Upon receipt of a TGSR, the receiving Party will issue an ASR to the other Party within twenty (20) business days after receipt of the TGSR. (20 business days for **PACIFIC/NEVADA** , 10 business days for **SBC-SWBT**, **SBC-AMERITECH**, and **SNET**)

7.4.1.3 Upon review of the TGSR, if a Party does not agree with the resizing, the Parties will schedule a joint planning discussion within the twenty (20) business days. The Parties will meet to resolve and mutually agree to the disposition of the TGSR.

7.4.1.4 If **SBC-13STATE** does not receive an ASR, or if **CLEC** does not respond to the TGSR by scheduling a joint discussion within the twenty (20) business day period, **SBC-13STATE** will attempt to contact **CLEC** to schedule a joint planning discussion. If **CLEC** will not agree to meet within an additional five (5) business days and present adequate reason for keeping trunks operational, **SBC-13STATE** will issue an ASR to resize the Interconnection trunks and facilities.

7.5 In all cases except a blocking situation, either Party upon receipt of a TGSR will issue an ASR to the other Party:

7.5.1 Within twenty (20) business days after receipt of the TGSR, upon review of and in response to the TGSR received; or (20 business days for **PACIFIC/NEVADA**, 10 business days for **SBC-SWBT**, **SBC-AMERITECH**, and **SNET**)

7.5.2 At any time as a result of either Party's own capacity management assessment, in order to begin the provisioning process. The intervals used for the provisioning process will be the same as those used for **SBC-13STATE**'s Switched Access service.

7.6 Projects require the coordination and execution of multiple orders or related activities between and among **SBC-13STATE** and **CLEC** work groups, including but not

limited to the initial establishment of Local Interconnection or Meet Point Trunk Groups and service in an area, NXX code moves, re-homes, facility grooming, or network rearrangements.

7.6.1 Orders that comprise a project, i.e., greater than four (4) DS-1's, shall be submitted at the same time, and their implementation shall be jointly planned and coordinated.

7.7 **CLEC** will be responsible for engineering its network on its side of the Point of Interconnection (POI). **SBC-13STATE** will be responsible for engineering its network on its side of the POI.

7.8 Due dates for the installation of Local Interconnection and Meet Point Trunks covered by this Appendix shall be based on each of the **SBC-13STATE**'s intrastate Switched Access intervals. If **CLEC** is unable to or not ready to perform Acceptance Tests, or is unable to accept the Local Interconnection Service Arrangement trunk(s) by the due date, **CLEC** will provide with a requested revised service due date that is no more than thirty (30) calendar days beyond the original service due date. If **CLEC** requests a service due date change which exceeds the allowable service due date change period, the ASR must be canceled by **CLEC**. Should **CLEC** fail to cancel such an ASR, **SBC-13STATE** shall treat that ASR as though it had been canceled.

7.9 Trunk servicing responsibilities for OPERATOR SERVICES trunks used for stand-alone Operator Service or Directory Assistance are the sole responsibility of **CLEC**.

7.10 TRUNK SERVICING – **SBC-SWBT** Exceptions:

7.10.1 The Parties will process trunk service requests submitted via a properly completed ASR within ten (10) business days of receipt of such ASR unless defined as a major project, as stated in 7.6. Incoming orders will be screened by **SWBT** trunk engineering personnel for reasonableness based upon current utilization and/or consistency with forecasts. If the nature and necessity of an order requires determination, the ASR will be placed in Held Status, and a Joint Planning discussion conducted. Parties agree to expedite this discussion in order to minimally delay order processing. Extension of this review and discussion process beyond two days from ASR receipt will require the ordering Party to Supplement the order with proportionally adjusted Customer Desired Due Dates. Facilities must also be in place before trunk orders can be completed.

7.11 Utilization shall be defined as Trunks Required as a percentage of Trunks In Service. Trunks Required shall be determined using methods described in Section 5.0 using Design Blocking Objectives stated in Section 6.1.

8. TRUNK DATA EXCHANGE: SBC-13STATE

8.1 Each Party agrees to service trunk groups to the foregoing blocking criteria in a timely manner when trunk groups exceed measured blocking thresholds on an average time consistent busy hour for a twenty (20) business day study period. The Parties agree that twenty (20) business days is the study period duration objective. However, a study period on occasion may be less than twenty (20) business days but at minimum must be at least three (3) business days to be utilized for engineering purposes, although with less statistical confidence.

8.2 Exchange of traffic data enables each Party to make accurate and independent assessments of trunk group service levels and requirements. Parties agree to establish a timeline for implementing an exchange of traffic data utilizing the DIXC process via a Network Data Mover (NDM) or FTP computer to computer file transfer process. Implementation shall be within three (3) months of the date, or such date as agreed upon, that the trunk groups begin passing live traffic. The traffic data to be exchanged will be the Originating Attempt Peg Count, Usage (measured in Hundred Call Seconds), Overflow Peg Count, and Maintenance Usage (measured in Hundred Call Seconds on a seven (7) day per week, twenty-four (24) hour per day, fifty-two (52) weeks per year basis. These reports shall be made available at a minimum on a semi-annual basis upon request. Exchange of data on one-way groups is optional.

9. NETWORK MANAGEMENT: SBC-13STATE

9.1 Restrictive Controls

9.1.1 Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps set at appropriate levels on traffic toward each other's network, when required, to protect the public switched network from congestion due to facility failures, switch congestion, or failure or focused overload. **CLEC** and **SBC-13 STATE** will immediately notify each other of any protective control action planned or executed.

9.2 Expansive Controls

9.2.1 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes will not be used to circumvent normal trunk servicing. Expansive controls will only be used when mutually agreed to by the Parties.

9.3 Mass Calling

9.3.1 **CLEC** and **SBC-13STATE** shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes.

10. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

10.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element as provided in Section 2.9 of the General Terms and Conditions.

Attachment D

Michael J. Wirl
Director
Regulatory and Governmental Affairs

100 Communications Drive
P.O. Box 49
Sun Prairie, WI 53590-0049

Phone: 608-837-1732
FAX: 608-837-1128
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November 1, 2004

VIA PSC ELECTRONIC REGULATORY FILING SYSTEM

Ms. Lynda L. Dorr, Secretary to the Commission
Public Service Commission of Wisconsin
PO Box 7854
Madison, WI 53707-7854

Re: Notification of an executed second amendment to the Interconnection Agreement between Verizon North, Inc. ("Verizon") f/k/a GTE North Incorporated and Level 3 Communications, LLC ("Level 3") } 05-TI-

Enclosed is a copy of the referenced executed second amendment to the agreement between Verizon North Inc ("Verizon") f/k/a/ GTE North Incorporated and Level 3 Communications, LLC for the State of Wisconsin. The original interconnection agreement was filed on April 24, 2001 and assigned docket number 05-TI-650. Amendment one was filed on November 22, 2002 and assigned docket number 05-TI-733. An electronic copy of this second amendment was sent to Mr. Ken Barth of the PSCW on November 1, 2004.

I have been authorized by Level 3 Communications, LLC to submit this filing to the Public Service Commission pursuant to 47 U.S.C. Section 252(e) and in recognition of the Public Service Commission's jurisdiction in this matter.

If you have questions relating to this matter, I can be contacted at the above numbers.

Very Truly Yours,

/s/ Mike Wirl

Mike J. Wirl

c: Mr. Peter Blisard
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021
Peter.Blisard @Level3.com

Ken Barth – PSCW w/o attachments

AMENDMENT NO. 2

to the

INTERCONNECTION AGREEMENT

between

VERIZON NORTH INC.

and

LEVEL 3 COMMUNICATIONS, LLC

This Amendment No. 2 (the "Amendment") shall be deemed effective on the "Effective Date" by and between Verizon North Inc. ("Verizon"), a Wisconsin corporation with offices at 8001 West Jefferson, Ft. Wayne, IN 46804, and Level 3 Communications, LLC, a Delaware limited liability company with offices at 1025 Eldorado Boulevard, Broomfield, Colorado 80021 ("Level 3"). Verizon and Level 3 may hereinafter be referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in the State of Wisconsin.

WITNESSETH:

WHEREAS, pursuant to an adoption letter dated March 29, 2002 (the "Adoption Letter"), Level 3 adopted in the State of Wisconsin, the interconnection agreement between MH Telecom Inc. and Verizon (such Adoption Letter and underlying adopted interconnection agreement referred to herein collectively as the "Agreement"); and

WHEREAS, the Parties wish to amend the Agreement to reflect their agreement on intercarrier compensation and interconnection architecture as set forth in Attachment A to this Amendment.

NOW, THEREFORE, in consideration of the mutual promises, provisions and covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that the terms and conditions set forth in Attachment A shall govern the Parties' mutual rights and obligations with respect to intercarrier compensation and interconnection architecture.

2. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

4. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.

5. Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Section 1 of this Amendment, and, except to the extent set forth in Section 1 of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the Effective Date.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed.

LEVEL 3 COMMUNICATIONS, LLC

By: _____

Printed: LaCharles Keesee

Title: Vice President - Wholesale Voice Services

10/20/2004

VERIZON NORTH INC.

By: _____

Printed: Jeffrey A. Masoner

Title: Vice President - Interconnection Services

Level 3 WI Interc Amendment.doc 3

Attachment A

1. Definitions. For the purposes of this Attachment, the following terms shall have the meanings provided below.

(a) "Act" means the Communications Act of 1934 (47 U.S.C. Section 151 et. seq.), as amended from time to time (including, but not limited to, by the Telecommunications Act of 1996).

(b) A "Call Record" shall include identification of any VOIP Traffic as VOIP Traffic, as well as at least one of the following: charge number, Calling Party Number ("CPN"), or Automatic Number Identifier. In addition, a "Call Record" may include any other information agreed upon by both Parties to be used for identifying the jurisdiction of the call or for assessing applicable intercarrier compensation charges. If the Forbearance Order and/or the FCC VOIP Order (as such terms are defined in Section 3.2) render this definition of "Call Record" to be inapplicable for the purpose of determining the jurisdiction of the call, the Parties will negotiate to agree upon any other information to be used prospectively for identifying the jurisdiction of a call and/or for assessing applicable intercarrier compensation charges as a replacement for charge number, CPN, or ANI.

(c) "Compensable Base" means the total combined minutes of use of ISP-Bound Traffic and Local Traffic originated by Verizon to Level 3 from July 1, 2002 through June 30, 2003 in all jurisdictions, that Verizon has agreed in writing are subject to intercarrier compensation. Any minutes of use that Verizon has not agreed are subject to intercarrier compensation, or as to which there remains an outstanding billing dispute between the Parties, shall not be included in the Compensable Base.

(d) "End User" means a third party residence or business end-user subscriber to Telephone Exchange Services, as such term is defined in the Act, provided by either of the Parties.

(e) "Effective Date" means April 1, 2004.

(f) "End Office" means a switching entity that is used to terminate End User station loops for the purpose of interconnection to each other and to trunks.

(g) "Extended Local Calling Scope Arrangement" means an arrangement that provides a End User a local calling scope (Extended Area Service, "EAS"), outside the End User's basic exchange serving area. Extended Local Calling Scope Arrangements may be either optional or non-optional. "Optional Extended Local Calling Scope Arrangement Traffic" is traffic that under an optional Extended Local Calling Scope Arrangement chosen by the End User terminates outside of the End User's basic exchange serving area.

(h) "Exchange Access" shall have the meaning set forth in the Act.

(i) *Intentionally left blank.*

(j) "Information Access" 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 a provider of information services, including an Internet service provider.

(k) "Information Service" shall have the meaning set forth in the Act.

(l) "ISP-Bound Traffic" means any Telecommunications traffic originated on the public switched telephone network ("PSTN") on a dial-up basis that is transmitted to an internet service provider at any point during the duration of the transmission, including V/FX Traffic that is transmitted to an internet service provider at any point during the duration of the transmission, but not including VOIP Traffic.

(m) "LERG" or "Local Exchange Routing Guide" means a Telcordia Technologies reference containing NPA/NXX routing and homing information.

(n) "Local Traffic" consists of Telecommunications traffic for which compensation is required by both Section 251(b)(5) of the Act and 47 C.F.R Part 51; and, for the avoidance of any doubt, the following types of traffic, among others, do not constitute Local Traffic under the terms of this Agreement: ISP-Bound Traffic; Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access; toll traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; Optional Extended Local Calling Scope Arrangement Traffic; special access, private line, frame relay, ATM, or any other traffic that is not switched by the receiving party; tandem transit traffic; V/FX Traffic; voice Information Service traffic; or VOIP Traffic.

(o) "NXX or "NXX Code" means the three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number).

(p) "Switched Exchange Access Service" means the offering of transmission and switching services for the purpose of the origination or termination of toll traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access and 900 access.

(q) "Tandem" or "Tandem Switch" means a physical or logical switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among End Office Switches and between and among End Office Switches and carriers' aggregation points, points of termination, or points of presence, and to provide Switched Exchange Access Services.

(r) "Telecommunications" shall have the meaning set forth in the Act.

(s) "Telecommunications Carrier" shall have the meaning set forth in the Act.

(t) "Virtual Foreign Exchange Traffic" or "V/FX" Traffic means a call to an End User assigned a telephone number with an NXX Code (as set forth in the LERG) associated with an exchange that is different than the exchange (as set forth in the LERG) associated with the actual physical location of such End User's station.

(u) "VOIP Traffic" means voice communications that are transmitted in whole or in part over packet switching facilities using Internet Protocol or any similar packet protocol. For avoidance of doubt, VOIP Traffic does not include ISP-Bound Traffic that is not used to generate voice traffic to or from the PSTN.

(v) "Wire Center" means a building or portion thereof which serves as the premises for one or more Central Office Switches and related facilities.

2. General/Term. Notwithstanding any change to Applicable Law effected after the Effective Date (and not withstanding any provision in the Agreement governing the Parties' rights or obligations in the event of such a change in Applicable Law), subject to compliance with Sections 6 and 7 below, and provided that there are no outstanding billing disputes between the Parties with respect to intercarrier compensation charges billed by either Party prior to the Effective Date with respect to Local Traffic, ISP-Bound Traffic or switched access traffic, the terms set forth in subsections 2.1-2.4 below shall govern the Parties' rights and obligations regarding compensation for ISP-Bound Traffic and Local Traffic. If there are outstanding billing disputes between the Parties with respect to intercarrier compensation charges billed by either Party prior to the Effective Date with respect to Local Traffic, ISP-Bound Traffic or switched access traffic, then subsections 2.1-2.4 below shall not apply and compensation for ISP-Bound Traffic and Local Traffic exchanged between the Parties shall be governed by the following: (i) an intercarrier compensation rate of zero ($0) shall apply to ISP-Bound Traffic delivered by Verizon to Level 3 and (ii) Verizon's then-prevailing reciprocal compensation rates in each particular service territory (as set forth in Verizon's standard price schedules, as amended) shall apply to ISP-Bound Traffic delivered by Level 3 to Verizon and to all Local Traffic exchanged between the Parties. For purposes of the preceding sentence only, all Local and ISP-Bound Traffic above a 2:1 ratio shall be considered to be ISP-Bound Traffic.

2.1 Intercarrier Compensation for ISP-Bound Traffic and Local Traffic. Commencing on the Effective Date, and continuing prospectively for the applicable time periods described below, when ISP-Bound Traffic or Local Traffic is originated by an End User of a Party on that Party's network (the "Originating Party") and delivered to the other Party (the "Receiving Party") for delivery to an End User of the Receiving Party, the Receiving Party shall bill and the Originating Party shall pay intercarrier compensation at the following equal and symmetrical rates: $.0005 per minute of use for

the period beginning on the Effective Date and ending on December 31, 2004, $.00045 per minute of use for the period beginning January 1, 2005 and ending on December 31, 2005, $.0004 per minute of use for the period beginning January 1, 2006 and ending upon the effective date of termination of this Section 2.1 (collectively, the "Intercarrier Compensation Rates"); ***provided, however***, that Verizon shall be under no obligation to pay any intercarrier compensation to Level 3 on Local Traffic or ISP-Bound Traffic insofar as the total combined minutes of use of such traffic originated by Verizon to Level 3 in all jurisdictions in which the Parties exchange traffic exceeds the Compensable Base by the following threshold percentages during each of the specified calendar years: 175% for 2004, 200% for 2005, 225% for 2006, and 225% for any calendar year subsequent to 2006 in which this Section 2.1 remains in effect.

2.2 The Intercarrier Compensation Rates shall not apply to V/FX Traffic that is not ISP-Bound Traffic, which such other V/FX Traffic shall be subject to applicable Switched Exchange Access Service tariff charges; provided, however, that the Parties do not agree on the compensation due for the exchange of VOIP Traffic that may constitute V/FX Traffic under Section 1(t) ("V/FX VOIP Traffic"). Pending resolution of the Parties' dispute on the compensation due for V/FX VOIP Traffic, Level 3 shall pay at least the Intercarrier Compensation Rates to Verizon for V/FX VOIP Traffic (other than V/FX VOIP Traffic addressed in Section 3.1, as to which interstate access charges shall apply) that it delivers to Verizon (in doing so, but without any probative value as to the substance of either Party's position on the appropriate compensation due on V/FX VOIP Traffic, Level 3 may dispute access or intercarrier compensation charges billed by Verizon in excess of the Intercarrier Compensation Rates). The Parties hereby agree that, as of the Effective Date, they are exchanging only a de minimis amount of V/FX Traffic that is not ISP-Bound Traffic; the Parties further agree that, from time to time, upon written request from either Party, the other Party shall review with the requesting Party whether the amount of such V/FX Traffic that is not ISP-Bound Traffic exchanged between them remains de minimis. For avoidance of doubt, the Intercarrier Compensation Rates also shall not apply to VOIP Traffic, except as set forth in this paragraph or to the extent otherwise required by Section 3 below.

2.3 Notwithstanding anything else in this Attachment, and except as otherwise provided in this Section 2.3, if Level 3 fails to comply with Sections 6 and 7 of this Attachment, the Intercarrier Compensation Rates set forth in this Section 2 shall not apply to ISP-Bound Traffic and Local Traffic delivered by Verizon to Level 3. Instead, the applicable intercarrier compensation rate for such ISP-Bound Traffic and Local Traffic delivered by Verizon to Level 3 shall be zero ($0) effective on the date Verizon provides Level 3 written notice detailing the specific facts and documentation supporting its position of non-compliance with Sections 6 and 7 of this Attachment ("Non-Compliance Notice") and continuing until the earlier of a determination by Verizon that Level 3 is in compliance with Sections 6 and 7 of this Attachment or termination of Sections 2 and 3 of this Attachment, as provided in Section 4 below. If Level 3 disagrees with the non-compliance finding, Level 3 shall respond in writing to Verizon within ten

business days of receipt of the Non-Compliance Notice with: (i) facts and documentation supporting its position and (ii) the name of an individual who will serve as Level 3's representative for purposes of negotiating resolution of the non-compliance dispute ("Level 3 Response"). Verizon shall have ten business days from receipt of the Level 3 Response to designate its representative to the negotiation, and shall continue to make payments during the Negotiation Period (as defined below) as though the Intercarrier Compensation Rates in this Section 2 continued to apply. The Parties' representatives shall meet at least once within 45 days after the date of the Level 3 Response in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations. If the Parties have been unable to resolve the dispute within 45 days of the date of the Level 3 Response ("Negotiation Period"), either Party may pursue any remedies available to it under the Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction; ***provided, however***, that if the matter is resolved with a finding that Level 3 was not in compliance with Sections 6 and 7 of this Attachment, Level 3 shall refund any payments of the Intercarrier Compensation Rates made by Verizon during the Negotiation Period.

2.4 In the event that Verizon should continue to offer or provide unbundled network element platforms ("UNE-P") after the Effective Date, the Intercarrier Compensation Rates shall not apply to any traffic involving Level 3 End Users served by UNE-P, and the Parties instead will negotiate in good faith to conclude mutually acceptable provisions governing intercarrier compensation associated with traffic to Level 3 End Users served by UNE-P.

3. VOIP Traffic.

3.1 Agreement to Comply with FCC Declaratory Ruling. The Parties agree that VOIP Traffic that originates on and terminates to the PSTN shall be subject to interstate access charges, as set forth in the FCC's Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, FCC 04-97, WC Docket No. 02-361 (released April 21, 2004) ("AT&T Order") unless and until the AT&T Order is modified in the Forbearance Order and/or the FCC VOIP Order (as such terms are defined in Section 3.2), in which case the Parties will negotiate an amendment to this Attachment to apply prospectively from the date of such Forbearance Order and/or the FCC VOIP Order addressing intercarrier compensation for the VOIP Traffic described in this Section 3.1.

3.2 Other VOIP Traffic. Except as provided in Section 3.1, the Parties do not agree on the compensation due for the exchange of VOIP Traffic. Accordingly, until such time as the FCC issues a substantive order in WC Docket No. 04-36 (FCC 04-28) on what compensation is due for the exchange of VOIP Traffic ("FCC VOIP Order") and such order becomes effective, Level 3 shall: (i) identify and track all VOIP Traffic that either

originates or terminates on the PSTN and (ii) pay at least the Intercarrier Compensation Rates to Verizon for VOIP Traffic other than VOIP Traffic addressed in Section 3.1 that it delivers to Verizon (in doing so, but without any probative value as to the substance of either Party's position on the appropriate compensation due on VOIP Traffic, Level 3 may dispute access or intercarrier compensation charges billed by Verizon in excess of the Intercarrier Compensation Rates) . Upon effectiveness of the FCC VOIP Order, such FCC VOIP Order shall be applied prospectively from the effective date of the FCC VOIP Order and retroactively to the Effective Date (taking into account intercarrier compensation payments made on VOIP Traffic under the preceding sentence); ***provided, however,*** that if a Party has filed a forbearance proceeding at the FCC addressing whether access charges should apply to VOIP Traffic originating or terminating on the PSTN, such as Level 3's filing of a petition for forbearance in Docket No. 03-266 ("Forbearance Proceeding"), then if the FCC issues an order in such Forbearance Proceeding or the petition for forbearance otherwise becomes effective (in either case, the "Forbearance Order") prior to issuance of the FCC VOIP Order, the Parties agree to apply the results of the Forbearance Order to the VOIP Traffic defined in the Forbearance Order prospectively from the effective date of the Forbearance Order and retroactively to the Effective Date until such time as the FCC VOIP Order is issued (taking into account intercarrier compensation payments made on VOIP Traffic under the preceding sentence), at which time such FCC VOIP Order shall be applied to the VOIP Traffic defined in the FCC VOIP Order prospectively from the effective date of the FCC VOIP Order (such implementation of a Forbearance Order and/or the FCC VOIP Order, the "VOIP Order Application"); ***provided, further*** that if VOIP Traffic is treated as Information Service traffic or as Local Traffic (either substantively or for compensation purposes only) by the Forbearance Order and/or the FCC VOIP Order, then for purposes of implementing such order(s) as part of the VOIP Order Application only (and only so long as the Forbearance Order and/or the FCC VOIP Order are in effect), VOIP Traffic terminated to or originated on the PSTN shall be subject to a rate of $.0007 per minute of use except to the extent the amount of VOIP Traffic delivered by Verizon to Level 3 exceeds the amount of VOIP Traffic delivered by Level 3 to Verizon in a monthly billing period by more than 10% ("Imbalance Factor"), in which case for all VOIP Traffic delivered by Verizon to Level 3 during that billing period in excess of the Imbalance Factor, Level 3 shall bill and Verizon shall pay the Intercarrier Compensation Rates; and ***provided, further***, that Level 3 and Verizon expressly waive any grounds they may have to raise any timing limitation on back-billing implemented by the other Party to effectuate the VOIP Order Application.

4. Termination. Either Party may terminate Sections 2 and 3 of this Attachment effective on or after January 1, 2007 (such date, "Termination Effective Date") by providing nine (9) months advance written notice to the other Party if the notice is provided on or before November 30, 2006 or by providing thirty (30) days advance written notice to the other Party if the notice is provided on or after December 1, 2006 (in either case, the date such notice is provided shall be the "Termination Notice Date," which shall not be prior to

April 1, 2006), provided that in the event that either Party elects to exercise its right to terminate Sections 2 and 3 of this Attachment: (i) the Parties shall promptly amend the Agreement to govern intercarrier compensation between the Parties for Local Traffic and ISP-Bound Traffic, and any such amendment (whether negotiated, arbitrated or otherwise litigated) shall be effective as of the Termination Effective Date and (ii) the VOIP Order Application described in Section 3.2 of this Attachment shall not apply to any time period after the Termination Notice Date (but which VOIP Order Application, for avoidance of doubt, will continue to apply to all time periods between the Effective Date and the Termination Notice Date regardless of the issuance date of the Forbearance Order or FCC VOIP Order; provided, further, that Section 3.2 shall be included in any interconnection agreement or amendment (including adoptions) entered into by the Parties unless and until the VOIP Order Application has been implemented by the Parties).

5. Other Traffic.

Notwithstanding anything else in this Attachment, for traffic Level 3 delivers to Verizon that originates with a third carrier, except as may be subsequently agreed to in writing by the Parties, Level 3 shall pay Verizon the same amount that such third carrier would have paid Verizon for that traffic at the location the traffic is delivered to Verizon by Level 3.

6. Call Records. Each Party shall take steps to ensure that all calls (including VOIP traffic) that it delivers to the receiving Party include a Call Record, and that such Call Records are transmitted intact to the receiving Party. Neither Party shall: (i) remove Call Records, (ii) alter or replace Call Records, or (iii) insert or add any Call Record information (such as a Charge Number) that does not correspond to that of the calling party. Using its best efforts and to the extent technically feasible, each Party also shall undertake steps to ensure that any service provider who hands off traffic for delivery to the other Party does not: (i) remove Call Records, (ii) alter or replace Call Records, or (iii) insert or add any Call Record information (such as a Charge Number) that does not correspond to that of the calling party. Neither Party shall knowingly and intentionally (a) strip or alter Call Records to disguise the jurisdiction of a call or (b) permit third parties to do so for traffic the Party delivers to the other Party.

6.1 For billing purposes, each Party shall pass a Call Record on each call delivered to the other Party to the extent technically feasible. The Receiving Party shall bill the Originating Party the then-current Intercarrier Compensation Rate, intrastate Switched Exchange Access Service rates, or interstate Switched Exchange Access Service rates applicable to each relevant minute of traffic for which Call Records are passed based on the Call Records, or other information that allows the Receiving Party to determine the jurisdiction of the call in accordance with the provisions herein, as provided in this Attachment, the applicable interconnection agreement between the Parties or the Receiving Party's applicable tariffs.

6.2 If, the percentage of calls passed with Call Record information is greater than ninety percent (90%), all calls exchanged without Call Record information will be billed according

to the jurisdictional proportion of the calls passed with Call Record information. If the percentage of calls passed without Call Record information is less than ninety percent (90%), all calls without Call Record information up to (but not exceeding) ten percent (10%) of all calls, will be billed according to the jurisdictional proportion of the calls passed with Call Record information, and the remaining calls without Call Record information will be billed at intrastate Switched Exchange Access Service rates.

6.3 *Intentionally left blank.*

6.4 If the Receiving Party lacks the ability to use Call Records to classify on an automated basis traffic delivered by the other Party as either ISP-Bound Traffic or Local Traffic or toll traffic, the Originating Party will supply, at the request of the Receiving Party, an auditable Percent Local Usage ("PLU") report (including Local Traffic and ISP-Bound Traffic) quarterly, based on the previous three (3) months' traffic, and applicable to the following three (3) months' traffic. If the Originating Party also desires to combine interstate and intrastate toll traffic on the same trunk group, it will supply an auditable Percent Interstate Usage ("PIU") report quarterly, based on the previous three (3) months' terminating traffic, and applicable to the following three (3) months' traffic. In lieu of the foregoing PLU and/or PIU reports, the Parties may agree to provide and accept reasonable surrogate measures for an agreed-upon period.

6.5 Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds. The Parties agree that, in addition to any applicable audit provisions in their applicable interconnection agreement, each Party shall have the right to conduct, at its own cost, periodic (but in any case no more frequent than semi-annual) audits, on commercially reasonably terms and conditions, with respect to billings sent in connection with this Attachment; and the other Party agrees to reasonably cooperate with any such audits.

6.6 For avoidance of doubt, all of this Section 6 shall apply to VOIP Traffic exchanged between the Parties until such time as the VOIP Order Application is implemented pursuant to Section 3.2 above, at which time all of this Section 6 shall continue to apply to VOIP Traffic except as otherwise provided by implementation of the VOIP Order Application.

7. Points of Interconnection; Mutual POIs. Notwithstanding any other provision in the interconnection agreement between the parties, any applicable tariff or SGAT, or under Applicable Law, this Section shall set forth the Parties' respective rights and obligations with respect to interconnection architecture.

7.1 Mutual points of interconnection ("POIs") in each LATA in which the Parties exchange traffic shall be established as set forth in this Section 7.

(a) Level 3 shall establish at least one technically feasible point on Verizon's network in each of the Verizon Tandem serving areas in each LATA in which the Parties exchange traffic at which each Party shall deliver its originating traffic to the other Party (such a point, a "mutual POI"). Each mutual POI shall be at the relevant Verizon Tandem Wire Center, unless otherwise agreed to in writing by the Parties. Level 3 shall deliver traffic that is to be terminated through a Verizon End Office to the mutual POI at the Verizon Tandem Wire Center that such Verizon End Office subtends. Each mutual POI established under this Section 7.1(a) may be accomplished by Level 3 through: (1) a collocation site established by Level 3 at the relevant Verizon Tandem Wire Center, (2) a collocation site established by a third party at the relevant Verizon Tandem Wire Center, or (3) transport (and entrance facilities where applicable) ordered and purchased by Level 3 from Verizon at the applicable Verizon intrastate access rates and charges.

(i) The Parties may use the trunks delivering traffic to the mutual POI to deliver the following types of traffic between their respective Telephone Exchange Service End Users: Local Traffic, ISP-Bound Traffic, VOIP Traffic, tandem transit traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and where agreed to between the Parties and as set forth in subsection (ii) below, IntraLATA and InterLATA toll traffic.

(ii) Under the architectures described in this Section 7, and subject to mutual agreement of the Parties, either Party may use the trunks delivering traffic to the mutual POI for the termination of intraLATA or interLATA toll traffic in accordance with the terms contained in this Section 7 and pursuant to the other Party's Switched Exchange Access Services Tariffs. If Level 3 seeks for Verizon to deliver intraLATA and interLATA presubscribed traffic originated by Verizon End Users to Level 3 over existing local interconnection architecture, Level 3 shall make a written request of Verizon, and subject to the mutual agreement of the Parties: (i) the Parties will evaluate the feasibility of transporting such traffic in this manner through testing and other means (in which case, all testing and development costs incurred by Verizon shall be borne by Level 3) and (ii) the Parties shall attempt in good faith to negotiate an amendment to this Attachment to address such traffic. When toll traffic is delivered over the same trunks as Local and/or ISP-Bound Traffic, any port, transport or other applicable access charges related to the delivery of toll traffic from the mutual POI on Verizon's network in a LATA to the terminating Party's End User shall be prorated so as to apply to the toll traffic.

(iii) Notwithstanding anything else in this Agreement, Interstate and

intrastate Exchange Access, Information Access, exchanges services for Exchange Access or Information Access, and toll traffic, shall be governed by the applicable provisions of this Attachment, the Agreement and applicable Tariffs.

(b) At any time that Level 3 has established a Collocation site at a Verizon End Office Wire Center, then either Party may request that such Level 3 Collocation site be established as a Mutual POI for traffic originated from or terminated to Verizon End Users served by an End Office in the Verizon End Office Wire Center.

(c) In any LATA in which there are fewer than two (2) Verizon Tandems, then in addition to the mutual POI at the Verizon Tandem Wire Center, Verizon may request and Level 3 shall establish an additional mutual POI at any Verizon End Office Wire Center: (i) at any time after the traffic exchanged between Level 3 and Verizon End Users served by the Verizon End Office reaches six (6) DS1s (approximately 1.3 million minutes of use per month) or (ii) at any Verizon End Office which is subtended by remote Verizon End Office(s) (any mutual POI located at a Verizon End Office Wire Center pursuant to this Section 7.1(c), an "Additional Mutual POI"). Verizon also may require the establishment of an Additional Mutual POI at a Verizon End Office other than the serving Verizon End Office, in which case Level 3 shall order Direct End Office Trunks ("DEOTs") from Verizon between the serving Verizon End Office and the Additional Mutual POI, with all costs of the portions of such DEOTs carrying Local Traffic and ISP-Bound Traffic to be borne by Verizon. In the situation described in the foregoing sentence, Level 3 shall be responsible for ordering and providing DEOTs on the Level 3 side of the Additional Mutual POI, with all costs of such DEOTs to be borne by Level 3. Level 3 shall establish any Additional Mutual POI requested by Verizon under this Section 7.1(c) within six (6) months of the date of the request, unless otherwise agreed to by the Parties. Each Additional Mutual POI requested under this Section 7.1(c) may be established by Level 3 through: (i) a collocation site established by Level 3 at the requested Verizon End Office Wire Center, (ii) a collocation site established by a third party at the requested Verizon End Office Wire Center, or (iii) transport (and entrance facilities where applicable) ordered and purchased by Level 3 from Verizon at the applicable Verizon intrastate access rates and charges. Each Party shall bear its own costs with respect to migration to Additional Mutual POIs established under this Section 7.1(c).

(d) For those Verizon End Offices that subtend a third party Tandem, Verizon may elect to exchange traffic through the third party Tandem or may designate a point on the Verizon network in the relevant Tandem serving area as the relevant mutual POI. Any point elected by Verizon under this Section 7.1(d) shall be the point at which the Intercarrier Compensation Rates shall be applied. If the designated mutual POI is not at the relevant Tandem, then Level 3 shall hand off direct non-switched trunks to

the relevant terminating Verizon End Offices at the mutual POI. For avoidance of doubt, nothing in this Section 7.1(d) shall alter Verizon's ability to require the establishment of Additional Mutual POIs under Section 7.1(c) above. If Verizon elects to exchange traffic through a third party Tandem under this Section 7.1(d), then any transiting, transport or fixed (as prorated) charges imposed by the third party shall be paid by the Party originating the traffic exchanged through the third party Tandem.

(e) Should Level 3 interconnect with any Telecommunications Carrier that is not a Party to this agreement at a point that is not a mutual POI under this Attachment, Verizon may elect to deliver traffic to such point(s) for the NXXs or functionalities served by those Points. To the extent that any such point is not located at a Collocation site at a Verizon Tandem (or Verizon Host End Office), then Level 3 shall permit Verizon to establish physical interconnection at the point, to the extent such physical interconnection is technically feasible.

7.2 Subject to subsections 7.4 and 7.6 below, neither Party may charge (and neither Party shall have an obligation to pay) any recurring fees, charges or the like (including, without limitation, any transport charges), with respect to ISP-Bound Traffic and Local Traffic that either Party delivers at a mutual POI, other than the Intercarrier Compensation Rates; ***provided, however,*** for the avoidance of any doubt, Level 3 shall also pay Verizon, at the rates set forth in an applicable interconnection agreement between the Parties or applicable Verizon Tariff for any multiplexing, cross connects or other Collocation-related services that Level 3 obtains from Verizon.

7.3 If the traffic destined for an End Office exceeds the CCS busy hour equivalent of two (2) DS1s for any three (3) months in a six (6) month period, Verizon may request Level 3 to order DEOTs to that End Office. Verizon shall be responsible for providing such DEOTs on the Verizon side of the mutual POI, with all costs of the portions of such DEOTs carrying Local Traffic and ISP-Bound Traffic to be borne by Verizon. Level 3 shall be responsible for ordering and providing such DEOTs on the Level 3 side of the mutual POI, with all costs of such DEOTs to be borne by Level 3. After initially establishing DEOTs pursuant to this subsection, traffic routed to this End Office will be allowed to overflow to the Tandem not to exceed the CCS busy hour equivalent of one (1) DS1. For avoidance of any doubt, neither Party will assess recurring and/or non-recurring charges for the implementation, installation, maintenance and utilization of interconnection trunks and facilities for the portions of such trunks carrying Local and ISP-Bound Traffic on its side of the mutual POI.

7.4 In those LATAs in which the Parties have previously established interconnection at POIs and/or are using interconnection transport and trunking architectures other than as set forth pursuant to the terms of Section 7.1(a), the interconnection transport and trunking architectures shall be governed by this Section 7.4.

(a) Verizon may require Level 3, via written notice to Level 3, to bring pre-existing interconnection arrangements into compliance with the terms of Section 7.1(a) through one of the following methods:

(i) Unless otherwise agreed in writing by the Parties, Level 3 shall implement a physical migration of the pre-existing arrangements to the terms prescribed herein within six (6) months of the date of such notice; or

(ii) In lieu of requiring physical rearrangements of pre-existing facilities or where the physical rearrangement has not been completed within six (6) months following such notice, the Parties shall implement a billing arrangement pursuant to which Level 3 shall pay Verizon for the transport (and entrance facilities if provided by Verizon) between each Verizon Tandem (or Additional Mutual POIs at Verizon End Offices in LATAs with less than two (2) Verizon Tandems) and the delivery to or from Level 3 at the Level 3 switch or other location, at the applicable Verizon intrastate access rates and charges.

(b) With respect to subsection 7.4(a) directly above, each Party shall bear its own costs with respect to any such migration; the Parties will coordinate any such migration, trunk group prioritization, and implementation schedule; and Verizon agrees to develop a cutover plan and to project manage the cutovers with Level 3 participation and agreement.

(c) *Intentionally left blank.*

(d) From and after the Effective Date, in any LATA where the Parties have not yet established mutual POIs or Additional Mutual POIs as described in Section 7.1(a) (including, without limitation, the situation presented in subsection 7.4(a) above), Level 3 shall not bill (and Verizon not have any obligation to pay) any fees, charges, or the like (including, without limitation, any transport charges) with respect to such arrangements, and to the extent that Level 3 utilizes transport provided by Verizon between the Level 3 network and the current point at which the Parties interconnect, Level 3 shall purchase such transport from Verizon at Verizon's tariffed intrastate access rates.

7.5 The Parties recognize that embedded one-way trunks may exist for the exchange of traffic between the Parties. To the extent either Party requires a transition of such one-way trunks to two-way trunks, the Parties agree to negotiate an amendment to set forth the terms and conditions for two-way trunks (if necessary), as well as to negotiate a transition plan to migrate the embedded one-way trunks to two-way trunks provided that Verizon shall bill, and Level 3 shall pay, the non-recurring charges for such conversions as set forth in Verizon's applicable tariffs.

7.6 Level 3 may apportion spare capacity on existing access entrance facilities (and/or transport where applicable) purchased by Level 3 between the relevant mutual POIs and/or the Level 3 switch as described in this Section 7; however, any such apportionment shall not affect the rates or charges applied to the relevant facilities.

BELLSOUTH® / CLEC Agreement

Customer Name: Level 3 Communications, L.L.C.

Note: This page is not part of the actual signed contract/amendment, but is present for record keeping purposes only.

By and Between

BellSouth Telecommunications, Inc.

And

Level 3 Communications, L.L.C.

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General Terms and Conditions

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IntraLATA Toll Traffic and/or Transit Traffic to BellSouth access tandems within the LATA, other than the tandems(s) to which Level 3 has established interconnection trunk groups, Level 3 shall order Multiple Tandem Access, as described in this Attachment."

4.3 Notwithstanding the forgoing, Level 3 shall establish an interconnection trunk group(s) to all BellSouth access and local tandems in the LATA where Level 3 has homed (i.e. assigned) its NPA/NXXs. Level 3 shall home its NPA/NXXs on the BellSouth tandems that serve the exchange rate center areas to which the NPA/NXXs are assigned. The specified exchange rate center assigned to each BellSouth tandem is defined in the LERG. Level 3 shall enter its NPA/NXX access and/or local tandem homing arrangements into the LERG.

4.4 Switched access traffic will be delivered to and from Interexchange Carriers (IXCs) based on Level 3's NXX access tandem homing arrangement as specified by Level 3 in the LERG.

4.5 Level 3 interconnection request that (1) deviates from the interconnection trunk group architectures as described in this Agreement, or (2) requires special BellSouth switch translations and other network modifications will require Level 3 to submit a BFR/NBR via the BFR/NBR Process as set forth in Attachment 11 of this Agreement.

4.6 Subject to the IP requirements and financial responsibility for IPs as set forth in Section 3 preceding, recurring and nonrecurring rates associated with interconnecting trunk groups for that carry an originating party's traffic on the terminating party's network between BellSouth and Level 3 are set forth in Exhibit A. To the extent a rate associated with the interconnecting trunk group is not set forth in Exhibit A, the rate shall be as set forth in the appropriate party's tariff for switched access services as filed and effective with the FCC or Commission.

4.7 Where BellSouth provides the transiting service, Level 3 shall be responsible for ordering and paying for any two-way trunks carrying Transit Traffic.

4.8 All trunk groups will be provisioned as Signaling System 7 (SS7) capable where technically feasible. If SS7 is not technically feasible multi-frequency (MF) protocol signaling shall be used.

4.9 In cases where Level 3 desires to route Level 3's originated Switched Access Traffic (i.e., where a BST end user is using Level 3 as their long distance carrier) over Level 3's local interconnection trunk groups, Level 3 may make such a request, via submission of an NBR in accordance with Attachment 11 of this Agreement. .

without prejudice to either Party's position concerning the application of reciprocal compensation or access charges to such traffic, the Parties agree for purposes of this Agreement only and on an interim basis until the FCC issues an Order addressing this issue, neither Party shall bill the other for any compensation in connection with the exchange of any traffic as described in the first sentence of this paragraph. Once the FCC issues an Effective Order addressing this issue, the Parties agree to amend this Interconnection Agreement to comply with the Order on a prospective basis only within 30 days of either Party's written request to amend the Agreement. No "true-up" shall be required in connection with such an Effective Order. Nothing in this Section 7.2.4 affects the obligations imposed on the Parties to compensate each other for Local Traffic and ISP-bound Traffic as those terms are defined in this Attachment. In the event of a conflict between this Section and the BellSouth Jurisdictional Factors Guide attached hereto, this Section controls

7.3 **Jurisdictional Reporting**

7.3.1 **Percent Local Use.** Each Party shall report to the other a Percent Local Usage (PLU) factor. The application of the PLU will determine the amount of local or ISP-bound minutes to be billed to the other Party. Each Party shall update its PLU on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than 30 days after the first of each such month based on local and ISP-bound usage for the past three months ending the last day of December, March, June and September, respectively. Requirements associated with PLU calculation and reporting shall be as set forth in BellSouth's Jurisdictional Factors Reporting Guide attached hereto as Exhibit F, as it is amended from time to time as mutually agreed by the Parties.

7.3.1.1 **Percent Local Facility.** Each Party shall report to the other a Percent Local Facility (PLF) factor. The application of the PLF will determine the portion of switched dedicated transport to be billed per the local jurisdiction rates. The PLF shall be applied to Multiplexing, Local Channel and Interoffice Channel Switched Dedicated Transport utilized in the provision of local interconnection trunks. Each Party shall update its PLF on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than 30 days after the first of each such month to be effective the first bill period the following month, respectively. Requirements associated with PLU and PLF calculation and reporting shall be as set forth in BellSouth's Jurisdictional Factors Reporting Guide, attached hereto as Exhibit F, as it is amended from time to time as mutually agreed by the Parties.

7.3.2 **Percent Interstate Usage**. Each Party shall report to the other the projected Percent Interstate Usage (PIU) factor. Requirements associated with PIU calculation and reporting shall be as set forth in BellSouth's Jurisdictional Factors Reporting Guide, attached hereto as Exhibit F as it is amended from time to time

assume that the percentages are the same as previously provided. If a valid quarterly report has never been received then BellSouth may utilize the factor(s) provided with the initial order for service, the most recent audit results if an audit has been performed or the default value for the particular factor. In cases where sufficient data is available then BellSouth will determine the factors to be utilized for billing.

3.2. PIU - Percent Interstate Usage

This factor is the percentage of use that is interstate. For services that are billed on a per minute of use (MOU) basis the PIU is based upon the traffic to and from the BellSouth Network. Further, depending upon the type of usage based service, the PIU may represent the percentage of both originating and terminating usage or may only represent the percentage of terminating usage that is jurisdictionally interstate. Any traffic that originates/terminates in the reporting carrier's network that ultimately originates/terminates to the BellSouth Network through another carrier's network shall be included in the reported PIU factor(s) by the intermediate carrier that accepts billing for the usage. This relationship is usually established per an agency authorization. In these situations, the carrier that accepts billing from BellSouth for the usage to and from BellSouth shall include such usage in their factor calculations that are reported to BellSouth. Any usage that transits a reporting carrier's network shall be included in the jurisdictional factor reporting by the billed carrier to the originating/terminating carrier regardless of the number of carriers involved in the transport of the traffic. It is incumbent upon the carrier that is billed for originating/terminating traffic to the BellSouth Network to report PIU factors to BellSouth that are representative of the actual jurisdiction of traffic delivered to BellSouth.

For services that are not billed on a usage sensitive basis (e.g. Switched Transport Local Channel, Interoffice Channels & Multiplexing Equipment) the total use of the service shall be considered in determining the PIU factors including originating and terminating usage to the BellSouth Network.

The PIU factor is calculated as follows where MOUs are billed minutes of use:

$$\frac{\textit{Total Interstate MOUs}}{\textit{Total Usage MOUs}}$$

Total Usage includes interstate, intrastate and local usage. This percentage is calculated on a statewide basis. Both Interexchange Carriers and Facility Based Competitive Local Exchange Carriers (CLECs) are required to report PIU factors per their Access Carrier Name Abbreviation (ACNA).

Attachment E

Accessible

Date: **November 30, 2004** Number: **CLEC04-444**

Effective Date: **December 13, 2004** Category: **All**

Subject: **(BUSINESS PROCESSES) EMI Changes Related to TIPToP Usage**

Related Letters: **NA** Attachment: **Yes**

States Impacted: **SBC Southwest Region 5-State**

Issuing SBC ILECS: **SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas (collectively referred to for purposes of this Accessible Letter as "SBC Southwest Region 5-State")**

Response Deadline: **NA** Contact: **Account Manager**

Conference Call/Meeting: **NA**

Effective December 13th, 2004, SBC Southwest Region 5-State will be making changes to their billing systems affecting some Exchange Message Interface (EMI) records.

With the implementation of Phase 1 of TIPToP, SBC Southwest Region 5-State will be creating VoIP records.

The TIPToP usage will be recorded on record types 01-01-25 and 11-01-20, with Indicator 9 (pos. 90) set to a value of 9, indicating that the transaction is IP originated. Record type 11-01-20 may contain settlement codes of 6, 8 or J.

SBC Southwest Region 5-State reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, SBC Southwest Region 5-State will send additional notification at the time of cancellation. SBC Southwest Region 5-State will incur no liability to the CLECs if such information mentioned above is canceled by SBC Southwest Region 5-State.