

DIVIDER

STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)

PU-2065-02-465

Level 3 Communications, LLC

Interconnection Arbitration

Application

Filed 8/30/2002

Closed 5/30/2003

02

DESCRIPTION

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

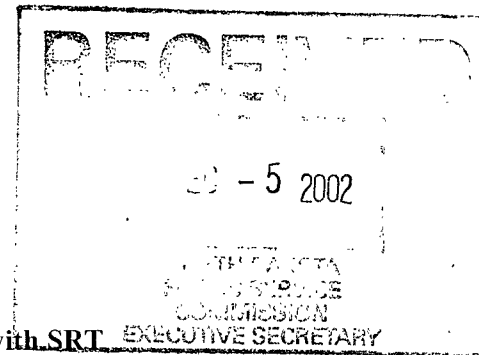
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December 3, 2002

VIA OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
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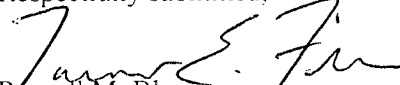
Re: Petition of Level 3 Communications, LLC for Arbitration with SRT Communications, Inc. – Case No. 2065-02-465

Dear Mr. Mielke:

On behalf of Level 3 Communications, LLC (“Level 3”), enclosed for filing are an original and seven (7) copies of each of the testimonies of Rogier Ducloo (public version), Timothy Gates, and William Hunt. Pursuant to Section 69-02-09 of the Commission’s rules, also enclosed for filing is one (1) copy of the trade secret version of the Rogier Ducloo testimony.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,


Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: William P. Hunt
Rogier R. Ducloo
Timothy J. Gates
Michael R. Romano
Service List

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of December 2002, true and correct copies of the foregoing testimonies of Timothy Gates and William Hunt, and the *trade secret version* of the Rogier Ducloo testimony, were sent via e-mail and overnight delivery to the following individuals:

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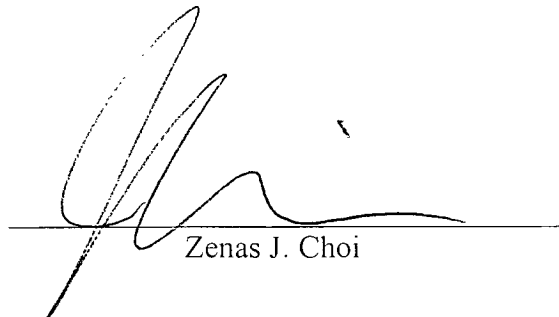
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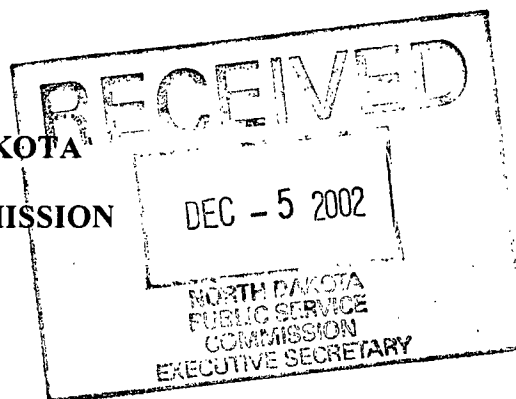
I hereby certify that, on this 3rd day of December 2002, true and correct copies of the foregoing testimonies of Timothy Gates and William Hunt, and the *public version* of the Rogier Ducloo testimony, were sent via regular mail to the following individuals:

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Zenias J. Choi

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

Case No. PU-2065-02-265

TESTIMONY OF ROGIER R. DUCLOO
ON BEHALF OF
LEVEL 3 COMMUNICATIONS, LLC

Dated: December 4, 2002

TRADE SECRET VERSION

This testimony contains Trade Secret Information

42

PU-2065-02-465

Pages: 23

Testimony of Rogier R Ducloo/Trade
Secret protection waived by SRT)
by Level 3 Communications, LLC

12/05/2002

Exhibit # Level 3 - 2

CC: Comm Legal PUD (3)



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

3 A: My name is Rogier Ducloo. I am a Network Planning Manager for Level 3 Communi-
4 cations, LLC ("Level 3"). My address is 1025 Eldorado Boulevard, Broomfield, Colo-
5 rado 80021.

6 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.**

7 A: As network Planning Manager I am responsible for the planning and certain imple-
8 mentation aspects of our network expansion build-out, as well as optimization of our
9 existing network. Included within my responsibilities are assisting in the negotiation
10 and review of interconnection agreements and leading the implementation team that
11 determines how Level 3 and an incumbent local exchange carrier ("ILEC") establish
12 direct interconnection.

13 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
14 **EXPERIENCE.**

15 A: I hold a B.S. degree in Finance, which I received from the University of Amsterdam,
16 Holland in 1994. My work experience, prior to joining Level 3, was in the areas of fi-
17 nancial analysis, investment strategy, and business development for financial institu-
18 tions in New York and Amsterdam, the Netherlands. I joined Level 3 in August of
19 1998 and have since been responsible for different aspects of network planning, design
20 and provisioning for our Softswitch-based services. Most recently I have had respon-
21 sibility for planning and implementation of certain portions of our network expansion
22 project.

23 **Q: HAVE YOU TESTIFIED BEFORE THIS COMMISSION BEFORE?**

1 A: No.

2 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A: The purpose of my testimony is to provide technical background that will be useful in
4 resolving the interconnection aspects of Issues one and four. Specifically, I will ex-
5 plain some of the technical characteristics that distinguish the Level 3 network and ex-
6 plain how Level 3 proposes to interconnect directly with SRT Communications, Inc.
7 (“SRT”).

8 **Q: CAN YOU FIRST GIVE SOME BACKGROUND ON LEVEL 3’S NETWORK?**

9 A: Yes. Level 3 operates a next-generation proprietary softswitch-based network. Our
10 network does not use any of the traditional circuit-switching technologies employed by
11 many incumbent and competitive telephone companies. The term “softswitch” refers
12 to computer software applications that perform many, if not all, of the basic functions
13 of a circuit switch. They have Time Division Multiplexing (“TDM”) trunks connecting
14 the voice/bearer lines to other switches. They use Signaling System 7 (“SS7”) signal-
15 ing to communicate with circuit-switched networks. They have routing information
16 that tells them how to route calls based on information in the SS7 signaling messages
17 (10-digit Called Number, NPA-NNX, Calling Number etc). They provide the ability to
18 create, enable, disable, and otherwise manage lines and trunks.

19 While softswitches have many similarities to circuit switches, there also are
20 many differences. In a traditional switch, all the required functions are usually pro-
21 vided by a single supplier (NorTel, Lucent, Alcatel, etc.). Softswitches, on the other
22 hand, allow each component (Trunking peripheral, Call Control, Signaling, Service
23 Management, and Call Detail Records (“CDR”)/Billing) to be provided by different

1 suppliers. Some of these functions run on general purpose computers, some on more
2 dedicated hardware. Because the functions of a softswitch are more easily distributed,
3 the parts of a softswitch can be, and often are, placed in different switching offices.
4 This is rarely done with circuit switches.

5 The biggest difference though between softswitches and circuit switches is
6 found in a network made up of only softswitches. Softswitches signal circuit switches
7 using SS7 protocols, but signal each other with Internet Protocol ("IP") based protocols
8 like Session Initiation Protocol ("SIP") and/or Remote Authentication Dial In User
9 Service ("RADIUS"). Within a softswitch based network, calls are converted into data
10 packets and routed to the appropriate location rather than just switched to an outbound
11 circuit. For example, data calls are routed to the Internet or an Internet Service Pro-
12 vider ("ISP"); voice calls are routed using SIP and Real-time Transport Protocol
13 ("RTP") to IP enabled voice units or to other softswitches. In short, because it involves
14 a very different network architecture that divides switching functions across multiple
15 locations, the softswitch-based network does not always fit clearly within the defini-
16 tions and structures used in a traditional circuit-switched network.

17 **Q: HOW DOES LEVEL 3 USE THIS SOFTSWITCH-BASED NETWORK TO**
18 **PROVIDE SERVICES TO ISPs?**

19 **A:** Level 3 currently uses this softswitch-based network infrastructure to provide inbound-
20 only services to ISPs. In order to provide this service, we must interconnect our net-
21 work with ILECs, such as Qwest and SRT. For example, Level 3 recently established
22 a presence in the Bismarck metropolitan area at Qwest's wire center, located at 220
23 North 5th Street. Level 3 has assigned a routing point Common Language Location

1 Identification ("CLLI") code of BSMRNDBC5MD at that location, as marked in the
2 Local Exchange Routing Guide ("LERG"). (The LERG is the database used by all car-
3 riers to identify routing and numbering information for each other.) From the CLLI
4 code routing point in Bismarck, we trunk to and interconnect with Qwest for the ex-
5 change of ISP-bound traffic in the Bismarck metropolitan area. Signaling functions for
6 traffic in the Bismarck area are administered through computer software deployed in
7 Seattle, Washington, and at this time it is anticipated that traffic may ultimately be ter-
8 minated to modem banks located in Denver, Colorado.

9 **Q: HOW MUCH TRAFFIC IS BEING EXCHANGED BETWEEN SRT AND**
10 **LEVEL 3 AT THIS POINT?**

11 **A:** None at this time. Level 3 does not consider the purchase of retail Primary Rate
12 Interface ("PRI") ISDN services to be an "exchange" of traffic between two carriers.
13 The term "exchange" implies that the parties are acting as co-carriers and exchanging
14 traffic between their respective switches.

15 Presently, as a result of an acquisition of certain assets from McLeodUSA
16 Information Services, Inc., Level 3 subscribes to meet point DS1s and PRI ISDNs from
17 SRT as a retail end user. Under the current arrangement, when a SRT end user dials a
18 number that SRT has assigned to Level 3, SRT will route the call through its switch
19 over the PRI ISDNs that Level 3 purchases from SRT. The call would then be routed
20 over transport that is jointly provided by SRT and Qwest to Level 3's customer modem
21 location in Bismarck. This is basically a retail Foreign Exchange arrangement pro-
22 vided in part by SRT and in part by Qwest. At no point in this transmission does the
23 call ever get routed through a Level 3 switching facility such that Level 3 could be con-

1 sidered a co-carrier in completing the communication – Level 3 is simply a retail sub-
2 scriber of SRT’s PRI ISDN service that Level 3 uses to deliver calls to ISPs. I there-
3 fore disagree with SRT’s assertion that Level 3 is directly interconnected, or
4 exchanging traffic, with SRT today. Level 3 is no more “interconnected” and “ex-
5 changing traffic” with SRT today than any other retail customer of SRT might be – I
6 wouldn’t think that a business in Minot would consider itself “interconnected” with
7 SRT. Until SRT interconnects with Level 3 as a co-carrier – that is, the parties ex-
8 change traffic between their two switches – the parties are not directly interconnected.

9 **Q: YOU MENTIONED THAT LEVEL 3 HAS A CUSTOMER LOCATION IN**
10 **BISMARCK. HOW DOES LEVEL 3 SERVE THAT CUSTOMER LOCATION**
11 **TODAY?**

12 A: As mentioned previously, Level 3 inherited some ISDN services as a retail customer
13 as part of its acquisition of certain assets of McLeod USA Information Services, in-
14 cluding the PRI ISDN services from SRT that I mentioned previously. Level 3 is in
15 the process of terminating these inherited retail ISDN services to the extent possible
16 in order to migrate such services to its own network. I will explain why later in my
17 testimony.

18 **Q: CAN YOU PLEASE EXPLAIN HOW A CALL FROM A SRT END USER GETS**
19 **TO THE INTERNET UNDER THE CURRENT ARRANGEMENT?**

20 A: Yes. SRT has actually assigned Level 3 a SRT telephone number(s) that is local to
21 SRT’s Minot exchange, even though Level 3 has no physical presence in Minot. When
22 a SRT end user dials the SRT number assigned to Level 3, SRT routes the call over the
23 PRI ISDN circuits that Level 3 purchases from SRT. The call then travels over trans-

1 port that is provided jointly by SRT and Qwest to reach the modems at Level 3's loca-
2 tion in Bismarck, which is outside of SRT's incumbent serving area. Level 3 delivers
3 the communication from the customer location in Bismarck to the Internet over trans-
4 port that it leases from IXCs.

5 **Q: WHY DOES LEVEL 3 OBJECT TO CONTINUING THIS RETAIL AR-**
6 **RANGEMENT?**

7 A: The current retail arrangement is not technically or economically efficient because it
8 does not take advantage of Level 3's state-of-the-art IP network. For example, Level 3
9 was one of the first carriers to offer its ISP customers V.92 modems. Moving traffic
10 onto Level 3's network as a co-carrier permits Level 3 to realize economies of scale in
11 its technology investments, giving Level 3 greater incentives to continue to introduce
12 new and innovative technology.

13 **Q: WHY IS THE CURRENT RETAIL ARRANGEMENT NOT ECONOMI-**
14 **CALLY EFFICIENT?**

15 A: From a network perspective, Level 3 has invested substantial capital in its IP network
16 and its proprietary softswitch. In order to reap the benefits of and optimize use of
17 that investment, Level 3 must carry its ISP customers' traffic over its own network,
18 using its own softswitch. Offering service to ISPs via the retail PRI ISDN services
19 Level 3 purchases from SRT is not a cost-effective solution and impedes Level 3's
20 ability to provide an alternative dial-up service to ISPs. When McLeod subscribed to
21 these PRI ISDN services from SRT, it did not have an IP network with softswitch
22 technology. Even more practically, by interconnecting with SRT as a co-carrier
23 rather than as an end user, Level 3 may be able to realize significant savings. And

1 most importantly, perhaps, from SRT's point of view – Level 3's proposed method of
2 interconnection would *cost* SRT nothing more from a transport perspective than it
3 does today in providing retail services to Level 3.

4 **Q: IS LEVEL 3 WILLING TO INTERCONNECT WITH SRT AT SRT'S**
5 **SWITCH?**

6 A: Yes. I can provide a network-oriented overview of Level 3's proposal. Level 3 pro-
7 poses to interconnect directly with SRT at SRT's Minot switch. In other words, the
8 point of interconnection or "POI" between SRT's and Level 3's network would be at
9 SRT's Minot switch. It is my understanding that SRT has established direct intercon-
10 nection arrangements with Commercial Mobile Radio Service ("CMRS") carriers that
11 also identify SRT's Minot switch as the POI. *See* Exhibit WPH-4 (Excerpts of CMRS
12 agreements).

13 Level 3 has proposed that SRT and Level 3 establish a separate, dedicated trunk
14 group (shown by the red and blue lines on Exhibit RRD-1) to handle traffic between
15 their respective end user customers. Level 3 would be willing to assume responsibility
16 for the trunks represented by the red and blue lines on the diagram attached as Exhibit
17 RRD-1 all the way into the SRT switch. Level 3 would bear financial responsibility
18 for picking up the calls originated by SRT customers by leasing transport from Qwest
19 to reach the SRT/Qwest meet-point and then leasing the remaining transport from SRT
20 between the meet-point and the SRT switch. (I've used different colors to represent the
21 different capacity of the transport we propose to use to interconnect with SRT – red for
22 a jointly provided DS3 and blue for T1's provided solely by SRT.) Level 3 would pay
23 SRT for this transport at SRT's generally available rates, presumably at the same rates,

1 terms, and conditions that SRT provides transport to CMRS carriers with whom SRT
2 has established direct interconnection. Under Level 3's proposal, SRT would have no
3 responsibility at all to transport or deliver a call beyond that one switch.

4 **Q: YOU MENTIONED THAT SRT HAS INTERCONNECTION AGREEMENTS**
5 **WITH CMRS CARRIERS. HAVE YOU REVIEWED THOSE AGREEMENTS?**

6 A: Yes, I have reviewed those CMRS agreements. I have also reviewed SRT-provided
7 diagrams showing how it directly interconnects with three CMRS carriers (SRT Wire-
8 less (an affiliate of SRT), Verizon Wireless, and Western Wireless) and SRT-provided
9 information concerning the trunk groups it has established with these carriers. See Ex-
10 hibit WPH-3 (SRT Response to Level 3 Interrogatory No. 14) and Exhibit RRD-2
11 (SRT Response to Level 3 Interrogatory No. 20).¹

12 **Q: BASED ON YOUR REVIEW OF THESE DOCUMENTS, ARE THERE SIMI-**
13 **LARITIES BETWEEN THE DIRECT INTERCONNECTION THAT LEVEL 3**
14 **HAS PROPOSED TO SRT AND THE DIRECT INTERCONNECTION SRT**
15 **HAS ESTABLISHED WITH CMRS CARRIERS?**

16 A: Yes. Like the CMRS carriers, Level 3 proposes to establish a POI at SRT's Minot
17 switch. *****BEGIN TRADE SECRET** Also like the CMRS carriers, Level 3 would
18 like to set up SS7 trunks to exchange signaling information with SRT. **END TRADE**
19 **SECRET***** Finally, like the CMRS carriers, Level 3 proposes to purchase T1 trans-
20 port from SRT from the POI at SRT's switch. This T1 transport, together with trans-
21 port purchased from Qwest, would be used to carry SRT's traffic back to Level 3's
22 network location. According to Section 4.1 of the SRT/SRT Wireless interconnection

¹ Pursuant to Section 69-02-09 of the Commission's rules, SRT has asserted trade secret protection for the information provided in response to Level 3's Interrogatory No. 20.

1 agreement, SRT Wireless also purchases transport from SRT back to its network loca-
2 tion in Bismarck. *See* Exhibit WPH-4 (Excerpts of CMRS agreements).

3 **Q: ARE THERE ANY DIFFERENCES BETWEEN THE INTERCONNECTION**
4 **LEVEL 3 PROPOSES AND THE DIRECT INTERCONNECTION SRT HAS**
5 **ESTABLISHED WITH ANY CMRS CARRIER?**

6 A: Yes. It appears from the SRT-provided diagrams that SRT Wireless may be physically
7 collocated at SRT's Minot switch (because the diagram shows a SRT Wireless network
8 location at the same address as SRT's Minot switch and no interoffice transport facility
9 between the Minot switch and the SRT network location). *See* Exhibit WPH-3 (SRT
10 Response to Level 3 Interrogatory No. 14). As Mr. Hunt explains, Level 3 does not
11 seek to impose collocation obligations on SRT.

12 **Q: IS LEVEL 3 WILLING TO INTERCONNECT INDIRECTLY WITH SRT?**

13 A: Yes. While we would prefer direct interconnection, we are willing to interconnect
14 indirectly.

15 **Q: WHY DOES LEVEL 3 PREFER DIRECT INTERCONNECTION?**

16 A: We prefer direct interconnection because of the traffic volumes we expect to exchange
17 with SRT. Also, because no third-party would be involved, direct interconnection
18 would give us more control over the facilities used to exchange traffic, forecasting and
19 traffic management. Specifically, if Level 3 determines that a dedicated trunk group
20 between its network and the POI at SRT's switch in Minot either is running near ca-
21 pacity or is underutilized, Level 3 would be able to recognize that traffic management
22 issue and attempt to resolve it. By contrast, if indirect interconnection is used, the par-
23 ties are relying in part upon third-party networks over which they have no control

1 whatsoever to help manage the traffic flow for them. Moreover, it is unclear whether
2 Qwest is willing to act as a transit carrier in this instance. I am not aware whether SRT
3 has approached Qwest to discuss using their transit service to interconnect indirectly
4 with Level 3.

5 **Q: PLEASE EXPLAIN HOW INDIRECT INTERCONNECTION FOR TRAFFIC**
6 **EXCHANGE BETWEEN SRT AND LEVEL 3 WOULD WORK.**

7 A: I can explain how I believe it would work from a network perspective. Level 3 at times
8 exchanges traffic with independent LECs by using the Bell Operating Company
9 ("BOC"), such as Qwest, as the transit carrier. In such cases, both the independent
10 LEC and Level 3 are directly interconnected with the BOC's tandem switch and each
11 party has its own interconnection agreement or arrangement with the BOC. If SRT and
12 Level 3 followed the typical indirect interconnection model, SRT would be responsible
13 for delivering a call destined for a Level 3 customer to Qwest's Bismarck tandem.
14 SRT presumably would use facilities it has already established to connect its network
15 to Qwest's tandem. SRT would hand the call off to Qwest at Qwest's tandem. The
16 call would be switched through Qwest's tandem onto its interconnection trunks with
17 Level 3. The call would be transported across the interconnection trunk into Level 3's
18 network. Level 3 would then switch the call through its softswitch and terminate the
19 call to its ISP customer.

20 In my experience, this is how indirect network interconnection is accomplished.
21 It is possible that there are other methods by which the parties could interconnect indi-
22 rectly. However, I am not aware of any and I do not know if this is the manner in
23 which SRT proposes to interconnect indirectly with Level 3.

1 **Q: HAS LEVEL 3 INTERCONNECTED DIRECTLY WITH OTHER INDEPEND-**
2 **ENT LECs?**

3 A: Yes. We try to establish direct interconnection with independent LECs, rather than
4 using a BOC's transit service for the exchange of traffic, whenever we plan to provide
5 service within an independent LEC's serving area. To date we have entered into inter-
6 connection agreements with ALLTEL, Citizens, Commonwealth, TXU/Fort Bend
7 Telephone, Chillicothe Telephone and Valor in 23 states that permit us to establish di-
8 rect interconnection, and we have established direct interconnection trunks in 35 rate
9 centers that are located in 23 different LATAs.

10 **Q: ARE THESE DIRECT INTERCONNECTION ARRANGEMENTS SIMILAR**
11 **TO THE PROPOSAL LEVEL 3 HAS OFFERED SRT?**

12 A: Yes. Because each independent LEC's network facilities and capabilities vary, we try
13 to tailor the arrangements to what the independent LEC is capable of providing. How-
14 ever, each direct interconnection arrangement shares two common features – the POI
15 between the parties' networks is established within the independent LEC's incumbent
16 serving territory and each party is responsible for the transport facilities on its side of
17 the POI.

18 **Q: PLEASE EXPLAIN HOW A CALL WOULD BE ROUTED FROM A SRT END**
19 **USER TO A LEVEL 3 ISP CUSTOMER IF THE PARTIES WERE INTER-**
20 **CONNECTED DIRECTLY IN THE MANNER PROPOSED BY LEVEL 3.**

21 A: A call originating within a SRT exchange area to a Level 3 NPA/NXX associated
22 with a rate center in a SRT exchange would be routed and terminated as follows:

- 23 1. A SRT retail customer in the Minot Exchange dials a telephone number as-
24 signed to a Level 3 customer.

- 1 2. SRT's Minot End Office Switch (MNOTNDXADS0) serving the end user
2 identifies the number as a number associated with a Level 3 customer, se-
3 lects a trunk going to the Level 3 network, and sends an SS7 Initial Address
4 Message (IAM) to the Level 3 Softswitch via the SS7 network.
- 5 3. The Softswitch checks the dialed number, identifies the Network Access
6 Server associated with the DS0 level circuit identified by the Originating
7 Switch, and sends a control message to the Network Access Server to ac-
8 cept the call on the specified circuit.
- 9 4. Upon receipt of a positive acknowledgement from the Network Access
10 Server, the call is considered "answered" and the Level 3 Softswitch will
11 respond to the Originating Switch with an Answer Message (ANM).
- 12 5. The Network Access Server converts the call to Internet Protocol and sends
13 the packets to the appropriate destination. The Softswitch may also respond
14 with other SS7 messages as appropriate. For example, a Busy (RCC-17)
15 could have been returned in step 4 under certain conditions. The Switch
16 will also respond to non-call SS7 messages such as CQM.

17
18 Attached to my testimony as Exhibit RRD-3 is a diagram depicting how such a call
19 would be routed and terminated.

20 **Q: WHERE IS THE LEVEL 3 CUSTOMER PHYSICALLY LOCATED IN THIS**
21 **CALL SCENARIO?**

22 **A:** Because we have just begun service in North Dakota as a telecommunications carrier,
23 we do not know yet where our customers will be located. We currently have a cus-
24 tomer location in Bismarck at 311A S. 8th Street, Bismarck, ND. As we market our
25 services and grow our business in North Dakota, it is possible that we will serve addi-
26 tional customers physically located in Bismarck, other areas within North Dakota, as
27 well as points outside of North Dakota.

28 **Q. WHAT IS "VIRTUAL NXX?"**

29 **A.** I am not an expert in this area, but as I understand it, for the purposes of this proceed-
30 ing, it is identical to Foreign Exchange service provided by ILECs, including SRT.
31 The terms "Foreign Exchange" and "Virtual NXX" describe a service that allows a
32 customer, such as an ISP, to obtain a telephone number in a local calling area in which

1 that party is not physically located. They enable ISPs to obtain local telephone num-
2 bers associated with local calling area A, for example, that terminate in the ISPs' mo-
3 dem banks located in local calling area B. I understand that when Level 3 assigns a
4 number that is local to a SRT customer, but Level 3's customer is physically located
5 outside of SRT's local calling area, the parties have referred to that as a "virtual NXX"
6 or "FX-like" service being provided by Level 3. In fact, it is my understanding that the
7 retail PRI ISDN services Level 3 purchases from SRT today are FX or FX-like services
8 because our physical customer location is outside of SRT's exchange area, but our
9 telephone number(s) is associated with SRT's exchange area. Level 3 currently pays
10 for all transport from the SRT local calling area to the Level 3 customer location in
11 Bismarck. Similarly, under our interconnection proposal, Level 3 would pay for all
12 transport from our POI with SRT in its local calling area to our POI with Qwest in
13 Bismarck (and of course, beyond the POI with Qwest to Level 3's network.)

14 **Q: FROM AN INTERCONNECTION PERSPECTIVE, WOULD THE ROUTING**
15 **OF THE CALL DIFFER DEPENDING ON THE PHYSICAL LOCATION OF**
16 **LEVEL 3'S CUSTOMER?**

17 **A:** No. A call to a Level 3 FX-like customer is routed just as any other locally dialed call
18 to an end user customer with a physical presence in the calling party's local calling
19 area – under either scenario, SRT is responsible for delivering the call to the point of
20 interconnection established between SRT's and Level 3's networks. The point of in-
21 terconnection represents a physical, operational, and economic demarcation point
22 where Level 3 assumes sole responsibility for the routing of a call, and where SRT's
23 responsibility for the call ends.

1 **Q: IF LEVEL 3 HAD CUSTOMERS PHYSICALLY LOCATED WITHIN SRT'S**
2 **LOCAL CALLING AREA, AS WELL AS CUSTOMERS PHYSICALLY LO-**
3 **CATED OUTSIDE SRT'S LOCAL CALLING AREA, HOW WOULD THE**
4 **ROUTING WITHIN LEVEL 3'S NETWORK DIFFER?**

5 A: Because Level 3's switch is not located within SRT's local calling area, Level 3 would
6 have to route both calls outside of SRT's local calling area back to Level 3's Network
7 Access Server. (The Network Access Server is one of the distributed components of
8 our proprietary softswitch.) The only difference occurs after the call is routed through
9 Level 3's Network Access Server. In the case of the ISP physically located within
10 SRT's local calling area, Level 3 would route the call back into that area on Level 3
11 owned or leased facilities. In the case of the FX-like ISP customer, Level 3 would
12 route the call over Level 3 owned or leased facilities to wherever the FX-like customer
13 maintains a physical location.

14 **Q: IN THE CASE OF AN ISP, CAN YOU PLEASE EXPLAIN WHAT YOU MEAN**
15 **BY THE CUSTOMER'S PHYSICAL LOCATION?**

16 A: I am referring to the physical location where the ISP maintains its modem banks to
17 receive its customers' calls. At the modem banks, the call is converted to IP format
18 and delivered to the Internet.

19 **Q: IS LEVEL 3'S INTERCONNECTION PROPOSAL MUTUALLY BENEFI-**
20 **CIAL?**

21 A: Yes. As I've already stated, Level 3 proposes to interconnect with SRT's network
22 via leased multiplexed DS3 facilities from the Level 3 Routing Point in the Qwest
23 Central Office in Bismarck to the multiplexing location in the SRT Central Office in

1 Minot. Under this proposal, the DS3's would be on fiber-meet arrangements between
2 SRT and Qwest, and both SRT and Qwest would therefore receive monthly recurring
3 revenue. In addition, as part of this proposal, Level 3 would lease the T1 facilities
4 from the multiplexing location to the SRT End Office switch in Minot, resulting in
5 additional revenue to SRT. Again, I'd like to stress that this is just one proposal, and
6 Level 3 is willing to discuss alternative arrangements with SRT.

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

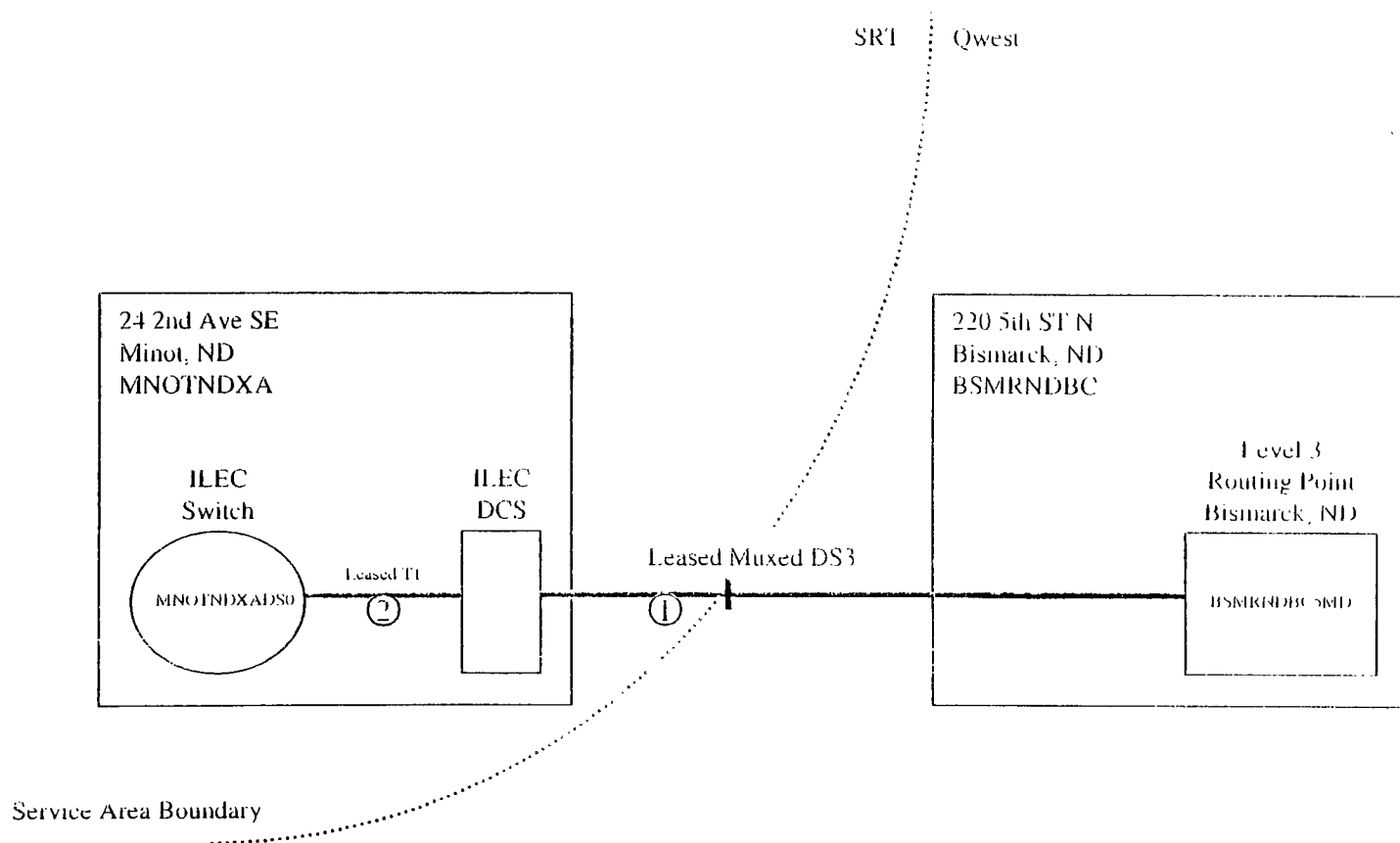
8 **A:** Yes, it does.

EXHIBIT RRD-1

**DIAGRAM SHOWING PROPOSED NETWORK
INTERCONNECTION ARCHITECTURE
BETWEEN LEVEL 3 AND SRT**

deliver the difference
(3)

Level 3 Network Interconnection with SRT



To interconnect with SRT's network, Level 3 will lease muxed DS3 facilities (1) from the Level 3 Routing Point in the Qwest Central Office in Bismarck to the SRT Central Office in Minot. The DS3's will be on fiber meet arrangements between SRT and Qwest. Both SRT and Qwest in North Dakota will receive monthly recurring revenue. In addition, Level 3 will lease the T1 facilities from the muxing location ("ILEC DCS") to the SRT End Office Switch in Minot (2).

EXHIBIT RRD-2

**SRT RESPONSE TO LEVEL 3 INTERROGATORY NO. 20
SRT TRADE SECRET**

Interrogatory #20

Request: Please state whether, and how often, SRT reviews usage on its trunk groups, and provide any and all documents related to any such and all similar reviews that SRT has conducted of its EAS trunks and/or its tandem trunks, including, but not limited to, the studies themselves, correspondence concerning the studies, etc.

Objections: Overbroad; Trade Secret

Response: SRT reviews usage on its trunk groups monthly. Attached is a twelve month traffic study on all trunk groups.

Group Number	Group Name	Peg In	Peg Out	Total Peg	CCS In	CCS Out	Total CCS	MOL (minutes)	Avg HT (minutes)	BH CCS	BH of BD	Over	Blkrk	Tandem	OOS
78	NDJS2WPRI	5,073	7,525	12,598	0.00	0.00	17,341.00	28,901.6667	2.2941	199.00	12:00 on 10/07/2002	23	0	0	0
79	T101OG	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
80	TERM102T	0	3,839	3,839	0.00	0.00	2,621.00	4,368.3333	1.1379	101.00	15:00 on 10/08/2002	20	0	0	0
81	TEAMDIDMHL	0	2,610	2,610	0.00	0.00	1,927.00	3,211.6667	1.2305	24.00	10:00 on 10/16/2002	64	0	0	0
82	TERM100Q	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
86	CNATSTRK	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
87	MONTALK	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
88	VER90	0	11	11	0.00	0.00	4.00	6.6667	0.6081	1.00	24:00 on 10/04/2002	0	0	0	0
89	MCSRTU	118	0	118	0.00	0.00	121.00	201.6667	1.7090	5.00	12:00 on 10/10/2002	0	0	0	0
90	SRTINETPRI2	0	786	786	0.00	0.00	38,087.00	60,145.0000	76.5204	186.00	17:00 on 10/28/2002	0	0	0	0
103	SPRINTSS7	470,355	75,596	545,951	0.00	0.00	1,336,632.00	2,227,720.0000	4.0804	5,755.00	21:00 on 10/06/2002	144	0	0	0
5	SRTFAXDID	0	2,469	2,469	0.00	0.00	1,409.00	2,348.3333	0.9511	30.00	09:00 on 10/25/2002	8	0	0	0
J8	CNIDID	0	2,487	2,487	0.00	0.00	474.00	790.0000	0.3177	12.00	12:00 on 10/16/2002	0	0	0	0
109	TERM102L	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
110	VERIZONSS7	372,816	342,542	715,358	0.00	0.00	699,789.00	1,166,315.0000	1.6304	3,276.00	22:00 on 10/14/2002	2,773	0	0	0
111	MTU	0	0	0	0.00	0.00	1.00	1.6667	0.0000	1.00	15:00 on 10/30/2002	0	0	0	0
112	IBMBSMKDID	0	7,872	7,872	0.00	0.00	206,298.00	343,830.0000	43.6776	919.00	12:00 on 10/08/2002	0	0	0	0
113	WCSSPA	0	416	416	0.00	0.00	39.00	65.0000	0.1583	4.00	18:00 on 10/24/2002	0	0	0	0
114	LEVEL3PRI1	0	45,268	45,268	0.00	0.00	508,690.00	847,816.6667	18.7288	1,145.00	02:00 on 10/27/2002	20,665	0	0	0
115	MINOTPA	0	13	13	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
118	DAKOSDN	14,736	4,694	19,430	0.00	0.00	15,359.00	25,598.3333	1.3175	129.00	16:00 on 10/07/2002	0	0	0	0
119	SYKESPRI	45,722	6,886	52,608	0.00	0.00	266,669.00	444,448.3333	8.4483	1,157.00	17:00 on 10/01/2002	0	0	0	0
121	USBKDID	0	2,278	2,278	0.00	0.00	2,721.00	4,535.0000	1.9908	40.00	11:00 on 10/02/2002	3	0	0	0
122	FSADID	0	1,239	1,239	0.00	0.00	659.00	1,098.3333	0.8865	12.00	10:00 on 10/23/2002	3	0	0	0
125	BCBS2W	3,861	2,766	6,627	0.00	0.00	8,482.00	14,103.3333	2.1282	94.00	09:00 on 10/30/2002	0	0	0	0
128	NSPPA	0	20	20	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
129	BUTLERDID	0	1,081	1,081	0.00	0.00	916.00	1,528.6667	1.4123	27.00	12:00 on 10/25/2002	0	0	0	0
130	EXCELSS7	7,074	6,869	13,943	0.00	0.00	41,568.00	69,280.0000	4.9688	581.00	21:00 on 10/29/2002	0	0	0	0
132	WLSFRGODID	0	10,073	10,073	0.00	0.00	11,490.00	19,150.0000	1.8011	122.00	11:00 on 10/01/2002	0	0	0	0
134	SEARSDID	0	10,550	10,550	0.00	0.00	10,559.00	17,598.3333	1.6681	78.00	16:00 on 10/04/2002	0	0	0	0
136	SRTANSIDID	0	17,712	17,712	0.00	0.00	11,916.00	19,880.0000	1.1213	79.00	10:00 on 10/28/2002	29	0	0	0
139	WSMETRO2W	2,954	3,002	5,956	0.00	0.00	15,413.00	25,688.3333	4.3130	176.00	16:00 on 10/10/2002	14	0	0	0
140	NDSSDN2W	18,278	14,307	32,585	0.00	0.00	53,922.00	89,870.0000	2.7580	412.00	10:00 on 10/01/2002	0	0	0	0
41	BNRDID	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
142	TSPSVERIFY	41	0	41	0.00	0.00	12.00	20.0000	0.4878	2.00	14:00 on 10/27/2002	0	0	0	0
143	MCCPA2	0	7	7	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
144	NDJCDID	0	29,089	29,089	0.00	0.00	34,061.00	56,768.3333	1.9515	188.00	20:00 on 10/25/2002	2,497	0	0	0
147	EHCASDN	312	476	788	0.00	0.00	1,994.00	3,323.3333	4.2174	50.00	09:00 on 10/09/2002	25	0	0	0

Group Number	Group Name	Peg In	Peg Out	Total Peg	CCS In	CCS Out	Total CCS	MOU (minutes)	Avg HT (minutes)	BH CCS	BH of AB	OVN	Blktr	Standem	CCS
149	MCCPA1	0	4,382	4,382	0.00	0.00	204.00	340.0000	0.0776	6.00	14:00 on 10/19/2002	78	0	0	0
158	WSSMCISDN	4,043	2,481	6,524	0.00	0.00	6,889.00	11,481.6667	1.7599	67.00	15:00 on 10/01/2002	0	0	0	0
159	UTCINET	41,454	129	41,583	0.00	0.00	959,076.00	1,598,460.0000	38.4402	3,119.00	22:00 on 10/02/2002	0	0	0	0
160	SORMVER90	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
162	AIRNATLGRDID	0	1,988	1,988	0.00	0.00	4,208.00	7,013.3333	3.5637	66.00	13:00 on 10/08/2002	0	0	0	0
165	ELLISPA	0	11	11	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
166	ATTSS7SRAS	616	47	663	0.00	0.00	280.00	466.6667	0.7039	112.00	14:00 on 10/07/2002	33	0	0	0
168	SRTPA2	0	41	41	0.00	0.00	3.00	5.0000	0.1220	1.00	15:00 on 10/14/2002	0	0	0	0
169	USPODID	0	4,431	4,431	0.00	0.00	4,683.00	7,805.0000	1.7615	73.00	15:00 on 10/28/2002	0	0	0	0
170	MENARDSDID	0	11,928	11,928	0.00	0.00	10,971.00	18,285.0000	1.5329	72.00	11:00 on 10/09/2002	27	0	0	0
172	USWSS7COMMON	1,471,785	1,524,509	2,996,294	0.00	0.00	5,010,312.00	8,350,520.0000	2.7869	16,160.00	17:00 on 10/21/2002	634	0	0	0
74	MINOTPA2	0	17	17	0.00	0.00	2.00	3.3333	0.1981	1.00	09:00 on 10/22/2002	0	0	0	0
77	SRTDISA	0	30	30	0.00	0.00	17.00	28.3333	0.9444	9.00	03:00 on 10/18/2002	0	0	0	0
178	WEBSMART2W	21,022	20,413	41,435	0.00	0.00	133,395.00	222,325.0000	5.3656	1,287.00	16:00 on 10/10/2002	0	0	0	0
179	WWWRTN	92	35,333	35,425	0.00	0.00	33,976.00	56,626.6667	1.5985	166.00	15:00 on 10/28/2002	1,102	0	0	0
180	WWWNOT	794,446	750,709	1,545,155	0.00	0.00	1,670,207.00	2,783,676.3333	1.8016	4,970.00	17:00 on 10/18/2002	34	0	0	0
181	MINOT911	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
182	DAKOTABOYSDID	0	5,604	5,604	0.00	0.00	6,288.00	13,813.3333	2.4649	71.00	15:00 on 10/30/2002	0	0	0	0
183	LEVEL3PRI6	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
185	TRHSDNOG	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
186	TRHMEGACOMIC1	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
187	TRHMEGACOMIC2	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
188	WESTLIEPA	0	1,185	1,185	0.00	0.00	104.00	173.3333	0.1483	17.00	18:00 on 10/04/2002	18	0	0	0
193	WSSPA	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
196	TEAMDID	0	2,984	2,984	0.00	0.00	1,837.00	3,061.6667	1.0280	20.00	13:00 on 10/15/2002	46	0	0	0
197	EPLDID	0	3,163	3,163	0.00	0.00	3,077.00	5,128.3333	1.6214	50.00	10:00 on 10/08/2002	32	0	0	0
198	MDUPA	0	188	188	0.00	0.00	12.00	20.0000	0.1064	2.00	04:00 on 10/08/2002	0	0	0	0
199	USWSS7TC	19,249	0	19,249	0.00	0.00	43,901.00	73,168.3333	3.8011	348.00	22:00 on 10/02/2002	0	0	0	0
200	LEVEL3PRI4	0	454	454	0.00	0.00	8,386.00	13,976.6667	30.7856	502.00	22:00 on 10/14/2002	0	0	0	0
201	ONVOYOSDA	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
205	MDUDISA	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
207	SRTPA1	0	3	3	0.00	0.00	1.00	1.6667	0.5556	1.00	12:00 on 10/12/2002	0	0	0	0
213	SJHSDNIC9	26	0	26	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
116	TRHVP1	0	42,792	42,792	0.00	0.00	6,651.00	11,085.0000	0.2580	68.00	14:00 on 10/18/2002	16	0	0	0
217	TRHPA	0	566	566	0.00	0.00	50.00	83.3333	0.1472	2.00	10:00 on 10/02/2002	6	0	0	0
220	TRHDISA	0	1,959	1,959	0.00	0.00	2,269.00	3,781.6667	1.9304	46.00	17:00 on 10/14/2002	0	0	0	0
221	TRH2W	1,446	692	2,138	0.00	0.00	44,643.00	74,405.0000	34.8012	200.00	12:00 on 10/06/2002	0	0	0	0
223	DEMODISA	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0

Form T-2300 (10/2002)
 RUN TIME: 11/05/2002 14:27:11
 Observation Period: 10/01/2002 - 10/31/2002

SRT Communications Inc.
 Exchange: 100 - SRT
 Summary Report

Group Number	Group Name	Pag In	Pag Out	Total Pag	CCS In	CCS Out	Total CCS	SMOU (minutes)	Avg HT (minutes)	HF CCS	HF (BD)	Blks	Tran	CCS
225	MCCDISA	0	214	214	0.00	0.00	148.00	246.6667	1.1526	18.00	18:00 on 10/25/2002	1	0	0
227	GL3000ES	0	24,088	24,088	0.00	0.00	4,963.00	8,271.6667	0.3434	29.00	16:00 on 10/07/2002	0	0	0
229	LEVEL3PRI7	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
231	NDDOT2W	4,949	4,812	9,761	0.00	0.00	10,397.00	17,328.3333	1.7753	123.00	11:00 on 10/01/2002	0	0	0
232	MEDARTSPA	0	127	127	0.00	0.00	11.00	18.3333	0.1444	1.00	16:00 on 10/02/2002	0	0	0
233	SJHPA	0	101	101	0.00	0.00	22.00	36.6667	0.3630	2.00	16:00 on 10/11/2002	0	0	0
235	LEVEL3PRI2	0	20,665	20,665	0.00	0.00	319,994.00	533,323.3333	25.8080	821.00	21:00 on 10/20/2002	5,498	0	0
236	WWTWNR	16	16,580	16,596	0.00	0.00	16,726.00	27,876.6667	1.6797	114.00	16:00 on 10/25/2002	24	0	0
239	LEVEL3PRI3	0	5,498	5,498	0.00	0.00	101,991.00	189,985.0000	30.9178	798.00	22:00 on 10/07/2002	454	0	0
240	NDTEAS	86,944	40,995	127,939	0.00	0.00	1,079,583.00	1,799,271.6667	14.0635	3,915.00	22:00 on 10/02/2002	0	0	0
241	TRHMEGACOMIC3	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
244	RELIASTAR	70,925	40,556	111,481	0.00	0.00	111,651.00	186,085.0000	1.6692	788.00	11:00 on 10/22/2002	0	0	0
247	BNSF2W	12,570	15,915	28,485	0.00	0.00	34,069.00	56,781.6667	1.9934	464.00	09:00 on 10/28/2002	20	0	0
248	NCHS2WPRI	22,883	16,882	39,765	0.00	0.00	54,997.00	91,661.6667	2.3051	485.00	10:00 on 10/28/2002	0	0	0
250	MCFMPA	0	9	9	0.00	0.00	2.00	3.3333	0.3704	1.00	14:00 on 10/21/2002	0	0	0
251	LEVEL3PRI5	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
254	AFH011	3	0	3	0.00	0.00	7.00	11.6667	3.8889	4.00	15:00 on 10/31/2002	0	0	0
255	WEBSMARTDID	0	115,887	115,887	0.00	0.00	232,019.00	386,698.3333	3.3369	841.00	14:00 on 10/30/2002	20,408	0	0
256	SRTLDS57	0	574,117	574,117	0.00	0.00	1,420,562.00	2,367,603.3333	4.1239	6,942.00	21:00 on 10/06/2002	68	0	0
257	MLT2W	18,074	21,740	39,814	0.00	0.00	32,097.00	53,485.0000	1.3436	395.00	12:00 on 10/23/2002	0	0	0
258	USWOSPS	0	3,159	3,159	0.00	0.00	1,908.00	3,180.0000	1.0068	47.00	15:00 on 10/08/2002	0	0	0
259	ATTSS7	488,637	76,018	544,655	0.00	0.00	1,381,672.00	2,302,786.6667	4.2280	5,815.00	21:00 on 10/13/2002	36	0	0
260	BOTT911	0	62	62	0.00	0.00	44.00	73.3333	1.1828	5.00	23:00 on 10/28/2002	0	0	0
268	NDJS2WPRI	4,949	4,812	9,761	0.00	0.00	10,397.00	17,328.3333	1.7753	123.00	11:00 on 10/01/2002	0	0	0
269	WEBSMARTZTELID	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
270	MSUDOD	68,833	0	68,833	0.00	0.00	117,632.00	196,053.3333	2.8482	543.00	22:00 on 10/14/2002	0	0	0
274	PHPCPA	0	446	446	0.00	0.00	28.00	46.6667	0.1046	2.00	11:00 on 10/15/2002	0	0	0
277	WASHBURN011	0	1	1	0.00	0.00	5.00	8.3333	8.3333	3.00	02:00 on 10/08/2002	0	0	0
278	ESADGTR	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
279	USPODOD	5,263	0	5,263	0.00	0.00	5,057.00	8,428.3333	1.6014	53.00	12:00 on 10/03/2002	0	0	0
280	SJHSDNOG	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
281	SJHSDNIC1	121	0	121	0.00	0.00	186.00	310.0000	2.5620	25.00	11:00 on 10/24/2002	0	0	0
282	SJHSDNIC2	8	0	8	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
283	SJHSDNIC3	40	0	40	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
284	SJHSDNIC4	11	0	11	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
285	SJHSDNIC5	55	0	55	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
286	SJHSDNIC6	26	0	26	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0
287	SJHSDNIC7	28	0	28	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0

TRADE SECRET
 RRD-2-62

Group Number	Group Name	Peg In	Peg Out	Total Peg	CCS In	CCS Out	Total CCS	MOU (minutes)	Avg HT (minutes)	Billed CCS	Billed Blk	Out	Blk	Trans	CCS
288	SJHSDNIC8	92	0	92	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
295	DMSMTX	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
296	MTXDMS	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
297	NDSTATE911	0	35	35	0.00	0.00	35.00	58.3333	1.6667	6.00	24:00 on 10/25/2002	0	0	0	0
298	MAFB911	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
301	STANLEY911	0	2	2	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
302	AFHDID	0	28,793	28,793	0.00	0.00	30,952.00	51,588.6667	1.9254	218.00	14:00 on 10/15/2002	5	0	0	0
303	AFHDOD	24,521	0	24,521	0.00	0.00	30,825.00	51,375.0000	2.0951	230.00	15:00 on 10/01/2002	0	0	0	0
304	TERM105	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
305	SRTPA3	0	1	1	0.00	0.00	2.00	3.3333	3.3333	2.00	04:00 on 10/08/2002	0	0	0	0
306	TRWDID	0	9,591	9,591	0.00	0.00	12,257.00	20,428.3333	2.1299	101.00	09:00 on 10/21/2002	0	0	0	0
309	VECDID	0	1,854	1,854	0.00	0.00	1,974.00	3,290.0000	1.7745	37.00	10:00 on 10/10/2002	49	0	0	0
312	MAGICINET1	0	1,148	1,148	0.00	0.00	67,763.00	112,938.3333	98.3783	290.00	21:00 on 10/07/2002	0	0	0	0
313	CHOICEDID	0	2,639	2,639	0.00	0.00	3,518.00	5,883.3333	2.2218	60.00	15:00 on 10/18/2002	0	0	0	0
314	MAGICINET2	0	184,693	184,693	0.00	0.00	5,136,326.00	8,560,543.3333	46.3501	14,822.00	21:00 on 10/28/2002	0	0	0	0
317	ATTSS764K	172	88	260	0.00	0.00	2,489.00	4,148.3333	15.9551	224.00	10:00 on 10/01/2002	0	0	0	0
318	SRTINETPRI1	0	790	790	0.00	0.00	35,982.00	59,970.0000	75.9114	251.00	16:00 on 10/24/2002	0	0	0	0
319	AF2W	76,720	149,241	225,961	0.00	0.00	423,832.00	706,388.6667	3.1281	1,298.00	16:00 on 10/18/2002	14	0	0	0
320	MCISS7	429,653	125,982	555,615	0.00	0.00	1,085,357.00	1,808,928.3333	3.2557	3,709.00	21:00 on 10/21/2002	16	0	0	0
321	USWSS764K	64	187	251	0.00	0.00	8,708.00	14,513.3333	57.8220	232.00	13:00 on 10/29/2002	0	0	0	0
322	FCSDID	0	3,946	3,946	0.00	0.00	4,125.00	6,875.0000	1.7423	57.00	16:00 on 10/18/2002	113	0	0	0
324	WILTESS7	128,570	46,544	173,114	0.00	0.00	264,518.00	440,863.3333	2.5467	1,499.00	21:00 on 10/21/2002	64	0	0	0
325	RTCE911	25	0	25	0.00	0.00	44.00	73.3333	2.9333	30.00	24:00 on 10/15/2002	0	0	0	0
326	VERIZONMET	4	3,781	3,785	0.00	0.00	2,493.00	4,155.0000	1.0978	33.00	22:00 on 10/13/2002	0	0	0	0
327	MCIXTRMPRI	0	88	88	0.00	0.00	214.00	356.6667	4.0530	194.00	16:00 on 10/30/2002	0	0	0	0
328	AFTC	0	31,985	31,985	0.00	0.00	58,284.00	97,140.0000	3.0370	282.00	11:00 on 10/09/2002	0	0	0	0
329	HCADID	0	696	696	0.00	0.00	382.00	636.6667	0.9148	13.00	11:00 on 10/30/2002	0	0	0	0
339	MSU2WDID	248	89,167	89,415	0.00	0.00	270,245.00	450,408.3333	5.0373	1,118.00	23:00 on 10/28/2002	0	0	0	0
340	ATTSS7TC	151,336	0	151,336	0.00	0.00	353,885.00	589,808.3333	3.8973	850.00	21:00 on 10/08/2002	0	0	0	0
341	UTCEAS	80,969	99,676	180,645	0.00	0.00	271,501.00	452,501.6667	2.5049	1,077.00	22:00 on 10/17/2002	0	0	0	0
345	MCISS764K	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
346	ARMYNG2WDID	2,280	2,435	4,715	0.00	0.00	4,841.00	8,068.3333	1.7112	63.00	14:00 on 10/02/2002	0	0	0	0
350	WCAUDIT2W	16,141	19,504	35,645	0.00	0.00	57,945.00	96,575.0000	2.7094	425.00	15:00 on 10/17/2002	66	0	0	0
353	SRTASDID	0	192	192	0.00	0.00	2,373.00	3,955.0000	20.5990	79.00	17:00 on 10/15/2002	0	0	0	0
485	SPARE2X90AD	0	0	0	0.00	0.00	0.00	0.0000	0.0000	0.00		0	0	0	0
900	SRTINET00	0	108,587	108,587	0.00	0.00	3,107,513.00	5,179,188.3333	47.7050	9,482.00	22:00 on 10/01/2002	0	0	0	0
901	SRTINET01	0	108,566	108,566	0.00	0.00	3,025,644.00	5,042,740.0000	46.4486	8,723.00	22:00 on 10/01/2002	0	0	0	0
902	SRTINET02	0	108,587	108,587	0.00	0.00	2,688,703.00	4,447,838.3333	40.9686	8,946.00	21:00 on 10/22/2002	0	0	0	0

Form T-2300 (10/2002)
 RUN TIME: 11/05/2002 14:27:12
 Observation Period: 10/01/2002 - 10/31/2002

SRT Communications Inc.
 Exchange: 100 - SRT
 Summary Report

PAGE 5 of 5

Group Number	Group Name	Peg In	Peg Out	Total Peg	CCS In	CCS Out	Total CCS	MOU (minutes)	Avg. H. (minutes)	BH CCS	BH d. (DD)	Civil	Blkrk	Random	CCS
903	SRTINET03	0	108,565	108,565	0.00	0.00	3,135,253.00	5,225,421.6667	48.1317	9,893.00	22:00 on 10/21/2002	0	0	0	0
904	SRTINET04	0	108,565	108,565	0.00	0.00	3,138,350.00	5,227,250.0000	48.1488	9,274.00	22:00 on 10/21/2002	0	0	0	0
905	SRTINET05	0	108,565	108,565	0.00	0.00	3,084,798.00	5,141,330.0000	47.3572	9,207.00	21:00 on 10/28/2002	0	0	0	0
906	SRTINET08	0	108,567	108,567	0.00	0.00	2,971,875.00	4,953,125.0000	45.6227	8,774.00	22:00 on 10/14/2002	0	0	0	0
910	MPDE911PSAPOG	44	1,170	1,214	0.00	0.00	620.00	1,033.3333	0.8512	9.00	06:00 on 10/16/2002	0	0	0	0
911	MPDE911PSAPIC	1,191	0	1,191	0.00	0.00	596.00	993.3333	0.8340	9.00	06:00 on 10/16/2002	0	0	0	0
4096	SRTPCSL2M	921,345	732,130	1,653,475	0.00	0.00	687,483.00	1,145,805.0000	0.6930	4,267.00	17:00 on 10/11/2002	1,524	0	0	0
4097	SRTPCSM2L	730,120	923,493	1,653,613	0.00	0.00	910,235.00	1,517,058.3333	0.9174	7,704.00	04:00 on 10/16/2002	1,344	0	0	0
4098	INCOMLPBK	162	0	162	0.00	0.00	65.00	108.3333	0.6687	3.00	22:00 on 10/04/2002	0	0	0	0
4099	OUTGOLPBK	0	162	162	0.00	0.00	63.00	105.0000	0.6481	3.00	22:00 on 10/04/2002	0	0	0	0
5002	WNDSTATE911	0	3	3	0.00	0.00	2.00	3.3333	1.1111	1.00	11:00 on 10/04/2002	0	0	0	0
5003	WTIENDST911	3	0	3	0.00	0.00	2.00	3.3333	1.1111	1.00	11:00 on 10/04/2002	0	0	0	0
5004	WBOTT911	0	1	1	0.00	0.00	1.00	1.6667	1.6667	1.00	21:00 on 10/09/2002	0	0	0	0
5005	WTIEBOTT911	1	0	1	0.00	0.00	1.00	1.6667	1.6667	1.00	21:00 on 10/09/2002	0	0	0	0
5010	SBS001	212,646	129,149	341,795	0.00	0.00	334,975.00	558,291.6667	1.6334	1,497.00	18:00 on 10/15/2002	0	0	0	0
5011	SBS002	211,278	127,991	339,269	0.00	0.00	335,962.00	559,936.6667	1.6504	1,500.00	18:00 on 10/15/2002	0	0	0	0
5012	SBS003	30,672	20,977	51,649	0.00	0.00	50,003.00	83,338.3333	1.6136	793.00	17:00 on 10/11/2002	0	0	0	0
5013	SBS004	45,882	30,860	76,542	0.00	0.00	72,878.00	121,130.0000	1.5825	1,166.00	16:00 on 10/08/2002	0	0	0	0
5100	WMPDE911PSAPOG	0	58	58	0.00	0.00	22.00	36.6667	0.6322	2.00	14:00 on 10/04/2002	0	0	0	0
5101	WMPDE911PSAPIC	58	0	58	0.00	0.00	22.00	36.6667	0.6322	2.00	14:00 on 10/04/2002	0	0	0	0
5500	GLMVP	0	920,313	920,313	0.00	0.00	269,611.00	449,351.6667	0.4883	1,124.00	16:00 on 10/08/2002	421	0	0	0
5502	GLMVPOU	31,620	0	31,620	0.00	0.00	37,216.00	62,026.6667	1.9816	257.00	10:00 on 10/07/2002	0	0	0	0
TOTAL		7,153,469	8,448,493	15,601,962	0.00	0.00	48,137,307.0	80,228,845.0000	5.1422	172,251.00		58,419	0	0	0

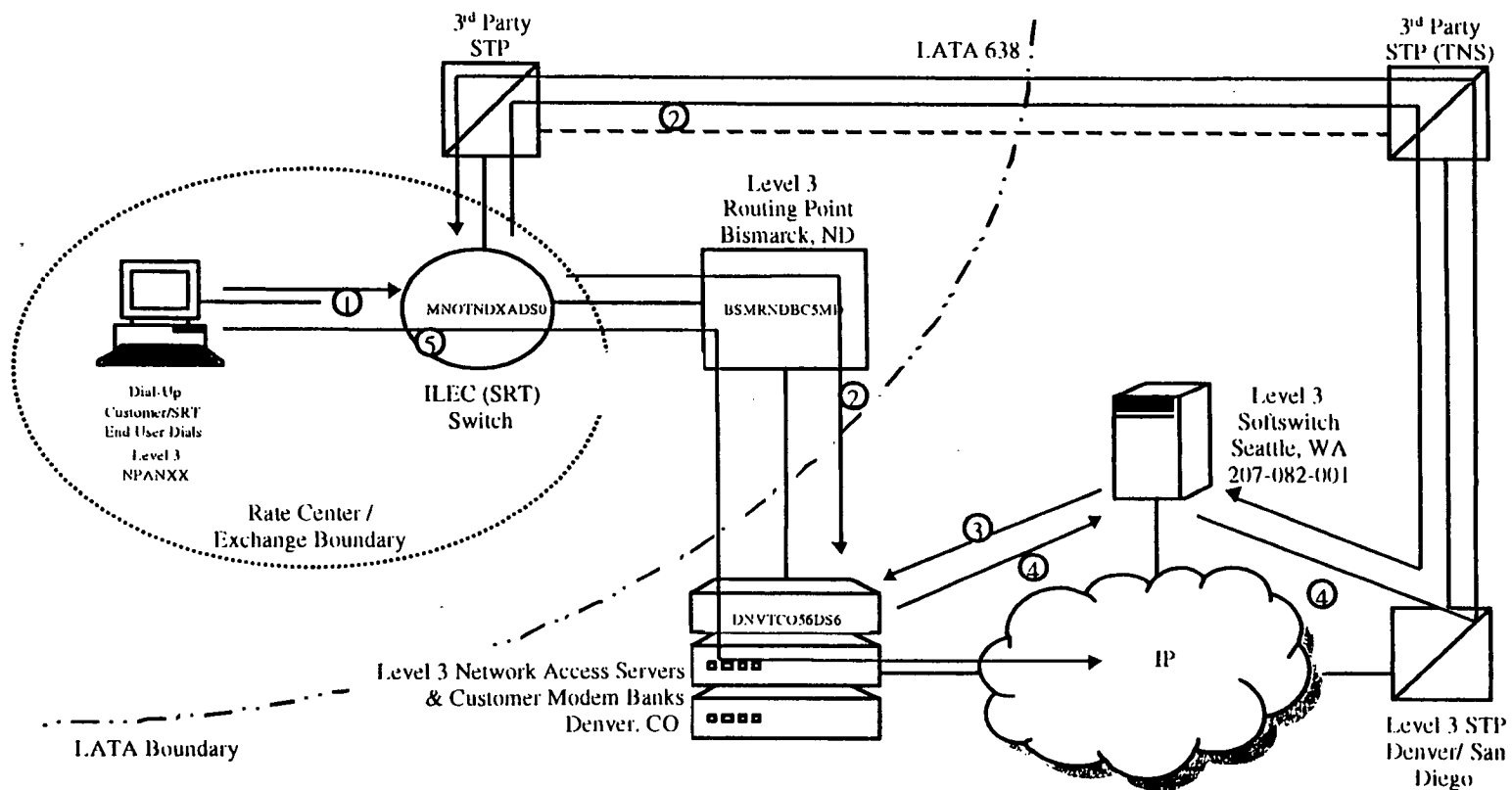
TRADE SECRET
 RRD-2-64

EXHIBIT RRD-3

**DIAGRAM SHOWING CALL FLOW
FROM SRT END USER TO LEVEL 3 ISP END USER**

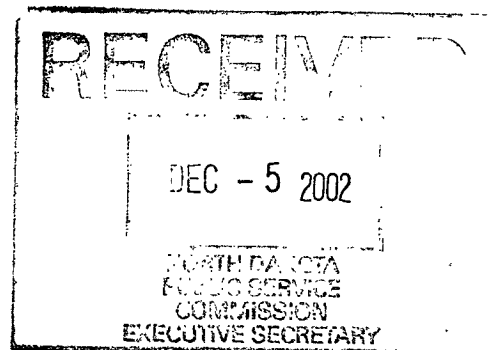
capture the difference
(3)

Level 3 Network Interconnection with SRT



- A SRT retail customer dials a Level 3 telephone number in the Minot Exchange
- SRT's Minot End Office Switch (MNOTNDXADS0) serving the user identifies the number as a Level 3 number, selects a trunk going to the Level 3 network and sends an SS7 Initial Address Message (IAM) to the Level 3 Softswitch via the SS7 network
- The Softswitch checks the dialed number, identifies the Network Access Servers associated with the DS0 level circuit identified by the Originating Switch and sends a control message the Network Access Servers to accept the call on the specified circuit
- Upon receipt of a positive acknowledgement from the Network Access Servers, the call is considered "Answered" and the Level 3 Softswitch will respond to the Originating switch with an Answer Message (ANM)
- The Network Access Servers converts the call to IP and sends the packets to the appropriate destination

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

Case No. PU-2065-02-265

TESTIMONY OF ROGIER R. DUCLOO
ON BEHALF OF
LEVEL 3 COMMUNICATIONS, LLC

Dated: December 4, 2002

PUBLIC VERSION

This testimony contains NO Trade Secret Information

41 **PU-2065-02-465** Pages: 23
Testimony of Rogier R Ducloo (Public
Version)
by Level 3 Communications, LLC
12/05/2002 CC: Comm Legal PUD (3)

42 **PU-2065-02-465** Pages: 23
Testimony of Rogier R Ducloo (Trade
Secret Version)
by Level 3 Communications, LLC
12/05/2002 CC: Comm Legal PUD (3)

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

3 A: My name is Rogier Ducloo. I am a Network Planning Manager for Level 3 Communi-
4 cations, LLC (“Level 3”). My address is 1025 Eldorado Boulevard, Broomfield, Colo-
5 rado 80021.

6 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.**

7 A: As network Planning Manager I am responsible for the planning and certain imple-
8 mentation aspects of our network expansion build-out, as well as optimization of our
9 existing network. Included within my responsibilities are assisting in the negotiation
10 and review of interconnection agreements and leading the implementation team that
11 determines how Level 3 and an incumbent local exchange carrier (“ILEC”) establish
12 direct interconnection.

13 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
14 **EXPERIENCE.**

15 A: I hold a B.S. degree in Finance, which I received from the University of Amsterdam,
16 Holland in 1994. My work experience, prior to joining Level 3, was in the areas of fi-
17 nancial analysis, investment strategy, and business development for financial institu-
18 tions in New York and Amsterdam, the Netherlands. I joined Level 3 in August of
19 1998 and have since been responsible for different aspects of network planning, design
20 and provisioning for our Softswitch-based services. Most recently I have had respon-
21 sibility for planning and implementation of certain portions of our network expansion
22 project.

23 **Q: HAVE YOU TESTIFIED BEFORE THIS COMMISSION BEFORE?**

1 A: No.

2 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A: The purpose of my testimony is to provide technical background that will be useful in
4 resolving the interconnection aspects of Issues one and four. Specifically, I will ex-
5 plain some of the technical characteristics that distinguish the Level 3 network and ex-
6 plain how Level 3 proposes to interconnect directly with SRT Communications, Inc.
7 (“SRT”).

8 **Q: CAN YOU FIRST GIVE SOME BACKGROUND ON LEVEL 3’S NETWORK?**

9 A: Yes. Level 3 operates a next-generation proprietary softswitch-based network. Our
10 network does not use any of the traditional circuit-switching technologies employed by
11 many incumbent and competitive telephone companies. The term “softswitch” refers
12 to computer software applications that perform many, if not all, of the basic functions
13 of a circuit switch. They have Time Division Multiplexing (“TDM”) trunks connecting
14 the voice/bearer lines to other switches. They use Signaling System 7 (“SS7”) signal-
15 ing to communicate with circuit-switched networks. They have routing information
16 that tells them how to route calls based on information in the SS7 signaling messages
17 (10-digit Called Number, NPA-NNX, Calling Number etc). They provide the ability to
18 create, enable, disable, and otherwise manage lines and trunks.

19 While softswitches have many similarities to circuit switches, there also are
20 many differences. In a traditional switch, all the required functions are usually pro-
21 vided by a single supplier (NorTel, Lucent, Alcatel, etc.). Softswitches, on the other
22 hand, allow each component (Trunking peripheral, Call Control, Signaling, Service
23 Management, and Call Detail Records (“CDR”)/Billing) to be provided by different

1 suppliers. Some of these functions run on general purpose computers, some on more
2 dedicated hardware. Because the functions of a softswitch are more easily distributed,
3 the parts of a softswitch can be, and often are, placed in different switching offices.
4 This is rarely done with circuit switches.

5 The biggest difference though between softswitches and circuit switches is
6 found in a network made up of only softswitches. Softswitches signal circuit switches
7 using SS7 protocols, but signal each other with Internet Protocol (“IP”) based protocols
8 like Session Initiation Protocol (“SIP”) and/or Remote Authentication Dial In User
9 Service (“RADIUS”). Within a softswitch based network, calls are converted into data
10 packets and routed to the appropriate location rather than just switched to an outbound
11 circuit. For example, data calls are routed to the Internet or an Internet Service Pro-
12 vider (“ISP”); voice calls are routed using SIP and Real-time Transport Protocol
13 (“RTP”) to IP enabled voice units or to other softswitches. In short, because it involves
14 a very different network architecture that divides switching functions across multiple
15 locations, the softswitch-based network does not always fit clearly within the defini-
16 tions and structures used in a traditional circuit-switched network.

17 **Q: HOW DOES LEVEL 3 USE THIS SOFTSWITCH-BASED NETWORK TO**
18 **PROVIDE SERVICES TO ISPs?**

19 **A:** Level 3 currently uses this softswitch-based network infrastructure to provide inbound-
20 only services to ISPs. In order to provide this service, we must interconnect our net-
21 work with ILECs, such as Qwest and SRT. For example, Level 3 recently established
22 a presence in the Bismarck metropolitan area at Qwest’s wire center, located at 220
23 North 5th Street. Level 3 has assigned a routing point Common Language Location

1 Identification (“CLLI”) code of BSMRNDBC5MD at that location, as marked in the
2 Local Exchange Routing Guide (“LERG”). (The LERG is the database used by all car-
3 riers to identify routing and numbering information for each other.) From the CLLI
4 code routing point in Bismarck, we trunk to and interconnect with Qwest for the ex-
5 change of ISP-bound traffic in the Bismarck metropolitan area. Signaling functions for
6 traffic in the Bismarck area are administered through computer software deployed in
7 Seattle, Washington, and at this time it is anticipated that traffic may ultimately be ter-
8 minated to modem banks located in Denver, Colorado.

9 **Q: HOW MUCH TRAFFIC IS BEING EXCHANGED BETWEEN SRT AND**
10 **LEVEL 3 AT THIS POINT?**

11 A: None at this time. Level 3 does not consider the purchase of retail Primary Rate
12 Interface (“PRI”) ISDN services to be an “exchange” of traffic between two carriers.
13 The term “exchange” implies that the parties are acting as co-carriers and exchanging
14 traffic between their respective switches.

15 Presently, as a result of an acquisition of certain assets from McLeodUSA
16 Information Services, Inc., Level 3 subscribes to meet point DS1s and PRI ISDNs from
17 SRT as a retail end user. Under the current arrangement, when a SRT end user dials a
18 number that SRT has assigned to Level 3, SRT will route the call through its switch
19 over the PRI ISDNs that Level 3 purchases from SRT. The call would then be routed
20 over transport that is jointly provided by SRT and Qwest to Level 3’s customer modem
21 location in Bismarck. This is basically a retail Foreign Exchange arrangement pro-
22 vided in part by SRT and in part by Qwest. At no point in this transmission does the
23 call ever get routed through a Level 3 switching facility such that Level 3 could be con-

1 sidered a co-carrier in completing the communication – Level 3 is simply a retail sub-
2 scriber of SRT’s PRI ISDN service that Level 3 uses to deliver calls to ISPs. I there-
3 fore disagree with SRT’s assertion that Level 3 is directly interconnected, or
4 exchanging traffic, with SRT today. Level 3 is no more “interconnected” and “ex-
5 changing traffic” with SRT today than any other retail customer of SRT might be – I
6 wouldn’t think that a business in Minot would consider itself “interconnected” with
7 SRT. Until SRT interconnects with Level 3 as a co-carrier – that is, the parties ex-
8 change traffic between their two switches – the parties are not directly interconnected.

9 **Q: YOU MENTIONED THAT LEVEL 3 HAS A CUSTOMER LOCATION IN**
10 **BISMARCK. HOW DOES LEVEL 3 SERVE THAT CUSTOMER LOCATION**
11 **TODAY?**

12 A: As mentioned previously, Level 3 inherited some ISDN services as a retail customer
13 as part of its acquisition of certain assets of McLeod USA Information Services, in-
14 cluding the PRI ISDN services from SRT that I mentioned previously. Level 3 is in
15 the process of terminating these inherited retail ISDN services to the extent possible
16 in order to migrate such services to its own network. I will explain why later in my
17 testimony.

18 **Q: CAN YOU PLEASE EXPLAIN HOW A CALL FROM A SRT END USER GETS**
19 **TO THE INTERNET UNDER THE CURRENT ARRANGEMENT?**

20 A: Yes. SRT has actually assigned Level 3 a SRT telephone number(s) that is local to
21 SRT’s Minot exchange, even though Level 3 has no physical presence in Minot. When
22 a SRT end user dials the SRT number assigned to Level 3, SRT routes the call over the
23 PRI ISDN circuits that Level 3 purchases from SRT. The call then travels over trans-

1 port that is provided jointly by SRT and Qwest to reach the modems at Level 3's loca-
2 tion in Bismarck, which is outside of SRT's incumbent serving area. Level 3 delivers
3 the communication from the customer location in Bismarck to the Internet over trans-
4 port that it leases from IXCs.

5 **Q: WHY DOES LEVEL 3 OBJECT TO CONTINUING THIS RETAIL AR-**
6 **RANGEMENT?**

7 A: The current retail arrangement is not technically or economically efficient because it
8 does not take advantage of Level 3's state-of-the-art IP network. For example, Level 3
9 was one of the first carriers to offer its ISP customers V.92 modems. Moving traffic
10 onto Level 3's network as a co-carrier permits Level 3 to realize economies of scale in
11 its technology investments, giving Level 3 greater incentives to continue to introduce
12 new and innovative technology.

13 **Q: WHY IS THE CURRENT RETAIL ARRANGEMENT NOT ECONOMI-**
14 **CALLY EFFICIENT?**

15 A: From a network perspective, Level 3 has invested substantial capital in its IP network
16 and its proprietary softswitch. In order to reap the benefits of and optimize use of
17 that investment, Level 3 must carry its ISP customers' traffic over its own network,
18 using its own softswitch. Offering service to ISPs via the retail PRI ISDN services
19 Level 3 purchases from SRT is not a cost-effective solution and impedes Level 3's
20 ability to provide an alternative dial-up service to ISPs. When McLeod subscribed to
21 these PRI ISDN services from SRT, it did not have an IP network with softswitch
22 technology. Even more practically, by interconnecting with SRT as a co-carrier
23 rather than as an end user, Level 3 may be able to realize significant savings. And

1 most importantly, perhaps, from SRT's point of view – Level 3's proposed method of
2 interconnection would *cost* SRT nothing more from a transport perspective than it
3 does today in providing retail services to Level 3.

4 **Q: IS LEVEL 3 WILLING TO INTERCONNECT WITH SRT AT SRT'S**
5 **SWITCH?**

6 A: Yes. I can provide a network-oriented overview of Level 3's proposal. Level 3 pro-
7 poses to interconnect directly with SRT at SRT's Minot switch. In other words, the
8 point of interconnection or "POI" between SRT's and Level 3's network would be at
9 SRT's Minot switch. It is my understanding that SRT has established direct intercon-
10 nection arrangements with Commercial Mobile Radio Service ("CMRS") carriers that
11 also identify SRT's Minot switch as the POI. *See* Exhibit WPH-4 (Excerpts of CMRS
12 agreements).

13 Level 3 has proposed that SRT and Level 3 establish a separate, dedicated trunk
14 group (shown by the red and blue lines on Exhibit RRD-1) to handle traffic between
15 their respective end user customers. Level 3 would be willing to assume responsibility
16 for the trunks represented by the red and blue lines on the diagram attached as Exhibit
17 RRD-1 all the way into the SRT switch. Level 3 would bear financial responsibility
18 for picking up the calls originated by SRT customers by leasing transport from Qwest
19 to reach the SRT/Qwest meet-point and then leasing the remaining transport from SRT
20 between the meet-point and the SRT switch. (I've used different colors to represent the
21 different capacity of the transport we propose to use to interconnect with SRT – red for
22 a jointly provided DS3 and blue for T1's provided solely by SRT.) Level 3 would pay
23 SRT for this transport at SRT's generally available rates, presumably at the same rates,

1 terms, and conditions that SRT provides transport to CMRS carriers with whom SRT
2 has established direct interconnection. Under Level 3's proposal, SRT would have no
3 responsibility at all to transport or deliver a call beyond that one switch.

4 **Q: YOU MENTIONED THAT SRT HAS INTERCONNECTION AGREEMENTS**
5 **WITH CMRS CARRIERS. HAVE YOU REVIEWED THOSE AGREEMENTS?**

6 A: Yes, I have reviewed those CMRS agreements. I have also reviewed SRT-provided
7 diagrams showing how it directly interconnects with three CMRS carriers (SRT Wire-
8 less (an affiliate of SRT), Verizon Wireless, and Western Wireless) and SRT-provided
9 information concerning the trunk groups it has established with these carriers. See Ex-
10 hibit WPH-3 (SRT Response to Level 3 Interrogatory No. 14) and Exhibit RRD-2
11 (SRT Response to Level 3 Interrogatory No. 20).¹

12 **Q: BASED ON YOUR REVIEW OF THESE DOCUMENTS, ARE THERE SIMI-**
13 **LARITIES BETWEEN THE DIRECT INTERCONNECTION THAT LEVEL 3**
14 **HAS PROPOSED TO SRT AND THE DIRECT INTERCONNECTION SRT**
15 **HAS ESTABLISHED WITH CMRS CARRIERS?**

16 A: Yes. Like the CMRS carriers, Level 3 proposes to establish a POI at SRT's Minot
17 switch. *****BEGIN TRADE SECRET -----**
18 **----- . END TRADE SECRET***** Finally,
19 like the CMRS carriers, Level 3 proposes to purchase T1 transport from SRT from the
20 POI at SRT's switch. This T1 transport, together with transport purchased from
21 Qwest, would be used to carry SRT's traffic back to Level 3's network location. Ac-
22 cording to Section 4.1 of the SRT/SRT Wireless interconnection agreement, SRT

¹ Pursuant to Section 69-02-09 of the Commission's rules, SRT has asserted trade secret protection for the information provided in response to Level 3's Interrogatory No. 20.

1 Wireless also purchases transport from SRT back to its network location in Bismarck.
2 *See* Exhibit WPH-4 (Excerpts of CMRS agreements).

3 **Q: ARE THERE ANY DIFFERENCES BETWEEN THE INTERCONNECTION**
4 **LEVEL 3 PROPOSES AND THE DIRECT INTERCONNECTION SRT HAS**
5 **ESTABLISHED WITH ANY CMRS CARRIER?**

6 A: Yes. It appears from the SRT-provided diagrams that SRT Wireless may be physically
7 collocated at SRT's Minot switch (because the diagram shows a SRT Wireless network
8 location at the same address as SRT's Minot switch and no interoffice transport facility
9 between the Minot switch and the SRT network location). *See* Exhibit WPH-3 (SRT
10 Response to Level 3 Interrogatory No. 14). As Mr. Hunt explains, Level 3 does not
11 seek to impose collocation obligations on SRT.

12 **Q: IS LEVEL 3 WILLING TO INTERCONNECT INDIRECTLY WITH SRT?**

13 A: Yes. While we would prefer direct interconnection, we are willing to interconnect
14 indirectly.

15 **Q: WHY DOES LEVEL 3 PREFER DIRECT INTERCONNECTION?**

16 A: We prefer direct interconnection because of the traffic volumes we expect to exchange
17 with SRT. Also, because no third-party would be involved, direct interconnection
18 would give us more control over the facilities used to exchange traffic, forecasting and
19 traffic management. Specifically, if Level 3 determines that a dedicated trunk group
20 between its network and the POI at SRT's switch in Minot either is running near ca-
21 pacity or is underutilized, Level 3 would be able to recognize that traffic management
22 issue and attempt to resolve it. By contrast, if indirect interconnection is used, the par-
23 ties are relying in part upon third-party networks over which they have no control

1 whatsoever to help manage the traffic flow for them. Moreover, it is unclear whether
2 Qwest is willing to act as a transit carrier in this instance. I am not aware whether SRT
3 has approached Qwest to discuss using their transit service to interconnect indirectly
4 with Level 3.

5 **Q: PLEASE EXPLAIN HOW INDIRECT INTERCONNECTION FOR TRAFFIC**
6 **EXCHANGE BETWEEN SRT AND LEVEL 3 WOULD WORK.**

7 A: I can explain how I believe it would work from a network perspective. Level 3 at times
8 exchanges traffic with independent LECs by using the Bell Operating Company
9 (“BOC”), such as Qwest, as the transit carrier. In such cases, both the independent
10 LEC and Level 3 are directly interconnected with the BOC’s tandem switch and each
11 party has its own interconnection agreement or arrangement with the BOC. If SRT and
12 Level 3 followed the typical indirect interconnection model, SRT would be responsible
13 for delivering a call destined for a Level 3 customer to Qwest’s Bismarck tandem.
14 SRT presumably would use facilities it has already established to connect its network
15 to Qwest’s tandem. SRT would hand the call off to Qwest at Qwest’s tandem. The
16 call would be switched through Qwest’s tandem onto its interconnection trunks with
17 Level 3. The call would be transported across the interconnection trunk into Level 3’s
18 network. Level 3 would then switch the call through its softswitch and terminate the
19 call to its ISP customer.

20 In my experience, this is how indirect network interconnection is accomplished.
21 It is possible that there are other methods by which the parties could interconnect indi-
22 rectly. However, I am not aware of any and I do not know if this is the manner in
23 which SRT proposes to interconnect indirectly with Level 3.

1 **Q: HAS LEVEL 3 INTERCONNECTED DIRECTLY WITH OTHER INDEPEND-**
2 **ENT LECs?**

3 A: Yes. We try to establish direct interconnection with independent LECs, rather than
4 using a BOC's transit service for the exchange of traffic, whenever we plan to provide
5 service within an independent LEC's serving area. To date we have entered into inter-
6 connection agreements with ALLTEL, Citizens, Commonwealth, TXU/Fort Bend
7 Telephone, Chillicothe Telephone and Valor in 23 states that permit us to establish di-
8 rect interconnection, and we have established direct interconnection trunks in 35 rate
9 centers that are located in 23 different LATAs.

10 **Q: ARE THESE DIRECT INTERCONNECTION ARRANGEMENTS SIMILAR**
11 **TO THE PROPOSAL LEVEL 3 HAS OFFERED SRT?**

12 A: Yes. Because each independent LEC's network facilities and capabilities vary, we try
13 to tailor the arrangements to what the independent LEC is capable of providing. How-
14 ever, each direct interconnection arrangement shares two common features – the POI
15 between the parties' networks is established within the independent LEC's incumbent
16 serving territory and each party is responsible for the transport facilities on its side of
17 the POI.

18 **Q: PLEASE EXPLAIN HOW A CALL WOULD BE ROUTED FROM A SRT END**
19 **USER TO A LEVEL 3 ISP CUSTOMER IF THE PARTIES WERE INTER-**
20 **CONNECTED DIRECTLY IN THE MANNER PROPOSED BY LEVEL 3.**

21 A: A call originating within a SRT exchange area to a Level 3 NPA/NXX associated
22 with a rate center in a SRT exchange would be routed and terminated as follows:

23 1. A SRT retail customer in the Minot Exchange dials a telephone number as-
24 signed to a Level 3 customer.

- 1 2. SRT's Minot End Office Switch (MNOTNDXADS0) serving the end user
2 identifies the number as a number associated with a Level 3 customer, se-
3 lects a trunk going to the Level 3 network, and sends an SS7 Initial Address
4 Message (IAM) to the Level 3 Softswitch via the SS7 network.
- 5 3. The Softswitch checks the dialed number, identifies the Network Access
6 Server associated with the DS0 level circuit identified by the Originating
7 Switch, and sends a control message to the Network Access Server to ac-
8 cept the call on the specified circuit.
- 9 4. Upon receipt of a positive acknowledgement from the Network Access
10 Server, the call is considered "answered" and the Level 3 Softswitch will
11 respond to the Originating Switch with an Answer Message (ANM).
- 12 5. The Network Access Server converts the call to Internet Protocol and sends
13 the packets to the appropriate destination. The Softswitch may also respond
14 with other SS7 messages as appropriate. For example, a Busy (RCC-17)
15 could have been returned in step 4 under certain conditions. The Switch
16 will also respond to non-call SS7 messages such as CQM.

17
18 Attached to my testimony as Exhibit RRD-3 is a diagram depicting how such a call
19 would be routed and terminated.

20 **Q: WHERE IS THE LEVEL 3 CUSTOMER PHYSICALLY LOCATED IN THIS**
21 **CALL SCENARIO?**

22 **A:** Because we have just begun service in North Dakota as a telecommunications carrier,
23 we do not know yet where our customers will be located. We currently have a cus-
24 tomer location in Bismarck at 311A S. 8th Street, Bismarck, ND. As we market our
25 services and grow our business in North Dakota, it is possible that we will serve addi-
26 tional customers physically located in Bismarck, other areas within North Dakota, as
27 well as points outside of North Dakota.

28 **Q. WHAT IS "VIRTUAL NXX?"**

29 **A.** I am not an expert in this area, but as I understand it, for the purposes of this proceed-
30 ing, it is identical to Foreign Exchange service provided by ILECs, including SRT.
31 The terms "Foreign Exchange" and "Virtual NXX" describe a service that allows a
32 customer, such as an ISP, to obtain a telephone number in a local calling area in which

1 that party is not physically located. They enable ISPs to obtain local telephone num-
2 bers associated with local calling area A, for example, that terminate in the ISPs' mo-
3 dem banks located in local calling area B. I understand that when Level 3 assigns a
4 number that is local to a SRT customer, but Level 3's customer is physically located
5 outside of SRT's local calling area, the parties have referred to that as a "virtual NXX"
6 or "FX-like" service being provided by Level 3. In fact, it is my understanding that the
7 retail PRI ISDN services Level 3 purchases from SRT today are FX or FX-like services
8 because our physical customer location is outside of SRT's exchange area, but our
9 telephone number(s) is associated with SRT's exchange area. Level 3 currently pays
10 for all transport from the SRT local calling area to the Level 3 customer location in
11 Bismarck. Similarly, under our interconnection proposal, Level 3 would pay for all
12 transport from our POI with SRT in its local calling area to our POI with Qwest in
13 Bismarck (and of course, beyond the POI with Qwest to Level 3's network.)

14 **Q: FROM AN INTERCONNECTION PERSPECTIVE, WOULD THE ROUTING**
15 **OF THE CALL DIFFER DEPENDING ON THE PHYSICAL LOCATION OF**
16 **LEVEL 3'S CUSTOMER?**

17 **A:** No. A call to a Level 3 FX-like customer is routed just as any other locally dialed call
18 to an end user customer with a physical presence in the calling party's local calling
19 area – under either scenario, SRT is responsible for delivering the call to the point of
20 interconnection established between SRT's and Level 3's networks. The point of in-
21 terconnection represents a physical, operational, and economic demarcation point
22 where Level 3 assumes sole responsibility for the routing of a call, and where SRT's
23 responsibility for the call ends.

1 **Q: IF LEVEL 3 HAD CUSTOMERS PHYSICALLY LOCATED WITHIN SRT'S**
2 **LOCAL CALLING AREA, AS WELL AS CUSTOMERS PHYSICALLY LO-**
3 **CATED OUTSIDE SRT'S LOCAL CALLING AREA, HOW WOULD THE**
4 **ROUTING WITHIN LEVEL 3'S NETWORK DIFFER?**

5 A: Because Level 3's switch is not located within SRT's local calling area, Level 3 would
6 have to route both calls outside of SRT's local calling area back to Level 3's Network
7 Access Server. (The Network Access Server is one of the distributed components of
8 our proprietary softswitch.) The only difference occurs after the call is routed through
9 Level 3's Network Access Server. In the case of the ISP physically located within
10 SRT's local calling area, Level 3 would route the call back into that area on Level 3
11 owned or leased facilities. In the case of the FX-like ISP customer, Level 3 would
12 route the call over Level 3 owned or leased facilities to wherever the FX-like customer
13 maintains a physical location.

14 **Q: IN THE CASE OF AN ISP, CAN YOU PLEASE EXPLAIN WHAT YOU MEAN**
15 **BY THE CUSTOMER'S PHYSICAL LOCATION?**

16 A: I am referring to the physical location where the ISP maintains its modem banks to
17 receive its customers' calls. At the modem banks, the call is converted to IP format
18 and delivered to the Internet.

19 **Q: IS LEVEL 3'S INTERCONNECTION PROPOSAL MUTUALLY BENEFI-**
20 **CIAL?**

21 A: Yes. As I've already stated, Level 3 proposes to interconnect with SRT's network
22 via leased multiplexed DS3 facilities from the Level 3 Routing Point in the Qwest
23 Central Office in Bismarck to the multiplexing location in the SRT Central Office in

1 Minot. Under this proposal, the DS3's would be on fiber-meet arrangements between
2 SRT and Qwest, and both SRT and Qwest would therefore receive monthly recurring
3 revenue. In addition, as part of this proposal, Level 3 would lease the T1 facilities
4 from the multiplexing location to the SRT End Office switch in Minot, resulting in
5 additional revenue to SRT. Again, I'd like to stress that this is just one proposal, and
6 Level 3 is willing to discuss alternative arrangements with SRT.

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

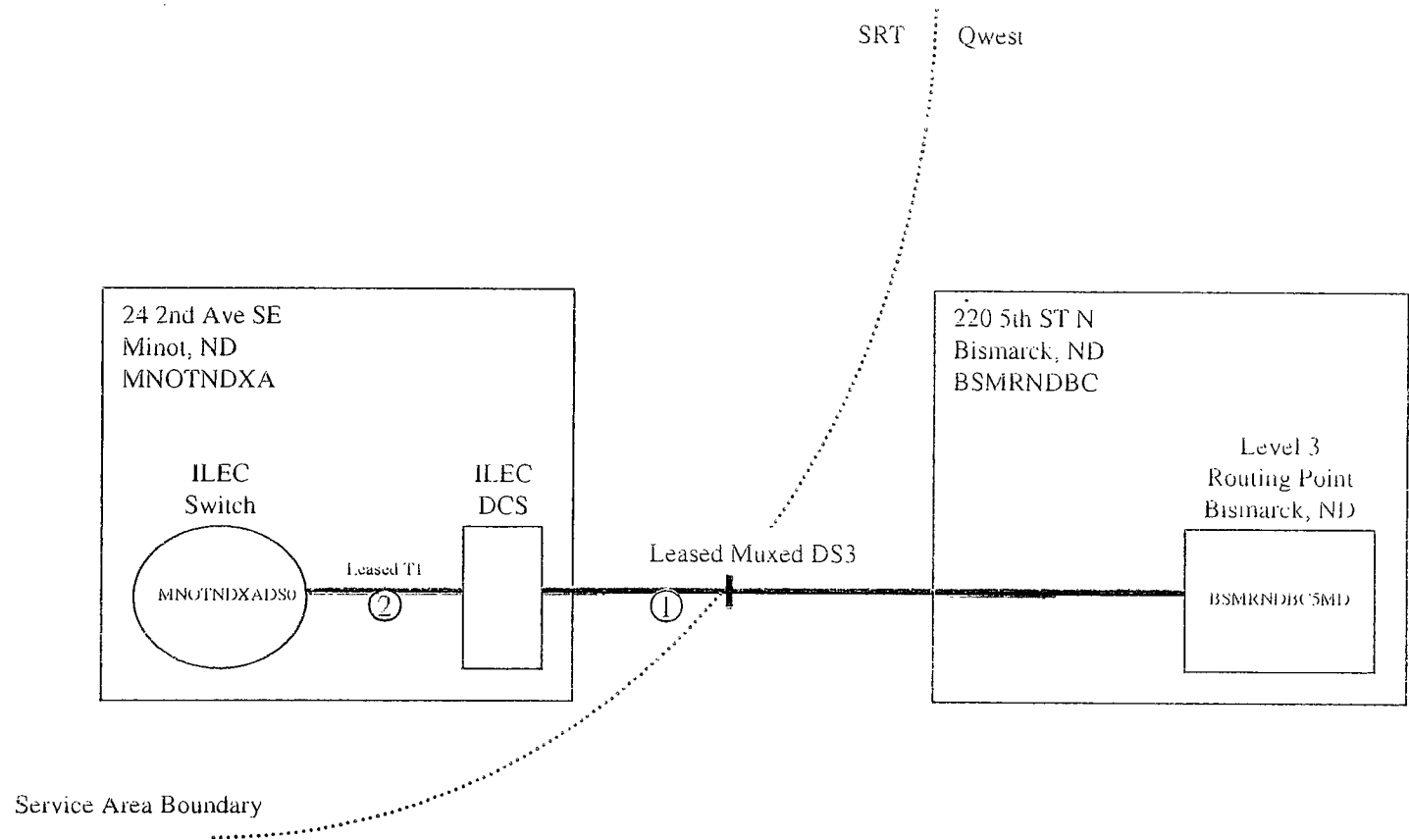
8 **A:** Yes, it does.

EXHIBIT RRD-1

**DIAGRAM SHOWING PROPOSED NETWORK
INTERCONNECTION ARCHITECTURE
BETWEEN LEVEL 3 AND SRT**

deliver the difference
(3)

Level 3 Network Interconnection with SRT



To interconnect with SRT's network, Level 3 will lease muxed DS3 facilities (1) from the Level 3 Routing Point in the Qwest Central Office in Bismarck to the SRT Central Office in Minot. The DS3's will be on fiber meet arrangements between SRT and Qwest. Both SRT and Qwest in North Dakota will receive monthly recurring revenue. In addition, Level 3 will lease the T1 facilities from the muxing location ("ILEC DCS") to the SRT End Office Switch in Minot (2).

EXHIBIT RRD-2

SRT RESPONSE TO LEVEL 3 INTERROGATORY NO. 20
SRT TRADE SECRET
MATERIAL REDACTED

Interrogatory #20

Request: Please state whether, and how often, SRT reviews usage on its trunk groups, and provide any and all documents related to any such and all similar reviews that SRT has conducted of its EAS trunks and/or its tandem trunks, including, but not limited to, the studies themselves, correspondence concerning the studies, etc.

Objections: Overbroad; Trade Secret

Response: SRT reviews usage on its trunk groups monthly. Attached is a twelve month traffic study on all trunk groups.

EXHIBIT RRD-3

**DIAGRAM SHOWING CALL FLOW
FROM SRT END USER TO LEVEL 3 ISP END USER**

**BEFORE THE
STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

<p>In the Matter of the Petition of Level 3 Communications, LLC</p> <p>For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended, to establish an Interconnection Agreement with SRT Communications Cooperative</p>	<p style="text-align: center;">Case No. PU-2065-02-465</p>
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**DIRECT TESTIMONY OF WILLIAM P. HUNT III
ON BEHALF OF
LEVEL 3 COMMUNICATIONS, LLC**

DECEMBER 4, 2002

40 **PU-2065-02-465** Pages: 250
Direct Testimony of William P Hunt III
by Level 3 Communications, LLC
12/05/2002 **Exhibit # Level 3 - 1**
CC: Comm Legal PUD (3)

EXHIBIT
Level 3 - 1

PEN/CAD 800-821-0389

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

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

7 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR LEVEL 3.**

8 A: As Vice President of Public Policy, I am responsible for developing, implementing, and
9 coordinating Level 3’s regulatory policy and governmental affairs in North America and
10 Europe. I am also responsible for ensuring the company’s regulatory compliance with
11 state and federal regulations, managing the company’s interconnection services group
12 and renegotiating municipal franchise and right-of-way agreements.

13 **Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
14 **PROFESSIONAL EXPERIENCE.**

15 A: I received a Bachelor of Journalism from the University of Missouri in 1984. I received
16 my Juris Doctor from Western New England College School of Law in 1991. I joined
17 Level 3 as Regulatory Counsel in February 1999 and was promoted to Vice President in
18 January 2000. Subsequently, I was promoted to Vice President of Public Policy when
19 Level 3’s regulatory operations in Europe, North America, and Asia were combined.

20 Prior to joining Level 3, I spent almost five years at MCI Communications
21 (“MCI”). I joined MCI’s Office of General Counsel in 1994 as a commercial litigator. In
22 March of 1996, I joined MCI’s state regulatory group in Denver, Colorado, where I was
23 responsible for securing state certifications in the western United States, supporting
24 arbitrations under the Communications Act of 1934, as amended (“Act”), and prosecuting
25 complaints against U S WEST Communications, Inc. (“U S WEST”) in Washington and
26 Minnesota.

1 **Q: HAVE YOU TESTIFIED BEFORE THE NORTH DAKOTA PUBLIC SERVICE**
2 **COMMISSION?**

3 A: No. Before joining Level 3, I testified before the South Dakota Public Utilities
4 Commission during MCI's state certification proceeding. Since coming to Level 3, I
5 have testified in arbitration proceedings before the California Public Utilities
6 Commission, the Illinois Commerce Commission, the Michigan Public Service
7 Commission, the Texas Public Utilities Commission, the Colorado Public Utilities
8 Commission, the Arizona Corporation Commission, the North Carolina Utilities
9 Commission, the Minnesota Public Utilities Commission, the New Mexico Public
10 Regulation Commission, the Wisconsin Public Service Commission, and the Washington
11 Utilities and Transportation Commission, and I have submitted pre-filed testimony before
12 the Oregon Public Utilities Commission. I have also testified before the Colorado Public
13 Utilities Commission with respect to Level 3's Declaration of Intent to Expand its service
14 territory to include those areas served by CenturyTel.

15 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A: The purpose of my testimony is to provide background information on Level 3 and to
17 explain Level 3's position with respect to all seven issues raised in this arbitration.

18

19 **BACKGROUND ON LEVEL 3'S OPERATIONS**

20 **Q: PLEASE DESCRIBE THE OPERATIONS OF LEVEL 3.**

21 A: Level 3 operates the first international network optimized end-to-end for Internet
22 Protocol ("IP") packet switching technology which allows information to be transmitted
23 at a far lower cost. The Level 3 network includes local loops in 36 cities in the U.S. and
24 Europe. The network includes an approximately 16,000-mile U.S. intercity and 4,700-
25 mile Pan-European network interconnected by a high-capacity transoceanic cable system.
26 Level 3's network employs a "softswitch" technology. A softswitch is a software system
27 running on commercially available servers that provides Level 3 with the ability to offer

1 voice, data, fax, and other services over the same Internet Protocol network that carries
2 broadband data services. The United States Patent Office recognized the unique nature of
3 Level 3's softswitch by granting a patent to the company. The patent gives Level 3 the
4 exclusive right to use and license the intellectual property used in its managed modem
5 platform. That platform currently carries each month more than 13 billion minutes of
6 "managed modem" traffic in the United States.

7 Level 3's system has non-proprietary interfaces intended to encourage the
8 development of innovative new services and applications by software and hardware
9 developers, Level 3's bandwidth customers, and other service providers.

10 **Q: PLEASE DESCRIBE WHAT IS "MANAGED MODEM" TRAFFIC.**

11 A: Let me start by providing some background on why and how Level 3 may carry managed
12 modem traffic. Level 3 is authorized to operate as a competitive local exchange carrier
13 ("CLEC") in North Dakota pursuant to a Commission Order entered at Docket No. PU-
14 2065-02-11 (Order entered March 13, 2002).¹ Consistent with that authorization, Level
15 3 offers direct inward dial ("DID") telecommunications services in North Dakota. These
16 services are included in Level 3's NDPS Tariff No. 1, § 13. The DID service provides
17 Level 3's customers with the ability to connect to the public switched telephone network
18 ("PSTN") in order to receive inbound calls from other users on the PSTN. The DID
19 service does not limit the customer to requesting DID in the local calling area in which
20 they are physically located. Therefore, the DID service is used to provide the so-called
21 "virtual NXX" or "Foreign Exchange-Like" ("FX-like") services.

22 Together with the DID service that gives customers local connectivity to the
23 PSTN, Level 3 offers Internet access support in a bundled service package that is branded
24 as "(3)Connect Modem" service. This service will take a local call placed on the PSTN

¹ *Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity*, Case No. PU-2065-02-11, Order (ND P.S.C. Mar. 13, 2002).

1 to an Internet Service Provider (“ISP”), switch it to the destination designated by the ISP,
2 convert the call from a standard telephone format into packets through Level 3’s
3 softswitch, and then assist the ISP in taking the call onto the Internet to reach the ISP’s
4 content as requested by the ISP’s end user. This traffic is what I refer to as “managed
5 modem” traffic. The service allows ISPs that want to offer dial-up capability for their
6 own customers to deliver dial-up services to end user customers without the need for
7 massive investments in infrastructure in every market nationwide. The service therefore
8 allows ISPs to make their services more widely available, to concentrate on delivering
9 content and features to their end users rather than managing a telecommunications
10 network, and to turn up service more quickly where consumer demand dictates.

11 **Q: DOES LEVEL 3 OFFER THIS DID SERVICE IN SRT’S INCUMBENT SERVING**
12 **AREA TODAY?**

13 A: No. Until we complete an interconnection agreement with SRT, Level 3 cannot obtain
14 local numbers for SRT’s Minot rate center. Nor can we offer our customers local
15 connectivity to the PSTN in SRT’s service area because in order to do so, we must have
16 interconnection arrangements in place to exchange calls between SRT’s customers and
17 Level 3’s customers.

18 **Q: YOU MENTIONED VOICE AS WELL AS DATA AND FAX SERVICES. DOES**
19 **LEVEL 3 HAVE PLANS TO PROVIDE VOICE SERVICE?**

20 A: Yes. While Level 3’s initial telecommunications offerings have focused on providing
21 local dial-up service to ISPs and some resold long distance services, Level 3 anticipates
22 broadening our service offerings to include some next-generation voice services as soon
23 as 2003.

24 **Q: DOES LEVEL 3 PROVIDE ANY OTHER SERVICES?**

25 A: Yes. In addition to the services discussed, Level 3 is a growing provider of Internet
26 backbone services, IP transport, private lines, collocation, dark fiber and wavelengths.
27 Our diverse customer set includes nine out of 10 of the world’s largest

1 telecommunication carriers, three out of five of the largest cable providers in the United
2 States, and wireless carriers serving more than 158 million subscribers.

3
4 **THRESHOLD INTERCONNECTION AND JURISDICTION ISSUES**

5 **Issue 1: Has SRT satisfied its duties under the Communications Act of 1934, as amended,**
6 **with respect to Level 3’s section 251(a) interconnection request?**

7 **Issue 2: Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable**
8 **terms and conditions for interconnection when it receives a request for interconnection**
9 **pursuant to section 251(a) of the Communications Act of 1934, as amended?**

10 **Issue 7: Does the North Dakota Public Service Commission have jurisdiction to adjudicate**
11 **disputes concerning ISP-bound traffic in the context of an interconnection agreement**
12 **arbitration?**

13 **Q: CAN YOU SUMMARIZE THE DISPUTE AND THE PARTIES’ POSITIONS ON**
14 **ISSUES 1, 2 AND 7?**

15 **A:** Yes. Issue 1 concerns whether Level 3 is entitled to an interconnection agreement with
16 SRT under Sections 251(a) and 252 of the Communications Act of 1934, as amended (the
17 “Act”),² for the exchange of ISP-bound traffic. Issue 2 is related to Issue 1 in that the
18 parties dispute whether SRT has a duty to negotiate such interconnection arrangements.
19 Finally, Issue 7 asks whether the Commission has jurisdiction to arbitrate this dispute
20 given that all of the traffic we propose to exchange with SRT at this time is ISP-bound
21 traffic.

22 Level 3 believes that the most relevant order of the Federal Communications
23 Commission (“FCC”) and related caselaw make clear that the FCC has set up different
24 rules for ISP-bound traffic *only* with respect to intercarrier compensation rates. In all
25 other respects, ISP-bound traffic is subject to the same rules that otherwise govern the
26 exchange of traffic between local exchange carriers (“LECs”), including interconnection,

² 47 U.S.C. §§ 251(a) and 252.

1 negotiation, and arbitration rules. Under the Act and FCC rules, Level 3 is entitled to
2 interconnect with SRT to exchange ISP-bound traffic and SRT has a duty to negotiate
3 interconnection arrangements with Level 3.

4 SRT takes alternative positions with respect to Issue 1. SRT suggests either that it
5 meets its Section 251(a) duty by virtue of both parties' connection to the PSTN, or by
6 selling Level 3 retail ISDN services through its tariffs. *See* Exhibit WPH-1 (Excerpts of
7 SRT Response to Level 3 Interrogatory No. 1). With respect to Issue 2, SRT believes
8 that it has no duty to negotiate and that Level 3 must interconnect with SRT by
9 purchasing SRT's Feature Group D service as an interexchange carrier ("IXC"). Finally,
10 SRT makes inconsistent arguments about the Commission's jurisdiction under Issue 7.
11 On the one hand it claims that the FCC has classified ISP-bound traffic as *interstate* and
12 asserted exclusive jurisdiction over such traffic, yet on the other hand it claims that
13 *intrastate* access charges apply to the parties' exchange of such traffic.

14 **Q: WHAT IS YOUR REACTION TO THE SRT POSITIONS?**

15 A: SRT's positions are discriminatory and based upon an erroneous interpretation of federal
16 law.

17 **Q: PLEASE EXPLAIN WHY SRT'S POSITION IS DISCRIMINATORY.**

18 A: SRT's position is discriminatory because SRT has negotiated direct interconnection
19 agreements with other carriers, and directly interconnects with other carriers, but refuses
20 to do so with Level 3. Specifically, SRT has entered into direct interconnection
21 agreements with, and established direct interconnection to, a number of Commercial
22 Mobile Radio Service ("CMRS") Providers. *See* Exhibits WPH-2 & 3 (SRT Responses
23 to Level 3 Interrogatory Nos. 13 & 14, respectively).³ These agreements provide, for

³ Pursuant to Section 69-02-09 of the Commission's rules, SRT has asserted Trade Secret status for portions of its response to Level 3's Interrogatory No. 14 that are not included in WPH-3.

1 example, that “SRT and WWC exchange calls between their networks and wish to
2 establish Interconnection and Compensation arrangements for these calls.” *See* Exhibit
3 WPH-4 (Excerpts of CMRS Agreements). To my knowledge, these interconnection
4 agreements provide that SRT will exchange traffic with the CMRS carriers as local traffic
5 (*See* Exhibit WPH-5 (SRT Response to Level 3 Interrogatory No. 23)), even though the
6 CMRS carriers trunk the traffic back to their network points of presence in Bismarck or
7 Grand Forks. *See* Exhibit WPH-4 (Excerpts of CMRS agreements). As Mr. Duclou
8 explains, this is the type of interconnection that Level 3 seeks. For SRT to provide this
9 type of interconnection to CMRS carriers, and to execute interconnection agreements
10 with CMRS carriers, but not Level 3, is *per se* discriminatory.

11 SRT also has established direct interconnection with two neighboring LECs,
12 North Dakota Telephone Company (“NDTC”) and Turtle Mountain Communications
13 (“TMC”), with whom SRT shares Extended Area Service (“EAS”) areas. *See* Exhibit
14 WPH-3 (SRT Response to Level 3 Interrogatory No. 14). Although SRT did not provide
15 Level 3 with a copy of the agreements that govern its interconnection with NDTC and
16 TMC, SRT admits that it exchanges traffic with these carriers on a bill and keep basis.
17 That is, SRT does not charge NDTC/TMC for originating traffic from SRT customers or
18 for terminating traffic to SRT customers. *See* Exhibit WPH-6 (SRT Response to Level 3
19 Interrogatory No. 16). This is important because both NDTC and TMC offer foreign
20 exchange service to their customers. *See e.g.* Exhibit WPH-7 (Excerpts of NDTC
21 concurrence with Qwest tariff). In other words, SRT interconnects directly with
22 independent LECs that provide FX services and exchanges traffic with them on a bill and
23 keep basis but refuses to do the same with Level 3. Again, this is *per se* discriminatory.

24 **Q: PLEASE EXPLAIN LEVEL 3’s ASSERTION THAT THE PARTIES ARE**
25 **REQUIRED TO NEGOTIATE AN INTERCONNECTION AGREEMENT.**

26 **A:** Since the first communication with SRT, Level 3 has pointed out that the network and
27 compensation arrangement that Level 3 seeks to enter with SRT are exactly the kinds of

1 issues that fall within the interconnection negotiation provisions of the Act. Specifically,
2 under Section 251(a) of the Act, carriers are obligated to interconnect directly or
3 indirectly for the exchange of telecommunications traffic.⁴ Under Section 252, the
4 parties have at least 135 days after the date of a request to negotiate such arrangements.⁵
5 If those negotiations fail, Section 252 then sets forth the procedural mechanisms available
6 to the parties.⁶ As the Commission determined in denying SRT's Motion to Dismiss,
7 Section 252 negotiation and arbitration provisions apply to all interconnection requests
8 made under Section 251.⁷

9 In fact, it is my understanding that Western Wireless requested interconnection
10 with SRT and other rural LECs in North Dakota under Section 251(a) and filed an
11 arbitration petition to enforce its right to interconnect with the rural LECs. *See* Exhibit
12 WPH-8 (Western Wireless Arbitration Petition). In its Response, the rural coalition, in
13 which SRT participated, never objected that the rural LECs were not required to negotiate
14 an agreement for direct interconnection under Section 251(a). *See* Exhibit WPH-9 (Rural
15 Coalition Response to Western Wireless Petition). I understand that the parties settled
16 their dispute, although the final agreement has not yet been filed with the Commission.

17 **Q: DID SRT EVER COMMENT ON LEVEL 3'S PROPOSED CONTRACT TERMS?**

18 A: No. During the negotiations period, SRT never produced draft contract terms or
19 commented on Level 3's proposed terms. Although SRT had ample opportunity to
20 propose contract language and raise any new or additional issues both during the
21 negotiations period and in its Response, it was not until October 28, 2002 that Level 3

⁴ This negotiation would incorporate only interconnection under Section 251(a) of the Act, which applies to all telecommunications carriers. Level 3 is not seeking to impose any obligations required of ILECs under Section 251(c) by challenging any "rural exemption" held by SRT under Section 251(f).

⁵ 47 U.S.C. § 252(b).

⁶ *Id.*

⁷ *Level 3 Communications, LLC Interconnection Arbitration Application*, Case No. PU-2065-02-465, Order (ND P.S.C. Nov. 20, 2002).

1 received proposed contract language from SRT (as part of the parties' information
2 exchange under Rule 69-02-10-18). Introducing contract language at this late date – well
3 after the 160 day period for negotiations has expired – is unfair, in bad faith, and
4 inconsistent with the Act and the Commission's rules. The Commission should
5 encourage carriers to follow the negotiation guidelines in the Act, rather than rewarding
6 SRT for refusing to negotiate by allowing the introduction of SRT's contract language at
7 this stage of the proceeding.

8 **Q: DO YOU KNOW WHY SRT IS WILLING TO NEGOTIATE DIRECT**
9 **INTERCONNECTION WITH WESTERN WIRELESS BUT REFUSES TO DO SO**
10 **WITH LEVEL 3?**

11 A: No. I can think of no principled distinction why SRT would negotiate direct
12 interconnection arrangements for the exchange of traffic with Western Wireless under
13 Section 251(a) but refuse to do so with Level 3. One principal difference between the
14 interconnection arrangements between Western Wireless and SRT, and the proposed
15 interconnection arrangements between Level 3 and SRT, is that CMRS carriers typically
16 originate more traffic than they terminate. As a result, SRT knew that traffic exchanged
17 between SRT and Western Wireless would result in reciprocal compensation payments
18 from Western Wireless to SRT.

19 It is worth noting that SRT's reciprocal compensation rates are \$0.023450 per
20 minute of use, or almost 2-1/2 cents per minute, which are more than 15 times higher
21 than the reciprocal compensation rate tariffed by Qwest in North Dakota (\$0.001475).
22 See Exhibit WPH-4 (Excerpts of CMRS Agreements). Thus, SRT obviously has a more
23 significant financial incentive to interconnect with Western Wireless than with Level 3,
24 but that does not excuse SRT from its legal requirement to interconnect with Level 3. In
25 fact, as Mr. Ducloo explains, the direct interconnection arrangements that SRT has
26 established with CMRS carriers appear to be consistent with what Level 3 seeks to
27 establish with SRT. Notwithstanding the fact that it both executed an agreement with

1 CMRS carriers and established direct interconnection arrangements with them without
2 waiving its rural exemption, SRT denies that Section 251(a) requires SRT to negotiate
3 with Level 3 and characterizes Level 3's request as a Section 251(c) request in disguise.⁸

4 On April 19, SRT stated in response to Level 3's request for interconnection that
5 it did not wish to meet with Level 3 and, instead, that Level 3 should contact the
6 company's consultant at John Staurulakis, Inc. ("JSI"). Soon after, a letter was sent from
7 SRT to Level 3 stating that SRT concurs in the position that JSI had identified in previous
8 correspondence between Level 3 and JSI (with respect to dealings between Level 3 and
9 other JSI clients) regarding similar Level 3 interconnection requests. Among other
10 things, the letter stated that JSI did not believe that Level 3's request to interconnect to
11 provide services to ISPs was valid, and that the FCC's rules do not allow requesting
12 carriers to obtain interconnection solely for the purpose of offering information services.
13 JSI added that it did not believe Level 3 would be operating as a CLEC. A conference
14 call was held on August 23, 2002 regarding the status of negotiations with SRT. By the
15 conclusion of the call, SRT had not changed its position. Mr. Gates provides more
16 detailed background on Level 3's continued efforts to contact SRT and seek resolution of
17 this dispute without resorting to arbitration.

18 **Q: IS JSI CORRECT THAT LEVEL 3 IS INTERCONNECTING SOLELY TO**
19 **PROVIDE INFORMATION SERVICES?**

20 **A:** No. Level 3 will provide a telecommunications service to information service providers.
21 Level 3 obtains local telephone numbers from the numbering administrator to provide
22 local services, and participates in number pooling and local number portability just as
23 other local exchange carriers do. We call our telecommunications service DID, SRT
24 calls its telecommunications service one-way inward dialing service. *See* Exhibit WPH-
25 10 (SRT Response to Level 3 Interrogatory No. 30). Both SRT and Level 3 have tariffed

⁸ SRT Response at 5-13.

1 these services in North Dakota. *See* Exhibit WPH-11 (Excerpts of Level 3’s NDPS Tariff
2 No. 1) and Exhibit WPH-12 (Excerpts of SRT’s General Exchange Tariff). Regardless of
3 the service name, the functions SRT provides to its ISP customers and the functions
4 Level 3 provides to its ISP customers are the same – the ability to receive incoming calls
5 from the ISP’s subscribers. Level 3 is no more an information service provider than SRT
6 is when it provides services to ISPs. There is an obvious conflict, as well, between SRT
7 and JSI over whether Level 3 is an information service provider. In fact, SRT’s argument
8 that Level 3’s service amounts to an interexchange service such that originating access
9 charges are due⁹ contradicts JSI’s assertion that Level 3 is offering an information
10 service.

11 **Q: DOES THE COMMISSION HAVE JURISDICTION TO DETERMINE THE**
12 **INTERCONNECTION ARRANGEMENTS BETWEEN SRT AND LEVEL 3?**

13 A: Yes. In short, the Act, the FCC’s rules and orders implementing the Act, and the court
14 decisions reviewing those FCC decisions are clear that state commissions have
15 jurisdiction over all interconnection arrangements among all telecommunications carriers.

16 Sections 251 and 252 of the Act govern interconnection, without limitation,
17 between telecommunications carriers. Section 251 imposes on *all* telecommunications
18 carriers a general duty to interconnect, and imposes additional obligations on certain
19 classes of service providers, such as LECs and incumbent LECs.¹⁰ Section 252 grants to
20 the state commissions the authority to approve or reject *all* interconnection agreements
21 and to mediate and arbitrate *all* interconnection disputes involving incumbent LECs.¹¹
22 Together, Sections 251 and 252 give the state commissions jurisdiction over all
23 interconnection-related disputes, regardless of the nature of the interconnection requested

⁹ SRT Response at 20.

¹⁰ 47 U.S.C. § 251.

¹¹ 47 U.S.C. § 252.

1 under Section 251, and regardless of the telecommunications services – intrastate,
2 interstate, or ISP-bound.

3 **Q: DOES THE FACT THAT LEVEL 3 PROPOSES TO EXCHANGE ONLY ISP-**
4 **BOUND TRAFFIC WITH SRT AFFECT THE COMMISSION’S JURISDICTION**
5 **TO DETERMINE THE PARTIES’ INTERCONNECTION ARRANGEMENTS?**

6 A: No. The FCC classified ISP-bound traffic as “interstate” and preempted state
7 commission authority over such traffic only for the limited purpose of intercarrier
8 compensation.¹² The FCC made clear that this classification, and the new intercarrier
9 compensation regime it adopted for ISP-bound traffic, does not disturb LECs’ other
10 obligations, including their interconnection obligations:

11 This interim regime affects **only the intercarrier compensation (i.e., the**
12 **rates) applicable to the delivery of ISP-bound traffic.** It does not alter
13 carriers’ other obligations under Part 51 rules, 47 C.F.R. Part 51, or
14 existing interconnection agreements, **such as obligations to transport**
15 **traffic to points of interconnection.**¹³

16 With this footnote, the FCC conclusively countered any suggestion that interconnection
17 obligations with respect to ISP-bound traffic – and specifically the “obligations to
18 transport traffic to points of interconnection” – would be affected in any respect by its
19 order. It thus specifically preserved this Commission’s jurisdiction to arbitrate
20 interconnection disputes concerning the exchange of ISP-bound traffic.

21 To the contrary, the FCC made clear that voice and ISP-bound traffic should be
22 accorded the same treatment. In the *ISP Order on Remand*, for example, the FCC stated
23 its “unwilling[ness] to take any action that results in the establishment of separate
24 intercarrier compensation rates, terms and conditions for local voice and ISP-bound

¹² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order (rel. Apr. 27, 2001) (“*ISP Order on Remand*”), at ¶ 78, n.149.

¹³ *Id.*(emphasis added).

1 traffic.”¹⁴ The FCC did this largely to prevent incumbent LECs such as SRT from
2 dictating terms on interconnecting carriers: “Because we are concerned about the
3 superior bargaining power of incumbent LECs, we will not allow them to ‘pick and
4 choose’ intercarrier compensation regimes, depending on the nature of the traffic
5 exchanged with another carrier.”¹⁵ SRT should not be permitted to impose more onerous
6 interconnection terms on Level 3 for the exchange of ISP-bound traffic by pretending that
7 such traffic is no longer subject to Commission jurisdiction or governed by federal
8 interconnection rules.

9 **Q: IS THE CHARACTERIZATION OF TRAFFIC AS “LOCAL” OR**
10 **“INTERSTATE” RELEVANT TO SRT’S INTERCONNECTION OBLIGATIONS**
11 **UNDER SECTION 251(a) OR THIS COMMISSION’S JURISDICTION TO**
12 **ARBITRATE THIS DISPUTE?**

13 A: No. First, the FCC has recognized that virtually all ISP-bound traffic is locally dialed.
14 That is, in order to call their local ISPs, customers make a local and not a long-distance
15 call. Second, SRT treats calls to ISPs as local for most regulatory purposes – it
16 characterizes the services it sells to ISPs as local exchange telecommunications services,
17 permits its customers to use basic local services for dial-up Internet access, and books
18 revenues from its sale of these services as intrastate revenues. SRT only classifies ISP-
19 bound traffic as subject to access charges when it wants to shift its financial obligations
20 onto competitors like Level 3. Third, even traditional voice traffic can be characterized
21 as “interstate” if a local calling area crosses state boundaries, so the “interstate”
22 characterization alone does not justify treating locally-dialed ISP-bound traffic differently
23 from locally-dialed voice traffic. Fourth, the FCC has exempted ISPs from the payment

¹⁴ *Id.* at 9196-97 (¶ 90).

¹⁵ *Id.* at 9196 (¶ 89).

1 of certain interstate access charges.¹⁶ ISPs are treated as end users for the purpose of
2 applying access charges and are, therefore, entitled to pay local business rates for their
3 connections to LEC central offices and the public switched telephone network.¹⁷ Finally,
4 the Supreme Court has already affirmed that state commissions have jurisdiction over
5 interstate matters under Sections 251 and 252. In addressing the interconnection
6 requirements set forth in Sections 251 and 252 of the Act, the FCC concluded as follows:

7 [I]n enacting sections 251, 252, and 253, Congress created a
8 regulatory system that differs significantly from the dual regulatory
9 system it established in the 1934 Act. That Act generally gave
10 jurisdiction over interstate matters to the FCC and over intrastate
11 matters to the states. The 1996 Act alters this framework, and
12 expands the applicability of both national rules to historically
13 intrastate issues, and state rules to historically interstate issues.

14
15 We view sections 251 and 252 as creating parallel jurisdiction for
16 the FCC and the states. These sections require the FCC to estab-
17 lish implementing rules to govern interconnection, resale of
18 services, access to unbundled network elements, and other matters,
19 and direct the states to follow the Act and those rules in arbitrating
20 and approving arbitrated agreements under sections 251 and 252 . .
21 .

22
23 Accordingly, we conclude that sections 251 and 252 address both
24 interstate and intrastate aspects of interconnection services and
25 access to unbundled elements.¹⁸

¹⁶ *MTS and WATS Market Structure*, CC Docket 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983) (“MTS/WATS Market Structure Order”).

¹⁷ *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Services Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (“ESP Exemption Order”).

¹⁸ *Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) (“Local Competition Order”), at ¶¶ 83, 85, 86.

1 The Supreme Court upheld the FCC's view that the 1996 Act upset entirely the
2 traditional notion of jurisdiction that rested on the interstate/intrastate distinction and
3 reinforced the notion that, in those situations identified by the Act and the FCC, it was
4 appropriate for state commissions to exercise jurisdiction over items that might, in some
5 way, implicate traffic that was jurisdictionally interstate.¹⁹

6 **Q: SRT HAS CLAIMED THAT IT MEETS ANY SECTION 251(a) OBLIGATION**
7 **TO EXCHANGE THIS ISP-BOUND TRAFFIC THROUGH ONE OF TWO**
8 **WAYS, EITHER BY SELLING LEVEL 3 RETAIL SERVICES (DIRECT**
9 **INTERCONNECTION) OR BY INTERCONNECTING INDIRECTLY WITH**
10 **LEVEL 3 THROUGH SRT'S CONNECTION TO THE PSTN. PLEASE**
11 **RESPOND.**

12 A: First, SRT provides Level 3 retail services as an *end user customer*. As Mr. Ducloo
13 explains, direct interconnection is an arrangement between two co-carriers, not a carrier
14 and an end user. The SRT retail services do not permit us to assign Level 3 telephone
15 numbers to our customers and they do not permit us to switch the traffic using our own
16 softswitch platform. Mr. Ducloo explains some of the technical and economic reasons
17 why Level 3 prefers to provide service by interconnecting with SRT as a co-carrier.
18 There are other important customer satisfaction reasons as well.

19 First, our customers want one-stop shopping. They want to be able to call Level 3
20 and know that Level 3 can provision a service or correct a problem without having to rely
21 on a third-party carrier, such as SRT. Our customers also want the advantages of Level
22 3's state-of-the-art IP network, which we cannot provide in its entirety unless the traffic
23 is switched by our softswitch platform and carried on our IP network. Finally, our
24 customers want specific numbers that follow the same pattern across the country. For
25 example, an ISP may wish to have the number NPA-NXX-4111 in every local calling

¹⁹ *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 378, 119 S.Ct. 721, 630 (1999).

1 area where it offers its customers dial-up access to the Internet. If Level 3 controls the
2 assignment of numbers, it can guarantee that its ISP customer gets the number it wants.
3 When a third-party carrier like SRT controls number assignment, this is not always
4 possible.

5 I would also note that because we would be picking up all of the traffic at SRT's
6 switch under our direct interconnection proposal, SRT would bear no more cost to
7 transport a call to Level 3 than it bears today under the retail service arrangement. By
8 contrast, if Level 3 cannot move traffic onto its own switching network and migrate away
9 from the PRI-based retail services being used today, it may become simply too expensive
10 to remain in this serving area at all – meaning that SRT would end up losing out on the
11 entire revenue stream associated with Level 3's presence in this market (whether as a
12 retail customer or co-carrier).

13 **Q: IS IT POSSIBLE FOR LEVEL 3 TO ESTABLISH AN INDIRECT**
14 **INTERCONNECTION ARRANGEMENT WITH SRT UNDER SECTION 251(a)**
15 **AND STILL MEET THESE NEEDS?**

16 **A:** While it is true that Level 3 exchanges traffic on a co-carrier basis with many
17 independent LECs through indirect interconnection arrangements, we approached SRT to
18 request direct interconnection for a number of reasons. First, given the volume of traffic
19 we expect to exchange with SRT, we thought it would be in both parties' best interest to
20 interconnect directly. As Mr. Ducloo explains, Level 3 typically tries to establish direct
21 interconnection once a threshold of one DS1's worth of traffic is reached for three
22 consecutive months.

23 Second, we assumed that SRT would prefer to interconnect directly with Level 3
24 because of the fact that SRT and Qwest do not share a common EAS area and because
25 there is a great distance between SRT's and Qwest's switches. In short, if we
26 interconnect indirectly with SRT through Qwest, then SRT, as the originating carrier,
27 would be responsible for transporting traffic originated by its customers over its trunks to

1 the Qwest tandem and may be required to pay Qwest transit charges for switching the
2 traffic from SRT to Level 3. In our experience, most independent LECs prefer to avoid
3 this expense of indirect interconnection and would prefer that Level 3 pick up their
4 originating traffic in the independent LEC's incumbent serving area. Likewise, I would
5 think that SRT might prefer direct interconnection because this would avoid the potential
6 that any transit provider might look to SRT as an originating carrier for transit charge
7 reimbursement. I would note, however, that if SRT prefers to exchange traffic with
8 Level 3 through indirect interconnection, Level 3 is willing to do so in a mutually agreed
9 upon manner. However, we still believe that an interconnection agreement is necessary
10 to govern such indirect interconnection arrangements.

11 **Q: WHY IS AN AGREEMENT STILL NECESSARY IF THE PARTIES ARE NOT**
12 **DIRECTLY INTERCONNECTED?**

13 A: Interconnection and traffic exchange agreements include not only the arrangements for
14 physical interconnection (direct or indirect), but other terms and conditions that are
15 important to ensure the smooth exchange of traffic between the parties' end users. For
16 instance, Level 3's proposed agreement addresses network planning and management,
17 contacts and escalation procedures, dispute resolution, and other matters integral to
18 maintaining efficient traffic exchange between the parties. It would be both fair and
19 efficient for the parties to enter into an agreement including these terms, regardless of
20 whether the parties ultimately decide to establish direct or indirect interconnection.

21 **Q: HAS LEVEL 3 BEEN SUCCESSFUL NEGOTIATING INTERCONNECTION**
22 **ARRANGEMENTS WITH OTHER INDEPENDENT LECs?**

23 A: Yes. In sharp contrast to SRT's approach to this issue, other independent LECs such as
24 ALLTEL, Citizens, Commonwealth, TXU/Fort Bend Telephone, Chillicothe Telephone,
25 and Valor have worked with Level 3 to establish mutually agreeable interconnection
26 arrangements. There may have been good faith differences of opinion between Level 3
27 and these other independent LECs during the negotiation process, but in each case the

1 parties were able to resolve their differences and complete an interconnection agreement
2 without resorting to arbitration before a state commission

3 **Q: IS THERE ANY ASPECT OF THIS DISPUTE OVER WHICH THE**
4 **COMMISSION DOES NOT HAVE JURISDICTION?**

5 A: Yes. The Commission lacks jurisdiction to determine the intercarrier compensation
6 arrangements that apply to the exchange of ISP-bound traffic.

7 **Q: IS LEVEL 3 REQUESTING PAYMENT OF RECIPROCAL OR OTHER**
8 **INTERCARRIER COMPENSATION FROM SRT UNDER SECTION 251(b)(5)?**

9 A: No. Level 3 is not requesting payment of reciprocal compensation under Section
10 251(b)(5), or payment of any other terminating intercarrier compensation by SRT. Level
11 3 recognizes that the FCC's *ISP Order on Remand* resolves the question of whether SRT
12 must pay terminating compensation to Level 3 for ISP-bound calls. Specifically, because
13 the parties did not exchange any ISP-bound traffic during the first quarter of 2001, this
14 represents a "new market" for Level 3 such that it cannot seek compensation from SRT
15 for completing calls placed by SRT customers. Level 3 recognizes that the FCC's *ISP*
16 *Order on Remand* establishes a "bill-and-keep" compensation mechanism for this traffic.

17 **Q: HOW HAS THE FCC DEFINED "BILL-AND-KEEP" FOR PURPOSES OF THIS**
18 **INTERCARRIER COMPENSATION REGIME THAT IS SPECIFIC TO ISP-**
19 **BOUND TRAFFIC?**

20 A: In its *ISP Order on Remand*, the FCC defined bill and keep as:

21 an arrangement in which neither of two interconnecting networks charges
22 the other for terminating traffic that originates on the other network.
23 Instead, each network recovers from its own end-users the cost of both
24 originating traffic that it delivers to the other network and terminating
25 traffic that it receives from the other network.²⁰

²⁰ *ISP Order on Remand* at n.6.

1 Under this ruling, SRT is not permitted to charge Level 3 for originating access in
2 connection with the exchange of ISP-bound traffic.

3 **Q: DOES THIS COMMISSION HAVE JURISDICTION TO ALTER THE BILL-
4 AND-KEEP ARRANGEMENT ORDERED BY THE FCC?**

5 A: No. The FCC specifically preempted state commissions from determining intercarrier
6 compensation for ISP-bound traffic.²¹

7 **Q: PLEASE SUMMARIZE YOUR RECOMMENDATION ON THESE ISSUES:**

8 A: The Commission should find that SRT must offer Level 3 interconnection on the same
9 terms and conditions that SRT offers interconnection to other carriers providing services
10 in SRT's local exchanges, including neighboring LECs with whom SRT shares an EAS
11 area and CMRS carriers. As such, the Commission should order SRT to establish direct
12 interconnect with Level 3. Because SRT refused to negotiate or propose contract
13 language during the negotiations period, and failed to include contract language in its
14 Response to our arbitration petition, the Commission should also adopt Level 3's
15 proposed contract language to govern the parties' interconnection and exchange of traffic.
16 Finally, the Commission should find that it lacks jurisdiction over intercarrier
17 compensation for the exchange of ISP-bound traffic and order that the parties apply the
18 FCC-ordered bill and keep regime.

19
20 **CLASSIFICATION OF AND INTERCARRIER ARRANGEMENTS FOR FX AND FX-
21 LIKE SERVICES**

22 **Issue 3: Are Level 3's proposed services exchange services that are subject to negotiated
23 transport and termination arrangements or are they interexchange services subject to
24 access charges?**

25 **Issue 4: For calls to NXX numbers assigned to the same local calling area, are the
26 interconnection, intercarrier compensation, and local service customer billing**

²¹ *Id.* at ¶ 78, n.149.

1 requirements different based on whether the call terminates within the original local
2 calling area or terminates outside of that local calling area.

3 **Q: PLEASE EXPLAIN THE DISPUTE UNDER ISSUE 3.**

4 A: Issue 3 is a dispute between the parties over the classification of a service that permits a
5 customer of carrier A to place a local call to a customer of carrier B if B's customer does
6 not maintain a physical presence in the rate center with which the customer's telephone
7 number is associated. This is, in short, a dispute over the proper intercarrier
8 compensation arrangements for what has been called at times "Foreign Exchange" traffic
9 or "Foreign Exchange-like" traffic or "Virtual NXX" traffic.

10 Level 3's position is that, for several legal, policy, economic, and network-related
11 reasons, the originating carrier is not entitled to originating access with respect to these
12 calls. SRT's position is that when Level 3 provides the FX-like service, these calls are
13 interexchange in nature such that originating access charges are due. However, SRT
14 takes the contradictory and discriminatory position that when SRT provides the FX-like
15 service, the originating carrier is not entitled to collect originating access charges from
16 SRT. *See* Exhibit WPH-13 (SRT Response to Level 3 Interrogatory No. 36). Moreover,
17 SRT's position gives SRT an unfair advantage in providing service to ISPs.

18 **Q: HOW DOES ISSUE 4 RELATE TO ISSUE 3?**

19 A: Issue 4 goes beyond the classification question to address not only the proper intercarrier
20 compensation for FX and FX-like traffic, but also interconnection arrangements for the
21 exchange of this type of traffic and customer billing requirements associated with this
22 type of traffic. Level 3's position is that the interconnection arrangements and customer
23 billing requirements for FX and FX-like traffic are the same as those that apply to all
24 other locally-dialed traffic. This is consistent with historical industry practice and the
25 manner in which SRT treats this traffic today.

26 **Q: PLEASE SUMMARIZE YOUR RECOMMENDATION ON THESE ISSUES.**

27 A: SRT's position should be rejected for at least five reasons.

1 *First*, SRT’s position discriminates against Level 3 vis-à-vis SRT’s own
2 operations and its treatment of other LECs. Applying originating access charges to
3 CLEC-delivered competitive responses to ILEC foreign exchange services would be
4 discriminatory and result in a regulatory-created competitive advantage for ILEC
5 provision of such services.

6 *Second*, from a functional perspective, the services that Level 3 would deliver to
7 ISPs in the SRT serving area are no different than those that ILECs have delivered for
8 years to their own foreign exchange customers, and are no different than other
9 comparable ISP-targeted services that many ILECs market today. While the network
10 architecture may be different and the scope of the service coverage wider, the
11 functionality delivered from the customer’s perspective is no different at all – the
12 customer gets a telephone number in a serving area where the customer has no physical
13 presence. The Commission should encourage, rather than discourage, this type of
14 technological innovation.

15 *Third*, SRT’s position that originating access charges apply is prohibited by
16 federal law. The FCC has found that in circumstances such as these – where a CLEC and
17 ILEC have not exchanged traffic prior to the effective date of the *ISP Order on Remand* –
18 the appropriate compensation mechanism for ISP-bound traffic is bill-and-keep.

19 *Fourth*, SRT’s position is contrary to the efficient workings of a competitive
20 telecommunications marketplace. As Mr. Gates explains, SRT’s position would penalize
21 competitors for deploying different kinds of networks, and imposes unnecessary costs
22 that will frustrate the delivery of competitive services.

23 *Fifth*, as Mr. Gates discusses, SRT’s claim that originating access charges are
24 needed is contradicted by the fact that it will incur no more cost in originating a call to a
25 Level 3 customer using a foreign exchange-type telephone number than SRT would incur
26 in originating a call to a similarly situated customer of another LEC, or to a Level 3
27 customer who has a physical presence in the rate center in question. SRT’s position is

1 based not upon cost recovery needs, but upon a desire to claim access revenue to which it
2 is not entitled.

3 **Q: PLEASE PROVIDE AN EXAMPLE OF HOW SRT'S POSITION GIVES IT AN**
4 **UNFAIR COMPETITIVE ADVANTAGE.**

5 A: First I need to provide some background on the rights of ISPs. Enhanced service
6 providers ("ESPs"), of which ISPs are a subset, often purchase local services from LECs.
7 Pursuant to federal rules, LECs are prohibited from imposing interstate access charges on
8 ESPs.²²

9 SRT has admitted in discovery that it has two ISP customers (including an ISP
10 that is affiliated with SRT) to whom it provides a local one-way inward dial service. *See*
11 Exhibit WPH-10 and WPH-14 (SRT Responses to Level 3 Interrogatory Nos. 30 & 31,
12 respectively). Because Level 3 purchases services from SRT as an end user, SRT also
13 serves Level 3 as an ISP customer (hereafter, I'll refer to this customer as Level 3-ISP to
14 distinguish it from Level 3 as a co-carrier). Furthermore, SRT provides Level 3-ISP an
15 FX-like service that permits end users in SRT's local calling area to place a local call to
16 reach the Level 3-ISP numbers. SRT does not charge Level 3-ISP originating access
17 charges. That is, Level 3-ISP does not pay SRT for originating switching or any other
18 originating access charge. However, if Level 3-ISP wants to switch its service to Level 3,
19 SRT would impose originating access charges on Level 3. This puts Level 3 at a
20 competitive disadvantage in serving ISPs in SRT's local markets.

21 If the Commission adopts SRT's language, it would permit SRT to impose
22 originating access charges on Level 3 that SRT is prohibited from imposing on ISPs. In
23 other words, when both the calling party and the called ISP are SRT customers, SRT

²² See *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC2d 682, 711 (1983); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631, 2633 (1988); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16133 (1997).

1 follows the “local model” which assumes that SRT recovers the costs of delivering that
2 traffic from its end user over the SRT network to the called party through SRT’s local
3 service rates. But if that same ISP switches its service to Level 3, and that same SRT end
4 user wants to dial that ISP, SRT proposes to follow the “access model” and charge Level
5 3 for SRT’s origination costs. By imposing costs on Level 3 that SRT may not impose on
6 the SRT ISP customers, SRT gains a competitive and economic advantage in providing
7 local dial-up Internet services.

8 SRT appears to believe that because another carrier (Level 3) is inserted between
9 SRT and the ISP, SRT may ignore the FCC’s ESP exemption. SRT is wrong. This
10 shows that SRT is seeking to gain an unfair advantage against its direct competitor –
11 Level 3. While SRT is willing to sell Level 3 its retail FX-like service, SRT is not
12 willing to let Level 3 compete on a level playing field in providing FX-like services as
13 a competitor to SRT.

14 **Q: PLEASE PROVIDE AN EXAMPLE THAT SHOWS WHY SRT’S POSITION IS**
15 **DISCRIMINATORY.**

16 A: SRT’s position is discriminatory as between carriers. Based on my experience in the
17 industry, I believe it is likely that NDTC and TMC serve ISPs and provide FX services.
18 To my knowledge, LECs like SRT do not set up separate networks to handle ISP-bound
19 or FX calls from their customers to other independent LECs – rather, SRT would route
20 these calls destined for NDTC’s and TMC’s ISP customers, and their FX customers, over
21 the same trunks that are used to handle any call originated by SRT’s end-user customers.
22 As SRT has admitted, it exchanges *all* traffic with NDTC and TMC on a bill-and-keep
23 basis. *See* Exhibit WPH-6 (SRT Response to Level 3 Interrogatory No. 16). Yet it
24 refuses to do the same for Level 3. Even more disturbing, as between Level 3 and SRT,
25 SRT demands originating access charges from SRT for calls to Level 3’s FX-like
26 customers but contends that SRT will not pay Level 3 originating access charges for calls

1 to SRT's FX customers. *See* Exhibit WPH-13 (SRT Response to Level 3 Interrogatory
2 No. 36).

3 To my knowledge, SRT does not assess originating compensation on similarly
4 situated calls to ILEC FX or FX-like customers. Consider the example of a SRT
5 customer located in the Sawyer Exchange in North Dakota. The Sawyer Exchange shares
6 a local calling area with the Velva Exchange, which is a NDTC rate center. Thus,
7 customers in Sawyer and Velva Exchanges can call each other locally, even though they
8 are served by two different telephone companies. Now assume that there is an ISP
9 located somewhere else in NDTC's region outside of the Velva Exchange, and that the
10 ISP wants a telephone number associated with the Velva Exchange. That ISP goes to
11 NDTC, and decides to purchase NDTC's FX service.

12 In this example, the ISP would buy the service from NDTC and obtain a remote
13 presence in the Velva Exchange even though the ISP's equipment (its "POP") might be
14 located outside of the Velva Exchange, say for example in the Harvey Exchange. Thus,
15 NDTC assigns a telephone number to the ISP for the Velva Exchange. Unless SRT asks
16 NDTC each month (or each day, for that matter) for a list showing which telephone
17 numbers are assigned to customers physically located in the Velva Exchange, SRT will
18 have no way of knowing that the NDTC ISP's Velva telephone number is actually routed
19 back to Harvey – a call that may otherwise be rated as toll to an SRT customer in Sawyer.
20 SRT would just send the calls to that ISP's Velva telephone number over the same trunks
21 used to route all other calls to Velva, and it would not know to charge NDTC something
22 different for that particular call.

23 In short, even though SRT may handle its own calls to its own ISP customers as
24 local, and even though SRT may handle ISP-bound calls exchanged with neighboring
25 LECs as local (or EAS), SRT is demanding that Level 3 set up a separate, more
26 expensive interconnection architecture (as an IXC) and pay SRT originating access
27 charges to handle traffic destined for Level 3-served ISPs. The point is that, unless SRT

1 is making such demands on other carriers with whom it exchanges locally-dialed traffic
2 to show where their customers are located on a number-by-number basis and then
3 imposing originating access charges on each locally-dialed call to “virtual” or FX
4 telephone numbers, it should not be permitted to assess such charges on Level 3. Such
5 discrimination is prohibited by law.²³

6 **Q: IS IT APPROPRIATE TO TREAT LEVEL 3 DIFFERENTLY GIVEN THAT**
7 **LEVEL 3 WILL BE SERVING ONLY ISPs UNDER THIS AGREEMENT?**

8 A: Not at all. While it is true that Level 3’s initial customers will be ISPs, that doesn’t mean
9 that the exchange of traffic should be subject to different terms and conditions than would
10 apply to the exchange of local traffic. (The exception, of course, is intercarrier
11 compensation rates, the one area in which the FCC expressly required a different set of
12 rules.) In fact, when you consider how SRT might handle traffic on its own network, or
13 the exchange of ISP-bound traffic with other carriers, it becomes clear that SRT’s
14 position penalizes Level 3 just because Level 3 only happens to serve ISPs. SRT’s
15 neighboring LECs, and perhaps even other CMRS competitors who provide both dialtone
16 and ISP-oriented services, all could use their local facilities under their local
17 interconnection agreement to exchange all locally-dialed traffic (ISP-bound or otherwise)
18 with SRT. Furthermore, SRT could continue to use its own local facilities to handle
19 traffic destined for its own ISP customers. But SRT would deny Level 3 a local
20 interconnection agreement because of the ISP-bound nature of its traffic. The
21 Commission should not sanction a regime under which SRT could grant itself or other
22 carriers a preference in the exchange of traffic.

23 **Q: HAS THE COMMISSION ADDRESSED THE ISSUE OF CLASSIFYING SO-**
24 **CALLED VIRTUAL NXX OR FX-LIKE SERVICES BEFORE?**

25 A: No, not to my knowledge.

²³ See e.g., 47 U.S.C. §§ 201(a)-(b) and 252(a).

1 **Q: HAVE OTHER STATES ADDRESSED THE QUESTION OF WHETHER CLEC**
2 **VIRTUAL NXX AND OTHER FOREIGN EXCHANGE-LIKE SERVICES ARE A**
3 **FUNCTIONAL EQUIVALENT TO ILEC FOREIGN EXCHANGE SERVICES?**

4 A: Yes. Mr. Gates discusses some of these decisions and Level 3 will address others in its
5 brief. A notable decision was in Texas, however, in which a number of CLEC brought
6 complaints against SWBT which were consolidated in Docket No. 24015.²⁴ The Texas
7 Commission was asked to consider how “FX type traffic” should be classified for
8 intercarrier compensation purposes and how a carrier should be compensated for
9 terminating FX type traffic originated by another carrier. Like the New York Public
10 Service-Commission²⁵ and most recently the Wisconsin Public Service Commission (*see*
11 Exhibit WPH-15 (Level 3/CenturyTel-WI Arbitration Award)),²⁶ the Texas arbitrators
12 found that “[f]rom the perspective of FX customers, ILEC-provided FX service and
13 CLEC-provided FX-type service serve the same intended purpose . . . While the
14 Arbitrators recognize that FX and FX-type services are provisioned differently, due to
15 differences between ILEC and CLEC network architectures and local calling scopes, the
16 Arbitrators are not persuaded that the differences in provisioning methods should
17 mandate different classification and/or compensation.”²⁷ The Arbitrators further found
18 that “in reviewing the historical treatment of FX service by and between ILECs, FX

²⁴ *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for “FX-Type” Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015, Revised Arbitration Award (Tex. P.U.C. Aug. 28, 2002) (“*Texas Order*”).

²⁵ *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies*, Case 00-C-0789, Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates, at 4 (N.Y.P.S.C. Sept. 7, 2001) (“*New York Order*”).

²⁶ *In the Matter of Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms and Conditions With CenturyTel of Wisconsin*, Docket 05-MA-130, Arbitration Award (WI P.S.C. Dec. 2, 2002).

²⁷ *Texas Order* at 30.

1 service has been treated like exchange service.”²⁸ The Arbitrators concluded that all ISP-
2 bound traffic, “whether provisioned via an FX/FX-type arrangement or not, is subject to
3 the compensation mechanism contained in the FCC’s ISP Remand Order.”²⁹ The
4 Arbitrators therefore found that, despite SWBT’s claims that access charges should be
5 payable on all FX-type traffic, the question of what compensation was due to the ILEC
6 had been settled by the FCC’s *ISP Order on Remand*, and that the decision with respect
7 to what compensation was due in the exchange of FX-type traffic would be limited to the
8 question of “non ISP-bound traffic.”³⁰ The Texas Arbitrators then found that non ISP-
9 bound FX-type traffic should also be exchanged on a “bill and keep” basis because that
10 was how ILECs had historically handled local and EAS calls – including FX calls –
11 exchanged between their networks.³¹

12 From a policy perspective, the fact that state commissions throughout the United
13 States have reached the conclusion that ILECs and CLECs are offering a functionally
14 equivalent foreign exchange-type service, coupled with the fact that ILECs in North
15 Dakota offer foreign exchange services and FX-like services today without having them
16 considered interexchange in nature, should lead the Commission to reject the position
17 that similar services provided by CLECs are interexchange in nature.

18 **Q: “VIRTUAL NXX” IS TYPICALLY REFERRED TO IN THE INDUSTRY AS A**
19 **PRACTICE WHEREBY A CARRIER ASSIGNS TELEPHONE NUMBERS**
20 **FROM A BLOCK OF NPA-NXX CODES TO ITS CUSTOMERS THAT ARE**
21 **NOT LOCATED WITHIN A GEOGRAPHIC AREA OF THE RATE CENTER**
22 **ASSOCIATED WITH THE NPA-NXX. DO YOU AGREE?**

²⁸ *Id.* at 36.

²⁹ *Id.* at 30-31.

³⁰ *Id.* at 31.

³¹ *Id.* at 57-58.

1 A: I agree in part. As an initial matter, I am not aware of an industry-standard definition of
2 “Virtual NXX.” Nor am I aware of a carrier who specifically offers any product called
3 “Virtual NXX.” The term “Virtual NXX” typically comes up in regulatory proceedings
4 where carriers are battling over how a CLEC might assign telephone numbers to certain
5 customers and the implications of those assignments for interconnection and intercarrier
6 compensation. Thus, the definition becomes a contested matter.

7 SRT makes it sound as if a “Virtual NXX” practice is something that only CLECs
8 do – that only a CLEC would devise a plan to assign a telephone number to a customer
9 who is not physically located in the rate center with which the telephone number is
10 associated.³² ILECs have been doing this for years in response to customer demand.
11 Traditionally, this was called foreign exchange service, and it gave the customers the
12 *exact* functionality as Virtual NXX. For example, a florist located 30 miles away might
13 obtain a foreign exchange telephone number in Minot to take local calls from Minot-
14 based customers. From the customer’s perspective, how the carrier provisions the service
15 is irrelevant; all that matters to the customer is that the customer receives a telephone
16 number where he or she does not have a physical presence.

17 **Q: PLEASE DISCUSS WHY THE KIND OF FOREIGN EXCHANGE-TYPE**
18 **SERVICE THAT LEVEL 3 MAY PROVIDE TO SOME ISPs IS A FUNCTIONAL**
19 **EQUIVALENT TO ILEC-PROVIDED SERVICES.**

20 A: Mr. Gates will cover this in more detail, with a comparison of ILEC services and CLEC
21 services. However, at a high level, one should think about this from the customer’s
22 perspective. The fact is that a customer purchasing a service called “foreign exchange”
23 from an ILEC (or, say, Wholesale Dial for Qwest-served ISPs) is receiving the same
24 service benefit that it would be receiving from Level 3’s service – the ability to obtain a

³² SRT Response at 14.

1 telephone number and a local dialing presence in a location where the customer does not
2 have a physical presence.

3 **Q: HOW DO YOU RESPOND TO THE CLAIM THAT LEVEL 3'S SERVICE IS**
4 **DIFFERENT FROM TRADITIONAL FX IN THAT THE LATTER IS**
5 **TYPICALLY OFFERED AS A RETAIL SERVICE OFFERING WITH A**
6 **DEDICATED CONNECTION TO THE CALLED PARTY?**

7 A: This comparison is based on a misunderstanding of the service in question and the nature
8 of a call flow in a competitive, multi-provider environment. First, Level 3's service is a
9 "retail service offering" offered to ISPs, which have long been treated as end user
10 customers by the FCC. Those ISPs will purchase local telecommunications connectivity
11 to the PSTN. Second, Level 3's service offers a "direct connection" to the ISP – the call
12 is delivered to the customer once it comes onto the Level 3 network, without going
13 through any intermediate carrier. While it is true that Level 3 and SRT are both involved
14 in routing the call between their customers, that is not a function of the way in which
15 Level 3 proposes to provide service – rather, such multi-provider routing is going to be
16 the product of *any* competitive telecommunications marketplace. Any call from a SRT
17 customer to a Level 3 customer – even if both customers were physically located in the
18 same local calling area – would require that SRT and Level 3 both be involved.

19 Likewise, any focus on a "dedicated circuit" from the "home exchange" to the
20 "foreign exchange" proceeds from the inappropriate premise that if CLECs want to
21 provide comparable services to ILECs, they have to build their networks and charge their
22 customers in the same exact way the ILECs do. Adopting SRT's proposal would
23 certainly discourage innovation and punish efficiency. New entrants design networks
24 differently, but that doesn't necessarily change the basic functionality delivered to
25 customers. The Commission should avoid SRT's suggestion to treat a foreign exchange-
26 like service – the assignment of telephone numbers to a customer who is not physically
27 located in the exchange to which the telephone number is assigned – differently based

1 upon the way in which a carrier's technology and/or network supports that service. It
2 would be discriminatory to prohibit a service based solely upon the way in which a
3 carrier provisions that service to its customers. I would instead encourage this
4 Commission to focus not on "call completion [sic] technology," but rather on technology-
5 neutral regulations that consider the functionality delivered to consumers.³³

6 The New York Public Service Commission summarized this well in considering
7 disputes between independent ILECs and CLECs with respect to ISP-bound foreign
8 exchange-type calls. Specifically, the New York commission found that foreign
9 exchange service should be defined "operationally, i.e, making local service possible in
10 an exchange where the customer has no physical presence."³⁴ The New York
11 commission further noted that an operational focus was more appropriate than a
12 technological focus because "the architecture of new entrant networks will differ from
13 that of incumbents and . . . CLECs need not replicate the incumbent's service offerings,
14 rate centers, or customer mix."³⁵

15 **Q: IF LEVEL 3 ASSIGNS THE TELEPHONE NUMBERS ASSOCIATED WITH**
16 **THE SRT LOCAL CALLING AREA TO ISPs, USING MODEM BANKS IN**
17 **DENVER, SHOULD THE COMMISSION BE CONCERNED ABOUT THAT**
18 **KIND OF "MORE DISTANT" FOREIGN EXCHANGE SERVICE?**

19 **A:** No. As a preliminary matter, Level 3's intention is to provide solutions for its customers
20 that leverage the technological efficiencies of its network. In large part because of the
21 nature of IP transport, customer location is less important than it might be in a circuit
22 switched environment. Moreover, one should recall that the traffic in question would be

³³ *New York Order* at 4.

³⁴ *Id.*

³⁵ *Id.*

1 ISP-bound in assessing the jurisdiction and appropriate intercarrier compensation
2 mechanism for the exchange of this foreign exchange-type traffic.

3 In addition to the economic and efficiency reasons spelled out in the testimony of
4 Timothy J Gates on behalf of Level 3, there are at least two regulatory policy reasons that
5 the physical location of the customer does not matter.

6 **Q: WHAT IS THE FIRST ISSUE TO CONSIDER WITH RESPECT TO THE**
7 **CUSTOMER'S PHYSICAL LOCATION?**

8 A: First, one must consider that *all* of Level 3's customers are ISPs. The FCC has confirmed
9 on several occasions – most recently in April 2001 – that it considers ISP-bound traffic to
10 be interstate in nature.³⁶ Therefore, the physical presence of an ISP should not matter in
11 determining the intercarrier compensation mechanism that applies to an ISP-bound call.
12 Indeed, in justifying the interstate jurisdiction of ISP-bound traffic, the FCC explicitly
13 stated that it would be perplexing to consider the jurisdiction of ISP-bound traffic based
14 upon the location of the modem banks. Specifically, the FCC acknowledged that “[m]ost
15 Internet-bound traffic traveling between a LEC’s subscriber and an ISP is indisputably
16 interstate in nature when viewed on an end-to-end basis. . . . The ‘communication’ taking
17 place is between the dial-up customer and the global computer network of web content,
18 e-mail authors, game room participants, databases, or bulletin board-contributors.
19 *Consumers would be perplexed to learn regulators believe they are communicating with*
20 *ISP modems, rather than the buddies on their e-mail lists.*”³⁷ This is something that can
21 be addressed in more detail in Level 3’s briefs, with citations to and discussions of the
22 state commission decisions that have found that the FCC’s decision settles this issue with
23 respect to ISP-bound virtual NXX traffic.

³⁶ *ISP Order on Remand* at ¶¶ 58 and 59.

³⁷ *Id.* (emphasis added).

1 It is particularly interesting to witness the evolution of ILEC arguments about
2 ISP-bound traffic. For years, in order to avoid paying reciprocal compensation, the
3 ILECs argued that a call to an ISP does not terminate in the local calling area. Having
4 prevailed in their efforts to have the FCC adopt this argument, the ILECs now turn
5 around and argue that despite its interstate nature, in order to avoid paying access charges
6 to the carrier serving the originating caller, an ISP-bound call *must* terminate to modem
7 banks located in the same rate center where the telephone number is assigned. In other
8 words, for the past several years, the ILECs have said that location of the modem banks
9 did not matter, but now they argue that the location of the modem banks is all that
10 matters. If the call is interstate in nature, where the ISP falls on this continuum should
11 not matter at all. This is particularly true since the ISP's location has no effect on what
12 Level 3 and SRT pay one another. Under FCC rules, the exchange of ISP-bound traffic
13 between independent ILECs like SRT and CLECs like Level 3 is subject to a bill-and-
14 keep compensation arrangement for intercarrier compensation purposes. Under these
15 rules, SRT is not entitled to originating access with respect to ISP-bound traffic, nor is
16 Level 3 entitled to any terminating compensation from SRT.

17 **Q: WHAT IS THE SECOND ISSUE TO CONSIDER IN LOOKING AT THE ISP'S**
18 **PHYSICAL LOCATION?**

19 A: The second factor to consider is that the fundamental nature of the dispute does not
20 change at all based upon how far away or how close to the SRT exchange area the ISPs'
21 modem banks are located. SRT's claim has always been that *any* FX-type service in its
22 exchange area is subject to access charges, even if all of the ISP customers physically
23 were located in downtown Bismarck. By SRT's own reasoning, the presence of the ISP
24 one foot over the SRT exchange area boundary or 150 miles away is immaterial to an
25 analysis of whether the service in question is lawful.

26 **Q: SRT ARGUES THAT LEVEL 3 IS SEEKING TO ESTABLISH VNXX CODES IN**
27 **ORDER TO PROVIDE A MEANS OF RECEIVING TOLL-FREE**

1 **INTEREXCHANGE CALLS FROM A WIDE GEOGRAPHIC AREA. HOW DO**
2 **YOU RESPOND?**

3 A: Despite SRT's assertions, Level 3's "primary purpose" in obtaining telephone numbers
4 and interconnection with SRT is not to deny access charges or toll revenue to SRT where
5 such payments are required.³⁸ As a preliminary matter, in terms of lost toll revenue and
6 access charges, one must consider how unlikely it would be that customers would choose
7 to dial a toll call to connect to the Internet. It is not as if by Level 3's mere presence in
8 the market, customer dialing patterns to the Internet will shift from toll to local, thereby
9 depriving SRT of toll calling revenues it would otherwise have obtained. Indeed, I
10 believe that SRT is probably concerned about end user customers leaving its ISP affiliate
11 when Level 3 begins to offer competitive services to ISPs. SRT's ISP affiliate is, of
12 course, an unregulated entity that does not (and should not) figure into any calculation of
13 SRT's regulated revenue requirements.

14 Level 3's "primary purpose" is to serve ISP customers, who for practical reasons
15 require a local calling presence to serve their own customers. If the ISP is not physically
16 located where the telephone number is, this is no different than the FX services that
17 ILECs developed in response to customer demands. Level 3 is asking that SRT
18 interconnect like it would in the case of any other CLEC (or neighboring ILEC, for that
19 matter) for the purposes of exchanging locally dialed calls between customers, including
20 FX and FX-like traffic.

21 Thus, so-called "Virtual NXX" number assignment is not some kind of nefarious
22 CLEC scheme, as SRT implies.³⁹ It is the same service functionality that ILECs deliver
23 to their own FX customers – albeit through what may be different technologies and
24 network platforms – to respond to customer demand for local telephone numbers in

³⁸ SRT Response at 13.

³⁹ SRT Response at 14-16.

1 different exchanges. If the Commission is going to direct Level 3 to pay originating
2 access to SRT for terminating foreign exchange calls from SRT's customers, then the
3 Commission must direct all carriers, ILECs and CLECs alike, to pay originating access to
4 the carrier whose customer originates the call to the terminating carrier's foreign
5 exchange customer.⁴⁰ In other words, the Commission must ensure that SRT does not
6 engage in any discriminatory, unfair, or anti-competitive practices.

7 **Q: YOU MENTIONED THAT SRT'S ATTEMPT TO CHARGE LEVEL 3 FOR**
8 **TRAFFIC ORIGINATING ON SRT'S NETWORKS IS PROHIBITED BY**
9 **FEDERAL LAW. COULD YOU EXPLAIN WHY SUCH CHARGES ARE**
10 **IMPROPER?**

11 A: Yes. In an effort to collect access charges, SRT has tried to turn this into an intercarrier
12 compensation dispute by demanding originating compensation.⁴¹ However, the *ISP*
13 *Order on Remand* makes clear that SRT is not entitled to originating compensation. And
14 the FCC explicitly prohibits carriers from charging for origination. FCC Rule 51.703(b)
15 states unequivocally that "[a] LEC may not assess charges on any other
16 telecommunications carrier for telecommunications traffic that originates on the LEC's
17 network."⁴²

18 **Q: WILL SRT'S REGULATED LEC OPERATIONS BE HARMED FINANCIALLY**
19 **IF IT IS NOT PERMITTED TO COLLECT ACCESS CHARGES ON LEVEL 3'S**
20 **ISP-BOUND TRAFFIC?**

21 A: No. As Mr. Gates explains, if Level 3 does not provide its FX-like service to its ISP
22 customers, the most likely result will be either that individual end users purchase Internet

⁴⁰ See 47 U.S.C. §§ 201(a)-(b) and 252(a).

⁴¹ SRT Response at 20.

⁴² 47 C.F.R. § 51.703(b).

1 access from SRT, or that they forego Internet access altogether. In neither case will SRT
2 receive originating access charges for this traffic.

3 **Q: WHAT IS YOUR RECOMMENDATION WITH RESPECT TO ISSUES 3 AND 4?**

4 A: My recommendation is that the Commission rule that originating access charges do not
5 apply to the exchange of ISP-bound traffic between SRT and Level 3, even where the ISP
6 does not have its modem banks physically located in the rate center to which the
7 telephone number is assigned. As discussed above, and/or in Mr. Gates' testimony, this
8 conclusion is consistent with: (i) the way in which ILECs have historically handled their
9 own exchange of comparable foreign exchange and foreign exchange-type traffic, (ii)
10 federal law with respect to intercarrier compensation for ISP-bound traffic, (iii) the goal
11 of promoting a competitive telecommunications marketplace, and (iv) the goal of a fair
12 and reasonable interconnection structure where carriers are compensated only to the
13 extent they incur some additional cost because of the interconnection. For these reasons,
14 like the other state commissions that have considered this specific question, the
15 Commission should find that *intercarrier compensation* for ISP-bound traffic is under the
16 FCC's exclusive jurisdiction and, therefore, subject to the FCC's intercarrier
17 compensation rules, regardless of whether the ISP customer is physically located in the
18 rate center to which its telephone number is assigned.

19
20 **RURAL EXEMPTION ISSUES**

21 **Issue 5: Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of**
22 **the Act?**

23 **Issue 6: Is SRT exempt from negotiation and interconnection obligations pursuant to**
24 **section 251(f)(1) of the Communications Act of 1934, as amended?**

25 **Q: THERE HAS BEEN SOME DISPUTE IN THIS ARBITRATION OVER**
26 **WHETHER LEVEL 3'S SECTION 251(a) INTERCONNECTION REQUEST IS**
27 **REALLY A SECTION 251(c) REQUEST IN DISGUISE. PLEASE RESPOND.**

1 A: At the time we submitted our request to interconnect with SRT, Level 3 made a conscious
2 decision to request more limited interconnection under Section 251(a), rather than
3 interconnection under Section 251(c). While Level 3 believes that it could satisfy the
4 limited set of criteria that the Commission must consider before terminating SRT's rural
5 carrier exemption, Level 3 did not believe such an approach would be necessary to
6 achieve its narrow service objectives.

7 **Q: COULD YOU PLEASE EXPLAIN SOME OF THE DIFFERENCES BETWEEN A**
8 **SECTION 251(a) AND SECTION 251(c) REQUEST?**

9 A: Yes. For example, if Level 3 had requested interconnection under Section 251(c), we
10 would seek the ability to interconnect with SRT by collocating Level 3 facilities in SRT's
11 Minot central office.⁴³ Under a Section 251(c) request, Level 3 would also seek to
12 impose on SRT the obligation to perform cost studies that comply with the FCC's Total
13 Element Long Run Incremental Cost ("TELRIC") methodology.⁴⁴ If Level 3 were
14 compelled to seek interconnection under Section 251(c), it would demand that SRT
15 provide Level 3 transport from the POI back to Level 3's network at those TELRIC
16 rates.⁴⁵ In contrast, under our Section 251(a) request, Level 3 is not seeking the right to
17 collocate with SRT and is willing to pay SRT's tariffed transport rates to the extent it
18 must purchase transport from SRT to interconnect with SRT.

19 **Q: TO YOUR KNOWLEDGE, DID WESTERN WIRELESS SUBMIT A BONA FIDE**
20 **REQUEST TO INTERCONNECT WITH SRT?**

21 A: No. It is my understanding that like Level 3, Western Wireless sought interconnection
22 with SRT under Section 251(a) and neither submitted a bona fide request nor asked the
23 Commission to waive SRT's rural exemption. The fact that Western Wireless and SRT

⁴³ 47 U.S.C. § 251(c)(6).

⁴⁴ 47 U.S.C. §§ 251(c)(3) and 252(d).

⁴⁵ 47 U.S.C. §§ 251(c)(2) and 252(d).

1 are already directly interconnected and exchanging traffic shows that carriers may, and
2 have, interconnected directly under Section 251(a) without impacting SRT's rural
3 exemption from Section 251(c) obligations.

4 **Q: COULD YOU PLEASE EXPLAIN WHY LEVEL 3 IS NOT REQUIRED TO**
5 **SUBMIT A BONA FIDE REQUEST TO SRT?**

6 A: This issue has been and will be addressed in Level 3's briefs, but I will summarize it
7 briefly. Section 251(f)(1)(A) makes clear that a requesting carrier need only submit a
8 bona fide request for interconnection, and seek waiver of a rural LEC's Section 251(c)
9 exemption, if the requesting carrier seeks to require the rural LEC to comply with its
10 Section 251(c) obligations.⁴⁶ As I've already explained, Level 3 does not seek to force
11 SRT to provide collocation, interconnection at TELRIC pricing, or any other item
12 required under Section 251(c).

13 **Q: ARE THERE PUBLIC POLICY REASONS WHY INTERCONNECTION UNDER**
14 **SECTION 251(a) AND 251(c) ARE DISTINGUISHABLE?**

15 A: Yes. When Congress enacted the 1996 Act, it intended to open all telecommunications
16 markets to competition, not just the local markets served by large ILECs. Although
17 Congress granted rural LECs some protections from competition, it did not grant them an
18 outright exemption from competition.⁴⁷ Indeed, Western Wireless is certified as an
19 Eligible Telecommunications Carrier ("ETC") in SRT's territory and thus is eligible to
20 provide local service in direct competition with SRT and receive universal service
21 support to do so. Level 3's planned market entry in SRT's incumbent serving area is
22 much less drastic than that of Western Wireless. At this time, and under this agreement,
23 Level 3 seeks only to provide alternative telecommunications services to ISPs.

⁴⁶ 47 U.S.C. § 251(f)(1)(A).

⁴⁷ *Local Competition Order* at ¶ 1262.

1 For these reasons, the Commission should not be overly concerned that decisions
2 in this proceeding in favor of Level 3 will expose rural carriers in North Dakota to
3 competitive forces that will undermine their ability to provide service to customers in
4 high cost areas. Unlike Western Wireless, Level 3 is not seeking ETC status in North
5 Dakota and to have the federal universal service support fund subsidize Level 3's
6 competitive entry to rural carrier markets. Level 3 does not intend to compete for end
7 users presently served by SRT on any level approaching the extent that the CMRS
8 carriers presently interconnected with SRT do. Level 3 intends to offer its services
9 primarily to ISPs who currently do not have points of presence in the exchange areas
10 covered by SRT. Rulings in favor of Level 3 in this proceeding will not prevent the
11 Commission from considering future broader applications for interconnection with SRT
12 - or any other rural carrier - on a case-by-case basis.

13 In fact, as a result of Level 3 being able to interconnect directly with SRT as a
14 co-carrier rather than as an end user, consumers who might otherwise have to dial long-
15 distance for access to these ISPs would benefit by the greater availability of options to
16 reach ISPs by making a local call. Under SRT's proposal, ISPs would have to install
17 equipment in every small town in North Dakota to obtain local calling capability for
18 their customers – and in the case of SRT's serving area, the only choice for a
19 telecommunications service provider would be SRT itself. It is safe to assume that no
20 ISP would do this any time soon due to the inefficiencies of such a network and the
21 associated costs – costs that would ultimately be passed on to North Dakota consumers.

22 **Q. WHAT IS YOUR RECOMMENDATION TO THIS COMMISSION?**

23 A. I would urge the Commission to adopt Level 3's position on each of the issues presented
24 in this arbitration. By allowing Level 3 to enter the markets in which SRT does business,
25 the Commission will serve the public interest by promoting a competitive marketplace,
26 customer welfare, and efficiency in the provision of telecommunications services.

1 **Q: HOW DOES GRANTING LEVEL 3's PETITION PROMOTE A COMPETITIVE**
2 **MARKETPLACE?**

3 A. While the country experienced an enormous build-out of telecommunications
4 infrastructure following the passage of the 1996 Act, the simple truth is that many rural to
5 mid-size markets were passed by. As the industry shakes itself out and looks for the
6 appropriate economic model, the simple truth is that no carrier is going to embark on the
7 sort of wholesale construction of facilities that the industry has experienced in the past.
8 What we will see now is competition on an incremental stage, where companies will
9 deploy their capital in the most economically efficient and promising manner. By
10 granting Level 3's Petition, the Commission will establish a framework through which
11 companies might establish a beachhead in SRT's operating territories. Then, as
12 economic conditions merit, those companies will develop and expand their service
13 offerings.

14 **Q. HOW DOES GRANTING LEVEL 3's PETITION PROMOTE CUSTOMER**
15 **WELFARE?**

16 A. By granting Level 3's Petition, the Commission will establish a framework by which
17 initially, ISPs will have a choice from whom they purchase local telecommunications
18 services. This will inject price competition into the area of providing service to ISPs and
19 should result in lower prices to the customers of the ISPs. It is important to remember
20 that the end-user customers of the ISP are the same end-user customers of SRT.

21 **Q. HOW DOES GRANTING LEVEL 3's PETITION PROMOTE EFFICIENCY IN**
22 **THE PROVISION OF TELECOMMUNICATIONS SERVICES?**

23 A. Much of SRT's opposition to Level 3's Petition has been about imposing the antiquated,
24 inefficient hierarchical network of a regulated monopoly on Level 3. With our state-of-
25 the-art technology, Level 3 has deployed one of the most efficient networks ever.
26 Efficient networks mean lower costs to operate and lower costs to consumers. Given the
27 economic reality of today's telecommunications industry, the best way to ensure

1 competition is to allow for the most efficient deployment of networks and the services
2 provided on them. In many respects, I don't think the question should be about why
3 Level 3 provides services it does in a certain way, but why SRT has not deployed these
4 new technologies and brought down the costs of the services it provides.

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

6 A: Yes.

EXHIBIT WPH-1

Interrogatory #1

Request: Please state the basis of SRT's claim that it meets its obligations under Section 251(a) by interconnecting to the Public Switched Telephone Network ("PSTN") and providing Level 3 services from SRT's access tariffs, and provide all documentation supporting your response.

Objections: Legal Argument; Trade Secret

Response: The basis of SRT's claim that it meets its obligations under Section 251(a) by interconnecting to the Public Switched Telephone Network ("PSTN") is that Section 251(a) obliges direct or indirect interconnection. Indirect connection between SRT and Level 3 is accomplished by SRT's interconnection to the Public Switched Telephone Network. That alone satisfies SRT's obligations under Section 251(a). SRT does not claim it is providing Level 3 services from SRT's access tariffs. Exchange access service is available to Level 3 but is not presently provided.

In addition, SRT is directly interconnected with Level 3; i.e., SRT is providing Level 3 with ISDN service under SRT's tariffs filed with the North Dakota Public Service Commission. Attached documentation includes SRT's ISDN tariff and a copy of a recent billing statement from SRT to Level 3.

EXHIBIT WPH-2

Interrogatory #13

Request: Please state whether any carriers are, or ever have been, directly interconnected with SRT; if so, please identify how many and what type of carriers, *e.g.*, CMRS, IXC, CLEC, ILEC, etc. have been directly interconnected with SRT.

Objections: None

Response: Yes, SRT has direct interconnection with three CMRS carriers, six IXC's, and two ILEC's.

EXHIBIT WPH-3

Interrogatory #14

Request: If the answer to the preceding DR is yes, please describe in detail the trunking arrangements SRT has established with each such carrier, including, but not limited to: (a) a diagram of the physical arrangements that shows the type of facility, ownership of the facility, distance of the facility, origination and termination points of the facility; (b) an explanation of the financial responsibility SRT and any such interconnecting carrier each bear or continue to bear for the trunking arrangement; (c) the monthly average of traffic that flows over the trunking arrangement in each direction (measured over the past twelve months); and (d) any documentation that governs the arrangements (such as a purchase order, contract, or other document).

Objections: Overbroad; Trade Secrets

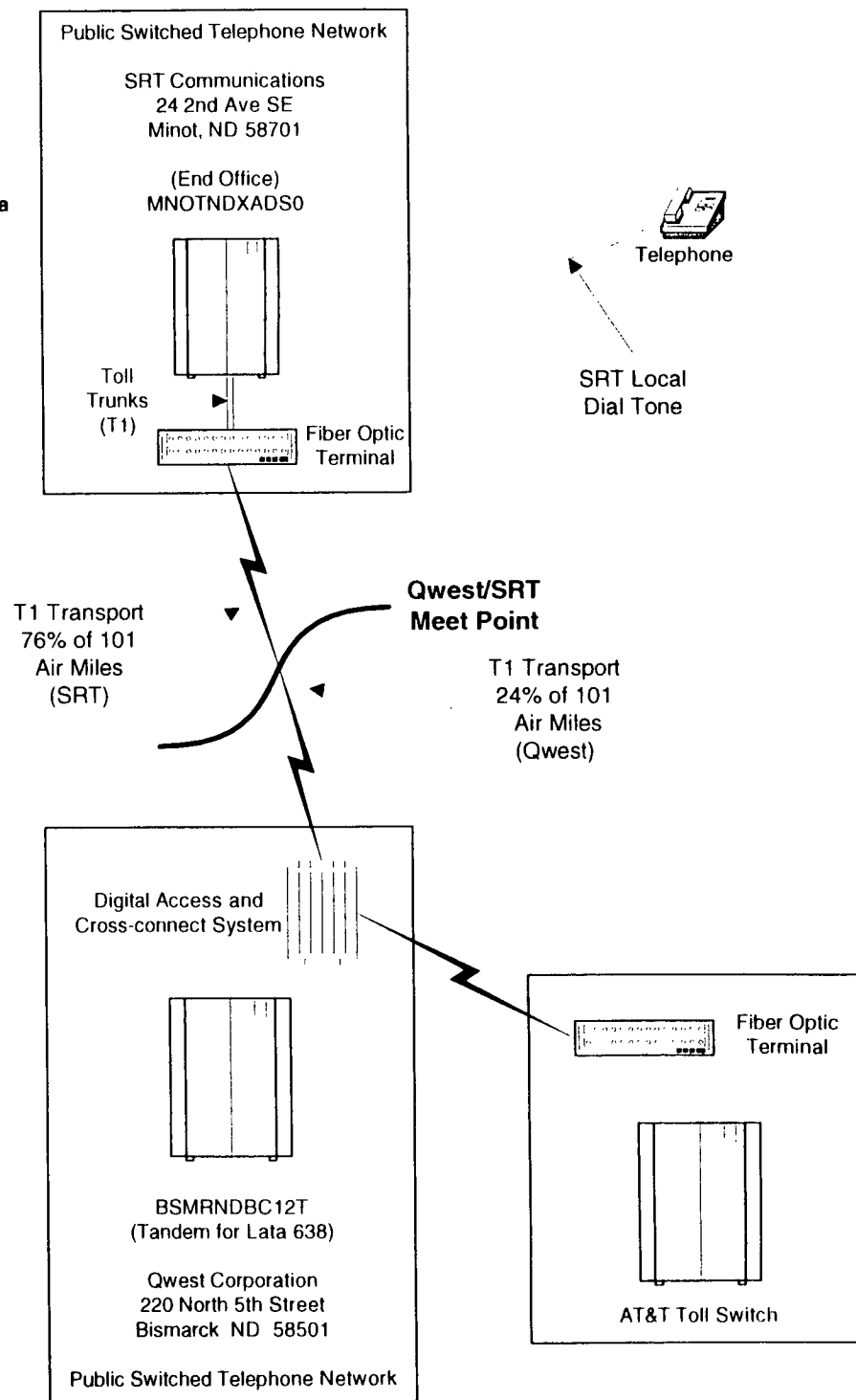
Response: The detail trunking arrangements are:

- (a) See the attached eleven diagrams (3 CMRS, 6 IXC, 2 ILEC)
- (b) The financial responsibility regarding CLEC's is in accordance with Interconnection Agreements. Responsibility regarding IXC's is identified in NECA and/or SRT's Intra State tariffs. The ILEC trunking arrangements and responsibility are covered under EAS agreements.
- (c) See the attached traffic information for CMRS, IXC's, and ILEC EAS for Rugby (NDTEAS) and Bottineau (UTCEAS).
- (d) The document that covers CMRS carriers is an Interconnection Agreement specific to each of the three CMRS carriers, SRT's Intra State tariff and inter state NECA tariff regarding arrangements with all six IXC's, and an EAS Agreement regarding the two ILEC's.

AT&T Toll Trunk Configuration

11/7/02

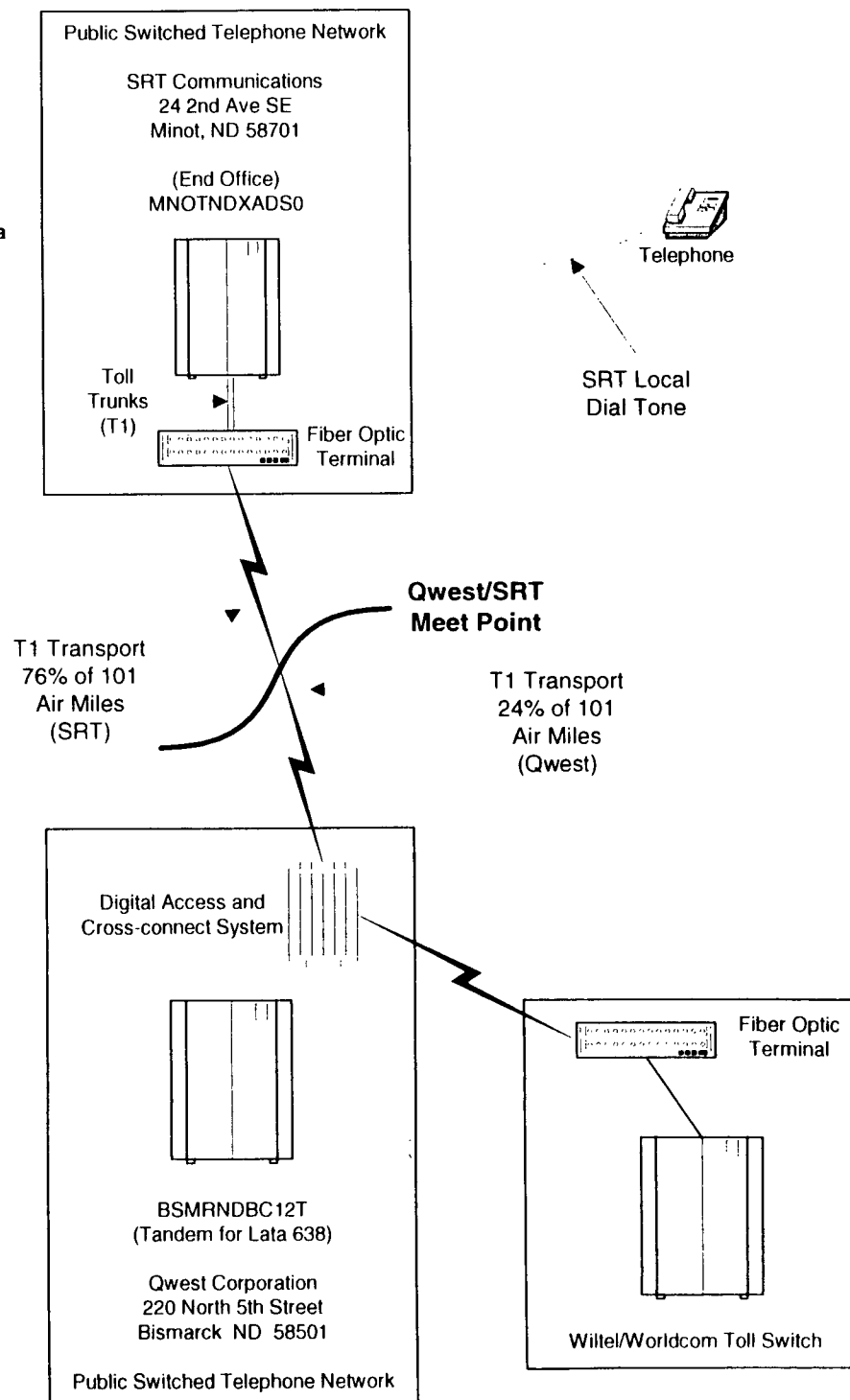
Diagram for Interrogatory Question #14a



Witel/Worldcom Toll Trunk Configuration

11/7/02

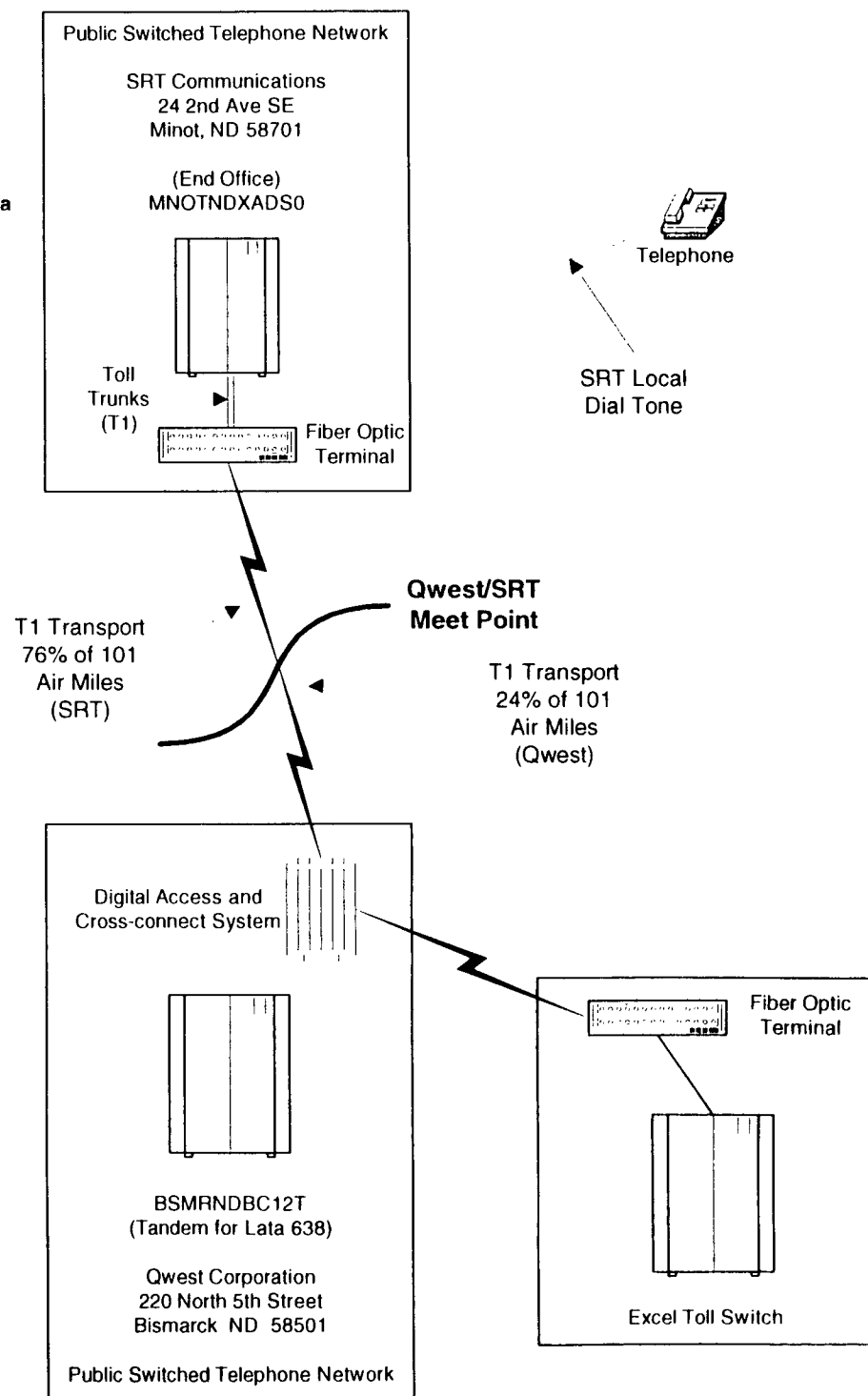
Diagram for Interrogatory Question #14a



Excel Toll Trunk Configuration

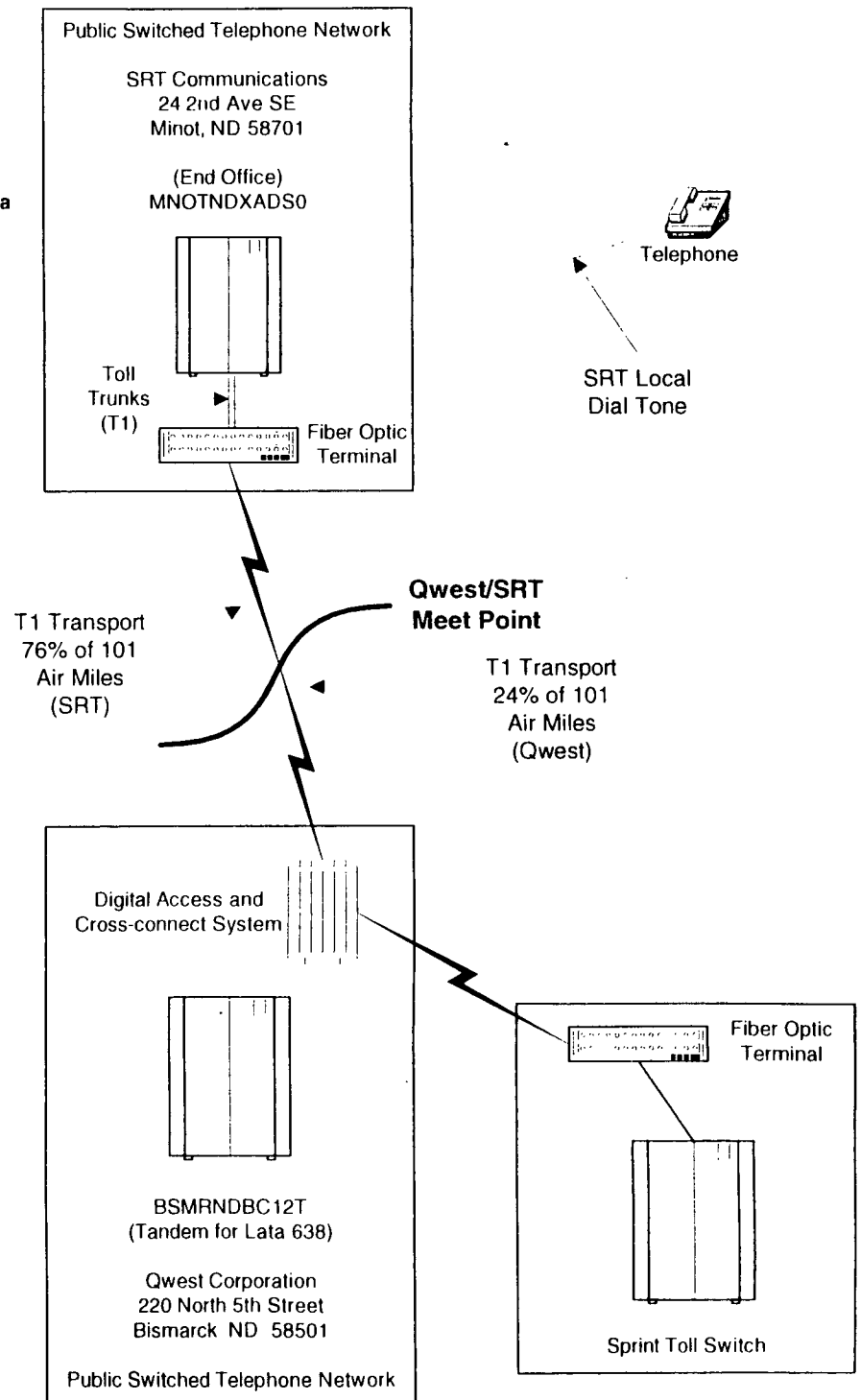
11/7/02

Diagram for Interrogatory Question #14a



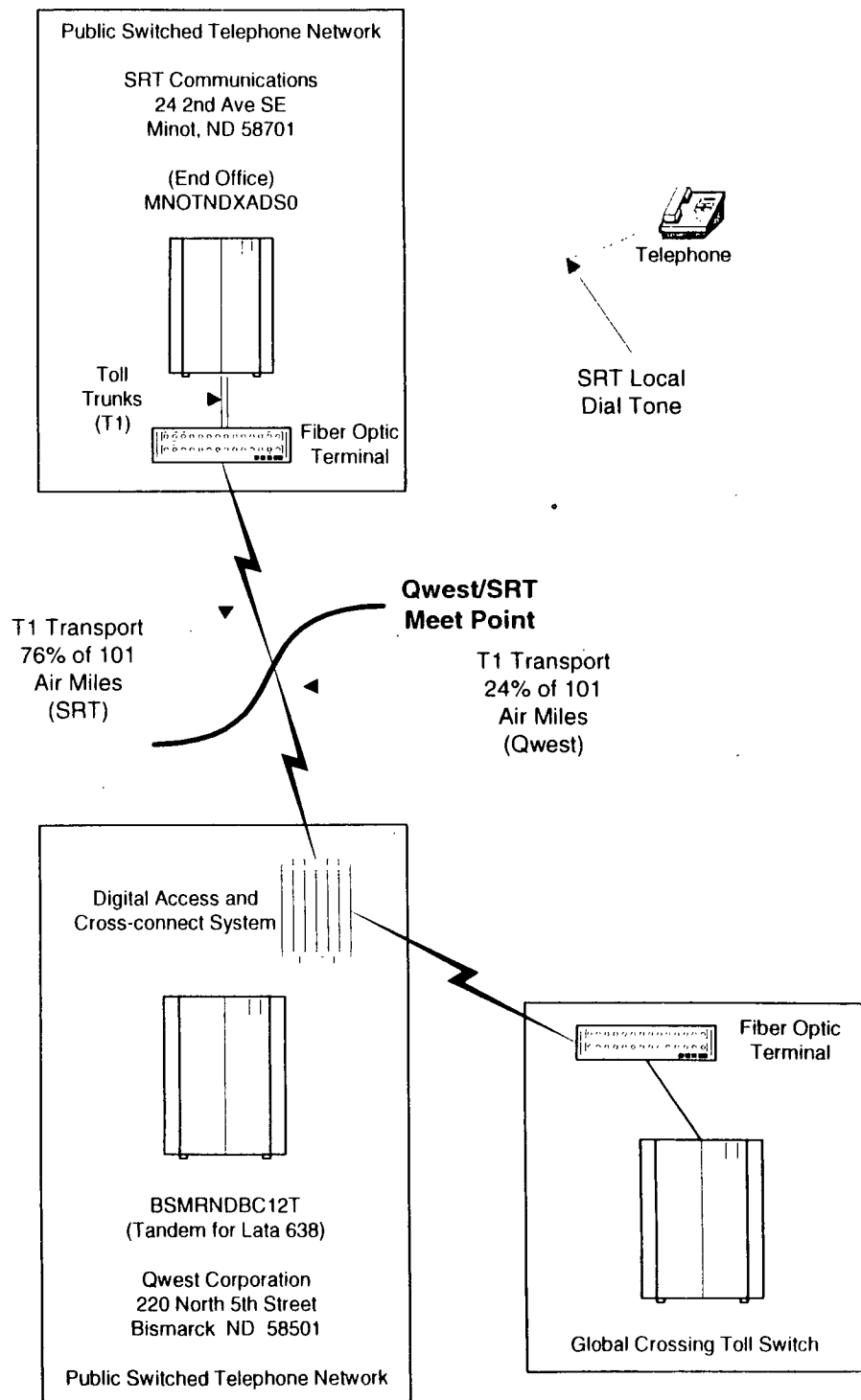
Sprint Toll Trunk Configuration

11/7/02
Diagram for Interrogatory Question #14a



SRT Toll Trunk Configuration

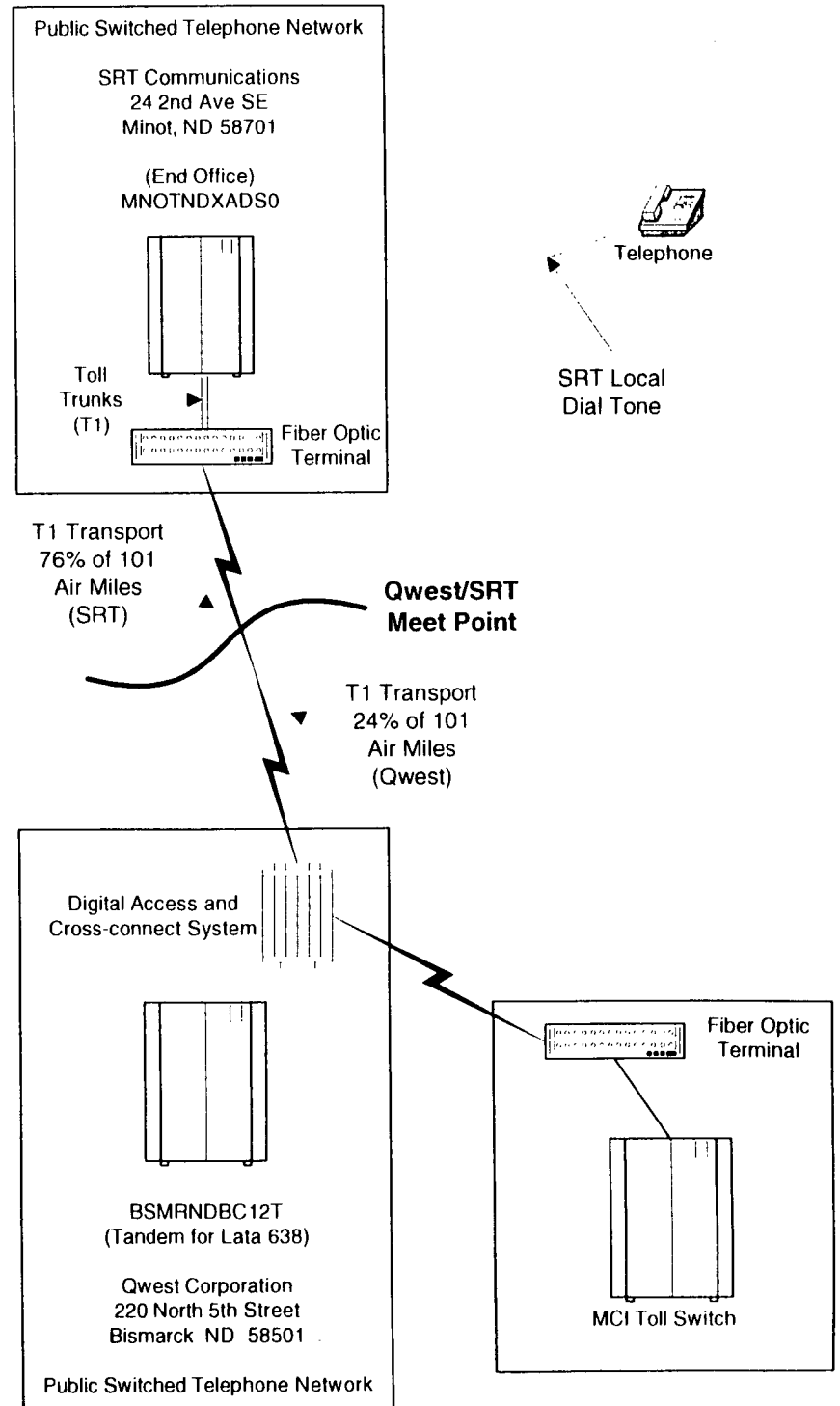
11/7/02
Diagram for Interrogatory Question #14a



MCI Toll Trunk Configuration

11/7/02

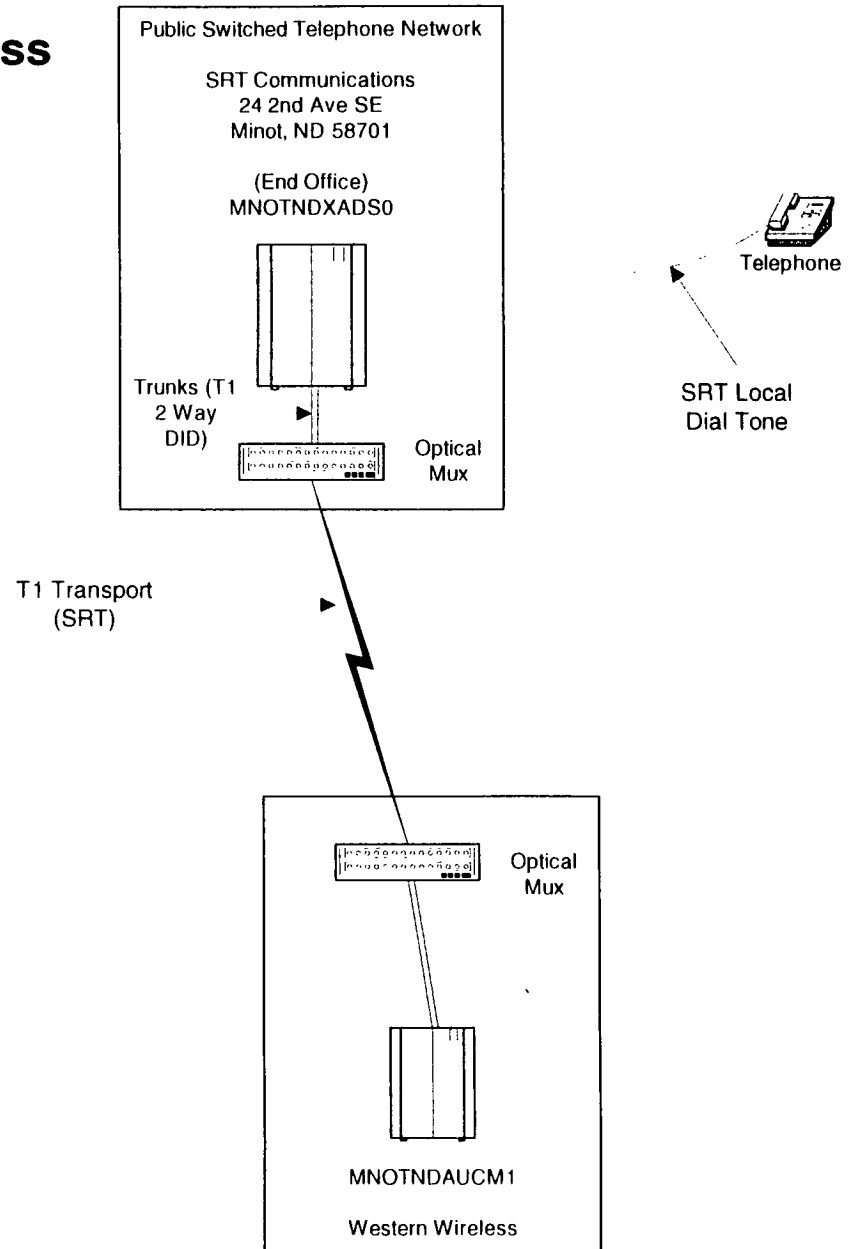
Diagram for Interrogatory Question #14a



Current Western Wireless Configuration

11/07/02

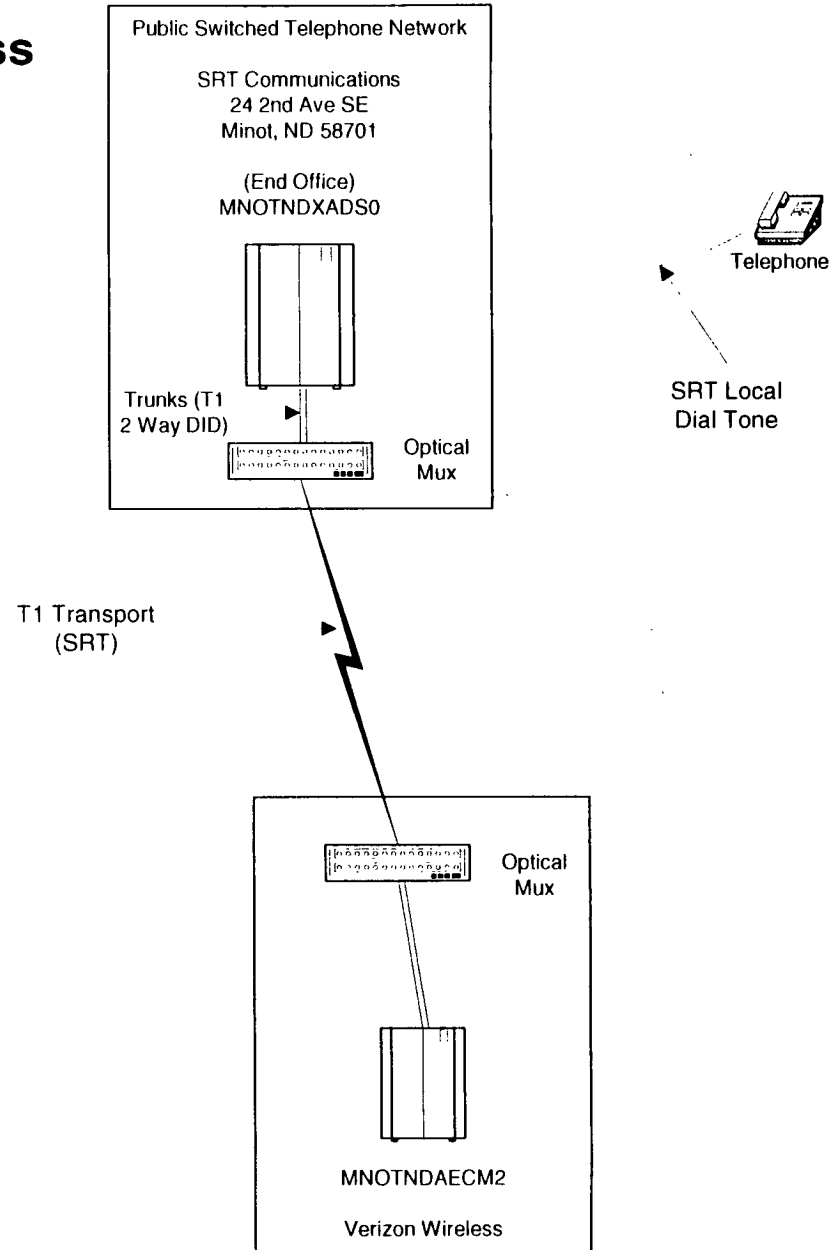
Diagram for Interrogatory Question #14a



Current Verizon Wireless Configuration

11/07/02

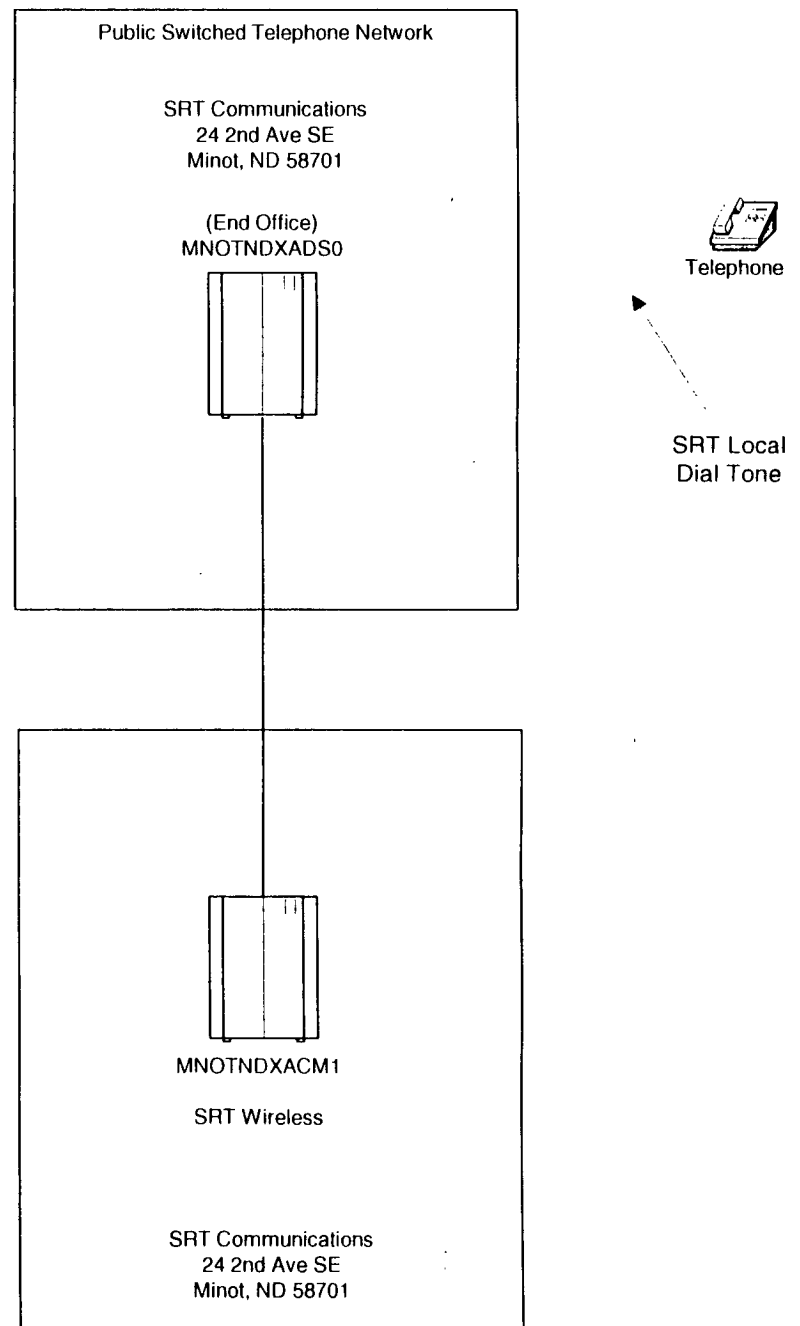
Diagram for Interrogatory Question #14a



Current North Dakota Network Company dba SRT Wireless Configuration

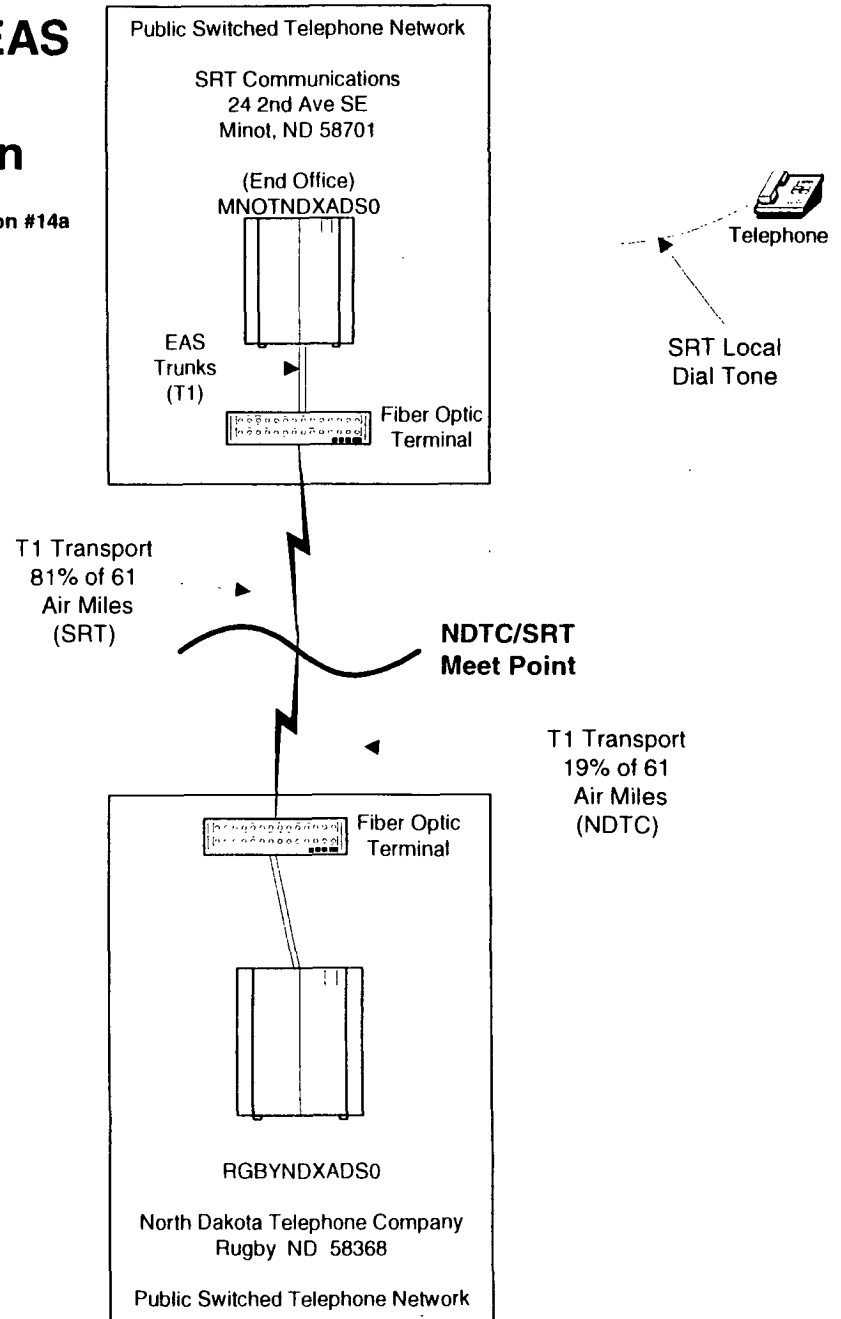
11/07/02

Diagram for Interrogatory Question #14a



Rugby/NDTC EAS Trunk Configuration

11/7/02
Diagram for Interrogatory Question #14a



Bottineau/TMC EAS Trunk Configuration

11/7/02
Diagram for Interrogatory Question #14a

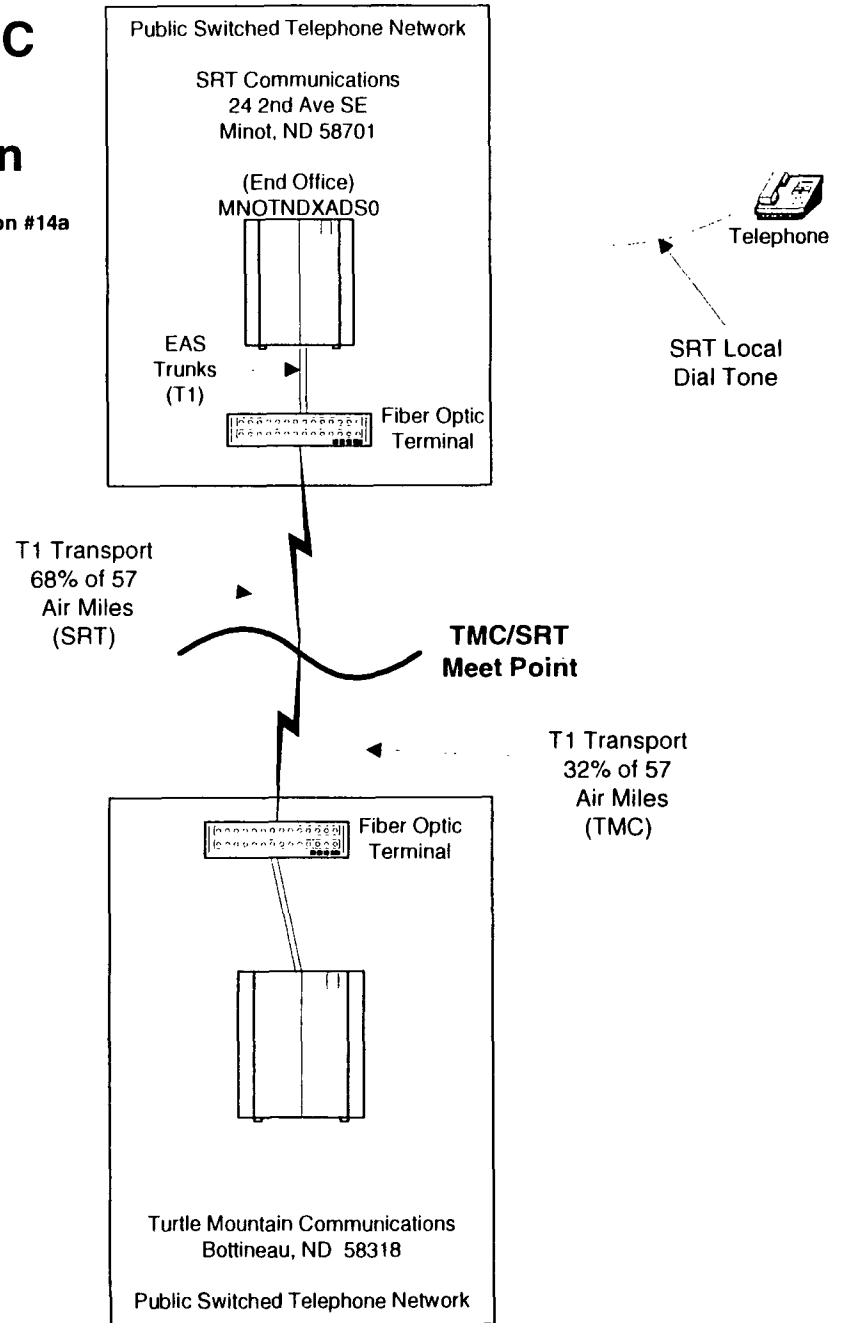


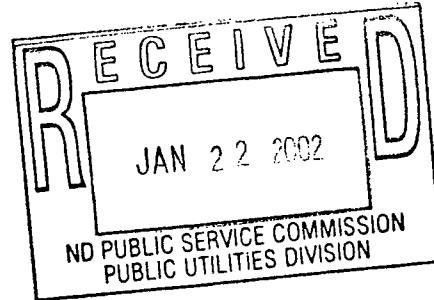
EXHIBIT WPH-4



Headquarters:
3615 North Broadway
PO Box 2027
Minot, ND 58702-2027
701-858-1200

Business Center:
24 - 2nd Ave. SE
PO Box 2027
Minot, ND 58702-2027
701-858-1200

SRT Connections:
1400 20th Ave. SW
PO Box 2027
Minot, ND 58702-2027
701-858-1200



January 21, 2002

Jon Mielke
ND Public Service Commission
State Capitol
600 East Boulevard Ave
Bismarck, ND 58505

Dear Jon:

Enclosed is a signed Amendment to the Interconnection Agreement between SRT and ~~Western Wireless~~, dated December 13, 2001.

This Amendment was mutually negotiated between the parties.

Sincerely,

Warren L. Hight
General Manager/CEO
SRT COMMUNICATIONS, INC.

krw
t:mielke

WPH-4-A-1

1 PU-2423-02-28

Pages: 2

Interconnection Agreement Amendment
application
by Western Wireless Corporation/SRT Communication
01/22/2002 CC: Comm Legal Ilona Jerry



**AMENDMENT TO
WIRELESS INTERCONNECTION AGREEMENT
BETWEEN
SRT COMMUNICATIONS, INC. AND WESTERN WIRELESS CORPORATION**

This **AMENDMENT TO WIRELESS INTERCONNECTION AGREEMENT BETWEEN SRT COMMUNICATIONS, INC. AND WESTERN WIRELESS CORPORATION** (the "Agreement"), entered into as of this day of Dec 13, 2001, revises the Reciprocal Compensation rate contained in the Wireless Interconnection Agreement between SRT Communications, Inc. and Western Wireless Corporation dated February 1, 2000.

Effective February 1, 2002 commencing with the automatic renewal of the Agreement for successive six months period, pursuant to Article II, Section 8 of the Agreement, the Reciprocal Compensation rate shall be changed from \$0.0469 to \$0.02345 per minute of use.

IN WITNESS WHEREOF, the Parties have executed this **AMENDMENT TO THE WIRELESS INTERCONNECTION AGREEMENT** by their duly authorized representative in one or more counterparts, each of which shall constitute an original.

Western Wireless Corporation

By: 

Name: Gene DeJordy

Title: Vice President

Date: January 4, 2002

SRT Communications, Inc.

By: 

Name: WARREN L. HIGHT

Title: GENERAL MGR/CEO

Date: 12/13/01



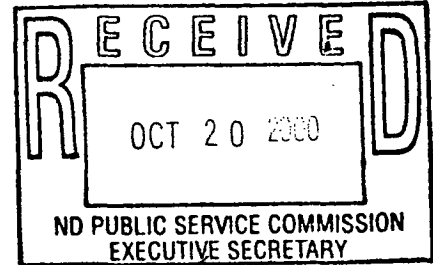
Headquarters:
3615 North Broadway
PO Box 2027
Minot, ND 58702-2027
701-858-1200

Business Center:
24 - 2nd Ave. SE
PO Box 2027
Minot, ND 58702-2027
701-858-1200

SRT Connections:
1400 20th Ave. SW
Suite 3
PO Box 2027
Minot, ND 58702-2027
701-852-1100

October 19, 2000

Jon Mielke
ND Public Service Commission
State Capitol
600 East Boulevard Ave
Bismarck, ND 58505



Dear Jon:

Enclosed for your information and filing is a copy of a Wireless Interconnection Agreement between Western Wireless Corporation and SRT Communications, Inc. The two parties to this Agreement have entered into the Agreement through voluntary negotiations without resort to mediation or arbitration.

Please give me a call if you have any questions about either of these agreements.

Sincerely,

Warren L. Hight
General Manager/CEO
SRT COMMUNICATIONS, INC.

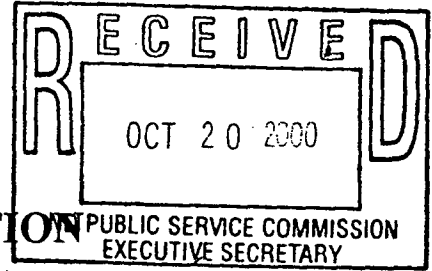
krw
Enclosures
t:mielke

WPH-4-A-3

1 PU-2423-00-565 Pages: 27

Application for Interconnection Agreement

by Western Wireless Corporation/SRT Communication
10/20/2000 CC: Comm Legal PUD (3)



**WIRELESS INTERCONNECTION
AGREEMENT**

BETWEEN

SRT COMMUNICATIONS INC.

AND

WESTERN WIRELESS CORPORATION

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 - 14. Pending Judicial Appeals and Regulatory Reconsideration
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 - A. SRT Communications Inc. – NXX and CLLI Designations
 - B. Western Wireless Corporation – NXX and CLLI Designations
 - C. Reserved For Future Use

I. Article I

1. INTRODUCTION

This Interconnection/Compensation Agreement ("Agreement") is effective as of the 1st day of February, 2000 (the "Effective Date"), by and between SRT Communications, Inc. ("SRT") with offices at P.O. Box 2027, 3615 North Broadway, Minot, North Dakota 58702-2027 and Western Wireless Corporation ("WWC") with offices at 3650 131st Avenue SE, Bellevue, WA 98006.

2. RECITALS

WHEREAS, SRT is a Local Exchange Carrier in the State of North Dakota;

WHEREAS, WWC is a Commercial Mobile Radio Service provider operating within the state of North Dakota;

WHEREAS, SRT and WWC exchange calls between their networks and wish to establish Interconnection and Compensation arrangements for these calls;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SRT and WWC hereby agree as follows:

II. Article II

1. DEFINITIONS

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "As Defined in the Act", means as specifically defined by the Act.

interconnection agreement, for the purpose of providing service to its customers utilizing customer premises equipment for communications over a wireless local loop, quasi-fixed, or fixed wireless service.

4.0 SERVICE AGREEMENT

Description of Arrangements. This Agreement provides for the following interconnection and arrangements between the networks of SRT and WWC. Additional arrangements that may be agreed to in the future will be delineated in Attachment C to this agreement.

4.1 Type 1 Connection at Towner: WWC has been assigned two (2) one thousand groups of numbers (537-3XXX and 537-4XXX) at SRT's Towner remote exchange. SRT's Towner remote switch does not have direct trunking capability and is served by SRT's Minot host switch (MNOTNDXADS0). Therefore, a two-way direct trunk group is provisioned between the Minot host switch and WWC network in Grand Forks. Applicable tariff charges for establishing and provisioning the two-way direct trunk groups are billed by SRT to WWC.

A. Landline to Wireless: Calls to WWC's customers served by 537-3XXX and 537-4XXX numbers from SRT's customers in the Towner exchange and other SRT exchanges that have non-optional two-way EAS with Towner (Upham (768)), are routed over the two-way direct trunk group from the Minot host switch to WWC's Network. All other calls to WWC customers served by 537-3XXX and 537-4XXX are routed in accordance with the Telcordia™ Traffic Routing Administration instructions or successor administrators of the Traffic Routing Administration.

B. Wireless to Landline: Calls from WWC's customers served by 537-3XXX and 537-4XXX numbers to SRT's customers in the Towner exchange and other SRT exchanges that have non-optional two-way EAS with Towner (Upham (768)), are routed over the two-way direct trunk group from WWC's network to the Minot host and delivered to SRT for termination to its customers, as appropriate. All other calls are routed in accordance with the Telcordia™ Traffic Routing Administration instructions or successor administrators of the Traffic Routing Administration instructions.

4.2 Type 2-B Interconnection at Minot: Type 2 interconnection and arrangements are based on the existing rate center designation for WWC's NPA/NXX, as listed in the Routing Database System's Destination Code Records. WWC shall notify SRT, in writing, of any change to the rate center designation

for NPA/NXX of 701/720, sixty days in advance of making such change. A two-way trunk group is provisioned between SRT's Minot Host Office (MNOTNDXADS0) and WWC's network in Grand Forks with the point of interconnection designated to be at the Minot switch. This trunk group is provisioned in connection with WWC's NPA/NXX of 701/720 designated as being located at the Minot exchange. Applicable tariff charges for establishing and provisioning these trunk groups are billed by SRT to WWC.

A. Landline to Wireless:

1. Calls from SRT's customers in Minot (420, 837, 838, 839, 852, 857, and 858) and from SRT's customers in remote exchanges that are served by SRT's Minot host switch and have two-way non-optional EAS with Minot (Minot AFB (723 and 727), Des Lacs (725), Deering (728), Sawyer (624), and South Prairie (722)), to WWC's customers with NPA/NXX of 701/720 are routed over the two-way direct trunk group from the Minot host to WWC's network in Grand Forks.
2. Routing of all other landline to wireless calls involving 701/720 will be in accordance with the Telcordia™ Traffic Routing Administration instructions or successor administrators of the Traffic Routing Administration instructions.

B. Wireless to Landline:

1. Calls from WWC's customers that originate in MTA #12 or customers of another CMRS provider that has entered into a roaming arrangement with WWC while roaming in MTA #12 to SRT's customers are routed from WWC's network via the two-way direct trunk group to the Minot host switch and terminated by SRT to its customers, as appropriate.
2. Routing of all other wireless to landline calls will be in accordance with the Telcordia™ Traffic Routing Administration instructions or successor administrators of the Traffic Routing Administration instructions.

4.3 Indirect Traffic to SRT. To the extent that WWC and USWEST or WWC and another LEC have entered into or may enter into contractual arrangements for the delivery of WWC traffic to SRT's network (i.e. traffic that is not covered elsewhere in this Agreement) for termination to SRT's customers, SRT will accept this traffic subject to compensation arrangement as outlined in Section 5 below.

5.0 COMPENSATION

5.1 Traffic Subject to Reciprocal Compensation.

Reciprocal compensation is applicable for Transport and Termination of Local Traffic as defined in Section 1.15 and is related to the exchange of traffic described in Sections 4.2, 4.3, and in Attachment C, as applicable.

The rate for Reciprocal Compensation shall be \$0.046900 per minute.

5.2 Traffic Subject to Terminating Compensation.

Terminating compensation is applicable to all Non-Local Traffic originated on WWC's network and delivered to SRT for termination to its customers as described in Sections 4.2, 4.3, and Attachment C, as applicable. WWC shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.3 Traffic Subject to Originating Compensation

Originating access compensation is applicable to all Non-Local Traffic originated by SRT's customers on SRT's network and delivered to WWC via the two-way trunk group, as provided for in sections 4.1, 4.2, and Attachment C, as applicable. WWC shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.4 Type 1 Services

A. The following charges apply to Type 1 Services described in Section 4.1, and in Attachment C, as applicable:

- | | |
|--|------------|
| 1. Network Usage Charge, per terminating minute of use | \$0.013669 |
| 2. Switching and Transiting Charge for EAS traffic terminating to another LEC, per minute of use | \$0.0096 |

B. In connection with section 4.1, and similar arrangements in Attachment C, to the extent that SRT subsequently enters into an agreement with US West, or another LEC that alters its current financial obligations related to the exchange of EAS traffic, and such change results in terminating compensation being due, WWC agrees it shall have the same obligations with regard to type 1 EAS traffic from its telephone numbers in SRT offices as does SRT.



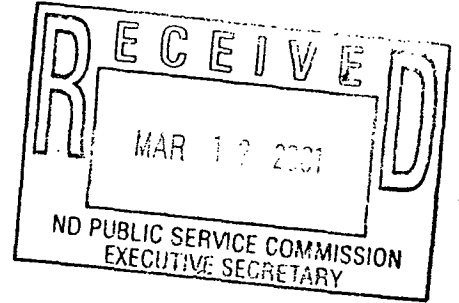
Headquarters:
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SRT Connections:
1400 20th Ave. SW
PO Box 2027
Minot, ND 58702-2027
701-858-1200

March 9, 2001

Jon Mielke
ND Public Service Commission
State Capitol
600 East Boulevard Ave
Bismarck, ND 58505



Dear Jon:

Enclosed for your information and filing is a copy of a Wireless Interconnection Agreement between ~~Sprint Spectrum L.P.~~ and SRT Communications, Inc. The two parties to this Agreement have entered into the Agreement through voluntary negotiations without resort to mediation or arbitration.

Also enclosed is a copy of a Wireless Interconnection Agreement between SRT's subsidiary company, North Dakota Network Company (dba SRT Wireless) and SRT Communications, Inc.

Please give me a call if you have any questions about either of these agreements.

Sincerely,

Warren L. Hight
General Manager/CEO

krw
Enclosures
t:mielke

WPH-4-B-1

2

PU-2495-01-108

Pages: 1

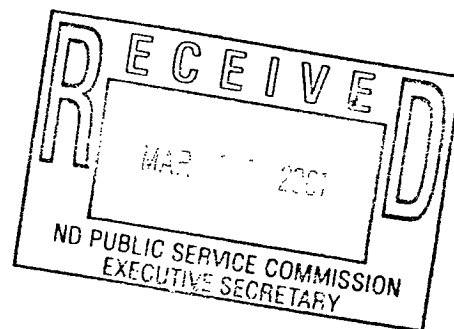
Cover letter re filing

by Sprint Spectrum L. P./SRT Communications, Inc.

03/12/2001

CC: Comm Legal Ilona Jerry





**WIRELESS INTERCONNECTION
AGREEMENT**

BETWEEN

SRT COMMUNICATIONS INC.

AND

SPRINT SPECTRUM L.P.

WPH-4-B-2

1 PU-2495-01-108

Pages: 27

Interconnection Agreement application
by Sprint Spectrum L. P./SRT Communications, Inc.

03/12/2001

CC: Comm Legal Ilona Jerry

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 - 15. Most Favored Nation Provision**
 - 16. Miscellaneous**
 - 17. Attachments:**
 - A. SRT Communications Inc. - NXX and CLLI Designations – Two-Way Non-Optional EAS Exchanges**
 - B. Sprint Spectrum L.P. - NXX and CLLI Designations**
 - C. Reserved For Future Use**

regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

3.0 SCOPE

3.1 This Agreement relates to exchange of traffic between SRT and SPCS. SRT's NXXs are listed in Attachment A hereto. SPCS represents that it is a CMRS provider of communications services to subscribers in MTA #12 (Minneapolis-St. Paul). Existing SPCS' NXXs are listed in Attachment B hereto, additions to SPCS' NXXs will be listed in the Local Exchange Routing Guide ("LERG") under Operating Company Number ("OCN") 6664 or 4061 for the state of North Dakota. Existing SRT's NXXs are listed in Attachment A hereto, additions to SRT's NXX will be listed in the LERG under Operating Company Number ("OCN") 3303.

3.2 This Agreement is limited to traffic of SRT end user customers for which SRT has tariff authority to carry. This Agreement is limited to traffic of SPCS end user customers to which SPCS provides two-way Mobile Service as defined in 47 U.S.C. §153(27). SRT and SPCS do not agree whether Mobile Service, as defined in 47 U.S.C. §153(27), includes the provision of fixed wireless services and therefore disagree on the regulatory treatment applicable to exchange of such traffic. SPCS does not currently provide fixed wireless services in SRT's Local Service Area. SPCS agrees that it will provide SRT prior notice of its intent to launch fixed wireless service in SRT's Local Service Area. Upon SRT's receipt of such notice, the Parties agree to negotiate an appropriate agreement or an amendment to this Agreement, which will address the exchange of such traffic.

Nothing in this Agreement shall prohibit SPCS from enlarging its system through management contracts with third parties for the construction and operation of a wireless network under the SPCS brand name. Traffic originating and terminating on such extended networks shall be treated as SPCS' traffic under the terms and conditions of this Agreement.

4.0 SERVICE AGREEMENT

Description of Arrangements. This Agreement provides for the following interconnection and arrangements between the networks of SRT and SPCS. Additional arrangements that may be agreed to in the future will be delineated in Attachment C to this agreement. Type 2 interconnection and arrangements are based on the existing rate center designation for SPCS' NPA/NXX, as listed in the Routing Database System's Destination Code Records. SPCS intends to obtain an NPA/NXX with rate center designation of Minot exchange, or one of SRT exchanges subtending SRT's Minot Host switch.

4.1 Type 2-B Interconnection at Minot: A two-way trunk group shall be provisioned between SRT Minot Host Office (MNOTNDXADS0) and SPCS' network in the applicable SRT exchange (i.e., the exchange in which SPCS has designated for as the rate center for SPCS' NPA/NXX. This trunk group is provisioned in connection with SPCS' NPA/NXX rate centered at the above mentioned NPA/NXX. Applicable tariff charges for establishing and provisioning these trunk groups are billed by SRT to SPCS.

A. Landline to Wireless:

1. Calls from SRT's customers in exchanges that have local calling or non-optional two-way EAS with the exchange that SPCS has designated as the rate center for SPCS' NPA/NXX(s) shall be routed over the two way direct trunk group from SRT network to SPCS.
2. Routing of all other landline to wireless calls will be in accordance to Telcordia's Traffic Routing Administration instructions.

B. Wireless to Landline:

1. Calls originated on SPCS' network in MTA #12 to SRT customers are routed from SPCS' network over the two-way trunk group to SRT for termination to its customers
2. All other wireless to landline calls will be routed in accordance to Telcordia's Traffic Routing Administration instructions.

4.2 Indirect Traffic to SRT. To the extent that SPCS and Qwest have entered into or may enter into contractual arrangements for the delivery of SPCS traffic to SRT's network (i.e. traffic that is not covered elsewhere in this Agreement) for termination to SRT's customers, SRT will accept this traffic subject to compensation arrangement as outlined in Section 5 below.

5.0 COMPENSATION

5.1 Traffic Subject to Reciprocal Compensation.

Reciprocal compensation is applicable for Transport and Termination of Local Telecommunications Traffic as defined in Section 1.14 and is related to the exchange of traffic described in Sections 4.1, 4.2, and in Attachment C, as applicable.

For terminating calls, usage begins when the terminating recording switch (i.e., the MSC or tandem) receives answer supervision from the terminating end user. The measurement of terminating call usage ends when the MSC receives or sends a release message.

The rate for Reciprocal Compensation shall be \$0.02345 per minute.

5.2 Traffic Subject to Terminating Compensation.

Terminating compensation is applicable to all Non-Local Telecommunications Traffic originated on SPCS' network and delivered to SRT for termination to its customers as described in sections 4.1.B, 4.2, and Attachment C, as applicable. SPCS shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.3 Traffic Subject to Originating Compensation

Originating Compensation is applicable to all Non-Local Traffic originated by SRT's customers on SRT network and delivered to SPCS via the two-way direct trunk group, as provided for in Section 4.1.A, and Attachment C, as applicable. SPCS shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.4 Shared Facilities: Where Type 2 interconnection facilities are used for two-way traffic, the recurring charges for such facilities billed by SRT will be reduced by an agreed upon percentage representing the estimated or actual percentage of traffic exchanged between SRT & SPCS over such facilities that is delivered by SRT to SPCS over the two-way direct trunk group (i.e. Type 2 interconnection facilities). This percentage is referred to as the Land-to-Mobile Traffic Factor. The Parties agree to review the Land-to-Mobile factor percentage of total traffic exchanged between the Parties over the two-way direct trunk group on a periodic basis and, if warranted by the actual usage, revise the percentage appropriately.

Land-to-Mobile factor	.28
Mobile-to-Land factor (i.e., 1 - Land-to-Mobile factor)	.72

5.5 Calculation of Payments and Billing.

5.5.1 SPCS will compensate SRT for Local Telecommunications Traffic and Non-Local Traffic delivered to SRT for termination to its customers, as prescribed and at the rates provided in Sections 5.1, 5.2, and for Non-Local Traffic originated by SRT customers on SRT's network and delivered to SPCS for termination to its customers, as prescribed and at the rates provided in 5.3, preceding. SRT will compensate SPCS for Local Telecommunications Traffic originated by SRT customers on SRT's network and delivered to SPCS over the two-way direct

trunk group for termination to its customers, as prescribed and at the rate provided in Section 5.1.

5.5.2 SPCS shall prepare a monthly billing statement to SRT, reflecting the calculation of Reciprocal Compensation due SPCS. SRT shall prepare a monthly billing statement to SPCS which will separately reflect the calculation of Reciprocal Compensation, Terminating Compensation, Originating Compensation, and total compensation due SRT. SRT shall use the total recorded originating traffic, recorded by SRT, and total terminating traffic recorded by either SRT and/or US West for billing SPCS. If either Party lacks the billing capability upon agreement by both Parties SRT shall also include the Reciprocal Compensation due to SPCS as a credit on the monthly billing statement.

5.5.3 To facilitate this billing by SRT, SPCS once it has the capability shall provide SRT on a monthly basis with SPCS usage information showing total minutes of Local and Non-Local traffic, originated on SRT's network by SRT's customers in Minot that is delivered to SPCS over two-way direct trunk group.

5.5.4 In the event that there is insufficient representative and verifiable data on the actual Local and Non-Local Traffic exchanged between the Parties to use in preparation of the monthly billing statement, the Parties agree to apply a Non-Local Traffic factor of 5% to the total traffic originating on SPCS' network and terminating on SRT's network as an estimate of the Non-Local Traffic being exchanged.

5.5.5 Each party may request to inspect, during normal business hours, the records, which are the basis for any monthly bill issued by the other Party and to request copies thereof provided that the requested records do not exceed 24 months in age from the date the monthly bill containing said record information was issued.

6.0 NOTICE OF CHANGES

If a Party contemplates a change in its network, which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

7.0 GENERAL RESPONSIBILITIES OF THE PARTIES

7.1 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting and, consistent with Section 5, measuring and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in a mutually acceptable format, and to terminate the traffic it



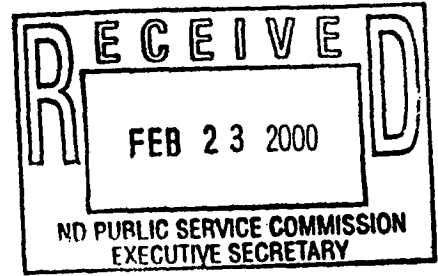
Headquarters:
3615 North Broadway
PO Box 2027
Minot, ND 58702-2027
701-858-1200

Business Center:
24 - 2nd Ave. SE
PO Box 2027
Minot, ND 58702-2027
701-858-1200

SRT Connections:
1400 20th Ave. SW
Suite 3
PO Box 2027
Minot, ND 58702-2027
701-852-1100

February 22, 2000

Jon Mielke
ND Public Service Commission
State Capitol
600 East Boulevard Ave
Bismarck, ND 58505



Dear Jon:

Enclosed for your information and filing is a copy of a Wireless Interconnection Agreement between ^{NORTH DAKOTA NETWORK CO} ~~Commnet Cellular~~ and SRT Communications, Inc. The two parties to this Agreement have entered into the Agreement through voluntary negotiations without resort to mediation or arbitration.

Also enclosed is a copy of a Wireless Interconnection Agreement between SRT's subsidiary company SRT Wireless and SRT Communications, Inc.

Please give me a call if you have any questions about either of these agreements.

Sincerely,

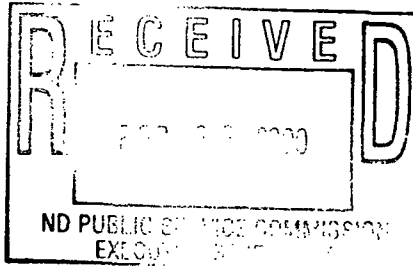
Warren L. Hight
General Manager/CEO

krw
Enclosures
t:mielke

WPH-4-C-1

2 PU-2239-00-77 Pages: 1
02/23/2000
North Dakota Network Co. / SRT Communicatio
Cover letter re application

CC: Comm Legal PUD (3)



**WIRELESS INTERCONNECTION
AGREEMENT**

BETWEEN

SRT COMMUNICATIONS INC.

AND

**NORTH DAKOTA NETWORK COMPANY
dba SRT WIRELESS**

WPH-4-C-2

1 PU-2239-00-77 Pages: 25
02/23/2000
North Dakota Network Co. / SRT Communicatio
Interconnection Agreement application

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 - 15. Miscellaneous**
 - 16. Attachments:**
 - A. SRT Communications Inc. - NXX and CLLI Designations**
 - B. SRT Wireless - NXX and CLLI Designations**
 - C. Reserved For Future Use**

I. Article I

1. INTRODUCTION

This Interconnection/Compensation Agreement ("Agreement") is effective as of the 1st day of February, 2000 (the "Effective Date"), by and between SRT Communications Inc. ("SRT") with offices at P.O. Box 2027, 3615 North Broadway, Minot, North Dakota 58702-2027 and North Dakota Network Company dba SRT Wireless ("SRT Wireless") with offices at P.O. Box 2027, 3615 North Broadway, Minot, North Dakota 58702-2027.

2. RECITALS

WHEREAS, SRT is a Local Exchange Carrier in the State of North Dakota;

WHEREAS, SRT Wireless is a Commercial Mobile Radio Service provider of two-way mobile communications services operating within the state of North Dakota;

WHEREAS, SRT and SRT Wireless exchange calls between their networks and wish to establish Interconnection and Compensation arrangements for these calls;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SRT and SRT Wireless hereby agree as follows:

II. Article II

1. DEFINITIONS

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "As Defined in the Act", means as specifically defined by the Act.

1.3 "As Described in the Act" means as described in or required by the Act.

3.0 SCOPE

This Agreement relates to exchange of traffic between SRT and SRT Wireless. SRT's NXXs are listed in Attachment A hereto. SRT Wireless represents that it is a CMRS provider of communications services to subscribers in BTA No. 299, Minot, ND. SRT Wireless' NXXs are listed in Attachment B hereto.

This Agreement is limited to traffic of SRT end user customers for which SRT has tariff authority to carry. This Agreement is limited to traffic of SRT Wireless end user customers to which SRT Wireless provides service on a two-way wireless, mobile basis. This Agreement covers only traffic of SRT Wireless end user customers that are utilizing a mobile station, as defined in the Communication Act of 1934. This Agreement does not cover traffic of SRT Wireless end user customers that are utilizing customer premise equipment for communications over a wireless local loop or quasi-fixed wireless service, even though the customer premise equipment might be transportable in a quasi-mobile application. This Agreement does not cover traffic of SRT Wireless on a one way mobile basis, sometimes called paging service.

Nothing in this Agreement shall be construed as a waiver by either party to institute proceedings before the Commission to compel the establishment of interconnection arrangements between SRT Wireless and SRT for wireless local loop service or quasi-fixed wireless services. If SRT Wireless desires to establish interconnection arrangements with SRT for wireless local loop or quasi-fixed wireless, or paging service, SRT will engage in bona fide negotiations with SRT Wireless to establish interconnection and compensation arrangements for such traffic. In the event said negotiations do not result in mutually satisfactory interconnection and compensation arrangements within a reasonable amount of time, either party may institute proceedings before the Commission pursuant to section 49-21-09 of the North Dakota Century Code.

The Parties also agree to exchange traffic associated with Third-Party local providers if an agreement has been made between the originating carrier and both the transiting company and the terminating company.

4.0 SERVICE AGREEMENT

Description of Arrangements. This Agreement provides for the following interconnection and arrangements between the networks of SRT and SRT Wireless. Additional arrangements that may be agreed to in the future will be delineated in Attachment C to this agreement. Type 2 interconnection and arrangements are based on the existing rate center designation for SRT Wireless' NPA/NXX, as listed in the Routing Database System's Destination Code Records. SRT Wireless' shall notify SRT, in writing, of any change to the rate center designation for NPA/NXX of 701/833 or any additional NPA/NXX designations sixty days in advance of making such change.

4.1 Type 2-B Interconnection at Minot: A two-way trunk group is provisioned between SRT Minot Host Office (MNOTNDXADS0) and SRT Wireless' network in Bismarck. This trunk group is provisioned in connection with SRT Wireless' NPA/NXX of 701/833 designated as being located at the Minot exchange. Applicable tariff charges for establishing and provisioning these trunk groups are billed by SRT to SRT Wireless.

A. Landline to Wireless Related to 701/833:

1. Calls from SRT's customers in Minot (420, 837, 838, 839, 852, 857, and 858) to SRT Wireless customers with NPA/NXX of 701/833 are routed over the two-way trunk from Minot host to the SRT Wireless' network in Bismarck.
2. Calls from SRT's customers served by SRT's remotes offices hosted by SRT's Minot host, that have two-way non-optional EAS with Minot (see Attachment A), to SRT Wireless' customers with NPA/NXX of 701/833 are routed to the Minot Host and delivered to SRT Wireless' network over the two-way trunk group.
3. Routing of all other landline to wireless calls involving 701/833 will be in accordance to Bellcore Traffic Routing Administration instructions.

B. Wireless to Landline Related to 701/833:

1. Calls from SRT Wireless 701/833 customers to SRT customers at Minot (420, 837, 838, 839, 852, 857, and 858) are routed from SRT Wireless' network via the two-way trunk group to Minot host and terminated by SRT, as appropriate.
2. Calls from SRT Wireless 701/833 customers to SRT's customers served by SRT's remotes hosted by SRT's Minot host, that have two-way non-optional EAS with Minot (see Attachment A), are routed over the two-way trunk group from SRT Wireless' network to the Minot Host and delivered to SRT for termination to its customers.
3. Routing of all other wireless to landline calls involving 701/833 will be in accordance to Bellcore Traffic Routing Administration instructions.

C. Wireless to Landline Other Calls:

1. Calls originated on SRT Wireless' network, by SRT Wireless' customers with NPA/NXX other than 701/833 or customers of another CMRS provider that has entered into roaming agreement with SRT Wireless, while roaming in Minot area, to SRT customers at Minot will be delivered over the two-way trunk group to Minot host for termination by SRT, as appropriate.
2. Calls originated on SRT Wireless' network, by SRT Wireless' customers with NPA/NXX other than 701/833 or customers of another CMRS provider that has entered into roaming agreement with SRT Wireless, while roaming in Minot area, to SRT's customers served by SRT's remotes hosted by SRT's Minot host that have two-way non-optional EAS with Minot (see Attachment A) will be delivered over the two-way trunk group to Minot host for termination by SRT.
3. All other wireless to landline calls will be routed in accordance to Bellcore Traffic Routing Administration instructions.

4.2 Indirect Traffic to SRT. To the extent that SRT Wireless and US West have entered into or may enter into contractual arrangements for the delivery of SRT Wireless traffic to SRT's network (i.e. traffic that is not covered elsewhere in this Agreement) for termination to SRT's customers, SRT will accept this traffic subject to compensation arrangement as outlined in Section 5 below.

4.3 In the event of SRT Wireless' utilization of interconnections established under this Agreement to provide services to its customers that are outside the scope of this Agreement under Article II.3 (i.e. if SRT Wireless provides wireless local loop or quasi-fixed wireless service or one-way paging service), such action by SRT Wireless shall be deemed a default entitling SRT to disconnect all Type 1 and Type 2 interconnections established under this Agreement on 24 hours notice. In the event of such a disconnection, SRT Wireless waives any and all claims under any federal or state statute, rule, regulation or common law for loss, liability or damages, including indirect, consequential, incidental or punitive damages, and waives any and all claims for an injunction to be issued by any court or for any order in the nature of an injunction to be issued by any federal or state agency to prevent such a disconnection or to restore interconnection. In the event of a conflict between the terms of this Section 4.3 and any other terms of this Agreement or applicable statute, rule or regulation, the terms of this Section 4.3 shall prevail.

5.0 COMPENSATION

5.1 Traffic Subject to Reciprocal Compensation.

Reciprocal compensation is applicable for Transport and Termination of Local Traffic as defined in Section 1.15 and is related to the exchange of traffic described in Sections 4.1, 4.2, and in Attachment C, as applicable. Reciprocal compensation is not applicable to traffic that is not originated by SRT customers on SRT's network:

The rate for Reciprocal Compensation shall be \$0.02345 per minute.

5.2 Traffic Subject to Terminating Compensation.

Terminating compensation is applicable to all Non-Local Traffic originated on SRT Wireless' network and delivered to SRT for termination to its customers as described in sections 4.1.B.1, 4.1.C.1, 4.2, and Attachment C, as applicable. SRT Wireless shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.3 Traffic Subject to Originating Compensation

Originating compensation is applicable to all Non-Local Traffic originated by SRT's customers on SRT network and delivered to SRT Wireless via the two-way direct trunk group, as provided for in section 4.1.A.1, and Attachment C, as applicable. SRT Wireless shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.4 Traffic Subject to Transiting Charges

Transiting compensation is applicable to all traffic originated on SRT Wireless network and transited through SRT's facilities in Attachment C, as applicable.

The rate for Transiting compensation shall be \$0.0096 per minute.

5.5 Calculation of Payments and Billing.

5.5.1 SRT Wireless will compensate SRT for Local and Non-Local Traffic delivered to SRT for termination to its customers, as prescribed and at the rates provided in Sections 5.1, 5.2, and for Non-Local Traffic originated by SRT customers on SRT's network and delivered to SRT Wireless for termination to its customers, as prescribed and at the rates provided in 5.3, preceding. SRT Wireless will also compensate SRT for transiting traffic, as prescribed and at the rate provided in Section 5.4. SRT will compensate SRT Wireless for Local Traffic originated by SRT customers on SRT's network and delivered to SRT Wireless over the two-way direct trunk group for termination to its customers, as prescribed and at the rate provided in Section 5.1.

5.5.2 SRT Wireless shall prepare a monthly billing statement to SRT, reflecting the calculation of Reciprocal Compensation due SRT Wireless. SRT shall prepare a monthly billing statement to SRT Wireless which will separately reflect the calculation of Reciprocal Compensation, Terminating Compensation, Originating Compensation, Transiting Compensation, and total compensation due SRT. SRT shall use the total recorded originating traffic, recorded by SRT, total transiting traffic recorded by SRT, and total terminating traffic recorded by either SRT and/or US West for billing SRT Wireless. If either Party lacks the billing capability upon agreement by both Parties SRT shall also include the Reciprocal Compensation due to SRT Wireless as a credit on the monthly billing statement.

5.5.3. To facilitate this billing by SRT, SRT Wireless once it has the capability shall provide SRT on a monthly basis with SRT Wireless usage information showing (a) total minutes of Local and Non-Local traffic, originated on SRT's network by SRT's customers in Minot that is delivered to SRT Wireless over two-way direct trunk group (i.e., traffic subject to Originating Compensation, in accordance with Section 5.3, above), (b) total minutes of Local and Non-Local traffic, originated on SRT Wireless network and routed over the two-way direct trunk group to SRT for termination to SRT customers (i.e., traffic subject to Reciprocal Compensation, in accordance with Section 5.1, above, or Terminating Compensation in accordance with Section 5.2, above), (c) total minutes of Local and Non-Local originated on SRT Wireless network that terminate to SRT customers through indirect connection (i.e., as described in Section 4.2 above to determine the traffic subject to Reciprocal Compensation, in accordance with Section 5.1, above, or Terminating Compensation in accordance with Section 5.2, above).

5.5.4 In the event that there is insufficient representative and verifiable data on the actual Local and Non-Local Traffic exchanged between the Parties to use in preparation of the monthly billing statement, the Parties agree to apply a Non-Local Traffic factor to the total traffic volumes in each direction as an estimate of the Non-Local Traffic being exchanged. This factor shall be based on aggregated end user billing initially provided by SRT Wireless. Due to administrative cost, Non-Local factor will not be applied in those circumstances where Non-Local Traffic usage is less than 5% of total traffic (i.e. All traffic will be considered Local and subject to Reciprocal Compensation as described in Section 5.1, above).

5.5.5 Each party may request to inspect, during normal business hours, the records, which are the basis for any monthly bill issued by the other Party and to request copies thereof provided that the requested records do not exceed 24 months in age from the date the monthly bill containing said record information was issued.



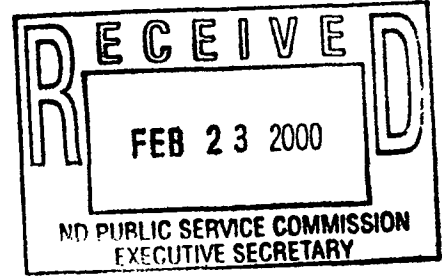
Headquarters:
3615 North Broadway
PO Box 2027
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701-858-1200

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PO Box 2027
Minot, ND 58702-2027
701-858-1200

SRT Connections:
1400 20th Ave. SW
Suite 3
PO Box 2027
Minot, ND 58702-2027
701-852-1100

February 22, 2000

Jon Mielke
ND Public Service Commission
State Capitol
600 East Boulevard Ave
Bismarck, ND 58505



Dear Jon:

Enclosed for your information and filing is a copy of a Wireless Interconnection Agreement between CommNet Cellular and SRT Communications, Inc. The two parties to this Agreement have entered into the Agreement through voluntary negotiations without resort to mediation or arbitration.

Also enclosed is a copy of a Wireless Interconnection Agreement between SRT's subsidiary company SRT Wireless and SRT Communications, Inc.

Please give me a call if you have any questions about either of these agreements.

Sincerely,

Warren L. Hight
General Manager/CEO

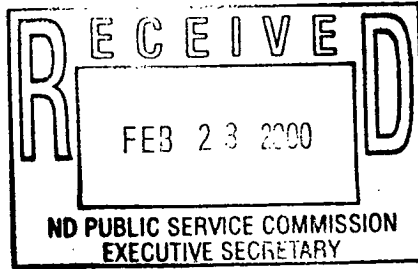
krw
Enclosures
t:mielke

WPH-4-D-1

2 PU-2240-00-78
02/23/2000
CommNet Cellular, Inc. / SRT Communications,
Cover letter re application

Pages: 1

CC: Comm Legal PUD (3)



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FEB 1 2000
SRT

**WIRELESS INTERCONNECTION
AGREEMENT**

BETWEEN

SRT COMMUNICATIONS INC.

AND

COMMNET CELLULAR, INC.

WPH-4-D-2

1 PU-2240-00-78 Pages: 25
02/23/2000
CommNet Cellular, Inc. / SRT Communications,
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 - 16. Attachments:**
 - A. SRT Communications Inc. - NXX and CLLI Designations**
 - B. CommNet Cellular, Inc. - NXX and CLLI Designations**
 - C. Reserved For Future Use**

I. Article I

1. INTRODUCTION

This Interconnection/Compensation Agreement ("Agreement") is effective as of the 1st day of February, 2000 (the "Effective Date"), by and between SRT Communications Inc. ("SRT") with offices at P.O. Box 2027, 3615 North Broadway, Minot, North Dakota 58702-2027 and CommNet Cellular, Inc. ("CommNet") with offices at 8350 East Crescent Parkway, Suite 400, Englewood, CO 80111.

2. RECITALS

WHEREAS, SRT is a Local Exchange Carrier in the State of North Dakota;

WHEREAS, CommNet is a Commercial Mobile Radio Service provider of two-way mobile communications services operating within the state of North Dakota;

WHEREAS, SRT and CommNet exchange calls between their networks and wish to establish Interconnection and Compensation arrangements for these calls;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SRT and CommNet hereby agree as follows:

II. Article II

1. DEFINITIONS

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

- 1.1 "Act" means the Communications Act of 1934, as amended.
- 1.2 "As Defined in the Act", means as specifically defined by the Act.
- 1.3 "As Described in the Act" means as described in or required by the Act.

3.0 SCOPE

This Agreement relates to exchange of traffic between SRT and CommNet. SRT's NXXs are listed in Attachment A hereto. CommNet represents that it is a CMRS provider of communications services to subscribers in MTA No. 12, Minneapolis-St. Paul. CommNet's NXXs are listed in Attachment B hereto.

This Agreement is limited to traffic of SRT end user customers for which SRT has tariff authority to carry. This Agreement is limited to traffic of CommNet end user customers to which CommNet provides service on a two-way wireless, mobile basis. This Agreement covers only traffic of CommNet end user customers that are utilizing a mobile station, as defined in the Communication Act of 1934. This Agreement does not cover traffic of CommNet end user customers that are utilizing customer premise equipment for communications over a wireless local loop or quasi-fixed wireless service, even though the customer premise equipment might be transportable in a quasi-mobile application. This Agreement does not cover traffic of CommNet on a one way mobile basis, sometimes called paging service.

Nothing in this Agreement shall be construed as a waiver by either party to institute proceedings before the Commission to compel the establishment of interconnection arrangements between CommNet and SRT for wireless local loop service or quasi-fixed wireless services. If CommNet desires to establish interconnection arrangements with SRT for wireless local loop or quasi-fixed wireless, or paging service, SRT will engage in bona fide negotiations with CommNet to establish interconnection and compensation arrangements for such traffic. In the event said negotiations do not result in mutually satisfactory interconnection and compensation arrangements within a reasonable amount of time, either party may institute proceedings before the Commission pursuant to section 49-21-09 of the North Dakota Century Code.

The Parties also agree to exchange traffic associated with Third-Party local providers if an agreement has been made between the originating carrier and both the transiting company and the terminating company.

4.0 SERVICE AGREEMENT

Description of Arrangements. This Agreement provides for the following interconnection and arrangements between the networks of SRT and CommNet. Additional arrangements that may be agreed to in the future will be delineated in Attachment C to this agreement. Type 2 interconnection and arrangements are based on the existing rate center designation for CommNet's NPA/NXX, as listed in the Routing Database System's Destination Code Records. CommNet shall notify SRT, in writing, of any change to the rate center designation for NPA/NXX of 701/240, 450, 340 or any additional NPA/NXX designations sixty days in advance of making such change.

4.1 Type 2-B Interconnection at Minot: A two-way trunk group is provisioned between SRT Minot Host Office (MNOTNDXADS0) and CommNet's network in Bismarck. This trunk group is provisioned in connection with CommNet's NPA/NXX of 701/240, 450, 340 designated as being located at the Minot exchange. Applicable tariff charges for establishing and provisioning these trunk groups are billed by SRT to CommNet.

A. Landline to Wireless Related to 701/240, 450, 340:

1. Calls from SRT's customers in Minot (420, 837, 838, 839, 852, 857, and 858) to CommNet customers with NPA/NXX of 701/240, 450, 340 are routed over the two-way trunk from Minot host to the CommNet's network in Bismarck.
2. Calls from SRT's customers served by SRT's remotes offices hosted by SRT's Minot host, that have two-way non-optional EAS with Minot (see Attachment A), to CommNet's customers with NPA/NXX of 701/240, 450, 340 are routed to the Minot Host and delivered to CommNet's network over the two-way trunk group.
3. Routing of all other landline to wireless calls involving 701/240, 450, 340 will be in accordance to Bellcore Traffic Routing Administration instructions.

B. Wireless to Landline Related to 701/240, 450, 340:

1. Calls from CommNet 701/240, 450, 340 customers to SRT customers at Minot (420, 837, 838, 839, 852, 857, and 858) are routed from CommNet's network via the two-way trunk group to Minot host and terminated by SRT, as appropriate.
2. Calls from CommNet 701/240, 450, 340 customers to SRT's customers served by SRT's remotes hosted by SRT's Minot host, that have two-way non-optional EAS with Minot (see Attachment A), are routed over the two-way trunk group from CommNet's network to the Minot Host and delivered to SRT for termination to its customers.
3. Routing of all other wireless to landline calls involving 701/240, 450, 340 will be in accordance to Bellcore Traffic Routing Administration instructions.

C. Wireless to Landline Other Calls:

1. Calls originated on CommNet's network, by CommNet's customers with NPA/NXX other than 701/240, 450, 340 or customers of another CMRS provider that has entered into roaming agreement with CommNet, while roaming in Minot area, to SRT customers at Minot will be delivered over the two-way trunk group to Minot host for termination by SRT, as appropriate.
2. Calls originated on CommNet's network, by CommNet's customers with NPA/NXX other than 701/240, 450, 340 or customers of another CMRS provider that has entered into roaming agreement with CommNet, while roaming in Minot area, to SRT's customers served by SRT's remotes hosted by SRT's Minot host that have two-way non-optional EAS with Minot (see Attachment A) will be delivered over the two-way trunk group to Minot host for termination by SRT.
3. All other wireless to landline calls will be routed in accordance to Bellcore Traffic Routing Administration instructions.

4.2 Indirect Traffic to SRT. To the extent that CommNet and US West have entered into or may enter into contractual arrangements for the delivery of CommNet traffic to SRT's network (i.e. traffic that is not covered elsewhere in this Agreement) for termination to SRT's customers, SRT will accept this traffic subject to compensation arrangement as outlined in Section 5 below.

4.3 In the event of CommNet's utilization of interconnections established under this Agreement to provide services to its customers that are outside the scope of this Agreement under Article II.3 (i.e. if CommNet provides wireless local loop or quasi-fixed wireless service or one-way paging service), such action by CommNet shall be deemed a default entitling SRT to disconnect all Type 1 and Type 2 interconnections established under this Agreement on 24 hours notice. In the event of such a disconnection, CommNet waives any and all claims under any federal or state statute, rule, regulation or common law for loss, liability or damages, including indirect, consequential, incidental or punitive damages, and waives any and all claims for an injunction to be issued by any court or for any order in the nature of an injunction to be issued by any federal or state agency to prevent such a disconnection or to restore interconnection. In the event of a conflict between the terms of this Section 4.3 and any other terms of this Agreement or applicable statute, rule or regulation, the terms of this Section 4.3 shall prevail.

5.0 COMPENSATION

5.1 Traffic Subject to Reciprocal Compensation.

Reciprocal compensation is applicable for Transport and Termination of Local Traffic as defined in Section 1.15 and is related to the exchange of traffic described in Sections 4.1, 4.2, and in Attachment C, as applicable. Reciprocal compensation is not applicable to traffic that is not originated by SRT customers on SRT's network.

The rate for Reciprocal Compensation shall be \$0.02345 per minute.

5.2 Traffic Subject to Terminating Compensation.

Terminating compensation is applicable to all Non-Local Traffic originated on CommNet's network and delivered to SRT for termination to its customers as described in sections 4.1.B.1, 4.1.C.1, 4.2, and Attachment C, as applicable. CommNet shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.3 Traffic Subject to Originating Compensation

Originating compensation is applicable to all Non-Local Traffic originated by SRT's customers on SRT network and delivered to CommNet via the two-way direct trunk group, as provided for in section 4.1.A.1, and Attachment C, as applicable. CommNet shall compensate SRT at SRT's applicable access tariff rates for all Non-Local Traffic.

5.4 Traffic Subject to Transiting Charges

Transiting compensation is applicable to all traffic originated on CommNet network and transited through SRT's facilities in Attachment C, as applicable.

The rate for Transiting compensation shall be \$0.0096 per minute.

5.5 Calculation of Payments and Billing.

5.5.1 CommNet will compensate SRT for Local and Non-Local Traffic delivered to SRT for termination to its customers, as prescribed and at the rates provided in Sections 5.1, 5.2, and for Non-Local Traffic originated by SRT customers on SRT's network and delivered to CommNet for termination to its customers, as prescribed and at the rates provided in 5.3, preceding. CommNet will also compensate SRT for transiting traffic, as prescribed and at the rate provided in Section 5.4. SRT will compensate CommNet for Local Traffic originated by SRT customers on SRT's network and delivered to CommNet over the two-way direct trunk group for termination to its customers, as prescribed and at the rate provided in Section 5.1.

5.5.2 CommNet shall prepare a monthly billing statement to SRT, reflecting the calculation of Reciprocal Compensation due CommNet. SRT shall prepare a monthly billing statement to CommNet which will separately reflect the calculation of Reciprocal Compensation, Terminating Compensation, Originating Compensation, Transiting Compensation, and total compensation due SRT. SRT shall use the total recorded originating traffic, recorded by SRT, total transiting traffic recorded by SRT, and total terminating traffic recorded by either SRT and/or US West for billing CommNet. If either Party lacks the billing capability upon agreement by both Parties SRT shall also include the Reciprocal Compensation due to CommNet as a credit on the monthly billing statement.

5.5.3. To facilitate this billing by SRT, CommNet once it has the capability shall provide SRT on a monthly basis with CommNet usage information showing (a) total minutes of Local and Non-Local traffic, originated on SRT's network by SRT's customers in Minot that is delivered to CommNet over two-way direct trunk group (i.e., traffic subject to Originating Compensation, in accordance with Section 5.3, above), (b) total minutes of Local and Non-Local traffic, originated on CommNet network and routed over the two-way direct trunk group to SRT for termination to SRT customers (i.e., traffic subject to Reciprocal Compensation, in accordance with Section 5.1, above, or Terminating Compensation in accordance with Section 5.2, above), (c) total minutes of Local and Non-Local originated on CommNet network that terminate to SRT customers through indirect connection (i.e., as described in Section 4.2 above to determine the traffic subject to Reciprocal Compensation, in accordance with Section 5.1, above, or Terminating Compensation in accordance with Section 5.2, above).

5.5.4 In the event that there is insufficient representative and verifiable data on the actual Local and Non-Local Traffic exchanged between the Parties to use in preparation of the monthly billing statement, the Parties agree to apply a Non-Local Traffic factor to the total traffic volumes in each direction as an estimate of the Non-Local Traffic being exchanged. This factor shall be based on aggregated end user billing initially provided by CommNet. Due to administrative cost, Non-Local factor will not be applied in those circumstances where Non-Local Traffic usage is less than 5% of total traffic (i.e. All traffic will be considered Local and subject to Reciprocal Compensation as described in Section 5.1, above).

5.5.5 Each party may request to inspect, during normal business hours, the records, which are the basis for any monthly bill issued by the other Party and to request copies thereof provided that the requested records do not exceed 24 months in age from the date the monthly bill containing said record information was issued.

EXHIBIT WPH-5

Interrogatory #23

Request: For each NXX identified in response to DR 22, please state whether SRT has ever billed or demanded payment of: (a) access charges; or (b) reciprocal compensation for calls to those NXXs.

Objections: Unclear; Trade Secret

Response: (a) Access charges are applicable under tariff for the following NXX's unless pertaining to traffic between EAS exchanges: 420, 837, 838, 839, 852, 857, and 858.

(b) Reciprocal compensation is applicable to CMRS carriers under the Interconnection Agreement for the following NXX's: 240, 340, 720, 721, and 833.

EXHIBIT WPH-6

Interrogatory #16

Request: If the answer to the preceding DR is yes, provide: (a) the name of each ILEC with whom SRT shares a local or EAS exchange and the name of the exchange area served by that incumbent LEC; and (b) a diagram similar to those contained under Tab 1 of SRT's exchange of information binder that shows the routing of a call from a SRT end user to an ISP served by the incumbent LEC with whom SRT shares an EAS area; and (c) specify what intercarrier compensation arrangements and rates apply to the exchange of such traffic.

Objections: Trade Secrets

Response: (a) The name of ILEC number one is Turtle Mountain Communications (TMC). The EAS exchange areas are as follows:

<u>From SRT Exchange</u>	<u>To TMC Exchange</u>
Antler (267)	Bottineau (228)
Landa (295)	Bottineau (228)
	Souris (243)
Maxbass (268)	Bottineau (228)
Metigoshe (263)	Bottineau (228)
	Dunsieth (244)
	Souris (243)
Newburg (272)	Bottineau (228)
	Kramer (359)
Upham (768)	Kramer (359)
Westhope (245)	Bottineau (228)
	Souris (243)

The name of ILEC number two is North Dakota Telephone Company (NDTC). The EAS exchange areas are as follows:

<u>From SRT Exchange</u>	<u>To NDTC Exchange</u>
Butte/ Keif/Kongsberg (626)	Anamoose/Drake/Balfour (465)
	Velva (338)
Karlsruhe (525)	Velva (338)
Martin (693)	Harvey (324)
Sawyer (624)	Velva (338)

- (b) See the diagram in response to Interrogatory #14 (a) for Rugby/NDTC EAS and Bottineau/TMC EAS.
- (c) EAS interconnections between SRT and the two ILEC's are provided between companies with no compensation to either company.

EXHIBIT WPH-7

GENERAL SERVICES

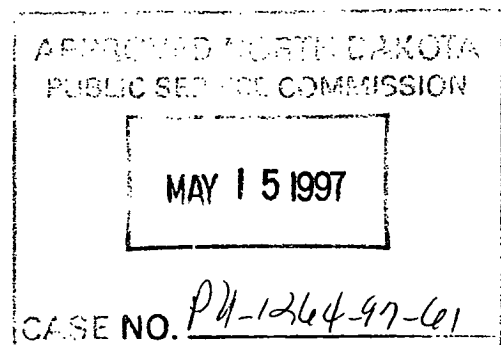
FOREIGN EXCHANGE SERVICE

A. Concurrence in Rates and Charges of Northwestern Bell Telephone Company

1. North Dakota Telephone Company concurs in the rates and charges governing Foreign Exchange Service, as applied by the Northwestern Bell Telephone Company in the state of North Dakota.
2. North Dakota Telephone Company extends this concurrence to any and all changes which may be made subsequent to this date by the Northwestern Bell Telephone Company.
3. North Dakota Telephone Company hereby expressly reserves the right to cancel and make void this statement of concurrence at any and such time as it appears to be in the best interest of the Company.
4. This concurrence supersedes and cancels all previous schedules of rates and charges or concurrences issued by the Company or its predecessors.

(M)

(M)



Issued: February 27, 1997

Effective: March 20, 1997

North Dakota Telephone Company
802 South Fifth Street
P.O. Box 180
Devils Lake, North Dakota 58301

WPH-7-1

**Qwest Corporation
Exchange and Network Services
Price Schedule**

State of North Dakota
Effective: 3-9-2001

TITLE PAGE
Release 1

TERMS, CONDITIONS, RATES AND CHARGES

Applying to the provision of intrastate

EXCHANGE AND NETWORK SERVICES

within the operating territory of

QWEST CORPORATION

in the State of

NORTH DAKOTA

NOTICE
THE INFORMATION CONTAINED IN THIS DOCUMENT IS SUBJECT TO CHANGE.

WPH-7-2

Qwest Corporation
Exchange and Network Services
Price Schedule

State of North Dakota
Effective: 3-9-2001

SECTION 5
Page 36
Release 1

5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS (Cont'd)

5.1.4 FOREIGN EXCHANGE SERVICE

A. Description

Foreign Exchange Service is a service whereby a customer may obtain local service from an exchange foreign to the exchange in which the customer is located.

B. Definitions

Normal Exchange

The exchange area within which the customer's premises are located.

Foreign Exchange

The exchange area from which the service is being provided.

Principal Central Office

The central office in a single office exchange or that office of a multi-office exchange (usually the toll office) in which toll facilities are normally terminated.

C. Terms and Conditions

1. The terms, conditions, rates and charges as specified in the Private Line Transport Services Price Schedule for Foreign Exchange Service apply for the interexchange facilities required to provide Foreign Exchange Service.
2. The terms, conditions, rates and charges of the foreign exchange apply for the main station.
3. Except as provided in C.2., above, the terms, conditions, rates and charges applicable to the normal exchange apply for service provided in the normal exchange.

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Qwest Corporation
Exchange and Network Services
Price Schedule

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SECTION 5
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Release 1

5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS

5.1.4 FOREIGN EXCHANGE SERVICE

C. Terms and Conditions (Cont'd)

4. Foreign Exchange Service is limited to individual line and private branch exchange trunks only and is suitable for the same connections between a station located on the premises in which the foreign exchange line terminates, and any other station, as the customer would receive if he were actually located in the exchange to which the line is connected. Such service is not provided in connection with Smart PAL Service.
5. Foreign Exchange Service is normally furnished from the principal central office of the foreign exchange. If, at the customer's request, the service is furnished from a central office other than the principal central office, foreign central office mileage charges apply for the channel between the principal and serving central offices.

D. Rates and Charges

1. Interexchange channels

The rates and charges, as specified in the Private Line Transport Services Price Schedule, for Foreign Exchange Service apply.

2. Exchange Service

a. Main Station

The monthly rates shall be the regularly established rates of the foreign exchange, applicable within the base rate area of that exchange, for individual line or private branch exchange trunk line service.

The Service Charges shall be those regularly applicable to the class of service in the normal exchange.

b. Extension Service

Extension Service may be installed in the normal exchange at the rates and charges of the normal exchange.

Extension Service may be provided in the foreign exchange at the rates and charges of the foreign exchange, with off-premises extension line mileage charges applicable between the principal central office and the extension location demarcation point. When special equipment is required to provide proper transmission and supervision, charges based on cost will apply.

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Qwest Corporation
Exchange and Network Services
Price Schedule

State of North Dakota
Effective: 3-9-2001

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Page 38
Release 1

5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS

5.1.4 FOREIGN EXCHANGE SERVICE

D.2. (Cont'd)

c. Directory Listings

Primary and additional directory listings are provided in the directory serving the foreign exchange as described in 5.7.1.

d. Auxiliary and Supplemental Services

All facilities and services offered in other sections of this Price Schedule which are compatible with this offering of Foreign Exchange Service are provided at the rates and charges set forth for such facilities and services.

3. Other Rates and Charges

- a. The rates and charges specified in D.1. and D.2., preceding, apply when Foreign Exchange Service is provided solely by this Company.
- b. When the service is provided jointly by this Company and a connecting company, additional rates and charges, as specified in the tariffs of the connecting company may also apply.
- c. Four-Wire Service Terminating Arrangement

(1) Description and Basis of Offering

The Four-Wire Service Terminating Arrangement permits switching equipment that is designed to use four-wire terminations to be connected to the Company's standard two-wire Foreign Exchange (FX) exchange facilities toll network. While this offering contemplates the use of four-wire facilities between the local serving central office and the premises switching equipment, two-wire facilities may be used.

Transmission performance that meets the established standards of the Company will be obtained over facilities connected to a Four-Wire Service Terminating Arrangement. If a customer requests improvement beyond this, additional equipment will be provided, where facility conditions permit, subject to additional rates and charges based on the costs incurred.

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Exchange and Network Services
Price Schedule

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5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS

5.1.4 FOREIGN EXCHANGE SERVICE

D.3.c. (Cont'd)

(2) Rates and Charges

The following rates and charges are for the Four-Wire Service Terminating Arrangement only and are in addition to the applicable rates and charges for the FX trunk with which it is associated.

	USOC	NONRECURRING CHARGE[1]	MONTHLY RATE
• Four-Wire Service Terminating Arrangement, each,			
- When installed coincident with the trunk with which associated	4WF	\$50.00	\$15.00
- When installed subsequent to the trunk with which associated	4WF	75.00	15.00

[1] In addition to the existing nonrecurring service charges.

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Release 1

5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS

5.1.4 FOREIGN EXCHANGE SERVICE (Cont'd)

E. Adjacent Exchange Service

1. Description

- a. Adjacent Exchange Service is offered to meet customer requirements for service from an adjacent exchange instead of, or in addition to, service from the exchange in which the customer is located.

Service, as used in this section, shall mean all local exchange grades of service offered in the adjacent exchange at the time of application for service.

- b. Adjacent Exchange Service will be furnished between customers governed by this Price Schedule and from all exchanges whether the customer is located in an exchange of this Company or in an exchange of another company. However, the other company must have a comparable tariff on file or concur in a comparable tariff. Adjacent Exchange Service will not be offered between exchanges that have Extended Area Service between them.

2. Terms and Conditions

- a. Where portions of this service are provided by two different companies, the rates and regulations of each individual company shall apply to that portion of the service which it provides.

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WPH-7-7

Qwest Corporation
Exchange and Network Services
Price Schedule

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Effective: 3-9-2001

SECTION 5
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Release 1

5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS

5.1.4 FOREIGN EXCHANGE SERVICE

E.2. (Cont'd)

b. Application of Charges

- (1) Where a customer is located in a Company exchange and requests service from an adjacent Company exchange:

The service and rates and charges in effect in the adjacent exchange applies plus a mileage rate as shown under 3., following.

- (2) Where a customer is located in a Company exchange and requests service from an adjacent independent company exchange:

The service and rates and charges specified by the independent company exchange applies plus a mileage charge as shown under 3., following.

- (3) Where a customer is located in an independent company exchange and requests service from an adjacent Company exchange:

The service and rates and charges in effect in the Company exchange applies plus the rates and charges specified by the independent company.

- (4) Rates for supplemental services and service charges of the adjacent exchange will apply.

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ND2001-012

WPH-7-8

Qwest Corporation
Exchange and Network Services
Price Schedule

State of North Dakota
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Release 1

5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS

5.1.4 FOREIGN EXCHANGE SERVICE

E.2. (Cont'd)

c. Construction Charges

Construction charges for the provision of Adjacent Exchange Service in Company exchanges apply as follows:

(1) Applicant's Exchange

The applicant shall be required to pay the total cost of providing the plant facilities from their premises to the adjacent exchange boundary line.

(2) Adjacent Exchange

The applicant may be required to pay all or a portion of the cost of construction from the last available facility to the exchange boundary line.

d. Conditions

Except as provided in this section, telephone service outside of an exchange boundary is provided only as Foreign Exchange Service, as set forth in the appropriate Private Line Transport Services Price Schedule.

3. Rates and Charges

In addition to the rates and charges for service of the adjacent exchange a mileage charge in the applicant's exchange applies from the customer's premises to the adjacent exchange boundary.

	USOC	MONTHLY RATE
• One airline mile or fraction thereof	1LXES	\$4.80

NOTICE

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ND2001-012

WPH-7-9

EXHIBIT WPH-8

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

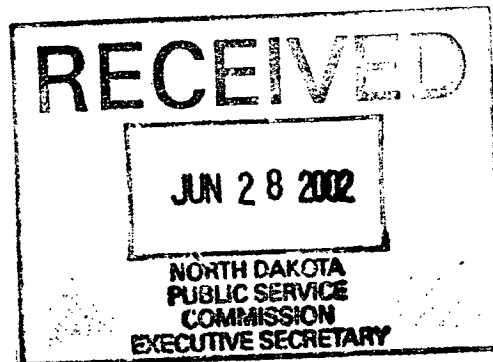
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Website www.kelsch.com

*Also Licensed in Minnesota

June 28, 2002



HAND DELIVERED
PUBLIC SERVICE COMMISSION
12TH & 13TH FL DEPT 408
600 E BLVD AVE
BISMARCK ND 58505

RE: Petition of WWC Holding Co. Inc. for Arbitration Under the Telecommunications Act of 1996
Our File No. 8451

Ladies or Gentlemen:

Enclosed for filing is the original and seven copies of WWC Holding Co. Inc.'s Petition for Arbitration. Thank you for your attention to this matter and if you have any questions please contact me.

Respectfully yours,

A handwritten signature in black ink, appearing to read "T. D. Kelsch".

Thomas D. Kelsch

ve
Encs

c: Gene DeJordy
Mark J Ayotte

WPH-8-1

2 PU-2077-02-308

Pages: 1

Cover letter re filing

by WWC Holding Co., Inc. by Thomas D. Kelsch, Attor

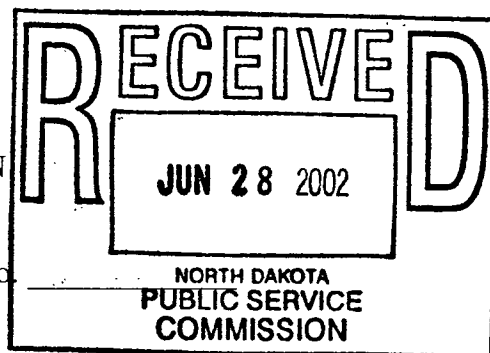
06/28/2002

CC: Comm Legal Illona Pat.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Petition of WWC Holding Co., Inc.)
For Arbitration Under The)
Telecommunications Act of 1996)

Case No. _____



PETITION FOR ARBITRATION
OF WWC HOLDING CO., INC.

WWC Holding Co., Inc. ("Western Wireless") hereby files this Petition with the North Dakota Public Service Commission ("Commission") to arbitrate the unresolved issues remaining after negotiations for an interconnection agreement between Western Wireless and the independent local exchange companies ("ILECs") listed on Exhibit 2, pursuant to N.D. Adm. Code § 69-02-10-04 and Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) ("Act").

Western Wireless is a commercial mobile radio service ("CMRS") provider providing service throughout North Dakota under the trade name CellularOne. Western Wireless holds licenses to provide cellular telecommunications service in ND 1, ND 2, ND 3, ND 4, and ND 5 Rural Service Areas ("RSAs") and the Grand Forks, Bismarck, and Fargo Metropolitan Service Areas ("MSAs") within the State of North Dakota. The negotiations with the ILECs, who were all represented by common counsel, proceeded with the understanding that a standard interconnection agreement would be used to govern interconnection between Western Wireless and the ILECs, although each agreement could contain different rates or additional provisions as necessary to address unique issues. Because all of the issues negotiated with the ILECs are the same and negotiations were held with the ILECs' common attorney and no individual negotiations took place between Western Wireless and the individual ILECs, a single Petition for Arbitration is being filed.

WPH-8-2

1 PU-2077-02-308 Pages: 44

Interconnection Arbitration Application

by WWC Holding Co., Inc.

06/28/2002

CC: Comm Legal Ilona Pat.

Exhibit 1 is the Interconnection Agreement negotiated to date by Western and the ILECs, setting forth the agreed-upon terms and conditions of service, along with the unresolved issues. Western Wireless has approved interconnection agreements on file with each of the ILECs, has given notice of intent to renegotiate, and by agreement of the parties, under Section 252 of the Act, arbitration must be requested between June 5 and June 30, 2002. The final agreements approved at the conclusion of the this proceeding will replace the existing agreements on file with the Commission.

PARTIES AND THEIR REPRESENTATIVES

Petitioner: WWC Holding Co., Inc.
c/o Gene DeJordy, Vice President of Regulatory Affairs
and Ron Williams, Director-Industry Relations
3650 – 131st Avenue S.E.
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Telephone: 425-586-8736
Fax: 425-586-8118
Gene.DeJordy@WWireless.com
Ron.Williams@WWireless.com

Thomas D. Kelsch
Kelsch, Kelsch, Ruff & Kranda
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tdkelsch@midco.net

Mark J. Ayotte
Philip R. Schenkenberg
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332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone: 651-223-6600
Fax: 651-223-~~6540~~ 6450
mayotte@briggs.com
pschenkenberg@briggs.com

Respondents: The companies listed in Exhibit 2 have been jointly represented by:

Michael A. Bosh
Pringle & Herigstad, P.C.
P. O. Box 1000
Minot, North Dakota 58702
Telephone: 701-852-0381
Fax: 701-857-1361
mbosh@ndak.net

Azita Sparano
John Starulakis, Inc.
4625 Alexander Drive
Suite 135
Alpharetta, Georgia 30022

SUMMARY OF THE NEGOTIATION HISTORY

On November 20, 2001, Western Wireless commenced negotiations with the ILECs for new interconnection agreements to govern the transport and termination of telecommunication traffic between Western Wireless and the ILECs. In January 2002, Michael A. Bosh, attorney for the ILECs, responded to Western Wireless' November 20, 2001 request for renegotiation of the existing agreements by proposing Amendments to the existing agreements between Western Wireless and the ILECs that would reduce the applicable transport and termination rate. On February 26, 2002, Western Wireless (1) signed the Amendments reducing the applicable transport and termination rate effective February 1, 2002, and (2) stated that renegotiations of new interconnection agreements would continue and that Western Wireless would provide the ILECs with proposed changes to the existing agreements (originally, Western Wireless provided the ILECs with a newly proposed interconnection agreement for their consideration, but the ILECs requested that Western Wireless use the existing agreement as a basis for renegotiation of new agreements). Negotiations continued over the next few weeks, and then, on April 23, 2002, Western Wireless and the ILECs agreed that the window for arbitration would be between June 5

and June 30, 2002, based upon the 135 and 160th day following the date (January 21, 2002) in which meaningful negotiations began.

Throughout the negotiations period, Western Wireless and the ILECs exchanged comments on, and proposed language for, new interconnection agreements, before it became apparent that unresolved issues would require Commission arbitration.

ISSUES TO BE ARBITRATED

The Act and the FCC's rules impose interconnection and compensation obligations on LECs and CMRS providers, and establish standards to apply to interconnection arbitration proceedings. In particular, the following sections of the Act and FCC rules govern the interconnection arrangements between the ILECs and Western Wireless:

- Section 251(a) of the Act requires all telecommunications carriers, including both CMRS carriers and local exchange companies, "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."
- Section 251(b)(5) of the Act imposes on all local exchange companies the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."
- Section 252(d)(2)(A) of the Act provides that "for the purposes of compliance by incumbent local exchange carriers with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier, and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."
- FCC Rule 20.11(a) provides that "a local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable."
- FCC Rule 20.11(b)(1) requires that "a local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier."
- FCC Rule 51.701(e) defines the reciprocal compensation required by the Act to mean an

arrangement "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."

- FCC Rule 51.701(b) imposes reciprocal compensation obligations on "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter."
- FCC Rule 51.703(a) states that "each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier."
- FCC Rule 51.703(b) provides that "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."
- The FCC has forbidden the imposition of access charges as compensation for the transport and termination of telecommunications traffic subject to reciprocal compensation: "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges." *Local Competition Order*, CC Docket 96-98, First Report and Order, ¶ 1043, 11 FCC Rcd 15499 (1996).
- FCC Rule 51.711(a) provides:

Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than a incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

- FCC Rule 51.711(a)(3) provides:

Where the switch of a carrier other than the incumbent LEC serves a geographical area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate.

In spite of these federal mandates, the ILECs have insisted throughout the negotiation of an interconnection agreement that they do not have an obligation to pay reciprocal compensation for land-to-mobile traffic that originates and terminates within the same MTA. The ILECs also have not proposed transport and termination rates that comply with the FCC's pricing standards. In addition, there are other miscellaneous issues that remain unresolved.

Unresolved Issue No. 1 (Scope of Reciprocal Compensation Obligations): What traffic is subject to reciprocal compensation in accordance with the FCC's rules?

The Act and the FCC rules require all telecommunications carriers to negotiate arrangements for reciprocal compensation for the transport and termination of telecommunications traffic. Section 51.701(b)(2) of the FCC rules defines the term "telecommunications traffic" to mean "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." 51 C.F.R. § 701(b)(2). The ILECs agree that mobile-to-land traffic that originates within the same MTA is subject to reciprocal compensation, but take the position that they should pay reciprocal compensation only when land-to-mobile traffic both originates and terminates within their local calling scope, not the MTA. If land-to-mobile traffic originates or terminates outside an ILEC's local calling scope, then the ILEC claims it has the right to charge switched access rates. The ILECs' position is contrary to FCC rules governing reciprocal compensation.

Under FCC Rule 51.701(b)(2), the MTA determines what traffic is subject to reciprocal compensation. The FCC has reiterated this MTA requirement in its *Local Competition Order*: "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges." *Local Competition Order*, CC Docket 96-98, First Report and Order,

¶ 1043, 11 FCC Rcd 15499 (1996). The Commission should resolve this issue by ordering that all traffic originated and terminated within an MTA is subject to reciprocal compensation.

Unresolved Issue No. 2 (Delivery of Land-To-Mobile Traffic): What obligations do the ILECs have to deliver traffic subject to reciprocal compensation to Western Wireless' network?

Issue No. 2a: Are the ILECs prohibited from collecting access charges from any telecommunications carrier on land-to-mobile calls that originate and terminate in the same MTA?

Today, ILEC customers can make land-to-mobile intraMTA calls only by using the services of their presubscribed interexchange carrier, unless Western Wireless establishes NPA/NXX within an ILEC's rate center. As a result, the ILECs are collecting access charges on this traffic, and customers are paying per-minute usage charges or long distance rates. FCC Rule 51.703(b) prohibits a LEC from collecting charges from any carrier for intraMTA land-to-mobile traffic. Instead, the FCC requires that a LEC deliver intraMTA land-to-mobile calls to the other carrier's network without charge. The Commission should order that this land-to-mobile traffic must be delivered to Western Wireless' network without payment of access charges by any carrier.

Issue No. 2b: If Western Wireless establishes a direct connection with an ILEC, should the ILEC deliver all land-to-mobile intraMTA traffic to Western Wireless over those direct facilities.

As discussed above, the ILECs have the obligation to deliver intraMTA calls to Western Wireless within the MTA without charge. If Western Wireless establishes a direct connection with an ILEC, the ILEC should deliver all intraMTA traffic to Western Wireless over those facilities. The ILECs take the position that traffic to Western Wireless' NPA/NXXs' should be toll calls subject to access charges, and that their customers are required to utilize an interexchange carrier.

Unresolved Issue No. 3 (Rates For Reciprocal Compensation): What rates can be adopted for the transport and termination of intraMTA traffic consistent with 47 U.S.C. § 252(d)(2) and FCC Rule 51.705?

The applicable statutes and rules require that rates for transport and termination of telecommunications traffic be reciprocal and symmetrical. 47 C.F.R. § 51.711. Rates for the transport and termination of telecommunications traffic must be set based on: 1) the forward looking costs of transport and termination on the ILEC's network, 2) default proxy rates, or 3) bill-and-keep. 47 C.F.R. § 51.705. If forward-looking rates are proven by the ILEC, those rates apply reciprocally – *i.e.*, Western Wireless charges the ILEC at the same rates when it terminates land-to-mobile intraMTA traffic. Section 252(d)(2)(A) of the Act provides that:

for the purposes of compliance by incumbent local exchange carriers with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier, and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls. (emphasis added).

Today, Western Wireless exchanges traffic with the ILECs under previously-negotiated voluntary agreements containing rates that are not based upon the ILECs' "additional costs of terminating" traffic. In this arbitration, however, the Commission must establish reciprocal compensation arrangements consistent with the statutory mandate of Section 252(d)(2)(A). During these negotiations, the ILECs have offered only their existing rates, and have not justified those rates based on any standards in the Act or the FCC's Rules. The ILECs do not rely on a forward-looking cost study, and have not attempted to show that their rates represent the additional costs of transporting and terminating traffic. In this proceeding, the burden of proof is on the ILECs. Unless the ILECs propose and prove rates on a company-by-company basis that

are consistent with the pricing standards in the Act, a bill-and-keep compensation mechanism should apply to the exchange of all intraMTA traffic. Such a bill-and-keep arrangement would constitute an appropriate and lawful arrangement for the reciprocal compensation.

Unresolved Issue No. 4 (Symmetrical Compensation at a Tandem Rate): Is Western Wireless entitled to be compensated at the tandem interconnection rate as required by 47 C.F.R. § 51.711(a) if its switch serves an area greater than the geographical area served by the ILECs' tandem switch?

Transport and termination rates must be based upon a reasonable approximation of the "additional costs" of terminating calls under 47 U.S.C. § 252(d)(2)(A)(ii). In implementing this statutory mandate, the FCC promulgated rules establishing symmetrical reciprocal compensation rates for the transport and termination of local traffic. FCC Rule 51.711(a) provides:

Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than a incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

47 C.F.R. § 51.711(a). Recognizing that a competitive carrier may serve a geographical area equal to or greater than the area served by an incumbent LEC, the FCC adopted a rule that requires a competitive carrier to be compensated at the incumbent LEC's tandem interconnection rate even if interconnection (and the compensation to the incumbent LEC) is at an incumbent LEC's end office:

Where the switch of a carrier other than the incumbent LEC serves a geographical area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate.

47 C.F.R. § 51.711(a)(3).

To this point, the ILECs have failed to propose separate rates for "tandem" or Type 2A interconnection, versus "end office" or Type 2B interconnection. Separate Type 2A and Type 2B rates are required under the FCC's rules. If a Type 2A rate is established for any particular ILEC, Western Wireless will be entitled to that rate on all land-to-mobile calls because its switch serves a geographical area equal to or greater than the area served by any of the ILECs' tandem switches.

Accordingly, if bill-and-keep is not adopted, Western Wireless is entitled to collect from the ILECs the full Type 2A tandem rate, which consists of the tandem switching, tandem transport, and local switching, for all land-to-mobile traffic subject to reciprocal compensation.

Unresolved Issue No. 5 (Rates for Interconnection Facilities): What rates should apply to interconnection facilities used for the transport and termination of local traffic in Type 1, Type 2B and Type 2A interconnection arrangements between an ILEC and Western Wireless?

During negotiations, the ILECs proposed that interconnection facilities be purchased out of intrastate tariffs. Under FCC rules, the ILECs are required to price interconnection facilities for CMRS providers at the lowest rates that are economically reasonable. 47 C.F.R. § 20.11(a). The ILECs' proposed intrastate tariffed rates do not meet that standard.

The parties also disagree as to the way in which Western Wireless and an ILEC will share the cost of two-way trunks. Western Wireless asserts that such costs should be shared equally unless another percentage is developed based on traffic over that facility.

Unresolved Issue No. 6 (Local Numbers): May Western Wireless have numbers rated as local to an ILEC's end office without establishing a direct interconnection to that end office?

Western Wireless is licensed to provide wireless service within the ILECs' certificated areas. To best serve customers in North Dakota, Western Wireless wants to offer consumers access to phone numbers that are local to the landline rate center. The ILECs claim such an

arrangement requires a direct connection to the ILEC end office. However, it is impossible for Western Wireless to establish direct connections to all ILEC end offices. To provide the greatest consumer benefit, Western Wireless should be entitled to obtain numbers which would be rated as local to an ILEC end office without establishing a direct connection. This would simply require the ILEC to program its switch to recognize the calls as local, and to send those calls to Western Wireless' point of interconnection at the nearest Qwest tandem switch. By establishing these local numbers, land-to-mobile calls would be efficiently routed, and landline customers would not incur unnecessary toll usage charges.

Unresolved Issue No. 7 (Definition of CMRS Traffic): Will the agreement apply to all traffic determined to be CMRS by the FCC?

The scope of this agreement should include all CMRS traffic between Western Wireless and each ILEC. The ILECs have proposed language that would seem to exclude from the agreement some traffic determined by the FCC to be CMRS.

Unresolved Issue No. 8 (Other Terms and Conditions): Whether the terms and conditions of an interconnection agreement proposed by Western Wireless are fair, reasonable, and consistent with the interconnection requirements of the Act and the FCC rules?

Attached hereto as Exhibit 1 is the Interconnection Agreement negotiated by the Parties containing the agreed-upon language and the disputed language. Western Wireless requests that the Commission adopt its language and reject the language proposed by the ILECs. The additional unresolved issues are as follows:

Issue No. 8a: Whether interMTA traffic would be exchanged between the Parties, and if so, what method of compensation should govern the parties' exchange of this traffic.

Issue No. 8b: Whether language reflecting the FCC's rules and orders governing ISP traffic should be contained in the Agreement (Section 3.2).

Issue No. 8c: Whether Western Wireless must home numbers at an ILEC tandem switch if it establishes a Type 2A connection (Section 4.12).

Issue No. 8d: Rates for transiting traffic (Section 4.4).

Issue No. 8e: Traffic subject to access charges (Section 5.2).

Issue No. 8f: Definitions of interconnection (Section 1.11) and interexchange carrier (Section 1.13).

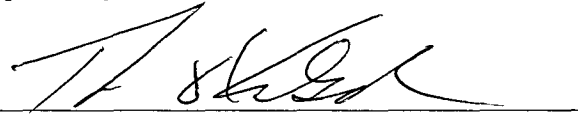
Issue No. 8g: Provision for renegotiation at end of term (Section 8.5).

REQUEST FOR RELIEF

Western Wireless respectfully requests that the Commission:

1. Arbitrate the unresolved issues between Western Wireless and the ILECs;
2. Issue an Order approving the Agreement attached hereto, to be effective immediately upon approval, modified to reflect Western Wireless' position with respect to the unresolved issues; and
3. Issue such other orders as are just and proper.

Respectfully submitted,



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Dated: June 28, 2002

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332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone No. (651) 223-6600

**Attorneys for Petitioner
WWC Holding Co., Inc.**

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of Jan, 2002, a true and correct copy of the above and foregoing was e-mailed and mailed by United States mail, postage prepaid, to:


MICHAEL A BOSCH

ATTORNEY AT LAW

PO BOX 1000

MINOT ND 58702

Mbosh@ndak.net



THOMAS D. KELSCH

WWC and _____

Exhibit 1 to WWC Arbitration Petition

**WIRELESS INTERCONNECTION
AGREEMENT**

BETWEEN

AND

WWC HOLDING CO., INC.

WWC and _____

Article I

1. INTRODUCTION

This Interconnection/Compensation Agreement ("Agreement") is effective as of the ____ day of _____, 2002 (the "Effective Date"), by and between _____ ("TELCO") with offices at _____ and WWC Holding Co., Inc. ("WWC") with offices at 3650 131st Avenue SE, Bellevue, WA 98006.

2. RECITALS

WHEREAS, TELCO is a Local Exchange Carrier in the State of North Dakota;

WHEREAS, WWC is a Commercial Mobile Radio Service provider operating within the state of North Dakota;

WHEREAS, the Parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TELCO and WWC hereby agree as follows:

Article II

1. DEFINITIONS

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

- 1.1 "Act" means the Communications Act of 1934, as amended.
- 1.2 "As Defined in the Act", means as specifically defined by the Act.
- 1.3 "As Described in the Act" means as described in or required by the Act."
- 1.4 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent. 47 U.S.C. §153(1).

1.5 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

(a) "End Office Switch" is a switch in which the subscriber station loops are terminated for connection to trunks. The subscriber receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an end office switch.

(b) "Remote End Office Switch" is a switch in which the subscriber station loops are terminated. The control equipment providing terminating, switching, signaling, transmission, and related functions would reside in a host office. Local switching capabilities may be resident in a remote end office switch.

(c) "Host Office Switch" is a switch with centralized control over the functions of one or more remote end office switches. A host office switch can serve as an end office as well as providing services to other remote end offices requiring terminating, signaling, transmission, and related functions including local switching.

(d) "Tandem Office Switch" is a switching system that establishes trunk-to-trunk connections. Local tandems switch calls from one end office to another within the same geographic area, and access tandems switch traffic from host or end offices to and from an interexchange carrier. A tandem office switch can provide host office or end office switching functions as well as the tandem functions.

(e) "Mobile Switching Center" or "MSC" means a CMRS Provider's facilities and related equipment used to route, transport and switch commercial mobile radio service traffic to and from and among its end Users and other telecommunications carriers.

A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch.

1.6 "Commercial Mobile Radio Services" or "CMRS" means Commercial Mobile Radio Services as defined in 47 CFR part 20.

1.7 "Commission" means the Public Service Commission of North Dakota.

1.8 "EAS Service Area" means a group of two or more exchanges, as defined in TELCO's then current General Subscriber Service Tariff, among which a TELCO Customer may make landline-to-landline calls without incurring a toll charge.

1.9 "Effective Date" means the date first above written.

WWC and _____

1.10 "FCC" means the Federal Communications Commission.

1.11

Issue	Western Wireless' Position	ILECs' Position
Definition of Interconnection (Petition, Issue No. 8f)	"Interconnection for purposes of this Agreement is the direct or indirect linking of TELCO and WWC networks for the exchange of telecommunications traffic described in this Agreement."	Unknown

1.12 "Interconnection Point" or "POI" means the physical location(s) at which the Parties' networks meet for the purpose of establishing interconnection.

1.13

Issue	Western Wireless' Position	ILECs' Position
Definition of Interexchange Carrier (Petition, Issue No. 8f)	"Interexchange Carrier or "IXC" means a carrier that is providing interexchange service."	Unknown

1.14 "InterLATA Service" means telecommunications between a point located in a local access and transport area and a point located outside such area. 47 U.S.C. §153(21).

1.15 "Local Access and Transport Area" or "LATA" means a contiguous geographic area:

(a) Established before February 8, 1996, by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(b) Established or modified by a Bell operating company after February 8, 1996, and approved by the Commission. 47 U.S.C. §153(25)

1.16

Issue	Western Wireless' Position	ILECs' Position
Definition of Local Service Area (Petition, Issue No. 1)	No such definition is necessary.	"Local Service Area means, for WWC, Major Trading Area Number 12 (Minneapolis-St. Paul) and for TELCO, its local calling area contained in TELCO's then current General Subscriber Service Tariff."

1.17

Issue	Western Wireless' Position	ILECs' Position
Definition of Local Traffic (Petition, Issue No. 1)	"Local Traffic means traffic exchanged between the WWC and TELCO that, at the beginning of the call, originates and terminates within the same MTA."	"Local Traffic is defined for all purposes under this Agreement as Local Service Area traffic that (a) is originated by a customer of one Party on that Party's network, (b) terminates to a customer of the other Party on the other Party's network within the same Major Trading Area (MTA), and (c) may be handled pursuant to an agreement between the originating Party and a carrier which performs only a transiting function for the originating Party in lieu of a direct connection between the Parties, provided that the customer of WWC is a two-way CMRS customer and receives mobile service on a wireless, mobile basis as described in 47 U.S.C. §153(27).

For purposes of determining originating and terminating points of a call on the WWC network under this agreement, the originating or terminating cell site locations will be used as the point of call origination and termination, respectively.

- 1.18 "Local Exchange Carrier" or "LEC" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Federal Communications Commission finds that such service should be included in the definition of such term. 47 U.S.C. §153(26).
- 1.19 "Major Trading Area" or "MTA" has the meaning given to the term in 47 CFR Section 24.202(A).

1.20

Issue	Western Wireless' Position	ILECs' Position
Definition of Mobile Service (Petition, Issue No. 7)	"Mobile service' is as defined by the FCC."	Unknown

1.21

Issue	Western Wireless' Position	ILECs' Position
Definition of Mobile Station (Petition, Issue No. 7)	"Mobile station' is as defined by the FCC."	Unknown

1.22

Issue	Western Wireless' Position	ILECs' Position
Definition of Non-Local Traffic (Petition, Issue No. 1)	"All traffic which is not Local Traffic as defined in Section 1.18 hereof is Non-Local Traffic and will not be subject to reciprocal compensation."	"Traffic that originates and terminates in different MTAs. Non-Local Traffic includes traffic that is rated as Local Service Area traffic, based on the rate centers associated with the originating and terminating numbers, but originates and terminates in different MTAs, due to the mobility of WWC customers."

1.23 "NPA" or the "Number Plan Area" also referred to as an "area code" refers to the three-digit code which precedes the NXX in a dialing sequence and identifies the general calling area within the North American Numbering Plan scope to which a call is to be routed (i.e., NPA/NXX-XXXX.).

1.24 "NXX" means the three-digit code, which appears as the first three digits of a seven-digit telephone number within a valid NPA or area code.

1.25 "Party" means either TELCO or WWC, and "Parties" means TELCO and WWC.

1.26 "Reciprocal Compensation" means an arrangement between two carriers in which each receives the same compensation from the other carrier for the transport and termination on each carrier's network of Local Traffic, as defined in Section 1.18 above, that originates on the network facilities of the other carrier. Compensation, regardless of the Party that receives it, is based on TELCO's cost of transport and termination.

WWC and _____

- 1.27 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. §153(43)
- 1.28 "Telecommunications Act" means the Communications Act of 1934, as amended.
- 1.29 "Telecommunications Carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. Section 226(a)(2)). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. 47 U.S.C. §153(44)
- 1.30 "Termination" means the switching of Local Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises. 47 CFR 51.701(d)
- 1.31 "Transiting Traffic" is traffic that originates from one provider's network, "transits" one or more other provider's network substantially unchanged, and terminates to yet another provider's network.
- 1.32 "Transport" means the transmission and any necessary tandem switching of Local Traffic subject to Section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC. 47 CFR 51.701(c)
- 1.33 "Type 1 Service" often referred to as a line-side trunk connection, is a service that involves connection to a telephone company end office similar to that provided to a private branch exchange (PBX). A type 1 Service is offered in connection with the provision of telephone numbers hosted by a TELCO switch.
- 1.34 "Type 2 Service" often referred to as a trunk side connection, is a service that involves interconnection to a telephone company end office (Type 2-B) or tandem (Type 2-A).

2. INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits, Appendices and Schedules shall be deemed to be references to Sections of, and Exhibits, Appendices and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument or other third party offering, guide or practice, statute, regulation, rule or tariff is for convenience of reference only and is not

WWC and _____

intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

3. SCOPE

3.1

Issue	Western Wireless' Position	ILECs' Position
Scope of Agreement (Petition, Issue No. 1)	"This agreement applies to all Local Traffic	"This agreement applies to Local Service Area Traffic

originated by the End User subscribers of one Party and terminated to end-user subscribers of the other Party which is (a) delivered over facilities owned or controlled by the Parties, which directly interconnect the Parties or, (b) indirectly connected, i.e., delivered over a Third Party Provider, performing transiting function, on behalf of the originating Party. Local Traffic is subject to only the Reciprocal Compensation as described in Appendix A of this Agreement. Non-Local Traffic exchanged between the Parties, if any, is subject to TELCO's interstate or intrastate access charges.

3.2

Issue	Western Wireless' Position	ILECs' Position
Effect of FCC's ISP Order (Petition, Issue No. 8b)	"The Parties recognize that the Federal Communications Commission issued its Order on Remand and Report and Order on Intercarrier Compensation for ISP-bound Traffic in its Docket No. 96-98 on April 27, 2001, and that various parties have filed appeals of that Order. The Parties agree that ISP-bound traffic between them, if any, is presently de minimus. If a Party has reason to believe that enhanced service and Internet traffic is not de minimus, that Party may reopen negotiations to determine an appropriate method for identifying such traffic, and, so long as the FCC Order referred to above is final and outstanding, such traffic above a de minimus level shall be transported and terminated on a bill and keep basis. If Telephone Company elects to invoke the rate cap for ISP-bound traffic established in the FCC's Order on Remand and Report and Order on Intercarrier Compensation for ISP-bound Traffic in its Docket No. 96-98 with respect to any telecommunications carrier, the Telephone Company and the CMRS Provider will begin exchanging all Local Traffic at the capped rate on the effective date of the implementation of the rate cap."	Language should not be included.

WWC and _____

3.3 This Agreement is intended, inter alia, to describe and enable specific Interconnection/Reciprocal Compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement relates to exchange of traffic between TELCO and WWC. TELCO's NXXs are listed in Telcordia's Local Exchange Routing Guide ("LERG") for Operating Company Number ("OCN") listed in Appendix A of this Agreement. WWC's NXXs are listed in LERG for OCN 5033 in the state of North Dakota.

3.4

Issue	Western Wireless' Position	ILECs' Position
Definition of CMRS Traffic (Petition, Issue No. 7)	"This Agreement is limited to exchange of TELCO local exchange end-user customers' traffic for which TELCO has tariff authority to carry. This Agreement is further limited to exchange of WWC end user customers' traffic to which WWC provides service on a two-way wireless, mobile basis."	"This Agreement is limited to exchange of TELCO local exchange end-user customers' traffic for which TELCO has tariff authority to carry. This Agreement is further limited to exchange of WWC end user customers' traffic to which WWC provides service on a two-way wireless, mobile basis. This Agreement does not cover traffic of WWC customers that are utilizing customer premise equipment for communications over a wireless local loop or quasi-fixed wireless service, even though the customer premise equipment might be transportable in a quasi-mobile application."

3.5 This Agreement does not cover the exchange of traffic for one-way mobile services such as paging, if provided by WWC. Should WWC desire to establish interconnection agreement with TELCO for such services, TELCO will engage in bona fide negotiations with WWC to establish an interconnection and compensation agreement for said one-way mobile services.

3.6

Issue	Western Wireless' Position	ILECs' Position
Definition of CMRS Traffic (Petition, Issue No. 7)	"WWC and TELCO do not agree whether Mobile Service, as defined in 47 U.S.C. §153(27), includes the provision of fixed wireless services and therefore disagree on the regulatory treatment applicable to exchange of such traffic."	"WWC and TELCO do not agree whether Mobile Service, as defined in 47 U.S.C. §153(27), includes the provision of fixed wireless services and therefore disagree on the regulatory treatment applicable to exchange of such traffic. WWC does not currently provide fixed wireless services in TELCO's Local Service Area. WWC agrees that it will provide TELCO prior notice of its intent to launch fixed wireless services in TELCO's Local Service Area. Upon TELCOS's receipt of such notice, the Parties agree to negotiate an appropriate agreement or an Amendment to this Agreement, which will address the exchange of such traffic."

3.7 The Parties also agree to exchange traffic associated with Third Party local provider, if an agreement has been made between the originating Party and both the transiting Party and the terminating third party local provider. WWC shall not provide transiting function on behalf of TELCO.

3.8

Issue	Western Wireless' Position	ILECs' Position
Scope of Reciprocal Compensation Obligations (Petition, Issues No. 1-2)	This language should not be included in the Agreement.	"Traffic that is exchanged between the Parties through an interexchange carrier ("IXC") is not covered under this Agreement."

4. **SERVICE AGREEMENT**

This Section describes the network architecture with which the Parties to this Agreement may interconnect their respective networks for the Transport and Termination of Telecommunications Traffic where the type of interconnection requested is reasonably available.

4.1 Interconnection Facilities

Issue	Western Wireless' Position	ILECs' Position
Delivery of Land-to-Mobile Traffic (Petition, Issues No. 1-2)	"The Parties agree to the following interconnection options, when direct interconnection is requested by WWC for exchange of Local traffic. Alternatively, either party may choose to indirectly connect to the other party's network, and route originated traffic via the facilities of a third party that performs a transit function on behalf of the Party."	"The Parties agree to the following interconnection options, when direct interconnection is requested by WWC for exchange of Local Service Area traffic. Alternatively, WWC may choose to indirectly connect to the TELCO's network, and route WWC originated Local Service Area traffic via the facilities of a third party LEC that performs a transit function on behalf of WWC for termination on TELCO's network."

4.1.1 Type 1 Interconnection: Facilities which provide a trunk side connection (line side treatment) between TELCO's End Office Switch and WWC's point of presence within that end office boundary, with the POI designated at the TELCO's End Office Switch.

4.1.2 Type 2A Interconnection: Facilities which provide a trunk side connection between TELCO's Tandem Office Switch and WWC's point of presence within the wire center boundary of the tandem switch, with the POI designated at the TELCO's Tandem Office Switch.

Issue	Western Wireless' Position	ILECs' Position
Restriction on Type 2A Interconnection (Petition, Issue No. 8c)	The proposed additional restriction is inappropriate.	Additional provision: "Type 2A arrangements require homing arrangement of WWC's NPA/NXX(s) on the TELCO's Tandem Switch."

4.1.3 Type 2B Interconnection: Facilities which provide a trunk side connection between TELCO's End Office Switch and WWC's point of presence within that end office boundary, with the POI designated at TELCO's End Office Switch. Type 2B facilities provide terminating and originating access to subscribers that can be reached via that TELCO's End Office Switch.

4.1.4

Issue	Western Wireless' Position	ILECs' Position
<p>Facilities Charges (Petition, Issue No. 5)</p>	<p>"In a direct interconnection, the Parties shall provide each other a forecast of projected mobile to land or land to mobile usage for each POI when significant changes in traffic patterns are anticipated. The Parties agree to work cooperatively to determine the number of trunks needed to handle the estimated traffic. Recurring charges billed by TELCO to WWC will be shared by the Parties on a proportional percentage basis as specified in Appendix A of this Agreement. The Parties agree to review these percentages on a periodic basis and, if warranted by actual usage, revise the percentages appropriately. The modified percentages shall be used on a going-forward basis from the date of revision."</p>	<p>"In a direct interconnection, the Parties shall provide each other a forecast of projected mobile to land or land to mobile usage for each POI when significant changes in traffic patterns are anticipated. The Parties agree to work cooperatively to determine the number of trunks needed to handle the estimated traffic. Parties agree that all direct interconnecting facilities will be two-way. TELCO's charges for the interconnection facilities will be at the rates specified in TELCO's Intrastate Access tariffs. Recurring charges billed by TELCO to WWC will be shared by the Parties on a proportional percentage basis as specified in Appendix A of this Agreement. The Parties agree to review these percentages on a periodic basis and, if warranted by actual usage, revise the percentages appropriately. The modified percentages shall be used to true up the charges between the Parties."</p>

4.2 Facility Locations

- 4.2.1 Technical Feasibility: WWC may interconnect with TELCO's network at a technically feasible point, agreed upon by the Parties. The Parties acknowledge for purposes of this requirement that the locations listed in Appendix B of this Agreement constitute the technically feasible point(s) of interconnection for WWC to deliver traffic to the TELCO for transport and termination by the Telephone Company on its network. Appendix C contains WWC's initial POI. WWC may establish additional POI's, from time to time, in accordance with this Agreement.
- 4.2.2 Incumbent LEC Requirement: The Parties acknowledge that the terms and conditions specified in this Agreement do not apply to the provision of

services or facilities by TELCO in those areas where TELCO is not the incumbent LEC.

4.2.3 Technical Requirements and Standards: Each Party will provide the services in this Agreement to the other Party at a standard at least equal in quality and performance to that which the Party provides itself and others. Either Party may request, and the other Party will provide, to the extent technically feasible, services that are superior or lesser in quality than the providing Party provides to itself, provided, however, that such services shall be considered special requests, and will be handled on a case-by-case basis.

4.2.4 Nothing in this Agreement will limit either Party's ability to modify its network, including, without limitation, the incorporation of new equipment, new software or otherwise provided, neither Party shall modify its network to the extent such modification will disrupt or degrade the other Party's use of the network. Each Party will provide the other Party reasonable written notice, of any such modifications to its network, which will materially impact the other Party's service. Each Party will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required as a consequence of this Agreement, including, without limitation, changes in facilities, operations or procedures, minimum network protection criteria, or operating or maintenance characteristics of facilities.

4.3 Transmission and Routing of Traffic

This Section provides the terms and conditions for the exchange of traffic between the Parties' respective networks for the transmission and routing by the Parties of Telecommunications.

4.3.1

Issue	Western Wireless' Position	ILECs' Position
Scope of Reciprocal Compensation and Delivery of Traffic (Petition, Issues No. 1-2)	<p><u>"Directly Interconnected</u>: Each Party shall be responsible for the delivery of Local Traffic from its network to the POI established between the Parties for the Transport and Termination of such traffic by terminating Party to its End Users, as appropriate."</p> <p>"4.3.1.1 TELCO agrees to deliver all originating intraMTA traffic bound for WWC to the direct connection(s)."</p>	<p><u>"Directly Interconnected</u>: Each Party shall be responsible for the delivery of Local Service Area traffic from its network to the POI established between the Parties for the Transport and Termination of such traffic by terminating Party to its End Users, as appropriate."</p>

WWC and _____

4.3.2 If WWC chooses to use TELCO's services or facilities, not otherwise covered under this Agreement, appropriate tariff rates will apply.

4.3.3

Issue	Western Wireless' Position	ILECs' Position
Indirect Interconnection-Delivery of Traffic (Petition, Issues No. 1-2, 6)	<p>"Indirectly Connected via a Third Party Provider: As an alternative to establishing a direct connection, either party may choose to deliver traffic from its network to a Third Party Provider and thus be indirectly connected with the other party for the delivery of traffic originated on that party's network."</p> <p>"3.3.1 TELCO agrees to route originating traffic, destined to a WWC NXX rated out of one of the TELCO's rate centers, to WWC via indirect connections when no direct connection exists."</p>	<p>"Indirectly Connected via a Third Party Provider: As an alternative to establishing a direct connection, WWC may choose to deliver traffic from its network to a Third Party Provider and thus be indirectly connected with TELCO for the delivery of traffic originated on WWC's network by WWC's End Users or roamers."</p>

4.4 Transiting Traffic

The Parties acknowledge and agree that this Agreement is intended to govern the exchange of traffic to and from the Parties' respective networks only. Traffic originated by a Party and delivered to the other Party for termination to the network of a non-party Telecommunications Carrier ("Non-Party Carrier") may be delivered to a Non-Party Carrier. If a Non-Party Carrier objects to the delivery of such traffic, then either Party to this Agreement may request direction from the Commission, FCC, North Dakota state courts or federal courts. The transiting Party will continue to perform transiting functions for the other Party pending ruling from the Commission, FCC, North Dakota state courts or federal courts. The Party performing such transiting function will bill the other Party the transiting charge, as specified in Section 5 below. In order for Non-Party Carrier to bill the other Party for charges it is obligated to pay the Non-Party Carrier, the Party performing the transiting function must provide total minutes of transiting traffic terminating to the Non-Party Carrier. WWC shall not perform a transiting function pursuant to this Agreement.

WWC and _____

5. **COMPENSATION**

5.1 **Traffic Subject to Reciprocal Compensation**

Reciprocal compensation applies to the Transport and Termination of one Party's Local Traffic by another Party over a Type 1, Type 2B, Type 2A, or indirect interconnection arrangement as described in Section 4.0.

The rate for Reciprocal Compensation is listed in **Appendix A** to this Agreement.

5.2 **Traffic Subject to Access Charges.**

Issue	Western Wireless' Position	ILECs' Position
Scope of Access Charges (Petition, Issue No. 8e)	"Each Party's access charges apply to the termination of Non-Local Traffic."	"Access charges are applicable to all WWC's Non-Local Traffic originated or terminated on TELCO's network. WWC shall compensate TELCO at TELCO's applicable access tariff rates for all Non-Local Traffic."

5.3 **Direct Billing.** The Parties shall pay each other for all charges in accordance with the rates set forth in Section 5.1 of this agreement. Such payments are to be received within 45 days from the date of the billing statement. The Parties shall pay a late charge on any undisputed charges, which are not paid within the 45-day period. The rate of the late charge shall be the lesser of 1.5% per month or the maximum amount allowed by law. Each Party shall pay the other Party the reasonable amount of the collecting Party's expenses related to collection of overdue bills, such amounts to include reasonable attorney fees. If either Party disputes a billing statement issued by the other Party, the disputing Party shall notify the billing Party in writing regarding the nature and the basis of the dispute within thirty (60) days of the statement date, or the dispute shall be waived. The Parties shall diligently work toward resolution of all billing issues.

5.4 **Traffic Subject to Transit Compensation**

Transit Compensation is applicable to the traffic originated on WWC's network and routed to TELCO for delivery to a Non-Party telecommunications carrier, as described in Section 4.4 above.

The rate for Transiting Compensation is listed in Appendix A to this Agreement.

5.5 Calculation of Payments and Billing.

5.5.1 WWC will compensate TELCO for Local and Non-Local Traffic delivered to TELCO for termination to its customers, as prescribed and at the rates provided in Sections 5.1 and 5.2, preceding. WWC will also compensate TELCO for transiting traffic routed to TELCO for termination to a non-party carrier, as prescribed and at the rate provided in Section 5.3, preceding.

Issue	Western Wireless' Position	ILECs' Position
Compensation for Termination of Non-Local Traffic. (Petition, Issue No. 8a)	"TELCO will compensate WWC for Local and Non-Local Traffic delivered to WWC for termination to its customers, as prescribed and at the rates provided in Sections 5.1 and 5.2 preceding."	"TELCO will compensate WWC for Local Traffic delivered to WWC for termination to its customers, as prescribed and at the rates provided in Section 5.1 preceding."

5.5.2 TELCO shall prepare a monthly billing statement to WWC which will separately reflect the calculation of Reciprocal Compensation, Terminating Compensation, Transit Compensation and total compensation due TELCO. Actual usage recorded by TELCO and/or record/reports provided by Qwest will be used for billing WWC. WWC shall prepare a monthly billing statement to TELCO which will separately reflect the calculation of Reciprocal Compensation due WWC. Actual usage recorded by WWC and/or record/reports provided by Qwest will be used for billing TELCO.

5.5.3 In the event that there is insufficient representative and verifiable data on the actual Local and Non-Local Traffic exchanged between the Parties to use in preparation of the monthly billing statement, the Parties agree to apply a _____% Non-Local Traffic factor to the total terminating traffic volumes as an estimate of the Non-Local Traffic being exchanged.

Issue	Western Wireless' Position	ILECs' Position
Applicable Non-Local Traffic Factor (Petition, Issue No. 8a)	Non-Local traffic, if any, would be de minimis and therefore a 0% factor should be used.	2.5% Non-Local Traffic factor

5.5.4 Each party may request to inspect, during normal business hours, the records, which are the basis for any monthly bill issued by the other Party and to request copies thereof provided that the requested records do not exceed 24 months in age from the date the monthly bill containing said record information was issued.

6. NOTICE OF CHANGES

If a Party contemplates a change in its network, which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

7. GENERAL RESPONSIBILITIES OF THE PARTIES

7.1 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting and, consistent with Section 5, measuring and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in a mutually acceptable format, and to terminate the traffic it receives in that mutually acceptable format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan, but agree to work cooperatively on matters that require joint implementation. Neither Party shall use any service related to or use any of the Services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.2 Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.

7.3 Each Party is responsible for administering NXX codes assigned to it.

7.4 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of Common Language Location Identifier ("CLLI") assigned to its switches.

7.5 Each Party shall use the LERG published by Telcordia or its successor for obtaining routing information and shall provide all required information to Telcordia for maintaining the LERG in a timely manner.

8. TERM AND TERMINATION

8.1 Subject to the provisions of Sections 13 and 15, the initial term of this Agreement shall be for two years ("Term") which shall commence on the Effective Date. This Agreement shall automatically renew for successive six-month periods, unless, not less than sixty (60) days prior to the end of the Term or any renewal term, either party notifies the other party of its intent to terminate this Agreement in writing.

WWC and _____

8.2 The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

8.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the Non-paying Party shall pay the disputed amounts with interest at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law. In addition, the Billing Party may cease terminating traffic for the Non-paying Party after undisputed amounts not paid become more than 90 days past due, provided the Billing Party gives an additional 30 days notice and opportunity to cure the default.

8.2.2 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law.

8.2.3 Undisputed amounts shall be paid within thirty (30) days of receipt of invoice from the Billing Party.

8.3 Upon termination or expiration of this Agreement in accordance with this Section:

(a) Each Party shall comply immediately with its obligations as set forth above;

(b) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;

(c) Each Party's indemnification obligations shall survive termination or expiration of this Agreement.

8.4 Either Party may terminate this Agreement in whole or in part in the event of a default of the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and the defaulting Party does not correct the alleged default within thirty (30) days after receipt of written notice thereof.

8.5

Issue	Western Wireless' Position	ILECs' Position
Renegotiation Provision (Petition, Issue No. 8g)	"If prior to expiration or termination of this Agreement either Party requests the negotiation of a successor agreement, then upon approval of the successor agreement this Agreement shall terminate. If the Parties are unable to negotiate a successor agreement within the statutory time frame set for negotiations under the Act, then either Party has the right to submit this matter to the Commission for resolution pursuant to the statutory rules for arbitration under the Act. The rates, term, and conditions applying during the interim period between the termination of this contract and the effective date of the successor contract shall be trued-up to be consistent with the rates, terms and conditions of the successor agreement."	Unknown

9. CANCELLATION CHARGES

Except as provided herein, no cancellation charges shall apply.

10. NON-SEVERABILITY

- 10.1 The services, arrangements, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable.
- 10.2 Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

11. INDEMNIFICATION

- 11.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim liability, damage, and expense (including reasonable attorney's fees) to customers and other third parties for:
 - (a) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;
 - (b) claims for libel, slander, or infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the

WWC and _____

Indemnifying Party's own communications or the communications of such Indemnifying Party's customers; and

(c) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.

Notwithstanding this indemnification provision or any other provision in the Agreement, neither Party, nor its parent, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages (as defined in Section 12.3).

11.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by customers or other third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand.

(a) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense.

(b) In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

(c) The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

12. LIMITATION OF LIABILITY

12.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

12.2 Except as otherwise provided in Section 11.0, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

- 12.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages, except in the case of gross negligence or willful misconduct.

13. REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

14. PENDING JUDICIAL APPEALS AND REGULATORY RECONSIDERATION

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules), either Party may, by providing written notice to the other party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

15. MISCELLANEOUS

15.1 Authorization

15.1.1 TELCO is a corporation duly organized, validly existing and in good standing under the laws of the State of North Dakota and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

15.1.2 WWC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

15.2 Compliance. Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

15.3 Independent Contractors. Neither this Agreement, nor any actions taken by WWC or TELCO in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between WWC and TELCO, or any relationship other than that of purchaser and seller of services. Neither this Agreement, nor any actions taken by WWC or TELCO in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between WWC and TELCO end users or others.

15.4 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the force majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

15.5 Confidentiality

15.5.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with

a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 15.5.2 of this Agreement.

15.5.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

15.5.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

15.6 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with the Commission, and the exclusive

remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of North Dakota without reference to conflict of law provisions.

- 15.7 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party.
- 15.8 Assignment. This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.
- 15.9 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.
- 15.10 Notices. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail, return receipt requested; or (iv) delivered by telecopy to the following addresses of the Parties:

WWC and _____

To: WWC

To: TELCO

WWC Holding Co., Inc
Regulatory Department
3650 131st Avenue SE
Bellevue, WA 98006
425-586-8700 (tel)
425-586-8118 (fax)

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent via express mail or personal delivery; (iii) three (3) days after mailing in the case of certified U.S. mail; or (iv) on the date set forth on the confirmation in the case of telecopy.

- 15.11 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.
- 15.12 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.
- 15.13 No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.
- 15.14 No License. No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.
- 15.15 Technology Upgrades. Nothing in this Agreement shall limit either Parties' ability to upgrade its network through the incorporation of new equipment, new software or otherwise, provided it is to industry standards, and that the Party

WWC and _____

initiating the upgrade shall provide the other Party written notice at least ninety (90) days prior to the incorporation of any such upgrade in its network which will materially impact the other Party's service. Each Party shall be solely responsible for the cost and effort of accommodating such changes in its own network.

15.16 Entire Agreement. The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this _____ day of _____, 2002.

WWC Holding Co., Inc.

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Appendix A

1.0 Traffic Factors for Shared Facilities

Where direct interconnection facilities are used for two-way traffic exchange between the Parties, the recurring charges for such facilities provided and billed for by TELCO shall be reduced by an agreed upon percentage representing the estimated or actual percentage of traffic exchanged between the Parties over such facilities that originate on TELCO's network by TELCOS's customers. This percentage is referred to as the Traffic Factor. The Parties agree to review those percentages on a periodic basis and, if warranted by the actual usage, revise the percentages appropriately.

- a. Landline to Wireless: _____
- b. Wireless to Landline: _____

Issue	Western Wireless' Position	ILECs' Position
Shared Facilities Factor (Petition, Issue No. 5)	Facilities should be shared equally until a different percentage is established by the parties based on actual usage.	Unknown

2.0 Traffic Subject to Reciprocal Compensation

Reciprocal compensation applies to the Transport and Termination of one Party's Local Traffic by another Party over a Type 1, Type 2B, Type 2A, or indirect interconnection arrangement as described in Section 4.0 of this Agreement.

- The rate for Type 1 Interconnection: _____
- The rate for Type 2B Interconnection: _____
- The rate for Type 2A Interconnection: _____
- The rate for Indirect Interconnection: _____

Issue	Western Wireless' Position	ILECs' Position
Rates for Reciprocal Compensation (Petition, Issue No. 3)	<p>In the absence of the establishment of forward-looking rates, bill and keep should apply.</p> <p><u>Mobile-to-Land</u> If forward looking rates are to be developed, there should be separate Type 2A and Type 2B rates.</p> <p>The rate for indirect interconnection should be either the Type 2A rate or the Type 2B rate depending on whether TELCO provides tandem switching.</p> <p><u>Land-to-Mobile</u> TELCO's Type 2A rate applies to all Local Traffic terminated by WWC.</p>	Existing, non-forward looking rates should continue to apply. Those rates are identified in Exhibit 1 to the Petition.

WWC and _____

3.0 Traffic Subject to Transit Compensation

Transit Compensation is applicable to the traffic originated on WWC's network and routed to TELCO for delivery to a Non-Party telecommunications carrier, as described in Section 4.4 of this Agreement.

The rate for Transiting Compensation:

Issue	Western Wireless' Position	ILECs' Position
Transit Rate (Petition, Issue No. 8d)	Proposed transit rate does not comply with applicable pricing rules.	Proposed transit rates are identified in Exhibit 1 to the Petition.

4.0 Rate for Interconnection Facilities

The rate for interconnection facilities: _____

Issue	Western Wireless' Position	ILECs' Position
Facilities Charges (Petition, Issue No. 5)	ILECs' Proposal to price facilities pursuant to intrastate tariff does not meet applicable standards.	Intrastate tariffs should apply.

WWC and _____

Appendix B

1.0 Technically Feasible POIs

[List of TELCO's End Office Switches with direct trunking capability]

WWC and _____

Appendix C

1.0 Initial POIs

WWC may establish additional POI's, from time to time, in accordance with this Agreement and such POIs will be listed here.

Exhibit 2 to WWC Arbitration Petition

<u>INDEPENDENT COMPANY</u>	<u>PROPOSED RATES PER MINUTE OF USE</u>	
	Transport & Termination	Transit
BEK Communications Cooperative	\$0.034773	\$0.008170
Consolidated Telcom	\$0.046300	\$0.013016
Dakota Central Telecommunications Coop.	\$0.039297	\$0.011283
Dakota Central Telecom I, Inc.	\$0.039297	\$0.011283
Dickey Rural Communications, Inc.	\$0.031592	\$0.077090
Dickey Rural Telephone Cooperative	\$0.031592	\$0.077090
Griggs County Telephone Company	\$0.043374	\$0.012311
Inter-Community Telephone Company, L.L.C.	\$0.039297	\$0.011283
Inter-Community Telephone II	\$0.029297	\$0.011283
Midstate Communications, Inc.	\$0.043374	\$0.012311
Midstate Telephone Company	\$0.039297	\$0.011283
Moore & Liberty Telephone Company	\$0.043374	\$0.012311
North Dakota Telephone Company	\$0.030673	\$0.006852
Northwest Communications Cooperative	\$0.039297	\$0.011283
Polar Communications Mutual Aid Corp.	\$0.031758	\$0.011283
Polar Telecommunications, Inc.	\$0.031758	\$0.011283
Red River Rural Telephone Assoc.	\$0.039297	\$0.011283
Red River Telecom, Inc.	\$0.039297	\$0.011283
Reservation Telephone Cooperative	\$0.036588	\$0.005067
SRT Communications Inc.	\$0.023450	
Turtle Mountain Communications, Inc.	\$0.030673	\$0.006852
United Telephone Mutual Aid Corp.	\$0.030673	\$0.006852
West River Telecommunications	\$0.039274	\$0.004788

EXHIBIT WPH-9



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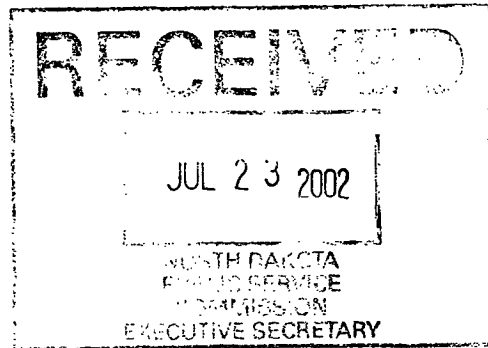
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TRANSMITTED VIA FAX AND UPS OVERNIGHT DELIVERY

July 23, 2002



Jon Mielke, Executive Secretary
ND Public Service Commission
600 E. Boulevard Ave., Dept. 408
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PETITION OF WESTERN WIRELESS HOLDING CO., INC. FOR ARBITRATION WITH RURAL NORTH DAKOTA INDEPENDENT LOCAL EXCHANGE CARRIERS UNDER THE TELECOMMUNICATIONS ACT OF 1996 - CASE NO. PU-2077-02-308

Please find enclosed for filing in the above-named matter an original and seven copies of the Response of the North Dakota Rural Local Exchange Carriers to Petition for Arbitration of WWC Holding Co., Inc.

Very truly yours,

Don A. Negaard

jb

encs.

cc/enc: Philip R. Schenkenberg (via UPS overnight delivery)
Gene DeJordy (via UPS overnight delivery)
Paul Hartman (via UPS overnight delivery)

WPH-9-1

8 **PU-2077-02-308**

Pages: 2

Cover letter re RLEC's Response
by Rural Local Exchange Carriers

07/23/2002

CC: Comm Legal Illona Pat.

cc/encs: Jerome Tishmack, Manager - BEK Communications Cooperative
L. Dan Wilhelmson, Manager - Consolidated Telcom
Keith Larson, Manager - Dakota Central Telecommunications Cooperative
and Dakota Central Telecom I, Inc.
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and Moore and Liberty Telephone Company
Keith Andersen, Manager - Inter-Community Telephone Company, L.L.C.
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Kenneth Lund, Jr., Manager - Northwest Communications Cooperative
David L. Dunning, Manager - Polar Communications Mutual Aid Corporation
and Polar Telecommunications, Inc.
Ardon M. Doran, Manager - Red River Telephone Association
and Red River Telecom, Inc.
Royce Aslakson, Manager - Reservation Telephone Cooperative
Warren L. Hight, Manager - SRT Communications, Inc.
Kenneth Carlson, Manager - United Telephone Mutual Aid Corporation
and Turtle Mountain Communications, Inc.
Albert R. Grosz, Manager - West River Telecommunications Cooperative
David Crothers - North Dakota Association of Telephone Cooperatives
Azita Sparano - John Staurulakis, Inc.
Douglas Meredith - John Staurulakis, Inc.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Petition of Western Wireless Holding
Co., Inc. for Arbitration with Rural North
Dakota Independent Local Exchange
Carriers Under the Telecommunications
Act of 1996

Case No. PU-2077-02-308

**RESPONSE OF THE NORTH DAKOTA RURAL LOCAL EXCHANGE
CARRIERS TO PETITION FOR ARBITRATION OF WWC HOLDING Co., INC.**

On June 28, 2002, Western Wireless Holding Co., Inc. (hereinafter, "WWC") filed a Petition with the North Dakota Public Service Commission ("Commission"), seeking arbitration of unresolved issues remaining after negotiations for revised interconnection agreements between WWC and 22 specified North Dakota rural telephone companies. Said Petition was filed pursuant to Section 252(b)(3) of the Telecommunications Act of 1996 (hereinafter, the "Act") (47 U.S.C. § 252(b)(3)), and pursuant to Chapter 69-02-10 of the North Dakota Administrative Code.

A list of the Respondents in this proceeding is attached to this response as Exhibit 1. Each Respondent is an incumbent local exchange carrier, and each Respondent is a rural telephone company, as defined in 47 U.S.C. § 153(37). Each Respondent provides local exchange telecommunications services within their respective certificated service territories. Respondents will be collectively referred to in this Response as the "RLECs."

The RLECs are filing this Response to WWC's Petition pursuant to 47 U.S.C. § 252(b)(3), and pursuant to N.D.A.C. § 69-02-10-07. Said Response is not mandatory

under the Act. However, the RLECs believe that the positions of the RLECs on certain issues presented by WWC were mischaracterized. Therefore, the RLECs submit this Response to provide additional information to help the Arbitrator understand the position of the RLECs on the disputed issues that have been properly presented in WWC's Petition.

Certain issues raised by WWC in the Petition do not satisfy the duties imposed upon WWC by both the Act and N.D.A.C. § 69-02-10-05. Regarding these issues, as specifically identified in Section V of this Response, the RLECs move that the Arbitrator strike those issues that do not comply with Section 252(b)(2)(A)(ii) of the Act. The issues that do not meet this requirement are identified in Section V of this response. Although the RLECs believe that the improperly presented issues should be rejected by the Arbitrator, the RLECs will provide a brief response to the issues improperly presented by WWC in the Petition. In the event that the Arbitrator retains any of the improperly presented issues, the RLECs respectfully move to be allowed by the Arbitrator to respond more fully to any such issue so allowed.

I. CONSOLIDATED PETITION FOR ARBITRATION.

In its Petition, WWC asserts that it is filing a single arbitration Petition because the RLECs were represented in negotiations by common counsel, and because the parties had attempted during negotiations to develop a relatively standard form interconnection agreement as a base contract. Throughout the course of the negotiations, the RLECs made it clear that counsel was representing each rural telephone company on an individual basis, not the group as a whole, and that counsel

was pursuing negotiations on behalf of each individual company, not on behalf of the collective group.

However, the RLECs agree that it would not be appropriate to conduct 22 separate arbitration proceedings, since the vast majority of substantive issues would be the same in each proceeding. Therefore, the RLECs agree to consolidate the disagreements between WWC and the individual RLECs into one arbitration proceeding, on the condition that WWC is responsible for one-half of all third-party costs and expenses associated with the arbitration.

II. EFFECTIVE DATE OF ANY NEW INTERCONNECTION AGREEMENTS.

This proceeding does not involve a telecommunications carrier seeking telecommunications services from an incumbent local exchange carrier for the first time. WWC has been receiving services from each of the RLECs for many years. This proceeding also does not involve a telecommunications carrier seeking an initial interconnection agreement with an incumbent local exchange carrier. WWC has a current and binding interconnection agreement with each of the RLECs.

The parties initially began negotiations for interconnection agreements back in 1999. After two years of negotiations, WWC and the various RLECs filed signed interconnection agreements with this Commission during a period of time from November 2000 through July 2001. All of the filed interconnection agreements were subsequently approved by the Commission.

Except for the interconnection agreement with Consolidated, all of the interconnection agreements between the RLECs and WWC were effective as of

February 1, 2000. The interconnection agreement with Consolidated is effective December 11, 2000.

All of the interconnection agreements were for two-year terms. The interconnection agreement between WWC and Consolidated does not expire until December 11, 2002. The interconnection agreements between WWC and the RLECs (other than Consolidated) were amended by mutual agreement of the parties, effective as of February 1, 2002. The amendments, which were all filed with and approved by the Commission, extended the term of the original agreements to August 1, 2002.

A representative example of one of the amendments between WWC and an individual RLEC (Midstate Telephone Company) is attached as Exhibit 2. In addition to extending the term of the original agreements to August 1, 2002, all of the amendments between WWC and the RLECs state that the extended interconnection agreement would automatically renew for successive six-month periods pursuant to Article II, Section 8 of the original interconnection agreements. Section 8.1 of the original interconnection agreements provides:

“This Agreement shall automatically renew for successive six-month periods, unless, not less than sixty (60) days prior to the end of the Term or any renewal term, either party notifies the other party of its intent to terminate this Agreement in writing.”

In order to properly terminate the current interconnection agreement, one of the parties would have had to properly notify the other party of its intent to terminate the current agreement on or before June 1, 2002, which is 60 days prior to the end of the current renewal term (August 1, 2002) of the current interconnection agreements

between the parties. Because neither WWC nor any of the RLECs provided proper and timely notice on or before June 1, 2002 that the current interconnection agreements would terminate on July 31, 2002, the current interconnection agreements between WWC and each of the RLECs has automatically renewed for a second six-month renewal period, and the current interconnection agreements remain binding contracts between the parties until at least January 31, 2003.

In its Petition, on page 2, WWC asserts that the "final agreements approved at the conclusion of this proceeding will replace the existing agreements on file with the Commission." WWC also requests, in its request for relief on page 12 of the Petition, that the Commission issue an order approving an agreement "to be effective immediately upon approval, modified to reflect [WWC's] position with respect to the unresolved issues." However, WWC's assertion is incorrect, and its request for relief must be denied.

The Commission does not have the jurisdiction or the power to alter the terms of existing, approved, and binding contracts between telecommunications carriers. Each of the RLECs has an existing, approved, and binding interconnection agreement with WWC that does not terminate until at least January 31, 2003. Therefore, assuming that one of the parties to each interconnection agreement properly notifies the other party that the current agreement will terminate as of January 31, 2003, the new interconnection agreements that result from this arbitration proceeding cannot take effect until February 1, 2003.

III. SUMMARY OF NEGOTIATION HISTORY BETWEEN THE PARTIES.

In its Petition, WWC provided a very brief summary of the negotiation history between the parties. However, in light of the procedural position WWC has taken in this proceeding – identifying January 21, 2002 as the date on “which meaningful negotiations began” – a more complete summary of the negotiations is necessary:

- | | |
|-------------------|--|
| November 20, 2001 | WWC mails and faxes letters to each RLEC requesting negotiation of new interconnection agreements. In the mailing, WWC includes a proposed new interconnection agreement. |
| January 2, 2002 | Email from WWC to RLEC counsel, inquiring whether RLEC counsel will be representing RLECs in negotiation of new interconnection agreements. |
| January 3, 2002 | Email from RLEC counsel to WWC that RLEC counsel will respond on behalf of individual LECs within the next seven to ten days. |
| January 10, 2002 | Correspondence from RLEC counsel to WWC, on behalf of 13 individual RLECs, in separate mailings for each LEC. Each letter states that it is specifically in response to WWC’s letter of November 20, 2001, and each letter contains a proposed amendment to the current interconnection agreements between the parties. The proposed amendment voluntarily lowers the reciprocal compensation rate to a rate just accepted by another wireless carrier, and provides that the current interconnection agreement will automatically renew for successive six-month periods beginning on February 1, 2002. |
| January 21, 2002 | Correspondence from RLEC counsel to WWC, on behalf of 6 more individual RLECs, in separate mailings for each LEC. Each letter states that it is specifically in response to WWC’s letter of November 20, 2001, and each letter contains proposed amendment to current interconnection agreement. |
| January 24, 2002 | Correspondence from RLEC counsel to WWC, on behalf of 2 individual RLECs, in separate mailings for each LEC. Each letter states that it is specifically in response to WWC’s letter of November 20, 2001, and each letter contains proposed amendment to current interconnection agreement. |
| January 29, 2002 | Phone call between RLEC counsel and WWC, and email from WWC to RLEC counsel, confirming that WWC would be “reviewing the current interconnection agreements” to determine what changes WWC would like to implement. In email, WWC asks for an electronic copy of the existing interconnection agreement, and states that WWC will provide RLEC counsel with a redline of the agreement for consideration by RLECs. |

February 1, 2002	Email from RLEC counsel to WWC, attaching electronic version of current agreement between WWC and one of the RLECs, to use as a form.
February 26, 2002	WWC sends signed amendments to current interconnection agreements between RLECs and WWC, in exact form as proposed by RLECs. The amendments show that WWC signed each amendment on February 14, 2002.
April 3, 2002	WWC sends email to RLEC counsel with redlined changes to current interconnection agreement between WWC and RLECs, to use as template agreement for negotiations. In email, WWC states for first time WWC's position that the window for the parties to request arbitration closes on April 30, 2002.
April 4, 2002	In exchange of several emails, RLEC counsel tells WWC that it will take some time to respond to the changes proposed by WWC in the April 3 rd email, and tells WWC that the RLECs disagree that any arbitration window will be closing on April 30th.
April 5, 2002	Interconnection Agreement Amendments dated effective as of February 1, 2002 filed with PSC for approval.
April 10, 2002	Email from RLEC counsel to WWC, proposing parties agree that WWC's email of April 3, 2002 constitutes a new request for negotiation under 47 U.S.C. § 252.
April 15, 2002	Email from RLEC counsel to WWC, again proposing that April 3, 2002 email from WWC constitutes new request for negotiations under Section 252.
April 19, 2002	Phone call from WWC to RLEC counsel, indicating WWC does not want to stipulate that April 3 rd email constitutes new Section 252 request. Instead, WWC proposes to extend the arbitration window, by stipulation, through June 30, 2002.
April 25, 2002	Fax of proposed stipulation from WWC to RLEC counsel.
April 26, 2002	Fax of signed stipulation from RLEC counsel to WWC, with cover letter stating that RLECs were not conceding WWC right to seek arbitration, stating that the RLECs disagreed that an arbitration window presently existed, and stating that the RLECs were only agreeing to extend an arbitration window to the extent one existed. Later in day, WWC faxes copy of stipulation after also signed by WWC.
May 23, 2002	RLEC counsel emails response to WWC email of April 3, 2002, in form of revised interconnection agreement redlined against the changes WWC had proposed on April 3 rd . The revised agreement accepts many of the changes initially proposed by WWC on April 3 rd .

June 5, 2002	Phone call from WWC to RLEC counsel, asking to set up conference call to review changes to agreement.
June 10, 2002	Conference call between parties.
June 11, 2002	Email from WWC to RLEC, purporting to summarize the "open interconnection agreement issues," as developed from the June 10 th conference call.
June 12, 2002	Email from RLEC counsel to WWC, indicating that WWC's email of June 11 th does not accurately state the position of the RLEC companies on many of the issues. Email also offers to further "extend the arbitration 'window,' to the extent one exists."
June 14, 2002	Second conference call between the parties.
June 17, 2002	Email from RLEC counsel to WWC, attaching data requested by WWC in June 14 th conference call.
June 24, 2002	Message from WWC to RLEC counsel that WWC would file for arbitration by June 28, 2002.
June 28, 2002	WWC files arbitration petition with Commission.

In an attempt to reduce the amount of paper to be filed with this Response, the RLECs are not attaching copies of each letter, fax, and email referred to in the preceding summary of the negotiation history. However, if requested by the Commission, the Arbitrator, or WWC, the RLECs will provide copies of any underlying document providing the basis for each recited fact.

IV. PROCEDURAL DEADLINES UNDER SECTION 252 AND N.D.A.C. CH. 69-02-10.

In the Petition, WWC asserts that "meaningful negotiations began" between the parties on January 21, 2002. As shown by the above chronology detailing the negotiation history between the parties, no substantive negotiations occurred on January 21, 2002. Rather, it is apparent that WWC simply chose the artificial date of January 21, 2002 by computing backward 160 days from the date of June 30, 2002,

which is the date that the parties agreed that the “window” for requesting arbitration closed, to the extent any such “window” existed.

However, as detailed above, the RLECs never conceded or agreed that a “window” for requesting arbitration actually existed at the time the stipulation was signed. In fact, the RLECs specifically asserted that no applicable arbitration “window” existed in relation to WWC’s request under 47 U.S.C. § 252 on November 20, 2001. The RLECs have consistently asserted that WWC’s November 20, 2001 negotiation request under Section 252 was addressed and concluded when WWC signed amendments to the current interconnection agreements in February 2002. The amendments were submitted to WWC in direct response to the Section 252 negotiation request, the amendments were signed by WWC, and the amendments were filed with and approved by the Commission.

The RLECs have consistently asserted that the April 3, 2002 email from WWC to RLEC counsel constituted a new request by WWC under Section 252 to obtain revised interconnection agreements from the RLECs, as this was the first date that WWC provided the RLECs with specific requested changes to the current interconnection agreements between the parties. Absolutely no meaningful negotiations took place between November 20, 2001 (the date of WWC’s initial letter) and April 3, 2002 (the date that WWC sent the RLEC’s counsel the email containing WWC’s proposed revisions to the current interconnection agreements).

Using WWC’s email of April 3, 2002 as the date on which actual meaningful negotiations took place, the correct “window” for any of the parties to request arbitration

was between August 15, 2002 (135 days from April 3, 2002) and September 9, 2002 (160 days from April 3, 2002). Therefore, WWC's Petition seeking arbitration, which was filed on June 28, 2002, was not made within any "arbitration window" in existence at that time.

Notwithstanding the fact that WWC's application for arbitration was not made within an existing "arbitration window," the RLECs are willing to move forward with the current arbitration proceeding. However, the RLECs are not willing to accept or concede WWC's designation of January 21, 2002 as the appropriate initiation date for use in calculating the other arbitration deadlines required by Section 252 of the Act, or by N.D.A.C. Ch. 69-02-10. More specifically, the RLEC's are not willing to accept the artificial initiation date of January 21, 2002, for use in computing the following two deadlines:

1. N.D.A.C. § 69-02-10-14 requires prehearing conference to be held within 200 days of date of making request for negotiation.
2. N.D.A.C. § 69-02-10-29 requires Arbitrator to issue decision no later than nine months from the date of the request for negotiation.

The use of WWC's artificial initiation date of January 21, 2002 would require the Arbitrator to compress the arbitration process into an extremely short time-frame that is inappropriate in light of the fact that the parties will need to: (i) engage in discovery; (ii) prepare prefiled testimony and perhaps rebuttal testimony; (iii) prepare prehearing position statements; (iv) participate in the hearing; (v) wait for preparation of a transcript of the hearing; (vi) prepare post-hearing briefs; (vii) conduct "final offer" negotiations; and (viii) allow the Arbitrator sufficient time to prepare his opinion and order. To require

all of these steps to be taken in a very short amount of time is inappropriate, especially considering that the new agreements will not be effective any sooner than February 1, 2003.

Using WWC's artificial initiation date of January 21, 2002, the prehearing conference required by N.D.A.C. § 69-02-10-14 would need to be held on or before August 9, 2002. Using the date that actual meaningful negotiations between the parties began (April 3, 2002), the prehearing conference would need to be held on or before October 20, 2002. However, the RLECs are not asserting that it would be appropriate to wait until September, much less October, to hold the prehearing conference. To the contrary, a telephonic prehearing conference to discuss and establish all of the procedural deadlines for the arbitration could and should be held in the first half of August.

If WWC's artificial initiation date of January 21, 2002 is given effect, then N.D.A.C. § 69-02-10-29 would require the Arbitrator to issue his decision on or before October 21, 2002. However, using the date that actual meaningful negotiations between the parties truly began (April 3, 2002), the Arbitrator's decision would need to be issued on or before January 3, 2003. However, because the current interconnection agreements will likely be terminated by the parties as of January 31, 2003, the RLECs suggest that a procedural schedule be developed that will allow not only the Arbitrator to issue his decision, but to also allow time for the Commission to approve the new arbitrated interconnection agreements, prior to the projected effective date of the new agreements. As a proposal, the RLECs suggest a procedural schedule requiring the

Arbitrator to issue his decision by December 1, 2002, which would allow more than enough time for the arbitrated agreements to be finalized and approved prior to January 31, 2003.

V. ISSUES TO BE RESOLVED.

As detailed above, WWC requested re-negotiation of existing interconnection agreements with the RLECs on November 20, 2001. Over four months later, WWC first provided the RLECs with a redline version of the current interconnection agreement between WWC and the RLECs, proposing substantial material changes to certain sections. The RLECs accepted most of WWC's revisions, with the exception of two general issues: (1) the treatment of intra-MTA traffic carried by interexchange carriers (hereinafter "IXCs"); and (2) the reciprocal compensation rate to be used by the parties.

Accordingly, the RLECs resubmitted a revised agreement to WWC, accepting most revisions and offering alternative language when WWC's proposed revisions were not acceptable. A conference call was held to discuss the second revision. During the call, WWC and the RLECs discussed some of the language in dispute, and agreed that the issue of "intra-MTA traffic carried by IXC" was the core stumbling block for the majority of the language in the contract being disputed by the parties. The parties also discussed WWC's new "VNXX" proposal, which had not been contained in the red-lined agreement provided to the RLECs on April 3, 2002, as well as language relating to applicability of the FCC's ISP Order. WWC was to re-evaluate its position with respect to the applicability of the ISP Order. After the call, WWC provided a list of "unresolved

issues,” and a second conference call was held a few days later to again discuss the unresolved issues. Subsequently, WWC filed a Petition with this Commission.

In this Response to WWC’s Petition, the RLECs will respond to each of the “issues” alleged by WWC to be disputed. For organizational purposes, the issues will be placed into three groups: (1) MTA related issues; (2) Rate Related Issues; and (3) Miscellaneous Issues.

MTA Related Issues:
Issues Number 1, 2a, 2b, 6 and 7

Prior to a specific discussion regarding the issues related to the scope of the interconnection agreement, it will be helpful to describe generally the overarching policies related to the rating of traffic. The Act and the FCC’s rules impose interconnection and compensation obligations on both LECs and CMRS providers. The Act and the FCC’s pre-Act and post-Act rules also impose additional obligations on the LECs, such as dialing parity, equal access, and the obligation to provide exchange access to interexchange carriers. However, neither Congress nor the FCC have ever expanded the local calling scope that the RLECs offer to their end-user customers.

The principal goal of the Act was to open the local market to competition. The FCC, in its Local Competition Order, took the steps to achieve this goal, and nothing in the Local Competition Order eliminated long distance calls by reclassifying them as local calls. Moreover, the FCC’s local dialing parity rules expressly forbid the RLECs from considering the called party’s local service provider when the RLECs rate and route calls. In other words, a RLEC cannot treat a landline-originated call differently,

depending on whether the call is made to a customer of another LEC or to a CMRS provider. The FCC's rules clearly obligate the RLECs to continue to provide exchange access to IXCs for long distance calls under the pre-Act access charge regime.

Throughout their negotiations with WWC, the RLECs have stressed this fundamental observation, but WWC has refused to acknowledge that RLECs have such obligations. In addition, in attempting to support its position, WWC cites only selected sections of the Act and FCC rules that WWC claims exclusively govern the interconnection arrangements. The RLECs submit that WWC's limited reading of selected portions of the entire text of the Act and the FCC rules causes WWC to err. Therefore, the RLECs will provide the following review of sections of the Act and the FCC rules that govern the RLEC's obligations. These statutes and rules recognize the exception for intra-MTA traffic that is carried by IXCs with respect to reciprocal compensation. Since this issue is intertwined with several of the disputed issues in this Arbitration, the RLECs will summarize and comment on their obligations.

- Section 251(b)(3) of the Act imposes dialing parity obligations on all LECs. These obligations are codified in 47 C.F.R. §§ 51.205 to 51.209. The local dialing parity rule requires a LEC to allow local calling within its local calling area notwithstanding the identity of the called party's telecommunications service provider.
- Section 251(g) imposes obligation on all LECs to continue enforcement of exchange access:

"On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations

(including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment." (Emphasis added)

- Congress and the FCC preserved the access charge regime and concluded that traffic between a LEC and a CMRS provider that originates and terminates within the same MTA is subject to reciprocal compensation, unless carried by an IXC. Local Competition Order, CC Docket 96-98, First Report and Order, ¶ 1034.
- The access charge regime and reciprocal compensation regime are mutually exclusive and cannot apply to the same traffic. 47 C.F.R. 69 – Access Charges, 47 C.F.R. 51 – Interconnection.

WWC conveniently ignores these federal obligations of the RLECs, and has instead insisted that the FCC has somehow expanded the RLECs' local calling scopes to include an entire MTA by providing preferential treatment to CMRS providers for landline calls made to a wireless customer. Exhibit 3 to this Response is a map of "MTA #12 (Minneapolis – St. Paul)," which includes all of North Dakota, all of Minnesota, most of South Dakota, and parts of Wisconsin, Michigan, and Iowa. In this proceeding, WWC is asserting that all calls from North Dakota landline phones to any CMRS customer within the five-state region covered by MTA #12 must be considered a "local call" that cannot be routed through an IXC carrier. For example, WWC is asserting that a call from a RLEC customer in Minot, North Dakota to a CMRS customer located in Minneapolis, Minnesota is a "local call" that cannot be routed to the CMRS customer through an IXC carrier.

However, the RLECs submit that a complete reading of the federal rules – and the Local Competition Order in particular – will unequivocally resolve the present issue; to wit, whether land-to-mobile calls routed via an IXC are interexchange access calls or reciprocal compensation calls. It should not go unnoticed that WWC’s argument, were it to prevail, would force the RLECs to discriminate against certain carriers, in contravention of the Act, because the way that originating calls are routed by RLECs will necessarily have to depend on the classification of the called party’s service provider.

Unresolved Issue No. 1 (Scope of Reciprocal Compensation Obligations): What traffic is subject to reciprocal compensation in accordance with the FCC rules?

As noted above, the core dispute between the RLECs and WWC centers on land-to-mobile traffic that is carried by an IXC. The RLECs submit that the FCC rules establishing reciprocal compensation with CMRS providers expressly allow that traffic carried by an IXC (or its equivalent) continue to be treated as access traffic.

The FCC has prescribed two mutually exclusive compensation regimes: the access-charge regime, which existed prior to the Act, and the post-Act reciprocal compensation regime for local traffic. Congress expressly preserved the access charge regime in Section 251(g) of the Act.¹ The new reciprocal compensation rules adopted

¹“On and after the date of enactment of Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline service, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission.” 47 U.S.C. § 251(g). See Senate and House Joint Explanatory Statement of the Committee of Conference, under the NEW SECTION 251 – INTERCONNECTION, stating this clearly indicates that

by the FCC did not replace the pre-existing access charge rules. Access charges apply to IXC traffic, while reciprocal compensation applies to local service providers such as LECs, CLECs, and CMRS providers. Furthermore, the reciprocal compensation and access charge regimes cannot apply to the same traffic.

Neither Congress nor the FCC expanded the local calling scope of the RLECs. A landline-originated call that was rated as a toll call and subject to access charges prior to the Act and Local Competition Order, continues to be rated as a toll call subject to access charges under the Act, and nothing in the Act or the FCC's rules changes such a rating.

The RLECs have federal and state mandated dialing parity and equal access obligations, requiring the RLECs to route toll calls to the presubscribed IXC of the customer's choice. The FCC has stated that calls between RLECs and WWC that originate and terminate within the same MTA are only subject to reciprocal compensation unless the calls are carried by an IXC.

Section 251(a) imposes a general duty on all telecommunications carriers to interconnect directly or indirectly with a requesting telecommunications carrier. Section 251(b) imposes several duties on all local exchange carriers. Specifically, Section 251(b)(3) imposes a duty to provide dialing parity, and Section 251(b)(5) imposes a duty to establish reciprocal compensation agreements for the transport and termination of traffic. In the Senate and House Joint Explanatory Statement of the Committee of

Congress did not intend to change the access charge regime in place prior to the Act.

Conference, the following statements clearly indicate that Congress did not intend to change the access charge regime in place prior to the Act:

“New Section 251(a) imposes a duty on all local exchange carriers possessing market power in the provision of telephone exchange service or exchange access service in a particular local area to negotiate in good faith and to provide interconnection with other telecommunications carriers that have requested interconnection with providing telephone exchange service or exchange access service. The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission’s access charge rules.” (Emphasis added)

Section 251(b)(3) of the Act imposes dialing parity obligations on all LECs. The FCC codified the LECs dialing parity obligations in 47 C.F.R. §§ 51.205 through 51.209. Local dialing parity rules specifically prohibit LECs from making any distinction based on the called party’s telecommunications service provider:

“A LEC shall permit telephone exchange customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer’s or the called party’s telecommunications service provider.” (Emphasis added)

The FCC’s local dialing parity rule is very clear, and the rule applies to all landline-originated calls, regardless of whether the call is made to a landline or a wireless number.

Section 251(b)(5) of the Act obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Under this section, a carrier must pay compensation for the use of another carrier’s facilities to

transport and/or terminate calls subject to reciprocal compensation. Specifically, the FCC has stated, in paragraph 1034 of the Local Competition Order:²

“We conclude that Section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area, as defined in the following paragraph. We disagree with Frontier’s contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers – typically, the originating LEC, the IXC, and the terminating LEC – collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. This reading of the statute is confirmed by Section 252(d)(2)(A)(i), which established the pricing standards for section 251(b)(5). Section 252(d)(2)(A)(i) provides for “recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier.” We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LECs networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.” (Emphasis added)

The FCC did not change the local calling scope of the ILECs, which is contained in the RLECs’ General Exchange Tariffs. Congress and the FCC preserved the access charge regime, and stated that reciprocal compensation does not apply to traffic that

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *First Report and Order*, FCC 96-325, 11 FCC Rcd 15499 (1996).

was subject to access charges prior to the Act (or prior to the First Report and the Local Competition Order).

It is clear that landline-originated calls to numbers outside of the RLEC's local calling scope have been and continue to be interexchange toll calls, and as such the RLECs must route these calls to the presubscribed IXC of the calling end user customer. The RLECs are obligated to route and rate calls under the federal and state-mandated dialing parity and equal access rules, and the RLECs are obligated to provide originating access to IXCs for interexchange (toll) calls for such traffic. WWC does not have similar dialing parity and equal access obligations, and are demanding that the RLECs ignore their own equal access and dialing parity obligations by giving WWC preferential treatment. Clearly, IXC-carried traffic is not the RLEC's traffic, and IXC-carried traffic is not subject to reciprocal compensation. The RLECs do not have any obligation to pay reciprocal compensation for another carrier's traffic.

In the Local Competition Order, the FCC defined local service area as traffic that originates and terminates within the same MTA for the purpose of compensation only. However, the FCC did not stop at this conclusion without also specifying certain qualifying conditions. Based on the complete reading and understanding of all of the relevant FCC rulings and orders, it is clear that the compensation regime applicable to IXC-carried traffic is access charges and not reciprocal compensation.

The following is the critical paragraph (with cited footnotes) that is quoted partially by WWC. The RLECs submit that a complete reading of the paragraph provides the resolution to this issue.

“1043. As noted above, CMRS providers’ license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs’ local service areas.²⁴⁸⁴ We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties’ locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some “roaming” traffic that transits incumbent LECs’ switching facilities, which is subject to interstate access charges.²⁴⁸⁵ Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.^{2486”}

Cited Footnotes

2484. See 47 CFR §§22.911, 24.202; see also PCIA comments in CC Docket No. 95-185 at 21-22; Letter from Leonard J. Kennedy, on behalf of Comcast Cellular Communications, to William Caton, Acting Secretary, FCC, July 25, 1996.

2485. “[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber’s local cellular number will be routed to them over interstate facilities when the customer is “roaming” in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge. . . . Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier’s carrier [i.e., access] charges is defined by §69.5(b) of our rules.” The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 RR 2d 1275, 1284-85 n.3 (1986). See also Implementation of Sections 3(n) and 332 of

the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98 [74 RR 2d 835] (1994) (concluding that there should be no distinction between incumbent LECs' interconnection arrangements with cellular carriers and those with other CMRS providers).

2486. See also, *supra*, XI.A.2.c.(1).

Local Competition Order, (Emphasis added)

The RLECs submit that this paragraph is abundantly clear in establishing that access charges continue to apply when they have applied prior to the Act and the Local Competition Order. Moreover, the FCC has consistently recognized the right of CMRS providers to recover access charges from IXCs:

"In the context of the existing access charge regime, we tentatively conclude that CMRS providers should be able to recover access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks." LEC-CMRS Interconnection NPRM, 11 FCC Rcd at 5074-76, ¶ 116.

The FCC again reiterated this principal in an opinion published earlier this month, when it specifically recognized that CMRS carriers have the right to seek access compensation from IXCs for IXC traffic that is exchanged through LEC facilities. In Re Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges, at ¶¶ 7 & 9, WT Docket No. 01-316, FCC 02-203 (Adopted July 2, 2002; Released July 3, 2002). Indeed, the FCC specifically determined that "there is a benefit to customers of both IXCs and CMRS carriers when CMRS carriers terminate IXC traffic." *Id.*, at ¶ 15.

These FCC rulings make clear that LECs properly route landline-to-mobile toll calls to IXCs. If, as WWC asserts, LECs cannot route landline-to-mobile toll calls

through IXCs, the FCC would not allow CMRS carriers to charge access to IXCs.

These FCC decisions make clear that WWC's remedy, to the extent it is not being compensated for terminating calls transported by IXCs, is to seek compensation directly from the IXCs transporting the traffic.

The present issue is one in which WWC seeks to obtain preferential treatment by demanding that the RLECs change the nature of calls that have always been carried by IXCs so that reciprocal compensation is applied in lieu of access charges. However, this position is clearly not consistent with federal policy or federal law.

Unresolved Issue No. 2 (Delivery of Land-to-Mobile Traffic): What Obligations do the RLECs have to deliver traffic subject to reciprocal compensation to Western Wireless' network?

Issue No. 2a: Are the RLECs prohibited from collecting access charges from any telecommunications carrier on land-to-mobile calls that originate and terminate in the same MTA?

As demonstrated in response to Unresolved Issue No. 1, landline-originated calls that are made to numbers outside the RLEC's local calling area are toll calls that must be handed off to the presubscribed IXC of the customer's choice, regardless of whether the call is made to a landline or a mobile customer. Nothing in the Act, or the FCC's orders or rules, has expanded the local calling area of RLECs from their current exchange boundary to encompass all of North Dakota and Minnesota, most of South Dakota, and parts of Wisconsin, Michigan, and Iowa. The RLECs continue to have an obligation to route toll calls to their customer's presubscribed IXC, the same as they did the day before the enactment of the Act. Contrary to the WWC's claim, the language in section 251(g) clearly states that such obligations include receipt of compensation.

Compensation for IXC-carried traffic continues to be governed by the access charge regime mentioned above, and any reciprocal compensation regime is inapplicable. WWC's reliance on 47 CFR § 51.703 is misplaced and should be rejected.

Issue No. 2b: If Western Wireless established a direct connection with a RLEC, should the RLEC deliver all land-to-mobile intraMTA traffic to Western Wireless over those direct facilities?

As demonstrated above, RLECs have equal access and dialing parity obligations, and must hand-off traffic subject to said obligations to the customer's presubscribed IXC. Furthermore, even under a local interconnection arrangement, a carrier cannot dictate how the providing telecommunications carrier must route its originated traffic. Neither the Act or the FCC has imposed any such requirement on the RLECs. The Commission should reject WWC's unfounded and unsupported claim.

Unresolved Issue No. 6 (Local Numbers): May Western Wireless have numbers rated as local to an RLEC's end office without establishing a direct connection to that end office?

WWC's claim under this issue again is to impose an obligation on RLECs to route traffic as requested by WWC. Section 251(a) does not obligate RLECs to route telephone exchange traffic³ to Western Wireless absent a determination by RLECs as to whether a direct or indirect interconnection is most appropriate. Under Section 251(a), the RLECs have the discretion to determine whether direct or indirect

³ Section 3(47) of the Act defines "telephone exchange service" as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area...and which is covered by the exchange service charge."

interconnection is most appropriate, based on RLECs' determination of its most technical and economical choices. The FCC, in paragraph 997 of the Local Competition Order, stated:

"Regarding the issue of interconnecting "directly or indirectly" with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices. The interconnection obligations under section 251(a) differ from the obligations under section 251(c). Unlike section 251(c), which applies to incumbent LECs, section 251(a) interconnection applies to all telecommunications carriers including those with no market power. Given the lack of market power by telecommunication carriers required to provide interconnection via section 251(a), and the clear language of the statute, we find that indirect connection (e.g., two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a). We decline to adopt, at this time, Metricom's suggestion to forbear under section 10 of the 1996 Act from imposing any interconnection requirements upon non-dominant carriers. We believe that, even for telecommunications carriers with no market power, the duty to interconnect directly or indirectly is central to the 1996 Act and achieves important policy objectives. Nothing in the record convinces us that we should forbear from imposing the provisions of section 251(a) on non-dominant carriers. In fact, section 251 distinguishes between dominant and non-dominant carriers, and imposes a number of additional obligations exclusively on incumbent LECs. Similarly, we also do not agree with the Texas Commission's argument that the obligations of section 251(a) should apply equally to all telecommunications carriers. Section 251 is clear in imposing different obligations on carriers depending upon their classification (i.e., incumbent LEC, LEC, or telecommunications carrier). For example, section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers."

The first underlined section clearly states that telecommunications carriers are permitted to provide interconnection, either directly or indirectly, based upon their own

technical and economic choices. It does not state that WWC is permitted to receive interconnection, either directly or indirectly, based upon WWC's technical and economic choices. The distinction between a "provider" and a "receiver" of interconnection is a critical one. The second underlined section then indicates that an indirect connection satisfies a carrier's interconnection duties under the Act.

Unresolved Issue No. 7 (Definition of CMRS Traffic): Will the agreement apply to all traffic determined to be CMRS by the FCC?

WWC has misstated the RLECs' position on this issue. During the last conference call held between the parties, the RLECs specifically stated that the RLECs accepted WWC's position on this issue. The RLECs only requested – and WWC agreed – that language be added to the interconnection agreement stating that the RLECs reserved their right to contest whether the definition of "mobile service" included the provision of fixed wireless service by WWC, in the event that the FCC or a federal court provided further clarification on this issue. WWC indicated that it would prepare draft language for the RLECs' consideration, but then WWC filed the Petition prior to providing any such proposed language. Since the parties have agreed in principal on this issue, it is not a "disputed" issue that needs to be resolved by the Arbitrator.

***Rate Related Issues:
Issues 3, 4, 5 and 8(d)***

There are three rate-related issues in the Petition for Arbitration. The RLECs desire to provide additional information in this response to clarify the position of the RLECs on these issues. As a preliminary matter, three inaccuracies in Exhibit 2 to WWC's Petition need to be corrected. Said Exhibit 2 includes WWC's summary of the

transport and termination rates proposed by the RLECs. Said Exhibit 2 inaccurately lists the proposed rate for Consolidated Telecom at 0.046300; Consolidated Telecom proposes a rate of 0.030249. Said Exhibit 2 inaccurately lists the proposed rate for Polar Communications Mutual Aid Corp. at 0.031758; said company proposes a rate of 0.039297. Said Exhibit 2 inaccurately lists the proposed rate for Polar Telecommunications, Inc. at 0.031758; said company proposes a rate of 0.039297.

Unresolved Issue No. 3 (Rates For Reciprocal Compensation): What rates can be adopted for the transport and termination of intra-MTA traffic consistent with 47 U.S.C. § 252(d)(2) and FCC Rule 51.705?

Currently, the parties are using reciprocal compensation rates that were agreed upon by both WWC and each RLEC pursuant to Section 252(a) of the Act. WWC now seeks to require the RLECs to provide rates that are consistent with the pricing standards established by the FCC for issues that come before a state commission for arbitration. Such forward-looking economic costs for reciprocal compensation will be provided by the RLECs. While the forward-looking studies are not yet completed, the RLECs will satisfy their burden in showing their forward-looking transport and termination costs during this Arbitration.

As a preliminary observation, the RLECs are high-cost rural carriers, serving sparsely-populated areas in the state of North Dakota. The current rates, which the RLECs assert remain appropriate for any revised interconnection agreement, are those accepted by another CMRS provider (Verizon). The RLECs voluntarily provided WWC with lower reciprocal compensation rates through the amendments to the current interconnection agreement, which WWC signed just last February. Despite the fact that

the new rates, mutually agreed upon between the parties, had been in effect for less than six months, WWC is now requesting much lower rates.

During the negotiations, the RLECs explained that the cost and time involved in conducting a cost study in accordance with the FCC's pricing standards is extensive. In addition, such cost study will not necessarily produce any lower rate than those currently offered by RLECs. Therefore, rather than maintain the previous offer to allow WWC to use the rate accepted by Verizon, the RLECs will instead rely on the forward-looking rates that will be developed during this Arbitration.

WWC asserts in its Petition that a "bill-and-keep compensation mechanism" would be appropriate. However, because the traffic flows between the RLECs and WWC are substantially disparate, any such bill-and-keep compensation structure would not be an economically fair option.

Unresolved Issue No. 4 (Symmetrical Compensation at a Tandem Rate): Is Western Wireless entitled to be compensated at the tandem interconnection rate as required by 47 C.F.R. § 51.711(a) if its switch serves an area greater than the geographic area served by the ILECs' tandem switch?

This issue should be rejected by the Arbitrator as defective under 47 U.S.C. 252(b)(2)(A)(ii), as the Petition fails to set forth the position of the RLECs. Without a clear and concise position statement of the parties, and the reason for the disagreement, the Arbitrator does not have the basis for identifying the dispute. It is the duty of the petitioner to explain the position of the parties in its petition. WWC has failed to meet its duty for this issue. The RLECs move that this issue be removed from this proceeding.

Notwithstanding WWC's failure to properly present this issue, the RLECs will provide a brief response. Each RLEC has a proposed rate for reciprocal compensation. The RLECs agree that this rate is symmetrical for WWC. If a RLEC owns a tandem, a tandem element is included in the proposed rate. The RLECs have offered, and will continue to offer, symmetrical rates to WWC. In the event that WWC now seeks asymmetrical rates, it has failed to cite and comply with 47 C.F.R. § 51.711(b), and has not moved in the Petition to establish asymmetrical rates under this section. Therefore, WWC is precluded seeking or obtaining asymmetrical rates under 47 C.F.R. § 51.711(b).

With this background, this issue should be rejected by the Arbitrator. In the event it is not rejected by the Arbitrator, the RLECs submit that the issue is a nullity because when an RLEC tandem switch is used, the RLECs will include tandem switching costs in their symmetrical rates. Thus, there is no disputed issue.

Unresolved Issue No. 5 (Rates for Interconnection Facilities): What rates should apply to interconnection facilities used for the transport and termination of local traffic in Type 1, Type 2B and Type 2A interconnection arrangements between a RLEC and WWC?

The issue of appropriate charges for interconnection facilities was never significantly discussed during negotiations. In fact, in the proposed agreement initially provided by Western Wireless back in November 2001, WWC's proposed agreement states that "Rates for entrance facilities and transport purchased from the Telephone Company are specified in the Telephone Company's Intrastate Access Service Tariff." These facilities are offered through tariff. As such, applicable tariff rates are reasonable

and appropriate charges for interconnection facilities. Western Wireless cites 47 C.F.R.

§ 20.11 (a) as the basis of its claim:

“A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable. Complaints against carriers under section 208 of the Communications Act, 47 U.S.C. 208, alleging a violation of this section shall follow the requirements of §§ 1.711-1.734 of this chapter, 47 C.F.R. 1.711-1.734.”

However, this rule does not address standards for pricing interconnection facilities – it only references economical reasonability. Furthermore, 47 C.F.R. § 20.11(a) was established by the FCC under pre-existing embedded cost rules that are considered by regulators as economically reasonable for tariff purposes. For clarification purposes, RLECs are already providing the type of interconnection referenced herein and requested by WWC. WWC has in place a number of Type 1 and Type 2 connections with various RLECs in North Dakota.

In its response to this issue, WWC states that the cost of two-way interconnection facilities should be shared equally unless another percentage is developed based on traffic over that facility. In the revised agreement proposed by the RLECs, the following language was offered relating to a percentage for shared facility:

“Where direct interconnection facilities are used for two-way traffic exchange between the Parties, the recurring charges for such facilities provided and billed for by TELCO shall be reduced by an agreed upon percentage representing the estimated or actual percentage of traffic exchanged between the Parties over such facilities that originate on TELCO’s network by TELCO’s customers. This percentage is referred to as the Traffic Factor. The Parties agree to review those percentages on a periodic basis and, if warranted by the actual usage, revise the percentages appropriately.

- a. Landline to Wireless: 20%
- b. Wireless to Landline: 80%”

In accordance with the FCC rule,⁴ the RLECs have proposed sharing of facility cost based on the proportion of Local Traffic originated by either Party to the total Local Traffic exchanged between the Parties. The actual ratio appropriate for WWC and individual RLECs will vary, as the amount of actual traffic exchanged between WWC and the individual RLECs will vary. In the proposed agreement, as an example, a ratio of 20/80 was used. This ratio, depending on the RLEC, could be 10/90, or 25/75, or perhaps even 0/100.

In order for the parties to share the facility costs equally, as WWC proposes, this proportion must be roughly equal. However, based on the current billing between Western Wireless and RLECs for reciprocal compensation under the current interconnection agreements, this proportion is not even close to equal for any of the RLECs.

Unresolved Issue No 8d: Rates for transiting traffic (Section 4.4).

The transit traffic rate proposed by the RLECs is a compensatory rate for services performed by the RLECs as a transiting carrier. If a RLEC is a transiting carrier, the RLEC should be compensated for whatever switching costs it incurs for the transiting function. The RLECs submit that a transit function is not explicitly required under Section 251 of the Act, and that any price standard can therefore apply to transit traffic rates. Nevertheless, in this Arbitration, the RLECs will prepare and submit

⁴ 47 C.F.R. § 51.709(b)

forward-looking economic cost-based rates for their transit function. The RLECs have determined that because the transit function is *de minimis* to the overall agreement, the limited time of this arbitration should be spent on the other pricing issues.

**Miscellaneous Issues:
Issues 8a, 8b, 8c, 8e and 8f**

Unresolved Issue No. 8a: Whether inter-MTA traffic would be exchanged between the Parties, and if so, what method of compensation should govern the parties' exchange of this traffic.

This issue should be rejected because it does not comply with 47 U.S.C. 252(b)(2)(A)(ii), as the Petition fails to set forth the position of the parties. There is no way to divine the position of the parties by simply proffering disputed language. Without a clear and concise statement of the parties, and the reason for the disagreement, the Arbitrator does not have the basis for identifying the dispute. It is the duty of the petitioner to explain the position of the parties in its petition. WWC has failed to meet its duty for this issue. The RLECs move that this issue be removed from this proceeding.

Notwithstanding the above, the RLECs will provide a brief response. During negotiations, WWC claimed that based on a study done with (or using data from) Qwest, WWC had determined that inter-MTA traffic represented 0.39% of total traffic. The RLECs question the ability of Qwest to determine the location of any WWC customer at the beginning of a call. Western Wireless agreed to provide support for its position, by supplying the reports or the study performed. No such information was ever provided by WWC.

Issue No. 8b: Whether language reflecting the FCC's rules and orders governing ISP traffic should be contained in the Agreement (Section 3.2).

This issue should be rejected because it does not comply with 47 U.S.C. 252(b)(2)(A)(ii). There is no way to divine the position of the parties by simply proffering disputed language. Without a clear and concise statement of the parties, and the reason for the disagreement, the Arbitrator does not have the basis for identifying the dispute. It is the duty of the petitioner to explain the position of the parties in its petition. WWC has failed to meet its duty for this issue. The RLECs move that this issue be removed from this proceeding.

Notwithstanding the above, the RLECs will provide a brief response. The FCC's ISP Order as interpreted by the CMRS providers' is not relevant, due to the fact that the RLECs did not have any existing arrangements on the effective date of the Order. The FCC clearly states, in paragraph 81 of the ISP Order, that all new agreements must treat ISP-bound traffic as bill-and-keep. The FCC's ISP Order did not eliminate all Section 251(b)(5) compensation – it only carved out ISP-bound traffic from Section 251(b)(5). A Most Favored Nation provision allows for opting into a negotiated or arbitrated agreement approved by the state commission, not for opting into a ruling made by the FCC or state commission. Paragraph 82 of the ISP Order makes this point very clear:

For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it

has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201.

In light of the above, this issue should be removed from this proceeding.

Issue No. 8c: Whether WWC must home numbers at a RLEC tandem switch if it establishes a Type 2A connection (Section 4.1.2).

This issue should be rejected because it does not comply with 47 U.S.C. 252(b)(2)(A)(ii). There is no way to divine the position of the parties by simply proffering disputed language. Without a clear and concise statement of the parties and the reason for the disagreement, the Arbitrator does not have the basis for identifying the dispute. It is the duty of the petitioner to explain the position of the parties in its petition. WWC has failed to meet its duty for this issue. The RLECs move that this issue be removed from this proceeding.

Notwithstanding the above, this issue is an industry standard. As such, the RLECs agree with WWC's language. The issue is therefore resolved.

Issue No. 8e: Traffic subject to access charges (Section 5.2).

This issue should be rejected because it does not comply with 47 U.S.C. 252(b)(2)(A)(ii). There is no way to divine the position of the parties by simply proffering disputed language. Without a clear and concise statement of the parties and the reason for the disagreement, the Arbitrator does not have the basis for identifying the dispute. It is the duty of the petitioner to explain the position of the parties in its petition. WWC has failed to meet its duty for this issue. The RLECs move that this issue be removed from this proceeding.

Notwithstanding the above, the RLECs will provide a brief response. The RLECs are access providers and provide for originating or terminating access, and as such are entitled to bill for originating or terminating access. The RLECs do not provide IXC service and therefore do not pay access charges.

Issue No. 8f: Definition of interconnection (Section 1.11) and interexchange carrier (Section 1.13).

This issue should be rejected because it does not comply with 47 U.S.C. 252(b)(2)(A)(ii). There is no way to divine the position of the parties by simply proffering disputed language. Without a clear and concise statement of the parties and the reason for the disagreement, the Arbitrator does not have the basis for identifying the dispute. It is the duty of the petitioner to explain the position of the parties in its petition. WWC has failed to meet its duty for this issue. The RLECs move that this issue be removed from this proceeding.

Notwithstanding the above, the RLECs will provide a brief response. It is unknown where WWC obtained the definitions of interconnection or interexchange carrier. Because WWC did not state its position as to why it would want to include these definitions, the RLECs cannot respond. The RLECs understand that if a term is not defined explicitly in a contract that the industry use of said term governs the interpretation of the contract. Therefore, because WWC did not provide any position statement, the RLECs move that this issue be removed from this proceeding.

Issue No. 8g: Provision for re-negotiation at end of term (Section 8.5).

This issue should be rejected because it does not comply with 47 U.S.C. 252(b)(2)(A)(ii). There is no way to divine the position of the parties by simply proffering disputed language. Without a clear and concise statement of the parties and the reason for the disagreement, the Arbitrator does not have the basis for identifying the dispute. It is the duty of the petitioner to explain the position of the parties in its petition. WWC has failed to meet its duty for this issue. The RLECs move that this issue be removed from this proceeding.

Notwithstanding the above, the RLECs will provide a brief response. This issue was never discussed during negotiations. Section 8.5 was not even in the latest version of the Agreement. RLECs were not aware of this issue until WWC filed its petition for arbitration. RLECs do not agree with the last section of WWC proposed language. There should not be a true-up for the rates, terms, and conditions. The new agreement and associated rates, terms, and conditions should apply on a prospective basis. The RLECs move that this issue be removed from this proceeding because WWC has never attempted to negotiate the issue and should be estopped from adding language without first attempting to negotiate and explain its position.

REQUEST FOR RELIEF

The RLECs request that the Commission:

1. Arbitrate the properly submitted unresolved issues between the RLECs and WWC, and reject arbitration of the issues improperly submitted by WWC.

2. At the conclusion of the arbitration proceeding, issue an Order approving an interconnection agreement between WWC and each RLEC, to be effective as of the proper termination date of the current interconnection agreements between WWC and each RLEC.

3. Provide such other relief as is just and proper.

Respectfully submitted this 23rd day of July, 2002.

PRINGLE & HERIGSTAD, P.C.

By 

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response of the North Dakota Rural Local Exchange Carriers to Petition for Arbitration of WWC Holding Co., Inc., was, on the 23rd day of July, 2002, mailed to:

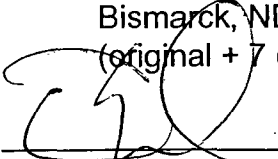
Philip R. Schenkenberg
Briggs and Morgan
2200 First National Bank Bldg.
332 Minnesota Street
St. Paul, MN 55101

Paul Hartman
39435 West 167th Street
Edgerton, KS 66021

Gene DeJordy
Western Wireless Corporation
3650 131st Ave. SE
Bellevue, WA 98006

Jon Mielke, Executive Secretary
ND Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

(original + 7 copies)



Don A. Negaard

EXHIBIT 1

LIST OF RESPONDENTS

1. BEK Communications Cooperative
2. Consolidated Telcom
3. Dakota Central Telecommunications Cooperative
4. Dakota Central Telecom I, Inc.
5. Dickey Rural Telephone Cooperative
6. Dickey Rural Communications, Inc.
7. Griggs County Telephone Company
8. Moore and Liberty Telephone Company
9. Inter-Community Telephone Company, L.L.C.
10. Midstate Telephone Company
11. Midstate Communications, Inc.
12. North Dakota Telephone Company
13. Northwest Communications Cooperative
14. Polar Communications Mutual Aid Corporation
15. Polar Telecommunications, Inc.
16. Red River Telephone Association
17. Red River Telecom, Inc.
18. Reservation Telephone Cooperative
19. SRT Communications, Inc.
20. United Telephone Mutual Aid Corporation
21. Turtle Mountain Communications, Inc.
22. West River Telecommunications Cooperative

EXHIBIT 2

**AMENDMENT TO
WIRELESS INTERCONNECTION AGREEMENT
BETWEEN
MIDSTATE TELEPHONE COMPANY AND WWC HOLDING CO., INC.**

This AMENDMENT TO THE WIRELESS INTERCONNECTION AGREEMENT BETWEEN MIDSTATE TELEPHONE COMPANY AND WWC HOLDING CO., INC. (the "Agreement"), entered into as of the 1st day of February, 2002, revises the Reciprocal Compensation rate contained in the Wireless Interconnection Agreement between Midstate Telephone Company and WWC Holding Co., Inc. dated February 1, 2000.

Effective February 1, 2002, commencing with the automatic renewal of the Agreement for successive six month periods, pursuant to Article II, Section 8 of the Agreement, the Reciprocal Compensation rate shall be changed to \$0.039297 per minute of use.

IN WITNESS WHEREOF, the Parties have executed this AMENDMENT TO THE WIRELESS INTERCONNECTION AGREEMENT by their duly authorized representatives in one or more counterparts, each of which shall constitute an original.

WWC Holding Co., Inc.

By: 

Name: Gene DeJordy

Title: Vice President

Date: Feb. 12, 2002

Midstate Telephone Company

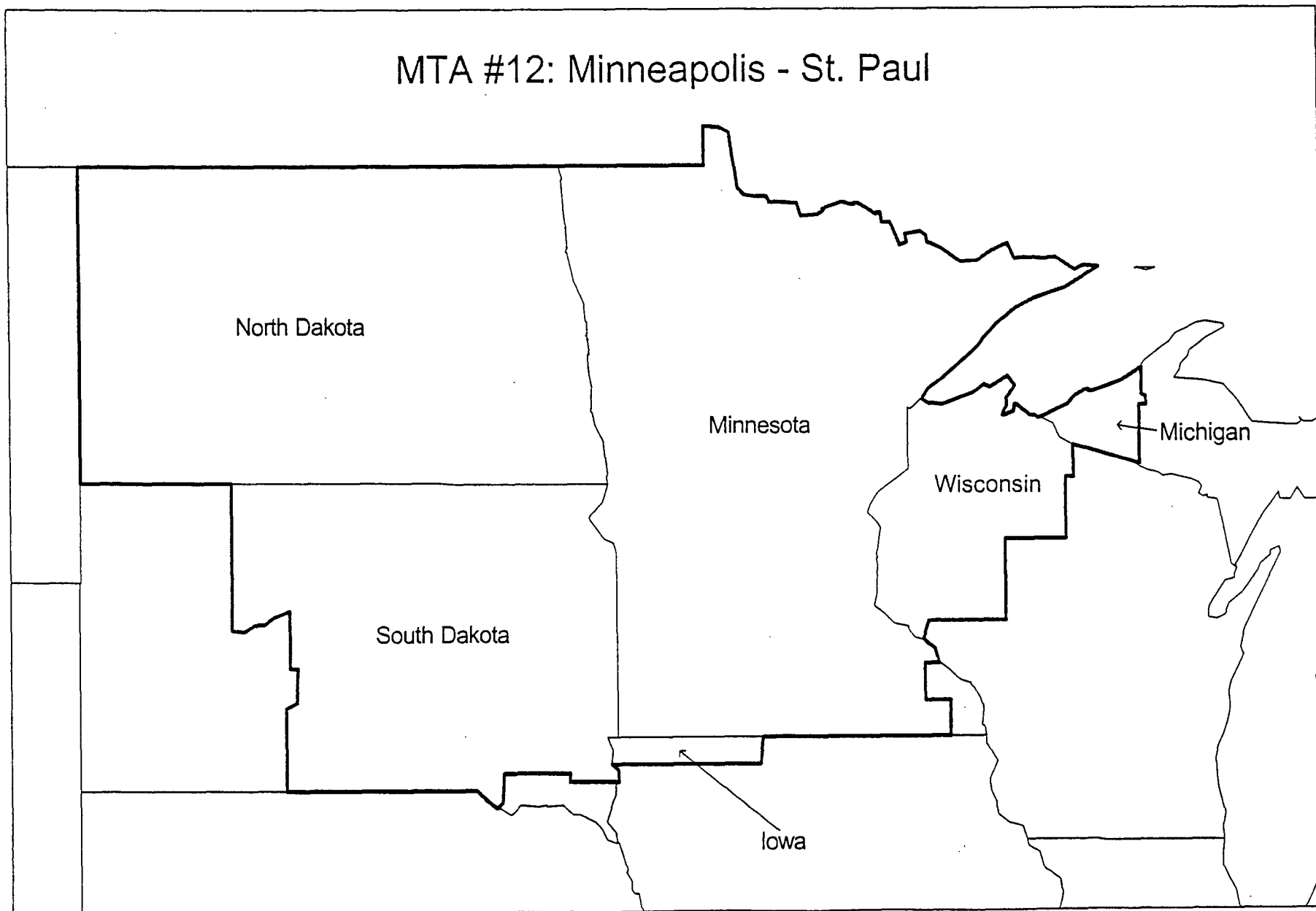
By: 

Name: Mark Wilhelmi

Title: General Manager

Date: 2-28-2002

WWC Holding Co., Inc.
BEK Communications Cooperative, et al.
Exhibit 1



WPH-9-42

EXHIBIT 3

EXHIBIT WPH-10

Interrogatory #30

Request: Please state whether SRT is aware of any ISPs physically located within its local calling area(s). For each ISP that is physically located within an SRT local calling area(s), please: (i) identify each ISP and state whether each ISP purchases any telecommunications service(s) from SRT; and (ii) identify the type of service purchased (*e.g.*, PRI, DID, etc.) by each such ISP.

Objections: Trade Secret

Response: Yes, there are two ISP's physically located in SRT's calling area.

- (i) The ISP's are Magic Internet and SRT's subsidiary company that both purchase telecommunications service from SRT.
- (ii) Both ISP's purchase One-Way Inward Dialing (OID) service under SRT's Local Exchange Tariff.

EXHIBIT WPH-11

INTRASTATE ACCESS SERVICES

TARIFF SCHEDULE APPLICABLE TO
ACCESS SERVICES
WITHIN THE STATE OF NORTH DAKOTA
BY
LEVEL 3 COMMUNICATIONS. LLC

Issued by:

Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications. LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-1000

ISSUED: November 8, 2002

EFFECTIVE: November 8, 2002

Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications. LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

WPH-11-1

 INTRASTATE ACCESS SERVICES
 CHECK SHEET

Current pages in this tariff are as follows:

<u>Page</u>	<u>Revision</u>	<u>Page</u>	<u>Revision</u>
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2	Original	28	Original
3	Original	29	Original
4	Original	30	Original
5	Original	31	Original
6	Original	32	Original
7	Original	33	Original
8	Original	34	Original
9	Original	35	Original
10	Original	36	Original
11	Original	37	Original
12	Original	38	1st Revised
13	Original	39	Original
14	Original	40	Original
15	Original	41	Original
16	Original	42	Original
17	Original	43	Original
18	Original	44	Original
19	Original	45	Original
20	Original	46	Original
21	Original	47	Original
22	Original	48	Original
23	Original	49	Original
24	Original	50	Original
25	Original	51	Original
26	Original		

ISSUED: November 12, 2002

EFFECTIVE: November 12, 2002

Issued By:

Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

WPH-11-2

INTRASTATE ACCESS SERVICES

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EFFECTIVE: November 8, 2002

Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications. LLC
1025 Eldorado Boulevard
Broomfield. CO 80021

INTRASTATE ACCESS SERVICES
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Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

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ISSUED: November 8, 2002

EFFECTIVE: November 8, 2002

Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

INTRASTATE ACCESS SERVICES

SECTION 13 – PRODUCT DESCRIPTION AND RATES

13.1 DID Trunk Services

13.1.1 DID Trunk Service provides a customer with a single, voice-grade telephonic communications channel which can be used to receive incoming calls one call at a time.

13.1.2 DID Trunk Service transmits the dialed digits for all incoming calls allowing the customer's incoming calls to be routed corresponding to each individual DID number. Charges for DID number blocks are listed below.

13.1.3 Non-recurring and Recurring charges per DID's apply as follows:

<u>Rate Group</u>	<u>Non-Recurring Charge</u>	<u>Recurring Charge</u>
All Zones	\$10.00	\$10.00 for blocks of 100

13.2 Direct Inward Dial (DID) Service

13.2.1 DID service can be purchased in conjunction with Company-provided private lines. DID service transmits the dialed digits for all incoming calls allowing the Customer's PBX or other designated equipment to route incoming calls as required by the Customer to individual stations corresponding to each individual DID number. Charges for DID capability and DID number blocks apply in addition to charges specified for private lines contained herein.

13.2.2 So the Company may efficiently manage its number resource, the Company, at its sole discretion reserves the right to limit the quantity of DID number blocks a Customer may obtain. Requests for 30 or more DID number blocks must be provided to the Company in writing no less than five (5) months prior to activation. In addition, the Company reserves the right to review vacant DID stations or stations not in use to determine their utilization. Should the Company determine, based on its own discretion, that there is inefficient number utilization, the Company may reassign the DID numbers.

13.2.3 The Customer has no property right to the telephone number or any other call number destination associated with DID service furnished by the Company, and no right to the continuance of service through any particular end office. The Company reserves the right to change such numbers, or the end office designation associated with such number, or both, assigned to the Customer, where the Company deems it necessary to do so in the conduct of its business.

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Individual DID Numbers	\$10.00	\$1.00 per DID Number

ISSUED: November 12, 2002

EFFECTIVE: November 12, 2002

Issued By: Thomas C. Stortz
 Group Vice President and General Counsel
 Level 3 Communications, LLC
 1025 Eldorado Boulevard
 Broomfield, CO 80021

EXHIBIT WPH-12

PU-2227-00-63

SRT COMMUNICATIONS, INC.

STATE OF NORTH DAKOTA

TELEPHONE TARIFF

COVERING

GENERAL RULES AND REGULATIONS

LOCAL EXCHANGE SERVICES

February 1, 2000

**SRT Communications, Inc.
Telephone Tariff**

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**DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK - ISDN**

A. General

Integrated Services Digital Network (ISDN) is a digital architecture that provides an integrated voice/data capability to the subscriber premises facility, utilizing the public switched network. ISDN distributes voice, data, video, image and facsimile by two standard methods of access: a Basic Rate Interface (BRI) or a Primary Rate Interface (PRI). These are serving arrangements which conform to internationally developed, published, and recognized standards generated by the International Telecommunications Union (formerly CCITT).

B. Definition

1. **Basic Rate Interface (BRI)**
BRI consists of up to three distinct channels on one pair of wires: one or two B (Bearer) channels and one D (Delta) channel. BRI is offered on either an individual case basis or in flat or measured rate single line ISDN service.
2. **B (Bearer) Channel**
The B-channel carrier circuit-switched voice and/or data communications at speeds up to 64 kbit/s, from the customers premises, over the loop facility, to the central office.
3. **B-Channel Circuit-Switched Data**
Circuit-Switched Data provides the capability of making data calls over the public switched network. Information is transmitted the same way as digitized voice. Like a voice call, a circuit-switched data call ties up network/system resources for the duration of the call. Similar to voice, caller ID functionality is provided.
4. **D (Delta) Channel**
The D-channel carries signaling and/or packet data information, at speeds up to 16 kbit/s on BRI, and signaling only information up to 64 kbit/s for PRI, from the subscriber's premises to the central office. The D-channel has both data and signaling functionality; it does not have voice capability.
5. **Primary Rate Interface (PRI)**
PRS has a capacity of 1.544 megabits per second (mbit/s) and has multiple channels: 23 B-channels, and 1 D-channel, and is also known as 23 B+D access. The B-channels carry voice calls, circuit switched data, and video, while the D-channel handles signaling information.
6. **Service Area**
Service Area pricing for Single Line ISDN Service includes all subscriber's who:
 - Draw dial tone directly from an ISDN switch, or
 - It is within a designated distance, as determined by the Company, from an ISDN equipped switch.

DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK - ISDN

B. Definitions (continued)

7. T1/DS1 Facility

This element is the digital facility transmitting at a rate of 1.544 mbit/s. The T1/DS1 signal provided to the subscriber's premises will have a loss not greater than 16.5 dB. Construction charges may apply.

8. Digital Subscriber Loop (DSL)

The digital ISDN connection from the Central Office to the subscriber's premise.

C. Regulations

1. General

- a. The subscriber will be responsible for the procurement of associated customer premises equipment (CPE) and will ensure compatibility with the ISDN digital switch serving the subscriber. CPE must meet national ISDN1 (NT1) standards to insure compatibility with ISDN services.
- b. ISDN includes a comprehensive 2 B+D package. Contained in the standard package are numerous voice and data features. The standard features and functions support two terminals per BRI. Within the standard package there is limited flexibility for customization; therefore ISDN does not offer B-channel packet service capabilities.
- c. The Company will terminate ISDN Services at the subscriber's demarcation point.
- d. Should any change in inside wiring (including riser cable) not owned by the Company, or CPE, require the Company to redesign ISDN service, the subscriber shall reimburse the Company for all costs incurred by the Company in making such a change. Should ISDN service fail due to inside wiring (including riser cable) not owned by the Company, CPE, or power failure, the responsibility for failure shall be solely that of the subscriber and the Company shall have no liability of any kind.
- e. The subscriber is responsible for placement, installation, operation, maintenance, repair and replacement of all inside wire (including riser cable), not owned by the Company, and CPE that the subscriber uses in connection with this service. Premises wiring and CPE must be compatible with the Company's provision of ISDN Service.

**DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK - ISDN**

C. Regulations (continued)

- f. If there is an ISDN Service interruption which lasts for more than 24 consecutive hours after the subscriber gives the Company notice of such out-of-service condition, except for problems caused by the subscriber's actions, inside wiring, interface, and/or CPE, an out-of-service credit will be applied to the subscriber's bill. This service shall be based on a 30 day month and shall be calculated by dividing the monthly rate for the service affected by 30 days and multiplying that daily rate by the number of days, or major fraction thereof, that the service was interrupted. This will be the subscriber's sole remedy.

- g. This ISDN service offering is considered as optional service. The ISDN equipment at the subscriber's premise will not function with the loss of electrical power leaving this service inoperable. Service location moves of ISDN circuits will be treated as a discontinuance and start of new service, therefore all associated nonrecurring charges will apply.

- 2. Availability
 - a. The rates and charges specified for ISDN are applicable only to subscribers whose serving central office has been identified by the Company as having ISDN available.

 - b. ISDN may be provided to subscriber's from a central office other than their normal serving office as determined by the Company.

 - c. ISDN is offered where compatible facilities and equipment are available. Service is generally considered available for loops 18 kilofeet or less in length. Loops greater than 18 kilofeet in total length must meet ISDN extension technology design requirements and will be considered available if ISDN compatible pair gain systems are in place or planned to serve the area based on the scheduled placement of compatible pair gain systems. If no pair gain system is in place or planned, loops greater than 18 kilofeet in length will also be considered available if single line loop extension equipment can be deployed and the loop is within the design limitation of this type of extension equipment. If the loop is greater than 18 kilofeet in length, additional engineering and construction charges may apply.

 - d. Some products and services are not available and/or compatible with ISDN therefore the subscriber is responsible for verifying capability before purchasing and installing this service.

**DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK - ISDN**

C. Regulations (continued)

3. Local Calling Areas and Telephone Numbers

- a. If a subscriber is provided service from a designated central office which is not the subscriber's normal serving office, the local calling area for the subscriber's ISDN will be that of the designated ISDN-equipped CO.
- b. Calling areas are subject to change as additional central offices become capable of directly providing ISDN services to the subscriber's own and nearby serving area. Changes to calling areas will affect subscriber telephone numbers.

4. Indemnification

- a. It is the subscriber's responsibility to indemnify and hold harmless the Company against any and all claims, losses, liabilities, damages and lawsuits brought by any nonparty and arising, in whole or in part, out of the subscriber's material breach of this Price Schedule. Indemnification shall include, but is not limited to, costs and attorney's fees.
- b. The subscriber is responsible for the content of communications. Where the subscriber's negligence or wrongful actions in using inside wire not owned by the Company, CPE, or the subscriber's communications result in any claim or legal action brought by any nonparty, the subscriber shall indemnify and hold the Company harmless.

5. Protection of the Network

- a. The Company has the right and option to check the output of any equipment used in the transmission of signals, to or from the customer premises, for this service. This includes the Company provided facilities or other companies' facilities used in connection with provision of ISDN capabilities, such as CPE.
- b. The Company will notify the subscriber of any deviation from the authorized transmission or specifications established in provision of the service.

**DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK – ISDN**

C. Regulations (continued)

- c. Upon notification by the Company that unauthorized transmissions are present due to customer equipment or facilities, the subscriber will correct the situation on an expeditious basis or service will be disconnected by the Company to protect the network. The Company shall not be liable for and disclaims liability for losses which might be incurred as a result of disconnecting service and disclaims any and all implied warranties, including, without limitation, warranties of merchantability and fitness for a particular purpose. With respect to such equipment or service, subscriber shall not be liable for any incidental or consequential damages, including, but not limited to loss, damage, or expense directly or indirectly arising from the subscriber's use of or inability to use this service or equipment, either separately or in combination with other services or equipment.

6. Agreement

Fixed period agreements will be priced on an Individual Case Basis (ICB) depending on the number of years of the Agreement. Additions or changes to the Agreement will be negotiable between the Company and the subscriber.

D. Rates and Charges – Basic Rate Interface (BRI)

1. **Description**
Basic Rate Interface (BRI) is compatible with U.S. National ISDN-1 standard and includes circuit-switched voice and circuit-switched data. The Company supports certain Bellcore defined ISDN Ordering Codes (IOC's).
2. Because of the different types of IOC packages subscribers should check with the Company compatibility before purchasing and installing these services.
3. Following are the monthly rates and nonrecurring charges for Basic Rate Interface (BRI). These rates and charges apply in addition to applicable rates and charges for other Company services.
 - a. Basic Rate Interface access is offered flat rated on originating calls only. The Company will provide flat BRI's at the same address, for the same subscriber, however, the flat services must reside on separate accounts.

2-2227-00-422

SRT Communications, Inc.

Section: 7

Sheet: 18

General Exchange Tariff

Revision: 1st

**DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK – ISDN**

D. Rates and Charges – Basic Rate Interface (BRI) (continued)

	<u>Nonrecurring Charge</u>	<u>Monthly Rate</u>	<u>Billing Code</u>
b. Basic Rate Interface (1) Month-to-Month Flat Rate, Unlimited Usage	\$110.00	\$ 56.00	01201

E. Rates and Charges – Primary Rate Interface (PRI)

1. Description

The basic Primary Rate Interface (PRI) structure consists of 23 B-channels and a D-channel, for a total transmission rate of 1.544 Mbit/s, which is equivalent to a T1/DS1 facility and is defined as 23 B+D. The B-channel is a 64 kbit/s channel used for information such as voice calls, circuit switched data, or video. The D-channel is a 64 kbit/s channel that is used to carry the control or signaling information. The subscriber may use CPE to bond together 64 kbit/s B-channels for the transmission of circuit switched data or video.

2. Terms and Conditions of Primary Rate Interface (PRI)

- a. PRI is provided subject to the availability of central office facilities.
- b. Each PRI consists of one T1/DS1 facility and one service configuration. A subscriber may request more than one PRI per premises.
- c. The PRI facility may be provided from a foreign central office or foreign exchange at the DS1 transport mileage rates. Associated charges will be applied to the PRI facility.
- d. PRI offerings are not available for use by commercial mobile radio carriers, private mobile radio carriers and interexchange carriers in the provision of services to their subscribers. Other digital services are offered by the Company for interconnection specifically for these carriers.
- e. The PRI facility for all channels may be provisioned on an existing or new T1/DS1 facility.
- f. PRI subscribers must subscribe to a minimum of one 23 B+D service configuration.
- g. DID numbers associated with PRI and a trunk connections is required for each inward of 2-way DID b-channel in a PRI and are not included with charges below.
- h. Circuit Switched Data PRI is only intended for data calls, including video.
- i. Subscribers requiring ISDN features not offered on a month-to-month schedule will be considered on an individual case basis. The contract period offered will be negotiable between the Company and the subscriber.

Filed With: ND Public Service Commission

Effective Date: 09/01/2000

Case Number: PU-2227-00-

**DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK – ISDN**

E. Rates and Charges – Primary Rate Interface (PRI) (continued)

3. Features and Services

a. Service Configurations

1) 23 B+D

This service configuration provides for 23 B-channels and 1 D-channel. The B-channels carry user information such as voice calls, circuit switched data, or video, while the D-channel handles signaling information. The equipped, the D-channel can control a maximum of 479 B-channels. The B-channels may be provisioned on the same facility as the D-channel or on other PRI T1/DS1 facilities.

2) 24B

This service configuration provides for 24 B-channels after the first 23 B+D is ordered. The B-channels carry user information such as voice calls, circuit switched data, or video. The signaling information is provided by a D-channel on the first T1 facility.

3) 23B+Back-up D

This service configuration provides for 23 B-channels and a back-up D-Channel. The back-up D-channel is used if the primary D-channel, which provides signaling for multiple T1 facilities, fails. Active calls are not maintained during the switch-over to the back-up D-channel.

b. Service Types

1) Call-by-Call PRI

The PRI B-channels are configured to support inward and outward call flexibility predetermined by the subscriber's traffic flow.

2) Dedicated PRI

Each B-channel is dedicated to inward, outward, or 2-way traffic.

c. Usage

1) Circuit Switched Data Connection

A Circuit Switched Data Connection is a central office translation that provisions 23 or 24 B-channels on a PRI T1/DS1 facility. All B-channels are dedicated with 2-way operation and have access to the exchange network. Incoming calls are restricted to circuit switched data or video.

2) ISDN Trunk Connection

An ISDN Trunk Connection (TC) is a central office translation that provisions each B-channel in a PRI. The TC allows access to the exchange network. One ISDN Trunk Connection is required for each B-channel used in a PRI.

**DIGITAL DATA SERVICES
INTEGRATED SERVICES DIGITAL NETWORK – ISDN**

E. Rates and Charges – Primary Rate Interface (PRI) (continued)

d. Standard Features

1) Caller ID

This feature displays the call identification information and the calling party's DN prior to the call being answered. Callers have the ability to inhibit the display of calling party information on the terminating number.

e. Features and Services

1) Caller ID Blocking – All Calls

All outgoing calls will be blocked for PRI customers where technically feasible as determined by the Company.

2) Direct Inward/Outward Dialing

Allows station users to place or receive calls by-passing the attendant.

3) Circuit Switched Data

Allows the transmission of circuit switched data on a voice channel.

4. Rates and Charges of Primary Rate Interface (PRI)

	<u>Nonrecurring</u>	<u>Monthly</u>	<u>Billing</u>
	<u>Charge</u>	<u>Rate</u>	<u>Code</u>
1. Transport			
• Stand Alone T1/DS1 facility (See Tariff Section 12)	\$175.00	\$111.00	CMT1
2. Service Configuration			
• 23B+D	\$350.00	\$400.00	01250
• 24B	\$350.00	\$400.00	01251
• 23B+Back-up D	\$350.00	\$400.00	01252
3. ISDN Trunk Connection, per B-channel (3)			
• B-channel Connection Each Trunk on a T1 Facility (per channel) (Requires end user access charges and TDDR per B-channel)*	\$ 12.00	\$ 26.44	PRIB

4. Nonrecurring charges apply as follows: Regular service order programming charges for CO line connection will apply to installation charges.

*Regular service order programming charges for CO line connection will apply to installation charges - refer to Tariff Section 3.

EXHIBIT WPH-13

Interrogatory #36

Request: Are there any circumstances in which SRT has paid access charges to the originating carrier for a call originated by another carrier and terminated to an SRT FX or FX-like customer? If so, please describe all circumstances under which such an obligation may arise. Does SRT propose to pay access charges to Level 3 if a Level 3 customer calls a SRT FX or FX-like customer?

Objections: FX-like service; Overbroad

Response: (a) No.
(b) No.

EXHIBIT WPH-14

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Level 3 Communications, LLC Petition for
Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection
Rates, Terms and Conditions With CenturyTel of Wisconsin

05-MA-130

ARBITRATION AWARD

Proceedings

On August 8, 2002, Level 3 Communications, LLC, (Level 3) filed a Petition for Arbitration of an interconnection agreement with twelve operating companies of CenturyTel in Wisconsin (collectively, CenturyTel) pursuant to 47 U.S.C. § 252(b)(1)¹ and the Commission's interim procedures.² The parties have stipulated that the date on which Level 3 requested negotiation of an interconnection agreement from CenturyTel was March 1, 2002, and that Level 3's petition for arbitration was timely filed.

CenturyTel filed its response to the Level 3 petition on September 3, 2002. On September 17, 2002, the Public Service Commission of Wisconsin (Commission) appointed a three member panel (Panel) to consider this petition: Edward Marion (Panel Chairman), Gary Evenson and Dennis Klaila. The parties jointly submitted a statement of the issues to be arbitrated on September 25, 2002. The Panel conducted an evidentiary hearing on

¹ Hereafter, simple references to § 251, § 252 and other sections without a title reference shall mean sections of Title 47 of the United States Code. Similarly, references to a Rule shall mean the corresponding section of Title 47 of the Code of Federal Regulations. References to "the Act" shall mean the Telecommunications Act of 1996, Public Law 104-104, 110 Stats. 56 (1996).

² Interim Procedures, Investigation of the Implementation of the Telecommunications Act of 1996 in Wisconsin, docket 05-TI-140, May 23, 1996.

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October 14, 2002. The parties filed initial briefs on November 1, 2002. The parties filed reply briefs on November 12, 2002.

Parties

The petitioning party, Level 3 Communications, LLC, is a Delaware corporation with its principal place of business at 1025 Eldorado Blvd., Bloomfield, Colorado 80021. Under Wisconsin law, Level 3 is an alternative telecommunications utility under Wis. Stat. § 196.01(1d)(f), authorized to provide facilities-based switched local exchange service to residential and business customers in the local service exchange areas (not including foreign exchange services, cross-LATA boundary services, or non-affiliate local calling areas) served by Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin); Verizon North Inc.; Mid-Plains Telephone Co.; Telephone USA of Wisconsin, LLC; CenturyTel of Central Wisconsin, LLC; CenturyTel of the Midwest-Kendall, LLC; CenturyTel of the Midwest-Wisconsin, LLC; CenturyTel of Wisconsin, LLC; CenturyTel of Northwest Wisconsin, LLC; CenturyTel of Northern Wisconsin, LLC; CenturyTel of Larsen-Readfield, LLC; CenturyTel of Southern Wisconsin, LLC; CenturyTel of Fairwater-Brandon-Alto, LLC; and CenturyTel of Forestville, LLC. *See* Application of Level 3 Communications, LLC, for Certification as a Competitive Local Exchange Carrier and Alternative Telecommunications Utility, Order for Certification as a Competitive Local Exchange Carrier, docket 7373-NC-100 (PSCW March 21, 2001). A similar request of Level 3 to provide facilities-based switched local exchange service to residential and business customers in the local service exchange areas served by CenturyTel of Monroe County, LLC, is pending before the Commission. *See* Application of Level 3 Communications, LLC, to Expand Its Certificate of Public Convenience and Necessity to Provide Facilities-Based Local

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Exchange and Interexchange Telecommunication Services and to Operate as an Alternative Telecommunications Utility – Other in the Service Territory of CenturyTel of Monroe County, LLC, docket 7373-NC-111 (application filed May 17, 2002). Under federal law, Level 3 is a telecommunications carrier for purposes of §§ 153(49) and a requesting telecommunications carrier for purposes of §§ 251(c)(1) and 252(a).

The respondents are Telephone USA of Wisconsin, LLC; CenturyTel of Central Wisconsin, LLC; CenturyTel of the Midwest-Kendall, LLC; CenturyTel of the Midwest-Wisconsin, LLC; CenturyTel of Monroe County, LLC; CenturyTel of Wisconsin, LLC; CenturyTel of Northwest Wisconsin, LLC; CenturyTel of Northern Wisconsin, LLC; CenturyTel of Larsen-Readfield, LLC; CenturyTel of Southern Wisconsin, LLC; CenturyTel of Fairwater-Brandon-Alto, LLC; and CenturyTel of Forestville, LLC. The respondents are all operating affiliates of CenturyTel of Monroe, Louisiana. Under Wisconsin law, the respondents are telecommunications utilities, as defined in Wis. Stat. § 196.01(10), collectively engaged in rendering local exchange and exchange access services in 198 telephone exchanges in Wisconsin. Under federal law, CenturyTel is a telecommunications carrier for purposes of § 153(49), and an Incumbent Local Exchange Carrier for purposes of § 251(h). For purposes of this arbitration and subsequent interconnection agreement, the parties have stipulated that CenturyTel of the Midwest-Wisconsin, CenturyTel of Monroe County, CenturyTel of Wisconsin, CenturyTel of Northwest Wisconsin, CenturyTel of Northern Wisconsin, CenturyTel of Larsen-Readfield, CenturyTel of Southern Wisconsin, CenturyTel of Fairwater-Brandon-Alto, and CenturyTel of Forestville are exempt under § 251(f)(1)(A), and therefore not subject to the requirements of § 251(c).

Issues

On September 25, 2002, the parties submitted a joint statement of the issues to be arbitrated. That joint statement listed 8 unresolved issues, numbered 1-5, 8, 11, and 13. The parties agreed that the resolution of Issues 8 and 11 would apply only to those operating companies not stipulated to be exempt under § 251(f)(1)(A): Telephone USA of Wisconsin, CenturyTel of Central Wisconsin, and CenturyTel of the Midwest-Kendall. On October 9, 2002, the parties reported that they had reached agreement on Issues 5, 8 and 13.

Conclusions of Law

1. The Petition for Arbitration filed by Level 3 Communications, LLC, was timely filed pursuant to 47 U.S.C. § 252(b)(1).
2. The Panel has jurisdiction under Wis. Stat. §§ 196.02, 196.04, 196.199(2)(a), 196.219(2m), (3)(a) and (4)(a), Wis. Admin. Code ch. PSC 160, and 47 U.S.C. §§ 251, 252, 253(b), and 261(b) and (c) to issue the following arbitration award.

Discussion of Issues

Issue 1: Is ISP-bound Traffic subject to different interconnection requirements than Local Traffic under federal law such that it should be handled by separate agreement?

Issue 2: What is the proper definition of Local Traffic?

Level 3 proposes to establish in Wisconsin a telecommunications network optimized to transmit Internet Protocol (IP) packet-switched traffic. Although this network can be used to transport a variety of telecommunications services, Level 3's initial telecommunications

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offerings have focused on service to Internet Service Providers (ISPs) and resold long distance service. Issues 1 through 4 of this arbitration concern traffic that originates on CenturyTel's telephone network, is directed to an ISP served by Level 3, is dialed using a seven-digit telephone number, is routed over Level 3's network to a modem bank that may be physically located in another exchange or even in another state, and then routed over the Internet to one or more Internet websites in the course of an Internet session. For purposes of this arbitration, this traffic is termed *Internet traffic*.

This first issue concerns whether an interconnection agreement arbitrated pursuant to §§ 251 and 252 should specify the rate and terms of interconnection when the traffic carried over the interconnected facility will consist predominantly or entirely of Internet traffic. The second issue is related, concerning the definition of the term *Local Traffic* for purposes of the interconnection agreement between the parties.

A. Position of the parties

CenturyTel. CenturyTel asserts that this Panel does not have jurisdiction to address Internet traffic in this arbitration proceeding. CenturyTel asserts that Internet traffic is not local traffic. CenturyTel regards this traffic as Information Access Traffic and proposes the following definition for this term:

1.43 Information Access Traffic (IAT)

Information Access Traffic means the provision of specialized exchange telecommunications services ... in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of an Information Service Provider ("ISP"), as defined in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, FCC 01-131, Order On Remand and Report and

Order (2001). Information Access is governed by Section 251(g) and is excluded from Section 251(b)(5) of the Act.

CenturyTel then proposes the following definition for the term *Local Traffic*:

1.58 Local Traffic

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local area, including mandatory local calling arrangements. Traffic to or from an end user not within CenturyTel's local calling area will be subject to access charges to the extent it does not constitute Information Access Traffic. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS." Local Traffic excludes Information Access Traffic, including but not limited to Enhanced Service Provider (ESP) and Internet Service Provider (ISP) Traffic, Internet, 900-976, etc., and Internet Protocol based long distance telephony.

CenturyTel contends that the interconnection agreement should be limited to traffic subject to §§ 251 and 252. Since CenturyTel believes that ISP-Bound Traffic/Information Access Traffic falls outside of §§ 251 and 252, CenturyTel concludes that this traffic should be subject to different interconnection and intercarrier compensation rules than local traffic, and should be addressed in a separate agreement. CenturyTel also contends that it is not obligated to transport or terminate Level 3's Internet traffic under § 251(a), nor is it obligated to interconnect with Level 3 under § 251(c). At Article V, Sections 1 and 5, CenturyTel proposes contract language limiting its obligation to exchange traffic under the agreement to that traffic that falls within its proposed definition of Local Traffic.

Level 3. Level 3 asserts that the interconnection agreement should contain compensation arrangements for Internet traffic. The agreement would treat Internet traffic as a separate and

distinct category of traffic, subject to bill-and-keep compensation under the *ISP Order on Remand*. Level 3 does not dispute that Internet traffic is subject to different intercarrier compensation rules than local traffic. However, Level 3 believes that, in promulgating its new intercarrier compensation rules for Internet traffic, the Federal Communications Commission (FCC) did not change the interconnection rules that apply. Level 3 thus objects to the proposed definition of the term *Information Access Traffic* and in turn proposes the following definitions for the terms *ISP-Bound Traffic* and *Local Traffic*:

1.49(a) ISP-Bound Traffic

Traffic originated by a customer of one Party to this Agreement that is delivered to an ISP served by the other Party.

1.58 Local Traffic

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS." Pursuant to applicable law, Local Traffic excludes ISP-Bound Traffic for purposes of intercarrier compensation.

Level 3 asserts that, even if the contract's intercarrier compensation terms need to be different, Internet traffic remains subject to the same interconnection rules as local traffic, and should be handled under an agreement applying to Internet traffic the same interconnection terms as local traffic. At Article V, Sections 1, 4 and 5, of the proposed interconnection agreement Level 3 would insert contract language to include ISP-Bound Traffic as one category of traffic

the parties would be required to exchange under the agreement. In Section 3, Level 3 proposes language that would apply a bill-and-keep compensation arrangement to ISP-Bound Traffic.

B. Discussion

The first objection raised by CenturyTel concerns the authority of this Panel to address this issue at all. CenturyTel asserts that this Panel lacks jurisdiction to consider this issue in an arbitration under §§ 251 and 252. There are two related questions at issue here. The first question is whether the Panel has authority under state or federal law to direct CenturyTel to connect with Level 3's network. The second question is whether this Panel has authority under either state or federal law to set the rates, terms and conditions of service with respect to interconnected Internet traffic between the parties. The key difference between these questions is that the second question assumes that the traffic Level 3 will receive from CenturyTel will consist entirely of Internet traffic, while the first question does not rest on this assumption.

Does this Panel have authority under either state or federal law to direct CenturyTel to connect with Level 3's network?

The answer to this question is certainly yes. Section 251(a)(1) provides that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. The scope of this language is very broad. It is intended to reach all carriers. The statute does not except any carrier from the reach of this provision.

As noted above, CenturyTel's jurisdictional argument rests on its assumption that the traffic that the parties will exchange will be exclusively Internet traffic. However, the plain meaning of § 251(a)(1) does not depend upon an analysis of the content of the call. Nor has CenturyTel pointed to any authority to suggest that § 251(a) should be read in this manner. The

duty to interconnect set forth in § 251(a) applies to CenturyTel because CenturyTel is a telecommunications carrier.

Level 3 has requested interconnection pursuant to § 251. Because Level 3 served a request for interconnection, and the parties could not reach agreement on the terms of their interconnection agreement, this arbitration has been convened, pursuant to § 252(b). The merit or legal sufficiency of this request is not affected by the content of the traffic Level 3 may carry. Nor does the authority of this Panel to arbitrate the terms of this agreement turn on an assumption regarding the content of the traffic that will be exchanged under the agreement. The authority of this Panel rests entirely upon the fact that Level 3 has served a request for interconnection upon CenturyTel, the parties were unable to negotiate all of the terms of their interconnection, and Level 3 has filed a timely petition requesting arbitration of the disputed terms.

Moreover, the Panel has the additional authority to enforce and apply state laws. Sections 252(e)(3), 253(b), and 261(b) and (c) preserve state regulation of intrastate telecommunications services to the extent that state regulation does not conflict with valid federal regulation of the same subject matter. The Commission has delegated to the Panel the full measure of its authority under Wisconsin law with respect to the arbitration it assigned to the Panel. Under Wis. Stat. § 196.199(2)(a), the Commission “has jurisdiction to approve and enforce interconnection agreements and may do all things necessary and convenient to its jurisdiction.” The Commission also has authority in Wis. Stat. § 196.02 “to do all things necessary and convenient to its jurisdiction.”

Under Wis. Stat. § 196.04(2), if there is a failure to agree upon the physical connection or the terms and conditions upon which the physical connections shall be made, then upon application and investigation, if the Commission determines that: (1) public convenience and necessity require the physical connections, (2) the physical connections will not result in irreparable injury to the owners or other users of the facilities of the public utility making the connection, and (3) the connection will not result in any substantial detriment to the service to be rendered by a public utility making the connection, the Commission, by order, shall direct that the physical connections be made. In its order, the Commission shall determine how and within what time the connections shall be made. The Panel finds that both parties have sufficient notice of a failure to agree on the terms and conditions of interconnection to trigger application of this section.

Thus, the Panel concludes that it has authority under § 252(b)(1), as well as authority under Wisconsin law, to consider the merits of the Level 3 proposal on interconnection, and issue the award discussed below.

Does this Panel have authority under either state or federal law to set the rates, terms and conditions of service that would apply to Internet traffic exchanges by the parties?

CenturyTel asserts that most, if not all, of the traffic it will deliver to Level 3 under the Level 3 proposed agreement will be Internet traffic. CenturyTel also asserts that in the *ISP Order on Remand*³ the FCC has determined that Internet traffic is predominantly interstate in nature, and cannot be reliably separated into interstate and intrastate components. CenturyTel

³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 F.C.C.R. 9151 (2001) (*ISP Order on Remand*).

concludes that, as a result, the FCC now has exclusive authority over the regulation of Internet traffic.

The parties do not dispute that the traffic the parties will exchange will be Internet traffic. However, the jurisdiction of Internet traffic continues to be in dispute.

In the *Declaratory Ruling*⁴, the FCC addressed the question of the site of termination of an Internet call:

12. Consistent with these precedents, we conclude ... that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.

Declaratory Ruling, 14 F.C.C.R. at 3697. The FCC then found "that, although some Internet traffic is intrastate, a substantial portion of Internet traffic involves accessing interstate or foreign websites." *Id.* at 3702. Thus, the FCC determined that Internet traffic is jurisdictionally mixed, consisting of both intrastate and interstate traffic. *Id.* at 3690. The interstate portion of this traffic fell within the FCC's jurisdiction under § 201.

On appeal, the Court of Appeals for the D.C. Circuit vacated the *Declaratory Ruling* and remanded the matter back to the FCC. *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 9 (D.C. Cir. 2000). With respect to the FCC's end-to-end jurisdictional analysis, the court commented:

The Commission nevertheless argues that although the call from the ISP to an out-of-state website is information service for the end-user, it is telecommunications for the ISP, and thus the telecommunications cannot be said to "terminate" at the ISP. As the Commission states: "Even if, from the perspective of the *end user* as customer, the telecommunications portion of an Internet call 'terminates' at the ISP's server (and information service begins), the remaining portion of the call would continue to constitute telecommunications from the perspective of the *ISP* as customer." Commission's Br. at 41. Once again, however, the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not

⁴ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, CC Docket Nos. 96-98 and 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, 14 F.C.C.R. 3689 (1999) (*Declaratory Ruling*).

"terminate" at the ISP. However sound the end-to-end analysis may be for jurisdictional purposes, the Commission has not explained why viewing these linked telecommunications as continuous works for purposes of reciprocal compensation.

Bell Atlantic v. FCC, 206 F.3d at 7. The Court concluded that “[b]ecause the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983); 5 U.S.C. § 706(2)(A), we must vacate the ruling and remand the case.” *Bell Atlantic v. FCC*, 206 F.3d at 8.

In the *ISP Order on Remand*, the FCC determined that §§ 251(b)(5) and 251(d)(2) governed the intercarrier compensation rates for all telecommunications not excluded by § 251(g). *ISP Order on Remand*, 16 F.C.C.R. at 9173. The FCC also found that telecommunications traffic directed to Internet service providers is a form of information access for purposes of § 251(g). *Id.* at 16 F.C.C.R. at 9165, 9171-72. The FCC thus concluded that Internet traffic was excluded from regulation under § 251(b)(5) by application of § 251(g). *Id.* at 9175.

On appeal from the *ISP Order on Remand*, the court again rejected the reasoning on which the FCC based its theory of jurisdiction over Internet traffic:

Because [§251(g)] is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act, we find the Commission’s reliance on § 251(g) precluded.

WorldCom, Inc. v. FCC, 288 F.3d 429, 430 (D.C. Cir. 2002).

The Court of Appeals did not vacate the *ISP Order on Remand*. In deciding whether to vacate the order or not, the Court balanced the seriousness of the order’s deficiencies against the disruptive consequences of a vacatur. The Court noted determined that, on remand, there is a non-trivial likelihood that the FCC has authority under § 251(b)(5) to adopt the very same bill-

and-keep compensation scheme set forth in the *ISP Order on Remand*. *Id.* at 434. On that basis, the Court remanded the *ISP Order on Remand*, but left in place the bill-and-keep compensation arrangement adopted in the order. *Id.*

In this arbitration, CenturyTel contends that the FCC has asserted exclusive jurisdiction over Internet traffic, completely preempting this Panel's authority over the interconnection arrangements between CenturyTel and Level 3. The Panel disagrees with this argument for three reasons.

First, as discussed above, this Panel's authority over interconnection in this state is not affected by the content of the call. The FCC explicitly stated that it was not altering carriers' obligations to transport ISP-bound traffic to points of interconnection. *ISP Order on Remand*, 16 F.C.C.R. at 9187, ¶ 78 n. 149; *accord*, *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC., and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043 (Washington Utilities and Transportation Commission, Third Supplemental Order Confirming Jurisdiction, October 25, 2002).

Second, again as discussed above, the jurisdiction of Internet traffic is unsettled. CenturyTel bases its jurisdictional argument on two theories, both of which have been rejected by the court on appeal. CenturyTel argues that Internet service is a form of information access, subject to regulation under §§ 201 and 251(g), but excluded from regulation under §§ 251 and 252. CenturyTel also argues that Internet traffic is interstate in nature based upon an end-to-end analysis of the end points of the communication.

The D.C. Circuit has unambiguously rejected § 251(g) as a basis for interstate jurisdiction over Internet traffic. *WorldCom, Inc. v. FCC*, 288 F.3d at 430. Thus, any reference to Internet traffic as a form of information access is improper. This theory of jurisdictional authority has been considered and denied. It is not available to the parties in this arbitration. The FCC Wireline Competition Bureau reached a similar conclusion in its recent arbitration proceeding in Virginia: “We disagree with Verizon’s assertion that every form of traffic listed in section 251(g) should be excluded from section 251(b)(5) reciprocal compensation. In remanding the [ISP Order on Remand] to the [FCC], the D.C. Circuit recently rejected the [FCC’s] earlier conclusion that section 251(g) supports the exclusion of ISP-bound traffic from section 251(b)(5)’s reciprocal compensation obligations. Accordingly, we decline to adopt Verizon’s contract proposals that appear to build on logic that the court has now rejected.”⁵

The D.C. Circuit also remanded the earlier *Declaratory Ruling* because it found the FCC’s end-to-end analysis poorly reasoned. *Bell Atlantic v. FCC*, 206 F.3d at 7. Although the FCC may return to this theory of jurisdiction in the future, it cannot provide a basis for jurisdiction, nor exclude this Panel’s jurisdiction over this arbitration, at this point in time.

Third, the fact that this Panel’s regulation may overlap the regulation of interstate services does not, in itself, undermine the authority of this Panel to conduct this arbitration. *Southwestern Bell Tel. Co. v. PUC of Texas*, 208 F.3d 475, 480 (5th Cir. 2000) (“[S]tate commission authority over interconnection agreements pursuant to section 252 extends to both

⁵ In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., CC Docket No. 00-218; CC Docket No. 00-249; CC Docket No. 00-251, 2002 FCC LEXIS 3544, ¶ 261 (WirelineComp.Bur. July 17, 2002) (Virginia Arbitration Award).

interstate and intrastate matters.”) Although it is not possible under current case law to sort out the precise jurisdictional boundary for Internet traffic, it is reasonable to assert for purposes of this arbitration that Internet traffic is jurisdictionally mixed. *See* CenturyTel brief at 3; Level 3 brief at 25. The FCC may implicitly preempt state regulation of a telecommunications service when the matter to be regulated has both interstate and intrastate aspects, preemption is necessary to protect a valid federal regulatory objective, and state regulation would negate the exercise by the FCC of its own lawful authority. *PSC of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990). The Panel concludes that the converse is true as well: this Panel may regulate a subject matter that has both interstate and intrastate aspects, provided its regulation does not conflict with federal law or negate the exercise of lawful federal authority.

Some of the definitions proposed by the parties serve to implement the respective theories of jurisdiction that the parties have advanced. Having found that this Panel has authority to arbitrate the terms under which the parties will exchange Internet traffic, the Panel denies the definition proposed by CenturyTel for the term *Information Access Traffic*. This definition conflicts with the decision of the Court of Appeals because it is based upon an interpretation of § 251(g) that the Court determined to be precluded by the plain meaning of that section. *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002). This definition would also conflict with this Panel’s lawful exercise of authority over Internet traffic in this state.

Similarly, the Panel denies the definition proposed by CenturyTel for the term *Local Traffic*. As discussed in the following issues, this definition fails to comply with a valid federal order governing intercarrier compensation for Internet traffic, and discriminates against the telecommunications service offered by Level 3.

The Panel adopts the definitions proposed by Level 3 for the terms *ISP-Bound Traffic* and *Local Traffic*. These definitions comply with federal law and are consistent with the Panel's authority over the subject matter of Internet traffic.

C. Award

The definitions proposed by CenturyTel for the terms *Information Access Traffic* and *Local Traffic* are denied. The Panel awards the definitions proposed by Level 3 for the terms *ISP-Bound Traffic* and *Local Traffic*. The Panel also awards the related language proposed by Level 3 for Article V, Sections 1, 4 and 5 of the agreement.

Issue 3: What is the proper treatment of Foreign Exchange or “Virtual NXX” Traffic for intercarrier compensation purposes?

Issue 4: How should the Parties define Bill-and-Keep to implement the FCC's *ISP Order on Remand*?

These issues are related to Issues 1 and 2 above. The first two issues addressed the authority of the Panel to address the subject matter of Internet traffic. Issues 3 and 4 concern the rate of intercarrier compensation for Internet traffic.

A. Position of the parties

Level 3. Level 3 argues that the rate for this type of call should be determined by a comparison of NPA-NXX codes. The traffic would be treated as the functional equivalent to Foreign Exchange service, and would not be considered interexchange for purposes of compensation. Level 3 argues that this is the standard practice of the industry today, and that shifting to a rating scheme based upon the geographical location of the originating and

terminating end users could not be consistently applied with existing billing and network systems.

Level 3 proposes a definition for the term *Bill-and-Keep* that follows the similar definition for that term in the *ISP Order on Remand*. Level 3's proposed definition would apply the Bill-and-Keep billing arrangement to ISP-Bound Traffic originated by CenturyTel end users.

Level 3 proposes the following contract language:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange in which neither of the Parties charges the other for terminating traffic that originates on the other network. Instead, each Party recovers from its own end users the cost of both the originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.

At Article V, Section 3, Level 3 proposes to add the following language to the respective subsections:

3.2.1 Mutual Compensation.

...

Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.

3.2.2 Bill-and-Keep.

...

Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of

compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2, except as set forth in Section 3.1 above.

CenturyTel. CenturyTel argues that Bill-and-Keep is not an appropriate compensation structure for Level 3's proposed ISP-bound traffic. CenturyTel believes that the *ISP Order on Remand* imposes Bill-and-Keep only for the termination of calls made to an ISP located within the customer's local calling area. Since Level 3 proposes to carry ISP-bound traffic that will not terminate within the CenturyTel customer's local calling area, Bill-and-Keep is not appropriate for such traffic. CenturyTel proposes to modify the Level 3 proposed definition as follows:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.

CenturyTel asserts that the rate for this type of call should be determined by a comparison of the geographic location of the originating and terminating parties. CenturyTel believes that "Virtual NXX" is interexchange traffic, similar to toll-free service, and should be subject to access charges.

B. Discussion

These two issues raise a question common to many arbitrations: can CenturyTel compel Level 3 to build and its operate its telephone network in a manner compatible with CenturyTel's billing preferences. Section 251(a) does not specify any criteria under which an incumbent carrier could object to the network design to which it is asked to interconnect. Nonetheless, the parties' respective comments accept for purposes of argument that an incumbent carrier may object to an interconnection request if the interconnection is not technically feasible, if the

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interconnection denies the incumbent carrier some amount of revenue it is otherwise entitled to, or if the interconnection is otherwise not consistent with the public interest, convenience, and necessity. CenturyTel brief at 13-15; Level 3 brief at 41; *compare* § 252(e).

Level 3 describes its network design as “Virtual NXX.” This proposal would permit Level 3 to assign NPA-NXX codes associated with a particular rate center or local calling area to customers physically located outside of that rate center or local calling area, and would rate these calls as local rather than toll even though the virtual NXX customer is located in a different local calling area than the caller. *See also* Virginia Arbitration Award, 2002 FCC LEXIS 3544, ¶ 48. Level 3 asserts that its network design is functionally equivalent to the foreign exchange service CenturyTel presently provides to its own customers. Level 3 also believes its proposal best accommodates the compensation scheme has established for Internet traffic in the *ISP Order on Remand*. Level 3 further asserts that to apply originating access charges would be discriminatory, and would frustrate the offering of competitive service alternatives to end users. Finally, Level 3 argues that there is no cost basis for treating a call to a Level 3 customer differently than other local calls that CenturyTel originates.

In testimony at hearing, the parties explored at length the similarities between Level 3’s proposed network and CenturyTel’s existing foreign exchange service. At a minimum, this similarity demonstrates that Level 3’s proposal is technically feasible.

CenturyTel asserts that the Level 3 interconnection denies it revenue to which it is entitled. The parties agree that bill-and-keep is the appropriate form of compensation for Internet traffic that is local. CenturyTel brief at 16. CenturyTel objects to this compensation rate for Internet traffic that it believes terminates outside the local calling area. CenturyTel contends

that nearly all of the Internet traffic Level 3 will transport is interexchange, and Level 3's network would operate in a manner not unlike a toll-free service.

Toll-free service is an adaptation of existing toll service intended to promote use of that existing toll network by reversing the charges for the call. Generally, toll-free calls are dialed on a ten-digit basis, generate a billing record, route through an access tandem and are carried by the terminating end user's presubscribed long distance carrier. Level 3 brief at 43; tr. at 31-33. All of these elements of a toll-free call contribute to the cost of the call. Level 3's network proposal would use none of these routing and billing arrangements. Thus, it is not the case that the Level 3 network proposal fails to compensate CenturyTel for an interexchange access service it is providing.

Moreover, CenturyTel's argument ultimately rests upon its theory that an Internet call terminates at the ISP modem bank. CenturyTel brief at 16. The FCC rejected this theory in its *Declaratory Ruling*. 14 F.C.C.R. at 3695-3701. In the *ISP Order on Remand*, the FCC commented that "it erred in focusing on the nature of the service (i.e., local or long distance) and in stating that there were only two forms of telecommunications services – telephone exchange service and exchange access – for purposes of interpreting the relevant scope of section 251(b)(5)." *Order on Remand*, ¶ 26. Of course, the FCC then attempted to substitute § 251(g) as the statutory basis for its regulation. On appeal, that substitution was reversed by the Court. *WorldCom, Inc. v. FCC*, 288 F.3d at 430. It is nonetheless clear that CenturyTel's theory that an Internet call terminates at the ISP has twice been rejected by the FCC. The intercarrier compensation scheme, upheld by the court on appeal, expressly provides for a single

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compensation rate without respect to the terminating point of the call. *Order on Remand*, ¶¶ 27-30, and n. 56.

It follows from this discussion that CenturyTel will not lose revenue to which it is entitled. Rather, Level 3 proposes to interconnect with CenturyTel in a manner that is both feasible and consistent with state and federal law. The Wireline Competition Bureau reached a similar result in Virginia. *See Virginia Arbitration Award*, 2002 FCC LEXIS 3544, ¶¶ 301-303.

Level 3 asserts that treating Internet traffic as CenturyTel proposes would be discriminatory and not in the public interest. Level 3 argues that since CenturyTel and other incumbent carriers have long provided foreign exchange to their own customers, it would be discriminatory to single out a CLEC service (and not the incumbent's own functionally identical services) to bear the burden of originating access charges.

In particular, Level 3 demonstrated during the hearing that CenturyTel offers its own customers dial-up access to CenturyTel's Internet service affiliate at local telephone exchange service rates. This local dial-up access is available not only to customers in CenturyTel exchanges, but also to customers located within the Extended Area Service calling areas of those exchanges.

CenturyTel attempts to distinguish its dial-up Internet access from that proposed by Level 3:

In each instance in which CenturyTel has assigned a number associated with non-CenturyTel exchanges, it is only in exchanges that are still within the same local calling area (i.e., within an EAS area). This is simply providing a number that is local because of EAS. Contrary to Level 3's suggestion, CenturyTel is in no way 'doing the same thing' that Level 3 proposes to do. Under CenturyTel's approach, the calls are local because the party placing the call and the ISP receiving the call are in each instance located in the same local calling area.

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CenturyTel brief at 15-16. However, it is again apparent that CenturyTel's argument depends upon its theory that an Internet call terminates at the ISP modem bank. For the reasons stated above, that theory is rejected. The CenturyTel Internet access service is similar in purpose, jurisdiction and operation to that proposed by Level 3. The two services should be rated the same. *See* § 252(d)(1)(A)(ii) and Wis. Stat. § 196.204.

Finally, CenturyTel argues that the Level 3 network proposal would unreasonably consume numbering resources. However, Level 3 responds, and CenturyTel does not dispute, that Level 3 has complied with the federal initiative on local number portability. This is the number conservation program now in effect. Level 3 is not required to do more.

With respect to the specific contract language proposed by the parties, the Panel finds that the definition for the term *Bill-and-Keep Arrangement* proposed by Level 3 best conforms to the requirements of the *ISP Order on Remand*. The CenturyTel proposals taken as a whole would impose originating access charges on traffic that must be rated at bill-and-keep to conform to the *ISP Order on Remand*. The CenturyTel proposals would also have the undesirable effect of applying originating access charges to traffic terminated by Level 3 while applying local service rates for similar traffic terminated to CenturyTel's ISP affiliate.

For the same reason, it is appropriate to adopt Level 3's proposed language for Article V, Section 3, of the agreement as well.

C. Award

The Panel awards the definition for the term *Bill-and-Keep Arrangement* proposed by Level 3. The Panel also awards the contract language proposed by Level 3 for Article V,

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Sections 3.2.1 and 3.2.2 of the agreement. The alternative language proposed by CenturyTel is denied.

Issue 11: To the extent CT is not a “rural telephone company,” where should the Parties be required to interconnect?

This issue concerns provisions in the interconnection agreement governing the location of the points of interconnection between the parties’ networks.

A. Position of the parties

Level 3 argues that § 251(c) and the administrative rule implementing that section require that an incumbent carrier allow a CLEC to establish a single point of interconnection in each LATA. Level 3 has also proposed that, where CenturyTel has two or more noncontiguous serving areas in the same LATA, Level 3 would establish a single point of interconnection in each serving area. Level 3 proposes the following contract language:

4.1.2 The Parties will mutually designate at least one IP on CenturyTel’s network within each LATA for the routing and exchange of traffic pursuant to this Agreement; provided, however, that if CenturyTel has two or more serving areas that are not geographically contiguous in the same LATA, Level 3 will establish a single IP in each non-contiguous CenturyTel serving area. For purposes of clarification, nothing in the foregoing sentence shall be read to require Level 3 to establish more than one IP within each CenturyTel serving area, even if a given CenturyTel serving area is comprised of multiple local calling areas, exchanges, and rate centers.

CenturyTel objects to aspects of the Level 3 proposal. CenturyTel agrees to establish a point of interconnection within each serving area, but would eliminate from the agreement the requirement that the number of points of interconnection is dependent upon whether CenturyTel serving areas are geographically contiguous. CenturyTel contends that Level 3 should pay for any interoffice transport necessary to deliver traffic to a Level 3 point of interconnection.

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CenturyTel proposes the following contract language:

4.1.2 The Parties will mutually designate at least one IP on CenturyTel's network within each CenturyTel serving area within a LATA.

B. Discussion

Section 251(c)(2) requires that the three non-exempt CenturyTel operating companies provide interconnection with its network for the transmission and routing of local telephone exchange service and exchange access at any technically feasible point. In the First Report and Order, the FCC comments:

198. We conclude that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations. We further conclude that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements. Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible. We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Finally, we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.

At paragraph 209, the FCC more clearly states that interconnecting CLECs are entitled to unilaterally determine the point(s) of interconnection:

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

The only constraint on a CLEC's discretion concerning the point of interconnection is technical feasibility. The U.S. Court of Appeals for the Third Circuit recently ruled:

The decision where to interconnect and where not to interconnection must be left to [the CLEC], subject only to concerns of technical feasibility.

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MCI Telecommunications Corp. et al. v. Bell Atlantic-Pennsylvania, 271 F.3d 491, 518 (3rd Cir. 2001); *see also U.S. West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

Under § 251(c), Level 3 is entitled to interconnect with the CenturyTel network at points of its choosing, subject to the single constraint of technical feasibility. CenturyTel proposes that the parties mutually designate at least one point of interconnection on CenturyTel's network within each CenturyTel serving area. Level 3 believes CenturyTel's language may result in more points of interconnection than the statute requires. It proposes a proviso reducing the number of interconnection points where serving areas are geographically contiguous. Neither proposal addresses squarely the statutory requirement of technical feasibility.

The Panel finds it is unable to select either contract language proposal. The CenturyTel proposal may impair Level 3's discretion under the statute to designate the interconnection points it desires. The Level 3 introduces a geographic test that is unrelated to the statutory test of technical feasibility.

C. Award

Accordingly, the Panel awards that CenturyTel must, at a minimum, deliver traffic to a Level 3 point of interconnection that originates within the local service area of the CenturyTel exchange serving the point of interconnection. The local service area would include the exchange itself and any other exchanges within the Extended Area Service or Extended Community Calling territory for that serving exchange, as specified in the applicable CenturyTel tariff.

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Level 3 is also awarded the further option of requesting a reduction in the number of points of interconnection by linking exchanges that are not presently connected by either an Extended Area Service or Extended Community Calling arrangement. This request must identify the specific routes at issue to permit analysis of technical feasibility on a case-by-case basis. In the event that Level 3 makes such a request, CenturyTel may object to a specific request as technically infeasible. If the parties are unable to negotiate a satisfactory resolution of the dispute, the parties may escalate the dispute following the dispute resolution procedures in Article III of the agreement.

Award

1. For each issue discussed in the Opinion above, the Panel awards the contract language specified for that issue. Where the Panel has adopted specific contract language, the parties shall incorporate that language into the Interconnection Agreement. Where the Panel has adopted a position on an issue and provided drafting instructions for the parties, the parties shall compose contract language to implement the Panel's award.
2. The parties shall jointly a final Interconnection Agreement to the Panel by noon, January 15, 2003. If the parties are unable to conclude a final agreement, the parties should so inform the Panel by January 15, 2003. The Panel will then contact the parties to take necessary actions to resolve the remaining disputes.

By the Panel,

Signed this 2nd day of December, 2002.

Edward S. Marion, Chairman

Gary A. Evenson

Dennis J. Klaila

ESM:GAE:DJK:t:\arbitration\05-MA-130\05-MA-130 arbitration award

EXHIBIT WPH-15

Interrogatory #31

Request: Please state whether SRT, or any affiliate of SRT, provides Internet access service to customers in SRT's incumbent serving area.

Objections: Trade Secret

Response: Yes. A wholly owned subsidiary of SRT, North Dakota Network Company, provides internet access service.

BEFORE THE
STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

<p>IN THE MATTER OF THE PETITION OF LEVEL 3 COMMUNICATIONS, LLC FOR ARBITRATION PURSUANT TO SECTION 252(B) OF THE TELECOMMUNICATIONS ACT OF 1934, AS AMENDED, TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH SRT COMMUNICATIONS COOPERATIVE</p>	<p>CASE No. PU-2065-02-465</p>
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DIRECT TESTIMONY OF TIMOTHY J GATES
ON BEHALF OF
LEVEL 3 COMMUNICATIONS, LLC

DECEMBER 4, 2002

39

PU-2065-02-465

Pages: 89

Direct Testimony of Timothy J Gates

by Level 3 Communications, LLC

Exhibit # Level 3 - 3

12/05/2002

CC: Comm Legal PUD (3)

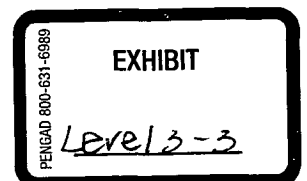


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1 **I. INTRODUCTION**

2
3 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**
4 **ADDRESS.**

5 A. My name is Timothy J Gates. My business address is QSI Consulting,
6 917 W. Sage Sparrow Circle, Highlands Ranch, Colorado 80129.

7 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION**
8 **WITH THE FIRM?**

9 A. QSI Consulting, Inc. (“QSI”) is a consulting firm specializing in regulated
10 industries, econometric analysis and computer aided modeling. I currently serve
11 as Senior Vice President.

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
13 **WORK EXPERIENCE.**

14 A. I received a Bachelor of Science degree from Oregon State University and a
15 Master of Management degree in Finance and Quantitative Methods from
16 Willamette University's Atkinson Graduate School of Management. I have taken
17 additional post-graduate classes, and I have attended numerous courses and
18 seminars specific to the telecommunications industry, including both the NARUC
19 Annual and NARUC Advanced Regulatory Studies Programs.

20 Prior to joining QSI, I was a Senior Executive Staff Member at MCI
21 WorldCom, Inc. (“MWCOR”). I was employed by MWCOR for 15 years in
22 various positions within the public policy group. While at MWCOR I managed

1 various functions, including tariffing, economic and financial analysis,
2 competitive analysis, witness training and MWCOT's use of external consultants.

3 Prior to joining MWCOT, I was employed as a Telephone Rate Analyst in
4 the Engineering Division at the Texas Public Utility Commission and earlier as an
5 Economic Analyst at the Oregon Public Utility Commission. I also worked at the
6 Bonneville Power Administration (United States Department of Energy) as a
7 Financial Analyst doing total electric use forecasts while I attended graduate
8 school. Prior to doing my graduate work, I worked for ten years as a forester in
9 the Pacific Northwest for multinational and government organizations.
10 Exhibit TJG-1 to this testimony is a summary of my work experience and
11 education.

12 **Q. HAVE YOU EVER TESTIFIED BEFORE THE NORTH DAKOTA**
13 **PUBLIC SERVICE COMMISSION ("COMMISSION")?**

14 A. Yes. In 1991, I provided direct and rebuttal testimony in Case No. PU-2320-90-
15 183 (Implementation of SB 2320 -- Subsidy Investigation) on behalf of
16 MWCOT. Likewise, I have testified more than 200 times before other state
17 commissions in 42 states and filed comments with the FCC on various public
18 policy issues ranging from costing, pricing, local entry and universal service to
19 strategic planning, merger and network issues.

20 **Q. HAVE YOU MADE ANY OTHER PUBLIC PRESENTATIONS ON**
21 **TELECOMMUNICATIONS ISSUES IN NORTH DAKOTA?**

22 A. Yes. In July of 1992, I made two presentations at the North Dakota Association
23 of Telephone Cooperatives' Summer Conference held in Minot. I was invited to

1 speak at the conference, and was asked to participate in two separate panels. I
2 made a presentation on "Equal Access in North Dakota: Implementation of PSC
3 Mandate" and on "Open Network Access in North Dakota" on behalf of
4 MWCOM.

6 **II. PURPOSE OF TESTIMONY**

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. I have been asked to address certain factual and policy issues pertinent to this
9 proceeding. Specifically, I will provide some background on the negotiations and
10 then address the manner in which Level 3 Communications, LLC ("Level 3") is
11 providing service to its customers, how it intends to rely upon interconnection
12 services provided by SRT Communications Cooperative ("SRT") to provide those
13 services, and the extent to which services offered by Level 3 are similar to service
14 offerings provided by other North Dakota incumbent local exchange carriers
15 ("ILECs"). I will also address certain industry practices associated with the
16 Telecom Act of 1996 ("the Act") and the efficient operations of companies under
17 co-carrier arrangements.

18 My testimony will focus on three of the seven issues identified in the
19 Commission's Notice of Hearing, dated November 7, 2002. The three issues this
20 testimony will address, at least in part, are as follows:

- 21 2. Does SRT have a duty to negotiate with Level 3 to establish fair
22 and reasonable terms and conditions for interconnection when
23 it receives a request for interconnection pursuant to section
24 251(a) of the Communications Act of 1934, as amended?
25

- 1 3. Are Level 3's proposed services exchange services that are
2 subject to negotiated transport and termination arrangements or
3 are they interexchange services subject to access charges?
4
5 4. For calls to NXX numbers assigned to the same local calling
6 area, are the interconnection, intercarrier compensation, and
7 local service customer billing requirements different based on
8 whether the call terminates within the original local calling area
9 or terminates outside of that local calling area.
10

11 **Q. PLEASE PROVIDE SOME BACKGROUND FOR THIS PROCEEDING.**

12 A. Level 3 is in the process of expanding the geographic availability of its services.
13 Part of that expansion includes the more rural areas of the country. Level 3
14 contacted QSI to help them negotiate interconnection agreements with certain
15 ILECs across the country. Within QSI we assigned various ILEC negotiations to
16 our consultants for purposes of negotiating agreements on behalf of Level 3. One
17 of the companies assigned to me was SRT in North Dakota.

18 **Q. WHY WERE YOU ASSIGNED THE NORTH DAKOTA COMPANIES?**

19 A. I asked for the North Dakota companies because I had met Mr. Warren Hight in
20 the past. Mr. Hight is the current General Manager and Chief Executive Officer
21 of SRT. In fact, I was present for the grand opening of the new SRT offices in
22 Minot. Further, I was one of the few people within QSI that had participated in
23 hearings in North Dakota. This familiarity with Mr. Hight, the Commission, and
24 North Dakota generally, was the principal reason for assigning the North Dakota
25 companies to me.

26 **Q. DID YOU INITIATE THE NEGOTIATIONS WITH SRT?**

1 A. Yes. My first calls to Mr. Hight at SRT regarding the interconnection request
2 occurred in March of this year. I sent the interconnection request materials to
3 Mr. Hight on March 26, 2002. Those materials included a one-page summary of
4 Level 3's market expansion project, a PowerPoint presentation providing
5 information on the interconnection request and Level 3's draft "mutual traffic
6 exchange agreement," and the draft agreement itself.¹

7 **Q. DID YOU SEND OTHER MATERIALS TO EXPLAIN LEVEL 3's**
8 **REQUEST?**

9 A. Yes. I received a letter from Mr. Hight, dated April 9, 2002, claiming that
10 Level 3's request "...does not provide adequate details relating to the proposed
11 arrangement with SRT..." The day before I received that letter, I sent Mr. Hight a
12 diagram developed by Level 3's engineers, depicting the manner in which Level 3
13 might interconnect with SRT. The diagram showed the rate center tandem in
14 Minot, T-1 trunks between that tandem and the Qwest central office in Minot, and
15 transport from the Qwest office to Level 3's network.

16 **Q. WERE YOU SURPRISED BY MR. HIGHT's REQUEST FOR**
17 **ADDITIONAL INFORMATION?**

18 A. No. The interconnection request materials were necessarily "general" as they
19 were used to initiate negotiations with over a hundred companies across the
20 country. Further, unless and until the engineers from Level 3 and SRT meet to

¹ See Level 3's Petition to Establish an Interconnection Agreement with SRT Communications Cooperative, dated August 30, 2002, Exhibit A.

1 discuss interconnection needs, there is no information that would allow a more
2 specific request.

3 **Q. WAS THE DIAGRAM YOU PROVIDED SUFFICIENT FOR**
4 **NEGOTIATION PURPOSES?**

5 A. Yes. The diagram indicated where Level 3 might interconnect, how the traffic
6 would be routed from SRT's serving territory to Qwest, and then on to Level 3's
7 network. This diagram provided enough basic information for the parties to
8 understand what network interconnection might look like and the possible
9 locations for a point of interconnection. The specific location of the point of
10 interconnection, the means of interconnection, and the type of transport required,
11 however, would need to be determined by the "implementation team" made up of
12 representatives from Level 3 and SRT.

13 **Q. DID THE IMPLEMENTATION TEAM MEET?**

14 A. No. Although on April 12, 2002, the same day I sent the network diagram,
15 Mr. Hight said he was forwarding the message to his engineering group and trying
16 to set up a meeting for the following week, no meeting or conference call was ever
17 scheduled. Instead, on April 19, 2002, I received a voice mail message from
18 Mr. Hight indicating that SRT had retained John Staurulakis, Inc. ("JSI") to
19 represent them in these negotiations. I also received a letter from Mr. Hight dated
20 April 25, 2002, confirming that voice mail message of April 19, 2002. We were
21 told that SRT concurred in JSI's position on Level 3's request and that we were to
22 contact Ms. Azita Sparano of JSI if we had any questions.

1 **Q. HOW DID THE NEGOTIATIONS PROCEED WITH JSI ON BEHALF OF**
2 **SRT?**

3 A. There were no substantive or productive negotiations. I received a letter from
4 Ms. Sparano, dated April 15, 2002, addressing Level 3's request. Although that
5 letter was in response to Level 3's interconnection request with North Dakota
6 Telephone Company, Mr. Hight indicated that they agreed with JSI's positions. I
7 responded to that letter on April 19, 2002. We had a conference call on April 23,
8 2002, and Ms. Sparano raised the same issues. Mr. Hunt of Level 3 responded
9 again to JSI's positions in a letter sent the very next day via fax and overnight
10 delivery. Despite those responses, JSI did not change its position or provide
11 alternative language for Level 3 or QSI to consider. In fact, despite Mr. Hunt's
12 offer to continue discussions and his request for a prompt resolution of the matter,
13 Ms. Sparano did not respond to Mr. Hunt's letter.

14 After several months and no progress with JSI, I again contacted Mr. Hight
15 and asked if we could negotiate directly with him and SRT. I explained that
16 despite our best efforts, we had made no progress with JSI on any issue. That
17 conversation occurred on August 7, 2002. Mr. Hight said that he wanted us to
18 continue to work with JSI on the interconnection request. As such, I again called
19 Ms. Sparano to seek some resolution of issues. After two conversations in
20 August, I was told on August 23, 2002 by Ms. Sparano that her positions still had
21 not changed.

22 Given the lack of movement with JSI, I asked Ms. Sparano to set up a call
23 or meeting with Mr. Hight to discuss the deadlock and to consider mediation with

1 the Commission. I talked with both Mr. Hight and Ms. Sparano on August 27,
2 2002, and we tentatively set up a conference call for the following week. I was
3 also told that, although they would consider mediation, they didn't think that
4 would be a worthwhile activity.

5 **Q. DID THE CONFERENCE CALL OCCUR?**

6 **A.** No. Given the limited time available under the Act, it was decided that absent an
7 extension of the statutory arbitration window, that such a meeting would not be
8 possible, or – given that SRT had never changed its position or offered alternative
9 language – likely to be productive. As such, I informed SRT through an email
10 message, a voice mail message to Mr. Hight, and by a conversation with
11 Mr. Steve Lysne (SRT's current Chief Financial Officer) that Level 3 would file
12 for arbitration.² I have attached a copy of that email to this testimony as Exhibit
13 TJG-2 (Email to Warren Hight). Level 3 filed its Petition for Arbitration on
14 August 30, 2002, which resulted in this proceeding.

15 **Q. WHAT KEY POSITIONS OF THE PARTIES WILL YOU ADDRESS IN**
16 **YOUR TESTIMONY?**

17 **A.** As I noted above, I will address issues 2, 3, and 4 identified in the Notice of
18 Hearing.

19 **III. SUMMARY OF FINDINGS AND**
20 **RECOMMENDATIONS**
21

² I understand that SRT's Board of Directors has selected Mr. Lysne as General Manager/Chief Executive Office of the company effective January 1, 2003. See (SRT.news, October 2002, Volume 24, Issue 7).

1 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AND STATE YOUR**
2 **RECOMMENDATIONS.**

3 A. Based upon my review of the interconnection agreement language at issue
4 between the parties, my understanding of Level 3's interconnection request and
5 the services Level 3 currently provides using the interconnection arrangements it
6 has requested, as well as an intimate understanding of related public policy and
7 regulatory rules impacting the issue, I conclude as follows:

- 8 • SRT is duty bound to negotiate with Level 3 to establish fair and reasonable
9 terms and conditions for interconnection when it receives a request for
10 interconnection pursuant to Section 251(a) of the Act.
- 11
12 • Level 3's service offering is consistent with similar offerings of SRT and other
13 ILECs within North Dakota. As such, SRT's objections to the services
14 provided by Level 3, and its subsequent refusal to allow interconnection
15 arrangements that support those services, are unpersuasive. FX and FX-type
16 services are ubiquitous and being provided in response to consumer demand.
- 17
18 • FX and FX-type (Extended Area Service ("EAS"), Qwest Wholesale Dial,
19 etc.) services provide important benefits to subscribers and the industry. Such
20 services have been in demand for years because they represent a cost-effective
21 manner by which to provide a local presence in a foreign exchange, without
22 the need for toll charges (or use of the toll network).
- 23
24 • If FX-type services are banned, or if the cost of providing those services
25 increases, the public interest will be harmed. Absent FX service and
26 competitive alternatives to such service, providers would have to duplicate
27 expensive local facilities. Perhaps more importantly, without FX-type
28 services, consumers would have fewer options for service and would be forced
29 to make toll calls to businesses that they heretofore had dialed on a local basis.
30 This is especially true for the Internet access business. Consumers demand
31 local dial-up access for the Internet, and FX services like those offered by
32 Level 3 provide that local connectivity in the most cost effective manner
33 possible.
- 34
35 • Despite SRT's claims, services offered by Level 3 are not comparable to 800
36 services. 800 services provide a completely different functionality for
37 consumers than does FX service, and requires significantly differently
38 rating/routing and general handling (*i.e.*, use of the access tandem, database

1 dips, number conversion, etc.). A comparison of the manner in which the two
2 types of services are provided indicates that Level 3's service is directly
3 comparable to FX service and is dramatically different from 800 services.
4

- 5 • Calls are conventionally rated and routed throughout the U.S. telephone
6 industry based upon the NXX code of the originating and terminating
7 telephone number. There is no reason to deviate from this convention now.
8 So-called virtual NXX and FX calls are routed to the same point as other local
9 traffic and handed off just as any other local call would be. This practice
10 should be continued such that calls between an originating and terminating
11 NXX associated with the same local calling area are rated and routed as local.
12
- 13 • Access charges are not appropriate for FX-type services. FX services have
14 been offered by North Dakota LECs such as Qwest and SRT for many years,
15 and they are and have been treated or viewed as "local" services since their
16 inception, even though they offer customers a presence in a different
17 exchange. FX services are exchange services, not exchange access, and as
18 such access charges cannot be applied. Further, because of the FCC's policy
19 to encourage the growth of the Internet, access charges that include a myriad
20 of non cost-based subsidies are never appropriately applied to enhanced
21 service providers ("ESPs"), including ISPs, consistent with the FCC's rules.³
22
- 23 • Level 3's service is a new and competitive response to SRT's FX and "Toll
24 Free Local Area Wide Calling" service and Qwest's FX services. The service
25 is in demand and provides significant benefits to the ISP industry and
26 consumers alike. Level 3 should be allowed to provide this service in North
27 Dakota without additional charges or conditions as suggested by SRT.
28

29 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

30 A. Level 3 is a relatively new company offering a competitive product in one of the
31 few segments of telecommunications showing signs of competition. While the
32 service is offered in a new and innovative way, the functionality provided to
33 consumers and to Level 3's customers are comparable to those of traditional FX
34 services. Level 3's service should be treated just as those other, more traditional

³ See *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC2d 682, 711 (1983); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631, 2633 (1988); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982,16133 (1997).

1 LEC services are treated – to do otherwise would be discriminatory and harmful
2 to the effective operation of the market. Indeed, new entrants should not be
3 punished or disadvantaged for developing new services or using new technology
4 to provide competitive responses to existing services.

5 SRT is attempting to prevent Level 3 from offering a service it has offered
6 for some time in other areas of the country – a service that is a competitive
7 response to services offered by SRT itself and other ILECs around the United
8 States today. Its refusal to negotiate for interconnection on fair terms and
9 conditions, and its demands for discriminatory treatment of Level 3’s service vis-
10 a-vis other LEC services, are simply an attempt to prevent competition in its
11 serving territory.

12 **IV. ISSUE 2 – SRT HAS A DUTY TO NEGOTIATE WITH**
13 **LEVEL 3 TO ESTABLISH FAIR AND REASONABLE**
14 **TERMS FOR INTERCONNECTION**

15
16 **Q. AT THE BEGINNING OF YOUR TESTIMONY, YOU SAID THAT YOU**
17 **WOULD ADDRESS ISSUE NUMBER 2 REGARDING SRT’S**
18 **RELUCTANCE TO NEGOTIATE WITH LEVEL 3. PLEASE EXPLAIN**
19 **YOUR UNDERSTANDING OF THAT REQUEST.**

20 **A.** One of the arguments made by SRT in this proceeding is that it is not required to
21 negotiate or enter into an interconnection agreement with Level 3.⁴ When QSI
22 met with Level 3 to discuss this project, it was very clear that Level 3 would be
23 seeking interconnection for purposes of providing local services to its customers.

1 One of the reasons Level 3 considered QSI for this project was our experience
2 with Section 252 arbitrations around the country. While I am not an attorney, and
3 I am not providing any legal argument on this point, the nature of this request was
4 never in doubt. In my opinion, based on my experience in dozens of arbitrations
5 since the Act was passed, Level 3 was indeed seeking interconnection as a
6 competitive carrier seeking to provide local services, albeit under Section 251(a)
7 as opposed to Section 251(c). Further, as noted in our documentation of our
8 negotiations with SRT, we assumed and identified the timeframes and
9 requirements under Section 252(b). More specifically, the negotiation time
10 frames identified under Section 252(b)(1) controlled our actions and options
11 during the negotiations.

12 **V. ISSUE 3 – LEVEL 3’S SERVICE OFFERING IS A LOCAL**
13 **EXCHANGE SERVICE AND A COMPETITIVE**
14 **ALTERNATIVE TO ILEC FX AND ISP SERVICES**

15 **Q. PLEASE DESCRIBE LEVEL 3’S DID OFFERING.**

16 **A.** Level 3 builds its network and provides for interconnection with other local
17 exchange carriers (“LECs”) primarily for purposes of providing customers local
18 connectivity to packet switched networks like the Internet. Level 3 accomplishes
19 this local connectivity by providing its customers a Direct Inward Dial (“DID”)
20 service whereby the customer is provided a local telephone number that directs
21 the ILEC customer’s calls directly from his/her local exchange carrier to the
22

⁴ See SRT’s Response and Motion to Dismiss Level 3’s Petition for Arbitration dated September 25, 2002, at 17.

1 Level 3 network. Level 3 then terminates the call to its customer – in this case an
2 Internet Service Provider (“ISP”).

3 Level 3’s DID service necessarily requires that Level 3 “turn up” local
4 numbers within its target markets, and as such, requires that Level 3 work closely
5 with the North American Numbering Plan Administrator (“NANPA) for purposes
6 of being assigned relevant “NXX” number blocks specific to the geography of its
7 target market.

8 **Q. COULD YOU PLEASE PROVIDE A BRIEF HISTORY OF THE USE OF**
9 **NUMBERING RESOURCES?**

10 A. Certainly. Our current numbering resource plan was established by AT&T in
11 1947 when it was the monopoly provider of all local and long distance telephone
12 service in the United States. This is how the FCC describes it:

13 In 1947, AT&T adopted the current nationwide numbering scheme,
14 under which the ten-digit telephone number serves not only as a
15 network “address,” but also conveys information to the network as
16 to how phone calls should be routed and billed. A principal benefit
17 of this system was that it permitted automated routing of long-
18 distance phone calls, obviating the need for operators to assist in
19 routing. Under the allocation system that developed to support this
20 system, numbering resources are allocated to local telephone
21 exchange carriers on the basis of physical geography, rather than
22 on the basis of end-user demand for those numbers. That is,
23 typically a large block of numbers is allocated to a carrier for use in
24 a geographic area, even though there may not be end-users
25 assigned to each individual number available in the area. This
26 system worked smoothly so long as only one entity (the local
27 exchange carrier) offered only one type of service (wireline
28 telephony) to customers.⁵

⁵ *Numbering Resource Optimization; Connecticut Department of Public Utility Control Petition For Rulemaking To Amend The Commission’s Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays; Massachusetts Department of Telecommunications and Energy Petition For Waiver To Implement a Technology-Specific Overlay In the 508, 617, 781, and 978 Area Codes; California Public Utilities Commission and The People of The State of California Petition For Waiver To Implement a*

1
2 As you can imagine, once alternative service providers such as Commercial
3 Mobile Radio Service (“CMRS”) carriers and competitive local exchange carriers
4 (“CLECs”) entered the market, the need for numbering resources exploded in a
5 manner that was never anticipated when the system was originally put into place.
6 The proliferation of facsimile machines and pagers placed additional pressure on
7 numbering resources. Yet the underlying purpose of the numbering system has
8 not kept pace with the industry. It is this anachronistic number administration
9 system that compels CLECs to obtain telephone numbers associated with ILEC
10 local calling areas wherever CLECs seek to provide service. As the all-distance
11 service offerings of CMRS carriers illustrate, the industry is already headed
12 toward the elimination of the distinction between local calls and long distance
13 calls. Nevertheless, as long as the number administration regime persists without
14 consolidation of rate centers and thousand block number assignment, each CLEC
15 must continue to obtain NXX number blocks as if it were providing service just
16 like an incumbent in 1947.

17 **Q. WHAT ARE NXX NUMBER BLOCKS?**

18 A. NXX number blocks are groups of numbers assigned to carriers for distribution to
19 customers. The blocks contain 10,000 numbers, or where number pooling is in
20 place, blocks of 1,000 numbers. The NXX codes are the fourth through sixth
21 digits of a ten-digit telephone number. These codes are used as rate center
22 identifiers for rating and routing of calls.

Technology-Specific or Service-Specific Area Code, Notice of Proposed Rulemaking, FCC 99-122, CC Docket No. 99-200, (rel. June 2, 1999) at ¶ 2.

1 **Q. MUST A CARRIER BE LOCAL NUMBER PORTABILITY (“LNP”)**
2 **CAPABLE TO PARTICIPATE IN NUMBER POOLING?**

3 A. Yes. Level 3 is LNP capable and able to participate in number pooling. Further,
4 Level 3 normally utilizes only numbers in the 4,000 block within a 10,000 block.
5 By not contaminating the numbers in the other thousand blocks, should jeopardy
6 occur and pooling be imposed, Level 3 could return numbers to the administrator.⁶

7 **Q. MUST A CARRIER REQUEST NUMBERS IN ORDER TO PROVIDE**
8 **SERVICE?**

9 A. Yes. Carriers need to obtain telephone numbers in every rate center in which they
10 wish to offer service. Those numbers must then be loaded into the Local
11 Exchange Routing Guide (“LERG”) so that ILECs that see the number are
12 instructed in how to route and rate the calls to that number. The numbers
13 received from the NANPA reside in the Level 3 switch. The LERG associates the
14 numbers with a specific rate center.

15 **Q. DO THE NUMBERING GUIDELINES PROHIBIT THE ASSIGNMENT**
16 **OF NUMBERS FOR FX OR FX-TYPE SERVICES?**

17 A. No. In fact Section 2.13 of the Numbering Guidelines specifically identifies FX
18 services as being eligible for number assignment:

19 2.1.3 It is assumed from a wireline perspective that CO
20 Codes/blocks allocated to a Wireline Service Provider are to be
21 utilized to provide service to a customer’s premise physically
22 located in the same rate center that the CO Codes/blocks are

⁶ While number pooling is the most common of number conservation activities, rate center consolidation should be considered and implemented as well when numbers become scarce or jeopardy situations occur.

1 assigned. Exceptions exist, for example tariffed services such as
2 with the exception of foreign exchange service.⁷ (emphasis added)
3

4 If it were improper or a violation of the guidelines to use NXX codes in this
5 manner then all ILECs currently providing FX and FX-type services would be in
6 violation today.

7 The numbering guidelines specifically anticipate the use of numbers in the
8 manner in which Level 3 is using them today. The example of foreign exchange
9 services is just one example of the use of numbers to provide a virtual presence
10 for customers not physically located in the exchange.

11 **Q. HOW ARE CUSTOMERS ASSIGNED AN NXX CODE?**

12 A. Carriers who meet the NANPA criteria for the assignment of central office codes,
13 like Level 3 and SRT, request and are assigned blocks of telephone numbers by
14 the numbering administrator.⁸ The numbers are loaded into Level 3's switch and
15 referenced in the LERG for routing by other carriers. Level 3 then assigns
16 numbers from within those blocks to its customers as requested.

17 **Q. HOW IS THE RATING OF CALLS IMPACTED BY THE NUMBERS**
18 **ASSIGNED TO CUSTOMERS?**

19 A. Standard industry practice and procedure provides that each NXX code is
20 associated with a particular carrier serving a particular rate center within a local
21 calling area. A single rate center may have more than one NXX code, but each

⁷ Alliance for Telecommunications Industry Solutions; Sponsor of Industry Numbering Committee; Central Code (NXX) Assignment Guidelines; Released August 16, 2002; hereinafter referred to as "Numbering Guidelines."

⁸ See Numbering Guidelines, Section 4.0.

1 code is assigned to only one rate center. This uniquely identifies the carrier and
2 the end office switch serving the NXX code, so that each carrier that is routing a
3 call knows which carrier and which end office switch to send the call to.

4 **Q. ARE THERE TECHNICAL REQUIREMENTS THAT COMPEL LECs TO**
5 **ASSIGN UNIQUE NXX CODES FOR INDIVIDUAL RATE CENTERS?**

6 A. No. As discussed above, the correlation of NXX codes to rate centers is a vestige
7 of the monopoly regime. There is no technical reason to associate an NXX code
8 to a particular rate center. A single NXX code could serve any number of
9 geographic “rate centers” if the calculation of access charges were removed from
10 the picture.

11 **Q. IS IT UNCOMMON FOR NXX CODES TO BE ASSIGNED TO**
12 **CUSTOMERS WHO ARE NOT PHYSICALLY LOCATED IN THE**
13 **LOCAL CALLING AREA WHERE THE NXX IS “HOMED” OR**
14 **ASSIGNED?**

15 A. No. It is also not uncommon for the “routing” point for an NXX code to differ
16 from the “rating” point for the same code. In other words, although an NXX may
17 be rated or homed to a specific end office switch, the routing information in the
18 LERG may specify that calls to that NXX code be routed to a different wire
19 center, for instance, a tandem.

20 **Q. IS IT IMPROPER OR AGAINST ANY RULES FOR CLECs TO PROVIDE**
21 **NUMBERS TO THEIR CUSTOMERS?**

22 A. No, not at all. In fact, as noted above, carriers must request numbers in order to
23 provide service in a particular exchange. Based on my review of Level 3’s

1 practices, Level 3 utilizes and abides by the Numbering Guidelines.⁹ In fact,
2 Level 3 has developed its own LNP solution and has established stringent
3 guidelines that result in very efficient use of numbering resources.

4 **Q. FOR LEVEL 3's SERVICE, HOW ARE THOSE NUMBERS USED AND**
5 **THE CALLS COMPLETED?**

6 -A. Level 3 assigns a number from its switch – or several numbers – to one or more of
7 its ISP customers from an exchange where Level 3 is authorized to provide
8 service. As the Commission is well aware, consumers are not willing to pay toll
9 charges – at least in most cases – to connect to the Internet. The ISP customers
10 therefore make these numbers available so that consumers (residential and
11 business alike) can connect to the Internet on a local – not a toll – basis. The
12 actual routing and handling of the call is transparent to the consumer.

13 If Level 3 cannot provide an ISP with a local telephone number, in all
14 practical effect, Level 3 will not be able to serve the ISP as long as end users in
15 that local calling area have an alternative to reach another ISP on a local basis.

16 **Q. IS THERE A LOCAL CALLING ALTERNATIVE IN SRT'S SERVICE**
17 **TERRITORY?**

18 A. Yes. SRT has its own ISP subsidiary that is accessible on a local basis by SRT
19 end users in every SRT exchange. *See* Exhibits WPH-10 & 14 (SRT Responses to
20 Level 3 Interrogatory Nos. 30 & 31).

21 **Q. PLEASE DESCRIBE HOW CONSUMERS ACCESS THEIR ISPs ON A**
22 **DIAL-UP BASIS.**

⁹ The Numbering Guidelines require compliance as a condition of receiving numbers.

1 A. Consumers enter the local ISP number into their dial-up modem instructions, and
2 the modem dials the local number to connect with the ISP.¹⁰ The calls are routed
3 to the appropriate central office per the LERG instructions associated with the
4 number. The calls are then directed to Level 3 for completion. Once Level 3
5 receives the call at the point of interconnection, it is financially and operationally
6 responsible for terminating the call that was originated by the LEC's customer.

7 Once Level 3 receives the call destined to its customer, it transports the
8 call over its own network, or over the network of other providers, to get the call to
9 the ISP modem banks. Once the call is connected following the familiar beeps
10 and buzzes of the "handshake" between the two computers, an Internet "browser,"
11 such as Microsoft Internet Explorer or Netscape Navigator, can be launched and
12 the consumer can navigate the Internet. Without the modem-to-modem telephone
13 connection, a computer's Internet browser functionality has little, if any,
14 usefulness.

15 **Q. DOES LEVEL 3's SERVICE PROVIDE THE SAME FUNCTIONALITY**
16 **FOR CONSUMERS AS THE FX AND FX-TYPE SERVICES PROVIDED**
17 **BY SRT AND OTHER ILECs?**

18 A. Yes, it does. Like SRT's FX service (and similar alternative FX-type services
19 offered by ILECs), Level 3 provides the customer the ability to obtain a "virtual"
20 presence in a local calling area where the customer is not physically located.

¹⁰ In my computer, I go to "My Computer" and then select "Dial-Up Networking." Within this screen I select "New Connection" or modify the number in my existing Earthlink connection. You are instructed to "Type the phone number for the computer you want to call" and then you type in the new ISP number. The computer saves the number and uses it whenever you instruct it to sign-on to the Internet.

1 Level 3's service is a competitive response to the traditional ILEC FX service. In
2 fact, in considering this question, many states have found that it provides the same
3 functionality to consumers as the FX service has provided for decades. In a
4 proceeding in Florida, the Commission concluded the following:

5 We believe that virtual NXX is a competitive response to FX
6 service, which has been offered in the market by ILECs for years.
7 Differing network architectures necessitate differing methods of
8 providing this service; nevertheless, we believe that virtual NXX
9 and FX service are similar "toll substitute services." Therefore, we
10 believe carriers should be permitted to assign NPA/NXXs in a
11 manner that enables them to provision these competitive services.¹¹
12

13 In an Order in Kentucky, that Commission also equated ILEC FX and Level 3
14 service as follows:

15 Both utilities offer a local telephone number to a person residing
16 outside the local calling area. BellSouth's service is called foreign
17 exchange ("FX") service and Level 3's service is called virtual
18 NXX service.¹²
19

20 In a recent decision in Texas, the Arbitrators analyzed FX and FX-type services
21 and concluded as follows:

22 From the perspective of FX customers, ILEC-provided FX service
23 and CLEC-provided FX-type service serve the same intended
24 purpose. The end user in the foreign exchange is able to avoid toll
25 calls to the FX customer and instead to place local calls to the FX
26 customer physically located in a different exchange. While the
27 Arbitrators recognize that FX and FX-type service are provisioned
28 differently, due to differences between ILEC and CLEC network
29 architectures and local calling scopes, the Arbitrators are not

¹¹ Before the Florida Public Service Commission; In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996; ORDER ON RECIPROCAL COMPENSATION, Docket No. 000075-TP (Phases II and IIA; Order No. PSC-02-1248-FOF-TP; Issued September 10, 2002; at 28.

¹² *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2000-404, Order (Ky. PSC March 14, 2001) at 7.

1 persuaded that the differences in provisioning methods should
2 mandate different classification and/or compensation. Therefore,
3 for purposes of this decision, the Arbitrators view FX and FX-type
4 service as comparable services from the perspective of FX
5 customers. To be sure, these FX arrangements provide FX
6 customers with exchange service within a Commission-prescribed
7 mandatory local calling area even though the FX customer
8 physically resides outside of said mandatory local calling area.¹³
9

10 There is little doubt that VNXX service provides the same functionality as an
11 ILEC's foreign exchange service.

12 **Q. DO ILECs AROUND THE COUNTRY OFFER SIMILAR SERVICES TO**
13 **THEIR CUSTOMERS AND THE ISP INDUSTRY?**

14 A. Yes. All RBOCs that I have investigated provide services that are targeted
15 directly at the ISP industry and provide similar advantages to Level 3's service.

16 **Q. DOES SRT OFFER FX SERVICE IN NORTH DAKOTA?**

17 A. Yes. SRT offers FX service out of its General Exchange Tariff (Section 11).¹⁴
18 SRT defines FX as follows:

19 Foreign Exchange Service is dial tone telephone service designed
20 to meet the requirements of subscriber's [sic] who have a
21 substantial amount of communications with subscriber's [sic] in an
22 exchange other than the one in which they are located. Foreign
23 Exchange Service may be provided under this rate schedule
24 between contiguous or noncontiguous exchanges located in the
25 State of North Dakota. This service will be provided by the use of
26 interexchange facilities between the central office in each
27 exchange.
28

¹³ Before the Public Utility Commission of Texas, Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution regarding Inter-carrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company, REVISED ARBITRATION AWARD, dated August 28, 2002, at 30-31.

¹⁴ See Exhibits TJG-3 and TJG-4 (SRT Responses to Level 3 Interrogatory Nos. 24 and 26, respectively).

1 As one can see, SRT's FX service is a service offered out of its General Exchange
2 Tariff that allows customers to obtain a local calling presence in an exchange in
3 which the customers do not have a physical presence.

4 **Q. DOES QWEST OFFER A SERVICE SIMILAR TO THE OTHER ILEC**
5 **ISP OFFERINGS DISCUSSED ABOVE?**

6 A. Yes. In addition to standard offerings such as EAS, FX, and its new Market
7 Expansion Line service, Qwest offers its "Wholesale Dial" service. According to
8 its online literature, Qwest's service "...provides a secure, reliable, cost-effective
9 dial-up network infrastructure solution for Internet service providers (ISPs). The
10 service provides the ISPs' end users with seamless dial-up functionality that
11 remains transparent." One of the benefits touted by Qwest is the availability of
12 "local access telephone numbers." So this is yet another example of services
13 provided to ISPs for the purpose of providing local dial-up access for consumers
14 in areas where the ISPs may or may not have a physical presence.

15 **Q. DO THESE ILEC SERVICES PROVIDE THE SAME FUNCTIONALITY**
16 **AS LEVEL 3's SERVICE?**

17 A. Yes. The ILEC services provide the same functionality as Level 3 proposes to
18 offer. These ILEC-provided FX-type services provide the customer a local
19 number in a local calling area where the customer is not physically located,
20 permitting the customer to establish a "virtual" presence in that local calling area
21 without incurring the expense of deploying additional facilities in that area.
22 Level 3's service is just provided in a new manner with an innovative network.

1 **Q. WHAT IS “NEW” OR “INNOVATIVE” IN THE WAY LEVEL 3**
2 **PROVIDES SERVICE?**

3 A. Mr. Ducloo will provide more information on how Level 3 provides service, but I
4 can provide a brief overview. Level 3 uses a “softswitch” technology to provide
5 service, as opposed to traditional circuit switches. The company just recently
6 received a patent for this new switching technology. Level 3 also uses a
7 completely scalable packetized IP protocol network to transport traffic. Indeed,
8 the Smithsonian Institute recognized this significant achievement by awarding
9 Level 3 with a medal. The point is that Level 3’s network is unique and allows
10 the company to provide service in new and efficient ways. While this technology
11 is transparent to the consumer, it does allow Level 3 to provide alternatives to
12 traditional services in new and more efficient ways.

13 **Q. ARE THERE OTHER ILEC SERVICES WHICH ARE SUBSTITUTES**
14 **FOR FX SERVICE OR THAT PROVIDE SIMILAR FUNCTIONALITIES?**

15 A. Yes. Two such services include Remote Call Forwarding (“RCF”) and Extended
16 Area Service (“EAS”). RCF automatically forwards calls to another station
17 designated by the RCF customer. SRT’s website describes the service as follows:

18 Allows you to create a list of up to 12 specific telephone numbers
19 from which calls will be forwarded to a number of your choice.
20 When someone on your list calls you, their call will ring at the
21 forwarding number location. All other calls not included on your
22 Selective Call Forwarding list will ring into your line as normal.

23
24 **Q. DOES SRT PROVIDE EAS?**

25 A. Yes. In fact, SRT has a wide area calling arrangement that lets all of its customers
26 call other customers within the SRT serving territory on a local basis. This allows

1 all customers to call anywhere in the service area as part of the basic flat rate
2 service without incurring any per minute long distance charges.¹⁵

3 **Q. DOES SRT PROVIDE EAS WITH OTHER ILECs IN NORTH DAKOTA?**

4 A. Yes. SRT has two-way EAS arrangements with two other ILECs in North
5 Dakota. Those two ILECs are Turtle Mountain Communications (“TMC”) and
6 North Dakota Telephone Company (“NDTC”).¹⁶

7 **Q. DO THE SERVICES PROVIDED BY SRT AND OTHER ILECs – EAS, FX,
8 ETC. – PROVIDE THE SAME FUNCTIONALITY TO CONSUMERS AS
9 LEVEL 3’s SERVICE?**

10 A. Yes. These services – FX, RCF, and EAS – provide a similar or identical
11 functionality for consumers as the FX-type offering of Level 3, with a single
12 carrier giving its customers the ability to extend their local calling presence on a
13 wider geographic scale.

14 In summary, Level 3 should not be constrained in its offering to ISPs
15 because similar services are being offered by other carriers. Consistent with
16 policy goals discussed later in this testimony, Level 3 is using a creative and
17 innovative network solution to bring Internet access to consumers in North
18 Dakota. Such innovation should not be discouraged. This is especially true when

¹⁵ See SRT website where it notes, “SRT provides Toll-Free Local Area Wide Calling between all of its telephone exchanges.” See also the Commission’s Order in Case No. PU-2147-99-421 at pages 6 and 8:

¹⁶ See Exhibits TJG-5 and WPH-6 (SRT’s Responses to Level 3 Interrogatory Nos. 15 and 16, respectively).

1 you consider that the only complaints about the offering are coming from
2 Level 3's competitors for those ISPs' business.¹⁷

3 **Q. DOES SRT PROVIDE A DID FUNCTIONALITY TO ISPs THAT IS**
4 **SIMILAR TO THE DID FUNCTIONALITY THAT LEVEL 3 IS**
5 **PROPOSING TO OFFER?**

6 A. Yes. In response to Level 3 Interrogatory Number 30, SRT states that ISPs
7 purchase "One-Way Inward Dialing (OID) service under SRT's Local Exchange
8 Tariff."¹⁸ This sounds similar to the local DID connectivity provided by Level 3's
9 service, and should make clear that there is nothing about the one-way nature of a
10 call that makes it something other than any other local call.

11 **VI. ISSUE 4 -- LEVEL 3 IS OFFERING A FOREIGN**
12 **EXCHANGE FUNCTIONALITY**

13
14 **Q. YOU HAVE MADE SEVERAL REFERENCES TO FX SERVICE, AND**
15 **YOU'VE PROVIDED SRT'S DEFINITION OF THAT SERVICE. PLEASE**
16 **DESCRIBE FX SERVICE AS IT IS GENERALLY UNDERSTOOD IN**
17 **THE TELECOMMUNICATIONS INDUSTRY TODAY.**

18 A. FX service is defined in Newton's Telecom Dictionary as follows:

19 Provides local telephone service from a central office which is
20 outside (foreign to) the subscriber's exchange area. In its simplest
21 form, a user picks up the phone in one city and receives a dial tone
22 in the foreign city. This means that people located in the foreign
23 city can place a local call to get the user. The airlines use a lot of
24 foreign exchange service. Many times, the seven digit local phone

¹⁷ See Exhibit WPH-14 (as noted in SRT's response to Level 3 Interrogatory Number 31, "A wholly owned subsidiary of SRT, North Dakota Network Company, provides internet [sic] access service.")

¹⁸ See Exhibit WPH-10 (SRT Response to Level 3 Interrogatory No. 30).

1 number for the airline you just called will be answered in another
2 city, hundreds of miles away. (Newton's Telecom Dictionary, 16th
3 Edition, 2000, at 354)
4

5 The Bell System defined foreign exchange service as follows:

6 Foreign exchange (FX) service enables a customer to be served by
7 a distant or "foreign" central office rather than by the nearby
8 central office. Calls to other customers in the distant exchange
9 area are then treated as local calls instead of toll calls. For
10 customers who make enough calls to a particular distant exchange
11 area, the monthly charge for FX service is less than the sum of the
12 toll charges they would otherwise pay. Customers who find FX
13 service economical include residence customers who often call
14 friends or relatives in towns outside their local calling area and
15 businesses such as firms in New Jersey who often call companies
16 in New York City. (Engineering and Operations in the Bell
17 System; Second Edition, AT&T Bell Laboratories, 1983, at 63)
18

19 Not surprisingly, these definitions are very similar to SRT's FX definition that I
20 quoted earlier in this testimony.

21 **Q. BASED ON YOUR REFERENCES ABOVE, IT SEEMS FX SERVICE HAS**
22 **BEEN OFFERED FOR YEARS. IS THAT CORRECT?**

23 A. Yes, FX service has been offered by ILECs for decades. When it was initially
24 offered it was for situations as described by the Bell System above – a local
25 calling plan offered by incumbents to minimize what would otherwise be a large
26 toll expense to reach a customer located "in another city, hundreds of miles
27 away."

28 **Q. DOES SRT CONSIDER ITS FX SERVICE TO BE A LOCAL SERVICE?**

1 A. Yes, it does. The service is offered out of SRT's general exchange tariff. Further,
2 in response to interrogatories, SRT refers to the FX service as being offered under
3 "SRT's Local Exchange tariff Section 11."¹⁹

4 **Q. HOW DOES SRT's FX SERVICE THAT YOU'VE DESCRIBED ABOVE**
5 **COMPARE TO LEVEL 3's SERVICE?**

6 A. SRT's service provides a customer with a telephone number for a rate center
7 outside the rate center in which the customer's premises are physically located.
8 This FX service provides the same functionality with different technology and rate
9 structure. Level 3's service, while perhaps different in scale and in technology
10 utilized – referred to sometimes as a virtual NXX or VNXX service – is the
11 functional equivalent of this traditional ILEC service in that it gives a customer
12 located in one exchange a telephone number associated with another exchange.
13 As shown by the service descriptions above, SRT's and Qwest's services provide
14 the same functionality as Level 3's service, but with different network
15 architecture.

16 **VII. THE CALLING SCOPE DOES NOT DEFINE THE**
17 **SERVICE**
18

19 **Q. IS THE LOCATION OF THE ISP, OR THE ISP's MODEM BANKS, AN**
20 **IMPORTANT DISTINCTION BETWEEN TRADITIONAL FX SERVICE**
21 **AND THE SERVICE PROVIDED BY LEVEL 3?**

¹⁹ See Exhibit TJG-6 (SRT Response to Level 3 Interrogatory No. 34).

1 A. No. While Level 3's service may or may not include longer transport in its FX
2 service than in traditional ILEC FX service, Level 3 and its customer bear the
3 entire cost of any transport beyond the interconnected ILEC's serving area. Thus,
4 in this case, SRT would have no financial obligation to take the call any further
5 than its own switch in Minot. Moreover, the fact is that what is offered from a
6 functional perspective – a telephone number in a rate center where the customer is
7 not present – is the same as traditional ILEC FX service. In fact, CLECs offering
8 the kinds of services provided by Level 3 here are doing so for the very same
9 reasons that drove LECs to offer FX and EAS services in the first instance –
10 efficiency and customer demand. CLECs can just offer these services over greater
11 distances because of the broader scope of their networks. By contrast, the Bell
12 Operating Companies such as Qwest were prohibited from offering anything other
13 than intraLATA service by the MFJ and then Section 271 of the Act.²⁰

14 **Q. SO YOU'RE SUGGESTING THAT THE CALLING SCOPE OF THE EAS**
15 **OR FX SERVICE IS NOT AN IMPORTANT DISTINCTION FROM A**
16 **POLICY PERSPECTIVE?**

17 A. That's correct. The point is that even though the manner in which Level 3 is
18 offering this service may – or may not – be “wider” in scope than traditional EAS
19 or FX service, that is just because Level 3 and other CLECs have not faced the
20 same historical limitations – either imposed upon or internally determined – as the

²⁰ Modification of Final Judgment or MFJ – United States v. Western Electric Co., 552 F. Supp. 131 (Dist. C.C. 1982).

1 ILECs. The Bell Operating Companies had geographical and line of business
2 restrictions in place for many years after divestiture, and some still do. Those
3 restrictions have been lifted now in many states. The independent LECs, such as
4 SRT, which were not subject to the MFJ restrictions, expanded their networks per
5 their internal business plans. Nothing prevents a carrier like SRT from
6 establishing a CLEC subsidiary and providing its own FX or FX-type service to
7 interested customers that might be located outside of the SRT incumbent serving
8 area.

9 **Q. GIVEN THE NATURE OF EAS, FX AND FX-TYPE SERVICE**
10 **PROVISIONING, DOES THE GEOGRAPHICAL LIMITATION**
11 **SUGGESTED BY SRT MAKE SENSE?**

12 A. No. SRT argues that Level 3 is offering an interexchange service for which
13 access charges should apply.²¹ SRT's telecommunications network "...provides
14 more than 38,000 customers with a combined total of more than 100,000 services
15 and covers a 10 county area (7200 square miles)."²² Calls between any of the 25
16 SRT exchanges are rated as local calls.²³ Indeed, SRT customers can call from
17 the Sherwood exchange in the north to the Martin exchange in the south on a local
18 basis. That call – about 125 miles – is treated as local by SRT. A call from the
19 Donnybrook exchange to the Towner exchange – about 70 miles – is also treated

²¹ See SRT's Response and Motion to Dismiss Level 3's Petition for Arbitration, dated September 25, 2002, at 2.

²² See Exhibit TJG-7 (SRT.news, April 2002, Volume 24, Issue 1, at page 3).

1 as local by SRT. Clearly these are interexchange calls, but SRT chooses to treat
2 all of those calls as local. More importantly, an SRT subscriber in the Metigoshe
3 exchange that placed a call to SRT's ISP affiliate in Minot would have that call
4 rated as a local call, but an SRT subscriber in the Minot exchange that placed a
5 call to Level 3's ISP customer in Bismarck would not, even though both distances
6 are roughly the same. SRT's FX service – which is treated as a local service – is
7 also an interexchange service. The service can be provided "...between
8 contiguous or noncontiguous exchanges located in the State of North Dakota."²⁴

9 If the Commission were to adopt SRT's reasoning, the fact that the Level 3
10 customers' modem banks are located in the exchange next door might be all right,
11 but the fact that the ISP modem banks are outside of the LATA, or perhaps
12 outside of SRT's expansive local calling area, would not be. That's an artificial
13 and improper distinction that should not be imposed. The courts have noted that
14 ISP-bound traffic is jurisdictionally mixed.²⁵ And the FCC has noted that the
15 "largely interstate nature" of ISP-bound traffic does not, in any event, remove
16 interconnection for ISP-bound traffic from the state-commission supervised

²³ See SRT's General Exchange Tariff, Section 2, Sheet 2. "The Extended Area Service, 'EAS Adder' rate entitles the subscriber to an extended local calling area (without toll charge) for all local stations and exchanges served by the Company."

²⁴ See, SRT's General Exchange Tariff, Section 11; Sheet 1.

²⁵ *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1, 5 (D.C. Cir. 2000) (noting that "[c]alls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a continuation, in a conventional sense, of the initial call to the ISP.").

1 negotiation and arbitration process.²⁶ The geographical distinction is also harmful
2 because it just introduces artificial inefficiencies into the network. Why does a
3 modem bank located two exchanges away make a call more “local” than a modem
4 bank located two LATAs away? Both scenarios involve an ISP customer who
5 isn’t physically located in the exchange where the telephone number is assigned.

6 **...Q. DO YOU HAVE ANY FURTHER COMMENT WITH RESPECT TO THE**
7 **LOCATION OF THE ISP MODEM BANKS?**

8 A. Yes. A new entrant such as Level 3 should not be punished for using its network
9 in a more efficient, but different manner than the ILECs to provide a FX
10 functionality to ISP customers – particularly when the CLEC’s use of its network
11 to serve ISPs in this manner doesn’t generate any additional costs for the ILECs as
12 compared to the origination of any other local call. As such, the Level 3 service
13 does not harm SRT, but it does provide a benefit to SRT’s local customers and the
14 ISP industry. Thus, the Commission should encourage carriers such as Level 3 to
15 respond to ISP customer demand and to serve their customers in this innovative
16 and efficient manner.

17 **Q. WOULD THE DEMAND FOR LOCAL DIAL-UP INTERNET ACCESS**
18 **EXIST IN SRT’S SERVING TERRITORY EVEN IF LEVEL 3 WERE NOT**
19 **PRESENT?**

²⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd. 3689, 3705, ¶ 25 (1999) (noting that “[a]s we observed in the Local Competition Order, state commission authority over interconnection agreements pursuant to section 252 ‘extends to both interstate and intrastate matters.’ Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and*

1 A. Yes, it would. Consumers would simply be limited to fewer choices for this dial-
2 up capability. As such, the calls will be made and originated by SRT regardless
3 of who terminates those calls. Absent an inefficient provider coming in and
4 duplicating SRT's entire local network, that will always be the case. SRT
5 evidently understands the importance of providing efficient dial up access to the
6 Internet. In its January 2001 newsletter it stated,---

7 SRT has accepted the challenge to provide dial-up Internet service
8 with little to **no busy lines**. We are meeting the challenge by
9 maintaining an industry low of five customers per dial-up port.
10 The industry standard teeters to either side of ten customers per
11 port. This equates to thousands of dial-up ports to make it the
12 areas largest dial-up modem pool by far. (emphasis in original)²⁷
13

14 **Q. HOW DOES SRT RECOVER THE COST OF THE LOCAL DIAL-UP**
15 **CALLS TODAY?**

16 A. The cost of those calls is already being recovered through SRT's local rate
17 structure under which customers pay SRT for the ability to place local calls.
18 Given that tautology, SRT's claims that Level 3's service will impose additional
19 costs, or that those calls should be subject to access charges, are not supportable.

20 **Q. HAS LEVEL 3 HAD THE BENEFIT OF MONOPOLY RATE PAYERS OR**
21 **A REVENUE REQUIREMENT SINCE ITS INCEPTION?**

22 A. No. During the past few years Level 3 has spent about \$13 Billion on the
23 deployment of its network without any support from monopoly ratepayers. All of
24 Level 3's customers were the result of its own marketing efforts, network

arbitration process.") (citations omitted), *vacated and remanded Bell Atlantic Telephone Cos. v. FCC*,
206 F.3d 1 (D.C. Cir. 2000).

²⁷ See SRT.news, January 2001.

1 deployment, and network management. Perhaps more importantly, if Level 3 fails
2 in its market entry strategy in North Dakota, Level 3's stockholders, and not
3 consumers, will bear the burden of that failure. As such, consumers and the State
4 have only an upside associated with Level 3's entry into the market. All Level 3
5 is asking is to be allowed to offer a service to compete with the services that SRT
6 is already offering today. Let's let the consumers decide whether Level 3's
7 services are providing benefits and not preclude consumer choice by preventing
8 competitive entry.

9 As I noted above, it is not in the public interest to protect SRT from any
10 kind of competition, especially one that will not reduce SRT's customer base, nor
11 is it in the public interest to constrain competition based upon some arbitrary
12 technological differences or on the location of the customers. It is clear that
13 Level 3 is providing a competitive service that is permitted under the Act despite
14 SRT's rural carrier exemption. SRT has tried to avoid this permissible
15 competition by misleading the Commission based upon technological arguments
16 and inconsistent statements about the location of customers. Such arguments
17 should be rejected.

18 **VIII. SRT IS WRONG TO SUGGEST THAT LEVEL 3's**
19 **SERVICE IS SIMILAR TO 800 SERVICE**
20

21 **Q. SRT ARGUES THAT LEVEL 3's SERVICE IS MORE AKIN TO 800**
22 **SERVICE THAN TO FX SERVICE.²⁸ DO YOU AGREE?**

²⁸ See SRT Response at 15-16.

1 A. No. The following characteristics should be considered when comparing various
2 services:

- 3 1. How the service is perceived by consumers;
- 4 2. How the service is dialed by consumers;
- 5 3. How the calls are routed and processed in the network; and,
- 6 4. The impact of the service on the ILEC.

7 I will compare generally the two services in debate – FX or virtual NXX service,
8 and 800 service.

9 Consumer perception is important for a properly operating market.
10 Consumers are not willing to pay toll charges to connect to the Internet. As such,
11 ISPs make arrangements (purchase services) for local dial up for their customers.
12 From the consumer’s perspective, FX and 800 services offer similar results – free
13 dial up access to the Internet.

14 The other consumer in this analysis is the Level 3 customer. That
15 customer, in this case an ISP, sees Level 3’s DID service as an alternative to
16 SRT’s FX or One-Way Inward Dialing service. The ISP is looking for a service
17 that provides a local presence in a foreign exchange. The local presence can be
18 accomplished with all of the services I have identified in my testimony. From the
19 ISP’s perspective, the Level 3 service – with a broader geographic reach and a
20 uniquely efficient transport technology – is attractive. While the ISP could go to
21 an IXC and purchase 800 service, it is clear that consumers (the customers of the

1 ISPs) want a local access number²⁹ – the ILEC-offered, ISP-targeted FX-type
2 services are perhaps the best proof of that demand. As such, from the ISP’s
3 perspective, in order to meet consumer demand it must purchase a service that
4 provides local dial up access.

5 The dialing arrangements are quite different for FX and 800 services.
6 Customers generally never know when they are dialing a FX number because it is
7 dialed on a seven or ten digit basis, just like any other local number. An 800
8 number, with its distinctive toll dialing pattern, is clearly a toll call – albeit one
9 that is free to the originating caller in most cases. To be fair, however, once the
10 number is entered into the consumer’s modem dialing instructions, the additional
11 digits required are transparent to the consumer.

12 The call routing and processing requirements for FX and 800 services are
13 dramatically different. FX calls are routed to the local switch like any other local
14 call. They are then routed to the foreign exchange via some form of transport for
15 termination. Further, the FX number is almost always associated with only one
16 exchange, even though it may be accessed on an EAS basis. Calls utilizing an 800
17 service, on the other hand, are routed from the customer premise, through the
18 local central office to the access tandem for additional routing and billing
19 instructions. The call requires a Line Information Database (“LIDB”) dip for
20 information on the IXC carrying the call and the true ten digit terminating routing
21 number associated with the 800 number. Plus, unlike FX calls, the 800 calls
22 could be coming from numerous, even hundreds of exchanges in a large

²⁹ SRT certainly offers local dial up access to its Internet subscribers. *See* discussion *infra*.

1 geographic area (*i.e.*, eastern United States), while FX service is generally
2 associated with just one foreign exchange. Finally, the ILECs have always
3 booked FX revenues and expenses as local, while they booked 800 service
4 revenues and expenses as toll.

5 FX and 800 services also impact the ILEC in different ways. FX service
6 routes calls just like other local calls. There is no need to take a FX call to the
7 access tandem, although depending upon network configuration, a FX call could
8 be routed through a local tandem. I'm not aware of any ILEC claiming that virtual
9 NXX/FX calls impose additional costs on their network or operations. There is an
10 additional cost associated with 800 service calls because the toll dialing pattern
11 automatically routes the call to the access tandem. At the tandem there is the
12 additional cost associated with a database dip and number conversion.

13 Level 3's service, which is provided in essentially the same manner as FX
14 service is, therefore, clearly distinct from 800 service. Customers perceive the
15 service as local and the ISPs use the service to acquire a "local presence" for their
16 customers, just like SRT's customers who purchase FX service. (Indeed, one
17 might wonder why ILECs need to offer FX service when 800 service is available
18 to consumers? The reason, of course, is consumer demand to which any
19 reasonable carrier wants to respond.) The Level 3 service is dialed and routed on
20 a local, as opposed to a toll basis. Like FX service, the Level 3 service does not
21 require sophisticated database dips or number conversions, and as such, does not
22 impose those additional costs on the ILEC. The Level 3 service is associated with

1 a specific exchange, and not hundreds or thousands of exchanges normally
2 associated with 800 service.

3 **Q. THROUGHOUT SRT's RESPONSE, IT SUGGESTS THAT LEVEL 3's**
4 **SERVICE IS REALLY 800 SERVICE. COULD LEVEL 3 PROVIDE AN**
5 **800 SERVICE?**

6 A. Level 3 could provide 800 service, and it does offer this option to its customers,
7 but that is not its primary business plan – because that is not what customers
8 demand. Instead, Level 3 is proposing to offer a local service in response to
9 customer demand. Indeed, one might very well say the same thing about SRT FX
10 services, or FX-type services that I've discussed earlier as offered by Qwest. The
11 goal should be to ensure that carriers can respond to customers to provide the
12 service they want, in the most efficient manner possible, and through means that
13 do not generate additional costs for other carriers. SRT should not be permitted to
14 dictate the services provided by other carriers just to ensure a particular revenue
15 stream – in this case access charges.

16 **Q. DOES SRT OFFER LOCAL DIAL-UP ACCESS TO ITS CUSTOMERS AS**
17 **WELL?**

18 A. Yes. SRT's online literature discusses the availability of local access numbers in
19 North Dakota. For instance, at the "Internet" site on its website, SRT discusses
20 "EasyNet Dial-up." When you click on "Internet Support" you find a local access
21 number for each of SRT's exchanges. While SRT may offer 800 service access
22 for dial-up Internet services, it is not advertised as such on its website

1 **Q. SRT STATES, “WHETHER THE SIGNALING IS BY NXX NUMBERS OR**
2 **BY 1-800 NUMBERS, IN EITHER CASE THE FACTUAL REALITY IS**
3 **THAT THE SERVICE IS INTER-EXCHANGE SERVICE, NOT LOCAL**
4 **SERVICE, BECAUSE THE ISP PROVIDER’S FACILITIES ARE NOT**
5 **PHYSICALLY PRESENT IN THE LOCAL EXCHANGE.”³⁰ PLEASE**
6 **COMMENT.**

7 **A.** In most cases, these calls will be interexchange in nature. That is no different,
8 however, than the FX calls that SRT provides, or the Wholesale Dial service that
9 Qwest provides. There have always been interexchange calls that have been
10 treated as local calls. Indeed, SRT’s expansive EAS calling is treated as local
11 even though the calls are “interexchange” in the sense that they travel across
12 traditional exchange boundaries. SRT’s FX tariff specifically refers to
13 interexchange facilities used to connect the home and foreign exchanges.
14 Level 3’s service is a competitive response to SRT’s FX service, and to prevent
15 Level 3 from providing the services under similar terms as its own service, SRT is
16 attempting to impose unwarranted access charges on the service. It is instructive
17 that nowhere in SRT’s comments did it state that it would impose access charges
18 on its own FX service.³¹

19 **IX. LEVEL 3’s FX-TYPE SERVICE DOES NOT IMPOSE**
20 **ANY ADDITIONAL COSTS ON INCUMBENT LECS**
21

³⁰ Id.

³¹ See Exhibit WPH-13 (SRT Response to Level 3 Interrogatory No. 36).

1 **Q. YOU STATED THAT LEVEL 3's SERVICE DOES NOT IMPOSE ANY**
2 **ADDITIONAL COSTS ON THE ILECs. PLEASE EXPLAIN.**

3 A. There is no additional cost incurred by SRT when a customer purchases a FX-type
4 service from Level 3, because from an interconnection perspective SRT carries the
5 call the same distance and incurs the same costs regardless of whether the call is
6 terminated to a Level 3 customer with a physical location in the NXX rate center,
7 or to a Level 3 customer with a virtual presence. SRT's obligations and costs are
8 therefore the same in delivering a call originated by one of its customers,
9 regardless of whether the call terminates at a so-called "virtual" or "physical"
10 NXX behind the Level 3 switch. Indeed, SRT noted in response to discovery that
11 "SRT makes no contention regarding its costs to deliver a call to a CLEC's
12 customer."³² SRT is bearing no greater cost in originating a locally dialed call to
13 any Level 3 customer than it might in originating a locally dialed call to one of its
14 own customers.

15 **Q. DO YOU BELIEVE THAT COST IS THE ISSUE IN THIS PROCEEDING?**

16 A. It should be, but SRT would rather make this a case about revenue. In fact, in the
17 many cases in which this issue has been litigated, I can't recall any ILEC stating
18 that the manner in which a CLEC offers its FX-like service imposes additional
19 costs on the ILEC. Instead, and as SRT has alluded to in its Response, the
20 argument is one of supposed foregone revenues (as opposed to costs). SRT is
21 attempting to classify these calls as something other than local to justify a
22 different cost recovery mechanism even though the costs actually do not differ at

1 all. If accepted, SRT would over-recover its costs, impede competition and
2 increase costs for consumers and the ISP industry.

3 **Q. PLEASE EXPLAIN HOW A CALL IS ROUTED TO A CUSTOMER WHO**
4 **IS PHYSICALLY LOCATED IN THE SAME RATE CENTER AS HER**
5 **TELEPHONE NUMBER IN A COMPETITIVE ENVIRONMENT.**

6 A. Assuming a SRT customer originates a call to a Level 3 customer, SRT is
7 responsible for getting the call to Level 3's point of interconnection or "POI."³³
8 SRT is responsible for switching and transporting the call to the POI. From the
9 POI, Level 3 is responsible for terminating the call for SRT – again, switching and
10 transporting the call to the called party, wherever that party might be located.

11 **Q. HOW DOES THIS DIFFER FOR A CALL PLACED TO A CUSTOMER**
12 **WHO PURCHASES AN FX-TYPE SERVICE, AND HAS A VIRTUAL**
13 **PRESENCE?**

14 A. It does not differ at all. SRT routes the call to the POI (or, if the parties decide to
15 interconnect indirectly, to the Qwest tandem that performs transit functions) in
16 exactly the same manner.

17 **Q. DOES THE USE OF SO-CALLED VIRTUAL NXX CODES IMPACT THE**
18 **HANDLING OR PROCESSING OF A CALL TO A LEVEL 3**
19 **CUSTOMER?**

³² See Exhibit TJG-8 (SRT Response to Level 3 Interrogatory No. 39).

³³ The POI represents a physical demarcation between two carriers' networks and represents the point where financial and operational responsibility for handling local calls changes.

1 A. No. SRT would always be responsible for carrying the call to the POI (or the
2 designated location for hand-off of transit traffic) and then handing off the call to
3 Level 3 to transport and terminate the call. The use of a virtual NXX does not
4 impact SRT's financial and/or operational responsibilities. Indeed, Level 3's
5 customer has a presence in the local calling area of the originating caller, it is just
6 a virtual presence, not a physical one, but the way the call is handled is the same
7 from the incumbent's perspective. This is no different than the case in which two
8 neighboring ILECs exchange calls between each LEC's FX and FX-type
9 customers today – SRT would hand the call off to a neighboring ILEC – say
10 NDTC -- at the same point as any other call, and would not route the call
11 differently based upon the fact that NDTC's customer might be a FX or FX-type
12 customer.³⁴ (In fact, I am not certain that SRT would even know which of the
13 other LEC's customers had a “physical” or “virtual” presence in a given rate
14 center.)

15 **X. ACCESS CHARGES ARE NOT APPROPRIATE FOR**
16 **EXCHANGE SERVICES INCLUDING FX AND ISP**
17 **BOUND TRAFFIC**
18

19 **Q. SRT HAS ASKED THAT ACCESS CHARGES BE APPLIED TO THE**
20 **LEVEL 3 FX-TYPE SERVICE.³⁵ DO YOU BELIEVE THAT ACCESS**
21 **CHARGES ARE APPROPRIATE FOR THIS TYPE OF TRAFFIC?**

³⁴ See Exhibit WPH-6 (SRT Response to Level 3 Interrogatory No. 16).

³⁵ See SRT's Response and Motion to Dismiss Level 3's Petition for Arbitration, dated September 25, 2002, at 5, 12, 13, etc.

1 A. Absolutely not. FX service is a “local” service to which access charges do not
2 apply. For decades ILECs have treated FX service as a local service, booking the
3 revenues and expenses as though it were a local service. Indeed, SRT’s FX
4 offering is provided under its own local tariff.

5 **Q. DOES SRT OR QWEST APPLY ACCESS CHARGES TO THEIR FX OR**
6 **FX-TYPE SERVICES?**

7 A. No. A quick review of their respective tariffs shows that access charges are not
8 applied to any portion of the ILEC FX service. Further, SRT admitted in
9 discovery that it neither imposes or pays access charges for calls terminated to an
10 SRT FX customer.³⁶

11 **Q. ARE THERE OTHER REASONS WHY ACCESS CHARGES DO NOT**
12 **APPLY TO FX OR FX-TYPE SERVICES TO ISPs?**

13 A. Yes. Access charges could only be applied to FX and FX-type services if they
14 were exchange access. Exchange access is defined as, “Exchange access means
15 the offering of access to telephone exchange services or facilities for the purpose
16 of the origination or termination of telephone toll services.”³⁷ Local service to
17 ISPs is not provided “for the purpose of the origination or termination of
18 telephone toll services.” It is provided for the purpose of the origination or
19 termination of *information services*. Therefore, service to ISPs is not exchange
20 access, and access charges cannot be assessed. Instead, the applicable intercarrier

³⁶ See Exhibit WPH-13 (SRT Response to Level 3 Interrogatory No. 36).

³⁷ 47 U.S.C. § 153(16).

1 compensation regime for ISP-bound traffic is the one established by the FCC's
2 ISP Remand Order.

3 Further, the ESP exemption specifically exempts ESPs and their services
4 from interstate access charges. ESPs – including ISPs – are treated as end users,
5 rather than carriers, for purposes of the FCC's interstate access charge regime.
6 ISPs are allowed to purchase their services from local tariffs and are not subject to
7 access charges. As noted above, SRT allows ISPs to purchase services out of its
8 local tariff.

9 Even setting aside the fact that intercarrier compensation for ISP-bound
10 traffic is governed by FCC rules, and that access charges are imposed on exchange
11 access traffic, access charges are not cost-based, and it has been federal and state
12 policy in recent years to drive access charges down to forward-looking economic
13 cost. It makes no sense to impose an out-dated compensation regime on an
14 artificial category of traffic. At a time when regulators and the industry are
15 looking to move to more competitive market models by eliminating implicit
16 subsidies in telecommunications rates and intercarrier payments, it would seem
17 contrary to that movement to foist originating switched access charges on only
18 one certain type of local traffic.

19 The costs of originating this traffic do not differ from any other local call,
20 and thus there is absolutely no economic or policy justification for imposing
21 switched access charges on Level 3 for local traffic originated by SRT customers.

1 Q. IS SRT COMPENSATED FOR CARRYING THE TRAFFIC
2 ORIGINATED BY ITS CUSTOMERS TO THE POI (OR DESIGNATED
3 TRANSIT POINT)?

4 A. Yes, it is. The FCC's *TSR Order* is directly on point. The language in this order
5 is very straightforward. The pertinent language with respect to ILEC
6 compensation is as follows:

7 According to Defendants, the *Local Competition Order's*
8 regulatory regime, which requires carriers to pay for facilities used
9 to deliver their originating traffic to their co-carriers, represents a
10 physical occupation of Defendants property without just
11 compensation, in violation of the Takings Clause of the
12 Constitution. We disagree. *The Local Competition Order requires*
13 *a carrier to pay the cost of facilities used to deliver traffic*
14 *originated by that carrier to the network of its co-carrier, who then*
15 *terminates that traffic and bills the originating carrier for*
16 *termination compensation.* In essence, the originating carrier holds
17 itself out as being capable of transmitting a telephone call to any
18 end user, and is responsible for paying the cost of delivering the
19 call to the network of the co-carrier who will then terminate the
20 call. *Under the Commission's regulations, the cost of the facilities*
21 *used to deliver this traffic is the originating carrier's*
22 *responsibility, because these facilities are part of the originating*
23 *carrier's network. The originating carrier recovers the costs of*
24 *these facilities through the rates it charges its own customers for*
25 *making calls.* This regime represents "rules of the road" under
26 which all carriers operate, and which make it possible for one
27 company's customer to call any other customer even if that
28 customer is served by another telephone company.³⁸
29

³⁸ In the Matters of TSR WIRELESS, LLC, et al, Complainants, v. US WEST COMMUNICATIONS, INC. et al, Defendants; **MEMORANDUM OPINION AND ORDER**; File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18; Released June 21, 2000; ¶34; (*TSR Order*) (emphasis added) (footnotes omitted).

1 By this reasoning, Level 3 should not have to pay SRT for SRT-originated traffic
2 to the POI (or designated transit point).³⁹

3 **Q. THIS QUOTE SAYS THAT ILECs WOULD RECOVER THEIR COSTS**
4 **THROUGH THE RATES THEY CHARGE THEIR OWN CUSTOMERS.**
5 **DO LOCAL RATES COVER THE COST OF CARRYING THIS TRAFFIC**
6 **TO THE POI (OR DESIGNATED TRANSIT POINT)?**

7 A. Yes. The FCC has stated that ILEC rates cover these costs. This does not just
8 refer to SRT's basic local rates. Local rates and revenues include not only the
9 basic local rate, but other revenues from subscriber line charges, vertical services
10 (*i.e.*, call waiting, call forwarding, anonymous call rejection and other star code
11 features), universal service surcharges, extended area service charges and
12 contribution from access charges for intraLATA and interLATA toll. It should
13 also be noted that, by agreeing to pick up all traffic at the SRT switch, Level 3 is
14 in fact relieving SRT of obligations it would have to deliver that call from the
15 switch to the called party, without any compensation flowing in return to Level 3
16 for relieving SRT of that responsibility.

17 **Q. IS THERE ANOTHER REASON WHY IMPOSING ACCESS CHARGES**
18 **ON VIRTUAL NXX CALLS IS INAPPROPRIATE?**

19 A. Yes. As noted above, the ILECs do not impose access charges on their own FX
20 services so to impose such charges on Level 3's service would be discriminatory
21 and anti-competitive.

³⁹ The Commission should keep in mind that Level 3 is not seeking compensation for performing the important function of terminating these calls for SRT and its customers.

1 **Q. TO YOUR KNOWLEDGE, HAS THE FCC ADDRESSED THE ISSUE OF**
2 **COMPENSATION FOR FX OR VIRTUAL NXX SERVICES?**

3 A. Yes, in a recent decision resolving an arbitration between Verizon Virginia and
4 several CLECs, the FCC's Wireline Competition Bureau considered whether calls
5 to FX numbers would be entitled to reciprocal compensation or whether access
6 charges should apply.⁴⁰ In that proceeding, Verizon made many of the same argu-
7 ments that SRT makes here, principally, that intercarrier compensation should be
8 based on the actual originating and terminating endpoints of the call and that
9 originating access should be paid where a call originates in one calling area and
10 terminates in a different area, even if the NPA/NXX of the called party is
11 associated with the same local calling area as the NPA/NXX of the calling party.
12 In its conclusion, the Wireline Bureau rejected Verizon's arguments entirely,
13 stating as follows:

14 We agree with the petitioners that Verizon has offered no viable
15 alternative to the current system, under which carriers rate calls by
16 comparing the originating and terminating NPA-NXX codes. We
17 therefore accept the petitioners' proposed language and reject
18 Verizon's language that would rate calls according to their
19 geographical end points. Verizon concedes that NPA-NXX rating
20 is the established compensation mechanism not only for itself, but
21 industry-wide. The parties all agree that rating calls by their
22 geographical starting and ending points raises billing and technical
23 issues that have no concrete, workable solutions at this time.⁴¹

⁴⁰ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order (Wireline Comp. Bureau, rel. July 17, 2002).

⁴¹ *Id.* at ¶ 286.

1 **XI. THE BENEFITS OF FX AND FX-TYPE SERVICES ARE**
2 **SUBSTANTIAL**

3
4 **Q. PLEASE DESCRIBE THE BENEFITS TO CONSUMERS AND**
5 **BUSINESSES ASSOCIATED WITH FX AND FX-TYPE SERVICES.**

6 A. Business customers prefer FX and FX-type service provided by ILECs and CLECs
7 because it permits them to serve more of their customers without establishing a
8 physical presence in every local calling area. It provides a less expensive way to
9 test markets or to expand to new markets without first spending large amounts of
10 capital. The ILEC product descriptions I provided earlier certainly suggest that
11 their products provide these benefits.

12 From a consumer perspective, it allows cheaper and easier access to
13 businesses. For instance, consumers will rarely dial a toll call to talk to a business
14 about its products. It is for that very reason that companies – including SRT --
15 provide consumers with local dialing capabilities to reach them.

16 **Q. ARE THE BENEFITS OF FX-TYPE SERVICES SUBSTANTIAL FOR**
17 **THE INTERNET INDUSTRY?**

18 A. Yes. As I noted above, consumers generally are not willing to pay toll charges to
19 connect with the Internet. Instead, they select providers who can offer local
20 dialing. Indeed, because the Internet is becoming such a fundamental part of
21 American life, many legislatures have either mandated or recommended “local”
22 access to the Internet for consumers. Families are becoming more and more
23 reliant on the Internet to manage their investments, communications, education
24 and training, research for work and school, and for their general information and

1 connectivity. Because of the frequent and regular access to the Internet, local
2 flat-rate calling for access to the Internet is essential.

3 The FCC has made numerous pronouncements regarding the need to
4 encourage the ubiquitous availability of the Internet to consumers and businesses.
5 As far back as 1997, the FCC issued an OPP White Paper entitled, "Digital
6 Tornado: The Internet and Telecommunications Policy." That paper addressed
7 numerous issues but also identified key national policies regarding the Internet.
8 For instance, it provides the FCC's policy on investment and innovation with
9 regard to the Internet as follows:

10 **Facilitate network investment and technological innovation.**

11
12 The Internet encourages the deployment of new technologies that
13 will benefit consumers and produce jobs. The Commission should
14 not attempt to pick winners, but should allow the marketplace to
15 decide whether specific technologies become successful. By
16 eliminating regulatory roadblocks and other disincentives to
17 investment, the FCC should encourage both incumbents and new
18 entrants to develop innovative solutions that transcend the
19 capabilities of the existing network. (OPP Working Paper Series;
20 March 1997; at ii.)

21
22 It is for this same reason that the FCC has exempted enhanced service providers
23 from access charges. The ESP exemption, as it is called, has been in place since
24 1983. At paragraph 20 of the ISP Order, the FCC states as follows:

25 Our determination that at least a substantial portion of dial-up ISP-
26 bound traffic is interstate does not, however, alter the current ESP
27 exemption. ESPs, including ISPs, continue to be entitled to
28 purchase their PSTN links through intrastate (local) tariffs rather
29 than through interstate access tariffs.⁴²

⁴² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; **Declaratory Ruling in CC Docket no. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68**; Released: February 26, 1999 (*ISP Order*).

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Q. PLEASE EXPLAIN WHY YOU BELIEVE THAT THESE NATIONAL PRINCIPLES AND POLICY GOALS ARE PERTINENT TO THIS PROCEEDING.

A. This principles and goals are pertinent because they reflect the kind of innovation and creative use of technology that Level 3 is using to provide service to the ISP industry. This is the type of innovation that brings substantial benefits to consumers in North Dakota and it should be encouraged. While I would never suggest that a State Commission adopt FCC principles and goals without review or serious investigation, I would recommend that this Commission consider these principles and goals. I believe they are consistent with what this Commission is ultimately attempting to do in North Dakota – encourage competition and the further deployment of competitive services to consumers.

Q. IF VIRTUAL NXX CALLS WERE TO BE SUBJECT TO ORIGINATING ACCESS AS SRT SUGGESTS, WHAT WOULD BE THE IMPACT ON CONSUMERS?

A. Today, the Internet market depends significantly upon local dial-up access. If calls using virtual NXX arrangements were now to be banned or treated like toll calls, individuals might face sharp increases in their cost to access the Internet. Further, schools, libraries, hospitals and charitable or other public interest organizations might face insurmountable increases in costs – thereby eliminating the availability of world-wide information to these groups and organizations.

1 The Commission must consider the implications – for consumers, the
2 competitive telecommunications market and the Internet access market – of a
3 decision that effectively precludes a carrier from assigning virtual NXXs to ISPs
4 (and other similar customers). For instance, if SRT’s position were adopted in
5 this proceeding, and assuming that position were applied to all carriers, ILECs and
6 CLECs alike, and not just to Level 3, no carrier in North Dakota could ever offer a
7 FX or FX-type product without facing a per-minute switched access charge on
8 every call coming to it. What incentive will any carrier have to serve ISPs when
9 the economics of such service are so discouraging, and have no relationship to
10 cost? What ISP will want to expend the funds necessary to establish a physical
11 presence in every single rate center in order to avoid being perceived as a “costly”
12 customer?

13 **Q. WOULD SRT’S PROPOSAL GIVE IT A COMPETITIVE ADVANTAGE**
14 **IN THE ISP MARKET?**

15 A. Yes. SRT and Qwest market certain products to ISPs, as discussed above. These
16 service offerings appear to be no different from what CLECs such as Level 3 offer
17 their own ISP customers using a virtual NXX arrangement. By precluding
18 Level 3 from providing this service, or by imposing access charges on each call,
19 the Commission would create an economic barrier to any other carriers providing
20 service to ISPs. Moreover, imposing these artificial costs on new entrants such as
21 Level 3 would give the ILECs a significant competitive advantage. This clear
22 advantage for ILECs would not only stifle the ability of CLECs such as Level 3 to

1 provide service to ISPs, but would essentially eliminate the prospect for
2 competition in this market.

3 **Q. WHAT DO YOU MEAN BY ARTIFICIAL COSTS?**

4 A. Artificial costs are any costs that are not associated with the efficient offering of
5 the service. For instance, imposing access charges on a service that has until now
6 been treated as a local service would artificially increase the cost of that service.
7 SRT's suggestion to impose switched access charges on Level 3's service would
8 result in an artificial cost increase. Forcing Level 3 to offer a different service
9 (800 service), or to offer a "joint" FX service with another provider, would also
10 impose artificial costs that are not cost-based. All such cost increases harm the
11 efficient operation of the market and result in higher costs for consumers. This is
12 all the more troubling a result when one considers that carriers such as Qwest and
13 SRT would continue to be able to offer their own FX and FX-like services without
14 the same kind of cost impositions.

15 **Q. WHAT DO YOU MEAN WHEN YOU REFER TO "HIGHER COSTS FOR**
16 **CONSUMERS"?**

17 A. If Level 3 incurs additional costs, those costs could result in several different
18 impacts. If the market permits, Level 3 could increase its rates to cover the costs.
19 The higher costs for the ISPs may ultimately translate into higher rates for Internet
20 access for consumers, or simply reduce the profitability of the ISPs. Reduced
21 profitability obviously slows down market penetration and the introduction of new
22 and innovative services. This is especially true in more rural parts of the country.

1 If the market doesn't allow Level 3 to pass along the artificial cost
2 increase, then Level 3 has two choices – accept the reduced earnings based on the
3 lower margin, assuming that margin is sufficient to cover its costs, or do not enter
4 the market.

5 **Q. IN YOUR OPINION, IS IT GOOD POLICY TO ARTIFICIALLY**
6 **INCREASE THE COST OF MARKET ENTRY FOR CLECs?**

7 A. No. New entrants should not be punished for developing new products or for
8 providing existing products in new and innovative ways. At a time when
9 competition is failing and the industry has seen a two trillion dollar reduction in
10 the value of the industry, new entrants should not be artificially handicapped
11 while legacy providers are protected. Even SRT cannot argue that handling FX-
12 like traffic will result in higher costs for SRT than the exchange of any other
13 locally dialed call. Absent proof of additional cost and similar treatment for its
14 own service, SRT should not be entitled to compensation from Level 3. Instead,
15 the Commission should see SRT's position for what it is – an attempt to generate
16 a revenue windfall by passing non-existent costs onto a competitor.

17 **Q. HOW DO YOU RESPOND TO ILEC CLAIMS THAT LEVEL 3's**
18 **VIRTUAL NXX SERVICE IS DESIGNED TO "TRICK" THEIR**
19 **TELEPHONE SYSTEMS INTO THINKING THEY ARE RATING AND**
20 **ROUTING A LOCAL CALL AND THEREBY AVOID TOLL CHARGES?**

21 A. First, no one is being "tricked" into doing anything any more than the ILECs' own
22 FX service "tricks" itself when it routes and rates a call to one of its FX
23 customers. Second, and more importantly, FX service is essential in order for

1 ISPs without local facilities to compete with ISPs served by the ILEC, particularly
2 the ILEC's own ISP subsidiary. Avoiding the payment of access charges to SRT
3 is not the goal of Level 3's virtual NXX service – it is a prerequisite if ISPs served
4 by Level 3 have any realistic chance of competing with the SRT ISP affiliate.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes, it does.

7

EXHIBIT TJG-1

**Qualifications of Timothy J Gates
TJG Schedule 1**

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

- A. Prior to my current position with QSI Consulting, I was a Senior Executive Staff Member in MCI WorldCom's ("MCIW") National Public Policy Group. In this position, I was responsible for providing public policy expertise in key cases across the country and for managing external consultants for MCIW's state public policy organization. In certain situations, I also provided testimony in regulatory and legislative proceedings.

Prior to my position with MCIW in Denver, I was an Executive Staff Member II at MCI Telecommunications ("MCI") World Headquarters in Washington D.C.. In that position I managed economists, external consultants, and provided training and policy support for regional regulatory staffs. Prior to that position I was a Senior Manager in MCI's Regulatory Analysis Department, which provided support in state regulatory and legislative matters to the various operating regions of MCI. In that position I was given responsibility for assigning resources from our group for state regulatory proceedings throughout the United States. At the same time, I prepared and presented testimony on various telecommunications issues before state regulatory and legislative bodies. I was also responsible for managing federal tariff reviews and presenting MCI's position on regulatory matters to the Federal Communications Commission. Prior to my assignment in the Regulatory Analysis Department, I was the Senior Manager of Economic Analysis and Regulatory Policy in the Legal, Regulatory and Legislative Affairs Department for the Midwest Division of MCI. In that position I developed and promoted regulatory policy within what was then a five-state operating division of MCI. I promoted MCI policy positions through negotiations, testimony and participation in industry forums.

Prior to my positions in the Midwest, I was employed as Manager of Tariffs and Economic Analysis with MCI's West Division in Denver, Colorado. In that position I was responsible for managing the development and application of MCI's tariffs in the fifteen MCI West states. I was also responsible for managing regulatory dockets and for providing economic and financial expertise in the areas of discovery and issue analysis. Prior to joining the West Division, I was a Financial Analyst III and then a Senior Staff Specialist with MCI's Southwest Division in Austin, Texas. In those positions, I was responsible for the management of regulatory dockets and liaison with outside counsel. I was also responsible for discovery, issue analysis, and for the development of working relationships with consumer and business groups. Just prior to joining MCI, I was employed by the Texas Public Utility Commission as a Telephone Rate Analyst in the Engineering Division responsible for examining telecommunications cost studies and rate structures.

I was employed as an Economic Analyst with the Public Utility Commissioner of Oregon from July, 1983 to December, 1984. In that position, I examined and analyzed cost studies and rate structures in telecommunications rate cases and investigations. I also testified in rate cases and in private and public hearings regarding telecommunications services. Before joining the Oregon Commissioner's Staff, I was employed by the Bonneville Power Administration as a Financial Analyst, where I made total regional electric use forecasts and automated the Average System Cost Review Methodology. Prior to joining the Bonneville Power Administration, I held numerous positions of increasing responsibility in areas of forest management for both public and private forestry concerns.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL CREDENTIALS.

- A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. I have also attended numerous courses and seminars specific to the telecommunications industry, including the NARUC Annual and Advanced Regulatory

Studies Program.

Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

A. Effective April 1, 2000, I joined QSI Consulting as Senior Vice President and Partner. In this position I provide analysis and testimony for QSI's many clients. The deliverables include written and oral testimony, analysis of rates, cost studies and policy positions, position papers, presentations on industry issues and training.

Q. PLEASE IDENTIFY THE JURISDICTIONS IN WHICH YOU HAVE TESTIFIED.

A. I have filed testimony or comments on telecommunications issues in Alabama, Arizona, California, Colorado, Delaware, Georgia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming. I have also filed comments with the FCC and made presentations to the Department of Justice.

I have testified or presented formal comments in the following proceedings and forums:

Alabama:

October 18, 2000; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

January 31, 2001; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Arizona:

September 23, 1987; Arizona Corporation Commission Workshop on Special Access Services; Comments on Behalf of MCI.

August 21, 1996; Affidavit in Opposition to USWC Motion for Partial Summary Judgment; No. CV 95-14284, No. CV-96-03355, No. CV-96-03356, (consolidated); On Behalf of MCI.

October 24, 1997; Comments to the Universal Service Fund Working Group; Docket No. R-0000-97-137; On Behalf of MCI.

May 8, 1998; Comments to the Universal Service Fund Working Group; Docket No. R-0000-97-137; On Behalf of MCI.

November 9, 1998; Docket No. T-03175A-97-0251; Application of MCI Metro Access Transmission Services, Inc. to Expand Its CCN to Provide IntraLATA Services and to Determine that Its IntraLATA Services are Competitive; Direct Testimony on Behalf of MCI WorldCom, Inc.

September 20, 1999; Docket No. T-00000B-97-238; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc.

January 8, 2001; Docket Nos. T-03654A-00-0882, T-01051B-00-0882; Petition of Level 3 Communications, LLC, for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

September 2, 2001; Docket No. T-00000A-00-0194 Phase II – A; Investigation into Qwest's Compliance with Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts; Rebuttal Testimony on Behalf of WorldCom, Inc.

California:

August 30, 1996; Application No. 96-08-068; MCI Petition for Arbitration with Pacific Bell; Direct Testimony on Behalf of MCI.

September 10, 1996; Application No. 96-09-012; MCI Petition for Arbitration with GTE California, Inc.; Direct Testimony on Behalf of MCI.

June 5, 2000; Petition of Level 3 Communications for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Colorado:

December 1, 1986; Investigation and Suspension Docket No. 1720; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

October 26, 1988; Investigation and Suspension Docket No. 1766; Mountain States Telephone and Telegraph Company's Local Calling Access Plan; Direct Testimony on Behalf of MCI.

September 6, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Direct Testimony on Behalf of MCI.

September 17, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Rebuttal Testimony on Behalf of MCI.

September 26, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. 90A-665T (consolidated); Direct Testimony on Behalf of MCI.

October 7, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. 90A-665T (consolidated); Rebuttal Testimony on Behalf of MCI.

July 18, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Direct Testimony on Behalf of MCI.

August 15, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Rebuttal Testimony on Behalf of MCI.

March 10, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Supplemental Direct Testimony on Behalf of MCI.

March 26, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Rebuttal Testimony on Behalf of MCI.

May 8, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Affidavit in Response to GTE.

November 4, 1998; Proposed Amendments to the Rules Prescribing IntraLATA Equal Access; Docket No. 98R-426T; Comments to the Commission on Behalf of MCI WorldCom and AT&T Communications of the Mountain States, Inc.

May 13, 1999; Proposed Amendments to the Rules on Local Calling Area Standards; Docket No. 99R-128T; Oral Comments before the Commissioners on Behalf of MCIW.

January 4, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Direct Testimony on Behalf of Level 3.

January 16, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Rebuttal Testimony on Behalf of Level 3.

January 29, 2001; Qwest Corporation, Inc., Plaintiff, v. IP Telephony, Inc., Defendant. District Court, City and County of Denver, State of Colorado; Case No. 99CV8252; Direct Testimony on Behalf of IP Telephony.

June 27, 2001; US WEST Statement of Generally Available Terms and Conditions; Docket No. 991-577T; Direct Testimony on Behalf of Covad Communications Company, Rhythms Links, Inc., and New Edge Networks, Inc.

Delaware:

February 12, 1993; Diamond State Telephone Company's Application for a Rate Increase; Docket No. 92-47; Direct Testimony on Behalf of MCI.

Florida:

July 1, 1994; Investigation into IntraLATA Presubscription; Docket No. 930330-TP; Direct Testimony on Behalf of MCI.

October 5, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Direct Testimony On Behalf of Level 3.

October 13, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Direct Testimony On Behalf of US LEC.

October 27, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Rebuttal Testimony On Behalf of US LEC.

November 1, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Rebuttal Testimony On Behalf of Level 3.

Georgia:

December 6, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

December 20, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Level 3.

Idaho:

November 20, 1987; Case No. U_1150_1; Petition of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

March 17, 1988; Case No. U_1500_177; Investigation of the Universal Local Access Service Tariff; Direct Testimony on Behalf of MCI.

April 26, 1988; Case No. U_1500_177; Investigation of the Universal Local Access Service Tariff; Rebuttal Testimony on Behalf of MCI.

November 25, 2002; Case No. GNR-T-02-16; Petition of Potlatch, CenturyTel, the Idaho Telephone Association for Declaratory Order Prohibiting the Use of "Virtual" NXX Calling; Comments/Presentation on Behalf of Level 3, AT&T, WorldCom, and Time Warner Telecom.

Illinois:

January 16, 1989; Docket No. 83_0142; Appropriate Methodology for Intrastate Access Charges; Rebuttal Testimony Regarding Toll Access Denial on Behalf of MCI.

February 16, 1989; Docket No. 83_0142; Appropriate Methodology for Intrastate Access Charges; Testimony Regarding ICTC's Access Charge Proposal on Behalf of MCI.

May 3, 1989; Docket No. 89_0033; Illinois Bell Telephone Company's Rate Restructuring; Direct Testimony on Behalf of MCI.

July 14, 1989; Docket No. 89-0033; Illinois Bell Telephone Company's Rate Restructuring; Rebuttal Testimony on Behalf of MCI.

November 22, 1989; Docket No. 88-0091; IntraMSA Dialing Arrangements; Direct Testimony on Behalf of MCI.

February 9, 1990; Docket No. 88-0091; IntraMSA Dialing Arrangements; Rebuttal Testimony on Behalf of MCI.

November 19, 1990; Docket No. 83-0142; Industry presentation to the Commission re Docket No. 83-0142 and issues for next generic access docket; Comments re the Imputation Trial and Unitary Pricing/Building Blocks on Behalf of MCI.

July 29, 1991; Case No. 90-0425; Presentation to the Industry Regarding MCI's Position on Imputation.

November 18, 1993; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Direct Testimony on Behalf of MCI and LDDS.

January 10, 1994; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Rebuttal Testimony on Behalf of MCI and LDDS.

May 30, 2000; Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

July 11, 2000; Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Supplemental Verified Statement on Behalf of Level (3) Communications, LLC.

Indiana:

October 28, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI.

December 16, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding GTE.

April 14, 1989; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding Staff Reports.

June 21, 1989; Cause No. 37905; Intrastate Access Tariffs -- Parity with Federal Rates; Direct Testimony on Behalf of MCI.

June 29, 1989; Cause No. 38560; Reseller Complaint Regarding 1+ IntraLATA Calling; Direct Testimony on Behalf of MCI.

October 25, 1990; Cause No. 39032; MCI Request for IntraLATA Authority; Direct Testimony on Behalf of MCI.

April 4, 1991; Rebuttal Testimony in Cause No. 39032 re MCI's Request for IntraLATA Authority on Behalf of MCI.

Iowa:

September 1, 1988; Docket No. RPU 88_6; IntraLATA Competition in Iowa; Direct Testimony on Behalf of MCI.

September 20, 1988; Docket No. RPU_88_1; Regarding the Access Charges of Northwestern Bell Telephone Company; Direct Testimony on Behalf of MCI.

September 25, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 3, 1991; Docket No. NOI-90-1; Presentation on Imputation of Access Charges and the Other Costs of Providing Toll Services; On Behalf of MCI.

November 5, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

December 23, 1991; Docket No. RPU-91-4; Investigation of the Earnings of US WEST Communications, Inc.; Supplemental Testimony on Behalf of MCI.

January 10, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

January 20, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Surrebuttal Testimony on Behalf of MCI.

June 8, 1999; Docket NOI-99-1; Universal Service Workshop; Participated on numerous panels during two day workshop; Comments on Behalf of MCIW.

October 27, 1999; Docket NOI-99-1; Universal Service Workshop; Responded to questions posed by the Staff of the Board during one day workshop; Comments on Behalf of MCIW and AT&T.

Kansas:

June 10, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Direct Testimony on Behalf of MCI.

September 16, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Rebuttal Testimony on Behalf of MCI.

Kentucky:

May 20, 1993; Administrative Case No. 323, Phase I; An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality; Direct Testimony on Behalf of MCI.

December 21, 2000; Case No. 2000-404; Petition of Level 3 Communications, LLC for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

January 12, 2001; Case No. 2000-477; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

Louisiana:

December 28, 2000; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

January 5, 2001; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

Maryland:

November 12, 1993; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Direct Testimony on Behalf of MCI.

January 14, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

May 19, 1994; Case No. 8585; Re Bell Atlantic Maryland, Inc.'s Transmittal No. 878; Testimony on Behalf of MCI.

June 2, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

September 5, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Rebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

October 15, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Surrebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

Massachusetts:

April 22, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Direct Testimony on Behalf of MCI.

May 10, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Rebuttal Testimony on Behalf of MCI.

Michigan:

September 29, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Direct Testimony on Behalf of MCI.

November 30, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Rebuttal Testimony on Behalf of MCI.

June 30, 1989; Case No. U-8987; Michigan Bell Telephone Company Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

July 31, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

November 17, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

July 22, 1993; Case No. U-10138 (Reopener); MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

February 16, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Direct Testimony on Behalf of AT&T. (Adopted Testimony of Michael Starkey)

May 11, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Rebuttal Testimony on Behalf of AT&T.

June 8, 2000; Case No. U-12460; Petition of Level 3 Communications for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 27, 2000; Case No. U-12528; In the Matter of the Implementation of the Local Calling Area Provisions of the MTA; Rebuttal Testimony on Behalf of Focal Communications, Inc.

Minnesota:

January 30, 1987; Docket No. P_421/CI_86_88; Summary Investigation into Alternative Methods for Recovery of Non-traffic Sensitive Costs; Comments to the Commission on Behalf of MCI.

September 7, 1993; Docket No. P-999/CI-85-582, P-999/CI-87-697 and P-999/CI-87-695, In the Matter of an Investigation into IntraLATA Equal Access and Presubscription; Comments of MCI on the Report of the Equal Access and Presubscription Study Committee on Behalf of MCI.

September 20, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Direct Testimony on Behalf of MCI.

September 30, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Rebuttal Testimony on Behalf of MCI.

September 14-16, 1999; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc. re OSS Issues.

September 28, 1999; Docket No. P-999/R-97-609; Universal Service Group; Comments on Behalf of MCI WorldCom, Inc. and AT&T Communications.

April 18, 2002; Commission Investigation of Qwest's Pricing of Certain Unbundled Network Elements; Docket Nos. P-442, 421, 3012/M-01-1916; P-421/C1-01-1375; OAH Docket No. 12-2500-14490; Rebuttal Testimony on Behalf of McLeod USA Telecommunications Services, Inc., Eschelon Telecom of Minnesota, Inc., US Link, Inc., Northstar Access, LLC, Otter Tail Telecomm LLC, VAL-Ed Joint Venture, LLP, dba 702 Communications.

Mississippi:

February 2, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 16, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Montana:

May 1, 1987; Docket No. 86.12.67; Rate Case of AT&T Communications of the Mountain States, Inc.; Direct Testimony on Behalf of MCI.

September 12, 1988; Docket No. 88.1.2; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

May 12, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

June 1, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Amended Rebuttal Testimony on Behalf of MCI.

Nebraska:

November 6, 1986; Application No. C_627; Nebraska Telephone Association Access Charge Proceeding; Direct Testimony on Behalf of MCI.

March 31, 1988; Application No. C_749; Application of United Telephone Long Distance Company of the Midwest for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

New Hampshire:

April 30, 1993; Docket DE 93-003; Investigation into New England Telephone's Proposal to Implement Seven Digit Dialing for Intrastate Toll Calls; Direct Testimony on Behalf of MCI.

January 12, 2001; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Direct Testimony on Behalf of BayRing Communications.

April 5, 2002; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Rebuttal Testimony on Behalf of BayRing Communications.

New Jersey:

September 15, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

October 1, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Reply Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

April 7, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Direct

Testimony on Behalf of MCI.

April 25, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Rebuttal Testimony on Behalf of MCI.

New Mexico:

September 28, 1987; Docket No. 87_61_TC; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

August 30, 1996; Docket No. 95-572-TC; Petition of AT&T for IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

September 16, 2002; Utility Case No. 3495, Phase B; Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Nonrecurring Charges, Spot Frames, Combination of Network Elements and Switching; Direct Testimony on Behalf of the Staff of the New Mexico Public Regulation Commission.

New York:

April 30, 1992; Case 28425; Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

June 8, 1992; Case 28425; Reply Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

North Carolina:

August 4, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 18, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 18, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

December 8, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

North Dakota:

June 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Direct Testimony on Behalf of MCI.

October 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Rebuttal Testimony on Behalf of MCI.

Oklahoma:

April 2, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Direct Testimony on Behalf of MCI.

June 22, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Rebuttal Testimony on Behalf of MCI.

Oregon:

October 27, 1983; Docket No. UT 9; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

April 23, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

May 7, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Rebuttal Testimony on Behalf of the Public Utility Commissioner of Oregon.

October 31, 1986; Docket No. AR 154; Administrative Rules Relating to the Universal Service Protection Plan; Rebuttal Testimony on Behalf of MCI.

September 6, 1996; Docket ARB3/ARB6; Petition of MCI for Arbitration with U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Direct Testimony on Behalf of MCI.

November 5, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Rebuttal Testimony on Behalf of MCI.

November 6, 2002; Investigation into the Use of Virtual NPA/NXX Calling Patterns; Comments/Presentation on Behalf of Level (3) Communications, LLC.

Pennsylvania:

December 9, 1994; Docket No. I-00940034; Investigation Into IntraLATA Interconnection Arrangements (Presubscription); Direct Testimony on Behalf of MCI.

September 5, 2002; Docket No. C-20028114; Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Rhode Island:

April 30, 1993; Docket No. 2089; Dialing Pattern Proposal Made by the New England Telephone Company; Direct Testimony on Behalf of MCI.

South Carolina:

Oct. ??, 2000; Docket No. 2000-0446-C; US LEC of South Carolina Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of US LEC.

November 22, 2000; Docket No. 2000-516-C; Adelpia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelpia.

December 14, 2000; Docket No. 2000-516-C; Adelpia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelpia.

South Dakota:

November 11, 1987; Docket No. F_3652_12; Application of Northwestern Bell Telephone Company to Introduce Its Contract Toll Plan; Direct Testimony on Behalf of MCI.

Tennessee:

January 31, 2001; Petition of Adelpia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelpia.

February 7, 2001; Petition of Adelpia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelpia.

Texas:

June 5, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

June 12, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 10, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 16, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Reply Testimony on Behalf of Level (3) Communications, LLC.

Utah:

November 16, 1987; Case No. 87_049_05; Petition of the Mountain State Telephone and Telegraph Company for Exemption from Regulation of Various Transport Services; Direct Testimony on Behalf of MCI.

July 7, 1988; Case No. 83_999_11; Investigation of Access Charges for Intrastate InterLATA and IntraLATA Telephone Services; Direct Testimony on Behalf of MCI.

November 8, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Direct Testimony on Behalf of MCI.

November 22, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Rebuttal Testimony on Behalf of MCI.

September 3, 1997; Docket No. 97-049-08; USWC Rate Case; Surrebuttal Testimony on Behalf of MCI.

September 29, 1997; Docket No. 97-049-08; USWC Rate Case; Revised Direct Testimony on Behalf of MCI.

February 2, 2001; Docket No. 00-999-05; In the Matter of the Investigation of Inter-Carrier Compensation for Exchanged ESP Traffic; Direct Testimony on Behalf of Level 3 Communications, LLP.

Washington:

September 27, 1988; Docket No. U-88-2052_P; Petition of Pacific Northwest Bell Telephone Company for Classification of Services as Competitive; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Direct Testimony on Behalf of MCI.

November 20, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Rebuttal Testimony on Behalf of MCI.

January 13, 1998; Docket No. UT-97-0325; Rulemaking Workshop re Access Charge Reform and the Cost of Universal Service; Comments and Presentation on Behalf of MCI.

December 21, 2001; Docket No. UT-003013, Part D; Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination; Direct Testimony on Behalf of WorldCom, Inc.

October 18, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

November 1, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

West Virginia:

October 11, 1994; Case No. 94-0725-T-PC; Bell Atlantic - West Virginia Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

June 18, 1998; Case No. 97-1338-T-PC; Petition of WorldCom, Inc. for Approval to Transfer

Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

Wisconsin:

October 31, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

November 14, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Rebuttal Testimony on Behalf of MCI.

December 12, 1988; Docket No. 05_TI_116; In the Matter of Provision of Operator Services; Rebuttal Testimony on Behalf of MCI.

March 6, 1989; Docket No. 6720_TI_102; Review of Financial Data Filed by Wisconsin Bell, Inc.; Direct Testimony on Behalf of MCI.

May 1, 1989; Docket No. 05_NC_100; Amendment of MCI's CCN for Authority to Provide IntraLATA Dedicated Access Services; Direct Testimony on Behalf of MCI.

May 11, 1989; Docket No. 6720_TR_103; Investigation Into the Financial Data and Regulation of Wisconsin Bell, Inc.; Rebuttal Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Disconnection of Local and Toll Services for Nonpayment -- Part A; Direct Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Examination of Industry Wide Billing and Collection Practices -- Part B; Direct Testimony on Behalf of MCI.

July 12, 1989; Docket No. 05-TI-112; Rebuttal Testimony in Parts A and B on Behalf of MCI.

October 9, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Direct Testimony on Behalf of MCI.

November 17, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Rebuttal Testimony on Behalf of MCI.

December 1, 1989; Docket No. 05-TR-102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

April 16, 1990; Docket No. 6720-TR-104; Wisconsin Bell Rate Case; Direct Testimony of Behalf of MCI.

October 1, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Direct Testimony on Behalf of MCI.

October 15, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Rebuttal Testimony on Behalf of MCI.

November 15, 1990; Docket No. 05-TR-103; Investigation of Intrastate Access Costs and Intrastate Access Charges; Direct Testimony on Behalf of MCI.

April 3, 1992; Docket No. 05-NC-102; Petition of MCI for IntraLATA 10XXX 1+ Authority; Direct Testimony on Behalf of MCI.

September 30, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 9, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Reply Testimony on Behalf of Level (3) Communications, LLC.

Wyoming:

June 17, 1987; Docket No. 9746 Sub 1; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

May 19, 1997; Docket No. 72000-TC-97-99; In the Matter of Compliance with Federal Regulations of Payphones; Oral Testimony on Behalf of MCI.

Comments Submitted to the Federal Communications Commission and/or the Department of Justice

March 6, 1991; Ameritech Transmittal No. 518; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates for OPTINET 64 Kbps Service.

April 17, 1991; Ameritech Transmittal No. 526; Petition to Suspend and Investigate on Behalf of MCI re Proposed Flexible ANI Service.

August 30, 1991; Ameritech Transmittal No. 555; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 30, 1991; Ameritech Transmittal No. 562; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates and Possible MFJ Violations Associated with Ameritech's OPTINET Reconfiguration Service (AORS).

October 15, 1991; CC Docket No. 91-215; Opposition to Direct Cases of Ameritech and United (Ameritech Transmittal No. 518; United Transmittal No. 273) on Behalf of MCI re the introduction of 64 Kbps Special Access Service.

November 27, 1991; Ameritech Transmittal No. 578; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 4, 1992; Ameritech Transmittal No. 650; Petition to Suspend and Investigate on Behalf of MCI re Ameritech 64 Clear Channel Capability Service.

February 16, 1995; Presentation to FCC Staff on the Status of Intrastate Competition on Behalf of MCI.

November 9, 1999; Comments to FCC Staff of Common Carrier Bureau on the Status of OSS Testing in Arizona on Behalf of MCI WorldCom, Inc.

November 9, 1999; Comments to the Department of Justice (Task Force on Telecommunications) on the Status of OSS Testing in Arizona and the USWC Collaborative on Behalf of MCI WorldCom, Inc.

Presentations Before Legislative Bodies:

April 8, 1987; Minnesota; Senate File 677; Proposed Deregulation Legislation; Comments before the House Committee on Telecommunications.

October 30, 1989; Michigan; Presentation Before the Michigan House and Senate Staff Working Group on Telecommunications; "A First Look at Nebraska, Incentive Rates and Price Caps," Comments on Behalf of MCI.

May 16, 1990; Wisconsin; Comments Before the Wisconsin Assembly Utilities Committee Regarding the Wisconsin Bell Plan for Flexible Regulation, on Behalf of MCI.

March 20, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Committee re SB 124 on behalf of MCI.

May 15, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Commission and the House Public Utilities Committee re MCI's Building Blocks Proposal and SB 124/HB 4343.

March 8, 2000; Illinois; Presentation to the Environment & Energy Senate Committee re Emerging Technologies and Their Impact on Public Policy, on Behalf of MCI WorldCom, Inc.

Presentations Before Industry Groups -- Seminars:

May 17, 1989; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 15-18, 1989; Panel Presentation -- Interexchange Service Pricing Practices Under Price Cap Regulation; Comments on Behalf of MCI.

July 24, 1989; National Association of Regulatory Utility Commissioners -- Summer Committee Meeting, San Francisco, California. Panel Presentation -- Specific IntraLATA Market Concerns of Interexchange Carriers; Comments on Behalf of MCI.

May 16, 1990; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 14-18, 1990; Presentation on Alternative Forms of Regulation.

October 29, 1990; Illinois Telecommunications Sunset Review Forum; Two Panel Presentations: Discussion of the Illinois Commerce Commission's Decision in Docket No. 88-0091 for the Technology Working Group; and, Discussion of the Treatment of Competitive Services for the Rate of Return Regulation Working Group; Comments on Behalf of MCI.

May 16, 1991; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation Course; May 13-16, 1991; Participated in IntraLATA Toll Competition Debate on Behalf of MCI.

November 19, 1991; TeleStrategies Conference -- "Local Exchange Competition: The \$70 Billion Opportunity." Presentation as part of a panel on "IntraLATA 1+ Presubscription" on Behalf of MCI.

July 9, 1992; North Dakota Association of Telephone Cooperatives Summer Conference, July 8-

10, 1992. Panel presentations on "Equal Access in North Dakota: Implementation of PSC Mandate" and "Open Network Access in North Dakota" on Behalf of MCI.

December 2-3, 1992; TeleStrategies Conference -- "IntraLATA Toll Competition -- A Multi-Billion Dollar Market Opportunity." Presentations on the interexchange carriers' position on intraLATA dialing parity and presubscription and on technical considerations on behalf of MCI.

March 14-17, 1993; NARUC Introductory Regulatory Training Program; Panel Presentation on Competition in Telecommunications on Behalf of MCI.

May 13-14, 1993; TeleStrategies Conference -- "IntraLATA Toll Competition -- Gaining the Competitive Edge"; Presentation on Carriers and IntraLATA Toll Competition on Behalf of MCI.

May 23-26, 1994; The 12th Annual National Telecommunications Forecasting Conference; Represented IXCs in Special Town Meeting Segment Regarding the Convergence of CATV and Telecommunications and other Local Competition Issues.

March 14-15, 1995; "The LEC-IXC Conference"; Sponsored by Telecommunications Reports and Telco Competition Report; Panel on Redefining the IntraLATA Service Market -- Toll Competition, Extended Area Calling and Local Resale.

August 28-30, 1995; "Phone+ Supershow '95"; Playing Fair: An Update on IntraLATA Equal Access; Panel Presentation.

August 29, 1995; "TDS Annual Regulatory Meeting"; Panel Presentation on Local Competition Issues.

December 13-14, 1995; "NECA/Century Access Conference"; Panel Presentation on Local Exchange Competition.

October 23, 1997; "Interpreting the FCC Rules of 1997"; The Annenberg School for Communication at the University of Southern California; Panel Presentation on Universal Service and Access Reform.

February 5-6, 2002; "Litigating Telecommunications Cost Cases and Other Sources of Enlightenment"; Educational Seminar for State Commission and Attorney General Employees on Litigating TELRIC Cases; Denver, Colorado.

EXHIBIT TJG-2

From: Tim Gates [mailto:tgates@qsiconsulting.com]
Sent: Thursday, August 29, 2002 5:38 PM
To: Warren Hight
Cc: Krezek, Michelle; Romano, Mike; Hunt, Bill; Azita Sparano
Subject: Level (3) Interconnection Request -- Section 252 Negotiation Deadline
Importance: High

Hi Warren,

As you know, we (Level 3 and QSI) provided you with the interconnection request on March 26th. Given the Section 252 guidelines for negotiations, we've reached the point where Level (3) must file for arbitration. I had talked to Azita about trying to extend the arbitration deadline, but I have not heard back from her. She said yesterday that she would call you to see if you would agree to an extension and then get back to me today. Since I haven't heard from Azita on your behalf, Level 3 intends to file for arbitration tomorrow with the ND Commission.

If you think there is some merit to extending the filing deadline, and you believe we can make some substantive progress in the negotiations, please call me before 11 am your time tomorrow (August 30th). I would note, however, that we have made no progress whatsoever in the last 4 months. In fact, neither JSI nor SRT has provided Level (3) or QSI with any alternative language or a proposal in response to our proposed agreement. Nevertheless, Level 3 (and QSI on behalf of Level (3)) remains committed to negotiating a mutually acceptable interconnection agreement. Again, if you would like to discuss a way to extend the deadline beyond the existing deadline, please call me tomorrow morning.

Regards,
Tim

Tim Gates
Senior Vice President
QSI Consulting
15712 W. 72nd Circle
Arvada, CO 80007
303-424-4433
Fax 303-424-4434

EXHIBIT TJG-3

Interrogatory #24

Request: Please state whether SRT offers any FX-like service, *e.g.*, do you currently offer any service or products to your customers, other than service specifically described as FX, under which a customer can obtain a telephone number with an “NXX” associated with a local calling area that is different from the local calling area in which the customer has a physical presence. If the answer is yes, please state the name of each such FX-like service.

Objections: Unclear; FX-like Service; Trade Secret

Response: No. SRT does not offer any “FX-like” service as defined in the preamble to the interrogatories. SRT does offer FX service as defined in the preamble to the interrogatories, incorporating by reference SRT’s North Dakota tariffs.

EXHIBIT TJG-4

Interrogatory #26

Request: Please identify: (a) the number of customers in North Dakota who subscribe to or purchase SRT's FX service and each of the FX-like services identified in response to DR 24; and (b) the number of intraLATA lines in North Dakota over which SRT provides FX service and each of the FX-like services identified in response to DR 24.

Objections: Unclear; FX-like service; Trade Secret

Response: (a) SRT does not offer "FX-like" service. SRT offers FX service to six customers in North Dakota.

(b) SRT provides a total of 51 FX lines.

EXHIBIT TJG-5

Interrogatory #15

Request: Please state whether SRT shares a local or an EAS exchange area (one-way or two-way) with any other ILEC, and whether SRT has any other serving arrangements (e.g., optional EAS) by which customers of SRT can purchase a flat-rated calling plan to place and/or receive calls of customers served by any other ILEC.

Objections: None

Response: SRT has two-way EAS arrangements with two ILEC's in North Dakota. EAS service is mandatory and no optional EAS arrangements exist.

EXHIBIT TJG-6

Interrogatory #34

Request: With respect to SRT's FX and FX-like services, please explain how SRT rates each of the following types of traffic originated by or terminated to your FX or FX-like customers, and provide all documentation supporting your answer:

- (a) A call placed by a SRT end user to a SRT FX or FX-like customer where the NXX code of the dialed number (FX or FX-like customer) and the NXX code of the calling party's number are assigned to the same local calling area (which, for purposes of these requests, is the area within which customers can place local and/or EAS calls), but the FX or FX-like customer is not physically located within the local calling area.
- (b) A call placed by a SRT FX or FX-like customer to a SRT end user where the NXX code of the dialed number and the NXX code of the calling party's number (FX or FX-like customer) are assigned to the same local calling area, but the FX or FX-like customer is not physically located in that local calling area.
- (c) A call placed by a SRT end user to a SRT FX or FX-like customer where the NXX code of the dialed number (FX or FX-like customer) is assigned to a local calling area within the same local access transport area ("LATA") as the calling party, but not assigned to the same local calling area as the calling party, and where the FX or FX-like customer is physically located in the same local calling area as the calling party.
- (d) A call placed by a SRT FX or FX-like customer to a SRT end user where the NXX code of the dialed number is assigned to a local calling area within the same LATA, but not within the same local calling area, as the NXX code assigned to the FX or FX-like customer, and where the FX or FX-like customer is physically located in the same local calling area as the called party.
- (e) A call carried by an interexchange carrier and terminated to a SRT FX or FX-like customer.

Objections: Unclear; Trade Secret; FX-like service

- Response:**
- (a) The traffic is rated as FX traffic under SRT's Local Exchange tariff Section 11.
 - (b) The traffic is rated as FX traffic under SRT's Local Exchange tariff Section 11.
 - (c) The traffic is rated as originating access charged to the IXC used by the end user to make the call per applicable SRT access tariff.

Interrogatory #34

Response, continued:

- (d) The traffic is rated as originating access charged to the IXC used by the FX customer to make the call per the applicable SRT access tariff.
- (e) The IXC carrying the call would be billed terminating access per the applicable SRT access tariff.

EXHIBIT TJG-7

April 2002

Volume 24

Issue 1

SRT news

Annual Membership Meeting to be Held June 26, 2002

Plan Now to Attend Your Cooperative's 51st Annual Meeting

In just a few short months all SRT members will have an opportunity to participate in their cooperative by attending the Annual Membership Meeting on June 26, 2002. Some of the activities being planned are supper, business meeting & election of directors, games for kids and great entertainment. All of these activities are FREE to our cooperative members

The annual meeting will be held at the State Fair Center in Minot. Mark your calendars now and watch for more details to be announced in the May & June editions of this newsletter.

Juice Newton to appear at SRT's Annual Meeting

Spend an evening with the "Queen of Hearts" or the "Angel of the Morning," or "The Sweetest Thing." Don't worry, you won't have to choose. They're all Juice Newton!

SRT is pleased to present Juice Newton at its 2002 Annual Meeting in June. This Grammy Award winning artist will take the audience on an emotion-filled ride from the soul searing "Hurt," to the rollicking "Love's Been A Little Bit Hard On Me," to the plea of "Break It To Me Gently."

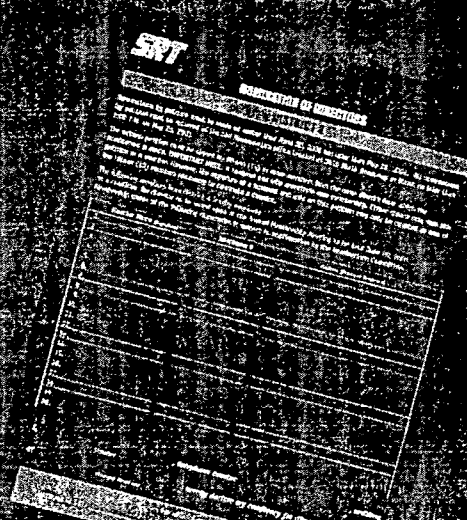


These songs and others have propelled Juice's "Greatest Hits" album to platinum, adding to her collection of gold and platinum certifications.

Procedure for the Nomination of SRT Directors

Annual Membership meetings are held each year to keep our member owners informed of the cooperative's business activities and to elect directors, one from each of our four districts, for a three-year term.

If you are interested in running or nominating someone to run for an SRT director position, please see the nomination procedure on page 2 of this newsletter.



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Procedure for the Nomination of Director

The following steps must be taken if you are interested in becoming a candidate for election as a SRT director

Procedure Steps:

1. A Nomination of Directors Petition Form, indicating the director district must be obtained from SRT Headquarters (principal office of the Cooperative) located at 3615 North Broadway in Minot.
2. Fifteen (15) or more members from the same district from which the nomination is being made must sign the written petition. **Important Note:** A husband and wife constitute **one** membership. Either spouse may sign this petition as a member. However, the signature of a husband and wife on this petition may only be counted as **one** of the fifteen (15) members necessary to nominate a director.
3. All nominations by petition must be received at SRT Headquarters located at 3615 North Broadway in Minot no earlier than April 30, 2002 nor later than May 28, 2002 by 5:00 PM. **Petitions postmarked before May 28, 2002 but arriving by mail after May 28, 2002 cannot be accepted.**
4. All nominations by petition are subject to verification of membership of signatories. Once verification is complete, the candidate will be notified and their name will appear on the ballot at SRT's Annual membership Meeting. Nominations for director candidates will not be accepted from the floor at the annual meeting.

The four incumbent directors whose terms expire this year are:



District 1
Dan DeRouchey



District 2
Tom Henry



District 3
John Marshall



District 4
Susan Schmutzler

To find out what district you reside in (Cooperative Member's principal residence), please refer to the Service Area Map & Director Districts on Page 3 of SRT's 2002 telephone book.

ND Tech Expo declared a success

The ND Tech Expo held on Thursday, February 28 was declared a success by all that attended.

The event began when Governor John Hoeven welcomed everyone during the ribbon cutting and opening ceremonies.

Over 40 booths showcased their latest technology to the expo's visitors. Other events during the day included keynote luncheon speaker, Cheryl Vedoe, Vice President of Education Products and Marketing at

continued on page 3



Governor Hoeven (center) welcomed everyone to the Tech Expo during the opening ceremonies. The Minot AFB Color Guard presented the flags.

NOC - Network Operations Center

It's been approximately one year since SRT introduced its Network Operations Center and as more and more communications services, offered by the cooperative, are added to the real-time monitoring system, it's hard to believe that not very long ago the network operated without it.

What is a NOC?

NOC stands for Network Operations Center – a central location from which network performance and availability can be monitored in real-time. Located in SRT's Business Center in Minot, the NOC brings all telecommunications services into one location and is used to monitor network status and performance.

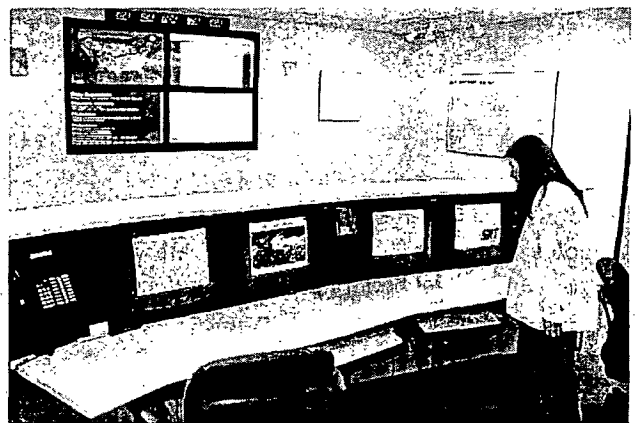
SRT's network can be broken down into four core segments: Telephone (local and long distance), Transport (voice and data), Internet (dialup, DSL and web hosting) and Digital Wireless PCS. SRT's telecommunications network provides more than 38,000 customers with a combined total of more than 100,000 services and covers a 10 county area (7200 square miles). All four core segments are monitored at the NOC.

SRT's goal is to provide the most reliable services possible. Considering there are hundreds of pieces of equipment "network elements," in more than 50 locations, this task required a unique solution.

The Solution!

SRT's real-time monitoring of the network's heartbeat provided by the NOC and the Micromuse® Netcool® Suite of Software are working together to provide the reliability customers have come to depend on.

The key part of the Netcool® Suite is the equipment specific "probes." These probes monitor the vital statistics of a group of equipment in real-time, much like medical monitors in hospitals do for people. SRT has 22 probes constantly monitoring its network. This allows SRT to begin the process of problem resolution immediately upon detection. The rapid problem resolution and historical analysis combine to assist in maintaining a high level of service.



NOC Specialist Amy Korgel responds to an alarm from the systems that are monitored. These systems range from the billing and records systems to backup power, heating, ventilation and air conditioning systems.

ND Tech Expo declared a success

Continued from page 2

Apple Computers based in California and an address via satellite by U.S. Senator Byron Dorgan. Visitors were also able to attend several seminars throughout the day, which included the topics: Broadband Deployment in North Dakota, The Personal Side of Technology and Distance Education.

The day's events concluded with a "Business After Hours" sponsored by SRT and the Minot Area Chamber of Commerce.



Cheryl Vedoe, Vice President Education Products and Marketing, Apple Computers, Inc., was the keynote luncheon speaker. She said that a Department of Labor report shows by the year 2006, 50 percent of the jobs will be in the high-tech field.



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Joel Hansen Retires from SRT

On March 28, a cake and coffee reception was held for Joel Hansen who retired from SRT on April 1, 2002. Joel is retiring after 35 years of service in the telecommunications industry.

Joel began his career at SRT in April 1967, as a member of the construction crew. He later became a combination technician, a position he held until his retirement.

Joel's retirement plans include enjoying his hobbies of fishing, hunting and camping.

SRT thanks Joel for his many years of loyal service and wishes him and his family good health and the best of luck in retirement.

Value Added Packages Save You Money!

SRT Communications delivers it all; calling features, Internet, long distance and digital wireless PCS in three convenient, value added packages.

DigitEL Solutions	ESSENTIAL PACKAGE \$31.00 per month	SAVE \$66.00 per year
	SELECT PACKAGE \$42.00 per month	SAVE OVER \$200.00 per year
	ULTIMATE PACKAGE \$58.00 per month	SAVE UP TO \$240.00 per year

Service and equipment is sold separately on all DigitEL Solutions Packages. To receive the lowest possible price on equipment or installation, a service contract may be required. Please see a SRT Representative for details on equipment and installation pricing. Service order or activation fees may also apply. All packages require local wire line service from SRT.

Call for details!



858-1200
www.srt.com

EXHIBIT TJG-8

Interrogatory #39

Request: Does SRT contend that it incurs higher costs to deliver a call to a CLEC's customer when the customer is physically located in a different rate center than the rate center associated with such NXX code? If the answer is anything other than an unequivocal no, please explain your answer in detail and produce any documents, including, but not limited to, cost studies to support your contention.

Objections: Relevance; Legal Argument

Response: This interrogatory presents a question as to a hypothetical situation. In the context of this proceeding, SRT makes no contention regarding its costs to deliver a call to a CLEC's customer.

BEFORE THE
STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION

<p>In the Matter of the Petition of</p> <p>For Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with SRT Communications, Inc.</p>	<p>Case No. PU-2065-02-465</p>
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PRE-FILED DIRECT TESTIMONY OF DOUGLAS MEREDITH

ON BEHALF OF

SRT COMMUNICATIONS, INC.

December 4, 2002

38

PU-2065-02-465

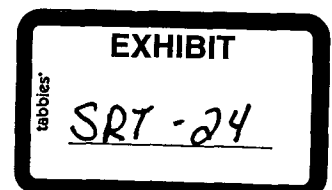
Pages: 98

Pre-Filed Direct Testimony of Douglas
Meredith
by SRT Communications, Inc

Exhibit # SRT-24

12/05/2002

CC: Comm Legal PUD (3)



1 **I. INTRODUCTION**

2
3 **Q. Please state your name, your employer, your position and your business address.**

4 A. My name is Douglas Meredith. I am employed by John Staurulakis, Inc. (“JSI”). JSI is a
5 telecommunications consulting firm headquartered in Seabrook, Maryland. At JSI, I am
6 the Director of Economics and Policy, and as such, I am responsible for the development
7 of policy pertaining to regulatory affairs, economics and pricing for clients. I have been
8 employed by JSI since 1995. Prior to my work at JSI, I was an independent research
9 economist in Washington D.C.

10
11 In my employment at JSI, I have developed policy and have participated in numerous
12 proceedings for rural and non-rural telephone companies. These activities have included
13 developing policy related to the application of the rural safeguards for qualified local
14 exchange carriers, the determination of eligible telecommunications carriers, and the
15 sustainability and application of universal service policy for telecommunications carriers.

16
17 I am also the Economic Advisor to the Telecommunications Regulatory Board of Puerto
18 Rico. In this capacity I prepare economic policy positions for the Board in the
19 Commonwealth of Puerto Rico. I participate jointly as a hearing examiner with Board
20 counsel on issues related to economics and pricing in Board hearings and in Section 252
21 arbitration proceedings. I provide economic and policy guidance on a myriad of

1 economic and regulatory matters, including but not limited to intra-island access
2 proceedings, interconnection arbitration awards, and universal service policy.

3

4 **II. SUMMARY OF TESTIMONY**

5

6 **Q: Are you familiar with the issues presented in this arbitration?**

7 A: Yes. I am aware that on August 30, 2002, Level 3 filed for Arbitration. There are three
8 (3) identified issues in the Level 3 petition for Arbitration. On October 31, 2002, the
9 North Dakota Public Service Commission (“Commission”) issued its list of arbitration
10 issues in this matter. The Commission, via the Arbitrator, identified seven (7) unresolved
11 issues in this proceeding. My testimony addresses six of these issues.

12

13 **Q. What is the purpose of your testimony?**

14 A. I have reviewed Level 3’s petition, attachments and responses to SRT’s interrogatories in
15 preparing this pre-filed direct testimony. The seven disputed issues involve a mixture of
16 questions related to facts and law. The purpose of my testimony is to establish certain
17 facts and review policy matters affecting the resolution of six issues. In doing so, I will
18 review state and federal rules and policies that relate to six of the disputed issues
19 identified by the Commission’s Arbitrator in this proceeding. My testimony will address
20 the following items:

- 1 • I will demonstrate that SRT has met its obligation pursuant to Section 251(a) of
2 the Act.
- 3 • I will demonstrate that Level 3 seeks to arbitrage the regulatory requirements for
4 interexchange traffic under the guise of “local interconnection” in violation of the
5 requirements outlined in the Federal Communications Commission’s (“FCC’s”)
6 implementation orders of the Telecommunications Act of 1996 (“Act”).¹
- 7 • I will explain how Level 3’s proposed Virtual NXX (“VNXX”) service violates
8 the established industry guidelines developed by the Alliance for
9 Telecommunications Industry Solutions (“ATIS”) at the direction of the FCC.
- 10 • I will show that Level 3 is not requesting to exchange local traffic that would call
11 for a local interconnection agreement, but rather it is seeking to have SRT
12 originate interexchange traffic that is not subject to the local interconnection
13 requirements of Section 251(a) and 251(c) of the Act.
- 14 • I will show that Level 3’s claim that its service is “foreign exchange” (“FX”) type
15 service is without merit. Level 3’s service does not meet the criteria for FX
16 service as defined by the FCC. Instead, this service is an interexchange service

¹ For example, See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Red 15499 (1996) (“*Local Competition Order*”), *aff’d in part and vacated in part sub nom. Competitive Telecommunications Ass’n v. FCC*, 117 F3d. 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part and remanded, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*.

1 offering that is equivalent to interexchange carriers' ("IXCs") inbound toll-free
2 calling services. This traffic is subject to originating access charges.

3 • Finally, I will also provide evidence for the appropriate regulatory and
4 compensatory treatment that applies to the traffic proposed by Level 3 in its
5 petition.

6

7 **III. DESCRIPTION OF LEVEL 3's PROPOSED SERVICE AND CURRENT**
8 **SERVICE**

9

10 **Q. Please describe your understanding of Level 3's purpose in service offering.**

11 A. Level 3 is a telecommunications carrier and seeks to offer telecommunications services to
12 ISPs. Their proposed service is a Direct Inward Dial (DID) calling service. Level 3
13 hopes ISPs would order this service in the exchange where the ISP has a physical
14 presence.² For discussion in my testimony, I denote the physical presence of an ISP as
15 the location where the ISP has placed modems or "modem banks" that receive dial-up
16 ISP transmissions from end-user customers.

² Level 3 Communications, LLC, *Petition for Arbitration* ("Petition"), State of North Dakota Public Service Commission, pages 5 and 6.

1 Level 3 has begun an effort to expand the geographic markets for its DID calling service.

2 Level 3 defines its market expansion project as “expanding its network footprint by
3 leasing facilities to increase the markets where it can offer dial-up data services to ISPs.”³

4

5 In its petition, Level 3 is emphatic that it is NOT proposing to offer any
6 telecommunications service to customers in SRT’s local exchange service area. In
7 proposing its market expansion project to SRT, Level 3 stated that it is NOT seeking to
8 compete for local customers ...”⁴ in SRT’s local exchange service area. Under Level 3’s
9 description of terms proposed by Level 3 for interconnection with SRT, NO Level 3
10 customer will be physically located in SRT’s local exchange service area. Level 3
11 clearly indicates that it is not following the “traditional CLEC model” where it would be
12 providing local telecommunications services in SRT’s local exchange service area,
13 offering existing cooperative members a choice in telecommunications providers.

14

15 In its *Petition for Arbitration*, Level 3 does not seek direct interconnection with SRT.

16 Transmission facilities between SRT and Level 3 will utilize common, shared transport
17 trunks.⁵ Level 3 states that it anticipates that traffic exchanged with SRT to be *de*

³ Id., Exhibit A.

⁴ Id., Exhibit A, page 1, bullet no. 4

⁵ *Petition*, Appendix A, page 1, bullet 9.

1 *minimis*.⁶ Level 3's petition for arbitration specifically states that the amount of traffic
2 exchanged between the parties to be *de minimis* and that until traffic volumes warrant,
3 common transport shall be used. In response to interrogatories, Level 3 now states in
4 writing for the first time since filing its petition that it will seek direct interconnection
5 with SRT.⁷

⁶ Id., page 13. In proposing a compensation mechanism, Level 3 projected that traffic between SRT and Level 3 would be *de minimis*.

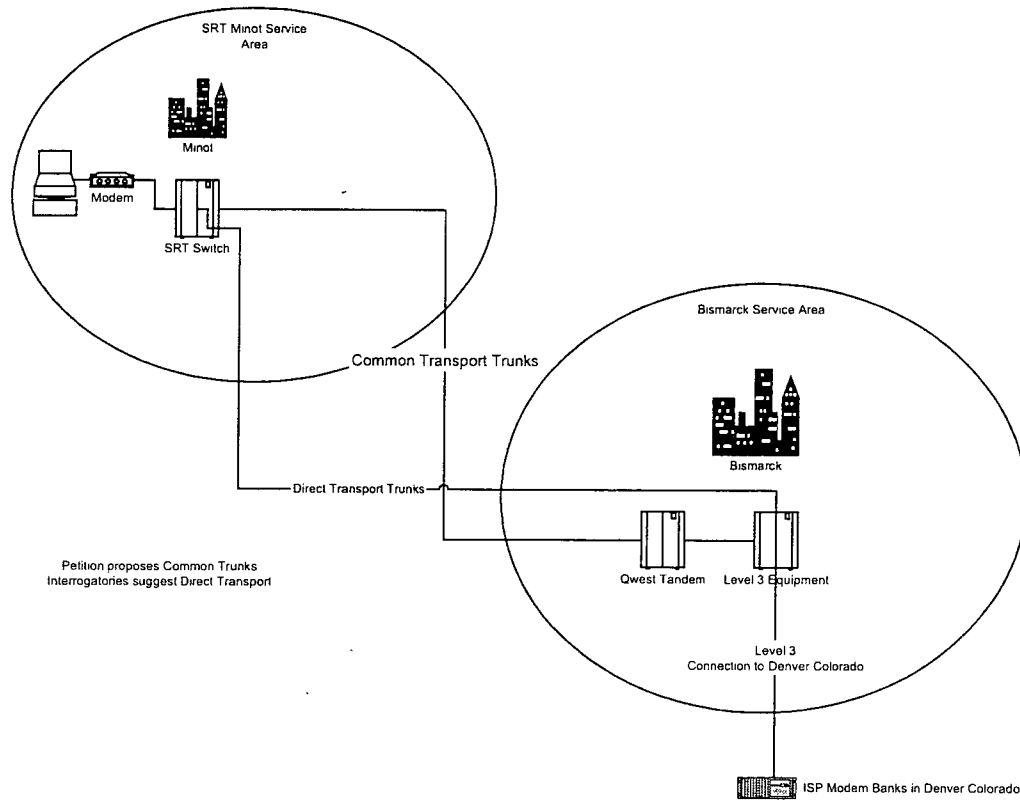
⁷ *Response*, Response No. 9.

1 The following diagram illustrates the proposed service sought by Level 3 with SRT.

2

3

Figure 1



4

5

6 From an operational standpoint, Level 3 intends to obtain NPA-NXX codes from the
7 North American Numbering Plan Administrator (“NANPA”) and plans to associate the
8 rate center designations for its NPA-NXX(s) with a SRT rate center (SRT Minot Service
9 Area in Figure 1). This association would attempt to establish the NXX(s) as “local
10 traffic” in the Local Exchange Routing Guide (“LERG”) for SRT end-user customers
11 calling the Level 3 NXX(s). Level 3 intends to assign telephone numbers from these

1 NPA-NXX codes to its customers who are located exclusively outside the designated rate
2 center boundaries of SRT's local exchange service area. Figure 1 identifies the Petition
3 method of transport and the Interrogatory method of transport. The Petition describes
4 common transport that will be transited by a Qwest tandem. This method of transport is
5 "common trunk transport." Based on Level 3's interrogatory response, the method of
6 transport is direct connection from SRT's switch in the Minot service area to the Level 3
7 equipment in Bismarck and the ISP modem banks in Denver, Colorado. At bottom,
8 Level 3 is requesting that SRT provide originating access for Level 3's interexchange
9 traffic and route calls for delivery to Level 3's customers located in Denver, Colorado
10 without compensation. The service Level 3 is attempting to provide is known in the
11 industry as the deployment of a VNXX service. VNXX service is also described as
12 interexchange-service-bypass because it avoids originating access compensation due the
13 originating carrier of interexchange traffic.

14 **Q: What are the services that SRT is currently providing to Level 3, for origination of**
15 **locally dialed ISP traffic?**

16 A: Based on Level 3's response to interrogatory number 14, Level 3 currently leases seven
17 DS-1s and 7 ISDN PRIs from SRT. These facilities are used to provide local calling in
18 Minot to ISP modem banks located in Bismarck.⁸

19

1 **IV. ARBITRATION ISSUE NO. 1: HAS SRT SATISFIED ITS DUTIES UNDER THE**
2 **COMMUNICATIONS ACT OF 1934, AS AMENDED, WITH RESPECT TO**
3 **LEVEL 3's SECTION 251(a) INTERCONNECTION REQUEST?**

4 **Q. How does Level 3 seek to interconnect with SRT in its market expansion project?**

5 A: In reviewing the information provided to SRT by Level 3 and Level 3's *Petition for*
6 *Arbitration*, it is clear that Level 3 seeks interconnection with SRT under section 251(a)
7 of the Act. Level 3 has repeatedly emphasized that it seeks only Section 251(a)
8 interconnection.

9
10 **Q: What are the federal requirements for interconnection under Section 251(a)?**

11 A: Section 251(a) imposes certain general duties on all telecommunications carriers:
12 specifically, the duty to "interconnect directly or indirectly with the facilities and
13 equipment of other telecommunications carriers;" and the duty "not to install network
14 features, functions, or capabilities that do not comply with the guidelines and standards
15 established pursuant to Section 255 or 256 [of the Act]."⁹

16
17 In its implementing orders, the FCC describes the first duty in Section 251(a) as the duty
18 to "interconnect" with other telecommunications carriers, to the extent any such carrier is

⁸ *Level 3 Communications, LLC's Response to SRT Communications, Inc.'s Interrogatories and Request for Production of Documents ("Response")*, Response No. 31.

⁹ 47 USC § 251(a).

1 engaged in providing telecommunications services to the public.¹⁰ The FCC rules
2 implement Section 251(a) and define “interconnection” as the “linking of two networks
3 for the mutual exchange of traffic.”¹¹

4
5 The duty to interconnect under Section 251(a) is a duty only to connect, directly or
6 indirectly: it is the physical linkage of two networks, either directly or indirectly. This
7 physical linkage duty imposed under Section 251(a) does not include the obligation of
8 exchange of traffic and mutual financial compensation.¹² The FCC distinguishes the
9 “duty to interconnect” under Section 251(a) from the obligations imposed under Section
10 251(c)(2).¹³

11
12 Most importantly, in its implementation order, the FCC concluded that SRT has the
13 choice to interconnect with Level 3 directly or indirectly. Specifically, the FCC
14 concludes that “telecommunications carriers should be permitted to provide
15 interconnection pursuant to section 251(a) either directly or indirectly, based on their
16 most efficient technical and economic choices.”¹⁴

10 *Local Competition Order* at ¶ 992.

11 47 CFR § 51.5.

12 See, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, 16
FCC Rcd 9923, FCC 01-146, SEVENTH REPORT AND ORDER AND FURTHER
NOTICE OF PROPOSED RULEMAKING, April 27, 2001, ¶ 97-*cf.*

13 *Local Competition Order* at ¶ 997.

1 **Q: Is SRT currently interconnected with Level 3?**

2 A: Yes. It is not disputed that SRT is interconnected indirectly with Level 3 through the
3 Public Switched Telephone Network (PSTN). In addition to connecting indirectly with
4 Level 3, SRT is directly connected with Level 3 with services ordered and paid for by
5 Level 3 for service to Bismarck. The current physical linking of the two networks is well
6 established.

7
8 **Q: Has SRT met its Section 251(a)(1) obligation to interconnect with Level 3?**

9 A: Yes. SRT has met its obligations under Section 251(a).

10

11 In this proceeding, Level 3 seeks to interconnect under Section 251(a) subject to specific
12 terms and conditions it controls (*e.g.*, use of common, shared transport trunks) and it
13 seeks to establish a compensation mechanism for the mutual exchange of traffic. Based
14 on comparison of Level 3's request to the architecture for interconnection under the Act
15 and the FCC's implementation rules, I conclude that Level 3's request is actually a
16 request under Section 251(c)(2) interconnection subject to specific terms and conditions
17 controlled by Level 3 and Section 251(b)(5) reciprocal compensation for the
18 establishment of a mutual exchange of traffic. However, Level 3 seeks arbitration relief
19 for these issues using the general interconnection duty of Section 251(a). My
20 understanding of Level 3's petition leads me to conclude that Level 3 places duties in

¹⁴ Id. (Emphasis supplied).

1 Section 251(a) that are clearly outlined in other sections of the Act. Moreover, under the
2 FCC's implementation of the Act, the matters that Level 3 raises should be addressed
3 under Section 251(b)(5) and Section 251(c)(2) of the Act.

4

5 The undisputed facts in this proceeding compel me to recommend that the Arbitrator
6 conclude that SRT has met its Section 251(a)(1) duty with Level 3 in accordance with
7 FCC implementation orders.¹⁵

8

9 **Q. Your response to issue number 1 defines a sharp contour between Section 251(a)**
10 **and Section 251(c)(2). How does the duty under Section 251(a) compare to the**
11 **duties under Section 251(c)(2)?**

12 A. I emphasize the sharp difference between Section 251(a)(1) interconnection and Section
13 251(c)(2) interconnection. Section 251(c)(2) requires an incumbent LEC "to provide, for
14 the facilities and equipment of any requesting telecommunications carrier,
15 interconnection with the local exchange carrier's network . . . for the transmission and
16 routing of telephone exchange service and exchange access"¹⁶ The FCC has
17 commented on these terms in its implementing order. It states that "[a]ll carriers
18 (including those traditionally classified as IXCs) may obtain interconnection pursuant to

¹⁵ Id., The FCC has determined that an indirect connection satisfies a telecommunications carrier's duty to interconnect pursuant to Section 251(a).

¹⁶ 47 U.S.C. § 251(c)(2) (Emphasis Supplied).

1 section 251(c)(2) for the purpose of terminating calls originating from their customers
2 residing in the same telephone exchange (*i.e.*, non-interexchange calls).”¹⁷

3
4 When Section 251(c)(2) applies to SRT, SRT will negotiate with Level 3 to comply with
5 Section 251(c)(2) interconnection for their customers residing in the same telephone
6 exchange, *i.e.*, non-interexchange calls. However, in the present case, Level 3 is not
7 attempting to interconnect with SRT for “transmission or routing of telephone exchange
8 service and exchange access” and does not seek to interconnect under Section 251(c)(2).

9 I repeat the Petition-established fact that Level 3 is not seeking interconnection to
10 provide local service to any customers residing in the SRT local exchange service area.
11 Therefore Section 251(c)(2) interconnection would not apply.

12
13 Section 251(c)(2) interconnection is also controlled by the requesting carrier. Level 3 in
14 this instance would dictate how and where interconnection would occur, provided it is at
15 a technically feasible point within SRT’s telephone network. The request to SRT from
16 Level 3 dictates the conditions where interconnection would occur. Thus, while Level 3
17 is professing to claim interconnection under Section 251(a)(1), it is in reality attempting
18 to dictate interconnection terms that reside within a Section 251(c)(2) interconnection
19 request. I strongly encourage the Arbitrator to define sharp contours between Section
20 251(a)(1) interconnection and Section 251(c)(2) interconnection using the FCC’s

¹⁷ *Local Competition Order* at ¶ 190 (Emphasis Supplied).

1 implementation orders. I am certain that a careful reading of the statute and
2 implementation orders will confirm that Level 3's request is beyond the scope of Section
3 251(a)(1) interconnection – a type of interconnection already being provided by SRT.
4 Level 3 should not be allowed to impose unilaterally additional interconnection
5 obligations on SRT under the guise of Section 251(a)(1) interconnection.

6
7 I recommend that the Arbitrator conclude that Level 3 cannot impose any terms and
8 conditions on SRT for a Section 251(a) interconnection. The physical linking of the two
9 networks for delivery of traffic to the other is at the discretion of the originating carrier –
10 SRT.

11

12 **Q: Does Level 3's proposed traffic qualify as local telephone exchange service or**
13 **exchange access that would qualify under Section 251(c)(2) interconnection?**

14 A: I emphasize that Level 3 is not seeking Section 251(c)(2) interconnection and therefore,
15 the question is a hypothetical question. Notwithstanding, Level 3 has stated that its ISP
16 customers are not in the SRT local exchange service area. As I explained above, the
17 traffic Level 3 seeks to exchange with SRT is interexchange traffic and does not qualify
18 for Section 251(c)(2) interconnection.

19

20 Level 3's request for interconnection – whose exclusive purpose is to provide an
21 interexchange service to its ISP customers physically located in another local calling area

1 is not allowed by the Act or the FCC rules. The goals of the Act are not advanced by a
2 service that assigns telephone numbers from SRT's rate center to Level 3 customers
3 exclusively located outside of the SRT's local exchange service area boundaries in the
4 manner proposed by Level 3.

5
6 From the information provided to SRT by Level 3 in its request for interconnection and
7 in its arbitration petition, it is clear that Level 3 will not be providing local telephone
8 exchange service or exchange access service to end users within SRT's local exchange
9 service territory. As such, Level 3 is not entitled to local interconnection with SRT under
10 Sections 251(c)(2) of the Act.

11
12 SRT has met its obligation to interconnect with Level 3 under Section 251(a)(1), as the
13 networks of Level 3 and SRT are physically linked. This is the extent of the Level 3
14 interconnection request.

15

1 **V. ARBITRATION ISSUE NO. 2: DOES SRT HAVE A DUTY TO NEGOTIATE**
2 **WITH LEVEL 3 TO ESTABLISH FAIR AND REASONABLE TERMS AND**
3 **CONDITIONS FOR INTERCONNECTION WHEN IT RECEIVES A REQUEST**
4 **FOR INTERCONNECTION PURSUANT TO SECTION 251(a) OF THE**
5 **COMMUNICATIONS ACT OF 1934, AS AMENDED?**

6

7 **Q: Are you familiar with Arbitration Issue Number 2?**

8 A: Yes.

9

10 **Q: Can you please explain the matters covered in this issue?**

11 A: Level 3 argues that SRT must establish an interconnection agreement with Level 3 for
12 purposes related to Section 251(a)(1) interconnection. Level 3 claims that SRT has a
13 duty to negotiate terms that provide for the “seamless routing and exchange of traffic.”
14 Level 3 claims that SRT has a duty to negotiate for interconnection under Section
15 251(a)(1) with Level 3 even if Level 3 were operating as an interexchange carrier.¹⁸

16

17 **Q: Do you have any comment related to this issue?**

18 A: Yes. In raising this issue, Level 3 alleges that calls between networks are being impaired.
19 There is no basis for this allegation. As I have explained above, SRT and Level 3 are
20 indirectly and directly interconnected today. If a SRT end-user customer were to call a

1 Level 3 customer located in Bismarck, Denver, or Minneapolis, the call would be
2 completed. There is no basis for the unsubstantiated allegation that SRT is not
3 interconnected with Level 3. If there in is fact no seamless interconnection between the
4 networks, Level 3 has not provided any evidence documenting the lack of
5 interconnection in its arbitration petition.

6 Another issue raised by Level 3 is the issue of IXC interconnection. I have already cited
7 that an IXC can avail itself of Section 251 interconnection for customers that are
8 physically located in the originating exchange. This principle applies to Level 3 as well.
9 However, Level 3 has clearly stated that it does not have and will not seek to have local
10 telephone exchange customers in SRT's local exchange service area. Thus, Level 3 is
11 precluded from seeking Section 251 interconnection in the manner it proposes under its
12 market expansion program.

13

14 **Q: Is Level 3's proposed service offering interexchange service, comparable to 800-type**
15 **service?**

16 A. Yes. Level 3's VNXX service arrangement is nearly identical from the SRT end-user
17 perspective to the toll-free 800 interexchange service offered by IXCs. In the assignment
18 of multiple NPA-NXX codes, each from a different rate center, to an individual customer
19 in a distant location, Level 3 proposes to offer its ISP customers the ability to receive
20 incoming toll-free interexchange calls from the entire geographic area of each NPA-NXX

¹⁸ *Petition*, pages 9-11.

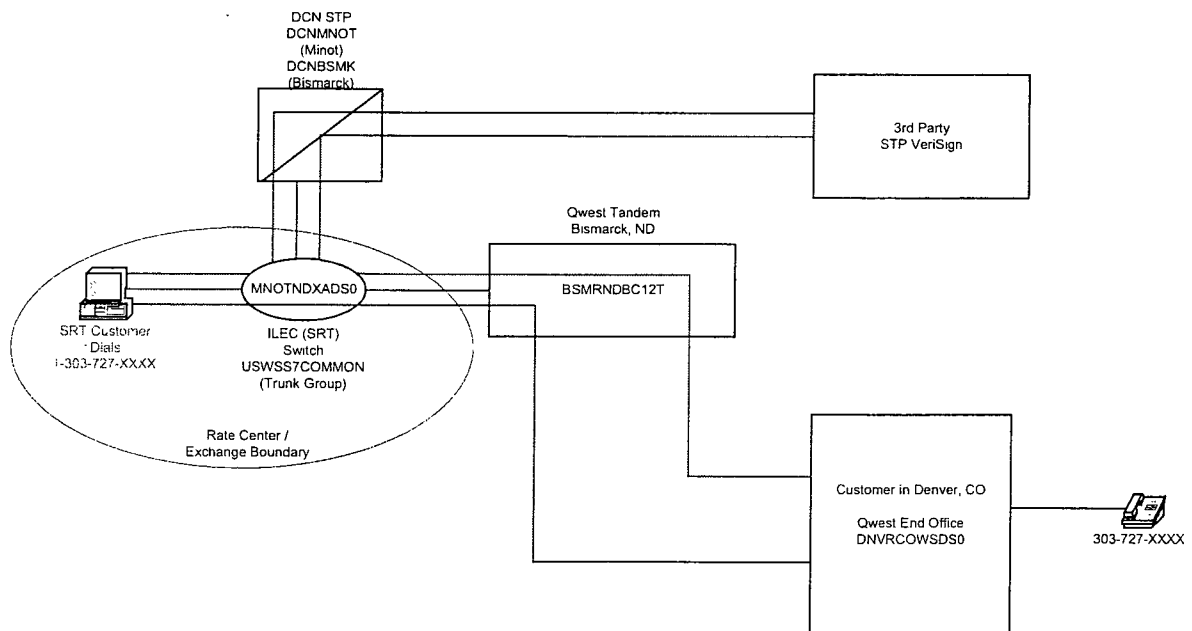
1 rate center, thereby providing an 800-type service without incurring the customary
2 exchange access charges. While Level 3 claims that its service is not similar to 800-type
3 service, the facts in this proceeding lead me to conclude that Level 3's VNXX service is
4 more akin to 800-type service than any other telecommunications service offered in the
5 marketplace.

6

7 Below is Figure 2 that illustrates an interexchange service originating from Minot, North
8 Dakota.

9

Figure 2



10

1 The interexchange service depicted in Figure 2 is identical to the service proposed by
2 Level 3. I have compared Level 3's Response to SRT Interrogatory No. 17 with Figure
3 2, a figure illustrating interexchange service, and the functionality and nature of the calls
4 in both figures are strikingly similar.

5
6 Level 3's proposed service would enable SRT end-user customers to place toll-free
7 interexchange calls to Level 3's customers not located within the SRT customer's local
8 calling area. Thus, Level 3's ISPs located in distant exchanges would be able to receive
9 calls that are ordinarily considered "interexchange service" calls with no liability for
10 compensating SRT for the use of its network as normally associated with 800-type
11 service. Although SRT end users will be dialing a local seven digit number, through
12 Level 3's use of VNXXs in lieu of a traditional 800 number, the call would be routed by
13 SRT in the same manner, utilizing the same facilities and switching functions as required
14 for interexchange calls. Just because an end user dials seven-digits instead of 11-digits
15 (1+ dialing) does not change the fact that the call itself is not "local" because it does not
16 originate and terminate to customers physically located within the same local calling
17 area.

18
19 Several state commissions have commented on the similarity between VNXX service and
20 800-type service offerings. The South Carolina Commission stated that "Virtual NXX"

1 closely parallels 800-service.”¹⁹ The Maine Commission noted that VNXX service “is a
2 variant of ‘800’ service, which is a recognized interexchange service.”²⁰ The Florida
3 Commission recently stated: “We believe that a comparison of NPA/NXXs is used as a
4 proxy for determining the actual physical location of the particular customer being called.
5 In other words, the NPA/NXX provides a reasonable presumption of the physical
6 location of a customer as being within the calling area to which the NPA/NXX is
7 homed.”²¹ From these determinations in other jurisdictions, it is evident that VNXX
8 service is an interexchange service.

9
10 **Q. Why does Level 3 claim that their proposed service is not comparable to 800**
11 **services?**

12 A. Price. I conclude that this proceeding is not an interconnection proceeding addressing
13 the physical interconnection of two networks, or a right to use new technologies to

¹⁹ South Carolina Public Service Commission, *Petition of Adelpia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Order No. 2001-045, Docket No. 2000-516-C, January 16, 2001 at 5.

²⁰ Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber, Docket No. 98-758 and New England Fiber Communications D/B/A Brooks Fiber Proposed Tariff Revisions to Introduce Regional Exchange (RX) Service, Docket No. 99-593; (June 30, 2000) (“Maine VNXX Decision”).

²¹ Florida PSC Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996* (Phases II and IIA), pg. 30, September 10, 2002.

1 provide similar services. This proceeding stems from a pricing issue. The only
2 significant difference between 800-type service and Level 3's proposed service is the
3 attempt to use VNXXs and avoid any compensation for interexchange service.
4

5 **VI. ARBITRATION ISSUE NO. 3: ARE LEVEL 3's PROPOSED SERVICES LOCAL**
6 **EXCHANGE SERVICES THAT ARE SUBJECT TO NEGOTIATED**
7 **TRANSPORT AND TERMINATION ARRANGEMENTS OR ARE THEY**
8 **INTEREXCHANGE SERVICES SUBJECT TO ACCESS CHARGES?**

9 **Q: Can you please explain the matters covered in this issue?**

10 A: Level 3 argues: (1) that Level 3 offers a local telephone exchange service; (2) that Level
11 3's service is "functionally equivalent" to FX service; (3) that SRT has interconnection
12 obligations with Level 3 if Level 3 were an interexchange carrier; (4) that Level 3 would
13 be able to invoke the ESP exemption to avoid access charges; (5) that Level 3's NXX
14 assignment shall govern rating and routing of calls; (6) that SRT is seeking access
15 charges for Level 3 traffic; (7) that state policy should be developed in this arbitration
16 proceeding; (8) that Level 3 seeks to impose bill-and-keep as a compensation
17 arrangement for non-ISP traffic under a *de minimis* standard; and (9) that Level 3 seeks
18 to impose a bill-and-keep as a compensation arrangement for ISP traffic between the
19 carriers.

20

1 **Q: Are Level 3’s proposed services identified in the petition for arbitration of telephone**
2 **exchange services?**

3 A: No. The proposed services are interexchange services.

4

5 Level 3 suggests that its proposed service is “not substantively different from a foreign
6 exchange arrangement.”²² A careful inspection of foreign exchange service shows that
7 Level 3’s claim is without foundation. To support my conclusion, I believe it is
8 instructive to refer to how the FCC defines FX service.

9

10 The FCC states that “Foreign Exchange (FX) service connects a subscriber ordinarily
11 served by a local (or “home”) end office to a distant (or “foreign”) end office *through a*
12 *dedicated line from the subscriber's premises to the home end office, and then to the*
13 *distant end office.* It is common to define the ‘home’ end as the closed-end, while the
14 ‘foreign’ end is known as the open-end. This service gives the subscriber a dial-tone-
15 presence in the distant exchange without incurring per minute toll charges.”²³

16

17 In ordering FX service, the subscriber purchases local exchange service from the
18 “foreign” or open-end office and purchases dedicated interoffice transport between the
19 subscriber’s location and the “foreign” or open-end office. The subscriber is provided a

²² Id. *Petition*, page 7.

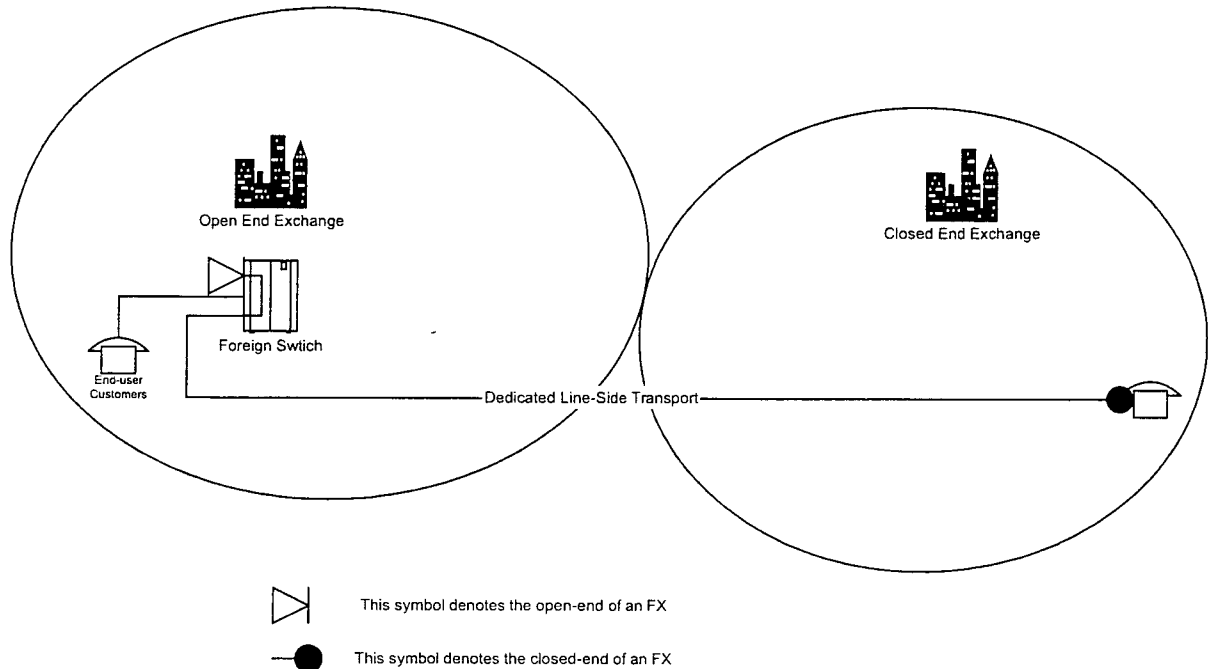
1 telephone number from the existing central office codes assigned to the open end-office.
2 In an FX service arrangement, all providers whose facilities are used to provide the FX
3 service receive compensation from the FX subscriber located in the closed-end exchange.

4
5 The diagram in Figure 3 illustrates the essential components of FX service: to wit, (1) a
6 line side connection is provided from a switch in the foreign exchange (open-end FX is
7 represented by a triangle); (2) a dedicated interoffice transport connection between the
8 open end switch and the end-use (since dedicated transport does not require switching
9 performed at the closed-end switch – it is not represented in the figure); (3) a termination
10 at the customer's location (closed end is represented by a circle); and (4) the existence of
11 local customers provided local telephone exchange service in the open-end exchange. I
12 note that condition (4) captures the essential nature of FX service as an exception to
13 services provided locally. As is discussed below, the industry considers FX service as a
14 secondary service to the primary local telephone exchange service.

²³ *AT&T Corporation, MCI Corporation v. Bell Atlantic*, 14 FCC Rcd 556, ¶ 71 (1998)
(Emphasis supplied).

1

Figure 3



2

3

4

5

6

7

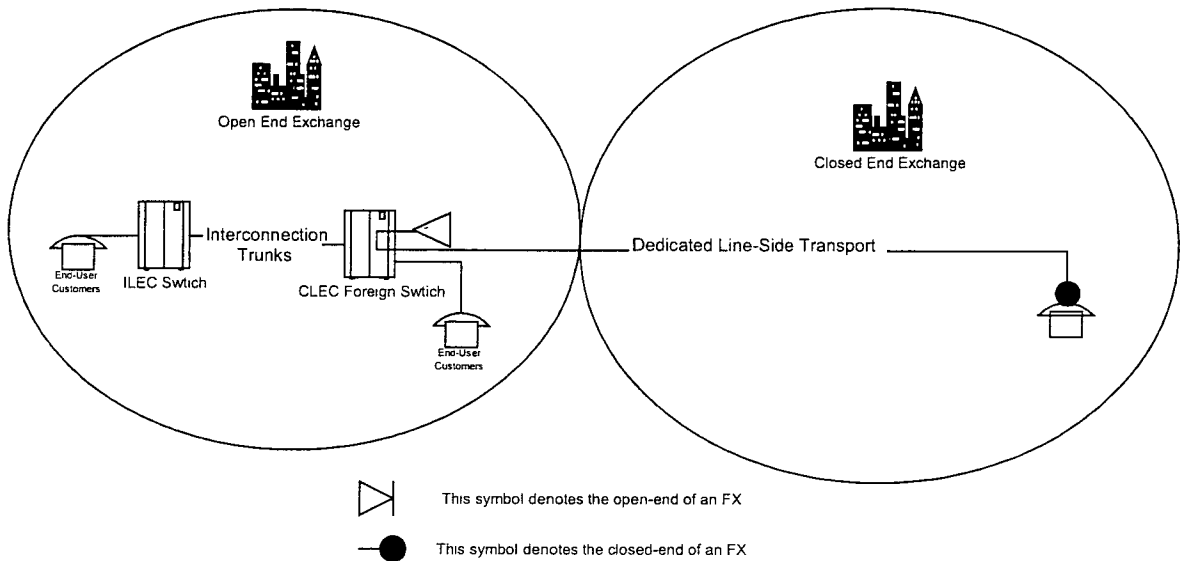
8

9

The situation described in Figure 3 does not identify the presence of a CLEC. I have prepared Figure 4 that illustrates the FX service where a "traditional" CLEC is the provider of the open-end service. In this diagram the CLEC has a line-side presence in the foreign exchange because it has a switch located in the foreign exchange. The only difference between diagram in Figure 3 and in Figure 4 is the presence of a CLEC that is able to provide a line-side open-end FX service.

1
2

Figure 4

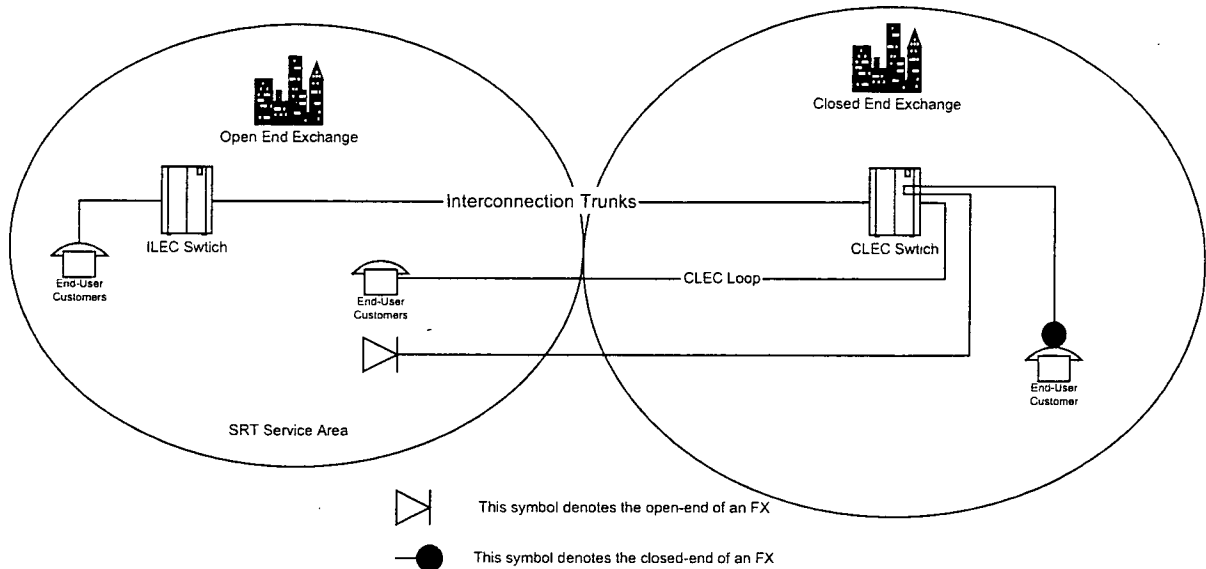


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9

In certain situations, a CLEC may want to provide the open-end of FX service in an exchange where it does not have a switch. The diagram in Figure 5 illustrates that for FX service to be provided, the CLEC must provide a line-side open-end presence in the foreign exchange. Moreover, the CLEC must have customers physically located in the open-end exchange. Without these conditions, the substantive nature of FX service does not exist.

1

Figure 5



2

3 Level 3's proposed service is vastly different than FX service. According to the FCC's
4 definition, an FX customer purchases a dedicated line "from the subscriber's premises ...
5 to the distant [foreign] end-office." Level 3 is not proposing a service that is
6 substantively similar to FX service.

7

8 **Q: In Figures 4 and 5, you require that the CLEC provide a line-side open-end**
9 **appearance in the foreign exchange and that the CLEC have line-side customers in**
10 **the open-end exchange in order to qualify as FX service. Why do you require these**
11 **two conditions?**

12 **A:** First, without a line-side open-end connection provided by a CLEC, the comparison of
13 Level 3's service to "FX service" is meaningless. The line-side open-end service is a
14 critical feature of FX service. Without a line-side open-end connection provided by the

1 CLEC, any toll service can qualify as “not substantively different” from FX service. The
2 only difference between Level 3’s market expansion project and industry-wide toll
3 service is the placement of the NPA-NXX rate center. Level 3 wants to identify Minot as
4 the rate center for its NXX and provide telecommunications to its ISPs customers
5 physically located in Denver. The proposed service for which Level 3 seeks
6 interconnection is not FX service.

7
8 As to the second condition of requiring CLEC line-side customers to be in the open-end
9 exchange, I refer to FCC implementation policy and to industry standards. The industry
10 standard I mentioned above is that FX service is an exception to the requirement that
11 wireline customers be physically located in the same rate center that the NXX codes are
12 assigned.

13
14 Since this is an exceptionally important requirement, I quote from the ATIS guidelines.
15 In accordance with the Central Office (“CO”) Code Assignment Guidelines, NANPA
16 assumes

17 “from a wireline perspective that CO Codes/blocks allocated to wireline
18 service providers are to be utilized to provide service to a customer’s
19 premises physically located in the same rate center that the CO
20 Codes/blocks are assigned. Exceptions exist, for example tariffed services
21 such as foreign exchange service.”²⁴
22

²⁴ Exhibit DDM-1 at Section 2.14.

1 This document states the general industry standard that customers be physically located
2 in the NXX rate center. It also recognizes that there are exceptions to this general
3 standard. These exceptions include FX service. However, the exception to the rule is
4 NOT the rule itself. This is why the industry views local telephone exchange service as a
5 primary service and FX service as a secondary service. Without the primary service
6 provided by the CLEC, the use of NXX numbers for a secondary service is not valid.

7

8 **Q: Are there FCC declarations addressing the inappropriate use of NXX number**
9 **assignments?**

10 A: Yes. I note that the assignment of NXX codes to a rate center for customers located
11 exclusively outside the rate center area is commonly referred to as a VNXX assignment.

12

13 In a very recent voluminous arbitration award authored by the Wireline Competition
14 Bureau Chief, the FCC has expressed its view regarding VNXX assignments.²⁵ The FCC
15 awarded the current practice of rating calls by comparing the originating and terminating
16 NPA-NXX codes based on the practicality of the convention. In making this judgment,
17 the FCC also stated that state commissions who have numbering authority can correct

²⁵ *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al.*, Chief, Wireline Competition Bureau, Federal Communications Commission, DA 02-1731, MEMORANDUM OPINION AND ORDER, July 17, 2002.

1 abuses of NPA-NXX allocations. The FCC added its imprimatur to a decision by the
2 Maine Commission whereby a CLEC was receiving NXX codes for ILEC rate centers
3 although the CLEC provided no local telephone exchange service to customers in certain
4 rate centers.²⁶

5
6 In its decision, the Maine Public Utilities Commission prohibited a CLEC from providing
7 a VNXX service and ordered NANPA to reclaim such NPA-NXX codes.²⁷ The basis for
8 the reclamation of the CLEC NXX codes was that because the Main Commission found
9 that the CLEC was not “providing local exchange service in those locations of the state
10 that are outside its Portland area exchange.” The CLEC was “instead using the NXX
11 codes for the purpose of providing an interexchange service that it characterized as like
12 foreign exchange.”²⁸ This CLEC was using the interoffice trunking of another carrier
13 rather than dedicated facilities provided by the CLEC itself.

14
15 The circumstances in the Maine case are strikingly similar to those in the present
16 proceeding. And the FCC has adopted the Maine case as an appropriate method to
17 address abuses to NXX assignments: specifically, the state commission should address

²⁶ Id., at ¶ 303.

²⁷ *Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758 and *New England Fiber Communications D/B/A Brooks Fiber Proposed Tariff Revisions to Introduce Regional Exchange (RX) Service*, Docket No. 99-593; (June 30, 2000) (“*Maine VNXX Decision*”).

1 and prohibit the abuse when and if the issue arises. In this proceeding, it is entirely
2 appropriate for the Commission to prevent what would be determined a clear abuse of
3 NXX assignments.

4
5 The FCC has adopted the Maine decision as the appropriate method to stem abuses to
6 NXX assignments. The FCC and other state commissions have concluded that the
7 exclusive assignment of telephone numbers to customers not physically located within
8 the rate center boundaries violates customary and normal industry practice and shall not
9 be countenanced.

10
11 In conclusion, from my understanding of the service Level 3 seeks to offer, it does not
12 seek to exchange local traffic with SRT, as encompassed by local interconnection under
13 the FCC's rules and Section 251, since Level 3's customers exclusively reside outside the
14 SRT local exchange service area. This traffic is interexchange traffic and should be
15 routed and rated accordingly. The Public Service Commission of North Dakota should
16 preemptively deny the abuse of NXX assignments by Level 3 or any other
17 telecommunications carrier seeking to abuse the normal and customary practices of the
18 industry.

19

1 **Q: Does Level 3 offer a local telephone exchange service?**

2 A: Yes. I do not doubt that Level 3 offers a local telephone exchange service in certain
3 areas of the country. Telephone exchange service is defined by the Act as:

4 (A) service within a telephone exchange, or within a connected system of
5 telephone exchanges within the same exchange area operated to furnish to
6 subscribers intercommunicating service of the character ordinarily
7 furnished by a single exchange, and which is covered by the exchange
8 service charge, or (B) comparable service provided through a system of
9 switches, transmission equipment, or other facilities (or combination
10 thereof) by which a subscriber can originate and terminate a
11 telecommunications service.²⁹
12

13 Level 3 may provide local telephone exchange service in other states, however the fact
14 remains that Level 3's proposed market expansion project does NOT provide for Level 3
15 to provide telephone exchange service in SRT's local exchange service area. This means
16 that under the terms of the present negotiated/arbitrated interconnection request, Level 3
17 shall not have a customer physically located in SRT's local exchange service area.

18

19 **Q: Is Level 3's VNXX service "functionally equivalent" with FX service?**

20 A: No. I have addressed the issue of FX service earlier in my testimony. I believe that
21 Level 3's use of the terms "not substantively different" and "functionally equivalent" are
22 synonymous. I therefore incorporate my earlier response regarding FX services.

²⁹ 47 U.S.C. § 153(47).

1 **Q: Level 3 raises several items related to compensation of its VNXX traffic. From a**
2 **regulatory perspective, how should Level 3’s VNXX service be classified?**

3 A: The service that Level 3 proposes in its interconnection request uses VNXX codes rate
4 centered in SRT local exchange service area to provide a telecommunications service to
5 Level 3 customers located exclusively outside SRT’s local exchange service area. This
6 service is indistinguishable at a carrier level from existing inbound toll-free
7 interexchange service offerings currently provided by interexchange carriers (IXCs).

8
9 In the FCC’s rules it defines “telephone toll service” as “telephone service between
10 stations in different exchange areas for which there is made a separate charge not
11 included in contracts with subscribers for exchange service.”³⁰ Level 3’s service
12 arrangement is an interexchange service and is identical to the toll-free 800 interexchange
13 service traditionally offered by IXCs, with the significant exception that it seeks to avoid
14 the intercarrier compensation mechanisms for 800 service paid by IXCs and that it uses a
15 seven-digit dial sequence instead of a 1+ ten-digit dial sequence. Because Level 3’s
16 proposed VNXX service is an interexchange service offering, the service Level 3 obtains
17 from SRT is exchange access service.

18
19 One of the most important aspects of the question regarding the type of traffic that Level
20 3 is providing is the fact that, regardless of whether Level 3 chooses to acknowledge that

1 its service is an interexchange service, the service that Level 3 is intending to provide is
2 not “local” because it does not originate and terminate within the same local calling area.
3 For SRT to treat Level 3 any differently than it treats other telecommunications providers
4 who provide the identical inbound interexchange service, and who are assessed the
5 appropriate tariffed charges for access service, would clearly be discriminatory on the
6 part of SRT. To avoid regulatory arbitrage, Level 3’s proposed interexchange service
7 should be subject to usage-based originating access charges.

8
9 **Q. Level 3 asserts that its VNXX traffic is subject to local interconnection under**
10 **Sections 251(a) and 251(c) of the Federal Telecommunications Act (Act). Do you**
11 **agree with this assertion?**

12 **A.** No. As discussed above, the VNXX service Level 3 seeks to provide to its ISP
13 customers does not originate from SRT end users and terminate to Level 3’s customer
14 located within the same local calling area. This traffic is interexchange traffic and is
15 subject appropriate regulatory treatment due all interexchange traffic.

16
17 **Q. Do reciprocal compensation obligations apply to interexchange traffic?**

18 **A.** No. Interstate interexchange traffic is exchanged between carriers pursuant to the FCC’s
19 authority established by Sections 251(g) and 201, under which the FCC has established

³⁰ 47 CFR § 153(48).

1 its access charge regime. Intrastate interexchange traffic is exchanged under state tariff
2 or contract.

3
4
5 **VII. ARBITRATION ISSUE NO. 4: FOR CALLS TO NXX NUMBERS ASSIGNED TO**
6 **THE SAME LOCAL CALLING AREA, ARE THE INTERCONNECTION,**
7 **INTERCARRIER COMPENSATION, AND LOCAL SERVICE CUSTOMER**
8 **BILLING REQUIREMENTS DIFFERENT BASED ON WHETHER THE CALL**
9 **TERMINATES WITHIN THE ORIGINAL LOCAL CALLING AREA OR**
10 **TERMINATES OUTSIDE OF THAT LOCAL CALLING AREA?**

11
12 **Q. Level 3 argues that rating and routing should follow NXX assignment without**
13 **regard to the physical location of the called party. Should the rating of calls be**
14 **based upon the physical location of the calling and the called party end-user rather**
15 **than the rate center upon which the NXXs are assigned?**

16 **A. Yes. Level 3 argues that the location of the ISP's in Bismarck or outside the state is not**
17 **relevant for purposes of determining the jurisdiction and ultimately the appropriate rating**
18 **of such traffic being sent to these ISPs. Level 3 argues that this is common industry**
19 **practice. All of Level 3's customers are exclusively outside the SRT local exchange**
20 **service area.**

21

1 I disagree with Level 3 because the common understanding and practice among many
2 state Commissions and the FCC prohibits Level 3's attempted use of VNXXs. This
3 opinion is expressed by the Florida Commission which states: "We disagree with the
4 [CLEC] position that jurisdiction of traffic should be determined based upon the
5 NPA/NXXs assigned to the calling and called parties. Although presently in the industry
6 switches do look at the NPA/NXXs to determine if a call is local or toll, we believe this
7 practice was established based upon the understanding that NPA/NXXs were assigned to
8 customers within the exchanges to which the NPA/NXXs are homed."³¹ As I cited
9 earlier, the FCC agrees with this sentiment and has encouraged state commissions to
10 enforce the assignment of NXXs in exchanges where CLEC customers physically reside.

11

12 **Q. Would SRT's implementation of Level 3's request entail a redefinition of SRT's**
13 **local calling scope?**

14 A. Yes. For wireline traffic, the state Commissions define the local calling areas. The FCC
15 provides the following guidance to state commissions: "With the exception of traffic to
16 or from a CMRS network, state commissions have the authority to determine what
17 geographic areas should be considered "local areas" for the purpose of applying
18 reciprocal compensation obligations under Section 251(b)(5), consistent with the state

³¹ Florida PSC Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996* (Phases II and IIA), pg. 30, September 10, 2002. (Emphasis supplied)

1 commissions' historical practice of defining local service areas for wireline LECs.
2 Traffic originating or terminating outside of the applicable local area would be subject to
3 interstate and intrastate access charges."³²

4
5 In the CMRS area, where the FCC has established clear jurisdiction, the geographic
6 locations of the calling and called parties at the beginning of a call are of paramount
7 importance. The FCC determines the jurisdictional classification of a CMRS call to be
8 "defined based on the parties' locations at the beginning of the call."³³ The FCC further
9 states that where a cellular company is offering interstate, interexchange CMRS service,
10 the local telephone company providing interconnection is deemed to be providing
11 exchange access to an interexchange carrier and may expect to be paid the appropriate
12 access charge.³⁴

13
14 The Commission has exercised its authority in this area by establishing the boundaries of
15 the exchanges in which local service is offered, and by its rules which determine if and
16 when those boundaries will be changed. State law defines the procedures for and
17 compensation associated with extended area service, the result of which is "local" calling

³² *Local Competition Order* at ¶ 1035.

³³ *Local Competition Order* at ¶ 1043.

³⁴ *Id.* at footnote 2485.

1 boundaries are expanded. Within the established local calling areas, calls between two
2 customers are included in the rate for local exchange service.

3

4 Level 3's attempted use of a VNXX calling arrangement attempts to change the local
5 calling area of SRT by assigning to its customers in a distant exchange a VNXX that
6 appears as a "local" service number within the SRT local calling area. When an ILEC
7 rates a call to a VNXX as if it were a local call, the ILEC local calling area has been
8 involuntarily expanded. If allowed to assign an NXX to a customer located outside the
9 rate center assigned to the NXX, there is no limit to the geographic area or the number of
10 customers to which this practice could be expanded.

11

12 This is not to imply that a CLEC cannot establish its own local calling scope for its own
13 customers. However, it is not Level 3's customers that originate the call and therefore in
14 lieu of creating its own local calling scopes, Level 3 is attempting to expand SRT's local
15 calling scope, which it is not permitted to do under the authority it cites for this
16 arbitration.

17

18 **Q. Is Level 3 providing a "creative" or "innovative" network solution?**

19 A. As previously discussed, it appears that Level 3 is simply seeking regulatory arbitrage
20 through the use of VNXX codes. Whether or not there is a real innovative solution that
21 Level 3 is providing its ISP customers in Denver Colorado is not in question in this

1 proceeding. With respect to any “innovative” solution that Level 3 proposes to offer to
2 end-user consumers who may utilize Level 3’s dial-up numbers to access their ISP, it
3 appears that the only innovation is the proposed implementation of a relatively new
4 mechanism, VNXX codes, that would enable Level 3 to bypass the access charges that
5 are normally associated with the type of interexchange traffic that Level 3 seeks to
6 provide.

7
8 Level 3 has made reference to other “innovations” such as v.92 service. This is hardly a
9 new protocol and I understand that it has not been widely accepted by consumers since
10 its debut in 2000. This service can be provided using existing facilities ordered by Level
11 3.

12
13 **Q. Level 3 claims that without its VNXX services, consumers will have fewer options**
14 **and would be forced to make toll calls. Do you agree?**

15 A: No. Consumers currently use many alternatives to avoid toll charges, such as “true” local
16 number dial-up ISP service, FX service, and 800-type services. Level 3 currently uses a
17 transport service for its ISP service. This option is active today and permits end-user
18 customers in SRT’s Minot exchange to dial-up the Internet in Bismarck on a toll-free
19 basis.

20

1 **Q. Would SRT’s implementation of Level 3’s request be discriminatory or anti-**
2 **competitive to other carriers?**

3 A: For interexchange services, the carrier orders and SRT charges the carrier for access
4 services. By rating calls to Level 3’s interexchange services as free or at “bill and keep”
5 compensation, SRT is forced to discriminate against other interexchange carriers. By
6 inappropriately assigning telephone numbers to customers who are not physically located
7 within the telephone number’s rate center designation, VNXX calling reduces the number
8 of interexchange calls carried by IXC’s by making calls to locations outside local calling
9 areas appear to be local. IXC’s will have to attempt to offer a similar service to their ISP
10 customers to remain competitive. This leads me to question: if VNXX services are
11 permitted for the carriage of interexchange ISP-bound traffic, why not for all
12 interexchange traffic? This question is outside the scope of the present arbitration;
13 nonetheless, the question does identify the potential ramifications of allowing VNXX
14 traffic in the scope of this arbitration.

15
16 VNXX calling is also anti-competitive in the local service market. Under Level 3’s
17 proposal, VNXX calling offloads inter-carrier costs and creates intercarrier compensation
18 disputes with all carriers who are within or may have extended local calling service to the
19 rate center to which Level 3 has designated its VNXXs. If permitted, Level 3 would be
20 able to use its VNXXs to provide interexchange services for their end-users without
21 bearing the relevant costs. Additionally, any local telephone exchange provider who

1 complies with the established ATIS guidelines by appropriately assigning telephone
2 numbers only to customers who are physically located within the designated rate center is
3 placed at a competitive disadvantage for following the established guidelines.

4

5 In the present case, Level 3 is not acting as a CLEC in SRT's local exchange service area
6 because it does not intend to provide local telephone exchange or exchange access
7 service to customers located within SRT's serving area. Indeed, Level 3's proposed
8 service is simply an interexchange service. Allowing Level 3 to provide an
9 interexchange service as if it were a local service would be discriminatory to SRT's
10 existing IXC customers who remit payment to SRT for the Commission-approved
11 tariffed rates for such exchange access service. As previously addressed, to permit Level
12 3 to employ VNXXs could expand SRT's local calling area to include the entire state of
13 North Dakota, or quite possibly the entire nation, considering the location of Level 3's
14 customers. This type of discriminatory treatment will send the inappropriate signals to
15 both end users and carriers alike, and would not be in the public interest.

16

1 **VIII. ARBITRATION ISSUE NO. 5: HAS LEVEL 3 MADE A *BONA FIDE* REQUEST**
2 **FOR INTERCONNECTION UNDER SECTION 251(f)(1) OF THE ACT?**
3

4 **Q: Are you familiar with subpart (f) of Section 251 of the Act?**

5 A: Yes.

6 **Q: Has Level 3 made a *bona fide* request under this section of the Act?**

7 A: No. Level 3 has stated in its request for interconnection and in its *Petition for Arbitration*
8 that it is NOT seeking to remove any rural exemption provided for under subpart (f) of
9 Section 251.

10
11 **IX. ARBITRATION ISSUE NO. 6: IS SRT EXEMPT FROM NEGOTIATION AND**
12 **INTERCONNECTION OBLIGATIONS PURSUANT TO SECTION 251(f)(1) OF**
13 **THE COMMUNICATIONS ACT OF 1934, AS AMENDED?**

14
15 **Q: How does the exemption in section 251(f)(1) apply to SRT?**

16 A: The rural exemption was granted by Congress and applies to SRT, a rural telephone
17 company as defined by Congress. This exemption relieves SRT from certain duties
18 found in Section 251(c) of the Act.

19
20 The request from Level 3 was identified as a Section 251(a) request. The Section
21 251(f)(1) rural exemption does not apply to Section 251(a) duties.

1

2

While Level 3 did not specifically request to negotiate the terms for a Section 251(b)(5) – Reciprocal Compensation obligation, Level 3 clearly seeks a specific reciprocal compensation agreement.

3

4

5

6

The problem with addressing Section 251(b)(5) compensation in this proceeding is that Level 3 does not have any traffic that would qualify for Section 251(b)(5) compensation.

7

8

All of Level 3's proposed traffic is interexchange traffic subject to the Section 251(g) carve-out provision and subject to access charges.

9

10

11

12

X. CONCLUSION

13

14

Q. How do you believe the Commission should resolve this proceeding?

15

A. Level 3 is not requesting to provide local telephone exchange or exchange access to customers within SRT's local service area that would necessitate a local interconnection agreement, but rather to originate interexchange traffic that is not subject to the local interconnection requirements of Section 251(a) and 251(c) of the Act. Level 3 is attempting to provide an interexchange service under the guise of local service in order to arbitrage the exchange access system developed by the Commission and the FCC. It is clear, not only through Level 3's description of their own service, but through an

16

17

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21

1 understanding of who Level 3's customers are, that Level 3 is in the business of
2 providing dial-up interexchange data services to an ISP customer base. The service that
3 Level 3 intends to deploy, however, is what determines how to treat Level 3's traffic
4 from both a regulatory and compensatory standpoint. Because Level 3 intends to
5 originate traffic from SRT exchanges and terminate this traffic to its ISP customer
6 located outside of SRT's local calling area, it is clear that Level 3's proposed service
7 utilizes SRT's exchange access service. It is critical to remember that while Level 3's
8 traffic is bound for ISPs, this traffic is interexchange in nature, not subject to Section
9 251(b)(5) or 251(c)(2).

10

11 The primary distinction in the present case is that Level 3 is attempting to obtain a free
12 service by use of a VNXX service arrangement and should be assessed the appropriate
13 access charges for the use of SRT's network, just as other carriers are liable for their
14 origination of interexchange traffic today. As discussed, Level 3's proposed VNXX
15 service arrangement violates established industry guidelines developed by the NANPA,
16 which are designed to provide the rules by which all carriers use the nation's limited
17 numbering resources.

18

19 Further, I have shown that Level 3's proposed service is not FX service as defined by the
20 FCC and instead is an interexchange service offering that competes with interexchange

1 carriers' inbound toll-free calling services, which are subject to originating exchange
2 access charges. Treatment of this service any differently would be discriminatory.

3

4 Clearly, Level 3 seeks to arbitrage the regulatory requirements for interexchange traffic
5 under the guise of "local interconnection" in violation of the requirements outlined in the
6 FCC's *Local Competition Order*. As such, the Commission should acknowledge Level
7 3's proposed service arrangement and traffic as interexchange traffic not subject to local
8 interconnection requirements of the Act. Likewise, the Commission should allow the
9 existing exchange access charge regime to apply in this case.

10

11 **Q. Does this conclude your pre-filed direct testimony?**

12 A: Yes.

**PRE-FILED DIRECT TESTIMONY OF DOUGLAS MEREDITH
ON BEHALF OF SRT COMMUNICATIONS, INC.**

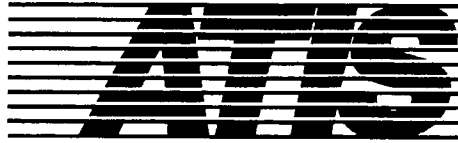
December 4, 2002

EXHIBIT DDM-1

Central Office Code (nxx) Assignment Guidelines

Industry Number Committee (INS)

Alliance for Telecommunications Industry Solutions (ATIS)



**Alliance for
Telecommunications
Industry Solutions**

Sponsor of



**Industry Numbering
Committee**

**1200 G Street NW
Suite 500
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**CENTRAL OFFICE
CODE (NXX)
ASSIGNMENT GUIDELINES**

These guidelines are reissued with the
resolution of INC Issue 374.

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Preface

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Central Office Code (NXX) Assignment Request and Confirmation Forms

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Part 2 - Routing and Rating Information (Forms 1-8)

Part 3 - Administrator's Response/Confirmation

Part 4 - Confirmation of CO Code in Service

Part 4 PA - Confirmation of Code In Service (Submitted by the Pooling Administrator)

***Note: Previous Part 2, Forms 3, 4 and 5 have been deleted.**

1.0 Purpose and Scope of This Document

This document specifies guidelines for the assignment of central office codes (also referred to as CO codes in this document). The term CO code or NXX refers to sub-NPA destination codes for addressing. Sub-NPA refers to digits D-E-F of a 10-digit NANP Area address, e.g., 740 is the CO code (NXX) in (201) 740-1111. Examples of uses for CO codes (NXX) for which these guidelines apply include plain old telephone service (POTS), Centrex, Direct Inward Dialing (DID), Commercial Mobile Radio Service (CMRS), data lines, facsimile, coin phones, and customer owned pay phones. While these guidelines were developed at the direction of the FCC,¹ they do not supersede controlling appropriate NANP Area governmental or regulatory principles, guidelines and requirements. These industry consensus guidelines are expected to apply throughout the NANP Area subject to guidelines and constraints of the NANP Area administrations unless the affected administrations direct otherwise.²

These guidelines apply only to the assignment of CO codes (NXX) within geographic numbering plan areas (NPAs). This does not preclude a future effort to address non-geographic NPAs in the same guidelines.³ CO codes (NXXs) are assigned for use at a Switching Entity or Point of Interconnection they own or control. Entities assigned CO Codes are termed "code holders" in areas where thousands-block number pooling has not been implemented or for those entities that are not participating in thousands-block number pooling. Where thousands-block number pooling has been implemented, an entity assigned a CO Code is designated as the "LERG⁴ Assignee." While the ultimate delivery of any call to a CO code (NXX) need not be geographically identified, by necessity initial routing is geographically defined. Therefore, for assignment and routing purposes, the CO code (NXX) is normally associated with a specific geographic location within an NPA, from which it is assigned. For some companies this is also used for billing purposes.

¹ This effort has been undertaken at the direction of the Federal Communications Commission (FCC), in a letter to NANPA dated June 21, 1991, in an attempt to develop procedures that can be applied uniformly while using a finite numbering resource in the most efficient and effective manner possible and subsequently changed per FCC 00-104 and FCC 00-429.

² The Canadian Radio-television and Telecommunications Commission (CRTC) has approved the Canadian Central Office Code (NXX) Assignment Guidelines for the administration of Central Office Codes within Canadian Numbering Plan Areas (NPAs) by the Canadian Numbering Administrator (CNA). See www.cnac.ca.

³ Separate procedures apply to the assignment of NXX codes within currently assigned Service Access Codes (SACs), and others will be developed, as appropriate, as new SACs are assigned by NANPA. For example, NXX assignment guidelines for the 900 SACs are available. Separate guidelines also will be prepared to address the assignment of numbering resources reserved for non-geographic applications.

⁴ LERG in the phrase "LERG Assignee" used in this document refers to the Telcordia™ LERG™ Routing Guide, Telcordia and LERG Routing Guides are trademarks of Telcordia Technologies, Inc.

2.0 Assumptions and Constraints

The development of the assignment guidelines includes the following assumptions and constraints.⁵

- 2.1 NANP resources, including those covered in these guidelines, are collectively managed by the North American Telecommunications industry with oversight of the North American regulatory authorities. The NANP is the basic numbering scheme for the public switched telecommunications networks in the nineteen countries that are participants in the North American Numbering Plan. NANP resources are used to route calls to subscriber terminals, and may be included in the call record for the purpose of rating calls.

The NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered, or leased by the assignee for a fee or other consideration. Transfer of code(s) due to merger/acquisition is permitted.

If a resource is sold, brokered, bartered, or leased for a fee, the resource is subject to reclamation.⁶ Unused numbers may also be subject to reclamation for reassignment to other carriers.⁷

- 2.2 NANP numbering resources shall be assigned to permit the most effective and efficient use of a finite numbering resource in order to prevent premature exhaust of the NANP and delay the need to develop and implement costly new numbering plans. Efficient resource management and code conservation are necessary due to the industry impacts of expanding the numbering resource (e.g., expansion from 10 to 11 digits). Impacts to the industry include:

- Customer impacts (e.g., dialing, changes to advertising and stationery, etc.)
- Customer Premise Equipment (CPE) modifications
- Domestic and international switching hardware and software modifications
- Operational support systems modifications
- Reprogramming of non-telecommunications databases that contain telephone numbers.

⁵ At present, various procedures are employed to recover costs associated with the assignment and implementation of codes. The treatment of these or any future costs associated with CO code assignments is not addressed in these guidelines.

⁶ Supported by the NANC in letter dated 7/30/97 from the NANC Chairman to the INC Moderator.

⁷ FCC 00-104, ¶ 5.

-
- 2.3 These guidelines treat the assignment of central office codes (NXX), including submission of new assignments for inclusion in the Telcordia™ Business Integrated Routing and Rating Database System (BIRRDS) and LIDB Access Support System (LASS) so that notification to the industry can take place through BIRRDS outputs. Examples of these outputs are the Telcordia™ LERG™ Routing Guide, the Telcordia™ NPA/NXX) Activity Guide (NNAG), the Telcordia™ TPM™ Data Source and the Telcordia™ NPA/NXX Vertical and Horizontal Coordinates Data (VHCD), and LASS outputs such as the Telcordia™ LIDB Access Routing Guide (LARG). Implementation of these assignments is beyond the scope of these guidelines⁸.
- 2.4 If regulatory certification is required, the applicant must be able to demonstrate that regulatory authorization has been obtained for the area where the code is to be utilized.
- 2.5 The guidelines should provide the greatest latitude in the provision of telecommunications services while effectively managing a finite resource.
- 2.6 These assignment guidelines also apply to an environment where number portability and/or number pooling have been implemented.
- 2.7 These guidelines do not address the issue of who will fulfill the role of CO Code Administrator(s) or Pooling Administrator(s) (PA). The guidelines described herein were developed by the industry without any assumption on who should be the CO Code Administrator(s) or Pooling Administrator(s).⁹
- 2.8 These assignment guidelines were prepared by the industry to be followed on a voluntary basis. However, FCC 00-104 - *Report and Order and Further Notice of Proposed Rule Making*, released March 31, 2000 and FCC 00-429 - *Second Report and Order, Order on Reconsideration* contain "Rules" associated with CO/NXX number administration which have been incorporated and are referenced by a footnote in the format "FCC 00-104 . . ." or "FCC 00- 429". Should the "Rules" change, the associated text in the guidelines and references would change accordingly.
- 2.9 Administrative assignment of the CO code (NXX) public resource to a code holder/LERG assignee does not imply ownership of the resource by Code Administrator, nor does it imply ownership by the code holder/ LERG assignee to which it is assigned.
- 2.10 SPs and numbering resource administrators are responsible for managing numbering resources in accordance with these guidelines and the orders of applicable regulatory authorities. Both SPs and numbering resource administrators are subject to audits. Further information may be found in FCC 00-104 ¶62, FCC 00-429 ¶81-99, and 47 CFR § 52.15(k).

⁸ TPM Data Source is a trademark of Telcordia Technologies, Inc.

⁹ A list of the current Code Administrator(s) is available upon request from NANPA (See Section 10).

- 2.11 Audits of the CO Code Administrator(s), the Pooling Administrator(s), and code applicants/holders may be performed to: 1) ensure uniformity in application of these guidelines by a CO Code Administrator to all code requests received, 2) ensure compliance with these guidelines by code applicants/holders and CO Code Administrator, and 3) ensure the efficient and effective use of numbering resources by code applicants/holders and the efficient management of numbering resources by CO Code Administrator.
- 2.12 An applicant is not required to provide any additional explanation or justification of items that he/she has certified. However, certification alone may not provide the CO Code Administrator(s) with sufficient information upon which to make a decision regarding code assignment, and additional dialog and written documentation may be required. The CO Code Administrator(s) is still obligated to reply within 10 business days. Service providers participating in number pooling shall apply to the PA for all numbering resources; i.e., thousands-blocks and full NXX codes. In addition, SPs participating in number pooling must submit changes or disconnects for pooled NXXs to the PA. Changes or disconnects for non-pooled NXXs in a pooling rate area should be sent to NANPA.
- 2.13 State commissions have access to service providers' applications for numbering resources. State commissions should request copies of such applications from the service providers operating within their states, and service providers must comply with state commission requests for copies of numbering resource applications. Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources.¹⁰
- 2.14 It is assumed from a wireline perspective that CO codes/blocks allocated to a wireline service provider are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO codes/blocks are assigned. Exceptions exist, for example tariffed services such as foreign exchange service.

3.0 Assignment Principles

The following assignment principles apply to all aspects of the CO code (NXX) Guidelines:

- 3.1 CO codes (NXXs) are assigned to entities for use at a Switching Entity or Point of Interconnection they own or control. Where thousands-block number pooling has been implemented, an entity assigned a CO Code is designated as the "LERG Assignee." Central office codes (NXX), as part of NANP telephone numbers, are to be assigned

¹⁰ FCC 01-362, § 52.15 (g)(5).

only to identify initial destination addresses in the public switched telephone network (PSTN), not addresses within private networks.

- 3.2 Central office codes (NXX) are a finite resource that should be used in the most effective and efficient manner possible. All applicants will be required to provide a completed Part 1 form and, for additional codes, quantitative support to demonstrate compliance with these guidelines. The quantitative information required for an additional code request is the "CO Code Assignment Months to Exhaust Certification Worksheet - TN Level" (Appendix B) or "CO Code Assignment Months to Exhaust Certification Worksheet – 1000-block Level" (Appendix G). The applicant should retain a copy in the event of an audit or regulatory initiative (See Section 4.2.1).
- 3.3 Information that is submitted by applicants in support of code assignment shall be kept to a minimum, shall be uniform for all applicants, and on request shall be treated as proprietary and adequately safeguarded. Information requested for BIRRDS will become available to the public upon input into those systems.
- 3.4 Central office codes shall be assigned in a fair and impartial manner to any applicant that meets the criteria for assignment as detailed in Section 4.0.
- 3.5 Applicants for central office codes must comply with all applicable local governmental, state, federal and the NANP Area governmental regulations relative to the services they wish to provide.
- 3.6 Any entity that is denied the assignment of one or more central office codes under these guidelines has the right to appeal that decision per Section 13.
- 3.7 Affected parties¹¹ in a given geographic area have the right and will be given the opportunity to participate as early as possible in the process of determining the alternatives for addressing CO code (NXX) exhaust and relief in that area before the CO Code Administrator(s) submits a final recommendation to the relevant regulatory body.
- 3.8 Resource conservation, in and of itself, should not inhibit or otherwise impede, the ability to obtain NXXs.

4.0 Criteria for the Assignment of Central Office Codes

The assignment criteria in the following sections shall be used by CO Code Administrator(s) in reviewing a central office code assignment request from a service provider for an initial and/or an additional code:

¹¹ Affected parties are a) those entities that have applied for and/or received central office code (NXX) assignments or reservations within the affected NPA per Section 4.0 of these Guidelines; b) all interested members of the industry within the affected NPA.

4.1 Code Assignment Criteria for Both Initial and Growth Resources

CO codes (NXXs) are assigned to entities for use at a Switching Entity or Point of Interconnection they own or control. Where thousands-block number pooling has been implemented, an entity assigned a CO Code is designated as the "LERG Assignee." Assignment of the initial code(s) will be to the extent required to terminate PSTN traffic as authorized or permitted by the appropriate regulatory or governmental authorities, and provided all the criteria in Sections 4.1.1 through 4.1.3 are met. An initial code assignment will be based on a unique rate center¹² consistent with regulatory restriction.

Utilization criteria or projection will not be used to justify an initial NXX assignment. The applicant must demonstrate authorization and preparation to provide service before receiving initial numbering resources.¹³ These requirements apply equally to carriers requesting an initial NXX code and those requesting an initial thousand-block pursuant to the pooling requirements established in FCC Report and Order No. 00-104.¹⁴ Where the PA is applying for the assignment of a CO Code, the service provider whose OCN is shown on the CO Code Application form shall meet the above requirement.

- 4.1.1 The applicant must certify a need for NANP numbers, e.g., provision of wireline or wireless service in the Public Switched Telephone Network.

In order to obtain CO codes, an applicant must submit or have submitted a North American Numbering Plan Numbering Resource Utilization/Forecast (NRUF) Report (See NRUF Reporting Guidelines) to the NANPA for the NPA(s) in which the CO code(s) is being requested.¹⁵ This requirement shall not apply in instances where an NPA has been implemented since the last NRUF Report and the Service Provider has submitted a NRUF Report for the NPA(s) previously serving the geographic areas involved.

The applicant must submit an NXX request form certifying that a need exists for an NXX assignment to a point of interconnection or a switching entity due to routing, billing, regulatory, or tariff requirements. The NXX request form must provide an Operating Company Number (OCN), which uniquely identifies the applicant. The NANPA will not issue numbering resources to a carrier without an OCN.¹⁶ The OCN cannot be shared

¹² Multiple NXX codes, each associated with a different rate center, may be assigned to the same switching entity/POI. Such arrangements may require "Meet Point Billing-like" considerations to permit proper recovery of interconnection charges (see also Section 6.2.3).

¹³ FCC 00-104, § 52.15, (g) (2) i – ii.

¹⁴ FCC 00-104, ¶ 97.

¹⁵ FCC 00-104, § 52.15 (f) (4) (5).

¹⁶ FCC 01-362, § 52.15 (g)(4).

with another service provider.

- 4.1.2 All applications for numbering resources must include the company name, company headquarters address, OCN, parent company's OCN(s),¹⁷ and the primary type of business in which the numbering resources will be used.
- 4.1.3. An applicant may request an NXX assignment for the establishment of an initial Location Routing Number (LRN) per POI or switching entity for each LATA in which the applicant has a customer served by that same POI or switch, provided the applicant has no existing resources available for LRN assignment. SPs must meet the months to exhaust and utilization requirements if the request is for a CO code for a new switch in a rate center in which the SP already has numbering resources. SPs may appeal to the appropriate regulatory authorities for exceptions to this rule.
- 4.1.4 Where thousands-block number pooling has been implemented, the PA is authorized to apply for CO Codes. The PA will select a "LERG Assignee" for codes to be added to the pool, in accordance with steps outlined in the Thousands-Block (NXX-X) Pooling Administration Guidelines. The LERG Assignee will fill out the CO Code Request and submit it to the PA who will then forward the request to the Code Administrator. The OCN and AOCN of the "LERG Assignee" will be entered on the NXX request form. The LERG Assignee shall also indicate on the CO Code Application that the NXX being requested is designated for thousands-block number pooling by checking the "Pool Indicator" box on the request form, and provide the names of both the PA and the LERG Assignee on the application (Code Applicant section) for the CO Code Administrator response purposes.
- 4.1.4.1 The PA shall apply for additional CO Codes in the following instances:
1. to add resources to the industry inventory pool in order to establish and maintain a 6 month¹⁸ inventory at the rate center level.
 2. to replenish the industry inventory pool in order to meet a service provider's request for a specific block due to technical reasons.
 3. to request an entire NXX code (i.e., 10,000 numbers) to satisfy the numbering needs for a service provider's single customer. A single customer is defined as one customer requiring 10,000 consecutive telephone numbers from one central office exchange.
 4. to request an NXX code for LRN purposes when an SP is deploying a new switching entity/POI that requires the assignment of an LRN.

¹⁷ FCC 00-104, § 52.15 (g) (1).

¹⁸ FCC 00-104, § 52.15 (d) (2).

4.1.5 All information provided on the NXX request form will be considered confidential, with selected information made available publicly only for those fields that must be input to the BIRRDs. The information placed in the BIRRDs becomes public upon assignment of the new code in the appropriate routing data base product.

4.2 Code Assignment Criteria for Initial Codes

Application to the NANPA for an initial code assignment shall include evidence that the applicant is authorized to provide service in the area for which the code is being requested,¹⁹ and that the applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date requested.²⁰

For an initial code request, a code applicant must provide one form of documentation from both Sections 4.2.1 and 4.2.2 below:

4.2.1 License and/or Certification

Evidence that demonstrates the SP has a license or authority issued by the FCC or a Certificate of Public Convenience and Necessity (CPCN) issued by a State Regulatory Body to provide service in the city and state/rate center/MSA#/RSA# /MTA#/BTA#/national /LATA. The SP may attach a copy of the FCC license or authority or CPCN to the application.

4.2.2 Facilities Readiness

Appropriate evidence that facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date (LERG Routing Guide effective date). Evidence may be provided via a copy of any one of the following document(s)²¹ the SP selects:

1. An executed interconnection agreement between a Local Exchange Carrier and the service provider requesting numbering resources. The relevant pages are the cover page, area covered and the signature page from the interconnection agreement.
2. Service Provider developed business plans to provide service in this area. Relevant excerpts from the Business Plan to include planned coverage area and in service dates.²²

¹⁹ FCC 00-104, § 52.15 (g) (2) (i).

²⁰ FCC 00-104, § 52.15 (g) (2) (ii).

²¹ There may be additional or different criteria requested by state regulators. See FCC 00-104 ¶ 98.

²² Provision of business plans may not be sufficient proof of facilities readiness in some serving areas.

-
3. A letter from the SP indicating the scheduled switch installation complete date (month/day/year), including the address location, as well as Point of Interconnection or CLLI.
 4. The service order request, pre-planning checklist, or the equivalent to show that facilities for origination or termination for calls being used specifically for the requested code(s) have been requested and are anticipated to be completed prior to the effective date of the code (See Appendix A for an example of a pre-planning checklist showing the identified fields which must be completed).
 5. A confirmation letter or letter of intent provided by the entity with which the requesting SP will interconnect. Interconnecting carriers are encouraged, but not required, to provide such letters.
 6. The construction schedule including the following information: site identifier, latitude and longitude of the cell site, and its construction start or complete date. The numbers assigned to the facilities identified must serve subscribers in the geographic area corresponding with the rate center requested.
 7. A letter from the requesting carrier identifying a code in service in another rate center that already uses the same facilities that will be used to serve the new rate center where the initial code is being requested.

All documentation submitted will be held confidential pursuant to FCC confidentiality rules.²³

4.3 Code Assignment Criteria for Growth Codes

Assignment of additional code(s) (growth codes) in a rate center will be made by satisfying the criteria in Section 4.3.1, 4.3.2, 4.3.3, or 4.3.4.

The MTE form submitted must demonstrate that all of the numbers assigned to the code holder in the rate center will exhaust within six months. In the MTE calculation, SPs must include every code in the rate center, regardless of NPA.²⁴ An exception occurs in cases where a rate center is split among multiple NPAs due to a regulatory order by a state commission. Should that occur, the MTE calculation shall be based on only those codes in the rate center and particular NPA for which additional resources are being requested.

- 4.3.1 For additional codes for growth, each code holder will demonstrate that existing codes for the rate center will exhaust within 6 months and *must* supply supporting data using

²³ 47 CFR, § 52.13 (c) (7)

²⁴ State commissions may have certain requirements as to the treatment of different types of grandfathered codes.

the "CO Code Assignment Months to Exhaust Certification Worksheet - TN Level"
which covers:²⁵

1. Telephone Number (TNs) Available for Assignment;
2. Growth history for six months
3. Projected demand for the coming 12 months; and
4. The applicants must demonstrate that existing numbering resources for the rate center will exhaust within 6 months.²⁶

The applicants must also meet the following numbering resource utilization levels:²⁷

- 60% effective May 8, 2001;
- 65% effective June 30, 2002;
- 70% effective June 30, 2003; and
- 75% effective June 30, 2004.

The numbering resource utilization level shall be calculated by dividing all assigned numbers by the total numbering resources in the applicant's inventory and multiplying the result by 100. Numbering resources activated in the LERG Routing Guide within the preceding 90 days of reporting utilization levels may be excluded from the utilization calculation.²⁸

- 4.3.2 Whether to replenish the inventory pool or meet a service provider's immediate request, the respective Months To Exhaust form sent to the Co Code Administrator by the PA will demonstrate that existing thousands-blocks for the rate center will exhaust within 6 months and will have documented and be prepared to supply supporting data to the CO Code Administrator in the form of:²⁹

1. Thousands-blocks available for assignment;
2. Growth history of thousands-blocks, or equivalent information, for the past 6 months; and
3. Projected demand for thousands-blocks in the next 12 months³⁰.

The PA shall complete the CO Code Assignment Months to Exhaust Certification Worksheet - 1000 Block Level and retain in the event of an audit or regulatory initiative and forward a copy to the CO Code Administrator.

²⁵ FCC 00-104, § 52.15 (g) (3) (iii).

²⁶ FCC 00 429 ¶ 29

²⁷ FCC 00 429 §52.15 (h)

²⁸ FCC 00-104, § 52.15 (g) (3) (i) (ii) .

²⁹ FCC 00-104, ¶ 189.

³⁰ FCC 00-104, § 52.15 (g) (3) (i).

The PA when applying to the CO Code Administrator for an NXX Code to a) satisfy the needs of an SP's single customer requiring 10,000 consecutive TNs, or b) be assigned for LRN purposes, will certify the need by providing the CO Code Administrator a copy of the "Thousands-Block Number Pooling Months To Exhaust Certification Worksheet - TN Level" that is supplied to the PA by the requesting SP in accordance with the Thousands-Block Number (NXX) Pooling Administration Guidelines which covers:

1. Telephone numbers (TNs) available for assignment;
2. Incremental growth history of new TNs for the past 6 months (does not include ported TNs);
3. Projected incremental demand for TNs in the next 12 months³¹; and
4. Utilization threshold level for the rate center in which growth numbering resources are being requested.

The PA must supply all certification information to the CO Code Administrator.

- 4.3.3 An additional code(s)³² is necessary for distinct routing, rating, or billing purposes (e.g., Calling Party Pays). Applicant must provide the CO Code Assignment Months To Exhaust Certification Worksheet – TN Level and utilization data by rate center as stated in Section 4.3.1.³³
- 4.3.4 An additional code(s) is necessary for other reasons. The applicant must provide an explanation of why existing assigned resources cannot satisfy this requirement. Applicant must provide the CO Code Assignment Months To Exhaust Certification Worksheet – TN Level and utilization data by rate center as stated in Section 4.3.1.³⁴
- 4.4 Where LRN-LNP based thousands-block number pooling has not been deployed, NXX code sharing between carriers, in which portions of the NXX codes are assigned to multiple switching entities/POIs, should be avoided unless mutually agreed to by affected parties.

When a single switching entity/POI provides access for multiple carriers (i.e., wireless and wireline carriers), and the need for numbers for either carrier is less than a full code (10,000 numbers), the unused numbers from an NXX code serving one of these carriers can be made available for any carrier served by the switching entity/POI.³⁵

³¹ FCC 00-104, § 52.15 (g) (3) (i).

³² Any additional information that can be provided by the code applicant may facilitate the processing of that application.

³³ FCC 00-104, § 52.15 (g) (3) (i) (A) and (B).

³⁴ FCC 00-104, § 52.15 (g) (3) (i) (A) and (B).

³⁵ In certain situations there are technical, billing, service delivery, roaming, and/or tariff reasons that require partial and/or different NXX assignments.

-
- 4.5 Codes shall be assigned on a first-come, first-served basis. Good faith efforts shall be made to eliminate or to minimize the number of reserved codes. Special requirements exist in jeopardy NPA situation.

Reservation is permitted if the applicant can demonstrate the reservation of the code is essential to accommodate technical or planning constraints or pending regulatory approval of a tariff and/or certification /registration if appropriate documentation to be provided should demonstrate that a request for regulatory certification/ registration has been submitted to one appropriate regulatory body to provide service when the applicant has provided a proposed use date within twelve months.

No reservation will be made unless the applicant meets the requirements of code assignment as outlined in Section 4 for initial codes (Section 4.2.1 - 4.2.2) or for additional codes (Section 4.3 -4.3.3), depending upon whether the reserved code is to be an initial or additional code.

If a reserved code is not activated within eighteen months, the code will be released from reservation.

When the reservation was due to technical constraints (e.g., step-by-step switches) solely, the reservation will be extended until the constraint is no longer present.

Upon written request to the CO Code Administrator(s), one reservation extension of six months will be granted when the proposed code use date will be missed due to circumstances beyond the control of the applicant (e.g., hardware, software provision delays, regulatory delays, etc.).

4.6 Unassignable CO/NXX Codes

The following CO codes cannot be assigned to a single SP:

- 4.6.1 The N11 codes are not to be assigned by NANPA to service providers as central office (NXX) codes. Only the FCC and other regulatory bodies can designate the official use of these codes.

Calls to these codes require no additional digits:

- 211 – Community Information and Referral Services
- 311 – Non-Emergency Police and Other Governmental Services
- 411 – Local Directory Assistance
- 511 – Travel Information Services
- 611 –Repair Service
- 711 – Telecommunications Relay Service (TRS)
- 811 – Business Office
- 911 – Emergency

- 4.6.2 The 555 code is not to be assigned by NANPA to a single service provider as a central office (NXX) code because its numbers are assigned by NANPA on a line-level basis to different entities. Calls to this code are completed with 7 or 10 digits.
- 4.6.3 In 1996, line number 700-4141 was established in each NPA as access for verification of a customer's IntraLATA carrier. However, this does not preclude the ability of NANPA to assign the 700 NXX code to a single Service Provider with the understanding that line number 4141 is protected and can only be used for its intended purpose.
- 4.6.4 The 950 code is not to be assigned by NANPA to a single service provider as a central office (NXX) code because it is used by the entire industry to access a Feature Group B Carrier Identification Codes (CIC) and has special Automatic Message Accounting (AMA) triggers. The 950 code plus the CIC constitutes a Carrier Access Code (CAC): 950-XXXX.
- 4.6.5 The 958 and 959 codes are not to be assigned by NANPA to a single service provider as central office (NXX) codes because they are used by the entire industry, in every central office, as standard test codes.
- 4.6.6 The 976 code can only be used for Information Delivery Service and its assignment to Service Providers is still under INC review.

These special use codes are duplicated in new NPAs during NPA relief. Any of these codes that have specific hosting company information may require additional documentation (Part 1 form) prior to being added to the routing and rating database.

5.0 CO Code (NXX) Assignment Functions

The CO Code Administrator(s) shall:

- 5.1 Produce and make available upon request information regarding NANPA CO Code Administration processes, guidelines, interfaces and services. Provide upon request of the code applicant information on how to obtain documents related to CO Code Administration by either referring them to web sites where it will be possible to download electronic copies or provide paper copies if the requester cannot obtain the document via the Internet.
- 5.2 Receive and process applications (CO Code (NXX) Assignment Request Form Part 1) for CO codes (NXX) within the geographic NPA(s) for which the CO Code Administrator is responsible.

For rate centers transitioning to pooling:

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- The CO Code Administrator will only process NXX requests received at least 33 calendar days prior to the Pool Start Date.
 - Within the 33 calendar days prior to Pool Start Date, applications for codes/blocks will not be accepted. However within this 33-day interval, the NANPA will continue to process code applications for:
 - CO codes awarded via lottery;
 - LRN requests;
 - full CO code request for a single customer;
 - CO code expedite requests;
 - petition/safety valve requests;
 - any requests from non-pooling capable carriers; and
 - PA requests to the NANPA.
 - After Pool Start Date, all pooling-capable carriers will apply to the PA for numbering resources.

5.2.1 Receive NXX Code application from SPs and validate the entire application to determine if the request is in compliance with code assignment policies and guidelines. If one or more errors are identified, the Code Administrator will notify the applicant with a list of all errors on the application. Upon notification, the application is suspended and the applicant has up to two business days to respond with the corrections back to the Code Administrator. If the application is returned within the two business days with all errors corrected, the Code Administrator will lift the suspension and proceed with the assignment process. If the errors identified by the Code Administrator are not corrected by the applicant within two business days, the Code Administrator will issue a Part 3 denial. The NANPA is required to withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements.³⁶

5.2.2 Respond within 10 business days from the date of receipt of an application form by completing the response portion that is part of these guidelines (See Appendix D, II). For an NXX assigned to a pool, the CO Code Administrator shall also set the "Pool Indicator" on the CO Code ACD screen in BIRRDs to designate that the NXX is assigned to a pool. For those NXXs which the "Pool Indicator" has been set, the CO Code Administrator shall provide a Central Office Code (NXX) Assignment Request - Part 3 (Administrator's Response/Confirmation) directly to both the PA and the LERG Routing Guide Assignee whose OCN appears on the request form.

The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) business days of receiving a request for numbering resources.³⁷ If the Code Administrator suspended the application within two business days of the end of the ten-day interval, the ten-day period may be extended up to two business days. Although the NANPA is required to withhold numbering resources from

³⁶ FCC 00-104, § 52.15 (g) (3) (B) (iv).

³⁷ FCC 01-362, § 52.15 (g)(4).

any U.S. carrier that fails to comply with reporting and number resource application requirements, state commissions have been delegated authority to affirm or overturn a NANPA decision to withhold initial numbering resources.³⁸

- 5.2.3 Review the documentation, verify the carrier's need, and determine if the code request is in compliance with these code assignment policies and guidelines. The NANPA must ensure that SPs satisfy the MTE requirement and the utilization threshold before obtaining additional numbering resources.³⁹ In cases where a code application is denied or suspended, NANPA will:
- a) provide specific reasons for the denial to the applicant in writing and information regarding where and how to appeal the administrator's decision, or
 - b) provide an explanation for the suspension (other than minor errors as noted above) and whether the applicant needs to give further information/documentation.
- 5.2.4 Select an unassigned code for assignment provided the code is not currently being aged due to an NPA split.
- 5.2.5 Monitor CO code usage in order to determine the need for relief or declaration of jeopardy, and notify NPA Relief Coordinators as appropriate. The NPA Relief Coordinators will then perform the notification functions in relief and jeopardy situations (See Section 9).
- 5.2.6 Maintain records on codes assigned plus those available.
- 5.2.7 Perform applicable CO Code utilization surveys as detailed in Section 6.4.1.
- 5.2.8 Verify that the code applicant has submitted a current NRUF Report.
- 5.2.9 Ensure, concurrent with assignment of an NXX to a code applicant, the NPA, NXX, and OCN of the code applicant are input to BIRRDS to indicate that a specific NXX has been assigned to an applicant. Completion of this step will allow the input of Part 2 data entries into BIRRDS that may or may not be performed by the CO Code Administrator (See Code Activation and In Service Timeline in Appendix D, II). Initiate code reclamation if assigned code is not activated and in service within sixty days of expiration of the service provider's applicable activation deadline.⁴⁰ The NANPA shall abide by the state commission's determination to reclaim numbering resources if the state commission is satisfied that the service provider has not activated and commenced assignment to end users of their numbering resources within six months of receipt.⁴¹

³⁸ FCC 00-104, ¶ 98.

³⁹ FCC 01-362, ¶ 50, 56.

⁴⁰ FCC 00-104, § 52.15 (i) 6.

⁴¹ FCC 00-104, § 52.15 (i) 5.

- 5.2.10 Respond to the code applicant or the PA in writing via the appropriate "Administrator's Response--Receipt of the Part 4" form within ten (10) business days of receiving the Part 4 or the Part 4-PA. The response may include, but not be limited to, the following:
- Part 4 Form Received and Approved
 - Invalid Part 4 Form Received
 - Delinquent Part 4 form Received
- 5.3 The CO Code (NXX) Assignment Guidelines Part 2 forms are used to provide information supporting a CO Code assignment (and changes to information for CO Codes previously assigned) for input into the BIRRDS. A Code Holder may elect to enter its own BIRRDS information into BIRRDS, or elect to have the Administrative Operating Company Number (AOCN) function performed by a third party. If requested to do so, NANPA is required to perform the AOCN function. This is done as a contracted "Required Enterprise Service" for which fees are charged. If the applicant has completed Section 1.8 of the Part 1 forms and has designated NANPA as its AOCN, the Part 2 data will be input by NANPA. If a code applicant does not designate NANPA as its AOCN on the Part 1 form, NANPA is not responsible for the input of the BIRRDS assignment data. Additional information can be found at the Telcordia™ Routing Administration (TRA) web site (www.trainfo.com) or by calling the TRA Customer Service Center (732-699-6700) including information on other third party providers of the AOCN function. Code applicants are entirely responsible for ensuring this data will be input within the industry standard timeline.
- 5.4 The following functions have an impact on the accurate routing of calls and are especially applicable to both newly assigned numbers and to the reassignment of existing CO codes.
- 5.4.1 Analyze and help resolve problems related to misrouted calls and calls that cannot be completed. Such trouble investigations should be initiated in the NPA in which the incomplete call originated.
- 5.4.2 Track switch cutovers and code reassignments, and perform other operational functions; e.g., code reclamation.
- 5.4.3 Ensure that the code applicant places the code in service within the time frame specified in Sections 6.3.3 and 4.4 of these guidelines. If the assigned code is not used within this time frame, the CO Code Administrator(s) shall request the return of the code for reassignment.
- 5.5 It is recognized that the overall code administration process, e.g., planning for number relief, is related to and will require exchange of information with the CO code (NXX) assignment process. The additional functions associated with code administration, related to CO codes (NXX) are described in Sections 8 and 11.

The CO Code Administrator may, on occasion, be requested by regulators or through INC recommendations or guidelines to set aside specific CO codes as unassignable. If an applicant requests one of the set-aside codes, the CO Code Administrator will advise the applicant of the reasons the code has been set aside. Should the applicant be unwilling to accept any other available CO code, the CO Code Administrator shall respond with a CO Code Administrator's Response/Confirmation marked "Assignment activity suspended by the administrator." The "Explanation" section will state that the code has been set aside and will identify the body that directed the CO Code Administrator to do so. The applicant may then appeal to that body, and ask that it advise the CO Code Administrator on whether or not to assign the requested set-aside code.

6.0 Responsibilities of Code Applicants and Holders

Code Applicants and Code Holders shall comply with the following. Code applicants and code holders are responsible for obtaining a current copy of the Central Office Code (NXX) Assignment Guidelines. These are available either electronically from the NANPA web site (www.nanpa.com) or on paper from the CO Code Administrator if the requester cannot obtain the document via the Internet.

6.1 The Application Process

- 6.1.1 Code applicants, including the PA, for initial and/or additional CO code (NXX) assignments shall submit their requests to the appropriate CO Code Administrator(s) using the Central Office Code (NXX) Assignment Request and Confirmation Form (Code Request Form). One application form is required per NXX code requested. SPs requesting codes in a rate center that is transitioning to pooling should note the criteria in Section 5.0. The code applicant will complete all required entries on the Code Request Form to the best of his/her knowledge as well as sign the form.

The following are acceptable forms of signature of the code applicant attesting to the truth and accuracy of data provided on the Part 1 form:

1. Signature of *Contact's Name* provided on the Part 1.
2. The entry "Signature on file" must be provided on the Part 1 (this field cannot be left blank), if the Part 1 is submitted electronically. The actual signature must be provided to NANPA to establish a "signature on file" (via letter, fax or other electronic transmission). The document containing the signature on file authorization must also contain the identity of those electronic addresses from which Part 1's can be accepted.
3. Signature other than the *Contact's Name* listed on the Part 1. If signature of code applicant is different than the contact name, an authorization letter must be

submitted to NANPA from the contact (applying company) authorizing the party to submit code requests and receive Part 3 confirmations on the applying company's behalf. The authorization letter must also include the signature of the party who can sign Part 1's for the applying company.

Incomplete/inaccurate code request forms will delay the start of the code assignment process. An Operating Company Number (OCN), which uniquely identifies the applicant, must be provided. The OCN cannot be shared with another service provider. In addition, the applicant's parent company OCN must be provided, if applicable.⁴² The applicant can get OCN information by calling NECA. (See the Forms Part 1, Section 1.2). The information provided on Part 1 of the CO Code Assignment Request Form shall be the official information. Any changes to this information shall be submitted to the CO Code Administrator as described in Section 6.3.1.

- 6.1.2 Requests for code assignments cannot be made more than 6 months prior to the requested effective date. Applicants must request an effective date at least 66 calendar days after the request is sent to NANPA. This 66-calendar day interval is derived by adding the 21 days allotted to code request processing and AOCN input to the industry standard of 45 days for code activation. The code activation interval begins on the date the NXX code request is input into BIRRDs. If the AOCN does not enter the information in sufficient time to allow a 45-day activation interval prior to the effective date, the effective date will be automatically changed in the appropriate TRA databases to ensure a minimum 45-day activation interval.
- 6.1.2.1 Requests to open, modify, or disconnect a code in fewer than 66 calendar days increases the potential for call blocking and/or billing errors and should be avoided except in emergency cases. If an SP must seek an expedite, the burden of implementation is borne by that SP and does not obligate any other SP to activate the code in fewer than 66 days.
- a) The expedited 21-day Interval activities:
- In addition to submitting the Part 1 form to NANPA, the SP obtains agreement from its AOCN to input the Part 2 data within a specific negotiated time period. This can reduce the AOCN period down from 7 days. The SP must provide written confirmation to NANPA of the reduction of the 7 days. *In the case where a Code Applicant/Holder acts as its own AOCN, the Code Applicant/Holder should indicate so on the Part 1. Doing so will reduce the AOCN period down from 7 days.*
 - Then, the SP submits the Part 1 form to NANPA with the attached confirmation from the AOCN if applicable, and NANPA will do everything possible to reduce its 14-day interval.
- b) The expedited 45-day Interval activities:

⁴² FCC 01-362, § 52.15 (g)(4).

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- The SP must follow the Network Interconnection and Interoperability Forum (NIIF) procedures to expedite the 45-day code activation process.⁴³
 - On an exception basis, an activation interval of less than 45 calendar days may be requested on the Part 1. Under no circumstances will an activation interval of less than 30 calendar days be approved by the homing tandem operating company or the NANPA.
 - To open a new code, the Part 1 must be accompanied by documentation from the homing tandem operating company that the shorter interval can be met.
 - To modify or disconnect an existing code, NANPA may have a direct role such as entering changes to data on the ACD screen. If NANPA has a direct role, NANPA has the discretion to grant an expedite without concurrence from the homing tandem operating company.

6.1.3 When requesting growth codes applicants shall meet the requirements as described in Section 4 and conform to the conditions contained therein. Applicants must provide (1) a CO Code Assignment Months to Exhaust Certification Worksheet – TN Level (see Appendix B) that provides utilization by rate center for the preceding six months and projected monthly utilization for the next twelve (12) months; and (2) the applicant's current numbering utilization level for the rate center in which it is seeking growth numbering resources.⁴⁴

6.1.4 For initial codes in a rate center, the code applicant shall provide documented proof⁴⁵ that (1) the code applicant is authorized to provide service in the area for which the numbering resources are requested and (2) the applicant is or will be capable of providing service within 60 days of the number resource activation date.⁴⁶

6.2 Information Required for Code Activation

For electro-mechanical switches, perform technical analysis as necessary to determine the appropriate CO code (NXX) to request.

6.2.1 Before a CO code (NXX) can become active, all code holders are responsible for providing the information shown in Part 2 of the CO Code (NXX) Assignment Request Form that includes routing and rating information for entry into BIRRDS. Applicants should be aware that a Revenue Accounting Office (RAO) code will be necessary on Part 2, and are encouraged to obtain that information in a timely manner to prevent delays in activation (see TRA Part 2 Job Aid, Section 2.2, Item 9). In addition, any changes to the requested effective date and/or Operating Company Number (OCN)

⁴³ For more information, refer to the latest issue of NIIF-008 "Recommended Notification Procedures to Industry for Changes in Access Network Architecture."

⁴⁴ FCC 00-104, § 52.15 (g) (3) (I).

⁴⁵ See sections 4.1 and 4.2 for more information on providing "documented proof" for initial codes.

⁴⁶ FCC 00-104, § 52.15 (g) (2).

need to be provided to the CO Code Administrator as soon as the changes occur. (Note: The LERG Routing Guide contains local routing information obtained from BIRRDS and reflects the current network configuration and scheduled changes within the PSTN). This can be transmitted directly to TRA or via an authorized third party acting on behalf of the code holder.

6.2.2 Each switching center, each rate center and each POI may have unique V&H coordinates.

6.2.3 A code applicant or holder who has issued or is planning to issue credit or calling cards will be responsible for entering CO code (NXX) information into the appropriate LIDB Access Support System (LASS).

6.3 Ongoing Administration

6.3.1 Information Changes

The information associated with a code assignment may change over time. Such changes may occur, for example, because of the transfer of a code to a different company. The CO Code Administrator must be notified of any changes to the information in Part 1 of the CO Code (NXX) Assignment Request Form. This includes changes such as, but not limited to, the tandem homing arrangement, OCN, switching entity/POI and rate center (including a rate center consolidation). For OCN changes due to merger/acquisition, the SP must so state on the Part 1 form.

SPs who change the rate center for a previously assigned NXX that has not been activated shall be required to first demonstrate the need for the NXX in the new rate center. For this change, SPs must first supply a new CO Code Assignment Months to Exhaust Certification Worksheet - TN Level to the CO Code Administrator prior to making any changes to BIRRDS for the affected NXX code. Accordingly, the CO Code Administrator(s) must be informed of these changes to ensure that an accurate record of the code holder/ LERG Routing Guide assignee responsible for the code and the data associated with the code is maintained so as not to jeopardize data integrity. The CO Code Administrator shall verify the retention of the NXX codes using the Months to Exhaust Certification Worksheet - TN Level prior to changes being made to the rate center in the TRA databases.

When changes are submitted the *Switching Identification (Switching Entity/POI)* field, Section 1.2 of the Part 1 Assignment Request Form, and if the information on the Part 1 is exactly the same for all NXXs involved, it is acceptable to submit one Part 1 Form with an attached listing of the NXXs affected.

SPs participating in number pooling must submit changes or disconnects for pooled NXXs to the PA. Changes or disconnects for non-pooled NXXs in a pooling rate area should be sent to NANPA. SPs' requests for changes to the rate center on NXX codes

assigned for pooling will be denied if any block assignments within the NXX have been made to a service provider other than the LERG Assignee.

6.3.2 Responsibilities of the Code Holder

The holder of a CO code (NXX) assigned by the CO Code Administrator or acquired by other means such as transfer (i.e., by merger or acquisition) must use the code consistent with these guidelines. Most importantly, the new code holder must be prepared to participate in an audit in order to effectively assess code utilization. Any revisions to the CO Code (NXX) Assignment Request Form Part 1 must be submitted to the CO Code Administrator as soon as the code holder is aware of these changes. This information is necessary regardless of who has AOCN responsibilities.

If the Code Holder no longer provides service in the rate area associated with the NXX code, the SP must notify the CO Code Administrator. SPs should not change routing information in appropriate databases until NANPA has processed the application and responded with a Part 3. Where there are LNP ports associated with the NXX code being returned, the initial Code Holder shall work cooperatively with the CO Code Administrator and the newly selected Code Holder to transition the default routing functions associated with the NXX code (See Appendix C).

6.3.3 Code Use

Code assignments are made subject to the conditions listed in Section 4. A code assigned either directly by the Code Administrator or through transfer from another Code Holder should be placed in service by the applicable activation deadline, that is, six months after the original effective date returned on the Part 3 and entered on the ACD screen in BIRRDs. Confirmation that codes have been placed "in service," (see glossary) is mandatory (see Central Office Code (NXX) Assignment Request and Confirmation Form - Part 4 and Part 4-PA). If the assignee no longer has need for the code, the code should be returned to the CO Code Administrator(s) for reassignment.

State commissions may investigate and determine whether service providers have activated their numbering resources and may request proof from all service providers that numbering resources have been activated and assignment of telephone numbers has commenced.⁴⁷

6.3.4 Rate Center Consolidation Notification

In the absence of state commission actions, SPs who file tariffs for a rate center consolidation must notify NANPA and the PA at the time of the filing.

6.4 NPA Planning Information

⁴⁷ FCC 00-104, § 52.15 (i) 2.

6.4.1 Forecast and Utilization Reporting Requirements

Forecast and utilization reports from service providers (i.e. Reporting Carriers) shall be completed and submitted to the CO Code Administrator and, where applicable, the Pooling Administrator semi-annually on or before August 1 for the preceding reporting period ending on June 30 and on or before February 1 for the preceding reporting period ending December 31.⁴⁸

The CO Code Administrator will issue a request for forecast and utilization data (i.e. NRUF Report) at least two months prior to the due date (See NRUF Reporting Guidelines). NRUF Report data will be used for projecting NPA exhaust and for planning NPA code relief. NRUF Report data shall be treated on a confidential and proprietary basis. If a service provider identifies a significant change in their forecast or utilization between NRUF reporting cycles, they should provide an updated NRUF Report.

6.4.2 Code holders shall submit the NRUF Report data per instructions in the NRUF Reporting Guidelines.

6.4.3 It is an FCC requirement that Central Office (CO) code holders, pooling carriers, resellers and type 1 wireless carriers (i.e. Reporting Carriers) report accurate and timely forecasting and utilization data via the NRUF Report. The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in FCC rules.⁴⁹

The code/block holders to whom the numbering resources are assigned shall be responsible to report the name and contact information to the NANPA of any other telecommunications carriers that have made numbers available for use and have reported them to NANPA as Intermediate numbers. These other telecommunication carriers, e.g. reseller/type 1 wireless carriers, shall be responsible to provide NRUF Report data to the NANPA.

6.5 All code holders and the PA agree to abide by the code reclamation guidelines outlined in Section 8.

7.0 Criteria for the Transfer of Central Office Codes

The assignment criteria in the following section shall be used by CO Code Administrator(s) in reviewing a central office code request from a service provider to transfer an NXX code from the current code holder to the service provider making the transfer request. These criteria will apply where the transfer of NXX code has been

⁴⁸ FCC 00-104, § 52.15 (f) (6) (i).

⁴⁹ FCC 01-362, § 52.15 (g)(4).

made from one service provider to another service provider where the full NXXs are assigned and reserved to a single end-user customer and shall not be part of a thousands-block number pool.

All time intervals applicable to the assignment of a new code apply in the case of a transfer. These intervals do not address the time intervals needed to perform the network and other rearrangements associated with the transfer.

The following criteria will be used by the CO Code Administrator in reviewing a central office code transfer request:

1. The applicant (service provider receiving the NXX to be transferred) must submit a complete CO code request form. In addition to the code request form, the applicant requesting the code transfer must also provide written confirmation that the current code holder agreed to the transfer of the code. The NANPA should ensure that the transfer was mutually acceptable.
2. Upon confirmation from both parties, NANPA will modify the ACD screen in BIRRDs for the code to be transferred to reflect the OCN and AOCN of the service provider to whom the code will be transferred. As appropriate, NANPA will coordinate these changes with Telcordia Routing Administration.
3. NANPA will notify the service provider receiving the code when the ACD screen has been successfully modified. It is the responsibility of the service provider receiving the code to arrange for the entry of any changes to BIRRDs data associated with a switching entity/POI.

8.0 Reclamation

Reclamation refers to the process by which service providers are required to return numbering resources to the NANPA.⁵⁰ State commissions have the authority to investigate and determine whether code holders have "activated" NXXs assigned to them within the applicable time frames.⁵¹ A state commission may request proof from all code holders that NXX codes have been activated and assignment of the numbers has commenced. NANPA will abide by the state commission's determination. If a state commission declines to exercise the authority delegated to it, the entity designated by the FCC to serve as the NANPA shall exercise this authority with respect to NXX code reclamation. The NANPA shall consult with the Common Carrier Bureau prior to exercising the authority delegated to it in this provision and shall provide service providers an opportunity to explain the circumstances causing the delay in activating and commencing assignment of their numbering resources prior to initiating

⁵⁰ FCC 00-104, § 52.15 (i) 1.

⁵¹ FCC 00-104, ¶ 237.

reclamation. This does not imply that the NANPA has the independent authority to grant code extensions.

8.1 Service Provider Responsibilities

A Service Provider shall return the code, if:

- it is no longer needed for the purpose for which it was requested and assigned,
- the service it was assigned for is disconnected, or
- the CO Code(s) was not placed in service within six months from the original effective date returned on the Part 3 and entered on the ACD screen in BIRRDs.

If the CO Code was assigned after the Pool Start Date, SPs participating in number pooling must return Part 4s to the PA.

The assignee must apply to the appropriate state commission point of contact for an extension date. The assignee must apply to the appropriate FCC point of contact if the appropriate state commission has declined to exercise its delegated reclamation authority.⁵² If an extension is approved, the regulator will notify the assignee and the Code Administrator of the new in service deadline and to whom the Part 4 should be sent. A list of appropriate state commission contacts and the FCC point of contact for those state commissions who decline to exercise their authority can be located at <http://www.nanpa.com>.

8.2 Administrator Responsibilities

For any Codes identified as not having been returned to the appropriate administrator for reassignment, the CO Code Administrator will contact any Non Pooling and Pooling Carriers who were assigned a CO Code prior to the Pool Start Date or the Pooling Administrator for any NXXs assigned after the Pool Start Date.

Codes may be returned for the following reasons:

- Assigned, but no longer in use by the assignee(s),
- Assigned to a service no longer offered,
- Assigned, but not placed in service within six months from the original effective date returned on the Part 3 and entered on the ACD screen in BIRRDs,
- Assigned, but not used in conformance with these assignment guidelines.

The CO Code Administrator shall contact the PA for inquiries about return of NXXs that are in a thousands-block number pool.

⁵² FCC 00-104, ¶ 237.

8.2.2 If a Part 4 has not been received by the Administrator during the first five months following the published original Part 3 effective date, then the Administrator will send, via facsimile/electronic mail, a reminder notice to the code assignee. The notice will be sent no later than one month prior to the end of the 6th month, and will direct the assignee to do one of the following by the end of the sixth month after the LERG Routing Guide effective date:

- If the code is in a non-pooling NPA, submit a Part 4 to NANPA
- If the code is in a pooling NPA, and the code was assigned prior to the implementation of pooling in the NPA, submit the Part 4 to NANPA
- If the code is in a pooling NPA, and the code was assigned to a pooling carrier after pooling was implemented in the NPA, submit the Part 4 to the PA.
- If the code is no longer needed or not in service, return the code by submitting a Part 1.

During the first ten calendar days of each calendar month, the Administrator will prepare and forward a spreadsheet of all existing and newly identified delinquent codes to the appropriate state commission. Spreadsheets for those states that have declined to exercise their reclamation authority will be forwarded to the FCC.

The Administrator must await further direction from the FCC or appropriate state commission for further action. If the FCC or appropriate state commission directs the Administrator to reclaim the code, the Administrator will send a letter to the code holder advising them of the effective date of the disconnect of the code.

If a Part 4 or Part 4-PA is returned to the Administrator for a code appearing on the delinquent list and an extension has not been granted, the Part 4 will be returned to the SP and the Part 4-PA to the Pooling Administrator marked as "refused" or "denied" with a reminder for the code holder to return the Part 4 to the appropriate state commission or to the FCC.

8.2.3 If there are active or pending LNP ports for any TNs within the NXX code which is being returned/reclaimed, the CO Code Administrator shall use the process outlined in Appendix C.

9.0 Central Office Code Conservation and Jeopardy Procedures

Assignment of NANP numbering resources is undertaken with the following objectives: to efficiently and effectively administer/manage a limited NANP resource through code conservation, to delay NPA exhaust and the need for NPA relief (e.g., splits/overlays) for as long as possible, and to delay the eventual exhaust of the NANP. NANPA meets these objectives in the following ways.

9.1 Semi-annual NRUF Report analysis is mandatory and is conducted utilizing projected demand forecasts, provided by code holders to the NANPA (see Section 6.4), to

identify NPAs nearing exhaust. The schedule for projected exhaust will be forwarded by NANPA to the appropriate CO Code Administrator(s) and published in summary format for industry use.⁵³

9.2 Ongoing code administration practices that foster conservation include the following:

9.2.1 Make code applicants aware of the options and potential benefits of sharing NXX codes, consistent with Section 4.4 above.

9.2.2 Use of CO codes for purposes other than assignment to customers should be minimized.

9.2.3 The use of protected codes (NXXs), which permits 7-digit dialing across NPA boundaries, should be eliminated as part of the NPA code relief planning process unless the state commission directs otherwise at the time of the proposed relief. Elimination of protected codes should be accomplished prior to a request for a relief NPA code.⁵⁴

9.2.4 Examination of the continued use of codes from the HNPA to serve customers in an adjacent NPA should be undertaken when the HNPA is nearing exhaust. Continued use should be eliminated where practical.

9.3 Declaration of Jeopardy

9.3.1 An NPA jeopardy condition exists when the forecasted and/or actual demand for NXX resources will exceed the known supply during the planning/implementation interval for relief.

9.3.2 NANPA will notify the appropriate regulatory authority(ies) and the industry that the NPA is in jeopardy. Upon jeopardy declaration, code allocations will initially be set at three per month. Such notification causes the immediate invocation of jeopardy procedures as documented in Sections 9.4-9.6⁵⁵

9.3.3 Should the supply and/or forecasted demand of codes no longer justify jeopardy, NANPA will rescind jeopardy. NANPA will notify the appropriate regulatory authorities and the industry that any jeopardy procedures, including code rationing, no longer apply. In this notification, NANPA will provide the number of codes available in the NPA and a new projected NPA exhaust date.

⁵³ NANPA will be responsible for disseminating NRUF Report results to the affected parties.

⁵⁴ Policy established per letter dated 10/29/97 from the NANC Chairman to the INC Moderator.

⁵⁵ State jurisdiction in fashioning jeopardy procedures must have met the conditions of the FCC Order 98-224, adopted September 11, 1998, "The Pennsylvania Order," i.e., absence of industry consensus and a relief plan decision.

9.4 Jeopardy Meeting

9.4.1 No later than 30 days after jeopardy has been declared, NANPA must notify and convene the industry to develop local industry jeopardy procedure options. At this meeting, NANPA will facilitate discussion of jeopardy code allocations and pursue consensus in a timely manner. NANPA will produce and distribute the meeting record within 15 business days. Local industry options are the determination of:

- Number of codes allocated per month
- Allocation method (e.g. lottery)

- Disposition of Unfilled Request:
 - Code requests that do not receive a code allocation in that current month allocation will be denied and the SP must submit a new application request for future month's allocation.
 - Code requests that do not receive a code allocation in that current month allocation will be held over to the next month's allocation and the SP does not need to submit a new application. NANPA will advance the choice level (see section 9.5.2) of these requests in the next lottery to the next highest choice, unless notified to the contrary by the SP.

- Use of priority numbers as indicated below:
 - Priority numbers are assigned but an SP must resubmit every month to maintain priority status. Failure to resubmit can result in the loss of the priority number. In this scenario, SPs are not added to the priority list until everyone on the current priority list receives a code; OR
 - Priority numbers are assigned. SP does not need to resubmit. First choice requests not receiving a code will be added to the priority list and a code will be assigned at a future date.

SPs are required to submit a current MTE at the time their priority number is assigned an NXX.

9.4.2 If industry consensus cannot be reached on jeopardy code allocations, and a relief plan has not been approved by the appropriate regulators, NANPA will establish a base allocation of three codes and follow the jeopardy procedures in these guidelines until relief can be implemented. If, however, industry consensus cannot be reached, yet a relief plan has been approved by regulators, NANPA will seek regulatory resolution of jeopardy allocations as soon as possible.

9.4.3 When jeopardy code allocations are determined for that NPA, NANPA will issue a Planning Letter (PL) which will include the NPA relief date if known. The NANPA web site will also be updated with the approved jeopardy procedures.

9.5 Overview of Jeopardy Procedures

These procedures should remain in effect only until NPA relief has been implemented.

- 9.5.1 A base allocation of 'X' CO Codes will be assigned per month. The value of 'X' will be determined at the jeopardy meeting. Any part of the base allocation not assigned in a month will be available for assignment the following month. Until the local industry determines otherwise, the base allocation will be three codes per month.
- 9.5.2 Applicants may each submit requests up to the maximum of the codes allocated per month. Requests are to be specified as the 1st, 2nd, 3rd, et cetera choice per OCN. This maximum applies even if the applicant is requesting resources in pooled and non-pooled rate centers in an NPA and accounts for requests that are currently suspended and held over to the next lottery. Additional requests submitted above the monthly allocation will automatically be denied.
- 9.5.3 Applications will be submitted to the CO Code Administrator upon dates determined by the CO Code Administrator or at the industry jeopardy meeting. In a pooling area, two dates will need to be established: one date for code requests to be submitted to the PA, and a second date for the PA to submit code requests to the Code Administrator. The PA will forward any application for the monthly CO code allocation for carriers participating in pooling. The PA will supply the aggregated CO Code demand for each rate center pool to the CO Code Administrator at least one business day prior to code allocation. The total number of codes allocated to pooling participants for any rate center pool should not exceed the aggregated demand for CO Codes for that pool.
- 9.5.4 Codes will be allocated as follows under the following situations:
- 9.5.4.1 If eligible requests received by the Code Administrator prior to the submission deadline are less than or equal to the number of codes available for assignment that month, then each request receives one NXX.
- 9.5.4.2 If eligible 1st choice requests received by the Code Administrator prior to the submission deadline are equal to the number of codes available for assignment that month, then each 1st choice request receives one NXX code. All remaining requests will be handled per the local industry decision(s) specified in section 9.4.1.
- 9.5.4.3 If eligible 1st choice requests received by the Code Administrator prior to the submission deadline are less than the number of codes available for assignment that month, then each 1st choice request will be granted. Remaining codes will be assigned via a lottery based on the next highest choice level if the number of requests is greater than the number of remaining codes. All remaining requests will be handled per the local industry decision(s) specified in section 9.4.1.

If eligible 1st choice requests received by the Code Administrator prior to the submission deadline are greater than the number of codes available for assignment

that month, then a lottery will be used to determine which 1st choice requests receive a code assignment. All remaining requests will be handled per the local industry decision(s) specified in section 9.4.1.

9.6 Applying for Numbering Resources during Jeopardy

9.6.1 CO Code Administration and CO Code Applicants

9.6.1.1 Applicants must meet all assignment criteria set forth in Section 4.

9.6.1.2 Non-LNP capable carriers submit applications to the Code Administrator.

9.6.1.3 The PA will forward any CO Code applications for carriers participating in pooling that have numbering needs that cannot be met by the existing pooled resources. The PA will supply the aggregated CO Code demand for each rate center pool to the Code Administrator at least one day prior to the lottery. For example, if three SPs submit a request for a block and the pool does not have resources, then all three SPs may each submit a code request. However, if the pool only needs one code to meet those block demands, then after the first code request is met for the rate center, the remaining code requests are denied because the pool is now replenished.

9.6.1.4 If the MTE worksheet is missing, incomplete or does not meet the established criteria, the code request will be denied. The PA will submit one MTE worksheet for each code application based upon the aggregated demand of the participants in a rate center pool. In the event there are more code applications submitted to the PA than the aggregated demand, the PA will duplicate and attach a copy of the MTE worksheet to each code application greater than the aggregated demand and submit it to the Code Administrator.

9.6.1.5 For codes reserved per Section 4.5: jeopardy cancels all code reservations. Code Administration will send a Part 3 response noting "code request denied per Section 9.6.1.5".

9.6.2 Pooling Administration and Pool Participants

9.6.2.1 Code applicants, whether pool participants or the PA, must meet all assignment criteria set forth in Section 4.

9.6.2.2 Provided there are sufficient available blocks in existing pools, each pool participant may be allocated the quantity of thousands-blocks equivalent to the monthly CO Code allocation (e.g., monthly allotment of 3 NXX codes = 30 thousands-blocks). The thousands-block equivalency factor may be requested across multiple rate centers. Communication will take place between the PA and NANPA to identify the number of blocks allocated to a carrier in a given month for which that carrier needs CO codes due to unfilled block requests.

In an NPA where pooling has been implemented, even if part of the NPA is not pooled, SPs participating in pooling must submit all CO Code applications to the PA. The PA will identify SPs that have received numbering resources prior to the establishment of a monthly CO Code allocation and will determine the maximum number of CO Code applications allowed for each SP. For pooling participants that have received at least 10 blocks, the PA will subtract the number of blocks equal to a full CO Code received from the monthly application limit to derive how many CO Code applications are allowed for a given SP. For example, if the monthly allocation is 3 applications per SP and a SP had requested 17 blocks from the pooled area, then the 17 blocks would be rounded up to two equivalent full CO codes. Thus, the SP would still be allowed one CO code application. (Note: One through four is rounded down, five through nine is rounded up)

- 9.6.2.3 The PA will submit one MTE worksheet with each CO Code application based upon the aggregated demand of each rate center pool. In the event there are more CO Code applications submitted than the aggregated demand, the PA will duplicate and attach a copy of the PA's MTE worksheet to each CO Code application that exceeds the aggregated demand.
- 9.6.2.4 In addition to forwarding the CO Code application(s), the PA will identify to the Code Administrator the aggregated demand per rate center pool at least one day prior to the lottery. The Code Administrator will not allocate more codes to participants in a rate center pool than the demonstrated aggregated demand.
- 9.6.2.5 The PA will be notified by the Code Administrator which pool participants were assigned codes from the current month's allocation. The PA will notify the assignees, advising them that they may retain the quantity of thousands-blocks they requested in the applicable rate center.
- 9.6.2.6 When an NPA is six months from exhaust, pool replenishment is accomplished only via excess blocks from a code assignee's NXX. Pool participants that have block requests that cannot be filled from the pool may apply for a CO Code under these Section 9 jeopardy procedures. They may keep the block(s) for which they qualify and the remaining blocks will be used for pool replenishment.
- 9.6.2.7 The number of remaining unallocated CO Codes indicates when an NPA is six months from exhaust. This is calculated by multiplying the monthly CO Code allocation by six (e.g. allocation of 3 codes per month X 6 months = 18 unallocated CO Codes remaining). The NPA in the example would be six months from exhaust when 18 unallocated CO Codes remain available for assignment. Therefore, the PA cannot replenish the pool until the pool runs out of resources.
- 9.6.2.8 If a substantial number of codes are returned to NANPA, it is likely that the six-month benchmark to halt pool replenishment would no longer be valid. In that case, NANPA sends a notice to the industry indicating the number of CO codes returned and the impact to the NPA exhaust date. NANPA will schedule a conference call for the local

industry to discuss possible changes such as the monthly allocation, replenishment of the pool, or a new exhaust date.

10.0 Maintenance of These Guidelines

These guidelines are periodically updated to reflect changes in industry practices or national regulatory directives. Questions regarding these guidelines may be directed to:

NANPA Director
46000 Center Oak Plaza, Building 10
Sterling, VA 20166
Tel: 571-434-5510
Fax: 571-434-5502
email: ron.conners@nanpa.com
<http://www.nanpa.com>

Requests for changes to these guidelines should be directed to the appropriate industry forum, currently the INC.

11.0 Responsibilities for Code Relief Planning

This section identifies required code relief planning functions that are related to the CO code (NXX) assignment functions as specified in these guidelines. These functions are identified because they are currently performed in conjunction with code assignment. An objective of this function is to promote effective and efficient code utilization and thereby helps ensure the adequate supply of CO codes (NXX).

The CO Code Administrator(s), with the assistance of the PA where thousands-block number pooling has been implemented, shall be required to participate in the code relief planning process when and if necessary. The output of the planning process shall be made available to code holders, applicants and the industry by whatever means is appropriate.

Relief planning functions included in this section are as follows:

- 11.1 Tracks CO code (NXX) assignments within NPAs to ensure effective and efficient utilization of numbering resources.
- 11.2 Works with the CO Code Administrator(s) with input from the PA to prepare the semi-annual North American Numbering Plan Numbering Resource Utilization/Forecast (NRUF) Report input as described in these guidelines and the Thousands-Block

Number (NXX-X) Pooling Administration Guidelines and forwards the information to the NANPA. This function includes the following activities:⁵⁶

- 11.2.1 Issues requests for, collects and compiles available information related to CO code (NXX) utilization and relief planning forecasts. Requests for semi-annual reported data should be made available, upon request, to local state regulatory authorities subject to appropriate confidentiality protections. Requests for carrier specific data shall be made available, upon request, to the PA who must protect proprietary and competitively sensitive information from public disclosure.⁵⁷
- 11.2.2 Investigates and resolves, wherever possible, any discrepancies in the information provided. The PA may assist when necessary.
- 11.2.3 Any information released to the public would be released only on an aggregated or summary basis (See Section 9.1).
- 11.2.4 State commissions shall have access to the disaggregated data submitted to the NANPA, provided that the state commission has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure to any entity other than the NANPA or the Commission.⁵⁸
- 11.3 Projects CO code (NXX) exhaust within NPAs in order to prepare for NPA relief activity. Monitors usage to declare jeopardy, if necessary.
- 11.4 Develops plans for NPA relief and initiates implementation efforts, in both normal and jeopardy situations (Refer to Section 9.3). Facilitates NPA-specific final jeopardy procedures as needed. When the need for code relief is identified and relief activity is initiated, advises all parties affected by NPA relief activities and includes them in the planning effort.⁵⁹
- 11.5 Collects, compiles and forwards the necessary information to NANPA for the purpose of obtaining an NPA assignment when it is determined that a new NPA code is required to accommodate relief.
- 11.6 Obtains endorsement of NPA relief plan from appropriate regulatory authority(ies), where necessary.

⁵⁶ The NRUF Report is required semi-annually per FCC 00-104, § 52.15 (6) (I).

⁵⁷ FCC 00-104, ¶ 75; ¶ 81; § 52.15 (f) (7).

⁵⁸ FCC 00-104, ¶ 81; § 52.15 (f) (7).

⁵⁹ A document, "NPA Code Relief Planning and Notification Guidelines" (INC 97-0404-016), addresses the notification process after it has been decided that NPA relief is needed and when that relief must take place.

- 11.7 Develops dialing plan alternatives within local jurisdictions.
- 11.8 Provides assistance to users of numbering resources and suggests alternatives, when possible, that will optimize numbering resource utilization.
- 11.9 Prepares and issues information related to reports for special information requests and scheduled periodic reports that relate to utilization of numbering resources.

12.0 Appeals and Safety Valve Process

12.1 Appeals Process

Disagreements may arise between the CO Code Administrator(s) and code holders/applicants/PA in the context of the administration of these guidelines. In all cases, the CO Code Administrator(s) and code holders/applicants will make reasonable, good faith efforts to resolve such disagreements among themselves consistent with the guidelines prior to pursuing any appeal. Appeals may include but are not limited to one or more of the following options:

- A. The code holder/applicant will have the opportunity to resubmit the matter to the administrator(s) for reconsideration with or without additional input.
- B. Guidelines interpretation/clarification questions may be referred to the body responsible for maintenance of the guidelines. Unless otherwise mutually agreed to by the parties, these questions will be submitted in a generic manner protecting the identity of the appellant.
- C. The CO Code Administrator(s) and code holders/applicant may pursue the disagreement with the appropriate governmental/regulatory body.
- D. Concerning NRUF Reporting, if the NANPA identifies any significant inconsistencies or anomalies in a carrier's data, the NANPA shall inform the submitting carrier of its findings, after which the carrier shall have five days to explain the inconsistencies or anomalies (to be defined by NANC), or to resubmit the data. If, after the discussions with a carrier, the NANPA preliminarily concludes that the carrier's data are insufficient, then the NANPA shall report that preliminary conclusion to the commission in the state where the carrier is providing service, and to the FCC's Common Carrier Bureau. The states have the authority to make a determination on the validity of the data and to instruct the carrier on how any deficiencies should be remedied. The NANPA shall assign no additional resources to that carrier until the appropriate state commission has resolved all questions regarding the inconsistency

or anomaly.⁶⁰ Resolution by the state commission is expected in an expeditious manner.

- E. In cases where the NANPA has withheld numbering resources from any U.S. carrier that fails to provide its utilization and forecast information, NANPA shall notify the carrier in writing and allow ten days for the carrier to either provide the report or show that it has already done so.⁶¹
- F. In cases where the NANPA has withheld numbering resources from a carrier that does not demonstrate that it is both authorized and prepared to provide service before receiving initial numbering resources, the NANPA must notify the carrier of its decision within ten days of receiving the request. Carriers disputing the NANPA's decision to withhold initial numbering resources upon a finding of noncompliance may appeal the NANPA's decision to the appropriate state commission for resolution.⁶²

Requests for modification of the guidelines can be pursued as described in Section 10 of the guidelines.

Reports on any resolution resulting from the above options, the content of which will be mutually agreed upon by the involved parties, will be forwarded to the body responsible for the maintenance of the guidelines. At a minimum the report will contain the final disposition of the appeal, e.g., whether or not a code was assigned.

12.2 Safety Valve Process

SPs disputing the NANPA/PA's decision to withhold initial numbering resources upon a finding of noncompliance may appeal the NANPA/PA's decision to the appropriate state commission for resolution.

The state commission may affirm, or may overturn, the NANPA/PA's decision to withhold numbering resources from the SP based on its determination that the SP has complied with the reporting and numbering resource application requirements.

The state commission also may overturn the NANPA/PA's decision to withhold numbering resources from the SP based on its determination that the SP has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies.⁶³

⁶⁰ FCC 00-104, ¶ 54.

⁶¹ FCC 00-104, ¶ 84.

⁶² FCC 01-362 § 52.15 (g) (4).

⁶³ FCC 00 429, § 52.15 (g) (5).

If a state does not reach a decision on a safety valve request within a reasonable timeframe, SPs may submit such requests to the FCC for resolution. In addition, SPs may appeal to the FCC safety valve decisions made by states.

13.0 Glossary

Activation Deadline	Six months from the original effective date returned on the Part 3 and entered on the ACD screen in BIRRDS. A Part 4 should be returned to NANPA by this date.
Active Code	A code assigned by the CO Code Administrator and implemented in the PSTN for specific routing and rating requirements as of the LERG Routing Guide effective date.
Additional NXX Code Assignment for Growth	A code assigned to a rate center subsequent to the assignment of the first code (See Initial Code), for the same purpose as a code that was previously assigned to the same rate center. A "Growth Code" is requested when the line numbers available for assignment in a previously assigned NXX code will not meet expected demand.
Affected Parties	Affected parties are a) those entities that have applied for and/or received central office code (NXX) assignments or reservations within the NPA per Section 4.0 of these Guidelines; b) all interested members of the industry within the affected NPA.
Administrative Numbers	Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards. Examples of administrative numbers are: Test numbers, employee/official numbers, Location Routing Numbers, Temporary Local Directory Numbers, soft dial tone numbers and wireless E911 (ESRD/ESRK) numbers. (FCC 00-104, § 52.15 (f) (1) (i))
Administrative Operating Company Number (AOCN)	A four character numeric or alphanumeric that identifies the administrator of one (or more) data record contained in BIRRDS. Numeric/alphanumeric AOCNs are determined by Operating Company Number (OCN) assignment. The AOCN further identifies the entity authorized by the code holder to input and maintain data into BIRRDS.

Aging Numbers	<p>Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 calendar days. Numbers previously assigned to business customers may be aged for no more than 365 days. (FCC 00-104 §52.15 (f)(1) (ii). See Erratum in CC Docket 99-200, released July 11, 2000).</p> <p>An aging interval includes any announcement treatment period as well as the vacant telephone number intercept period. A number is disconnected when it is no longer used to route calls to equipment owned or leased by the disconnecting subscriber of record.</p>
Applicant/Code Applicant	<p>Service providers who submit a Central Office Code Request to the CO Code Administrator for the purpose of being assigned a CO Code for their use. In thousands-block telephone number pooling, the Pooling Administrator is authorized to apply for the assignment of CO Codes as outlined in section 4.1.2.2 of these guidelines.</p>
Assigned Numbers	<p>Assigned numbers are numbers working in the PSTN under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five calendar days shall not be classified as assigned numbers (FCC 00-104, § 52.15 (f) (1) (iii)).</p>
Available Numbers	<p>Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved. Available numbers is a residual category that can be calculated by subtracting a sum of numbers in the assigned, reserved, intermediate, aged, and administrative primary categories from the total of numbers in the inventory of a code or block holder (FCC 00-104, § 52.15 (f) (1) (iv))</p>
Audit	The accumulation and evaluation of evidence about

	documented information of an auditee to determine and report on the degree of compliance with INC industry guidelines.
Auditee	The SP/NANPA/PA that is the subject of an audit.
Auditor	The FCC Common Carrier Bureau's Audits Branch of the Accounting Safeguards Division or its other designated agents perform audits of US numbering resources. (FCC 00-429 ¶ 90). State Commissions also may conduct audits. (FCC 01-362 ¶ 101).
Authorized Representative of an Applicant	The person from the applicant's organization or its agent that has the legal authority to take action on behalf of the applicant.
BIRRDS	The Telcordia™ Business Integrated Routing and Rating Database System contains data in the routing and rating of calls. Contains a complete description of all Local Exchange Companies' networks in the NANP Area and pertinent information relating to the networks of other code holders. This provides information for, (1) message routing, (2) common channel signaling call setup routing, and (3) operator service access routing. Data supports all CO Codes assigned through these Guidelines, as well as all CO Codes in place prior to the existence of these Guidelines, and covers all Numbering Plan Areas (NPAs) administered under the North American Numbering Plan (NANP).
Central Office (CO) Code	The sub-NPA code in a TN, i.e., digits D-E-F of a 10-digit NANP Area address. Central office codes are in the form "NXX," where N is a number from 2 to 9 and X is a number from 0 to 9. Central office codes may also be referred to as "NXX codes." (47 C.F.R. § 52.7(c))
CLLI™	A CLLI™ <i>Location Identification Code</i> is an eleven-character alphanumeric descriptor used to identify switches, points of interconnection, and other categories of telephony network elements and their locations. Companies that are licensees of Telcordia™ COMMON LANGUAGE® Products can refer questions to their company's COMMON LANGUAGE Coordinator. If you do not know if you are a licensee, do not know your Coordinator, or are a licensee with questions regarding

	<p>CLLI, call the COMMON LANGUAGE Hotline, 877-699-5577. Alternatively, or if you are <i>not</i> a licensee, you may obtain further information at www.commonlanguage.com. (COMMON LANGUAGE is a registered trademark and CLLI is a trademark of Telcordia Technologies, Inc.)</p>
CO Code (NXX) Exhaust	<p>A point in time at which the quantity of TNs within existing CO codes (NXX) which are "Available for Assignment" equals zero within a switching entity/POI or, conversely, when the quantities of "TNs Unavailable for Assignment" equal 10,000 times the quantity of existing CO codes (NXX) assigned to a switching entity/POI. Where CO code sharing occurs or partial CO codes are assigned to a switching entity/POI, the latter number should be adjusted accordingly.</p>
Certify/Certification	<p>The authorization of a carrier by a regulator to provide a telecommunications service in the relevant geographic area. FCC § 52.15 (g) requires that applications for initial numbering resources include evidence that the applicant is authorized to provide service in the area for which numbering resources are being requested.</p>
CO Code Administrator	<p>Entity(ies) responsible for the administration of the NXXs within an NPA.</p>
Code Activation	<p>See Active Code.</p>
Code Holder	<p>An assignee of a full NXX code which was allocated by the CO Code Administrator. Where the Code Holder is participating in thousands-block number pooling, the Code Holder becomes a LERG Assignee at the Block Donation Date.</p>
Code Protection	<p>Code protection is an arrangement where a central office code assigned in one NPA is not assigned in an adjacent NPA, thereby becoming protected to allow 7-digit dialing across the common boundary.</p>
Conservation	<p>Consideration given to the efficient and effective use of a finite numbering resource in order to minimize the cost and need to expand its availability in the introduction of new services, capabilities and features.</p>
Contamination	<p>Contamination occurs when at least one telephone number within a thousands-block of telephone numbers is</p>

	<p>not available for assignment to end users or customers. Blocks contaminated up to and including 10 percent are eligible for donation. For purposes of this provision, a telephone number is "not available for assignment" if it is classified as administrative, aging, assigned, intermediate, or reserved as defined in FCC rules (FCC 00-104, §52.7 (h)).</p>
Dealer Numbering Pools	<p>Numbers allocated by a service provider to a retail dealer for use in the sale and establishment of service on behalf of that service provider. See the definition of "Intermediate Numbers" below (FCC 00-104, ¶ 20).</p>
Effective Date	<p>The date by which routing and rating changes within the PSTN must be complete for the assigned thousands-block or the assigned CO Code. Also, the date by which the thousands-block becomes an active block. (Also referred to as "the LERG Routing Guide effective date.")</p>
Employee/Official Number	<p>A number assigned by a service provider for its own internal business purposes. See "Administrative Numbers" definition.</p>
INC	<p>Industry Numbering Committee, a standing committee of the Carrier Liaison Committee (CLC) that provides an open forum to address and resolve industry-wide issues associated with the planning, administration, allocation, assignment and use of numbering resources and related dialing considerations for public telecommunications within the North American Numbering Plan (NANP) area.</p>
(Industry) Inventory Pool	<p>Used in thousands-block number pooling to describe a reservoir of unassigned thousands-blocks administered by the Pooling Administrator for purposes of assignment to certified service providers participating in thousands-block number pooling.</p>
Initial Code	<p>The first geographic NXX code assigned in a unique rate center.</p>
In Service	<p>A code or block for which local routing information has been input to the LERG Routing Guide <i>and</i> the carrier has begun to activate and assign numbers within the NXX code or NXX-X block to end users (FCC 00-104, ¶240).</p>

Interchangeable NPAs	Refers to an industry plan to expand substantially the supply of Numbering Plan Area codes (NPAs) in January 1995, by removing the restriction that the second digit of the NPA must be a 0 or 1.
Intermediate Numbers	Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers (FCC 00-104, § 52.15 (f) (1) (v)).
Inventory	The term "inventory" refers to all telephone numbers distributed, assigned or allocated: (1) To a service provider, or (2) To a pooling administrator for the purpose of establishing or maintaining a thousands-block number pool (FCC 00-104, § 52.7 (j)).
Jeopardy	A jeopardy condition exists when the forecasted and/or actual demand for NXX resources will exceed the known supply during the planning/implementation interval for relief.
LATA (Local Access and Transport Area)	Also referred to as service areas by some BOCs, a LATA serves two basic purposes: to provide a method for delineating the area within which the BOCs may offer services and, to provide a basis for determining how the assets of the former Bell System were to be divided between the BOCs and AT&T at divestiture.
LERG™ Routing Guide	The Telcordia™ LERG™ Routing Guide contains information about the local routing data obtained from the BIRRDs. This information reflects the current network configuration and scheduled network changes for all entities originating or terminating PSTN calls within the NANP.
Location Routing Number (LRN)	The ten-digit (NPA-NXX-XXXX) number assigned to a switch/POI used for routing in a permanent local number portability environment. See "Administrative Numbers" definition.
Major Vertical Coordinate	A five-digit number used with the Vertical Coordinates and Horizontal Coordinates to pinpoint the location of a

	<p>rate center. The Vertical and Horizontal Coordinates can be used to calculate mileage measurements between two rate centers that is used to determine the appropriate mileage rates in determining the charge for message telephone service calls.</p>
Minor Vertical Coordinate	<p>A five-digit number used with the Vertical Coordinates and Horizontal Coordinates to pinpoint a more specific location. The Minor Vertical and Horizontal Coordinates can be used to divide rate centers into zones for more specific distance calculations. Most often used to rate interstate messages when straight distance between the calling and called point is less than forty miles.</p>
Months to Exhaust	<p>A calculation that is used by SPs to document the need for an additional code or block as follows:</p> $\text{TNs Available for Assignment divided by Average Monthly Growth Rate}$ <p>A calculation used by the PA to document the need for an additional CO Code as follows:</p> $\text{Blocks Available for Assignment divided by Average Monthly Growth Rate}$
NANP (North American Numbering Plan)	<p>A numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA code, a three digit central office code of the form NXX, and a four-digit line number of the form XXXX.</p>
NANPA (North American Numbering Plan Administration)	<p>With divestiture, key responsibilities for coordination and administration of the North American Numbering/Dialing Plans were assigned to NANPA. These central administration functions are exercised in an impartial manner toward all industry segments while balancing the utilization of a limited resource.</p>
NANP Area	<p>Consists of the United States, Canada and the Caribbean countries (Anguilla, Antigua, Bahamas, Barbados, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and</p>

	the Commonwealth of the Northern Mariana Islands).
Newly Acquired Numbers	<i>"Newly acquired numbers"</i> are those that have been activated within the LERG Routing Guide, and thus are available for assignment, within the preceding 90 days of reporting utilization. <i>Newly acquired</i> numbering resources are excluded from the calculation of utilization level (FCC 00-104, ¶ 111).
North American Numbering Plan Numbering Resource Utilization/Forecasting (NRUF) Report	The NANPA gathers forecast and utilization information to monitor and project exhaust in individual NPAs/area codes as well as in the NANP overall. This semi-annual report includes number utilization information as well as a five-year forecast of demand by year. Pooling carriers report at the thousands-block level per rate center. Non-pooling carriers report at the Central Office Code level per rate center. For more detailed information, see the NRUF Reporting Guidelines.
NPA	<p>Numbering Plan Area, also called area code. An NPA is the 3-digit code that occupies the A, B, and C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form N0/1X, where N represents the digits 2-9 and X represents any digit 0-9. After 1/1/95, NPAs will be of the form NXX. In the NANP, NPAs are classified as either geographic or non-geographic.</p> <p>a) <u>Geographic NPAs</u> are NPAs which correspond to discrete geographic areas within the NANP Area.</p> <p>a) <u>Non-geographic NPAs</u> are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, e.g., 800.</p>
NPA Code Relief	NPA code relief refers to an activity that must be performed when an NPA nears exhaust of its 792 NXX capacity. Options for relief are described in Section 6.0 of the NPA Code Relief Planning & Notification Guidelines.
NPA Relief Date	The date by which the NPA is introduced and routing of normal commercial traffic begins.

OCN	An Operating Company Number (OCN) is a four place alphanumeric code that uniquely identifies providers of local telecommunications service. OCN assignments are required of all SPs in their submission of utilization and forecast data (FCC 00-104, ¶ 41 and Public Notice DA 00-1549). Relative to CO Code assignments, NECA assigned Company Codes may be used as OCNs. Companies with no prior CO Code or Company Code assignments contact NECA (800 524-1020) to be assigned a Company Code(s). Since multiple OCNs and/or Company Codes may be associated with a given company, companies with prior assignments should direct questions regarding appropriate OCN usage to the Telcordia™ Routing Administration (TRA) on 732 699-6700.
Point of Interconnection (POI)	The physical location where an SP's connecting circuits interconnect for the purpose of interchanging traffic on the PSTN.
Pooling Administrator (PA)	The term Pooling Administrator refers to the entity or entities responsible for administering a thousands-block number pool (FCC 00-104, § 52.7 (g)).
Pool Start/Allocation Date	The date the PA may start allocating thousands-blocks from the industry inventory pool to SPs. This is also the start date for SPs to send requests for thousands-blocks to the PA.
Premature Exhaust	<p>(When referring to NANP): Premature exhaust means the exhaust of NANP resources (i.e., requires expansion beyond the 10-digit format) much sooner than the best industry projections. The NANP is expected to meet the numbering needs of the telecommunications industry well into the 21st century (i.e., a minimum of 25 years).</p> <p>(When referring to NPA): Premature exhaust is when a specific date for NPA relief has been established and the NPA is projected to exhaust prior to that date.</p>
Private Networks	Private networks are composed of stations which are not directly accessible from all PSTN stations via the use of NANP E.164 numbers.
Public Switched Telephone Network	The PSTN is composed of all transmission and switching facilities and signal processors supplied and operated by

(PSTN)	all telecommunications common carriers for use by the public. Every station on the PSTN is capable of being accessed from every other station on the PSTN via the use of NANP E.164 numbers.
Rate Area	Denotes the smallest geographic area used to distinguish rate boundaries.
Reassignment	In a pooling environment, reassignment refers to the process of reestablishing the assignment of a thousands-block, which was previously assigned to another SP or to a new SP. Reassignment may also mean the transfer of a working or assigned NXX from one switching entity/POI to another.
Reclamation	Reclamation refers to the process by which service providers are required to return numbering resources to the NANPA (FCC 00-104, § 52.15 (i) (1)).
Reporting Carrier	Refers to a telecommunications carrier that receives numbering resources from the NANPA, a Pooling Administrator or another telecommunications carrier. (FCC 00-104, § 52.15 (f) (2)).
Reseller	An SP which purchases facilities and/or services from another SP for resale. Also, see "Intermediate Numbers" above.
Reserved CO Codes	<p>A reserved code is an NXX code that has been temporarily set aside for an applicant for future use, and is, therefore, not to be immediately activated. Code reservation may be used, for example, by new entrants who need to prepare their switches before they are ready to offer service to subscribers.</p> <p>In addition, a reserved code is an NXX code that has been set aside for potential future use but is not associated with any specific applicant. For example, an NXX code which is identical to the home NPA, although theoretically assignable, is considered "reserved" for use only as a last resort.</p>
Reserved Numbers	Reserved numbers are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 180 calendar days

	shall not be classified as reserved numbers (FCC 00-429, § 52.15 (f) (1) (vi)).
Service Provider	The term "service provider" refers to a telecommunications carrier or other entity that receives numbering resources from the NANPA, a Pooling Administrator or a telecommunications carrier for the purpose of providing or establishing telecommunications service (FCC 00-104, § 52.5 (i)).
Soft Dial Tone Numbers	Numbers that permit restricted dialing, such as calling emergency services and sometimes receive incoming calls (FCC 00-104, ¶ 33). See "Administrative Numbers" definition.
Switching Entity	An electromechanical or electronic system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating PSTN calls. A single switching system may handle several Central Office (CO) codes.
Technical Requirement, Reason, Limitation or Constraint	A limitation of the Point of Interconnection or Switching Entity where an existing code, a thousands-block, and/or numbers cannot be used for designated network routing and/or rating of PSTN calls. Examples that constitute "technical constraint" include limitations on a switch, network element, or planning constraint, CPE limitations or unique AIN Triggers.
Temporary Local Directory Number (TLDN)	A number dynamically assigned on a per call basis by the serving wireless service provider to a roaming subscriber for the purpose of incoming call setup. See "Administrative Numbers" definition.
Terminating Point Master	The TPM contains all the active NPA and CO code (NXX) combinations in the NANP and for each of these points the following is provided: Major Vertical and Horizontal coordinates, LATA/LATA-like code, LATA sub-zone code, RAO code, place and state, province or country name abbreviation, and time zone indicator.
Test Number	A TN assigned for inter- and intra-network testing purposes. See "Administrative Numbers" definition.
Thousands-block	A range of one thousand TNs within an NPA-NXX beginning with X000 and ending with X999, where X is a

	value from 0 to 9.
Thousands-block (NXX-X) Number Pooling	Thousands-block number pooling is a process by which the 10,000 numbers in a central office code (NXX) are separated into ten sequential blocks of 1,000 numbers each (thousands-blocks), and allocated separately within a rate center (FCC 00-104, § 52.20 (a)).
Type 1 Interconnection Service Provider	A wireless SP that utilizes Type 1 (trunk side with line treatment) interconnection with another SP's end office switch.
Unassignable Code	An unassignable code is an NXX code designated by the administrator which will not be made available for assignment to any code applicant. For example, the code "911" will not be assigned as a central office code so as to avoid potential conflict with emergency services.
Utilization Level	The <i>utilization</i> level in a given geographic area (NPA or rate center) is calculated by dividing all <i>assigned numbers</i> (numerator) by total numbering resources assigned to that carrier in the appropriate geographic region (denominator), and multiplying the result by 100.
Wireless E911 ESRD/ESRK Number	A 10-digit number used for the purpose of routing an E911 call to the appropriate Public Service Answering Point (PSAP) when that call is originating from wireless equipment. The Emergency Services Routing Digit (ESRD) identifies the cell site and sector of the call origination in a wireless call scenario. The Emergency Services Routing Key (ESRK) uniquely identifies the call in a given cell site/sector and correlates data that is provided to a PSAP by different paths, such as the voice path and the Automatic Location Identification (ALI) data path. Both the ESRD and ESRK define a route to the proper PSAP. The ESRK alone, or the ESRD and/or Mobile Identification Number (MIN), is signaled to the PSAP where it can be used to retrieve from the ALI database, the mobile caller's call-back number, position and the emergency service agencies (e.g., police, fire, medical, etc.) associated with the caller's location. If a NANP TN is used as an ESRD or ESRK, this number cannot be assigned to a customer. See "Administrative Numbers" definition.

BEFORE THE
STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION

<p>In the Matter of the Petition of</p> <p>For Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with SRT Communications, Inc.</p>	<p>Case No. PU-2065-02-465</p>
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PRE-FILED DIRECT TESTIMONY OF JAN M. SEBBY

ON BEHALF OF

SRT COMMUNICATIONS, INC.

December 4, 2002

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PU-2065-02-465

Pages: 125

Pre-Filed Direct Testimony of Jan M.
Sebby
by SRT Communications, Inc.

Exhibit # SRT-23

12/05/2002

CC: Comm Legal PUD (3)

EXHIBIT

SRT-23

tabbles

1 **Q: What is your name and business address?**

2 A: My name is Jan M. Sebby. My business address is my home address, 732 Hi Park
3 Avenue, Red Wing, Minnesota.

4 **Q: What is your relationship to SRT?**

5 A: As a member of the Pringle & Herigstad Law firm, I provided legal services to SRT.
6 During the period 1984 through 1999, I was primarily responsible for the firm's legal
7 services to SRT. Since my retirement in 1999, I have remained available as a
8 consultant to SRT.

9 **Q: Please summarize your educational background and professional experience.**

10 A: I graduated from the College of St. Thomas with a major in accounting in 1961 and
11 from the University of Minnesota Law School in 1964, both with honors. The single
12 area of my practice that received most of my time, attention and interest during my
13 active career was rural electrification and rural telephony. From 1984 through 1999,
14 I represented not only SRT but many other North Dakota rural telephone companies
15 in an array of proceedings related to changes in state and federal law affecting
16 telecommunications after the AT&T divestiture in 1984 and the enactment of the
17 Telecommunications Act of 1996.

18 **Q: What is the purpose of your testimony?**

19 A: The purpose of my testimony is to summarize why SRT should not be obliged to
20 provide Level 3 the interconnection and services it has requested or on the terms

1 it has requested. I will address the seven issues identified in the pre-hearing
2 documents. I will endeavor to restrict my testimony to matters of fact and how the
3 facts are affected by telecommunications law. It is not my purpose to testify about
4 what telecommunications law or public policy should be. Of course, what the law
5 is now is a matter of fact, so my testimony will address some of SRT's and Level 3's
6 assertions about what is the law that governs the facts of this proceeding.

7 **Q: Please describe the business and operations of SRT.**

8 A: SRT is organized and operated as a cooperative, to provide telecommunications
9 for the benefit of its consumer/owners. SRT provides both local and long distance
10 service to end users in 25 local exchange areas, "telephone exchange service" and
11 "telephone toll service," to use the technical terms of the 1996 Act. SRT provides
12 "exchange access" to other providers of telephone toll service and an array of other
13 telecommunications services, to end users and to other telecommunications
14 companies. Notable for purposes of this case, SRT provides internet service
15 directly to end users, and it provides services through which other ISPs provide
16 internet service to their end users in SRT's local exchange areas.

17 **Q: Can you give some examples of SRT's service to other ISPs?**

18 A: Yes. As indicated, SRT maintains a modem bank and server for its ISP service
19 offering. There is another company that operates a modem bank and server
20 physically located in Minot. We know there are some, but I don't know which or

1 how many ISPs provide service to end users in SRT's exchange areas via 1-800
2 dialing to their modem banks that are located outside the SRT exchange area.
3 And, SRT provides services to Level 3 that facilitate Level 3's business as a
4 telecommunications carrier between users of internet service in SRT's exchange
5 areas and Level 3's ISP customers whose modems and other physical facilities are
6 located elsewhere. Level 3 utilizes local numbers, numbers associated with SRT's
7 exchange area, for this service. SRT provides local dialing parity, so that not only
8 SRT's internet customers, but also other ISPs' customers can manually dial or
9 program their computer modems to dial local numbers to establish connections with
10 their ISPs.

11 **Q: Are you familiar with Level 3's Petition for Arbitration?**

12 A: Yes.

13 **Q: Are you familiar with Level 3's Responses to SRT's Interrogatories and**
14 **Request for Documents?**

15 A: Yes.

16 **Q: Are you familiar with the statement of issues in the Commission's Notice of**
17 **this arbitration hearing?**

18 A: Yes.

19 **Q: Please summarize the facts on which SRT relies regarding these issues.**

20 A: First, SRT and Level 3 are presently directly interconnected.

21 Second, SRT and Level 3 are presently indirectly interconnected.

1 Under these two points, SRT has fulfilled its duties under section 251(a) of the
2 Telecommunications Act.

3 Third, under both the present interconnection and under Level 3's proposed
4 arrangement, SRT is and would be a local exchange carrier and Level 3 is and
5 would be an interexchange carrier delivering telecommunications traffic from
6 internet users in SRT's local exchange area to Level 3's ISP customers in different
7 areas.

8 Fourth, the ISP Remand Order on which Level 3 relies does not apply to
9 interexchange traffic.

10 Fifth, because it is presently directly interconnected with SRT and is delivering
11 telecommunications traffic from internet users in SRT's local exchange area to
12 Level 3's ISP customers, Level 3 is not "new" to the market within the meaning of
13 the FCC's ISP remand order.

14 Level 3's proposal and its arbitration petition are an endeavor to compel the
15 renegotiation of an existing arrangement to make a different arrangement that is
16 best described as bypass of access charges and/or regulatory arbitrage.

17 **Q: Please explain your first statement, that SRT and Level 3 are presently directly**
18 **interconnected.**

19 A: SRT and Level 3 are presently interconnected and Level 3 uses the existing
20 interconnection for the same purpose described in its petition for arbitration.

21 Level 3 proposes to terminate that arrangement. See Level 3 answers to

1 interrogatories, Nos. 14, 25 and 31. Because these two carriers are presently
2 interconnected, SRT has fulfilled its duties under section 251(a) of the
3 Telecommunications Act.

4 **Q: What if Level 3 and SRT were not presently interconnected?**

5 A: The statutory provision that Level 3 invokes, section 251(a) of the Act, provides
6 that, "Each telecommunications carrier has the duty to interconnect directly or
7 indirectly with the facilities and equipment of other telecommunications carriers."

8 Similar words appear in section 251(c) which was addressed by the FCC in its 1996
9 Local Competition Order. At paragraph 176, the FCC concluded that the term
10 "interconnection refers to the physical linking of two networks." And the FCC's
11 adoption of new Federal Regulations to implement the Act defines the term
12 "interconnection" as the linking of two networks for the mutual exchange of traffic,
13 without distinguishing between sections 251(a) and (c) insofar as the meaning of
14 "interconnection" is concerned. 47 C.F.R. 51.5

15 Whichever of sections 251(a) or (c) applies, both plainly refer to interconnections
16 with "facilities and equipment." Level 3 has no owned or leased facilities to
17 physically link or interconnect with SRT. See Level 3 answers to interrogatories,
18 No.10. This fact shows that Level 3 is in no position to claim a right to an
19 interconnection.

20 Level 3 does have authority to operate facilities based telecommunications in North

1 Dakota, but its proposed agreement does not constitute an interconnection
2 agreement because it does not propose the physical linking of any facilities.

3 I am aware of the possibility that Level 3 might lease facilities, even from SRT, and
4 claim leased facilities as its own for purposes of an interconnection, but no such
5 arrangement has been requested.

6 In its answers to SRT's interrogatories, Level 3 has recently proposed to
7 interconnect with SRT "...by leasing multiplexed DS3 facilities....[and]... also
8 proposes to lease DS1 facilities..." See Level 3 answers to interrogatories, No. 9.

9 This recent proposal differs from Level 3's initial proposal where Level 3
10 unequivocally stated it did not seek a direct interconnection. Level 3 first proposed
11 "traffic to be routed over common shared transport trunks." Now it says something
12 different, it proposes a facilities lease, but Level 3 has not presented any facilities
13 lease proposal to SRT.

14 Level 3 seems to be requesting services more like a reseller than as a facilities
15 based carrier that might be entitled to interconnection. Level 3 has certificates for
16 facilities based service in North Dakota, and it is also a registered reseller. Level
17 3's proposed arrangement with SRT looks like a proposal to resell services that
18 Level 3 receives from SRT, except Level 3 does not want to pay for the resold
19 service. Level 3 wants free access that would be included in the one-way DID
20 service that Level 3 would sell to its ISP customers, traffic originating in SRT's local

1 exchange area and terminating in other exchanges. This is exactly the kind of
2 abuse and arbitrage the FCC condemned in its "ISP Remand Order," at paragraph
3 21. Implementation of the Local Competition Provisions in the Telecommunications
4 Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound
5 Traffic, 99-68, FCC 01-131 (2001).

6 **Q: Are there additional facts that affect Level 3's claims to the agreement it has**
7 **proposed?**

8 A: Yes. Even if Level 3 were regarded as a facilities based carrier entitled to
9 interconnection, there are additional facts related to Level 3's claimed status as a
10 CLEC. Level 3's proposed agreement is labeled as an agreement for the exchange
11 of traffic and verbiage consistent with that label is included in its proposed
12 agreement. But Level 3's Petition for Arbitration and the attached descriptive
13 materials explaining Level 3's business plan make it clear that they do not propose
14 or intend operations as a true CLEC, where Level 3 and the incumbent LEC, SRT,
15 would provide and exchange two way switched intraexchange traffic among end
16 users within the local exchange area under an agreement for interconnection under
17 section 251(c).

18 **Q: What is a CLEC and why does SRT believe Level 3 is not a true CLEC?**

19 A: North Dakota law defines a competitive local exchange company, commonly
20 abbreviated CLEC, as a telecommunications company that provides local exchange
21 service, other than an incumbent local exchange carrier. Neither the Federal Act

1 nor the pertinent Code of Federal Regulations defines a CLEC, but other FCC
2 publications and industry jargon are consistent with the North Dakota definition.
3 The basic concept is that a CLEC offers two way switched telecommunications in
4 a local exchange area as a competitive alternative to similar service available from
5 an incumbent carrier, an ILEC that formerly held a legal monopoly in local exchange
6 service. As I said, Level 3 does not propose two way switched telephone exchange
7 service in any SRT local exchange area as a competitive alternative to similar
8 service available from SRT. Level 3 has a CLEC certificate of public convenience
9 and necessity issued by the North Dakota PSC, but that certificate has nothing to
10 do with the service Level 3 proposes in SRT's exchange areas.

11 Instead, Level 3 intends to provide only one way traffic, and that one way
12 traffic would not be intraexchange, it would be interexchange traffic. This fact
13 shows Level 3's requested interconnection agreement should not be subjected to
14 negotiation for several reasons.

15 **Q: Please explain.**

16 **A:** There are a number of reasons that Level 3's proposed one-way interexchange
17 traffic arrangement should not be subjected to negotiation. Although the several
18 reasons seem interrelated, there is no apparent logical order, so I'll just press on in
19 an order that makes sense to me. All the following reasons can be subdivided

1 under two headings: A) Whether Level 3 proposes a local or long distance
2 arrangement; and B) Whether the FCC's ISP Remand Order of April 2001 and its
3 bill and keep edict apply to the arrangement Level 3 has proposed.

4 **Q: Continue, please.**

5 A: To begin with the basics, all telecommunications can be divided between local and
6 long distance, either intraexchange or interexchange. Exchange boundaries are
7 facts with which the telecommunications industry routinely deals on two fronts, call
8 routing and compensation. Calls routed within an exchange are usually paid for by
9 end users' payment of a flat rate monthly service fee; rates are not measured with
10 regard to time on line or distance between the calling party and called party inside
11 the exchange boundaries. Calls routed from a calling party to a called party in a
12 different exchange area are usually paid for on a toll or measured basis, and the toll
13 rate depends on the time on line and the distance between the two parties'
14 exchanges.

15 Interexchange calls typically involve 3 telecommunications carriers, the local
16 exchange carrier that operates the exchange where a long distance call originates,
17 the local exchange carrier that operates the exchange where a long distance call
18 terminates, and the interexchange carrier. A system of intercarrier compensation
19 arrangements called "access charge rules" governs how the several carriers
20 compensate one another for their shared use of their separately owned facilities

1 and services to provide interexchange long distance service between end users.

2 The basic situation I have described has become somewhat complicated by the
3 development of alternative local exchange carriers within a local exchange area,
4 ILECs and CLECs. When a local customer of one LEC calls a local customer of the
5 other, the ILEC and the CLEC compensate one another for their shared use of one
6 another's facilities for the transport and termination of local traffic under "reciprocal
7 compensation rules."

8 The basic situation I have described has also been complicated by the development
9 of telecommunications service via modems that facilitate access to the internet.
10 The lines between local and long distance telecommunications services one uses
11 to connect with the internet are not so easily discerned as are the lines between a
12 grandparents' telephone calls to grandchildren who live across town or across the
13 country.

14 Over the last 20 years, intercarrier compensation rules have been the subject of
15 ongoing debate and rule making in both legislative and administrative forums.
16 Intercarrier compensation for traffic that is specifically bound for internet service
17 providers is but one aspect of the larger debate. Still, the simple fact remains:
18 Regardless of how a call is paid for by end users or how costs are shared by
19 carriers, each telephone call either does or does not cross the boundary of the
20 exchange in which the call originated. That simple fact remains whether the

1 instruments involved are ordinary voice phones or devices such as modems, and
2 that simple fact remains as the basis of determining how multiple carriers who
3 collaborate to complete a call are compensated for their respective roles in
4 completing a call. The present system of laws, regulations and industry practice
5 provides different intercarrier compensation schemes for collaboration in completion
6 of intraexchange local calls and for interexchange long distance calls.

7 Level 3 claims to be a CLEC in its proposed interconnection arrangement with SRT,
8 but Level 3 proposes to have no customers physically located in the same local
9 exchange area as SRT. Level 3 Petition, pp 11 and 14; Level 3 answers to
10 interrogatories, Nos. 1 and 4. Level 3's customers would not be POTS customers.
11 Level 3's customers would be only ISPs who would not have modems physically
12 located in the exchange area. Level 3's ISP customers would have local telephone
13 numbers associated with the SRT local exchange area, but the ISPs' modems
14 would be located in other exchange areas. The arrangement proposed by Level 3
15 would provide for SRT's end user customers in SRT's local exchange area to use
16 their computer modems to connect with Level 3's ISP customers' modems located
17 in other exchange areas, where Level 3 provides service. Those are the facts, so
18 the arrangement proposed by Level 3 should be regarded as long distance service,
19 and Level 3 should be regarded as an interexchange carrier insofar as its proposed
20 interconnection and agreement are concerned.

1 Level 3 has both LEC and IXC PC&N certificates, and it is registered as a reseller
2 of both local and long distance telecommunications service. Insofar as its proposed
3 interconnection arrangement with SRT is concerned, Level 3 would be operating as
4 an interexchange carrier, not as a local exchange carrier.

5 **Q: How does SRT respond to Level 3's claim that the arrangement it seeks is**
6 **local, not long distance?**

7 A: I have already stated, the arrangement proposed by Level 3 would provide for end
8 users in SRT's local exchange area to use their computer modems to connect with
9 ISPs' modems located in other exchange areas. Those are the facts, so the
10 arrangement proposed by Level 3 should be regarded as long distance service.
11 This view of the facts is consistent with definitions in both federal and state law.

12 **Q: What definitions are you referring to?**

13 A: In the Federal Communications Act, the definitions of telephone exchange service
14 and telephone toll service, subsections (47) & (48) of section 4 of the Act. Under
15 North Dakota's statutes, Level 3 would be considered an interexchange
16 telecommunications company that provides telecommunications service to end
17 users located in separate local exchange areas, under N.D.C.C. § 49-21-01,
18 definition number 9.

19 **Q: What is SRT's position on Level 3's assertion that calls placed by end users**
20 **in SRT's local exchange area to ISPs served by Level 3 should be rated as**
21 **local calls because Level 3's ISP customers would have virtual presence in**
22 **SRT's local exchange area apart from the ISPs' physical presence?**

1 A: As SRT understands the proposal, Level 3 would inform the Numbering Plan
2 Administrator that it is a CLEC and it needs a block of numbers associated with an
3 SRT exchange area, numbers that Level 3 would assign to its local exchange
4 customers in SRT exchange areas. An unstated premise is that Level 3 needs new
5 numbers for new local exchange customers, as distinguished from competing with
6 SRT and persuading some of its customers to change carriers. The distinction is
7 important, because ILEC customers who decide to take service from a CLEC retain
8 their old numbers under number portability rules, so a new block of numbers is not
9 needed for that kind of CLEC service.

10 But Level 3 makes it clear that it does not intend to operate as a true competitive
11 local exchange carrier. Level 3 does not want number portability and it does not
12 want new numbers for new local customers. Level 3 wants new local numbers to
13 assign to its ISP customers who are physically located in other exchange areas.
14 The fact that Level 3's ISP customers have no physical presence in the SRT
15 exchange area is probably the central fact in this case. A related fact is that Level
16 3's ISP customers already have local numbers, under the existing interconnection
17 between Level 3 and SRT.

18 Level 3 calls this its proposed arrangement, where its ISP customers would have
19 new local numbers, "virtual presence" in the local exchange area, sufficiently
20 present to characterize its proposed arrangement with SRT as an arrangement

1 between a CLEC and an ILEC. SRT's position is that so-called virtual presence is
2 not real presence or the functional equivalent of real presence. Level 3's service
3 to its ISP customers is not a local service where Level 3's ISP customers have no
4 physical presence in the local area, even though these customers may be assigned
5 local numbers.

6 As the term "virtual" is used by Level 3 in describing its scheme, it seems adapted
7 from the coined expression "virtual reality" as a description of computer generated
8 images and their movement. It seems a matter of common knowledge that virtual
9 reality is not real reality; it is child-like pretending, on an adult level. Virtual reality
10 is not real, it is imaginary. Imagination is employed in virtual reality applications for
11 lots of reasons, from game-playing for entertainment to serious purposes such as
12 pilots' flight training.

13 But virtual flying on a flight simulator does not transport the pilot or imaginary
14 passengers from place to place. The same is true of so-called virtual NXX signaling
15 from one telephone station or modem to another. No matter what calling number
16 arrangements are established or what kind of glossy label is attached to the
17 arrangement, a call from a computer modem in any local exchange area to a
18 modem located in another exchange area travels over the interexchange network
19 and is therefore a long distance call, not a local call. That's a real fact.

20 **Q: What is SRT's position about Level 3's statements that its proposals are**
21 **consistent with established industry practice?**

1 A: SRT views Level 3's proposals as contrary to industry practice, an endeavor to
2 change industry practice, or both.

3 **Q: Please explain.**

4 A: Level 3's virtual NXX concept is not consistent with present industry practice. For
5 example, Level 3 refers to the LERG, Local Exchange Routing Guide, in support of
6 its claim that so-called virtual presence should be regarded as local, intraexchange
7 calling for compensation purposes. Level 3's Petition states that: "It is industry
8 practice to rate a call as local or toll by reference to the NXX codes of the calling
9 and called parties." That is a true statement as far as it goes, but the whole truth
10 is this practice is based on a shared understanding and expectation within the
11 industry that NXX codes are trusted to convey true and correct information about
12 the physical/geographical locations of calling and called parties, as their locations
13 are defined by exchange boundaries. Without compliance with this expectation and
14 trust, a call cannot be correctly rated as local or long distance. Exceptions occur,
15 as with FX service, but Level 3's proposal is not consistent with industry practice
16 and is not consistent with exceptions that are permissible under industry practice,
17 Level 3's VNXX concept would ignore and distort the factual, physical, geographical
18 reality of telephone exchange boundaries, and would ignore and violate long
19 standing industry practice of compensation for telecommunications by reference to
20 established exchange boundaries. In fact, Level 3's process of assigning NXX code

1 in order to establish a so-called virtual presence apart from a customer's physical
2 presence is the functional equivalent of bypass of the access charge rules. Level
3 3's process would not bypass the interexchange network, but would evade payment
4 of access charges. Level 3's proposed process is like driving a freight truck on a
5 toll road without stopping to pay at the toll booth. They want to change industry
6 practice to permit this proposed process, but the proposal is not consistent with
7 present industry practice.

8 **Q: How does SRT respond to Level 3's claim that the dispute should be resolved**
9 **by considering its proposal as similar to FX service?**

10 A: The FX analogy may be helpful in resolving the factual dispute. But the FX analogy
11 does not support Level 3's claim that its proposed arrangement is a local service.
12 FX is long distance. FX is not local.

13 **Q: Explain FX service.**

14 A: I have already mentioned that long distance calling is usually paid for on a
15 measured service basis. The traditional and still common way that consumers pay
16 for long distance calling is that the calling party pays for a long distance call that he
17 originates, on a toll basis related to the call's time duration and distance between
18 exchanges. But that is not the only way that end users pay for long distance.
19 The old concept of calling collect or reversed charges where the called party
20 consents to pay for an incoming long distance call has been supplemented by at

1 least two alternative arrangements, FX service and 1-800 service. Both services
2 may be viewed as business arrangements to overcome customers' or potential
3 customers' possible resistance to making long distance calls at their own expense.
4 Both FX service and 1-800 service are so-called toll free calling arrangements for
5 interexchange calling, but the interexchange character is not free of charge.
6 1-800 service is analogous to so-called collect service, except the called party has
7 consented in advance to pay for incoming calls originated in many exchanges.
8 FX or foreign exchange service is a private line long distance service between two
9 specific exchanges. FX is private because it allows only one or a few associated
10 telephone stations in one exchange to be called from any station in a specified
11 distant "foreign" exchange. The station in the home exchange is assigned a
12 number associated with the foreign exchange, and the service is provided by an
13 interexchange communications path that has a cost and a charge that compensates
14 for the interexchange or long distance aspect of foreign exchange service.
15 Because FX service is limited as a private line service between specified exchanges
16 and also limited to specified stations in the home local exchange, it is service
17 provided by local exchange carriers, even though it is a long distance service. The
18 charge for FX service is commonly a flat rate charge related to the distance
19 between the home and foreign exchanges and there is no additional charge for
20 measured minutes of use. The facts that FX service is utilized by numbers that

1 may appear to be local and appear to be free to a calling party in the foreign
2 exchange and the fact that rates are not based on measured minutes of use do not
3 change the basic fact that FX service is long distance service between telephone
4 stations in different exchanges. FX service is not local. FX service originates in one
5 local exchange area, uses interexchange facilities, and terminates in another local
6 exchange area. FX service is long distance service, and it is not free.

7 **Q: Are there any other facts that relate to Level 3's FX analogy?**

8 A: Yes. There are two additional points, one general and one specific to this case.
9 Generally, FX service is regarded as an ancillary service offered by a local
10 exchange carrier, an ILEC or CLEC. I have no industry-wide statistics, but it is fair
11 to say that the vast majority of local numbers in any local exchange area are used
12 for local service and only a very small percentage of local numbers are used for FX
13 long distance service.

14 Specifically, the arrangement presently existing between Level 3 and SRT is
15 arguably "FX-like" to use Level 3's vocabulary. Level 3 provides its ISP customers
16 interexchange telecommunications service between their modems in Bismarck and
17 the ISPs' end users' modems in Minot. Internet users in Minot are presently able to
18 use a toll free local number to dial-up internet service provided by Level 3's ISP
19 customers who have modems in Bismarck. Level 3 answers to interrogatories, Nos.
20 14, 25, and 31. The arrangement Level 3 proposes is virtually identical to the existing

1 arrangement, except the ISPs would have new dial-up numbers. The existing
2 arrangement and the proposed arrangement are arguably “FX-like” service between
3 Bismarck as the ISPs’ modems’ home exchange and Minot as the foreign exchange,
4 but the argument falls for at least two reasons.

5 The only feature of Level 3’s existing or proposed arrangement that is “FX-like” is the
6 use of numbers associated with one exchange to call modems physically located in
7 another exchange. The supposed “Foreign exchange-like service” is not like FX
8 service because there is no “home exchange” where the carrier, Level 3, provides
9 local exchange service. (Level 3 seems ambivalent about whether to describe SRT’s
10 Minot exchange area or Bismarck as the home exchange under Level 3’s concepts
11 of “FX-like” service.) But neither the existing service or the proposed arrangement
12 is true FX service, because it is not ancillary to any local service that Level 3
13 provides in either Minot or Bismarck.

14 Level 3 claims status as a CLEC, but Level 3 does not propose any local telephone
15 exchange service in SRT’s local exchange area or anywhere in North Dakota and to
16 offer real FX or virtual FX as a service ancillary to local service. Level 3 Petition, pp
17 11 and 14; Level 3 answers to interrogatories, Nos. 1, 4, 7 and 8.

18 The FX analogy does not support Level 3’s claim that its proposed arrangement is
19 a local service. Level 3 proposes to provide only one way interexchange traffic, for
20 Level 3’s ISPs’ customers in SRT’s local exchange area to place calls to the ISPs’

1 modems located in different exchange areas. Level 3 wants to use local numbers
2 100% for interexchange service. That is not FX service offered by Level 3, ancillary
3 to local service offered by Level 3, because Level 3 does not propose any local
4 service. Level 3's proposed service to its ISP customers is long distance service, no
5 matter what numbers are dialed or punched into an ordinary telephone or
6 programmed into a computer modem.

7 **Q: You mentioned 1-800 service. How does that analogy affect the dispute about**
8 **Level 3's requested service as local or long distance?**

9 A: The service that is now commonly called 1-800 service was originally called
10 INWATS, an acronym for inward wide area telephone service that was initiated by
11 dialing the digits 1-800 and paid for by the called party. Level 3 rejects the 1-800
12 analogy. I surmise they prefer the FX analogy because FX service that is truly long
13 distance may appear as local service when local exchange numbers are called to
14 connect to a station located in a different exchange. The 1-800 analogy may be
15 more appropriate, not only because the numbers used clearly identify the service as
16 long distance, but also because there are other characteristics of 1-800 service that
17 are appropriately analogous to Level 3's proposals.

18 **Q: What other characteristics of 1-800 service are similar to Level 3's proposals?**

19 A: Level 3 proposes one-way service, from SRT's local exchange end user customers
20 to Level 3's ISP customers in distant exchanges. That is similar to arrangements
21 common in the industry today, under which ISPs establish 1-800 service so their

1 customers in distant exchanges may place long distance calls to connect with the
2 internet, toll free to the calling party and paid for by the called party, the ISP.

3 So, both 1-800 and FX service are factually comparable to Level 3's proposed
4 arrangements. All three are long distance service, because they connect telephone
5 stations in one local exchange area with instruments in a distant exchange area.

6 That's a fact.

7 **Q: Describe the present arrangements between SRT and Level 3 and compare the**
8 **present arrangement to Level 3's proposed arrangement.**

9 A: Level 3 is a registered reseller of local and long distance service and a certificated
10 facilities based provider of local and interexchange services in North Dakota. Level
11 3 has customers in Bismarck, including ISPs with modems physically present in
12 Bismarck. Level 3 provides service to its ISP customers in Bismarck that enables
13 internet users in SRT's local exchange area dial-up connection to Level 3's ISP
14 customers that are located outside the SRT exchange area. As this "FX -like"
15 service necessarily involves arrangements between a LEC in the Bismarck
16 exchange and a LEC in the Minot exchange, Level 3 has made arrangements with
17 SRT for DID service. This arrangement enables Level 3's ISP customers'
18 customers who are also local telephone customers in SRT's exchange area to use
19 local numbers as they program their modems to dial-up the ISP.

20 Level 3's proposal envisions that the existing arrangement would be replaced by a
21 different numbering arrangement, where Level 3 would assign new local numbers

1 to its ISP customers in lieu of the local numbers that are already assigned to those
2 same ISP customers. Level 3 would receive the functional equivalent of its
3 incumbent one-way interexchange arrangement via its virtual NXX numbering
4 scheme. The significant differences that Level 3 proposes are calls to the new
5 numbers would be: 1) rated as local calls; and 2) delivered to the ISPs' modems in
6 Bismarck over interexchange common trunk groups, i.e. over the public switched
7 telephone network, instead of being delivered over the incumbent private line
8 interexchange arrangement.

9 **Q: What is SRT's objection to Level 3's proposal that calls placed by end users**
10 **in SRT's local exchange area to ISPs served by Level 3 , but with new**
11 **numbers, should be rated as local calls under the virtual presence concept?**

12 **A:** Level 3's virtual NXX concept is nothing other than a scheme to bypass access
13 charges under the existing regime of federal and state access charge rules
14 governing intercarrier compensation for their shared use of their separately owned
15 facilities to provide interexchange long distance service between end users. It
16 surpasses strange that a knowledgeable telecommunications carrier would suggest
17 that calls should be rated as local and delivered to a different exchange, without
18 compensation for the interexchange piece of the service. Beyond strange, it seems
19 incredible that Level 3 would request the Commission not merely to sanction, but
20 to compel any local exchange carrier to install such an arrangement in place of an
21 existing interconnection and arrangement that acknowledges this kind of traffic as

1 interexchange traffic with appropriate compensation.

2 Presently, Level 3 has in effect an interconnection and one-way interexchange DID
3 arrangement with SRT. The existing interconnection and DID arrangement enables
4 persons who are both SRT local exchange customers and end users of ISP service
5 provided by Level 3's ISP customers to call a local number to connect with the ISPs'
6 modems that are in exchange areas outside of SRT's local exchange area. For
7 their own business reasons, these ISPs have chosen this service from Level 3,
8 rather than locate modems in SRT's local exchange area or arranging for 1-800
9 internet access. As stated, the existing arrangements includes compensation for
10 the interexchange aspect of the existing arrangement. Level 3 wants to change the
11 present arrangement.

12 Level 3 wants to replace the present interconnection and arrangement with an
13 arrangement that would provide it with exchange access free of compensation to
14 which SRT is entitled under existing industry practice and existing law, the access
15 charge rules. Level 3 would use this free access to subsidize Level 3's
16 interexchange service, the carriage of traffic from ISPs' end user customers in
17 SRT's exchange area to ISPs' modems located in other exchange areas. Level 3's
18 bypass proposal is not much different from a "leaky PBX" which has long been a
19 model of bypass that the FCC condemns as "regulatory arbitrage." See Developing
20 a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92, Notice of

1 Proposed Rulemaking, FCC 01-132 (“NPRM”), par. 12.

2 **Q: Does SRT contend that Level 3 cannot change the existing arrangement?**

3 A: No, that is not what SRT is saying. The existing arrangement is maintained month-
4 to-month. As far as SRT is concerned, Level 3 can terminate this arrangement if
5 it wants to. What I am saying is that the two companies are presently
6 interconnected. There is presently a direct interconnection between these two
7 telecommunications carriers. SRT has satisfied its 251(a) duties by this direct
8 connection. If Level 3 decides to terminate the existing arrangement, that does not
9 mean that Level 3 has pushed SRT out of compliance with section 251(a).

10 And, SRT remains in compliance with its 251(a) duties because it is indirectly
11 interconnected with Level 3 via SRT’s connection to the public switched telephone
12 network. Level 3 has declared its business purpose to carry traffic originating in
13 SRT’s local exchange, over the public network of shared common trunks,
14 terminating in a distant different exchange, in place of Level 3’s present private line
15 arrangement. If Level 3 wants to carry traffic from internet users’ modems in SRT’s
16 local exchange area to Level 3’s ISP customers’ modems in other areas, over the
17 public switched network instead of under the incumbent private line arrangements,
18 SRT’s access service is available for Level 3 to operate as a carrier of this sort of
19 interexchange traffic.

20 SRT is not obliged by any provision of the Telecommunications Act to make the kind

1 of access charge bypass arrangement Level 3 proposes as an interconnection
2 under section 251(a) of the Act, and that kind of arrangement should not be
3 compelled in arbitration procedures.

4 **Q: Can you identify the parts of Level 3's suggested form of agreement with SRT**
5 **that SRT finds objectionable as a access charge bypass scheme?**

6 A: Yes. Level 3 attached a suggested form of agreement to its Petition in this
7 proceeding. The verbiage in Level 3's suggested form of agreement, sections 2.2
8 and 3 are objectionable as the operative words that would install Level 3's bypass
9 scheme.

10 **Q: Has SRT made a counterproposal to Level 3 that addresses these objections.**

11 A: Yes. SRT has made a counterproposal that would provide for so-called VNXX
12 traffic that terminates in an exchange outside of SRT's service to be recognized as
13 interexchange traffic and compensated under access charge rules. Sections 5.2
14 and 5.3 of SRT's proposed agreement would provide for access charges to be
15 applied to SRT originated traffic that terminates to Level 3's customers who are not
16 be physically located in SRT's local exchange areas.

17 Level 3 has recently reiterated the interexchange nature of its proposal. "In
18 particular, Level 3 intends to offer its services primarily to ISPs who currently do not
19 have points of presence in the exchange areas covered." Level 3 answers to
20 interrogatories, No. 6. SRT's proposed agreement would provide for access
21 charges to be applied to SRT originated traffic that terminates to Level 3's

1 customers who do not have points of presence in SRT's exchange area.

2 There a few other provisions in SRT's proposed agreement that relate to the
3 principal points of sections 5.2 and 5.3. These are the definitions of "Local
4 Telecommunications Traffic" and "Toll Traffic" in sections 1.10 and 1.20, and
5 section 3.5, that relates to the locations of end-users and their assigned telephone
6 numbers.

7 There are some differences in the two parties' boilerplate that do not have
8 substantial effects on the principal issue, compensation for interexchange traffic.

9 **Q: What is SRT's response to Level 3's statements that SRT would incur no**
10 **additional or incremental costs to establish Level 3's proposed arrangement?**

11 **A:** Although I have only a general understanding of economic theories about
12 incremental costs' effects on prices, I can say that the theory is limited in the real
13 world. If I were arrested for driving on the toll road after bypassing the toll booth,
14 I could not reasonably plead, "The road was already there. It didn't cost anybody
15 anything for me to ride on it free of charge." Telephone service is like transportation
16 service on the toll road. Prices are established to compensate for all costs of
17 service, including costs incurred before the service is rendered. I am aware there
18 are some incremental cost principles reflected in some intercarrier compensation
19 rules. Mr. Meredith is more competent than I to answer detailed questions about
20 this subject.

21 Level 3's incremental cost assertions exemplify the common attitude of

1 interexchange carriers that access charges under existing rules are generally too
2 high, not cost justified, and provide an uneconomic subsidy to local service. The
3 long distance party line is that local rates and access rates should be changed or
4 "rebalanced" so that local rates are increased and access charges reduced. But the
5 issue here is whether the existing access charge rules apply to the facts of this
6 case. An interconnection dispute is not the proper proceeding to address access
7 charge policy issues.

8 **Q: What is SRT's response to Level 3's claim that its proposal is consistent with**
9 **the FCC's April 2001 ISP Remand Order?**

10 A: SRT disagrees. To the contrary, SRT believes its position is supported by the ISP
11 Remand Order.

12 **Q: Please explain.**

13 A: To be complete, the explanation is somewhat lengthy, and includes consideration
14 of not only the ISP Remand Order but also its companion Notice of Proposed Rule
15 Making, both of which were promulgated in April of 2001.

16 It may be helpful to begin in the middle, by referring to the part of the ISP Remand
17 Order on which Level 3 relies, paragraph 81, which declares that "bill and keep"
18 arrangements shall apply to ISP bound traffic where a new carrier enters a market
19 or a carrier enters a new market.

20 Of course candor requires acknowledgment that the words of paragraph 81 of the
21 ISP Remand Order, read in isolation, could appear to support Level 3's assertion

1 that bill and keep compensation should apply to Level 3's proposal for a "new"
2 arrangement affecting Level 3's ISP bound traffic that originates in SRT's local
3 exchange area. But closer examination shows that the ISP Remand Order for bill
4 and keep compensation does not apply to Level 3's proposed arrangement. The
5 factual background of the ISP Remand Order should be considered.

6 **Q: Please explain the factual background.**

7 A: Since 1996, CLECs have established inTRAexchange interconnections and
8 agreements with ILECs, providing for reciprocal compensation in money, based on
9 measured service. Traffic in a local exchange area served by an ILEC and one or
10 more CLECs is generally two way, but in many exchange areas CLECs have
11 acquired ISPs with physical local presence as local customers. Consequently, as
12 all end-users in the exchange area utilize local dial-up service to ISPs, the CLECs
13 record large volumes of terminating service for calls originated among ILECs'
14 populations of end users. In these circumstances, ILECs are collecting from their
15 end-users for flat rate local service, including origination of ISP bound calls to ISPs
16 that are physically, geographically present in the same local exchange area, and the
17 ILECs pay substantial amounts of "reciprocal compensation" to CLECs for the
18 measured service of terminating these local calls to ISPs' modems. In these
19 situations, there is true two-way local traffic between the ILECs' and the CLECs'
20 ordinary voice users, but when ISP bound traffic is added to the mix, there is a

1 gross imbalance in traffic terminated by CLECs and paid for by ILECs. The
2 imbalance is commonly so extreme as to be characterized by the FCC as "creating
3 a potential windfall" by the CLECs' taking advantage of "opportunities for regulatory
4 arbitrage." NPRM, par 11, and ISP Remand Order, par 4, 5, and 21. These
5 citations to particular paragraphs of these two FCC pronouncements are exemplary,
6 not exclusive as addressing the problems of regulatory arbitrage that are mentioned
7 throughout the orders. The FCC's purpose under both the ISP Remand Order and
8 the companion NPRM is to take away this arbitrage opportunity and install an
9 efficient intercarrier compensation system.

10 By imposing "bill and keep" in the ISP Remand Order insofar as new
11 interconnection agreements between CLECs and ILECs are concerned, the FCC
12 has disabled new CLECs from reaping the windfall that is produced when reciprocal
13 compensation arrangements are distorted by gross imbalances in local traffic
14 volumes and where the imbalance is due to ISP bound traffic. Bill and keep was
15 imposed as a temporary stop-gap measure, affecting only "new carriers," entering
16 existing markets or existing carriers entering "new markets," pending the outcome
17 of the NPRM proceedings. ISP Remand Order, par 81.

18 There are significant factual distinctions between the kinds of situations addressed
19 by the FCC in its ISP Remand Order and the situation presented by Level 3's
20 Petition. First and most obvious, the ISP remand order dealt only with

1 compensation affecting ILECs' and CLECs' exchange of local traffic. That is, the
2 ISP order dealt with real CLECs with real local customers including real local ISP
3 customers. The ISP Remand Order does not impose bill and keep compensation
4 in situations where the interconnecting carrier has no local traffic and its ISP bound
5 traffic originates in one exchange and terminates in another exchange, as Level 3
6 proposes. As I have already testified, the arrangement proposed by Level 3 is long
7 distance traffic in fact, not local traffic. The Order modified the reciprocal
8 compensation system that is applicable to ILECs' and CLECs' exchange of local
9 traffic; the Order did not modify the access charge rules for intercarrier
10 compensation for interexchange traffic. As the FCC explained in the NPRM, at
11 paragraphs 5-7, long distance calls are subject to access charge rules, not the rules
12 that govern local traffic. That is the present state of the law and regulations.

13 Second and similarly, the ISP remand order addressed situations of real CLEC and
14 ILEC exchanges of traffic, whereas Level 3 proposes an arrangement that would
15 involve only one-way traffic. In the ISP Remand Order, the FCC declared its
16 concern with two way traffic that is imbalanced, on average, by a factor of 18, and
17 the FCC installed a presumption that a 3:1 or higher ratio of exchanged traffic
18 indicates the presence of out of balance ISP bound traffic on the CLEC side of the
19 exchange. But Level 3's one-way proposal is infinitely out of balance; Level
20 proposes no exchange of traffic. Level 3 does not propose to originate any local

1 traffic to exchange with SRT, to terminate with SRT's local end users. The provision
2 of the ISP Remand Order, paragraph 81, imposing bill-and-keep arrangements on
3 new ILEC/CLEC interconnection arrangements, is not applicable because there is
4 no expected exchange of local traffic under Level 3's proposal.

5 As the FCC repeatedly explained in the related NPRM, bill and keep methodology
6 is generally appropriate where there is a relative balance in a two way exchange of
7 traffic, and the FCC has implied in the ISP Remand Order that some imbalance is
8 acceptable where ordinary local exchange traffic between CLECs and ILECs is
9 unbalanced by CLECs' ISP-Bound traffic. By consistent reasoning, bill and keep
10 methodology is inappropriate where the traffic is not merely unbalanced but entirely
11 one directional.

12 Third, nothing in the ISP Remand Order indicates the FCC was considering "virtual
13 presence" or "VNXX" concepts, and nothing in the order directly declares or
14 indirectly infers that so-called virtual presence is the functional or factual equivalent
15 of real presence within the geographical boundaries of a local exchange area.
16 Quite the contrary, the entire history, from the first Order, through the first appeal,
17 the ISP Remand Order and the second appeal all indicate the focus of attention was
18 on situations where "...an ISP's end-user customer typically access the Internet
19 through an ISP server located in the same local calling area " ISP Remand Order,
20 par 10. Similar references to ISPs' server locations appear elsewhere in the ISP

1 Remand Order. The appellate court also understood the FCC rules under its review
2 involved the circumstances where “an `end user’ of the telephone system will use
3 a computer and modem to place a call to the ISP server in his local calling area.”
4 Bell Atl. Tel. Cos. V FCC, 206 F.3d, 3 (D.C. Cir. 2000.)

5 This third point is reinforced by references to VNXX in the NPRM, where the very
6 issues involved in this arbitration proceeding are subjects of the FCC’s requests for
7 comments as it considers making new rules. NPRM, pars. 97 and 115. The FCC
8 has not endorsed the usage of VNXX codes, and has recognized that consideration
9 of the usage of VNXX codes necessarily includes consideration of compensation
10 issues. The FCC has these matters under consideration, but it has not made a
11 decision or made any rules.

12 Fourth, Paragraph 81 of the ISP Remand Order and its imposition of bill and keep
13 methodology applies only where “a new carrier enters the market or an existing
14 carrier expands into a market it previously had not served.” But Level 3 does not
15 propose arrangements either as a “new carrier” entering an existing market or as
16 an existing carrier expanding into a market it previously had not served. Level 3
17 is not a new carrier, and it is not proposing to expand into a market it previously
18 had not served. Level 3 is an existing carrier of ISP bound traffic from SRT’s
19 exchange areas to Level 3’s ISP customers in other exchange areas, under the
20 existing direct interconnection between SRT’s and Level 3’s facilities. In its answers

1 to interrogatories, Level 3 has admitted it is not a "a new carrier enter[ing] the
2 market or an existing carrier [that seeks to] expand into a market it previously had
3 not served." To use Level 3's words, it wants to "migrate" existing services. See
4 Level 3 answers to interrogatories, Nos. 25 and 31. Level 3 is not a new carrier and
5 its proposal does not affect a new market.

6 Fifth, the ISP Remand Order and its imposition of bill and keep methodology was
7 intended as a limitation on CLECs' receipt of excessive amounts of reciprocal
8 compensation payments. Bill and keep was not imposed on ILECs as any sort of
9 limitation on ILECs' access revenues. Level 3's argument that bill and keep
10 methodology should be imposed on ILECs such as SRT is conceptually related to
11 Level 3's incremental cost argument; it is another way of saying that ILECs like SRT
12 are adequately compensated by their end users' local rates for the costs of
13 delivering calls to CLECs and CLECs' ISP customers. But this argument was
14 rejected by the FCC in the ISP Remand Order, where the Commission stated the
15 CLECs have not demonstrated that ILEC end-user rates are designed to recover
16 from the originating end-user the costs of delivering calls to ISPs. ISP Remand
17 Order, par 88.

18 In addition, the NPRM specifically separated the FCC's consideration of bill and
19 keep compensation for access. "We begin now to explore the possible application
20 of bill-and-keep approaches to interstate LEC-IXC interconnection." NPRM, par 97.

1 Considering the simultaneous release of both the ISP Remand Order and the
2 comprehensive NPRM, it cannot reasonably be claimed that the ISP Remand Order
3 made a decision on the issue whether bill and keep is appropriate compensation for
4 interexchange interconnections.

5 These five points can be summarized: Level 3's claims re unsupported by the facts
6 and circumstances addressed in or the plain words of the ISP Remand Order.

7 Sixth, the FCC explained its ISP Remand Order as intended to "limit the regulatory
8 arbitrage opportunity presented by ISP-bound traffic" (ISP Remand Order, par 2),
9 and explained the bill and keep provisions for "new markets" as intended to impose
10 a "standstill" in the interim as comprehensive and long term compensation
11 arrangements are addressed in the NPRM. ISP Remand Order par 81. Surely the
12 ISP Remand Order was not intended to create and ought not be interpreted to
13 create new opportunities for regulatory arbitrage. But that would be the outcome
14 if Level 3's proposals were installed by compulsory arbitration.

15 Here we have a telecommunications company that claims to be a CLEC, proposes
16 no local exchange service, and it wants to carry interexchange telecommunications
17 traffic from one exchange to another over common trunks, free of interexchange
18 intercarrier compensation obligations. Long distance traffic would be carried by
19 Level 3, but the toll booth would be bypassed. Level 3 proposes this arrangement
20 to replace its incumbent DID private line arrangement, where it provides virtually

1 the same service to its ISP customers. Level 3 wants to replace the existing
2 arrangement that it pays for with a different arrangement that would be free. But
3 only the flow of money would change. The flow of traffic would not be changed. To
4 permit this outcome, or worse, for a state commission to compel this outcome,
5 cannot be an intended consequence of the ISP Remand Order that was clearly
6 aimed at the elimination of CLEC arbitrage of the reciprocal compensation rules
7 which govern the compensation between telecommunications carriers for the
8 transport and termination of local traffic. The ISP Remand Order should not be seen
9 as authorizing an unintended consequence, the creation of new opportunities for
10 arbitrageurs to bypass the access charge rules which govern the compensation that
11 interexchange carriers pay to LECs to originate and terminate long-distance calls.
12 The FCC specifically declared its intention that its ISP Remand Order should not
13 result in the exacerbation of the market problems that the Order was intended to
14 ameliorate. ISP Remand Order, Par 81.

15 **Q: How do you respond to Level 3's claim it is a "retail subscriber" of SRT under**
16 **the existing private line interconnection and the proposed arrangement would**
17 **be a "co-carrier" arrangement?**

18 A: In the telecommunications world, the supply side participants are called carriers and
19 the demand or consumer side participants are commonly called end users. Carriers
20 interconnect and sell services to one another in the chain of supplied
21 telecommunications services. At the end of the line, one carrier sells service to an

1 end user. Level 3 uses the services it purchases from SRT as Level 3, a
2 telecommunications carrier, sells services to its end user customers, ISPs. In their
3 existing relationships, SRT and Level 3 are carriers; they are presently "co-carriers,"
4 to use Level 3's term. They are interconnected carriers. SRT is a carrier to carrier
5 supplier of services to Level 3. Level 3 is not an end user of the services it
6 purchases from SRT. SRT and Level 3 are presently interconnected carriers, but
7 Level 3 proposes to terminate that arrangement and make a different arrangement.
8 See Level 3 answers to interrogatories, Nos. 14, 25 and 31.

9 **Q: Are there any other aspects of the ISP Remand Order that affect this case?**

10 A: Three additional points occur to me concerning the question whether the ISP
11 Remand Order affects interexchange ISP bound traffic.

12 First, considering the experience of the FCC and its staff and considering the
13 comprehensive dissertations in the ISP Remand Order and the companion NPRM,
14 it seems fair to suggest this interpretation: If the FCC intended the bill and keep
15 provisions of the Order to replace existing access charge rules affecting intercarrier
16 compensation for interexchange traffic, it would have specifically said so.
17 Considering that the ISP Remand Order's factual background was local traffic, and
18 recognizing that bill and keep was imposed not on ILECs but on CLECs to eliminate
19 their arbitrage of the reciprocal compensation rules affecting local traffic, and
20 realizing the significance of, the revolutionary impact of installing a bill and keep

1 system in place of the existing regime of access charges rules affecting
2 interexchange traffic, it seems the only rational response to Level 3's arguments
3 about the ISP Remand Order is: If the FCC had intended that VNXX concepts
4 would be effective to convert interexchange traffic into local traffic subject to bill and
5 keep compensation, it would have said so. But nothing in the ISP Remand Order
6 imposes bill and keep compensation on an originating LEC, in lieu of access
7 charges, in situations where ISP bound traffic originates in one exchange and
8 terminates in another exchange.

9 Second, consider the FCC's captions that identify the subjects of its deliberation
10 and decisions. The ISP Remand Order is an outgrowth of the 1996 "Local
11 Competition Order" , Implementation of the Local Competition Provisions in the
12 Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325. "Access
13 Charge Reform" is routinely the subject of separate proceedings. See, e.g., In the
14 Matter of Access Charge Reform; Reform of Access Charges Imposed by
15 Competitive Local Exchange Carriers, CC Docket No. 96-262, Seventh Report and
16 Order, FCC 01-146. The ISP Remand Order did not address any reformation of
17 access charges affecting ISP-bound traffic.

18 As I have already testified, the FCC's NPRM specifically reserved the VNXX issue
19 and the issue whether bill and keep concepts should replace the access charge
20 rules. This fact supports the notion that the FCC did not intend its ISP Remand

1 Order to convert VNXX traffic, FX traffic, or "FX- like" traffic, into local traffic subject
2 to bill and keep compensation, or to apply bill and keep compensation to any kind
3 of interexchange traffic.

4 Third, the rule-making power of the FCC exercised in the ISP Remand Order
5 affected only local traffic intercarrier compensation rules, not the access rules
6 affecting intercarrier compensation for interexchange traffic.

7 **Q: Can you cite pertinent rules?**

8 A: Yes. The formal parts of the ISP Remand Order, affecting the Code of Federal
9 Regulations, amended 47 CFR part 51, subpart H, regarding interconnections
10 subject to reciprocal compensation rules. The Commission did not amend 47 CFR
11 part 69, regarding intercarrier compensation for interexchange traffic.

12 **Q: How does SRT respond to Level 3's claim that its proposal facilitates the**
13 **deployment of competition?**

14 A: SRT asserts Level 3's business plan is inconsistent with the principles of
15 competition envisioned by the 1996 Act and the FCC's several proceedings to
16 implement the Act. The FCC has a consistent purpose to facilitate efficient
17 competition, and it consistently condemns as "market distortions" the kind of
18 business plan proposed by Level 3. I refer again to the NPRM, par 11, and the ISP
19 Remand Order, par 4, 5, and 21.

20 Level 3 implies that the lower costs it would incur if its business plan were approved
21 would lower costs to end users of ISP service. Petition, p 13; Level 3 answers to

1 interrogatories, No. 6. Beyond the obvious response that there is no assurance
2 that either Level 3's charges for its services to ISPs or ISPs' end user prices would
3 be reduced as a consequence of Level 3's avoidance of access charges, the
4 response based on the FCC's line of reasoning is this: ISP service that includes an
5 interexchange element that is uncompensated is not competitive efficiency; it
6 "distorts competition by subsidizing one type of service at the expense of others."
7 ISP Remand Order, paragraph 5.

8 The FCC also used more blunt language: "There is no public policy rationale to
9 support a subsidy running from all users of basic telephone service to those end-
10 users who employ dial-up internet access." ISP Remand Order, paragraph 87. But
11 that is exactly what would happen if Level 3's bypass operation were successful.

12 **Q: Does the North Dakota PSC have jurisdiction to adjudicate disputes**
13 **concerning ISP-bound traffic in the context of an interconnection agreement**
14 **arbitration?**

15 **A:** This issue presents two questions, the PSC's jurisdiction to adjudicate disputes, and
16 whether the dispute should be adjudicated in the context of an interconnection
17 agreement arbitration.

18 The telecommunications industry is governed by both federal and state laws. The
19 1996 Telecommunications Act establishes a number of obligations and limitations
20 as matters of national law, and also establishes a number of processes that assume
21 states' regulatory commissions will be active in administering federal law in addition

1 to whatever laws each state may apply to telecommunications within their separate
2 jurisdictions.

3 The North Dakota PSC has jurisdiction in this case under the North Dakota
4 legislation that enabled the PSC to administer the arbitration system created by the
5 1996 Telecommunications Act. N.D.C.C. § 49-21-01.7 subd 8 and 9. Though it is
6 involved in administering federal law, the ND PSC is a state agency created by state
7 law; it is not a federal agency. The PSC exists under the North Dakota
8 Constitution, and the PSC's authority is defined by the state legislature.

9 North Dakota's legal system is different from some states, where legislatures have
10 delegated some policy making authority to their regulatory commissions. And it is
11 different from the federal government's system, where Congress has delegated
12 some policy making authority to the FCC. In North Dakota, the PSC is an
13 administrative agency, not a policy making body. The PSC administers policy
14 established by the North Dakota legislature, and the North Dakota PSC administers
15 policies established by the Federal Congress and the Federal Communications
16 Commission only to the extent that the North Dakota legislature has delegated
17 administrative responsibilities to the PSC. These features of the PSC's jurisdiction
18 are specifically included in the enabling legislation, N.D.C.C. § 49-21-01.7 subd 14.

19 **Q: Can you present some examples about the PSC's jurisdiction based on the**
20 **facts of this case?**

21 **A:** Yes. I have two examples in mind. First, Level 3 has asserted "that the regulatory

1 treatment of virtual NXX traffic is a state policy decision that is worthy of
2 consideration.” (Level 3's Response to SRT's Motion to Dismiss, p 23.) Some of
3 the state regulatory commissions' decisions that Level 3 cites seem to support the
4 proposition that “regulatory treatment of virtual NXX traffic is a state policy
5 decision.” Perhaps the legislators of some states have delegated to their
6 Commissions the authority to make that kind of state policy decision, but that is not
7 the situation in all states, and it is not the situation in North Dakota.

8 In my view, the North Dakota PSC does not have the jurisdiction to make a policy
9 decision that so-called virtual NXX traffic to ISPs in distant exchanges should be
10 reclassified as local traffic that would bypass the existing rules of federal and state
11 law that govern intercarrier compensation for interexchange traffic. As I testified
12 earlier, under North Dakota's statutes, Level 3 would be considered an
13 interexchange telecommunications company that provides “telecommunications
14 service to end users located in separate local exchange areas.” N.D.C.C. § 49-21-
15 01, definition number 9. In my view, the North Dakota PSC does not have the
16 jurisdiction to make a policy decision that so-called virtual NXX traffic to ISPs in
17 distant exchanges in North Dakota or in other states should be reclassified as local
18 traffic inside a North Dakota exchange area. The fact that the VNXX concept
19 seems to have been a subject of regulators' attention only after the enactment of
20 the existing state laws that are the basis of this commission's jurisdiction supports

1 the notion that the legislature did not intend that the PSC could adopt VNXX
2 concepts that would amend the statutory status of local exchange boundaries.

3 **Q: What is the second example?**

4 A: The second example is based on the fact that Level 3 has requested an
5 interconnection under section 251 of the federal act, including bill and keep
6 compensation, and it has invoked the PSC's jurisdiction to arbitrate the request. It
7 seeks arbitration under section 252 of the federal act, but it is more accurate to
8 describe the PSC's jurisdiction as derived from N.D.C.C. § 49-21-01.7 subd. 8 and
9 9, by which the state legislature enabled the state commission to administer
10 interconnection arrangements under the standards included in section 252 of the
11 federal act.

12 The point of this example is that the state statute's incorporation of the federal act
13 includes the standards of 252 subsections (c) & (d). However, the terms of
14 sections 252 (c) &(d) refer to interconnections under section 251(c). Sections 252
15 (c) &(d) do not relate to interconnections of the kind described in section 251(a), or
16 an agreement including compensation terms requested by Level 3. Whether
17 considered as a matter of federal or state law, subsections 252 (c) & (d) do not
18 authorize the PSC to impose bill and keep compensation for one-way traffic over an
19 interconnection that is established under section 251(a).

20 A related point is that Level 3 relies on the FCC's ISP Remand Order as imposing

1 bill and keep compensation concepts on its proposed interconnection arrangement
2 with SRT. SRT asserts that the ISP Remand Order does not apply to Level 3's
3 proposed arrangement, for all the reasons I have already mentioned. But to the
4 extent the ISP Remand Order affects this arbitration process, it should not be
5 overlooked that the FCC's ISP Remand Order did not rely on any provision of
6 section 252.

7 These jurisdictional gaps in Level 3's case cannot be bridged by the North Dakota
8 PSC. The state statute specifically declares that the PSC cannot impose
9 obligations different or greater than those imposed under the federal act. N.D.C.C.
10 § 49-21-01.7 subd 14. There is simply no statutory nexus for the North Dakota PSC
11 to apply the bill and keep compensation concept to the interconnection requested
12 by Level 3.

13 **Q What about context?**

14 **A:** As to the context, Level 3's position - that ISP bound interexchange traffic should
15 bypass the existing access charge rules that govern intercarrier compensation for
16 interexchange traffic - is a revolutionary concept that is not appropriate for
17 consideration or adoption by any state's commission in the context of an
18 interconnection agreement arbitration. If that revolutionary concept has any merit,
19 it is the kind of issue that should be addressed to the FCC.

20 The ISP Remand Order addressed only reciprocal compensation rules regarding

1 the exchange of local traffic, not the access charge rules regarding interexchange
2 traffic. The ISP Remand Order did not consider and did not eliminate existing
3 access charge rules concerning interexchange traffic. In the NPRM, the FCC said
4 it would consider whether the access charge rules should be changed, and how
5 ISPs would be or should be affected by changes in the access charge rules. See
6 NPRM, paragraphs 66-68.

7 Even though the FCC has signaled its predisposition to bill and keep as a
8 conceptual model - including the possibility that bill and keep methodology might
9 replace the incumbent access charge rules. - the FCC has not studied or evaluated
10 all the relevant empirical evidence or interested parties' comments. Final action has
11 not been taken by the FCC, regarding either ISP-Bound traffic alone or the larger
12 issue of intercarrier compensation of which ISP-Bound traffic is one part. This
13 global or national issue is within the jurisdiction of the FCC, not the North Dakota
14 PSC.

15 As I have already testified, the FCC has reserved jurisdiction over "VNXX" issues,
16 and it has also acknowledged there are unsettled questions about the FCC's
17 "authority to modify our existing interstate access rules to move them into a bill-and-
18 keep regime" and the FCC's authority and states' commissions' authority to modify
19 existing intrastate access rules. NPRM, par. 121 and 122.

20 Much of Level 3's presentation is a promotion of its views of how

1 telecommunications law and policy should be changed to relieve Level 3 of financial
2 obligations under the existing access charge rules. While the FCC acknowledges
3 questions as to the Federal and states' commissions authority to change the access
4 rules are unsettled, it cannot be said that the North Dakota PSC has jurisdiction to
5 adjudicate the dispute between SRT and Level 3 in the context of an
6 interconnection agreement arbitration.

7 **Q: Are you saying that the PSC has no jurisdiction to adjudicate disputes**
8 **concerning ISP-bound traffic in the context of an interconnection agreement**
9 **arbitration?**

10 A: It would be more accurate to characterize my testimony about jurisdiction as saying
11 the PSC does not have the breadth of jurisdictional power that would be required
12 to compel SRT to enter an interconnection agreement with Level 3 on the terms
13 proposed by Level 3.

14 **Q Does that mean Level 3 has no possible way for its claim to be decided by any**
15 **agency, short of the federal congress or the state legislature amending the**
16 **statutes?**

17 A: No. As I have already testified, Level 3's revolutionary concept could be presented
18 to the FCC in its pending NPRM proceedings, or Level 3 could pursue arbitration
19 by the FCC under section 252(e)(5) of the Act. It is also possible that arrangements
20 could be negotiated between SRT and Level 3, but not established by compulsory
21 arbitration.

Request No. 1

Provide a full and complete copy of any and all references in Level 3's North Dakota tariffs (and FCC tariffs, if Level 3 asserts that the traffic in question in this proceeding is FCC jurisdictional) to FX or FX-like services. If the state tariff is in draft form as suggested in Level 3's brief opposing dismissal of the petition provide the most recent draft.

Response: Level 3's Intrastate Access Services tariff, which was recently filed with the North Dakota Public Service Commission, includes a direct inward dial ("DID") telecommunications service. The DID service provides Level 3's customers with the ability to connect to the public switched telephone network ("PSTN") in order to receive inbound calls from other users on the PSTN. The DID service does not limit the customer to requesting DID in the local calling area in which they are physically located. Therefore, the DID service is used to provide the so-called "FX-like" service at issue in this proceeding. Included as Attachment 1 is a copy of Level 3's Intrastate Access Services tariff as filed with the North Dakota Public Service Commission.

Respondent:

William P. Hunt, III
Vice President, Public Policy
Level 3 Communications, LLC

SRT's Interrogatories and Request for Production of Documents

ATTACHMENT 1

INTRASTATE ACCESS SERVICES

TARIFF SCHEDULE APPLICABLE TO
ACCESS SERVICES
WITHIN THE STATE OF NORTH DAKOTA
BY
LEVEL 3 COMMUNICATIONS, LLC

Issued by:

Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
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INTRASTATE ACCESS SERVICES

CHECK SHEET

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INTRASTATE ACCESS SERVICES

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INTRASTATE ACCESS SERVICES
EXPLANATION OF SYMBOLS

The following symbols shall be used in this tariff for the purposes indicated below.

- (C) To signify changed listing, rule, or condition which may affect rates or charges.
- (D) To signify discontinued material, including listing, rate, rule or condition.
- (I) To signify an increase.
- (L) To signify material relocated from or to another part of tariff schedule with no change in text, rate, rules or conditions.
- (N) To signify new materials including listing, rate, rule or condition.
- (R) To signify reduction.
- (T) To signify change in wording of text but not change in rate, rule or condition.

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INTRASTATE ACCESS SERVICES

APPLICATION OF TARIFF

This Tariff contains the regulations and rates applicable to intrastate access services provided by Company to business customers for telecommunications between points within the State. Company's services are furnished subject to the availability of facilities and subject to the terms and conditions of this Tariff.

The rates and regulations contained in this Tariff apply only to the services furnished by Company and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carrier for use in accessing the services of Company.

The Customer is entitled to limit the use of Company's services by end users at the Customer's facilities, and may use other common carriers in addition to or in lieu of Company.

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INTRASTATE ACCESS SERVICES

SECTION 1 - DEFINITION OF TERMS

Certain terms used generally throughout this tariff for Communications Service of this Company are defined below.

Advance Payment: Part or all of a payment required before the start of service.

Authorized User: A person, firm or corporation which is authorized by the Customer or Joint User to be connected to the service of the Customer or Joint User, respectively.

Bit: The smallest unit of information in the binary system of notation.

Commission: North Dakota Public Service Commission.

Company: Level 3 Communications, LLC, the issuer of this tariff.

Customer: The person, firm or corporation which purchases service and is responsible for the payment of charges and compliance with the Company's regulations.

Dedicated: A facility or equipment system or subsystem set aside for the sole use of a specific Customer.

End Office: The term "end office" denotes the switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.

Joint User: A person, firm or corporation which is designated by the Customer as a user of services furnished to the Customer by the Company and to whom a portion of the charges for the service will be billed under a Joint User arrangement as specified in the Company's tariff.

LATA: A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4.

Major Service Interruption: An interruption of Customer service due to the Company's negligence or due to its noncompliance with the provisions of this tariff.

Premises: The space occupied by a Customer, Authorized User or Joint User in a building or buildings or contiguous property (except railroad rights-of-way, etc.) not separated by a highway.

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INTRASTATE ACCESS SERVICES

SECTION 1 - DEFINITION OF TERMS. (CONT'D)

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Commencement Date: The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or the tariffs of the Company, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date.

Service Order: The written request for Company Services submitted by the Customer in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth herein and pursuant to the tariffs of the Company, but the duration of the service is calculated from the Service Commencement Date.

Shared: A facility or equipment system or subsystem that can be used simultaneously by several Customers.

Transmission: The sending of electrical or optical signals over a line to a destination.

User: A Customer, Joint User, or any other person authorized by a Customer to use service provided to the Customer under a Level 3 Communications, L.L.C. tariff.

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INTRASTATE ACCESS SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY2.1 General

- 2.1.1 The Company does not undertake to transmit messages but offers the use of its facilities for the transmission of communications.
- 2.1.2 Customers and Users may use services and facilities provided under the tariffs of the Company to obtain access to services offered by other companies. The Company is responsible for the services and facilities provided under its tariffs, and for its unregulated services provided pursuant to contract, and it assumes no responsibility for any service (whether regulated or not) provided by any other entity that purchases access to the Company network in order to originate or terminate such entity's own services, or to communicate with such entity's own customers.
- 2.1.3 The Company shall have no responsibility with respect to billings, charges or disputes related to services used by the Customer which are not included in the services herein including, without limitation, any local, regional or long distance services not offered by the Company. The Customer shall be fully responsible for the payment of any bills for such services and for the resolution of any disputes or discrepancies with the service provider.

2.2 Description of Service

Company's Service consists of any of the business services offered pursuant to this tariff, either individually or in combination. Each business service is offered independent of the others, unless otherwise noted. Service is offered via the Company's facilities or in combination with transmission facilities provided by other certificated carriers.

2.3 Application for Service

Customers desiring to obtain Company's Service must complete the Company's standard service order form(s).

2.4 Shortage of Equipment or Facilities

- 2.4.1 The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control, on a nondiscriminatory basis.
- 2.4.2 The furnishing of service under the tariffs of the Company is subject to the availability on a continuing basis of all the necessary facilities and is limited to the reasonable capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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INTRASTATE ACCESS SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)**2.5 Terms and Conditions**

- 2.5.1 Service shall be provided on the basis of a minimum period of at least one (1) year.
- 2.5.2 Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in the tariffs of the Company. Customer will also be required to execute any other documents as may be reasonably requested by the Company.
- 2.5.3 At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party. Any termination shall not relieve Customer of its obligation to pay any charges incurred under the service order and the tariffs of the Company prior to termination. The rights and obligations, which by their nature extend beyond the termination of the term of the service order shall survive such termination.
- 2.5.4 In any action between the parties to enforce any provision of the tariffs of the Company, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.
- 2.5.5 The tariffs of the Company shall be interpreted and governed by the laws of the State of North Dakota without regard for its choice of laws provision.

2.6 Liability of the Company

- 2.6.1 The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omissions, shall be limited to the extension of allowances for interruption as set forth in Section 9.0, following. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer or User as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company, Company's employees or agents.
- 2.6.2 The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department.

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INTRASTATE ACCESS SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)

agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority, national emergencies, insurrections, riots, wars, unavailability of rights-of-way or materials, or strikes, lockouts, work stoppages, or other labor difficulties.

- 2.6.3 The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers or Users facilities or equipment used for or with the services the Company offers.
- 2.6.4 The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or User or due to the failure or malfunction of Customer or User-provided equipment or facilities.
- 2.6.5 The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of any installation so provided.
- 2.6.6 The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this paragraph as a condition precedent to such installations.
- 2.6.7 The Company is not liable for any defacement of or damage to Customer or User premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- 2.6.8 The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered, or as required by North Dakota Law.
- 2.6.9 The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer provided equipment or facilities
- 2.6.10 The Company shall not be liable for any damages resulting from delays in meeting any service dates due to delays resulting from normal construction procedures. Such delays

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INTRASTATE ACCESS SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)

shall include, but not be limited to, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right-of-way approvals and delays in actual construction work.

- 2.6.11 The Company shall not be liable for any damages whatsoever to property resulting from the installation, maintenance, repair or removal of equipment and associated wiring unless the damage is caused by the Company's willful misconduct or negligence.
- 2.6.12 **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN ITS TARIFFS.**
- 2.6.13 The Company shall not be liable for any damages whatsoever associated with service, facilities, or equipment which the Company does not furnish or for any act or omission of Customer or any other entity furnishing services, facilities or equipment used for or in conjunction with Level 3 Communications, LLC.

2.7 Notification of Service-Affecting Activities

To the extent possible, the Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

2.8 Provision of Equipment and Facilities

- 2.8.1 All services along the facilities between the point identified as the Company's origination point and the point identified as the Company's termination point will be furnished by the Company, its agents or contractors.
- 2.8.2 The Company may undertake to use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff.
- 2.8.3 The Company undertakes to use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer, Joint User, or Authorized

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INTRASTATE ACCESS SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)

User may not, nor may they permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.

- 2.8.4 Equipment the Company provides or installs at the Customer's premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided the equipment.
- 2.8.5 The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer, Joint User, or Authorized User when the service difficulty or trouble report results from the use of equipment or facilities the Customer, Joint User, or Authorized User provided.
- 2.8.6 The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities; subject to this responsibility the Company shall not be responsible for:
- 2.8.6.1 The transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or
- 2.8.6.2 The reception of signals by Customer provided equipment. The Customer, Authorized User, or Joint User is responsible for ensuring that Customer provided equipment connected to Company equipment and facilities is compatible with such Company equipment and facilities. The magnitude and character of the voltages and currents impressed on Company provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company provided equipment and wiring or injury to the Company's employees or to other persons. Customer will submit to Company a complete manufacturer's specification sheet for each item of equipment that is not provided by the Company and which shall be attached to the Company's facilities. The Company shall approve the use of such item(s) of equipment unless such item is technically incompatible with Company's facilities. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.
- 2.8.7 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Company services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.

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INTRASTATE ACCESS SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)

2.8.8 Company may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carrier which are applicable to such connections.

2.9 Nonroutine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours and/or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.10 Ownership of Facilities

Title to all facilities provided in accordance with the tariffs of the Company remains with the Company, its agents or contractors. The Customer shall not have, nor shall it assert, any right, title or interest in all the fiber optic or other facilities and associated equipment provided by the Company hereunder.

2.11 Optional Rates and Information Provided to the Public

The Company will promptly advise Customers who may be affected of new, revised or optional rates applicable to their service. Pertinent information regarding the Company's services, rates and charges shall be provided directly to Customers, or shall be available for inspection at the Company's local business address. If required by the Commission, the Company will cause to have published a notice of its intention to charge its rates, tolls, charges, rules and regulations in one or more newspapers in circulation in the affected area.

2.12 Continuity of Service

In the event of prior knowledge of an interruption of service for a period exceeding one day, the Customers will, if feasible, be notified in writing, by mail, at least one week in advance.

2.13 Governmental Authorizations

The provision of services is subject to and contingent upon the Company obtaining and retaining such approvals, consents, governmental authorizations, licenses and permits, as may be required or be deemed necessary by the Company. The Company shall use reasonable efforts to obtain and keep in effect all such approvals, consents, authorizations, licenses and permits that may be

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INTRASTATE ACCESS SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)

required to be obtained by it. The Company shall be entitled to take, and shall have no liability whatsoever for, any action necessary to bring the Services into conformance with any rules, regulations, orders, decisions, or directives imposed by the Federal Communications Commission or other applicable agency, and the Customer shall fully cooperate in and take such action as may be requested by the Company to comply with any such rules, regulations, orders, decisions, or directives.

2.14 Customer Service Complaints

Company will make a full and prompt investigation of all service complaints made by its customers and provide a status report of such investigation to the customer within 5 working days of receipt of the complaint. The final disposition of each complaint investigation shall be reported to the Customer. A Customer may request such report be made in writing.

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INTRASTATE ACCESS SERVICES

SECTION 3 - OBLIGATIONS OF THE CUSTOMER3.1 General

The Customer shall be responsible for:

- 3.1.1 the payment of all applicable charges pursuant to the tariffs of the Company;
- 3.1.2 damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer or of any User: or by the noncompliance by the Customer or any User with these regulations; or by fire or theft or other casualty on the Customer's or any User's Premises. unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- 3.1.3 providing at no charge, as specified from time to time by the Company, any needed personnel, equipment space and power to operate the Company facilities and equipment installed on the premises of the Customer or any User: and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- 3.1.4 any and all costs associated with obtaining and maintaining of the rights-of-way from the point of entry at the Customer's location to the termination point where service is finally delivered to the Customer, including, but not limited to, the costs of installing conduit or of altering the structure to permit installation of Company provided facilities. The Customer's use of such rights-of-way shall in all respects be subject to the terms, conditions and restrictions of such rights-of-way and of agreements between the Company and such third parties relating thereto, including without limitation, the duration applicable to and the condemnation of such rights-of-way, and shall not be in violation of any applicable governmental ordinance, law, rule, regulation or restriction. Where applicable, the Customer agrees that it shall assist the Company in the procurement and maintenance of such right-of-way. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service;
- 3.1.5 providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which the Company's employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain the Company's facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company;
- 3.1.6 the Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;

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SECTION 3 - OBLIGATIONS OF THE CUSTOMER (CONT'D)

- 3.1.7 complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of the Company's facilities and equipment in any Customer or User premises or the rights-of-way for which Customer is responsible under section 3.1.4; and granting or obtaining permission for the Company's agents or employees to enter the premises of the Customer or any User at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- 3.1.8 not creating or allowing to be placed any liens or other encumbrances on the Company's equipment or facilities; and
- 3.1.9 making the Company's facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.
- 3.2 Prohibited Uses
- 3.2.1 The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all governmental approvals, authorizations, licenses, consents and permits required to be obtained by the Customer with respect thereto.
- 3.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and Department regulations, policies, orders, and decisions.
- 3.2.3 The Company may, without obtaining any further consent from the Customer, assign any rights, privileges, or obligations under this tariff. The Customer shall not, without prior written consent of the Company, assign, transfer, or in any other manner dispose of, any of its rights, privileges, or obligations under this tariff, and any attempt to make such an assignment, transfer, disposition without such consent shall be null and void.
- 3.2.4 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.
- 3.2.5 A Customer may not use the services so as to interfere with or impair service over any facilities and associated equipment, or so as to impair the privacy of any communications over such facilities and associated equipment.

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SECTION 3 - OBLIGATIONS OF THE CUSTOMER (CONT'D)

- 3.2.6 Customer use of any resold service obtained from other service providers shall also be subject to any applicable restrictions imposed by the underlying providers.
- 3.2.7 A Customer, Joint User, or Authorized User shall not represent that its services are provided by the Company, or otherwise indicate to its customers that its provision of services is jointly with the Company, without the written consent of the Company. The relationship between the Company and Customer shall not be that of partners or agents for one or the other, and shall not be deemed to constitute a partnership or agency agreement.

3.3 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- 3.3.1 any loss, destruction or damage to property of the Company or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer or User or their employees, agents, representatives or invitees;
- 3.3.2 any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer or User, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between Customer and the Company; or
- 3.3.3 any claim of any nature whatsoever brought by a User with respect to any matter for which the Company would not be directly liable to the Customer under the terms of the applicable Company tariff.

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INTRASTATE ACCESS SERVICES

SECTION 4 - PAYMENT ARRANGEMENTS4.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold or shared with other persons.

4.2 Billing and Collection of Charges

4.2.1 Nonrecurring charges are due and payable within 30 days after the date an invoice is mailed to the Customer by the Company.

4.2.2 The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice is mailed.

4.2.3 Charges based on measured usage will be included on the next invoice rendered following the end of the month in which the usage occurs, and will be due and payable within 30 days after the invoice is mailed.

4.2.4 When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.

4.2.5 Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in the tariffs of the Company or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

4.2.6 With respect to Business Customers only, if any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, net of taxes, not compounded, multiplied by a monthly late factor of 1.5%.

4.2.7 For any check returned to the Company due to insufficient funds, uncollected funds, or closed account, a \$10.00 fee will be assessed per check returned.

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INTRASTATE ACCESS SERVICES

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)4.3 Advance Payments

- 4.3.1 To safeguard its interests, the Company may require a Business Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the nonrecurring charge(s) and the first month's estimated recurring charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated nonrecurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill and may be required in addition to a deposit.
- 4.3.2 A customer whose service has been discontinued for nonpayment of bills will be required to pay the unpaid balance due carrier and may be required to pay reconnect charges.

4.4 Deposits

- 4.4.1 The Company may, in order to safeguard its interests, require an applicant to make a suitable deposit to be held by the Company as a guarantee of the payment of charges.
- 4.4.2 A deposit will be required under the following conditions:
- 4.4.2.1 Applicant does not have verifiable credit with any Level 3 Communications, LLC affiliate anywhere within the region in the same of similar business; or
- 4.4.2.2 Applicant has had previous verifiable Service with any Level 3 Communications, LLC affiliate anywhere within the region but has an outstanding and unpaid bill for Service; or has not established satisfactory credit. Satisfactory credit for an Service customer is defined as twelve consecutive months of service without a suspension of service for nonpayment or with no more than one notification of intent to suspend service for nonpayment.
- 4.4.2.3 Applicant for nonresidential service will be given credit for previous nonresidential service only if the applicant is same business entity to which such service was previously provided.
- 4.4.3 An initial deposit or an additional deposit will be required of an existing customer when high risk is indicated and existing security is insufficient. Such requirement will be imposed when a payment history includes a suspension of service for nonpayment during the previous twelve month period.
- 4.4.4 The Company reserves the right to provide for installment payment of the deposit if the circumstances warrant.

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SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)

- 4.4.5 Any deposit required of an existing Customer is due and payable within ten days after the requirement is imposed. This requirement shall be in writing and the payment date shall be on or after the due and payable date for the current bill. If said deposit or installment thereof, as appropriate, is not paid within the aforementioned time frame, the Company may suspend service of the Customer without further notice. The following are exceptions to this provision:
- 4.4.5.1 In the event service is suspended for a Customer for nonpayment, an initial or additional deposit shall be required prior to the restoration of service if existing security is insufficient.
- 4.4.5.2 In the event prior indebtedness or prior unsatisfactory credit has been determined subsequent to the initial establishment of service due to misrepresentation of the facts by the Customer, a deposit shall be due and payable within five days upon verbal notification and written confirmation or within ten days when notification can only be provided in writing. The ten day period shall be measured from the mailed date of the written notice. If said deposit is not paid within the aforementioned time frame, the Company may suspend service to the Customer without further notice.
- 4.4.6 The amount of the deposit shall be the estimated charges for the Service which will accrue for a 2-month period. All applicants and existing Customers shall be treated uniformly for the determination and application of deposits.
- 4.4.7 When it is determined that a deposit is required under the conditions specified above, the applicant or Customer may, in lieu of or in addition to making the deposit, arrange for an acceptable third party to guarantee payment of his charges by executing on his behalf a Guarantee of Payment Agreement with the Company. An acceptable third party guarantor for Service is a current non residential customer with at least two years continuous service, whose payment history for the most recent twelve month period is satisfactory.
- 4.4.8 The fact that a deposit has been made in no way relieves the Customer from complying with the Company's regulations as to advance payments, or the prompt payment of bills on presentation.
- 4.4.9 The deposit will bear simple interest computed from the date of its receipt by the Company to the date the deposit is refunded, or service is terminated, or annually upon request of the Customer. In the event that a deposit is retained during time periods having different rates of interest, the interest accrued on the deposit will be calculated using the interest rate applicable to each time period.

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SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)

- 4.4.10 When the Customer is a candidate for political office or is a person or organization acting on behalf of a candidate for political office the deposit requirement will be adjusted monthly to reflect twice the current month's actual billing. Under these circumstances, a security, i.e., surety bond or bank letter of credit equal to the Company's deposit requirement will be the only acceptable substitutes for a cash deposit.
- 4.4.11 The applicable interest rate to be paid on Customer deposits will be equivalent to the rate paid on 2-year U.S. treasury notes for the preceding 12 months ending December 31 of any year or as otherwise required by the Commission and its rules.
- 4.4.12 When service is terminated, the amount of the initial or additional deposit, with any interest due, will be credited to the Customer's account and any credit balance which may remain will be refunded. After an existing customer has established satisfactory credit, the amount of the deposit, with any interest due, will be either credited to the account or at the option of the Customer, refunded. Satisfactory credit for a Customer is defined as twelve consecutive months of Service without suspension for nonpayment and with no more than one notification of intent to suspend service for nonpayment.

4.5 Discontinuance of Service

- 4.5.1 Upon nonpayment of any amounts owing to the Company, the Company may, by giving ten days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- 4.5.2 Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- 4.5.3 Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer, or if a condition immediately dangerous or hazardous to life, physical safety or property exists, or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- 4.5.4 Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately require a deposit without incurring any liability.
- 4.5.5 Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

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SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)

- 4.5.6 Upon the Company's discontinuance of service to the Customer under paragraphs 4.5.1 or 4.5.2 above, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of the tariffs of the Company, may declare all future monthly and other charges which would have been payable by the Customer during, the remainder of the minimum term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent (6%)).
- 4.5.7 Any Customer or Applicant for Service requesting the opportunity to dispute any action or determination of company under the Commission's Customer Service Rules shall be given an opportunity for a supervisory review by the Company immediately following Customer's request for such review. Service will not be disconnected pending completion of the review.
- 4.6 Cancellation of Application for Service
- 4.6.1 Applications for service are noncancellable unless the Company otherwise agrees. Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- 4.6.2 Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun (all discounted to present value at six percent (6%)).
- 4.6.3 Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- 4.6.4 The special charges described in paragraphs 4.6.1 through 4.6.3, above, will be calculated and applied on a case-by-case basis.

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INTRASTATE ACCESS SERVICES

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)4.7 Changes in Service Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

4.8 Taxes

The Customer is responsible for the payment of Federal excise taxes, gross receipts, access, state and local sales and use taxes and all taxes, fees, surcharges (however designated) and other exactions imposed on the Company or its services by governmental jurisdictions, other than taxes imposed generally on corporations. Any taxes imposed by a local jurisdiction (e.g. county and municipal taxes) will only be recovered from those customers residing in the affected jurisdictions. All such taxes, fees, and charges shall be separately designated on the Company's invoices, and are not included in the tariffed rates. It should be the responsibility of the Customer to pay any such taxes that subsequently become applicable retroactively.

4.9 Disputed Bills

In the event a customer disputes any portion of a bill for services rendered by the Company, the customer must pay any undisputed portion of the bill and notify the Company in writing of the disputed amount. The Company will then comply with the Commission's rules regarding disputed bills. Upon receipt of the notice of dispute, the Company will

- a) notify the customer of receipt of the notice of dispute, and
- b) initiate an investigation.

The Company will not disconnect service until the investigation is complete and the customer is informed of the results. The Customer will then have five (5) working days to make full payment of any amount still in dispute.

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INTRASTATE ACCESS SERVICES

SECTION 5 - USE OF CUSTOMER'S SERVICE BY OTHERS5.1 Resale and Sharing

Any service provided under the Company tariffs may be resold to or shared with other persons at the option of Customer, except as provided in 5.3, following. Customer remains solely responsible for all use of services ordered by it or billed to its telephone number(s) pursuant to the tariffs of the Company, for determining who is authorized to use its services, and for notifying the Company of any unauthorized use. Business rates apply to all service that is resold or shared.

5.2 Joint Use Arrangements

Joint use arrangements will be permitted for all services available for resale and sharing pursuant to the Company tariffs. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. Company will accept orders to start, rearrange, relocate, or discontinue service only from the Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each Joint User shall be responsible for the payment of the charges billed to it.

5.3 Transfers and Assignments

5.3.1 Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party and any appropriate authorizations, if necessary, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company, (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

5.3.2 If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a Major Service Interruption, Customer agrees to pay to the Company the following sums, within 21 days of the effective date of the cancellation or termination and be payable under the terms set forth in Section 4.0, preceding: all costs, fees and expenses reasonably incurred in connection with:

5.3.2.1 All Nonrecurring charges as specified in the Company's tariffs, plus

5.3.2.2 Any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of Customer, plus

5.3.2.3 All Recurring Charges specified in the applicable Company tariff for the balance of the then current term.

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INTRASTATE ACCESS SERVICES

SECTION 6 - CANCELLATION OF SERVICE

Reserved for future use.

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INTRASTATE ACCESS SERVICES

SECTION 7 - NOTICES AND COMMUNICATIONS

- 7.1 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 7.2 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- 7.3 All notices or other communications required to be given pursuant to the tariffs of the Company will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 7.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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INTRASTATE ACCESS SERVICES

SECTION 8 - CUSTOMER EQUIPMENT AND CHANNELS8.1 General

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in the tariffs of the Company. A User may transmit any form of signal that is compatible with the Company's equipment, but except as otherwise specifically stated in its tariffs, the Company does not guarantee that its services will be suitable for purposes other than voice-grade telephonic communication.

8.2 Station Equipment

- 8.2.1 Terminal equipment on the User's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the User. The User is responsible for the provision of wiring or cable to connect its terminal equipment to the Company's Point of Connection.
- 8.2.2 The Customer is responsible for ensuring that Customer-provided equipment connected to the Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.
- 8.2.3 Customer provided station equipment may be attached to services provided under the tariffs of the Company subject to Part 68 of the FCC Rules and to any applicable provisions of the tariffs of the Company and is the sole responsibility of the Customer.
- 8.2.4 The Company is not responsible for malfunctions of Customer-owned telephone sets or other Customer-provided equipment, or for misdirected calls, disconnects or other service problems caused by the use of Customer-owned equipment.

8.3 Interconnection of Facilities

- 8.3.1 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communications Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- 8.3.2 Communications Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and

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INTRASTATE ACCESS SERVICES

SECTION 8 – CUSTOMER EQUIPMENT AND CHANNELS (CONT'D)

conditions of the tariffs of the other communications carriers which are applicable to such connections.

- 8.3.3 Facilities furnished under the tariffs of the Company may be connected to customer provided terminal equipment in accordance with the provisions of the tariffs of the Company. All such terminal equipment shall be registered by the Federal Communications Commission pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User provided wiring shall be installed and maintained in compliance with those regulations.

8.4 Tests and Adjustments

Upon suitable notice, the Company may make such tests, adjustments, and inspections as may be necessary to maintain the Company's facilities in satisfactory operating condition. No interruption allowance will be credited to the Customer for the period during which the Company makes such tests, adjustments, or inspections.

8.5. Inspections

- 8.5.1 Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the User is complying with the requirements set forth in Section 2.8 for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- 8.5.2 If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

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INTRASTATE ACCESS SERVICES

SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE

9.1 General

- 9.1.1 Interruptions in service, which are not due to the negligence of, or noncompliance with the provisions of the tariffs of the Company by, the Customer or of an authorized or Joint User, or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth below for the part of the service that the interruption affects.
- 9.1.2 A credit allowance will be made when an interruption occurs because of a failure of any component furnished by the Company under its tariffs. An interruption period begins when the Customer reports a service, facility or circuit is interrupted and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.
- 9.1.3 For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- 9.1.4 A credit allowance will be given for interruptions of 30 minutes or more. Credit allowances shall be calculated as follows:

9.2 Interruptions of 16 Hours or Less

<u>9.2.1 Length of Service Interruption</u>	<u>Credit</u>
-Less than 1 hour	None
-1 hour up to but not including 8 hours	1/4 of day
-8 hours up to but not including 12 hours	1/2 of day
-12 hours up to but not including 16 hours	3/4 of day
-16 hours up to but not including 24 hours	one day

- 9.2 Two or more service interruptions of the same type to the same line/equipment of two (2) hours or more during any one twenty-four (24) hour period shall be considered as one interruption. In no event shall such interruption credits for any one line/equipment exceed one (1) day's fixed recurring charges for such line/equipment in any twenty-four (24) hour period.

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SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE (CONT'D)

- 9.3 Interruptions Over 24 Hours. Interruptions over 24 hours will be credited 1/24 day for each 1-hour period or fraction thereof up to a maximum of 8 hours. Interruptions in excess of 8 hours will be credited as one day. No more than one full day's credit will be allowed for any period of 24 hours.
- 9.4 No credit allowance will be made for:
- 9.4.1 interruptions due to the negligence of, or noncompliance with the provisions of the tariffs of the Company by, the Customer, User, or other common carrier providing service connected to the service of the Company;
 - 9.4.2 interruptions due to the negligence of any person other than the Company, including but not limited to the Customer or other common carriers connected to the Company's facilities;
 - 9.4.3 interruptions of service due to the failure or malfunction of facilities, power or equipment provided by the Customer, Authorized User, Joint User, or other common carrier providing service connected to the services or facilities of the Company;
 - 9.4.4 interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
 - 9.4.5 interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
 - 9.4.6 interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
 - 9.4.7 interruption of service due to circumstances or causes beyond the control of the Company; and
 - 9.4.8 interruptions of service that occur or continue due to the Customer's failure to authorize replacement of any element of special construction.

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SECTION 10 - APPLICATION OF RATES10.1 Distance-Based Charges

10.1.1 Distance between two points is measured as airline distance between two Points of Service.

10.1.2 The airline distance between any two Points of Service is determined as follows:

- A. Obtain the vertical and horizontal coordinates for each Point of Service location.
- B. Compute the difference between the vertical coordinates of the two Points of Service: and compute the difference between the two horizontal coordinates.
- C. Square each difference between the vertical coordinates and the horizontal coordinates.
- D. Add the square of the vertical coordinates difference and the square of the horizontal coordinates difference.
- E. Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained. For example: $\frac{(V2 - V1)^2 + (H2 - H1)^2}{10}$
- F. Take the square root of the result.

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INTRASTATE ACCESS SERVICES

SECTION 11 - SPECIAL CONSTRUCTION AND SPECIAL ARRANGEMENTS11.1 Special Construction

Subject to the agreement of the Company and to all of the regulations contained in the tariffs of the Company, special construction and special arrangements may be undertaken on a reasonable efforts basis at the request of the Customer. Special arrangements include any service or facility relating to a regulated telecommunications not otherwise specified under tariff, or for the provision of service on an expedited basis or in some other manner different from the normal tariff conditions. Special construction is that construction undertaken:

11.1.1 where facilities are not presently available, and there is no other requirement for the facilities so constructed;

11.1.2 of a type other than that which the Company would normally utilize in the furnishing of its services;

11.1.3 over a route other than that which the Company would normally utilize in the furnishing of its services;

11.1.4 in a quantity greater than that which the Company would normally construct;

11.1.5 on an expedited basis;

11.1.6 on a temporary basis until permanent facilities are available;

11.1.7 involving abnormal costs; or

11.1.8 in advance of its normal construction.

11.2 Basis for Charges

Where the Company furnishes a facility or service on a special construction basis, or any service for which a rate or charge is not specified in the Company's tariffs, charges will be based on the costs incurred by the Company and may include: (1) nonrecurring type charges; (2) recurring type charges; (3) termination liabilities; or (4) combinations thereof. The agreement for special construction will ordinarily include a minimum service commitment based upon the estimated service life of the facilities provided.

11.3 Basis for Cost Computation

The costs referred to in Section 11.2 preceding may include one or more of the following items to the extent they are applicable:

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- 11.3.1 installed costs of the facilities to be provided including estimated costs for the rearrangements of existing facilities. Installed costs include the cost of:
- 11.3.1.1 equipment and materials provided or used.
 - 11.3.1.2 engineering, labor and supervision,
 - 11.3.1.3 transportation,
 - 11.3.1.4 rights of way, and
 - 11.3.1.5 any other item chargeable to the capital account;
- 11.3.2 annual charges including the following:
- 11.3.2.1 cost of maintenance;
 - 11.3.2.2 depreciation on the estimated installed cost of any facilities provided, based on the anticipated useful service life of the facilities with an appropriate allowance for the estimated net salvage;
 - 11.3.2.3 administration, taxes and uncollectible revenue on the basis of reasonable average costs for these items;
 - 11.3.2.4 any other identifiable costs related to the facilities provided; and
 - 11.3.2.5 an amount for return and contingencies.

11.4 Termination Liability

To the extent that there is no other requirement for use by the Company, the Customer may have a termination liability for facilities specially constructed at the request of the customer, if and only if such liability is clearly stated in a written agreement between the Company and the Customer.

- 11.4.1 The maximum termination liability is equal to the total cost of the special facility as determined under 11.3, preceding, adjusted to reflect the redetermined estimate net salvage, including any reuse of the facilities provided.
- 11.4.2 The maximum termination liability as determined in paragraph (1) shall be divided by the original term of service contracted for by the Customer (rounded up to the next whole number of months) to determine the monthly liability. The Customer's termination liability shall be equal to this monthly amount multiplied by the remaining unexpired

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INTRASTATE ACCESS SERVICES

SECTION 11 - SPECIAL CONSTRUCTION AND SPECIAL ARRANGEMENTS (CONT'D)

term of service (rounded up to the next whole number of months), discounted to present value at six percent (6%), plus applicable taxes.

11.5 Term

The minimum term for any Company service shall not be less than one (1) year, unless otherwise agreed to by the Company. The Customer and Company may agree to longer minimum terms for particular services.

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SECTION 12 - TEMPORARY PROMOTIONAL PROGRAMS

The Company may establish temporary promotional programs to introduce present or potential customers to a service not previously received by Customers. During specific promotional periods, an offer may be made to reduce nonrecurring charges on a nondiscriminatory basis, up to the full amount, for optional products and services. Unless specifically approved elsewhere, this offer will not apply to single basic exchange access lines. Written notice of such findings will be provided to the staff of the Commission prior to the date upon which the offer is to commence.

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INTRASTATE ACCESS SERVICES

SECTION 13 – PRODUCT DESCRIPTION AND RATES

13.1 DID Trunk Services

- 13.1.1 DID Trunk Service provides a customer with a single, voice-grade telephonic communications channel which can be used to receive incoming calls one call at a time.
- 13.1.2 DID Trunk Service transmits the dialed digits for all incoming calls allowing the customer’s incoming calls to be routed corresponding to each individual DID number. Charges for DID number blocks are listed below.
- 13.1.3 Non-recurring and Recurring charges per DID’s apply as follows:

<u>Rate Group</u>	<u>Non-Recurring Charge</u>	<u>Recurring Charge</u>
All Zones	\$10.00	\$10.00 for blocks of 100

13.2 Direct Inward Dial (DID) Service

- 13.2.1 DID service can be purchased in conjunction with Company-provided private lines. DID service transmits the dialed digits for all incoming calls allowing the Customer’s PBX or other designated equipment to route incoming calls as required by the Customer to individual stations corresponding to each individual DID number. Charges for DID capability and DID number blocks apply in addition to charges specified for private lines contained herein.
- 13.2.2 So the Company may efficiently manage its number resource, the Company, at its sole discretion reserves the right to limit the quantity of DID number blocks a Customer may obtain. Requests for 30 or more DID number blocks must be provided to the Company in writing no less than five (5) months prior to activation. In addition, the Company reserves the right to review vacant DID stations or stations not in use to determine their utilization. Should the Company determine, based on its own discretion, that there is inefficient number utilization, the Company may reassign the DID numbers.
- 13.2.3 The Customer has no property right to the telephone number or any other call number destination associated with DID service furnished by the Company, and no right to the continuance of service through any particular end office. The Company reserves the right to change such numbers, or the end office designation associated with such number, or both, assigned to the Customer, where the Company deems it necessary to do so in the conduct of its business.

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Individual DID Numbers	\$10.00	\$1.00 per DID Number

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INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES

Dedicated Access Services consist of the services offered pursuant to this section, either individually or in combination. Each service is offered independently of the others. Service is offered via the Company's facilities for the transmission of one-way and two-way communications, unless otherwise noted.

14.1 Services Offered

14.1.1 The following dedicated access services are offered in this tariff:

DS3 Service (44.736 Mbps)
OC-3 (Optical Carrier Level 3 155.52 Mbps)
OC-12 (SONET Channel of 622.08 Mbps)
OC-3c (Concatenated Optical Carrier Level 3, SONET Channel of 155.52 Mbps)
OC-12c (Concatenated Optical Carrier Level 12, SONET Channel of 622.08)
OC-48 (Optical Carrier Level 48, SONET Channel of 2.4 Gbps)
OC-48c (Concatenated Optical Carrier Level 48, SONET Channel of 2.4 Gbps)

14.1.2 Other services may be provided by the Company on an Individual Case Basis (ICB).

14.2 Type I and Type II Services

14.2.1 Services may be provided as either Type I or Type II Services, depending upon the availability of facilities. Type I Service rates apply when both endpoints of the channel are served by the Company's network. Type II Service rates apply when the endpoints of the transmission channel are served by another local exchange carrier's network. Because Type II Service prices are dependant upon another LEC's facilities, they will be provided at the sole discretion of the Company and priced on an Individual Case Basis ("ICB"), applied in a nondiscriminatory manner.

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INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)14.3 DS3 SERVICE (44.736 Mbps)

14.3.1 DS3 Service is composed of digital channels provided at 44.736 Mbps for the transmission of one-way and two-way communications. Interconnections to such channels and equipment interfacing to such channels shall meet the following technical characteristics:

Line Rate: 44.736 Mbps +/- 20 ppm

Line Code: Bipolar with three-zero substitution

Test Load: 75 ohms resistive +/- 5 percent

Power Levels: For an all-ones transmitted pattern, the power in a 2 KHz band about 22.368 KHz shall be -1.8 to +5.7 dBm and the power in a 2 KHz band about 44.736 MHz shall be at least 20 dB below that in a 2 KHz band about 22.368 KHz. 1

NOTES:

1. The power levels specified by CCITT Recommendation G.703 are identical except that the power is to be measured in 3 KHz bands.

14.3.2 Digital channels at 44.736 Mbps will be provided in one of the following configurations, as specified by the customer:

14.3.3 Clear Channel DS3: A DS3 signal that is transmitted intact and transparently as provided at the customer interface. No performance monitoring is performed since all 44.736 Mbps are considered customer data or voice.

14.3.4 M13 Framed DS3: A DS3 that is channelized into 28 DS1 (1.544 Mbps) signals and include a predefined standard multiplexing scheme as defined in ANSI T1.107a. The M13 DS3 contains parity bits which can be monitored to offer an approximate measure of performance. 43.232 Mbps is customer data (or voice), the remainder being used for framing, synchronization, parity, etc.

14.3.5 C-bit Parity Framed DS3: A DS3 that can be used for subrated or nonsubrated DS3 signals. This allows DS3 signal monitoring for end-to-end performance measurement on an in-service basis, transmitted on the maintenance data communications channel. The C-

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SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

bit parity format is defined in ANSI T1.107a. 43.232 Mbps is customer data (or voice), the remainder being used for framing, synchronization, parity, etc.

14.4 OC-3 Service

OC-3 provides for the direct electrical-to-optical mapping of the STS-3 signal with frame synchronous scrambling.

14.5 OC-12 Service

OC-12 provides for the direct electrical to optical mapping of the STS-12 (SONET) channel of 622.08 Mbps with frame synchronous scrambling.

14.6 OC-3c Service

OC-3c provides for the concatenated direct electrical- to -optical mapping of the STS-3 (SONET) with frame synchronous scrambling.

14.7 OC-12c Service

OC-12c provides for the concatenated direct electrical-to-optical mapping of the STS-12 (SONET) channel of 622.08 Mbps with frame synchronous scrambling.

14.8 OC-48 Service

OC-48 provides for the direct electrical to optical mapping of STS-48 (SONET) channel with 2.488 Gbps with frame synchronous scrambling.

14.9 OC-48c Service

OC-48c provides for the concatenated direct electrical-to-optical mapping of the STS-48 (SONET) channel of 2.4 Gbps with frame synchronous scrambling.

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INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)14.10 Rates for Dedicated Access Services14.10.1 General

Nonrecurring and monthly recurring rates apply for each Digital Transmission Service furnished by the Company. Monthly recurring rates vary according to the time period for which the Customer commits to take the service. Unless otherwise noted, these standard rate elements are used in calculating the monthly recurring rate for each service:

14.10.1.1 Interoffice Channel Mileage-Fixed: This rate element applies per digital channel whenever there is mileage associated with the channel: a digital channel has mileage associated with it when the endpoints of the channel are located in geographic areas normally served out of separate Customer premises or the Customer premise and the Level 3 Gateway. This rate element applies per circuit.

14.10.1.2 Interoffice Channel Mileage-Per Mile: This rate element applies whenever there is mileage associated with the digital channel. The unit rate is multiplied by the number of miles (Interoffice Mileage) between the two Customer premises or the Customer premise and the Level 3 Gateway. Fractions of a mile are rounded up to the next whole mile before rates are applied.

14.10.1.3 Terms

a. Standard Lease

1. A 1 year standard lease is available as standard to all users.
2. In addition, 2, 3, 4 and 5 year leases are also available on an ICB basis.
3. All standard lease terms will include monthly recurring charges and non-recurring install charges as described in the tables below.

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INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

b. 5 Year Long Term Lease

A standard long term lease has a term of 5 years. Multiple long term leases may be purchased for any Dedicated Access/Private Line service ordered by purchasing a purchase option. The purchase option is a one-time NRC that is applied at year one. The cost of the purchase option to Customer will be 1% of the Future Value of the option at the beginning of the first 5-year term. For example; Customer may purchase 2 x Long Term Lease OC3c which would mean that Company agrees to provide a defined OC3c circuit to customer for an initial five year term and a second five year term at the option of Customer. At the end of the first 5-year term. Customer may exercise the option at the predetermined price set at the contract/option signing (year 0).

Long Term Lease charges will consist of a non-recurring lease charge, segment(s) and termination(s) charges, a non-recurring lease install charge, and an annual O&M charge.

The Long Term Lease option also has an annual O&M fee (paid annually in advance) of 2.5% of the Long Term Lease fee. It will be incremented annually by the CPI.

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INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

14.11 IntraCity Local Transport Services

IntraCity Local Transport service is a dedicated access service that provides point to point capacity transport between two circuit end-points.

14.11.1 Standard Lease PricingType I DS3 Service

This service consists of a DS3 (44.736 Mbps) capacity digital channel available on a 24 hour per day, 7 day per week basis between two points. There is a 1-year minimum service period for each Basic DS3.

DS3 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$950
Interoffice Channel Mileage (0>1 miles)	\$1,000
Interoffice Channel Mileage (Per Mile above 1 mile)	\$10
NRC Installation Rate	\$500

Type I OC3 Service

This service consists of an OC3 (155.52 Mbps) capacity digital channel available on a 24 hour per day, 7 day per week basis between two points. There is a 1-year minimum service period for each Basic OC3.

OC3 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$2,600
Interoffice Channel Mileage (0>1 miles)	\$2,800
Interoffice Channel Mileage (Per Mile above 1 mile)	\$50
NRC Installation Rate	\$2,000

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SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)Type I OC12 Service

This service consists of an OC12 (622.08 Mbps) capacity digital channel available on a 24 hour per day, 7 day per week basis between two points. There is a 1-year minimum service period for each Basic OC12.

OC12 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$7,500
Interoffice Channel Mileage (0>1 miles)	\$7,900
Interoffice Channel Mileage (Per Mile above 1 mile)	\$100
NRC Installation Rate	\$3,000

Type I OC48 Service

This service consists of an OC48 (2.4 Gbps) capacity digital channel available on a 24 hour per day, 7 day per week basis between two points. There is a 1-year minimum service period for each Basic OC48.

OC48 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$22,000
Interoffice Channel Mileage (0>1 miles)	\$23,000
Interoffice Channel Mileage (Per Mile above 1 mile)	\$200
NRC Installation Rate	\$5,000

14.11.2 5 Year Long Term Lease Pricing

IntraCity Local Transport 5 year Long Term Lease will be priced according to the method stated in Section 14.10.1.3(b).

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INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)Type I OC3 Service

OC3 Upfront Payment	5 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$73,317
Interoffice Channel Mileage (0>1 miles)	\$80,711
Interoffice Channel Mileage (Per Mile above 1 mile)	\$1,802
NRC Installation Rate	\$2,000

Type I OC12 Service

OC12 Upfront Payment	5 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$205,989
Interoffice Channel Mileage (0>1 miles)	\$220,650
Interoffice Channel Mileage (Per Mile above 1 mile)	\$3,605
NRC Installation Rate	\$3,000

Type I OC48 Service

OC48 Upfront Payment	5 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$540,355
Interoffice Channel Mileage (0>1 miles)	\$583,482
Interoffice Channel Mileage (Per Mile above 1 mile)	\$7,209
NRC Installation Rate	\$5,000

O&M – An Annual Recurring O&M Fee will be due for each year of each 5 Year Long Term Lease. The O&M Fee is equal to 2.5% of the up-front payment for the service ordered. There is a minimum O&M fee of \$2,500.

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INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

14.12 IntraCity Metro Access Service

IntraCity Metro Access is an IntraCity service offered in conjunction with the purchase of Company's InterState Private Line services as stated in Level 3's Interstate and International Dedicated Access price schedule which can be found at www.Level3.com. When IntraCity Private Line is offered in conjunction with InterState Private Line, the IntraCity Metro Access rates will reflect a discounted rate from the standard IntraCity Local Transport rates above.

14.12.1 Standard Lease Pricing

Type I DS3 Service

DS3 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$825
Interoffice Channel Mileage (0>1 miles)	\$875
Interoffice Channel Mileage (Per Mile above 1 mile)	\$10
NRC Installation Rate	\$500

Type I OC3 Service

OC3 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$2,250
Interoffice Channel Mileage (0>1 miles)	\$2,450
Interoffice Channel Mileage (Per Mile above 1 mile)	\$50
NRC Installation Rate	\$2,000

ISSUED: November 8, 2002

EFFECTIVE: November 8, 2002

Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)Type I OC12 Service

OC12 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$6,460
Interoffice Channel Mileage (0>1 miles)	\$6,860
Interoffice Channel Mileage (Per Mile above 1 mile)	\$100
NRC Installation Rate	\$3,000

Type I OC48 Service

OC48 Monthly Recurring Rate	1 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$19,700
Interoffice Channel Mileage (0>1 miles)	\$20,500
Interoffice Channel Mileage (Per Mile above 1 mile)	\$200
NRC Installation Rate	\$5,000

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Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)14.12.2 5 Yr. Long Term Lease Pricing

IntraCity Metro Access 5 year Long Term Lease will be priced according to the method stated in Section 14.10.1.3(b).

Type I OC3 Service

OC3 Upfront Payment	5 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$63,197
Interoffice Channel Mileage (0>1 miles)	\$70,390
Interoffice Channel Mileage (Per Mile above 1 mile)	\$1.802
NRC Installation Rate	\$2.000

Type I OC12 Service

OC12 Upfront Payment	5 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$177,038
Interoffice Channel Mileage (0>1 miles)	\$191,235
Interoffice Channel Mileage (Per Mile above 1 mile)	\$3.605
NRC Installation Rate	\$3.000

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Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)Type I OC48 Service

OC48 Upfront Payment	5 Year
Interoffice Channel Mileage (Fixed or 0 miles)	\$483,377
Interoffice Channel Mileage (0>1 miles)	\$519,554
Interoffice Channel Mileage (Per Mile above 1 mile)	\$7,209
NRC Installation Rate	\$5,000

O&M – An Annual Recurring O&M Fee will be due for each year of each 5 Year Long Term Lease. The O&M Fee is equal to 2.5% of the up-front payment for the service ordered. There is a minimum O&M fee of \$2,500.

ISSUED: November 8, 2002

EFFECTIVE: November 8, 2002

Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications. LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

INTRASTATE ACCESS SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

14.13 Non-Standard Offerings

14.13.1 Individual Case Basis (ICB) Arrangements

For special situations, rates for Dedicated Access Services will be determined on an Individual Case Basis (ICB) and specified by contract between the Company and the Customer. Such contracts will be submitted to the Commission pursuant to Commission Rules.

ISSUED: November 8, 2002

EFFECTIVE: November 8, 2002

Issued By: Thomas C. Stortz
Group Vice President and General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

SRT's Interrogatories and Request for Production of Documents

Request No. 4

Fully and completely describe the telecommunications services Level 3 plans or proposes to provide to Level 3 customers physically located in SRT's local exchange areas.

Response: Level 3 plans and proposes to offer customers the services included in the tariffs that Level 3 has filed with the Commission. Level 3's customers for such services may be located both within and outside of SRT's local exchange areas. Initially, Level 3 intends to provide DID service. Level 3's proposed DID service would provide Level 3's customers with the ability to connect to the PSTN in order to receive inbound calls from other users on the PSTN. The DID service does not limit the customer to requesting DID in the local calling area in which they are physically located. Therefore, the DID service can be used to provide a so-called "virtual NXX" or FX-like functionality to the customers where needed. Together with the DID service that gives customers local connectivity to the PSTN, Level 3 offers Internet access support in a bundled service package that is branded as "(3)Connect Modem" service. Included as Attachment 4 is a product brochure for Level 3's (3)Connect Modem service.

Level 3 also plans and proposes to offer other telecommunications services, including local voice services in 2003, and other services as they are developed and deployed in Level 3's Internet Protocol network. Before providing such services, Level 3 will amend its tariffs on file with the Commission to the extent necessary to reflect those services, and to the extent required by applicable law.

Respondent:

William P. Hunt, III
Vice President, Public Policy
Level 3 Communications, LLC

SRT's Interrogatories and Request for Production of Documents

ATTACHMENT 4

(3)Connect Modem

(3)CONNECT MODEM – COMPLETE OUTSOURCING OF YOUR DIAL-UP NETWORK

PRODUCT OVERVIEW

THE COMPLETE OUTSOURCING SOLUTION

If you are an Internet Service Provider (ISP) or large corporation, our (3)Connect Modem service allows you to provide dial-up connections to the Internet without incurring the costs associated with maintaining your own infrastructure. Currently, Level 3 processes more than 13 billion minutes per month over its (3)Connect Modem service.

HOW DOES IT WORK?

You purchase ports in Level 3 Gateways for an all-inclusive per-port or per-minute fee, and we provide:

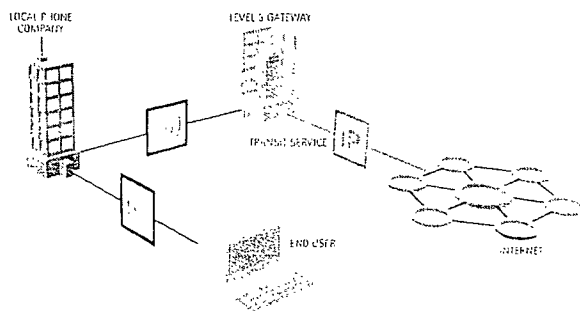
- Your local dial network infrastructure and local numbers
- Traffic termination to the Internet
- Network management and operations support

HOW DO YOU BENEFIT?

- **Competitive Cost per Port** – Most large ISPs outsource management of their dial network to avoid the capital and operating expense. Outsourcing your ports lets you enjoy similar variable costs with the added benefit of the 40–60% lower cost position of our Softswitch network.
- **Improved Network Quality** – Outsourcing your network to Level 3 provides your end users with the same high quality experience as those of the largest ISPs.
- **Focus On Winning** – Our services allow you to focus on the activities where you enjoy a competitive advantage and to outsource the rest to Level 3.
- **A Global Network In Five Days** – Level 3's global presence lets you conduct business in most major markets around the world without additional capital equipment or the need for a local network management organization.
- **Virtual Ownership** – A suite of network and customer management services lets you manage our Network as if it were your own. Services include billing options (flat rate, usage), real-time installations, comprehensive network and operations tools, rapid response to issues, and quick repair.

(3)CONNECT MODEM SERVICE TYPES

Our Transit Service allows you to rely on Level 3 to route all incoming traffic directly to the public Internet. This enables you to completely off-load the responsibility of terminating and routing all end-user traffic. By dialing a local number provided by Level 3, your end users send their data traffic over this dial-in connection to modems that are housed in the Level 3 Gateway facility. Level 3 then sends your end users' traffic to its final destination through high-speed Internet



connections. We can get you up and running in five days on our Transit service.

Our Nationwide Access Service combines a toll-free (800) number with Level 3's Transit service to provide access to the Level 3 dial access network to calls originating anywhere in the United States, Guam, Puerto Rico, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (CNMI).

SOFTSWITCH – THE TECHNOLOGY BEHIND (3)CONNECT MODEM SERVICE

At the heart of Level 3's call processing technology is our Softswitch technology. Softswitch supports the conversion of analog or traditional digital calls into data packets. Upon conversion, the call is transmitted using Level 3's lower-cost, more-efficient, Internet Protocol (IP) based network.

FEATURES

- V.92 support to bridge the gap between dial-up and broadband
- High-speed connections to major network access points (NAPs) and metropolitan area exchanges (MAEs), and multiple high-speed connections to other major carrier backbones
- Rapid termination of your end users' sessions or those sessions that appear active but are actually terminated, via our Zap API feature
- Dynamic Filters allow you to specify the behavior and connection requirements of a dial-up connection
- Support for analog and ISDN (64 Kbps) traffic at all NAPs
- Redundant hardware and network infrastructure
- Rapid network growth to support future traffic increases
- Support for current hardware and software, eliminating technological obsolescence
- 24 x 7 network surveillance and management. Your one-stop TCAM (Technical Customer Account Manager) will be pleased to assist you with all aspects of your account

GEOGRAPHIC AVAILABILITY

(3)Connect Modem service provides local dial-up service covering nearly 90 percent of the U.S. population.

IP ADDRESSING

Dynamic Addressing: The default option for all (3)Connect Modem customers is dynamically allocated IP addresses that are assigned to end users.

- Level 3 will dynamically assign IP addresses to your end users out of our own pool of addresses.

(3)Connect Modem is a service mark of Level 3 Communications, Inc.

(3)Connect Modem

End users dial into the internet via a personal computer and a standard modem connection. The call is routed through the local phone company into the Level 3 Gateway where, for example, an ISP customer's equipment is located. Using Softswitch technology to convert the transmission, Level 3 routes the call via the Level 3 broadband Network to the public Internet.

SRT's Interrogatories and Request for Production of Documents

Request No. 6

Fully and completely describe any differences between Level 3's ISP customers' internet service to end users in SRT's local exchange areas who currently obtain local number dial-up connection to Level 3's ISP customers, as compared to the internet service that would be available to Level 3's ISP customers' internet service end users if Level 3's proposed Mutual Traffic Exchange Agreement were in effect

Response: Level 3 does not currently provide telecommunications services to ISPs in North Dakota. As stated in response to Request No. 2, Level 3 cannot provide its proposed telecommunications services without an interconnection agreement with SRT, because it would not be able to establish direct trunks for the exchange of traffic with SRT, nor would it be able to obtain the NXX codes needed to offer its proposed services.

Typically when seeking to enter a new market, Level 3 must first: (i) enter into an interconnection agreement with the incumbent LEC, (ii) get a code assigned to it by NANPA, and (iii) establish interconnection trunking. Once these preliminary tasks are completed, Level 3 would then port active numbers to Level 3's own switch. However, since SRT is not LNP capable, to initiate its proposed telecommunications services in SRT's exchange areas, Level 3 will most likely be required to assign new phone numbers to Level 3's customers and transition the traffic from the old numbers to the newly assigned numbers over a period of 30 to 60 days. Thus, in the short term, the technical differences experienced between Level 3's ISP customers' Internet service to end users in SRT's local exchange areas who currently obtain local number dial-up connection to Level 3's ISP customers, as compared to the Internet service that would be available to Level 3's ISP customers' Internet service end users if Level 3's proposed Mutual Traffic Exchange Agreement were in effect, would be slight -- the main difference being that the end user would have to dial a new number to initiate an ISP bound call.

In the long-run, however, Level 3 would be able to offer significant technical advantages, to the extent it does not continue to experience barriers to market entry. In particular, Level 3 could enhance the dial-up Internet experience between Level 3's ISP customers and the ISP's subscribing end users in SRT's local exchanges by providing access to new technologies and service choices such as Level 3's V.92 advanced data standard. V.92 technology is the newest data standard in modem technology that can permit Level 3's customers to achieve increased efficiencies and cost savings, while delivering a better Internet experience to analog modem users. Included as Attachment 6 is a informational overview of the V.92 advanced data standard.

In addition, the economic impact to both Level 3 and dial-up Internet end users in SRT's local exchanges could be substantial if Level 3 were permitted to interconnect with SRT under Level 3's proposed terms, as a co-carrier, instead of as an end user customer. If competitive local exchange carriers are not permitted

SRT's Interrogatories and Request for Production of Documents

to provide services in the manner proposed by Level 3, North Dakota consumers would be denied an important competitive choice in telecommunications services. In particular, Level 3 intends to offer its services primarily to ISPs who currently do not have points of presence in the exchange areas covered by SRT. Thus, consumers who otherwise would have to dial long-distance for access to these ISPs would benefit by the greater availability of options to reach ISPs by making a local call. On the other hand, under SRT's proposal, ISPs would have to install equipment in every small town in North Dakota to obtain local calling capability for their customers – and in the case of SRT's serving area, the only choice for a telecommunications service provider would be SRT itself. It is safe to assume that no ISP would do this any time soon due to the inefficiencies of such a network and the associated costs – costs that would ultimately be passed on to North Dakota consumers.

Respondent:

William P. Hunt, III
Vice President, Public Policy
Level 3 Communications, LLC

SRT's Interrogatories and Request for Production of Documents

ATTACHMENT 6

V.92: The (3)ConnectSM Modem Advanced Data Standard

For information on the (3)ConnectSM Modem, visit our website at www.level3.com or call 1-800-368-3636.

TECHNOLOGY OVERVIEW

V.92 is the newest data standard in modem technology. It narrows the gap between dial-up and broadband services by delivering an improved Internet experience to analog modem users. Level 3 has implemented and is now offering V.92 to customers.

Customers who support V.92 technology benefit by:

- Becoming more competitive by enabling their network to offer the latest technology to their subscribers and exceeding the service offerings of other ISPs
- Generating more revenue and decreasing customer churn by offering subscribers tiers of services or by charging more for V.92 features like Modem On Hold
- Utilizing Quick Connect and V.44 compression to decrease usage costs and improve subscriber experience

A CLOSER LOOK

V.92 presents key enhancements to the V.90 56K technology, including Modem On Hold, V.44, Quick Connect, and PCM Upstream. Each of these enhancements represents a push forward to a more user-friendly dial-up experience.

MODEM ON HOLD

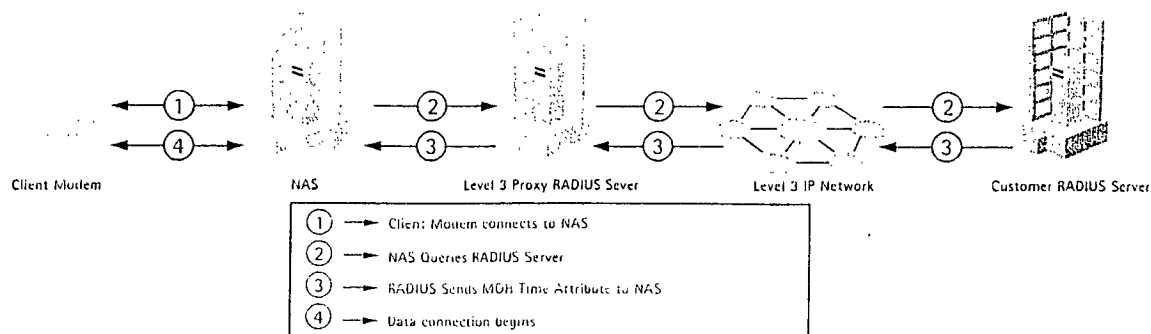
Modem on Hold allows end users to suspend their data connection to either initiate or receive a voice call. If the phone conversation is completed within the allotted timeframe, the user may resume the data connection without redialing.

Under previous standards, analog modems were not compatible with the call waiting service offered by the telephone companies. When the phone line was engaged in a data session, call waiting was either disabled (caller gets a busy signal) or the modem disconnected when interrupted by the call waiting tone. However, V.92 modems use the call waiting beep to trigger the on-hold feature. To receive calls while online, users must subscribe to a call waiting service, and for initiating calls, the three-way calling service.

When a call comes through a phone line tied up by a data connection, the call waiting beep prompts the client modem to alert the user to an incoming call. With software added to the client's PC, the alert message is displayed in a pop-up dialog box. For users who subscribe to a caller ID service, the incoming call's number is also displayed.

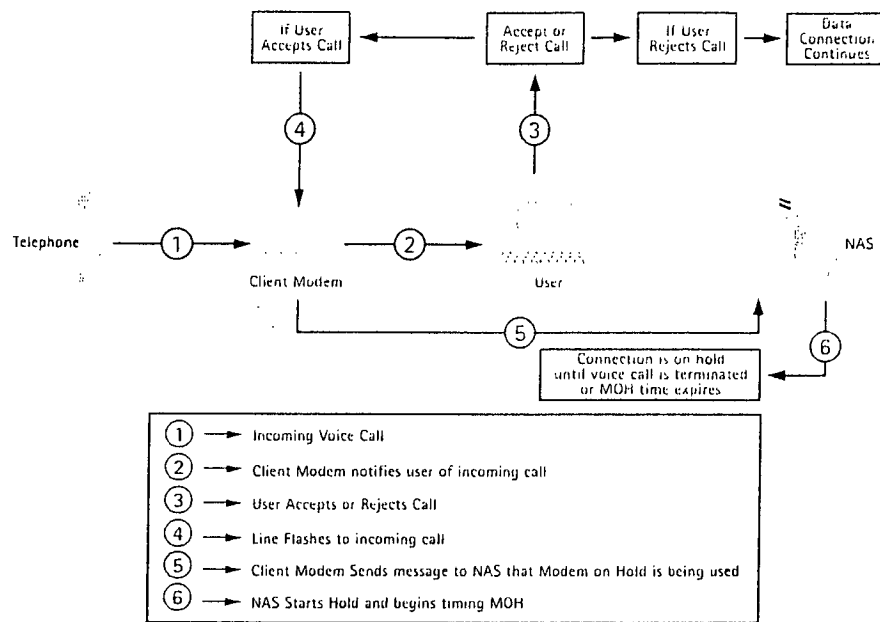
Upon dialing in, the the Network Access Server (NAS) queries the RADIUS server for Modem on Hold information. That information is stored by the NAS until the end user opts to use Modem on Hold.

Diagram 1. Modem on Hold Attributes Passed to NAS on Initial Dial-up Connection



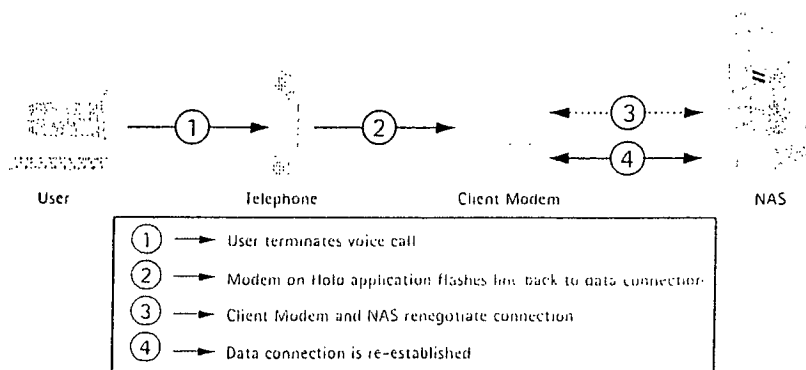
If the user decides to pause surfing and take the call, the client modem requests the server modem to go on hold. The two modems then negotiate and determine the maximum time allowed before the server modem terminates the connection. The client modem flashes the line and connects the user to the voice call.

Diagram 2. Modem on Hold Incoming Voice Call



After the user hangs up the call, the two modems retrain and re-establish the data connection.

Diagram 3. Voice Call is Terminated



If the user exceeds the allotted Modem on Hold time set by the server, the NAS disconnects from the client modem and sends a disconnect reason type to the RADIUS server.

Although V.92 technology allows a maximum on-hold time of 16 minutes, due to pre-set timeouts in higher protocol stacks, the client might not be able to take full advantage of the on-hold time without causing interruption of the data application. However, Modem on Hold allows enough time for the user to

decide either to drop the data connection or communicate to the calling party about terminating the call. It also may include software to warn the user when the predetermined timeout approaches.

For users who use their primary telephone line for Internet access, Modem on Hold eliminates their risk of missing important phone calls while online. For some households, it saves the cost of buying a second phone line for Internet connections. The ability to seamlessly switch between voice and data services eliminates the time and cost of reconnecting, which also allows fuller line utilization.

Potential Applications of Modem on Hold to ISPs

- Modem on Hold enables service providers to offer "broadband-like" voice and data services over the same telephone lines, at a much more reasonable dial-up price. It also represents potential revenue opportunities for ISPs planning to charge for the on-hold service.

RADIUS Attributes for Modem on Hold

The following new RADIUS attribute has been added to the dictionary to support setting the modem-on-hold-timeout value for an individual connection:

```
ATTRIBUTE Ascend-MOH-Timeout 261 integer
```

Values:

```
VALUE TS_MOH_DISABLED 0
VALUE TS_MOH_TIMEOUT_10_SEC 1
VALUE TS_MOH_TIMEOUT_20_SEC 2
VALUE TS_MOH_TIMEOUT_30_SEC 3
VALUE TS_MOH_TIMEOUT_40_SEC 4
VALUE TS_MOH_TIMEOUT_1_MIN 5
VALUE TS_MOH_TIMEOUT_2_MIN 6
VALUE TS_MOH_TIMEOUT_3_MIN 7
VALUE TS_MOH_TIMEOUT_4_MIN 8
VALUE TS_MOH_TIMEOUT_6_MIN 9
VALUE TS_MOH_TIMEOUT_8_MIN 10
VALUE TS_MOH_TIMEOUT_12_MIN 11
VALUE TS_MOH_TIMEOUT_16_MIN 12
VALUE TS_MOH_TIMEOUT_NO_LIMIT 13
VALUE TS_MOH_CONN_DEFAULT 14
```

There is a disconnect-reason-type logged to syslog and RADIUS accounting servers when a modem is disconnected due to the maximum-on-hold-timeout being exceeded.

Value:

```
Disconnect-Reason-Type DIS_MODEM_MOH_TIMER_EXPIRED 19
```

Syslog example:

```
Dec 4 17:38:23 192.168.77.20 1/14: [1/14/13/0] LAN session info: Conn=(PPP
42667/28800 34/19) Auth=(26 224/10 185/9) Sess=(131 288/12 185/9) [MBID 7;
3034655360->89613] [mpuser!]
```


PCM UPSTREAM (AVAILABLE 2003)

PCM Upstream increases the upstream data rate from the current V.34 speed (33.6 kbps) to as high as 48 kbps.

PCM Upstream redesigns the upstream modulation process to minimize signal loss during the analog-to-digital conversion. Higher upstream data rate is accomplished by manipulating the client modem settings so that the analog signal it transmits can be reconstructed to a more precise digital signal on the central office PCM Codec. A filter is inserted into the client analog modem transmitter. The server modem determines the channel characteristics and designs coefficients for the client filter to use so that line impairments are mitigated.

The most obvious benefit to PCM Upstream is faster uploading of files, including ftp uploads or e-mails with large image file attachments. As an example, digital camera users who frequently upload photos for printing or sharing with family and friends can accomplish this task much quicker. Note: Increasing upstream rate decreases the downstream rate to a maximum 48 kbps.

By increasing the upstream bandwidth, PCM Upstream introduces more symmetry to the dial-up connection. This improves the quality of applications that require symmetric data flow, such as voice over IP calls and multiplayer online gaming. For users who pay local or long distance toll charges, faster upload speeds up their session, which saves them money.

AT Commands

PCM upstream is enabled with an AT command. If the client modem adheres to v.250 AT commands, the commands are:

AT+PIG=0 (enable PCM Upstream)

AT+PIG=1 (disable PCM Upstream)

Potential Applications of PCM Upstream for ISPs

- Broadband providers whose technology only supports one-way downstream capability can increase the speed of the upstream dial-up connection with PCM Upstream. This allows broadband providers to begin their market penetration while waiting for technology upgrades.

Q & A

Who can use the V.92 data standard?

Any user who has a V.92-compliant PC modem, calling services (call waiting, three-way calling, caller ID), and a standard telephone line can take advantage of V.92.

For information about V.92 compatible user modems, visit these sites:

<http://www.modemsite.com/56k/v92s.asp>

<http://www.smlink.com/modemindex.htm>

Where does Level 3 offer V.92-capable (3)Connect Modem service?

Call Level 3 at 1-877-4LEVEL3 to speak to a service representative or contact your Level 3 Account Manager for current coverage.

Which ISPs are currently offering V.92?

Visit this site for a current list of ISPs offering V.92:

<http://www.modemsite.com/56k/v92isp.asp>

(3)Connect[™] Modem is a service mark of Level 3 Communications, Inc.

SRT's Interrogatories and Request for Production of Documents

Request No. 7

Fully and completely describe the telecommunications services Level 3 currently provides to Level 3 customers physically located in local exchange areas in North Dakota other than SRT's local exchange areas.

Response: Level 3 objects to the Request on the grounds that it is *vague and ambiguous* and not *relevant* to the issues presented in the arbitration. To the extent the Request seeks information beyond the geographic boundaries of SRT's exchange areas, Level 3 further objects on the grounds that it is *overly broad* and *not relevant*. Notwithstanding and subject to this objection, Level 3 is not at this time offering telecommunications services to any customers physically located in local exchange areas in North Dakota.

Respondent:

William P. Hunt, III
Vice President, Public Policy
Level 3 Communications, LLC

SRT's Interrogatories and Request for Production of Documents

Request No. 8

Fully and completely describe the telecommunications services Level 3 plans or proposes to provide to Level 3 customers physically located in local exchange areas in North Dakota other than SRT's local exchange areas.

Response: To the extent the Request seeks information beyond the boundaries of SRT's exchange areas, Level 3 objects on the grounds that it is *overly broad* and *not relevant*. Notwithstanding and subject to this objection, see response to Request No. 4.

Respondent:

William P. Hunt, III
Vice President, Public Policy
Level 3 Communications, LLC

SRT's Interrogatories and Request for Production of Documents

Request No. 9

Fully and completely describe the telecommunications facilities and equipment that Level 3 plans or proposed to interconnect with SRT's network.

Response: *CONFIDENTIAL AND PROPRIETARY*****

Level 3 proposes to interconnect with SRT's network by leasing multiplexed DS3 facilities from the Level 3 Routing Point in the Qwest Central Office in Bismarck to the SRT Central Office in Minot. The DS3's would be on fiber meet arrangements between SRT and Qwest. Level 3 also proposes to lease DS1 facilities from the multiplexing location to the SRT End Office Switch in Minot. Included as Attachment 9 is a diagram depicting Level 3's proposed interconnection with SRT's network.

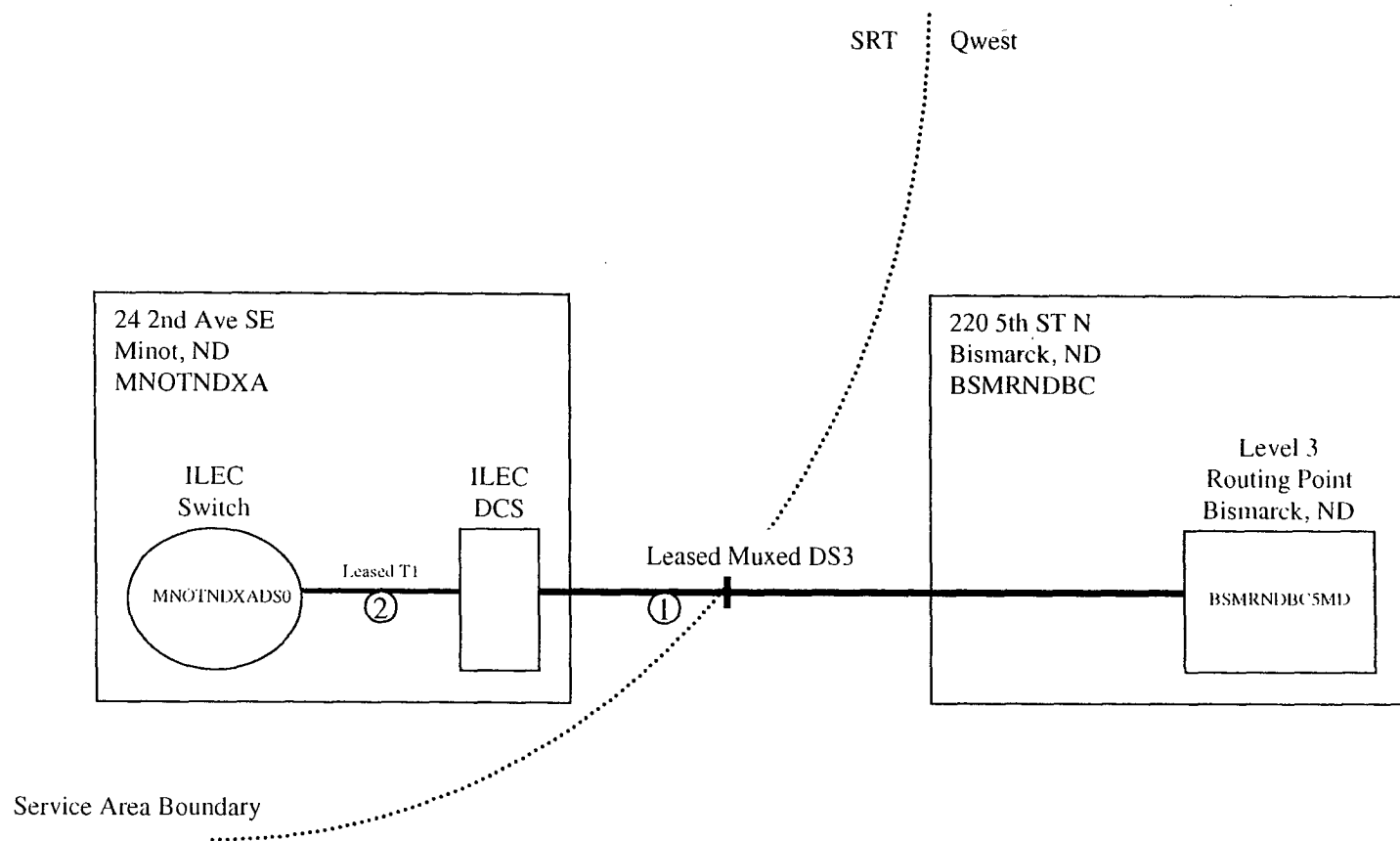
Respondent:

Rogier Ducloo
Network Planning Manager
Level 3 Communications, LLC

deliver the difference
(3)

ATTACHMENT 9 -- CONFIDENTIAL & PROPRIETARY

Level 3 Network Interconnection with SRT



To interconnect with SRT's network, Level 3 will lease muxed DS3 facilities (1) from the Level 3 Routing Point in the Qwest Central Office in Bismarck to the SRT Central Office in Minot. The DS3's will be on fiber meet arrangements between SRT and Qwest. Both SRT and Qwest in North Dakota will receive monthly recurring revenue. In addition, Level 3 will lease the T1 facilities from the muxing location ("ILEC DCS") to the SRT End Office Switch in Minot (2).

SRT's Interrogatories and Request for Production of Documents

Request No. 10

Using a written narrative and diagram describe the location and nature of Level 3's facilities currently located in SRT's exchanges.

Response: Level 3 objects to this Request on the grounds that it is *vague and ambiguous* because it does not define the term "facilities," which could be interpreted to include telecommunications facilities, real estate, or other real property. Notwithstanding and subject to its objection, Level 3 states that it interprets this Request to seek information concerning the Level 3-owned or leased facilities located in SRT's exchanges that are used to provide telecommunications services. Because Level 3 does not currently provide telecommunications services in SRT's exchanges, no such facilities exist.

Respondent:

Rogier Ducloo
Network Planning Manager
Level 3 Communications, LLC

SRT's Interrogatories and Request for Production of Documents

Request No. 14

Provide a diagram and written narrative of the services that Level 3 is currently purchasing from SRT.

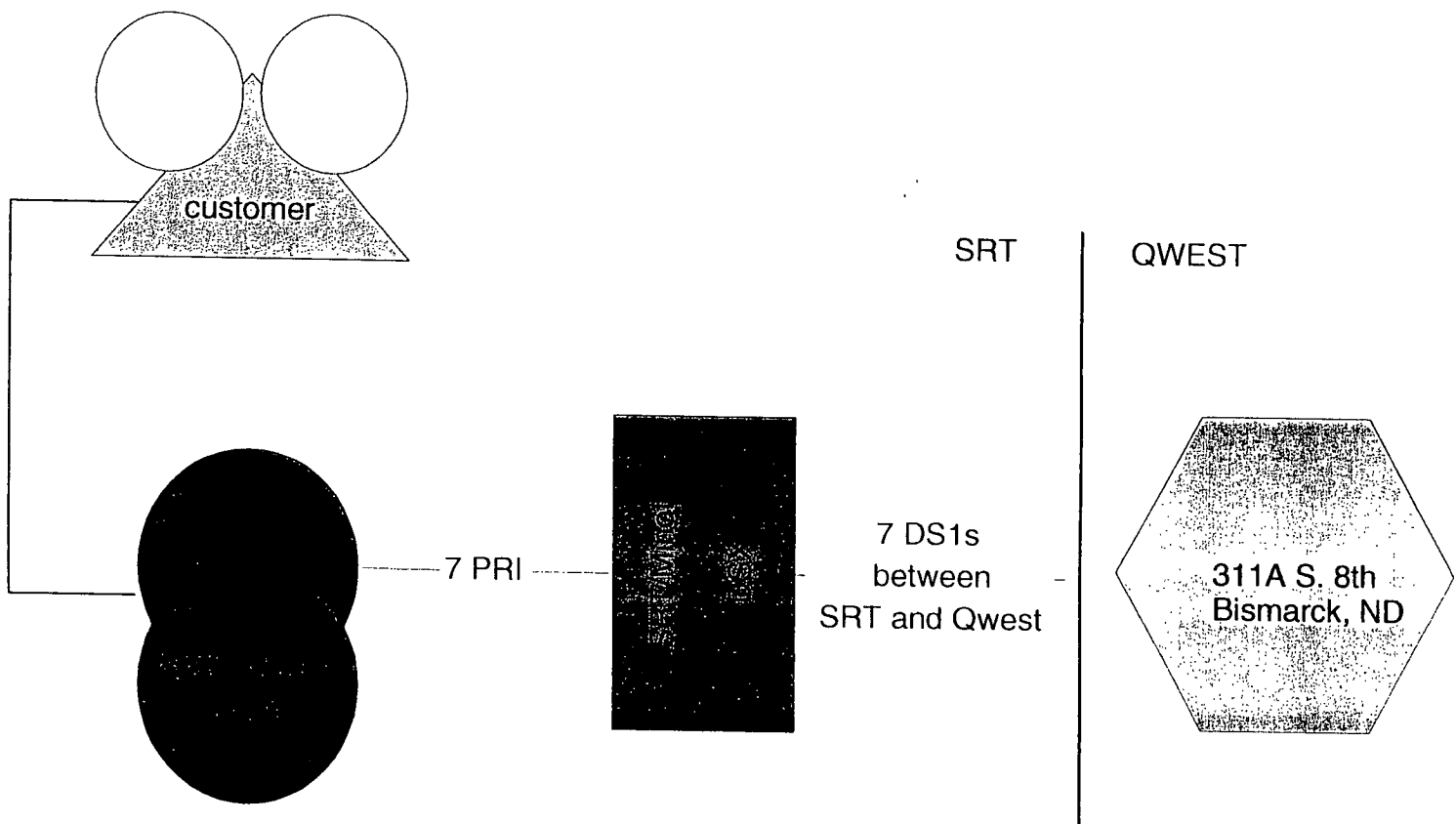
Response: ***CONFIDENTIAL AND PROPRIETARY***

Level 3 objects to this Request on the grounds that it seeks information that is already within the possession of SRT and, as such, is *unduly burdensome*. Notwithstanding and subject to this objection, Level 3 states that it currently leases 7 meet-point DS1s and 7 ISDN PRIs from SRT. Please refer to Attachment 14 for a network diagram depicting the facilities Level 3 currently leases from SRT.

Respondent:

Rogier Ducloo
Network Planning Manager
Level 3 Communications, LLC

ATTACHMENT 14 -- CONFIDENTIAL & PROPRIETARY



This scenario is for Mir

SRT's Interrogatories and Request for Production of Documents

**ATTACHMENT 14
-- CONFIDENTIAL AND PROPRIETARY --**

SRT's Interrogatories and Request for Production of Documents

Request No. 17

Fully and completely describe and provide a schematic of the routing and termination of a call originating within SRT's exchanges to a Level 3 NPA/NXX that would be rate centered in a SRT exchange.

Response: ***CONFIDENTIAL AND PROPRIETARY***

A call originating within an SRT exchange area to a Level 3 NPA/NXX associated with a rate center in an SRT exchange would be routed and terminated as follows:

1. An SRT retail customer in the Minot Exchange dials a telephone number associated with a Level 3 customer.
2. SRT's Minot End Office Switch (MNOTNDXADS0) serving the end user identifies the number as a number associated with a Level 3 customer, selects a trunk going to the Level 3 network, and sends an SS7 Initial Address Message (IAM) to the Level 3 Softswitch via the SS7 network.
3. The Softswitch checks the dialed number, identifies the Network Access Server associated with the DS0 level circuit identified by the Originating Switch and sends a control message to the Network Access Server to accept the call on the specified circuit.
4. Upon receipt of a positive acknowledgement from the Network Access Server, the call is considered "answered" and the Level 3 Softswitch will respond to the Originating Switch with an Answer Message (ANM).
5. The Network Access Server converts the call to Internet Protocol and sends the packets to the appropriate destination. The Softswitch may also respond with other SS7 messages as appropriate. For example, a Busy (RCC-17) could have been returned in step 4 under certain conditions. The Switch will also respond to non-call SS7 messages such as CQM

Included as Attachment 17 is a diagram depicting how such a call would be routed and terminated.

Respondent:

Rogier Ducloo
Network Planning Manager
Level 3 Communications, LLC

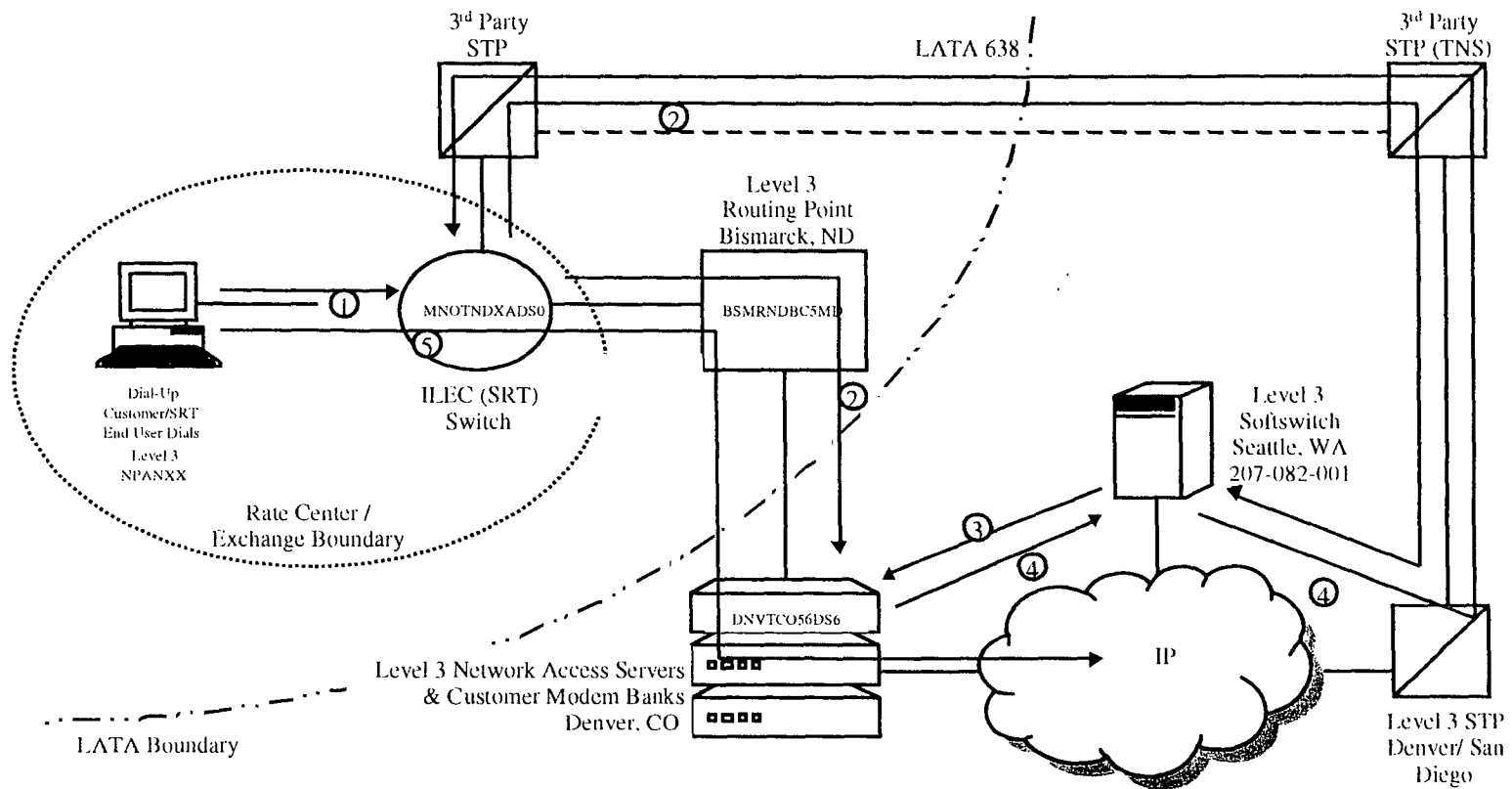
SRT's Interrogatories and Request for Production of Documents

**ATTACHMENT 17
-- CONFIDENTIAL AND PROPRIETARY --**

different the difference
(3)

ATTACHMENT 17 -- CONFIDENTIAL & PROPRIETARY

Level 3 Network Interconnection with SRT



- A SRT retail customer dials a Level 3 telephone number in the Minot Exchange
- SRT's Minot End Office Switch (MNOTNDXADS0) serving the user identifies the number as a Level 3 number, selects a trunk going to the Level 3 network and sends an SS7 Initial Address Message (IAM) to the Level 3 Softswitch via the SS7 network
- The Softswitch checks the dialed number, identifies the Network Access Servers associated with the DS0 level circuit identified by the Originating Switch and sends a control message the Network Access Servers to accept the call on the specified circuit
- Upon receipt of a positive acknowledgement from the Network Access Servers, the call is considered "Answered" and the Level 3 Softswitch will respond to the Originating switch with an Answer Message (ANM)
- The Network Access Servers converts the call to IP and sends the packets to the appropriate destination

SRT's Interrogatories and Request for Production of Documents

Request No. 25

Fully and completely describe all ISDN services utilized by Level 3.

Response: *CONFIDENTIAL AND PROPRIETARY*****

To the extent the Request seeks information beyond the geographic boundaries of SRT's exchange areas, Level 3 objects to this Request on the grounds that the Request is *overly broad* and not *relevant*. Similarly, Level 3's use of ISDN services is not *relevant* to any issue set forth in this arbitration proceeding. Notwithstanding and subject to the foregoing objection, Level 3 states that it does not utilize ISDN services from local exchange carriers to provide telecommunications services in North Dakota. Level 3 has inherited some ISDN services as a retail customer as part of its acquisition of certain assets of McLeod USA Information Services. In particular, Level 3 currently purchases 7 ISDN PRIs from SRT. Each PRI has 23 B channels and 1 D channel for call set-up and signaling. Level 3 is in the process of terminating these retail ISDN services to the extent possible in order to migrate such services to its own network. In addition, please refer to Attachment 14 for a diagram depicting the ISDN services acquired as a part of Level 3's acquisition of certain assets of McLeod USA Information Services.

Respondent:

Rogier Ducloo
Network Planning Manager
Level 3 Communications, LLC

SRT's Interrogatories and Request for Production of Documents

Request No. 31

Reference the existing physical connection between SRT and Level 3. Explain how the end-user in SRT's exchange areas presently gains access to the internet.

Response: Level 3 objects to the first sentence of the Request on the grounds that it seeks information that SRT should already have in its possession and, as such, is *unduly burdensome*. In addition, Level 3 further objects on the grounds that the Request is *vague and ambiguous* and *overly broad*. Notwithstanding and subject to the foregoing objections, Level 3 refers SRT to its response to Request No. 14 for a diagram of the existing physical connection between SRT and Level 3. A call originating with a SRT local exchange customer to an ISP currently served by Level 3 via the retail ISDN services it purchases from SRT would be routed to the Internet as follows:

1. An SRT retail customer in the Minot Exchange dials a telephone number that SRT has assigned to Level 3 as a retail customer.
2. SRT's Minot End Office Switch (MNOTNDXADS0) serving the end user identifies the number as a number associated with Level 3's retail service and sends the call over the PRI's depicted on Attachment 14.
3. The call passes through the SRT Minot DSX and is carried on the DS1 to Level 3's physical location at 311A S. 8th Street, Bismark, ND where it terminates to modem banks. (Level 3 acquired this physical location, and the modem banks included at that location, through its acquisition of certain assets from McLeod USA Information Services)
4. The modem banks convert the call to Internet Protocol format and the call is carried over transport leased from IXCs to a node where Level 3 routes the call onto the Internet.

Respondent:

Rogier Ducloo
Network Planning Manager
Level 3 Communications, LLC



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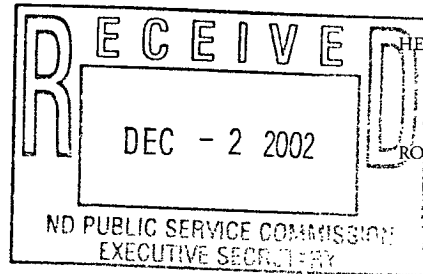
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BRENT M. OLSON



November 27, 2002

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
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Bismarck, ND 58505-0480

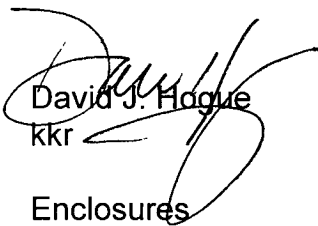
**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

Pursuant to Section 69-02-10-18(4) of the Commission's rules, enclosed for filing on behalf of SRT Communications, Inc. ("SRT") is an original and eight copies of SRT Communications, Inc.'s Prehearing Statement.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided.

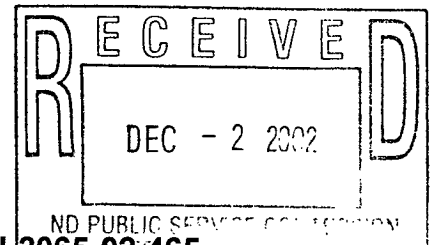
Very truly yours,


David J. Hogue
kkr

Enclosures

cc: Zenas Choi via Federal Express (w/enclosure)
Michael Romano (w/enclosure)
William Binek (w/enclosure)
Frank Lamancusa (w/enclosure)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Level 3 Communications, LLC
Interconnection Arbitration Application

Case No. PU-2065-02-465

SRT COMMUNICATIONS, INC.'S PREHEARING STATEMENT

November 27, 2002

Pursuant to the North Dakota Public Service Commission's Scheduling Order in the captioned matter, and Section 69-02-10-18, NDAC, SRT Communications, Inc. ("SRT") submits its written statement with respect to the seven issues to be resolved by arbitration. In this statement SRT provides a summary of its position on each of the seven issues, identifies its expert witnesses and the issues each will address in written and verbal testimony, and cites to relevant legal authority for support of its positions.

ISSUE NO. 1: Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?

Yes. SRT has satisfied the duty under section 251(a), as that duty is explained by the FCC in paragraph 997 of the 1996 Local Competition Order. SRT's network is not only available for Level 3 to obtain originating access service for Level 3's interexchange carriage of traffic to its ISP customers over the public switched telephone network, but also Level 3 and SRT are presently directly interconnected. Level 3 is an existing carrier of traffic from SRT's exchange areas to Level 3's ISP customers in other exchange areas, under the existing direct interconnection between SRT's and Level 3's facilities.

ISSUE NO. 2: Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?

No. Section 251(a) imposes on all telecommunications carriers the general duty to interconnect with other carriers. Section 251(a) does not provide for any carrier to request special interconnection arrangements or subject any carrier to a duty to negotiate special arrangements apart from the general duty of direct or indirect interconnection. In this important respect, Section 251(a) is significantly different from 251(c) which imposes additional duties for ILECs to negotiate with requesting carriers for interconnections for telephone exchange service and exchange access and network elements. Section 251(c)(2) imposes on ILECs duties to negotiate “rates, terms and conditions that are just, reasonable, and non-discriminatory. . . .” Section 251(a) does not include such terms. Level 3 has not requested an interconnection under section 251(c).

In addition, where a direct connection presently exists, as the incumbent arrangement that exists between Level 3 and SRT, Section 251(a) does not impose on SRT the obligation to negotiate a different arrangement. *Total Telecommunications Services v. AT&T* 16 FCC Rcd 5726, quoting *Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act, Declaratory Ruling and Notice of Proposed Rulemaking*, 12 FCC Rcd 6925, 6937-38 P19 (1997).

ISSUE NO. 3: Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements, or are they interexchange services subject to access charges?

SRT expects the evidence will show that Level 3's proposed service to its ISP customers is one-way traffic between exchanges. Therefore, Level 3's proposed services are interexchange services subject to access charges. 47 USC §153(47); 47 USC

§153(48). *WorldCom, Inc. v FCC*, 288 F.3d 429 (D.C. Cir. 2002); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, 99-68, 16 FCC Rcd 9151 (2001).

ISSUE NO. 4: For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of the that (*sic*) local calling area?

Yes. Those calls that terminate within the original local calling area are subject to interconnection, intercarrier compensation and local service customer billing requirements as local calls. No matter what calling number arrangements are established, those calls that terminate outside of the local calling area are interexchange calls that are subject to interconnection, intercarrier compensation and customer billing requirements that are applicable to long distance interexchange telecommunications service. Several state commissions have weighed in on this issue. SRT expects that both parties will cite to most of the germane state decisions. *TSR Wireless v. US West Communications*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 Memorandum Opinion and Order. FCC 00-194 (rel. Jun. 21, 2000).

ISSUE NO. 5: Has Level 3 made a bona fide request for interconnection?

The term “bona fide” appears in section 251(f) in reference to rural telephone companies’ exemption from ILECs’ obligations under section 251(c), regarding interconnections between ILECs and CLECs. Though it disavows reliance on section 251(c), Level 3 does seem to assert status as a CLEC as integral to its assertions that so-called virtual NXX signaling is local, not long distance. To the extent that Level 3 asserts status as a CLEC, its request does not appear to be bona fide, because it has not

addressed the rural exemption.

ISSUE NO. 6: Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?

Under the facts of this case, yes. The record is clear that Level 3 admits SRT is a rural telephone company that is exempt from the obligations of section 251(c). The exemption is subject to the possibility of termination, but the record is clear that Level 3 has not taken appropriate action to seek termination of the exemption. To the extent that Level 3 relies on any part of section 251(c), SRT is exempt from the obligations of that section unless and until the exemption is terminated under procedures prescribed in the statute. As previously stated, SRT respectfully disagrees with a legal construction of 251(a) which “incorporates by reference” the duties contained in 251(c). If the arbitrator or the Commission were to consider Level 3’s request for interconnection improperly made under section 251(a) and properly made under section 251(c), then SRT is exempt from the obligations of section 251(c), subject to the possibility of termination of the exemption.

ISSUE NO. 7: Does the North Dakota PSC have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

This issue presents two questions, the PSC’s jurisdiction to adjudicate disputes involving VNXX numbering schemes and IP Bound traffic, and whether the dispute should be adjudicated in the context of an interconnection agreement arbitration.

Though it is involved in administering federal law, the North Dakota PSC is a creature of state law, not a federal agency. The PSC exists under the North Dakota Constitution, and the PSC’s authority is defined by the state legislature. North Dakota Constitution, Art. 5, Secs. 12 & 13; *Capital Electric Cooperative v. Public Service*

Commission, 534 NW 2d 588 (ND 1995); *Cass County Electric Coop. Inc. v. Northern States Power Co.*, 518 N.W. 2d 216 (ND 1994); *Public Service Commission v. Montana-Dakota Utilities Co.*, 100 N.W 2d 140, (ND 1959); *Grafton v. Otter Tail Power Co.*, 86 NW 2d 197 (ND 1957).

The North Dakota PSC has jurisdiction in this case under the North Dakota legislation that enabled the PSC to administer the arbitration system created by the 1996 Telecommunications Act. NDCC §49-21-01.7 subd. 8 and 9.

In North Dakota, the North Dakota PSC is an administrative agency, not a policy making body. The PSC administers policy established by the North Dakota legislature, and the North Dakota PSC administers policies established by the Federal Congress and the Federal Communications Commission only to the extent that the North Dakota legislature has delegated administrative responsibilities to the PSC. These features of the PSC's jurisdiction are specifically included in the enabling legislation, NDCC 49-21-01.7 subd 14. In these respects, North Dakota's legal system is different from some states, where legislatures have delegated some policy making authority to their regulatory commissions. And it is different from the federal government's system, where Congress has delegated some policy making authority to the FCC.

Level 3 has asserted "that the regulatory treatment of virtual NXX traffic is a state policy decision that is worthy of consideration." (Level 3's Response to SRT's Motion to Dismiss, p. 23.) A recent decision of the Federal Communications Commission could be understood as supporting Level 3's view "that the regulatory treatment of virtual NXX traffic is a state policy decision that is worthy of consideration. *In the Matter of the Petition of*

WorldCom, CC Dockets No. 00-218, 00-249, and 00-251, par 303. And some of the state regulatory commissions' decisions that Level 3 cites in support of its position may also be described in the same words, "regulatory treatment of virtual NXX traffic is a state policy decision."

The North Dakota PSC does not have subject matter jurisdiction to make a policy decision that so-called virtual NXX traffic to ISPs in distant exchanges should be reclassified as local traffic that would bypass the existing rules of federal and state law that govern intercarrier compensation for interexchange traffic. Under North Dakota's statutes, Level 3 would be considered an interexchange telecommunications company that provides "telecommunications service to end users located in separate local exchange areas." NDCC §49-21-01(9). The words "located" and "local" have meanings related to geographical reality, and the North Dakota PSC does not have the jurisdiction to make a policy decision that so-called virtual NXX traffic to ISPs in distant exchanges in North Dakota or in other states should be reclassified as local traffic inside a North Dakota exchange area.

Further, SRT is aware that the issue of whether a state commission has subject matter jurisdiction to adjudicate interconnection disputes related to ISP Bound traffic was recently litigated by Level 3 in Pennsylvania. There, the arbitrator concluded the Pennsylvania Commission lacked jurisdiction because of the interstate nature of the IP traffic. SRT is presently unclear about the status of this case. See Recommended Decision of Administrative Law Judge in *Level 3 Communications, LLC v. Marianna and Scenery Hill Telephone Company*, Docket no. C-20028114, Pennsylvania Public Utility

Commission.

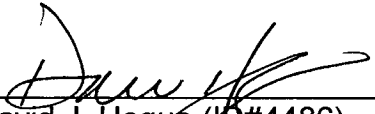
As to the context, Level 3's position - that ISP bound interexchange traffic should bypass the existing access charge rules that govern intercarrier compensation for interexchange traffic - is a revolutionary concept that is not appropriate for consideration or adoption by any state's commission in the context of an interconnection agreement arbitration. This global or national issue is within the jurisdiction of the FCC, not the North Dakota PSC, and the issue should not be pre-judged by the PSC in the context of an interconnection agreement affecting one local exchange carrier in North Dakota.

Level 3's revolutionary concept could be presented to the FCC in its pending COBAK proceedings, or Level 3 could pursue arbitration by the FCC under section 252 (e)(5) of the Act.

Expert witnesses and the issues they will address: Mr. Douglas Meredith will testify about issues 2, 3, 4, 5 and 6; Mr. Jan Sebby will testify about all seven issues.

Dated this 27th day of November, 2002.

PRINGLE & HERIGSTAD, P.C.

By 
David J. Hogue (ID#4486)
Attorneys for SRT Communications, Inc.
2nd Floor, Bremer Bank Building
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CERTIFICATE OF SERVICE

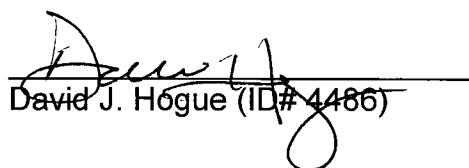
A true and correct copy of the foregoing **SRT COMMUNICATIONS, INC.'S PREHEARING STATEMENT** was, on the 27th day of November, 2002, mailed to:

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Telecom Dispute Solutions, Inc.
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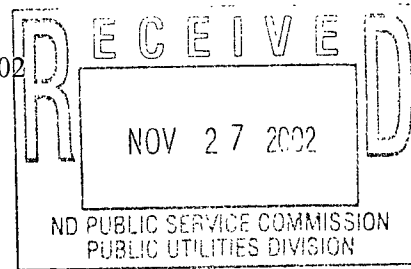

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November 26, 2002



VIA OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
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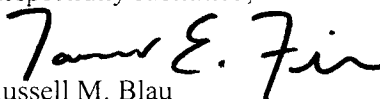
**Re: Petition of Level 3 Communications, LLC for Arbitration with SRT
Communications, Inc. – Case No. 2065-02-465**

Dear Mr. Mielke:

Pursuant to Section 69-02-10-18(4) of the Commission's rules, enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") are an original and ten (10) copies of Level 3's pre-hearing statement of positions and applicable law. Level 3 has provided a binder containing hard copies of each case cited in this filing to the Arbitrator, Frank Lamancusa, as well as to his staff advisors. We would also be pleased to send you any of these materials upon request.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,


Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: Jon Mielke, Executive Secretary (w/o enclosure)
Michael R. Romano (w/o enclosure)
Service List

33 PU-2065-02-465 *- Pat and this* Pages: 1500
Copy of cases cited in pre-hearing
statement of positions
by Level 3 Communications, LLC
11/27/2002 CC: Comm Legal PUD (3)

34 PU-2065-02-465 Pages: 19
Pre-hearing statement of positions and
applicable law
by Level 3 Communications, LLC
11/27/2002 CC: Comm Legal PUD (3)

LEVEL 3/SRT ARBITRATION – STATEMENT OF POSITIONS AND APPLICABLE LAW

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
1	<p>Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?</p>	<p>SRT has not satisfied its duties under Sections 251(a) and 252 of the FTA to negotiate¹ and establish interconnection with Level 3.</p> <p>SRT is not directly interconnected with Level 3. SRT currently provides Level 3 a retail Foreign Exchange arrangement provided in part by SRT and in part by Qwest. At no point in this transmission does the call ever get routed through a Level 3 switching facility such that Level 3 could be considered a carrier in completing the communication – Level 3 is simply a retail subscriber of SRT's service that Level 3 uses to complete calls to ISPs. Level 3 therefore disagrees with SRT's assertion that Level 3 is directly interconnected, or exchanging traffic, with SRT today. Until SRT interconnects with Level 3 as a co-carrier – that is, the parties exchange traffic between their switches – the parties are not directly interconnected.</p> <p>Nor is SRT indirectly interconnected with Level 3 by virtue of both carriers'</p>	<p>Communications Act of 1934, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 <i>et seq.</i>, and implementing regulations, including:</p> <p>47 U.S.C § 153(43), (44), (46).</p> <p>47 U.S.C. § 251.</p> <p>47 U.S.C. § 252.</p> <p>47 U.S.C. § 261.</p> <p>N.D. Cent. Code § 49-21-02.</p> <p>N.D Cent. Code § 49-21-07.</p> <p>N.D. Cent. Code § 49-21-09.</p> <p>N.D. Cent. Code § 49-21-10.</p> <p><i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i>, First Report and Order, FCC 96-325. 11 FCC Rcd 15499, ¶¶ 985-998 (1996).</p>	<p>William P. Hunt, III Vice President – Public Policy Level 3 Communications, LLC</p> <p>Rogier Ducloo Network Planning Manager Level 3 Communications, LLC</p> <p>Timothy J Gates Senior Vice President QSI Consulting</p>

¹ The negotiation aspects of SRT's duty are addressed in Issue 2.

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>connection to the PSTN. Although Level 3 sometimes exchanges traffic with independent LECs by using the Bell Operating Company ("BOC"), such as Qwest, as the transit carrier, SRT has not agreed to exchange traffic on a local basis with Level 3 through Qwest's tandem. While it is possible that there are other methods by which the parties could interconnect indirectly, SRT has not made any indirect interconnection proposals to Level 3 for the exchange of local calls between the parties' customers.</p> <p>If SRT prefers to exchange traffic with Level 3 through indirect interconnection, Level 3 is willing to do so in a mutually agreeable manner. However, an interconnection agreement is still necessary not only to govern such indirect interconnection arrangements, but also to establish such other terms and conditions that are important to ensure the smooth exchange of traffic between the parties' end users. For example, even in the case of indirect interconnection, an agreement is useful to specify the routing path for the calls between the parties, what they will (or will not) pay each other for the exchange of traffic, how responsibility for transit through a third party will be governed, and how</p>	<p><i>Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity</i>, Case No. PU-2065-02-11, Order (Mar. 13, 2002).</p> <p><i>North Dakota Network Co./SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2239-00-77, Order Approving Interconnection Agreement (ND P.S.C. May 10, 2000).</p> <p><i>CommNet Cellular, Inc./SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2240-00-78, Order Approving Interconnection Agreement (ND P.S.C. May 10, 2000).</p> <p><i>Western Wireless Corporation/SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2423-00-565, Order Approving Interconnection Agreement (ND P.S.C. Dec. 20, 2000).</p> <p><i>Sprint Spectrum L.P./SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2495-01-108, Order Approving Interconnection Agreement (ND P.S.C. May 9, 2001).</p>	

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		the interconnection arrangements do not affect any rural exemption held by SRT with respect to Sections 251(b) or (c), as applicable.	<i>Western Wireless Corporation/SRT Communications, Inc. Interconnection Agreement Amendment Application</i> , Docket No. PU-2423-02-28, Order (ND P.S.C. Mar. 27, 2002).	
2	Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?	Under Sections 251(a) and 252, SRT has a duty to negotiate fair and reasonable terms and conditions for interconnection with Level 3. The clear language of the Act shows that the only prerequisite for invoking Section 252 negotiation and arbitration procedures is a request for interconnection made to an incumbent LEC. Section 252(a) only refers to requests for interconnection negotiations under Section 251, without reference to a <i>bona fide</i> request as described in Section 251(f), or to any specific subsection of Section 251. Level 3 has made an interconnection request of SRT pursuant to Section 251(a), and is statutorily entitled to seek resolution of any open issues before the PSC. Indeed, as this Commission has determined in denying SRT's Motion to Dismiss, Section 252 negotiation and arbitration provisions apply to all interconnection requests made under Section 251. The Commission should enforce SRT's duty to negotiate through this arbitration.	Communications Act of 1934, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 <i>et seq.</i> , and implementing regulations, including: 47 U.S.C. § 201. 47 U.S.C. § 251. 47 U.S.C. § 252. 47 U.S.C. § 261. N.D. Cent. Code § 49-21-02. N.D. Cent. Code § 49-21-07. N.D. Cent. Code § 49-21-09. N.D. Cent. Code § 49-21-10. <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , First Report and Order, FCC 96-325, 11 FCC Rcd 15499, ¶¶ 156, 997 (1996).	William P. Hunt, III Vice President – Public Policy Level 3 Communications, LLC Timothy J Gates Senior Vice President QSI Consulting

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>Further, Level 3 is entitled to just and reasonable terms and conditions from SRT by virtue of Section 201(b) of the Communications Act of 1934, even if Section 251(c)(2)(D) is not applicable to the interconnection between SRT and Level 3.</p> <p>Moreover, SRT's position is inconsistent and discriminatory in violation of Sections 201 and 252 because SRT has negotiated interconnection arrangements and entered into interconnection agreements with various CMRS carriers under Section 251(a) without asserting or waiving its rural exemption.</p>	<p><i>Bell Atlantic v. Global NAPs</i>, 15 FCC Rcd 12946, 12959, ¶ 23 (1999), <i>aff'd on recon.</i>, 15 FCC Rcd 5997 (2000), <i>aff'd</i>, 247 F.3d 252 (D.C. Cir. 2001).</p> <p><i>Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and CenturyTel of Washington, Inc.</i> Pursuant to 47 U.S.C. Section 252, Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction (W.U.T.C. Oct. 25, 2002).</p> <p><i>North Dakota Network Co./SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2239-00-77, Order Approving Interconnection Agreement (ND P.S.C. May 10, 2000).</p> <p><i>CommNet Cellular, Inc./SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2240-00-78, Order Approving Interconnection Agreement (ND P.S.C. May 10, 2000).</p> <p><i>Western Wireless Corporation/SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2423-00-565, Order Approving Interconnection Agreement (ND P.S.C.</p>	

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
			<p>Dec. 20, 2000).</p> <p><i>Sprint Spectrum L.P./SRT Communications, Inc. Interconnection Agreement Application</i>, Docket No. PU-2495-01-108, Order Approving Interconnection Agreement (ND P.S.C. May 9, 2001).</p> <p><i>Western Wireless Corporation/SRT Communications, Inc. Interconnection Agreement Amendment Application</i>, Docket No. PU-2423-02-28, Order (ND P.S.C. Mar. 27, 2002).</p>	
3	<p>Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?</p>	<p>Issue 3 asks that the Commission clarify the proper classification of a service that permits a customer of one carrier to place a local call to a customer of another carrier, where the other carrier's customer does not maintain a physical presence in the rate center with which the customer's telephone number is associated. At bottom, this issue involves the proper intercarrier compensation arrangements for what has been called foreign exchange ("FX") traffic or "virtual NXX" traffic, together, "FX-like traffic." Level 3's position is that, for several legal, policy, economic, and network-related reasons, the originating carrier is not entitled to originating</p>	<p>Communications Act of 1934, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 <i>et seq.</i>, and implementing regulations including:</p> <p>47 C.F.R § 51.703(b).</p> <p><i>Louisiana PSC v. FCC</i>, 476 U.S., 106 S.Ct. 1890 (1986).</p> <p><i>WorldCom, Inc. v FCC</i>, 288 F.3d 429 (D.C. Cir. 2002).</p> <p><i>Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding</i></p>	<p>William P. Hunt, III Vice President – Public Policy Level 3 Communications, LLC</p> <p>Rogier Ducloo Network Planning Manager Level 3 Communications, LLC</p> <p>Timothy J Gates Senior Vice President QSI Consulting</p>

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>access with respect to these calls.</p> <p>Level 3 is a competitive local exchange telecommunications carrier that lawfully provides a regulated local exchange telecommunications service to its ISP customers. Level 3's proposed service could best be described as a competitive response to the traditional FX services many ILECs across the country have offered to customers for years. SRT offers a similar service to terminate traffic to ISPs. These FX services have been billed, rated, and routed as local calls for years, and it would be discriminatory for the PSC to classify traditional ILEC FX services as local but classify new CLEC FX-like services as interexchange. If Level 3 must pay originating access to SRT for terminating FX calls from SRT's customers, then all carriers, ILECs and CLECs alike, must pay originating access to the carrier whose customer originates the call to the terminating carrier's FX customer.</p> <p>The FCC's <i>ISP Order on Remand</i> and Section 51.703(b) of FCC rules also make clear that SRT is not entitled to originating compensation. SRT's claim that originating access charges are proper is contradicted by the fact that it</p>	<p><i>Interconnection Disputes with Verizon-Virginia, Inc., and for Expedited Arbitration</i>, Memorandum Opinion and Order, WCB Dkt. No. 00-218 et al., DA 02-1731 (rel. July 17, 2002).</p> <p><i>Developing a Unified Intercarrier Compensation Regime</i>, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).</p> <p><i>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</i>, CC Docket No. 96-98, <i>Intercarrier Compensation for ISP-Bound Traffic</i>, 99-68, 16 FCC Rcd 9151 (2001).</p> <p><i>Access Charge Reform</i>, First Report and Order, 12 FCC Rcd 15982, ¶ 265 (1997).</p> <p><i>Investigation as to Whether Certain Calls are Local, Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas</i>, DT 00-223, DT 00-054, Order No. 24,080 (N.H. PUC Oct. 28, 2002).</p> <p><i>Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon Pennsylvania, Inc. Pursuant to Section 252(b) of the Telecommunications Act</i></p>	

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		<p>will incur no more cost in originating a call to a Level 3 customer using a FX-type arrangement than it would to a similarly situated customer physically located inside of the rate center in question. Under either scenario, the burden on SRT would be the same. SRT would only be responsible for delivering SRT end user originated traffic up to the point of interconnection between the parties at which point Level 3 assumes full responsibility for the call. Level 3 has proposed establishing this point of interconnection at SRT's switch in Minot.</p> <p>Moreover, the flexible approach to the use of telephone numbers has enabled ISPs to provide low cost services throughout the state, including lightly populated areas. (The fact that the existing modem banks used to provide ISP services in Minot are actually physically located in Bismarck demonstrates that even SRT itself has recognized the benefits of a flexible approach to serving ISPs.) The Commission should encourage technical innovation and competition by classifying both ILEC and CLEC FX-like services as local services.</p> <p>Consistent with the FCC's regime,</p>	<p><i>of 1996</i>, Docket No. A-310814F7000, Recommended Decision (Pa. PUC Sep. 13, 2002).</p> <p><i>Investigation into Appropriate Method to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996</i>, Order on Reciprocal Compensation, Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP, at 28 (Fla. P.S.C. Sept. 10, 2002).</p> <p><i>Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Inter-carrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company</i>, Docket No. 24015, Revised Arbitration Award, at 30-31 (Tex. P.U.C. Aug. 28, 2002).</p> <p><i>Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies</i>, Case 00-C-0789, Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates, at 4 (N.Y.P.S.C. Sept. 7, 2001).</p> <p><i>Essex Telecom, Inc. v. Gallatin River</i></p>	

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>however, Level 3 does not request payment of reciprocal compensation under Section 251(b)(5), or payment of any other terminating intercarrier compensation by SRT. The FCC's <i>ISP Order on Remand</i> resolves the question of whether SRT must pay terminating compensation to Level 3 for ISP-bound calls. In particular, the FCC's <i>ISP Order on Remand</i> establishes a bill and keep compensation mechanism for this traffic.</p>	<p><i>Communications, L.L.C.</i>, Docket No. 01-0427, Order, at 8 (Ill.C.C. July 24, 2002).</p> <p><i>Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint</i>, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (P.U.C.O. May 9, 2002).</p> <p><i>Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996</i>, Case No. 2000-404, Order, at 7 (Ky. P.S.C. Mar. 14, 2002).</p> <p><i>DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities</i>, Docket No. 01-01-29, at 41-42 (Conn. D.P.U.C. Jan. 30, 2002).</p> <p><i>Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio</i>, Case No. 01-724-TP-ARB, Arbitration Award, at 9</p>	

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
			<p>(P.U.C.O. Oct. 4, 2001).</p> <p><i>Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Docket No. P-474, Sub. 10, Order Ruling on Objections and Requiring the Filing of the Composite Agreement (N.C.U.C. Aug. 2, 2001).</i></p> <p><i>Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Docket No. P-474, Sub 10, Recommended Arbitration Order (N.C.U.C., adopted Apr. 3, 2001).</i></p> <p><i>TDS Metrocom, Inc., Case No. U-12952, Opinion and Order, 2001 WL 1335639 (Mich. P.S.C. Sept. 7, 2001).</i></p> <p><i>Application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment</i></p>	

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
			<p><i>of reciprocal compensation, Case No. U-12696, Opinion and Order (Mich. P.S.C. Jan. 23, 2001).</i></p> <p><i>Petition of Focal Communications Corporation of Pennsylvania for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc., Docket No. A-310630F0002, Opinion and Order (Pa. PUC Jan. 24, 2001).</i></p> <p><i>Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan, Case No. U-12460, Opinion and Order (Mich. P.S.C. Oct. 24, 2000).</i></p> <p><i>Petition of Coast to Coast Telecommunications, Inc. for arbitration of interconnection rates, terms, conditions, and related arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan, Case No. U-12382, Order Adopting Arbitrated Agreement (Mich. P.S.C. Aug. 17, 2000).</i></p> <p><i>Order Instituting Rulemaking on the</i></p>	

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			<p><i>Commission's Own Motion Into Competition for Local Exchange Service</i>, D.99-09-029 (Cal P.U.C. Sep. 3, 1999).</p> <p><i>In re Complaint of Glenda Bierman against CenturyTel of Michigan, Inc. d/b/a CenturyTel</i>, Opinion and Order, Case No. U-11821 (Mich. P.S.C. Apr. 12, 1999).</p>	
4	<p>For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area?</p>	<p>Issue 4 addresses the interconnection arrangements for the exchange of FX-like traffic and customer billing requirements associated with this type of traffic. Level 3 believes that FX-like traffic should be treated the same as any other locally-dialed traffic. This would be consistent with historical industry practice and the manner in which the industry treats this traffic today.</p> <p>From a functional perspective, the services that Level 3 would deliver to ISPs are no different than those that ILECs have delivered for years to their own FX customers, and are no different than other comparable ISP-targeted services that many ILECs market today. While the network architecture may be different and the scope of the service coverage wider, the functionality delivered from the customer's</p>	<p>Same as Issue 3, and in addition:</p> <p>47 C.F.R. § 51.711.</p> <p><i>TSR Wireless v. US West Communications</i>, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 Memorandum Opinion and Order, FCC 00-194, ¶ 34 (rel. Jun. 21, 2000).</p>	<p>William P. Hunt, III Vice President – Public Policy Level 3 Communications, LLC</p> <p>Rogier Ducloo Network Planning Manager Level 3 Communications, LLC</p> <p>Timothy J Gates Senior Vice President QSI Consulting</p>

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>perspective is no different at all. All that matters to the customer is that it is able to receive calls through a telephone number associated with a rate center where that customer does not have a physical presence. SRT likely exchanges FX-like traffic with other independents on a local basis today and it would be discriminatory for SRT to refuse to do the same with Level 3. Indeed, a pertinent example of such a local service are the local calls that travel today to modem banks physically located in Bismarck through a local telephone number provided by SRT that is associated with Minot.</p> <p>The fact that state commissions around the country have reached the conclusion that ILECs and CLECs are offering a functionally equivalent FX-type service, coupled with the fact that ILECs in North Dakota offer FX services and FX-like services today without having them considered interexchange in nature, support the conclusion that Level 3's FX-like service should be treated as any other locally-dialed traffic.</p>		
5	<p>Has Level 3 made a <i>bona fide</i> request for interconnection under section 251(f)(1) of the</p>	<p>Although Level 3 has not made a <i>bona fide</i> request for interconnection under Section 251(f)(1) of the Act, a review of the statute makes clear that Level 3</p>	<p>Communications Act of 1934, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 <i>et seq.</i>, and implementing</p>	<p>William P. Hunt, III Vice President – Public Policy Level 3 Communications, LLC</p>

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
	<p>Act?</p>	<p>is not required to make a <i>bona fide</i> request in order to interconnect with SRT under Section 251(a).</p> <p>Section 251(a) does not include a requirement that Level 3 submit a <i>bona fide</i> request for interconnection with SRT, and nothing in Section 251(f)(1) affects the authority of a state commission to arbitrate an interconnection dispute arising under Sections 251(a) and 252 involving a rural incumbent LEC, such as SRT. Indeed, Section 252(b) authorizes <u>any</u> party to petition a state commission for arbitration of any open issues between the 135th and 160th days after the date an incumbent LEC has received a request for negotiation – without regard to whether that request were <i>bona fide</i> under Section 251(f)(1)(A).</p> <p>There is precedent for a competitive carrier seeking interconnection with SRT under 251(a) rather than 251(c). In June 2002, WWC Holding Co. Inc. (“Western Wireless”) filed a Petition for Arbitration with SRT and other rural LECs, seeking interconnection solely under Section 251(a) and 251(b). Western Wireless did not seek interconnection under 251(c), and SRT did not allege that Western Wireless was seeking interconnection under</p>	<p>regulations, including:</p> <p>47 U.S.C § 251.</p> <p>47 U.S.C. § 252.</p> <p>47 U.S.C. § 261.</p> <p><i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i>, First Report and Order, FCC 96-325, 11 FCC Rcd 15499, ¶¶ 197, 1262, 1265 (1996).</p>	<p>Timothy J Gates Senior Vice President QSI Consulting</p>

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>251(c) in violation of SRT's rural carrier exemption. The parties have resolved their dispute and Western Wireless has withdrawn its Petition.</p>		
6	<p>Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?</p>	<p>SRT is not exempt from negotiation and arbitration obligations under Section 251(f)(1). Section 251(f)(1) makes clear that a requesting carrier need only submit a <i>bona fide</i> request for interconnection, and seek waiver of a rural LEC's Section 251(c) exemption if the requesting carrier seeks to require the rural LEC to comply with its Section 251(c) obligations.</p> <p>Because Level 3 has not requested interconnection under Section 251(c), those additional duties (unbundling of network elements at forward-looking cost, collocation, resale at a discount, etc.) and accompanying restrictions in Section 251(f) are irrelevant to this dispute. Level 3 has requested negotiations under Section 251(a) and nothing in Section 251(f) exempts SRT from its Section 251(a) duties.</p> <p>Indeed, if Level 3 were to have sought interconnection under Section 251(c), it would have demanded that SRT provide it with collocation at SRT wire centers and dedicated transport from the point of interconnection back to</p>	<p>Communications Act of 1934, as amended by the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 <i>et seq.</i>, and implementing regulations, including:</p> <p>47 U.S.C. § 201.</p> <p>47 U.S.C. § 251.</p> <p>47 U.S.C. § 252.</p> <p>47 U.S.C. § 261.</p> <p>N.D. Cent. Code § 49-21-02.</p> <p>N.D. Cent. Code § 49-21-07.</p> <p>N.D. Cent. Code § 49-21-09.</p> <p>N.D. Cent. Code § 49-21-10.</p> <p><i>Telephone Number Portability</i>, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, FCC 97-74, 12 FCC Rcd 7236, 7303 (rel. Mar. 11, 1997).</p> <p><i>In the Matter of Implementation of the</i></p>	<p>William P. Hunt, III Vice President – Public Policy Level 3 Communications, LLC</p> <p>Timothy J. Gates Senior Vice President QSI Consulting</p>

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>Level 3's network at TELRIC-based rates. Instead, Level 3 has expressed willingness to pay above-cost subsidy-laden tariffed transport rates to the extent it must purchase transport from SRT to interconnect.</p> <p>Moreover, the fact that Western Wireless sought interconnection with SRT under Section 251(a), while neither having submitted a <i>bona fide</i> request nor a request to terminate SRT's rural exemption, and is already directly interconnected with SRT, shows that carriers may and should have direct interconnection under Section 251(a) without impacting SRT's rural exemption. To refuse the same treatment to Level 3 would violate the non-discrimination principles set forth under state law and the Act.</p>	<p><i>Local Competition Provisions of the Telecommunications Act of 1996</i>, First Report and Order, FCC 96-325, 11 FCC Rcd 15499, ¶ 197 (1996).</p> <p><i>In the Matter of the Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252</i>, Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction (W.U.T.C. Oct. 25, 2002).</p>	
7	<p>Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?</p>	<p>The Commission's jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration has been preempted by the FCC in only one, narrow instance—determining intercarrier compensation for the exchange of ISP-bound traffic. All issues relating to compensation for ISP-bound traffic fall within the scope of the FCC's preemption ruling, including</p>	<p>Same as Issue 3, and in addition:</p> <p>47 U.S.C § 201.</p> <p>47 U.S.C. § 251.</p> <p>47 U.S.C. § 252.</p> <p>47 U.S.C. § 261.</p> <p><i>AT&T Corporation v. Iowa Utilities</i></p>	<p>William P. Hunt, III Vice President – Public Policy Level 3 Communications, LLC</p> <p>Timothy J. Gates Senior Vice President QSI Consulting</p>

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>traffic to ISPs using FX-like arrangements. In adopting its interim compensation regime for transport and termination of ISP-bound traffic, the FCC explicitly stated that its interim regime "does not alter carrier' other obligations under Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection." With this statement, the FCC conclusively countered any suggestion that interconnection obligations with respect to ISP-bound traffic would be affected in any respect by its order. Section 252 grants to state commissions the authority to approve or reject <i>all</i> interconnection agreements, to mediate and arbitrate <i>all</i> interconnection disputes, and to enforce <i>all</i> the interconnection obligations of Section 251 and the interconnection rules that the FCC may adopt. This jurisdiction applies whether the services are classified for jurisdictional purposes as intrastate or interstate, voice or ISP-bound.</p> <p>Indeed, the FCC has made clear that voice and ISP-bound traffic should be accorded the same treatment. In its <i>ISP Order on Remand</i>, the FCC stated its "unwilling[ness] to take any action that</p>	<p><i>Board</i>, 525 U.S. 366, 378, 119 S.Ct. 721 (1999).</p> <p><i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i>, First Report and Order, FCC 96-325, 11 FCC Rcd 15499, ¶¶ 985-997 (1996).</p> <p><i>MTS and WATS Market Structure</i>, CC Docket 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983).</p> <p><i>Amendments of Part 69 of the Commission's Rules Relating to Enhanced Services Providers</i>, CC Docket 87-215, Order, 3 FCC Rcd 9, 2631, 2633 (1988).</p> <p><i>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic</i>, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶ 78 n.149, ¶ 90 (2001) ("<i>ISP Order on Remand</i>"), <i>remanded WorldCom v. FCC</i>, 288 F.3d 429 (D.C. Cir. 2002).</p> <p><i>In the Matter of the Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and CenturyTel</i></p>	

ISSUE	STATEMENT	LEVEL 3'S POSITION	APPLICABLE LAW	WITNESS
		<p>results in the establishment of separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic." The FCC did this largely to prevent incumbent LECs, such as SRT, from dictating terms on interconnecting carriers. SRT should not now be permitted to impose more onerous interconnection terms on Level 3 for the exchange of ISP-bound traffic by pretending that such traffic is no longer subject to Commission jurisdiction or governed by federal interconnection rules.</p>	<p><i>of Washington, Inc. Pursuant to 47 U.S.C. Section 252, Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction (W.U.T.C. Oct. 25, 2002).</i></p> <p><i>Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc., Case 02-C-0006, Order Resolving Arbitration Issues, at 9 (N.Y. P.S.C. May 24, 2002).</i></p> <p><i>Petition of Level 3 Communications, LLC for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Communications, MPUC Docket No. P-5733, 421/IC-02-1372, Arbitrator's Recommended Decision (Minn. P.U.C. Nov. 1, 2002).</i></p>	

CERTIFICATE OF SERVICE

I hereby certify that, on this 26th day of November 2002, a true and correct copy of the foregoing was sent via overnight delivery to the following individuals *with* enclosure:

David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
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Minot, ND 58701
dhogue@ndak.net

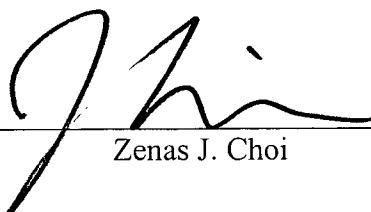
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I hereby certify that, on this 26th day of November 2002, a true and correct copy of the foregoing was sent via regular mail to the following individuals *without* enclosure:

Illona Jeffcoat-Sacco
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Zenas J. Choi

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of November, 2002**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

Russell M Blau
Swidler Berlin Shereff Friedman LLP
3000 K St NW Ste 300
Washington D C 20007-5116
Cert. No. 7001 1940 0005 3425 1910

Tamar E Finn
Swidler Berlin Shereff Friedman LLP
3000 K St NW Ste 300
Washington D C 20007-5116
Cert. No. 7001 1940 0005 3425 1927

David J Hogue
Pringle & Herigstad
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Minot ND 58702-1000
Cert. No. 7001 1940 0005 3425 1958

Timothy J Gates Sr Vice President
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15712 W 72nd Circle
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Frank G Lamancusa President
Telecom Dispute Solutions Inc
17721 Tree Lawn Dr
Ashton MD 20861
Cert. No. 7001 1940 0005 3425 1934

Michael R Romano
Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021
Cert. No. 7001 1940 0005 3425 1965

Sharon Helbling further deposes and says that on the **21st day of November, 2002**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Warren L Hight
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

Azita Sparano
John Staurulakis Inc
6315 Seabrook Rd
Seabrook MD 20706

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **21st day of November, 2002.**

Sharon Helbling

Sandra L. Scott

Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

MOTION

APPROVED

DATE: 11-20-02
KMF

November 20, 2002

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission adopt the Order denying SRT Communications, Inc.'s Motion for Dismissal, Case No. PU-2065-02-465.

WWB

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

ORDER

November 20, 2002

On August 30, 2002, Level 3 Communications, LLC ("Level 3") filed a Petition for Arbitration with the Commission, under 47 U.S.C. § 252(b), to arbitrate the unresolved issues in the interconnection negotiations between Level 3 and SRT Communications, Inc., ("SRT") under Section 252(b) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C § 151 *et seq.*)(“Act”) and N.D. Admin. Code Chapter 69-02-10.

On September 24, 2002, SRT filed a response in opposition to Level 3’s petition and included in that response a Motion for Dismissal. SRT alleged that the petition should be dismissed because interconnection under Section 251(a) is not the kind of interconnection that is the subject of obligations imposed under Section 251(c)(1) and the related arbitration provisions under Section 252 of the Act. Furthermore, SRT argued that the petition be dismissed because Level 3 has not made a bona fide request under Section 251(f)(1)(A), and has not requested nor has the Commission determined that SRT’s rural exemption under Sections 251(f)(1)(A) and (B) should be terminated.

On October 7, 2002, Level 3 filed a response to SRT’s motion to dismiss alleging that Section 252 negotiation and arbitration procedures apply to Section 251(a) requests for interconnection. Level 3 further argued the rural exemption issues do not apply because Level 3 has requested interconnection under Section 251(a), not 251(C), and that Level 3 is not challenging SRT’s rural exemption under Section 251(f). On October 29, 2002, Level 3 filed a supplement to its response and objection to bring to the Commission’s attention a recent decision by the Washington Utilities and Transportation Commission (“WUTC”) in which the WUTC found that Section 251(a) imposed a duty on all telecommunications carriers to interconnect with other carriers, and affirmed that the duty to interconnect under Section 251(a) is enforceable through the arbitration provisions of Section 252(b).

On October 29, 2002, the arbitrator appointed by the Commission filed the Recommended Order of the Arbitrator Concerning SRT Communications, Inc.’s Motion for Dismissal. The arbitrator found that the interconnection requested by Level 3 was under Section 251(a) of the Act, and consequently concluded that the restrictions of Section 251(c) are inapplicable. Section 251(a) requires all telecommunications carriers to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” The arbitrator further determined that the arbitration provisions in Section 252 are available for all Section 251 interconnections, including interconnection under Section 251(a).

On November 4, 2002, SRT filed comments to the arbitrator’s recommended order. SRT agreed that the interconnection requested by Level 3 is under Section 251(a) of the Act. SRT argued, however, that neither the Act nor any regulations under the Act require SRT to

negotiate or to submit to arbitration the terms and conditions of a Section 251(a) interconnection. SRT further argued that its duty to interconnect under Section 251(a) is by legislative fiat, and that SRT's direct and indirect connection to the public switched network fulfills that legal obligation.

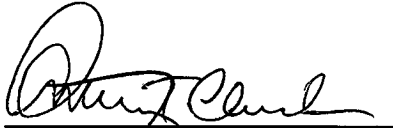
On November 18, 2002, the Commission heard oral arguments by the parties on the Motion to Dismiss.

The Commission has reviewed the recommendations of the arbitrator, and concurs with the findings by the arbitrator that the arbitration provisions in Section 252 are available for all Section 251 interconnections. The Commission therefore issues the following:

ORDER

The Commission **Denies** SRT's Motion for Dismissal in its entirety.

PUBLIC SERVICE COMMISSION



Anthony T. Clark
Commissioner



Susan E. Wehald
President



Leo M. Reinbold
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **7th day of November, 2002**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Hearing

The envelopes were addressed as follows:

Russell M Blau
Swidler Berlin Shereff Friedman LLP
3000 K St NW Ste 300
Washington D C 20007-5116
Cert. No. 7001 1940 0005 3426 5627

Tamar E Finn
Swidler Berlin Shereff Friedman LLP
3000 K St NW Ste 300
Washington D C 20007-5116
Cert. No. 7001 1940 0005 3426 5634

David J Hogue
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7001 1940 0005 3426 5641

Timothy J Gates Sr Vice President
QSI Consulting
15712 W 72nd Circle
Arvada CO 80007
Cert. No. 7001 1940 0005 3426 5658

Frank G Lamancusa President
Telecom Dispute Solutions Inc
17721 Tree Lawn Dr
Ashton MD 20861
Cert. No. 7001 1940 0005 3425 1781

Michael R Romano
Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021
Cert. No. 7001 1940 0005 3425 1798

Sharon Helbling further deposes and says that on the **7th day of November, 2002**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

29 PU-2065-02-465

Pages: 2

Affidavit of Service

by Public Service Commission

11/07/2002

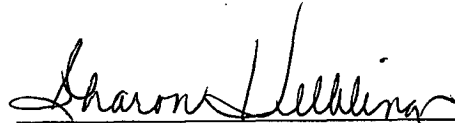
CC: Comm Legal PUD (3)

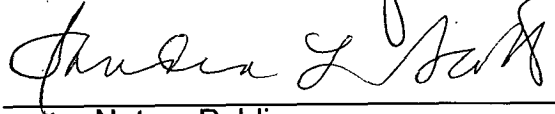
Warren L Hight
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

Azita Sparano
John Staurulakis Inc
6315 Seabrook Rd
Seabrook MD 20706

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **7th day of November, 2002.**





Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

APPROVED

DATE: 11-6-02
JS

MOTION

November 6, 2002

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission issue a Notice of Hearing in Level 3 Communications, LLC's Interconnection Arbitration application, Case No. PU-2065-02-465.

sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

NOTICE OF HEARING

November 6, 2002

On August 30, 2002, Level 3 Communications, LLC ("Level 3") filed a Petition for Arbitration with this Commission to arbitrate several unresolved issues arising out of interconnection agreement negotiations between Level 3 and SRT Communications, Inc. ("SRT"). Level 3's Petition was filed pursuant to section 252 of the Communications Act of 1934, as amended, and the North Dakota Administrative Code Chapter 69-02-10.

On September 19, 2002, the Commission appointed Frank G. Lamancusa of Telecom Dispute Solutions, Inc., of Ashton, Maryland, as the arbitrator in this proceeding.

On September 24, 2002, SRT filed its response to the Level 3's arbitration petition and a motion to dismiss. On October 7, 2002, Level 3 filed its response to SRT's motion to dismiss.

On October 11, 2002, the arbitrator held a telephonic, prehearing conference under the Commission's procedural rules.

On October 31, 2002, the arbitrator issued a Prehearing Conference Order setting forth the arbitration procedural schedule and a joint issue matrix. The issues in dispute to be determined in the arbitration proceeding are:

1. Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?
2. Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?
3. Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?

Post-it® Fax Note	7671	Date	11-7-02	# of pages	2
To	<i>Al Eminence</i>	From	<i>Arbitrator</i>		
Co./Dept.		Co.	<i>PSC</i>		
Phone #	<i>255-3513</i>	Phone #	<i>328-4081</i>		
Fax #	<i>255-6079</i>	Fax #	<i>328 2410</i>		

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Pages: 2

Notice of Hearing

by Public Service Commission

11/06/2002

CC: Comm Legal PUD (3)

4. For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area.
5. Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?
6. Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?
7. Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

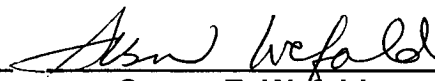
A hearing in this proceeding will be held beginning **December 9, at 9:00 a.m. CST, in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.** The hearing is open to the public, but participation is limited to the parties named herein and Commission staff.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify Jon Mielke, Executive Secretary, at least 24 hours prior to the hearing.

PUBLIC SERVICE COMMISSION



Anthony T. Clark
Commissioner



Susan E. Wehald
President



Leo M. Reinbold
Commissioner

APPROVED

DATE: 11-6-02
AW

MOTION

November 6, 2002

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission admit attorneys Russell M. Blau, Tamur E. Finn, and Michael W. Fleming to practice before the Commission in Level 3 Communications, LLC's Interconnection Arbitration application, Case No. PU-2065-02-465.

wwb



LAW OFFICES OF

PRINGLE & HERIGSTAD, P.C.

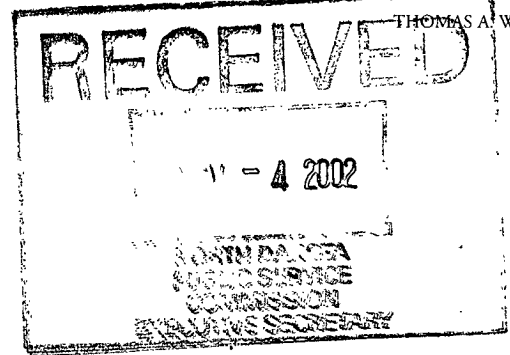
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HERBERT L. MESCHKE
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RETIRED
ROGER O. HERIGSTAD
THOMAS A. WENTZ

November 4, 2002

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

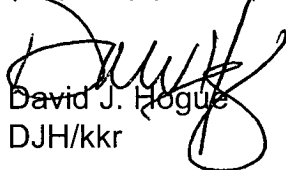


**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

Enclosed please find an original and seven copies of SRT Communications, Inc.'s Comments Regarding the Arbitrator's Recommendation in the captioned matter. Please date-stamp the enclosed additional copy and return it to me in the enclosed prepaid self-addressed envelope.

Very truly yours,


David J. Hogue
DJH/kkr

Enclosures

cc: Frank Lamancusa (w/enclosure)
William Binek (w/enclosure)
Russell Blau/Tamar Finn (w/enclosure)
Michael Romano (w/enclosure)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration Application

Case No. PU-2065-02-465

**COMMENTS OF SRT COMMUNICATIONS, INC. REGARDING
ARBITRATOR'S RECOMMENDED ORDER ON MOTION FOR DISMISSAL**

I. INTRODUCTION AND BACKGROUND

SRT Communications, Inc. ("SRT") is an incumbent local exchange carrier ("ILEC"). Level 3 Communications, LLC ("Level 3") is authorized to provide facilities-based local exchange and interexchange services, under the Commission's order in Case no. PU-2065-002-11. (Arbitrator's Recommended Order, par. 2 & 3, herein abbreviated "Rec. Ord.")

Level 3 communicated with SRT in March of 2001, and submitted a proposed "traffic exchange agreement" between Level 3 and SRT. The parties negotiated but did not agree, mainly because SRT's position was that Level 3's request to interconnect was not valid under applicable provisions of federal statutes and related rules established by the Federal Communications Commission. (Rec. Ord. par. 5 & 6.)

Level 3 filed with the Commission a Petition for Arbitration asserting it was entitled to interconnection under section 251(a) of the Telecommunications Act of 1934, as amended in 1996, ("Act"), and that terms of an interconnection should be established under the arbitration provisions of section 252 of the Act. Level 3's

Petition “identified three general, unresolved issues between the parties: (1) that SRT had a statutory duty to interconnect directly or indirectly with Level 3; (2) that SRT had a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection arrangements; and (3) that Level 3's proposed services are exchange services that are subject to negotiated transport and termination arrangements, rather than interexchange services subject to access charges.” (Rec. Ord. par. 7; underscoring added.)

SRT moved to dismiss Level 3's Petition, on the grounds the interconnection arrangement proposed by Level 3 is not subject to SRT's obligations under the Act.

The arbitrator appointed by the Commission has recommended denial of SRT's motion to dismiss. SRT respectfully urges the Commission to reject the arbitrator's recommendation and urges the Commission to dismiss Level 3's Petition.

II. ARGUMENT

SRT asserts the arbitrator erred in developing the opinion that the arbitration provisions of section 252 of the Act apply to Level 3's request for an interconnection under section 251(a). In these comments, SRT does not repeat all the arguments that are in the record and available to the Commission. The arguments previously filed are summarized and supplemented below.

The Act imposes two duties of interconnection, the “general” duty of all telecommunications carriers to interconnect, under section 251(a), and the

“additional” duty of ILECs, under section 251(c)(2). Importantly, Level 3 has requested an interconnection under section 251(a), not 251(c). Level 3 has invoked section 252 to obtain by negotiation or arbitration a 251(a) interconnection, including transport and termination arrangements, under special terms.

SRT is respectfully adamant in its position that neither the Act nor any regulations under the Act oblige it to negotiate or submit to arbitration the terms and conditions of a 251(a) interconnection. Section 251(a) obligations are not administered under section 252. SRT is directly and indirectly connected to the public switched network, and that fulfills its legal obligation under section 251(a). Level 3 has the opportunity to utilize SRT's facilities under SRT's filed tariffs. No additional negotiations or arbitration procedures are needed. The statute and regulations do not require negotiation or impose arbitration procedures for Level 3 to obtain a 251(a) interconnection on special terms differing from tariffed rates.

Level 3 is consistent in stating it claims interconnection rights under section 251(a), not under 251(c). Both parties agree that a 251(c) interconnection agreement is not at issue. But the words of section 251(c) need to be considered in addressing the question whether 252 arbitration procedures affect section 251(a) interconnections.

Level 3's response to SRT's motion to dismiss is simply stated:

“Section 252(a) only refers to requests for interconnection negotiations under section 251, without reference to . . . any specific subsection of section 251. Thus, a request for interconnection

under Section 251(a) is sufficient to give this Commission jurisdiction over the Parties' interconnection dispute." Level 3 Response, p. 5.

The arbitrator evidently accepted Level 3's interpretation. (Rec. Ord. par. 18-25.)

Level 3's "Thus" statement, that "a request for interconnection under Section 251(a) is sufficient to give this Commission jurisdiction over the Parties' interconnection dispute" states an incorrect conclusion. It is not correct because "requests for interconnection under section 251" referred to in section 252 refer only to section 251(c), not to section 251(a). This is the correct interpretation of section 252's reference to section 251, because only section 251(c) requires negotiations to establish interconnections, where negotiations are initiated by one telecommunications carrier's request to another carrier.

Section 251(a) imposes on all telecommunications carriers the duty of direct or indirect interconnection. The duty exists by legislative fiat. As stated, SRT is directly and indirectly connected to the public switched network, and that fulfills its legal obligation under section 251(a). No telecommunications carrier's 251(a) duty is activated by another carrier's request! Section 251(a) imposes no duty for negotiation between telecommunications carriers about the terms of interconnections.

Section 251(c) is significantly different from 251(a) in imposing additional duties for ILECs' to negotiate with requesting carriers to fulfill duties of interconnections for telephone exchange service and exchange access and

network elements. The FCC's Local Competition Order explains, at par. 138: "Section 251(c)(1) of the statute imposes on incumbent LECs the 'duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described' in sections 251(b) and (c)." These duties are inchoate unless activated by a request. No section 251(c) interconnection has been requested by Level 3.

The Local Competition Order also explains that the interconnection obligations under 251(a) and 251(c) differ. "For example, section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers." *Id.* ¶1997.

These general observations about the differences between Act sections 251(a) & (c) show that section 251(a)'s general duty of interconnection is not accompanied by a duty to negotiate, whereas negotiation is a duty specifically imposed by section 251(c). These observations inspire a notion that arbitration is imposed to assure that required negotiations produce agreements, and that arbitration is wholly out of place when there is no requirement to negotiate. This understanding of the different kinds of duties under all of section 251 and the limited application of compulsory arbitration is supported by a detailed examination of the entire statute and its structure, leading to the conclusion that an interconnection under section 251(a) is not subject to arbitration under section 252.

Section 251(a) imposes on all telecommunications carriers the obligation to interconnect with other carriers. The duty exists by legislative mandate. Any carrier's 251(a) duty is in force, not suspended unless or until activated by another telecommunications carrier's request. Section 251(a) imposes interconnection duties, and imposes no duties to negotiate terms of an interconnection.

Section 251(a) does not refer to section 252.

Section 251(c) imposes duties to negotiate certain kinds of interconnection, upon request.

Section 251(c) refers to section 252.

Section 252, subsection (a) through (d), is replete with verbiage that makes sense only with reference to section 251(c) and no sense with reference to section 251(a).

1. Section 252(a) makes no reference to section 251(a), but section 252(a) does refer to sections 251(b) and (c).
2. Section 252(a) refers to a requesting telecommunications carrier, a term that appears repeatedly in section 251(c) and nowhere in section 251(a).
3. Section 252(b), which creates arbitration as a system to establish interconnections, refers to a requesting telecommunications carrier, a term that appears repeatedly in section 251(c) and nowhere in section 251(a).
4. Sections 252(c) and (d) relating to arbitration standards make sense only with reference to interconnections established under section 251(c). Indeed, as the bottom line in this case is rates for services, the only pricing

standards mentioned in section 252 relate to interconnections under subsection (c)(2) of section 251. There is no provision in section 252 for pricing standards applicable to a section 251(a) interconnection.

5. There is one reference in the arbitration standards to section 251 generally, the requirement in section 252(c) that any conditions imposed in compulsory arbitration “. . . meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251.” But there is nothing in section 251 or in the Code of Federal Regulations that establishes terms and conditions of interconnections under section 251(a).

Quite the contrary, the FCC’s rules implementing Act section 251(a) define interconnection as the linking of two networks for the mutual exchange of traffic, and state that it “does not include the transport and termination of traffic.” 47 CFR §51.5.

All these details in sections 251 and 252 of the Act support the initial concept and point to the conclusion: The general duty of interconnection under section 251(a) stands as a legislated mandate, the duty is not subject to negotiation, and there is no duty to negotiate terms of an interconnection under that section of the Act. Where there is no duty to negotiate, there is nothing to arbitrate.

This interpretation of the nature of duties under section 251(a) is supported by a recent decision of the FCC, where carriers’ disputed one’s reliance on

section 251(a) to authorize a requested interconnection arrangement the FCC regarded as a sham. In Matter of Total Telecommunications Services, Inc. v. AT&T, 16 FCC Rcd 5726 (2001), the FCC opined that Act Section 251's subsections (a), (b) & (c) comprise a "hierarchy of escalating obligations." I.e., section 251(a) directly imposes interconnection - physical linking - duties on all carriers, as distinguished from sections 251(b) and (c) which impose additional duties on LECs and ILECs, including the duty to negotiate particular kinds of interconnections. The FCC opined that it would not be logical to confer a broader meaning to the term "interconnection" as it appears in the less-burdensome section 251(a).

Likewise, section 252's arbitration provisions should be interpreted consistent with section 251's "hierarchy of escalating obligations." As the heavier duty to negotiate section 251(c) obligations requires the sanction of arbitration in order to effect the fulfillment of those obligations, less-burdensome duties under section 251(a) should not be subjected to arbitration in the absence of a statutory duty to negotiate. It is illogical to confer or compel by arbitration processes transport and termination obligations that are not imposed by section 251(a).

III. CONCLUSION

SRT acknowledges its general obligation to interconnect under section 251(a). SRT has met that obligation. No additional negotiations or arbitration procedures are needed for Level 3 to obtain originating service from SRT under existing tariffs. But Level 3 insists it wants an arbitrated arrangement for an

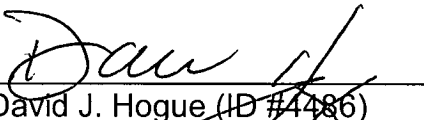
interconnection under section 251(a) including transport and termination arrangements. Section 251(a) and 47 CFR §51.5 plainly do not provide for transport and termination.

Nothing in the Act or the Regulations adopted by the FCC or the FCC's Local Competition Order that explains the Regulations supports Level 3's notion that it may "request" an interconnection and obtain via the arbitration process a section 251(a) interconnection on special terms.

For all these reasons, the Commission should reject the Arbitrator's recommended decision on SRT's Motion to Dismiss. The Commission should conclude as a matter of law that arbitration proceedings under section 252 of the Act do not apply to interconnections under section 251(a). Accordingly, the Commission should grant SRT's Motion to Dismiss.

Dated this 4th day of November, 2002.

PRINGLE & HERIGSTAD, P.C.

By 
David J. Hogue (ID #4486)
Attorneys for SRT Communications, Inc.
2nd Floor, Bremer Bank Building
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Phone: (701) 852-0381
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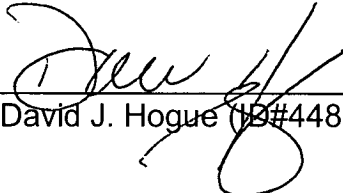
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing **COMMENTS OF SRT COMMUNICATIONS, INC. REGARDING ARBITRATOR'S RECOMMENDED ORDER ON MOTION FOR DISMISSAL** was, on the 4th day of November, 2002, mailed to:

Swidler Berlin Shereff Friedman, LLP
Russell M. Blau
Tamar E. Finn
3000 K Street NW, Ste. 300
Washington, DC 20007

Level 3 Communications, Inc.
Michael R. Romano
Director - State Regulatory Affairs
8270 Greensboro Drive. Ste. 900
McLean, VA 22102

N.D. Public Service Commission
William Binek, Commerce Counsel
600 East Blvd. Ave., Dept. 408
Bismarck, ND 58505-0480



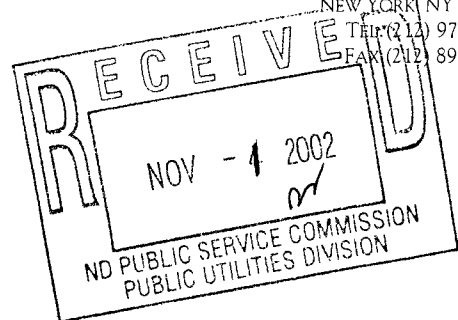
David J. Hogue (ID#4486)

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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November 1, 2002



VIA FAX & OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480

**Re: Petition of Level 3 Communications, LCC for Arbitration with SRT
Communications, Inc. - Case No. PU-2065-02-~~465~~ 465**

Dear Mr. Mielke:

On behalf of Level 3 Communications, LLC ("Level 3"), and pursuant to North Dakota Administrative Code § 69-02-01-06(2), we are writing to request permission to practice and appear before the North Dakota Public Service Commission ("Commission") as attorneys on behalf of Level 3 in the above-referenced proceeding. Russell M. Blau has been a member in good standing of the District of Columbia bar since 1982 and the Maryland bar since 1983. Tamar E. Finn has been a member in good standing of the Pennsylvania bar since 1994, the Maryland bar since 1995, and the District of Columbia bar since 1996. Michael W. Fleming has been a member in good standing of the Virginia bar since 1994 and the District of Columbia bar since 1997.

If you have any questions concerning the qualifications of either of the undersigned to practice and appear before the Commission, or if you have any other questions concerning this request, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamar E. Finn".

Russell M. Blau
Tamar E. Finn
Michael W. Fleming

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Zenas J. Choi
Service List

23 PU-2065-02-465

Pages: 2

Request for permission to practice &
appear before the Commission
by Level 3 Communications, LLC

11/01/2002

CC: Comm Legal PUD (3)

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of November 2002, a true and correct copy of the foregoing was sent via email to the following individuals:

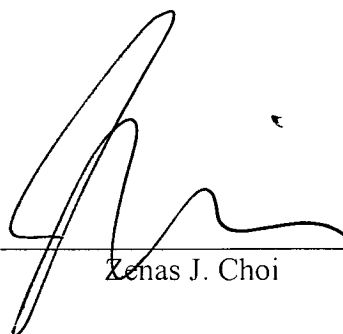
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Illona Jeffcoat-Sacco
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Zenas J. Choi

Telecom Dispute Solutions, Inc.

Mediation and Arbitration Services for the Telecommunications Industry

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301/774-4251

Frank G. Lamancusa
President
FLamancusa@TelecomADR.com

October 31, 2002

Via Facsimile and U.S. Mail

Jon H. Mielke
Executive Secretary
Public Service Commission, State of North Dakota
600 East Boulevard Avenue, Department 408
Bismark, North Dakota 58505-0480

Re: Prehearing Conference Order – Level 3 Communications, LLC Interconnection Arbitration
Application
Case No. PU-2065-02-465

Dear Mr. Secretary:

Enclosed for filing with the North Dakota Public Service Commission is an original and seven (7) copies of the "Prehearing Conference Order" in the above captioned matter.

Please date-stamp the enclosed additional copy and return it to me in the attached postage-paid envelope. If you have any questions, please do not hesitate to contact me at 301/774-4251.

Sincerely,



Frank G. Lamancusa
Arbitrator, Case No. PU-2065-02-465

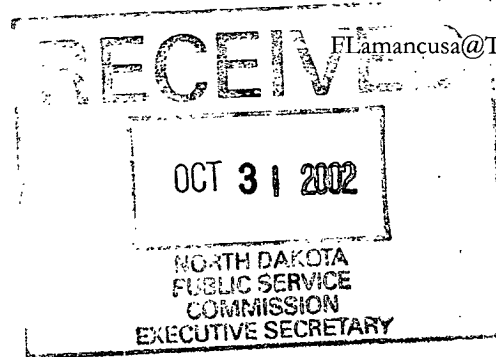
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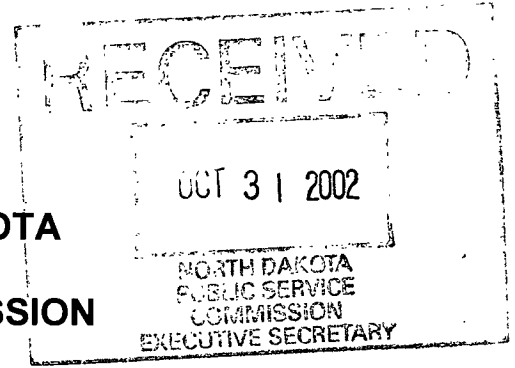
cc: Michael R. Romano, Esq.
David J. Hogue, Esq.

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Pages: 1

Cover letter re Prehearing Conference
Order
by Telecom Dispute Solutions, Inc. by Frank G Lamanc
10/31/2002 CC: Comm Legal PUD (3)





**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

PREHEARING CONFERENCE ORDER

October 31, 2002

Telephonic prehearing conferences were held before the Arbitrator in this matter on September 30 and October 11, 2002.

After receiving the advice of the parties' counsel and the consent of the North Dakota Public Service Commission to extend the time for a decision by the Arbitrator, the Arbitrator hereby orders:

A. The rules applicable to this proceeding are contained in chapter 69-02-10 of the North Dakota Administrative Code.

B. The schedule for this proceeding is as follows:

October 25, 2002	Parties exchanged information pursuant to N.D. Admin. Code § 69-02-10-18.
November 1, 2002	Formal discovery requests due (N.D. Admin. Code § 69-02-10-19).
November 13, 2002	Responses to formal discovery requests due.
November 27, 2002	Pre-hearing material due (N.D. Admin. Code § 69-02-10-18).
December 4, 2002	Written direct testimony due (N.D. Admin. Code § 69-02-10-20).
December 9, 2002	Arbitration hearing begins.
December 23, 2002	Post-hearing briefs and final offer arbitration agreements due (N.D. Admin. Code § 69-02-10-27).

January 17, 2003 Close of post-final offer negotiation period (N.D. Admin. Code § 69-02-10-26).

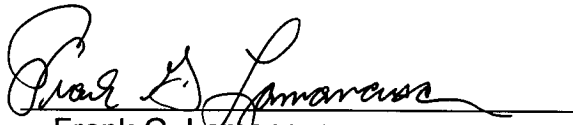
January 31, 2003 Arbitrator's decision due (N.D. Admin. Code § 69-02-10-29).

The hearing will be held beginning December 9, at 9:00 a.m. CST, in the Commission Hearing Room, 12th Floor, State Capitol, Bismark, North Dakota. The hearing is open to the public, but participation is limited to the parties named herein and Commission staff.

C. The disputed issues to be determined in the arbitration proceeding are as follows:

1. Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?
2. Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?
3. Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?
4. For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area.
5. Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?
6. Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?
7. Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

Dated October 31, 2002

By: 
Frank G. Lamancusa
Arbitrator, PU-2065-02-465

Telecom Dispute Solutions, Inc.

Mediation and Arbitration Services for the Telecommunications Industry

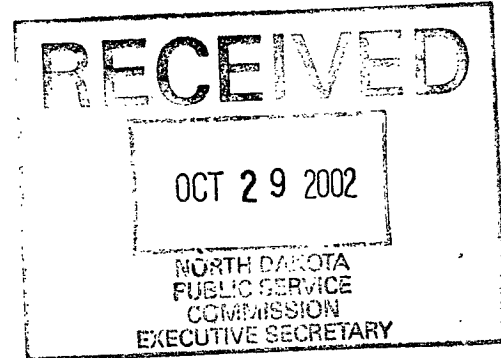
17721 Tree Lawn Drive
Ashton, Maryland 20861
301/774-4251

Frank G. Lamancusa
President
FLamancusa@TelecomADR.com

October 29, 2002

Via Facsimile and U.S. Mail

Jon H. Mielke
Executive Secretary
Public Service Commission, State of North Dakota
600 East Boulevard Avenue, Department 408
Bismark, North Dakota 58505-0480



Re: Recommended Order of the Arbitrator Concerning SRT Communications Cooperative's Motion For Dismissal – Level 3 Communications, LLC Interconnection Arbitration Application
Case No. PU-2065-02-465

Dear Mr. Secretary:

Enclosed for filing with the North Dakota Public Service Commission is an original and seven (7) copies of the "Recommended Order of the Arbitrator Concerning SRT Communications Cooperative's Motion For Dismissal" in the above captioned matter.

Please date-stamp the enclosed additional copy and return it to me in the attached postage-paid envelope. If you have any questions, please do not hesitate to contact me at 301/774-4251.

Sincerely,

Frank G. Lamancusa
Arbitrator, Case No. PU-2065-02-465

Enclosure

cc: Michael R. Romano, Esq.
David J. Hogue, Esq.

20 PU-2065-02-465

Pages: 1

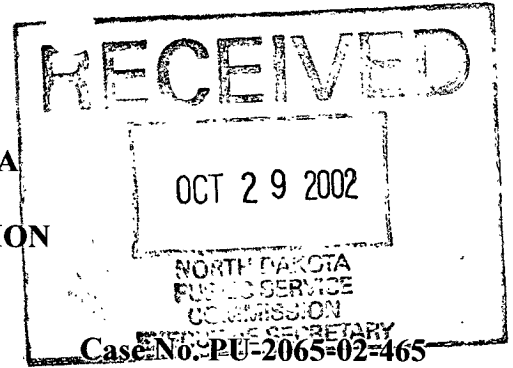
Cover letter re Recommended Order

by Telecom Dispute Solutions, Inc. by Frank G Lamanc

10/29/2002

CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Level 3 Communications, LLC
Interconnection Arbitration Application

**RECOMMENDED ORDER OF THE ARBITRATOR CONCERNING
SRT COMMUNICATIONS COOPERATIVE'S MOTION FOR DISMISSAL**

I. INTRODUCTION

1. This recommended order concludes that, pursuant to sections 251 and 252 of the Communications Act of 1934 ("the Act"), as amended, and chapter 69-02-10 of the North Dakota Administrative Code, the North Dakota Public Service Commission ("Commission") should deny SRT Communications Cooperative's ("SRT") motion for dismissal of the petition for arbitration filed by Level 3 Communications, LLC ("Level 3"). SRT bases its motion on the assertions that the interconnection sought by Level 3 does not impose negotiation and arbitration obligations upon SRT and that SRT's rural telephone company exemption has not been terminated, thus insulating SRT from any negotiation or arbitration requirements under the Act. I disagree with SRT's conclusions and recommend that SRT's motion to dismiss be denied.¹

II. BACKGROUND

A. The Parties

2. Level 3 is a Delaware limited liability company, and a wholly-owned subsidiary of Level 3 Communications, Inc., a publicly-traded Delaware corporation. Level 3 is authorized

¹ On September 19, 2002, the North Dakota Public Service Commission appointed Frank G. Lamancusa as an arbitrator in this matter. This recommended decision is made pursuant to North Dakota Century Code chapter 49-21 and North Dakota Administrative Code 69-02-10-13.

to provide facilities-based local exchange and interexchange services in the State of North Dakota pursuant to the Commission's order in Case No. PU-2065-02-11.²

3. SRT is an incumbent local exchange carrier³ ("LEC") for certain portions of the State of North Dakota. SRT is also considered a "rural telephone company"⁴ under the Act.

B. Statement of Facts

4. On March 26, 2002, Level 3 initiated negotiations to establish interconnection by sending an information package to SRT. The package provided an overview of Level 3's goals for its expansion into SRT's service area, a proposed traffic exchange agreement, and a network drawing depicting a possible way in which Level 3 might route traffic from SRT to Level 3's network.⁵

5. SRT responded on April 19, 2002, that it did not wish to meet with Level 3 and, instead, that Level 3 should deal with the company's consultant at John Starurulakis, Inc. ("JSI").

² *Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity*, Case No. PU-2065-02-11, Order (N.D. Pub. Serv. Comm'n Mar.13, 2002).

³ 47 U.S.C. § 251(h).

⁴ 47 U.S.C. § 153(37).

⁵ *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended, to Establish an Interconnection Agreement with SRT Communications Cooperative*, Case No. PU-2065-02-465, Petition for Arbitration, p.3 (N.D. Pub. Serv. Comm'n filed Aug. 30, 2002) ("Petition"). The typical standard of review under a motion to dismiss which tests the legal sufficiency of a claim is to construe the pleadings in the light most favorable to the plaintiff, taking as true the well-pleaded allegations in the complaint. *See* N.D.R. Civ.P. 12(b)(vi); *Burke v. North Dakota Dep't of Corr. & Rehab*, 2000 ND 85, ¶ 4, 609 N.W.2d 729 (2000); *Perry Center, Inc. v. Heitkamp*, 1998 ND 78, ¶42, 576 N.W.2d 505 (1998). Because determinations on the merits are generally preferred to dismissal on the pleadings, motions to dismiss based on the legal sufficiency of a claim are viewed with disfavor. *Wells v. First Am. Bank W.*, 1999 ND 170, ¶8, 598 N.W.2d 834 (1999). Accordingly, the scrutiny of the pleadings should be deferential to the plaintiff, and the pleading should not be dismissed unless "it is disclosed with certainty the impossibility of proving a claim upon which relief can be granted." *Lang v. Schafer*, 2000 ND 2, ¶8, 603 N.W.2d 904 (2000). The North Dakota courts' standard of review is the most appropriate to use in examining SRT's motion to dismiss. The facts alleged in Level 3's petition for arbitration therefore will be viewed in their most favorable light.

Soon after, Level 3 received a letter from SRT concurring with JSI's previous position that Level 3's request to interconnect to provide services to ISPs was not valid, and that the Federal Communication Commission's rules did not allow requesting carriers to obtain interconnection solely for the purpose of offering information services.

6. On August 23, 2002, a conference call was held to discuss the status of negotiations between Level 3 and SRT. By the conclusion of the conference call, SRT had not changed its position concerning Level 3's interconnection request. Also, at that time, SRT had not produced any comments to Level 3's draft agreement or provided draft terms SRT considered acceptable.⁶

C. Procedural History

7. On August 30, 2002, Level 3 filed with the Commission a Petition for Arbitration ("Petition") to resolve disputed issues between the parties and establish an interconnection agreement with SRT pursuant to section 252(b)(1) of the Act and chapter 69-02-10 of the North Dakota Administrative Code.⁷ Level 3 identified three general, unresolved issues between the parties: (1) that SRT had a statutory duty to interconnect directly or indirectly with Level 3; (2) that SRT had a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection arrangements; and (3) that Level 3's proposed services are exchange services that are subject to negotiated transport and termination arrangements, rather than interexchange services subject to access charges.

⁶ *Petition*, p.4.

⁷ *Id.*

Recommended Order on SRT's Motion for Dismissal
Case No. PU-2065-02-465

8. On September 24, 2002, SRT filed a response in opposition to Level 3's petition.⁸

In addition to responding to Level 3's rendition of the facts and unresolved issues, SRT's Response included a motion to dismiss Level 3's Petition in its entirety. In support of its motion to dismiss, SRT made the following three arguments:⁹

- a. Level 3 has not made a *bona fide* request for an interconnection under section 251(f)(1)(A) of the Act.
- b. Level 3 has not requested nor has the Commission determined that SRT's exemption from negotiation and interconnection obligations should be terminated under sections 251(f)(1)(A) and (B) of the Act.
- c. The interconnection that Level 3 seeks under section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under section 251(c)(1) and the related arbitration provisions under section 252 of the Act.

9. Level 3 filed its response to SRT's motion to dismiss on October 7, 2002.¹⁰ The gravamen of Level 3's response was that it was not requesting interconnection under section 251(c) of the Act but rather under section 251(a) and that the restrictions of section 251(c) were inapplicable.¹¹

⁸ *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended, to Establish an Interconnection Agreement with SRT Communications Cooperative*, Case No. PU-2065-02-465, Response to Petition for Arbitration (N.D. Pub. Serv. Comm'n filed Sept. 24, 2002) ("Motion for Dismissal").

⁹ *Motion for Dismissal*, p.5.

¹⁰ *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended, to Establish an Interconnection Agreement with SRT Communications Cooperative*, Case No. PU-2065-02-465, Level 3 Communications LLC's Response to SRT Communications, Inc.'s Motion to Dismiss (N.D. Pub. Serv. Comm'n filed Oct. 7, 2002) ("Response"). Level 3 filed its Response pursuant to a schedule established during a telephone conference held on September 30, 2002, between the parties, the arbitrator, and Commission staff.

¹¹ On October 29, 2002, Level 3 filed with the Commission a Supplement to its Response and Objection to SRT's Motion to Dismiss in this matter which brought to the Commission's attention a recent decision by the State of Washington's Utilities and Transportation Commission in *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC., and CenturyTel of Washington, Inc.*, Dkt. No. UT-023043,

III. DISCUSSION

A. Rural Telephone Company Exemptions of Section 251(f)(1) Do Not Apply to Section 251(a) Duties.

10. SRT argues that Level 3's arbitration petition should be dismissed because Level 3 has not made a *bona fide* request for interconnection under Section 251(f)(1)(A) of the Act.¹² SRT further argues that the arbitration petition should be dismissed because Level 3 has neither requested nor has the Commission determined that SRT's exemption from section 251(c) obligations should be terminated. Both of these events are required before a rural telephone company can lose its exemption from the interconnection obligations of an incumbent LEC under section 251(c).¹³ SRT's arguments concerning its rural telephone company exemptions of section 251(f)(1) are based on alleged facts that are inconsistent with the facts contained in Level 3's pleadings. SRT's arguments turn on the type of interconnection requested by Level 3. In a motion to dismiss, as discussed previously, the facts alleged by Level 3 are to be viewed in their most favorable light.¹⁴ Because SRT's arguments are not supported by those facts, SRT's motion to dismiss should not be granted.

11. Section 251 of the Act imposes interconnection obligations on telecommunications carriers. For example, Section 251(a) requires all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other

Third Supplemental Order Confirming Jurisdiction (Wash. Util. & Trans. Comm'n, October 25, 2002)("Washington Petition").

¹² *Motion for Dismissal*, pp. 5 & 18.

¹³ 47 U.S.C. § 251(f)(1).

¹⁴ *See supra* n. 5.

telecommunications carriers.”¹⁵ Whereas section 251(c) imposes specific interconnection duties on incumbent LECs, including the duty to negotiate in good faith.

12. Not all incumbent LECs, however, must comply with section 251(c)'s requirements to interconnect. Section 251(f)(1) exempts certain rural telephone companies from the obligations of section 251(c) until two events occur – a *bona fide* interconnection request is made and the respective State commission determines “that such a request is not unduly economically burdensome, is technically feasible, and is consistent” with the Act's universal service requirements.¹⁶ Without such a request and determination, a rural telephone company is not required to provide interconnection under the terms of section 251(c).

13. SRT's status as a rural telephone company is uncontested in this proceeding.¹⁷ However, whether Level 3 made a *bona fide* request for interconnection or failed to seek the termination of SRT's rural telephone company exemption from section 251(c) is not relevant to this dispute.¹⁸ Level 3 has repeatedly stated and SRT has agreed that Level 3 is not requesting interconnection pursuant to section 251(c).¹⁹ Section 251(f)(1)(A) states that “[s]ubsection (c) of ... section [251] shall not apply to a rural telephone company”²⁰ making it clear that the rural telephone company exemption afforded SRT applies to interconnection requests made pursuant to section 251(c) not section 251(a).

¹⁵ 47 U.S.C. § 251(a). Section 251(b) places additional, non-interconnection obligations on LECs.

¹⁶ 47 U.S.C. § 251(f)(1)(A). The universal service requirements are set out in 47 U.S.C. § 254.

¹⁷ *Response*, p. 24.

¹⁸ SRT asserts that Level 3's request for service was not *bona fide* because, according to SRT, Level 3 did not seek to operate as a competitive LEC offering a range of local exchange services. *Motion for Dismissal*, p. 18.

¹⁹ SRT also claimed that Level 3 had not requested the termination of SRT's rural telephone company exemption nor has the Commission held any proceeding to remove that exemption. As discussed above, those issues only impact requests for interconnection pursuant to § 251(c).

²⁰ 47 U.S.C. § 251(f)(1)(A).

14. The alleged failure of a requesting telecommunications carrier to comply with the steps found in section 251(f)(1) necessary to eliminate a rural telephone company's exemption from section 251(c) obligations does not affect the viability of a request for interconnection based on section 251(a). Interconnection under section 251(a) applies to all telecommunications carriers without exception. Therefore, SRT's arguments that Level 3 failed to comply with section 251(f)(1)(A) and (B) do not affect Level 3's request for interconnection. Consequently, I recommend that SRT's motion to dismiss based on the arguments that Level 3 did not submit a *bona fide* interconnection request and failed to seek the termination of SRT's rural telephone company exemption be denied.²¹

B. Section 252 Provisions Apply to Section 251(a) Interconnection

15. SRT also argues that Level 3's arbitration petition should be dismissed because the interconnection sought by Level 3 under section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under section 251(c)(1) and the related arbitration provisions under section 252 of the Act. While section 251(c) obligations are not triggered by a section 251(a) interconnection request, the provisions of section 252 are not limited exclusively to section 251(c) interconnection but rather are available for all 251 interconnection, including

²¹ The Washington Utility and Transportation Commission ("WUTC") recently reached a similar conclusion on virtually identical facts. In a matter in which Level 3 sought section 251(a) interconnection from a rural telephone company, the WUTC stated: "The rural exemption set forth in 47 U.S.C. § 251(f) applies only the requirements of Section 251(c). Rural companies remain obligated to comply with the provisions of Sections 251(a) and (b)." *Washington Petition*, ¶ 14.

interconnection sought under section 251(a).²² As more fully set out below, I recommend that the Commission deny SRT's motion to dismiss.

1. Section 251(a) Interconnection Requests Do Not Trigger Section 251(c) Obligations

16. As stated previously, section 251(a) establishes the duty of each telecommunications carrier to interconnect either directly or indirectly with other telecommunications carriers. Section 251(c) details the interconnection duties of an incumbent LEC to a requesting telecommunications carrier for the transmission and routing of telephone exchange service and exchange access. Section 251(c)(1) specifically imposes a duty on the part of incumbent LECs "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and ... subsection [251(c)]."²³

17. As stated above, Level 3 has requested interconnection under section 251(a) and is not seeking section 251(c) interconnection.²⁴ It follows that Level 3 is neither entitled to obtain interconnection pursuant to section 251(c) nor in the position to require SRT to comply with any obligations it may have had under section 251(c). That also means that to the extent SRT's arguments for dismissal are based on Level 3 requesting interconnection pursuant to section 251(c), the motion to dismiss should be denied. Such a determination, however, does not end the

²² SRT spends a significant portion of its Response attempting to categorize Level 3's request for interconnection and subsequent arbitration petition as inappropriately seeking section 251(c) interconnection. As addressed previously, Level 3 is not requesting section 251(c) interconnection. Arguments related about Level 3 failure to comply with the requirements of section 251(c) are therefore inapplicable to this dispute.

²³ 47 U.S.C. § 251(c)(1).

²⁴ See, e.g., *Response*, p.3.

inquiry of whether SRT is required to negotiate or arbitrate interconnection under the provisions of section 252.

2. Section 252 Applies To All Section 251 Requests for Interconnection

18. SRT asserts that because Level 3 has not made an interconnection request pursuant to section 251(c), Level 3 is not entitled to the negotiation and arbitration provisions of section 252. SRT further asserts that the interconnection sought by Level 3 is neither telephone exchange service nor exchange access. SRT also argues that Level 3 does not seek interconnection to compete for service to local customers. Lastly, SRT reiterates its assertion that the type of interconnection Level 3 seeks under section 251(a) is not interconnection subject to the obligations under section 251(c).

19. SRT is correct that so long as SRT is exempt from section 251(c) obligations, SRT is not required to provide interconnection pursuant to that section. However, SRT ignores that the negotiation and arbitration obligations of telecommunications carriers are not limited exclusively to the provisions of section 251(c).

20. Section 252(a) states:

“Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251.”²⁵

Two conclusions necessarily follow from this language. First, any request for interconnection under 251 triggers this provision, and second, the statute contemplates that an incumbent LEC

²⁵ 47 U.S.C. 252(a).

may negotiate and enter into binding agreement for that interconnection. With respect to a request for interconnection, the language of the statute does not limit the provision's eligibility to a particular subsection of section 251. As such, there is no reason to conclude that a section 251(a) interconnection request does not satisfy the first portion of this section. In terms of the instant matter, SRT received a request for interconnection from Level 3 pursuant to section 251(a).

21. The next portion of section 252(a) then establishes that incumbent LECs are permitted to negotiate and enter into agreements with a requesting telecommunications carrier and may do so without regard to the requirements of sections 251(b) and (c). This provision sanctions the use of negotiation to negate the requirements placed upon incumbent LECs by sections 251(b) and (c). Incumbents are therefore afforded an opportunity to bargain for terms and conditions different from what is required by the statute and the rules and regulations promulgated thereunder. The provision therefore contemplates, at a minimum, the opportunity for the incumbent LECs to enter into negotiations.

22. Section 252(b) then picks up where section 252(a) left off.

“During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under [section 252], the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.”²⁶

Section 252(b) contemplates a course of action if and when a request for negotiation fails to yield an interconnection agreement and ensures that the incumbent LEC does not deny interconnection

²⁶ 47 U.S.C. § 252(b).

under section 251 to a requesting telecommunications carrier. Without such a provision, a requesting carrier might never obtain an interconnection agreement. Such a scenario would run counter to the concept embodied in section 251(a) that all telecommunication carriers are required to interconnect.

23. In the instant case, Level 3 initiated a request for interconnection with SRT under section 251(a) on April 30, 2002. SRT and Level 3 failed to reach a negotiated agreement for interconnection. SRT and Level 3 had the opportunity to negotiate an agreement, but failed to do so. Consequently, Level 3 filed a timely petition with the Commission to arbitrate the open and unresolved issues. The course of dealing between the parties to date tracks the sequence of events contemplated by the Act.

24. SRT argues that the negotiation and arbitration provisions of section 251(c) do not apply to Level 3's request. On that point, I agree. However, Level 3 has not requested interconnection under section 251(c) but rather under section 251(a). Section 252 applies to all section 251 requests for interconnection and therefore section 252 provisions apply to Level 3's request for interconnection under section 251(a). SRT's motion to dismiss based on the inapplicability of section 252 to a request for interconnection under section 251(a) should be denied.²⁷

²⁷ The WUTC also held in a similar manner –“ the mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).” *Washington Petition*, ¶ 9.

IV. CONCLUSION

25. In conclusion, Level 3 has sought interconnection with SRT pursuant to section 251(a). Section 252 permits the parties to negotiate an agreement, and if failing to do so, allows for the filing of a petition to arbitrate the unresolved issues. SRT's arguments that Level 3 is not entitled to interconnection under section 251(c) are not relevant to the underlying issues of Level 3's petition. The provisions of section 252 are also applicable to requests for interconnection pursuant to section 251(a). I recommend the denial of SRT's motion for dismissal in its entirety.

Dated this 29th day of October 2002.

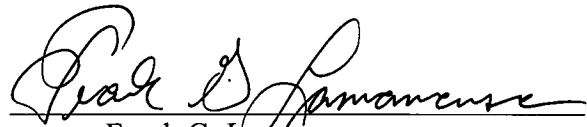
Frank G. Lamancusa
Arbitrator
Case No. PU-2065-02-465

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Recommended Order of the Arbitrator Concerning SRT Communications Cooperative's Motion for Dismissal" was sent via e-mail, facsimile, and U.S. mail to the following individuals on October 29, 2002:

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, Virginia 22101

David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
P.O. Box 1000
Minot, North Dakota 58702-1000


Frank G. Lamancusa

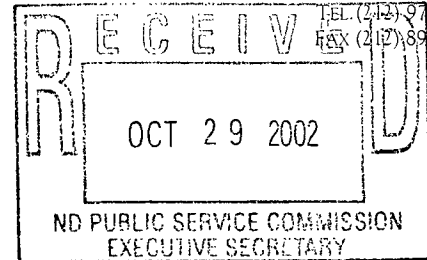
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FAX (212) 891-9598

October 28, 2002



VIA OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480

Re: Level 3 Communications, LLC's Supplement to the Response and Objection to SRT Communications, Inc.'s Response to Level 3's Petition for Arbitration and Motion to Dismiss (PU-2065-02-465)

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") are an original and ten (10) copies of Level 3's Supplement to the Response and Objection to SRT Communications, Inc.'s Response to Level 3's Petition for Arbitration and Motion to Dismiss ("Response and Objection"). Level 3 files this Supplement to its Response and Objection to bring to the Commission's attention a recent decision by the Washington Utilities and Transportation Commission as further support for Level 3's opposition to SRT's Motion to Dismiss.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamar E. Finn".

Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Service List

18 PU-2065-02-465

Pages: 1

Cover letter re Response

by Level 3 Communications, LLC

10/29/2002

CC. Comm Legal PUD (3)

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

Case No. PU-2065-02-~~265~~⁴⁶⁵ *rw*

**SUPPLEMENT TO
LEVEL 3 COMMUNICATIONS LLC'S RESPONSE
TO SRT COMMUNICATIONS, INC.'S MOTION TO DISMISS**

On October 8, 2002, Level 3 Communications, LLC ("Level 3") filed with the North Dakota Public Service Commission ("Commission") its Response and Objection to SRT Communications, Inc.'s Response to Level 3's Petition for Arbitration and Motion to Dismiss ("Response and Objection"). For reasons set forth in Level 3's Response and Objection, Level 3 requested that the Commission deny SRT's Motion to Dismiss and that the Arbitrator resolve each of the issues identified in Level 3's Petition for Arbitration. Level 3 files this Supplement to its Response and Objection to bring to the Commission's attention a recent decision by the Washington Utilities and Transportation Commission ("WUTC") as further support for Level 3's opposition to SRT's Motion to Dismiss.

On October 25, 2002, the WUTC issued a Third Supplemental Order Confirming Jurisdiction ("WUTC Order") over the interconnection dispute between Level 3 and CenturyTel of Washington, Inc.¹ In that Order, the WUTC found that "Section 251(a)

¹ *In the Matter of the Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC., and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252, Docket*

imposes a duty on all telecommunications carriers to interconnect with other carriers,”² and affirmed that “the duty to interconnect set forth in Section 251(a) is enforceable through the arbitration provisions of Section 252(b).”³ The WUTC also stated that “the FCC preempted state commission authority over compensation for ISP-bound traffic”⁴ and that “the FCC’s ISP Remand Order does not preempt our jurisdiction to arbitrate issues regarding CenturyTel’s obligation to interconnect with Level 3 to facilitate ISP-bound traffic.”⁵

In further support of Level 3’s Response and Objection, Level 3 respectfully submits the attached copy of the WUTC Order.

Respectfully submitted,

Level 3 Communications, LLC

By Tamar E. Finn

Russell M. Blau

Tamar E. Finn

Swidler Berlin Shereff Friedman, LLP

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and

No. UT-023043, Third Supplemental Order Confirming Jurisdiction (W.U.T.C. Oct. 25, 2002) (“WUTC Order”).

² WUTC Order at 3.

³ WUTC Order at 3.

⁴ WUTC Order at 4; *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Remand, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Report and Order (rel. Apr. 27, 2001) (“ISP Remand Order”), remanded *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

⁵ WUTC Order at 4.

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Its Attorneys

Dated: October 28, 2002

[Service Date October 25, 2002]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition for)	
Arbitration of an Interconnection)	
Agreement Between)	
	)	DOCKET NO. UT-023043
LEVEL 3 COMMUNICATIONS, LLC.,)	
)	
and	)	THIRD SUPPLEMENTAL ORDER
	)	CONFIRMING JURISDICTION
)	
CENTURYTEL OF WASHINGTON,)	
INC.,)	
)	
Pursuant to 47 U.S.C. Section 252)	
.....)	

1 **Synopsis:** The Commission decides that it has jurisdiction to conduct an arbitration proceeding between Level 3 Communications and CenturyTel of Washington, Inc.

2 **Procedural history:** By petition dated August 7, 2002, Level 3 Communications, LLC., (Level 3) requested that the Commission arbitrate a proposed interconnection agreement between Level 3 and CenturyTel of Washington, Inc., (CenturyTel) pursuant to 47 U.S.C. § 252(b)(1). In its response to the petition, CenturyTel challenged on several grounds the Commission’s jurisdiction to conduct the arbitration.

3 On September 24, 2002, the Commission convened a prehearing conference in this docket at Olympia, Washington before Arbitrator Dennis J. Moss. Level 3 was represented by Rogelio Peña, Peña and Associates, Boulder, Colorado; CenturyTel was represented by Calvin K. Simshaw, Associate General Counsel, Vancouver, Washington; WITA, *amicus curiae*, on the issue of jurisdiction, was represented by Richard A. Finnigan, Attorney at Law, Olympia, Washington.

4 During the prehearing conference Arbitrator Moss noted CenturyTel’s argument that the Commission lacks jurisdiction over this matter and required the parties to file briefs on the jurisdictional issues. The Washington Independent Telephone

Association (WITA) petitioned to intervene in the proceeding. Without acting on WITA's petition, the arbitrator permitted WITA to file an *amicus curiae* brief on the jurisdictional issue. The parties filed simultaneous opening briefs on October 7, 2002, and responsive briefs on October 15, 2002.

MEMORANDUM

1. Does the Commission have jurisdiction to arbitrate interconnection disputes brought to enforce the interconnection obligation of 47 U.S.C. § 251(a)?

5 Level 3 requested arbitration under 47 U.S.C. §§ 251(a) and (c). CenturyTel argues that the Commission has no authority to arbitrate the interconnection issues between the two companies because the arbitration provisions of Section 252(b) "can only be triggered by the issuance and receipt of a valid request for negotiation." *Brief of Century Tel at 2*. Section 251(c) obligates incumbent local exchanges companies (ILECs) to enter into good faith negotiations over terms and conditions of agreements to fulfill the duties set forth in Sections 251(b) and (c)(1)-(5). Section 252(a) provides that an ILEC may voluntarily enter into negotiations with other carriers to reach an agreement that does not comply with the standards set forth in Section 251. Section 252(b) authorizes a state commission to arbitrate at the behest of any party to a negotiation any unresolved issue following a request for negotiation under Section 252(a). CenturyTel argues that Level 3 cannot make a valid request to negotiate with it because it is exempt from the provisions of Section 251(c). *Brief of CenturyTel at 7-9 (citing 47 U.S.C. § 251(f))*.

6 WITA makes a similar argument. WITA states that the "only section of the Act that imposes the obligations of Section 252 on ILECs is Section 251(c). . . . Section 252 is only mentioned in Sections 251(c)(1) and 252(c)(2). Thus, the requirements of Section 252 are only triggered by the language of Section 251(c)."

7 Level 3 argues that *all* telecommunications carriers are required to interconnect with each other pursuant to 47 U.S.C. § 251(a). Level 3 argues that this duty is in addition to the duties imposed on local exchange carriers (LECs) under Section 251(b) on ILECs under Section 251(c). *Brief of CenturyTel at 5-6*.

8 Level 3 further argues that the only prerequisite for invoking the negotiation, mediation, and arbitration provisions of Section 252 is a request for interconnection, services, or network elements under Section 251. Level 3 notes that Section 252 itself states that carriers may request negotiation with incumbent ILECs pursuant to 251, without listing any particular subsection of Section 251. Therefore, the provisions of Section 252 are not limited to requests made under Section 251(c). *Brief of CenturyTel at 6-7*.

9 The Commission agrees with Level 3 that Section 251(a) imposes a duty on all telecommunications carriers to interconnect with other carriers. We also agree that the mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a). Nothing in Section 252(a) limits the negotiation and arbitration processes to matters falling within Section 251(c). Therefore, we hold that the duty to interconnect set forth in Section 251(a) is enforceable through the arbitration provisions of Section 252(b).

10 While it is true that the only mandate for negotiation under Sections 251 and 252 is set forth in Section 251(c), this does not mean that state commission authority to conduct arbitrations pursuant to Section 252(b) is limited to arbitrating issues arising from Section 251(c). Section 252(a) provides for voluntary negotiations whereby an ILEC may negotiate an interconnection agreement without regard to the requirements of Sections 251(b) and (c). A request for an interconnection agreement under Section 251(a) is a request for an agreement without regard to the requirements of Sections 251(b) and (c). Because negotiation for interconnection pursuant to Section 251(a) is voluntary, an ILEC may refuse to negotiate with a requesting carrier. However, after 135 days from the date negotiations are requested—whether or not negotiations take place—a party to the negotiation may request the state commission to arbitrate any open issues. *47 U.S.C. § 252(b)(1)*.

11 Therefore, we hold that Section 252(b)(1) gives the Commission jurisdiction to arbitrate a request for interconnection brought pursuant to Section 251(a).

2. Is CenturyTel exempt, as a rural telephone company, from arbitration proceedings brought to enforce the interconnection duty set forth in Section 251(a)?

12 CenturyTel is a rural telephone company as defined in 47 U.S.C. § 153(37). Rural companies, like CenturyTel, are exempt from the interconnection, unbundled access, resale, collocation, and duty to negotiate provisions of Section 251(c). *47 U.S.C. § 251(f)(1)(A)*. CenturyTel argues that the Commission does not have jurisdiction to arbitrate this matter because it is exempt from the provisions of Section 251(c), and therefore exempt from the provisions of Section 252. *Brief of CenturyTel at 6-9*.

13 Level 3 argues that while CenturyTel is exempt from the requirements of Section 251(c), it is not exempt from the interconnection requirement of Section 251(a). *Brief of Level 3 at 24-25*.

14 The rural exemption set forth in 47 U.S.C. § 251(f) applies only to the requirements of Section 251(c). Rural companies remain obligated to comply with the provisions of Sections 251(a) and (b). Therefore, rural companies are not required to provide interconnection at any technically feasible point on the network as set forth in 47

U.S.C. § 251(c)(2)(B), but they must interconnect with requesting carriers pursuant to 47 U.S.C. § 251(a).

15 The rural exemption set forth in 47 U.S.C. § 251(f) does not divest the Commission of jurisdiction over this matter because CenturyTel is required to interconnect with Level 3 pursuant to 47 U.S.C. § 251(a). Because we hold that the interconnection obligation of Section 251(a) is enforceable through the arbitration provisions of Section 252(b), we hold that the Commission has jurisdiction to arbitrate this matter.

3. Do the provisions of 47 U.S.C. §§ 251 and 252 apply to agreements providing for the exchange of ISP-bound traffic?

16 CenturyTel and WITA argue that the Commission does not have jurisdiction to arbitrate this matter because the traffic involved is traffic bound for Internet service providers (ISPs). CenturyTel argues that the FCC has preempted state commission jurisdiction over ISP bound traffic. *Brief of CenturyTel at 11 (citing In re Implementation of the Local Compensation 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), remanded WorldCom Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002) (ISP Remand Order))*. CenturyTel argues that the ISP Remand Order placed ISP-bound traffic within the FCC's regulatory authority under Section 201 of the Act, and removed it from the duties set forth in Sections 251 and 252. *Id.*

17 Level 3 argues that CenturyTel and WITA have mischaracterized the FCC's preemption of state commission authority regarding ISP-bound traffic. Level 3 states that the FCC's ISP Remand Order addresses only the narrow issue of compensation for ISP-bound traffic and does not preempt state authority to make non-compensation-related decisions with respect to that traffic. *Brief of Level 3 at 11-13 (citing ISP Remand Order, ¶ 82)*.

18 We agree with Level 3 that the FCC preempted state commission authority over compensation for ISP-bound traffic, and did not preempt state commission authority to arbitrate other issues relating to ISP-bound traffic.

19 The Commission determines that the FCC's ISP Remand Order does not preempt our jurisdiction to arbitrate issues regarding CenturyTel's obligation to interconnect with Level 3 to facilitate ISP-bound traffic. The FCC preempted only the Commission's authority to arbitrate the compensation for ISP-bound traffic.

4. Do the provisions of 47 U.S.C. §§ 251 and 252 apply to the exchange of traffic outside of a local exchange company's local calling area?

- 20 CenturyTel and WITA argue that the Commission has no authority to arbitrate this matter because Level 3 intends to provide service to customers located outside of CenturyTel's local calling area. *See Brief of Century Tel at 3.* CenturyTel argues that this traffic is interexchange traffic, and is not subject to the local competition provisions of 47 U.S.C. §§ 251 and 252. *Id. at 3-5.* The company argues instead that this traffic is subject to the FCC's jurisdiction over interexchange traffic under 47 U.S.C. § 201, and the Commission has no jurisdiction to arbitrate the matter under 47 U.S.C. § 252. *Id. at 3.*
- 21 Level 3 argues that the provisions of 47 U.S.C. §§ 251 and 252 are not limited to intrastate services. Level 3 argues "the lines between FCC jurisdiction under § 201 and state commission jurisdiction under §§ 251 and 252 are fluid, with regulation of some aspects of certain services falling to the FCC and other aspects of the same services falling to the state commissions." *Brief of Level 3 at 18.*
- 22 The Commission rejects CenturyTel's argument that because the traffic is interstate, it is, therefore, not subject to the arbitration provisions of 47 U.S.C. § 252. We hold that the provisions of 47 U.S.C. §§ 251 and 252 apply to both interstate and intrastate services. The obligations of 47 U.S.C. § 251(a) apply to all telecommunications carriers. The duties set forth in 47 U.S.C. §§ 251(b) and (c) apply to "local exchange companies," which include carriers that provide telephone exchange service or exchange access. *47 U.S.C. § 153(26).* "Exchange access" is "the offering of access to telephone exchanges services or facilities for the purpose of origination or termination of telephone toll services." *47 U.S.C. § 153(16).* Therefore, a local exchange company may provide both intrastate and interstate services and fall within the obligations of 47 U.S.C. § 251. State commissions, therefore, are authorized to consider both intrastate and interstate service when arbitrating issues that arise from 47 U.S.C. § 251.

SUMMARY

- 23 The Commission's jurisdiction to conduct arbitration proceedings is not limited to requests for arbitration regarding the obligations set forth in 47 U.S.C. § 251(c). The Commission holds it has jurisdiction to conduct arbitration proceedings involving the obligation of all telecommunications carriers to interconnect with other carriers set forth in 47 U.S.C. § 251(a). The Commission also holds that CenturyTel, as a rural carrier, is not exempt from the interconnection requirements of 47 U.S.C. § 251(a). Finally, the Commission determines that decisions by the FCC regarding compensation for traffic bound for Internet service providers do not divest the Commission of jurisdiction over this matter.

FINDINGS OF FACT

- 24 Having discussed all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decision of the Commission are incorporated by this reference.
- 25 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to conduct actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996, P.L. 104-104 (110 Stat. 56). *RCW 80.36.610*. The Commission also has jurisdiction over telecommunications companies under Title 80. RCW.
- 26 (2) CenturyTel and Level 3 are telecommunications carriers as defined by 47 U.S.C. § 153(44).
- 27 (3) CenturyTel is an incumbent local exchange company as defined by 47 U.S.C. § 252(h).
- 28 (4) CenturyTel is a rural telephone company as defined by 47 U.S.C. § 153(47).
- 29 (5) Level 3 requested CenturyTel to negotiate an interconnection agreement pursuant to 47 U.S.C. § 252(a)
- 30 (6) Level 3 requested that the Commission arbitrate its request for interconnection with CenturyTel pursuant to 47 U.S.C. §§ 251(a) and (c) – to the extent that CenturyTel is not exempt from interconnecting with Level 3 under 47 U.S.C. § 251(f).

CONCLUSIONS OF LAW

- 31 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and Parties to, this proceeding. *RCW 80.36.610; Title 80 RCW*.
- 32 (2) CenturyTel is obligated to interconnect with Level 3 pursuant to 47 U.S.C. § 251(a).
- 33 (3) CenturyTel, as a rural telephone company, currently is exempt from the obligations set forth in 47 U.S.C. § 251(c).
- 34 (4) CenturyTel, as a rural telephone company, is not exempt from the duty to interconnect with Level 3 under 47 U.S.C. § 251(a).

- 35 (5) The Commission has jurisdiction to arbitrate the interconnection matter between Level 3 and CenturyTel pursuant to 47 U.S.C. 252(b).
- 36 (6) The Federal Communications Commission has not preempted the Commission from considering non-compensation issues relating to ISP-bound traffic when arbitrating interconnection agreements under 47 U.S.C. § 252(b).
- 37 (7) The provisions of 47 U.S.C. §§ 251 and 252 apply to both intrastate and interstate service.

ORDER

38 The Commission has jurisdiction to arbitrate the interconnection matter between Level 3 and CenturyTel.

DATED at Olympia, Washington , and effective this ____ day of October, 2002.

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

APPENDIX

The following statutory provisions are most central to our discussion and decision:

47 U.S.C. § 251 Interconnection.

- (a) General duty of telecommunications carriers.— Each telecommunications carrier has the duty—
 - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
 - (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of this title.

- (c) Additional obligations of incumbent local exchange carriers.—In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:
 - (1) Duty to negotiate.— The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.
 - (2) Interconnection.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
 - (A) for the transmission and routing of telephone exchange service and exchange access;

- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(f) Exemptions, suspensions, and modifications.—

(1) Exemption for certain rural telephone companies.—

- (A) Exemption.—Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

47 U.S.C. § 252 Procedures for negotiation, arbitration, and approval of agreements.

(a) Agreements arrived at through negotiation.—

(1) Voluntary negotiations.—Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation.—Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration.—

(1) Arbitration.—During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of October 2002, a true and correct copy of the foregoing was sent via email to the following individuals:

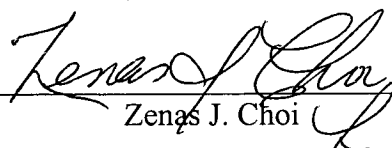
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Zenas J. Choi

MOTION

APPROVED

DATE: 10-23-02
KME

October 23, 2002

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission grant the joint request of Level 3 Communications, LLC and SRT Communications, Inc. for an extension of the deadline under Section 252(b)(4)(C) of the Telecommunications Act of 1996 for issuing a decision within the nine-month arbitration resolution requirement, and that the deadline be extended to January 31, 2003, Case No. PU-2065-02-465.

PJF

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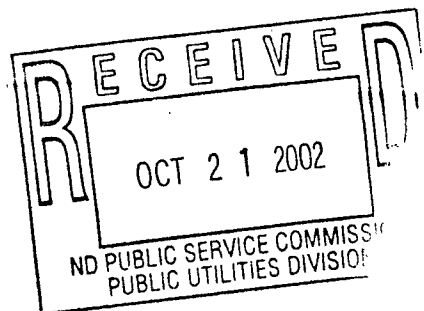
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October 16, 2002

VIA OVERNIGHT DELIVERY

Frank Lamancusa
Telecom Dispute Solutions, Inc.
17721 Tree Lawn Drive
Ashton, MD 20861

David Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
20 SW First Street
Minot, ND 58701



Re: Level 3 Communications, LLC Petition for Arbitration (PU-2065-02-465)

Dear Messrs. Lamancusa and Hogue:

Consistent with the disclosure obligations set forth under Section 4 of the Arbitration Agreement in the above-referenced matter, this letter discloses prior relationships of Level 3 Communications, LLC, its law firm, and any individuals representing Level 3 in this arbitration ("collectively referred to as "Level 3"), with the Arbitrator and its company.

Level 3 is not aware of any relationships, or financial interests, that would necessitate disclosure under the specific terms of Section 4 of the Arbitration Agreement. Nor is Level 3 aware of any other circumstances that may give rise to justifiable doubt regarding the Arbitrator's independence or impartiality in this arbitration.

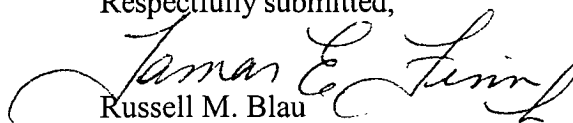
Nevertheless, in the interest of full and fair disclosure, Level 3 would like to advise you that Rebecca Dick, currently an attorney at Swidler Berlin Shereff Friedman, LLP ("SBSF"), the law firm representing Level 3 in this matter, and formerly an attorney at the Department of Justice ("DOJ"), hired Mr. Lamancusa in 1994 to fill a position at DOJ. Mr. Lamancusa worked for Ms. Dick at DOJ for less than one year, at which time Ms. Dick was promoted to a different office within DOJ. Mr. Lamancusa and Ms. Dick have had no other significant interaction in the past seven years. Ms. Dick is not representing Level 3 in this case and will have no involvement in this matter.

Frank Lamancusa
David Hogue
October 16, 2002
Page 2

In addition, during the time that Mr. Lamancusa was employed by the Federal Communications Commission, several attorneys of this firm, including some who may be involved in this case, had professional contacts with Mr. Lamancusa regarding matters within his responsibility, including disputes between competitive and incumbent local exchange carriers. None of these contacts, however, were on behalf of Level 3.

Should you have any questions concerning this disclosure, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tamar E. Finn". The signature is written in black ink and is positioned above the printed name.

Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Service List

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via U.S. first-class mail, postage prepaid, to the following individuals:

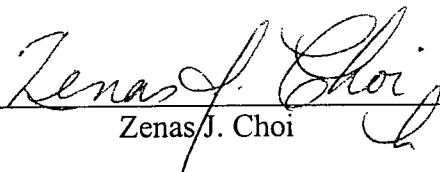
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Zenas J. Choi

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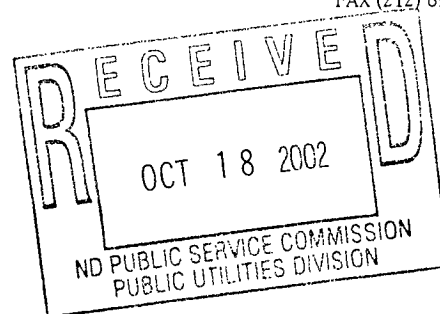
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October 18, 2002

VIA FACSIMILE & OVERNIGHT DELIVERY

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Department 408
Bismark, ND 58505-0480



Re: Stipulation for Extension of Time for Commission to Render Its Final Decision (Level 3 Communications, LLC Petition for Arbitration, Case No. PU-2065-02-465)

Dear Mr. Mielke:

Enclosed for filing with the North Dakota Public Service Commission is an original and seven (7) copies of the joint correspondence submitted on behalf of Level 3 Communications, LLC ("Level 3") and SRT Communications, Inc. ("SRT") to confirm the agreement between the parties to extend the statutory nine-month timeframe in which the Commission must render its final decision in the above-referenced arbitration.

Please date-stamp the enclosed additional copy and return it to us in the attached postage-prepaid envelope. If you have any questions, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,

Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: Service List
Michael Romano (via facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October, 2002, one (1) fully executed original of the foregoing was delivered by U.S. first-class mail, prepaid to:

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dhogue@ndak.net

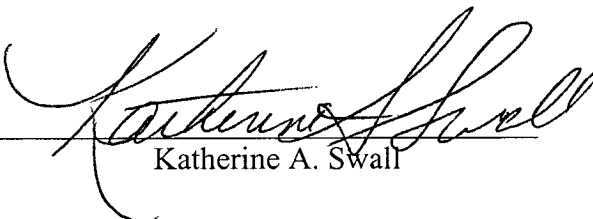
and that a true and correct copy of the foregoing was delivered by U.S. first class mail, prepaid, to the following individuals:

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October 11, 2002

VIA FACSIMILE AND
OVERNIGHT DELIVERY

North Dakota Public Service Commission
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600 East Boulevard Avenue, Department 408
Bismark, ND 58505-0480

Re: Level 3 Communications, LLC Petition for Arbitration -PU-2065-02-465

Dear Mr. Mielke:

This joint correspondence is submitted on behalf of Level 3 Communications, LLC ("Level 3") and SRT Communications, Inc. ("SRT") to confirm certain procedural matters agreed to in the above-referenced arbitration.

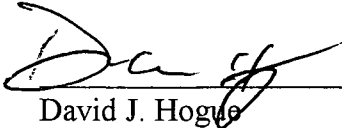
On September 25, 2002, SRT filed its Response to Level 3's Petition for Arbitration. SRT's Response included three grounds upon which it suggests that Level 3's Petition should be dismissed. Level 3 was provided a deadline of October 7, 2002 to respond to SRT's Motion to Dismiss. The Arbitrator agreed to consider the pleadings and issue his Recommended Decision during the week of October 14, 2002. The Parties will then be given an opportunity to comment on the recommended decision and the Commission will issue the final Order granting or rejecting SRT's Motion.

The Parties recognize that the resolution of these threshold matters and the need to satisfy other procedural requirements may preclude the Commission from issuing a decision within the nine-month arbitration resolution requirement set forth in Section 252(b)(4)(C) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). Accordingly, to allow for a proper window of time for the Arbitrator, the Parties, and the Commission to comply with all procedural requirements established under Section 69-02-10 of the Commission's Rules, the Parties have agreed that the Commission should have an extension of time to issue its decision in this matter. Accordingly, the Parties knowingly and voluntarily agree to waive the nine-month deadline, and hereby commit that they will not appeal any decision

in this matter that is rendered by the extended deadline, which is now January 31, 2002, on the basis that such decision is untimely under the Act.

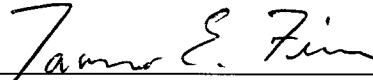
Thank you for your attention to this request. If you should require any additional information from the parties, please do not hesitate to contact us.

Respectfully submitted,



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Counsel for
Level 3 Communications, LLC

cc: Service List

MOTION

APPROVED

DATE: 10-10-02
KMF

October 10, 2002

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission appoint Patrick Fahn and Jerry Lein as staff advisors to the arbitrator, Frank G. Lamancusa, in Level 3 Communications, LLC's interconnection arbitration application, Case No. PU-2065-02-465.

IJS/sdh

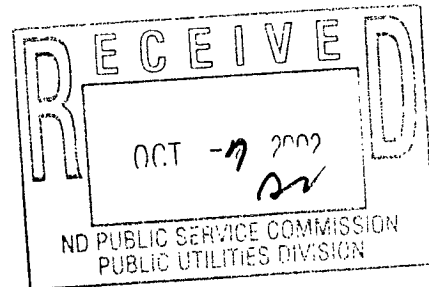
ORIGINAL

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October 7, 2002



VIA FAX & OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480

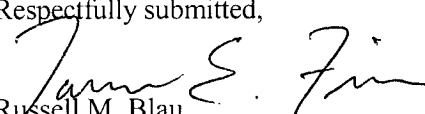
Re: Level 3 Communications, LLC's Response and Objection to SRT Communications, Inc.'s Response to Level 3's Petition for Arbitration and Motion to Dismiss (PU-2065-02-465)

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") are an original and ten (10) copies of Level 3's Response and Objection to SRT Communications, Inc.'s Response to Level 3's Petition for Arbitration and Motion to Dismiss.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,


Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Service List

12 PU-2065-02-465

Pages: 1

Letter re Response

by Level 3 Communications, LLC

10/07/2002

CC: Comm Legal PUD (3)

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to) **Case No. PU-2065-02-265**
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

**LEVEL 3 COMMUNICATIONS LLC'S RESPONSE
TO SRT COMMUNICATIONS, INC.'S MOTION TO DISMISS**

Level 3 Communications, LLC ("Level 3") responds to and opposes SRT Communications, Inc.'s ("SRT") Motion to Dismiss Level 3's Petition for Arbitration ("Petition") in the above-captioned matter. In its Motion to Dismiss, SRT asserts a narrow and incorrect interpretation of Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"), in an effort to convince the Commission to dismiss Level 3's Petition. As Level 3 will demonstrate, SRT's three alleged grounds do not justify dismissal. To the contrary, each argument that SRT attempts to advance helps demonstrate that questions of fact and law exist and are ripe for the Commission's consideration in the context of an arbitration under Section 252(b) of the Act and Section 69-02-10 of the Commission's Rules.

For the reasons set forth herein, Level 3 requests that the Commission deny SRT's Motion to Dismiss and direct the Arbitrator to resolve each of the issues identified in Level 3's Petition for Arbitration.

BACKGROUND

Level 3 has requested direct or indirect interconnection with SRT pursuant to Section 251(a) of the Act. Level 3 seeks to offer a local exchange telecommunications service to

its Internet Service Provider (“ISP”) customers, and to make arrangements for carrying traffic originating on SRT’s local networks between SRT’s switches and the modem banks of Level 3’s ISP customers. Level 3 is a certificated local exchange carrier in the State of North Dakota,¹ and is in the process of finalizing its tariff for filing with this Commission prior to beginning service. Despite the fact that Level 3 is authorized to offer its proposed services to North Dakota consumers - services that have been traditionally recognized as local exchange services by incumbent local exchange carriers (“LECs”) nationwide - SRT will not engage in meaningful negotiations with Level 3 for interconnection.

Thus, while Level 3 has expressed interest in negotiating the details and terms of interconnection with SRT, to date, no substantive progress has been made towards finalizing an interconnection agreement. To resolve this interconnection dispute, Level 3 had no option but to petition this Commission to arbitrate pursuant to the procedures set forth under Section 252 of the Act and Section 69-02-10 of the Commission’s Rules. In its Petition, Level 3 presented three substantive issues for resolution by this Commission. In response, SRT addressed these substantive issues only in passing and instead focused its argument on three grounds upon which it recommends that Level 3’s Petition should be dismissed. The basis of each of SRT’s grounds, however, is the unfounded assertion that because Level 3’s request is being made pursuant to Section 251(a), rather than Sections 251(c) and (f), SRT is not obligated to abide by the

¹ Contrary to SRT’s suggestion, Level 3’s Certificate does not exempt SRT from negotiating interconnection arrangements with Level 3. *SRT Motion to Dismiss* at 19. Rather, the only limitation in Level 3’s certificate is that, if Level 3 seeks interconnection under Section 251(c) (which it does not here), it must comply with Section 251(f). *Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity*, Case No. PU-2065-02-11, Order, 2 (March 13, 2002) (“Granting Level 3 a certificate on a statewide basis does not affect the rights of rural telephone companies under 47 U.S.C. §251(f).”). As Level 3 shows in Sections I.A.1. and II., *infra*, the Section 251(f) rural exemption and associated procedures do not apply to negotiations for interconnection arrangements under Section 251(a). If SRT were correct, the Commission’s grant of statewide competitive LEC authority to any carrier would be meaningless, as no competitive LEC could then obtain interconnection to offer services under SRT’s reading.

negotiation and arbitration procedures established under Sections 251 and 252 of the Act and Section 69-02-10 of the Commission's rules. As Level 3 will demonstrate herein, Level 3 has requested negotiations under Section 251(a), Section 252 negotiation and arbitration procedures apply to Section 251(a) requests, and Sections 251(c) & (f) are irrelevant to the dispute before the Commission because of the limited scope of Level 3's request. Therefore, SRT's manufactured grounds for dismissal are baseless and the Commission should deny its Motion to Dismiss.

ARGUMENT

I. SECTION 252 NEGOTIATION AND ARBITRATION PROCEDURES APPLY TO REQUESTS FOR INTERCONNECTION UNDER SECTION 251(a).

A. Section 252 negotiation and arbitration procedures apply to Section 251(a) requests for interconnection.

1. Relationship between Sections 252 and 251(a).

Level 3 and SRT agree that Level 3's request for interconnection was made under Section 251(a), rather than under Section 251(c).² Section 251(a)(1) provides that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.³ A "telecommunications carrier" is "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services[.]"⁴ "Telecommunications services" are defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively

² *SRT Motion to Dismiss* at 6. Given this admission, SRT's arguments concerning its obligations under, and the standards of, Section 251(c) are irrelevant. Nonetheless, because SRT has attempted to confuse the issues, grasping for any conceivable basis to escape this arbitration, Level 3 responds to those arguments as well.

³ 47 U.S.C. § 251(a)(1); *see also* 47 C.F.R. § 51.100(a)(1).

⁴ 47 U.S.C. § 153(44).

available directly to the public, regardless of the facilities used.”⁵ “Telecommunications,” in turn, is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing without change in the form or content of the information as sent and received.”⁶ Thus, on its face, Section 251(a) obligations are not limited to any particular type of telecommunications carrier (*e.g.*, rural or non-rural incumbent LEC), or any particular type of telecommunications service (*e.g.*, local or long distance).

Level 3 and SRT agree that the Act imposes a general duty for all telecommunications carriers to interconnect under Section 251(a), while imposing additional duties on certain incumbent LECs under Section 251(c).⁷ However, as shown in this Section and in Section II., because Level 3 has not requested interconnection under Section 251(c), those additional duties (and accompanying restrictions in Section 251(f)) are irrelevant to this dispute.

While the statutory relationship between Sections 251 and 252 of the Act is clear on its face, SRT ignores the statutory language in an attempt to convince the Commission that Section 252 negotiation and arbitration procedures do not apply to interconnection requests made under Section 251(a). Notwithstanding SRT’s arguments to the contrary, Section 252 grants to state commissions the authority to approve or reject *all* interconnection agreements, to mediate and arbitrate *all* interconnection disputes, and to enforce *all* the interconnection obligations of Section 251 and the interconnection rules that the FCC may adopt.⁸ Thus, state commissions have an overarching role that encompasses interconnection generally under Section 251 - one that is not limited to any particular subsection of Section 251 or subset of LEC interconnection

⁵ 47 U.S.C. § 153(46).

⁶ 47 U.S.C. § 153(43).

⁷ *SRT Motion to Dismiss* at 6.

⁸ 47 U.S.C. § 252.

obligations. Indeed, the clear language of the statute shows that the only prerequisite for invoking Section 252 is a request for interconnection made to an incumbent LEC.

Section 252(a)(1) provides:

Upon receiving a request for interconnection, services, or network elements *pursuant to Section 251* ... an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and (c) of Section 251 ... The agreement ... shall be submitted to the State commission under subsection (e) of this section.⁹

Section 252(a) only refers to requests for interconnection negotiations under Section 251, without reference to a *bona fide request* as described in Section 251(f), or to any specific subsection of Section 251. Thus, a request for interconnection under Section 251(a) is sufficient to give this Commission jurisdiction over the Parties' interconnection dispute. This jurisdiction includes the authority to approve or reject the proposed agreement,¹⁰ to mediate a dispute between the parties,¹¹ or to arbitrate a dispute between the parties.¹²

Level 3 has made an interconnection request of SRT pursuant to Section 251(a), and is statutorily entitled to seek resolution of any open issues before this Commission pursuant to Section 252(b). This Commission should therefore reject SRT's narrow and incorrect reading of Sections 251 and 252 and deny SRT's Motion to Dismiss.

⁹ 47 U.S.C. § 252(a)(1).

¹⁰ 47 U.S.C. § 252(e).

¹¹ 47 U.S.C. § 252(a)(2).

¹² 47 U.S.C. § 252(b).

2. SRT has not fulfilled its duty to provide or negotiate interconnection under Sections 251(a) and 252.

SRT further misinterprets its duties under Sections 251 and 252 by suggesting that because it is directly connected to the public switched network (“PSTN”), it has fulfilled its legal obligation under Section 251(a) such that no additional negotiation and arbitration procedures are necessary.¹³ As an initial matter, the Commission must reject SRT’s contention because any claim that SRT has discharged its interconnection obligation under Section 251(a) by virtue of a connection to the PSTN is a mixed question of fact and law that cannot be resolved in a Motion to Dismiss. Moreover, because SRT has not even engaged in discussions with Level 3 in order to determine to what extent it is possible to exchange traffic indirectly, the question of whether SRT satisfies the indirect interconnection duty established under Section 251(a) remains open.

SRT ignores the fact that it is duty bound to observe the negotiation and arbitration procedures established under Section 252, regardless of whether SRT believes it is indirectly connected to Level 3 by virtue of a connection to the PSTN. Under SRT’s interpretation of its duty to negotiate for interconnection under Sections 252 and 251(a), SRT would unreasonably limit the means and terms by which any requesting carrier could interconnect to exchange traffic with SRT, or any other non-dominant carrier.

To illustrate, Level 3 has requested direct *or indirect* interconnection with SRT. Under SRT’s proposal, the Parties would not even be provided an opportunity to discuss “their most efficient technical and economic choices” to establish interconnection and the exchange of traffic, as contemplated by Section 251(a).¹⁴ Although Level 3 would prefer direct

¹³ SRT Motion to Dismiss at 12.

¹⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶ 997 (rel. Aug. 8, 1996) (“Local Competition Order”).

interconnection, it would be willing to interconnect indirectly if the Commission determines that is what SRT is obligated to provide.¹⁵ Even if the Parties determine to establish only indirect interconnection, however, the clear language of Section 252 dictates that SRT may not avoid its obligation to negotiate an agreement and limit Level 3 to interconnection via services purchased from SRT's access tariffs.

Interconnection and traffic exchange agreements include not only the arrangements for physical interconnection (direct or indirect), but other terms and conditions that are important to ensure the smooth exchange of traffic between the Parties' end users. For instance, Level 3's proposed agreement addresses network planning and management, contacts and escalation procedures, dispute resolution, and other matters integral to maintaining efficient traffic exchange between the Parties. Indeed, it would be both fair and efficient for the Parties to enter into an agreement including these terms, regardless of whether the Parties ultimately decide to establish direct or indirect interconnection.

SRT would prefer to avoid negotiating these arrangements and force Level 3 to purchase services out of its access tariffs.¹⁶ As an incumbent LEC with a lucrative access tariff in effect, SRT has no incentive to negotiate a reasonable interconnection agreement with Level 3 if it can force Level 3 to interconnect only through this tariff.¹⁷ Indeed, SRT's proposal would provide it

¹⁵ Interestingly, direct interconnection may be less expensive for SRT, in that when carriers interconnect indirectly, often times the transiting carrier bills the originating carrier for transit costs. Direct interconnection would ensure that SRT incur no such transiting costs. Direct interconnection could also result in a revenue stream to SRT, to the extent that Level 3 determined that it needed to lease transport from SRT to reach a direct interconnection point in the SRT serving area. These are the kinds of factual considerations that the Commission should consider in an interconnection arbitration to determine the appropriate interconnection arrangements between Level 3 and SRT.

¹⁶ *SRT Motion to Dismiss* at 12.

¹⁷ At the same time, because Level 3 is not seeking to challenge SRT's rural exemption and compel forward-looking cost-based pricing from SRT, if Level 3 needs dedicated transport from SRT to reach a point of interconnection specified in the interconnection agreement, Level 3 would presumably lease such

with the ability to dictate how Level 3 must establish its connection to SRT, and the terms of traffic exchange with SRT. SRT's position is also in direct conflict with the intent of Section 251(a) - to pave the way for carriers without market power to be able to interconnect and exchange traffic in a fair and efficient manner with any other telecommunications carrier.¹⁸ Accordingly, this Commission should not permit SRT to effect such a one-sided process because, as the FCC has found, "[u]sing the tariff process to circumvent the Section 251 and 252 processes cannot be allowed."¹⁹

The questions raised in Level 3's Petition and SRT's Response are questions that must be resolved through the negotiation and arbitration process - the process outlined under Section 251 and 252 for all carriers to engage in discussions to ensure the seamless exchange of traffic. While there is no need to terminate any applicable rural exemptions at this time, an interconnection agreement is nevertheless required for Level 3 and SRT to interconnect on a fair and reasonable basis, ensure the seamless exchange of traffic between their customers, and define the rights and responsibilities of the Parties.

As Section 252 and federal and state commission orders recognize, interconnection agreements implement each carrier's statutory duties and provide both Parties a valuable roadmap to govern their relationship and avoid future disputes. The Commission should find that the questions concerning SRT's duty to provide direct or indirect interconnection under

transport from SRT pursuant to its access tariff rates. Thus, while the interconnection agreement would set the "ground rules" for interconnection and define each party's responsibilities, any service that one party ordered and purchased from the other party to effectuate that interconnection would likely be purchased at the access tariff rates.

¹⁸ *Local Competition Order* at ¶ 997.

¹⁹ *Bell Atlantic v. Global NAPs*, 15 FCC Rcd 12946, 12959 ¶ 23 (1999), *aff'd on recon.*, 15 FCC Rcd 5997 (2000), *aff'd*, 247 F.3d 252 (D.C. Cir. 2001).

Section 251(a), and whether SRT has met this duty, are material questions of fact and law that are best addressed by this Commission through the use of its arbitration/mediation procedures and, therefore, reject SRT's Motion to Dismiss.

B. Section 252 negotiation and arbitration procedures apply to this interconnection dispute despite the fact that Level 3 may provide a “non-traditional” local exchange service in North Dakota.

To further confuse the issue, SRT opines that since Level 3 does not seek “to operate as a CLEC offering ordinary local service to subscribers in SRT's local and EAS service areas,” SRT need not engage in negotiations for interconnection or participate in the arbitration process.²⁰ SRT argues that because, in its estimation, Level 3's services are not “telephone exchange service” or “exchange access” as those terms are defined under the Act, SRT is not required to negotiate with Level 3 in good faith under the requirements of Section 251(c).²¹

As an initial matter, because Level 3 has requested interconnection only under Section 251(a), and not under Sections 251(c), and because Section 251(a) interconnection is not limited to telephone exchange or exchange access services, SRT's argument is irrelevant. Further, whether or not Level 3's services are “ordinary local service[s]” is a disputed issue of fact and law that may not be resolved in a Motion to Dismiss. Because SRT nonetheless expounds at length on this irrelevant digression, Level 3 explains below why the local service it provides its ISP end-user customers entitles Level 3 to interconnect with SRT on a local basis under Section 251(a).

²⁰ *SRT Motion to Dismiss* at 8.

²¹ *SRT Motion to Dismiss* at 6-8.

1. Level 3's service in North Dakota is a local service that is consistent with its authority granted by this commission and its tariffs.

SRT argues that the Commission should dismiss Level 3's Petition because, it claims, Level 3 is "an IXC that requests interconnection solely for the purpose of originating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others" on SRT's network.²² Contrary to SRT's assertion, however, Level 3's proposed service is a local service that is consistent with its authority granted by this Commission. Level 3 is authorized to operate as a competitive local exchange carrier in North Dakota.²³ Pursuant to this grant of authority, Level 3 intends to provide direct inward dial ("DID") and private line services in North Dakota. Level 3's proposed DID service would provide its customers with the ability to connect to the PSTN in order to receive inbound calls from other users on the PSTN. The DID service does not limit the customer to requesting DID in the local calling area in which they are physically located. Therefore, the DID service can be used to provide a Foreign Exchange-like functionality - a functionality that has also been called "Virtual NXX" in many cases - to the customers where needed.

Level 3's service provides the same functionality for consumers as the Foreign Exchange ("FX") services provided by many incumbent LECs.²⁴ FX service provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area. The FX and FX-like services provided by incumbent LECs and, as proposed here, by Level 3 are

²² *SRT Motion to Dismiss* at 11.

²³ *Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity*, Case No. PU-2065-02-11, Order, 2(Mar. 13, 2002).

²⁴ *See e.g.*, Qwest Corporation (N.D. P.S.C.) Exchange and Network Services Tariff, § 5.1.4 (effective 3-9-2001).

substantially the same, even if they are provisioned differently.²⁵ FX and FX-like services have always provided a customer with a telephone number for a rate center outside the rate center in which the customer's premises are physically located.

Moreover, FX services have traditionally been rated and routed as local services. The end user placing the call to an FX customer is charged for a local call. Further, from the perspective of the incumbent LEC, a call to a competitive LEC's FX-like customer is routed just as any other local call to an end user customer with a physical presence in the calling party's exchange - both calls must be delivered to the point of interconnection established between the incumbent LEC's and the competitive LEC's networks at which point the competitive LEC assumes responsibility for the call. While provisioned differently, Level 3's proposed service is the functional equivalent of traditional incumbent LEC FX service in that it gives a customer located in one exchange a telephone number with an NPA/NXX associated with another exchange. In short, Level 3's service can be best characterized as a competitive response to the traditional LEC FX and FX-like service.

2. Many state regulators have classified virtual NXX services as FX-like services that are the functional equivalent of the FX services incumbent LECs provide.

In fact, many state commissions have found that competitive LEC FX-like or virtual NXX services provide the same functionality to consumers as incumbent LEC FX service has provided for decades. For example, the Florida PSC concluded:

²⁵ One clear directive in the Act and the FCC's implementing regulations is the recognition that competition will spur technological innovation and change. For example, one rule expressly notes that a competitive LEC's single switch might be capable of serving a geographic area comparable to that served by an incumbent LEC's tandem, and its subtended end offices. *See* 47 C.F.R. § 51.711(3). It would be anti-competitive if the classification of Level 3's service turned on whether Level 3 provisioned and deployed its facilities in precisely the same way that ILECs historically deployed their FX services. That result would reward the status quo and discourage innovation - hardly a goal contemplated by Congress or the FCC.

[CLEC] witness Selwyn [states] that the practice of terminating a call in an exchange that is different than the exchange to which the NPA/NXX is assigned is nothing new. He contends that ILECs have been providing this service for decades through their [Foreign Exchange] service. We agree. We believe that virtual NXX is a competitive response to FX service, which has been offered in the market by ILECs for years.²⁶

The Kentucky Commission equated incumbent LEC FX and Level 3 service as follows:

Both utilities offer a local telephone number to a person residing outside the local calling area. BellSouth's service is called foreign exchange ("FX") service and Level 3's service is called virtual NXX service.²⁷

Neither the Michigan Public Service Commission nor the North Carolina Utilities Commission even refer to "virtual NXX," but instead both agencies identify the service provided by the incumbent LEC and the equivalent service provided by the competitive LEC as "FX service."²⁸

The New York Public Service Commission summarized this well in considering the same kind of disputes between independent LECs and competitive LECs with respect to ISP-bound, FX-like calls. Specifically, the New York commission found that FX service should not be defined by "call competition technology," but rather FX service should be defined "operationally, *i.e.*, making local service possible in an exchange where the customer has no

²⁶ *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order on Reciprocal Compensation, Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP, 28 (Fla. P.S.C. Sep. 10, 2002) ("*Florida Decision*").

²⁷ *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2000-404, Order, 7 (Ky. P.S.C. Mar. 14, 2002) ("*Kentucky Decision*").

²⁸ *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order, 2001 WL 1335639 (Mich. P.S.C. Sep. 7, 2001) ("*TDS Metrocom*"); *Petition of MCI Metro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. P-474, Sub 10, Order Ruling on Objections and Requiring the Filing of the Composite Agreement (N.C.U.C. Aug. 2, 2001) ("*MCI Metro Decision*").

physical presence.”²⁹ The New York commission further noted that an operational focus was more appropriate than a technological focus because “the architecture of new entrant networks will differ from that of incumbents and . . . CLECs need not replicate the incumbent’s service offerings, rate centers, or customer mix.”³⁰ Further, as shown in Section I.B.3. *infra*, these and other state commissions have ordered that incumbent and competitive LECs route and rate calls to virtual NXX and FX customers as local for purposes of intercarrier compensation.

Moreover, FX-like and virtual NXX services are not the functional equivalent of “1-800” service as SRT would lead this Commission to believe.³¹ First, as a procedural matter, this again presents a disputed question of fact that warrants more consideration than SRT’s request for summary dismissal would permit. Moreover, SRT’s argument misses on the merits. For example, “800” service differs from both traditional FX service and FX-like services in that “800” service is not associated with a particular geographic area. Callers may generally access an “800” number on a toll-free basis regardless of their physical location. FX services, on the other hand, are associated with a specific local exchange. The caller may only access the FX number on a local (or “toll-free”) basis if the caller has local service in the same local exchange; a call to the FX number from outside that local exchange would be rated as a toll call. Second, “800” calls use a toll dialing pattern. The toll status of an “800” call is evidenced by the indicator digit, the “1” in a “1-800” call. FX calls, on the other hand, are dialed just like any other local call. Third, an “800” service may have several termination options, such as

²⁹ *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies*, Case 00-C-0789, Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates, 4 (N.Y.P.S.C. Sep. 7, 2001).

³⁰ *Id.*

³¹ *SRT Motion to Dismiss* at 15-16.

termination to a PBX over dedicated lines, termination on a time-sensitive basis, or termination to multiple locations. FX service has only one termination point. Finally, “800” service revenues are booked as toll revenues, while FX revenues are booked as local revenues. Given these clear distinctions between “800” and FX or FX-like services, the Commission should reject SRT’s “800” service analogy as a feeble attempt to divert its attention from the relevant issue - whether Level 3 is entitled, as a telecommunications carrier, to an interconnection agreement with SRT for the provision of telecommunications services.

C. As a Provider of Local Services, Level 3 is Entitled to Local Interconnection and is Not Required to Purchase Access Services.

SRT claims that Level 3 improperly relies on the FCC’s *ISP Remand Order*³² for support that Level 3 is entitled to local interconnection.³³ Level 3’s reliance on the *ISP Remand Order* is not misplaced, however, as that *Order* supports Level 3’s position that the Parties must exchange traffic on a bill-and-keep basis - an arrangement under which neither originating access charges nor terminating intercarrier compensation charges apply. SRT also claims that because Level 3 may provide service through FX-like arrangements, it is only entitled to interconnection as an interexchange carrier. Although SRT selectively cites only state commission decisions that support its decision, even these cases prove that this dispute must be settled through interconnection arbitration, and may not be decided on a motion to dismiss.

³² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Remand, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Report and Order (rel. Apr. 27, 2002) (“*ISP Remand Order*”), remanded sub nom. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C.Cir. 2002).

³³ *SRT Motion to Dismiss* at 15.

1. The FCC's *ISP Remand Order* applies regardless of where the ISP modem banks are located.

Despite the fact that the type of telecommunications traffic Level 3 seeks to exchange with SRT under Section 251(a) is not relevant to the disposition of SRT's Motion to Dismiss, SRT asserts that Level 3 may not rely on the FCC's *ISP Remand Order* for the proposition that Level 3 is entitled to interconnect with SRT as a local carrier. According to SRT, that *Order* applies only to ISP-bound traffic where the ISP facilities are physically located in the local exchange area.³⁴

In its April 2001 *ISP Remand Order*, the FCC asserted exclusive jurisdiction over compensation issues related to ISP-bound traffic. The FCC ruled that traffic to ISPs was excluded from the reciprocal compensation requirements of Section 251(b)(5) by operation of Section 251(g) of the Act.³⁵ Further, under the authority of *Louisiana PSC v. FCC*,³⁶ the FCC held that state commissions no longer had jurisdiction to address the issue of intercarrier compensation for ISP-bound traffic.³⁷ Thus, going forward, the FCC has sole authority to address all questions relating to intercarrier compensation for the exchange of ISP-bound traffic.

Moreover, the FCC did *not* distinguish "local" ISP-bound traffic from "non-local" ISP-bound traffic - or as SRT argues, where the ISP facilities are physically located outside of the local exchange area - thus mooted the issue of whether the *ISP Remand Order* applies only to "local" ISP-bound traffic. All ISP-bound traffic falls within the scope of the FCC's preemption ruling,

³⁴ *Id.*

³⁵ *ISP Remand Order* at ¶ 46. This aspect of the *ISP Remand Order* was rejected by the D.C. Circuit.

³⁶ *Louisiana PSC v. FCC*, 476 U.S. 355, 106 S. Ct. 1890 (1986).

³⁷ *ISP Remand Order* at ¶ 82.

including traffic to ISPs using FX-like arrangements. This has been the conclusion of a number of state commissions that have considered the issue.

For example, an Arbitration Panel of the Texas Public Utility Commission considered the issue, and specifically addressed a position similar to the one taken by SRT in this proceeding. The Texas Arbitrators rejected the argument that “the ISP Remand Order does not apply to all types of ISP-bound traffic, but only to ISP traffic that originates and terminates in the same local calling area.”³⁸ The Public Utilities Commission of Ohio also stated, “[t]he Commission agrees . . . that all calls to FX/virtual NXX [numbers] that are also ISP-bound are subject to the inter-carrier compensation regime set forth in the ISP Remand Order.”³⁹ Likewise, the Connecticut Department of Public Utility Control has ruled, also in the context of virtual NXX traffic to ISPs, “that intercarrier compensation for ISP-bound traffic is within the jurisdiction of the FCC and that on a going forward basis, the Department has been preempted from addressing the issue beyond the effective date of the ISP Order [June 14, 2001].”⁴⁰ Similarly, the Public Service Commission of Michigan ruled in a Section 252 arbitration proceeding that, with respect to virtual NXX traffic, the *ISP Remand Order* “takes care of ISP traffic.”⁴¹

³⁸ *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for “FX-Type” Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015, Arbitration Award, 30-31 (Tex. P.U.C. Nov. 28, 2001).

³⁹ *Allegiance Telecom of Ohio, Inc.’s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award, 9 (P.U.C.O. Oct. 4, 2001). *See also*, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (P.U.C.O. May 9, 2002)(same result).

⁴⁰ *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29, 41-2 (Conn. D.P.U.C. Jan. 30, 2002).

⁴¹ *TDS Metrocom, supra*.

The Florida Commission recently issued a decision regarding intercarrier compensation and virtual NXX issues stating that “due to the FCC’s recent *ISP Remand Order*, which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers.”⁴² Likewise, the Illinois Commerce Commission ruled that “with the adoption of the *ISP Remand Order*, the Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls.”⁴³ In that proceeding, an independent LEC sought to impose access charges on virtual NXX traffic terminated by a competitive LEC. The Commission rejected the independent LEC’s position.⁴⁴

Further, the FCC was fully aware that competitive LECs were using virtual NXX arrangements to serve ISPs long before the *ISP Remand Order* was released. Several carriers - both incumbent and competitive LECs, including Level 3 - asked the FCC to include virtual NXX traffic within the scope of the order.⁴⁵ In fact, the *ISP Remand Order* makes clear that the new federal regime applies to *all* ISP-bound traffic even if it does not specifically address virtual NXX traffic: “We conclude that this definition of ‘information access’ was meant to include *all access traffic* that was routed by a LEC ‘to or from’ providers of information services, of which ISPs are a subset.”⁴⁶ Indeed, it would be illogical to conclude first that an ISP call is of interstate jurisdiction based upon the theory that the call does not terminate at the ISP’s location, but to then conclude that the ISP

⁴² *Florida Decision* at 26.

⁴³ *Essex Telecom, Inc. v. Gallatin River Communications, L.L.C.*, Docket No. 01-0427, Order, 8 (Ill. C. C. July 24, 2002).

⁴⁴ *Id.*

⁴⁵ See ex parte filings in FCC CC Docket No. 99-68: Letter dated March 28, 2001 from Gary L. Phillips, SBC Telecommunications, Inc., to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 3; Letter dated March 7, 2001 from Susanne Guyer, Verizon, to Dorothy Attwood, at 2-3; Letter dated December 13, 2000 from John T. Nakahata, Counsel to Level 3 Communications, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 1.

⁴⁶ *ISP Remand Order* at ¶ 44 (emphasis added).

must be physically located within the local calling area to fall within the scope of that order. Nowhere does the *Order* limit its findings to only “local” ISP-bound traffic.

Moreover, Level 3 is not aware of any state commission that has considered the preemption language of the *ISP Remand Order* and decided that FX-like or virtual NXX traffic was not included within the scope of the FCC’s preemption order. Thus, the FCC *ISP Remand Order* governs all intercarrier compensation arrangements related to ISP-bound traffic, including the payment of access charges. SRT’s argument is without merit.

2. Compensation for ISP-bound traffic is not “in limbo.”

SRT further argues that the FCC’s ISP-bound traffic compensation mechanism adopted under the *ISP Remand Order* has been placed in “limbo” by *Worldcom v. FCC*. This argument blatantly mischaracterizes the current state of the law. In reviewing the *ISP Remand Order*, the D.C. Circuit considered only the narrow issue of “whether § 251(g) provided authority claimed by the FCC for not applying § 251(b)(5),” *i.e.*, carving out ISP-bound traffic from its reciprocal compensation rules.⁴⁷ The D.C. Circuit left undisturbed the compensation mechanism set forth under the *ISP Remand Order*, while asking the FCC to provide more appropriate rationale to support the conclusion that such traffic did not fall within the scope of Section 251(b)(5).

Under the federal compensation regime that was established in the *ISP Remand Order* and remains effective, neither SRT nor Level 3 would owe compensation to each other for calls placed to ISPs. Where parties did not yet have an agreement in place for the exchange of ISP-bound traffic during the first quarter of 2001 - as would be the case between SRT and Level 3 -

⁴⁷ *WorldCom v. FCC*, 288 F.3d at 432.

the proper intercarrier compensation for ISP-bound traffic is “bill and keep.”⁴⁸ Under this compensation regime, SRT may not charge Level 3 for the origination of a call to an ISP, and Level 3 may not charge SRT for termination of a call to an ISP.

At the same time, however, footnote 149 of the *ISP Remand Order* makes clear that the FCC’s decision *only* addresses intercarrier compensation for ISP-bound traffic; all other provisions of law governing interconnection of networks (including the fact that state commissions have primary responsibility over the arbitration of interconnection disputes) are not modified by the order. Therefore, the Commission should ignore SRT’s meritless arguments, which are blatantly intended to distract the Commission’s attention from the relevant issues at hand, deny SRT’s Motion to Dismiss, and arbitrate the Parties’ interconnection dispute.

3. Level 3 is entitled to local interconnection despite the fact that it offers non-traditional local services.

Level 3 does not seek to engage in arbitrage to obtain interexchange services at local exchange prices, as SRT has suggested.⁴⁹ SRT claims that it provides access to IXCs, including Level 3, to local exchanges at rates established under Federal and State regulatory regimes.⁵⁰ Thus, SRT claims that no additional negotiations or arbitration procedures are needed for Level 3 to obtain originating access service from SRT under existing tariffs.⁵¹ To the extent SRT seems to argue that Section 251(a) does not obligate SRT to negotiate with Level 3 to establish interconnection, or to offer anything different from the access rates that are in effect under

⁴⁸ *ISP Remand Order* at n.6 “Bill and keep” is an arrangement under which “each network recovers from its own end-users the cost of both *originating traffic that it delivers to the other network* and terminating traffic that it receives from the other network.” (Emphasis added).

⁴⁹ *SRT Motion to Dismiss* at 17.

⁵⁰ *SRT Motion to Dismiss* at 2.

⁵¹ *Id.*

applicable Federal and State laws, SRT is wrong.⁵² As Level 3 has demonstrated, SRT is duty bound to negotiate with Level 3 to establish interconnection, and if open issues remain at the timeframes set forth under Section 252(b)(1), SRT must submit itself to arbitrate those issues before this Commission.

In a feeble attempt to establish its “arbitrage” argument, SRT cites to several state arbitration decisions in which it claims that FX-like services have been held to resemble interexchange, rather than local exchange services.⁵³ SRT attempts to mislead the Commission into believing that the classification of virtual NXX services is a settled question (to SRT’s favor) that this Commission need not consider - this could not be further from the truth. Although SRT presents a one-sided view of the decisions of other state commissions concerning interconnection and compensation for the exchange of traffic destined for virtual NXX and FX customers, even this one-sided view shows that these issues are best resolved in an interconnection arbitration.

While SRT directs the Commission’s attention to a South Carolina arbitration decision, and five additional cases cited in that order as supporting authority,⁵⁴ many of these cases do not support SRT’s position in this case. For example, the Illinois, Florida, and Texas decisions identified by SRT are not applicable to this case as those state commissions have specifically recognized that the FCC’s *ISP Remand Order* removed ISP-bound traffic from state jurisdiction - including traffic to ISPs using virtual NXX or FX-like services. Moreover, it is important to keep in mind that the Maine decision identified by SRT was predicated first and foremost on number conservation issues (at a time prior to implementation of full local number portability

⁵² *SRT Motion to Dismiss* at 3.

⁵³ *SRT Motion to Dismiss* at 13.

⁵⁴ *Id.*

and the availability of number pooling and other number conservation measures) and prohibited *all* carriers (incumbent and competitive LECs) from providing FX-like services. Rather than relying on SRT's one-sided illustration of state precedent, the Commission should instead find that "whether reciprocal compensation or access charges should apply to virtual NXX/FX traffic is better left for parties to negotiate in individual interconnection agreements";⁵⁵ and where such negotiations have failed, consider the merits of the parties' positions in the context of a Section 252(b) arbitration.

Indeed, what SRT fails to mention is that many other state commissions that have considered the appropriate regulatory treatment for virtual NXX services have ruled that virtual NXX traffic should be treated as local traffic for interconnection purposes. For example, the Kentucky Public Service Commission has found that both competitive LEC virtual NXX service and BellSouth's Foreign Exchange service should be treated as local traffic:

The traffic in question is dialed as a local call by the calling party. BellSouth agrees that it rates foreign exchange traffic as local traffic for retail purposes. These calls are billed to customers as local traffic. If they were treated differently here, BellSouth would be required to track all phone numbers that are foreign exchange or virtual NXX type service and remove these from what would otherwise be considered local calls for which reciprocal compensation is due. This practice would be unreasonable given the historical treatment of foreign exchange traffic as local traffic.

Accordingly, the Commission finds that foreign exchange and virtual NXX services should be considered local traffic when the customer is physically located within the same LATA a[s] the calling area with which the telephone number is associated.⁵⁶

⁵⁵ *Florida Decision* at 28.

⁵⁶ *Kentucky Decision* at 7.

The Michigan Commission has considered this issue several times, and each time has decided not to reclassify foreign exchange service as non-local exchange traffic.⁵⁷ Likewise, the state of California has ruled that a call should be rated as local or toll by comparing the NXX codes of the calling party and the called party, regardless of customer location.⁵⁸ The North Carolina Utilities Commission (“NCUC”) has also ruled that virtual NXX services should be treated as local traffic.⁵⁹

Moreover, as the NY PSC recently noted, whether or not the CLEC provides traditional local voice services has no impact whatsoever on its rights to interconnection on a local basis under federal law:

At issue in this arbitration is the significance, if any, of the fact that Global appears to be overwhelmingly, if not entirely, a carrier for the provision of internet service rather than a partially facilities-based voice competitor. We see no legal, policy or factual basis to draw such a distinction at this time.⁶⁰

⁵⁷ *TDS Metrocom, Inc.*, 2001 WL 1335639; *Application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation*, Case No. U-12696, Opinion and Order (Mich. P.S.C. Jan. 23, 2001); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Case No. U-12460, Opinion and Order (Mich. P.S.C. Oct. 24, 2000); *Petition of Coast to Coast Telecommunications, Inc. for arbitration of interconnection rates, terms, conditions, and related arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan*, Case No. U-12382, Order Adopting Arbitrated Agreement (Mich. P.S.C. Aug. 17, 2000); *In re Complaint of Glenda Bierman against CenturyTel of Michigan, Inc. d/b/a CenturyTel*, Opinion and Order, Case No. U-11821 (Mich. P.S.C. Apr. 12, 1999).

⁵⁸ *Order Instituting Rulemaking on the Commission’s Own Motion Into Competition for Local Exchange Service*, D.99-09-029 (Cal P.U.C. Sep. 3, 1999).

⁵⁹ *Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. P-474, Sub 10, Recommended Arbitration Order (N.C.U.C., adopted Apr. 3, 2001).

⁶⁰ *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Inter-carrier Agreement with Verizon New York, Inc.*, Case 02-C-0006, Order Resolving Arbitration Issues, 9 (N.Y. P.S.C. May 24, 2002).

The FX-like service that Level 3 would provide in SRT's serving area is the functional equivalent of incumbent LEC FX services. Level 3 is not seeking terminating compensation from SRT. Level 3 will incur all transport and termination obligations beyond the SRT switch. SRT need only deliver the traffic to Level 3 *at SRT's switch* (which is where it would take any local call of its own to start), and Level 3 will be responsible for the traffic from there. In exchange, SRT will not charge Level 3 originating access charges, and SRT will rate the calls as local for its end users.

One thing that is clear is that it would be discriminatory to treat like services differently based solely upon the carrier who provides a service or the way in which a carrier provisions that service to its customers. New entrants building networks design those networks differently from the legacy network built by incumbent LECs over a hundred years, but that does not necessarily change the basic functionality delivered to customers. Any policy that classifies a competitive LEC FX-like service as interexchange, instead of the traditional local classification for incumbent LEC FX services, based merely upon the way in which the carrier's technology and/or network supports that service would punish new entrants for innovation. Nevertheless, this is exactly what SRT seeks to accomplish by moving to dismiss Level 3's Petition.

At bottom, this question is far from settled. As Level 3 has demonstrated above the state commissions have taken opposing views as to the proper classification of virtual NXX service. The differences in outcomes reached by the various states that have considered the issue, however, indicates that the regulatory treatment of virtual NXX traffic is a state policy decision that is worthy of consideration. The various decisions on point indicates a range of views on competition. Competition is better served, however, when virtual NXX services and the incumbent LEC FX and FX-like services are treated comparably, and both are exchanged as

local traffic for interconnection and intercarrier compensation purposes. Indeed, the fact that each of these state commissions have considered and addressed this very issue in the context of Section 252(b) arbitration demonstrates that it is not proper for this Commission to dismiss Level 3's Petition for Arbitration, and that the issue is ripe for consideration before this Commission.

II. BECAUSE RURAL TELEPHONE COMPANY PROTECTIONS ARE NOT APPLICABLE, SRT'S SECOND AND THIRD GROUNDS SET FORTH IN ITS MOTION TO DISMISS ARE BASELESS.

Perhaps anticipating that its first ground rests upon an inaccurate reading of federal law, SRT tries to attribute to Level 3 either an intent to, or a need to, interconnect with SRT under Section 251(c) and to waive SRT's rural exemption. Nothing could be further from the truth. As explained in Section I, and as admitted by SRT,⁶¹ Level 3 requested interconnection under Section 251(a), not 251(c), and is not challenging SRT's rural exemption under Section 251(f). Furthermore, Section 251(a) entitles Level 3 to the interconnection agreement it seeks to enter with SRT.

Notwithstanding these undisputed facts, in SRT's second and third grounds to support its Motion to Dismiss, SRT argues that the negotiation and interconnection obligations of Sections 251(c) and 252 do not apply to SRT because it is a rural carrier.⁶² Specifically, SRT concludes that Level 3's Petition should be dismissed because Level 3 has not made a *bona fide* request for interconnection under Section 251(f)(1)(A) of the Act, and because Level 3 has not filed a petition to terminate SRT's rural exemption. SRT's arguments are without basis. As has

⁶¹ *SRT Motion to Dismiss* at 2, 6.

⁶² *SRT Motion to Dismiss* at 17.

been made clear from the outset, Level 3 has not sought to terminate any rural exemptions that SRT may possess, and has not requested interconnection pursuant to Section 251(c).

Level 3 seeks interconnection only under Section 251(a), so SRT's exemptions from any obligations set forth in Sections 251(b) and (c) would remain intact. Thus, there is no reason why Level 3 would have needed to present a "bona fide request" under Section 251(f)(1)(A), or present notice of such a request to this Commission.⁶³ Section 251(f)(1)(A) sets forth the exemption provided for certain rural telephone companies and states that the obligations set forth under Section 251(c) do not apply to rural telephone companies until the company has received a *bona fide* request for interconnection, and the state commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254.

SRT's argument about the "rural exemption" is irrelevant to this dispute. The Section 251(f)(1) "rural exemption" addresses only the issue of *which* Section 251 obligations apply to a rural telephone company. Specifically,

*Subsection (c) of this Section [251] shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).*⁶⁴

As the FCC noted in clarifying the number portability obligations of rural LECs, "Section 251(f)(1) applies only to rural LECs, and offers an exemption only from the

⁶³ *Local Competition Order* at ¶ 156. The FCC has stated that "Section 251(f)(1) provides that a rural telephone company is exempt from the requirements of Section 251(c) until, among other things, it receives a "bona fide request" for interconnection, services, or network elements."

⁶⁴ 47 U.S.C. § 251(f)(1)(A) (emphasis added). In contrast to Section 251(f)(1), the Section 251(f)(2) exemption is something that rural LECs must petition for and receive from the state commission. SRT has not alleged that it has received a Section 251(f)(2) exemption from this Commission.

requirements of Section 251(c).”⁶⁵ Thus a valid “rural exemption” under Section 251(f)(1) in no way exempts SRT from other interconnection obligations, particularly under Section 251(a) (or any obligations arising under Section 251(b) for that matter).

SRT is required to negotiate and arbitrate with Level 3 despite the fact that Level 3 has not made a *bona fide* request for interconnection under Section 251(f)(1)(A) of the Act. Section 252(b) authorizes any party to petition a state commission for arbitration of any open issues between the 135th and 160th days after the date an incumbent LEC has received a request for negotiation - without regard to whether that request were *bona fide* under Section 251(f)(1)(A). As the FCC has stated, “if Congress had intended to impose a ‘bona fide request’ requirement on requesting carriers as part of their duty to negotiate in good faith, Congress would have made that requirement explicit.”⁶⁶ Section 251(a) does not include a requirement that Level 3 submit a bona fide request for interconnection with SRT, and nothing in Section 251(f)(1) affects the authority of a state commission to arbitrate an interconnection dispute arising under Sections 251(a) and 252 involving a rural incumbent LEC, such as SRT. As shown in Section I.A.3, *infra*, where a carrier such as Level 3 has made clear that it seeks interconnection solely under Section 251(a), rather than Sections 251(b) and (c), the negotiation and arbitration requirements of Section 252 still apply. Therefore, SRT’s second and third grounds for dismissal are red herrings. The Commission should deny SRT’s motion and proceed with this arbitration.

⁶⁵ *Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, FCC 97-74, 12 FCC Rcd 7236, 7303 (rel. Mar. 11, 1997).

⁶⁶ *Local Competition Order* at ¶ 156.

III. THIS COMMISSION SHOULD ASSERT JURISDICTION OVER THE INTERCONNECTION DISPUTE TO PROMOTE INTERNET ACCESS AND COMPETITION IN RURAL AREAS OF NORTH DAKOTA.

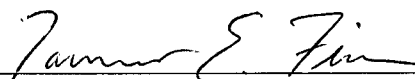
This Commission should reject SRT's Motion to Dismiss and promote important North Dakota public policy interests. The issues of Internet access and competition in rural areas remain acute. Level 3 proposes to provide telecommunications services and deliver the benefits of competition to ISPs. This would in turn make it more likely that ISPs can provide services to their own customers at lower cost. The role of state commissions is particularly critical in assessing local conditions in rural markets, where consumers are under-served in terms of Internet access and often have little, if any, choice to make among providers. To serve these policy interests, the Commission should deny SRT's Motion to Dismiss and encourage the availability of additional Internet connectivity and provider choice for rural consumers, and at the same time provide incentives for competitive providers, like Level 3, to establish their networks in a technically superior and efficient manner.

CONCLUSION

For the reasons set forth herein, Level 3 requests that the Commission deny SRT's Motion to Dismiss and direct the Arbitrator to resolve each of the issues identified in Level 3's Petition for Arbitration.

Respectfully submitted,

Level 3 Communications, LLC

By  _____

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Its Attorneys

Dated: October 7, 2002

CERTIFICATE OF SERVICE

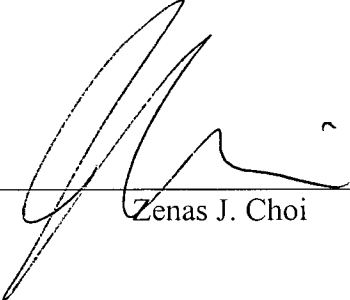
I hereby certify that a true and correct copy of the foregoing was e-mailed and then overnighted, prepaid, to the following individuals:

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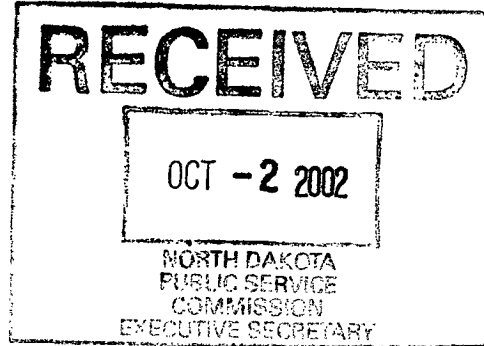
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Frank G. Lamancusa
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October 2, 2002

Via Facsimile and U.S. Mail

Jon H. Mielke
Executive Secretary
Public Service Commission, State of North Dakota
600 East Boulevard Avenue, Department 408
Bismark, North Dakota 58505-0480



Re: Level 3 Communications, LLC Interconnection Arbitration Application
Case No. PU-2065-02-465

Dear Mr. Secretary:

Pursuant to section 69-02-10-09 of the North Dakota Administrative Code, I request the assistance of Commission staff personnel to serve as advisors in the above captioned arbitration. Costs associated with the arbitration process incurred by the Commission or Commission staff are the responsibility of the telecommunications companies involved in the proceeding. N.D. Admin. Code §69-02-10-12.

Sincerely,

A handwritten signature in cursive script that reads "Frank G. Lamancusa".

Frank G. Lamancusa
Arbitrator, Case No. PU-2065-02-465

cc: Michael R. Romano, Esq. (fax only)
David J. Hogue, Esq. (fax only)
William W. Binek, Esq. (fax only)

10 PU-2065-02-465

Pages: 1

Request for assistance of Commission
staff personnel to serve as advisors
by Telecom Dispute Solutions, Inc. by Frank G Lamanc

10/02/2002

CC: Comm Legal PUD (3)



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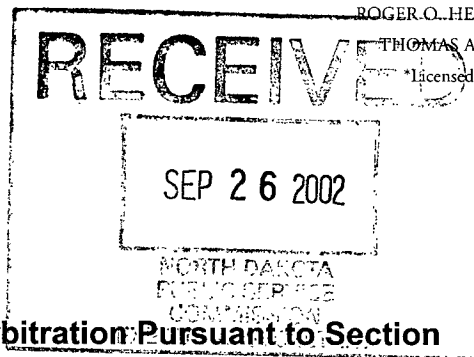
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September 25, 2002

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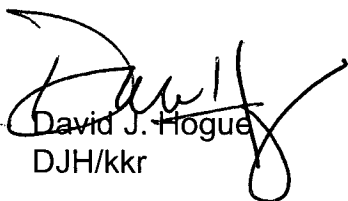
**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

Enclosed for filing on behalf of SRT Communications, Inc. ("SRT") is an original and seven copies of SRT's motion for dismissal of the petition for arbitration to establish an interconnection agreement with SRT. SRT also responds to Level 3's petition.

As indicated in the response to Level 3's petition, SRT requests an expedited review of its motion to dismiss the petition. An expedited review may reduce both parties' arbitration expense in the event the PSC agrees with SRT that the interconnection requested by Level 3 is not subject to compulsory arbitration.

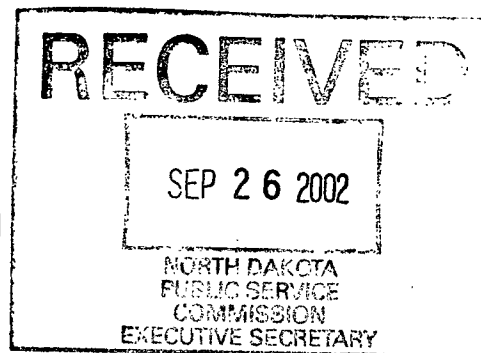
Very truly yours,


David J. Hogue
DJH/kkr

Enclosures

cc: Russell Blau (w/enclosure)
Tamar Finn (w/enclosure).
Michael Romano (w/enclosure)
Tim Gates (w/enclosure)
William Binek (w/enclosure)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications, Inc.)

Case No. PU-2065-02-465

RESPONSE TO PETITION FOR ARBITRATION

SRT Communications, Inc. ("SRT") responds to the Petition for Arbitration filed by Level 3 Communications, LLC ("Level 3") on August 30, 2002. This Response is filed under the provisions of Chapter 69-02-10 of the Rules of Practice and Procedure of the North Dakota Public Service Commission ("PSC") and Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 151 et. seq. and related provisions of the Code of Federal Regulations, 47 C.F.R Part 51 promulgated by the Federal Communications Commission ("FCC").

INTRODUCTION AND SUMMARY

To begin at the beginning, it seems appropriate for SRT to respond to Level 3's accusation that "SRT has refused to negotiate terms and conditions for interconnection arrangements with Level 3." (Petition, page 10. Similar statements appear elsewhere in the Petition.) SRT's Response is that it does acknowledge its general obligation to interconnect under Act Section 251(a), and

it is ready and willing to negotiate with Level 3. But discussions between the companies were commenced by Level 3 on untenable premises, including Level 3's request for interconnection as if the requested interconnection and requested terms were subject to Act Sections 251(c)(1) and 252.

Level 3 wants to negotiate a special arrangement for an interconnection with SRT, relying on Act Section 251(a) - not Section 251(c). Level 3 wants access to SRT's local exchange as the originating point of Level 3's interexchange service to a limited group of Level 3's customers. Level 3's interexchange service is not conventional long distance service available to all consumers in SRT's local exchange area. Level 3's Petition declares a limited business purpose to establish interconnections to provide telecommunications services to Internet Service Providers ("ISPs") that are customers of Level 3, all at points of termination outside of SRT's local exchange area. Level 3 wants to pay local service rates for long distance service. (Petition, pages 5, 6, 7, 8, 9, 11, and 13.)

SRT acknowledges its general obligation to interconnect under Section 251(a). SRT has met that obligation. SRT provides access to interexchange carriers, including Level 3. Even though Level 3 is not a conventional long distance company, it is an interexchange carrier entitled to access to local exchanges at rates established under Federal and State regulatory regimes. No additional negotiations or arbitration procedures are needed for Level 3 to obtain originating access service from SRT under existing tariffs.

Neither Act Section 251(a) nor Section 251(c) obliges SRT to negotiate to establish an interconnection on the special terms and conditions that Level 3 has requested, different from the access rates that are in effect under applicable Federal and State laws.

Therefore, SRT's position in these proceedings is to move for dismissal because SRT has performed its duty of interconnection under Act Section 251(a) and there is nothing to be arbitrated under Section 252(b) where there is nothing that must be negotiated under Section 251(c).

The PSC's Rules of Practice and Procedure, 69-02-10-01 et. seq., impose a schedule of pre-hearing processes (e.g., the appointment of an arbitrator and an early pre-hearing conference). The PSC, Level 3 and SRT are apparently constrained to abide by this schedule without these processes being held in abeyance while a motion for dismissal is pending. Participation in the arbitration process does not affect SRT's basic position that there are no issues subject to arbitration and that the Petition should be dismissed. However, to avoid unnecessary arbitration expenses, SRT requests PSC's earliest consideration of the motion for dismissal.

SRT's RESPONSE TO LEVEL 3's STATEMENT OF ISSUES

Although SRT's position is presented in its entirety in the following motion to dismiss, brief responses to the headings of Level's Petition seem to be in order.

Interconnection Negotiation History

Level 3 initiated negotiations. Level 3 presented a proposed "Mutual Traffic

Exchange Agreement” accompanied by literature fairly described as a sales pitch. SRT Responded. Level 3's statement that “SRT has refused to negotiate terms and conditions for interconnection arrangements with Level 3” (Petition, page 10) is not true. The parties have communicated; they have negotiated. They have negotiated but they have not agreed.

Unresolved Issues

There are no issues to be resolved by arbitration because there is nothing to be arbitrated under Act Section 252 where there is nothing that must be negotiated under Section 251(c).

Issue 1: Whether SRT has a statutory duty to interconnect directly or indirectly with Level 3?

SRT agrees it has a statutory duty to interconnect directly or indirectly with Level 3, under Act Section 251(a). SRT has fulfilled that duty by its connection with the public switched network. Level 3 can obtain the interexchange interconnection it wants for its ISP-bound interstate traffic under SRT's filed tariffs for access services.

Issue 2: Whether SRT has a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection arrangements?

As argued in SRT's motion for dismissal, the interconnection requested by Level 3 is not subject to the negotiation obligations under Act Section 251(c)(2).

Issue 3: Whether Level 3's proposed services are exchange services that are subject to negotiated transport and termination arrangements, rather than interexchange services subject to access?

The interconnection requested by Level 3 is *not* for exchange services that are subject to negotiated transport and termination arrangements, *and is* interexchange services subject to access charges.

MOTION FOR DISMISSAL

SRT moves the dismissal of Level 3's Petition for arbitration.

1. The Petition should be dismissed because the interconnection that Level 3 seeks under Section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under Section 251(c)(1) and the related arbitration provisions under Section 252 of the Act.

2. The Petition should be dismissed because Level 3 has not made a bona fide request for an interconnection under Section 251(f)(1)(A) of the Act.

3. The Petition should be dismissed because Level 3 has not requested nor has the PSC determined that SRT's exemption from negotiation and interconnection obligations should be terminated under Section Sections 251(f)(1)(A) and (B) of the Act.

ARGUMENT

SRT moves the dismissal of Level 3's Petition for arbitration on three grounds. Though somewhat related, each ground is independent and adequate for dismissal to be ordered.

1. The Petition should be dismissed because the interconnection that Level 3 seeks under Section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under Section 251(c)(1) and the related arbitration provisions under Section 252 of the Act.

The Act imposes two duties of interconnection, the "general" duty of all telecommunications carriers to interconnect, under Section 251(a), and the "additional" duty of ILECs, under Section 251(c)(2).

Section 251(c)(2) imposes on ILECs particular duties to interconnect with other carriers for "the transmission and routing of telephone exchange service and exchange access." That section is sanctioned by a duty to negotiate under Section 251(c)(1) and (should negotiations fail) compulsory arbitration proceedings administered by state commissions such as the PSC, under Section 252(b). The "general" duty of all telecommunications carriers to interconnect, under Section 251(a), is not sanctioned by a duty to negotiate under Section 251(c)(1) and the related compulsory arbitration proceedings under Section 252.

Level 3 does not claim a right to interconnection under Act Section 251(c)(2). Instead, Level 3's Petition refers to the requested interconnection required by Section 251(a). (Petition pages 5, 7, 9 and 12). SRT agrees that the requested interconnection is affected by Section 251(a).

Even though the parties are in agreement on this point, brief digression to show why the Petition does not address interconnections of the kind described in Act Section 251(c)(2) may be helpful to the Commission.

Level 3's description of the interconnection it hopes to establish with SRT makes it plain that the desired interconnection is not for "the transmission and routing of telephone exchange service and exchange access" under Section 251(c)(2). The terms "telephone exchange service" and "exchange access" are

defined by the Act in Section 153.

Subsection (16) defines exchange access as "access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." More simply stated, "exchange access" is the service that local exchange carriers provide to interexchange (long distance) carriers to complete connections between consumers placing and receiving long distance telecommunications between different exchange areas. Level 3's Petition makes it plain that Level 3 does not seek an "exchange access" interconnection with SRT so that Level 3 can operate a conventional long distance telephone service.

"Telephone exchange service" is defined as "(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." Act Section 153(47). More simply stated, "telephone exchange service" is the service provided by an LEC that enables a consumer in the local exchange area to place and receive calls to and from any other consumer in the same local exchange area, including extended area service ("EAS"). Telephone exchange service is local telephone service, not interexchange service.

At this stage in the life of telecommunications law, it should be recognized

without extensive briefing that a principal policy/purpose of the interconnection obligation imposed on ILECs by Act Section 251(c)(2) is to facilitate the emergence of CLECs and their offering of competing telephone exchange service to consumers in an ILEC's local telephone exchange service area. It is equally clear that Level 3's Petition does NOT seek an interconnection "to furnish to subscribers intercommunication service of the character ordinarily furnished by a single exchange" Act Section 153(47). Level 3's Petition includes the statement: "Pursuant to existing law, Level (3) is NOT seeking to compete for local customers" (Petition, Exhibit A, page 1.) Level 3's Petition makes it plain that it does not seek interconnection with SRT to enable Level 3 to operate as a CLEC offering ordinary local service among subscribers in SRT's local and EAS service areas.

Nowhere does Level 3's Petition claim a right to interconnection under Act Section 251(c)(2). That omission is fatal to Level 3's request for compulsory arbitration. Level 3's Petition refers to the requested interconnection required under Section 251(a). (Petition, pages 5, 7, 9 and 12). SRT agrees that the requested interconnection is affected by Section 251(a) and is not of the kind affected by Section 251(c)(2). And, the requested interconnection is not subject to the duty to negotiate under Act Section 251(c)(1) and the related arbitration provisions under Section 252.

The duty to negotiate under Act Section 251(c)(1) does not directly address interconnections under Section 251(a). The duty to negotiate under Act Section

251(c)(1) refers only to “. . . the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection.” As noted above, Level 3 does not seek negotiation and arbitration of “. . . the particular terms and conditions of agreements to fulfill the duties described in this subsection,” i.e, Section 251(c)(2).

Since Level 3 eschews interconnections under Section 251(c)(2) but wants a 251(a) interconnection, and since Section 251(c)(1) does not refer to negotiations for interconnections under Section 251(a), it seems obvious that SRT has no duty to negotiate and Level 3 has no right to compulsory arbitration of the terms of a Section 251(a) interconnection. Nevertheless, Level 3 endeavors to find some way of shoehorning interconnections under Section 251(a) into the negotiation provisions of Section 251(c)(1) and the related arbitration provisions of Section 252. Apparently, the only available lever is Section 252(c)(1)'s reference to “. . . paragraphs (1) through (5) of subsection (b). . . .”

Level 3 does not claim the requested interconnection has anything to do with resale, number portability, dialing parity or access to rights of way, the subjects of paragraphs (1) through (4) of subsection (b). The only possible remaining opening is reciprocal compensation, under paragraph (5) of subsection (b).

Perhaps Level 3 might claim it seeks negotiation or arbitration (under Sections 251(c)(1) and 252) of terms and conditions of reciprocal compensation arrangements under Section 251(b)(5) for interconnections established under Section 251(a). But these dots don't connect, because Level 3's Petition

specifically declares it is not seeking reciprocal compensation. (Exhibit A, page 1). This concession is consistent with the FCC's determination that "ISP-bound traffic is not subject to the reciprocal compensation obligations of Section 251(b)(5)." 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, Order on Remand and Report and Order, 66 FR 26806, May 15, 2001, amending 47 C.F.R. 51.701.

So, the duties of interconnection, reciprocal compensation and negotiation under Act Sections 251(c)(1) and 251(b)(5), do not apply to Level 3's business plan to be a telecommunications bridge between SRT's exchange areas and any ISP that is not located in SRT's service area. The Petition should be dismissed because the interconnection that Level 3 seeks under Act Section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under Section 251(c)(1) of the Act and the related arbitration provisions under Section 252 of the Act.

This should be the end of this case, but the PSC might wonder: Does this result mean that Level 3 cannot participate in the telecommunications industry? Clearly not! Does Level 3 have any alternatives? Yes, there are alternatives, but not affected by compulsory arbitration provisions of the Act.

One might speculate that Level 3 would endeavor to transport its requested interconnection out of the Section 251(a) category and into Section 251(c)(2). This is not a viable alternative, because, as demonstrated above, Level 3's

requested interconnection is neither telephone exchange access nor exchange access. FCC regulations make it clear the requested interconnection cannot be established under Section 251(c)(2):

“A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC’s network and not for the purpose of providing to others telephone exchange service, exchange access service, or both is not entitled to receive interconnection pursuant to Section 251(c)(2) of the Act. 47 CFR Sec 51.305(b).

This Regulation was promulgated consequent to the FCC’s comprehensive Local Competition Order, CC Docket No 96-98, First Report and order, 11 FCC Rcd. 16005 (1996) under the heading: “Interexchange Service is Not Telephone Exchange Service or Exchange Access.” The Commission said: “We conclude, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC’s network is not entitled to receive interconnection pursuant to Section 252 (C)(2).” Local Competition Order, par 191.

Level 3 is “an IXC that requests interconnection solely for the purpose of originating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others on an incumbent LEC’s [SRT’s] network.” Level 3 was correct in not asserting its claims under Act Section 252(c)(2), and the claim cannot be resuscitated under that section.

Another alternative is mentioned in Level 3’s Petition, on page 7; a private

line arrangement might be negotiated. Since terms and conditions of private line arrangements are not regulated by federal or state law, a private line arrangement could be established under conventional willing buyer/willing seller principles, neither under any compulsion. One can anticipate Level 3's conventional objection about this alternative: "We need regulatory oversight." That would be available under another alternative, mentioned by Level 3's Petition and attributed to SRT: Recognition that Level 3's proposed service is interexchange service (Petition, pages 10 and 13). This alternative - interconnection for the purpose of originating Level 3's interexchange traffic - is not only available, it also fulfills SRT's general duty of interconnection under Act Section 251(a).

"Regarding the issue of interconnecting 'directly or indirectly' with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnections pursuant to Section 251*(a) either directly or indirectly, based upon their most efficient technical and economic choices."
Local Competition Order 11 FCC Rcd 16005, par 997 (1996).

Act Section 251(a) requires direct or indirect interconnection, and neither the Act nor any regulations under the Act oblige any telecommunications carrier to negotiate or submit to arbitration the terms and conditions of a 251(a) interconnection. SRT is directly and indirectly connected to the public switched network, and that fulfills its legal obligation under Section 251(a). Level 3 has the opportunity to utilize SRT's facilities for the origination or termination of Level 3's interexchange service, under SRT's filed access tariffs. No additional negotiations or arbitration procedures are needed. The statute and regulations do not require

negotiation or impose arbitration procedures for Level 3 to obtain access service on special terms differing from tariffed rates.

But that is not what Level 3 wants. What Level 3 wants is interexchange service at local service prices. Level 3 explains that its ISP customers are not physically located in the same rate center to which their telephone numbers would be designated. (Petition, pages 11 and 12; Exhibit A, proposed agreement, Section 2.2.) Even though ISP customers of Level 3 would be assigned 7 digit local numbers whose first three digits are identified with SRT's local exchange service areas, calls to those numbers would terminate outside SRT's local exchange area. This is interexchange/long distance traffic, not local traffic.

Level 3 argues that its interexchange traffic be regarded as local traffic, that factual reality be ignored. No, not ignored - denied - regarded as something other than what it really is. Level 3 wants its telecommunications traffic - traffic originating in certain local exchange areas in North Dakota and terminating in distant places, in Colorado and Utah and maybe elsewhere - to be called local exchange service, not interexchange service. Similar arguments have been made to and rejected by other States' Commissions. See In Re Petition of Adelpia Business Solutions, South Carolina PSC Docket No 2000-516-C, Order No 2001-45. Supporting authorities cited in the South Carolina Order include decisions of the Illinois, Maine, Florida, Georgia and Texas Commissions. (One can't avoid noticing that Mr. Tim Gates, identified in Level 3's Petition to the North Dakota Commission (page 3), was a principal witness for Level 3 in its losing Petition to

the Illinois Commission and for Adelphia in its loss before the South Carolina Commission.)

Untroubled by the facts and the record of precedents, Level 3 urges that techno-babble buzzwords “virtual presence” should be adopted to transmogrify an ISP’s real location in Colorado or Utah as if it were simultaneously really located in SRT’s exchange area in North Dakota. Level 3 brazenly asserts that “The Commission should find that Level 3 provides a [local] telecommunications service to its ISP customers, even when Level 3’s customer may not be physically located in the same rate center to which their telephone number is assigned” (Petition, page 14.) It is difficult to counter-argue any way other than to say “virtual presence” arguments are simply absurd. It is enough to say that Level 3’s argument is simply not credible. Real facts cannot be ignored and replaced by a pretense that things are other than what they really are. “Virtual presence” is not real presence, it is a “fiction,” to use the words of the Illinois Commission which decided: “There is no reasonable basis to suggest that calls under this fiction can or should be considered local” See Arbitration Decision at p. 10, in Level 3’s Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Docket No. 00-0332 (August 30, 2000).

Even though Level 3’s argument is out of sync with factual reality and the record of decisions by other States’ Commissions, it continues to press its fictional “virtual presence” argument, relying on the ISP Remand Order. (Petition, p.13, n

16 and Exhibit A, proposed agreement section 3.) But Level 3's reliance on the ISP Remand Order is misplaced, for three reasons.

First, the ISP Remand Order applies only to ISP-bound traffic where the ISP facilities are physically located in the local exchange area. See Worldcom Inc. v FCC, 288 F.3d 429 (DC Cir. May 3, 2002). Nothing in the FCC's ISP Remand Order remotely suggests that manipulation of NXX codes accomplishes the practical, economic, or legal effect to recognize an ISP's real location in Colorado or Utah as if it were simultaneously really located in SRT's exchange area in North Dakota.

Second, If Level 3 were to press the argument that the FCC's ISP Remand Order does apply to the "virtual NXX" interconnection that Level 3 seeks to establish with SRT, the compensation mechanism that Level 3 promotes in reliance on the FCC's 2001 ISP Remand Order (Petition, p.13, n 16 and Exhibit A, proposed agreement section 3) has been placed in limbo by the 2002 court order in Worldcom v FCC. Whether one focuses on the nature of the interconnection as described by Level 3 or on the compensation mechanism promoted by Level 3, in either case the FCC's ISP Remand Order does not support Level 3's Petition.

Third, to employ a popular phrase, Level 3's argument would turn on its head the policy underlying the ISP Remand Order, the FCC's criticism and rejection of "regulatory arbitrage." To employ some of Level 3's expressions, the NXX methodology it envisions is the functional equivalent of, virtually the same as 1-800

service that is common in the industry as the route by which internet users connect with ISP providers located in distant exchange areas. Whether the signaling is by NXX numbers or by 1-800 numbers, in either case the factual reality is that the service is inter-exchange service, not local service, because the ISP provider's facilities are not physically present in the local exchange. In the case of 1-800 signaling, the ISP provider pays for the interexchange service and passes on that cost to its end-users. What Level 3 wants to accomplish is interexchange service at local service prices. This sort of scheme is not only described by the FCC as "regulatory arbitrage;" it is this sort of "distortion" that the ISP Remand Order was intended to eliminate. 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, Order on Remand and Report and Order, 66 FR 26806, May 15, 2001, para 9-10.

Even though the ISP Remand Order applies only to ISP facilities that are physically located in the local exchange area, even though the final status of cost recovery mechanism affecting ISP bound traffic is unsettled following Worldcom v FCC, and regardless of the final outcome of the FCC's and the Court's action on the details affecting ISP traffic, there is no doubt about the continuing vitality of the comprehensive policy to eliminate regulatory arbitrage. Regardless of final decisions on these issues, neither the 2001 ISP Remand Order nor any earlier or later authoritative pronouncement of the Commission or of any Court has the purpose or effect to sanction Level 3's arbitrage objective to obtain interexchange

service at local service prices.

Though the structure of Act Sections 251 and 252 and the FCC's regulations are mazelike, patient reading shows that the kind of interconnection desired by Level 3 is not subject to the negotiation obligations imposed by Section 251(c)(1) and the related arbitration provisions of Section 252. Therefore, the Petition for arbitration should be dismissed.

2. The Petition should be dismissed because Level 3 has not made a bona fide request for an interconnection under Section 251(f)(1)(A) of the Act.

and

3. The Petition should be dismissed because Level 3 has not requested nor has the PSC determined that SRT's exemption from negotiation and interconnection obligations should be terminated under Section Sections 251(f)(1)(A) and (B) of the Act.

Even if the Commission were not to dismiss the Petition on the grounds argued in the first part of this Response, the Petition should be dismissed on the grounds the negotiation and interconnection obligations of Act Section 251(c)(1) and related arbitration provisions of Section 252 do not apply to SRT because it is a "rural telephone company" under the Act (47 U.S.C. 153 (37)).

Section 251(f) of the Act provides that the negotiation and interconnection obligations under Section 251(c) do not apply to a rural telephone company unless and until two conditions are satisfied: (i) the rural telephone company has received a bona fide request for interconnection, services or network elements, AND (ii) the PSC has determined (under Section 252(f)(1)(B) of the Act) that the exemption should be terminated. In addition, Level 3's Certificate of Public Convenience and

Necessity specifically reserves the rights of rural telephone companies under Section 251(f) of the Act. (PSC Case No. PU-2065-02-11; Order issued March 13, 2002.)

The Petition should be dismissed because Level 3 has not made a bona fide request for an interconnection under Section 251(f)(1)(A) of the Act. Although Level 3 might say its request for service is bona fide (good faith) because it truly means it really wants an interconnection, the term “bona fide” has a larger meaning than seriousness of purpose.

As noted in the argument in the first part of this Response, Level 3 does not seek an interconnection with SRT in a good faith effort to operate a CLEC offering a range of local exchange services. Instead, it is transparently clear Level 3 seeks an economic windfall, the payment of local service rates for Level 3's interexchange traffic that would originate in SRT's local service area and terminate in other states. This is another form of “arbitrage” of the kind generally disallowed by regulators (e.g., the ISP Remand Order, 66 FR 26806) and specifically disallowed by Act Section 251(c)(4)(B). The request for this kind of interconnection does not pass the bona fide test.

In addition, the Petition should be dismissed because Level 3 has not requested nor has the PSC determined that SRT's exemption from interconnection obligations should be terminated under Section Sections 251(f)(1)(A) and (B) of the Act. Though Level 3 has paid lip service to SRT's rural exemption (Petition, pages 3, 7 and 8), it has not complied with the terms of the Act, Section 251(f) or

the terms of its Certificate of Public Convenience and Necessity that specifically reserves the rights of rural telephone companies under Section 251(f) of the Act.

Under Level 3's PC&N Certificate and under Section 251(f) of the Act, SRT is exempt from obligations to negotiate interconnections, and being exempt from obligations to negotiate there is no impasse to be resolved by compulsory arbitration. Even if it were to be conceded or decided that Level 3's request for interconnection qualifies as bona fide, SRT's exemption is in effect unless and until Level 3 were to request and the PSC were to order termination of the exemption under Section Sections 251(f)(1)(A) and (B) of the Act.

Though Level 3 has asserted it is constrained to seek arbitration now, by a limited open window (Petition, page 4, citing Act Section 252(b)(1), there is another window that should be first opened but has not yet been opened and (being unopened) is in no danger of being slammed shut. Level 3 holds the handle to the windows.

Level 3 should have notified the PSC of its request for an interconnection with SRT when the request was made, in March of 2002 (Petition, page 3) and at the same time Level 3 should have requested the PSC to revoke SRT's exemption if it expected SRT to be subject to the obligation to negotiate. Act Section 251(f)(1)(B). That Section provides for the exemption issue to be addressed and resolved within 120 days. Level 3 did not notify the PSC about the request for interconnection until it filed its Petition for Arbitration on August 30, more than 120 days after its March 26 request. In effect, Level 3 has proceeded as if SRT were

not a rural telephone company exempt from the negotiation and interconnection obligations of Section 252(c)(1). But SRT is exempt and not subject to negotiation obligations or related arbitration processes so long as the exemption is in effect.

SUMMARY AND CONCLUSION

The rural safeguard provisions of the Act provide that SRT is exempt from the obligations to negotiate interconnections and related provisions for failed negotiations to be resolved by compulsory arbitration. The exemption is in effect unless and until Level 3 were to request and the PSC were to order termination of the exemption.

Even if SRT were not exempt from the obligations to negotiate under Act Section 251(c)(1) and related arbitration provisions of Section 252, the statutes, regulations and ample precedent establish that the kind of interconnection and the terms desired by Level 3 are not available under those provisions of the Act.

The service provided by Level 3 to its ISP customers, traffic originating in local exchange areas in North Dakota and terminating at distant locations in Colorado or Utah is interexchange traffic, not local traffic. No matter what numbers are dialed or pressed into a key pad for an end user to connect with his distant ISP provider, the traffic is interexchange traffic. SRT is entitled to originating access charges for Level 3's interexchange traffic. This arrangement is available to Level 3 under SRT's filed tariffs, and this arrangement fulfills SRT's general duty of interconnection under Act Section 251(a). No additional negotiations or arbitration procedures are needed for Level 3 to obtain access

service at regulated rates.

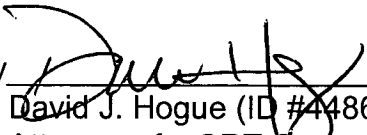
For all these reasons, the Petition for Arbitration should be dismissed.

Before closing this Response, it bears repeating for SRT to respond to Level 3's accusation that "SRT has refused to negotiate terms and conditions for interconnection arrangements with Level 3." (Petition, page 10.) SRT's Response is that it does acknowledge its general obligation to interconnect under Act Section 251(a). The parties negotiated but they have not agreed because their discussions were commenced by Level 3 on untenable premises, including: 1) the untenable legal claim that the requested interconnection is subject to Act Sections 251(c)(1) and 252, and 2) the untenable factual claim that the appearance of "virtual presence" afforded by NXX dialing schemes magically converts interexchange telecommunications into local service.

The Commission's dismissal of Level 3's Petition for Arbitration will not mean it cannot establish an interconnection with SRT; it will mean any negotiations will proceed on correct premises about the law, the facts, the status of the parties and the nature of the requested interconnection. Dismissal of the Petition will terminate Level 3's scheme of regulatory arbitrage.

Dated this 24 day of September, 2002.

PRINGLE & HERIGSTAD, P.C.

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CERTIFICATE OF SERVICE

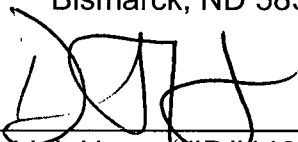
A true and correct copy of the foregoing **RESPONSE TO PETITION FOR ARBITRATION** was, on the 24 day of September, 2002, mailed to:

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RE: Level 3 Communications, LLC Interconnection Arbitration Application,
Case No. PU-2065-02-465

Gentlemen:

Please be advised that on September 19, 2002, the Commission appointed Frank G. Lamancusa as the arbitrator in this proceeding. A copy of the Commission's motion is attached.

The Commission's rules require that the parties to the arbitration proceeding must contract directly with the arbitrator for the arbitration services and pay all costs and

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Pages: 3

Letter to parties re appointment of Frank
G Lamancusa as arbitrator
by Public Service Commission

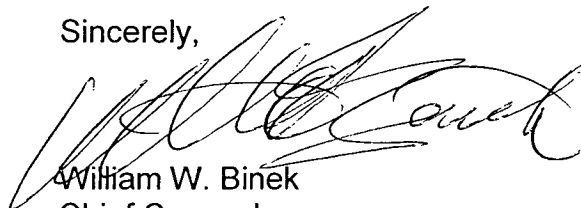
09/23/2002

CC: Comm Legal PUD (3)

fees of the arbitrator and any outside consultants retained to assist the arbitrator. See N.D. Admin. Code § 69-02-10-12. The rules also require that the Commission will designate the court reporter for the proceeding, but the parties must pay directly to the court reporter the fees and costs of the court reporter including costs of transcripts. See N.D. Admin Code § 69-02-10-25.

N.D. Admin. Code § 69-02-10-14 requires the arbitrator to schedule a prehearing conference to be held no later than two hundred days from the date of making the request for negotiation. The purpose of the prehearing conference is to have discussions concerning a procedural schedule, areas of testimony, the scope and timing of discovery, and to identify, simplify and limit issues. The arbitrator must issue an order following the prehearing conference setting forth a procedural order for the proceeding and identifying the issues in dispute. N.D. Admin. Code § 69-02-10-15 requires the Commission to issue a notice of hearing within fifteen days after the prehearing conference.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Biniek", is written over a printed name and title.

William W. Biniek
Chief Counsel

WWB/sls
Enclosure

MOTION

September 19, 2002

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission appoint Frank G. Lamancusa, President of Telecom Dispute Solutions, Inc., Ashton, Maryland, as arbitrator in Level 3 Communications, LLC interconnection arbitration application, Case No. PU-2065-02-465, subject to his availability and willingness to serve.

MOTION

APPROVED

DATE: 9-19-02
KMI

September 19, 2002

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission appoint Frank G. Lamancusa, President of Telecom Dispute Solutions, Inc., Ashton, Maryland, as arbitrator in Level 3 Communications, LLC interconnection arbitration application, Case No. PU-2065-02-465, subject to his availability and willingness to serve.

Scott, Sandi L.

From: Binek, William W.
Sent: Wednesday, September 18, 2002 5:07 PM
To: Comm; Mielke, Jon H.; PUD
Cc: Legal
Subject: FW: Level 3 Communications, Interconnection Arbitration Application Case No. 2065-02-465

RECEIVED

SEP 18 2002

NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

-----Original Message-----

From: Michelle.Krezek@Level3.com [mailto:Michelle.Krezek@Level3.com]
Sent: Wednesday, September 18, 2002 3:59 PM
To: ww@psc.state.nd.us
Cc: dhogue@ndak.net
Subject: Level 3 Communications, Interconnection Arbitration Application Case No. 2065-02-465

Mr. Binek;

I wanted to notify you that SRT Communications and Level 3 have come to a joint recommendation on a neutral arbitrator. We have selected Mr. Frank Lamancusa, President of Telecom Dispute Solutions, Inc. I will follow up this e-mail notice with a letter to your attention. If you have any questions, please feel free to call me.

Thank you.

Michelle

Michelle Krezek
Director, Interconnection Services
Level 3 Communications
1025 Eldorado Boulevard
Broomfield, CO 80021
720 888 6330 - phone
720 888 5134 - fax
michelle.krezek@level3.com



VIA FACSIMILE

William W. Binck, Chief Counsel
Public Service Commission
State of North Dakota
600 E. Boulevard Avenue
Department 408
Bismarck, ND 58505-0408

Fax 701 328-2410

RE: Level 3 Communications Interconnection Arbitration Application,
Case No. PU-2065-02-465

Dear Mr. Binck;

Level 3 Communications submits the following names and qualifications of two qualified neutral arbitrators.

- Ms. Susan Ness, former FCC Commissioner
- Mr. Frank Lamancusa, President of Telecom Dispute Solutions, Inc.

I am also attaching brief biographies listing the qualifications of each candidate. Both were highly recommended to Level 3 as being well versed in interconnection issues.

These names were submitted to Mr. Hogue, counsel for SRT Communications, on Friday, September 13, 2002. Level 3 received an e-mail from Mr. Hogue this afternoon expecting to forward possible candidates to Level 3 today. Level 3 and SRT will attempt to reach a joint recommendation on an arbitrator and forward that to you as soon as possible.

Please feel free to contact me if you have any questions. Thank you for your time and attention to this matter.

Sincerely,

Michelle Krezek
Director, Interconnection Services

Attachments

4

PU-2065-02-465

Pages: 6

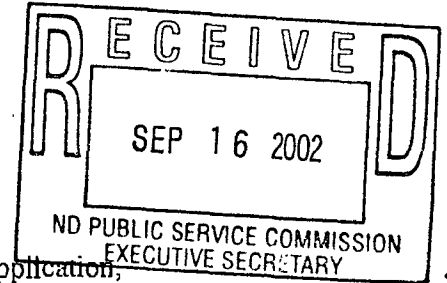
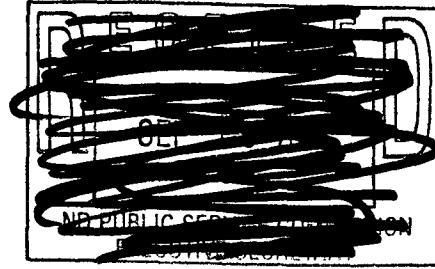
Level 3 Communications, LLC 1025 Eldorado Boulevard
www.Level3.com

Submission of proposed arbitrators

by Level 3 Communications, LLC

09/16/2002

CC: Comm Legal PUD (3)



Susan Ness

5505 Devon Road
Bethesda, Maryland 20814
Tel: 301 654-3925 Fax: 301 654-5425
Email: ness@susanness.com

A former FCC Commissioner, Susan Ness was Distinguished Visiting Professor of Communication at the University of Pennsylvania's Annenberg School for Communication for the 2001-2002 academic year. She also was Director of Information and Society at the Annenberg Public Policy Center in Washington, D.C.

Previously, she served for seven years as a member of the Federal Communications Commission, from 1994 through 2001. In that capacity, she chaired the Federal-State Joint Board on universal telephone service, served on the Communications Committee of the National Association of Regulatory Utility Commissioners, and was the FCC's senior representative at the 1995, 1997, and 2000 World Radiocommunication Conferences.

During her FCC tenure, Commissioner Ness advocated measures to advance competition domestically and globally, spur new technologies and services, expand economic opportunities, eliminate unnecessary regulation, and minimize regulatory uncertainty. She played a key role in shaping policies for efficient management of the radio spectrum and was considered the lead member on international matters. She helped forge agreement on the digital television standard and on guidelines to improve the quality and quantity of children educational television programming. She fought to ensure the delivery to classrooms and libraries of advanced telecommunications services at discounted prices, so that every child – urban and rural, rich and poor – could participate in the information revolution.

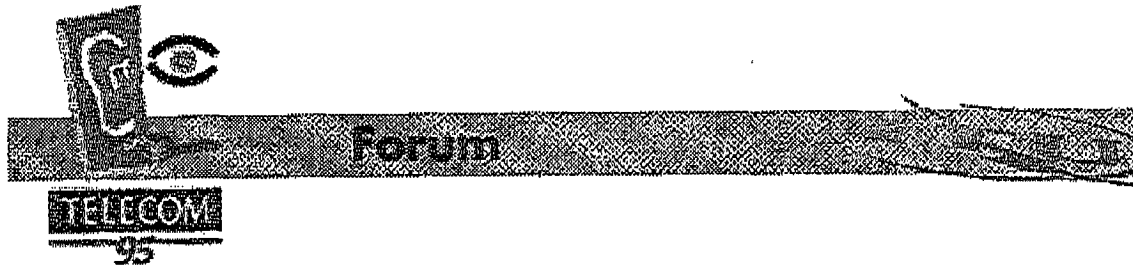
In recognition of her achievements, she was chosen as one of four 1999 recipients of the International Radio and Television Society Foundation Award; was honored as the first government recipient of the Digital Television Pioneer Awards in 2000; was selected as one of *Electronic Media's* "12 to Watch in 1997;" was presented with the 2002 Edward L. Palmer Award at The Annenberg School for Communication for her work to improve children's television; and was bestowed the 2002 Achievement Award by the National Association of Broadcasters' engineering and technology members. She also received the first "Advocate" award by American Women in Radio and Television in 2001, and the 2002 Leadership Award by the District of Columbia chapter of AWRT for her efforts on behalf of women; and was honored by Wireless Women's Network for her leadership. Rutgers University inducted her into its Hall of Distinguished Alumni in 1998, and Douglass College selected her as a 1995 member of the Douglass Society.

Susan Ness was elected to the board of directors of LCC International (NASDAQ), the board of directors of the Library of American Broadcasting, a non-for-profit foundation, and the Arthur C. Clarke Foundation. She recently was appointed chair of the International Communications Committee of the American Bar Association Section on International Law and Practice.

Prior to her FCC appointment, she was a senior lender to communications companies as vice president and group head of a regional financial institution. She served as Assistant Counsel to the Committee on Banking, Currency and Housing of the U.S. House of Representatives, and she founded and directed the Judicial Appointments Project of the National Women's Political Caucus.

Susan Ness is a member of the District of Columbia Bar, the American Bar Association, the Federal Communications Bar Association and Leadership Washington (Class of 1988). Previously, she held many civic leadership positions, including chair of the Montgomery County (Maryland) Charter Review Commission; vice chair of the Montgomery County Task Force on Community Access Television; and president of the Montgomery County Commission for Women.

Susan Ness is a graduate of Douglass College, where she received her Bachelor of Arts degree and served on the board of directors of WRSU Radio (Rutgers University). She received a Juris Doctor, *cum laude*, from Boston College Law School, and a Masters in Business Administration from The Wharton School of The University of Pennsylvania.



THE HONORABLE SUSAN NESS

COMMISSIONER

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Biography

Commissioner Susan Ness was nominated by President Clinton and confirmed by the U.S. Senate on May 19, 1994, to complete the unexpired term of former Commissioner Ervin Duggan and, thereafter, to serve a full five-year term that ends on June 30, 1999.

Commissioner Ness is one of three designated FCC Commissioners on the Federal-State Joint Board that is charged with addressing universal telephone service issues. She has a particular interest in the efficient management of the radio spectrum, both domestically and internationally, and is actively promoting measures to introduce new technologies, spur new services, and expand economic opportunities. Commissioner Ness is serving as the FCC's lead representative at the 1995 World Radiocommunication Conference in Geneva, Switzerland. She also brings a long-standing expertise to mass media issues.

Prior to her appointment to the FCC, Commissioner Ness served as a senior lender, and then group head, for the Communications Industries Division of American Security Bank. Her portfolio encompassed many sectors of the industry, including companies engaged in telecommunications (rural telephones, long distance, cellular, paging, and satellite), media (radio, television, cable television, and programming), and publishing.

A lawyer, Commissioner Ness served as Assistant Counsel to the Committee on Banking, Currency and Housing of the U.S. House of Representatives during the mid-1970's. She later founded and directed the Judicial Appointments Project of the National Women's Political Caucus.

Commissioner Ness received a *juris doctor, cum laude*, from Boston College Law School in 1974, and a Masters in Business Administration from The Wharton School of The University of Pennsylvania in 1983. She is admitted to the practice of law in both the District of Columbia and Maryland and is a member of the Federal Communications Bar Association.

She received her B.A. from Douglass College in 1970. There she served on the board of directors of WRSU Radio (Rutgers University) and produced public affairs and foreign language programming for the station.

Telecom Dispute Solutions, Inc.

Mediation and Arbitration Services for the Telecommunications Industry

[Home](#)[Contact Info](#)[Resume](#)[Forms](#)

Frank G. Lamancusa

17721 Tree Lawn Drive
Ashton, Maryland 20861
301/774-4251 (tel.)
301/518-0416 (cell)
240/209-5524 (fax)
FLamancusa@TelecomADR.com

Telecom Dispute Solutions, Inc. (May 2002 to present)

President

Serves as a neutral arbitrator in telecommunications disputes. Provides mediation and other alternative dispute resolution services to telecommunications companies.

Federal Communications Commission (June 1998 to May 2002)

*Deputy Division Chief, Market Disputes Resolution Division, Enforcement Bureau
Chief, Accelerated Complaints Resolution Branch, Enforcement Division, Common
Carrier Bureau*

Responsible for the Commission's "Accelerated Docket" complaint resolution process from its inception in July 1998. Led mediations requiring expertise in both communications law and technology of over one hundred and fifty disputes between telecommunications companies. Attained settlements in approximately forty percent of those matters. Drafted and edited Commission, Bureau, and Division level orders. Drafted and issued legal rulings and factual findings in complaint proceedings. Conducted mini-trials and status conferences pursuant to the Commission's complaint procedures. Evaluated Commission and Bureau level orders for enforcement-related concerns. Negotiated consent decree provisions on behalf of the Commission. Participated in numerous intra-agency task forces related to the enforcement efforts of the Commission. Presented Commission perspectives at industry conferences. Taught mediation techniques to agency personnel.

United States Department of Justice (October 1994 to June 1998)

Trial Attorney, Telecommunications Task Force, Antitrust Division
Trial Attorney, Civil Task Force, Antitrust Division

Led both merger and non-merger antitrust investigations in the telecommunications industry (e.g., telephone, cable, satellite, broadcast television, and radio). Formulated and directed investigation and litigation strategy to obtain testimony and evidence for legal, factual, and economic antitrust analyses. Deposed and interviewed fact and expert witnesses. Drafted legal and factual memoranda in furtherance of such investigations. Drafted pleadings in matters before United States District Courts. Drafted Department's evaluations of two Regional Bell Operating Companies' applications to enter the in-region, interLATA market pursuant to the Telecommunications Act of 1996. Briefed and advised Assistant Attorneys General, Deputy Assistant Attorneys General, and Senior Counsels to the Assistant Attorneys General on matters within my responsibility.

Howrey & Simon (September 1988 to October 1994)

Associate Attorney

Represented clients in civil antitrust merger investigations and commercial litigation. Drafted pleadings in matters before United States District Courts. Responsible for negotiating and resolving discovery disputes in civil litigation matters. Deposed and interviewed fact and expert witnesses in commercial and antitrust civil litigation. Drafted legal and factual memoranda on civil litigation issues. Advised corporate clients on litigation, antitrust, and insurance coverage issues. Researched legal issues related to civil litigation and antitrust.

Education

Bucknell University, Lewisburg, Pennsylvania
1985 B.A., Economics

Case Western Reserve School of Law, Cleveland, Ohio
1988 J.D., *cum laude*
Editor in Chief, Case Western Reserve Law Review

Recent Presentations

ALTS Annual Conference and Exposition, *The Future of Telecom Enforcement*, July 23, 2002

Administrative Council for Terminal Attachments, *The "New" Part 68 FCC Enforcement*,

May 1, 2002

International Wireless Communications Expo, *FCC's Enforcement Bureau Perspective*,
April 26, 2002

American University School of Law, *Telecommunications: Law & Policy*, Guest
Lecturer, February 7, 2002

ISPCon, *Enforcement of the FCC's Rules: Complaints and Investigations*, April 4, 2001

Practicing Law Institute, *Practices and Procedures in FCC Formal Complaints*,
February 15, 2001

Massachusetts Department of Telecommunications & Energy, *Accelerated Dispute
Resolution Procedures Training Session*, January 17, 2001

PCIA's Paging and Messaging Council Meeting, *Complaint Procedures and the New
Enforcement Bureau*, May 2, 2000

CompTel 2000 Annual Convention and Trade Exposition, *ABC's for CLECs: Antitrust,
Backsliding and Compliance*, February 22, 2000

ALTs Annual Business Conference, *Rights Without Remedies: Enforcing Competition*,
November 16, 1999



LAW OFFICES OF

PRINGLE & HERIGSTAD, P.C.

BREMER BANK BUILDING
20 SW 1ST STREET
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@ndak.net

DENISE C. HAYS
DEBRA L. HOFFARTH
JAMES G. WOLFF*

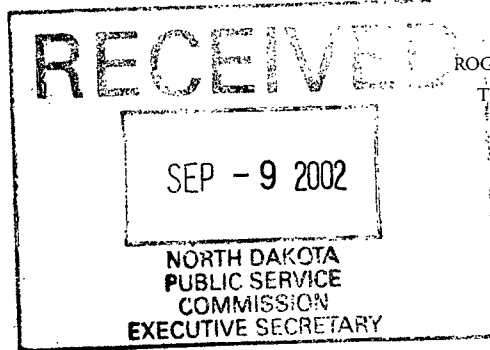
OF COUNSEL
HERBERT L. MESCHKE
JAN M. SEBBY

RETIRED

ROGER O. HERIGSTAD
THOMAS A. WENTZ
*Licensed in Nevada

MARK F. PURDY
DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
MICHAEL A. BOSH
BRENT M. OLSON

September 6, 2002



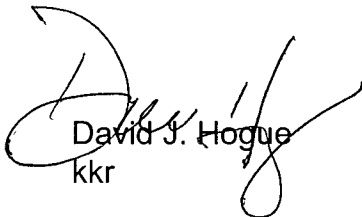
North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

Enclosed for filing in the above-captioned matter please find an original and seven copies of a Notice of Appearance on behalf of SRT Communications, Inc.

Very truly yours,


David J. Hogue
kkh

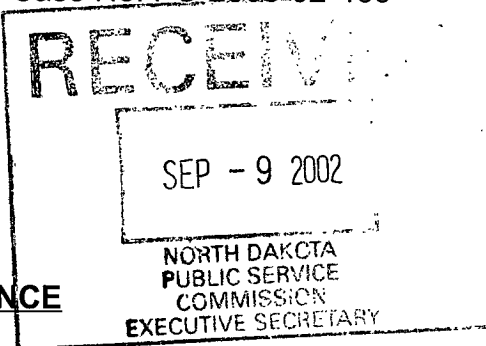
Enclosures

cc: Russell Blau (w/enclosure)
Tamar Finn (w/enclosure)
Michael Romano (w/enclosure)
Tim Gates (w/enclosure)
William Binek (w/enclosure)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

Case No. PU-2065-02-465

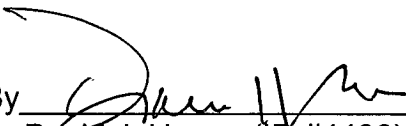


NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned, David Hogue, of Pringle & Herigstad, P.C., 20 SW 1st Street, Bremer Bank Building, 2nd Floor, Minot, North Dakota, 58701, appears on behalf of SRT Communications, Inc. in the above-entitled action and will hereafter serve upon you a response to the Petition for Arbitration. All future correspondence, pleadings, and communications should be served upon the undersigned.

Dated this 6 day of September, 2002.

PRINGLE & HERIGSTAD, P.C.

By 
David J. Hogue (ID #4486)
Attorneys for SRT Communications, Inc.
2nd Floor, Bremer Bank Building
P.O. Box 1000
Minot, ND 58702-1000
Phone: (701) 852-0381
Fax: (701) 857-1361

CERTIFICATE OF SERVICE

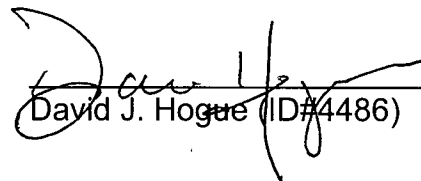
A true and correct copy of the foregoing **NOTICE OF APPEARANCE** was, on the 6 day of September, 2002, mailed to:

Swidler Berlin Shereff Friedman, LLP
Russell M. Blau
Tamar E. Finn
3000 K Street NW, Ste. 300
Washington, DC 20007

Level 3 Communications, Inc.
Michael R. Romano
Director - State Regulatory Affairs
8270 Greensboro Drive. Ste. 900
McLean, VA 22102

QSI Consulting
Tim Gates, Senior Vice President
15712 W 72nd Circle
Arvada, CO 80007

N.D. Public Service Commission
William Binek, Commerce Counsel
600 East Blvd. Ave., Dept. 408
Bismarck, ND 58505-0480



David J. Hogue (ID#4486)



Public Service Commission

State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Leo M. Reinbold
Anthony T. Clark

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: sab@oracle.psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

September 4, 2002

Russell M. Blau
Tamar E. Finn
Swindler Berlin Shereff Friedman, LLP
3000 K Street, N.W. Suite 300
Washington, DC 20007

Warren Hight
General Manager/CEO
SRT Communications Cooperative
3615 North Broadway
P.O. Box 2027
Minot, ND 58702

Tim Gates
Senior Vice President
QSI Consulting
15712 W. 72nd Circle
Arvada, CO 80007

Azito Sparano
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, VA 22102

RE: Level 3 Communications, LLC Interconnection Arbitration Application,
Case No. PU-2065-02-465

Gentlemen:

On August 30, 2002, the Commission received a Petition for Arbitration from Level 3 Communications, LLC to establish an interconnection agreement with SRT Communications Cooperative. The purpose of this letter is to remind the parties of some of the requirements of the Commission's arbitration rules under N.D. Admin. Code Chapter 69-02-10.

N.D. Admin. Code § 69-02-10-08 requires that within fifteen days from the date the petition is filed, the party that requests arbitration must provide to the Commission the names and qualifications of at least two qualified neutral arbitrators that are acceptable to all parties to the negotiation. If the parties are unable to agree on the acceptability of arbitrators, each party must submit the names and qualifications of at least two arbitrators that would be acceptable to that party. Under N.D. Admin. Code §

69-02-10-10, the Commission must appoint an arbitrator within twenty days after the petition has been filed.

The Commission's rules require that the parties to the arbitration proceeding must contract directly with the arbitrator for the arbitration services and pay all costs and fees of the arbitrator and any outside consultants retained to assist the arbitrator. See N.D. Admin. Code § 69-02-10-12. The rules also require that the Commission will designate the court reporter for the proceeding, but the parties must pay directly to the court reporter the fees and costs of the court reporter including costs of transcripts. See N.D. Admin Code § 69-02-10-25.

N.D. Admin. Code § 69-02-10-14 requires the arbitrator to schedule a prehearing conference to be held no later than two hundred days from the date of making the request for negotiation. The purpose of the prehearing conference is to have discussions concerning a procedural schedule, areas of testimony, the scope and timing of discovery, and to identify, simplify and limit issues. The arbitrator must issue an order following the prehearing conference setting forth a procedural order for the proceeding and identifying the issues in dispute. N.D. Admin. Code § 69-02-10-15 requires the Commission to issue a notice of hearing within fifteen days after the prehearing conference.

Sincerely,



William W. Binék
Chief Counsel

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

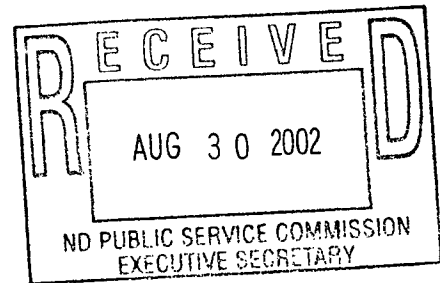
THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9598

August 30, 2002

VIA FAX & OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480



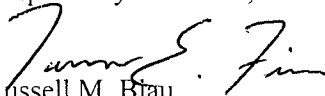
Re: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications Cooperative

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") are an original and ten (10) copies of Level 3's Petition for Arbitration to Establish an Interconnection Agreement with SRT Communications Cooperative. The Petition is being filed pursuant to 47 U.S.C. § 252(b) and the procedures established in North Dakota Administrative Code § 69-02-10, and requests that the Commission resolve each of the issues identified therein by ordering the Parties to incorporate Level 3's proposed contract language into an agreement for execution.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at (202) 295-8375.

Respectfully submitted,


Russell M. Biau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Zenas J. Choi
Service List

1 PU-2065-02-465

Pages: 39

Application for Interconnection Arbitration
with SRT Communications Cooperative
by Level 3 Communications, LLC

08/30/2002

CC: Comm Legal PUD (3)

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to) Case No. _____
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

PETITION FOR ARBITRATION

Level 3 Communications, LLC (“Level 3”), pursuant to Section 252(b)(1) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 252(b)(1), and the procedures established in North Dakota Administrative Code § 69-02-10, petitions the Commission for arbitration of the unresolved issues arising out of the interconnection negotiations between Level 3 and SRT Communications Cooperative (“SRT”). Level 3 requests that the Commission resolve each of the issues identified in this Petition by ordering the Parties to incorporate Level 3’s proposed contract language into an agreement for execution by the Parties.

In support of this Petition, Level 3 states as follows:

I. THE PARTIES

Level 3 is a Delaware limited liability company, and a wholly-owned subsidiary of Level 3 Communications, Inc., a publicly traded Delaware corporation. Level 3 is authorized to provide facilities-based local exchange and interexchange services in the State of North Dakota

pursuant to the Commission's order in Case No. PU-2065-02-11.¹ SRT is an incumbent local exchange carrier ("ILEC") for certain portions of the State of North Dakota. Within its operating territory, SRT has, at all relevant times, been an ILEC as that term is defined in Section 251(h) of the Act, 47 U.S.C. § 251(h).

All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following representatives of Level 3:

Russell M. Blau
Tamar E. Finn
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: 202/945-6917
Fax: 202/295-8478
e-mail: tefinn@swidlaw.com

Tim Gates
Senior Vice President
QSI Consulting
15712 W. 72nd Circle
Arvada, CO 80007
Tel: 303/424-4433
Fax: 303/424-4434
e-mail: tgates@qsiconsulting.com

and

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, VA 22102
Tel: 703/762-0147
Fax: 703/762-0150
e-mail: mike.romano@level3.com

The following parties participated on SRT's behalf during the negotiations:

Warren Hight
General Manager/CEO
SRT Communications Cooperative
3615 North Broadway
P.O. Box 2027
Minot, ND 58702
Tel: 800/737-9130
Fax: 701/837-4005

Azita Sparano
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, Maryland 20706
Tel: 301/459-7590
Fax: 301/577-5575
e-mail: asparano@jsitel.com

¹ *Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity*, Case No. PU-2065-02-11, Order (N.D. Pub. Serv. Comm'n Mar. 13, 2002) ("Level 3 CPCN Order").

II. INTERCONNECTION NEGOTIATION HISTORY

Level 3 initiated negotiations to establish a mutual traffic exchange/interconnection agreement by sending an information package to SRT, which was received by SRT on March 26, 2002. The package provided an overview of Level 3's goals for its expansion into SRT's service area, such as Level 3's goals to offer telecommunications services to support dial-up services offered by ISPs, maintain SRT's rural exemption, and to implement a bill-and-keep mechanism for the exchange of traffic between the Parties.² The package included a proposed traffic exchange agreement containing fair and reasonable terms and conditions for interconnection, and for the routing and exchange of traffic between the Parties' networks.³ Level 3 also provided a network drawing depicting on possible way in which Level 3 might route traffic from SRT to Level 3's network.⁴

On April 19, SRT stated in response that it did not wish to meet with Level 3 and, instead, that Level 3 should deal with the company's consultant at John Staurulakis, Inc. ("JSI"). Soon after, a letter was sent from SRT to Level 3 stating that SRT concurs in the position that JSI had identified in previous correspondence between Level 3 and JSI (with respect to dealings between Level 3 and other JSI clients) regarding similar Level 3 interconnection requests. Among other things, the letter stated that JSI did not believe that Level 3's request to interconnect to provide services to ISPs was valid, and that the FCC's rules do not allow requesting carriers to obtain interconnection solely for the purpose of offering information services. JSI added that it did not believe Level 3 would be operating as a competitive local

² See Exhibit A.

³ Id.

⁴ Id.

exchange carrier (“CLEC”) even though it was requesting interconnection as a CLEC. A conference call was later held on August 23, 2002 regarding the status of negotiations with SRT. By the conclusion of this conference call, SRT had not changed its position and SRT has yet to produce any comments on the Level 3 draft agreement, or to produce draft terms it would consider acceptable.

Level 3 remains willing to negotiate to arrive at mutually agreeable terms and conditions, even after this Petition is filed, and hopes that many issues can be resolved. Level 3 would also be willing to participate in Commission-led mediation sessions, if this approach is agreeable to SRT. However, in light of SRT’s unwillingness to engage in any meaningful discussions to date, and with the statutorily prescribed arbitration window set to close on September 2, 2002, Level 3 has been compelled to seek arbitration with SRT by filing this Petition pursuant to Section 252(b) of the Act.⁵ This Petition is timely filed within the statutory arbitration window set forth under Section 252(b)(1).⁶

To assist the Commission in the review of the unresolved issues, and to provide an overview of the many issues involved in this arbitration, Level 3 has attached hereto (as Exhibit A) a copy of the Level 3 proposed agreement, along with a brief overview of Level 3’s goals for expansion into SRT’s service area.

III. UNRESOLVED ISSUES

In the following sections, Level 3 states (1) the issues between the Parties that remain unresolved, including a statement identifying the unresolved issues, and (2) the positions of each Party concerning the unresolved issues. In light of SRT’s unwillingness to engage in substantive

⁵ 47 U.S.C. § 252(b).

⁶ 47 U.S.C. § 252(b)(1).

negotiations with Level 3, no issues have been resolved through voluntary negotiations to date, leaving the entire agreement in dispute. Because SRT has not provided competing contract language or revisions to Level 3's proposed language, to the extent the Commission resolves the following issues in Level 3's favor, Level 3 requests that its proposed agreement be adopted in its entirety and presented to the Parties for execution.

ISSUE 1: SRT has a statutory duty to interconnect directly or indirectly with Level 3. (Level 3 Agreement §§ 1, 2.3, 2.4, 2.5, 2.6, 4.1, 4.2)

Level 3's Position: SRT has a statutory duty under Section 251(a) of the Act to interconnect, either directly or indirectly, with any requesting telecommunications carrier. Level 3 is a certificated competitive local exchange carrier proposing to provide local telecommunications services to Internet Service Providers ("ISPs") in North Dakota. Because Level 3 is a telecommunications carrier, as that term is defined under the Act,⁷ under the requirements set forth under Section 251(a) of the Act, SRT is required interconnect, either directly or indirectly, with Level 3.⁸

In particular, Level 3 offers a telecommunications service to ISPs. The service, which is a Direct Inward Dial ("DID") calling capability, provides local connectivity to the public switched telephone network that only a local telecommunications carrier certificated by a state commission may provide. Level 3 is certificated to provide such services in North Dakota,⁹ including in SRT's serving areas. Like other local exchange carriers who offer similar services

⁷ See 47 U.S.C. § 153(44). The term "telecommunications carrier" means any provider of telecommunications services. See also 47 U.S.C. § 153(46). The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

⁸ 47 U.S.C. § 251(a).

⁹ See Level 3 CPCN Order.

to ISPs, Level 3 publishes the rates, terms, and conditions for its DID services in tariffs filed with the state commission.

Contrary to SRT's contentions, Level 3 is a competitive local exchange carrier that offers regulated tariffed DID telecommunications services to its customers, such that Level 3 would not be interconnecting solely to offer information services. Rather, Level 3 requires interconnection with SRT to provide a telecommunications service that, in turn, supports the services of an ISP. Like other local exchange carriers, Level 3 obtains local telephone numbers from the numbering administrator to provide local services, and participates in number pooling and local number portability just as other local exchange carriers do. Level 3 is not an enhanced service provider just because its services are purchased by ISPs, any more than other local exchange carriers are burglar alarm companies just because they provide dedicated circuits to Brinks or ADT.

Pursuant to the ESP exemption,¹⁰ ISPs may purchase telecommunications services from telecommunications carriers such as Level 3 out of a local tariff. In providing this inbound-only connectivity to the public switched network, Level 3 is the local exchange carrier providing a telecommunications service to ISPs. The fact that Level 3 may then provide "backhaul" transport service to ISPs in connection with this service offering does not change the fundamental nature of the telecommunications service offered to the ISPs in the local exchange market. Moreover, even if one were to consider – as JSI has suggested – that the "backhaul" aggregation functions performed by Level 3 on behalf of its ISP customers constitutes an information service, that characterization does not change the fact that Level 3 is separately

¹⁰ See *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 715 (rel. Aug. 22, 1983) ("MTS/WATS Market Structure Order"); *In the Matter of Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd at 2635 n.8, 2637 n.53 (rel. Apr. 27, 1988) ("ESP Exemption Order").

offering a regulated, tariffed DID telecommunications service to its customers in the local serving area.

Indeed, Level 3's service is not substantively different from a foreign exchange ("FX") arrangement, or a private line service, which are unquestionably regulated telecommunications services. Thus, Level 3 would not be interconnecting solely to offer information services. Rather, Level 3 would be interconnecting for the purpose of providing a telecommunications service to facilitate the services of its ISP customers. Because Level 3 is a competitive local exchange carrier, and offers telecommunications services to its ISP customers, SRT is required under Section 251(a) of interconnect, either directly or indirectly, with Level 3.¹¹

To facilitate SRT's interconnection obligations, Level 3 would be willing to interconnect, directly or indirectly, in any technically feasible manner, including, but not limited to, the use of either Party's own facilities or the leasing of facilities from a third party carrier. Similarly, Level 3 has proposed contract language that would obligate the Parties to negotiate mutually acceptable locations for points of interconnection, language to ensure the deployment of sufficient trunking capability at all times to minimize the likelihood of call blocking for consumers, and other terms and conditions that would satisfy SRT's statutory duty to interconnect with Level 3. Level 3 submits this contract language under the belief that the Parties should accomplish these goals by working cooperatively to establish interconnection arrangements, and work towards the cooperative installation and maintenance of a reliable interconnection architecture.

While Level 3's proposed contract language is fair and reasonable, Level 3 also seeks to make clear that it does not seek to challenge or undermine any rural exemptions or other

¹¹ 47 U.S.C. § 251(a).

protections to which SRT may be entitled under the Act, or under applicable state law. Indeed, this would be consistent with the Commission's requirements under Level 3's certification order that Level 3 could provide services in North Dakota to the extent that any rural exemption was not challenged absent Commission review and approval.¹² Nor does Level 3 request the right to collocate or have SRT unbundle its network or resells services at an avoided cost discount. To the extent Level 3 were to need to purchase any transport from SRT to reach a given point of interconnection, Level 3 would anticipate doing so at rates, terms, and conditions under which SRT generally makes such transport available to all carriers – and would not propose to require SRT to generate a forward-looking cost for that transport. Level 3's proposal is consistent with law and should be adopted by the Commission.

SRT's Position: SRT contends that Level 3's request to interconnect with SRT is not valid. SRT takes the position that Level 3 would interconnect solely for the purpose of offering information services, and that Level 3 is not operating as a competitive local exchange carrier. In light of SRT's unwillingness to engage in discussions concerning Level 3's request, it is unclear what SRT's positions are with respect to Level 3's remaining contentions.

Proposed Resolution: The Commission should find that Level 3 is a competitive local exchange telecommunications carrier that lawfully provides a regulated local exchange telecommunications service to its ISP customers. Consistent with these findings, the Commission should obligate SRT to abide by its statutory duty to interconnect with Level 3 and to negotiate fair and reasonable terms and conditions for such arrangements. Level 3 has proposed fair and reasonable contract language to establish interconnection arrangements between the Parties, while SRT has not provided any competing contract language. The

¹² See Level 3 CPCN Order.

Commission should adopt Level 3's contract language in its entirety and incorporate it into an agreement for execution by the Parties.

ISSUE 2: SRT has a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection arrangements. (Level 3 Agreement §§ 2.1, 4.2, 5.1, 5.2, 6, 7.1, 7.2, 7.3, 7.4, 8, 9, 10.1, 10.2, 11-23)

Level 3 Position: Level 3 has provided a template agreement that sets forth the fair and reasonable terms and conditions for interconnection, to facilitate the seamless completion of calls, and to implement the most efficient and cost-effective routing and exchange of calls between the Parties' networks.¹³ Level 3 has repeatedly tried to contact SRT and SRT's consultant to negotiate terms and conditions that would be satisfactory to both Parties. SRT has completely refused to negotiate terms and conditions, contending that Level 3 has no right to interconnect because it is either an information service provider or an interexchange carrier.

As explained above, SRT is duty bound to interconnect with Level 3 under Section 251(a) of the Act.¹⁴ Indeed, even if Level 3 were operating as an interexchange carrier in delivering these services to ISPs -- which it is not -- SRT would still be required to interconnect with Level 3 under the terms of Section 251(a), which imposes a duty on "telecommunications carriers" generally, and not on local exchange carriers specifically. Intertwined with its duty to interconnect with Level 3 is the expectation that SRT engage in negotiations to establish reasonable terms and conditions for such arrangements. In this regard, Level 3 has proposed terms and conditions that are fair and reasonable, but SRT has failed to offer any competing contract language or propose edits or counter-proposals to Level 3's proposed language. The Commission should find that SRT must provide interconnection to

¹³ See Exhibit A.

¹⁴ 47 U.S.C. § 251(a).

Level 3 and that, since SRT has not provided competing language, it should be on the terms and conditions proposed by Level 3.

Level 3's proposed interconnection agreement is not intended to supercede tariffed offerings that Level 3 might require from SRT to provide service. For instance, Level 3 may require tariffed transport services to interconnect with SRT, in which case Level 3 will pay the same tariffed rate for these services as any other customer. Instead, the agreement is aimed at establishing some very basic principles – such as how and where the Parties will interconnect, what they will (or will not) pay each other for the exchange of traffic, as well as establishing the general terms and conditions that will govern dealings between the Parties. The agreement further clarifies that Level 3 would be willing to interconnect with SRT by whatever technically feasible means are available, including through a third-party carrier or through direct interconnection in SRT's serving area. In addition, the agreement would also provide SRT assurance that interconnecting in a technically feasible manner does not impact SRT's rural exemptions in any way.

Level 3's proposed contract language is fair, reasonable, consistent with the Parties' obligations under federal law, and should be adopted in its entirety.

SRT Position: SRT has refused to negotiate terms and conditions for interconnection arrangements with Level 3. SRT's position that it is not required to interconnect with Level 3 is premised on its unfounded contention that Level 3 is either an information service provider or an interexchange carrier. SRT's remaining positions with respect to the specific interconnection, traffic exchange, and general terms and condition sections of the proposed agreement are unclear in light of SRT's unwillingness to negotiate.

Proposed Resolution: The Commission should find that SRT must negotiate with Level 3 to establish terms and conditions for an agreement upon which the Parties can interconnect their networks, and to ensure for the seamless routing and exchange of traffic between their respective networks. Level 3 has proposed fair and reasonable terms and conditions, while SRT has offered no competing language or counter-proposals. Level 3's position is fair and reasonable and should be adopted by the Commission. Level 3's proposed contract language should be adopted in its entirety and incorporated into an agreement for execution by the Parties.

ISSUE 3: Level 3's proposed services are exchange services that are subject to negotiated transport and termination arrangements, rather than interexchange services subject to access charges. (Level 3 Agreement §§ 2.2, 3)

Level 3 Position: SRT refuses to interconnect with Level 3 in part because it believes Level 3 seeks interconnection solely to offer either information or interexchange services. Contrary to SRT's contention, the fact that Level 3's customers may not be physically located in the same rate center to which their telephone number is designated does not change the fact that Level 3 offers a local telephone exchange service. In reality, while perhaps delivered through different technologies and on a different scope, Level 3's service is the functional equivalent of an FX service which many incumbent and competitive LECs offer today to give customers who are not physically located in an exchange a telephone number associated with that exchange. The fact that certain ISP customers may not be physically located in the rate center to which their telephone numbers are assigned does not change the fact that Level 3 is offering a local service. Thus, as is further explained above, SRT is not justified in refusing to negotiate an interconnection agreement with Level 3 on the premise that Level 3 does not offer a local telecommunications service.

Through JSI, SRT has also suggested that it considers Level 3's service to be an interexchange service such that originating access charges should be due to SRT. As an initial matter, SRT's assertion that Level 3's service amounts to an interexchange service such that originating access charges are due contradicts SRT's argument that Level 3 is offering an information service. If SRT continues to assert that Level 3 offers an interexchange service – a point that Level 3 strongly disputes – Level 3 would nonetheless still be offering a form of telecommunications service, such that SRT must negotiate with Level 3 (in its capacity as a telecommunications carrier) to establish interconnection under Section 251(a) of the Act. Moreover, pursuant to the ESP exemption,¹⁵ information service providers are exempt from paying access charges.

Regardless of the way traffic is exchanged between the Parties, each Party should also be required to ensure that calls to the other Party's NXX codes that are rated as local or mandatory EAS will also be rated as such for the purposes of both customer billing and intercarrier compensation. It is industry practice to rate a call as local or toll by reference to the NXX codes of the calling and called parties. Indeed, Level 3's process of assigning NXX codes in order to establish a virtual presence apart from a customer's physical presence is the functional equivalent of an FX service that is offered by many competitive and incumbent LECs today. Under such services, it is likewise industry practice to rate calls with reference to the local calling area of the assigned NXX prefix. This service does not contradict the principle of rating calls on a geographical basis, it is simply a way to transfer the geographic rating point of the called party from one exchange to another.

¹⁵ See ESP Exemption Order, at 2633.

A flexible approach to the use of NXX codes has enabled ISPs to provide low cost services throughout the state, including lightly populated areas. Moreover, consumers expect to be charged for a local call when dialing a local prefix. If SRT were to seek access charges for calls placed to local prefixes, it would make it more costly for competitors to provide advanced services, especially in sparsely populated areas such as those served by SRT. It would also make SRT's customers more reluctant to place calls to an ISP served by Level 3's telecommunications service, thus hampering consumer demand for Internet services. Instead, the Commission should adopt Level 3's proposal because it facilitates the deployment of competition. The use of NXX codes to establish virtual presence enables all LECs to provide all end users with attractive local services statewide, including lightly populated areas. The Commission should find that Level 3's proposal is fair, reasonable, and should be adopted.

Lastly, consistent with federal law, Level 3 is not seeking to charge SRT for terminating calls originated by SRT customers, or impose any reciprocal compensation obligations upon SRT. Indeed, because of the *de minimis* nature of the local traffic that Level 3 anticipates will be exchanged between the Parties, Level 3 suggests that the Parties exchange such traffic on a bill-and-keep basis. In addition, Level 3 suggests that the Parties agree to compensate each other for ISP-bound traffic on a bill-and-keep basis in accordance with the approach envisioned by FCC in its *ISP Remand Order*.¹⁶

SRT Position: SRT contends that it is not obligated to interconnect with Level 3 because Level 3 solely offers either information services or interexchange services to ISPs. SRT premises this contention in part from the understanding that Level 3's ISP customers may not

¹⁶ 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, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ("ISP Remand Order").

always be physically located in the exchanges where the telephone numbers are assigned. SRT has further suggested that it considers Level 3's service to be a sort of interexchange service such that originating access should be due to SRT. SRT's remaining positions with respect to the proper compensation mechanism for local and ISP-bound traffic are unclear due to SRT's unwillingness to negotiate with Level 3.

Proposed Resolution: The Commission should find that Level 3 provides a telecommunications service to its ISP customers, even when Level 3's customer may not be physically located in the same rate center to which their telephone number is assigned. To the extent that a call is placed to the other Party's NXX code that is rated as local or mandatory EAS, the call should be treated as such for billing and intercarrier compensation purposes. Lastly, due to the *de minimis* nature of local traffic that Level 3 expects will be exchanged between the Parties' networks and in light of the FCC's *ISP Remand Order*, the Commission should find that local and ISP-bound traffic should be exchanged on a bill-and-keep basis.

Level 3 has proposed fair and reasonable terms and conditions to address the proper compensation mechanisms for traffic exchanged between the Parties' networks. SRT has failed to offer any competing language or revisions to Level 3's proposals. The Commission should find that Level 3's position is consistent with law and adopt Level 3's proposed contract language in its entirety.

IV. CONCLUSION AND PRAYER

Level 3 requests that the Commission arbitrate the unresolved issues described above and resolve them in Level 3's favor. In particular, Level 3 requests that the Commission find that Level 3's proposed interconnection agreement is fair, reasonable, and consistent with law.

Level 3 requests that the Commission adopt Level 3's proposed interconnection agreement in its entirety, and issue an order approving the agreement, to be effective immediately upon approval.

Respectfully submitted,

Level 3 Communications, LLC

By 

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Its Attorneys

Dated: August 30, 2002

EXHIBIT A

Level (3) Market Expansion Project

Key Facts and Information

Information about Level 3 and QSI:

- Level (3) Communications, LLC is a global facilities-based provider of telecommunications services with headquarters in Broomfield, Colorado.
- QSI is a consulting firm that has been retained by Level (3) to help negotiate mutual traffic exchange agreements across the nation.

The Market Expansion Project:

- Level (3) is expanding its network footprint by leasing facilities to increase the markets where it can offer dial-up data services to ISPs.
- Pursuant to existing law Level (3) is NOT seeking to compete for local customers or to collect reciprocal compensation for ISP traffic.
- The goal of QSI and Level (3) is to develop a mutually acceptable traffic exchange agreement with each incumbent local exchange company, in a quick and efficient manner.
- Level (3) is NOT seeking to lift or modify any rural or small carrier exemptions that have been granted consistent with the Act. Level (3) is seeking Interconnection consistent with Section 251(a) and Section 201 of the Act (portions of the Act not impacted by the rural exemption).

Implementation:

- Level (3)'s proposed agreement asks that both companies identify an "Implementation Team" consisting of representatives from Level (3) and the incumbent local exchange carrier. The team will plan the interconnection architecture and other logistics (billing, etc.).
- The companies will exchange local, EAS and Information Access traffic pursuant to the agreement. Level (3) wishes to use a strict "bill and keep" compensation structure for this traffic consistent with the FCC's guidelines.
- Traffic will be routed over common, shared transport trunks through the tandem switch of an interconnected third party, or, when/if traffic volumes warrant, over dedicated trunks leased from the ILEC. At this time, Level (3) does not intend to "build-out" its own facilities to these geographical areas.
- If and when direct connection becomes feasible, a mutually agreeable point of interconnection (POI) will be identified for the exchange of traffic at a location within the ILEC's serving territory or at the serving area boundary.



Market Expansion

Information on Interconnection Request
Key Facts -- The Agreement -- Implementation

The logo for QSI CONSULTING is located in the bottom right corner. It features the letters "QSI" in a large, bold, sans-serif font, followed by the word "CONSULTING" in a smaller, all-caps, sans-serif font. Below this, the tagline "Market Solutions • Digital • Support" is written in a very small font.

QSI CONSULTING
Market Solutions • Digital • Support

About

Level (3)SM
COMMUNICATIONS

- A global communications company offering IP services, broadband transport, and collocation services
- Expanding service throughout the USA primarily to manage dial-up ISP traffic
- Seeking traffic exchange agreements with more than 200 incumbent LECs
- QSI Consulting is aiding Level (3) in negotiating agreements nationwide

The Traffic Exchange Agreement

- Level (3) is NOT seeking to compete for the ILEC's existing local customer base
- Since the majority of traffic will be local data traffic, neither reciprocal compensation nor access charges are expected to apply
- Level (3) will lease facilities from the ILEC when possible— Level (3) does not intend to build
- Level (3) is NOT challenging any rural exemption or seeking to impose 251(c) obligations from the Act

The Traffic Exchange Agreement

- Level (3) has a proposed agreement that includes all of the principles identified above.
- The carriers are welcome to begin with the Level (3) agreement or draft/propose their own.
- Any questions, comments or discussion is best undertaken with your QSI representative.
- The next few slides walk you through the most important aspects of the Level (3) proposed agreement

The Traffic Exchange Agreement

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between _____ ("ILEC"), and Level 3 Communications, LLC ("Level 3"). ILEC and Level 3 may collectively be referred to as "Parties," and each individually may be referred to as a "Party."

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") together. "Traffic" is without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act").

Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall cooperate in good faith and in a prompt manner to implement the most effective and cost efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are routed for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the true center to which such NXX code has been assigned in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the other Party in writing. The Parties shall periodically review the LERG and ensure that it has entered the other Party's NXX as an access and billing system. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ or request and be assigned and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges, whether on the other Party, in connection with the obligations set forth in this Subsection.

2.3 In the extent that both Parties are interconnected with a third party carrier, until the total amount of traffic being exchanged between the Parties exceeds _____ of traffic for three consecutive months (the "threshold"), the Parties may complete calls between their customers through the Tandem Switch of the other carrier (if through a transit arrangement).

Section 1. Scope of the Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

- Defines scope of the agreement as traffic exchange
- Identifies "Information Access Traffic" and "Local Traffic"
- Highlights the fact that this Agreement is NOT meant to impact a rural carrier's "exemption" from portions of Section 251 of the TA96

The Traffic Exchange Agreement

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement was created by and between ILEC ("ILEC") and Level 3 Communications LLC ("Level 3"). ILEC and Level 3 may collectively be referred to as "Parties," and each individually may be referred to as a "Party."

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Area Traffic, and Mandatory Extended Area Service Traffic ("EAS") (together "Traffic"), without interruption or delay. Nothing in this Agreement shall be interpreted as intended to waive or to be an acknowledgment or admission by either Party with respect to any claim that it may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act").

Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 221(a) and 221(b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and most efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves the purpose, including but not limited to, (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected or (ii) direct interconnection of the Parties' networks subject to the requirements herein.

2.2 Regardless of the terms of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned in accordance with the Local Exchange Routing Guide ("LERG"). Each Party may update Exhibit A at any time by giving notice to the other Party in writing. Notwithstanding any update to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXX in its records and billing systems. Nothing in this Agreement shall be construed to limit or otherwise affect in any manner either Party's right to employ, in request and be assigned and to utilize by agreement to customers, any NXX code or telephone number pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this subsection.

2.3 To the extent that both Parties are interconnected to a third party carrier and the total amount of Traffic being exchanged between the Parties exceeds the amount of Traffic for their common rate center (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).

Section 2. Routing, Exchange, and Completion of Traffic

- 2.1 ...Parties shall negotiate in good faith ... to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize ... the Tandem Switch ... or direct interconnection of the Parties' networks if justified by traffic.
- 2.2 ...calls to the other Party's NXX codes ... are rated based upon the rate center to which each NXX code has been assigned
- 2.3 ... Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement), unless and until traffic warrants direct interconnection.
- 2.4 ... When traffic warrants, parties will establish a mutually agreeable POI where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within ILEC's incumbent serving area or at ILEC's incumbent serving area boundary.

- Identifies requirement to negotiate in good faith and implement effective interconnection using either tandem routed or direct, dedicated connections.
- When traffic warrants, parties agree to negotiate a POI within the ILEC's serving area for interconnection and routing of traffic.

The Traffic Exchange Agreement

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between ILEC, and Level 3 Communications LLC (Level 3). ILEC and Level 3 may collectively be referred to as "Parties" and each individually may be referred to as a "Party".

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's member serving area, and Level 3's customers, located both within and outside of ILEC's member serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") together. "Traffic" is defined as follows: Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that it may have with respect to its status as a local telephone company or its entitlement to certain regulatory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 221(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and most efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (a) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected or (a) direct interconnection of the Parties' networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will assume the costs to the other Party of N.A. rates as listed in Exhibit A to the Agreement and used for purposes of both customer billing and inter-carrier compensation as a local or mandatory E.A. call based upon the rate center in which the N.A. call has been originated in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A, at any time by giving notice to the carrier listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has executed the other Party's N.A. as an inter-carrier and billing system. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to complete, in respect to and be assigned, and to arbitrate its assignment to customers, any N.A. calls or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall assume any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 In the event that both Parties are interconnected with a third party carrier, and the total amount of Traffic being exchanged between the Parties exceeds _____ of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (e.g., through a transit arrangement).

Section 3. Compensation for Local Traffic and Information Access Traffic

Because of anticipated *de minimis* nature of the Local Traffic to be exchanged between the Parties, Level 3 and ILEC agree to exchange Local Traffic on a bill-and-keep basis, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Local Traffic. Level 3 and ILEC further agree to compensate one another on a bill-and-keep basis for the exchange of Information Access Traffic in accordance with the Order on Remand released by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Information Access Traffic.

○ Carriers agree to compensate one another using "Bill and Keep" for all local and information access traffic.

The Traffic Exchange Agreement

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between Level 3 Communications, L.P. ("Level 3"), ILEC, and Level 3, Communications, L.P. ("Level 3"). ILEC and Level 3 may collectively be referred to as "Parties," and each individually may be referred to as a "Party."

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers located within ILEC's incumbent serving area and Level 3's customers located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), International Access Traffic and Inland Area Service Traffic ("IAS") (collectively, "Traffic") without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a local telephone company or its compliance to certain sections, exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 224(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and most efficient means of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the facilities of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NAN code as listed in Exhibit A to this Agreement are routed for purposes of both customer billing and intercarrier compensation as a local or mandatory EAN call based upon the rate center to which each NAN code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Upon obtaining any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NANs in its voicemail and billing systems. Nothing in this Agreement shall be construed in limit or otherwise adversely affect in any manner either Party's right to employ, to accept and be assigned, and to utilize by assignment to customers, any NAN code of telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges in excess of the other Party's connection with the obligations set forth in this Agreement.

2.3 To the extent that both Parties are interconnected with a third party carrier until the total amount of traffic being exchanged between the Parties exceeds _____ of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the carrier of the other carrier (i.e., through a transit arrangement).

Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture the Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 ...the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement.

- The parties agree to work cooperatively to install and maintain a reliable interconnection architecture.
- The goal will be to minimize blocking and other network disruptions.
- Carriers agree to use an "implementation team" made up of representatives from Level (3) and the ILEC to plan the interconnection and business processes.

The Traffic Exchange Agreement

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between Level 3 Communications ("Level 3"), and Level 3 Communications, LLC ("Level 3", "Level 3" and Level 3 are collectively referred to as "Party") and each individually may be referred to as a "Party".

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers located within ILEC's nonmember serving area and Level 3's customers located both within and outside of ILEC's nonmember serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), International Access Traffic and nonmember Exchange Area Traffic ("EAT") together ("Traffic") without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an admission, judgment or admission by either Party with respect to any claim that it may have with respect to its status as a regulated common carrier or its obligations to certain regulatory filing items as may be provided under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act").

Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (d) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost efficient means of routing of calls between their respective customers and networks. The Parties may enter any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (a) completion of calls through the tandem switch of number carrier with whom both Parties are interconnected or (b) direct interconnection of the Parties' networks subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NNA routes as listed in Exhibit A to this Agreement are used for purposes of both customer billing and intercarrier compensation on a local or mandatory LSC call based upon the rate center to which such NNA route has been assigned in accordance with the Local Exchange Routing Table ("LERT"). Each Party may update Exhibit A at any time by giving notice to the other Party in writing. Each Party shall maintain any system or system of LERTs that it uses to route and bill traffic. Nothing in this Agreement shall be construed to limit or otherwise affect in any manner either Party's right to update, to review and be updated, and to utilize by assignment to customers, its NNA code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 In the event that both Parties are interconnected with a third party carrier, and the total amount of traffic being exchanged between the Parties exceeds a threshold amount of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the tandem switch of that other carrier (or through a transit arrangement).

Section 5. Billing

5.1 Each Party shall keep adequate records relating to Traffic usage and all other facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice....

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

- Agree to keep records for 12 months. Audits are allowed.
- Normal rules and regulations apply to the provisioning and recording of billing records.
- Back-billing is limited to 90 days.

The Traffic Exchange Agreement

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between _____ ("ILEC"), and Level 3 Communications LLC ("Level 3"). ILEC and Level 3 may collectively be referred to as "Parties," and each individually may be referred to as a "Party."

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customer premises located within ILEC's serviceable serving area, and Level 3's customers located both within and outside of ILEC's serviceable serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Evolved Area Server Traffic ("EAST") together. "Traffic," without derogation or delay, nothing in this Agreement shall be interpreted or construed as a waiver, not an acknowledgment or admission by either Party with respect to any claim that it may have with respect to its status as a rural telephone company or its entitlement to certain statutory protections as may be provided under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act").

Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 221(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves the purpose including but not limited to (i) completion of calls through the tandem switch of another carrier with whom both Parties are interconnected or (ii) direct interconnection of the Parties' networks subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NAN code as listed in Exhibit A to this Agreement are routed for purposes of both carriage, billing and intercarrier compensation on a local or mandatory EAS call based upon the rate center to which each NAN code has been assigned in accordance with the Local Exchange Routing Guide ("LERG"). Each Party may utilize Exhibit A or any other routing information in the carrier's hand in this Agreement. Notwithstanding any address in Exhibit A, each Party shall periodically review the ILECs and ensure that it has carried the other Party's calls on an end-to-end and billing system. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to comply, to request and be assigned, and to utilize its assignment to customers any NAN code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges or practices on the other Party in connection with the obligations set forth in this subsection.

2.3 In the event that both Parties are interconnected with a third party carrier, and the total amount of traffic being exchanged between the Parties exceeds _____ of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the tandem switch of that other carrier (i.e. through a transit arrangement).

Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

- The agreement will have an agreed upon initial term of two years.
- The agreement will automatically renew for successive one year periods absent a written notice 135 days prior to expiration.
- The agreement remains in effect while negotiations proceed.

Summary

- **Level(3)** seeks the following:
 - Expand into new markets quickly and efficiently with minimal impact on interconnected carriers
 - Execute a simple traffic exchange agreement
 - No attempt to collect reciprocal compensation or to impact rural exemptions
 - Lease facilities required for interconnection
 - Develop a good working relationship that results in a win-win situation for carriers and customers

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement (“Agreement”) is made effective on the date this Agreement has been executed by and between _____ (“ILEC”), and Level 3 Communications, LLC (“Level 3”). ILEC and Level 3 may collectively be referred to as “Parties,” and each individually may be referred to as a “Party.”

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC’s customers, located within ILEC’s incumbent serving area, and Level 3’s customers, located both within and outside of ILEC’s incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic (“Local Traffic”), Information Access Traffic, and mandatory Extended Area Service Traffic (“EAS”) (together, “Traffic”), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”).

Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties’ networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party’s NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide (“LERG”). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party’s NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party’s right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds _____ of traffic for three consecutive months (the “Threshold”), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (*i.e.*, through a transit arrangement).

2.4 At such time as the total amount of Traffic between the Parties exceeds the Threshold, or as may otherwise be mutually agreed to by the Parties, the Parties will begin to implement arrangements for direct interconnection of their respective networks. Such interconnection may be achieved by any technically feasible means, including but not limited to the use of either Party's own facilities or the leasing of facilities from a third party carrier. The Parties shall negotiate in good faith and in a prompt manner to establish a mutually agreeable Point of Interconnection ("POI") where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within ILEC's incumbent serving area or at ILEC's incumbent serving area boundary.

2.5 Should any dispute arise with respect to the establishment of the POI under Subsection 2.4, the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.

2.6 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

Section 3. Compensation for Local Traffic and Information Access Traffic

Because of anticipated *de minimis* nature of the Local Traffic to be exchanged between the Parties, Level 3 and ILEC agree to exchange Local Traffic on a bill-and-keep basis, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Local Traffic. Level 3 and ILEC further agree to compensate one another on a bill-and-keep basis for the exchange of Information Access Traffic in accordance with the Order on Remand released by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Information Access Traffic.

Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (*e.g.*, maintenance contact numbers, escalation contact information) to achieve reliability. Should direct interconnection be employed pursuant to Section 2, the Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 To optimize the exchange of traffic under this Agreement, the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management and overflow contingencies;
- b. the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the interconnections (including signaling);

- c. disaster recovery and escalation provisions;
- d. points of contact and escalation procedures for ordering, provisioning, billing, and maintenance;
- e. service ordering and provisioning procedures, including provision of the trunks and facilities; and
- f. other network planning components including testing and provisioning intervals.

Section 5. Billing

5.1 Each Party shall keep adequate records relating to Traffic usage and all other facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

Section 7. Limitation of Liability and Indemnification

7.1 Neither Party shall be liable to the other for any lost profits or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited with respect to its indemnification obligations under this Agreement.

7.2 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In the event said loss, cost, claim, liability, damage or expense to third parties is the result of the fault, in whole or in part, of both Parties, the Parties shall be entitled to indemnification or contribution to the extent permitted by applicable state law governing the apportionment, if any, of said loss, cost, claim, liability, damage or expense. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

7.3 The Indemnified Party shall (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense.

7.4 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

Section 8. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay; provided, however, that the affected Party shall make commercially reasonable efforts to restore service as soon as practicable. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations during the delay.

Section 9. Agency

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

Section 10. Nondisclosure of Proprietary Information

10.1 The Parties desire to protect certain Proprietary Information, as defined herein, should it become necessary to exchange Proprietary Information during the term of this Agreement. Proprietary Information shall include, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Act, and similar information. Furthermore, Proprietary Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; and (ii) information derived by the receiving Party from a disclosing Party's usage of the receiving Party's network. Proprietary Information is deemed proprietary to the disclosing Party and it shall be protected by the receiving Party in the same manner as the receiving Party would protect its own proprietary information. Proprietary Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

10.2 The receiving Party shall have no obligation to safeguard Proprietary Information (i) which was in the receiving Party's possession free of restriction prior to its receipt from disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by receiving Party,

or (iii) after it is independently developed by personnel of receiving Party to whom the disclosing Party's Proprietary Information had not been previously disclosed. The receiving Party may disclose Proprietary Information if required by law, a court, or governmental agency; provided, however, that the receiving Party shall provide as much written and other notice as possible (as considered in the context of time frames identified in the legal requirement) to the disclosing Party prior to disclosing any information to the governmental entity so that the disclosing Party an opportunity to consider the legal requirement.

Section 11. Notices

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:
Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Manager -- Finance/Network Cost
Contact Phone Number: (720) 888-2876

FOR ILEC:
Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:
Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Michelle Krezek, Director-Interconnection Services
Contact Phone Number: (720) 888-6330
Facsimile: (720) 888-5271

FOR ILEC:
Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:
Facsimile:

or to such other location as the receiving party may direct in writing.

Section 12. Dispute Resolution

Should a dispute arise between the Parties with respect to implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement,

either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 12. Upon receipt of this notice, representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute. If these initial negotiations should fail to resolve the dispute within thirty (30) calendar days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President level (or other position with authority to negotiate and settle on behalf of each Party). If these second-tier negotiations should fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its customers, the affected Party may seek immediate relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its obligations under this Agreement and shall not take any other action with respect to the disputed issue except as set forth in this Section 12. Furthermore, in the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner, and will not be withheld pending resolution of the disputed portion of any bill.

Section 13. Severability

If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which is invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

Section 14. Assignment

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any entity that the assigning Party controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party whether by consolidation, merger, sale or otherwise, or in connection with a financing transaction.

Section 15. Entire Agreement

This Agreement, including all Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. No modification or waiver of any provisions of this Agreement shall be effective unless in writing and signed by both parties.

Section 16. Multiple Counterparts

This Agreement may be executed in counterparts and such counterparts shall together constitute one and the same instrument.

Section 17. Default

If either Party defaults in the payment of any undisputed amount, or if either Party materially breaches any other material provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may move to terminate this Agreement or suspend the provision of any or all services hereunder by providing a second written notice to the defaulting Party and to the State Commission thirty (30) days prior to the intended date of suspension or termination. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period noted above, or the alleged default or violation is the subject of a good faith dispute, the other Party shall not terminate the Agreement or suspend service provided hereunder.

Section 18. Representations and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, **NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FACILITIES OR ARRANGEMENTS PROVIDED HEREUNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.**

Section 19. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

Section 20. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

Section 21. Headings

The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

Section 22. Change of Law

In the event of a change in applicable law (including, but not limited to, rulings by the FCC or the State Commission) that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action.

Section 23. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the state of _____, without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, each Party having been advised by counsel, the Parties hereto have caused this Agreement to be executed as of the date(s) set forth below.

LEVEL 3 COMMUNICATIONS, LLC

[ILEC]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

**NXX CODES TO BE RECOGNIZED BY EACH PARTY
AS LOCAL OR EAS FOR CALLING PURPOSES BASED UPON
ORIGINATING AND TERMINATING RATE CENTER**

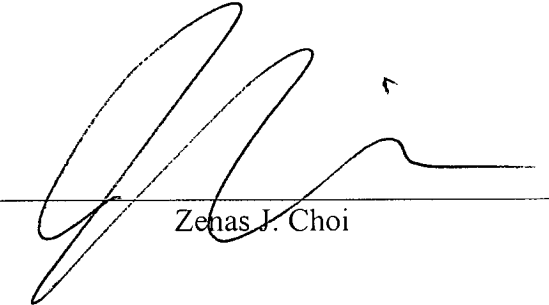
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via facsimile and via overnight delivery, prepaid, to the following individuals:

Tim Gates
Senior Vice President
QSI Consulting
15712 W. 72nd Circle
Arvada, CO 80007

Warren Hight
General Manager/CEO
SRT Communications Cooperative
3615 North Broadway
P.O. Box 2027
Minot, ND 58702

Azita Sparano
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, Maryland 20706



Zenas J. Choi

PU-2065-02-465

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Russell M Blau
 Sweller Berke Kemp Treisman LLP
 3000 K St NW Ste 300
 Washington DC 20007-5116

2. Article Number
 (Transfer from service label)

7001 1940 0005 3425 1910

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

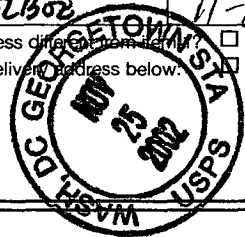
COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X Miller delore Agent Addressee

B. Received by (Printed Name)
 DM VENO ELBOZ

C. Date of Delivery
 11-25-02

D. Is delivery address different from item 1?
 If YES, enter delivery address below: Yes No



3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PU-2065-02-465

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Frank G. Laramusa
 Telecom Dispute Mediators Inc
 17721 Side Lawn Dr
 Ashton MD 20861

2. Article Number
 (Transfer from service label)

7001 1940 0005 3425 1934

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Frank G. Laramusa Agent Addressee

B. Received by (Printed Name)
 Frank G. Laramusa

C. Date of Delivery
 11-30-02

D. Is delivery address different from item 1?
 If YES, enter delivery address below: Yes No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PU-2065-02-465

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Michael R Romano
 Level 3 Communications LLC
 1025 Eldorado Blvd
 Broomfield CO 80021

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X James Kleist Agent Addressee

B. Received by (Printed Name)
 James Kleist

C. Date of Delivery
 11-25-02

D. Is delivery address different from item 1?
 If YES, enter delivery address below: Yes No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PU-2065-02-465

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

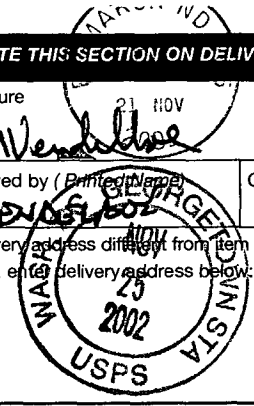
1. Article Addressed to:
 Jamar & Finn
 Swiller Berlin Jeff Friedman LLP
 3000 K St NW Ste 300
 Washington DC 20007-5116

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 Don Vendelboe

B. Received by (Printed Name) C. Date of Delivery
 DMV DINGEL 11-25-02

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type
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 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) | 7001 1940 0005 3425 1927

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Jennifer J Gates
 Q&S Consulting
 15712 W 92nd Circle
 Arvada Co 80007

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 J. Gates

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) | 7001 1940 0005 3426 5658

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 David J Yague
 Pringle & Herzig
 PO Box 1000
 Mount DIX 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 Angela Keller

B. Received by (Printed Name) C. Date of Delivery
 Angela Keller 22 NOV 2

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PU-2065-02-465

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Frank & Lamarcusa
 Telecom Dispute Solutions Inc
 17721 Green Lawn Dr
 Ashton Md 20861

2. Article Number
 (Transfer from service label)

7001 1940 0005 3425 1781

PS Form 3811, August 2001

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COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
[Signature]

B. Received by (Printed Name) C. Date of Delivery
 [Blank] 11-12-02

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PU-2065-02-465

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Russell M Blau
 Swidler Berlin Shuyfretman LLP
 3000 K St NW Ste 300
 Washington DC

2. Article Number
 (Transfer from service label)

7001 1940 0005 3426 5627

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
[Signature]

B. Received by (Printed Name) C. Date of Delivery
 DM VENDERBOE 11/12/02

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PU-2065-02-465

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Jamar E Sinn
 Swidler Berlin Shuyfretman LLP
 3000 K St NW Ste 300
 Washington DC 20007-5700

2. Article Number
 (Transfer from service label)

7001 1940 0005 3426 5627

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

COMPLETE THIS SECTION ON DELIVERY

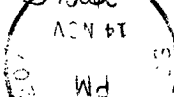
A. Signature Agent Addressee
[Signature]

B. Received by (Printed Name) C. Date of Delivery
 DM VENDERBOE 11/12/02

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes



PU-2065-02-465

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>James Kleist</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>James Kleist</i>	C. Date of Delivery <i>11 12 02</i>
1. Article Addressed to: <i>Michael R Romano Level 3 Communications LLC 1025 Eldorado Blvd Broomfield Co 80021</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)	7001 1940 0005 3425 1798	
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PU-2065-02-465

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>Angela Keller</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>Angela Keller</i>	C. Date of Delivery - 8 NOV 2002
1. Article Addressed to: <i>David J Urquie Phoenix Arizona PO Box 1000 Phoenix AZ 85001-1000</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)	7001 1940 0005 3426 5641	
PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035		

86 **PU-2065-02-465**

Pages: 0

Trade Secret material shredded

by Public Service Commission

06/17/2004

CC: Comm Legal PUD (3)



LAW OFFICES OF

PRINGLE & HERIGSTAD, P.C.

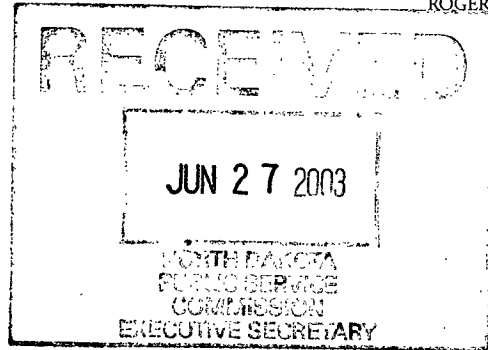
BREMER BANK BUILDING
20 SW 1ST STREET
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

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RETIRED
THOMAS A. WENTZ
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JAN M. SEBBY

DONALD A. NEGAARD
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CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG

ROGER O. HERIGSTAD
(1919-2003)



June 26, 2003

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

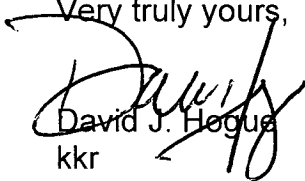
**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

On behalf of SRT Communications, Inc. ("SRT"), enclosed for filing are an original and seven (7) copies of SRT Communications, Inc.'s Response to Level 3 Communications, LLC's Petition for Reconsideration in the above-captioned matter.

If you have any questions, please don't hesitate to contact me.

Very truly yours,


David J. Hogue
kk

Enclosures

cc: Zenas Choi (w/enclosure)
Michael Romano (w/enclosure)
William Binek (w/enclosure)
Frank Lamancusa (w/enclosure)

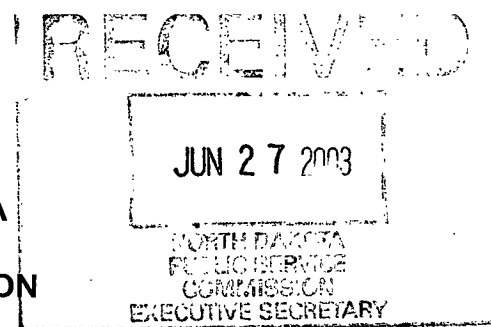
85 PU-2065-02-465

Pages: 1

Cover letter re SRT's Response to Petition
for Resconsideration
by SRT Communications, Inc. by David Hogue, Attorne

06/27/2003

CC: Comm Legal PUD (3)



**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Level 3 Communications, LLC

Case No. PU-2065-02-465

Interconnection Arbitration Application

**SRT COMMUNICATIONS, INC.'S RESPONSE TO
LEVEL 3 COMMUNICATIONS, LLC'S PETITION FOR RECONSIDERATION**

June 25, 2003

PRELIMINARY STATEMENT

This case's history is recorded in detail in the North Dakota Public Service Commission's ("Commission") Order dated May 30, 2003 ("Order"). To summarize:

Level 3 Communications, LLC ("Level 3") applied to the Commission to establish an interconnection agreement between Level 3 and SRT Communications, Inc. ("SRT"), under sections 251 and 252 of the Communications Act of 1934, as amended in 1996 ("the Act") and related provisions of the North Dakota Century Code ("NDCC"). The Commission appointed an arbitrator to hear the case and to recommend a decision to the Commission.

SRT moved to dismiss Level 3's petition for arbitration, asserting exemption from interconnection duties under the Act. Section 251(f) of the Act provides that the interconnection duties under section 251(c) do not apply to a rural telephone company until such company has received a bona fide request

for interconnection and the State Commission determines whether to terminate the exemption. SRT moved to dismiss Level 3's petition because SRT is a rural telephone company and because Level 3 did not make a bona fide request for an interconnection and Level 3 did not request nor had the Commission determined that SRT's exemption should be terminated. The motion to dismiss was denied and the case proceeded to a hearing.

The issues raised by SRT in its motion to dismiss were also addressed in the hearing and in the arbitrator's recommendations. Throughout the proceedings, Level 3 has asserted that its request for interconnection should be considered under section 251(a) of the Act, apart from other provisions of section 251 relied on by SRT, sections 251(c) and (f).

The arbitrator's recommendations adopted Level 3's position, that its request for interconnection ought to be considered under section 251(a) of the Act. The Arbitrator opined whether Level 3 made a bona fide request for interconnection under sections 251(c) and (f) was a "moot question for purposes of this arbitration." (Decisions and Recommendations of the Arbitrator, ¶ 48.)

In its May 30, 2003 Order, the Commission found that the interconnection requested by Level 3 was the kind of interconnection affected by section 251(c) and concluded that a bona fide request must be made by Level 3 under section 251(f) before SRT must provide interconnection. The Commission concluded that the arbitration process initiated by Level 3 does not meet the requirements of section 251. The Commission ordered dismissal of

Level 3's application, without addressing other issues, and without prejudice to Level 3's rights to seek an interconnection with SRT under bona fide procedures addressing the rural company exemption. Order, Findings No. 3, No. 8, No. 10, No. 13, No. 14 and No. 15; Conclusion No. 7.

Level 3 has filed a "Petition for Reconsideration" urging the Commission to reverse its order and instead approve the Arbitrator's Recommended Decision.

ARGUMENT

In this Response, SRT addresses the arguments made by Level 3 in the order of their appearance in the Petition for Reconsideration.

I. STANDARD OF REVIEW.

Though designated a petition for reconsideration under 69-02-06-02 of the North Dakota Administrative Code ("NDAC"), Level 3 presents its arguments as if it were appealing the Commission's Order to a reviewing court under NDCC 28-32-46. In effect, Level 3 has presented the Commission and SRT with a preview of a prospective appeal of the Commission's Order that would follow the Commission's denial of the Petition for Reconsideration.

Level 3 correctly states the essence of NDCC 28-32-46, a reviewing court must affirm the Commission's decision unless, among other things, "(a) the order is not in accordance with the law, (b) the findings of fact made by the agency are not supported by a preponderance of the evidence, (c) the conclusions of law and order of the agency are not supported by its findings of fact, (d) the findings of fact made by the agency do not sufficiently address the

evidence presented to the agency by the appellant, or (e) the conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge." Petition for Reconsideration, p 2.

SRT responds to each of these in the order presented, (a) through (e), to demonstrate to the Commission why its Order will be upheld if appealed as indicated by Level 3.

In addressing the Petition for Reconsideration, the Commission's decision that Level 3 seeks to be reversed ought to be clearly identified: the Commission's decision and order was to dismiss Level 3's interconnection arbitration application, without prejudice. The Commission did not decide that Level 3 was not entitled to an interconnection. No findings or conclusions were made on that issue and related issues because the Commission concluded as a matter of law that the arbitration process used by Level 3 does not meet the requirements of section 251 of the Act. The Commission dismissed Level 3's interconnection arbitration application, without prejudice, preserving Level 3's rights to seek an interconnection under processes that do meet the requirements of section 251 of the Act.

The Commission's dismissal without addressing other issues conforms to generally accepted principles of procedure in legal forums. If the procedure used does not properly invoke the forum's jurisdiction, then the merits ought not be addressed.

(a) **THE ORDER OF DISMISSAL WAS IN ACCORDANCE WITH THE LAW.**

The Commission's Order includes analysis of the applicable federal and state law and demonstrated the Commission's study of both parties' voluminous briefs, all leading the Commission to its conclusion that Level 3's invocation of the arbitration process did not meet the requirements of section 251 of the Act. Order, Conclusion of Law No. 7.

Level 3's Petition for Reconsideration (Part II, pp. 3-6) repeats the arguments it made before the Commission issued its Order on May 30, 2003. No new arguments are presented. Though Level 3 may ardently believe and bluntly declare its contrary opinion that "Nothing in the Telecom Act supports the view adopted by the commission...", (Petition, p. 3), at the end of the day, the Commission must and did make a decision in accordance with the law as the Commission interprets the law after considering the parties' arguments. There is no reason for the Commission to reverse its unanimous interpretation of the requirements of section 251 of the Act.

(b) **THE FINDINGS OF FACT ARE SUPPORTED BY THE EVIDENCE.**

The Commission's decision and order to dismiss Level 3's interconnection arbitration application was supported by facts established not merely by a preponderance of evidence, but uncontroverted facts not disputed by Level 3 in its Petition for Reconsideration, the crucial facts found by the Commission: "Level 3 chose not to file a bona fide request when it requested

interconnection from SRT in March of 2002.” Order, Finding No. 13. No other findings were made regarding other issues because none were necessary to support the order of dismissal.

(c) **THE COMMISSION’S CONCLUSIONS OF LAW AND ORDER ARE SUPPORTED BY ITS FINDINGS OF FACT.**

The plain words of the Commission’s conclusions of law, and order of dismissal -- most particularly Conclusion No. 6 and No. 7 -- are directly linked to and supported by its uncontroverted and clearly articulated Finding of Fact No.13: “Level 3 chose not to file a bona fide request when it requested interconnection from SRT in March of 2002.”

(d) **THE FINDINGS OF FACT MADE BY THE COMMISSION SUFFICIENTLY ADDRESS THE EVIDENCE PRESENTED BY LEVEL 3.**

The comments made under points (b) and (c) above are equally apropos under this component of the standard of review. The sole finding supporting the order of dismissal -- Level 3’s choice not to file a bona fide request when it requested interconnection from SRT -- sufficiently and completely addresses the uncontroverted evidence bearing on Finding of Fact No. 13.

III. **THE COMMISSION’S ORDER DOES NOT UNLAWFULLY DISCRIMINATE AGAINST LEVEL 3.**

Despite the Commission’s clear statement that its order of dismissal rendered unnecessary findings or conclusions on other issues, Level 3 persists in arguments about its views of the facts and law unrelated to the grounds upon which its application was dismissed. Level 3 waxes at length about “discrimination” as it compares the interconnection it seeks with the

interconnections between SRT and CMRS carriers (Petition, pp. 6-8), suggesting “There is no basis in the record for the Commission to conclude that Level 3 is not entitled to the same terms of interconnection as those offered by SRT to CMRS carriers.” These fall back arguments are not only out of place in the absence of any findings or conclusions by the Commission affecting these issues, but Level 3’s arguments about discrimination were rejected by the Arbitrator, based on the record. (Decisions and Recommendations of the Arbitrator, ¶¶ 38-41.)

IV and V. THE POLICY OBJECTIVES IDENTIFIED BY THE COMMISSION SUFFICIENTLY EXPLAIN THE REJECTION OF THE ARBITRATOR’S RECOMMENDATIONS.

Somewhere between its recital of the components of the standard of review on page 2 of its Petition (“a reviewing court must affirm”) and the argument on pages 11 and 12 (“a reviewing court shall reverse”), Level 3 has turned on its head (to borrow a phrase from Level 3’s Petition) North Dakota’s law governing courts’ review of agency decisions.

Nothing in the words of the North Dakota Administrative Agencies Practice Act, and nothing in any opinion or decision of any North Dakota court appeal from any agency decision supports the notion, promoted on pages 11 and 12 of Level 3’s Petition, that Section 28-32-46 interposes a hearing officer’s or administrative law judge’s recommendation to limit the Commission’s jurisdiction and authority to make final decisions. Quite the contrary, the Commission should anticipate that a court reviewing the Order will give appreciable deference to the Commission’s interpretation of the Act. See

Consolidated Telephone Coop. V. Western Wireless Corp., 2001 ND 209, 637 N.W. 2d 699, 702 and Cass County Elec. Coop. Inc. v. Northern States Power Co., 518 N.W.2d 216, 220 (N.D. 1994).

Assuming but not conceding that an “arbitrator” is to be considered as a “hearing examiner” or “administrative law judge,” and acknowledging Level 3’s understandable preference that the Commission would have adopted the arbitrator’s opinion, and observing that Level 3 does not sufficiently explain how, in its view, the Commission failed to explain its rationale for not adopting the arbitrator’s contrary recommendation, the Commission should expect a reviewing court will conclude the Order does meet the test of NDCC 28-32-46 (8).

The Order succinctly and eloquently explains the Commission’s rationale for rejecting the Arbitrator’s recommendation and opinion that whether Level 3 submitted a bona fide request for interconnection under sections 251 (c) and (f) was a “moot question for purposes of this arbitration.” (Decisions and Recommendations of the Arbitrator, ¶ 48.) The Commission explained it rejected the Arbitrator’s recommendations for two reasons: Both Level 3’s arguments and the Arbitrator’s recommendations ignored the Commission’s previous order that Level 3’s certification was without prejudice to the rural exemption provided in section 251(f) of the Act, and the interpretation of sections 251(a) and 251(c) promoted by Level 3 and recommended for adoption by the Arbitrator “would seriously undermine the protections afforded rural carriers by Congress in section 251(f).” Order, Findings No. 9 and No. 10.

Thus, it is clear that Commission's objectives are not "to protect SRT from competition," as cynically and crudely suggested by Level 3 at page 9 of its Petition. The Commission's decision and Order preserves not only the protections afforded rural carriers such as SRT under section 251(f), the decision and Order of dismissal without prejudice also preserves the rights of carriers such as Level 3 under section 251(f) to make bona fide requests for interconnections, to request the Commission to terminate the rural exemption and to establish interconnections under processes that meet the requirements of the entire section 251. And the Order preserves the role assigned by Congress to States' Commissions to determine whether an interconnection exemption shall be terminated or maintained. Act Section 251(f)(1)(A) and (B). The Commission's explanation of its rationale for rejecting the arbitrator's recommendation is sufficient not only in the sense that the thought processes of the reasoning minds that produced the rationale are clearly articulated, the Commission's rejection of the arbitrator's recommendation is also sufficient for the reason that the Commission's decision is in accordance with the law.

SUMMARY

Level 3's petition identifies Finding No. 10 as "The essence of the Order." (Petition, p. 3) Level 3 argues that the Commission "misreads" section 251 of the Act (Petition, p. 2). Level 3 opines, "Nothing could be further than the truth" than the essence of the Commission's Order. (Petition, p. 8) The meaning of section 251 of the Act may not be clear to Level 3, but it is clear to the Commission. Order, Finding No. 10.

If Level 3 appeals for a court to review the Commission's Order under NDCC 28-32-46, the Order will be affirmed because the crucial fact found by the Commission (Finding No. 13) -- that Level 3 chose not to file a bona fide request when it requested interconnection from SRT in March of 2002 -- is supported by the evidence presented by Level 3 and this finding supports the Conclusion of Law (No. 7) that "The arbitration process used in this proceeding does not meet the requirements of section 251 and therefore this proceeding should be dismissed."

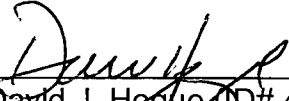
In the plain words of NDCC 28-32-46, the Order is in accordance with the law, all as sufficiently explained by the Commission's Order. The appropriate response to the Petition is to declare the issues have been fully considered, and on reconsideration, the May 30, 2003 Order is not reversed, it is confirmed as in accordance with the evidence and with the law.

CONCLUSION

For all these reasons, and for all the reasons argued by SRT in its previous briefs to the Commission in the Case, Level 3's Petition for Reconsideration should be denied, and the Commission's May 30, 2003 Order should be confirmed.

Dated this 26 day of June, 2003.

PRINGLE & HERIGSTAD, P.C.

By  _____
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CERTIFICATE OF SERVICE

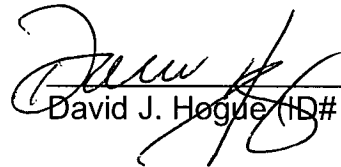
A true and correct copy of the foregoing **SRT COMMUNICATIONS, INC.'S RESPONSE TO LEVEL 3 COMMUNICATIONS, LLC'S PETITION FOR RECONSIDERATION** was, on the 26 day of June, 2003, mailed to:

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June 16, 2003



VIA OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480

Re: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications Cooperative - - Case PU-2065-02-465

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") are an original and ten (10) copies of Level 3's Petition for Reconsideration of the Order in the above-referenced proceeding.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael W. Fleming".

Russell M. Blau
Tamar E. Finn
Michael W. Fleming

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Service List

83

PU-2065-02-465

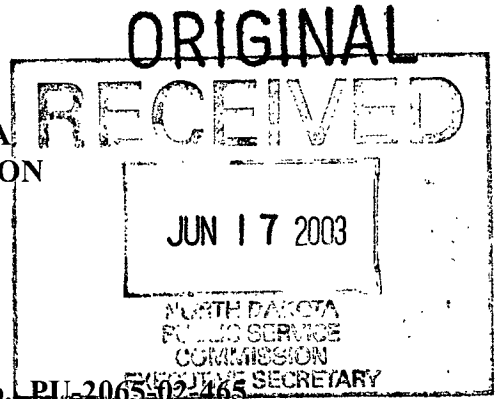
Pages 1

Cover letter re Petition for
Reconsideration
by Level 3 Communications, LLC

06/17/2003

CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

Case No. PU-2065-02-465

PETITION FOR RECONSIDERATION

Pursuant to N.D. Admin Code § 69-02-06-02, Level 3 Communications, LLC (“Level 3”) respectfully submits this Petition for Reconsideration of the Commission’s Order dated May 30, 2003 dismissing Level 3’s interconnection arbitration application (“Order”).

The Commission erred as a matter of law in the Order because its reading of sections 251(a) and 251(c) of the Communications Act of 1934 (the “Communications Act”), as amended by the Telecommunications Act of 1996 (the “Telecom Act”), is not supported by the plain text of the Act. The Commission erred in its interpretation of the Telecom Act to require all interconnection between a competitive local exchange carrier (“CLEC”) and an incumbent local exchange carrier (“ILEC”) to adhere to the requirements of section 251(c) of the Telecom Act. The Commission’s reading of those sections also violates section 202 of the Communications Act and section 49-21-07 of the North Dakota Century Code by discriminating against Level 3 by permitting SRT Communications, Inc. (“SRT”) to deny Level 3 the same terms and conditions of interconnection that it offers to other carriers that provide telephone exchange service or exchange access. In addition, the policy objectives cited in support of the Commission’s

decision have no basis in the facts of this case. Finally, the Order fails to satisfy the applicable standard of review because it did not sufficiently explain why it was rejecting the recommendation of the Arbitrator in this proceeding.

I. STANDARD OF REVIEW

On appeal of a decision of the Commission, a reviewing court is governed by the Administrative Agencies Practice Act, N.D.C.C. ch 28-32. *Coteau Properties Co. v. Oster*, 606 N.W.2d 876, 878, 2000 ND 23 (2000). Under the Administrative Agencies Practice Act, a reviewing court must affirm the Commission's decision unless, among other things, (a) the order is not in accordance with the law, (b) the findings of fact made by the agency are not supported by a preponderance of the evidence, (c) the conclusions of law and order of the agency are not supported by its findings of fact, (d) the findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant, or (e) the conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge. *Consolidated Telephone Coop. v. Western Wireless Corp.*, 637 N.W.2d 699, 702, 2001 ND 209 (2001), *citing* N.D.C.C. § 28-32-46.

Level 3 submits that the Order fails to meet this standard of review because it is not in accordance with state or federal telecommunications law. As discussed below, the Commission misreads Sections 251(a) and 251(c) of the Telecom Act. Further, the Order discriminates against Level 3 in violation of Section 202 of the Communications Act and Section 49-21-07 of the North Dakota Century Code by permitting SRT to deny interconnection to Level 3 on the same terms and conditions offered to other carriers.

Further, the Commission's findings of fact are not supported by the evidence, and the Commission's conclusions are not supported by the findings of fact. In addition, the Commission's findings of fact do not sufficiently address the evidence presented by Level 3. As discussed below, the Commission ignored evidence in the record regarding SRT's current interconnection arrangements with CMRS carriers in imposing a discriminatory section 251(c) interconnection requirement on Level 3. Finally, the Order does not address the Decisions and Recommendations of the Arbitrator in this proceeding, nor does the Commission explain why it does not adopt the contrary recommendations by the Arbitrator. For all of these reasons, the Order fails to meet the applicable standard of review. The Commission should vacate the Order and adopt the Decisions and Recommendations of the Arbitrator instead.

II. THE COMMISSION ERRED BY CONCLUDING THAT ALL INTERCONNECTION ARRANGEMENTS FOR TELEPHONE EXCHANGE SERVICE OR EXCHANGE ACCESS MUST FOLLOW THE REQUIREMENTS OF SECTION 251(C)

The essence of the Order is that Level 3 is not "allowed to choose which parts of [the Telecom Act] they wish to file under, to the exclusion of those sections they would rather ignore." Order ¶ 10. Accordingly, in the view of the Commission, "When interconnecting with an ILEC, such as SRT, the transmission and routing of telephone exchange service and exchange access is clearly stated under 251(c)(2)(A)." *Id.* Thus, in the Commission's view, Level 3 is not permitted to interconnect with SRT under section 251(a) of the Telecom Act.

Level 3 submits that nothing in the Telecom Act supports the view adopted by the Commission, and in fact, a careful review of the Telecom Act reveals that local

interconnection can occur under Section 251(a). Nothing in section 251(c) states that it provides the *only* means of interconnection between an ILEC and a CLEC for the provision of telephone exchange service or exchange access, as the Commission holds. To the contrary, as the FCC found, section 251(c) obligations are in *addition to* – and not exclusive of – section 251(a) and (b) obligations.¹ Indeed, Section 252(a)(1) makes clear that the request for interconnection need only be “pursuant to Section 251” – *not Section 251(c)* – and Section 252(a)(1) also envisions that the agreement could be negotiated “without regard to the standards set forth in subsections (b) and (c) of Section 251.” If the Telecom Act truly required that interconnection must occur under Section 251(c) as the Commission suggests, Section 252(a)(1) would make no sense – how could one request interconnection under Section 251 and how could there be an agreement without reference to Section 251(c) if interconnection agreements can *only* be entered into pursuant to Section 251(c)?

While Section 251(c) refers to the duty of each incumbent local exchange carrier to provide interconnection for the transmission and routing of telephone exchange service and exchange access, the duty described is very specific and far more detailed than the simple interconnection of two networks. Section 251(c) provides significant rights to the carrier that seeks interconnection with the ILEC, such as (1) the ability to designate where the networks shall be interconnected, (2) the right to receive the same quality of service that the ILEC provides to itself or to a subsidiary or an affiliate, and (3) on rates subject to a pricing methodology based upon a hypothetical “most efficient network” that

¹ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996), *vacated in part, Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999) (“Local Competition Order”) at ¶ 997.

may have no correlation to the ILEC's actual, historical, or embedded costs. Nothing in Section 251(c) requires a CLEC to demand interconnection on these terms. If a CLEC chooses not to invoke its additional rights under Section 251(c), that does not mean it loses its rights to interconnection under Section 251(a). In essence, the Commission has turned the structure of the Telecom Act on its head and has imposed mandatory interconnection obligations *on Level 3* rather than on SRT. The Telecom Act simply does not support such a result.

Further, nothing in Section 251(a) excludes its application to telephone exchange service or exchange access. Section 251(a) states, "General Duty of Telecommunications Carriers.—Each telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers[.]" It is not possible to read an exclusion into this language when it refers to the "general duty" of all telecommunications carriers.

Finally, the Commission must consider the practical implications of ruling in the manner it has on the exchange of traffic between carriers. Consider, for example, a case in which Qwest Corporation shares a mandatory local/EAS calling area with an incumbent such as SRT and the two carriers must interconnect in order to provide local exchange or exchange access services to their customers. In that case, under the Commission's reasoning, the two parties would need to interconnect under Section 251(c) and Qwest would be required to challenge SRT's rural exemption. The same would hold true in the case of a CLEC or a wireless provider. The Commission's finding that all interconnection between carriers must occur under Section 251(c) means that

every time a rural carrier interconnects with any other provider, that rural carrier will by definition be waiving its rights to any protections afforded by Section 251(f).

III. THE ORDER DISCRIMINATES AGAINST LEVEL 3 IN VIOLATION OF FEDERAL AND STATE LAW

In denying Level 3's request for interconnection with SRT under Section 251(a) of the Telecom Act, the Commission states that interconnection with an ILEC to provide telephone exchange service or exchange access can occur solely under the auspices of Section 251(c). Order ¶ 10. Yet this conclusion is contradicted by fact because SRT is already interconnected with carriers that provide telephone exchange service or exchange access,² and those carriers did not follow the requirements of Section 251(c) nor petition to remove SRT's rural exemption under Section 251(f). As a result, the Order discriminates against Level 3 by permitting SRT to deny interconnection on the same terms as SRT provides to other carriers that provide telephone exchange service or exchange access.

The record is clear that "SRT has negotiated interconnection arrangements and entered into interconnection agreements with various CMRS carriers under Section 251(a) without asserting or waiving its rural exemption. (Tr. 26:22-27:7, Hunt at 7:18-20)." Level 3 Post-Hearing Brief at 29. Further, "there is precedent in North Dakota for a competitive carrier seeking interconnection with SRT under Section 251(a) rather than Section 251(c), without making a *bona fide* request under Section 251(f). In June 2002, WWC Holding Co. Inc. ("Western Wireless") filed a Petition for Arbitration with SRT and other rural LECs, seeking interconnection solely under Section 251(a) and

Section 251(b). (Hunt at 37:21-23) Western Wireless did not seek interconnection under Section 251(c), and SRT did not allege that Western Wireless was seeking interconnection under 251(c) in violation of SRT's rural carrier exemption. (Hunt at 37:23-38:3) The parties have resolved their dispute and Western Wireless has withdrawn its Petition." *Id.* at 55. In short, although SRT and Western Wireless are interconnected for the exchange of local exchange traffic, their interconnection was accomplished without invoking section 251(c) and without challenging SRT's rural exemption under section 251(f).

Nevertheless, the Order would require Level 3 to interconnect with SRT under section 251(c) and to lift SRT's rural carrier exemption, even though none of the CMRS carriers with which SRT is interconnected were required to follow the same process. Thus, the Order is inherently discriminatory in violation of federal and state law.

Both Section 202 of the Communications Act and Section 49-21-07 of the North Dakota Century Code prohibit SRT from discriminating against Level 3 in the provision of communications services. As Level 3 explained, the physical interconnection arrangements that Level 3 is seeking to establish with SRT are substantially the same—if not identical—to the physical interconnection arrangements that SRT has already established with CMRS carriers. Level 3 Post-Hearing Brief at 19.³ SRT cannot

² See *Local Competition Order* at ¶ 1015 (finding that CMRS carriers provide local exchange service and are entitled to interconnection with ILECs under section 251(c)).

³ As Level 3 stated in its Post-Hearing Brief, "Level 3 proposes to interconnect directly at SRT's Minot switch – i.e., Level 3 seeks to establish a point of interconnection between SRT's and Level 3's networks at SRT's Minot host switch. (DuCloo at 7:6-9). SRT has established direct interconnection arrangements with CMRS carriers that also identify SRT's Minot switch as the POI. (DuCloo at 7:9-12) Level 3 would also like to set up SS7 trunks to exchange signaling information with SRT, just like SRT has in place with the CMRS carriers. (DuCloo at 8:17-19; Tr. 233:22-234:2) Also, like the CMRS carriers, Level 3 proposes to purchase DS1 transport from SRT from the POI at SRT's switch, which combined with Qwest provided transport, would be used to carry SRT's traffic back to Level 3's network location. (DuCloo at 8:19-22). [Footnote: According to Section 4.1 of the SRT/SRT Wireless interconnection agreement, SRT Wireless also purchases transport from SRT back to its network location in Bismarck.

interconnect with CMRS carriers, and also deny the same type of interconnection with Level 3, without violating state and federal law.

In addition, SRT utterly failed to demonstrate that the service arrangements in question are not “like telecommunications service[s]” warranting exemption from the non-discrimination requirements of state and federal law. Level 3 Post-Hearing Brief at 29. SRT cited no authority for its position that CMRS carriers and Level 3 should be treated differently. *Id.* There is no basis in the record for the Commission to conclude that Level 3 is not entitled to the same terms of interconnection as those offered by SRT to CMRS carriers.

IV. THE POLICY OBJECTIVE IDENTIFIED BY THE COMMISSION IS GROUNDLESS IN THIS CONTEXT

The Order states that adopting Level 3’s approach, which had been accepted by the Arbitrator, “would seriously undermine the protections afforded rural carriers by Congress in section 251(f).” Order ¶ 10. Nothing could be further from the truth. As shown above, by requiring all LECs to interconnect with ILECs under section 251(c) for the exchange of local exchange and exchange access traffic, this could have the perverse consequence of making it *more difficult* for the rural carrier to protect its rural exemption.

(Exhibit WPH-4-C-6)] As Mr. DuCloo explained at the hearing, this appears to be similar to the type of interconnection that Level 3 seeks. [Footnote: There is, however, at least one way to distinguish the interconnection requested by Level 3 and the interconnection provided to the CMRS carriers. SRT Wireless is physically collocated at SRT’s Minot switch. (Tr. 217:17-20) Level 3 does not seek to impose collocation obligations on SRT, or any other obligation set forth under Section 251(c) for that matter. (DuCloo at 9:6-11; Hunt at 38:10-12; Exhibit WPH-3)] (Tr. 70:9-10) For SRT to provide this type of interconnection to CMRS carriers, and to execute interconnection agreements with CMRS carriers, but not Level 3, is per se discriminatory. [Footnote: Level 3 is not seeking to dictate the conditions where interconnection would occur, and does not seek interconnection “at any technically feasible point” as might be required under Section 251(c). (cf. Meredith at 14:15-19). However, to the extent SRT has offered interconnection arrangements similar to those Level 3 seeks to other requesting carriers, Level 3 believes it would be discriminatory not to allow Level 3 to interconnect under similar terms and conditions.]

In the end, the rural carrier's customers will lose if all rural interconnection must take place under Section 251(c), because their provider's fear of waiving the rural exemption means customers will be left unable to place or receive local calls with respect to customers served by other providers. In fact, it is clear that the Commission's holding in this case is intended to protect SRT from competition, rather than preserving any specific protections afforded by Section 251(f). Indeed, if anything, the Commission's holding *encourages* competitors to undermine the protections of Section 251(f) by challenging the rural exemption, rather than seeking to interconnect under Section 251(a) without disrupting the rural exemption.

The rural carrier exemption is not an absolute shield from competition. It only exempts rural carriers from the requirements of Section 251(c), which include providing unbundled network elements at forward-looking economic cost and collocation. It does not prohibit carriers from competing with rural carriers on grounds that do not implicate Section 251(c). Level 3 does not seek to impose any of the obligations of Section 251(c) on SRT, and nothing in the proposed terms and conditions would in any way "undermine the protections afforded in section 251(f)." Thus, there is no basis whatsoever for a finding that the proposed interconnection would undermine any of the rural protections – unless the rural protections of Section 251(f) are somehow viewed, despite the plain language of the statute, as including absolute protection from competition.

Second, Level 3 is seeking interconnection with SRT solely to convert an existing retail relationship with SRT into a wholesale arrangement in which Level 3 will provide service to its own customers as a carrier. It is quite possible that SRT will not lose *any* customers to Level 3. The arrangement that SRT currently provides to Level 3 on a retail

basis will not even be lost; it will merely be converted to a wholesale arrangement, substantially the same as the wholesale arrangement that SRT now has with several CMRS carriers. In fact, as Level 3 pointed out previously, Western Wireless is certified as an Eligible Telecommunications Carrier (“ETC”) in SRT’s territory and thus is eligible to provide local service in direct competition with SRT while receiving universal service support to do so. (Hunt at 38:18-21) With ETC status, Western Wireless represents an actual threat to take customers away from SRT’s embedded basis of dial tone business and residential customers. Level 3’s planned market entry in SRT’s incumbent serving area is much less threatening to SRT because it would be limited to ISPs under the contract currently being arbitrated. (Hunt at 39:4-10) *See* Level 3 Post-Hearing Brief at 57.

Moreover, as Level 3 also argued previously, the type of competition anticipated by Level 3 would have no impact on SRT’s ability to provide universal service, which the rural exemption was intended to address. (Hunt at 39:4-6) Level 3 would serve only ISPs, and there are only two ISPs in the SRT local calling area at this time. (Hunt at 39:8-10) Level 3 has agreed to limit the terms of its interconnection agreement to serve only ISPs. To the extent Level 3 is competing with SRT at all for customers already in Minot, there are only two to choose from, and the SRT ISP affiliate is an unlikely candidate to switch to Level 3. The ability of Level 3 to take customers away from SRT is speculative at best. Level 3 intends to provide service to the ISPs it already serves in North Dakota, and to other ISPs that do not already have a presence in the SRT calling area. SRT will certainly experience competition in the provision of its retail services, but

it will be to its ISP affiliate's *unregulated retail information services*, which have no entitlement to protection from competition. *See* Level 3 Post-Hearing Brief at 57-58.

Third, Level 3 has clearly stated that "Level 3 proposes to limit the scope of the Parties' interconnection agreement to the exchange of ISP-bound traffic, and will seek to reopen negotiations with SRT once it plans to begin offering additional services in North Dakota." Level 3 Post-Hearing Brief at 3. Thus, Level 3 is willing to accept limitations on the types of service that it is providing in the SRT service territory, provided that its proposed terms of interconnection are approved.

It is clear that the type of interconnection with SRT proposed by Level 3 does not undermine SRT's rural carrier exemption. Level 3's proposed interconnection agreement language recognizes explicitly that SRT retains the ability to deny terms of interconnection under section 251(c) until the Commission decides to lift the protection provided by section 251(f). The Commission should approve the terms of interconnection proposed by Level 3 and accepted by the Arbitrator.

V. THE COMMISSION DID NOT DISTINGUISH THE ARBITRATOR'S RECOMMENDED DECISION

Under the North Dakota Administrative Agencies Practice Act, a reviewing court shall reverse an agency decision if the agency does not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge. *Consolidated Telephone Coop. v. Western Wireless Corp.*, 637 N.W.2d 699, 702, *citing* N.D.C.C. § 28-32-46. In this case, the duly appointed Arbitrator issued his Decisions and Recommendations on March 3, 2003, granting in large part the relief requested by Level 3. With respect to SRT's argument that Level 3 is

not entitled to interconnection with SRT under section 251(a) of the Telecom Act, the Arbitrator ruled, “Level 3 has sought interconnection from SRT pursuant to section 251(a), therefore, none of the obligations of section 251(c) nor any applicable exemptions are triggered by such a request. Neither the Act, rules promulgated thereunder, nor any subsequent determinations have concluded that the exemptions afforded rural telephone companies under section 251(f)(1) to the requirements of section 251(c) apply to requests for interconnection under section 251(a).” Decisions and Recommendations at 12. Further, in response to SRT’s assertion that Level 3 is actually requesting interconnection under section 251(c), the Arbitrator ruled, “Such an exercise in speculation is not useful in deciding the instant issue. Level 3 has not requested interconnection pursuant to section 251(c). The consequences of that action are borne by Level 3 as any rights or obligations attached to section 251(c) are not available to Level 3. The analysis of this question lies with what type of interconnection was actually requested by Level 3.” *Id.*

The Order is squarely contrary to this recommendation by the Arbitrator in this proceeding. The Commission erred by failing to sufficiently explain its rationale for not adopting the Arbitrator’s recommendation. Accordingly, the Order fails to meet the standard of review.

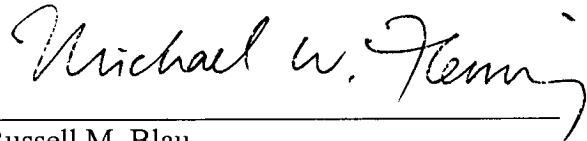
VI. CONCLUSION

The Commission erred as a matter of law by ruling that all interconnection between an ILEC and a CLEC for the provision of telephone exchange service or exchange access must be provided pursuant to section 251(c) of the Telecom Act. Nothing in the Act supports such a reading. Further, the primary result of the Commission’s decision is to permit SRT to discriminate against Level 3 in the provision

of interconnection arrangements in direct violation of state and federal law. Finally, the policy objectives identified by the Commission to support its ruling have no basis in the facts of this case. SRT's rural carrier exemption would not be undermined by permitting interconnection under the terms proposed by Level 3. Accordingly, the Commission should reverse the Order, and instead approve the Arbitrator's Recommended Decision and the conforming interconnection agreement proposed by Level 3.

Respectfully submitted,

Level 3 Communications, LLC



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Its Attorneys

Dated: June 16, 2003

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2003, a true and correct copy of the foregoing was sent via overnight delivery to the following individuals:

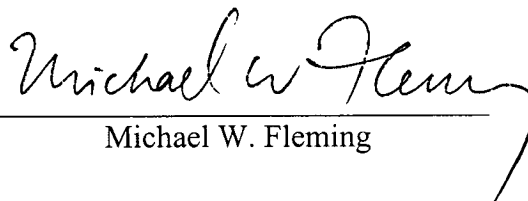
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Michael W. Fleming

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **2nd day of June, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

Russell M Blau
Swidler Berlin Shereff Friedman LLP
3000 K St NW Ste 300
Washington D C 20007-5116
Cert. No. 7002 2030 0003 7647 8399

Michael W Fleming
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Michael R Romano
Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021
Cert. No. 7002 2030 0003 7647 8443

Sharon Helbling further deposes and says that on the **2nd day of June, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

81 **PU-2065-02-465**

Pages: 2

Affidavit of Service

by Public Service Commission

05/30/2003

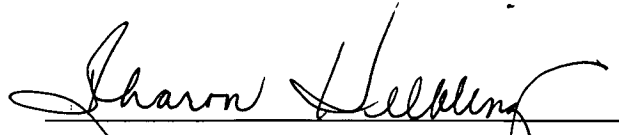
CC: Comm Legal PUD (3)


Warren L Hight
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

Azita Sparano
John Staurulakis Inc
6315 Seabrook Rd
Seabrook MD 20706

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **2nd day of June, 2003**.





Notary Public

SEAL

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

MOTION

APPROVED

DATE: 5-30-03
KMF

May 30, 2003

**Level 3 Communications, LLC
Interconnection Arbitration
Application**

Case No. PU-2065-02-465

I move the Commission adopt the Order dismissing without prejudice the Level 3 Communications, LLC's interconnection arbitration application for failure to file a bona fide request for interconnection pursuant to section 251 of the Telecommunications Act of 1934 as amended in 1996, Commission Case No. PU-2065-02-465.

PJF/sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

ORDER

May 30, 2003

Appearances

Frank G. Lamancusa, Telecom Dispute Solutions, Inc., Ashton, Maryland,
appearing as Arbitrator.

Michael W. Fleming, Attorney at Law, Swidler Berlin Shereff Friedman, LLP,
3000 K Street N.W., Suite 300, Washington, D.C. 20007-5116, **appearing for Level 3**
Communications, LLC.

David J. Hogue, Attorney at Law, Pringle & Herigstad, 20 First Street S.W.,
Suite 201, P.O. Box 1000, Minot, North Dakota 58702-1000, **appearing for SRT**
Communications, Inc.

William W. Binek, Special Assistant Attorney General, Public Service
Commission, State Capitol, Bismarck, ND 58505-0480, **appearing for the Public**
Service Commission.

Patrick Fahn and Jerry Lein, Public Service Commission, State Capitol,
Bismarck, ND 58505-0480, **appearing as Technical Assistant to the Arbitrator.**

Preliminary Statement

On August 30, 2002, Level 3 Communications, LLC (Level 3) filed a Petition for Arbitration with the Public Service Commission (Commission), under 47 U.S.C. § 252(b) and N.D. Admin. Code Chapter 69-02-10, to establish an interconnection agreement between Level 3 and SRT Communications Cooperative a/k/a SRT Communications, Inc. (SRT) pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (Act). Level 3 requested, under 47 U.S.C. § 251(a), interconnection with SRT to

provide a telecommunications service that, in turn, supports the services of Internet Service Providers (ISPs).

On September 4, 2002, a Notice of Appearance was filed by David J. Hogue, Attorney for SRT Communications, Inc.

On September 16, 2002, Level 3 submitted names of proposed arbitrators, and on September 28, 2003, Level 3 filed an via e-mail a joint recommendation by the parties on Frank G. Lamancusa as the neutral arbitrator in this case. On September 19, 2002, the Commission appointed Frank G. Lamancusa as the arbitrator, and on October 10, 2002, the Commission appointed Patrick Fahn and Jerry Lein as staff advisors to the arbitrator.

On September 26, 2003, SRT filed its response to the petition for arbitration and a motion to dismiss.

On October 7, 2002, Level 3 filed its response to SRT's motion to dismiss, and on October 29, 2002 Level 3 filed a supplement to that response.

On October 18, 2002, the parties filed a stipulation for an extension of time beyond the statutory nine-month timeframe for the Commission to render its final decision in the case. On October 23, 2003, the Commission granted the joint request of the parties for an extension of the deadline under Section 252(b)(4)(C) extending the deadline for the arbitrator's decision to January 31, 2003.

On October 29, 2002, the arbitrator filed his recommended order concerning SRT's motion for dismissal recommending that the motion be denied. On November 4, 2002, SRT filed comments on the recommendation. On November 20, 2002, the Commission issued its order denying SRT's motion for dismissal.

On October 31, 2002, the arbitrator filed his Prehearing Conference Order setting forth the arbitration procedural schedule and listing the disputed issues to be determined in the arbitration proceeding. On November 11, 2002, the Commission issued its notice of the arbitration hearing scheduling the arbitration hearing and setting forth the issues to be determined in the arbitration proceeding as follows:

1. Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?
2. Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?

3. Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?
4. For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area.
5. Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?
6. Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?
7. Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

A hearing in this proceeding was held beginning December 9, 2002, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Notice thereof was published in the weekly newspapers throughout the state as required by law.

On March 3, 2003, the arbitrator filed his decision and recommendations in this proceeding.

On April 2, 2003, the parties filed an interconnection agreement incorporating the arbitrator's decisions and recommendations in compliance with N.D. Admin. Code § 69-02-10-30.

On April 16, 2003, Polar Communications (Polar) and Reservation Telephone Cooperative (RTC) filed comments on the interconnection agreement, and on April 17, 2003, Level 3, SRT, and the North Dakota Association of Telecommunications Cooperatives (NDATC) filed comments on the interconnection agreement.

On May 15, 2003, Level 3 filed a letter with four state commission decisions as supplemental authority pertaining to state commission jurisdiction to establish interconnection arrangements under a section 251(a) interconnection request.

Discussion

In this order, the Commission dismisses, without prejudice, Level 3's interconnection arbitration application. The Commission's decision is based on interpretation of state and federal law and FCC rules and decisions.

Under N.D.C.C. § 49-21-09 the Commission may direct the use by one telecommunications company of facilities or services of another telecommunications company.

Under N.D.C.C. § 49-21-01.7(8) the Commission has the authority to mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the Act, and under N.D.C.C. § 49-21-01.7(9) the Commission has the authority to approve or reject such agreements.

Under 47 U.S.C. § 252(b)(4)(A) the Commission must limit its consideration of any petition for arbitration to the issues set forth in the petition and issues set forth in responses to the petition from other parties. Under 47 U.S.C. § 252(b)(4)(C) and 252 (c) the Commission must resolve each issue set forth in the petition and the response by imposing appropriate conditions to (1) ensure that such resolution and conditions meet the requirements of 47 U.S.C. § 251, including regulations prescribed by the Federal Communications Commission (FCC) pursuant to section 251; (2) establish any rates for interconnection, services, or network elements according to subsection 47 U.S.C. § 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Under 47 U.S.C. § 252(e)(1) the Commission may approve or reject an interconnection agreement adopted by arbitration, with written findings as to any deficiencies. Under 47 U.S.C. § 252(e)(2)(B) the Commission may only reject such interconnection agreement adopted by arbitration, or portion thereof, if it does not meet the requirements of 47 U.S.C. § 251, including regulations prescribed by the FCC pursuant to section 251, or the standards set forth in 47 U.S.C. § 252(d).

Part 47 U.S.C. § 251(a) requires that a telecommunications carrier interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

Part 47 U.S.C. § 251(b) requires that each local exchange carrier not prohibit the resale of its telecommunications services; provide number portability; provide dialing parity to competing providers of telephone exchange service and telephone toll service, provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing; afford access to poles, ducts, conduits, and rights-of-way to competing providers telecommunications services; and establish reciprocal compensation.

Part 47 U.S.C. § 251(c) requires that each incumbent local exchange carrier (1) negotiate in good faith the particular terms and conditions of interconnection agreements; (2) provide interconnection with the local exchange network for the transmission and routing of telephone exchange service and exchange access, at any technically feasible point within the local exchange network; (3) provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point; (4) offer for resale any telecommunications service that it provides at

retail to subscribers who are not telecommunications carriers; (5) provide notice of changes that would affect the interoperability of facilities and networks; and (6) provide for physical collocation of equipment.

Part 47 U.S.C. § 153 defines telephone exchange service as “(A) service within a telephone exchange, or within a connected system of telephone exchanges with the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.”

Part 47 U.S.C. § 153 defines exchange access as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” Part 47 U.S.C. § 153 defines telephone toll service as “telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.”

Part 47 U.S.C. § 252(d) addresses pricing standards and provides that rates for interconnection and network elements and transportation and termination of traffic must be just and reasonable, nondiscriminatory, and be based on the cost of providing the interconnection or network element or service.

If the Commission does not act to approve or reject the agreement, the FCC will assume the responsibility of the Commission and act for the Commission.

The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

Findings of Fact

1. Level 3 is requesting interconnection with SRT to provide a telecommunications service that, in turn, supports the services of Internet Service Providers (ISPs). The FCC in 47 § C.F.R. 51.5 defines interconnection as the linking of two networks for the mutual exchange of traffic and states that this term does not include the transport and termination of traffic. Level 3 requested negotiations for interconnection on March 26, 2002 by sending an information package to SRT. The information package provided an overview of Level 3’s goals to offer telecommunications services to support dial-up services offered by ISPs, to maintain SRT’s rural exemption, and to implement a bill-and-keep mechanism for the exchange of traffic. The package included a proposed traffic exchange agreement containing terms and conditions for interconnection, and for the routing and exchange of traffic between the Parties’ networks. Level 3 also provided a network drawing depicting one possible way in which Level 3 might route traffic from SRT to Level 3’s network.

2. Level 3 states that it is making its request for interconnection under section 251(a) and believes that the request for interconnection is therefore not subject to terms and conditions set forth in 251(b) or 251(c).

3. SRT moved to dismiss Level 3's petition for arbitration for the following reasons: (a) that Level 3 had not made a *bona fide* request for an interconnection under section 251(f)(1)(A) of the Act; (b) that Level 3 had not requested nor had the Commission determined that SRT's exemption from negotiation and interconnection should be terminated; and (c) that the interconnection Level 3 seeks under section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under section 251(c)(1) and the related arbitration provisions under section 252 of the Act, and as such, Level 3 is not entitled to the negotiation and arbitration provisions of section 252. SRT argued that neither the Act nor any regulations promulgated under the Act required SRT to negotiate or to submit to arbitration under section 251(a).

4. Level 3 responded that it was not requesting interconnection under section 251(c) of the Act but rather under section 251(a) and that the restrictions of section 251(c) were inapplicable. Level 3 argued that section 252 negotiation and arbitration procedures apply to section 251(a) requests.

5. The arbitrator issued a decision finding that Level 3 requested interconnection under section 251(a) of the Act, and consequently concluded that the restrictions of section 251(c) were inapplicable. The arbitrator also determined that the arbitration provisions in section 252 were available for all section 251 requests including interconnection under section 251(a). The Commission concurred with the arbitrator's finding that the arbitration provisions of 252 are available for all 251 requests, and denied SRT's motion to dismiss.

6. Following hearing of the arbitration proceeding, the arbitrator found that SRT does not have a duty to negotiate for interconnection under section 251(a) of the Telecommunications Act (Act), but then determined that while SRT may, but is not required to negotiate under section 251(a), it is not exempt from the arbitration requirements under the Act nor from its duties to interconnect. Essentially, the arbitrator found that the statutory language of section 251(a) does not require an incumbent local exchange carrier (ILEC) to negotiate, but that arbitration under the Act does not require negotiations as a condition precedent. We agree.

7. Level 3 emphatically claims it seeks to offer telephone exchange or exchange access service.¹ In fact it chides SRT for suggesting that the Level 3 service is primarily interexchange in nature. Level 3 states "SRT bases its argument, in large part, on the mistaken belief Level 3 is an interexchange carrier that requests interconnection solely for the purposes of originating interexchange traffic, rather than for the provision of 'telephone exchange' or 'exchange access' as those terms are defined in the Act."² And further, Level 3 states ". . . SRT's arguments are factually incorrect because Level

¹ Level 3's Post Hearing Brief at pages 26-28.

² *Id.* at 26-27.

3's proposed service is a local telephone exchange service that is consistent with its authority granted by this Commission."³

8. The Commission makes no determination as to whether the Level 3 offering is truly local or interexchange. We have no need to make such a finding because Level 3 itself declares it to be offering telephone exchange access or exchange service. But if we accept that the Level 3 offering is truly local exchange service in nature, then the provisions of section 251(c) would have to apply. Level 3 is unable to claim it is offering a local exchange service, while at the same time maintaining section 251(c) inapplicability. If the Level 3 offering is truly a local exchange service, then we must note that SRT still qualifies for the rural carrier exemption as defined in 251(f). No bona fide request has been made to terminate the exemption, and as such, we conclude SRT would be unable to be made the subject of such an interconnection arbitration prior to this Commission making a determination on SRT's 251(f) rural exemption.

9. Level 3 points to the CPCN this commission granted as proof that it is enabled to offer telephone exchange access in the SRT service territory. Yet Level 3 and the arbitrator ignore that the Commission ordered such certification without prejudice of the rural exemption provided in 251(f).⁴

10. If Level 3 is truly offering a local exchange service, then it cannot simply declare that it is filing an exclusive 251(a) interconnection agreement. The clear language of the act prevents that occurrence. When interconnecting with an ILEC, such as SRT, the transmission and routing of telephone exchange service and exchange access is clearly stated under 251(c)(2)(A). While Level 3 may want to apply under solely 251(a), there is no basis upon which to allow that to happen. We do not view the act as a buffet menu from which carriers are allowed to choose which parts of it they wish to file under, to the exclusion of those sections they would rather ignore. Such an interpretation would seriously undermine the protections afforded rural carriers by Congress in section 251(f).

11. While an ILEC has the duty to negotiate in good faith under section 251(c)(1), section 252(a)(1) makes negotiation permissive. We find that this can only be interpreted to mean that SRT may, but is not required to, negotiate. However, when negotiations have begun, SRT is required to negotiate in good faith.

12. SRT chose not to voluntarily negotiate an agreement for the interconnection requested by Level 3.

13. In its request for interconnection Level 3 stated that one of its goals was to maintain SRT's rural exemption. Level 3 chose not to file a bona fide request when it requested interconnection from SRT in March 2002.

³ Id. at 27.

⁴ Commission order dated March 13, 2002, Case No. PU-2065-02-11

14. We find that Level 3 must file a bona fide request before SRT must provide interconnection and therefore the Arbitrated Interconnection Agreement submitted in this proceeding must be rejected.

15. Because we find that a bona fide request must be made before SRT must provide interconnection, no findings or conclusions are made regarding the other issues in this proceeding.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the Parties and the subject matter of this proceeding.

3. SRT's duties to provide the interconnection Level 3's seeks are set forth under the section 251 duties for a rural ILEC and those duties include duties in addition to duties specified 251(a).

4. The provisions of section 252 apply to the interconnection requested by Level 3.

5. SRT may, but is not required, to negotiate an interconnection agreement with Level 3.

6. SRT chose not to voluntarily negotiate the interconnection agreement, and therefore Level 3 must file a bona fide request to seek interconnection with SRT.

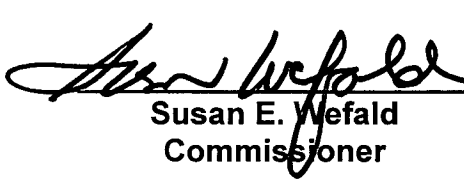
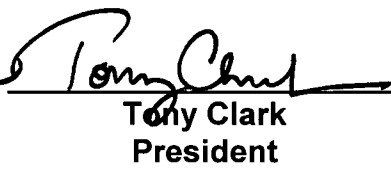

7. The arbitration process used in this proceeding does not meet the requirements of section 251 and therefore this proceeding should be dismissed.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

Order

The Commission orders that Level 3's interconnection arbitration application is dismissed without prejudice.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Leo M. Reinbold Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

CONCURRING OPINION
Commissioner Susan E. Wefald

May 30, 2003

I concur with the Order that Level 3's interconnection arbitration application should be dismissed, however I do not agree with many of the findings of fact and conclusions of law that support the adopted order.

This case hinges on whether or not SRT has interconnected directly or indirectly with Level 3, not on whether or not Level 3 has filed a bona fide request for an interconnection agreement. The facts of the case show that SRT has interconnected indirectly with Level 3, and has met the requirements of Section 251(a) of the Federal Telecommunications Act (Act).

This case has been very difficult, since the service that Level 3 wishes to provide is exchange internet service provider (ISP) bound traffic.¹ Federal law and rules do not give clear guidance on how to treat this type of service within Section 251 of the Act. However, the FCC has determined under 251(c)(2) that an IXC requesting interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection from an ILEC.² Also, the FCC has determined that the LEC-provided link between an end-user and an ISP is properly characterized as interstate access,³ when addressing intercarrier compensation.

Level 3 requested in this case to directly interconnect with SRT because of the traffic volumes it expects to exchange with SRT and because it would give Level 3 more control over facilities used to exchange traffic, forecasting, and traffic management. Although Level 3 preferred direct interconnection, it also wanted more provided through indirect interconnection than SRT presently provides.

¹ Level 3's Post Hearing Brief at page 3.

² *First Report and Order* at para. 191; 47 C.F.R. 51.305.

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order; FCC 01-131; adopted April 18, 2001, released April 27, 2001; para.57.

Level 3 is currently purchasing telecommunications services from SRT. Level 3 leases seven ISDN PRI's (Integrated Services Digital Network Primary Rate Interface) and seven meet-point DS1's from SRT. This arrangement provides a means for traffic to flow between Level 3 and SRT so there is a mutual exchange of traffic, which constitutes indirect interconnection between SRT and Level 3.

Both parties have put considerable time and effort into this case. I agree with the arbitrator's finding that SRT does not have a duty to negotiate under section 251 (a) of the Act, but that arbitration under the Act does not require negotiations as a condition precedent.

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

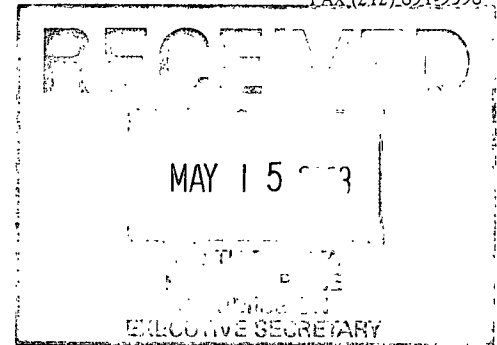
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May 15, 2003

VIA FAX & OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480



**Re: Petition of Level 3 Communications, LLC for Arbitration
Pursuant to Section 252(b) of the Telecommunications Act of
1934, as Amended to Establish an Interconnection Agreement
with SRT Communications Cooperative (Case PU-2065-02-465)
– Supplemental Authority**

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC (“Level 3”) are an original and ten (10) copies of four state commission decisions that are filed as supplemental authority in the above-referenced matter. Level 3 files this Supplemental Authority in order to bring to the Commission’s attention recent decisions by the Washington Utilities and Transportation Commission (“Washington Commission”) and the Public Service Commission of Wisconsin (“Wisconsin Commission”) holding that state commissions have jurisdiction to establish interconnection arrangements under section 251(a) and section 252 of the Communications Act¹ for calls bound for Internet Service Providers (“ISPs”). Level 3 referred to both of these proceedings in its Post-Hearing Brief.² The decisions discussed below were released or approved by the Commissions following the filing of Level 3’s Post-Hearing Brief.

This filing is also provided in response to the April 16, 2003 Comments filed by SRT Communications, Inc. (“SRT”) in which SRT cited a Colorado decision for the position that state commissions do not have jurisdiction under section 252 of the Act to address interconnection

¹ The Communications Act of 1934, as amended by, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 251 et seq. (“the Act”).

² In the Matter of the Petition of Level 3 Communications, LLC, For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, Case No. PU-2065-02-465, Level 3 Communications, LLC’s Post-Hearing Brief, at 35, 39, 59, and 53 (December 23, 2002).

arrangements requested under section 251(a).³ The Washington Commission rejected this view and determined that it had jurisdiction to arbitrate a dispute regarding a carrier's request for interconnection under section 251(a) of the Act, including requests for interconnection to provide ISP-bound traffic:

The Commission's jurisdiction to conduct arbitration proceedings is not limited to requests for arbitration regarding the obligations set forth in 47 U.S.C. § 251(c). The Commission holds it has jurisdiction to conduct arbitration proceedings involving the obligation of all telecommunications carriers to interconnect with other carriers set forth in 47 U.S.C. § 251(a). Finally, the Commission determines that decisions by the FCC regarding compensation for traffic bound for Internet service providers do not divest the Commission of jurisdiction over this matter.⁴

In reaching this determination, the Washington Commission expressly considered and dismissed the reasoning of the Colorado Commission⁵ cited by SRT in its Comments. The Colorado Commission had concluded that: section 252 "gives the Commission jurisdiction only over matters arising under §§ 251(b) and 251(c)' and not to matters arising under § 251(a)." Seventh Supplemental Order, at ¶ 15. The Washington Commission rejected this conclusion and affirmed its determination that:

While it is true that the only mandate for negotiation under Sections 251 and 252 is set forth in Section 251(c), this does not mean that state commission authority to conduct arbitrations pursuant to Section 252(b) is limited to arbitrating issues arising from Section 251(c). Section 252(a) provides for voluntary negotiations whereby an ILEC may negotiate an interconnection agreement without regard to the requirements of Sections 251(b) and (c). A request for an interconnection agreement under Section 251(a) is a request for an agreement without regard to the requirements of Sections 251(b) and (c). Because negotiation for interconnection pursuant to Section 251(a) is voluntary, an ILEC may refuse to negotiate with a requesting carrier. However, after 135 days from the date negotiations are requested – whether or not negotiations take place – a party to the negotiation may request the state commission to arbitrate any open issues.

³ Comments of SRT Communications, Inc. Regarding Interconnection Agreement Incorporating Decisions and Recommendations of the Arbitrator, Case No. PU-2065-02-465, at 10 (April 16, 2003) ("SRT Comments").

⁴ In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc., Docket No. UT-023043, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision, at ¶ 12 ("Seventh Supplemental Order") (emphasis added). The Washington Commission's Seventh Supplemental Order is attached herein as **Attachment A**. See, also, In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC, and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. Section 252, Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction (Oct. 25, 2002) ("Third Supplemental Order"). The Washington Commission's Third Supplemental Order is attached herein as **Attachment B**.

⁵ In the Matter of the Petition of Level 3 Communications, LLC for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 With CenturyTel of Eagle, Inc., Docket No. 02B-408T, Decision No. C03-0117 (issued Jan. 30, 2003) ("Colorado Decision"); SRT Comments, at 10.

Seventh Supplemental Order, at ¶ 17 (quoting Third Supplemental Order, at 10.). In short, the Washington Commission rejected Colorado's "half-empty" perspective in favor of its own "half-full" perspective that:

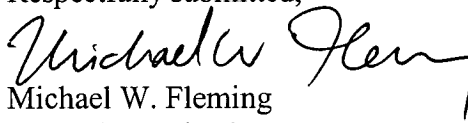
Nothing in Section 252(a) limits the negotiation and arbitration processes to matters falling within Section 251(c). Therefore, we hold that the duty to interconnect set forth in Section 251(a) is enforceable through the arbitration provisions of Section 252(b).

Seventh Supplemental Order, at ¶ 18 (quoting Third Supplemental Decision, at ¶ 9). The Washington Commission reached this conclusion in part because the "Colorado commission's result leaves a regulatory gap with no regulatory agency clearly responsible for enforcement of the fundamental rights conferred by Congress under Section 251(a)."⁶ Whereas, in its view, the Washington Commission's analysis and result "leave no such gap" and are consistent with FCC orders.⁷

Relying in part on the Washington Commission's decisions, the Wisconsin Commission has also concluded that it has authority under Section 252(b) of the Act to consider disputes regarding interconnection arrangements arising under Section 251(a).⁸ In that case, the Wisconsin Commission rejected CenturyTel's contention that as a consequence of the FCC's determination that Internet traffic is predominantly interstate in nature, the FCC preempted state commissions from addressing interconnection arrangements for Internet traffic.⁹ Instead, the Wisconsin PSC concluded that it "may regulate a subject matter that has both interstate and intrastate aspects, provided its regulation does not conflict with federal law or negate the exercise of lawful federal authority."¹⁰

In sum, it is clear from the Act, FCC orders, and state commission precedent that state commissions have had jurisdiction with to address interconnection disputes that arise following a section 251(a) interconnection request.

Respectfully submitted,



Michael W. Fleming

Edward W. Kirsch

Counsel for Level 3 Communications, LLC

⁶ Seventh Supplemental Order, at ¶ 19.

⁷ Id.

⁸ In the Matter of Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms and Conditions With CenturyTel of Wisconsin, Docket No. 05-MA-130, Arbitration Award, at 8-11 (Dec. 2, 2002) ("Wisconsin Arbitration Award"). The Wisconsin Commission's Arbitration Award is attached herein as **Attachment C**. The Wisconsin Commission approved the Arbitration Award during its opening meeting on February 13, 2003. See, Attachment D.

⁹ Wisconsin Arbitration Award, at 10-15.

¹⁰ Wisconsin Arbitration Award, at 15.

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2003, a true and correct copy of the foregoing was sent via electronic mail and via overnight delivery to the following individuals:

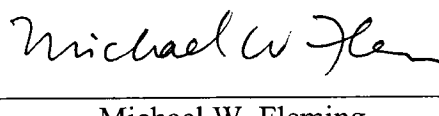
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tgates@qsiconsulting.com



Michael W. Fleming

ORIGINAL

[Service Date February 28, 2003]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between

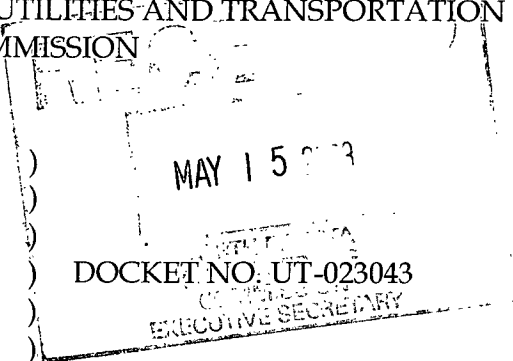
LEVEL 3 COMMUNICATIONS, LLC,

and

CENTURYTEL OF WASHINGTON, INC.,

Pursuant to 47 U.S.C. Section 252

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SEVENTH SUPPLEMENTAL ORDER: AFFIRMING ARBITRATOR'S REPORT AND DECISION

1 SYNOPSIS: The Commission, ruling on CenturyTel's Petition for Review, affirms the Arbitrator's conclusions that: (1) ISP-bound traffic is not subject to different interconnection requirements than local traffic and does not require a separate agreement; (2) the term "local traffic" should be defined to exclude ISP-bound traffic only for the purpose of determining compensation for termination of the traffic ; (3) ISP-bound calls enabled by virtual NXX should be treated the same as other ISP-bound calls for purposes of determining intercarrier compensation requirements consistent with the FCC's ISP Order on Remand; and (4) the term "bill-and-keep" should be defined in a manner consistent with the FCC's ISP Order on Remand and implemented by the parties' interconnection agreement in a manner consistent with the FCC's order.

SUMMARY

2 PROCEEDINGS: Docket No. UT-023043 is a petition filed by Level 3 Communications, LLC, (Level 3) for arbitration pursuant to 47 U.S.C. §252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (Telecom Act), of a proposed interconnection agreement between Level 3

and CenturyTel of Washington, Inc., (CenturyTel). Arbitrator Dennis J. Moss entered his Arbitrator's Report and Decision on January 2, 2003.

3 CenturyTel filed its Petition for Commission Review of Arbitrator's Report and Decision on January 21, 2003. Level 3 filed its Answer on January 31, 2003. The Washington Independent Telephone Association (WITA) and Verizon Northwest, Inc. (Verizon), filed an *amicus* brief on January 21, 2003, which the Commission agreed to consider on review.

4 **APPEARANCES:** Michael R. Romano, Level 3 Communications' Director, State Regulatory Affairs, McLean, Virginia, and Rogelio E. Peña, Peña & Associates, LLC, Boulder, Colorado, appeared for Level 3 Communications. Calvin K. Simshaw, corporate counsel for CenturyTel, Vancouver, Washington, appeared for CenturyTel. Richard A. Finnigan, attorney, Olympia, Washington, appeared for the Washington Independent Telephone Association (WITA) and Verizon Northwest, Inc. (Verizon), who participated as *amicus curiae* on review.

5 **COMMISSION:** The Commission affirms the Arbitrator's Report and Decision and requires the parties to file a fully executed interconnection agreement that conforms to the terms of that Report and Decision and this Order.

MEMORANDUM

6 We have considered the parties' and the *amici's* briefs and arguments concerning the issues CenturyTel raises by its Petition, and the related issue raised by the parties' filing of separate, partially executed interconnection agreements. Our analyses, and decisions, based on these arguments and the record below, follow.

1) **Is Internet-bound traffic subject to bill-and-keep reciprocal compensation in all instances, or only when the ISP is in the local calling area?**

7 The fundamental issue in this arbitration is whether the FCC's reciprocal compensation rules for ISP-bound traffic, as established by the FCC's *ISP Remand*

Order,¹ apply when the ISP's premise (*i.e.*, modem bank) is outside the local calling area. CenturyTel and its *amici* read the *ISP Remand Order* narrowly and would apply it only to situations where the ISP is in the local calling area. Level 3 argues that the FCC decision applies to Internet-bound traffic without regard to the location of the ISP.

8 There is ample room for confusion on this point. When Congress established standards for local interconnection and compensation for local traffic, it also created an exception for exchange access service. The FCC subsequently created another exception for Internet-bound calls, requiring that they be terminated without compensation. The FCC's decision on Internet-bound calls, however, is a rule without a court-approved rationale, because the D.C. Circuit remanded the FCC's decision, but did not vacate the FCC's rule.² In fact, the courts have now twice rejected the FCC's formal explanation of why Internet-bound traffic should not be included in the local interconnection regime and should be subject to its own compensation rules.

9 CenturyTel characterizes the policy behind the FCC's decision as one of concern about arbitrage, that is, concern about CLECs getting a windfall by collecting local switching revenues on large volumes of Internet-bound traffic. We think that is a reasonable reading of the FCC's intent; the FCC has just had a hard time coming up with a legal analysis that is supported by the statutes. However, given that policy, it is difficult to imagine why the FCC would have intended that even higher access charges should apply to Internet-bound traffic. Moreover, the FCC's larger rationale for different treatment of Internet-bound traffic is that it is not local traffic. That rationale applies at least as well when the ISP modem bank is outside the local calling area as it does when the ISP modem bank is inside the local calling area.

¹ *In re 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*, FCC 01-131 (2001) ("*ISP Order on Remand*"), remanded *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

² *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002); see also *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

10 CenturyTel argues that both the FCC and the D.C. Circuit Court decisions characterize the issue as one of proper compensation for calls to *local* ISPs. CenturyTel emphasizes the use of the word “local.” We believe CenturyTel reads too much into what are very general characterizations by the FCC and the appeals court of the issue before it. The substance of the decisions makes no distinction based on the location of the ISP’s modems, and doing so would be inconsistent with rationales previously offered by the FCC for its treatment of ISP-bound traffic. We believe the arbitrator properly rejected CenturyTel’s argument.

2) Is the WUTC preempted from arbitrating this dispute?

11 CenturyTel continues to argue that the Commission lacks jurisdiction to arbitrate an interconnection agreement dispute concerning ISP-bound traffic under Section 252 of the Telecommunications Act of 1996, despite our prior decision and Order on this question. CenturyTel’s Petition, however, adds no new argument or authority that is persuasive on the point.

12 CenturyTel acknowledges that its “earlier briefs on the jurisdictional issues submitted in this docket” included its more detailed arguments.³ CenturyTel would have us refer to those arguments again. Previously, we rejected CenturyTel’s arguments and summarized our holdings as follows:

The Commission’s jurisdiction to conduct arbitration proceedings is not limited to requests for arbitration regarding the obligations set forth in 47 U.S.C. § 251(c). The Commission holds it has jurisdiction to conduct arbitration proceedings involving the obligation of all telecommunications carriers to interconnect with other carriers set forth in 47 U.S.C. § 251(a). The Commission also holds that CenturyTel, as a rural carrier, is not exempt from the interconnection requirements of 47 U.S.C. § 251(a). Finally, the Commission determines that decisions by the FCC regarding compensation for traffic bound for Internet service providers do not divest the Commission of jurisdiction over this matter.

³ *CenturyTelPetition at 10.*

- 13 Our reasoning and result have been expressly acknowledged and followed in Wisconsin, where Level 3 and CenturyTel argued essentially the same case.⁴ Other jurisdictions (e.g., Arizona, Minnesota, and North Dakota) have reached the same result, according to Level 3.⁵
- 14 CenturyTel argues that we now should reverse our prior determination and follow the one jurisdiction, Colorado, where the state regulatory authority recently reached a different result. In Colorado, the ALJ below determined that the FCC, through its *ISP Order on Remand* preempted state commission jurisdiction over all issues concerning ISP-bound traffic. It is this recommended decision by the ALJ that CenturyTel cites in support of its preemption argument.⁶
- 15 The full commission in Colorado, however, did not sustain the ALJ's preemption determination and held "that the FCC has not preempted state commission jurisdiction under § 252 of all disputes relating to ISP-bound traffic."
- 16 On the other hand, the Colorado commission determined that § 252 "gives the Commission jurisdiction only over matters arising under §§ 251(b) and (c)" and not to matters arising under §251(a). Accordingly, the Colorado commission voted to dismiss the case.
- 17 This result is directly contrary to our determination that "the mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a)."⁷ The Colorado decision offers two reasons for its result: (1) that Section 252(a) "mentions §§ 251(b) and (c) specifically . . . , and makes no mention of §251(a);" and (2) "§ 252(a), according to its title, relates to interconnection agreements arrived at through negotiations [but] the duty to negotiate interconnection agreements . . . is itself a §§ 251(b) and

⁴ *In re Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms and Conditions With CenturyTel of Wisconsin, Arbitration Award, Wisconsin Public Service Commission, Docket No. 05-MA-130, (Dec. 2, 2002).*

⁵ *Level 3 Answer at 5-6.*

⁶ *CenturyTel Petition at p. 10, n. 15.*

⁷ *Third Supplemental Order at ¶ 9.*

(c) obligation, not one arising under §251(a).” Our Third Supplemental Order states:

While it is true that the only mandate for negotiation under Sections 251 and 252 is set forth in Section 251(c), this does not mean that state commission authority to conduct arbitrations pursuant to Section 252(b) is limited to arbitrating issues arising from Section 251(c). Section 252(a) provides for voluntary negotiations whereby an ILEC may negotiate an interconnection agreement without regard to the requirements of Sections 251(b) and (c). A request for an interconnection agreement under Section 251(a) is a request for an agreement without regard to the requirements of Sections 251(b) and (c). Because negotiation for interconnection pursuant to Section 251(a) is voluntary, an ILEC may refuse to negotiate with a requesting carrier. However, after 135 days from the date negotiations are requested – whether or not negotiations take place – a party to the negotiation may request the state commission to arbitrate any open issues. 47 U.S.C. § 252(b)(1).

- 18 The Colorado commission’s “half-empty” perspective contrasts to our “half-full” perspective that: “Nothing in Section 252(a) limits the negotiation and arbitration processes to matters falling within Section 251(c). Therefore, we hold that the duty to interconnect set forth in Section 251(a) is enforceable through the arbitration provisions of Section 252(b).”⁸
- 19 The Colorado commission’s result leaves a regulatory gap with no regulatory agency clearly responsible for enforcement of the fundamental rights conferred by Congress under Section 251(a). Our analysis and result leave no such gap and are consistent, at least, with the FCC’s recent suggestion that state commissions should continue to arbitrate carrier-to-carrier disputes including disputes that involve ISP-bound traffic.⁹

⁸ *Id.*

⁹ See *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, at ¶ 325 (rel. Dec. 23, 2002) (“Qwest 271 Order”).*

20 CenturyTel also claims an inconsistency between the Arbitrator's Report and Decision and the Third Supplemental Order concerning jurisdiction. CenturyTel argues that the Commission previously concluded that it did not have jurisdiction over the question of compensation for Internet-bound traffic, yet the arbitrator ordered bill-and-keep compensation. We believe these decisions are consistent. The arbitrator determined that the calls between CenturyTel and Level 3 are subject to the FCC's rules for Internet-bound traffic. Once that decision was made, there was no discretion but to apply the FCC's required bill-and-keep compensation method. In other words, contrary to CenturyTel's arguments, it is the FCC and not the arbitrator who imposed bill-and-keep compensation on the parties to this proceeding. The arbitrator simply followed and applied the FCC's *ISP Remand Order*, thus assuring that the parties' interconnection agreement will comply with existing federal law.

3) **What contract language properly implements the arbitrator's decision?**

21 The parties' dispute about actual language to implement the Arbitrator's Report and Decision led them to file separate interconnection agreements rather than a single agreement. The only difference between the two agreements is at Article IV, Section 4.2 covering compensation for interconnection facilities. Level 3 asserts that the Arbitrator's Report and Decision requires that the words "and ISP-Bound Traffic" be inserted after the words "Only Local Traffic" in that provision. CenturyTel contends that the language Level 3 offers would conflict with the Commission's prior decisions excluding Internet-bound traffic from "relative use" calculations.

22 The Commission recently heard detailed argument on this same issue in an arbitration dispute between Level 3 and Qwest.¹⁰ While that result does not necessarily bind us, we see no reason to depart from it here. Level 3 and CenturyTel must include Internet-bound traffic in "relative use" calculations.

¹⁰ *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC, and Qwest Corporation Pursuant to 47 U.S.C. Section 252, Docket No. UT-023042, Fourth Supplemental Order (February 5, 2003).*

Accordingly, we require that the version of the parties' interconnection agreement submitted by Level 3 be executed by both parties and filed with the Commission.

4) Should the Commission defer a decision in this arbitration until after its interpretive and policy statement proceedings concerning virtual NXX (VNXX) are completed?

23 CenturyTel argues that the Commission should defer its decision on treatment of Internet-bound traffic here until it completes the VNXX interpretive or policy statement proceeding in Docket No. UT-021569. In Docket No. UT-021569, the Commission is considering a possible interpretive or policy statement on the use of virtual prefixes.

24 The VNXX proceeding will not produce a legally binding determination by the Commission. Moreover, the results in that proceeding may have no specific relevance here. The Commission, for example, may issue a policy statement that addresses questions about how numbering resources (NXXs) should be used for Internet-bound calls without saying anything about the regulatory treatment of those calls. Finally, we are concerned that deferring a decision would deny Level 3 its right under federal law to a timely arbitration decision.

25 We reject CenturyTel's suggestion that we defer our ruling in this proceeding. We note, however, that should future proceedings result in a change of law concerning the treatment of VNXX, or Internet-bound calls, the parties' interconnection agreement includes a "change-of-law" provision that could require them to file an amendment to their agreement.

FINDINGS OF FACT

26 The Commission makes the following summary findings of fact, having discussed above the evidence concerning all material matters and having stated our more detailed findings of fact. Those portions of the preceding discussion

pertaining to the Commission's ultimate findings in this matter are incorporated by this reference.

- 27 (1) The Washington Utilities and Transportation Commission ("Commission") is an agency of the State of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities, and practices of telecommunications companies in the state.
- 28 (2) The Telecommunications Act of 1996 ("Act") authorizes the Commission to arbitrate and approve interconnection agreements between telecommunications carriers, pursuant to Section 252 of the Act. The Commission is specifically authorized by state law to engage in that activity. *RCW 80.36.610.*
- 29 (3) CenturyTel is engaged in the business of furnishing telecommunications services, including, but not limited to, basic local exchange service within the state of Washington, and is a local exchange carrier as defined in the Act.
- 30 (4) Level 3 is a Competitive Local Exchange Carrier that wishes to establish local interconnection to provide direct inward dialing capability to its Internet Service Provider customers in Washington.
- 31 (5) On March 4, 2002, Level 3 commenced negotiations with CenturyTel with the intention to achieve an Interconnection Agreement between Level 3 and CenturyTel in the state of Washington. The parties could not resolve certain issues by negotiation and Level 3 requested arbitration.
- 32 (6) The essential facts pertinent to the Arbitrator's Report and Decision and the Commission's consideration of the issues on review are not disputed.

CONCLUSIONS OF LAW

- 33 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties to this proceeding.

- 34 (2) This arbitration and approval process is conducted pursuant to and in
compliance with 47 U.S.C. § 252 and RCW 80.36.610
- 35 (3) The Commission should affirm the Arbitrator's Report and Decision with
respect to each of the issues decided, as follows:

ISP-bound traffic is not subject to different interconnection requirements than local traffic and does not require a separate agreement; (b) the term "local traffic" should be defined to exclude ISP-bound traffic only for the purpose of determining compensation for termination of the traffic; (c) ISP-bound calls enabled by virtual NXX should be treated the same as other ISP-bound calls for purposes of determining intercarrier compensation requirements consistent with the FCC's ISP Order on Remand; and (d) the term "bill-and-keep" should be defined in a manner consistent with the FCC's ISP Order on Remand and implemented by the parties' interconnection agreement in a manner consistent with the FCC's order.

- 36 (4) The parties must conform their interconnection agreement to provide that
ISP-bound traffic will be included in relative-use calculations, as discussed in
the body of this Order.
- 37 (5) The negotiated and arbitrated terms of the parties' interconnection
agreement, as established by this Order, are consistent with the public
interest and do not discriminate against any other telecommunications
carrier.
- 38 (6) The arbitrated provisions of the parties' interconnection agreement meet the
requirements of Section 251 of the Act, including the regulations prescribed
by the FCC pursuant to Section 251, and the pricing standards set forth in
Section 252(d) of the Act, or otherwise established by law.
- 39 (7) The laws and regulations of the state of Washington, and Commission orders
shall govern the construction and interpretation of the parties'

interconnection agreement. The parties' interconnection agreement is subject to the jurisdiction of the Commission and Washington courts.

V. ORDER

THE COMMISSION ORDERS:

- 40 (1) The Arbitrator's Report and Decision, which is the Fifth Supplemental Order, entered in this proceeding on January 2, 2003, is affirmed.
- 41 (2) Level 3 and CenturyTel must submit a fully executed interconnection agreement reflecting: (a) the agreed on language in the interconnection agreement filed with the Commission by both parties on January 31, 2003, and (b) the resolutions in this arbitration proceeding of the disputed issues in accordance with this Order.

DATED at Olympia, Washington and effective this ____ day of February 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

[Service Date October 25, 2002]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for)	
Arbitration of an Interconnection)	
Agreement Between)	
	)	DOCKET NO. UT-023043
LEVEL 3 COMMUNICATIONS, LLC.,)	
)	
and	)	THIRD SUPPLEMENTAL ORDER
	)	CONFIRMING JURISDICTION
)	
CENTURYTEL OF WASHINGTON,)	
INC.,)	
)	
Pursuant to 47 U.S.C. Section 252)	
.....)	

1 **Synopsis:** The Commission decides that it has jurisdiction to conduct an arbitration proceeding between Level 3 Communications and CenturyTel of Washington, Inc.

2 **Procedural history:** By petition dated August 7, 2002, Level 3 Communications, LLC., (Level 3) requested that the Commission arbitrate a proposed interconnection agreement between Level 3 and CenturyTel of Washington, Inc., (CenturyTel) pursuant to 47 U.S.C. § 252(b)(1). In its response to the petition, CenturyTel challenged on several grounds the Commission’s jurisdiction to conduct the arbitration.

3 On September 24, 2002, the Commission convened a prehearing conference in this docket at Olympia, Washington before Arbitrator Dennis J. Moss. Level 3 was represented by Rogelio Peña, Peña and Associates, Boulder, Colorado; CenturyTel was represented by Calvin K. Simshaw, Associate General Counsel, Vancouver, Washington; WITA, *amicus curiae*, on the issue of jurisdiction, was represented by Richard A. Finnigan, Attorney at Law, Olympia, Washington.

4 During the prehearing conference Arbitrator Moss noted CenturyTel’s argument that the Commission lacks jurisdiction over this matter and required the parties to file briefs on the jurisdictional issues. The Washington Independent Telephone

Association (WITA) petitioned to intervene in the proceeding. Without acting on WITA's petition, the arbitrator permitted WITA to file an *amicus curiae* brief on the jurisdictional issue. The parties filed simultaneous opening briefs on October 7, 2002, and responsive briefs on October 15, 2002.

MEMORANDUM

1. Does the Commission have jurisdiction to arbitrate interconnection disputes brought to enforce the interconnection obligation of 47 U.S.C. § 251(a)?

5 Level 3 requested arbitration under 47 U.S.C. §§ 251(a) and (c). CenturyTel argues that the Commission has no authority to arbitrate the interconnection issues between the two companies because the arbitration provisions of Section 252(b) "can only be triggered by the issuance and receipt of a valid request for negotiation." *Brief of Century Tel at 2*. Section 251(c) obligates incumbent local exchanges companies (ILECs) to enter into good faith negotiations over terms and conditions of agreements to fulfill the duties set forth in Sections 251(b) and (c)(1)-(5). Section 252(a) provides that an ILEC may voluntarily enter into negotiations with other carriers to reach an agreement that does not comply with the standards set forth in Section 251. Section 252(b) authorizes a state commission to arbitrate at the behest of any party to a negotiation any unresolved issue following a request for negotiation under Section 252(a). CenturyTel argues that Level 3 cannot make a valid request to negotiate with it because it is exempt from the provisions of Section 251(c). *Brief of CenturyTel at 7-9 (citing 47 U.S.C. § 251(f))*.

6 WITA makes a similar argument. WITA states that the "only section of the Act that imposes the obligations of Section 252 on ILECs is Section 251(c). . . . Section 252 is only mentioned in Sections 251(c)(1) and 252(c)(2). Thus, the requirements of Section 252 are only triggered by the language of Section 251(c)."

7 Level 3 argues that *all* telecommunications carriers are required to interconnect with each other pursuant to 47 U.S.C. § 251(a). Level 3 argues that this duty is in addition to the duties imposed on local exchange carriers (LECs) under Section 251(b) on ILECs under Section 251(c). *Brief of CenturyTel at 5-6*.

8 Level 3 further argues that the only prerequisite for invoking the negotiation, mediation, and arbitration provisions of Section 252 is a request for interconnection, services, or network elements under Section 251. Level 3 notes that Section 252 itself states that carriers may request negotiation with incumbent ILECs pursuant to 251, without listing any particular subsection of Section 251. Therefore, the provisions of Section 252 are not limited to requests made under Section 251(c). *Brief of CenturyTel at 6-7*.

9 The Commission agrees with Level 3 that Section 251(a) imposes a duty on all telecommunications carriers to interconnect with other carriers. We also agree that the mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a). Nothing in Section 252(a) limits the negotiation and arbitration processes to matters falling within Section 251(c). Therefore, we hold that the duty to interconnect set forth in Section 251(a) is enforceable through the arbitration provisions of Section 252(b).

10 While it is true that the only mandate for negotiation under Sections 251 and 252 is set forth in Section 251(c), this does not mean that state commission authority to conduct arbitrations pursuant to Section 252(b) is limited to arbitrating issues arising from Section 251(c). Section 252(a) provides for voluntary negotiations whereby an ILEC may negotiate an interconnection agreement without regard to the requirements of Sections 251(b) and (c). A request for an interconnection agreement under Section 251(a) is a request for an agreement without regard to the requirements of Sections 251(b) and (c). Because negotiation for interconnection pursuant to Section 251(a) is voluntary, an ILEC may refuse to negotiate with a requesting carrier. However, after 135 days from the date negotiations are requested—whether or not negotiations take place—a party to the negotiation may request the state commission to arbitrate any open issues. *47 U.S.C. § 252(b)(1)*.

11 Therefore, we hold that Section 252(b)(1) gives the Commission jurisdiction to arbitrate a request for interconnection brought pursuant to Section 251(a).

2. Is CenturyTel exempt, as a rural telephone company, from arbitration proceedings brought to enforce the interconnection duty set forth in Section 251(a)?

12 CenturyTel is a rural telephone company as defined in 47 U.S.C. § 153(37). Rural companies, like CenturyTel, are exempt from the interconnection, unbundled access, resale, collocation, and duty to negotiate provisions of Section 251(c). *47 U.S.C. § 251(f)(1)(A)*. CenturyTel argues that the Commission does not have jurisdiction to arbitrate this matter because it is exempt from the provisions of Section 251(c), and therefore exempt from the provisions of Section 252. *Brief of CenturyTel* at 6-9.

13 Level 3 argues that while CenturyTel is exempt from the requirements of Section 251(c), it is not exempt from the interconnection requirement of Section 251(a). *Brief of Level 3* at 24-25.

14 The rural exemption set forth in 47 U.S.C. § 251(f) applies only to the requirements of Section 251(c). Rural companies remain obligated to comply with the provisions of Sections 251(a) and (b). Therefore, rural companies are not required to provide interconnection at any technically feasible point on the network as set forth in 47

U.S.C. § 251(c)(2)(B), but they must interconnect with requesting carriers pursuant to 47 U.S.C. § 251(a).

15 The rural exemption set forth in 47 U.S.C. § 251(f) does not divest the Commission of jurisdiction over this matter because CenturyTel is required to interconnect with Level 3 pursuant to 47 U.S.C. § 251(a). Because we hold that the interconnection obligation of Section 251(a) is enforceable through the arbitration provisions of Section 252(b), we hold that the Commission has jurisdiction to arbitrate this matter.

3. Do the provisions of 47 U.S.C. §§ 251 and 252 apply to agreements providing for the exchange of ISP-bound traffic?

16 CenturyTel and WITA argue that the Commission does not have jurisdiction to arbitrate this matter because the traffic involved is traffic bound for Internet service providers (ISPs). CenturyTel argues that the FCC has preempted state commission jurisdiction over ISP bound traffic. *Brief of CenturyTel at 11 (citing In re Implementation of the Local Compensation 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), remanded WorldCom Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002) (ISP Remand Order))*. CenturyTel argues that the ISP Remand Order placed ISP-bound traffic within the FCC's regulatory authority under Section 201 of the Act, and removed it from the duties set forth in Sections 251 and 252. *Id.*

17 Level 3 argues that CenturyTel and WITA have mischaracterized the FCC's preemption of state commission authority regarding ISP-bound traffic. Level 3 states that the FCC's ISP Remand Order addresses only the narrow issue of compensation for ISP-bound traffic and does not preempt state authority to make non-compensation-related decisions with respect to that traffic. *Brief of Level 3 at 11-13 (citing ISP Remand Order, ¶ 82)*.

18 We agree with Level 3 that the FCC preempted state commission authority over compensation for ISP-bound traffic, and did not preempt state commission authority to arbitrate other issues relating to ISP-bound traffic.

19 The Commission determines that the FCC's ISP Remand Order does not preempt our jurisdiction to arbitrate issues regarding CenturyTel's obligation to interconnect with Level 3 to facilitate ISP-bound traffic. The FCC preempted only the Commission's authority to arbitrate the compensation for ISP-bound traffic.

4. Do the provisions of 47 U.S.C. §§ 251 and 252 apply to the exchange of traffic outside of a local exchange company's local calling area?

20 CenturyTel and WITA argue that the Commission has no authority to arbitrate this matter because Level 3 intends to provide service to customers located outside of CenturyTel's local calling area. *See Brief of Century Tel at 3.* CenturyTel argues that this traffic is interexchange traffic, and is not subject to the local competition provisions of 47 U.S.C. §§ 251 and 252. *Id. at 3-5.* The company argues instead that this traffic is subject to the FCC's jurisdiction over interexchange traffic under 47 U.S.C. § 201, and the Commission has no jurisdiction to arbitrate the matter under 47 U.S.C. § 252. *Id. at 3.*

21 Level 3 argues that the provisions of 47 U.S.C. §§ 251 and 252 are not limited to intrastate services. Level 3 argues "the lines between FCC jurisdiction under § 201 and state commission jurisdiction under §§ 251 and 252 are fluid, with regulation of some aspects of certain services falling to the FCC and other aspects of the same services falling to the state commissions." *Brief of Level 3 at 18.*

22 The Commission rejects CenturyTel's argument that because the traffic is interstate, it is, therefore, not subject to the arbitration provisions of 47 U.S.C. § 252. We hold that the provisions of 47 U.S.C. §§ 251 and 252 apply to both interstate and intrastate services. The obligations of 47 U.S.C. § 251(a) apply to all telecommunications carriers. The duties set forth in 47 U.S.C. §§ 251(b) and (c) apply to "local exchange companies," which include carriers that provide telephone exchange service or exchange access. *47 U.S.C. § 153(26)*. "Exchange access" is "the offering of access to telephone exchanges services or facilities for the purpose of origination or termination of telephone toll services." *47 U.S.C. § 153(16)*. Therefore, a local exchange company may provide both intrastate and interstate services and fall within the obligations of 47 U.S.C. § 251. State commissions, therefore, are authorized to consider both intrastate and interstate service when arbitrating issues that arise from 47 U.S.C. § 251.

SUMMARY

23 The Commission's jurisdiction to conduct arbitration proceedings is not limited to requests for arbitration regarding the obligations set forth in 47 U.S.C. § 251(c). The Commission holds it has jurisdiction to conduct arbitration proceedings involving the obligation of all telecommunications carriers to interconnect with other carriers set forth in 47 U.S.C. § 251(a). The Commission also holds that CenturyTel, as a rural carrier, is not exempt from the interconnection requirements of 47 U.S.C. § 251(a). Finally, the Commission determines that decisions by the FCC regarding compensation for traffic bound for Internet service providers do not divest the Commission of jurisdiction over this matter.

FINDINGS OF FACT

- 24 Having discussed all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decision of the Commission are incorporated by this reference.
- 25 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to conduct actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996, P.L. 104-104 (110 Stat. 56). *RCW 80.36.610*. The Commission also has jurisdiction over telecommunications companies under Title 80. RCW.
- 26 (2) CenturyTel and Level 3 are telecommunications carriers as defined by 47 U.S.C. § 153(44).
- 27 (3) CenturyTel is an incumbent local exchange company as defined by 47 U.S.C. § 252(h).
- 28 (4) CenturyTel is a rural telephone company as defined by 47 U.S.C. § 153(47).
- 29 (5) Level 3 requested CenturyTel to negotiate an interconnection agreement pursuant to 47 U.S.C. § 252(a)
- 30 (6) Level 3 requested that the Commission arbitrate its request for interconnection with CenturyTel pursuant to 47 U.S.C. §§ 251(a) and (c) – to the extent that CenturyTel is not exempt from interconnecting with Level 3 under 47 U.S.C. § 251(f).

CONCLUSIONS OF LAW

- 31 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and Parties to, this proceeding. *RCW 80.36.610; Title 80 RCW*.
- 32 (2) CenturyTel is obligated to interconnect with Level 3 pursuant to 47 U.S.C. § 251(a).
- 33 (3) CenturyTel, as a rural telephone company, currently is exempt from the obligations set forth in 47 U.S.C. § 251(c).
- 34 (4) CenturyTel, as a rural telephone company, is not exempt from the duty to interconnect with Level 3 under 47 U.S.C. § 251(a).

- 35 (5) The Commission has jurisdiction to arbitrate the interconnection matter
between Level 3 and CenturyTel pursuant to 47 U.S.C. 252(b).
- 36 (6) The Federal Communications Commission has not preempted the
Commission from considering non-compensation issues relating to ISP-
bound traffic when arbitrating interconnection agreements under 47 U.S.C. §
252(b).
- 37 (7) The provisions of 47 U.S.C. §§ 251 and 252 apply to both intrastate and
interstate service.

ORDER

38 The Commission has jurisdiction to arbitrate the interconnection matter between
Level 3 and CenturyTel.

DATED at Olympia, Washington , and effective this ____ day of October, 2002.

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

APPENDIX

The following statutory provisions are most central to our discussion and decision:

47 U.S.C. § 251 Interconnection.

- (a) General duty of telecommunications carriers.— Each telecommunications carrier has the duty—
 - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
 - (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256 of this title.

- (c) Additional obligations of incumbent local exchange carriers.—In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:
 - (1) Duty to negotiate.— The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.
 - (2) Interconnection.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
 - (A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(f) Exemptions, suspensions, and modifications.—

(1) Exemption for certain rural telephone companies.—

(A) Exemption.—Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

47 U.S.C. § 252 Procedures for negotiation, arbitration, and approval of agreements.

(a) Agreements arrived at through negotiation.—

(1) Voluntary negotiations.—Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation.—Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration.—

(1) Arbitration.—During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

ORIGINAL

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Level 3 Communications, LLC Petition for
Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection
Rates, Terms and Conditions With CenturyTel of Wisconsin

05-MA-130

ARBITRATION AWARD

Proceedings

On August 8, 2002, Level 3 Communications, LLC, (Level 3) filed a Petition for Arbitration of an interconnection agreement with twelve operating companies of CenturyTel in Wisconsin (collectively, CenturyTel) pursuant to 47 U.S.C. § 252(b)(1)¹ and the Commission's interim procedures.² The parties have stipulated that the date on which Level 3 requested negotiation of an interconnection agreement from CenturyTel was March 1, 2002, and that Level 3's petition for arbitration was timely filed.

CenturyTel filed its response to the Level 3 petition on September 3, 2002. On September 17, 2002, the Public Service Commission of Wisconsin (Commission) appointed a three member panel (Panel) to consider this petition: Edward Marion (Panel Chairman), Gary Evenson and Dennis Klaila. The parties jointly submitted a statement of the issues to be arbitrated on September 25, 2002. The Panel conducted an evidentiary hearing on

¹ Hereafter, simple references to § 251, § 252 and other sections without a title reference shall mean sections of Title 47 of the United States Code. Similarly, references to a Rule shall mean the corresponding section of Title 47 of the Code of Federal Regulations. References to "the Act" shall mean the Telecommunications Act of 1996, Public Law 104-104, 110 Stats. 56 (1996).

² Interim Procedures, Investigation of the Implementation of the Telecommunications Act of 1996 in Wisconsin, docket 05-TI-140, May 23, 1996.

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October 14, 2002. The parties filed initial briefs on November 1, 2002. The parties filed reply briefs on November 12, 2002.

Parties

The petitioning party, Level 3 Communications, LLC, is a Delaware corporation with its principal place of business at 1025 Eldorado Blvd., Bloomfield, Colorado 80021. Under Wisconsin law, Level 3 is an alternative telecommunications utility under Wis. Stat. § 196.01(1d)(f), authorized to provide facilities-based switched local exchange service to residential and business customers in the local service exchange areas (not including foreign exchange services, cross-LATA boundary services, or non-affiliate local calling areas) served by Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin); Verizon North Inc.; Mid-Plains Telephone Co.; Telephone USA of Wisconsin, LLC; CenturyTel of Central Wisconsin, LLC; CenturyTel of the Midwest-Kendall, LLC; CenturyTel of the Midwest-Wisconsin, LLC; CenturyTel of Wisconsin, LLC; CenturyTel of Northwest Wisconsin, LLC; CenturyTel of Northern Wisconsin, LLC; CenturyTel of Larsen-Readfield, LLC; CenturyTel of Southern Wisconsin, LLC; CenturyTel of Fairwater-Brandon-Alto, LLC; and CenturyTel of Forestville, LLC. *See* Application of Level 3 Communications, LLC, for Certification as a Competitive Local Exchange Carrier and Alternative Telecommunications Utility, Order for Certification as a Competitive Local Exchange Carrier, docket 7373-NC-100 (PSCW March 21, 2001). A similar request of Level 3 to provide facilities-based switched local exchange service to residential and business customers in the local service exchange areas served by CenturyTel of Monroe County, LLC, is pending before the Commission. *See* Application of Level 3 Communications, LLC, to Expand Its Certificate of Public Convenience and Necessity to Provide Facilities-Based Local

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Exchange and Interexchange Telecommunication Services and to Operate as an Alternative Telecommunications Utility – Other in the Service Territory of CenturyTel of Monroe County, LLC, docket 7373-NC-111 (application filed May 17, 2002). Under federal law, Level 3 is a telecommunications carrier for purposes of §§ 153(49) and a requesting telecommunications carrier for purposes of §§ 251(c)(1) and 252(a).

The respondents are Telephone USA of Wisconsin, LLC; CenturyTel of Central Wisconsin, LLC; CenturyTel of the Midwest-Kendall, LLC; CenturyTel of the Midwest-Wisconsin, LLC; CenturyTel of Monroe County, LLC; CenturyTel of Wisconsin, LLC; CenturyTel of Northwest Wisconsin, LLC; CenturyTel of Northern Wisconsin, LLC; CenturyTel of Larsen-Readfield, LLC; CenturyTel of Southern Wisconsin, LLC; CenturyTel of Fairwater-Brandon-Alto, LLC; and CenturyTel of Forestville, LLC. The respondents are all operating affiliates of CenturyTel of Monroe, Louisiana. Under Wisconsin law, the respondents are telecommunications utilities, as defined in Wis. Stat. § 196.01(10), collectively engaged in rendering local exchange and exchange access services in 198 telephone exchanges in Wisconsin. Under federal law, CenturyTel is a telecommunications carrier for purposes of § 153(49), and an Incumbent Local Exchange Carrier for purposes of § 251(h). For purposes of this arbitration and subsequent interconnection agreement, the parties have stipulated that CenturyTel of the Midwest-Wisconsin, CenturyTel of Monroe County, CenturyTel of Wisconsin, CenturyTel of Northwest Wisconsin, CenturyTel of Northern Wisconsin, CenturyTel of Larsen-Readfield, CenturyTel of Southern Wisconsin, CenturyTel of Fairwater-Brandon-Alto, and CenturyTel of Forestville are exempt under § 251(f)(1)(A), and therefore not subject to the requirements of § 251(c).

Issues

On September 25, 2002, the parties submitted a joint statement of the issues to be arbitrated. That joint statement listed 8 unresolved issues, numbered 1-5, 8, 11, and 13. The parties agreed that the resolution of Issues 8 and 11 would apply only to those operating companies not stipulated to be exempt under § 251(f)(1)(A): Telephone USA of Wisconsin, CenturyTel of Central Wisconsin, and CenturyTel of the Midwest-Kendall. On October 9, 2002, the parties reported that they had reached agreement on Issues 5, 8 and 13.

Conclusions of Law

1. The Petition for Arbitration filed by Level 3 Communications, LLC, was timely filed pursuant to 47 U.S.C. § 252(b)(1).
2. The Panel has jurisdiction under Wis. Stat. §§ 196.02, 196.04, 196.199(2)(a), 196.219(2m), (3)(a) and (4)(a), Wis. Admin. Code ch. PSC 160, and 47 U.S.C. §§ 251, 252, 253(b), and 261(b) and (c) to issue the following arbitration award.

Discussion of Issues

Issue 1: Is ISP-bound Traffic subject to different interconnection requirements than Local Traffic under federal law such that it should be handled by separate agreement?

Issue 2: What is the proper definition of Local Traffic?

Level 3 proposes to establish in Wisconsin a telecommunications network optimized to transmit Internet Protocol (IP) packet-switched traffic. Although this network can be used to transport a variety of telecommunications services, Level 3's initial telecommunications

offerings have focused on service to Internet Service Providers (ISPs) and resold long distance service. Issues 1 through 4 of this arbitration concern traffic that originates on CenturyTel's telephone network, is directed to an ISP served by Level 3, is dialed using a seven-digit telephone number, is routed over Level 3's network to a modem bank that may be physically located in another exchange or even in another state, and then routed over the Internet to one or more Internet websites in the course of an Internet session. For purposes of this arbitration, this traffic is termed *Internet traffic*.

This first issue concerns whether an interconnection agreement arbitrated pursuant to §§ 251 and 252 should specify the rate and terms of interconnection when the traffic carried over the interconnected facility will consist predominantly or entirely of Internet traffic. The second issue is related, concerning the definition of the term *Local Traffic* for purposes of the interconnection agreement between the parties.

A. Position of the parties

CenturyTel. CenturyTel asserts that this Panel does not have jurisdiction to address Internet traffic in this arbitration proceeding. CenturyTel asserts that Internet traffic is not local traffic. CenturyTel regards this traffic as Information Access Traffic and proposes the following definition for this term:

1.43 Information Access Traffic (IAT)

Information Access Traffic means the provision of specialized exchange telecommunications services ... in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of an Information Service Provider ("ISP"), as defined in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, FCC 01-131, Order On Remand and Report and

Order (2001). Information Access is governed by Section 251(g) and is excluded from Section 251(b)(5) of the Act.

CenturyTel then proposes the following definition for the term *Local Traffic*:

1.58 Local Traffic

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local area, including mandatory local calling arrangements. Traffic to or from an end user not within CenturyTel's local calling area will be subject to access charges to the extent it does not constitute Information Access Traffic. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS." Local Traffic excludes Information Access Traffic, including but not limited to Enhanced Service Provider (ESP) and Internet Service Provider (ISP) Traffic, Internet, 900-976, etc., and Internet Protocol based long distance telephony.

CenturyTel contends that the interconnection agreement should be limited to traffic subject to §§ 251 and 252. Since CenturyTel believes that ISP-Bound Traffic/Information Access Traffic falls outside of §§ 251 and 252, CenturyTel concludes that this traffic should be subject to different interconnection and intercarrier compensation rules than local traffic, and should be addressed in a separate agreement. CenturyTel also contends that it is not obligated to transport or terminate Level 3's Internet traffic under § 251(a), nor is it obligated to interconnect with Level 3 under § 251(c). At Article V, Sections 1 and 5, CenturyTel proposes contract language limiting its obligation to exchange traffic under the agreement to that traffic that falls within its proposed definition of Local Traffic.

Level 3. Level 3 asserts that the interconnection agreement should contain compensation arrangements for Internet traffic. The agreement would treat Internet traffic as a separate and

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distinct category of traffic, subject to bill-and-keep compensation under the *ISP Order on Remand*. Level 3 does not dispute that Internet traffic is subject to different intercarrier compensation rules than local traffic. However, Level 3 believes that, in promulgating its new intercarrier compensation rules for Internet traffic, the Federal Communications Commission (FCC) did not change the interconnection rules that apply. Level 3 thus objects to the proposed definition of the term *Information Access Traffic* and in turn proposes the following definitions for the terms *ISP-Bound Traffic* and *Local Traffic*:

1.49(a) ISP-Bound Traffic

Traffic originated by a customer of one Party to this Agreement that is delivered to an ISP served by the other Party.

1.58 Local Traffic

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS." Pursuant to applicable law, Local Traffic excludes ISP-Bound Traffic for purposes of intercarrier compensation.

Level 3 asserts that, even if the contract's intercarrier compensation terms need to be different, Internet traffic remains subject to the same interconnection rules as local traffic, and should be handled under an agreement applying to Internet traffic the same interconnection terms as local traffic. At Article V, Sections 1, 4 and 5, of the proposed interconnection agreement Level 3 would insert contract language to include ISP-Bound Traffic as one category of traffic

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the parties would be required to exchange under the agreement. In Section 3, Level 3 proposes language that would apply a bill-and-keep compensation arrangement to ISP-Bound Traffic.

B. Discussion

The first objection raised by CenturyTel concerns the authority of this Panel to address this issue at all. CenturyTel asserts that this Panel lacks jurisdiction to consider this issue in an arbitration under §§ 251 and 252. There are two related questions at issue here. The first question is whether the Panel has authority under state or federal law to direct CenturyTel to connect with Level 3's network. The second question is whether this Panel has authority under either state or federal law to set the rates, terms and conditions of service with respect to interconnected Internet traffic between the parties. The key difference between these questions is that the second question assumes that the traffic Level 3 will receive from CenturyTel will consist entirely of Internet traffic, while the first question does not rest on this assumption.

Does this Panel have authority under either state or federal law to direct CenturyTel to connect with Level 3's network?

The answer to this question is certainly yes. Section 251(a)(1) provides that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. The scope of this language is very broad. It is intended to reach all carriers. The statute does not except any carrier from the reach of this provision.

As noted above, CenturyTel's jurisdictional argument rests on its assumption that the traffic that the parties will exchange will be exclusively Internet traffic. However, the plain meaning of § 251(a)(1) does not depend upon an analysis of the content of the call. Nor has CenturyTel pointed to any authority to suggest that § 251(a) should be read in this manner. The

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duty to interconnect set forth in § 251(a) applies to CenturyTel because CenturyTel is a telecommunications carrier.

Level 3 has requested interconnection pursuant to § 251. Because Level 3 served a request for interconnection, and the parties could not reach agreement on the terms of their interconnection agreement, this arbitration has been convened, pursuant to § 252(b). The merit or legal sufficiency of this request is not affected by the content of the traffic Level 3 may carry. Nor does the authority of this Panel to arbitrate the terms of this agreement turn on an assumption regarding the content of the traffic that will be exchanged under the agreement. The authority of this Panel rests entirely upon the fact that Level 3 has served a request for interconnection upon CenturyTel, the parties were unable to negotiate all of the terms of their interconnection, and Level 3 has filed a timely petition requesting arbitration of the disputed terms.

Moreover, the Panel has the additional authority to enforce and apply state laws. Sections 252(e)(3), 253(b), and 261(b) and (c) preserve state regulation of intrastate telecommunications services to the extent that state regulation does not conflict with valid federal regulation of the same subject matter. The Commission has delegated to the Panel the full measure of its authority under Wisconsin law with respect to the arbitration it assigned to the Panel. Under Wis. Stat. § 196.199(2)(a), the Commission “has jurisdiction to approve and enforce interconnection agreements and may do all things necessary and convenient to its jurisdiction.” The Commission also has authority in Wis. Stat. § 196.02 “to do all things necessary and convenient to its jurisdiction.”

Under Wis. Stat. § 196.04(2), if there is a failure to agree upon the physical connection or the terms and conditions upon which the physical connections shall be made, then upon application and investigation, if the Commission determines that: (1) public convenience and necessity require the physical connections, (2) the physical connections will not result in irreparable injury to the owners or other users of the facilities of the public utility making the connection, and (3) the connection will not result in any substantial detriment to the service to be rendered by a public utility making the connection, the Commission, by order, shall direct that the physical connections be made. In its order, the Commission shall determine how and within what time the connections shall be made. The Panel finds that both parties have sufficient notice of a failure to agree on the terms and conditions of interconnection to trigger application of this section.

Thus, the Panel concludes that it has authority under § 252(b)(1), as well as authority under Wisconsin law, to consider the merits of the Level 3 proposal on interconnection, and issue the award discussed below.

Does this Panel have authority under either state or federal law to set the rates, terms and conditions of service that would apply to Internet traffic exchanges by the parties?

CenturyTel asserts that most, if not all, of the traffic it will deliver to Level 3 under the Level 3 proposed agreement will be Internet traffic. CenturyTel also asserts that in the *ISP Order on Remand*³ the FCC has determined that Internet traffic is predominantly interstate in nature, and cannot be reliably separated into interstate and intrastate components. CenturyTel

³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 F.C.C.R. 9151 (2001) (*ISP Order on Remand*).

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concludes that, as a result, the FCC now has exclusive authority over the regulation of Internet traffic.

The parties do not dispute that the traffic the parties will exchange will be Internet traffic. However, the jurisdiction of Internet traffic continues to be in dispute.

In the *Declaratory Ruling*⁴, the FCC addressed the question of the site of termination of an Internet call:

12. Consistent with these precedents, we conclude ... that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.

Declaratory Ruling, 14 F.C.C.R. at 3697. The FCC then found "that, although some Internet traffic is intrastate, a substantial portion of Internet traffic involves accessing interstate or foreign websites." *Id.* at 3702. Thus, the FCC determined that Internet traffic is jurisdictionally mixed, consisting of both intrastate and interstate traffic. *Id.* at 3690. The interstate portion of this traffic fell within the FCC's jurisdiction under § 201.

On appeal, the Court of Appeals for the D.C. Circuit vacated the *Declaratory Ruling* and remanded the matter back to the FCC. *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 9 (D.C. Cir. 2000). With respect to the FCC's end-to-end jurisdictional analysis, the court commented:

The Commission nevertheless argues that although the call from the ISP to an out-of-state website is information service for the end-user, it is telecommunications for the ISP, and thus the telecommunications cannot be said to "terminate" at the ISP. As the Commission states: "Even if, from the perspective of the *end user* as customer, the telecommunications portion of an Internet call 'terminates' at the ISP's server (and information service begins), the remaining portion of the call would continue to constitute telecommunications from the perspective of the *ISP* as customer." Commission's Br. at 41. Once again, however, the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not

⁴ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, CC Docket Nos. 96-98 and 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, 14 F.C.C.R. 3689 (1999) (*Declaratory Ruling*).

"terminate" at the ISP. However sound the end-to-end analysis may be for jurisdictional purposes, the Commission has not explained why viewing these linked telecommunications as continuous works for purposes of reciprocal compensation.

Bell Atlantic v. FCC, 206 F.3d at 7. The Court concluded that “[b]ecause the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983); 5 U.S.C. § 706(2)(A), we must vacate the ruling and remand the case.” *Bell Atlantic v. FCC*, 206 F.3d at 8.

In the *ISP Order on Remand*, the FCC determined that §§ 251(b)(5) and 251(d)(2) governed the intercarrier compensation rates for all telecommunications not excluded by § 251(g). *ISP Order on Remand*, 16 F.C.C.R. at 9173. The FCC also found that telecommunications traffic directed to Internet service providers is a form of information access for purposes of § 251(g). *Id.* at 16 F.C.C.R. at 9165, 9171-72. The FCC thus concluded that Internet traffic was excluded from regulation under § 251(b)(5) by application of § 251(g). *Id.* at 9175.

On appeal from the *ISP Order on Remand*, the court again rejected the reasoning on which the FCC based its theory of jurisdiction over Internet traffic:

Because [§251(g)] is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act, we find the Commission’s reliance on § 251(g) precluded.

WorldCom, Inc. v. FCC, 288 F.3d 429, 430 (D.C. Cir. 2002).

The Court of Appeals did not vacate the *ISP Order on Remand*. In deciding whether to vacate the order or not, the Court balanced the seriousness of the order’s deficiencies against the disruptive consequences of a vacatur. The Court noted determined that, on remand, there is a non-trivial likelihood that the FCC has authority under § 251(b)(5) to adopt the very same bill-

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and-keep compensation scheme set forth in the *ISP Order on Remand*. *Id.* at 434. On that basis, the Court remanded the *ISP Order on Remand*, but left in place the bill-and-keep compensation arrangement adopted in the order. *Id.*

In this arbitration, CenturyTel contends that the FCC has asserted exclusive jurisdiction over Internet traffic, completely preempting this Panel's authority over the interconnection arrangements between CenturyTel and Level 3. The Panel disagrees with this argument for three reasons.

First, as discussed above, this Panel's authority over interconnection in this state is not affected by the content of the call. The FCC explicitly stated that it was not altering carriers' obligations to transport ISP-bound traffic to points of interconnection. *ISP Order on Remand*, 16 F.C.C.R. at 9187, ¶ 78 n. 149; *accord*, *In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC., and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043 (Washington Utilities and Transportation Commission, Third Supplemental Order Confirming Jurisdiction, October 25, 2002).

Second, again as discussed above, the jurisdiction of Internet traffic is unsettled. CenturyTel bases its jurisdictional argument on two theories, both of which have been rejected by the court on appeal. CenturyTel argues that Internet service is a form of information access, subject to regulation under §§ 201 and 251(g), but excluded from regulation under §§ 251 and 252. CenturyTel also argues that Internet traffic is interstate in nature based upon an end-to-end analysis of the end points of the communication.

The D.C. Circuit has unambiguously rejected § 251(g) as a basis for interstate jurisdiction over Internet traffic. *WorldCom, Inc. v. FCC*, 288 F.3d at 430. Thus, any reference to Internet traffic as a form of information access is improper. This theory of jurisdictional authority has been considered and denied. It is not available to the parties in this arbitration. The FCC Wireline Competition Bureau reached a similar conclusion in its recent arbitration proceeding in Virginia: “We disagree with Verizon’s assertion that every form of traffic listed in section 251(g) should be excluded from section 251(b)(5) reciprocal compensation. In remanding the [*ISP Order on Remand*] to the [FCC], the D.C. Circuit recently rejected the [FCC’s] earlier conclusion that section 251(g) supports the exclusion of ISP-bound traffic from section 251(b)(5)’s reciprocal compensation obligations. Accordingly, we decline to adopt Verizon’s contract proposals that appear to build on logic that the court has now rejected.”⁵

The D.C. Circuit also remanded the earlier *Declaratory Ruling* because it found the FCC’s end-to-end analysis poorly reasoned. *Bell Atlantic v. FCC*, 206 F.3d at 7. Although the FCC may return to this theory of jurisdiction in the future, it cannot provide a basis for jurisdiction, nor exclude this Panel’s jurisdiction over this arbitration, at this point in time.

Third, the fact that this Panel’s regulation may overlap the regulation of interstate services does not, in itself, undermine the authority of this Panel to conduct this arbitration. *Southwestern Bell Tel. Co. v. PUC of Texas*, 208 F.3d 475, 480 (5th Cir. 2000) (“[S]tate commission authority over interconnection agreements pursuant to section 252 extends to both

⁵ In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., CC Docket No. 00-218; CC Docket No. 00-249; CC Docket No. 00-251, 2002 FCC LEXIS 3544, ¶ 261 (WirelineComp.Bur. July 17, 2002) (Virginia Arbitration Award).

interstate and intrastate matters.”) Although it is not possible under current case law to sort out the precise jurisdictional boundary for Internet traffic, it is reasonable to assert for purposes of this arbitration that Internet traffic is jurisdictionally mixed. *See CenturyTel* brief at 3; Level 3 brief at 25. The FCC may implicitly preempt state regulation of a telecommunications service when the matter to be regulated has both interstate and intrastate aspects, preemption is necessary to protect a valid federal regulatory objective, and state regulation would negate the exercise by the FCC of its own lawful authority. *PSC of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990). The Panel concludes that the converse is true as well: this Panel may regulate a subject matter that has both interstate and intrastate aspects, provided its regulation does not conflict with federal law or negate the exercise of lawful federal authority.

Some of the definitions proposed by the parties serve to implement the respective theories of jurisdiction that the parties have advanced. Having found that this Panel has authority to arbitrate the terms under which the parties will exchange Internet traffic, the Panel denies the definition proposed by CenturyTel for the term *Information Access Traffic*. This definition conflicts with the decision of the Court of Appeals because it is based upon an interpretation of § 251(g) that the Court determined to be precluded by the plain meaning of that section. *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002). This definition would also conflict with this Panel’s lawful exercise of authority over Internet traffic in this state.

Similarly, the Panel denies the definition proposed by CenturyTel for the term *Local Traffic*. As discussed in the following issues, this definition fails to comply with a valid federal order governing intercarrier compensation for Internet traffic, and discriminates against the telecommunications service offered by Level 3.

The Panel adopts the definitions proposed by Level 3 for the terms *ISP-Bound Traffic* and *Local Traffic*. These definitions comply with federal law and are consistent with the Panel's authority over the subject matter of Internet traffic.

C. Award

The definitions proposed by CenturyTel for the terms *Information Access Traffic* and *Local Traffic* are denied. The Panel awards the definitions proposed by Level 3 for the terms *ISP-Bound Traffic* and *Local Traffic*. The Panel also awards the related language proposed by Level 3 for Article V, Sections 1, 4 and 5 of the agreement.

Issue 3: What is the proper treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes?

Issue 4: How should the Parties define Bill-and-Keep to implement the FCC's *ISP Order on Remand*?

These issues are related to Issues 1 and 2 above. The first two issues addressed the authority of the Panel to address the subject matter of Internet traffic. Issues 3 and 4 concern the rate of intercarrier compensation for Internet traffic.

A. Position of the parties

Level 3. Level 3 argues that the rate for this type of call should be determined by a comparison of NPA-NXX codes. The traffic would be treated as the functional equivalent to Foreign Exchange service, and would not be considered interexchange for purposes of compensation. Level 3 argues that this is the standard practice of the industry today, and that shifting to a rating scheme based upon the geographical location of the originating and

terminating end users could not be consistently applied with existing billing and network systems.

Level 3 proposes a definition for the term *Bill-and-Keep* that follows the similar definition for that term in the *ISP Order on Remand*. Level 3's proposed definition would apply the Bill-and-Keep billing arrangement to ISP-Bound Traffic originated by CenturyTel end users.

Level 3 proposes the following contract language:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange in which neither of the Parties charges the other for terminating traffic that originates on the other network. Instead, each Party recovers from its own end users the cost of both the originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.

At Article V, Section 3, Level 3 proposes to add the following language to the respective subsections:

3.2.1 Mutual Compensation.

...

Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.

3.2.2 Bill-and-Keep.

...

Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of

compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2, except as set forth in Section 3.1 above.

CenturyTel. CenturyTel argues that Bill-and-Keep is not an appropriate compensation structure for Level 3's proposed ISP-bound traffic. CenturyTel believes that the *ISP Order on Remand* imposes Bill-and-Keep only for the termination of calls made to an ISP located within the customer's local calling area. Since Level 3 proposes to carry ISP-bound traffic that will not terminate within the CenturyTel customer's local calling area, Bill-and-Keep is not appropriate for such traffic. CenturyTel proposes to modify the Level 3 proposed definition as follows:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.

CenturyTel asserts that the rate for this type of call should be determined by a comparison of the geographic location of the originating and terminating parties. CenturyTel believes that "Virtual NXX" is interexchange traffic, similar to toll-free service, and should be subject to access charges.

B. Discussion

These two issues raise a question common to many arbitrations: can CenturyTel compel Level 3 to build and its operate its telephone network in a manner compatible with CenturyTel's billing preferences. Section 251(a) does not specify any criteria under which an incumbent carrier could object to the network design to which it is asked to interconnect. Nonetheless, the parties' respective comments accept for purposes of argument that an incumbent carrier may object to an interconnection request if the interconnection is not technically feasible, if the

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interconnection denies the incumbent carrier some amount of revenue it is otherwise entitled to, or if the interconnection is otherwise not consistent with the public interest, convenience, and necessity. CenturyTel brief at 13-15; Level 3 brief at 41; *compare* § 252(e).

Level 3 describes its network design as “Virtual NXX.” This proposal would permit Level 3 to assign NPA-NXX codes associated with a particular rate center or local calling area to customers physically located outside of that rate center or local calling area, and would rate these calls as local rather than toll even though the virtual NXX customer is located in a different local calling area than the caller. *See also* Virginia Arbitration Award, 2002 FCC LEXIS 3544, ¶ 48. Level 3 asserts that its network design is functionally equivalent to the foreign exchange service CenturyTel presently provides to its own customers. Level 3 also believes its proposal best accommodates the compensation scheme has established for Internet traffic in the *ISP Order on Remand*. Level 3 further asserts that to apply originating access charges would be discriminatory, and would frustrate the offering of competitive service alternatives to end users. Finally, Level 3 argues that there is no cost basis for treating a call to a Level 3 customer differently than other local calls that CenturyTel originates.

In testimony at hearing, the parties explored at length the similarities between Level 3’s proposed network and CenturyTel’s existing foreign exchange service. At a minimum, this similarity demonstrates that Level 3’s proposal is technically feasible.

CenturyTel asserts that the Level 3 interconnection denies it revenue to which it is entitled. The parties agree that bill-and-keep is the appropriate form of compensation for Internet traffic that is local. CenturyTel brief at 16. CenturyTel objects to this compensation rate for Internet traffic that it believes terminates outside the local calling area. CenturyTel contends

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that nearly all of the Internet traffic Level 3 will transport is interexchange, and Level 3's network would operate in a manner not unlike a toll-free service.

Toll-free service is an adaptation of existing toll service intended to promote use of that existing toll network by reversing the charges for the call. Generally, toll-free calls are dialed on a ten-digit basis, generate a billing record, route through an access tandem and are carried by the terminating end user's presubscribed long distance carrier. Level 3 brief at 43; tr. at 31-33. All of these elements of a toll-free call contribute to the cost of the call. Level 3's network proposal would use none of these routing and billing arrangements. Thus, it is not the case that the Level 3 network proposal fails to compensate CenturyTel for an interexchange access service it is providing.

Moreover, CenturyTel's argument ultimately rests upon its theory that an Internet call terminates at the ISP modem bank. CenturyTel brief at 16. The FCC rejected this theory in its *Declaratory Ruling*. 14 F.C.C.R. at 3695-3701. In the *ISP Order on Remand*, the FCC commented that "it erred in focusing on the nature of the service (i.e., local or long distance) and in stating that there were only two forms of telecommunications services – telephone exchange service and exchange access – for purposes of interpreting the relevant scope of section 251(b)(5)." *Order on Remand*, ¶ 26. Of course, the FCC then attempted to substitute § 251(g) as the statutory basis for its regulation. On appeal, that substitution was reversed by the Court. *WorldCom, Inc. v. FCC*, 288 F.3d at 430. It is nonetheless clear that CenturyTel's theory that an Internet call terminates at the ISP has twice been rejected by the FCC. The intercarrier compensation scheme, upheld by the court on appeal, expressly provides for a single

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compensation rate without respect to the terminating point of the call. *Order on Remand*, ¶¶ 27-30, and n. 56.

It follows from this discussion that CenturyTel will not lose revenue to which it is entitled. Rather, Level 3 proposes to interconnect with CenturyTel in a manner that is both feasible and consistent with state and federal law. The Wireline Competition Bureau reached a similar result in Virginia. *See Virginia Arbitration Award*, 2002 FCC LEXIS 3544, ¶¶ 301-303.

Level 3 asserts that treating Internet traffic as CenturyTel proposes would be discriminatory and not in the public interest. Level 3 argues that since CenturyTel and other incumbent carriers have long provided foreign exchange to their own customers, it would be discriminatory to single out a CLEC service (and not the incumbent's own functionally identical services) to bear the burden of originating access charges.

In particular, Level 3 demonstrated during the hearing that CenturyTel offers its own customers dial-up access to CenturyTel's Internet service affiliate at local telephone exchange service rates. This local dial-up access is available not only to customers in CenturyTel exchanges, but also to customers located within the Extended Area Service calling areas of those exchanges.

CenturyTel attempts to distinguish its dial-up Internet access from that proposed by Level 3:

In each instance in which CenturyTel has assigned a number associated with non-CenturyTel exchanges, it is only in exchanges that are still within the same local calling area (i.e., within an EAS area). This is simply providing a number that is local because of EAS. Contrary to Level 3's suggestion, CenturyTel is in no way 'doing the same thing' that Level 3 proposes to do. Under CenturyTel's approach, the calls are local because the party placing the call and the ISP receiving the call are in each instance located in the same local calling area.

CenturyTel brief at 15-16. However, it is again apparent that CenturyTel's argument depends upon its theory that an Internet call terminates at the ISP modem bank. For the reasons stated above, that theory is rejected. The CenturyTel Internet access service is similar in purpose, jurisdiction and operation to that proposed by Level 3. The two services should be rated the same. *See* § 252(d)(1)(A)(ii) and Wis. Stat. § 196.204.

Finally, CenturyTel argues that the Level 3 network proposal would unreasonably consume numbering resources. However, Level 3 responds, and CenturyTel does not dispute, that Level 3 has complied with the federal initiative on local number portability. This is the number conservation program now in effect. Level 3 is not required to do more.

With respect to the specific contract language proposed by the parties, the Panel finds that the definition for the term *Bill-and-Keep Arrangement* proposed by Level 3 best conforms to the requirements of the *ISP Order on Remand*. The CenturyTel proposals taken as a whole would impose originating access charges on traffic that must be rated at bill-and-keep to conform to the *ISP Order on Remand*. The CenturyTel proposals would also have the undesirable effect of applying originating access charges to traffic terminated by Level 3 while applying local service rates for similar traffic terminated to CenturyTel's ISP affiliate.

For the same reason, it is appropriate to adopt Level 3's proposed language for Article V, Section 3, of the agreement as well.

C. Award

The Panel awards the definition for the term *Bill-and-Keep Arrangement* proposed by Level 3. The Panel also awards the contract language proposed by Level 3 for Article V,

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Sections 3.2.1 and 3.2.2 of the agreement. The alternative language proposed by CenturyTel is denied.

Issue 11: To the extent CT is not a “rural telephone company,” where should the Parties be required to interconnect?

This issue concerns provisions in the interconnection agreement governing the location of the points of interconnection between the parties’ networks.

A. Position of the parties

Level 3 argues that § 251(c) and the administrative rule implementing that section require that an incumbent carrier allow a CLEC to establish a single point of interconnection in each LATA. Level 3 has also proposed that, where CenturyTel has two or more noncontiguous serving areas in the same LATA, Level 3 would establish a single point of interconnection in each serving area. Level 3 proposes the following contract language:

- 4.1.2 The Parties will mutually designate at least one IP on CenturyTel’s network within each LATA for the routing and exchange of traffic pursuant to this Agreement; provided, however, that if CenturyTel has two or more serving areas that are not geographically contiguous in the same LATA, Level 3 will establish a single IP in each non-contiguous CenturyTel serving area. For purposes of clarification, nothing in the foregoing sentence shall be read to require Level 3 to establish more than one IP within each CenturyTel serving area, even if a given CenturyTel serving area is comprised of multiple local calling areas, exchanges, and rate centers.

CenturyTel objects to aspects of the Level 3 proposal. CenturyTel agrees to establish a point of interconnection within each serving area, but would eliminate from the agreement the requirement that the number of points of interconnection is dependent upon whether CenturyTel serving areas are geographically contiguous. CenturyTel contends that Level 3 should pay for any interoffice transport necessary to deliver traffic to a Level 3 point of interconnection.

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CenturyTel proposes the following contract language:

4.1.2 The Parties will mutually designate at least one IP on CenturyTel's network within each CenturyTel serving area within a LATA.

B. Discussion

Section 251(c)(2) requires that the three non-exempt CenturyTel operating companies provide interconnection with its network for the transmission and routing of local telephone exchange service and exchange access at any technically feasible point. In the First Report and Order, the FCC comments:

198. We conclude that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations. We further conclude that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements. Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible. We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Finally, we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.

At paragraph 209, the FCC more clearly states that interconnecting CLECs are entitled to unilaterally determine the point(s) of interconnection:

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

The only constraint on a CLEC's discretion concerning the point of interconnection is technical feasibility. The U.S. Court of Appeals for the Third Circuit recently ruled:

The decision where to interconnect and where not to interconnection must be left to [the CLEC], subject only to concerns of technical feasibility.

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MCI Telecommunications Corp. et al. v. Bell Atlantic-Pennsylvania, 271 F.3d 491, 518 (3rd Cir. 2001); *see also U.S. West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

Under § 251(c), Level 3 is entitled to interconnect with the CenturyTel network at points of its choosing, subject to the single constraint of technical feasibility. CenturyTel proposes that the parties mutually designate at least one point of interconnection on CenturyTel's network within each CenturyTel serving area. Level 3 believes CenturyTel's language may result in more points of interconnection than the statute requires. It proposes a proviso reducing the number of interconnection points where serving areas are geographically contiguous. Neither proposal addresses squarely the statutory requirement of technical feasibility.

The Panel finds it is unable to select either contract language proposal. The CenturyTel proposal may impair Level 3's discretion under the statute to designate the interconnection points it desires. The Level 3 introduces a geographic test that is unrelated to the statutory test of technical feasibility.

C. Award

Accordingly, the Panel awards that CenturyTel must, at a minimum, deliver traffic to a Level 3 point of interconnection that originates within the local service area of the CenturyTel exchange serving the point of interconnection. The local service area would include the exchange itself and any other exchanges within the Extended Area Service or Extended Community Calling territory for that serving exchange, as specified in the applicable CenturyTel tariff.

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Level 3 is also awarded the further option of requesting a reduction in the number of points of interconnection by linking exchanges that are not presently connected by either an Extended Area Service or Extended Community Calling arrangement. This request must identify the specific routes at issue to permit analysis of technical feasibility on a case-by-case basis. In the event that Level 3 makes such a request, CenturyTel may object to a specific request as technically infeasible. If the parties are unable to negotiate a satisfactory resolution of the dispute, the parties may escalate the dispute following the dispute resolution procedures in Article III of the agreement.

Award

1. For each issue discussed in the Opinion above, the Panel awards the contract language specified for that issue. Where the Panel has adopted specific contract language, the parties shall incorporate that language into the Interconnection Agreement. Where the Panel has adopted a position on an issue and provided drafting instructions for the parties, the parties shall compose contract language to implement the Panel's award.
2. The parties shall jointly a final Interconnection Agreement to the Panel by noon, January 15, 2003. If the parties are unable to conclude a final agreement, the parties should so inform the Panel by January 15, 2003. The Panel will then contact the parties to take necessary actions to resolve the remaining disputes.

By the Panel,

Signed this 2nd day of December, 2002.

Edward S. Marion, Chairman

Gary A. Evenson

Dennis J. Klaila



ORIGINAL



Public Service Commission of Wisconsin

The PSC

Info by Industry

Consumer Info

Events / Actions

General Info

Minutes and Informal Instructions - Open Meeting of Thursday, February 13, 2003

Minutes

The Public Service Commission of Wisconsin (Commission) met as noticed. Present were Chairperson Bridge, Commissioner Bie, and Commissioner Garvin.

The Commission approved the minutes of the Open Meetings of Thursday, January 30, 2003; and Thursday, February 6, 2003

780-WR-103 - Application of the Village of Brown Deer, Milwaukee County, as a Public Water Utility, for Authority to Change Its Method of Cost Recovery for Providing Public Fire Protection Service

The Commission approved a Notice of Proceeding and directed it be signed by the Secretary to the Commission on behalf of the Commission.

2320-WR-101 - Application of the Village of Granton, Clark County, as a Public Water Utility, for Authority to Increase Water Rates

The Commission approved a Notice of Proceeding and directed it be signed by the Secretary to the Commission on behalf of the Commission.

4900-WR-106 - Application of the City of Racine, Racine County, as a Public Water Utility, for Authority to Increase Water Rates

The Commission approved a Notice of Proceeding and directed it be signed by the Secretary to the Commission on behalf of the Commission.

6185-WR-101 - Application of the Village of Warrens, Monroe County, as a Public Water Utility, for Authority to Increase Water Rates

The Commission approved a Notice of Proceeding and directed it be signed by the Secretary to the Commission on behalf of the Commission.

137-CE-110 - Applicant of American Transmission Company, LLC, as an Electric Public Utility, for Authority to Upgrade, Install, Operate, and Maintain Certain Electric Transmission Facilities in Dane County

The Commission approved a Notice of Investigation and directed it be signed by the Secretary to the Commission on behalf of the Commission.

05-MA-130 - In the Matter of Level 3 Communications, LLC, Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms, and Conditions With CenturyTel of Wisconsin, LLC

The Commission affirmed the findings of the panel and approved the agreement.

The Commission directed the Telecommunications Division to draft an order consistent with this decision.

6720-TI-170 - Petition of Wisconsin Bell, Inc., for a Section 271 Checklist Proceeding

1-IC-309 - Application for Intervenor Compensation Filed by Citizens' Utility Board for \$42,185 to Participate in Docket 6720-TI-170

Request for Supplemental Award of Intervenor Compensation Filed by Citizens' Utility Board for \$32,800 to Participate in Docket 6720-TI-170

Request for Second Supplemental Award of Intervenor Compensation Filed by Citizens' Utility Board for \$15,050 to Participate in Docket 6720-TI-170

This item was laid over at the request of the Commission.

The Commission directed the Director of Fiscal Services to obtain additional information from the Citizens' Utility Board.

6720-TI-170 - Petition of Wisconsin Bell, Inc., for a Section 271 Checklist Proceeding

The Commission authorized the Administrative Law Judge, in consultation with the staff, to set and implement further procedural steps respecting SBC Wisconsin compliance and performance measure filings and various vendor interim reports.

1-AC-188 - In the Matter of Rulemaking Regarding Municipal Rights-of-Way Issues

Clearinghouse Rule Number 01-077

The Commission agreed to modify the rules relating to municipal rights-of-way and adopted a germane modification.

3270-UR-111 - Application of Madison Gas and Electric Company for Authority to Change Electric and

Natural Gas Rates

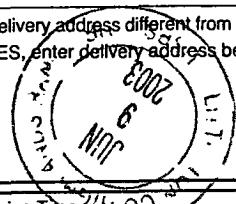
No discussion was held.

Miscellaneous Business - Such Other Matters As Authorized By Law

The Commission welcomed Daniel Ebert to the Public Service Commission. Dan will serve as Executive Assistant to the Chairperson.

Lynda L. Dorr
Secretary to the Commission

PU-2065-02-465

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Joseph Gates</i>	
	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: <i>Joseph J. Gates 9-5 Consulting 15712 W 72nd Circle Arvada Co 80007</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No 	
	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)	7002 2030 0003 7647 8429	
PS Form 3811, August 2001		Domestic Return Receipt 2ACPRI-03-Z-0985


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	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: <i>Frank G. Lamancusa Telecom Dispute Solutions Inc 17721 Inu Lawn Dr Ashton Md 20861</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No	
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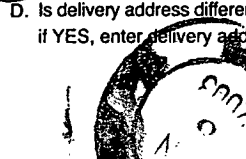
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	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: <i>David J. Hoque Prentice & Bergstad PO Box 1000 Orlando FL 32802-1000</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No	
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	B. Received by (Printed Name) <i>Colman Sevilla</i>	C. Date of Delivery <i>6/6/03</i>
1. Article Addressed to: <i>Michael W Fleming Sheriff's Office 3000 K St NW Ste 300 Washington DC 20007-5116</i>	D. Is delivery address different from item 1? if YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
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	B. Received by (Printed Name) <i>Colman Sevilla</i>	C. Date of Delivery <i>6/6/03</i>
1. Article Addressed to: <i>Russell M Blau Sheriff's Office 3000 K St NW Ste 300 Washington DC 20007-5116</i>	D. Is delivery address different from item 1? if YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
2. Article Number (Transfer from service label) 7002 2030 0003 7647 8399		
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	B. Received by (Printed Name) <i>Barbara Dunsen</i>	C. Date of Delivery <i>6-7-03</i>
1. Article Addressed to: <i>Michael R Romano Level 3 Communications LLC 1425 E Grand Blvd Broomfield Co 80021</i>	D. Is delivery address different from item 1? if YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
2. Article Number (Transfer from service label) 7002 2030 0003 7647 8443		
PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985		

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

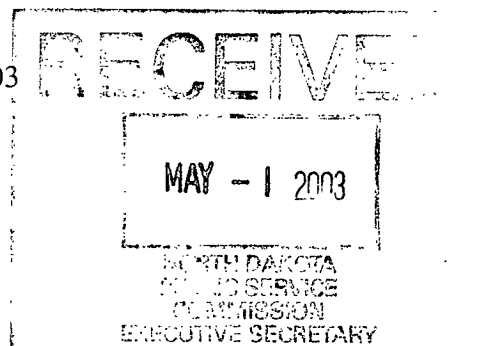
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FAX (212) 891-9598

May 1, 2003

**VIA FACSIMILE AND
OVERNIGHT DELIVERY**

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480



Re: Level 3 Communications, LLC Petition for Arbitration -PU-2065-02-465

Dear Mr. Mielke:

This joint correspondence is submitted on behalf of Level 3 Communications, LLC ("Level 3") and SRT Communications, Inc. ("SRT") to confirm certain procedural matters agreed to in the above-referenced arbitration.

On March 3, 2003, the Arbitrator in this proceeding issued his Decisions and Recommendations Concerning Level 3 Communications, LLC's Interconnection Arbitration Application. On April 2, 2003, Level 3 and SRT filed an interconnection agreement conforming to the Decisions and Recommendations for approval by the Commission. On April 17, 2003, Level 3 and SRT filed comments regarding the conforming agreement. On April 25, 2003, the Commission conducted a working session to consider the Arbitrator's Decisions and Recommendations, the conforming agreement, and the comments regarding the conforming agreement. Pursuant to N.D. Admin. Code § 69-02-10-32, the Commission must approve or reject the conforming agreement within 30 days of its filing, which in this case would require a Commission decision by May 2, 2003.

The Parties recognize that the resolution of these matters may preclude the Commission from issuing a decision within the period required by N.D. Admin. Code § 69-02-10-32. Accordingly, to allow for a proper window of time for the Commission to consider this matter thoroughly, the Parties have agreed that the Commission should have an extension of time of thirty (30) days to issue its decision in this matter. Accordingly, the Parties knowingly and voluntarily agree to waive the 30-day deadline, and hereby

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Pages: 2

Joint letter to confirm certain procedural
matters
by Level 3 Communications/SRT Communication

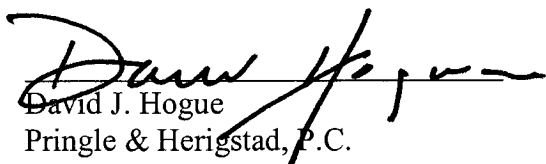
05/01/2003

CC: Comm Legal PUD (3)

commit that they will not appeal any decision in this matter that is rendered by the extended deadline, which is now June 2, 2003, on the basis that such decision is untimely under the Act.

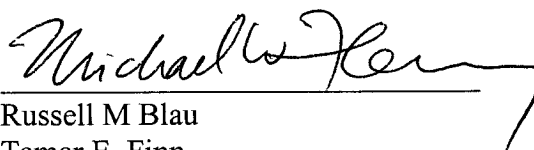
Thank you for your attention to this request. If you should require any additional information from the parties, please do not hesitate to contact us.

Respectfully submitted,



David J. Hogue
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
Tel: (701) 852-0381
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Counsel for
Level 3 Communications, LLC

cc: Service List

Decision No. C03-0117

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02B-408T

IN THE MATTER OF THE PETITION OF LEVEL 3 COMMUNICATIONS, LLC FOR
ARBITRATION PURSUANT TO SECTION 252(B) OF THE TELECOMMUNICATIONS
ACT OF 1996 WITH CENTURYTEL OF EAGLE, INC. REGARDING RATES, TERMS,
AND CONDITIONS FOR INTERCONNECTION.

DECISION DENYING EXCEPTIONS

Mailed Date: January 30, 2003
Adopted Date: January 17, 2003

I. BY THE COMMISSION

A. Statement, Findings, and Conclusion

1. This matter comes before the Commission for consideration of Exceptions filed by Level 3 Communications, LLC. (Level 3) on November 21, 2002. The Exceptions were filed in response to Decision No. R02-1242 (Recommended Decision) which granted CenturyTel of Eagle, Inc.'s (CenturyTel) Motion to Dismiss Petition in this docket. Level 3, in its Petition for Arbitration pursuant to 47 U.S.C. § 252, requests interconnection with CenturyTel's network for the transport and termination of traffic to Internet Service Providers (ISPs) served by Level 3. In Decision No. R02-1242, the Administrative Law Judge (ALJ) determined that the Federal Communications Commission (FCC) has preempted state commission jurisdiction over all issues concerning ISP-bound traffic. As such, the ALJ concluded, this Petition for Arbitration by Level 3 must be dismissed.

2. CenturyTel filed its Response to the Exceptions. On January 3, 2003, we heard oral argument on the Exceptions and, in particular, the Commission's authority to arbitrate Level 3's request for interconnection with CenturyTel. Attorneys for Level 3 and CenturyTel presented

arguments and support for their positions in this matter. Now being duly advised, we grant the Exceptions, in part only. While we agree with Level 3 that the FCC has not preempted state commissions from arbitrating all matters concerning ISP traffic, we nevertheless agree with CenturyTel that, for reasons other than those cited by the ALJ, the Commission lacks jurisdiction over this Petition under 47 U.S.C. § 252.

B. Exceptions by Level 3

3. Level 3 argues that the ALJ erred in his conclusion that the Commission lacks jurisdiction to arbitrate the interconnection dispute between Level 3 and CenturyTel pursuant to §§ 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Act).¹ Level 3 states that the FCC has not preempted state commissions from exercising jurisdiction over ISP traffic, except on the discreet issue of setting intercarrier compensation rates under § 251(b)(5) of the Act.

4. According to Level 3, the Recommended Decision would inflate the costs for any ISP served by Level 3, because CenturyTel will charge originating access charges, thus forcing Level 3 to pay for dedicated facilities to carry traffic that CenturyTel should otherwise be obligated to carry at its own expense.² The FCC has stated that the ban on origination charges ensures that the costs of facilities used to deliver telecommunications traffic to the point of interconnection are borne by the originating carrier, and that the originating carrier recovers the costs of those facilities through the rates it charges to its own local customers.

¹ 47 U.S.C. §§ 251-252.

² See 47 C.F.R. § 51.703(b) (stating that “[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC’s network.”).

5. The Exceptions suggest that the ALJ made three principal legal errors. First, the ALJ mischaracterized the scope of the FCC's preemption of state jurisdiction over ISP-bound traffic. Second, the ALJ's inference of broad FCC preemption over all interconnection matters relating to ISP-bound traffic is inconsistent with federal judicial preemption doctrine. Third, the ALJ erred by mischaracterizing ISP-bound traffic under the relevant FCC and judicial precedents by not finding that it is jurisdictionally mixed, with both local and long distance components, and that it is not "information access."

6. Level 3 asserts that the ALJ's findings were contrary to the FCC's *ISP Order on Remand*³ because in that order the FCC only preempted states with respect to setting intercarrier compensation rates for ISP-bound traffic. Level 3 states that, instead of relying on the plain language of §§ 251 and 252, which grant the state commissions jurisdiction to arbitrate all interconnection disputes between all telecommunications carriers, the ALJ relied on the jurisdictional analysis rejected by the U.S. Court of Appeals for the D.C. Circuit,⁴ and which the FCC has abandoned. Level 3 argues that §§ 251 and 252 "address both the interstate and intrastate aspects of interconnection, services and access to unbundled network elements."⁵

7. In arguing that the FCC has not preempted state commission jurisdiction over all ISP issues, Level 3 notes that the ALJ failed to address footnote 149 of the *ISP Order on Remand*. This footnote states that the FCC's interim intercarrier compensation regime for ISP-bound traffic:

[A]ffects only the intercarrier compensation (i.e., the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.

³ *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 (FCC 2001) (*ISP Order on Remand*)

⁴ *Bell Atlantic v. Federal Communications Commission*, 206 F.3d 1 (D.C. Cir. 2000).

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15, 499, 15,547 ¶ 92 (FCC 1996)

8. Level 3 continues that this footnote clearly and unambiguously states that the FCC did not otherwise alter interconnection obligations with respect to ISP-traffic or remove state commission jurisdiction over arbitration and enforcement of those interconnection agreements. The ALJ did not address this footnote in his decision. Rather, the ALJ took the position that the *ISP Order on Remand* can be read either as limited to intercarrier compensation issues, or all ISP traffic issues encompassed by §§ 251 and 252. This inference, Level 3 argues, is contrary to the FCC's own clear statements on the issue.

9. Likewise, Level 3 states that the ALJ ignored the plain meaning of §§ 251 and 252, which grants the state commission jurisdiction to arbitrate all interconnection disputes between all telecommunications carriers. Section 251(a) provides that “[e]ach telecommunications carrier has the duty – (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carrier.” A “telecommunications carrier” is not limited to providers of exclusively local or intrastate telecommunications services, but rather encompasses interstate services as well. Level 3 has sought interconnection with CenturyTel under §§ 251(a) and (b), and under § 251(c) to the extent CenturyTel is not a rural telephone company with an exemption under § 251(f)(1). Level 3 contends that § 252 grants to state commissions the authority to approve or reject proposed interconnection agreements, to mediate or arbitrate disputes, and to enforce obligations falling under §§ 251 (a), (b), and (c). The ALJ mistakenly concluded that the scope of §§ 251 and 252 is limited to intrastate services. By extension, Level 3 contends that the ALJ erroneously claims that the interstate nature of ISP-bound traffic precludes state commissions from asserting jurisdiction over interconnection disputes involving ISP traffic.

10. Level 3 further disagrees with the ALJ's reliance on the FCC's end-to-end analysis of ISP traffic to justify that ISP traffic is interstate in nature. Level 3 notes that the D.C. Circuit vacated this rationale, stating that the FCC erred in focusing on the nature of the service (*i.e.*, local or long

distance).⁶ Level 3 argues that this traffic, is in fact, jurisdictionally mixed with components of both intrastate and interstate traffic. Because of this hybrid nature, it is not traditional interexchange traffic such as WorldCom, Inc., or AT&T Communications of the Mountain States, Inc., carry. In the *Bell Atlantic* decision, the D.C. Circuit confirmed the jurisdictionally mixed nature of ISP-bound traffic stating:

Calls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a continuation, in the conventional sense, of the initial call to the ISP.

Level 3 asserts that this statement neutralizes the ALJ's conclusions that rely on a pure interstate classification.

11. Level 3 also asserts that the ALJ's inference of broad FCC preemption over all interconnection matters relating to ISP traffic is inconsistent with federal preemption doctrine. According to Level 3, a federal agency's intent to preempt state regulation must be explicit and unambiguous. In this case, the FCC did not state with clarity that it is preempting states with respect to ISP traffic. On the contrary, the FCC stated it was not preempting state commission jurisdiction over anything, but setting intercarrier compensation rates for ISP-bound traffic. Again, Level 3 claims that footnote 149 of the *ISP Order on Remand* supports this contention.

12. Level 3 then argues that the ALJ mistakenly concluded that ISP-bound traffic is an information service. Level 3 points to the *Bell Atlantic* decision, which rejected the FCC's characterization of ISP-bound traffic as exchange access or information access, and noted that ISP-bound traffic appears to be a telecommunications service. Similarly, in *WorldCom*⁷ the D.C. Circuit rejected the FCC's argument that ISP-bound traffic was information access subject to § 251 (g) of the

⁶ *Bell Atlantic Telephone Cos. v. FCC*, 206 F. 3d 1 (D.C. Circuit 2000)

⁷ *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

Act and that the exchange of ISP-bound traffic between local exchange carriers (LECs) was the provision of “information access” by the originating LEC within the scope of § 251(g).

13. Finally, Level 3 contends that the ALJ mistakenly claimed that the Court in *WorldCom* found that the state commissions would no longer have § 251(e)(1) authority over interconnection for ISP-bound traffic. Level 3 asserts that the Court, *supra.* at 431-32, was simply summarizing the FCC’s position – one that was rejected by the Court when it reversed and remanded the order. The ALJ’s finding that the Court “appears” to have concluded that the FCC’s preemption extended to all interconnection matters involving ISP-bound traffic is therefore erroneous.

14. In summary, Level 3 requests that we grant its Exceptions and assert jurisdiction over this arbitration, or, if we adopt the ALJ’s decision, that we clarify that we are ceding jurisdiction over this proceeding to the FCC pursuant to § 252(e)(5) of the Act.⁸

C. CenturyTel’s Response

15. In its Response, CenturyTel argues that the Commission lacks jurisdiction to arbitrate this matter, and, therefore, Level 3’s Exceptions should be denied and the Recommended Decision adopted.

16. According to CenturyTel, ISP-bound traffic is not subject to this Commission’s review under § 252 of the Telecom Act. The FCC, in the *ISP Order on Remand* (paragraph 52), not only preempted states with respect to intercarrier compensation for ISP-bound traffic, but also concluded that ISP-bound traffic is properly classified as interstate traffic. As such, it falls within the FCC’s § 201 jurisdiction.⁹ CenturyTel agrees with the ALJ’s finding that the FCC has exclusive

⁸See § 252(e)(5) (“if a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the [FCC] shall issue an order preempting the State commission’s jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.”)

⁹ 47 U.S.C. § 201.

jurisdiction over all ISP traffic interconnection issues under its § 201 authority, not only those involving reciprocal compensation.

17. CenturyTel acknowledges footnote 149 of the *ISP Order on Remand*, but states that the FCC did not specify in that order what a carrier's obligations are for transporting ISP-bound traffic under its Part 51 rules. CenturyTel asserts that this obligation does not exist in the Part 51 rules, but even if it did, CenturyTel would not have an obligation under § 251 of the Telecom Act to transport or terminate ISP-bound traffic that originates on CenturyTel's network. Interconnection, according to Centurytel, simply means the physical linking of two networks.

18. CenturyTel contends that the FCC's jurisdiction over ISP-bound traffic is based on the well-established principle that, when communications are jurisdictionally mixed and cannot be separated--the case with ISP-bound traffic--then, the FCC, not a state commission, has authority to regulate such communications.¹⁰ CenturyTel asserts that the FCC, having concluded that ISP-bound traffic should be classified as interstate communications, preempted the state commissions from exercising jurisdiction over all prospective interconnection matters relating to ISP traffic.

19. According to CenturyTel, in classifying ISP-bound traffic as interstate, the FCC excluded this traffic from §§ 251 and 252 altogether, thereby leaving the state commissions no authority over interconnection issues related to this traffic. Significantly, the *ISP Order on Remand* prohibited any carrier from invoking § 252(i) to opt into any existing interconnection agreement addressing ISP-bound traffic. At paragraph 82 of that order, the FCC stated that § 252(i) applies only

¹⁰ Citing *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 376 n. 4 (1986) (federal regulation of traffic is appropriate where it is not possible to separate the interstate and intrastate components of the asserted regulation); and *Southwestern Bell Tel. Co. v. FCC*, 153 F. 3d 523, 541-42 (federal regulation of "jurisdictionally mixed" traffic is appropriate).

to agreements arbitrated or approved by state commissions pursuant to § 252. Further, CenturyTel states, the ALJ appropriately points out that the Court's description in *WorldCom* of the FCC's holdings in the *ISP Order on Remand* supports this position. That description states in pertinent part, "[T]he state regulatory commissions would no longer have jurisdiction over ISP-bound traffic as part of their power to resolve LEC interconnection issues under 252(e) of the Act."¹¹

20. CenturyTel addresses Level 3's request that this Commission cede jurisdiction to the FCC pursuant to § 252(e)(5), stating that Level 3 misapplies this section to the present circumstances. Section 252(e)(5) only applies to those instances in which a state commission fails to carry out its responsibilities under § 252. However, CenturyTel states, the FCC, the D.C. Circuit t, and the ALJ in this proceeding have all concluded that state commissions lack the authority to arbitrate the interconnection dispute at issue here. Thus, if the Commission adopts the Recommended Decision, such action would not constitute a failure to act; rather, the Commission does not possess the jurisdiction in the first instance.

21. CenturyTel contends that the ALJ's jurisdictional characterization of ISP-bound traffic is correct. While the FCC recognized that ISP-bound traffic has interstate and intrastate components, it also concluded that those components cannot be reliably separated. Therefore, ISP traffic is properly classified as interstate, and, as such, falls within the FCC's jurisdiction.¹² Thus, CenturyTel concludes, the Level 3 argument should be disregarded.

22. CenturyTel also points out that this Commission recently upheld the ALJ's decision to deny Level 3's declaration of intent to provide local services in CenturyTel's territory (Docket

¹¹ *WorldCom* at 432.

¹² *ISP Order on Remand* at ¶ 52.

No. 02U-236T). *See* Decision No. C03-0067. According to CenturyTel, the Commission concluded that the service Level 3 proposes to offer did not constitute a local exchange telecommunications service, and therefore, Level 3's certificate for local services should not be extended to serve in CenturyTel's exchanges. CenturyTel cites the FCC's Local Competition Order in which it states, "[a]ll carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (i.e., non-interexchange calls)." Further, the FCC concluded that "an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbents LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2)."¹³

23. CenturyTel continues: Level 3 erroneously argues that there are no limitations on state commissions' authority to arbitrate interconnection disputes. Not all interconnection arrangements are subject to § 252 arbitration and review. For example, intrastate and interstate access arrangements for the termination and origination of interexchange traffic are not arbitrated and reviewed by the state commissions pursuant to § 252. Section 252(a) makes reference only to §§ 251(b) and (c) and not to § 251(a) when describing the arbitration authority of a state commission. In relevant part, § 252(a) provides that,

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement...without regard to the standards set forth in subsections 251(b) and (c) of Section 251...The agreement ...shall be submitted to the State commission under subsection (e) of this section.¹⁴

¹³ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers; First Report and Order*, 11 FCC Rcd 15499, 15598 ¶¶190-91 (*Local Competition Order*).

¹⁴ 47 U.S.C. § 252(a).

24. According to CenturyTel, § 252(a) makes no specific reference to interconnection pursuant to § 251(a). Further, § 252(d) supports this position. That provision sets forth pricing standards for interconnection pursuant to §§ 251(b)(5) and 251(c)(2)-(4) only. None of these interconnection provisions applies to the negotiations between Level 3 and CenturyTel. There are no pricing standards in § 252(d) for § 251(a) interconnection, CenturyTel claims, because it was not contemplated that § 251(a) interconnection agreements would be reviewed by a state commission under § 252(e).

25. Finally, CenturyTel argues that this arbitration does not fall under § 251(c) because CenturyTel is a rural provider exempt from the obligations contained in that section. This Commission has not terminated CenturyTel's rural exemption status (pursuant to § 251(f)); therefore, interconnection with CenturyTel could fall only under §§ 251(a) or (b). However, CenturyTel does note that due to the interstate nature of this ISP-bound traffic it also cannot fall under § 251 (b). With only 251(a) then remaining, CenturyTel reiterates that § 252 does not give state commissions authority to arbitrate an interconnection dispute involving only § 251(a) interconnection.

D. Decision

26. It is not clear to us whether the FCC has completely preempted state commissions' jurisdiction over issues relating to ISP-bound traffic, or whether the FCC intended only to carve out reciprocal compensation for such traffic and bring it within federal jurisdiction. The *ISP Remand Order* seems to want to have it both ways. On the one hand, it makes a jurisdictional determination that ISP-bound traffic is mixed and hence interstate; on the other hand, the Order seems to imply what seems a logical impossibility; namely, that only the compensation aspect of ISP traffic is FCC jurisdictional. To this extent we do not understand what the FCC means to do, we grant the Exceptions and do not accept the ALJ's rationale.

27. Ultimately, however, we agree with CenturyTel that, for reasons other than those cited by the ALJ, dismissal of Level 3's Petition for Arbitration is required. We conclude that in light of: (1) CenturyTel's status as a rural incumbent local exchange carrier (ILEC); and (2) the interexchange nature of the ISP traffic to be carried by Level 3 with its proposed interconnection with CenturyTel, the Commission lacks jurisdiction to arbitrate this dispute under § 252 of the Telecom Act.

28. On the issue of preemption, Level 3 is correct that the FCC's intent to preempt state commission authority must be clear and unambiguous. *Integrity Management International, Inc. v. Tombs & Sons*, 836 F.2d 485 (10th Cir. 1987). Because we see confused temporizing from the FCC, and nothing approaching clear and unambiguous intent to preempt, we cannot find ourselves preempted.

29. Generally, the Recommended Decision (and CenturyTel in its support of the Recommended Decision) relies on the *ISP Order on Remand* for its conclusion that the FCC intended to preempt state commission arbitration over all matters relating to ISP-bound traffic. That decision, however, contains no clear and unambiguous statements that the FCC intended such preemption. Furthermore, the most plausible interpretation of the *ISP Order on Remand* is that the FCC intended to preempt state commissions on ISP-bound traffic only with respect to compensation issues, and even then, only on matters that would conflict with the FCC's specific directives relating to compensation. For example, in paragraph 4 of the Executive Summary, the FCC stated its general determination "that intercarrier compensation for ISP-bound traffic is within the jurisdiction of this Commission under section 201 of the (Telecom) Act..." (emphasis added). And in attempting to point to specific language in the *ISP Order on Remand* to support its preemption argument, CenturyTel cited paragraphs 52 and 82 of the order. However, the language in those paragraphs is

clear that the FCC was addressing only its authority to establish intercarrier compensation requirements for ISP traffic.

30. We further note that the ISP Order on Remand explicitly acknowledges that state commissions have and would continue to have a role in arbitrating, reviewing, and enforcing interconnection agreements relating to ISP-bound traffic. *See ISP Order on Remand*, paragraph 79 (carrier may rebut presumptions regarding the amount of traffic that is ISP-bound traffic by providing evidence "to the appropriate state commission" in "state commission proceedings"); and paragraph 80 (FCC-ordered rate caps have no effect to the extent state commissions have ordered LECs to exchange ISP-bound traffic at rates below the caps or on a bill-and-keep basis).

31. CenturyTel points to the conclusion in the ISP Order on Remand that ISP-bound traffic is interstate traffic and within the FCC's § 201 jurisdiction. Interstate communications, CenturyTel argues, does not fall within state commissions' authority, but is exclusively within the FCC's jurisdiction. Accordingly, whether or not the FCC specifically articulated its intent to preempt the states on matters related to ISP traffic, preemption follows from the determination that this traffic is interstate communications. We disagree.

32. The FCC itself, in the *Local Competition Order* (footnote 11, *supra.*) observed that the Act abolished previously existing distinctions between the FCC's jurisdiction over interstate communications and the states' jurisdiction over intrastate communications. Specifically, the FCC stated that §§ 251 and 252 created "parallel jurisdiction for the FCC and the states." So, § 251 authorizes the FCC to establish regulations regarding both interstate and intrastate aspects of interconnection and unbundled network elements, and, similarly, the states' authority under § 252 extends to both interstate and intrastate matters. This interpretation of the Act is confirmed by the courts. *Southwestern Bell Telephone v. Public Utility Commission*, 208 F. 3d 475, at 480 (5th Cir.

2000). Therefore, the FCC's determination that ISP-bound traffic is interstate traffic is not particularly relevant on the question whether the Commission possesses jurisdiction over the present dispute between Level 3 and CenturyTel. For the reasons discussed above, we conclude that the FCC has not preempted state commission jurisdiction under § 252 of all disputes relating to ISP-bound traffic.

33. Nevertheless, we determine that § 252 gives the Commission jurisdiction only over matters arising under §§ 251(b) and (c). Level 3 argues that the only prerequisite for invoking the Commission's § 252 jurisdiction is a request for interconnection made to an ILEC. According to Level 3, § 252(a) refers only to a request for interconnection under § 251, without reference to any subsection of § 251. Thus, even a request for interconnection under § 251(a) is subject to arbitration by a state commission. We disagree.

34. CenturyTel points out that § 252(a) mentions §§ 251(b) and (c) specifically (ILEC may negotiate an interconnection agreement without regard to the standards set forth in subsections (b) and (c)), and makes no mention of § 251(a). Moreover, we note that § 252(a), according to its title, relates to interconnection agreements arrived at through negotiations. However, the provision where an ILEC's duty to negotiate is specified is in § 251(c) (which also incorporates the duties specified in § 251(b)). The duty to negotiate interconnection agreements, therefore, is itself a §§ 251(b) and (c) obligation, not one arising under § 251(a). We conclude that a state commission's § 252 authority is limited to requests for interconnection agreements implicating §§ 251(b) and (c) obligations. As such, a state commission has no arbitration authority over § 251(a) matters.

35. Level 3 purports to request interconnection under §§ 251(a), (b), and even (c), to the extent CenturyTel is not a rural ILEC with an exemption under § 251(f)(1). We conclude that no provision of § 251(b) applies to this case. The only § 251(b) obligation plausibly raised by Level 3's

Petition for Arbitration is that arising under § 251(b)(5) (duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications). However, the *ISP Order on Remand* clearly excludes ISP-bound traffic from § 251(b)(5). Therefore, Level 3's Petition states no plausible claim for interconnection under § 251(b).

36. Similarly, the Petition cannot state a claim for interconnection under § 251(c). In the first place, CenturyTel is a rural ILEC and, pursuant to § 251(f), is presently exempt from § 251(c) obligations. The Commission has not terminated CenturyTel's rural exemption (by finding that a request for interconnection with CenturyTel is not unduly economically burdensome, is technically feasible, and consistent with universal service requirements). Moreover, CenturyTel notes that the ISP customers that Level 3 seeks to serve are not located in CenturyTel's local calling area. As such, calls by CenturyTel's end-users to Level 3's ISP customers would originate and terminate in different calling areas, and, therefore, would be interexchange calls. Section 252(c)(2) is clear that the duty to interconnect under its provisions does not apply to interexchange calling. Rather, that section is limited to interconnection for the purpose of providing exchange service and exchange access. It is apparent that Level 3 does not propose to provide either service pursuant to its proposed interconnection with CenturyTel. For these reasons, the Petition does not state a request for interconnection under § 251(c).

37. Level 3's Petition can only state a request for interconnection under § 251(a). And, as explained above, state commissions' § 252 jurisdiction does not extend to such requests for interconnection. Consequently, we conclude that the Petition should be dismissed. For these reasons, we affirm the ALJ's recommendation to dismiss this proceeding.

II. ORDER

A. The Commission Orders That:

1. The Motion for Pro Hac Vice filed by Level 3 Communications, LLC is granted.
2. The Motion for Pro Hac Vice filed by CenturyTel of Eagle, Inc., is granted.
3. The Motion for Leave to File Additional Authority by Level 3 Communications, LLC submitted on January 16, 2003 is denied.
4. The Motion for Leave to File Additional Authority and Response by Level 3 Communications submitted on January 17, 2003 is denied.
5. The Exceptions by Level 3 Communications, LLC, to Decision No. R02-1242 are granted in part only consistent with the above discussion. Otherwise the Exceptions are denied.
6. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.
7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
January 17, 2002.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN RAYMOND L. GIFFORD
SPECIALLY CONCURRING.

III. CHAIRMAN RAYMOND L. GIFFORD SPECIALLY CONCURRING:

1. I support the Commission's rationale for dismissing this arbitration petition, but in a most reluctant way. There is much room here for help from the Federal Communications Commission (FCC), which has repeatedly twisted itself in knots over these ISP-bound traffic issues. I believe that the law, as it currently stands, does not give Level 3 Communications, LLC (Level 3) an arbitration right before a state commission under § 252. Level 3's request for interconnection falls under § 251(a), a category of interconnection obligation that we have never arbitrated or approved.

2. That said, I have misgivings that this is indeed the best course or the only course that the FCC could plot for Internet Service Provider (ISP) traffic interconnection. Surely, subjecting this traffic to access – as must be Centurytel of Eagle, Inc.'s desire – is not best for consumers or for competitive provision of ISP services. Neither, of course, do we want artificial inducements such as ISP-bound reciprocal compensation obligations falsely to signal the need to enter the ISP traffic market. Regulatory arbitrage—be it for universal service purposes or simply false price inducements—is something to be avoided.

3. I believe that the FCC has both the discretion and the power under the Telecommunications Act of 1996 to correct the confusion surrounding ISP traffic, its jurisdictional status, and compensation mechanisms attaching to it. The sooner that is done, in clear, unambiguous language, the better off consumers will be.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Chairman

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MEMORANDUM

TO: Commissioners Clark, Reinbold and Wefald
PUD

FROM: Bill Binek

DATE: March 10, 2003

RE: Summary of the Arbitrator's Decision and Recommendation, Level 3
Communications, LLC, Interconnection Arbitration Application, Case No.
PU-2065-02-465

On March 3, 2003, Frank Lamancusa, the arbitrator selected by the parties and appointed by the Commission, issued his decision and recommendations in this case. The arbitrator decided in favor of Level 3 Communications, LLC (Level 3). The arbitrator initially found that SRT Communications Cooperative (SRT) does not have a duty to negotiate for interconnection under section 251(a) of the Telecommunications Act (Act), but then determined that while SRT may, but is not required to negotiate under section 251(a), it is not exempt from the arbitration requirements under the Act nor from its duties to interconnect. Basically, the arbitrator found that the statutory language of section 251(a) does not require an incumbent LEC to negotiate, but that arbitration under the Act does not require negotiations as a condition precedent.

The arbitrator found that Level 3 is not required to make a *bona fide* request for interconnection. Level 3's request was for interconnection under section 251(a). The obligation for a *bona fide* request under section 251(f) occurs when a request for interconnection is made under section 251(c). Here the request is for interconnection under section 251(a), and section 251(a) does not require Level 3 to submit a *bona fide* request.

The arbitrator found that SRT is not exempt from negotiation and interconnection obligations of section 251(f)(1). SRT asserted that its status as a rural company exempted it from negotiation and interconnection obligations because Level 3 had not taken the appropriate actions under the Act to terminate the rural exemption. As noted previously, Level 3's request for interconnection was under section 251(a). The arbitrator found that section 251(f)(1) does not exempt SRT from obligations that stem from a section 251(a) interconnection request.

The arbitrator found that SRT has not satisfied the interconnection obligations of section 251(a) with respect to Level 3's request. SRT argued that it satisfied its duty under section 251(a) to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." SRT asserted that it has done so in two basic ways – indirectly through SRT's links with the public switched network and directly through the services Level 3 currently obtains from SRT.

Level 3 argued that it requires more than both parties being connected to the public switched network to constitute indirect interconnection – there must be a mutually agreed upon physical linking of the parties’ networks that in most instances involves a designated third party carrier to facilitate the exchange of traffic between the parties. Level 3 also argued that SRT is not directly interconnected with Level 3. Level 3 currently purchases services from SRT as an end user for the purposes of completing calls to an internet service provider (ISP). Under that arrangement, when an SRT end user dials a number assigned by SRT to Level 3, SRT routes the call through SRT’s switch and onto the services purchased by Level 3, and the call is then routed over transport that is jointly provided by SRT and Qwest to Level 3’s customer modem in Bismarck. The call never gets routed through a Level 3 switching facility, and therefore Level 3 claims it would not be considered a co-carrier in completing the communication. Level 3 also argued that SRT was discriminating against Level 3 because it has negotiated direct interconnection agreements with a number of CMRS providers with the type of service Level 3 requests in this proceeding. Level 3 also asserts that SRT has established direct interconnection with two neighboring LECs with whom SRT shares extended area service (EAS).

The arbitrator found that the FCC concluded in its *Local Competition Order* that “the term ‘interconnection’ under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic.” More recently, the FCC stated that “nothing in the statutory scheme suggested that the term ‘interconnection’ had one meaning in section 251(a) and a different meaning in 251(c)(2). The arbitrator concluded that determining whether a telecommunications carrier satisfies its section 251(a)(1) obligations turns on examining the physical linking of the two networks and the ability to mutually exchange traffic.

The arbitrator found that SRT is not indirectly interconnected to Level 3 in a manner that satisfies its section 251(a) obligations. The arbitrator determined that interconnection under section 251 requires more than just the physical linking of two networks – the interconnection must also allow for the mutual exchange of traffic between the two networks. The arbitrator found that the mechanism through the public switched network that SRT posits as satisfying its section 251(a) obligations for indirect interconnection breaks down at the local exchange level because it would not provide a mechanism for traffic to flow from SRT’s network to Level 3’s network.

The arbitrator stated that if not by regulatory fiat, then by economic necessity, every LEC must interconnect with the public switched network. The arbitrator found that to argue that by simply connecting to the public switched network, SRT satisfies its obligation under section 251(a) renders the requirements of that section meaningless. The arbitrator stated that the presence of a physical link is inadequate if the networks cannot work together to exchange traffic.

The arbitrator also determined that SRT is not directly interconnected to Level 3 in a manner that satisfies its section 251(a) obligations. As noted previously, SRT argued that the services Level 3 obtains from SRT directly interconnects their two

networks which SRT states satisfies its interconnection obligations under section 251(a). The arbitrator disagreed because the services Level 3 purchases from SRT do not provide for the mutual exchange of traffic between SRT's and Level 3's networks. Without such interconnection, those services cannot be considered a means to satisfy SRT's section 251(a) obligation to directly interconnect with Level 3. The arbitrator found that the services Level 3 purchases from SRT do interconnect with SRT's network, but they do not interconnect with Level 3's network. Traffic is merely carried to a single Level 3 customer's location. The arbitrator stated that if the networks were directly interconnected, SRT end users could contact a Level 3 customer on the Level 3 network. The arbitrator stated that interconnection to a carriers switches is what creates the modern telecommunications system and allows traffic to flow from literally any point A to any point B. He found that the current services purchased by Level 3 from SRT do not provide that level of interoperability between the two networks, and therefore, SRT is not directly interconnected with Level 3 in a manner that satisfies SRT's section 251(a) interconnection obligations.

The next issues addressed by the arbitrator were issues that were addressed simultaneously by both parties. The first was the issue of whether Level 3's proposed services are exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges. The second issue related to calls to NXX numbers assigned to the same local calling area, and the question was whether the interconnection, intercarrier compensation, and local service customer billing requirements are different based on whether the call terminates within the original local calling area or terminates outside of that local calling area.

SRT's argument was that Level 3's proposed services are interexchange services because calls to Level 3's customers terminate outside the SRT local calling area. SRT asserts that it is entitled to intercarrier compensation under the FCC's access charge rules.

Level 3 argues that its proposed services are interexchange local services subject to transport and termination arrangements contained in the FCC's *ISP Remand Order*. Level 3 also asserts that calls to NXX numbers assigned to the same local calling area should be treated as local traffic. Level 3 argued that the FCC has assumed exclusive jurisdiction over compensation for ISP-bound traffic, but has left in place state commission jurisdiction over other aspects of ISP-bound traffic such as obligations under sections 251 and 252 of the Act. Level 3 also argued, in the alternative, that Level 3's services are sufficiently similar to foreign exchange (FX) services currently provided by SRT that the two services should be treated alike. Access charges are not levied on FX services.

The arbitrator stated that the FCC, in its *ISP Remand Order*, affirmed its position that ISP-bound traffic is interstate in nature and therefore within the jurisdiction of the FCC under section 201 of the Act to regulate. In that order, the FCC established that in instances where carriers were not exchanging traffic pursuant to interconnection agreements prior to April 18, 2001, ISP-bound traffic must be exchanged on a "bill and

keep” basis. The FCC also removed the state commissions’ jurisdiction to determine the appropriate intercarrier compensation for ISP-bound traffic.

The arbitrator agreed with SRT’s position that the traffic to Level 3’s customers is interexchange traffic because it terminates outside of SRT’s local calling area. The arbitrator, however, disagreed that the traffic be treated under the interexchange compensation regime and be subject to access charges. The arbitrator determined that the intercarrier compensation associated with this particular traffic is beyond the Commission’s authority to decide because the FCC removed from the state’s jurisdiction the ability to address the compensation mechanisms for ISP-bound traffic, and under the *ISP Remand Order*, ISP-bound traffic must be compensated on a “bill and keep” basis. The arbitrator found that the FCC considers ISP-bound traffic to be interstate in nature whether the ISP is located across the street or across the country. The arbitrator determined that Level 3’s proposed services are subject to the “bill and keep” compensation regime of the *ISP Remand Order*. The arbitrator also concluded that because “bill and keep” does not impose any disparate treatment, billing or otherwise, for calls to NXXs within the same local calling area, such calls should not be treated any differently based on where they terminate.

The final issue is whether the Commission has jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection arbitration. SRT argued that the Commission has no jurisdiction or authority under state law to make a state policy decision about the regulatory treatment of virtual NXX traffic. SRT also challenged the Commission’s jurisdiction over disputes concerning ISP-bound traffic in the context of an interconnection agreement. SRT further argued that Level 3 was not a “new carrier” pursuant to the *ISP Remand Order* and consequently is not entitled to the “bill and keep” methodology for ISP-bound traffic, and that subsections 252(c) and (d) of the Act do not authorize the Commission to impose “bill and keep” intercarrier compensation arrangements over interconnection that was established under section 251(a).

Level 3 argued that section 252 grants to state commissions the authority to approve or reject all interconnection agreements, to mediate and arbitrate all interconnection disputes, and to enforce all the interconnection obligations of section 251 and the interconnection rules that the FCC may adopt. Level 3 argued that this jurisdiction applies whether the services are classified as intrastate or interstate. Level 3 stated that the FCC has only preempted the Commission’s jurisdiction in one area – determining intercarrier compensation for the exchange of ISP-bound traffic, and the Commission retains jurisdiction over the remainder of the disputed issues.

The arbitrator determined that the Commission has jurisdiction under North Dakota law to administer the arbitration system created by the Act. The FCC has reached conclusions on the policy questions concerning the compensation regime for ISP-bound traffic. Therefore, the arbitrator determined that the Commission does not have to analyze the policy question, and furthermore, that the Commission is not entitled to do so. The arbitrator found that even though the FCC has not issued a final

order in the *Intercarrier Compensation NPRM*, the FCC has established the interim measures in the *ISP Remand Order* that will govern ISP-bound traffic pending the FCC's final decision. ISP-bound traffic in this proceeding is governed by the "bill and keep" regime established by the FCC. The arbitrator determined that the unified regime for such traffic eliminates any disparate treatment based on the ISP-bound traffic's point of termination or the location of Level 3's NXX code assignment. The arbitrator concluded that the Commission is not presented with a policy decision that could affect its jurisdiction since the FCC has already reached a conclusion on the issue.

SRT made three other arguments that the Commission lacks jurisdiction to decide some of the issues in this proceeding. The arbitrator found that all three center on the imposition of a "bill and keep" compensation regime for ISP-bound traffic. The first relates to the Commission's ability to reach "policy" decision in the context of an interconnection agreement arbitration. Since the FCC has determined the appropriate compensation regime for ISP-bound traffic, the Commission is not making policy.

Second, SRT argued that Level 3 was not entitled to "bill and keep" because of previous interconnection relationships between the companies. The arbitrator found that Level 3 and SRT were not interconnected either directly or indirectly in a manner that would satisfy SRT's section 251(a) obligations. The arbitrator stated that the *ISP Remand Order* is clear that the "bill and keep" compensation regime is applicable to parties who were not exchanging traffic pursuant to an interconnection agreement as of April 18, 2001. Therefore, the "bill and keep" arrangement is required in this case.

The last argument made by SRT is that section 251(a) interconnections are not entitled to the "bill and keep" compensation regime. The arbitrator found nothing in the *ISP Remand Order* that supported SRT's position. The arbitrator stated that the relevant language of the order on that issue refers to "carriers" generically, and that to conclude otherwise would encourage the type of regulatory arbitrage the FCC was specifically attempting to address.

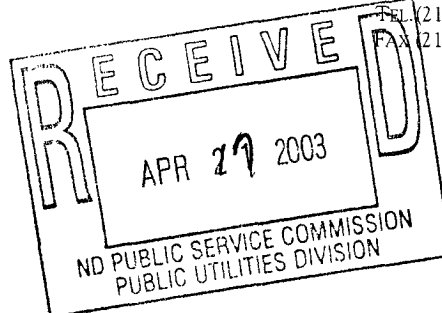
The arbitrator concluded that the Commission would be within its jurisdictional authority as circumscribed by the North Dakota legislature to approve an interconnection agreement between Level 3 and SRT consistent with the arbitrator's decisions and recommendations. Section 252(b)(4)(C) requires the Commission to resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement section 252(c) upon the parties. Section 252(c) sets forth the standards state commissions must employ for resolving open issues and imposing conditions. N.D.C.C. § 49-21-01.7(8) authorizes the Commission to mediate or arbitrate agreements for interconnection, and N.D.C.C. § 49-21-01.7(9) authorizes the Commission to approve or reject agreements for interconnection.

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April 17, 2003



VIA FAX & OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480

Re: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications Cooperative - - Case PU-2065-02-465

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") and SRT Communications Cooperative are an original and ten (10) copies of Level 3's comments regarding the conforming arbitrated interconnection agreement in the above-referenced proceeding. The comments are timely filed pursuant to the procedures established in N.D. Admin. Code § 69-02-10-31.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at (202) 295-8375.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamar E. Finn".

Russell M. Blau
Tamar E. Finn
Michael W. Fleming

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Service List

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to) **Case No. PU-2065-02-465**
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

COMMENTS REGARDING CONFORMING AGREEMENT

Pursuant to N.D. Admin Code § 69-02-10-31¹ and the Decisions and Recommendations of the Arbitrator in the above-referenced proceeding,² Level 3 Communications, LLC (“Level 3”) respectfully submits these comments with respect to the conforming interconnection agreement (“Agreement”) filed by the parties with the North Dakota Public Service Commission (“Commission”) on April 2, 2003.

INTRODUCTION

Level 3 wishes first to commend the Arbitrator’s efforts in this proceeding to establish an Agreement between Level 3 and SRT Communications, Inc. (“SRT”). The Agreement includes just, reasonable, and lawful terms that recognize Level 3’s right to provide competitive telecommunications services in SRT’s serving area in North Dakota. Thus, Level 3 asks the Commission to find that, except for the issues noted below, the

¹ Pursuant to N.D. Admin. Code § 69-02-10-31, “[a]ny person may file written comments on the interconnection agreement within fifteen days of the date of filing of the agreement with the commission. Each of the arbitrating parties may also file comments within this same timeframe.” Whereas the conforming agreement was filed with the Commission via facsimile on April 2, 2003, these comments are timely filed within the fifteen day timeframe set forth under the Commission’s rules.

² *Level 3 Communications, LLC Interconnection Arbitration Application*, Case No. PU-2065-02-465, Decisions and Recommendations of the Arbitrator Concerning Level 3 Communications, LLC’s Interconnection Arbitration Application, at 35 (N.D. Pub. Serv. Comm’n Mar. 3, 2003) (“Decisions and Recommendations”).

Agreement is consistent with state and federal law, and this Commission's pro-competitive policies. Nonetheless, the Agreement should be modified as requested in these comments because certain aspects of the Arbitrator's recommended decision are not supported by law. In particular, Level 3 asks the Commission to clarify (1) that all incumbent LECs have a duty to negotiate terms and conditions for interconnection pursuant to section 251(a); (2) that both interconnecting carriers may consider their own economic and technical choices when determining interconnection pursuant to section 251(a); and (3) that Level 3 has no obligation to pay a monthly local service charge to SRT as an interconnecting carrier. Level 3 asks that the Commission require modification of the specific provisions discussed herein, and otherwise approve the Agreement.

DISCUSSION

A. Level 3 Does Not Seek to Terminate SRT's Rural Carrier Exemption

As a preliminary matter, Level 3 has not sought interconnection under section 251(c) of the Communications Act of 1934, as amended (the "Act"), and the Arbitrator's Decisions and Recommendations do not alter or undermine SRT's rural carrier exemption. As discussed in Level 3's Post-Hearing Brief, the net effect of Level 3's proposal is to convert an existing relationship with SRT from a retail arrangement to a carrier wholesale arrangement.³ While Level 3 has sought interconnection with SRT pursuant to section 251(a), "[n]either the Act, rules promulgated thereunder, nor any subsequent determinations have concluded that the exemptions afforded rural telephone

³ Level 3's Post-Hearing Brief at 3. In North Dakota, Level 3 inherited some services as a retail customer of SRT as part of its acquisition of certain assets of McLeod USA Information Services—a company that was not a certificated telecommunications carrier. As such, SRT currently provides a retail FX-like arrangement to Level 3 as an end user customer.

companies under section 251(f)(1) to the requirements of section 251(c) apply to requests for interconnection under section 251(a).”⁴ In this regard, Section 1 of the Agreement acknowledges that the Agreement is not to be interpreted or construed to affect SRT’s rural telephone company status, or its entitlement to any applicable rural exemptions under the Act.⁵

B. The Arbitrator’s Decisions and Recommendations Should Be Adopted With Three Revisions

The Arbitrator’s Decisions and Recommendations was substantially correct and consistent with applicable law, with three exceptions. Except as noted below, the Decisions and Recommendations should be approved and adopted by the Commission. In particular, the Arbitrator correctly held that the Agreement is a proper result of the arbitration process under sections 251 and 252 of the Act.⁶ As the Commission has previously held in denying SRT’s Motion to Dismiss, the “arbitration provisions of Section 252 are available for all Section 251 interconnections.”⁷ Without this arbitration and an examination of the issues, a telecommunications carrier (and not the Commission) would be able to unilaterally determine the conditions upon which other telecommunications carriers could interconnect in the State of North Dakota.⁸

⁴ Decisions and Recommendations at 12. Level 3 requested interconnection with SRT pursuant to section 251(a), rather than section 251(c). And, as the Arbitrator found, “a request for interconnection pursuant to section 251(a) does not require Level 3 to submit a *bona fide* request for interconnection with SRT.”

⁵ *Id.* at 29.

⁶ *Id.* at 6-7.

⁷ *Level 3 Communications, LLC Interconnection Arbitration Application*, Case No. PU-2065-02-465, Order, at 2 (N.D. Pub. Serv. Comm’n Nov. 20, 2002).

⁸ Decisions and Recommendations at 7.

The Arbitrator also correctly ruled that SRT had not yet satisfied its obligations to interconnect under section 251(a), and imposed just and reasonable terms of interconnection. In particular, the Arbitrator correctly applied the terms of the FCC's *Remand Order* regarding intercarrier compensation for ISP-bound traffic. Under the terms of that Order, because Level 3 and SRT were not exchanging traffic prior to the effective date of the Order, all ISP-bound traffic between Level 3 and SRT must be exchanged on a bill-and-keep basis. Notwithstanding all of these proper findings, however, there are three respects in which the Arbitrator's decision should be modified or clarified to ensure consistency with applicable law and accuracy with the record below.

1. The Commission Should Clarify that Incumbent LECs Have a Duty to Negotiate Interconnection Under Section 251(a)

Although it appears settled as between the Commission and the Arbitrator that sections 251 and 252 procedures apply to interconnection requests under section 251(a), the Arbitrator incorrectly found that section 251(a) does not expressly require telecommunications carriers to negotiate with other telecommunications carriers for interconnection.⁹ Intertwined with the duty of a telecommunications carrier to interconnect with any other carrier is the expectation that the parties engage in negotiations to establish reasonable terms and conditions for such arrangements.¹⁰ Although it is true that the "good faith" negotiation requirement of section 251(c)(1) does not apply in the context of a section 251(a) interconnection request, an interpretation of the section 251/252 procedures that would allow an incumbent LEC to forego negotiations altogether and sit on its hands for 135 days until the arbitration window

⁹ *Id.* at 8.

¹⁰ Level 3's Post-Hearing Brief at 27.

opens would result in unnecessary administrative and financial burden to carriers requesting interconnection – and to the Commission, which would then have to arbitrate all of the unresolved issues under section 251(a) when at least some portion of them could have been negotiated to resolution during the preceding four months. Under this view of the world, the incumbent LEC having no other incentives to negotiate would enjoy the privilege of delaying interconnection for requesting carriers for up to 160 days and force costly, and timely, arbitration procedures for every interconnection request. This is not an efficient proposition from the carriers’ or the Commission’s perspective, and is not consistent with the pro-competitive policies set forth under state and federal law. It is more consistent with the provisions of the Act and North Dakota law – both of which require carriers to provide services on just and reasonable terms and conditions¹¹ – to clarify that every telecommunications carrier is obligated to negotiate with requesting carriers in order to establish such terms and conditions.

2. Interconnection Should be Permitted Under *Both* Parties’ Most Efficient Technical and Economic Choices

While the interconnection provisions contained in Section 2 of the Agreement properly reflect the fact that the parties are required to interconnect, the Arbitrator incorrectly found that in the context of a request for interconnection pursuant to section 251(a), the “providing carrier” has sole discretion to decide how the interconnection obligations will be satisfied.¹² The Arbitrator’s Decisions and Recommendations

¹¹ Under 47 U.S.C. § 201(b), “[a]ll charges, practices, classifications, and regulations for and in connection with [communications services], shall be just and reasonable. Similarly, N.D. Cent. Code § 49-21-07 provides that “[i]t shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company...”.

¹² Decisions and Recommendations at 17.

presume that SRT is “providing” interconnection to Level 3. This presumption is not supported by the facts because SRT is interconnecting its own network with Level 3’s at exactly the same level that Level 3 is interconnecting its network with SRT’s. The Arbitrator’s decision was based upon language in paragraph 997 of the *Local Competition Order*, which states that “telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices.”¹³ A more reasonable reading of this language is simply that under section 251(a), each carrier has an equal responsibility to complete interconnection arrangements with other carriers. Thus, each carrier is permitted to determine the best way for it to achieve interconnection with other carriers by determining the steps it must take to connect its own network to the network of another carrier. Any other reading, including the reading adopted by the Arbitrator, places undue control on one of the two carriers to dictate terms of interconnection under section 251(a). Such an approach would be inconsistent with the language of section 251(a) that imposes the same obligations on all carriers to interconnect with other carriers.

In this situation, the Arbitrator’s approach would be especially inappropriate. An incumbent LEC should not be permitted to dictate the terms of interconnection with a competitive LEC based solely on the incumbent LEC’s own most efficient technical and economic choices. Indeed, the Arbitrator has clarified that it is not appropriate for a telecommunications carrier to unilaterally determine the conditions upon which other

¹³ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, at ¶ 997 (rel. Aug. 8, 1996) (“*Local Competition Order*”).

telecommunications carriers could interconnect in the State of North Dakota.¹⁴ Yet this is precisely the situation the Arbitrator's ruling would impose. Because such an interpretation provides SRT an incentive to impose only the most expensive interconnection on requesting carriers, SRT would be given free rein to impose barriers to competitive entry in violation of section 253(a).¹⁵

3. The Interconnection Charge Should Be Eliminated

The Arbitrator awarded contract language imposing SRT's proposed \$15.95 per month interconnection fee.¹⁶ This monthly interconnection fee would be assessed without regard to the telephone numbers assigned by Level 3 to its customers and without regard to end users' calling volumes.¹⁷ In its last and final offer, SRT proposed the fee as a "trade off", *i.e.*, SRT would not charge Level 3 access charges for so-called FX-type or Virtual NXX traffic, and in exchange, Level 3 would receive its interconnection *from* SRT using numbers that the North American Numbering Plan Administrator has assigned to SRT.¹⁸

Although relatively small in amount, this monthly interconnection fee is inconsistent with the principle that the two parties are interconnecting carriers, rather than one being the retail customer of the other. As an initial matter, the \$15.95 fee is random and has never been justified by SRT as being rooted in any cost or administrative expense

¹⁴ Decisions and Recommendations at 7.

¹⁵ Level 3's Post-Hearing Brief at 23.

¹⁶ SRT claims that the \$15.95 fee is equivalent to the price of 1 basic business line in the Minot exchange area. SRT's Last and Final Offer at 8.

¹⁷ Decisions and Recommendations at 32.

¹⁸ SRT's Last and Final Offer at 7-8

of exchanging traffic with Level 3. Nor has SRT argued that it charges the fee to any other interconnecting carrier. Moreover, the sections of SRT's Last and Final Offer proposal that would limit Level 3 to using number blocks assigned by SRT were not adopted by the Arbitrator. Thus, the premise upon which this fee was based – the idea that Level 3 would be using SRT's numbers as a customer rather than interconnecting as another carrier – has been rejected as part of the contract; it therefore makes no sense to retain this fee as a stand-alone matter. Finally, the Arbitrator held that access charges may not be applied for the termination of ISP-bound traffic, irrespective of the physical location of the calling and called parties. Since the proposal has no cost basis, since SRT does not charge any other interconnecting carrier this amount, since SRT's rationale for proposing the fee at all was not adopted by the Arbitrator, and since the fee resembles an access payment of some sort, the arbitrary interconnection fee should also be eliminated.

CONCLUSION

North Dakota Century Code § 49-21-09 provides that the Commission may require interconnection of the facilities of two or more telecommunications companies for the exchange of telecommunications if the public convenience and necessity would be served.¹⁹ The approval of the Agreement, as modified in Attachment A, serves the public convenience and necessity such that Level 3 would establish a competitive presence in areas served by SRT, with no offsetting injury or detriment to the public, or the parties and facilities involved.

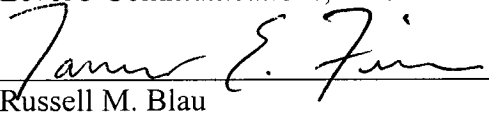
As a result of Level 3 being able to interconnect directly with SRT as a co-carrier rather than as an end user, consumers would benefit by the greater availability of options

¹⁹ N.D. Cent. Code § 49-21-09.

to reach ISPs by making a local call. By allowing Level 3 to interconnect with SRT as a co-carrier under the terms and conditions of the Agreement as modified, the Commission will serve the public interest by promoting a competitive marketplace, customer welfare, and efficiency in the provision of telecommunications services.

Respectfully submitted,

Level 3 Communications, LLC

By 

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Its Attorneys

Dated: April 17, 2003

ATTACHMENT A

SRT Conforming Agreement

Telecommunications Interconnection Agreement

This Telecommunications Interconnection Agreement (“Agreement”) is made effective on the date this Agreement has been executed by and between SRT Communications, Inc. (“ILEC”), and Level 3 Communications, LLC (“Level 3”). ILEC and Level 3 may collectively be referred to as “Parties,” and each individually may be referred to as a “Party.”

Section 1. Scope of Agreement

The purpose of this Agreement is to arrange for the exchange of Information Access Traffic (“Traffic”) between the Parties and the completion of calls from ILEC’s customers located within ILEC’s local exchange areas to Level 3’s Internet Service Provider customers (“ISPs”) located outside of ILEC’s local exchange areas. This agreement provides only for the exchange of Information Access Traffic where 1) the calling parties are ILEC’s end user customers of telephone exchange service who are also end users of internet service provided by Level 3’s ISP customers, 2) the called parties are Level 3’s ISP customers having modems, servers and similar equipment that is physically located outside of ILEC’s local exchange areas, and 3) where the Parties have arranged for the Direct Inward Dialing (“DID”) to Level 3’s ISP customers and for the traffic to be transported over dedicated facilities. The interconnection and exchange of traffic arrangements are partially illustrated on Exhibit A, attached to this Agreement.

Should Level 3 desire to offer other telecommunications services (other than to ISPs located outside ILEC’s local exchange area) that require interconnection with the facilities of ILEC, the Parties will engage in good faith negotiations to establish interconnection and compensation arrangements for such other services.

Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”).

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense.

Section 2. Interconnection, Routing, Exchange, and Completion of Traffic

2.1 The Parties agree to directly interconnect their respective facilities at ILEC's central office switch as the point of interconnection ("POI"). For purposes of the interconnection, Level 3 will lease ILEC's available facilities.

2.2 Each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit B to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit B at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit B, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 The Parties agree to implement arrangements for direct interconnection of their respective networks. Based on the specific nature of ILEC's network in this case, that a POI will be established at the ILEC host end office switch, which is located at 24 Second Avenue, SE, Minot, ND, 58701, and which has been designated in the LERG as of the date of this Agreement with a Common Language Location Identification Code of MNOTNDXADS0. If Level 3 chooses to lease dedicated transport facilities from ILEC to reach this location, because ILEC is a rural telephone company and is therefore not subject to the pricing requirements with respect to interconnection set forth in Section 251(c) of the Act, ILEC will lease such dedicated transport facilities to Level 3 at the applicable tariffed charges.

2.4 Should any dispute arise with respect to the establishment of the POI under Subsection 2.3, the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange ISP Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.

2.5 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

2.6 Each Party agrees to assume complete responsibility for the acquisition of, and payment for, all facilities necessary to originate, transport, and terminate ISP Traffic to and from that Party's customers on its side of the POI.

2.7 ILEC will provide Level 3 SS7 signaling information for ILEC-originated calls to Level 3's ISP customers at nondiscriminatory rates, terms and conditions to those

offered to any other incumbent LEC, CMRS carrier, or CLEC with whom ILEC exchanges traffic on an EAS and/or local basis.

Section 3. Compensation for ISP Traffic

3.1 Notwithstanding custom and usage in the telecommunications industry or any provisions in the Local Exchange Routing Guide (“LERG”), DID calls from end users in ILEC’s local exchange areas to Level 3’s ISP customers having modems, servers and similar equipment that is physically located outside of the ILEC’s local exchange areas shall not be rated as local calling subject to ILEC’s local service charges payable by Level 3 and shall not be rated as interexchange calling subject to intercarrier compensation subject to originating access charges. The Parties specifically agree that the limited scope of this agreement is reasonable cause to establish compensation arrangements appropriate to the circumstances.

~~3.1 Level 3 will pay to ILEC an interconnection fee of Fifteen Dollars and Ninety Five Cents (\$15.95) per month, without regard to the numbers of NXX codes assigned by Level 3 to its ISP customers and without regard to end users’ calling volumes.~~

Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (e.g., maintenance contact numbers, escalation contact information) to achieve reliability. The Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 To optimize the exchange of ISP traffic under this Agreement, the Parties agree to meet and to form a team (the “Implementation Team”) within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management, signaling, and overflow contingencies;
- b. the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the interconnections (including signaling);
- c. disaster recovery and escalation provisions;

- d. points of contact and escalation procedures for ordering, provisioning, billing, and maintenance;
- e. service ordering and provisioning procedures, including provision of the trunks and facilities; and
- f. other network planning components including testing and provisioning intervals.

Section 5. Billing

5.1 ILEC shall bill Level 3 once per month all applicable charges under this Agreement. Level 3 shall pay invoices within thirty (30) days from the bill date. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be made the next business day. Any amounts not paid when due shall bear interest from the date such amounts were due at the rate of one and one-half percent (1-1/2%) per month.

5.2 Each Party shall keep adequate records relating to facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

5.3 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

Section 7. Limitation of Liability and Indemnification

7.1 Neither Party shall be liable to the other for any lost profits or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited with respect to its indemnification obligations under this Agreement.

7.2 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In the event said loss, cost, claim, liability, damage or expense to third parties is the result of the fault, in whole or in part, of both Parties, the Parties shall be entitled to indemnification or contribution to the extent permitted by applicable state law governing the apportionment, if any, of said loss, cost, claim, liability, damage or expense. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

7.3 The Indemnified Party shall (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense.

7.4 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

Section 8. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the

performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay; provided, however, that the affected Party shall make commercially reasonable efforts to restore service as soon as practicable. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations during the delay.

Section 9. Agency

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

Section 10. Nondisclosure of Proprietary Information

10.1 The Parties desire to protect certain Proprietary Information, as defined herein, should it become necessary to exchange Proprietary Information during the term of this Agreement. Proprietary Information shall include, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information (“CPNI”) as that term is defined by the Act, and similar information. Furthermore, Proprietary Information shall include (i) all information delivered in written form and marked “confidential” or “proprietary” or bearing mark of similar import; and (ii) information derived by the receiving Party from a disclosing Party’s usage of the receiving Party’s network. Proprietary Information is deemed proprietary to the disclosing Party and it shall be protected by the receiving Party in the same manner as the receiving Party would protect its own proprietary information. Proprietary Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

10.2 The receiving Party shall have no obligation to safeguard Proprietary Information (i) which was in the receiving Party’s possession free of restriction prior to its receipt from disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by receiving Party, or (iii) after it is independently developed by personnel of receiving Party to whom the disclosing Party’s Proprietary Information had not been previously disclosed. The receiving Party may disclose Proprietary Information if required by law, a court, or governmental agency; provided, however, that the receiving Party shall provide as much written and other notice as possible (as considered in the context of time frames identified in the legal requirement) to the disclosing Party prior to disclosing any information to the governmental entity so that the disclosing Party an opportunity to consider the legal requirement.

Section 11. Notices

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:

Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Manager – Finance/Network Cost
Contact Phone Number: (720) 888-2876

FOR ILEC:

Business Name: SRT Communications, Inc.
Mailing Address: P.O. Box 2027
City/State/Zip Code: Minot, ND 58702
Attention: General Manager/CEO
Contact Phone Number: (701) 838-9707

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:

Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Michelle Krezek, Director –
Interconnection Services
Contact Phone Number: (720) 888-6330
Facsimile: (720) 888-5211

FOR ILEC:

Business Name: SRT Communications, Inc.
Mailing Address: P.O. Box 2027
City/State/Zip Code: Minot, ND 58702
Attention: General Manager/CEO
Contact Phone Number: (701) 838-9707
Facsimile:

or to such other location as the receiving party may direct in writing.

Section 12. Dispute Resolution

Should a dispute arise between the Parties with respect to implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement, either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 12. Upon receipt of this notice, representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute.

If these initial negotiations should fail to resolve the dispute within thirty (30) calendar days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President level (or other position with authority to negotiate and settle on behalf of each Party). If these second-tier negotiations should fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its customers, the affected Party may seek immediate relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its obligations under this Agreement and shall not take any other action with respect to the disputed issue except as set forth in this Section 12. Furthermore, in the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner, and will not be withheld pending resolution of the disputed portion of any bill.

Section 13. Severability

If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which is invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

Section 14. Assignment

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any entity that the assigning Party controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party whether by consolidation, merger, sale or otherwise, or in connection with a financing transaction.

Section 15. Entire Agreement This Agreement, including all Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. No modification or waiver of any provisions of this Agreement shall be effective unless in writing and signed by both parties.

Section 16. Multiple Counterparts

This Agreement may be executed in counterparts and such counterparts shall together constitute one and the same instrument.

Section 17. Default

If either Party defaults in the payment of any undisputed amount, or if either Party materially breaches any other material provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may move to terminate this Agreement or suspend the provision of any or all services hereunder by providing a second written notice to the defaulting Party and to the State Commission thirty (30) days prior to the intended date of suspension or termination. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period noted above, or the alleged default or violation is the subject of a good faith dispute, the other Party shall not terminate the Agreement or suspend service provided hereunder.

Section 18. Representations and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, **NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FACILITIES OR ARRANGEMENTS PROVIDED HEREUNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.**

Section 19. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

Section 20. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

Section 21. Headings

The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

Section 22. Change of Law

In the event of a change in applicable law (including, but not limited to, rulings by the FCC or the State Commission) that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action. Unless otherwise agreed to by the Parties, the effective date of such acceptable new terms shall be the date that any amendment or other agreement implementing such terms is executed by the Parties.

Section 23. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the State of North Dakota, without regard to its conflicts of laws principles.

Section 24. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

IN WITNESS WHEREOF, each Party having been advised by counsel, the Parties hereto have caused this Agreement to be executed as of the date(s) set forth below.

LEVEL 3 COMMUNICATIONS, LLC

SRT COMMUNICATIONS, INC.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2003, a true and correct copy of the foregoing was sent via facsimile and via overnight delivery to the following individuals:

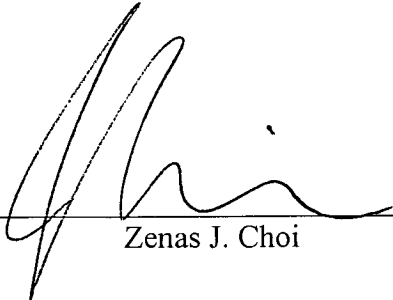
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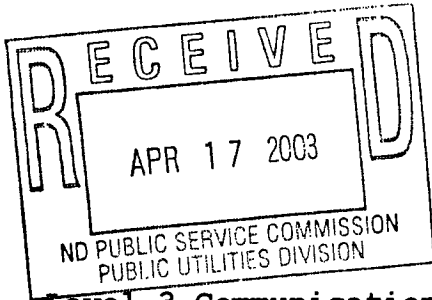


Zenas J. Choi



NORTH DAKOTA ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES

P.O. Box 1144 • Mandan, ND 58554
Phone 701-663-1099 • Fax 701-663-0707
www.ndatc.com



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC

Case No. PU-2065-02-465

Interconnection Arbitration Application

COMMENTS OF NORTH DAKOTA ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES REGARDING INTERCONNECTION AGREEMENT INCORPORATING DECISIONS AND RECOMMENDATIONS OF THE ARBITRATOR

April 17, 2003

The North Dakota Association of Telecommunications Cooperatives ("NDATC") files these comments under section 69-02-10-31 of the Commission's rules, North Dakota Administrative Code ("NDAC").

NDATC represents seventeen (17) rural telephone companies in North Dakota providing telecommunications services to their 164,000 consumer members. The purposes of the association include providing information to North Dakota officials, including the Legislature and the Public Service Commission, about matters affecting the availability of telecommunications service in rural areas that is comparable to service available in urban areas of the United States.

NDATC files these comments in support of SRT Communications, Inc.'s ("SRT") request that the North Dakota Public Service

Commission ("NDPSC") reject the arbitrated interconnection agreement that has been produced in the arbitration processes.

NDATC is concerned that the arbitrator's decision and recommendations and the resulting interconnection agreement now before the NDPSC, if approved, present a dangerous precedent damaging substantial interests of North Dakota rural telephone companies and undermining the due processes under the Act that protect those interests.

This case affects not only SRT, not only its Minot exchange, but its other twenty-four (24) exchanges, most of which are typical of local exchanges served by NDATC's member companies. Most of the telephone exchanges served by SRT and NDATC's other members provide service to a few hundred local telephone subscribers in sparsely populated rural areas, many of which are miles remote from larger centers of trade and services, such as Bismarck, Jamestown, Fargo, Grand Forks, Devils Lake, Minot, Williston and Dickinson. This case presents a dangerous precedent affecting the costs of basic telecommunications service in all these sparsely populated areas.

As the NDPSC considers whether to adopt the arbitrator's decision and recommendations and whether to approve or reject the interconnection agreement proposed to be imposed on SRT by compulsory arbitration, NDATC directs the NDPSC's attention to two important issues.

**RURAL CUSTOMERS IN NORTH DAKOTA SHOULD NOT BE FORCED TO
SUBSIDIZE LEVEL 3's SERVICE TO ITS ISP CUSTOMERS.**

Take a good look at Level 3's evident business plan. First, it

applies to state commissions to obtain CLEC and IXC status. Second, it tells the Numbering Plan Administrator a material misstatement, that Level 3 is a CLEC needing a block of local numbers associated with an ILEC's local exchange area. This piece of misinformation is patently untrue, but not because Level 3 has no customers. Obviously, a newly certified true CLEC needs local numbers before it can solicit and obtain local customers. Level 3's assertion is untrue because it has no intention of seeking local customers, customers physically located in the local exchange area associated with the block of numbers that Level 3 wants to be assigned to it. Level 3 wants local numbers that it can assign to its only customers, ISPs that have no physical presence in the local calling area.

Level 3's pitch to ISPs is simple: You ISPs that were formerly faced with two choices now have three choices. Instead of investing in local facilities so an ISP's end-users can connect with the internet by calling local numbers, or instead of an ISP's incurring 1-800 long distance costs for the ISP's customers to connect to the internet, you ISPs now have a third choice; you can make a deal with Level 3. We can get you local calling with no local facilities; we can assign you local numbers that accomplish the functional equivalent of 1-800 internet access without the costs of long distance service. In short, ISPs' costs will be reduced. How can we do this? By persuading state commissions to order LECs to interconnect with Level 3 to facilitate this kind of interexchange traffic, but without requiring Level 3 to pay access charges that

are applied to IXC/ILEC interconnections.

Level 3 envisions reducing its costs of operations and passing on some of the cost reductions to ISPs who are understandably eager to reduce their own costs. Next, Level 3 seeks from the ILEC an interconnection agreement, providing for Level 3's block of local NXX numbers to be programmed into the ILEC's local switch, rated as local calls, and routed to Level 3's interexchange network.

By this arrangement, beginning with the deceptive assertion of CLEC status to obtain local NXXs and ending with the use of local numbers to transmit traffic bound for Level 3's interstate ISP customers, Level 3 hopes to deliver long distance service to ISPs, free of interexchange access charges, a service supported by local service rates - paid not by the ISPs and not even by only the ISPs local customers. The financial support comes from all the ILECs local customers, whether or not they are also customers of Level 3's ISP customers.

Level 3's business plan is another form of regulatory arbitrage criticized by the FCC in both its ISP Remand Order and the related Notice of Proposed Rule Making where the FCC is considering a Unified Intercarrier Compensation Regime. Whereas the CLECs described in the ISP remand order (CLECs whose principal customers are ISPs) inflated their revenues by claiming reciprocal compensation from ILECs, Level 3 (whose only customers are ISPs) proposes to deflate its costs by claiming immunity from access charges payable to ILECs. In either case, the effects are the same, inflation of the bottom lines of the arbitrageurs and deflation of

the revenues of ILECs, ultimately impacting ILECs local customers. The impact falls on all local customers, not only those using Level 3's ISP's customers internet service.

The impact of Level 3's bypassing access charges falls on all local customers not only in the rates paid by them for local service, but also in access revenue lost to the local rural telephone company as Level 3 and its ISP customers receive interexchange service free of access charges. Access revenues lost to the local rural telephone company have an effect on local customers:

Look at it this way. Telecommunications service in rural North Dakota is substandard if subscribers in a local exchange area are able to communicate only with one another or perhaps with a few other exchanges through EAS types of arrangement. As small North Dakota communities are shriveling, the remaining population in rural areas, farm folks and residents of the small towns, are necessarily dependent on communication - long distance calling - to the center cities where goods and services are available. The local exchange provides not only local service, but also "access" service to facilitate long distance calling. Local subscribers pay not only for local service, but part of their payments for long distance calling is returned to the local company when the long distance company pays for access.

We're talking about payments for fixed costs of operation. If one company, like Level 3, is able to evade payment for access, the local company's costs are not reduced. If one company, like Level

3, is able to evade payment for access, the lost revenue must be replaced, either in increased local service charges, or in increased access charges, or a combination. The bottom line is that someone is subsidizing Level 3 and its ISP customers.

Arguments about subsidies, which are beneficial and which are detrimental to society, are never ending. But one authoritative statement has been made about the subsidy inherent in Level 3's business plan: The FCC stated in the ISP Remand Order, at ¶87: "There is no public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access."

THE NORTH DAKOTA PUBLIC SERVICE COMMISSION SHOULD NOT PERMIT LEVEL 3 TO BYPASS THE RURAL EXEMPTION IN AN ARBITRATION PROCEEDING.

NDATC submits it is inappropriate in the forum of this interconnection arbitration dispute to deny a local exchange carrier that qualifies as a rural telephone company its rights to receive, and Level 3's obligations to pay access charges for originating Level 3's interexchange traffic. See Arbitrator Decision at ¶91. These policy issues are the subject of the FCC's NPRM. The NPRM indicates the FCC has in mind resolving the kinds of concerns raised by SRT and by NDATC. That is 180 degrees different from Level 3's pending proposals, that access service should be provided free of access charges and without adequate consideration to fair revenue replacement. Unless and until the FCC imposes a "Unified Intercarrier Compensation Regime," the access charge policy and the

rules of 47 CFR part 69 should continue to apply to the kind of interconnection that Level 3 seeks to establish with rural telephone companies.

These issues are also implicated by the rural safeguard provisions of the Act, including section 251(f)'s provisions that the interconnection obligations of section 251(c) do not apply to a rural telephone company unless and until the rural exemption is terminated as provided in section 251(f). The concerns expressed in these comments by NDATC are summarized in the words of the Act. Interconnections with rural telephone companies should not be "unduly economically burdensome." The Act sets this place at the table for commissions in rural states.

If the Public Service Commission of North Dakota, one of the most rural of rural states, is to preserve its role in the ongoing implementation of national telecommunications policy, as envisioned by both the Federal Act and NDCC § 49-21, the NDPSC should dispose of both Level 3's Petition and the arbitrated interconnection agreement. That will set the stage for proceedings to be started over again, with due procedural attention to the rural safeguard provisions and the NDPSC's role in determining whether the rural exemption should be applied or terminated.

CONCLUSION

Pursuant to section 251(f), this Commission determines whether the rural exemption should be removed. The North Dakota Public Service Commission should not permit Level 3 to bypass the rural

exemption, contained in section 251(f) of the Act.

The interconnection arrangement sought by Level 3 requires rural exchange customers to subsidize the business relationship between Level 3 and its large ISP customers such as AOL and Earthlink. NDATC concurs with the FCC's conclusion that there is no "public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up internet access."

Dated this 17th day of April, 2003.

NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES



By _____
David Crothers
Executive Vice President
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Mandan, ND 58554-1144
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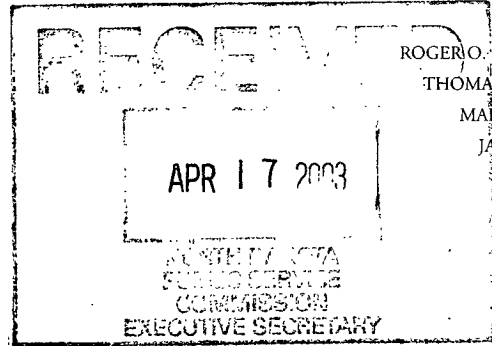


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REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG

April 16, 2003

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

On behalf of SRT Communications, Inc. ("SRT"), enclosed for filing are an original and seven (7) copies of Section 69-02-10-31, NDAC, Comments of SRT Communications, Inc. Regarding Interconnection Agreement Incorporating Decisions and Recommendations of the Arbitrator in the above-captioned matter.

If you have any questions, please don't hesitate to contact me.

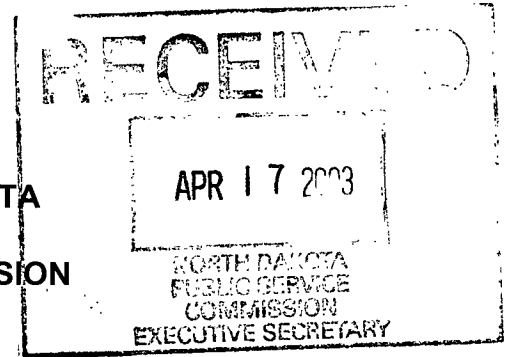
Very truly yours,

David J. Hogue
kk

Enclosures

cc: Zenas Choi (w/enclosure)
Michael Romano (w/enclosure)
William Binek (w/enclosure)
Frank Lamancusa (w/enclosure)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Level 3 Communications, LLC

Case No. PU-2065-02-465

Interconnection Arbitration Application

**SECTION 69-02-10-31, NDAC, COMMENTS OF SRT COMMUNICATIONS,
INC. REGARDING INTERCONNECTION AGREEMENT INCORPORATING
DECISIONS AND RECOMMENDATIONS OF THE ARBITRATOR**

April 16, 2003

BACKGROUND

The parties to this proceeding are Level 3 Communications, LLC ("Level 3") and SRT Communications, Inc. ("SRT"). Each party is a "telecommunications carrier" within the meaning of Section 153(44) of the Communications Act of 1934 ("the Act"), as amended, and each is a "telecommunications company" within the meaning of Section 49-21-01(19) of the North Dakota Century Code ("NDCC").

SRT provides "telephone exchange service" (Act § 153(47)) within a connected system of twenty-five (25) telephone exchanges located in the north central area of North Dakota. SRT is an incumbent local exchange carrier ("ILEC") within the meaning of § 251(h) of the Act. SRT is also a "rural telephone company" within the meaning of § 153(37) of the Act.

On March 26, 2002, Level 3 initiated negotiations to establish an interconnection with SRT. The parties negotiated but did not achieve agreement.

Level 3 filed with the North Dakota Public Service Commission (“NDPSC” or “Commission”) a Petition for Arbitration to establish an interconnection agreement with SRT. Decisions and Recommendations of the Arbitrator (“DRA”) were filed on March 3, 2003. The arbitrator’s summary stated:

“In particular, the Arbitrator finds that SRT does not have a duty to negotiate for interconnection under section 251(a) of the Act; that Level 3 is not required to make a *bona fide* request for interconnection pursuant to section 251(a); that SRT is not exempt from interconnection obligations pursuant to section 251(f)(1) of the Act; that SRT has not satisfied the interconnection obligations of section 251(a); that intercarrier compensation for Level 3’s proposed services are governed by the rules promulgated by the Federal Communications Commission; and that the North Dakota Public Service Commission has the jurisdiction to reach these conclusions. These Decisions and Recommendations also select proposed language for an interconnection agreement between the parties.” *Decisions and Recommendations of the Arbitrator, para. 1.*

The parties have jointly prepared and filed with the Commission a form of interconnection agreement incorporating the provisions of the arbitrator’s decision, as required by the Commission’s Rules of Practice and Procedure, North Dakota Administrative Code (“NDAC”) § 69-02-10-30. The arbitrated interconnection agreement was filed by the parties not as their “agreement” as the word agreement is ordinarily understood, but as a document that records their shared understanding of terms of an interconnection arrangement recommended by the arbitrator to be imposed on the parties under the arbitration provisions of federal and state telecommunications law. By participating in the creation of an arbitrated interconnection agreement as required by NDAC § 69-

02-10-30, SRT does not concede that Level 3 is entitled to an interconnection agreement.

The interconnection agreement produced by arbitration procedures must be submitted to the Commission for approval or rejection. 47 U.S.C. § 252(e); NDCC § 49-21-01.7(9); NDAC § 69-02-10-32. Any person may file written comments on the interconnection “agreement”. NDAC § 69-02-10-31.

SRT urges the Commission to reject the arbitrated interconnection agreement.

SRT’s objections to the arbitrated interconnection agreement are presented as “written comments on the interconnection agreement” under § 69-02-10-31, NDAC. Even though the form of these comments addresses the arbitrated interconnection agreement and the DRA, the substance of the comments is unchanged from SRT’s arguments addressing the “issues” in the arbitration process. For the record, SRT states it abides by its positions on all those issues and does not abandon any position or argument even though not repeated or restated in these comments. All of SRT’s arguments on file in the arbitration proceeding are available and commended to the Commission’s attention as it considers whether to approve or reject the arbitrated interconnection agreement.

The essential facts are that Level 3 desires an interconnection with SRT, a rural telephone company, to facilitate only one kind of telecommunications, direct inward dialing (“DID”) service from SRT’s end user customers in SRT’s local exchange calling area to Level 3’s only customers, Information Service

Providers (“ISPs”) that are physically located outside SRT’s local calling area. Level 3 desires these calls to its ISP customers to be rated as local calls despite the fact that Level 3’s customers are located outside SRT’s local calling area. The arbitrator determined as a fact that “[t]raffic bound for Level 3’s ISP customers crosses exchange boundaries and is therefore interexchange in nature.” DRA at para. 91. The interexchange nature of this traffic is a stubborn, inalterable fact, which controls the outcome of this dispute.

The absence of disputes about the facts of the case is important as limiting the effect of the arbitrator’s recommendation and emphasizing the authority of the Commission in its decision whether to approve or reject the arbitrated interconnection agreement. Level 3 might argue that the DRA is entitled to some presumption or deference, comparable to the status of a Commission’s decision appealed to a court. But that concept is not relevant where there is no dispute as to material facts. In this circumstance, the arbitrator’s recommendations as to issues of law are subject to full review by the Commission, to the same extent as Commission action on issues of law is subject to review when appealed to a court.

Before addressing particular terms of the arbitrated interconnection agreement, attention is due to a threshold question: whether the applicable law entitles Level 3 to obtain by arbitration processes the kind of interconnection it has requested from SRT? SRT asserts the interconnection that Level 3 seeks under § 251(a) of the Act is not a kind of interconnection that is the subject of arbitration provisions under § 252 of the Act.

I. LEVEL 3 CANNOT COMPEL AN ARBITRATED AGREEMENT UNDER § 251(a) OF THE ACT.

Level 3 has requested an interconnection under Act § 251(a) and has invoked § 252 in seeking interconnection be compelled by arbitration. SRT asserts that neither the Act nor any regulations under the Act oblige any telecommunications company to negotiate or submit to arbitration the terms and conditions of a 251(a) interconnection. Section 251(a) obligations are not administered under § 252. Only § 251(c) obligations are administered under § 252.

Level 3 is consistent in stating it claims interconnection rights under § 251(a), not under 251(c). Evidently, Level 3 seeks to avoid § 251(c) as it seeks to obtain an interconnection because a 251(c) interconnection is not available from a rural telephone company such as SRT, unless Level 3 were to persuade the state commission that the rural safeguard/exemption provisions of § 251(f) should be terminated.

Nothing in the Act or the Regulations adopted by the FCC, or the FCC's Local Competition Order that explains the Regulations, supports the notion that any carrier may "request" an interconnection outside the provisions of § 251(c) and obtain its request by the arbitration process.

The arbitrator agreed with SRT that SRT is not obliged to negotiate an interconnection, including in his analysis the observation that "Level 3 seeks a type of interconnection from a rural telephone company that arguably is less

settled from a regulatory perspective.” DAR pars. 26-42. Nevertheless, the arbitrator opined, without citation of any higher authority, that under § 251(a) “incumbent LECs are afforded an opportunity to bargain for terms and conditions different from what is required by the statute and rules and regulations Thus, while an incumbent LEC is presented with the opportunity to negotiate, there is no requirement under that portion of the Act that it does so Granted failing to do so has its own consequences, such as being subjected to the arbitration provisions of the Act” [Emphasis supplied.] DRA paras. 35 and 36.

Granted? Most definitely not! It is not “granted” that SRT’s “failing” to bring the “opportunity” to negotiate an interconnection arrangement to a conclusion satisfactory to Level 3 “has its own consequences, such as being subjected to the arbitration provisions of the Act.” To say arbitration is granted begs the question. To say it is granted presents a virtual absurdity, that SRT is subject to the same sanction - arbitration - for SRT’s “failing” to act (to Level 3’s satisfaction) on an opportunity to negotiate as for failing to act on the legal duty to negotiate with Level 3 as if the request had been made under § 251(c) of the Act. Indeed, to say it is a “failing” to stand one’s ground and to not concede to another’s demands when presented an “opportunity to negotiate” under § 251(a), to say it is a “failing” that has consequences of being subjected to compulsory arbitration is to say the opportunity to negotiate under § 251(a) is the functional and legal equivalent of the duty to negotiate under § 251(c). To say a failed

opportunity has the same consequences as violation of a duty is to suggest that catch-22 is a maxim of law.

The arbitrator agreed that SRT is not obliged to negotiate an interconnection agreement yet he opines that SRT is subject to the compulsory arbitration provisions of § 252. These contradictory opinions are incompatible with the structure of §§ 251 and 252. The arbitrator's opinion conflicts with the common sense proposition that arbitration is not available in the absence of a duty to negotiate.

The DRA is plainly erroneous on this point, in view of the FCC's description of the structure of § 251. As the FCC has explained, under § 251's "three-tiered hierarchy of escalating obligations" it is not logical to confer a broader § 251(c) obligations under the less-burdensome § 251(a). *Total Telecommunications Services v. AT&T*, 16 FCC Rcd 5726 (2001). Yet, the DRA would subject SRT's least burdensome obligation under § 251(a) to the sanction of the most burdensome obligation under § 251(c).

It not only defies accepted statutory construction and common sense to declare that arbitration is available in the absence of a duty to negotiate, not only would it do violence to the hierarchical structure of § 251 if the arbitration sanction to support the 251(c) duty to negotiate were magically appended to the opportunity to negotiate under § 251(a), but also the rural safeguard provisions of §§ 251(c) and 251(f) and the state commission's role in administering those provisions of the Act would be bypassed. The point relevant to adopting the

agreement is this: if interconnection terms appropriate under § 251(c) are compelled to be attached to a 251(a) interconnection request, then the rural safeguard provisions of § 251(f) will have been evaded.

The arbitrator's observation about the "importance and necessity" of an arbitration process where there is no duty to negotiate (DRA at para. 25) is inconsistent with his observation (DRA at para. 41) that "Level 3 seeks a type of interconnection from a rural telephone company that arguably is less settled from a regulatory perspective." Extensive briefing is not necessary to establish two major ingredients of the Telecommunications Act of 1996: The exemptions of rural telephone companies from certain obligations, and the role of states' commissions in determining whether the exemption should be applied or terminated in certain cases. Act § 251(f). But the arbitrator opines and recommends that the Commission ought to order and impose on SRT "a type of interconnection from a rural telephone company that arguably is less settled from a regulatory perspective" without first addressing the threshold issue whether the rural exemption should be terminated.

The rural safeguard issues that SRT raises in this case are conceptually similar to issues considered and decided by the Commission in a recent case, *Western Wireless Corporation, Designated Eligible Carrier Application, NDPSC Case No. PU.1564-98-428*. As the record in that case shows, Western Wireless applied for designation as an eligible telecommunications carrier in all service areas in North Dakota. But in areas served by rural telephone companies, the

Commission must determine whether designation of additional ETCs is in the public interest. The public interest issue was litigated and it was ultimately determined by the Commission and affirmed on appeal that designating Western Wireless as an additional eligible telecommunications carrier in the service area of rural telephone companies is in the public interest. See *Western Wireless Corporation, Designated Eligible Carrier Application, Order on Remand, October 3, 2001. NDPSC Case No. PU.1564-98-428*. Similarly, in the case of Level 3's request for an interconnection with SRT (and possible later requests for interconnections with other rural telephone companies that are exempt under § 251(f)), whether Level 3 is entitled to an interconnection must be subjected to the Commission's inquiry for the purpose of determining whether to terminate the rural telephone company exemption. Act § 251(f)(A) and (B).

To borrow words from the DRA, what is important and necessary is the preservation of the rural safeguards and the Commission's role in determining whether the rural exemption should be maintained or terminated. It is surely not important or necessary that these provisions be ignored.

Finally, the arbitrator's observation that "SRT raises no additional authority in its subsequent pleadings to support its claim that arbitration before the Commission is not available to Level 3 . . ." (DRA at para. 25) can now be updated. After the arbitration hearing and consequent processes of written argument were completed, and before the DRA was issued, the Colorado Public

Utilities Commission issued a decision in a case remarkably similar to the matter now before the North Dakota Public Service Commission.

In the Colorado case, Level 3 requested an interconnection with a rural telephone company (CenturyTel) to facilitate Level 3's service to its ISP customers. The case did not go as far as arbitration, because it was dismissed on exactly the legal grounds asserted in SRT's motion for dismissal of Level 3's application. *In the Matter of the Petition of Level 3 Communications, LLC for arbitration pursuant to § 252(b) of the Telecommunications Act of 1996 with CenturyTel of Eagle, Inc., regarding rates, terms and conditions for interconnection; Public Utilities Commission of the State of Colorado; Docket No. 02B-408T; Decision No C03-0117; Adopted: January 17, 2003; Issued: January 30, 2003* (herein "Colorado Level 3 Decision"):

"...[W]e determine that § 252 gives the Commission jurisdiction only over matters arising under §§ 251(b) and (c)

"The duty to negotiate interconnection agreements, therefor, is itself a §§ 251(b) and (c) obligation, not one arising under § 251(a). We conclude that a state commission's § 252 authority is limited to requests for interconnection agreements implicating §§ 252 (b) and (c) obligations. As such, a state commission has no arbitration over § 251(a) matters." *Colorado Level 3 Decision, para. 36 and 37.*

For these reasons, Level 3's Petition should be dismissed, without prejudice to its rights under Act § 251(c).

II. SRT'S OBJECTIONS TO PARTICULAR TERMS OF THE ARBITRATED INTERCONNECTION AGREEMENT.

In accordance with NDAC § 69-02-10-26, 29 and 30 and DRA paras. 115 et. seq., the parties have prepared an arbitrated interconnection agreement. The agreement was filed April 2, 2003.

SRT's objections to particular terms of the arbitrated interconnection agreement are presented below, with objections numbered according to the order of the numbered provisions of the arbitrated interconnection agreement. Appropriate reference is also made to numbered paragraphs of the DRA that relate to the objectionable terms.

A. SECTION 2.2 IS OBJECTED TO.

Section 2.2 is objectionable because it would implement Level 3's "virtual NXX" scheme.

As stated, it is undisputed as matters of fact that Level 3 desires an interconnection with SRT to facilitate only one kind of telecommunications, direct inward dialing service from SRT's end user customers in SRT's local exchange calling area to Level 3's only customers, ISPs that are physically located outside SRT's local calling area.

The problem at the core of this dispute is whether regulatory authorities should allow carriers of interexchange traffic to bypass and avoid access charges for interexchange carriers' use of local exchange facilities.

Level 3's primary argument was that Level 3 (wearing its CLEC sheepskin) would establish a CLEC/ILEC interconnection with SRT. Though Level 3 claimed to intend operating as a CLEC with ISPs as its only local customers, Level 3's ISP customers would not have any physical presence in the local exchange area served by SRT and Level 3 as interconnected LECs. Instead, Level 3 proposed "VNXX" concepts should permit interexchange ISP traffic to be treated as if it were intraexchange ISP traffic between Level 3 as a CLEC and SRT as an ILEC. Level 3 specifically denied it would be operating as an interexchange carrier in delivering these services to ISPs. See *Level 3 Petition for Arbitration, August 30, 2002*.

A consequence of Level 3 's primary argument, if successful, is that the resulting CLEC/LEC relationship between Level 3 and SRT would be affected by the FCC's "ISP Remand Order," which imposes "bill and keep" compensation methodology on "new" CLEC/ILEC relationships for the exchange of ISP-bound traffic, in lieu of "reciprocal compensation" methodology affecting CLEC/ILEC relationships under § 25(b)(5) of the Act. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, 99-68, FCC 01-131 (2001)*.

Under "bill and keep" methodology, carriers such as SRT and Level 3 would bill only their own end-user customers and keep the revenue received from their own end-user customers in lieu of re-directing some of their revenue to

pay other carriers for use of other carriers' facilities to complete calls between the two carriers' end-user customers. 47 C.F.R. 51.713(a); ISP Remand Order, n. 6. Whether a comprehensive bill and keep system should be imposed on the telecommunications industry is the subject of a separate, but related rule-making proposal now pending before the Federal Communications Commission. See *Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 ("NPRM").*)

SRT's position is that Level 3's carriage of ISP traffic out of SRT's local calling area via so-called "VNXX" arrangements is not properly subject to the bill and keep provisions of the ISP Remand Order, because that order addresses only CLEC/ILEC relationships. Level 3 is not a true CLEC because its only customers, ISPs, would not have any physical presence in the local exchange area. The interconnection that Level 3 seeks is an IXC/ILEC relationship, not affected by the ISP Remand Order.

SRT's position is that this relationship is subject to the FCC's long standing access charge rules for IXC/ILEC intercarrier compensation under 47 C.F.R. Part 69, not subject to reciprocal compensation rules for CLEC/ILEC intercarrier compensation under Act § 251(b)(5), 47 C.F.R. part 51. So, when the FCC's ISP Remand Order addressed CLEC/ILEC intercarrier compensation arrangements and modified the Part 51 rules, the Part 69 rules for IXC/ILEC intercarrier compensation were unaffected.

Level 3's rejoinder to SRT's arguments that Level 3 was wearing the wrong sheepskin, that Level's IXC certification and not its CLEC certification would be implemented by an interconnection agreement with SRT, was to retreat from its denial of IXC status. Level 3 developed a fall back argument, that the ISP Remand Order affected not only a change in the reciprocal compensation rules affecting CLEC/ILEC relationships; the ISP Remand Order also mandated a change in the access charge rules affecting IXC/ILEC interconnections. Thus, according to Level 3's interpretation of the ISP Remand Order, where Level 3, wearing its IXC cloak, establishes an IXC/ILEC interconnection with SRT, SRT is not entitled to access charges for its origination of interexchange calls from SRT's local end user customers to Level 3's end user customers, ISPs that are located outside of SRT's local exchange area.

The arbitrator did not directly address Level 3's primary argument that the manipulation of NXX codes to emulate physical presence effectuates a legal reality. It certainly appears the arbitrator rejected Level 3's VNXX arguments and its assertions of CLEC status when he determined as a fact that "[t]raffic bound for Level 3's ISP customers crosses exchange boundaries and is therefore interexchange in nature." DRA at para. 91.

The arbitrator adopted Level 3's fallback argument. DRA at paras. 91-96. Under the arbitrator's interpretation, the ISP Remand Order affected not only a change in the reciprocal compensation rules affecting CLEC/ILEC relationships; the ISP Remand Order also mandated a change in the access charge rules

affecting IXC/LEC interconnections. Under this interpretation, SRT is not entitled to access charges for its origination of interexchange calls from SRT's local end user customers, "[t]raffic bound for Level 3's ISP customers [that] crosses exchange boundaries and is therefore interexchange in nature." Despite the interexchange character of Level 3's traffic, the arbitrator recommends contract verbiage that would implement Level 3's VNXX scheme to utilize local numbers to accomplish interexchange telecommunications, bypassing the access charge rules. DRA at paras. 96 and 122. SRT disagrees and objects.

Considering the complexity of the VNXX issue and the importance attached to the issue by both parties, the DRA is deficient in addressing the issue. The DRA is also inconsistent and self-contradictory. On one hand, DRA at para. 91 recognizes that "[t]raffic bound for Level 3's ISP customers crosses exchange boundaries and is therefore interexchange in nature." On the other hand, DRA at para. 96 fails to distinguish between NXXs that are truly "within" the same calling area and NXXs that are programmed into switches that are most definitely not physically located in the same calling area, or to explain why the factual distinction does or does not make any difference in the legal rights and responsibilities of intercarrier compensation. Despite the interexchange character of Level 3's traffic, the arbitrator's decision and recommendations would implement Level 3's VNXX scheme to utilize local numbers to accomplish interexchange telecommunications, a sort of computerized virtual larceny that manipulates the public switched telecommunications network so that long

distance calls are disguised by misleading numbers to appear as local calls, bypassing the IXC/ILEC intercarrier compensation regime under 47 C.F.R. part 69.

SRT continues to abide by its consistent position, that Level 3's carriage of ISP traffic out of SRT's local calling area is not subject to the bill and keep provisions of the ISP Remand Order.

The entire history of the ISP Remand Order, from the first Order, through the first appeal, the ISP Remand Order itself and the second appeal, all indicate the focus of attention was on situations where "an ISP's end-user customer typically access the Internet through an ISP server located in the same local calling area". ISP Remand Order at para. 10. Similar references to ISPs' server locations appear elsewhere in the ISP Remand Order. The appellate court also understood the FCC rules under its review involved the circumstances where "an 'end user' of the telephone system will use a computer and modem to place a call to the ISP server in his local calling area." *Bell Atl. Tel. Cos. V. FCC*, 206 F.3d, 3 (D.C. Cir. 2000). The ISP Remand Order did not address situations where the interconnecting carrier has no local traffic and its ISP bound traffic originates in one exchange and terminates in another exchange.

The authority of the FCC is not exercised by its explanations of its action; its rule-making power is exercised by its making of rules. This fundamental point is recited in the DRA's opening paragraph: "intercarrier compensation for Level

3's proposed services are governed by the rules promulgated by the Federal Communications Commission" (Emphasis added.)

The rule-making power of the FCC exercised in the ISP Remand Order affected only intercarrier reciprocal compensation rules for intraexchange traffic, not the access rules affecting intercarrier compensation for interexchange traffic. The formal parts of the ISP Remand Order, affecting the Code of Federal Regulations, amended 47 C.F.R. part 51, subpart H, regarding CLEC/ILEC interconnections subject to reciprocal compensation rules. The ISP Remand Order did not amend 47 C.F.R. part 69, regarding IXC/LEC intercarrier compensation for interexchange traffic. Neither the words of the amended rules or the text of the ISP Remand Order supports any notion that Level 3's proposed services are not interexchange services. Indeed, when the arbitrator determined as a fact that "[t]raffic bound for Level 3's ISP customers crosses exchange boundaries and is therefore interexchange in nature," DRA at para. 91, he pointed to the answer to the legal question how IXC/LEC exchanges of interexchange traffic is to be compensated. As the FCC explained in the NPRM, at paras. 5-7, long distance calls are subject to access charge rules, not the rules that govern local traffic. But the recommended decision goes off in the other direction, towards the rules affecting CLEC/ILEC exchanges of intraexchange traffic.

The NPRM specifically separated the FCC's consideration of bill and keep compensation for IXC/LEC exchanges of interexchange traffic. "We begin now

to explore the possible application of bill-and-keep approaches to interstate LEC-IXC interconnection.” NPRM at para. 97. Perhaps the NPRM will result in a bill and keep intercarrier compensation regime, affecting interexchange ISP traffic and other interexchange traffic. The FCC has tentatively asserted that authority in the NPRM, but it neither claimed nor exercised that authority in the ISP Remand Order.

Returning to Level 3's primary position about “VNXX,” nothing in the ISP Remand Order indicates the FCC was considering "virtual presence" or "VNXX" concepts, and nothing in the order directly declares or indirectly infers that so-called virtual presence is the functional or factual equivalent of real presence within the geographical boundaries of a local exchange area. This point is reinforced by references to VNXX in the NPRM, where the very issues involved in this arbitration proceeding are subjects of the FCC's requests for comments as it considers making new rules. NPRM paras. 97 and 115. The same comment applies to the essence of the arbitrator's recommendation of arbitrated interconnection agreement section 2.2, recommending implementation Level 3's VNXX scheme to utilize local numbers to accomplish interexchange telecommunications.

The ISP Remand Order addressed a particular kind of regulatory arbitrage practiced by some CLECs under the reciprocal compensation rules that govern CLEC/ILEC exchanges of intraexchange traffic. ISP Remand Order at para. 4-6; 21. The ISP Remand Order's imposition of bill and keep methodology was

intended as a limitation on CLECs' receipt of excessive amounts of reciprocal compensation payments from ILECs. Bill and keep methodology was not imposed on ILECs as any sort of limitation on ILECs' access revenues or as any sort of reduction of IXCs' costs of carrying interexchange traffic to ISPs. But that is clearly what Level 3 seeks to accomplish, bypass of access charges for its traffic bound for Level 3's ISP customers that crosses exchange boundaries and is interexchange in nature. For any state commission to compel this outcome cannot be an intended consequence of the ISP Remand Order that was clearly aimed at the elimination of CLEC arbitrage of the reciprocal compensation rules governing intercarrier compensation between CLECs and ILECs. The FCC specifically declared its intention that its ISP Remand Order should not result in the exacerbation of the problems that the Order was intended to ameliorate. ISP Remand Order at para. 81.

B. SECTION 2.3 IS OBJECTED TO.

Section 2.3 recommended under DRA para. 123, is objectionable because it would impose upon SRT interconnection obligations greater than those required under § 251(a), in effect awarding Level 3 a 251(c) interconnection.

The particularly objectionable provision of section 2.3 of the arbitrated interconnection agreement is “[s]uch interconnection should be established based upon both Parties’ most efficient technical and economic choices.” (Emphasis added.) The other language of agreement section 2.3 and the

arbitrator's note to DRA para. 123, regarding "where interconnection takes place" is inconsistent with the arbitrator's recognition that:

"The FCC's *Local Competition Order* also concluded that 'telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices.'⁶⁰ In other words, it is the telecommunications carrier *providing* interconnection under section 251(a) that acts on its own most efficient technical and economic choices when determining how to satisfy its interconnection obligations. This is different from the scenario articulated under a section 251(c) request, where the requesting carrier determines the method and location of interconnection. Therefore, in the context of a request for interconnection pursuant to section 251(a), a requesting carrier is entitled to ask for interconnection, but the providing carrier decides how the interconnection obligations will be satisfied." *DRA at para. 69.*

DRA para. 69 includes a footnote reference to the FCC's Local Competition Order, para. 997, which provides in pertinent part: "For example, section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers."

Despite these limitations on SRT's § 251(a) interconnection obligations, it is asserted that "Level 3 has invested substantial capital in its IP network and its proprietary softswitch [and] in order to reap the benefits and optimize use of that investment, Level 3 must carry its ISP customers' traffic over its own network, using its own softswitch." Level 3 Post-Hearing Brief at p. 16. Similarly, "Level 3's customers also want the advantages of Level 3's state-of-the-art IP network, which Level 3 cannot provide in its entirety, unless the traffic is switched by Level

3's softswitch platform and carried on its IP network.” Level 3 Post-Hearing Brief at p. 23.

The arbitrated interconnection agreement's provision obliging SRT to coordinate its most efficient technical and economic choices with Level 3's choices - to optimize Level 3's choices - would impose § 251(c) obligations on a § 251(a) interconnection. The DRA is plainly erroneous on this point, in view of the structure of § 251. As the FCC has explained, under § 251's “three-tiered hierarchy of escalating obligations”, it is not logical to confer broader § 251(c) obligations under the less-burdensome § 251(a). *Total Telecommunications Services v. AT&T*, 16 FCC Rcd 5726 (2001).

C. SECTION 2.7 IS OBJECTED TO.

Section 2.7, recommended under DRA para. 123, is objectionable because it would impose upon SRT obligations to provide SS7 signaling information, a service not required under § 251(a).

The first objection to section 2.7 emphasizes the differences between § 251(a) and § 251 (c) obligations. It appears from the record that Level 3 has configured its network so as to be dependent on a particular technology known as SS7 signaling. If Level 3 were entitled to a § 251(c) interconnection where it determines the method of interconnection, it might be entitled to SS7 signaling. But that is not required by § 251(a).

Second, section 2.7 is selected from Level 3's "final offer arbitration agreement," but the offer does not comply with requirements of NDAC § 69-02-10-28, which requires that final offers must establish rates. Level 3's proposed section 2.7 selected by the arbitrator does not establish rates; it only makes a general reference to "non-discriminatory rates." Section 2.7 does not provide required definite terms.

Third, to the extent DRA para. 125 might be interpreted as accepting the reference to "nondiscriminatory rates, terms and conditions" as sufficiently definite as a basis of compensation, this recommendation is not supported by the DRA's findings and recommendations on issues of discrimination. Level 3 alleged that SRT had unlawfully discriminated by not negotiating with Level 3 given that it had negotiated with other telecommunications carriers. The arbitrator determined (DRA paras. 32 and 38-41) that SRT did not discriminate against Level 3, because the "differences are sufficient in the current instance to justify the disparate treatment afforded Level 3 by SRT when compared to CMRS providers and neighboring LECs for the interconnection of networks pursuant to section 251(a)." DRA para. 41. Combining the essence of DRA para. 41 and arbitrated interconnection agreement section 2.7, there is no extant nondiscriminatory rate to be replicated in a § 251(a) interconnection agreement between SRT and Level 3.

D. ARTICLE 3 IS OBJECT TO.

Article 3 is objected to by SRT, because the unnumbered preamble to this section deny SRT intercarrier compensation, access charges for handling “[t]raffic bound for Level 3’s ISP customers [that] crosses exchange boundaries and is therefore interexchange in nature.” DRA para. 91. The objection is virtually identical to the objections addressing section 2.2 where it is argued that “VNXX” concepts should not be legitimated, allowing interexchange traffic to be treated as if it were local traffic and allowing carriers of interexchange traffic to bypass and avoid access charges for interexchange carriers’ use of local exchange facilities. There is no purpose to repeating all those arguments that are equally applicable to Section 3. But it is appropriate to emphasize that Level 3’s VNXX scheme is a form of regulatory arbitrage of the kind condemned by the FCC in the ISP Remand Order upon which Level 3 relies.

Section 3 is objected to by SRT, even though it appears from DRA para. 125 that section 3 is SRT’s proposal. Section 3, in the form as recommended by DRA para. 125, is objectionable because it violates the “issue by issue” principles of the arbitration process of NDAC § 69-02-10, referred to in DRA para. 115, and 47 C.F.R. 51.5.

In SRT’s Post Hearing Brief, it was plainly stated that:

“SRT’s submission of a final offer agreement is compelled by the prehearing order and section 69-02-10-27, NDAC. SRT’s final offer agreement makes several significant concessions. Importantly, the final offer agreement proposes

to relieve Level 3 of originating access charges which would otherwise be due, in exchange for Level 3's agreement to use numbers that the Numbering Plan Administrator has assigned to SRT for Level 3's DID service to its ISP customers instead of applying to the Administrator for numbers associated with SRT's local calling area to be assigned to Level 3 and used in connections with its "VNXX" scheme. By making this "final offer" in the form of an interconnection agreement as required by the pre-hearing conference order and § 69-02-10-27, NDAC, SRT does not concede that Level 3 is entitled to an interconnection agreement. (Emphasis added).

The annotated copy of the final offer agreement submitted by SRT also explained that it proposed an exchange, a "trade-off," a package deal. In this final offer context, SRT's proposed Article 3 was an integrated proposal, not amenable to disintegration and dissection in the manner recommended by the arbitrator. See 47 C.F.R. 51.5, which provides that issue by issue final offer arbitration obliges the arbitrator to select "without modification" on an issue-by-issue basis one of the parties' proposals.

To state the obvious, SRT would have preferred the arbitrator select Article 3 in its entirety as proposed by SRT, but the selection of parts of the verbiage that do not reflect the whole proposal submitted by SRT violates both the letter and the spirit of the arbitration rules.

SUMMARY AND CONCLUSION

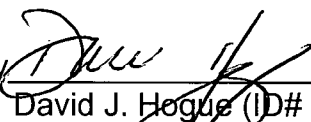
Level 3's petition should be dismissed for two interrelated reasons. First, Level 3 declares an intent to obtain an interconnection under § 251(a) of the Act, but the arbitration provisions under Act § 252 do not apply to 251(a) interconnections.

Second, arbitration is available for interconnections requested under § 251(c). Considering that the arbitrator's recommendation would impose interconnection on terms appropriate under § 251(c), those terms should not be imposed unless and until the Commission has addressed rural exemption issues under § 251(c) and § 251(f).

The agreement should be rejected without prejudice to Level 3's rights under Act § 251(c).

Dated this 16th day of April, 2003.

PRINGLE & HERIGSTAD, P.C.

By 
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CERTIFICATE OF SERVICE


A true and correct copy of the foregoing **COMMENTS OF SRT COMMUNICATIONS, INC. REGARDING INTERCONNECTION AGREEMENT INCORPORATING DECISIONS AND RECOMMENDATIONS OF THE ARBITRATOR** was, on the 16th day of April, 2003, mailed to:

Swidler Berlin Shereff Friedman, LLP
Zenas Choi
3000 K Street NW, Ste. 300
Washington, DC 20007

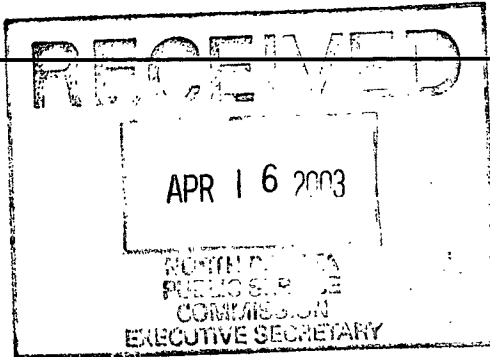
Level 3 Communications, Inc.
Michael R. Romano
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N.D. Public Service Commission
William Binek, Commerce Counsel
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Bismarck, ND 58505-0480

Telecom Dispute Solutions, Inc.
Frank Lamancusa
17721 Tree Lawn Drive
Ashton, MD 20861



David J. Hogue (ID# 4486)



April 17, 2003

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

**RE: Petition of Level 3 Communications, LLC for Arbitration
Pursuant to Section 252(b) of the Telecommunications Act of 1934,
as Amended to Establish an Interconnection Agreement with
SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

We are writing to submit comments about the proposed interconnection agreement in the above-captioned matter. Polar Communications has been monitoring the dispute through the North Dakota Association of Telephone Cooperatives.

Polar Communications objects to the proposed agreement for two reasons. First, the proposed agreement authorizes use of virtual NXX (VNXX) numbering schemes without any thoughtful review from the Public Service Commission about whether VNXX is good policy for North Dakota telephony consumers. I am aware that other state commissions have studied the wisdom of permitting VNXX numbering. Because use of VNXX numbering will have a significant impact on access revenues to rural companies like Polar Communications, I would request the North Dakota Public Service Commission solicit input from rural companies about the advantages and disadvantages of VNXX numbering.

We contend that compelling a rural company to use VNXX numbering through an interconnection agreement prior to considering the overall effect on rural North Dakota telephone companies is inappropriate. The North Dakota Public Service Commission should decide first whether the practice is good policy before requiring it in interconnection agreements.

69 PU-2065-02-465 Pages: 2
Letter of opposition to interconnection agreement by Polar Communications Mutual Aid Corporation
04/16/2003 CC: Comm Legal PUD (3)

Polar's second concern relates to the way in which Level 3 has bypassed the rural safeguard in section 251(f) of the federal telecommunications act. We are aware that Level 3 has labeled its request as a 251(a) request and thus denies the rural exemption applies. The ND PSC should reject Level 3's label as a transparent attempt to evade the rural exemption. The ND PSC has responsibility to determine whether the rural exemption should be terminated. By passively accepting Level 3's assertion, the ND PSC will, by default, effectively repeal the rural exemption.

For these two reasons, we urge the ND PSC to reject the proposed interconnection agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Dunning", with a long, sweeping underline that extends to the right.

David L. Dunning,
General Manager/CEO

Cc: Steve Lysne
David Crothers
Board of Directors

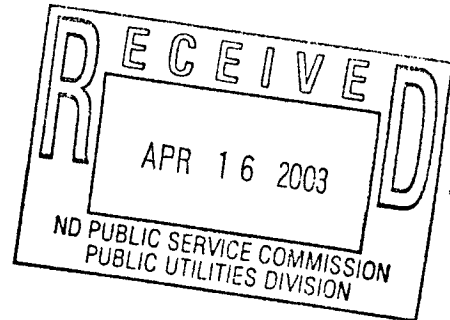


RESERVATION TELEPHONE COOPERATIVE

ROYCE S. ASLAKSON
General Manager

April 16, 2003

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480



**RE: Petition of Level 3 Communications, LLC for Arbitration
Pursuant to Section 252(b) of the Telecommunications Act of 1934,
as Amended to Establish an Interconnection Agreement with
SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

On behalf of Reservation Telephone Cooperative, I am writing to express opposition to the Level 3/SRT interconnection agreement.

The rural telephone companies have been following this case in the past several months. I am aware that the same issues present in this case are being discussed, litigated, and argued in other states as well.

Our cooperative is a rural company serving customers in the western counties with declining population. Like many rural companies, we are concerned about the impact of VNXX numbering on access revenue. In our view, VNXX numbering permits long distance companies to avoid paying access charges for interexchange traffic.

Before the PSC requires a rural company to use VNXX numbering, it should seek input from all the rural companies. Thank you.

Sincerely,

Royce S. Aslakson, General Manager
Reservation Telephone Cooperative

RSA/dw

68 PU-2065-02-465 Pages: 1

Letter of opposition to interconnection
agreement
by Reservation Telephone Cooperative

04/16/2003

CC: Comm Legal PUD (3)

"Owned By Those We



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Leo M. Reinbold
Susan E. Wefald

Executive Secretary
Jon H. Mielke

Russell M. Blau
Tamar E. Finn
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QSI Consulting
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Arvada, CO 80007

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
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McLean, VA 22102

Steve Lysne
General Manager/CEO
SRT Communications Cooperative
3615 North Broadway
P.O. Box 2027
Minot, ND 58702

Azito Sparano
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
P.O. Box 1000
Minot, ND 58702-1000

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: sab@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

April 4, 2003

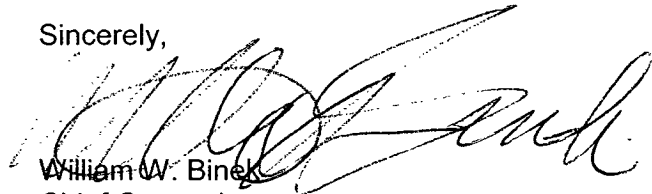
RE: Level 3 Communications, LLC Interconnection Arbitration Application,
Case No. PU-2065-02-465

Gentlemen:

On April 2, 2003, the parties filed an interconnection agreement in this case in compliance with N.D. Admin. Code § 69-02-10-30.

As noted in my March 4, 2003 letter to you, N.D. Admin. Code § 69-02-10-31 provides that written comments on the interconnection agreement may be filed within fifteen days of the date the agreement is filed with the Commission. **Written comments are due April 17, 2003.** N.D. Admin. Code § 69-02-10-32 provides that within thirty days following the filing of the interconnection agreement, the Commission must issue a decision approving or rejecting the agreement.

Sincerely,



William W. Binek
Chief Counsel

67 PU-2065-02-465

Pages: 1

Written comments due 4/17/03

by Public Service Commission by Bill Binek

04/04/2003

CC: Comm Legal PUD (3)

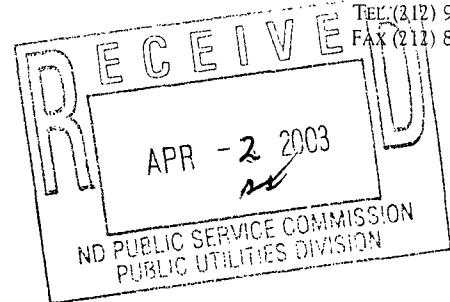
ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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NEW YORK, NY 10174
TEL: (212) 973-0111
FAX: (212) 891-9598

April 2, 2003



VIA FAX & OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480

Re: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications Cooperative - - Case PU-2065-02-465

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") and SRT Communications Cooperative are an original and ten (10) copies of Level 3's conforming agreement in the above-referenced proceeding. The conforming agreement is being filed pursuant to 47 U.S.C. § 252(e) and the procedures established in N.D. Admin. Code § 69-02-10-30.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at (202) 295-8375.

Respectfully submitted,

Russell M. Blau
Tamar E. Finn
Michael W. Fleming

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Service List

SRT Conforming Agreement

Telecommunications Interconnection Agreement

This Telecommunications Interconnection Agreement (“Agreement”) is made effective on the date this Agreement has been executed by and between SRT Communications, Inc. (“ILEC”), and Level 3 Communications, LLC (“Level 3”). ILEC and Level 3 may collectively be referred to as “Parties,” and each individually may be referred to as a “Party.”

Section 1. Scope of Agreement

The purpose of this Agreement is to arrange for the exchange of Information Access Traffic (“Traffic”) between the Parties and the completion of calls from ILEC’s customers located within ILEC’s local exchange areas to Level 3’s Internet Service Provider customers (“ISPs”) located outside of ILEC’s local exchange areas. This agreement provides only for the exchange of Information Access Traffic where 1) the calling parties are ILEC’s end user customers of telephone exchange service who are also end users of internet service provided by Level 3’s ISP customers, 2) the called parties are Level 3’s ISP customers having modems, servers and similar equipment that is physically located outside of ILEC’s local exchange areas, and 3) where the Parties have arranged for the Direct Inward Dialing (“DID”) to Level 3’s ISP customers and for the traffic to be transported over dedicated facilities. The interconnection and exchange of traffic arrangements are partially illustrated on Exhibit A, attached to this Agreement.

Should Level 3 desire to offer other telecommunications services (other than to ISPs located outside ILEC’s local exchange area) that require interconnection with the facilities of ILEC, the Parties will engage in good faith negotiations to establish interconnection and compensation arrangements for such other services.

Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”).

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense.

Section 2. Interconnection, Routing, Exchange, and Completion of Traffic

2.1 The Parties agree to directly interconnect their respective facilities at ILEC's central office switch as the point of interconnection ("POI"). For purposes of the interconnection, Level 3 will lease ILEC's available facilities.

2.2 Each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit B to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit B at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit B, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 The Parties agree to implement arrangements for direct interconnection of their respective networks. Based on the specific nature of ILEC's network in this case, that a POI will be established at the ILEC host end office switch, which is located at 24 Second Avenue, SE, Minot, ND, 58701, and which has been designated in the LERG as of the date of this Agreement with a Common Language Location Identification Code of MNOTNDXADS0. If Level 3 chooses to lease dedicated transport facilities from ILEC to reach this location, because ILEC is a rural telephone company and is therefore not subject to the pricing requirements with respect to interconnection set forth in Section 251(c) of the Act, ILEC will lease such dedicated transport facilities to Level 3 at the applicable tariffed charges.

2.4 Should any dispute arise with respect to the establishment of the POI under Subsection 2.3, the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange ISP Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.

2.5 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

2.6 Each Party agrees to assume complete responsibility for the acquisition of, and payment for, all facilities necessary to originate, transport, and terminate ISP Traffic to and from that Party's customers on its side of the POI.

2.7 ILEC will provide Level 3 SS7 signaling information for ILEC-originated calls to Level 3's ISP customers at nondiscriminatory rates, terms and conditions to those offered to any other incumbent LEC, CMRS carrier, or CLEC with whom ILEC exchanges traffic on an EAS and/or local basis.

Section 3. Compensation for ISP Traffic

3.1 Notwithstanding custom and usage in the telecommunications industry or any provisions in the Local Exchange Routing Guide ("LERG"), DID calls from end users in ILEC's local exchange areas to Level 3's ISP customers having modems, servers and similar equipment that is physically located outside of the ILEC's local exchange areas shall not be rated as local calling subject to ILEC's local service charges payable by Level 3 and shall not be rated as interexchange calling subject to intercarrier compensation subject to originating access charges. The Parties specifically agree that the limited scope of this agreement is reasonable cause to establish compensation arrangements appropriate to the circumstances.

3.2 Level 3 will pay to ILEC an interconnection fee of Fifteen Dollars and Ninety Five Cents (\$15.95) per month, without regard to the numbers of NXX codes assigned by Level 3 to its ISP customers and without regard to end users' calling volumes.

Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (e.g., maintenance contact numbers, escalation contact information) to achieve reliability. The Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 To optimize the exchange of ISP traffic under this Agreement, the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management, signaling, and overflow contingencies;
- b. the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the interconnections (including signaling);
- c. disaster recovery and escalation provisions;

- d. points of contact and escalation procedures for ordering, provisioning, billing, and maintenance;
- e. service ordering and provisioning procedures, including provision of the trunks and facilities; and
- f. other network planning components including testing and provisioning intervals.

Section 5. Billing

5.1 ILEC shall bill Level 3 once per month all applicable charges under this Agreement. Level 3 shall pay invoices within thirty (30) days from the bill date. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be made the next business day. Any amounts not paid when due shall bear interest from the date such amounts were due at the rate of one and one-half percent (1-1/2%) per month.

5.2 Each Party shall keep adequate records relating to facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

5.3 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

Section 7. Limitation of Liability and Indemnification

7.1 Neither Party shall be liable to the other for any lost profits or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited with respect to its indemnification obligations under this Agreement.

7.2 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In the event said loss, cost, claim, liability, damage or expense to third parties is the result of the fault, in whole or in part, of both Parties, the Parties shall be entitled to indemnification or contribution to the extent permitted by applicable state law governing the apportionment, if any, of said loss, cost, claim, liability, damage or expense. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

7.3 The Indemnified Party shall (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense.

7.4 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

Section 8. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war,

terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay; provided, however, that the affected Party shall make commercially reasonable efforts to restore service as soon as practicable. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations during the delay.

Section 9. Agency

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

Section 10. Nondisclosure of Proprietary Information

10.1 The Parties desire to protect certain Proprietary Information, as defined herein, should it become necessary to exchange Proprietary Information during the term of this Agreement. Proprietary Information shall include, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Act, and similar information. Furthermore, Proprietary Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; and (ii) information derived by the receiving Party from a disclosing Party's usage of the receiving Party's network. Proprietary Information is deemed proprietary to the disclosing Party and it shall be protected by the receiving Party in the same manner as the receiving Party would protect its own proprietary information. Proprietary Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

10.2 The receiving Party shall have no obligation to safeguard Proprietary Information (i) which was in the receiving Party's possession free of restriction prior to its receipt from disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by receiving Party, or (iii) after it is independently developed by personnel of receiving Party to whom the disclosing Party's Proprietary Information had not been previously disclosed. The receiving Party may disclose Proprietary Information if required by law, a court, or governmental agency; provided, however, that the receiving Party shall provide as much written and other notice as possible (as considered in the context of time frames identified in the legal requirement) to the disclosing Party prior to disclosing any information to the governmental entity so that the disclosing Party an opportunity to consider the legal requirement.

Section 11. Notices

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:

Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Manager – Finance/Network Cost
Contact Phone Number: (720) 888-2876

FOR ILEC:

Business Name: SRT Communications, Inc.
Mailing Address: P.O. Box 2027
City/State/Zip Code: Minot, ND 58702
Attention: General Manager/CEO
Contact Phone Number: (701) 838-9707

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:

Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Michelle Krezek, Director –
Interconnection Services
Contact Phone Number: (720) 888-6330
Facsimile: (720) 888-5211

FOR ILEC:

Business Name: SRT Communications, Inc.
Mailing Address: P.O. Box 2027
City/State/Zip Code: Minot, ND 58702
Attention: General Manager/CEO
Contact Phone Number: (701) 838-9707
Facsimile:

or to such other location as the receiving party may direct in writing.

Section 12. Dispute Resolution

Should a dispute arise between the Parties with respect to implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement, either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 12. Upon receipt of this notice,

representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute. If these initial negotiations should fail to resolve the dispute within thirty (30) calendar days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President level (or other position with authority to negotiate and settle on behalf of each Party). If these second-tier negotiations should fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its customers, the affected Party may seek immediate relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its obligations under this Agreement and shall not take any other action with respect to the disputed issue except as set forth in this Section 12. Furthermore, in the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner, and will not be withheld pending resolution of the disputed portion of any bill.

Section 13. Severability

If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which is invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

Section 14. Assignment

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any entity that the assigning Party controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party whether by consolidation, merger, sale or otherwise, or in connection with a financing transaction.

Section 15. Entire Agreement

This Agreement, including all Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. No modification or waiver of any provisions of this Agreement shall be effective unless in writing and signed by both parties.

Section 16. Multiple Counterparts

This Agreement may be executed in counterparts and such counterparts shall together constitute one and the same instrument.

Section 17. Default

If either Party defaults in the payment of any undisputed amount, or if either Party materially breaches any other material provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may move to terminate this Agreement or suspend the provision of any or all services hereunder by providing a second written notice to the defaulting Party and to the State Commission thirty (30) days prior to the intended date of suspension or termination. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period noted above, or the alleged default or violation is the subject of a good faith dispute, the other Party shall not terminate the Agreement or suspend service provided hereunder.

Section 18. Representations and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, **NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FACILITIES OR ARRANGEMENTS PROVIDED HEREUNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.**

Section 19. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

Section 20. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

Section 21. Headings

The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

Section 22. Change of Law

In the event of a change in applicable law (including, but not limited to, rulings by the FCC or the State Commission) that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action. Unless otherwise agreed to by the Parties, the effective date of such acceptable new terms shall be the date that any amendment or other agreement implementing such terms is executed by the Parties.

Section 23. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the State of North Dakota, without regard to its conflicts of laws principles.

Section 24. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

IN WITNESS WHEREOF, each Party having been advised by counsel, the Parties hereto have caused this Agreement to be executed as of the date(s) set forth below.

LEVEL 3 COMMUNICATIONS, LLC

SRT COMMUNICATIONS, INC.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2003, a true and correct copy of the foregoing was sent via facsimile and via overnight delivery to the following individuals:

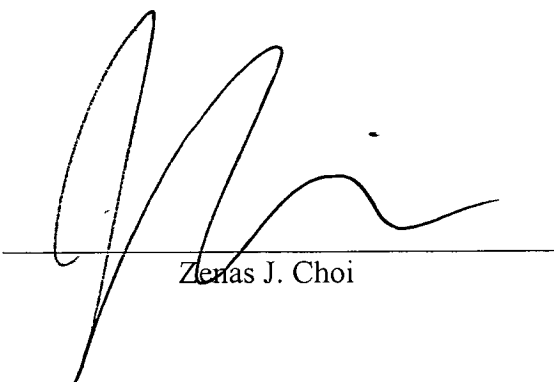
David J. Hogue
Pringle & Herigstad, P.C.
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dhogue@ndak.net

Frank G. Lamancusa, President
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Illona Jeffcoat-Sacco
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wwb@psc.state.nd.us

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jrl@psc.state.nd.us
pjf@psc.state.nd.us

QSI Consulting
Timothy J. Gates, Senior Vice President
917 W. Sage Sparrow Circle
Highlands Ranch, CO 80129-6236
tgates@qsiconsulting.com


Zenias J. Choi



Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Leo M. Reinbold
Anthony T. Clark

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: sab@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

March 4, 2003

Russell M. Blau
Tamar E. Finn
Michael W. Fleming
Swindler Berlin Shereff Friedman, LLP
3000 K Street, N.W. Suite 300
Washington, DC 20007

Tim Gates
Senior Vice President
QSI Consulting
15712 W. 72nd Circle
Arvada, CO 80007

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, VA 22102

Steve Lysne
General Manager/CEO
SRT Communications Cooperative
3615 North Broadway
P.O. Box 2027
Minot, ND 58702

Azito Sparano
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
P.O. Box 1000
Minot, ND 58702-1000

RE: Level 3 Communications, LLC Interconnection Arbitration Application,
Case No. PU-2065-02-465

Gentlemen:

On March 3, 2003, the arbitrator, Frank G. Lamancusa, issued his decision and recommendation in this proceeding. The purpose of this letter is to remind the parties of some of the requirements of the Commission's arbitration rules under N.D. Admin. Code Chapter 69-02-10.

N.D. Admin. Code § 69-02-10-30 requires that within thirty days after the arbitrator's decision is filed, the parties must jointly file with the Commission an agreement incorporating the provisions adopted through negotiation and arbitration. N.D. Admin. Code § 69-02-10-31 provides that written comments on the interconnection agreement may be filed within fifteen days of the date the agreement is filed with the

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Pages: 2

Letter to parties re Arbitrator's Decision

by Public Service Commission by Bill Binek

03/04/2003

CC: Comm Legal PUD (3)

Commission. N.D. Admin. Code § 69-02-10-32 provides that within thirty days following the filing of the interconnection agreement, the Commission must issue a decision approving or rejecting the agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Binek". The signature is fluid and cursive, with the first name "William" and last name "Binek" clearly distinguishable.

William W. Binek
Chief Counsel

Telecom Dispute Solutions, Inc.

Mediation and Arbitration Services for the Telecommunications Industry

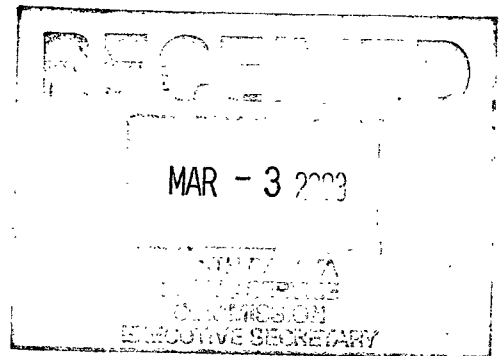
17721 Tree Lawn Drive
Ashton, Maryland 20861
301/774-4251

Frank G. Lamancusa
President
FLamancusa@TelecomADR.com

March 3, 2003

Via Facsimile and U.S. Mail

Jon H. Mielke
Executive Secretary
Public Service Commission, State of North Dakota
600 East Boulevard Avenue, Department 408
Bismarck, North Dakota 58505-0480



Re: Decisions and Recommendations of the Arbitrator Concerning Level 3 Communications, LLC's Interconnection Arbitration Application – Level 3 Communications, LLC Interconnection Arbitration Application: Case No. PU-2065-02-465

Dear Mr. Secretary:

Enclosed for filing with the North Dakota Public Service Commission is an original and seven (7) copies of the "Decisions and Recommendations of the Arbitrator Concerning Level 3 Communications, LLC's Interconnection Arbitration Application" in the above captioned matter.

Please date-stamp the enclosed additional copy and return it to me in the attached postage-paid envelope. If you have any questions, please do not hesitate to contact me at 301/774-4251.

Sincerely,

Frank G. Lamancusa
Arbitrator, Case No. PU-2065-02-465

Enclosure

cc: Per attached Certificate of Service

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration Application

Case No. PU-2065-02-465

DECISIONS AND RECOMMENDATIONS OF THE ARBITRATOR
CONCERNING LEVEL 3 COMMUNICATIONS, LLC'S
INTERCONNECTION ARBITRATION APPLICATION

I. INTRODUCTION

1. These Decisions and Recommendations address the unresolved issues raised by Level 3 Communications, LLC ("Level 3") and SRT Communications Cooperative ("SRT") in the context of Level 3's interconnection agreement arbitration petition before the North Dakota Public Service Commission ("Commission"), filed August 30, 2002, pursuant to sections 251 and 252 of the Communications Act of 1934 ("the Act"), as amended, and chapter 69-02-10 of the North Dakota Administrative Code. In particular, the Arbitrator¹ finds that SRT does not have a duty to negotiate for interconnection under section 251(a) of the Act; that Level 3 is not required to make a *bona fide* request for interconnection pursuant to section 251(a); that SRT is not exempt from interconnection obligations pursuant to section 251(f)(1) of the Act; that SRT has not satisfied the interconnection obligations of section 251(a); that intercarrier compensation for Level 3's proposed services are governed by the rules promulgated by the Federal Communications Commission; and that the North Dakota Public Service Commission has the jurisdiction to reach these conclusions. These Decisions and Recommendations also select proposed language for an interconnection agreement between the parties.

II. BACKGROUND

A. Parties

2. Level 3 is a Delaware limited liability company, and a wholly-owned subsidiary of Level 3 Communications, Inc., a publicly-traded Delaware corporation. Level 3 is authorized to provide facilities-based local exchange and interexchange services in the State of North Dakota pursuant to the Commission's order in Case No. PU-2065-02-11.²

3. SRT is an incumbent local exchange carrier³ ("LEC") and provides "telephone exchange services"⁴ within a connected system of 25 telephone exchanges in the north central

¹ On September 19, 2002, the North Dakota Public Service Commission appointed Frank G. Lamancusa as an arbitrator in this matter.

² *Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity*, Case No. PU-2065-02-11, Order (N.D. Pub. Serv. Comm'n Mar. 13, 2002).

³ 47 U.S.C. § 251(h).

⁴ 47 U.S.C. § 153(47).

region of the State of North Dakota. SRT is also considered a "rural telephone company"⁵ under the Act.

B. Statement of Facts

4. On March 26, 2002, Level 3's interconnection negotiation consultant, QSI Consulting, Inc., sent interconnection request material to SRT. The package included an overview of Level 3's market expansion project, a PowerPoint presentation providing information on both the interconnection request and Level 3's draft "mutual traffic exchange agreement," and the draft agreement itself.⁶ On April 12, 2002, QSI provided SRT with a diagram developed by Level 3's engineers depicting a potential arrangement to interconnect Level 3's network with SRT's network.⁷

5. SRT responded on April 19, 2002, indicating that it would not meet directly with Level 3 but that the request should be discussed with SRT's consultant, John Starurulakis, Inc. ("JSI"). Soon thereafter, SRT sent a letter to Level 3 expressing its concurrence with a position JSI had taken in previous matters between Level 3 and other JSI clients. Principally, JSI asserted that Level 3's request to interconnect to provide services to internet service providers ("ISPs") was invalid, that the Federal Communication Commission's rules did not allow requesting carriers to obtain interconnection solely for the purpose of offering information services, and that Level 3 was not operating as a competitive local exchange carrier.⁸ A conference call and several letters followed, but the parties made no further progress in establishing an interconnection arrangement.⁹

6. On August 23, 2002, another conference call was held between QSI and JSI to discuss the status of negotiations between Level 3 and SRT. The parties failed to resolve any issues with respect to Level 3's interconnection request.¹⁰

C. Procedural History

7. On August 30, 2002, Level 3 filed with the Commission a Petition for Arbitration ("Petition") to resolve the disputed issues between the parties and establish an interconnection agreement with SRT pursuant to section 252(b)(1) of the Act¹¹ and chapter 69-02-10 of the North Dakota Administrative Code. Level 3 identified three general, unresolved issues between the

⁵ 47 U.S.C. § 153(37).

⁶ See Petition for Arbitration, *In the Matter of the Petition of Level 3 Communications, LLC, For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended, to Establish an Interconnection Agreement with SRT Communications Cooperative*, N.D. Pub. Serv. Comm'n, PU-2065-02-465, at 3 (filed Aug. 30, 2002) ("Petition") (This matter is subsequently referenced as "Level 3 Arbitration Petition Proceeding.").

⁷ Direct Testimony of Timothy J Gates on Behalf of Level 3 Communications, LLC, *Level 3 Arbitration Petition Proceeding*, at 6 (Dec. 4, 2002) ("Gates Testimony").

⁸ Petition at 4.

⁹ Gates Testimony at 7.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 252(b)(1) ("During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request to negotiations under [section 252], the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.") Level 3 timely filed its arbitration petition on the 157th day of that period.

parties: (1) that SRT had a statutory duty to interconnect directly or indirectly with Level 3; (2) that SRT had a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection arrangements; and (3) that Level 3's proposed services are exchange services that are subject to negotiated transport and termination arrangements, rather than interexchange services subject to access charges.

8. On September 24, 2002, SRT filed an opposition to Level 3's petition. In addition to responding to Level 3's rendition of the facts and unresolved issues, SRT included a motion to dismiss Level 3's petition in its entirety¹² making the following three arguments:

- a. Level 3 had not made a *bona fide* request for an interconnection under section 251(f)(1)(A) of the Act.
- b. Level 3 had not requested nor has the Commission determined that SRT's exemption from negotiation and interconnection obligations should be terminated under sections 251(f)(1)(A) and (B) of the Act.
- c. The interconnection that Level 3 sought under section 251(a) was not a kind of interconnection that was the subject of the obligations imposed under section 251(c)(1) and the related arbitration provisions under section 252 of the Act.

9. Level 3 filed its response to SRT's motion to dismiss on October 7, 2002.¹³ The gravamen of Level 3's response was that it was not requesting interconnection under section 251(c) of the Act but rather under section 251(a) and that the restrictions of section 251(c) were inapplicable.

10. The arbitrator issued a decision on October 29, 2002, recommending that the Commission deny SRT's dismissal motion.¹⁴ The arbitrator found that the interconnection requested by Level 3 was under section 251(a) of the Act, and consequently concluded that the restrictions of section 251(c) were inapplicable. The arbitrator further determined that the arbitration provisions in section 252 were available for all section 251 requests for interconnection, including interconnection pursuant to section 251(a).

11. On November 4, 2002, SRT filed comments to the arbitrator's recommended order.¹⁵ SRT agreed that the interconnection requested by Level 3 was under section 251(a) of the Act. SRT argued, however, that neither the Act nor any regulations promulgated thereunder required SRT to negotiate or to submit to arbitration the terms and conditions of a section 251(a) interconnection. SRT further argued that its duty to interconnect under section 251(a) is by

¹² Response to Petition for Arbitration, *Level 3 Arbitration Petition Proceeding* (filed Sept. 24, 2002) ("Motion for Dismissal").

¹³ Level 3 Communications LLC's Response to SRT Communications, Inc.'s Motion to Dismiss, *Level 3 Arbitration Petition Proceeding* (filed Oct. 7, 2002).

¹⁴ Recommended Order of the Arbitrator Concerning SRT Communications Cooperative's Motion for Dismissal, *Level 3 Arbitration Petition Proceeding* (filed Oct. 29, 2002) ("Recommended Order on SRT's Motion for Dismissal").

¹⁵ Comments of SRT Communications, Inc. Regarding Arbitrator's Recommended Order on Motion for Dismissal, *Level 3 Arbitration Petition Proceeding* (filed Nov. 4, 2002).

legislative fiat, and that SRT's direct and indirect connection to the public switched network fulfilled that legal obligation. On November 18, 2002, the Commission heard oral arguments by the parties on SRT's motion to dismiss.

12. On November 20, 2002, the Commission concurred with the findings of the arbitrator, specifically that the arbitration provisions in section 252 were available for all section 251 interconnection requests, and denied SRT's motion to dismiss in its entirety.¹⁶

13. A hearing was held on December 9, 2002, before the arbitrator.¹⁷ Post-hearing briefs and issue-by-issue final offer arbitration agreements were filed by both parties on or before December 23, 2002.¹⁸

D. Unresolved Issues

14. On October 31, 2002, the arbitrator filed an order establishing the procedural schedule and identifying the disputed issues to be determined during the arbitration proceeding.¹⁹ The disputed issues were identified as follows:

- a. Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?
- b. Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?
- c. Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?
- d. For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area?
- e. Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?

¹⁶ Order, *Level 3 Arbitration Petition Proceeding* (N.D. Pub. Serv. Comm'n Nov. 20, 2002) ("Order on SRT's Motion for Dismissal").

¹⁷ Transcript of Arbitration Hearing, *Level 3 Arbitration Petition Proceeding* (Dec. 9, 2002) ("Hearing Tr.").

¹⁸ Level 3 Communications, LLC's Post-Hearing Brief, *Level 3 Arbitration Petition Proceeding* (Dec. 23, 2002) ("Level 3's Post-Hearing Brief"); SRT Communications, Inc.'s Post Hearing Brief, *Level 3 Arbitration Petition Proceeding* (Dec. 23, 2002) ("SRT's Post-Hearing Brief").

¹⁹ Prehearing Conference Order, *Level 3 Arbitration Petition Proceeding* (Oct. 31, 2002). The Commission later released a hearing notice incorporating the issues contained in the Prehearing Conference Order. Notice of Hearing, *Level 3 Arbitration Petition Proceeding* (N.D. Pub. Serv. Comm'n Nov. 6, 2002).

- f. Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?
- g. Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

15. At the time of the hearing, the parties had not reached a negotiated solution to any of the disputed issues.

E. Summary of Material Evidence²⁰

16. During the hearing, Level 3 authenticated the pre-filed direct testimony of three witnesses: William P. Hunt III, Roger Ducloo, and Timothy J Gates. Their testimonies and accompanying exhibits were received into the record. All three witnesses were made available for cross-examination during Level 3's direct case. Mr. Gates also later testified as a rebuttal witness.

17. Mr. Hunt provided background information on Level 3 from an operational and business perspective. He also explained Level 3's position with respect to all seven disputed issues. Mr. Ducloo provided testimony on technical issues in support of Level 3's petition. Mr. Gates testified about Level 3's negotiation experience with SRT, the manner in which Level 3 provides service to its customers, how Level 3 intends to rely on interconnection services provided by SRT, and the extent to which services offered by Level 3 are similar to services provided by other incumbent LECs in North Dakota. Mr. Gates also testified about certain industry practices associated with the Act and the efficiency of operations under co-carrier arrangements. Mr. Gates later provided rebuttal testimony to an SRT witness concerning the manner and type of services Level 3 plans to provide in SRT's service area.

18. As part of its direct case, SRT authenticated the pre-filed direct testimony of two witnesses: Douglas Meredith and Jan M. Sebby. Their testimony and accompanying exhibits were received into the record. Both witnesses were made available for cross-examination.

19. Mr. Meredith testified that SRT had met its obligations under the Act, that Level 3 sought to obtain local interconnection in violation of the FCC's requirements, and about how Level 3's proposed services were contrary to industry guidelines. He also stated that Level 3 was seeking to have SRT originate traffic not subject to the local interconnection requirements of the Act, rebutted Level 3's claim that its services were similar to other incumbent LEC services, and described the appropriate regulatory treatment and compensation for Level 3's traffic. Mr. Sebby testified that SRT should not be obliged to provide Level 3 with the interconnection and services it had requested. Mr. Sebby addressed SRT's position with respect to all seven disputed issues and opined about the law governing the facts of the interconnection agreement arbitration.

²⁰ Section 69-02-10-29(1) of the N.D. Administrative Code requires the arbitrator's decision to include a summary of the material evidence presented.

20. Level 3 also called Warren L. Hight, General Manager/Chief Executive Officer of SRT as a witness. SRT examined Mr. Hight as well. In general, Mr. Hight testified about SRT and its relationships with other SRT affiliates and other telecommunications carriers in North Dakota.

21. In addition to the material accompanying the pre-filed direct testimony, several exhibits were introduced into the hearing record: SRT's Foreign Exchange Service Tariff, the access numbers of SRT's internet service provider, an *ex parte* filing of Level 3 to the FCC, a map of North Dakota telephone companies' service areas, and two flip-chart diagrams made during the hearing. Pursuant to Commission rules,²¹ a stenographic record was made of the arbitration hearing and filed with the Commission.

22. All requested material, pleadings, and accompanying support filed in this matter, including the supplemental material received after the date of post-hearing filings,²² were considered in rendering this recommended decision.

III. DISCUSSION – PROCEDURAL INTERCONNECTION ISSUES

23. Several of the disputed issues probe SRT's duties as an incumbent LEC upon receipt of an interconnection request and Level 3's obligations when seeking interconnection from a rural telephone company. Portions of those issues were addressed during the motion to dismiss stage, but the parties remained divided at the time of the hearing.

24. As an initial matter, SRT maintains that the interconnection Level 3 seeks under section 251(a) is not a kind of interconnection subject to the arbitration provisions of section 252 of the Act. SRT acknowledges that this argument was previously presented and denied by the Commission, but SRT has not abandoned its claim.²³ Without revisiting at length its position, SRT argues that because section 251(a) does not impose a duty to negotiate, the failure to do so does not trigger the arbitration provisions of section 252.²⁴

25. The arbitrator's recommended decision concerning SRT's motion to dismiss squarely addressed this question and recommended against adopting SRT's interpretation of the Act.²⁵ The Commission reviewed the recommendations of the arbitrator and concurred with the findings that the "arbitration provisions of Section 252 are available for all Section 251 interconnections."²⁶ SRT's raises no additional authority in its subsequent pleadings to support its claim that arbitration before the Commission is not available to Level 3 and, therefore, I see no reason to recommend that the Commission reverse its previous determination. In fact, the

²¹ N.D. Admin. Code § 69-02-10-25.

²² Supplement to Level 3 Communications, LLC's Post-Hearing Brief, *Level 3 Arbitration Petition Proceeding* (Jan. 7, 2003); SRT Communications, Inc.'s Response to Level 3 Communications, LLC's Supplemental Post Hearing Brief, *Level 3 Arbitration Petition Proceeding* (Jan. 14, 2003); and Supplement to SRT Communications, Inc.'s Post-Hearing Brief, *Level 3 Arbitration Petition Proceeding* (Jan. 16, 2003).

²³ SRT's Post-Hearing Brief at 4.

²⁴ *Id.* at 5-6.

²⁵ Recommended Order on SRT's Motion for Dismissal at 9-11.

²⁶ Order on SRT's Motion for Dismissal at 2.

importance and necessity of such a process is borne out in this proceeding. For without this arbitration and an examination of the issues raised therein, a telecommunications carrier, and not the Commission, may have unilaterally determined the conditions upon which other telecommunications carriers could interconnect in the State of North Dakota.

A. Issue: Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?

1. SRT's position

26. SRT asserts that section 251(a) of the Act does not require a carrier to negotiate the terms and conditions for interconnection with another telecommunications carrier. Unlike section 251(c) which specifically obligates an incumbent LEC to negotiate just and reasonable rates, terms, and conditions for interconnection, SRT argues that section 251(a) does not contain such a duty and that Level 3 cannot demand SRT to do so. SRT notes that the FCC has promulgated comprehensive rules and regulations affecting the rights and obligations of parties to negotiate under section 251(c), but that the FCC's rules and regulations do not impose such a duty with respect to section 251(a) interconnection. Because Level 3 acknowledges that it has not requested interconnection pursuant to section 251(c) but rather is seeking interconnection under section 251(a), SRT claims it has no obligation to negotiate with Level 3.

27. SRT's witnesses further assert that because Level 3 does not propose to offer two-way switched exchange services but instead intends to provide interexchange services, Level 3 should not be treated as a competitive LEC entitled to an interconnection agreement.²⁷

2. Level 3's position

28. Level 3 makes several, and slightly broader, arguments in support of its position that SRT is required to negotiate terms and conditions for interconnection with Level 3. First, Level 3 states that the Commission has already ruled on the issue – “the arbitration provisions of Section 252 are available for all 251 interconnections.”²⁸ Level 3 asserts that it follows that SRT had a duty to negotiate with Level 3 in order to frame the issues for the arbitration, and possibly avoid arbitration entirely.

29. Level 3 claims that SRT ignores its duty to observe the negotiation and arbitration procedures of section 252, regardless of whether SRT believes it is directly or indirectly interconnected to Level 3. Level 3 adds that because SRT is required to interconnect with Level 3 under the terms of section 251(a), there is an intertwined expectation that SRT engage in negotiations to establish reasonable terms and conditions for such arrangements.

²⁷ Pre-Filed Direct Testimony of Jan M. Sebby on Behalf of SRT Communications, Inc., *Level 3 Arbitration Petition Proceeding*, at 8-9 (Dec. 4, 2002) (“Sebby Testimony”); Pre-Filed Direct Testimony of Douglas Meredith on Behalf of SRT Communications, Inc., *Level 3 Arbitration Petition Proceeding*, at 6 (Dec. 4, 2002) (“Meredith Testimony”).

²⁸ Order on SRT's Motion for Dismissal at 2.

30. Level 3 addresses the arguments of SRT's witnesses and asserts that its proposed Direct-Inward Dialing ("DID") service is a local telephone exchange service consistent with its authority granted by the Commission to operate as a competitive LEC in North Dakota. Level 3 avers that its lack of traditional dial-tone customers does not negate Level 3's status as a competitive LEC, since the Act does not require a competitive LEC to mimic in breath and scope the services of the incumbent LEC.

31. Level 3 further argues that because Level 3 has requested interconnection only under section 251(a) and not under section 251(c), and because section 251(a) interconnection is not limited to "telephone exchange" or "exchange access" services, SRT's arguments that Level 3's proposed services are interexchange and not subject to interconnection under sections 251 and 252 are irrelevant.²⁹

32. Lastly, Level 3 contends that SRT has a duty to negotiate with Level 3 because SRT has negotiated interconnection arrangements with other carriers providing service in SRT's local exchange areas, specifically commercial mobile radio service ("CMRS") providers and neighboring incumbent LECs. According to Level 3, SRT's refusal to negotiate with Level 3 is discriminatory and in violation of sections 202 and 252 of the Act, since the arrangements between SRT and the other telecommunications carriers were provided under section 251(a) without SRT asserting or waiving its rural exemption. Level 3 claims that it should be treated the same as CMRS providers since they would similarly interconnect with SRT under section 251(a) for the exchange of intraexchange and interexchange traffic.

3. Analysis

33. Section 251(a) requires all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."³⁰ Section 251(b) imposes additional duties on local exchange carriers ("LECs") and section 251(c) imposes further obligations and specific interconnection duties on incumbent LECs, including the duty to negotiate in good faith. The FCC and others have recognized that the various subsections of section 251 impose escalating obligations on carriers depending upon their classification (*i.e.*, telecommunications carrier, LEC, or incumbent LEC)³¹ and apply their requirements accordingly.

34. Level 3 has sought section 251(a) interconnection from SRT and has specifically stated that it is not requesting section 251(c) interconnection. Unlike section 251(c), the language of section 251(a) does not expressly require a telecommunications carrier to negotiate with other telecommunications carriers. Consequently, Level 3 cannot rely on the express terms of section 251(a) to support its argument that SRT must negotiate with Level 3.

²⁹ Level 3's Post-Hearing Brief at 27.

³⁰ 47 U.S.C. § 251(a)(1).

³¹ *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, FCC 01-84, ¶ 25 (rel. Mar. 13, 2001).

35. Section 252 (a) states:

“Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier *may* negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251.”³²

Under this section, incumbent LECs are afforded an opportunity to bargain for terms and conditions different from what is required by the statute and the rules and regulations promulgated thereunder. However, there is no mention under this section that an incumbent local exchange carrier *must* negotiate for interconnection with a requesting telecommunications carrier. Thus, while an incumbent LEC is presented with the opportunity to negotiate, there is no requirement under that portion of the Act that it does so.³³

36. Section 252 (b) then picks up where section 252(a) left off:

“During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under [section 252], the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.”

Section 252(b) contemplates a course of action if and when a request for negotiation fails to yield an interconnection agreement and ensures that the incumbent LEC does not deny interconnection under section 251 to a requesting telecommunications carrier. But as before, there is no affirmative obligation on the part of the incumbent LEC to negotiate an agreement. Granted failing to do so has its own consequences, such as being subjected to the arbitration provisions of the Act, nevertheless, there is no statutory mandate to negotiate an agreement in the context of a section 251(a) request for interconnection.

37. Nor can a duty to negotiate be inferred from the arbitration provisions of section 252 when placed in the context of a section 251(a) interconnection request. While negotiating provisions of an interconnection arrangement could simplify the arbitration process, arbitration under the Act does not require negotiations as a condition precedent. In the instant case, Level 3 made its section 251(a) interconnection request to SRT in April 2002. While Level 3 and SRT engaged in some limited form of negotiations shortly thereafter, no agreement was reached. Level 3 then filed a timely request for arbitration with the Commission to obtain the interconnection it sought. SRT's failure to negotiate an agreement did not curtail Level 3's rights to obtain interconnection; it merely complicated the process – albeit in a manner contemplated by the statute. Since the “arbitration provisions of Section 252 are available for all

³² 47 U.S.C. § 252(a) (emphasis added).

³³ As an aside, it is useful to view this language in the context in which an incumbent LEC normally provides service – by tariff. The opportunity to negotiate for services is a boon not routinely available in a regulatory environment where rates, terms and conditions for services are subject to state commission scrutiny prior to their approval. Section 252(a) is therefore not a hollow right and actually provides an incumbent LEC with substantial leeway to structure an arrangement without the need for regulatory oversight.

Section 251 interconnections,”³⁴ Level 3’s ability to obtain interconnection was not dependent on reaching a negotiated agreement with SRT. Consequently, there is no compelling reason to infer that such a duty to negotiate exists for section 251(a) interconnection requests.

38. Lastly, Level 3 asserts that SRT unlawfully discriminated against it by failing to establish an interconnection agreement similar to what SRT had done with other carriers providing services in SRT’s local exchange areas, including neighboring LECs with whom SRT shared an extended area service (“EAS”) region and CMRS providers.³⁵ Level 3 argues that the Commission should find that SRT must establish an interconnection agreement with Level 3 just as SRT has done with the other providers who have sought interconnection pursuant to section 251(a).

39. Level 3’s discrimination argument however misses the crux of this issue. The question is whether SRT has a duty to *negotiate* to establish fair and reasonable terms and conditions for interconnection, not whether there is a duty to establish interconnection under fair and reasonable terms. SRT’s interconnection duty is of crucial importance and is addressed in greater detail below, but the present discussion is focused on whether SRT should have negotiated with Level 3 given that it had done so with other telecommunications carriers requesting 251(a) interconnection.³⁶

40. Section 202(a) of the Act states that “[i]t shall be unlawful for any common carrier to make any unjust and unreasonable discrimination in charges, practices, ... facilities, or services for or in connection with like communication service”³⁷ The FCC analyzes discrimination claims using a three-part test: (1) are the practices and services “like”, (2) are those practices and services provided differently between different entities, and (3) is the disparate treatment, if any, unjust and unreasonable.³⁸ The North Dakota Centennial Code contains several anti-discrimination provisions concerning the provision of telecommunications services³⁹ and is sufficiently similar to warrant analyzing the issue using the same criteria.

41. Even if Level 3 were to satisfy the first two prongs of that test, that the interconnection services are “like” and that Level 3 was treated differently, Level 3 has not presented a persuasive argument that such disparate treatment was “unjust and unreasonable.” CMRS providers and neighboring LECs have directly interconnected their networks with SRT for the mutual exchange of traffic since before the local competition provisions of the Act were

³⁴ Order on SRT’s Motion for Dismissal at 2.

³⁵ See Direct Testimony of William P. Hunt III on Behalf of Level 3 Communications, LLC, *Level 3 Arbitration Petition Proceeding*, at 7-8 (Dec. 4, 2002) (“Hunt Testimony”).

³⁶ SRT’s additional argument that because Level 3 did not offer two-way switched service it was not entitled to an interconnection agreement is also misplaced. The question raised by that assertion is ultimately a question of SRT’s interconnection obligations, not to a duty to negotiate. An analysis of the impact of Level 3’s service on SRT’s interconnection obligations is addressed subsequently.

³⁷ 47 U.S.C. § 202(a).

³⁸ See e.g., *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990).

³⁹ See e.g., N.D. Cent. Code § 49-21-02 (Regulation to establish and maintain reasonable charges for telecommunication services “without unreasonable discrimination.”); § 49-21-24 (“A telecommunications company may not ... discriminate against another provider of telecommunications services by refusing or delaying access to the company’s services.”).

enacted. Each had also established reciprocal compensation rates for the traffic that flowed between their networks. Furthermore the regulatory treatment of their relationship was well established. While the interconnection services requested by Level 3 at some level are identical to those of the CMRS providers and the neighboring LECs, Level 3 does not come to the bargaining table from a similarly situated position. Level 3 does not anticipate initially having originating traffic, nor did Level 3 seek direct interconnection with SRT, at least not during the initial stages of the interconnection process. Lastly, Level 3 seeks a type of interconnection from a rural telephone company that arguably is less settled from a regulatory perspective. All of these differences are sufficient in the current instance to justify the disparate treatment afforded Level 3 by SRT when compared to CMRS providers and neighboring LECs for the interconnection of networks pursuant to section 251(a).

42. Given the above discussion, I conclude that SRT did not have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it received Level 3's request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended. This conclusion does not exonerate SRT from any interconnection obligations that may exist, but addresses Level 3's proposition that SRT had a duty to negotiate an interconnection agreement.

B. Issue: Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?

1. SRT's position

43. SRT asserts that rural telephone companies are exempt from the obligations of section 251(c) until they receive, among other things, a *bona fide* request for interconnection. SRT acknowledges that Level 3 disavows reliance on section 251(c) for interconnection but claims that Level 3's status as a competitive LEC is integral to its assertions that it is entitled to an interconnection agreement with SRT. To the extent that Level 3 asserts status as a competitive LEC, SRT argues that Level 3's request for interconnection is not *bona fide* because it has not addressed the rural exemption.

2. Level 3's position

44. Level 3 argues that it has no obligation to make a *bona fide* request for interconnection under section 251(f)(1) of the Act. Level 3 has not sought to terminate any rural exemptions that SRT may possess and has not requested interconnection under section 251(c). Because it has only pursued interconnection under section 251(a), Level 3 asserts that any exemptions from obligations set forth in section 251(b) and (c) remain intact. Since section 251(a) does not require Level 3 to submit a *bona fide* request for interconnection, Level 3 asserts that it does not have to do so.

3. Analysis

45. Section 251(f)(1) provides that rural telephone companies are exempt from the obligations of section 251(c) until they receive a *bona fide* request for interconnection and the State commission determines that such a request is not unduly economically burdensome, is

technically feasible, and is consistent with section 254 of the Act.⁴⁰ This section does not exempt rural telephone companies from any other obligations under the Act.

46. Level 3 has sought interconnection from SRT pursuant to section 251(a), therefore, none of the obligations of section 251(c) nor any applicable exemptions are triggered by such a request. Neither the Act, rules promulgated thereunder, nor any subsequent determinations have concluded that the exemptions afforded rural telephone companies under section 251(f)(1) to the requirements of section 251(c) apply to requests for interconnection under section 251(a).

47. SRT argues that Level 3 is seemingly requesting interconnection under section 251(c) despite Level 3's clear pronouncements to the contrary. Such an exercise in speculation is not useful in deciding the instant issue. Level 3 has not requested interconnection pursuant to section 251(c). The consequences of that action are borne by Level 3 as any rights or obligations attached to section 251(c) are not available to Level 3. The analysis of this question lies with what type of interconnection was actually requested by Level 3.

48. As discussed above, a request for interconnection pursuant to section 251(a) does not require Level 3 to submit a *bona fide* request for interconnection with SRT. Therefore, whether Level 3 submitted such a request is a moot question for purposes of this arbitration.⁴¹

C. Issue: Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?

1. SRT's position

49. SRT asserts that its status as a rural telephone company exempts it from the obligations of section 251(c) pursuant to section 251(f)(1). Because Level 3 has not taken the appropriate actions under the Act to terminate that exemption, SRT argues that Level 3 cannot rely on section 251(c) for interconnection. SRT also states that if Level 3's interconnection request should be determined to be properly made under section 251(c), then SRT remains exempt from those obligations until the exemption is terminated.

2. Level 3's position

50. Level 3 argues that section 251(f)(1) does not exempt SRT from the negotiation and interconnection obligations related to section 251(a) interconnection. Level 3 requested interconnection under section 251(a), not 251(c), and is not challenging SRT's rural exemption under section 251(f). Level 3 further asserts that section 251(f)(1) does not insulate SRT from its duty to establish interconnection arrangements with Level 3. In sum, Level 3 argues that the restrictions in section 251(f) are irrelevant to this dispute.

⁴⁰ 47 U.S.C. § 251(f)(1).

⁴¹ Additionally, nothing in section 251(f)(1) restricts the Commission's authority to arbitrate an interconnection agreement dispute arising under sections 251(a) and 252 involving a rural telephone company, such as SRT.

3. Analysis

51. As stated previously, section 251(f)(1) exempts a rural telephone company from the obligations of section 251(c) until that exemption is terminated. Level 3 has not challenged SRT's status as a rural telephone company under the Act⁴² and has not taken any steps to terminate that exemption. Level 3 however has sought interconnection pursuant to section 251(a) and not section 251(c).

52. The alleged failure of a requesting telecommunications carrier to comply with the steps found in section 251(f)(1) necessary to terminate a rural telephone company's exemption from section 251(c) obligations does not affect the viability of a request for interconnection based on section 251(a). Section 251(a) creates interconnection obligations that apply to all telecommunications carriers separate from the duties created under section 251(c). Therefore, SRT's allegations that Level 3 failed to comply with sections 251(f)(1)(A) and (B) does not affect Level 3's request for interconnection addressed in this arbitration. While SRT remains exempt from the obligations detailed in section 251(c), section 251(f)(1) does not exempt SRT from the obligations that stem from Level 3's section 251(a) interconnection request.

IV. DISCUSSION – SUBSTANTIVE INTERCONNECTION ISSUES

53. The remaining disputed issues focus on SRT's interconnection obligations under the Act, the effect the type of service Level 3 proposes to provide has on the terms and conditions for interconnection, and the Commission's overall jurisdiction to resolve those questions.

A. Issue: Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?

1. SRT's position

54. SRT asserts that it has satisfied its duty under section 251(a) to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" consistent with the requirements articulated by the FCC.⁴³ It has done so, according to SRT, in two basic ways – indirectly through SRT's links with the public switched telephone network ("PSTN") and directly through the services Level 3 currently obtains from SRT.

55. With respect to indirect interconnection, SRT argues that its connection to the PSTN enables traffic to flow from end users of internet service in SRT's local calling area to Level 3's ISP customers physically located in other exchange areas. Such traffic could reach Level 3's ISP customers using a 1-800 service or by way of originating access services that could be purchased by Level 3 for the carriage of its interexchange traffic to its ISP customers.⁴⁴ Either

⁴² 47 U.S.C. § 153(37).

⁴³ SRT's Post-Hearing Brief at 6 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15991, ¶997 (1996) ("Local Competition Order")).

⁴⁴ See SRT Communications, Inc.'s Prehearing Statement, *Level 3 Arbitration Petition Proceeding*, at 1 (Nov. 27, 2002); Sebby Testimony at 25.

method allows traffic to flow from SRT's network to Level 3's and, according to SRT, satisfies SRT's obligation under section 251(a) to indirectly interconnect with Level 3.

56. SRT also claims that Level 3 and SRT are directly interconnected. Level 3 currently carries traffic from SRT's exchange areas to Level 3's ISP customers in other exchange areas over leased dedicated DS1 facilities which Level 3 currently obtains from SRT.⁴⁵ SRT asserts that those facilities directly interconnect Level 3 with SRT and are not substantially different from the facilities Level 3 proposes to obtain from SRT to establish a direct interconnection under its desired new arrangement.⁴⁶ SRT also argues that Level 3's own interrogatory answers acknowledge that the difference between the past and future arrangements "would be slight."⁴⁷

2. Level 3's position

57. Level 3 counters that simply because both parties are connected to the public switched network does not mean that they are indirectly interconnected. Level 3 avers that indirect interconnection requires a mutually agreed upon physical linking of the parties' networks that in most instances involves a designated third party carrier to facilitate the exchange of traffic between the parties.⁴⁸ The typical indirect interconnection model, according to Level 3, is where both Level 3 and the independent LEC are directly interconnected with a Bell Operating Company's ("BOC") tandem switch and each party has its own interconnection agreement or arrangement with the BOC.

58. Moreover, Level 3 asserts that SRT's position that it satisfies its obligations under section 251(a) by being connected to the PSTN would render section 251(a) meaningless. Since every LEC is already connected to the PSTN in order to maximize the utility to its customers, the requirement under Section 251(a) for indirect interconnection must require some additional obligation to a carrier if it is to have any meaning at all.⁴⁹

59. Level 3 also argues that SRT is not directly interconnected with Level 3. Level 3 acknowledges that it purchases services from SRT as an end user for the purposes of completing calls to an ISP.⁵⁰ Under this arrangement, when an SRT end user dials a number assigned by SRT to Level 3, SRT routes the call through SRT's switch and onto the services purchased by Level 3. The call is then routed over transport that is jointly provided by SRT and Qwest to Level 3's customer modem location in Bismarck. The call does not get routed through a Level 3 switching facility and, therefore, Level 3 claims it would not be considered a co-carrier in completing the communication.⁵¹

⁴⁵ SRT's Post-Hearing Brief at 7.

⁴⁶ *Id.* at 8.

⁴⁷ *Id.* (citing to Level 3's Interrogatory Response No. 6, Hearing Ex. 23).

⁴⁸ Level 3's Post-Hearing Brief at 11.

⁴⁹ *Id.* at 13.

⁵⁰ Level 3 obtained the meet points DS1s and PRI ISDNs as a result of its acquisition of certain assets from McLeod USA Information Services. Testimony of Rogier R. Ducloo on Behalf of Level 3 Communications, LLC, *Level 3 Arbitration Petition Proceeding*, at 4-5 (Dec. 4, 2002) ("Ducloo Testimony").

⁵¹ Level 3's Post-Hearing Brief at 14.

60. Level 3 posits that because Level 3 and SRT do not interconnect as co-carriers, that is, where the parties exchange traffic between their two switches, the parties are not directly interconnected.⁵² Level 3 “inherited” the services provided by SRT after purchasing the assets of McLeod Information Services in North Dakota.⁵³ According to Level 3, the services were considered by SRT to be retail end-user services when provided to McLeod. Level 3 adds that McLeod Information Services was also never authorized by the Commission to offer services as a telecommunications carrier in the state.⁵⁴ Level 3 argues, therefore, that retail services purchased by a non-telecommunications carrier, McLeod, do not satisfy SRT’s direct interconnection obligations merely through the purchase of the McLeod’s assets.

61. Level 3 also states that the retail services obtained from SRT by Level 3 do not enable Level 3 to assign its own telephone numbers to its customers. Nor does the present arrangement permit Level 3 to carry traffic to its own switch.

62. Level 3 also asserts that SRT’s unwillingness to directly interconnect with Level 3 is discriminatory in violation of section 202(a) of the Act and section 49-21-07 of the North Dakota Century Code. According to Level 3, SRT discriminates against Level 3 in that it has negotiated direct interconnection agreements with other carriers, and directly interconnects with other carriers. Specifically, SRT has entered into direct interconnection agreements with, and established direct interconnection to, a number of CMRS providers. Level 3 proposes to interconnect at SRT’s Minot switch and set up SS7 trunks to exchange signaling information with SRT, just like SRT has in place with the CMRS providers. Level 3 argues that while SRT may have a more significant financial incentive to interconnect with CMRS providers than with Level 3, such financial considerations do not excuse SRT from its legal obligations to interconnect with Level 3.

63. Level 3 also argues that SRT has established direct interconnection with two neighboring LECs with whom SRT shares Extended Area Service (“EAS”) areas. SRT exchanges FX-like traffic with these carriers on a “bill and keep” basis. In other words, SRT interconnects directly with independent LECs that provide FX services and exchanges traffic with them on a bill and keep basis, but refuses to do the same with Level 3. This disparity of treatment by SRT of Level 3 as compared to other carriers, Level 3 alleges, is discriminatory.

64. Level 3 further argues that SRT’s refusal to directly interconnect with Level 3 is a barrier to entry in violation of the Act. According to Level 3, SRT believes that it can impose its preferred manner of interconnection on Level 3 based solely on SRT’s preferences. SRT would like the Commission to believe that section 251(a) interconnection implies that SRT should be permitted to dictate the conditions of interconnection with Level 3 subject only to SRT’s most efficient technical and economic choices. Level 3 argues that this interpretation undermines the intent of the negotiation and arbitration provisions of sections 251 and 252. SRT’s interpretation might result in a requesting carrier never obtaining an interconnection agreement. According to

⁵² *Id.* at 15.

⁵³ *See* Ducloo Testimony at 4-5.

⁵⁴ Hearing Tr. at 15.

Level 3, this would give SRT free reign to impose only the most expensive interconnection on requesting CLECs and impose barriers to competitive entry in violation of section 253(a).

65. Lastly, Level 3 argues that its interconnection request is consistent with the public convenience and necessity as required by the North Dakota Centennial Code. Level 3 asserts that the public convenience and necessity would be served if the parties were to interconnect and exchange traffic with no offsetting injury or detriment to the parties or the facilities involved.⁵⁵

3. SRT's rebuttal

66. SRT disagrees with Level 3's argument that since the connection was "inherited" from a non-carrier, McLeod USA Information Services, it cannot be a section 251(a) interconnection. According to SRT, Level 3 cites no authority for its "inherited" argument. SRT asserts that Level 3 is unwilling to admit that its purchase of the McLeod assets included a direct interconnection with SRT. SRT maintains that when SRT's end-users dial numbers associated with Level 3, the calls are completed and delivered to Level 3's ISP customers.

67. SRT also refutes Level 3's argument that because the services Level 3 obtains are out of an SRT's "retail" tariff offering, Level 3 is not directly connected with SRT. SRT argues that even Level 3's own witnesses agree that there is no legal precedent requiring either "carrier to carrier" or "non-retail" connections to satisfy section 251(a).

4. Analysis

68. Section 251(a)(1) of the Act states that each telecommunications carrier has the duty to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."⁵⁶ In its *Local Competition Order*, the FCC concluded "that the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic"⁵⁷ and incorporated that definition into the Code of Federal Regulations.⁵⁸ More recently, the FCC stated that "nothing in the statutory scheme [suggested] that the term 'interconnection' [had] one meaning in section 251(a) and a different meaning in section 251(c)(2)."⁵⁹ Consequently, determining whether a telecommunications carrier satisfies its section 251(a)(1) obligations turns on examining the physical linking of the two networks and the ability to mutually exchange traffic.

69. The FCC's *Local Competition Order* also concluded that "telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices."⁶⁰ In other words, it is the telecommunications carrier *providing* interconnection under section 251(a) that acts on

⁵⁵ *Id.* at 23.

⁵⁶ 47 U.S.C. §251(1)(a).

⁵⁷ *Local Competition Order*, ¶ 176. *See also Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997).

⁵⁸ 47 C.F.R. §51.5 ("Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.")

⁵⁹ *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, FCC 01-84, ¶ 25 (2001).

⁶⁰ *Local Competition Order* ¶ 997.

its own most efficient technical and economic choices when determining how to satisfy its interconnection obligations. This is different from the scenario articulated under a section 251(c) request, where the requesting carrier determines the method and location of interconnection. Therefore, in the context of a request for interconnection pursuant to section 251(a), a requesting carrier is entitled to ask for interconnection, but the providing carrier decides how the interconnection obligations will be satisfied.

70. Section 251(a) does not exempt a telecommunications carrier from other obligations under the Act. The providing telecommunications carrier is still required to provide that interconnection in a lawfully proscribed manner. For example, section 202(a) of the Act prohibits unjust and unreasonable discrimination with respect to rates, terms, and conditions.⁶¹ Also the North Dakota Century Code bars a telecommunications company from “[d]iscriminating against another provider of telecommunications service by refusing or delaying access to the company’s services.”⁶²

71. SRT asserts that it has met the interconnection obligations of section 251(a). I disagree. Interconnection is more than establishing a link to the PSTN or providing transport services between two points that lacks the level of interoperability provided by network switches and signaling systems.

- a) *SRT is not indirectly interconnected to Level 3 in manner that satisfies its section 251(a) obligations.*

72. SRT and Level 3 present two very different perspectives on the form of indirect interconnection that would satisfy the requirements of section 251(a). SRT asserts that by interconnecting its network to the PSTN, SRT indirectly interconnects to Level 3 such that SRT local exchange customers can contact Level 3 ISP customers. Level 3 argues that indirect interconnection is a more formalized arrangement that requires the two indirectly interconnecting carriers to each obtain separate direct interconnection arrangements with a third-party that then carries the traffic between the two and that the two interconnecting carriers’ switches can mutually exchange traffic.

73. As noted previously, the FCC has stated that interconnection requires the physical linking of two networks. SRT argues that because both SRT and Level 3 are linked to the PSTN, physical continuity can be traced from SRT’s network to Level 3’s. While the route may be circuitous, SRT local exchange customers can utilize a toll (1+) or toll-free (1-800) service to access an ISP on Level 3’s network. According to SRT, this satisfies its obligations under section 251(a) for indirect interconnection.

74. Interconnection under section 251(a), however, requires more than just the physical linking of two networks – the interconnection must also allow for the mutual exchange of traffic. Any mechanism that does not provide for the mutual exchange of traffic between the two networks, therefore, cannot satisfy the interconnection obligations of section 251(a).

⁶¹ 47 U.S.C. § 202(a). *See also* N.D. Cent. Code § 49-21-02(3) (ensuring reasonable charges); § 49-21-07 (discrimination unlawful).

⁶² N.D. Cent. Code § 49-21-24(1)(b).

75. SRT's argument that being connected to the PSTN enables traffic to flow from SRT's network to Level 3's network breaks down at the local exchange level. If Level 3 were to obtain telephone numbers assigned to an end office switch in SRT's local service area, the indirect interconnection through the PSTN that SRT posits as satisfying its 251(a) obligations would not provide a mechanism for traffic to flow from SRT's network to Level 3's network. SRT's indirect interconnection argument assumes that the PSTN has a mechanism to carry the traffic from SRT's local calling area to Level 3's customer. When the telephone number of Level 3's customer is outside of SRT's local service area, then the interexchange services available to an SRT customer would allow the call to continue beyond SRT's network. In that instance, the interexchange carrier provides the indirect interconnection between the two networks. However, when a call is placed to a telephone number within the local calling area of SRT, the intermediary carrier necessary to provide connectivity between SRT and Level 3 is absent. Since SRT *is* the PSTN, the call would stop on SRT's network. Under this scenario, an indirect interconnection through the PSTN does not permit the mutual exchange of traffic.

76. SRT argues that Level 3 is providing an interexchange service and is therefore not entitled to reap the benefits of being a competitive LEC. SRT's position conflicts with the fact that Level 3 was authorized by the Commission to provide local exchange services in the North Dakota. Also, the tariffed DID services that Level 3 intends to offer are local exchange services. Lastly, there is no requirement in the Act that a competitive LEC must provide a particular type of local service before it is eligible to be considered a competitive LEC. In fact, the Act and the resulting rules and regulations promulgated by the FCC indicate that duplication of the incumbent LEC's network was to be avoided. SRT's argument that because Level 3 does not provide two-way local exchange service Level 3 is somehow no longer considered a competitive LEC is contrary to the state of telecommunications law today.

77. An additional difficulty with SRT's position lay in the breadth of its effect. If not by regulatory fiat, then by economic necessity, every LEC must interconnect the PSTN. To argue that by simply connecting to the PSTN, SRT satisfies its obligation under section 251(a) renders the requirements of the section meaningless. Furthermore, connecting to the PSTN may satisfy the physical component of interconnection, but it does not necessarily address the interoperability portion of that interconnection necessary for the mutual exchange of traffic. The presence of a physical link is inadequate if the networks cannot work together to exchange traffic.⁶³

78. The local competition provisions of the Act also promote the use of agreements to address interconnection related issues. If section 251(a) were satisfied through connection with the PSTN, then requesting telecommunications carriers would be unable to seek a greater level

⁶³ A Level 3 witness testified that Level 3 does not currently exchange SS7 signaling information with SRT but wants to do so when interconnection is obtained. *See* Hearing Tr. 74-75. Level 3 asserts that traffic to its network cannot be efficiently routed without SS7 signaling and therefore the suite of services Level 3 can offer without it is limited. SS7 signaling provides routing information that facilitates the carriage of traffic over both SRT and Level 3's network. Level 3 also argues that SRT is discriminating against Level 3, because SRT exchanges SS7 signaling with CMRS and interexchange carriers. *See* Hearing Tr. 233-34. While the record is not entirely clear on this issue, SS7 signaling information appears to be necessary to provide a minimum level of interoperability for the mutual exchange of traffic.

of interconnection. Such an interpretation would appear contrary to the intentions of the Act and the FCC's implementing regulations. Therefore, an interpretation of what constitutes indirect interconnection that effectively removes interconnection obligations should not be supported.

79. I find SRT's argument that its interconnection to the PSTN satisfies its section 251(a) obligations to be unpersuasive and contrary to the Act and FCC's rules. I am therefore compelled to conclude that SRT is not indirectly interconnected to Level 3 in a manner that satisfies its section 251(a) obligations.

b) *SRT is not directly interconnected to Level 3 in a manner that satisfies its 251(a) obligations.*

80. As noted above, interconnection under section 251(a) requires the physical interconnection of networks for the mutual exchange of traffic. SRT asserts that the services Level 3 obtains from SRT directly interconnects their two networks. Consequently, SRT argues that SRT has satisfied its interconnection obligations under section 251(a). I disagree. The services Level 3 purchases from SRT do not provide for the mutual exchange of traffic between SRT's and Level 3's networks. Without such interconnection, those services cannot be considered a means to satisfy SRT's section 251(a) obligation to directly interconnect with Level 3.

81. Level 3 purchases meet point DS1s and Primary Rate Interface ("PRI") ISDN services from an SRT retail tariff. These services allow for the transport of calls from an SRT end user in the SRT local calling area to a single Level 3 ISP customer located in Bismarck, North Dakota. When an SRT end user dials the number assigned by SRT to Level 3, SRT routes the call through its switch and over the PRI ISDNs purchased by Level 3. The call is then routed over transport facilities jointly provided by SRT and Qwest to Level 3's ISP customer. At no point does the call get routed through a Level 3 switching facility.

82. SRT maintains that these services constitute a direct interconnection between SRT and Level 3. SRT, however, does not explain how these services provide direct interconnection between SRT's and Level 3's *networks*, as required by section 251(a). To be clear, the services Level 3 purchases from SRT do interconnect with SRT's network, however, they do not interconnect with Level 3's network on the other end. Traffic is merely carried to a single Level 3 customer's location. Additionally, those services do not provide interconnection to other Level 3 customers. If the networks were directly interconnected, then SRT end users could contact any Level 3 customer on the Level 3 network.

83. SRT argues that the services Level 3 obtains under the existing arrangement are not substantially different from the facilities Level 3 proposes to lease from SRT to establish a direct interconnection under Level 3's desired new agreement.⁶⁴ What is different however is what those services or facilities connect to. In the present arrangement, SRT's network is connected to a single Level 3 customer in Bismarck. Under Level 3's proposed arrangement

⁶⁴ SRT's Post-Hearing Brief at 7 (comparing Level 3's interrogatory responses and hearing testimony).

SRT's network would be connected to a Level 3 routing point which in turn would be connected to Level 3's network of other routing points, servers, switches, and customer modem banks.⁶⁵

84. Interconnection to a network is entirely different from access to an individual customer. One of the defining characteristics of such an interconnection is the ability for each side to route traffic from the other's network over its own facilities to the ultimate destination. This requires signaling information to flow to the portion of a carrier's network that provides routing intelligence – a switch. Without traffic flowing to a carrier's switch, network configuration would require virtually an infinite number of dedicated lines to connect a myriad of end points. Therefore, interconnection to a carrier's switches is what creates the modern telecommunications system and allows for traffic to flow from literally any point A to any point B. The current services purchased by Level 3 from SRT do not provide that level of interoperability between the two networks. Therefore, SRT is not directly interconnected with Level 3 in a manner that satisfies SRT's section 251(a) interconnection obligations.

B. Issue: Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?

C. Issue: For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area?

85. Both SRT and Level 3 address these questions simultaneously, therefore, I will do the same.

1. SRT's position

86. SRT asserts that Level 3's proposed services are interexchange services because calls to Level 3's customers terminate outside the SRT local calling area. SRT asserts that it is therefore entitled to intercarrier compensation under the FCC's access charge rules. SRT also opposes rating calls that are routed and terminated to Level 3's ISP customers outside the SRT local calling area as local,⁶⁶ since this would result in the avoidance of intercarrier compensation obligations.⁶⁷

2. Level 3's position

87. Level 3 asserts that its proposed services are interexchange local services subject to the transport and termination arrangements contained in the FCC's *ISP Remand Order*. Level 3 also argues that calls to NXX numbers assigned to the same local calling area should be treated as local traffic. According to Level 3, the FCC has assumed exclusive jurisdiction over

⁶⁵ Ducloo Testimony at 11-12, 14-15.

⁶⁶ These calls would be rated as local because Level 3 intends to assign its NXX code to a switch within SRT's local calling area.

⁶⁷ SRT raises several jurisdictional challenges to the Commission's authority to resolve these questions. Those issues are addressed in the subsequent section.

compensation for ISP-bound traffic but has left in place the state commissions' jurisdiction over other aspects of ISP-bound traffic, such as the obligations contained in sections 251 and 252 of the Act.

88. Level 3 argues in the alternative that Level 3's services are sufficiently similar to the foreign exchange ("FX") services currently provided by SRT that the two services should be treated alike. Because SRT's own FX service is treated as a local service even though the traffic is interexchange,⁶⁸ Level 3 argues that its service should be considered local as well and to do otherwise would be discriminatory. Level 3 further contends that access charges would not be appropriate for Level 3's proposed services since those charges are not levied on SRT's FX services.⁶⁹

3. Analysis

89. Telecommunications bound for the internet became the subject of controversy soon after the passage of the Telecommunications Act of 1996. The federal courts, the FCC, and state commissions have issued numerous orders relating to its treatment both in the context of compensation and interconnection. In its most recent statement on the issue, the *ISP Remand Order*,⁷⁰ the FCC affirmed its previous conclusion that ISP-bound traffic was interstate in nature and within the jurisdiction of the FCC under section 201 of the Act to regulate.⁷¹ In that order, the FCC established compensation mechanisms for ISP-bound traffic. In instances "where carriers [were] not exchanging traffic pursuant to interconnection agreements prior" to April 18, 2001, the FCC determined that ISP-bound traffic must be exchanged on a "bill-and-keep" basis.⁷² The FCC also removed the state commissions' jurisdiction "to determine the appropriate intercarrier compensation for ISP-bound traffic."⁷³ Because the Commission simultaneously released several proposed rulemakings on related topics with 3-year transitional compensation mechanisms for ISP-bound traffic, this "bill-and-keep" form of compensation was considered to be "interim" pending a decision on the larger issues.⁷⁴

90. In *WorldCom, Inc. v. Federal Communications Commission*,⁷⁵ however, the U.S. Court of Appeals for the District of Columbia found that the statutory authority cited by the FCC in the *ISP Remand Order* did not provide an adequate basis for the FCC to classify ISP-bound

⁶⁸ Level 3's Post-Hearing Brief at 41.

⁶⁹ Level 3's Post-Hearing Brief at 44.

⁷⁰ Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("ISP Remand Order").

⁷¹ *ISP Remand Order* ¶ 65.

⁷² *ISP Remand Order* ¶ 81 (The date of the order's adoption established the cut-off date.). "Bill-and-keep" refers to an arrangement in which neither of two interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end-users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. *Id.* ¶ 2 n.6.

⁷³ *ISP Remand Order* ¶ 82 ("Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue.").

⁷⁴ *ISP Remand Order* ¶ 83.

⁷⁵ *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

traffic as information services. The Court did not vacate the order, citing the preferences of the parties for “bill and keep” and the “non-trivial likelihood that the [FCC had the] authority to elect such a system”⁷⁶ but did remand the matter back to the FCC for further proceedings. The court specifically did not address any of the other issues raised by the parties on appeal. The compensation rules within the *ISP Remand Order* remain in effect, although the basis for those rules is in question. It follows that the compensation issues addressed in this arbitration proceeding must be viewed in the context of that order.

91. SRT argues that the traffic to Level 3's ISP customers is interexchange because it terminates outside of SRT's local calling area. I agree. Traffic bound for Level 3's ISP customers crosses exchange boundaries and is therefore interexchange in nature. SRT asserts that the traffic should be treated under the interexchange compensation regime and subject to access charges. I disagree. The intercarrier compensation associated with this traffic is beyond the Commission's authority to decide as the FCC removed from the state's jurisdiction the ability to address the compensation mechanisms for ISP-bound traffic.⁷⁷ Pursuant the *ISP Remand Order*, for Level 3 and SRT, two carriers who were not previously exchanging traffic under an interconnection agreement,⁷⁸ ISP-bound traffic must be compensated for on a “bill-and-keep” basis.

92. SRT argues, however, that the *ISP Remand Order* only applies to ISP-bound traffic that originates in a given local exchange area and terminates at an ISP modem bank located in the same local exchange area. SRT contends that *all other* ISP-bound traffic is interexchange traffic that requires the payment of access charges to the originating carrier. SRT continues that because traffic to Level 3's ISP customers is outside the originating local exchange area, Level 3 is obligated to pay originating access charges to SRT. Again, I disagree.

93. The FCC goes through great lengths in the *ISP Remand Order* to eliminate its previous use of the term “local” when discussing ISP-bound traffic and instead discusses such traffic as information access.⁷⁹ As mentioned above, the FCC considers ISP-bound traffic to be interstate for jurisdictional purposes⁸⁰ and, thus, subject to the FCC's authority to regulate. The FCC reached this conclusion by viewing traffic between a LEC subscriber and an ISP on an end-

⁷⁶ 288 F.3d at 434.

⁷⁷ Several state commissions that have addressed this identical question have concluded that the FCC's “bill-and-keep” compensation mechanism is appropriate for all ISP-bound traffic. *See generally*, Level 3's Post-Hearing Brief at 33-36. I also find that the state commission decisions referenced by SRT on this issue to be distinguishable based on the procedural posture of the cases or the issues presented.

⁷⁸ SRT's contention that Level 3 is not entitled to “bill-and-keep” under the FCC's interim procedures because SRT and Level 3 were already interconnected is incorrect. As the language of the order demonstrates, the appropriate question is whether the parties were exchanging traffic pursuant to an interconnection agreement at the time the *ISP Remand Order* was adopted (April 18, 2001). As demonstrated previously, the parties do not have an interconnection agreement even at this time.

⁷⁹ *See e.g.*, *ISP Remand Order* ¶ 46 (“[T]he use of the phrase ‘local traffic’ created unnecessary ambiguities, and we correct that mistake here.”); ¶ 64 (“[T]o the extent that our prior briefs could be read to conceptualize the nature of ISP service as local, akin to intense users of local service, we now embrace a different conceptualization that we believe more accurately reflects the nature of ISP service.”).

⁸⁰ *See e.g.*, *ISP Remand Order* ¶ 57 (“For jurisdictional purposes, the Commission views LEC-provided access to enhanced service providers, including ISPs, on the basis of the end points of the communication, rather than intermediate points of switching or exchanges between carriers (or other providers).”)

to-end basis. The practical effect of such a conclusion is that regardless of whether the ISP is across the street or across the country, the FCC considers the communications to the internet to be interstate. Where the ISP is located in that communications is therefore not a factor in determining the jurisdictional nature of the call and the appropriate intercarrier compensation mechanism.

94. Additionally, the language of the ISP Remand Order does not support SRT's interpretation that the location of the ISP modem bank dictates whether the ISP-bound traffic is subject to "bill-and-keep" or another form of compensation – "[w]e conclude this definition of 'information access' was meant to include all access traffic that was routed by a LEC 'to or from' providers of information services, of which ISPs are a subset."⁸¹

95. The FCC has determined that ISP-bound traffic is subject to its jurisdiction and is compensable under a "bill-and-keep" arrangement. Level 3 and SRT were not exchanging traffic pursuant to an interconnection agreement prior to when the *ISP Remand Order* was adopted and, therefore, their proposed traffic is governed by the *ISP Remand Order*'s interim compensation regime. Consequently, I find Level 3's proposed services to be subject to the "bill-and-keep" compensation regime of the *ISP Remand Order*.

96. For purposes of clarity, the second issue in this section – whether calls to NXX numbers in the same local calling area are treated differently based on where the call terminates – is addressed by the adoption by the FCC of "bill-and-keep" compensation regime for ISP-bound traffic. Because "bill-and-keep" does not impose any disparate treatment, billing or otherwise, for calls to NXXs within same local calling area, I conclude that such calls should not be treated differently based on where they terminate.

D. Issue: Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

1. SRT's position

97. SRT states that because the North Dakota Public Service Commission does not have policy making authority in the context of an arbitration under the Act, the scope of what the Commission can decide in this proceeding is limited. Specifically, SRT argues that the Commission has no jurisdiction or authority under state law to make a state policy decision about the regulatory treatment of virtual NXX traffic. SRT further contends that the FCC has made no rules or decisions to establish a national policy about the "regulatory treatment of virtual NXX traffic." Their position concludes that the Commission cannot make a policy decision that virtual NXX traffic to ISPs in distant exchanges should be reclassified as local traffic, for such a decision would bypass the existing rules of federal and state law that govern intercarrier compensation for interexchange traffic.⁸²

⁸¹ *ISP Remand Order* ¶ 44.

⁸² SRT's Post-Hearing Brief at 19.

98. SRT also challenges whether the Commission's limited jurisdiction extends to disputes concerning ISP-bound traffic in the context of an interconnection agreement.⁸³ SRT claims that an interconnection agreement arbitration proceeding is not the appropriate forum to consider and decide "policy" issues.

99. SRT raises two additional jurisdictional arguments concerning the applicability of the *ISP Remand Order*. First, SRT argues that Level 3 is not a "new carrier" pursuant to the *ISP Remand Order* and is consequently not entitled to the "bill-and-keep" methodology for ISP-bound traffic. Second, SRT argues that subsections 252(c) and (d) of the Act do not authorize the Commission to impose "bill-and-keep" intercarrier compensation arrangements on carriers that exchange traffic over an interconnection that was established under section 251(a). SRT claims that the Commission cannot impose obligations different or greater than those imposed under the Act and there is no statutory nexus for the Commission to compel "bill-and-keep" compensation on a section 251(a) interconnection.

2. Level 3's position

100. Level 3 asserts that section 252 grants to state commissions the authority to approve or reject all interconnection agreements, to mediate and arbitrate all interconnection disputes, and to enforce all the interconnection obligations of section 251 and the interconnection rules that the FCC may adopt.⁸⁴ Level 3 argues that this jurisdiction applies whether the services are classified as intrastate or interstate.

101. Level 3 states that the FCC has only preempted the Commission's jurisdiction in one area – determining intercarrier compensation for the exchange of ISP-bound traffic. Thus, Level 3 concludes, the Commission retains jurisdiction over the remainder of the disputed matters.

3. Analysis

102. Arbitration proceedings are often necessary to enter into interconnection agreements under the Act. SRT proposes that an arbitration proceeding is not an appropriate vehicle to resolve policy disputes and that this Commission should wait until the matter is decided by the FCC. While it is helpful when the FCC has articulated a rule with respect to issues related to national telecommunications policy, the Act specifically contemplates that state commissions must decide each issue presented to them during arbitration.⁸⁵ Without such decisions, interconnection agreements stand the risk of never being finalized or becoming effective.

103. The Commission has jurisdiction under the North Dakota legislation to administer the arbitration system created by the Act.⁸⁶ What the Commission cannot do, according to SRT, is fill in the gaps on policy issues. SRT asserts that some of the determinations in this proceeding cross the boundary from findings of fact and conclusions of law into the realm of

⁸³ SRT's Post-Hearing Brief at 21.

⁸⁴ Level 3's Post-Hearing Brief at 56.

⁸⁵ 47 U.S.C. § 252(b)(4)(C).

⁸⁶ N.D. Cent. Code § 49-21-01.7 (8) & (9).

policy where the Commission is prohibited to go. I disagree. The FCC has reached conclusions on the “policy” questions concerning the compensation regime for ISP-bound traffic. In fact, the FCC removed from the state’s jurisdiction the ability to review the question. The Commission therefore neither needs to analyze the policy question nor is it entitled to.

104. SRT’s jurisdictional argument focuses principally on one issue – the Commission does not have the jurisdiction “to make a policy decision that so-called virtual NXX traffic to ISPs in distant exchanges in North Dakota or in other states should be reclassified as local traffic subject to the FCC’s new arrangement for intercarrier compensation affecting ISP bound traffic exchanged” between incumbent LECs and competitive LECs in the same local calling area.⁸⁷ SRT argues that the FCC has not reached a decision on the topic and the Commission should not “endeavor to forecast what new rules the FCC might make.”⁸⁸ In support of this argument, SRT cites the proposed rulemaking issued by the FCC concerning the development of a unified intercarrier compensation regime.⁸⁹

105. The *Inter-carrier Compensation NPRM* was issued by the FCC to solicit comments on a proposed “bill-and-keep” regime as a long-term, unified intercarrier compensation mechanism that combined the two current regimes of access charges and reciprocal compensation.⁹⁰ On the same day, the FCC released its *ISP Remand Order* adopting interim measures for three years to address “intercarrier compensation for traffic that is specifically bound” for ISPs.⁹¹ Thus even though the FCC has not issued a final order in the *Inter-carrier Compensation NPRM*, the FCC established the interim measures in the *ISP Remand Order* that would govern ISP-bound traffic pending its final decision.⁹² The FCC addressed SRT’s question by concluding that the ISP-bound traffic in the instant matter is governed by the “bill-and-keep” compensation regime while it explores whether such a mechanism is appropriate in the future. SRT’s argument that the FCC has not decided the current regulatory treatment of ISP-bound traffic is incorrect. As demonstrated in the preceding section, the FCC classifies ISP-bound traffic as a single category that is governed by the *ISP Remand Order*. The unified regime for such traffic therefore eliminates any disparate treatment based on the ISP-bound traffic’s point of termination or the location of Level 3’s NXX code assignment. The Commission,

⁸⁷ SRT’s Post-Hearing Brief at 20.

⁸⁸ SRT’s Post-Hearing Brief at 19.

⁸⁹ Notice of Proposed Rulemaking, *Developing a Unified Inter-carrier Compensation Regime*, CC No. 01-92, FCC 01-132, ¶¶ 97, 115, 121 & 122 (rel. April 27, 2001) (“Inter-carrier Compensation NPRM”).

⁹⁰ *Inter-carrier Compensation NPRM* ¶ 2.

⁹¹ *Id.* ¶ 3.

⁹² Because the specific paragraphs in the *Inter-carrier Compensation NPRM* cited to by SRT focus on interstate access charges, those provisions arguably do not address the issues presented in this arbitration. There is an entire section in the NPRM not cited by SRT that discusses the future of “bill-and-keep” for ISP-bound traffic, and is entirely unrelated to the interstate access issues raised by SRT in support of its arguments. *Id.* ¶¶ 66-68. Also, the FCC had released contemporaneously with that NPRM its *ISP Remand Order* that had concluded that ISP-bound traffic was subject to information access and not interexchange access. The FCC therefore was addressing two different issues in two different orders. SRT’s argument that the ISP-bound traffic was being addressed differently in the two orders is consequently unpersuasive.

consequently, is not presented with a policy decision that could affect its jurisdiction since the FCC has already reached a conclusion on the issue.⁹³

106. SRT's makes three additional arguments that the Commission lacks jurisdiction to decide some of the issues presented in this arbitration. All center on the imposition of a "bill-and-keep" compensation regime for ISP-bound traffic. The first relates to the Commission's ability to reach "policy" decision in the context of an interconnection agreement arbitration. Again, because the FCC has determined the appropriate compensation regime for ISP-bound traffic, the Commission is not faced with the issue of making a "policy" decision in this proceeding.

107. With respect to SRT's claim that Level 3 was not entitled to "bill-and-keep" because of previous interconnection relationships, SRT's argument is faulty. As demonstrated above, Level 3 and SRT were not interconnected either directly or indirectly in a manner that would satisfy SRT's section 251(a) obligations. The *ISP Remand Order* is clear that the "bill-and-keep" compensation regime is the applicable to parties who were not exchanging traffic pursuant to an interconnection agreement as of April 18, 2001.⁹⁴ Since there was no interconnection agreement between SRT and Level 3, the "bill-and-keep" arrangement for ISP-bound traffic is required.

108. Lastly, SRT argues that section 251(a) interconnections are not entitled to the "bill-and-keep" compensation regime. Nothing in the *ISP Remand Order* supports that conclusion. The relevant language of the order on that the issue refers to "carriers" generically⁹⁵ and, in fact, to conclude otherwise would encourage the type of regulatory arbitrage that the FCC was specifically attempting to address.⁹⁶ Therefore I find that Level 3's requested section 251(a) interconnection is entitled to "bill-and-keep" as articulated by the *ISP Remand Order*.

109. I conclude that the Commission would be within its jurisdictional authority as circumscribed by the North Dakota legislature to approve an interconnection agreement between Level 3 and SRT consistent with the above decisions and recommendations.

V. RESOLUTION OF UNRESOLVED ISSUES AND CONFORMING CONTRACT PROVISIONS

A. Duty of State Commission to Arbitrate Interconnection Agreements

1. Section 252 requirements

110. Section 252 of the Act establishes the procedures for negotiation, arbitration, and approval of agreements for interconnection, services, or network elements between telecommunication carriers. While section 252(a) addresses negotiated agreements, section

⁹³ In fact, as mentioned previously, the FCC has removed the Commission's authority to even examine the issue had a policy question been presented.

⁹⁴ *ISP Remand Order* ¶ 81.

⁹⁵ See e.g., *id.* ¶¶ 78, 79, 81, 83, 84.

⁹⁶ *Id.* ¶ 83.

252(b) discusses the process for resolving disputed issues through arbitration. That section establishes the timetable for an arbitration request and duties of the parties and the Commission during the process.⁹⁷

111. Specifically, section 252(b)(4)(C) requires the Commission to “resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement [section 252(c)] upon the parties to the agreement.” Section 252(c) sets forth the standards state commissions must employ for resolving through arbitration any open issues and imposing conditions upon the parties to the agreement. State commissions are required to (1) ensure that the resolution and conditions meet the requirements of section 251, including the regulations promulgated by the FCC thereunder; (2) establish any rates according to section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

112. Section 252(d) is not the sole source for rate determination. Section 201(b) requires that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate] communication service, shall be just and reasonable.”⁹⁸ Section 202(a) also prohibits unjust and unreasonable discrimination in the “charges, practices, classifications, regulations, facilities, or services for or in connection with like communication services.”⁹⁹

2. North Dakota Administration Provisions

113. The North Dakota Century Code authorizes the Commission to “mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252” of the Act¹⁰⁰ and to approve or reject such agreements.¹⁰¹ The Commission also has the authority to review the charges for telecommunications services within the state.¹⁰²

B. Recommended Resolution of Unresolved Issues

114. Pursuant to the above analysis, I recommend that the Commission adopt the following conclusions when considering the interconnection agreement to be submitted by the parties under the schedule below:

- a. SRT did not have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it received Level 3’s request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended.
- b. Level 3’s request for interconnection pursuant to section 251(a) does not require Level 3 to submit a *bona fide* request for interconnection with SRT, and,

⁹⁷ 47 U.S.C. § 252 (b)(1) (timetable), § 252(b)(2) (duty of petitioner), § 252(b)(3) (opportunity to respond), and § 252(b)(4) (action by state commission).

⁹⁸ 47 U.S.C. § 201(b).

⁹⁹ 47 U.S.C. § 202(a).

¹⁰⁰ N.D. Cent. Code § 49-21-01.7(8). *See* N.D. Admin. Code § 69-02-10-01 to -33 (N.D. rules for arbitration).

¹⁰¹ N.D. Cent. Code § 49-21-01.7(9).

¹⁰² *See e.g.*, N.D. Cent. Code §§ 49-21-02(3), 49-21-04, 49-21-07, 49-21-09.

- therefore, whether Level 3 submitted such a request is a moot question for purposes of this arbitration.
- c. SRT remains exempt from the obligations detailed in section 251(c), but section 251(f)(1) does not exempt SRT from the obligations that stem from Level 3's section 251(a) interconnection request.
 - d. SRT is not indirectly or directly interconnected to Level 3 in a manner that satisfies SRT's section 251(a) obligations.
 - e. Level 3's proposed services are subject to the "bill-and-keep" compensation regime contained in the FCC's *ISP Remand Order*. The FCC's decision moots the need for the Commission to determine the compensation mechanism for ISP-bound traffic and to address whether ISP-bound traffic to local NXX numbers should be treated differently based on its termination point.
 - f. The Commission has the jurisdiction to answer the unresolved issues presented in this arbitration proceeding.

C. Selection Process of Appropriate Agreement Provisions

115. As discussed during the Hearing, the arbitrator was to use final offer arbitration, on an issue-by-issue basis, to select the appropriate agreement provisions.¹⁰³ Pursuant to that process, the arbitrator must select without modification one of the proposals of either party for each issue.

116. SRT and Level 3 each submitted their final offer arbitration agreements on December 23, 2003. The parties used the Level 3's initial proposed agreement as the template upon which to base their submissions.

117. Given the conclusions reached above, the selection process for the appropriate interconnection agreement provision was guided by three principle findings. First, Level 3 is entitled to interconnection to provide its intended service. Second, SRT is required to provide services to Level 3 in a just, reasonable, and nondiscriminatory manner at just, reasonable, and nondiscriminatory rates, terms and conditions. Lastly, because Level 3 sought interconnection pursuant to section 251(a), SRT is entitled to decide where and how interconnection will take place. The parties should use these three principle findings to craft their final interconnection agreement.

D. Conforming Language

118. Consistent with the recommendations summarized above, the following agreement language was selected on an issue-by-issue basis. To the extent neither party offered language consistent with a recommendation, the provision closest to the recommendation was chosen and additional language was suggested to conform more accurately to the arbitrator's conclusions.

¹⁰³ Hearing Tr. at 260-66. See N.D. Admin. Code §§ 69-02-10-01(7) & 69-02-10-26.

119. SRT's proposal for the following provision was selected:

Title and Introductory Paragraph:

Telecommunications Interconnection Agreement

This Telecommunications Interconnection Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between SRT Communications, Inc. ("ILEC"), and Level 3 Communications, LLC ("Level 3"). ILEC and Level 3 may collectively be referred to as "Parties," and each individually may be referred to as a "Party."

120. SRT's proposal for the following provision was selected:

Section 1. Scope of Agreement

The purpose of this Agreement is to arrange for the exchange of Information Access Traffic ("Traffic") between the Parties and the completion of calls from ILEC's customers located within ILEC's local exchange areas to Level 3's Internet Service Provider customers ("ISPs") located outside of ILEC's local exchange areas. This agreement provides only for the exchange of Information Access Traffic where 1) the calling parties are ILEC's end user customers of telephone exchange service who are also end users of internet service provided by Level 3's ISP customers, 2) the called parties are Level 3's ISP customers having modems, servers and similar equipment that is physically located outside of ILEC's local exchange areas, and 3) where the Parties have arranged for the Direct Inward Dialing ("DID") to Level 3's ISP customers and for the traffic to be transported over dedicated facilities. The interconnection and exchange of traffic arrangements are partially illustrated on Exhibit A, attached to this Agreement.¹⁰⁴

Should Level 3 desire to offer other telecommunications services (other than to ISPs located outside ILEC's local exchange area) that require interconnection with the facilities of ILEC, the Parties will engage in good faith negotiations to establish interconnection and compensation arrangements for such other services.

Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

¹⁰⁴ Note: Exhibit A is Level 3's response and diagram to SRT's Interrogatory No. 9 – Hearing Exhibit 23.

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense.

121. SRT's proposal for the following provision was selected:

Section 2. Interconnection, Routing, Exchange, and Completion of Traffic

2.1 The Parties agree to directly interconnect their respective facilities at ILEC's central office switch as the point of interconnection ("POI"). For purposes of the interconnection, Level 3 will lease ILEC's available facilities.

122. Level 3's proposal for the following provision was selected:

2.2 Each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit B¹⁰⁵ to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit B at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit B, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

123. Level 3's proposals for the following provisions were selected:

2.3 The Parties agree to implement arrangements for direct interconnection of their respective networks. Such interconnection should be established based upon both Parties' most efficient technical and economic choices, including but not limited to the use of either Party's own facilities or the leasing of facilities from a third party carrier. The Parties further agree, based on the specific nature of ILEC's network in this case, that a POI will be established at the ILEC host end office switch, which is located at 24 Second Avenue, SE, Minot, ND, 58701, and which has been designated in the LERG as of the date of this Agreement with a Common Language Location Identification Code of MNOTNDXADS0. If Level 3 chooses to lease dedicated transport facilities from ILEC to reach this location, because ILEC is a rural telephone company and is therefore not

¹⁰⁵ Note: Exhibit B in the above paragraph was changed from Exhibit A in Level 3's proposal. This change reflects the prior use of a reference to an Exhibit A.

subject to the pricing requirements with respect to interconnection set forth in Section 251(c) of the Act, ILEC will lease such dedicated transport facilities to Level 3 at the applicable tariffed charges.

[Arbitrator's Note: Level 3's paragraph 2.3 generally provides the better language with respect to the parties' point of interconnection but it places the parties on equal footing with respect to the POI's selection. As mentioned before, because Level 3 has sought interconnection pursuant to section 251(a) and not section 251(c), SRT decides where interconnection takes place. The adoption of SRT's section 2.1 is consistent with that approach. The parties should modify the language of section 2.3 and any other similarly affected sections to conform to that conclusion.]

2.4 Should any dispute arise with respect to the establishment of the POI under Subsection 2.3, the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange ISP Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.

2.5 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

2.6 Each Party agrees to assume complete responsibility for the acquisition of, and payment for, all facilities necessary to originate, transport, and terminate ISP Traffic to and from that Party's customers on its side of the POI.

2.7 ILEC will provide Level 3 SS7 signaling information for ILEC-originated calls to Level 3's IPS customers at nondiscriminatory rates, terms and conditions to those offered to any other incumbent LEC, CMRS carrier, or CLEC with whom ILEC exchanges traffic on an EAS and/or local basis.

124. Level 3's proposal for the following caption was selected:

Section 3. Compensation for ISP Traffic

125. SRT's proposals for the following provisions were selected:

(Under the caption contained in the previous paragraph, place the following)

Notwithstanding custom and usage in the telecommunications industry or any provisions in the Local Exchange Routing Guide ("LERG"), DID calls from end users in ILEC's local exchange areas to Level 3's ISP customers having modems, servers and similar equipment that is physically located outside of the ILEC's local exchange areas shall not be rated as local calling subject to ILEC's local service charges payable by

Level 3 and shall not be rated as interexchange calling subject to intercarrier compensation subject to originating access charges. The Parties specifically agree that the limited scope of this agreement is reasonable cause to establish compensation arrangements appropriate to the circumstances.

3.1 Level 3 will pay to ILEC an interconnection fee of Fifteen Dollars and Ninety Five Cents (\$15.95) per month, without regard to the numbers of NXX codes assigned by Level 3 to its ISP customers and without regard to end users' calling volumes.

126. SRT's remaining proposals for Section 3 are contained in relevant part in Level 3's proposals for Section 2. As a result, no additional provisions are warranted for Section 3.

127. SRT's proposal for the following provision was selected:

Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (e.g., maintenance contact numbers, escalation contact information) to achieve reliability. The Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

128. Level 3's proposals for the following provisions were selected:

4.2 To optimize the exchange of ISP traffic under this Agreement, the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management, signaling, and overflow contingencies;

(The remaining subsections of 4.2 remain the same.)

129. SRT's proposals for the following provisions were selected:

Section 5. Billing

5.1 ILEC shall bill Level 3 once per month all applicable charges under this Agreement. Level 3 shall pay invoices within thirty (30) days from the bill date. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be

made the next business day. Any amounts not paid when due shall bear interest from the date such amounts were due at the rate of one and one-half percent (1-1/2%) per month.

Each Party shall keep adequate records relating to facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

130. Level 3's proposed addition to "Section 6. Term of Agreement" was not selected given the language proposed later in the Agreement by SRT.

131. SRT's proposals for the following provisions were selected:

Section 11. Notices

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:

Business Name:	Level 3 Communications, LLC
Mailing Address:	1025 Eldorado Boulevard
City/State/Zip Code:	Broomfield, CO 80021
Attention:	Manager – Finance/Network Cost
Contact Phone Number:	(720) 888-2876

FOR ILEC:

Business Name:	SRT Communications, Inc.
Mailing Address:	P.O. Box 2027
City/State/Zip Code:	Minot, ND 58702
Attention:	General Manager/CEO
Contact Phone Number:	(701) 838-9707

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:

Business Name:	Level 3 Communications, LLC
Mailing Address:	1025 Eldorado Boulevard
City/State/Zip Code:	Broomfield, CO 80021
Attention:	Michelle Krezek, Director – Interconnection Services
Contact Phone Number:	(720) 888-6330
Facsimile:	(720) 888-5211

FOR ILEC:	
Business Name:	SRT Communications, Inc.
Mailing Address:	P.O. Box 2027
City/State/Zip Code:	Minot, ND 58702
Attention:	General Manager/CEO
Contact Phone Number:	(701) 838-9707
Facsimile:	

or to such other location as the receiving party may direct in writing.

132. Level 3's proposal for the following provision was selected:

Section 22. Change of Law

In the event of a change in applicable law (including, but not limited to, rulings by the FCC or the State Commission) that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action. Unless otherwise agreed to by the Parties, the effective date of such acceptable new terms shall be the date that any amendment or other agreement implementing such terms is executed by the Parties.

133. Level 3's proposal for the following provision was selected:

Section 23. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the State of North Dakota, without regard to its conflicts of laws principles.

134. SRT's proposals for the following additional provisions were selected:

Section 24. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification

of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

VI. SUBSEQUENT PROCEDURES

A. Submission of Interconnection Agreement

135. Pursuant to the Commission's rules, SRT and Level 3 shall jointly file an agreement incorporating the provisions adopted through negotiation and arbitration thirty days after the filing of this recommended decision.¹⁰⁶ The combined agreement will be referred to as the interconnection agreement.

136. The interconnection agreement is subject to public commentary and any person may file written comments with the Commission within fifteen days of the filing of the interconnection agreement.¹⁰⁷ SRT and Level 3 may also file comments within the same timeframe.

B. Commission Review

137. Within thirty days following the filing of the interconnection agreement, the Commission is required to issue a decision approving or rejecting the agreement.¹⁰⁸

VII. RECOMMENDATIONS

138. The Arbitrator respectfully recommends that the North Dakota Public Service Commission conclude that the arbitration conducted in this matter was performed consistent with the Communications Act of 1934, as amended, and the relevant provisions of the North Dakota Century and Administrative Codes and properly applied the rules and regulations promulgated by the Federal Communications Commission and this Commission.

139. Also, the Arbitrator respectfully recommends that the North Dakota Public Service Commission adopt the conclusions reached herein on the disputed issues when considering the interconnection agreement to be submitted by the parties.

¹⁰⁶ N.D. Admin. Code § 69-02-10-30.

¹⁰⁷ N.D. Admin. Code § 69-02-10-31.

¹⁰⁸ N.D. Admin. Code § 69-02-10-32.

Decisions and Recommendations
Level 3 Communications' Interconnection Arbitration Application
Case No. PU-2065-02-465

Dated this 3rd day of March, 2003

A handwritten signature in black ink, reading "Frank G. Lamancusa". The signature is written in a cursive style with a large initial "F" and "L".

Frank G. Lamancusa

Arbitrator

Case No. PU-2065-02-465

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Decisions and Recommendations of the Arbitrator Concerning Level 3 Communications, LLC's Interconnection Arbitration Application" was sent to the individuals set out below on March 3, 2003, in the following manner:

By E-mail and U.S. Mail

Michael R. Romano
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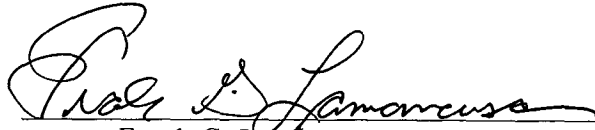
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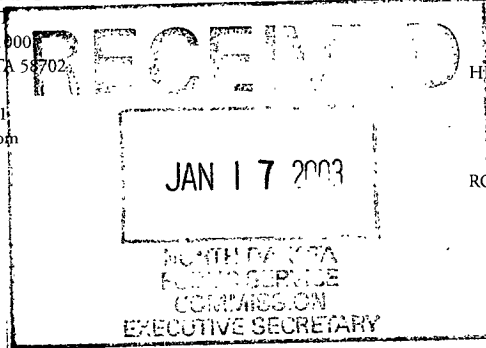
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January 16, 2003

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Telecom Dispute Solutions, Inc.
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VIA OVERNIGHT MAIL

**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Gentlemen:

On December 23, 2002, Level 3 Communications, LLC ("Level 3") and SRT Communications, Inc. ("SRT") filed post hearing briefs in this matter. On January 7, 2003, Level 3 filed a supplement to its post hearing brief, commenting on a recent Arbitrator's Report and Decision issued in a case in Washington state.

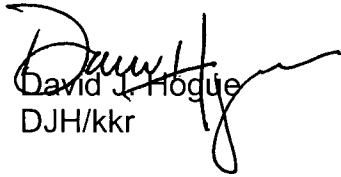
Also on January 7, 2003, the Pennsylvania Public Utilities Commission entered an order affecting Level 3 and virtual NXX issues similar to those in this case pending before the North Dakota Public Service Commission. SRT submits this supplement to the record to notify the arbitrator and the North Dakota Public Service Commission of the Pennsylvania Public Utilities Commission's recently filed decision in *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114.

In its decision, the Pennsylvania Public Utilities Commission affirmed the decision of an Administrative Law Judge to dismiss Level 3's complaint against the ILEC. Like the case at bar, the Pennsylvania decision was limited to a single service: "Level 3's only telecommunications service consists of transmitting Internet dial-up calls from customers of Internet Service Providers (ISPs) to those ISPs." *Id. at 2.*

Construing the federal Telecommunications Act of 1996, the Administrative Law Judge dismissed the Level 3 complaint in part because of his conclusion the Pennsylvania Public Utilities Commission lacked subject matter jurisdiction. *Id.* at 11. The Administrative Law Judge also relied on 47 C.F.R. § 51.305 that provides that a carrier that requests interconnection solely for the purpose of originating and terminating interexchange traffic on an ILEC's network in not entitled to an interconnection agreement under the Act. *Id.* The Pennsylvania Public Utilities Commission found this analysis "generally persuasive" and affirmed dismissal of the Level 3 complaint. *Id.* A copy of the decision is enclosed.

As SRT has previously stated, a decision by Washington's or Pennsylvania's or any other state's commission is only informational and has no status as controlling precedent. These two states' decisions taken together show that VNXX issues remain unsettled. In these circumstances, SRT reiterates that an interconnection agreement arbitration proceeding is not the appropriate forum to consider and decide unsettled issues that are currently pending before the FCC in other proceedings.

Very truly yours,


David J. Hogue
DJH/kkr

Enclosure

cc: Zenas Choi (w/enclosure) *via overnight mail*
Michael Romano (w/enclosure)
William Binek (w/enclosure)

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held November 21, 2002

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick, Concurring in result
Kim Pizzingrilli

Level 3 Communications, LLC

C-20028114

v.

Marianna & Scenery Hill Telephone Company

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Exceptions filed to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Michael C. Schnierle, issued October 15, 2002. Exceptions were filed by Level 3 LLC (Level 3), Marianna & Scenery Hill Telephone Company (M&SH), and Verizon Pennsylvania Inc. (Verizon)¹ on

¹ Verizon was directed to participate in this proceeding as a possible indispensable party.

October 23, 2002. Replies to Exceptions were filed October 30, 2002, by these same Parties.

Concomitantly with its Exceptions, Level 3 filed an Application for Oral Argument before the Commission. 52 Pa. Code § 5.538(b). On November 4, 2002, M&SH filed an Answer opposing oral argument.

History of the Proceedings

Verizon is the incumbent local exchange carrier (ILEC) that serves the Washington, PA exchange. M&SH is the ILEC that serves the Marianna and the Scenery Hill exchanges. Level 3 is a competitive local exchange carrier (CLEC) currently certificated as a competitive access provider (CAP), CLEC and interexchange carrier (IXC). Currently, Level 3's only telecommunications service consists of transmitting Internet dial-up calls from customers of Internet Service Providers (ISPs) to those ISPs. (Level 3 St. 1, p. 22; M&SH St. 2, pp. 8-9). Level 3 and Verizon have an interconnection agreement, dated November 1, 2000, and filed January 26, 2001. (*See Joint Petition . . . for Approval of an Interconnection Agreement*, Docket No. A-310633F0002 (Order entered April 23, 2001)).

On July 12, 2002, Level 3 filed a Formal Complaint and Petition for Interim Emergency Order seeking to prevent M&SH from changing the way in which it routes certain telephone calls (*i.e.*, all calls that start with 825 in the 724 area code) placed by M&SH's local telephone customers to Level 3 customers, which were ISPs. In its Formal Complaint, Level 3 asserted that the rerouting of those calls to the Washington, PA rate center, rather than to Verizon's tandem switch that is located in the Pittsburgh exchange, would result in a failure to complete those calls.

The calls at issue were to ISPs that were served and assigned a “Virtual” NXX (VNXX) code of 825 in the 724 area code (724-825) by Level 3, *infra*. The telephone subscribers who made the ISP-bound calls were served by M&SH in its Marianna and Scenery Hill exchanges,² but had their calls routed to Pittsburgh pursuant to instructions given by Level 3 to the LERG routing guide service, *infra*.³ Acquisition and assignment of NXX codes entails a process, administered by the North American Numbering Plan Administrator (NANPA), under which an acquiring local exchange carrier provides an exchange or geographic area to which the requested NXX codes will be associated.

Proceedings before Chief Administrative Law Judge (ALJ) Robert A. Christianson, where Level 3 litigated its entitlement to interim emergency relief, were based on the factual premise that the ISP-bound calls at issue were terminated in Pittsburgh. Level 3 sought interim emergency relief when faced with potential service disruption to approximately 65 ISPs. (*See* July 23, 2002 Order). During the course of hearings on the merits of Level 3’s Formal Complaint, however, it was determined that the calls actually terminated at a Level 3 modem bank in Baltimore, Maryland. (*See* R.D., p. 6).

On July 23, 2002, the Office of Administrative Law Judge (OALJ), per CALJ Christianson denied Level 3’s Petition for Interim Emergency Relief and entered an Order Certifying A Material Question to the Commission. The question posed was whether or not the status quo regarding the routing of Level 3’s NXX codes by M&SH

² Both of these exchanges are located adjacent to the Washington, PA exchange and have extended area service (EAS) to Washington, PA.

³ The LERG is a document issued by Telcordia (formerly Bellcore) that is used to identify NPA-NXX routing and homing information, as well as network element and equipment designation. It contains a listing of local routing data such as destination codes, switching entities, rate centers and locality information by LATA. The LERG is an essential tool for networking planning.

should be maintained during the pendency of the complaint proceeding. Level 3 and M&SH submitted briefs to the Commission regarding the Material Question. By Opinion and Order entered August 8, 2002 (*Material Question Order*), we answered the question in the affirmative and: (1) directed Level 3 to obtain a surety bond or an escrow account in an amount of money equal to the access charges, originating and terminating charges, and transport/transit charges to which M&SH might have been entitled pending the outcome of the complaint proceeding;⁴ (2) directed Level 3 to immediately refrain from assigning any previously unassigned numbers from its NXX codes to ISP's residing outside of the rate center to which that NXX code is associated pending the final order; and (3) directed the ALJ to analyze Level 3's NXX utilization, its participation in the pooling of the 724 area code, and whether civil penalties were appropriate.

Level 3 filed a Petition for Reconsideration of our Material Order Question. By Opinion and Order entered October 10, 2002, we granted, in limited part, and denied, in substantial part, Level 3's Petition for Reconsideration.

On October 15, 2002, the Recommended Decision of ALJ Schnierle regarding Level 3's Complaint against M&SH, was issued. Based on the evidence presented in the record during the proceeding detailing the interstate routing of the calls, the ALJ determined that the Commission does not currently have jurisdiction to resolve the compensation issue between the Parties. (R.D., p. 6; 33). Once that determination was reached, the ALJ concluded that the three issues identified above, and outlined in our

⁴ M&SH's position regarding the financial consequences of routing this traffic to Pittsburgh was that Level 3, unilaterally, created a circumstance in which M&SH's switch afforded local call treatment for what should have been toll calls. As such, Level 3 was able to avoid paying access charges to M&SH. However, M&SH was assessed access and transit charges by Verizon for the same traffic. (*See* M&SH Exc., p. 2).

Material Question Order, were moot. Thus, the ALJ recommended that the *Material Question Order* should be vacated. Exceptions and Replies were thereafter filed.

Discussion

We note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also*, generally, *University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Application for Oral Argument

As a preliminary matter we shall address Level 3's Application for Oral Argument (Application). We note that Section 5.538 of our regulations, 52 Pa. Code §5.538, provides that where Exceptions are filed under Section 5.533(b), that a request for oral argument before the Commission shall be filed in writing together with its Exceptions.

We note further that M&SH is opposed to Level 3's request for oral argument on the premise that delay of these proceedings due to oral argument would prove detrimental to M&SH. (M&SH Answer, p. 3). Our review of Level 3's request for oral argument, in light of the record as developed, fails to persuade us that granting oral argument is the most efficient course of action. Therefore, Level 3's Application for Oral Argument is denied.

B. Jurisdiction

Each of the Parties have filed Exceptions to the ALJ's finding that the Commission lacks subject matter jurisdiction. Each Party objects to this finding based on a slightly different view and interpretation of the pertinent Federal Communications Commission (FCC) and judicial decisions relating to ISP-bound traffic and interconnection obligations and reciprocal compensation obligations arising under TA-96.

1. ALJ's Recommendation

After consideration of the testimony of the Parties, ALJ Schnierle concluded that this Commission lacks subject matter jurisdiction to award relief to either Level 3 or M&SH. This determination is based, in substantial part, on the ALJ's conclusion that the calls in question are interstate in nature. The ALJ concluded that the calls are interstate in nature because, *inter alia*, the circuit switched portion of the call originates in Pennsylvania and terminates in Maryland. Thus, he reasoned:

. . . when a Marianna customer (or, for that matter, any customer in the Pittsburgh area) calls a Level 3 number for an ISP, the circuit switched call is carried to Baltimore, Maryland, where it is converted to a packet switched Internet communication. Certainly, if one takes the FCC's view (that was overturned in the *First ISP Appeal*) that all Internet dial-up calls are interstate, then these calls also must be interstate. However, even if these calls were not converted to packet switched Internet communications in Baltimore, they would be interstate calls: The circuit switched part of each call originates in Pennsylvania and terminates in Maryland. These are interstate calls by any reasonable application of the end-to-end analysis.

(R.D., p. 11).

2. Position of the Parties

(a) Level 3

Level 3 maintains that the location of the ISPs' modem banks in Baltimore, Maryland is not relevant to the issue of this Commission's jurisdiction. According to Level 3, the FCC has assumed exclusive jurisdiction over compensation for ISP-bound traffic, but, in the process, left in place the jurisdiction of the state commissions over other issues. These issues include carriers' obligations under Sections 251 and 252 of TA-96 pertaining to interconnection and the arbitration of unresolved issues. (*See* Level 3 Exc., pp. 8-9, citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151 (2001), *remanded WCOM v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (*ISP Remand Order*)).

As it has in prior pleadings in this case, Level 3 analogizes its service provided to the Washington, PA exchange to foreign exchange (FX) service. (Exc., pp. 11-12; R.Exc., p. 3-4). It maintains that the manner in which it services Washington, PA exchange customers (*i.e.*, ISPs located in Baltimore Maryland) is the "functional" equivalent of this "traditional" FX ILEC service, in that the service gives a customer located in one exchange a telephone number with a NPA/NXX associated with another exchange. Therefore, Level 3 argues that it has never made any difference to the originating caller, or the originating carrier, where the terminating caller is located. (*See* Level 3 Exc., pp. 11-12).

(b) M&SH

M&SH states that, as a practical matter, it does not contest Commission jurisdiction in this case, principally because the routing instructions for the NXXs involved are to Pittsburgh. (Exc., p. 11). However, M&SH is of the view that the ALJ's conclusion

regarding jurisdiction, to the effect that all traffic to the internet is interstate, is an overly broad reading of the various FCC orders pertaining to ISPs. (Exc., pp. 11-12). Similar to the position of Level 3 on this issue, M&SH states that the FCC has asserted jurisdiction over internet calls, but preserved existing compensation arrangements. And, in the case where the ISP is located locally, M&SH adds that the “bill and keep” compensation arrangement will apply. (Exc., p. 12; 16-20). However, where the traffic is not routed to a location within the local calling area, M&SH argues, the FCC has not said anything about preempting the application of access charges to this traffic. Rather, states M&SH, FCC regulations expressly exempt interexchange access from reciprocal compensation. (*Id.*, 47 C.F.R. §51.701(b)(1)).

M&SH vigorously maintains that the service provided by Level 3 is not local exchange service and the calls in question are not local. Rather, M&SH argues that Level 3, in fact, provides interexchange service in that Level 3, with no facilities, aggregates traffic with a relay switch in the Pittsburgh area, for forwarding to Baltimore. (Exc., p. 3; 7). Additionally, M&SH observes that irrespective of whether the service provided by Level 3 is jurisdictional, this Commission has the authority to revoke Level 3’s NXX codes. (Exc., p. 12). M&SH points out that Level 3 had no authority to open number codes in the first place in light of the fact that Level 3 is not offering local service. Consequently, M&SH argues that Level 3 has no need to open number codes in Pittsburgh, or surrounding rate centers. The proper rate center and network routing for these calls is, according to M&SH, Baltimore. (*Id.*).

(c) Verizon

Verizon, as noted, was joined as an indispensable party to these proceedings. Verizon maintains that its role in this dispute is not that of an indispensable party, however. (*See VZ MB*, pp. 8-13). Notwithstanding, Verizon, in its Exceptions, contends that even if the traffic involved in this dispute were properly characterized as interstate under the

unique facts of this case, the Commission may find other bases on which to assert jurisdiction. (Exc., p. 3). Verizon also notes that, regardless of whether the traffic is properly characterized as interstate or intrastate, the Commission still has jurisdiction by virtue of our authority over numbering and the fact that Level 3 obtained and is using these assigned numbers in its capacity as a Commission-certificated CLEC. (Exc., pp. 6-8 citing, *inter alia*, *In the Matter of Petition of WorldCom, Inc. . . . for Preemption of the Jurisdiction of the Virginia State Corporation Commission . . .*, CC Docket No. 00-218, *et al.*, Memorandum Opinion and Order by the Chief, Wireline Competition Bureau (Rel. July 17, 2002) (*Virginia Arbitration Order #1*)).⁵

3. Disposition

On consideration of the positions of the Parties and the Recommended Decision, we generally agree with the ALJ that this Commission does not currently have subject matter jurisdiction over the compensation issues for interstate calls such as those at issue in this dispute. However, we do not agree with the ALJ's recommendation to vacate our *Material Question Order*, nor do we agree with the ALJ's recommended resolutions of the identified issues raised in our *Material Question Order*.

Dismissing Level 3's Complaint for lack of subject matter jurisdiction over the compensation arrangements for interstate calls does not resolve the question of whether or not Level 3's number assignment practices, apart from engaging in VNXX, comply with this Commission's orders regarding number conservation. Because we find that a comprehensive review of Level 3's numbering practices is appropriate, we shall direct staff to undertake a comprehensive review of all of Level 3's numbering practices consistent

⁵ The FCC has recently reorganized and its Wireline Competition Bureau is the successor of the Common Carrier Bureau.

with the discussion, below. Based upon its findings, the Law Bureau shall take appropriate action as deemed necessary.

a. Compensation and Interconnection

The ALJ's determination that this Commission has no jurisdiction over any internet call is overly broad. On review of the record and positions of the Parties, we conclude that the Commission may have concurrent jurisdiction with the FCC over certain aspects of the dispute raised by this Formal Complaint that is limited to the interconnection and the numbering administration aspects to this dispute.

Section 251(a) of TA-96 provides that a LEC has a general duty to interconnect.⁶ (47 U.S.C. §251(a)). Section 252(d) and 252(e) of TA-96 provide for the state commission's review and approval of arbitrated and/or negotiated interconnection agreements, which include the provision of charges for transport and termination of traffic.

In the FCC's *ISP Remand Order*, it was noted that "when end-to-end communications involving enhanced service providers cross state lines, the Commission [FCC] has categorized the link that the LEC provides to connect the end-user with an enhanced service provider as interstate access service. Internet service providers are a class of ESPs. Accordingly, the LEC-provided link between an end-user and an ISP is properly characterized as *interstate* access." (Para. 57; 61) (Notes omitted). Thus, it

⁶ M&SH has received a suspension of the interconnection obligations of Section 252(c) of TA-96. See, generally *Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action, Pursuant to Section 251(f)(2) and 253(b) of the Telecommunications Act of 1996 . . .*; Docket No. P-00971177, et al. (Order entered July 10, 1997).

appears that the service provided by Level 3 is properly characterized as interstate access service under the Communications Act and TA-96.

The ALJ noted that Section 251(c)(2)(A) of TA-96 requires all ILECs to interconnect for the “transmission and routing of telephone exchange service and exchange access.” The ALJ reasoned that because 47 U.S.C. §153(40) defines “exchange access” as access for the purpose of making toll (interexchange) calls, pursuant to Sections 251 and 252, M&SH can be directed to interconnect with Level 3 only as long as the conditions set forth in 47 U.S.C. §153(47) are met. However, the ALJ further noted that the FCC regulation at 47 C.F.R. §51.305 that provides that a carrier that requests interconnection solely for the purpose of originating and terminating interexchange traffic on an ILEC’s network, and not for the purpose of providing to others telephone exchange service or exchange access service, or both, is not entitled to receive interconnection pursuant to Section 251(c)(2).

Thus, the ALJ concluded that the Commission could not order M&SH to interconnect with Level 3 under Section 251(c) of TA-96 for the provision of telephone exchange or exchange access services because in this instance, Level 3 is providing an interexchange service from Marianna to Baltimore. (R.D., pp. 31-32). We find this analysis generally persuasive and, as such, it leads us to the determination to dismiss the Formal Complaint.

Furthermore, in deciding to dismiss the instant Formal Complaint, we are not persuaded that this matter is properly before us as a proceeding for the arbitration of unresolved issues pursuant to TA-96. Prior to discovering the existence of this telecommunications traffic through audit, Level 3 provided no actual or constructive notice to M&SH which would have triggered negotiations under the provisions of TA-96, FCC

regulations, or this Commission's orders.⁷ Since the promulgation of TA-96, this Commission has implemented the necessary orders and other directives to inform the telecommunications industry of the procedures needed for efficient competitive entry, the approval of voluntarily negotiated interconnection agreements, and the procedures needed for the arbitration of unresolved issues for interconnection, including reciprocal compensation for the exchange of local telecommunications traffic. Level 3 has not availed itself of any of these procedures required for the negotiation of interconnection agreements as contemplated by Commission orders and directives. M&SH has argued, and we would agree, that the necessity for arrangements to reach an acceptable and lawful compensation arrangement for the transiting of the calls at issue came as a surprise to M&SH.

b. Numbering Administration

Section 251(e) of TA-96, establishes the jurisdiction of the FCC over numbering administration. Regarding this Commission's jurisdiction over the numbering administration issues posed by the dispute, the FCC delegated aspects of numbering administration to the state commissions. (47 C.F.R. §52.9(b)). (*See also Implementation of Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released July 20, 2000 – NXX Code Rationing*; Docket No. M-00001427F0002; P-00961027F0002 (Order entered December 27, 2000) (describing our jurisdiction over NXX Codes); Docket No. M-00001373 (Order entered August 22, 2000) (*Reclamation Order*)). We also take administrative notice that similar issues pertaining to NXX code assignment are raised in another pending arbitration

⁷ *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Orders entered June 3, 1996 and September 9, 1996)

proceeding, *Petition of US LEC for Arbitration with Verizon . . .*, Docket No. A-3108147F000 (Recommended Decision of ALJ Louis G. Cocheres dated September 17, 2002).

During our review of the *Material Question Order*, this Commission became aware that Level 3 is using its NXX codes in “virtual NXX arrangements (VNXX).” Also during that time, the record showed that Level 3, a CLEC,⁸ had applied for and received a full 724 NXX code, despite the fact that the 724 area code was in mandatory thousands-block pooling during the time Level 3 applied for the NXX code. Consequently, our *Material Question Order* restricted the numbering assignment practices of Level 3 regarding VNXX and expanded the scope of the complaint proceeding to address whether or not Level 3 is making the most efficient use of the Commonwealth’s numbering resources.

Regarding the VNXX issue, the Commission instituted the *Generic Investigation* to fully explore the impact on numbering resources of these VNXX arrangements and directed that the ALJ submit an investigative report to the Commission.⁹ Pending the outcome of that VNXX *Generic Investigation*, we conclude that it is not appropriate to place restrictions on Level 3 that are not imposed on other carriers of the

⁸ In May of 1998 and April of 1999, Level 3 was certificated by this Commission to provide service as a CLEC, an Interexchange Toll Reseller, and a facilities-based Interexchange Carrier to the public in the Commonwealth of Pennsylvania.

⁹ See *Generic Investigation Regarding Virtual NXX Codes*, Docket No. I-00020093. (Order entered October 8, 2002).

Commonwealth.¹⁰ Therefore, we shall direct that the VNXX numbering assignment restrictions placed on Level 3 during our *Material Question Order* now be vacated.

Aside from using NXX codes as VNXX codes, Level 3's initial petition and the subsequent related pleadings raised questions regarding Level 3's use of the Commonwealth's numbering resources. It is the responsibility of all jurisdictional carriers to ensure the efficient usage of numbering resources as mandated by both federal rules and this Commission. In addition to implementing federal rules regarding numbering usage, the FCC has delegated authority to state commissions to ensure the efficient usage of numbering resources. For example, pursuant to federal rules, we have been delegated the authority to ensure that carriers sequentially assign the numbers of their NXX codes and, where they fail to do so, we have the authority to direct the NANPA to withhold future numbering resources from that company. (47 C.F.R. §52.15(j)(3)). Further, the Commission can also refer companies who violate federal numbering rules related to numbering to the auditing program of the FCC. (47 C.F.R. §51.15(k)).

The ALJ determined that the Commission does not have jurisdiction over numbering issues. As noted, we cannot agree with the ALJ recommendation for two reasons. First, Level 3's initial petition to this Commission brought before us the issue of Level 3's numbering assignment practices. Therefore, this Commission has an obligation to determine whether or not Level 3's number assignment practices are in compliance with our orders. Second, this Commission's long-stated policy is to ensure the efficient

¹⁰ We take administrative notice that similar issues pertaining to VNXX code assignments and appropriate compensation arrangements are being raised in two pending arbitration proceedings, *Petition of US LEC for Arbitration with Verizon . . .*, Docket No. A-3108147F000 (Recommended Decision of ALJ Louis G. Cocheres dated September 17, 2002); *Petition of Global NAP's South, Inc. for arbitration . . . with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000 (Recommended Decision of ALJ Herbert Smolen dated October 23, 2002).

usage of numbering resources and we have taken a very active role in ensuring the efficient usage of numbering resources by jurisdictional carriers in the Commonwealth.¹¹

Based on the foregoing, we shall direct the Law Bureau to undertake a comprehensive review of all Level 3's numbering practices. Premised upon its findings, the Law Bureau shall take such appropriate action as deemed necessary.

c. Status of the Escrow Account

Before concluding, it is appropriate that we address the status of the escrow account which we required Level 3 to establish and our directive that M&SH continue routing traffic to Level 3 VNXX codes as it existed prior to July 27, 2002. Level 3 was previously directed to establish an escrow account for the benefit of M&SH. We shall adopt the ALJ's recommendation to vacate that provision of our *Material Question Order*.

¹¹ For example, carriers in the 610/484, 412, 724, 570 and 717 area codes are required by Commission orders to participate in mandatory thousands-block pooling. *Implementation of Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released July 20, 2000 – Thousands-Block Number Pooling*, Docket No. M-00001427 and P-00961061F0002 (Order entered December 27, 2000); *Implementation of Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released July 20, 2000 – Thousands-Block Number Pooling*, Docket No. M-00001427 and P-00961027F0002 (Order entered May 31, 2002); *Implementation of Voluntary Thousands-Block Pooling in the 570 and 717 Area Codes*, Docket No. M-00001427 (Order entered August 9, 2001). This Commission has also ordered the rationing of NXX codes in the 412 area code which placed restrictions on the number of NXX codes that could be assigned to carriers in that area code. *Implementation Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released July 20, 2000 – NXX Code Rationing*, Docket No. M-00001427 and P-0961027F0002 (Order entered December 27, 2000). Further, we have established a process by which we aggressively seek the return of numbering resources not assigned by carriers in accordance with federal law. *Implementation of Number conservation Measures Granted to Pennsylvania by the Federal Communications commission in its Order released March 31, 2000 – NXX Code Reclamation*, Docket No. M-00001373 (Order entered August 22, 2000), 30 Pa. B. 4701 (September 2, 2000).

At the time of our review of the *Material Question Order*, the record did not indicate that the nature of the calls at issue in this Complaint were interstate. Consequently, we had no reason to question our jurisdiction to require the establishment of an escrow account. Now that the record shows that we do not have current jurisdiction over the compensation issues involved, it is appropriate to discontinue the escrow account established by our *Material Question Order*.

Conclusion

Based on the foregoing, we shall adopt the recommendation of ALJ Schnierle, solely to the extent consistent with this Opinion and Order. We conclude that although we may exercise concurrent jurisdiction under certain provisions of TA-96 pertaining to interconnection, we do not have subject matter jurisdiction over the compensation issues raised in the instant dispute. We conclude, however, that this Commission has been delegated jurisdiction over numbering administration. Based on the foregoing, we shall dismiss, without prejudice, the Formal Complaint of Level 3. We shall also grant the Exceptions of the Parties solely to the extent they are consistent with this Opinion and Order, otherwise they are denied. The August 8, 2002 Order shall be vacated, consistent with the discussion contained in this Opinion and Order; **THEREFORE**,

IT IS ORDERED:

1. That the Exceptions filed by the Parties to ALJ Michael C. Schnierle's Recommended Decision are granted, consistent with this Opinion and Order.

2. That the Application for Oral Argument filed by Level 3 Communications LLC is denied.

3. That the Recommended Decision of Administrative Law Judge Michael C. Schnierle is adopted, as modified by this Opinion and Order.

4. That the Formal Complaint of Level 3 Communications LLC at Docket No. C-20028114 is dismissed, without prejudice, for lack of subject matter jurisdiction.

5. That the payment by Level 3 LLC of sums into an escrow account, as directed in our Opinion and Order of August 8, 2002, shall be vacated.

6. That the numbering assignment restrictions placed on Level 3 by our Opinion and Order entered August 8, 2002, are hereby vacated.

7. That within twenty (20) days of the entry date of this Opinion and Order, Level 3 shall provide all information related to its Pennsylvania NXX codes. Such information shall include, but not be limited to, all of the applications for numbering resources Level 3 has filed since beginning operations in Pennsylvania, all Number Resource Utilization and Forecast Report forms it is required to file according to federal rules, all thousands-block pooling donation and forecast forms it is required to submit to our pooling administrator, and all Part 4 forms it has submitted to the North American Numbering Plan Administrator.

8. That the Law Bureau, in conjunction with the Bureau of Fixed Utility Services, shall undertake a review of all the information submitted by Level 3 and take appropriate action as deemed necessary.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 21, 2002

ORDER ENTERED: January 7, 2003



DIVIDER

STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)

CONTINUED

DESCRIPTION

PU - 2065 - 02 - 465
Level 3 Communications,
LLC
Interconnection Arbitration
Application 02
Filed 8/30/2002
Closed 5/30/2003



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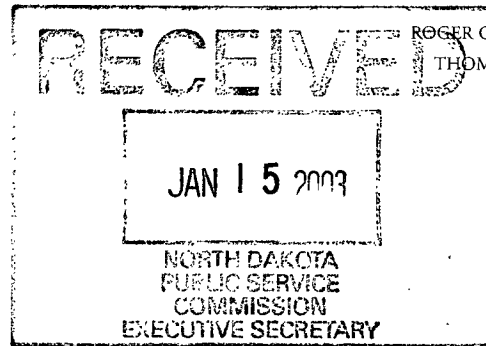
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RETIRED

ROGER O. HERIGSTAD
THOMAS A. WENTZ

January 14, 2003



North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

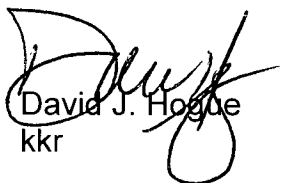
**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

On behalf of SRT Communications, Inc. ("SRT"), enclosed for filing are an original and seven (7) copies of SRT's Response to Level 3's Supplemental Post Hearing Brief in the above-captioned matter.

If you have any questions, please don't hesitate to contact me.

Very truly yours,


David J. Hogue
kkh

Enclosures

cc: Zenas Choi (w/enclosure)
Michael Romano (w/enclosure)
William Binek (w/enclosure)
Frank Lamancusa (w/enclosure)

RECEIVED

JAN 15 2003

NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
ATTORNEY GENERAL'S OFFICE
STATE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC

Case No. PU-2065-02-465

Interconnection Arbitration Application

**SRT COMMUNICATIONS, INC.'S RESPONSE
TO LEVEL 3 COMMUNICATIONS, LLC'S
SUPPLEMENTAL POST HEARING BRIEF**

January 14, 2003

On December 23, 2002, Level 3 Communications, LLC ("Level 3") and SRT Communications, Inc. ("SRT") filed post hearing briefs in this matter. Though the procedural arrangements did not provide for additional briefs, Level 3 has filed a supplement to its post hearing brief. Presumably, SRT has an equal opportunity to respond.

Level 3's supplement cites a recent "Arbitrator's Report and Decision" issued in a case in Washington state, a document Level 3 describes and presents as "a recent decision by the Washington Utilities and Transportation Commission as further support for Level 3's proposed resolution of this [North Dakota PSC] matter." (Quotation from Level 3's January 7, 2003 letter of transmittal.)

In response, SRT submits the following comments as the arbitrator in this North Dakota case considers what effect, if any, the Washington arbitrator's report might have in formulating a recommended resolution of this North Dakota case.

First, and most obvious, the document presented by Level 3 is not “a recent decision by the Washington Utilities and Transportation Commission;” it is an arbitrator’s recommended decision. As a decision by Washington’s or any other state’s commission is only informational, so also the Washington arbitrator’s recommended decision has no status as controlling precedent. Both the arbitrator and the North Dakota Public Service Commission are bound to address the issues in this case independently, without according any special status to decisions in other states.

Second, there are differences in the material facts of the Washington case and the pending case in North Dakota affecting the dispute between Level 3 and SRT. In Washington, Level 3 was apparently pursuing a true “new” arrangement with an ILEC. But the facts in Level 3’s North Dakota case are substantially different. Level 3’s and SRT’s facilities are presently directly interconnected. Level 3 is not new to the market within the meaning of the ISP Remand Order, paragraph 81. Level 3 is not entitled to a new agreement to impose new terms on the existing direct interconnection of the facilities existing between SRT and Level 3, an interconnection that Level 3 presently uses to deliver ISP traffic to its end users that are physically located outside SRT’s local calling area.

Finally, SRT respectfully suggests the North Dakota arbitrator and Public Service Commission should reject the Washington arbitrator’s opinion that Level 3 supports, that the ISP Remand Order obliges states’ commissions to recognize “VNXX” carriage of ISP traffic as subject to the FCC’s new arrangement for intercarrier compensation for ISP-Bound traffic, (Washington Arbitrator’s Report

and Decision, paragraphs 32-35).

The entire history, from the first order, through the first appeal, the ISP Remand Order and the second appeal all indicate the focus of attention was on situations where “. . . an ISP’s end-user customers typically access the Internet through an ISP server located in the same local calling area.” ISP Remand Order, paragraph 10. The appellate court also understood the FCC rules under its review involved the circumstances where “an ‘end user’ of the telephone system will use a computer and modem to place a call to the ISP server in his local calling area.” *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d, 3 (D.C. Cir. 2000.) The ISP Remand Order dealt only with compensation affecting ILECs’ and CLECs’ exchange of local traffic, including local ISP traffic. Contrary to the opinion of the Washington arbitrator, the ISP Remand Order can only be fairly read to concern only this subset of ISP-bound traffic, because that is the only kind of traffic addressed by the FCC in those proceedings. The ISP Remand Order did not address situations like Level 3’s limited business plan and desire for an interconnection to facilitate service only to ISPs that are physically located outside an ILEC’s local calling area.

Nothing in the ISP Remand Order indicates the FCC was considering “VNXX” concepts. This point is reinforced by references to VNXX in the NPRM, where the very issues involved in this arbitration proceeding are subjects of the FCC’s requests for comments as it considers making new rules. NPRM, paras. 97 and 115. The FCC has not endorsed the usage of VNXX codes, and has recognized that consideration of the usage of VNXX codes necessarily includes consideration of compensation issues. The FCC has these matters under

consideration, but it has not made a decision or made any rules.

It is unsettled “. . . how the exchange of traffic under foreign exchange or virtual NXX arrangements should be compensated in a multi-provider environment [and] . . . it is of critical importance for the [Federal Communications] Commission to settle issues such as whether state commissions have jurisdiction to rule on questions arising from the exchange of ISP-bound traffic between LECs. . .” (Quotation from Level 3 Ex parte letter to FCC, Exhibit 20.) See also NPRM, pars. 97, 115, 121 and 122.

In these circumstances, SRT emphasizes that an interconnection agreement arbitration proceeding is not the appropriate forum to consider and decide unsettled issues that are currently pending before the FCC in other proceedings. See *Petition of WorldCom*, Memorandum Opinion and Order, CC Docket No.00-218, paragraph 3.

For these reasons and all the other reasons presented in SRT's Post Hearing Brief and in the evidentiary record, Level 3's Petition should be dismissed or denied.

Dated this 14 day of January, 2003.

PRINGLE & HERIGSTAD, P.C.

By 

David J. Hogue (ID #4486)

Attorneys for SRT Communications, Inc.

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CERTIFICATE OF SERVICE

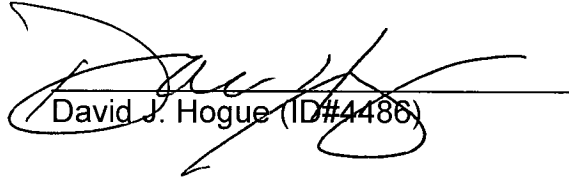
A true and correct copy of the foregoing **SRT COMMUNICATIONS, INC.'S RESPONSE TO LEVEL 3 COMMUNICATIONS, LLC'S SUPPLEMENTAL POST HEARING BRIEF** was, on the 14 day of January, 2003, mailed to:

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Zenas Choi
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Washington, DC 20007

Level 3 Communications, Inc.
Michael R. Romano
Director - State Regulatory Affairs
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McLean, VA 22102

N.D. Public Service Commission
William Binek, Commerce Counsel
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Bismarck, ND 58505-0480

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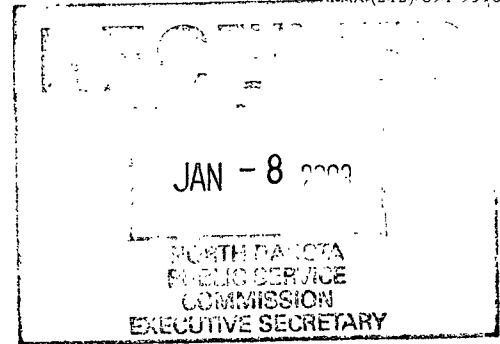
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January 7, 2003

VIA OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480



**Re: Supplement to Level 3 Communications, LLC's Post-Hearing Brief
(PU-2065-02-465)**

Dear Mr. Mielke:

Enclosed for filing on behalf of Level 3 Communications, LLC ("Level 3") are an original and ten (10) copies of a Supplement to Level 3's Post-Hearing Brief in the above-referenced matter. Level 3 files this Supplement to bring to the Commission's attention a recent decision by the Washington Utilities and Transportation Commission as further support for Level 3's proposed resolution of this matter.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamar E. Finn".

Russell M. Blau
Tamar E. Finn
Michael W. Fleming

Counsel for Level 3 Communications, LLC

cc: Michael R. Romano
Service List

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to) **Case No. PU-2065-02-465**
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications Cooperative)

**SUPPLEMENT TO
LEVEL 3 COMMUNICATIONS, LLC'S
POST-HEARING BRIEF**

On December 23, 2002, Level 3 Communications, LLC ("Level 3") filed with the North Dakota Public Service Commission ("Commission") its Post-Hearing Brief in the above-referenced matter. Level 3 files this Supplement to its Post-Hearing Brief to bring to the Commission's attention a recent decision by the Washington Utilities and Transportation Commission ("WUTC") arbitrator as further support for Level 3's proposed resolution of this matter.¹

Having earlier confirmed jurisdiction over the interconnection dispute between Level 3 and CenturyTel of Washington, Inc.,² the WUTC arbitrator rendered a decision

¹ On October 28, 2002, Level 3 filed a Supplement to the Response and Objection to SRT Communications, Inc.'s Response to Level 3's Petition for Arbitration and Motion to Dismiss to bring to the Commission's attention the WUTC's Third Supplemental Order Confirming Jurisdiction as further support for Level 3's opposition to SRT's Motion to Dismiss. *See infra n.2.* In that Order, the WUTC found, among other things, that "the FCC's ISP Remand Order does not preempt our jurisdiction to arbitrate issues regarding CenturyTel's obligation to interconnect with Level 3 to facilitate ISP-bound traffic."

² *Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252, Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction (W.U.T.C. Oct. 25, 2002) ("Third Supplemental Order").*

on the merits on January 2, 2003.³ In the Fifth Supplemental Order, the arbitrator rejected CenturyTel's argument that bill-and-keep applies only where traffic is bound for an ISP located within the local calling area, and that all other ISP-bound traffic is interexchange traffic subject to access charges.⁴ Instead, the arbitrator clarified that the FCC's *ISP Remand Order* encompasses "all telecommunications traffic delivered to ISPs and not some subset of that universe as CenturyTel contends."⁵ The arbitrator reasoned that "the FCC and appeals court refer to the traffic that terminates at an ISP within the caller's local area, but they do so not to limit their scope to this subset of ISP-bound calls. Rather, both emphasize that even when the traffic remains in the local area it is not to be treated for compensation purposes as local traffic."⁶

Thus, the Fifth Supplemental Order supports Level 3's position on Issues 3 and 4 in this arbitration, making clear that the *ISP Order on Remand* removes the question of the appropriate compensation mechanism for the exchange of any ISP-bound traffic from this Commission's jurisdiction, since "[b]ill-and-keep is what the FCC's order requires, at least on an interim basis."⁷ Furthermore, supporting Level 3's position on Issue 7 in this matter, the Washington arbitrator in the Fifth Supplemental Order restated its

³ *Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043, Fifth Supplemental Order, Arbitrator's Report and Decision (W.U.T.C. January 2, 2003) ("Fifth Supplemental Order"). A copy of the Fifth Supplemental Order to this Supplement is attached hereto. Paragraph 42 of the Order establishes that petitions for Commission review of the Order are due by January 21, 2002 and that replies may be filed by January 31, 2002.

⁴ Fifth Supplemental Order at ¶33, fn. 9 (citing CenturyTel Brief at 12).

⁵ *Id.* at ¶35.

⁶ *Id.* (emphasis added).

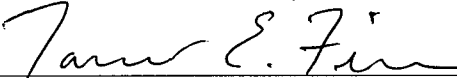
⁷ *Id.* at ¶37.

conclusion from the Third Supplemental Order, clarifying that “ISP-bound traffic is not subject to different interconnection requirements than local traffic under federal law.”⁸

In further support of Level 3’s Post-Hearing Brief, Level 3 respectfully submits the attached copy of the WUTC’s Fifth Supplemental Order.

Respectfully submitted,

Level 3 Communications, LLC

By 

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Its Attorneys

Dated: January 7, 2003

⁸ *Id.* at ¶21.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for)	
Arbitration of an Interconnection	)	DOCKET NO. UT-023043
Agreement Between)	
	)	FIFTH SUPPLEMENTAL ORDER
LEVEL 3 COMMUNICATIONS, LLC,)	
	)	ARBITRATOR’S REPORT AND
and	)	DECISION
)	
CENTURYTEL OF WASHINGTON,)	
INC.,)	
)	
Pursuant to 47 U.S.C. Section 252.)	
.....)	

Synopsis—This Arbitration decision determines that: (1) ISP-bound traffic is not subject to different interconnection requirements than local traffic and does not require a separate agreement; (2) the term “local traffic” should be defined to exclude ISP-bound traffic only for purposes of intercarrier compensation requirements; (3) ISP-bound calls enabled by virtual NXX should be treated the same as other ISP-bound calls for purposes of determining intercarrier compensation requirements consistent with the FCC’s ISP Order on Remand; and (4) the term “bill-and-keep” should be defined in a manner consistent with the FCC’s ISP Order on Remand and implemented by the parties’ interconnection agreement in a manner consistent with the FCC’s order.

I. BACKGROUND

A. Procedural History

1 On March 4, 2002, Level 3 Communications, LLC (Level 3) initiated negotiations with CenturyTel of Washington, Inc. (CenturyTel) with the intention to achieve an Interconnection Agreement between Level 3 and CenturyTel in Washington. On August 8, 2002, Level 3 filed with the Commission a petition for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq. (Act).

2 Level 3 is a Competitive Local Exchange Carrier (CLEC) that wishes to establish local interconnection to provide direct inward dialing capability to its Internet Service Provider

(ISP) customers in Washington. CenturyTel is a rural incumbent local exchange company (ILEC) as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services in various local exchange areas in Washington. The Commission has jurisdiction over the petition and the parties pursuant to 47 U.S.C. §§ 251-252 and RCW 80.36.610. The parties have negotiated and agreed to the majority of terms that would be included in an interconnection agreement between them. Four issues remain in dispute.

- 3 The Commission entered an Order on Arbitration Procedure and appointed an Arbitrator on August 16, 2002. The procedural order is consistent with the Commission's Interpretive and Policy Statement that establishes guidelines for conducting arbitrations under the Act, as codified.¹
- 4 CenturyTel filed its response to Level 3's petition on September 3, 2002. On September 24, 2002, the Arbitrator held a prehearing conference to establish a procedural schedule and to consider other matters that would facilitate an efficient arbitration process. On September 27, 2002, the Arbitrator entered the Second Supplemental Order: Pre-Arbitration Conference Order. The Second Supplemental Order included a schedule agreed to by the parties.
- 5 The Second Supplemental Order also required the parties to file briefs to address CenturyTel's contention that the Commission lacks jurisdiction to conduct this arbitration. The Arbitrator certified the question to the full Commission. On October 28, 2002, the Commission entered its Third Supplemental Order Confirming Jurisdiction.
- 6 Level 3 and CenturyTel filed their respective direct testimonies and exhibits on October 18, 2002, and their respective rebuttal cases on November 1, 2002. The exhibit list attached to this Report as Appendix A reflects the admission of these documents at hearing, and the admission of various exhibits that were introduced on cross-examination during the arbitration hearing.
- 7 The Commission conducted its arbitration hearing on October 28, 2002, before Administrative Law Judge Dennis J. Moss. The parties filed briefs on November 7, 2002.

¹ *Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 (June 1996).

B. Appearances.

- 8 Michael R. Romano, attorney, Level 3 Communications, LLC, McLean, Virginia, and Rogelio E. Peña, Peña & Associates, LLC, Boulder, Colorado, represent Level 3 Communications. Calvin K. Simshaw, Associate General Counsel, CenturyTel, Vancouver, Washington, represents CenturyTel.

C. Unresolved Issues

- 9 CenturyTel and Level 3 have engaged in largely successful negotiations toward an interconnection agreement. Although Level 3's Petition stated 15 issues to which the parties had not agreed, the number was reduced to 4 by the time of the arbitration hearing. The Arbitrator commends the parties for their substantial progress toward agreement.

- 10 The issues, as stated in the parties' briefs, are:

ISSUE ONE: Is ISP-bound traffic subject to different interconnection requirements than local traffic under federal law such that it should be handled by separate agreement?

ISSUE TWO: What is the proper definition of "local traffic"?

ISSUE THREE: What is the proper treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes?

ISSUE FOUR: How should the parties define "bill-and-keep" to implement the FCC's *ISP Order on Remand*?²

² *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, 9188, ¶

D. Resolution of Disputes and Contract Language Issues

11 As a general matter, the Arbitrator's report is limited to the disputed issues presented for arbitration. *47 U.S.C. § 252(b)(4)*. The parties were required to present proposed contract language on all disputed issues to the extent possible, and the Arbitrator reserves the discretion to either adopt or disregard proposed contract language in making decisions. Each decision by the Arbitrator is qualified by discussion of the issue. Contract language adopted pursuant to arbitration remains subject to Commission approval. *47 U.S.C. § 252(e)*.

12 This Report is issued in compliance with the procedural requirements of the Act, and it resolves all issues that the parties submitted to the Commission for arbitration. The parties are directed to resolve all other existing issues consistent with the Arbitrator's decisions. If the parties are unable to submit a complete interconnection agreement due to an unresolved issue they must notify the Commission in writing prior to the time set for filing the Agreement. At the conclusion of this Report, the Arbitrator addresses procedures for review to be followed prior to entry of a Commission order approving an interconnection agreement between the parties.

II. MEMORANDUM

A. The Commission's Duty Under the Telecommunications Act of 1996

13 Two central goals of the Telecommunications Act are the nondiscriminatory treatment of carriers and the promotion of competition. The Act contemplates that competitive entry into local telephone markets will be accomplished through interconnection agreements between ILECs and CLECs, which will set forth the particular terms and conditions necessary for the ILECs to fulfill their duties under the Act. *47 U.S.C. § 251(c)(1)*. Each interconnection agreement must be submitted to the Commission for approval, whether the agreement was negotiated or arbitrated, in whole or in part. *47 U.S.C. § 252(d)*.

B. Standards for Arbitration

14 The Telecommunications Act provides that in arbitrating interconnection agreements, the state commission is to: (1) ensure that the resolution and conditions meet the

81 (2001) ("*ISP Order on Remand*"), *remanded WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("*WorldCom*").

requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

C. Background

- 15 Level 3 is a facilities-based competitive local exchange carrier (“CLEC”) that provides telecommunications services in Washington and throughout the United States. Through its own network and interconnection with other LECs, Level 3 provides customers local connectivity to packet-switched networks like the Internet. Level 3 provides its customers a direct inward dial (“DID”) service, whereby the customer is provided a local telephone number that directs the end-user’s calls from his/her local exchange carrier to the Level 3 network. Level 3’s DID service requires that it “turn up” local numbers within its target markets, through assignment of “NXX” codes specific to the geography of its target market.³
- 16 CenturyTel is an incumbent provider of local exchange services in Washington, and in several other states. CenturyTel is a “telecommunications company” and a “public service company,” as those terms are defined in RCW 80.04.010, and an Incumbent Local Exchange Carrier (“ILEC”) under 47 U.S.C. § 251(h). Certain of CenturyTel’s operating divisions are entitled to the rural exemption under 47 U.S.C. § 251(f)(1)(A), and therefore not subject to the requirements of 47 U.S.C. § 251(c).
- 17 Level 3 plans to establish a telecommunications network in Washington that is based on proprietary technology optimized to transmit Internet Protocol (IP) packet-switched traffic. Level 3’s proposed network can be used to provide several different telecommunications services, but its initial focus is on providing service to Internet Service Providers (ISPs) that require a local calling presence to serve their own end users whether or not the ISP is physically located in the ISP customer’s local calling area.

³ See generally Direct Testimony of Timothy J. Gates, Exhibit No. 1, at 7:10-22.

18 The issues in this proceeding involve traffic that would originate on CenturyTel's telephone network when a CenturyTel customer dials a seven-digit telephone number, using so-called virtual NXX capability, to connect to the customer's chosen ISP. Level 3 would route the call over its network to the ISP's modem bank that may be physically located in another exchange or even in another state. The ISP then routes the call to one or more Internet sites during the course of the customer's Internet session.

D. Issues, Discussion, And Decisions

1. Is ISP-bound traffic subject to different interconnection requirements than local traffic under federal law such that it should be handled by separate agreement?

19 CenturyTel initially framed this issue in terms of jurisdiction, asserting "ISP-bound traffic is not within the jurisdiction of the state PUCs."⁴ On brief, CenturyTel continues to insist that "Level 3's traffic would not be local and therefore, . . . should not be subject to a local interconnection agreement under the provisions of sections 251 and 252 of the Act."⁵

20 The Commission resolved the question of its jurisdiction in its Third Supplemental Order, in part, as follows:

We agree with Level 3 that the FCC preempted state commission authority over compensation for ISP-bound traffic, and did not preempt state commission authority to arbitrate other issues relating to ISP-bound traffic.

The Commission determines that the FCC's ISP Remand Order does not preempt our jurisdiction to arbitrate issues regarding CenturyTel's obligation to interconnect with Level 3 to facilitate ISP-bound traffic. The FCC preempted only the Commission's authority to arbitrate the compensation for ISP-bound traffic . . .

[T]he provisions of 47 U.S.C. §§ 251 and 252 apply to both interstate and intrastate services. The obligations of 47 U.S.C. § 251(a) apply to all telecommunications carriers. The duties set forth in 47 U.S.C. §§ 251(b)

⁴ *CenturyTel Response* at 3.

⁵ *CenturyTel Brief* at 16.

and (c) apply to “local exchange companies,” which include carriers that provide telephone exchange service or exchange access. *47 U.S.C. § 153(26)*. “Exchange access” is “the offering of access to telephone exchanges services or facilities for the purpose of origination or termination of telephone toll services.” *47 U.S.C. § 153(16)*. Therefore, a local exchange company may provide both intrastate and interstate services and fall within the obligations of *47 U.S.C. § 251*. State commissions, therefore, are authorized to consider both intrastate and interstate service when arbitrating issues that arise from *47 U.S.C. § 251*.

21 Stated in terms of the issue framed by the parties, the Commission’s Third Supplemental Order establishes that ISP-bound traffic is not subject to different interconnection requirements than local traffic under federal law such that it should be handled by separate agreement. That result controls for purposes of this Arbitrator’s Report and Decision.

22 In general, then, the starting point for the parties’ interconnection agreement should be CenturyTel’s standard template interconnection agreement, not the CenturyTel “Information Access Traffic Exchange Agreement” that CenturyTel apparently tendered to Level 3 at some point during the parties’ negotiations.⁶ The interconnection agreement template should be modified to reflect the parties’ agreements and the Arbitrator’s resolution of the remaining issues, as discussed in this Report and Decision.

2. What is the proper definition of Local Traffic?

23 Level 3’s proposed definition of “local traffic,” for purposes of an interconnection agreement with CenturyTel, is as follows:

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel’s then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area’s (i.e., optional rate packages that permit the end user to choose a local

⁶ See *CenturyTel Response at 2*.

calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as “optional EAS”. Pursuant to applicable law, Local Traffic excludes ISP-bound Traffic for purposes of intercarrier compensation.

- 24 CenturyTel proposes a definition that would modify Level 3’s suggested language as indicated below in legislative format (*i.e.*, deletions indicated by strikethrough, additions indicated by underlining):

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel’s then current local calling area, including mandatory local calling arrangements. Traffic to or from an end user not within CenturyTel’s local calling area will be subject to access charges to the extent it does not constitute Information Access Traffic. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area’s (*i.e.*, optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as “optional EAS”. Local Traffic excludes Information Access Traffic, including but not limited to Enhanced Service Provider (ESP) and Internet Service Provider (ISP) traffic, Internet, 900-976, etc., and Internet Protocol based long distance telephony.

- 25 CenturyTel argues that the Arbitrator should reject Level 3’s proposed definition “for the simple reason that it includes non-local traffic.”⁷
- 26 Level 3 argues that CenturyTel’s proposed definition is both vague and overbroad; that it would exclude from treatment as local traffic several existing and developing Internet protocol based technologies that it would be better to consider on a case-by-case basis as one carrier or another seeks to implement new services.
- 27 Insofar as it concerns the issues in this proceeding, and the purpose for which Level 3 seeks an interconnection agreement with CenturyTel, Level 3’s proposed definition is

⁷ *CenturyTel Brief at 16.*

limited in reach to the one question that truly remains at issue in this proceeding: the treatment of ISP-bound traffic for purposes of intercarrier compensation. Level 3's definition, which would exclude ISP-bound traffic from the definition of local traffic for purposes of intercarrier compensation, is consistent with the FCC's *ISP Order on Remand*.

28 By contrast, CenturyTel's proposed definition is not narrow in its effect; it includes a sweeping exclusion of various forms of Internet protocol based services that are not squarely at issue in this proceeding and that may not have even been developed yet to the point of any practical application. As Level 3 argues in its brief, the record in this proceeding is inadequate to support adoption of a definition of local traffic that has broad implications in terms of services that Level 3 does not seek to implement through an interconnection agreement with CenturyTel at this time.⁸

29 The FCC's *ISP Order on Remand* discusses, at paragraph 34, the agency's view of the impracticability of using the term "local traffic" as a basis to define parties' respective rights and obligations under Section 251 of the Act: "We also refrain from generically describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in Section 251(b)(5) or Section 251(g)." In addition, the FCC discusses, at paragraph 51 of the *ISP Order on Remand*, its view that Section 251(i) of the Act offers flexibility in the pricing and regulation of innovative services, and acknowledges the importance of maintaining an open-minded regulatory environment:

We expect that, as new network architectures emerge, the nature of telecommunications traffic will continue to evolve. As we have already observed, since Congress passed the 1996 Act, customer usage patterns have changed dramatically; carriers are sending traffic over networks in new and different formats; and manufacturers are adding creative features and developing innovative network architectures. Although we cannot anticipate the direction that new technology will take us, we do expect the dramatic pace of change to continue. Congress clearly did not expect the dynamic, digital broadband driven telecommunications market place to be hindered by rules premised on legacy networks and technological assumptions that are no longer valid.

⁸ See generally, *Level 3 Brief at 13-20*.

- 30 Adopting CenturyTel's proposed definition of local traffic, with its several exclusions, would take us significantly beyond any result that the record on this arbitration can support. Moreover, the exclusions CenturyTel advocates are not well-defined and to adopt them here might have unintended consequences in the future. Indeed, adopting CenturyTel's proposed definition of local traffic conceivably could forestall the introduction of innovative technologies and increased competition in favor of preserving legacy network dominance and a narrower range of service options for customers now and in the future. Such a result could be antithetical to the fundamental goals of competition and innovation that are the driving force behind telecommunications regulatory policy at both the national and the state level.
- 31 Issue Two is resolved in favor of Level 3's proposed definition of local traffic. The parties must adopt that definition in their interconnection agreement, and must make any other changes in their agreement that are necessary in light of this resolution of Issue Two.

3. What is the proper treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes?

- 32 Both Level 3 and CenturyTel acknowledge that the substance of their dispute turns on the question of compensation. Level 3 contends that the FCC has preempted from state commission determination the question of intercarrier compensation for ISP-bound traffic. Level 3 argues that the *ISP Remand Order* establishes "bill and keep" as the only intercarrier compensation regime that can apply, at least on the interim basis established by the *ISP Remand Order*, for all ISP-bound traffic.
- 33 CenturyTel, by contrast, asserts that the *ISP Remand Order* applies by its terms only to that segment of ISP-bound traffic that originates in a given local exchange area and terminates at an ISP modem located in the same local exchange area.⁹ CenturyTel contends that all other ISP-bound traffic is interexchange traffic that is required to pay access charges to the originating carrier.
- 34 The straightforward answer to this argument is that the FCC's *ISP Remand Order* is not limited in its effect as CenturyTel urges in its brief. CenturyTel reads too much into certain language it quotes from the D.C. Circuit's reviews of the FCC's first ISP order

⁹ *CenturyTel Brief at 12* ("the FCC has ruled only that bill and keep should be applied where traffic is bound for an ISP located within the local calling area").

and the *ISP Remand Order*.¹⁰ While it is true that one of the issues the FCC considers in its order is ISP-bound traffic that reaches a modem bank in the same local exchange area in which the ISP customer resides, the order cannot be fairly read to concern only this subset of ISP-bound traffic.

35 The FCC's *ISP Remand Order* begins with the straightforward statement that: "In this Order, we reconsider the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to Internet service providers (ISPs)." The FCC's order, thus, introduces its subject matter as encompassing all telecommunications traffic delivered to ISPs and not some subset of that universe as CenturyTel contends. The FCC's order is consistent in this regard throughout its discussion and nowhere suggests that its result is limited to the narrow class of ISP-bound traffic that CenturyTel argues is the scope of its application. It is the case, as CenturyTel argues, that both the FCC and the appeals court refer to the traffic that terminates at an ISP within the caller's local area, but they do so not to limit their scope to this subset of ISP-bound calls. Rather, both emphasize that even when the traffic remains in the local area it is not to be treated for compensation purposes as local traffic.

4. How should the parties define "bill-and-keep" to implement the FCC's *ISP Order on Remand*?

36 CenturyTel argues that bill-and-keep is not the appropriate compensation scheme for Level 3's ISP-bound traffic. CenturyTel proposes the following definition for bill-and-keep with the intent to exclude ISP-bound traffic from such compensation under the parties' interconnection agreement:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.

Given the resolution of the first three issues in this arbitration, discussed above, and considering the intent of CenturyTel's proposed definition, it is rejected.

¹⁰ See *CenturyTel Brief at 12-13 and cases cited therein: Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (D.C. Cir. 2000); *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. May 3, 2002).

37 Level 3 proposes to define bill-and-keep as follows:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange in which neither of the Parties charges the other for terminating traffic that originates on the other network. Instead, each Party recovers from its own end users the cost of both the originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.

Additionally, at Article V, Section 3, Level 3 proposes to include the following language:

3.2.1 Mutual Compensation.

...

Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.

3.2.2 Bill-and-Keep.

...

Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2, except as set forth in Section 3.1 above.

The *ISP Order on Remand* takes from the Arbitrator's hands any decision regarding the appropriate compensation mechanism for the exchange of ISP-bound traffic. Bill-and-keep is what the FCC's order requires, at least on an interim basis. The Arbitrator's task is to ensure that the parties' interconnection agreement includes terms that are consistent with what the FCC requires in this regard. Level 3's proposed definition of bill-and-keep and the additional language it proposes for Article V, Section 3, are consistent with the *ISP Order on Remand*. Level 3's proposals are adopted.

E. Additional Issues Raised On Brief.

38 CenturyTel raises two issues on brief that were not presented for arbitration. CenturyTel contends that Level 3 should be bound to establish points of interconnection within CenturyTel's local calling areas.¹¹ CenturyTel argues that "Level 3 in this proceeding repeatedly made the commitment that it would agree" to this arrangement, and any interconnection agreement should contain point of interconnection language that is consistent with Level 3's commitment. It is neither necessary, nor appropriate that there be any arbitration award on this point. If, as CenturyTel contends, Level 3 has unequivocally committed itself to such an arrangement, an arbitration award would add nothing to that commitment. If, however, there is some dispute over this point, the parties must endeavor to work it out between themselves or queue the matter up for Commission determination with appropriate notice so that a proper record can be developed to support a reasoned decision.

39 CenturyTel also contends that "any local interconnection agreement imposed by the Commission should include language limiting the traffic to be exchanged to ISP-bound traffic."¹² Again, it is neither necessary nor appropriate that there be any arbitration award on this point. As CenturyTel observes in its brief, Level 3's Vice President of Public Policy, Mr. Hunt, testified that Level 3 would agree to have the language of the parties' interconnection agreement note that the agreement, at least initially, is limited to service for ISP-bound traffic.¹³ However, to the extent there is any disagreement between the parties on this point, the matter was not properly put before the Arbitrator for decision and it will not be resolved here.

¹¹ *CenturyTel Brief at 17.*

¹² *Id. at 18.*

¹³ *Transcript at 134.*

F. Implementation Schedule

40 Pursuant to 47 U.S.C. § 252(c)(3), the Arbitrator is to “provide a schedule for implementation of the terms and conditions by the parties to the agreement.” In preparing an agreement for submission to the Commission for approval, the parties may include an implementation schedule. In this case the parties did not submit specific alternative implementation schedules. Specific provisions to the agreement, however, may contain implementation time-lines. The parties must implement the agreement according to the schedule provided in its provisions, and in accordance with the Act, applicable FCC Rules, and this Commission’s orders.

G. Conclusion

41 The Arbitrator’s resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). The parties are directed to submit an interconnection agreement to the Commission for approval pursuant to the following requirements.

1. Petitions for Review and Requests for Approval

42 Any party may petition for Commission review of this Arbitrators’ Report and Decision by January 21, 2003. Any petition for review must be in the form of a brief or memorandum, and must state all legal and factual bases in support of arguments that the Arbitrators’ Report and Decision should be modified. Replies to any petition for Commission review may be filed by January 31, 2003.

43 By January 31, 2003, the parties also must file a complete copy of the signed interconnection agreement, including any attachments or appendices, incorporating all negotiated terms, all terms requested pursuant to Section 252(i), and all terms intended to fully implement arbitrated decisions. This filing will include the parties’ request for approval, subject to any pending petitions for review.¹⁴ The Agreement must clearly identify arbitrated terms by bold font style and identify by footnote the arbitrated issue that relates to the text.

44 Parties that request approval of negotiated terms must summarize those provisions of the agreement, and state why those terms do not discriminate against other carriers, are

¹⁴ If the parties agree that no petition for review will be filed, the parties may file their joint request for approval and complete interconnection agreement at any time after the date of this Report and Decision.

consistent with the public interest, convenience, and necessity, and are consistent with applicable state law requirements, including relevant Commission orders.

45 Parties that request approval of arbitrated terms must summarize those provisions of the agreement, and state how the agreement meets each of the applicable requirements of Sections 251 and 252, including relevant FCC regulations, and applicable state requirements, including relevant Commission orders. A party that petitions for review must provide alternative language for arbitrated terms that would be affected if the Commission grants the party's petition.

46 Any petition for review, any response, and/or any request for approval may reference or incorporate previously filed briefs or memoranda. Copies of relevant portions of any such briefs or memoranda must be attached for the convenience of the Commission. The parties are not required to file a proposed form of order.

47 Any petition for review of this Arbitration Report and Decision and any response to a petition for review must be filed (original and six (6) copies) with the Commission's Secretary and served as provided in WAC 480-09-120. Post-arbitration hearing filings and any accompanying materials must be served on the opposing party by delivery on the day of filing, unless jointly filed.

48 An electronic copy of all post-arbitration hearing filings must be provided by e-mail delivery to records@wutc.wa.gov. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch, IBM-formatted, high-density diskette including the filed document(s), in Adobe Acrobat file format (*i.e.*, <filename>.pdf), reflecting the pagination of the original. Please also provide the text in either MSWord file format (*i.e.*, <filename>.doc) or WordPerfect file format (*i.e.*, <filename>.wpd). Attachments or exhibits to pleadings and briefs that do not pre-exist in an electronic format do not need to be converted.

2. Approval Procedure

49 The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) to include the approval process. Further, the Commission does not interpret

the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act.¹⁸

- 50 Any person who wishes to comment on a request for approval may do so by filing written comments with the Commission no later than 10 days after the date a request for approval is filed. Comments must be served on all parties to the Agreement, and parties to the Agreement may file written responses to comments within 7 days after service.
- 51 The Commission will consider the request(s) for approval at a public meeting. Any person may appear at the public meeting to comment on the request(s). The Commission may set the matter for consideration at a special public meeting.
- 52 The Commission will enter an order approving or rejecting the Agreement within 30 days after the parties' interconnection agreement is filed. The Commission's order will include its findings and conclusions

Dated at Olympia, Washington, and effective this 2nd day of January 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Arbitrator

¹⁸ *Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996*, Docket No. UT-960269, In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996 (June 28, 1996).

APPENDIX A

EXHIBIT LIST

NUMBER		A/R	DATE	DESCRIPTION
LEVEL 3				
1	Timothy J. Gates	A	11/7/02	TJG-1T: Prefiled Direct Testimony
2	Timothy J. Gates	A	11/7/02	TJG-2: Witness Qualifications
3	Timothy J. Gates	A	11/7/02	TJG-3T: Rebuttal Testimony
4	Timothy J. Gates	A	11/7/02	TJG-4: Summary of the Number of NXXS Used by Washington ICOS
5	Timothy J. Gates	A	11/7/02	TJG-5: CenturyTel Service Information
6	CenturyTel Cross	A	11/7/02	Inter-exchange Transport Diagram
7	William P. Hunt	A	11/7/02	WPH-1T: Prefiled Direct Testimony
8	William P. Hunt	A	11/7/02	WPH-2: Powell: Time to 'Retool' the FCC
9	William P. Hunt	A	11/7/02	WPH-2: Remarks of Commissioner Susan Ness
10	William P. Hunt	A	11/7/02	WPH-4: Rebuttal Testimony
11	CenturyTel Cross	A	11/7/02	Tariff WN U-2 (excerpt)
CENTURY TEL				
12	R. Craig Cook	A	11/7/02	RCC-1T: Direct Testimony
13	R. Craig Cook	A	11/7/02	RCC-2: Level 3 Market Expansion Project Key Facts and Information
14	R. Craig Cook	A	11/7/02	RCC-3: Central Office Code Assignment Guidelines
15	R. Craig Cook	A	11/7/02	RCC-4: Level 3 Products and Services Overview

16	R. Craig Cook	A	11/7/02	RCC-5: Level 3 NPA-NXXs in Washington
17	R. Craig Cook	A	11/7/02	RCC-6: Level 3's 3-Connect Modem Product Brochure
18	R. Craig Cook	A	11/7/02	RCC-7: Rebuttal Testimony
19	Level 3 Cross	A	11/7/02	Ocosta Diagram
20	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 1
21	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 2
22	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 3
23	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 4
24	William H. Weinman	A	11/7/02	WHW-1T: Direct Testimony
25	William H. Weinman	A	11/7/02	WHW-2: Use of CenturyTel's Network
26	William H. Weinman	A	11/7/02	WHW-3T: Rebuttal Testimony
27	Level 3 Cross	A	11/7/02	Ocosta/Aberdeen Diagram
28	Level 3 Cross	A	11/7/02	Ocosta/Aberdeen/Seattle Diagram
29	Level 3 Cross	A	11/7/02	CT Exchange A Diagram
30	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 5

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of January 2003, a true and correct copy of the foregoing was sent regular mail to the following individuals:

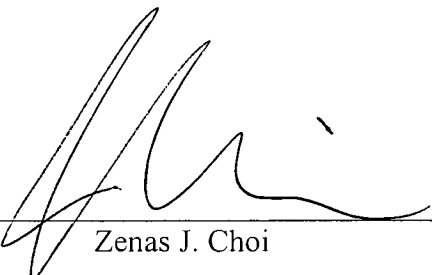
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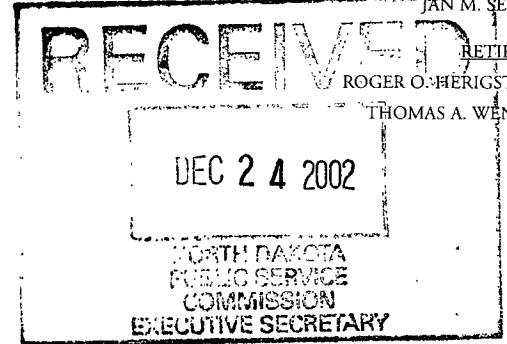
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December 23, 2002

North Dakota Public Service Commission
Jon Mielke, Executive Secretary
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

**RE: Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1934, as Amended to Establish an Interconnection Agreement with SRT Communications, Inc.
Case No: PU-2065-02-465**

Dear Mr. Mielke:

On behalf of SRT Communications, Inc. ("SRT"), enclosed for filing are an original and eight (8) copies of SRT's Post Hearing Brief in the above-captioned matter.

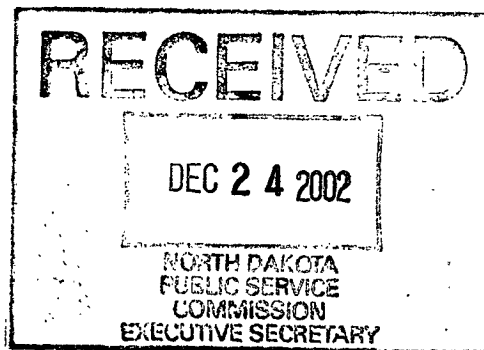
Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. If you have any questions, please don't hesitate to contact me.

Very truly yours,

David J. Hogue
kk

Enclosures

cc: Zenas Choi via Federal Express (w/enclosure)
Michael Romano (w/enclosure)
William Binek (w/enclosure)
Frank Lamancusa via Federal Express (w/enclosure)



**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Level 3 Communications, LLC

Case No. PU-2065-02-465

Interconnection Arbitration Application

**SRT COMMUNICATIONS, INC.'S
POST HEARING BRIEF AND
FINAL OFFER AGREEMENT**

December 23, 2002

55 PU-2065-02-465

Pages: 57

Post Hearing Brief and Final Offer
Agreement
by SRT Communications, Inc. by David J Hogue, Attorney
12/24/2002 CC: Comm Legal PUD (3)

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC

Case No. PU-2065-02-465

Interconnection Arbitration Application

SRT COMMUNICATIONS, INC.'S
POST HEARING BRIEF

December 23, 2002

BACKGROUND AND NATURE OF DISPUTE

The parties to this proceeding are Level 3 Communications, LLC ("Level 3") and SRT Communications, Inc. ("SRT"). SRT submits this post hearing brief in accordance with the North Dakota Public Service Commission's ("Commission" or "PSC") pre-hearing conference order dated October 31, 2002. Attached to this brief is SRT's final offer arbitration agreement. The final offer arbitration agreement is submitted pursuant to the prehearing conference order and section 69-02-10-27 of the North Dakota Administrative Code ("NDAC").

Each party is a "telecommunications carrier" within the meaning of section 153 (44) of the Communications Act of 1934 ("the Act"), as amended, and each is a "telecommunications company within the meaning of section 49-21-01(19) of the North Dakota Century Code ("NDCC").

Level 3 is authorized to provide facilities-based local exchange and interexchange services in the State of North Dakota pursuant to the Commission's

Order in Case No. PU-2065-02-11. Level 3 is also a registered reseller of local exchange and interexchange services in the State of North Dakota.

SRT provides “telephone exchange service” (Act section 153 (47)) within a connected system of 25 telephone exchanges located in the north central area of North Dakota. See Hearing Exhibit 30. SRT is an incumbent local exchange carrier (“ILEC”) within the meaning of section 251(h) of the Act. SRT is also a “rural telephone company” within the meaning of section 153(37) of the Act.

On March 26, 2002, Level 3's consultant initiated negotiations to establish an interconnection with SRT. The parties negotiated but did not achieve agreement. On August 30, 2002, Level 3 filed with the Commission a Petition for Arbitration (“Petition”) to resolve disputed issues between the parties and establish an interconnection agreement with SRT.

The arbitration hearing record established as an undisputed fact that Level 3 desires an interconnection to facilitate only its direct inward dialing (“DID”) service to its only customers, Information Service Providers (“ISPs”) that are physically located outside SRT's local calling area. See Prefiled Testimony of Level 3 Witness, William P. Hunt, p. 5, l. 9; p. 6, l. 8; p. 33, l. 8; and p. 35, ll. 14-20. Level 3's consistent theme in these proceedings - undisputed by SRT - is that Level 3 is a telecommunications carrier of services to end user ISPs and that Level 3 itself is not an end user ISP. See also Hearing Testimony of Hunt at p. 33, l. 24; p. 35, ll. 1-4.

In the course of proceedings, the issues have been identified as:

1. Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?
2. Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?
3. Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?
4. For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area.
5. Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?
6. Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?
7. Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

SRT has consistently maintained that it has met its obligations under section 251(a) of the Act. SRT does not retreat from its position and, as argued below, SRT requests the Commission to dismiss Level 3's Petition. If the Commission agrees with SRT on one of issues 1, 2, 5, 6, or 7, it is unnecessary to decide issues 3 and 4. Resolution of issues 3 and 4 affects the substance of the interconnection agreement the parties will execute at the conclusion of this proceeding, if and only if an interconnection agreement were required.

SRT's submission of a final offer agreement is compelled by the prehearing order and section 69-02-10-27, NDAC. SRT's final offer agreement makes several significant concessions. Importantly, the final offer agreement proposes to relieve Level 3 of originating access charges which would otherwise be due, in exchange for Level 3's agreement to use numbers that the Numbering Plan Administrator has assigned to SRT for Level 3's DID service to its ISP customers instead of applying to the Administrator for numbers associated with SRT's local calling area to be assigned to Level 3 and used in connections with its "VNXX" scheme. By making this "final offer" in the form of an interconnection agreement as required by the pre-hearing conference order and section 69-02-10-27, NDAC, SRT does not concede that Level 3 is entitled to an interconnection agreement.

SUMMARY OF ARGUMENTS

SRT asserts:

- A. The interconnection that Level 3 seeks under section 251(a) is not a kind of interconnection that is the subject of arbitration provisions under section 252 of the Act. This assertion was presented by a Motion to Dismiss that has been denied but is not abandoned. Extended reargument at this stage of the proceeding is not necessary or appropriate.
- B. Even if the interconnection that Level 3 seeks under section 251(a) were a kind of interconnection that is the subject of arbitration provisions under section 252 of the Act, Level 3 is not entitled to an interconnection agreement under the facts of the case and the applicable law. This

assertion is addressed in detail below.

- C. Even if Level 3 were entitled to an interconnection, under the facts of the case and the applicable law, Level 3 is not entitled to an interconnection on the terms it has proposed. This assertion is addressed in detail below.
- D. If Section 251(a) of the Act entitles Level 3 to a direct connection under terms more favorable than the parties' current arrangement, the Commission should adopt SRT's final offer agreement.

In the following sections of this brief, Point A is not reargued at length, having been fully argued in connection with the motion to dismiss. Points B and C are argued under each of the 7 issues in the case, as appropriate. Point D is argued and explained in the "Comment" sections of SRT's final offer agreement.

A. THE INTERCONNECTION THAT LEVEL 3 SEEKS UNDER SECTION 251(A) IS NOT A KIND OF INTERCONNECTION THAT IS THE SUBJECT OF ARBITRATION PROVISIONS UNDER SECTION 252 OF THE ACT.

The Act imposes two duties of interconnection, the "general" duty of all telecommunications carriers to interconnect, under section 251(a), and the "additional" duty of ILECs, under section 251(c)(2).

Section 251(c)(2) imposes on ILECs particular duties to interconnect with other carriers for "the transmission and routing of telephone exchange service and exchange access." That section is sanctioned by a duty to negotiate under Section 251(c)(1) and (should negotiations fail) compulsory arbitration proceedings administered by State commissions such as the PSC, under section 252. The "general" duty of all telecommunications carriers to interconnect, under section

251(a), is not sanctioned by a duty to negotiate under Section 251(c)(1) and the related compulsory arbitration proceedings under section 252.

B. LEVEL 3 IS NOT ENTITLED TO AN INTERCONNECTION AGREEMENT UNDER THE FACTS OF THE CASE AND THE APPLICABLE LAW.

Issue Number 1: Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?

Yes. SRT has satisfied the duty under section 251(a), the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" as that duty is explained by the FCC in paragraph 997 of the 1996 Local Competition Order.

SRT is connected to the public switched telecommunications network such that Level 3 is enabled to carry traffic from end users of internet service in SRT's local calling area to Level 3's ISP customers physically located in other exchange areas. See Pre-filed Testimony of Level 3 Witness Gates, p. 37, ll. 6-7: "Level 3 could provide 800 service, and it does offer this option to its customers, but that is not its primary business plan."

Even though 800 service might not be Level 3's preference, SRT is legally obliged to satisfy the obligation imposed by statute, not to satisfy Level 3's preferences. The availability of 1-800 service satisfies SRT's statutory obligation of indirect interconnection with Level 3's facilities, as an alternate to direct interconnection.

SRT's and Level 3's facilities are not only indirectly connected to facilitate Level 3's service to its customers by 800 service, but also Level 3 and SRT are

presently directly interconnected. Level 3 is a carrier of traffic from SRT's exchange areas to Level 3's ISP customers in other exchange areas, under an existing direct interconnection between SRT's and Level 3's facilities. See Pre-filed Testimony of Level 3 Witnesses Hunt, p. 24 and Ducloo, pp 4-5. Though both witnesses seem engaged in self-deceptive word games as they seek to avoid describing the existing PRI/ISDN arrangement as a direct interconnection, it is abundantly clear from Level 3's own evidence that it is directly connected with the facilities of SRT in exactly the same way as any end user of SRT's PRI/ISDN services is directly connected to SRT's facilities. But Level 3 is not a directly connected end user, Level 3 is a carrier directly connected to SRT, and that is a direct connection "that Level 3 uses to deliver calls to ISPs." Ducloo Pre-filed Testimony, p. 5, l. 2. See also Level 3's Responses to SRT's interrogatories, Responses Nos. 14, 25 and 31, admitted in the hearing record as part of Exhibit 23, Tr. pp. 161-164.

Presently, Level 3 has leased dedicated DS1 facilities that are directly interconnected with SRT. The present arrangement is not substantially different from the facilities Level 3 proposes to lease from SRT to establish a direct interconnection under its desired new agreement. Compare Level 3's description of the existing arrangement (Level 3 's Interrogatory Responses Nos. 14, 25 and 31), with its description of its proposed arrangement interrogatory (Response No. 9, also admitted in the hearing record as part of Exhibit 23). Mr. Hunt made the comparison most succinct: "Level 3 typically tries to establish direct interconnection once a threshold of one DS1's worth of traffic is reached for three

consecutive months.” Hunt Pre-filed Testimony, p. 18, ll. 20-22. Level 3 already has 7 DS1's leased from SRT and directly connected. See Interrogatory Responses No. 14, 25 and 31.

In making the comparison, also consider Level 3's Interrogatory Response No. 6 (also admitted in the hearing record as part of Exhibit 23), that acknowledges “the technical differences experienced between Level 3's ISP customers' Internet service to end users in SRT's local exchange areas who currently obtain local number dial-up connection to Level 3's ISP customers, as compared to the Internet service that would be available to Level 3's ISP customers' Internet service end users if Level 3's proposed Mutual Traffic Exchange Agreement were in effect, would be slight”

Level 3 presently has a direct interconnection and does not propose any change in the facilities that would be directly interconnected. Level 3 proposes no substantial change in the existing direct interconnection, the physical link between its facilities and SRT's, and no substantial change in its use of the interconnection: Level 3's transport of ISP traffic from internet end users in SRT's calling area to Level 3's ISP customers physically located in other exchange areas. What Level 3 does propose is a change in DID telephone numbers. But Level 3's expressed desire for its own numbering scheme (criticized in other parts of this brief) does not mean that Level 3 has somehow rendered SRT out of compliance with section 251(a). The fact is that Level 3 and SRT are carriers that are presently directly interconnected.

Level 3 denies its facilities are present directly interconnected with SRT's

facilities under two noncredible explanations. Level 3 asserts that since the connection was “inherited” from a non-carrier, McLeod Information Services, p. 6, ll. 13-25, it cannot be a section 251(a) connection. Level 3 also asserts it is not a direct connection because the PRIs are purchased from SRT’s tariff as a “retail” offering. Id. at 78, l. 20; Ducloo Prefiled Testimony at p. 4, l. 15; Hunt cross at p. 38, ll. 16-20.

Neither of Level 3's theories have any basis in law or in fact, and Level 3 admits as much. Mr. Ducloo agrees SRT and Level 3 are physically linked, Id. at p. 75, ll. 20-25; he is unaware of any legal precedent requiring Level 3's desired “carrier to carrier” or “non-retail” connection under section 251(a). As the FCC has explained under section 251's “three-tiered hierarchy of escalating obligations,” section 251(a) “only requires [the non-requesting carrier] to provide direct or indirect physical links between itself and [the requesting carrier].” *Total Telecommunications Services v. AT&T*, 16 FCC Rcd 5726, quoting *Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act*, 12 FCC Rcd 6925, 6937-38 (1997).

Level 3 cites no authority for its argument that an “inherited” direct connection from a non-carrier is not a direct interconnection under section 251(a). Level 3's witness uttered a better analogy than inheritance when he explained that Level 3 “stepped into the shoes” of McLeod Information Services, Level 3 purchased the existing direct connection with SRT as a “vendor contract”. Hunt cross p. 33, ll. 18-22. Level 3 is unwilling to face the facts and admit that its purchase of

McCleod assets included a direct connection with SRT. But regardless of the labels Level 3 attaches to the present arrangement, one fact remains conclusive: when SRT's end-users dial numbers associated with Level 3, the calls get completed and delivered to Level 3's ISP customers. Ducloo cross p. 75, ll. 7-13.

In their existing relationships, SRT and Level 3 are carriers; they are presently "co-carriers," to use Level 3's term. They are interconnected carriers. SRT is a carrier to carrier supplier of services to Level 3. Level 3 is not an end user of the services it purchases from SRT. SRT and Level 3 are presently interconnected carriers, but Level 3 proposes to terminate the compensation arrangement and make a different arrangement for an existing direct interconnection. See Level 3 Responses to Interrogatories, Nos. 14, 25 and 31.

SRT has satisfied its obligations under section 251(a) of the Act. SRT's and Level 3's facilities are both directly and indirectly interconnected.

Issue Number 2: Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?

No. Section 251(a) imposes on all telecommunications carriers the general duty to interconnect with other carriers. Section 251(a) does not oblige any carrier to negotiate terms and conditions of an interconnection. The FCC's rules and regulations do not impose any such duty, with respect to a 251(a) interconnection. In this important respect, Section 251 (a) is significantly different from 251(c) which imposes additional duties for ILECs to negotiate with requesting carriers for interconnections for telephone exchange service and exchange access and

network elements. The FCC has promulgated comprehensive rules and regulations affecting the range of rights and obligations of parties to negotiations under section 251(c). Level 3 has not requested an interconnection under section 251(c).

Issues 3 and 4 are addressed in part C of this brief.

Issue Number 5: Has Level 3 made a bona fide request for interconnection?

The term “bona fide” appears in section 251(f) in reference to rural telephone companies’ exemption from ILECs’ obligations under section 251(c), regarding interconnections between ILECs and CLECs. Though it disavows reliance on section 251(c), Level 3 does seem to assert status as a CLEC as integral to its assertions that it is entitled to an interconnection agreement with SRT. Indeed, Level 3 must use its CLEC certificate to acquire numbering resources from the NANPA. To the extent that Level 3 asserts status as a CLEC, its request does not appear to be bona fide, because it has not addressed the rural exemption.

Issue Number 6: Is SRT exempt from negotiation and interconnection obligations pursuant to section 251 (f)(1) of the Communications Act of 1934, as amended?

SRT is a rural telephone company that is exempt from the obligations of section 251(c). The facts which establish the exemption are not disputed. The exemption is subject to the possibility of termination, but the record is clear that Level 3 has not taken appropriate action to seek termination of the exemption. To the extent that Level 3 relies on any part of section 251(c), SRT is exempt from the obligations of that section unless and until the exemption is terminated under procedures prescribed in the statute. Similarly, if the arbitrator or the Commission

were to consider Level 3's request for interconnection is improperly made under section 251(a) and properly made under section 251(c), then SRT is exempt from the obligations of section 251(c), subject to the possibility of termination of the exemption.

Issue Number 7: Does the North Dakota PSC have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

The PSC exists under the North Dakota Constitution, and the PSC's authority is defined by the state legislature. The PSC is an administrative agency, not a policy making body. North Dakota Constitution, Art. 5, Secs. 12 & 13; *Capital Electric Cooperative v. Public Service Commission*, 534 NW 2d 588, (ND 1995); *Cass County Electric Coop. Inc. v. Northern States Power Co.*, 518 N.W. 2d 216 (ND 1994); *Public Service Commission v. Montana-Dakota Utilities Co.*, 100 N.W 2d 140, (ND 1959); *Grafton v. Otter Tail Power Co.*, 86 NW 2d 197 (ND 1957).

The PSC has jurisdiction in this case under the North Dakota legislation that enabled the PSC to administer the arbitration system created by the 1996 Telecommunications Act. NDCC § 49-21-01.7 subd. 8 and 9. The PSC's jurisdiction is not co-extensive with the jurisdiction that a state might have in the federal system. The PSC administers policy established by the North Dakota legislature, and the North Dakota Public Service Commission administers policies established by the Federal Congress and the Federal Communications Commission only to the extent that the North Dakota legislature has delegated administrative responsibilities to the PSC. These features of the PSC's jurisdiction

are specifically included in the enabling legislation, NDCC § 49-21-01.7 subd. 14.

North Dakota's legal system is different from some states, where legislatures have delegated some policy making authority to their regulatory commissions. And it is different from the federal government's system, where Congress has delegated some policy making authority to the FCC. These features of North Dakota's legal system affect its Public Service Commission's jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration.

Answers to the jurisdiction issue/question supporting SRT's position that Level 3 is not entitled to an interconnection agreement under the facts of the case and the applicable law are detailed below.

1. NORTH DAKOTA PUBLIC SERVICE COMMISSION JURISDICTION OVER "VNXX" ISP TRAFFIC.

The issue/question about the Commission's jurisdiction as to ISP bound traffic necessarily confronts Level 3's assertion that so-called "VNXX" or "FX-like" traffic is subject to the FCC's assertion of exclusive jurisdiction over intercarrier compensation affecting ISP bound traffic exchanged between ILECs and CLECS in the same local calling area. (Other arguments about so-called "VNXX" or "FX-like" traffic are addressed in part C of this brief.)

As SRT understands Level 3's position, Level 3's carriage of ISP traffic out of SRT's local calling area via so-called "VNXX" or "FX-like," arrangements would have been "local traffic" but for the ISP Remand Order. After the ISP Remand Order, according to Level 3, this traffic is reclassified as "ISP-bound traffic" that is

subject to the FCC's new arrangement for intercarrier compensation for ISP-bound traffic, that state commissions have no authority to make different compensation arrangements, and that Level 3's proposal would be a new arrangement with SRT that is subject to "bill and keep" compensation for the exchange of ISP-Bound traffic. See ISP Remand Order, pars. 81 & 82.

SRT's position is that Level 3's carriage of ISP traffic out of SRT's local calling area via so-called "VNXX" or "FX-like," arrangements would NOT have been "local traffic" but for the ISP Remand Order, and after the ISP Remand Order this traffic and SHOULD NOT BE reclassified as "ISP-bound traffic".

The arbitration hearing record establishes as an undisputed fact that Level 3 desires an interconnection to facilitate only its DID service to its only customers, ISPs that are physically located outside SRT's local calling area. See Prefiled Testimony of Level 3 Witness William P. Hunt, p. 5, l. 9; p. 6, l. 8; p. 33, l. 8; and p. 35, ll. 14-20. See also Level 3 Interrogatory Response No. 6: "In particular, Level 3 intends to offer its services primarily to ISPs who currently do not have points of presence in the exchange areas covered by SRT." Level 3's limited business plan and desire for an interconnection to facilitate service to its only customers, ISPs that are physically located outside SRT's local calling area, is substantially different from the kinds of situations addressed by the FCC in its ISP Remand Order.

The entire history, from the first Order, through the first appeal, the ISP Remand Order and the second appeal all indicate the focus of attention was on situations where “. . . an ISP's end-user customers typically access the Internet

through an ISP server located in the same local calling area” ISP Remand Order, par. 10. (Underscoring added). Similar references to ISPs’ server locations appear elsewhere in the ISP Remand Order. The appellate court also understood the FCC rules under its review involved the circumstances where “an ‘end user’ of the telephone system will use a computer and modem to place a call to the ISP server in his local calling area.” *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d, 3 (D.C. Cir. 2000.) The ISP remand order dealt only with compensation affecting ILECs’ and CLECs’ exchange of local traffic, including local ISP traffic. The ISP Remand Order dealt with real CLECs with real local customers including real local ISP customers.

The ISP Remand Order did not address situations like Level 3’s limited business plan and desire for an interconnection to facilitate service only to ISPs that are physically located outside SRT’s local calling area. This single substantial difference shows that the intercarrier compensation regime installed by the ISP Remand Order does not apply to Level 3’s requested interconnection agreement with SRT. The ISP Remand Order did not affect situations where the interconnecting carrier has no local traffic and its ISP traffic originates in one exchange and terminates in another exchange, as Level 3 proposes.

This conclusion is supported by noting nothing in the ISP Remand Order indicates the FCC was considering “virtual presence” or “VNXX” concepts, and nothing in the order directly declares or indirectly infers that so-called virtual presence is the functional or factual equivalent of real presence within the geographical boundaries of a local exchange area or a local calling area. This

point is reinforced by references to VNXX in the NPRM, where the very issues involved in this arbitration proceeding are subjects of the FCC's requests for comments as it considers making new rules. NPRM, pars. 97 and 115. The FCC has not endorsed the usage of VNXX codes, and has recognized that consideration of the usage of VNXX codes necessarily includes consideration of jurisdiction issues. NPRM, pars. 121 and 122.

For these reasons, the ISP Remand Order does not compel the North Dakota Commission to recognize Level 3's "VNXX" and "FX-like" carriage of ISP traffic as "ISP-Bound Traffic" subject to the FCC's new arrangement for intercarrier compensation for ISP-Bound traffic! Level 3 as an institution and its Witness William P. Hunt are on record as acknowledging the truth of this assertion, in this proceeding and in FCC proceedings (both the ISP and the NPRM dockets). Level 3 has acknowledged the unsettled status of ". . . how the exchange of traffic under foreign exchange or virtual NXX arrangements should be compensated in a multi-provider environment [and] that it is of critical importance for the Commission to settle issues such as whether state commissions have jurisdiction to rule on questions arising from the exchange of ISP-bound traffic between LECs" Exhibit 20.

But Level 3 emphatically wants regulatory sanction of its "VNXX" and "FX-like" carriage of ISP traffic. The FCC's ISP Remand Order does not oblige the North Dakota Commission to recognize Level 3's "VNXX" and "FX-like" carriage of ISP traffic as "ISP-Bound Traffic." As an alternative, Level 3 suggests state commissions should exercise their jurisdiction and authority to move "VNXX" and

“FX-like” carriage of ISP traffic into the FCC’s new arrangement for intercarrier compensation for ISP-bound traffic. “. . . [R]egulatory treatment of virtual NXX traffic is a state policy decision that is worthy of consideration.” (Level 3’s Response to SRT’s Motion to Dismiss, p. 23.) Level 3’s principal witness William P. Hunt testified “. . . [t]here are at least two regulatory policy reasons that the physical location of the customer does not matter.” Hunt Pre-filed Testimony, p. 33, ll. 4-5. The decision of the Federal Communications Commission in Petition of WorldCom, Memorandum Opinion and Order, CC Docket No.00-218 appears to endorse Level 3’s view “that the regulatory treatment of virtual NXX traffic is a state policy decision that is worthy of consideration.”

If North Dakota were one of those states where a regulatory commission has jurisdiction and authority to make a state policy decision about the regulatory treatment of virtual NXX traffic, the arbitrator and the PSC might study the decisions and rationales of other states’ actions as a decision for North Dakota. Not that the decisions of any foreign states’ commissions’ have any legal power under conventional concepts of precedent or stare decisis, but only as pertinent information as this state’s commission makes its own independent policy decision - if it had the power.

The situation is different regarding the PSC’s consideration of the FCC’s actions regarding the regulatory treatment of virtual NXX traffic; the supremacy clause of the United States Constitution obliges states’ commissions to exercise the jurisdiction and authority that they possess under states’ laws consistent with federal law. If the federal jurisdiction, power and authority were exercised to make

a national policy decision about the “regulatory treatment of virtual NXX traffic,” the North Dakota Commission would be constrained to exercise its power (conferred by the state legislature) to apply the national policy adopted by the FCC - if the FCC had adopted a national policy decision about the “regulatory treatment of virtual NXX traffic.” But the FCC has made no national decision about the regulatory treatment of virtual NXX traffic. The FCC has broached the subject (and related jurisdictional issues), in the NPRM, pars. 115, 121 and 122. The FCC has proposed to make rules but it has made no rules about VNXX traffic.

Are there any FCC decisions regarding virtual NXX traffic that the North Dakota Commission might be obliged to follow as controlling precedents, as states’ courts are obliged to follow United States Supreme Court decisions regarding federal law? No. The FCC has made no decisions that amount to a national policy decision about the “regulatory treatment of virtual NXX traffic.”

One might look at the *WorldCom* case and say “There’s one! There is a decision of the FCC about the ‘regulatory treatment of virtual NXX traffic!’” As noted above, the *WorldCom* decision appears to endorse Level 3's view “that the regulatory treatment of virtual NXX traffic is a state policy decision that is worthy of consideration.” That decision has the same precedential effect as a decision that might have been made by the Virginia Commission - none - because that was a decision where the Commission acted as a surrogate for a state commission, under Act section 252(e)(5). The *WorldCom* decision was not a national policy decision about the “regulatory treatment of virtual NXX traffic.”

The North Dakota Public Service Commission has no jurisdiction or authority under state law to make a state policy decision about the regulatory treatment of virtual NXX traffic, and the Federal Communications Commission has made no rules or decisions to establish a national policy about the “regulatory treatment of virtual NXX traffic.” The FCC does have these issues under consideration. See NPRM, pars. 97, 115, 121 and 122, but it has not made a decision or made any rules. To articulate what should be obvious, the North Dakota Commission (having no policy making jurisdiction or authority) should not endeavor to forecast what new rules the FCC might make for the future and administer this present interconnection arbitration under “back to the future” processes.

Neither the ISP Remand Order or any other action of the FCC compels the North Dakota Commission to recognize Level 3’s “VNXX” and “FX-like” carriage of ISP traffic as “ISP-Bound Traffic” subject to the FCC’s new arrangement for intercarrier compensation for ISP-Bound traffic. The North Dakota PSC must reject Level’s 3 suggestion that state commissions should exercise their jurisdiction and authority to move “VNXX” and “FX-like” carriage of ISP traffic into the FCC’s new arrangement for intercarrier compensation for ISP-bound traffic, as a state policy decision. This state’s commission does not have the jurisdiction to make a policy decision that so-called virtual NXX traffic to ISPs in distant exchanges should be reclassified as local traffic that would bypass the existing rules of federal and state law that govern intercarrier compensation for interexchange traffic.

Under North Dakota’s statutes, Level 3 would be considered an interexchange telecommunications company that provides “telecommunications

service to end users located in separate local exchange areas,” under NDCC § 49-21-01, definition number 9, because its only customers are ISPs that have no physical presence in SRT’s local calling areas. See Level 3 Interrogatory Responses No. 6. The words “located” and “local” have meanings related to geographical reality.

To focus on the statutory words “located” and “local” might be criticized as hypertechnical, but there is a particularly pertinent precedent, the ISP Remand Order. The FCC’s purpose to assert its jurisdiction over ISP Bound local traffic was accomplished by its exercise of its rulemaking power, the removal of the word “local” in 47 CFR part 51, subpart H. See ISP Remand Order, Appendix B. The North Dakota Public Service Commission does not have policy making power comparable to the FCC. If VNXX concepts were to be adopted as a matter of state law or policy in North Dakota, as Level 3 suggests, that could be accomplished by the state legislature by amending the statutory status of local exchange boundaries. It is not within the jurisdiction of the North Dakota Public Service Commission, under North Dakota’s laws and constitution, to make such a change in the state’s telecommunications law .

In sum, the North Dakota Public Service Commission does not have the jurisdiction to make a policy decision that so-called virtual NXX traffic to ISPs in distant exchanges in North Dakota or in other states should be reclassified as local traffic subject to the FCC’s new arrangement for intercarrier compensation affecting ISP bound traffic exchanged between ILECs and CLECS in the same local calling area.

2. INTERCONNECTION AGREEMENTS AND ADOPTION OF POLICY.

The jurisdiction issue affects not only questions about the Commission's authority under North Dakota's constitution and statutes, but also whether its limited jurisdiction extends to disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration.

An interconnection agreement arbitration proceeding is not the appropriate forum to consider and decide "policy" issues. See *Petition of WorldCom, Memorandum Opinion and Order*, CC Docket No.00-218, par. 3. [Though] "many of the issues that the parties have presented raise significant questions of communications policy that are also currently pending before the Commission in other proceedings . . . we apply current Commission rules and precedents, with the goal of providing to the parties, to the fullest extent possible, with answers to the questions they have raised."

The cited *WorldCom* case was an interconnection arbitration decision made by the FCC, under section 252(e)(5) of the Act, because the Virginia Commission acknowledged its lack of jurisdiction under its state's law. Similarly, as the North Dakota Commission lacks the jurisdiction to make the kind of "policy" decision that is crucial to Level 3's case, Level 3 could pursue arbitration by the FCC under section 252(e)(5) of the Act.

3. LEVEL 3 AS A NEW CARRIER UNDER THE ISP REMAND ORDER.

Level 3 has proposed "bill and keep" compensation, under the ISP remand order. See Exhibit A attached to Petition for Arbitration, section 3. Level

3 is not a new carrier to the market.

Under the ISP Remand Order, bill and keep was imposed as a temporary measure, affecting only “new carriers,” entering existing markets or existing carriers entering “new markets,” pending the outcome of the NPRM proceedings. Bill and keep methodology applies only where “a new carrier enters the market or an existing carrier expands into a market it previously had not served.” ISP Remand Order, par. 81.

But Level 3 does not propose arrangements either as a “new carrier” entering an existing market or as an existing carrier expanding into a market it previously had not served. Level 3 is not a new carrier, and it is not proposing to expand into a market it previously had not served. As shown under issue 1 above, Level 3 is an existing carrier of ISP bound traffic from SRT’s exchange areas to Level 3’s ISP customers in other exchange areas.

Under the existing direct interconnection between SRT’s and Level 3’s facilities, Level 3 is a carrier directly connected to SRT, and that is a direct connection “that Level 3 uses to deliver calls to ISPs.” Ducloo Pre-filed Testimony, p. 5, l. 2. See also Level 3 Response to SRT’s Interrogatories, Responses Nos. 14, 25 and 31, admitted in the hearing record as part of Exhibit 23, Tr. pp. 161-164. Level 3 has admitted it is not a “a new carrier enter[ing] the market or an existing carrier [that seeks to] expand into a market it previously had not served.” To use Level 3’s words, it wants to “migrate” existing services. See Level 3 Response to SRT’s Interrogatories, No. 25. Level 3 is not a new carrier and its

proposal does not affect a new market.

Though it is obvious, it ought to be stated that the argument that Level 3 is not “new” to the market is based in part on the fact that Level 3’s and SRT’s facilities are presently directly interconnected, as addressed under issue number 1.

4. IMPOSING BILL AND KEEP IN A § 251(a) INTERCONNECTION REQUEST.

Level 3 has requested not only an interconnection under section 251(a) of the Act, it has also requested a specific kind of intercarrier compensation arrangement, “bill and keep” compensation, and it has invoked the PSC’s jurisdiction to arbitrate the request. It seeks arbitration under section 252 of the federal act, but it is more accurate to describe the PSC’s jurisdiction as derived from NDCC § 49-21-01.7 subd. 8 and 9, by which the state legislature enabled the state commission to administer interconnection arrangements under the standards included in section 252 of the Act.

However, the state statute’s incorporation of the Act includes the standards of 252 subsections (c) & (d). The terms of sections 252(c) & (d) refer to interconnections under section 251(c). Sections 252(c) & (d) do not relate to interconnections of the kind described in section 251(a), or an agreement including “bill and keep” intercarrier compensation terms requested by Level 3. Whether considered as a matter of federal or state law, subsections 252(c) & (d) do not authorize the PSC to impose bill and keep intercarrier compensation arrangement on carriers’ exchange of traffic over an interconnection that is established under

section 251(a).

These jurisdictional gaps in Level 3's case cannot be bridged by the North Dakota Public Service Commission.

The state statute specifically declares that the PSC cannot impose obligations different or greater than those imposed under the Act. NDCC § 49-21-01.7 subd 14. There is simply no statutory nexus for the North Dakota PSC to compel bill and keep compensation on a 251(a) interconnection. The PSC does not have the breadth of jurisdictional power that would be required to compel SRT to enter an interconnection agreement with Level 3 on the bill and keep terms proposed by Level 3.

SUMMARY OF PART B OF BRIEF.

Level 3 is not entitled to an interconnection agreement as the outcome of this arbitration proceeding, because:

Level 3 and SRT's facilities are presently directly and indirectly interconnected. SRT has fulfilled its obligations under Act section 251(a).

To the extent that Level 3 relies on any part of section 251(c), SRT is exempt from the obligations of that section unless and until the exemption is terminated under procedures under Act section 251(f).

The North Dakota Public Service Commission does not have jurisdiction to impose intercarrier compensation terms for the kind of interconnection arrangement desired by Level 3. The PSC does not have the breadth of jurisdictional power that would be required to compel SRT to enter an agreement

with Level 3 for a 251(a) interconnection on the bill and keep terms proposed by Level 3. The ISP Remand Order does not compel the North Dakota Commission to recognize Level 3's "VNXX" and "FX-like" carriage of ISP traffic as "ISP-Bound Traffic," and the North Dakota Public Service Commission does not have the jurisdiction to make a policy decision that so-called virtual NXX traffic to ISPs in distant exchanges in North Dakota or in other states should be reclassified as local traffic subject to the FCC's new arrangement for intercarrier compensation affecting ISP bound traffic.

C. UNDER THE FACTS OF THE CASE AND THE APPLICABLE LAW, LEVEL 3 IS NOT ENTITLED TO AN INTERCONNECTION ON THE TERMS IT HAS PROPOSED

Issues 1, 2, 4, 5, 6 and 7 are addressed in part B of this brief. Issues 3 and 4 are addressed in this part C.

Issue Number 3: Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?

Issue Number 4: For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of the that (*sic*) local calling area.

Issues 3 and 4 confront Level 3's assertions that its desired interconnection with SRT would facilitate Level 3's so-called "VNXX" or "FX-like" service to its ISP customers, under intercarrier compensation arrangements that would treat this service as if it were local service. See Level 3 Petition, p. 12, and attached Exhibit

A, Sections 2 and 3.

But the answer to these questions is Level 3's proposed services are interexchange services subject to access charges because calls to its customers would terminate outside SRT's local calling area where the calls originate. These answers to both these issues are consequences of the undisputed fact that Level 3 desires an interconnection to facilitate only its DID service to its only customers, ISPs that are physically located outside SRT's local calling area. See Prefiled Testimony of Level 3 Witness, William P. Hunt, p. 5, l. 9; p. 6, l. 8; p. 33, l. 8; and p. 35, l. 14-20. See also Level 3 interrogatory Response, No. 6: "In particular, Level 3 intends to offer its services primarily to ISPs who currently do not have points of presence in the exchange areas covered by SRT."

Level 3 proposes to provide only interexchange service and to carry only interexchange traffic, for Level 3's ISPs' customers in SRT's local exchange area to place calls to the ISPs' modems located in different exchange areas. SRT is entitled to intercarrier compensation under access charge rules where calls originating in SRT's local calling area are carried by Level 3 for termination to its ISP customers outside SRT's local calling area. Stated otherwise, where Level 3 carries traffic from one calling area to another, it is not entitled to "free" access that applies to local traffic, under 47 CFR 51.703(b). SRT opposes Level 3's proposals, that Level 3 should avoid ("bypass") intercarrier compensation obligations by SRT's being compelled to rate as local calls that are in fact routed and terminated to Level 3's ISP customers outside SRT's local calling area.

The answers to these questions might be different if Level 3 had end user

customers both inside and outside SRT's local calling area, a situation exemplified by the *WorldCom* case, Memorandum Opinion and Order, CC Docket No.00-218. But Level 3 desires an interconnection only to facilitate the carriage of interexchange traffic from SRT's local calling area to Level 3's only customers, ISPs that are physically located outside SRT's local calling area. Level 3 wants to use local numbers 100% for interexchange service. Level 3's proposed service to its ISP customers is long distance service, not local service, no matter what numbers are dialed or punched into an ordinary telephone or programmed into a computer modem.

Another point inspired by the *WorldCom* decision must be noted. Unlike Verizon in the Virginia case, SRT has presented a contract proposal responsive to the facts as created by Level 3. Under SRT's initial contract proposal, Sections 5.2 and 5.3 would provide for access charges to be applied to SRT originated traffic that terminates to Level 3's customers who are not physically located in SRT's local exchange areas. All of Level 3's delivery of traffic originating in SRT's exchange area would be subjected to access charges, because Level 3 has been candid to admit all of the telecommunications traffic originating on SRT's network that Level 3 would deliver to its customers would be delivered to Level 3 ISP customers in other exchanges.

What Level 3 wants to accomplish is interexchange service at local service prices. This sort of scheme is not only described by the FCC as "regulatory arbitrage;" it is this sort of "distortion" that the ISP Remand Order was intended to eliminate. See ISP Remand Order, pars. 2, 4 and 21. See also NPRM, pars.

11 and 12.

As noted in the discussion about jurisdiction under part B of this brief, an interconnection agreement arbitration is not the appropriate forum for resolution of “policy” disputes. Despite Level 3’s arguments that its VNXX concepts are “FX-like” or “like” EAS or wireless or other telecommunications services or its imprecise claims that it is a victim of discrimination, Level 3 impliedly admits the revolutionary nature of its proposals by claiming “innovation.” Additionally, Level 3 has expressly admitted the existing state of telecommunications law regulating the status of VNXX is unsettled regarding “. . . how the exchange of traffic under foreign exchange or virtual NXX arrangements should be compensated in a multi-provider environment.” Hunt ex-parte letter, Exhibit 20.

These very same issues 3 and 4 in this arbitration proceeding are subjects of pending FCC proceedings. NPRM, pars. 97 and 115. The FCC has not endorsed the usage of VNXX codes, and has recognized that consideration of the usage of VNXX codes necessarily includes consideration of compensation issues. The FCC has these matters under consideration, but it has not made a decision or made any rules that support Level 3's claim that its traffic - all of it interexchange traffic - should be compensated as if it were local traffic.

CONCLUSION

Level 3's Petition for Arbitration should be denied. Most particularly:

1. The petition should be dismissed because SRT has fulfilled its obligations under Act section 251(a). Level 3 and SRT’s facilities are presently directly

interconnected. Level 3 is not entitled to a new agreement to impose new terms on the existing direct interconnection of the facilities existing between SRT and Level 3, an interconnection that Level 3 presently uses to deliver ISP traffic to its end users that are physically located outside SRT's local calling area.

2. The North Dakota Public Service Commission does not have jurisdiction to impose intercarrier compensation terms for the kind of interconnection arrangement desired by Level 3.

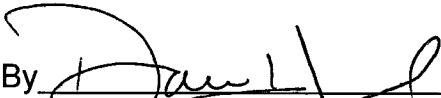
3. Level 3 has acknowledged the unsettled status of “. . . how the exchange of traffic under foreign exchange or virtual NXX arrangements should be compensated in a multi-provider environment [and] “that it is of critical importance for the [Federal Communications] Commission to settle issues such as whether state commissions have jurisdiction to rule on questions arising from the exchange of ISP-bound traffic between LECs . . .” Exhibit 20.

An interconnection agreement arbitration proceeding is not the appropriate forum to consider and decide issues that are currently pending before the FCC in other proceedings. See Petition of WorldCom, Memorandum Opinion and Order, CC Docket No. 00-218, paragraph 3, and NPRM, pars. 97, 115, 121 and 122. The FCC has these matters under consideration, but it has not made a decision or made any rules under the ISP Remand Order or in any other proceedings that compels or authorizes the North Dakota Commission to impose intercarrier compensation terms for the kind of interconnection arrangement desired by Level 3.

For these and all the other reasons presented in this brief, Level 3's Petition should be dismissed or denied.

Dated this 23rd day of December, 2002.

PRINGLE & HERIGSTAD, P.C.

By 

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CERTIFICATE OF SERVICE

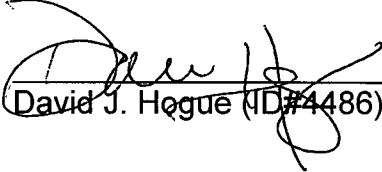
A true and correct copy of the foregoing **SRT COMMUNICATIONS, INC.'S POST HEARING BRIEF AND FINAL OFFER AGREEMENT** was, on the 23rd day of December, 2002, mailed to:

Swidler Berlin Shereff Friedman, LLP
Zenas Choi
3000 K Street NW, Ste. 300
Washington, DC 20007

Level 3 Communications, Inc.
Michael R. Romano
Director - State Regulatory Affairs
8270 Greensboro Drive. Ste. 900
McLean, VA 22102

N.D. Public Service Commission
William Binek, Commerce Counsel
600 East Blvd. Ave., Dept. 408
Bismarck, ND 58505-0480

Telecom Dispute Solutions, Inc.
Frank Lamancusa
17721 Tree Lawn Drive
Ashton, MD 20861



David J. Hegue (ID#4486)

THIS AGREEMENT IS ADAPTED FROM
LEVEL 3'S INITIAL PROPOSED AGREEMENT. AS
ARGUED IN ITS BRIEF, SRT DOES NOT AGREE
LEVEL 3 IS ENTITLED TO AN INTERCONNECTION
AGREEMENT. SRT SUBMITS THIS AGREEMENT
UNDER SECTION 69-02-10-27, NDAC.

MUTUAL TRAFFIC EXCHANGE TELECOMMUNICATIONS INTERCONNECTION
AGREEMENT

This ~~Mutual Traffic Exchange Telecommunications~~
Interconnection Agreement ("Agreement") is made effective on the
date this Agreement has been executed by and between SRT
Communications Inc. ("ILEC"), and Level 3 Communications, LLC
("Level 3"). ILEC and Level 3 may collectively be referred to as
"Parties," and each individually may be referred to as a "Party."

Comment: "TELECOMMUNICATIONS INTERCONNECTION AGREEMENT" is an
accurate description of the arrangement.

In consideration of the mutual obligations set forth below,
the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to arrange for the exchange
of Information Access Traffic (Traffic) between the Parties
ensure and the seamless completion of calls between from ILEC's
customers, located within ILEC's incumbent serving local exchange
areas and to Level 3's Internet Service Provider customers,
(ISPs) located both within and outside of ILEC's incumbent
servicing local exchange areas. This agreement provides only for
the exchange of Information Access Traffic where 1) the calling
parties are ILEC's end user customers of telephone exchange
service who are also end users of internet service provided by
Level 3's ISP customers, 2) the called parties are Level 3's ISP
customers having modems, servers and similar equipment that is
physically located outside of ILEC's local exchange areas, and
3) where the Parties have arranged for the Direct Inward Dialing
(DID) to Level 3's ISP customers and for the traffic to be
transported over dedicated facilities. Level and ILEC agree to

exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. The interconnection and exchange of traffic arrangements are partially illustrated on Exhibit A, attached to this Agreement.

Comment: *The scope of the agreement describes the limited arrangement desired by Level 3, an interconnection for the exchange of Information Access Traffic, or more specifically, ISP traffic.. The arbitration hearing record establishes as an undisputed fact that Level 3 desires an interconnection to facilitate only its DID service to its only customers, ISPs that are physically located outside SRT's local calling area. See prefiled testimony of Level 3 witness William P. Hunt, p 5, l 9- p 6, l 8 and p 33, l 8, and p 35, l 14-20. .*

Should Level 3 desire to offer other telecommunications services (other than to ISPs located outside ILEC's local exchange area) that require interconnection with the facilities of ILEC, the Parties will engage in good faith negotiations to establish interconnection and compensation arrangements for such other services.

Comment: *This agreement to facilitate Level 3's service to its ISP customers would not foreclose Level 3 from offering other services in the future that require interconnection with SRT's facilities.*

Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgment or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense.

Comment: Self explanatory.

Section 2. Interconnection, Routing, Exchange, and Completion of Traffic

2.1 The Parties agree to directly interconnect their respective facilities at ILEC's central office switch as the point of interconnection ("POI"). For purposes of the interconnection, Level 3 will lease ILEC's available facilities. Pursuant to Sections 251 (a) and) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties' networks, subject to the requirements herein.

Comment: The arbitration hearing record establishes as an undisputed fact that Level 3 desires a direct interconnection and that Level 3 would lease facilities from SRT. See prefiled testimony of Level 3 witness William P. Hunt, p 18, l 16-23 and of Level 3 witness Rogier Ducloo, p 7, l 4 -- p 8, l 22, and related exhibit RRD-1. See also Level 3 Response to SRT's interrogatories, response #9 and attachment #9, admitted in the hearing record as part of Exhibit 23, Tr. Pp 161-164. The verbiage in Level 3's first offer regarding common trunks and other carriers' tandem switches is moot.

2.2 ILEC will assign to Level 3 a block of NXX codes (telephone numbers) out of the 701-420-XXXX block of numbers previously assigned to ILEC by the Numbering Plan Administrator. ILEC has previously assigned and Level 3 has previously used numbers in the 701-420-1900 through 1950 block; ILEC will reserve those numbers for Level 3's use under this Agreement. In addition, ILEC will reserve for Level 3's use under this agreement one thousand numbers in the block 701-420-4000 through 4999, so long as this Agreement remains in effect. Level 3 will reassign numbers in the 701-420-1900 through 1950 and 701-420-4000 through 4999 blocks only to Level 3's ISP customers and only for DID calling to Level 3's ISP customers having modems, servers and similar equipment that is physically located outside of ILEC's local exchange areas.

Comment: SRT's assignment of numbers assigned to it by the Numbering Plan Administrator would continue existing arrangement between SRT and Level 3 under which Level 3 is providing service to its ISP customers. Reservation of additional numbers would serve Level's expectation of increasing numbers of ISP customers, utilizing the 4000 series that Level prefers. See also comments under proposed section 3.1 and under proposed deletions from Level 3's original proposed section 2.2, below.

ILEC will route to the POI established under this Agreement calls from all ILEC's 25 local exchange areas to DID numbers in the 701-420-1900 through 1950 and 701-420-4000 through 4999 blocks for transport by Level 3 to its ISP customers' modems, servers and similar equipment that is physically located outside of ILEC's local exchange areas.

Level 3 is responsible for the transport facilities from the POI. Level 3 shall lease facilities available from ILEC at ILEC's tariffed rates provided ILEC shall not be required to build new facilities.

Level 3 will be responsible for all transport and related services required from any third party carrier.

ILEC will provide SS7 signaling services to Level 3 appropriate to Level 3's service to its ISP customers, provided that ILEC shall not be obliged to upgrade any of its existing facilities or third party services.

Comment: The preceding four paragraphs of this section adopt Level 3's proposals that it would lease facilities from SRT. See prefiled testimony of Level 3 witness Rogier Ducloo, p 7, l 4 -- p 8, l 22. Ducloo, and related exhibit RRD-1. See also Level 3 Response to SRT's interrogatories, response #9 and attachment #9, admitted in the hearing record as part of Exhibit 23, Tr. Pp 161-164. Level 3 has also requested an SS7 signaling service as part of the proposed agreement with SRT. See Ducloo hearing testimony at p 75, l 3; Ducloo prefiled testimony at 2-3. SRT does not presently provide SS7 signaling to Level 3.

~~Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and~~

~~intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party's NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subjection.~~

Comment: Under SRT's offer under section 2.2, above, SRT's would re-assign to Level 3 numbers assigned to SRT by the Numbering Plan Administrator for DID calling to Level 3's ISP customers. "Rating" is addressed under SRT's proposed section 3.1, below. Under SRT's offer under section 2.2, Level 3 would not obtain NXX codes associated with SRT's local calling area for use by Level 3 under its "VNXX" and/or related "FX-like" concepts. SRT suggests this not only as a "trade-off" (see comments under SRT's proposed section 3.1 below, but also because of substantial doubts about the North Dakota Public Service Commission's jurisdiction to effect "VNXX" calling.

~~2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds of traffic for three consecutive months (the "Threshold"), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement).~~

~~2.4 At such time as the total amount of Traffic between the Parties exceeds the Threshold, or as may otherwise be mutually agreed to by the Parties, the Parties will begin to implement arrangements for direct interconnection of their respective networks. Such interconnection may be achieved by any technically feasible means, including but not limited to the use of either Party's own facilities or the leasing of facilities from a third party carrier. The Parties shall negotiate in good faith and in a prompt manner to establish a mutually agreeable Point of Interconnection ("POI") where their owned or leased facilities will be interconnected for the routing of, all Traffic between~~

~~them; provided, however, that this POI shall be located within ILEC's incumbent serving area or at ILEC's incumbent serving area boundary.~~

~~2.5 Should any dispute arise with respect to the establishment of the POI under Subsection 2.4, the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.~~

Comment: As noted in connection with SRT's proposed section 2.1, The arbitration hearing record establishes as an undisputed fact that Level 3 desires a direct interconnection. The verbiage in Level 3's first offer regarding common trunks and other carriers' tandem switches and transition to direct connection is moot.

2.63 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

2.4. ILEC shall not be obliged to route any calls or to facilitate the routing of any calls to a 701-420-NXX number assigned to Level 3 other than to the POI and interconnected transport facilities dedicated to Level 3's DID ISP customers. Level 3 shall not be privileged to route any calls or to facilitate the routing of any calls to a 701-420- NXX assigned to Level 3 other than DID calls to its ISP customers.

Comment: This proposed addition reiterates the limited scope of the interconnection agreement sought by Level .

Section 3. ~~Compensation for Local Traffic and Information Access Traffic~~

Notwithstanding custom and usage in the telecommunications industry or any provisions in the Local Exchange Routing Guide ("LERG"), DID calls from end users in ILEC's local exchange areas to Level 3's ISP customers having modems, servers and similar equipment that is physically located outside of ILEC's local exchange areas shall not be rated as local calling subject to ILEC's local service charges payable by Level 3 and shall not be rated as interexchange calling subject to intercarrier compensation subject to originating access charges. The Parties specifically agree that the limited scope of this agreement is reasonable cause to establish compensation arrangements appropriate to the circumstances.

3.1 Level 3 will pay to ILEC an interconnection fee of Fifteen Dollars and Ninety Five Cents (\$15.95) per month, without regard to the numbers of NXX codes assigned by Level 3 to its ISP customers and without regard to end users' calling volumes.

Comment: From the beginning of negotiations in March of 2002 through the arbitration hearing, SRT has held two important principles. 1) That SRT is entitled to intercarrier compensation under access charge rules where calls originating in SRT's local calling area are carried by Level 3 for termination to its ISP customers outside SRT's local calling area. 2) That Level 3 should not obtain from the Numbering Plan Administrator numbers associated with SRT's local calling area and use those numbers for rating as local calls that are in fact routed and terminated to Level 3's ISP customers outside SRT's local calling area. Stated otherwise, where Level 3 carries traffic from one calling area to another, it is not entitled to "free" access that applies to local traffic, under 47 CFR 51.703. (b) SRT's principles stand

in sharp contrast to Level 3's proposals, that Level should avoid ("bypass") intercarrier compensation obligations by SRT's being compelled to rate as local calls that are in fact routed and terminated to Level 3's ISP customers outside SRT's local calling area. The contrast is made stark by realization that Level 3 proposes an interconnection only to facilitate DID service to Level 3's only customers, ISPs that are physically located outside SRT's local calling area. See prefiled testimony of Level 3 witness William P. Hunt, p 5, l 9- p 6, l 8 and p 33, l 8, and p 35, l 14-20.

In the context of the final offer arbitration process, SRT proposes a "trade-off." SRT will not charge Level 3 for intercarrier compensation under access charge rules where calls originating in SRT's local calling area are carried by Level 3 for termination to its ISP customers outside SRT's local calling area, nor will Level 3 receive "free" access. Instead, Level 3 would pay a nominal interconnection fee, (The \$15.95 is the price of one basic business line in the Minot exchange area). On the others side of the trade-off, Level 3 would receive its interconnection for DID service to its ISP customers using numbers that the Numbering Plan Administrator has assigned to SRT.

3.2. Level 3 will pay to ILEC for each DS1 or DS3 trunk leased by Level 3 at applicable tariff rates for transport of Traffic from the POI to Level 3's ISP customers' modems or to a meet point with a third carrier as arranged by Level 3. Copies of ILEC's current tariffs are attached for reference.

3.3 Where Level 3 leases DS3 trunks for transport of Traffic, Level 3 will also lease DSI facilities for multiplexing. Level 3 will pay to ILEC for each DS1 facility at applicable tariff rates. A copy of ILEC's current tariff is attached for reference.

3.4 Level 3 will pay to ILEC a SS7 signaling fee of Five Hundred Twenty Dollars (\$520) per month per DS1 leased under section 3.2 or 3.3, in addition to the applicable tariff rates for DS1 facilities.

Comment: *The compensation terms proposed under sections 3.2, 3.3 and 3.4 are consistent with Level 3's testimony, that it would lease facilities from SRT. See prefiled testimony of Level 3 witness Rogier Ducloo, p 7, l 4 -- p 8, l 22.*

~~Because of anticipated de minimis nature of the Local Traffic to be exchanged between the Parties, Level 3 and ILEC agree to exchange Local traffic on a bill-and-keep basis, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Local Traffic. Level 3 and ILEC further agree to compensate one another on a bill-and-keep basis for the exchange of Information Access Traffic in accordance with the Order on Remand released by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Information Access Traffic.~~

Comment: This language from Level 3's first offer is stricken for two reasons. 1) Level 3 proposes an interconnection only to facilitate DID service to Level 3's only customers, ISPs that are physically located outside SRT's local calling area (See prefiled testimony of Level 3 witness William P. Hunt, p 5, l 9- p 6, l 8 and p 33, l 8, and p 35, l 14-20). So, references to "Local Traffic" (traffic that is not ISP traffic) are moot. 2) "Bill and keep" compensation is inappropriate because of substantial uncertainty whether the Order on Remand applies to ISP traffic where the ISP is not physically located in the same local calling area as a calling party, and bill and keep compensation is inconsistent with the "trade-off" concepts articulated under proposed section 3.1 (no "free" access).

Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (e.g., maintenance contact numbers, escalation contact information) to achieve reliability. ~~Should direct interconnection be employed pursuant to Section 2,~~ The Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

Comment: As noted in connection with SRT's proposed section 2.1, The arbitration hearing record establishes as an undisputed fact that Level 3 desires a direct interconnection. The verbiage in Level 3's first offer

regarding common trunks and other carriers' tandem switches and transition to direct connection is moot and stricken from Section 2, so it is appropriate to remove this cross-reference to Section 2.

4.2 To optimize the exchange of traffic under this Agreement, the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management and
overflow contingencies;
- b. the respective duties and responsibilities of the Parties with respect to the
administration and maintenance of the interconnections (including signaling);
- c. disaster recovery and escalation provisions;
- d. points of contact and escalation procedures for ordering, provisioning, billing, and maintenance;
- e. service ordering and provisioning procedures, including provision of the trunks
and facilities; and
- f. other network planning components including testing and provisioning intervals.

Section 5. Billing

5.1 ILEC shall bill Level 3 once per month all applicable charges under this Agreement. Level shall pay invoices within thirty (30) days from the bill date. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be made the next business day. Any amounts not paid when due shall bear interest from the date such amounts were due at the rate of one and one-half percent (1-1/2%) per month.

Comment: This is a business as usual provision about an important subject not addressed in Level 3's first offer.

Each Party shall keep adequate records relating to ~~Traffic usage and all other~~ facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written noticed. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

Comment: The reference to traffic usage is deleted as inconsistent with proposed section 3.1.

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

Section 7. Limitation of Liability and Indemnification

7.1 Neither Party shall be liable to the other for any lost profits or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited with respect to its indemnification obligations under this Agreement.

7.2 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In the event said loss, cost, claim, liability, damage or expense to third parties is the result of the fault, in whole or in part, of both Parties, the Parties shall be entitled to indemnification or contribution to the extent permitted by applicable state law governing the apportionment, if any, of said loss, cost, claim, liability, damage or expense. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

7.3 The Indemnified Party shall (i) notify the indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and

(ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense.

7.4 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

Section 8. Force Majeure

Neither Party shall be liable for any delay for failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay; provided, however, that the affect Party shall make commercially reasonable efforts to restore service as soon as practicable. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations during the delay.

Section 9. Agency

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

Section 10. Nondisclosure of Proprietary Information

10.1 The Parties desire to protect certain Proprietary Information, as defined herein, should it become necessary to exchange Proprietary Information during the term of this

Agreement. Proprietary Information shall include, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders or services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Act, and similar information. Furthermore, Proprietary Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; and (ii) information derived by the receiving Party from a disclosing Party's usage of the receiving Party's network. Proprietary Information is deemed prop to the disclosing Party and it shall be protected by the receiving Party in the same manner as t receiving Party would protect its own proprietary information. Proprietary Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

10.2 The receiving Party shall have no obligation to safeguard Proprietary Information (i) which was in the receiving Party's possession free of restriction prior to its receipt from disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by receiving Party, or (iii) after it is independently developed by personnel of receiving Party to whom the disclosing Party's Proprietary Information had not been previously disclosed. The receiving Party may disclose Proprietary Information if required by law, a court, or governmental agency; provided, however, that the receiving Party shall provide as much written and other notice as possible (as considered in the context of time frames identified in the legal requirement) to the disclosing Party prior to disclosing any information to the governmental entity so that the disclosing Party has an opportunity to consider the legal requirement.

Section 11. Notices

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:
Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Manager - Finance/Network Cost
Contact Phone Number: (720) 888-2876

FOR ILEC:
Business Name: SRT Communications, Inc.
Mailing Address: PO Box 2027
City/State/Zip Code: Minot ND 58702
Attention: General Manager/CEO
Contact Phone Number: (701)838-9707

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:
Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Michelle Krezek, Director-
Interconnection Services
Contact Phone Number: (720) 888-6330
Facsimile: (720) 888-5211

FOR ILEC:
Business Name: SRT Communications, Inc.
Mailing Address: PO Box 2027
City/State/Zip Code: Minot ND 58702
Attention: General Manager/CEO
Contact Phone Number: (701)838-9707
Facsimile: _____

or to such other location as the receiving party may direct in writing.

Section 12. Dispute Resolution

Should a dispute arise between the Parties with respect to

implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement, either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 12. Upon receipt of this notice, representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute. If these initial negotiations should fail to resolve the dispute within thirty (30) calendar days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President level (or other position with authority to negotiate and settle on behalf of each Party). If these second-tier negotiations should fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its customers, the affected Party may seek immediate relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its "obligations under this Agreement and shall not take any other action with respect to the disputed issue except as set forth in this Section 12. Furthermore, in the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner, and will not be withheld pending resolution of the disputed portion of any bill.

Section 13. Severability

If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which is invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

Section 14. Assignment

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any entity that the assigning Party

controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party whether by consolidation, merger, sale or otherwise, or in connection with a financing transaction.

Section 15. Entire Agreement

This Agreement, including all Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. No modification or waiver of any provisions of this Agreement shall be effective unless in writing and signed by both parties.

Section 16. Multiple Counterparts

This Agreement may be executed in counterparts and such counterparts shall together constitute one and the same instrument.

Section 17. Default

If either Party defaults in the payment of any undisputed amount, or if either Party materially breaches any other material provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may move to terminate this Agreement or suspend the provision of any or all services hereunder by providing a second written notice to the defaulting Party and to the State Commission thirty (30) days prior to the intended date of suspension or termination. Notice shall be posted by overnight mails return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period noted above, or the alleged default or violation is the subject of a good faith dispute, the other Party shall not terminate the Agreement or suspend service provided hereunder.

Section 18. Representations and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY (EXPRESS OR IMPLIED), WITH RESPECT TO THE SERVICES, FACILITIES OR ARRANGEMENT, PROVIDED HEREUNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE

IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

Section 19. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

Section 20. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

Section 21. Headings

The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

Section 22. Change of Law

In the event of a change in applicable law including, but not limited to, rulings by the FCC or the State Commission that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action.

Section 23. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the state of North Dakota, without regard to its conflicts of laws principles.

Comment: North Dakota is the appropriate jurisdiction for venue and choice of law.

Section 24. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

Comment: Self explanatory.

IN WITNESS WHEREOF, each Party having been advised by counsel,
the Parties hereto have caused this Agreement to be executed as
of the date(s) set forth below.

LEVEL 3 COMMUNICATIONS, LLC

[ILEC]

By: _____

By: _____

Printed Name: _____

Printed Name:

Title: _____

Title:

Date: _____

Date:

EXHIBIT A

Diagram and Level 3 response to SRT interrogatory Number 9 (part of exhibit 23)

SRT's Interrogatories and Request for Production of Documents

Request No. 9

Fully and completely describe the telecommunications facilities and equipment that Level 3 plans or proposed to interconnect with SRT's network.

Response: ***CONFIDENTIAL AND PROPRIETARY***

Level 3 proposes to interconnect with SRT's network by leasing multiplexed DS3 facilities from the Level 3 Routing Point in the Qwest Central Office in Bismarck to the SRT Central Office in Minot. The DS3's would be on fiber meet arrangements between SRT and Qwest. Level 3 also proposes to lease DS1 facilities from the multiplexing location to the SRT End Office Switch in Minot. Included as Attachment 9 is a diagram depicting Level 3's proposed interconnection with SRT's network.

Respondent:

Rogier Ducloo
Network Planning Manager
Level 3 Communications, LLC

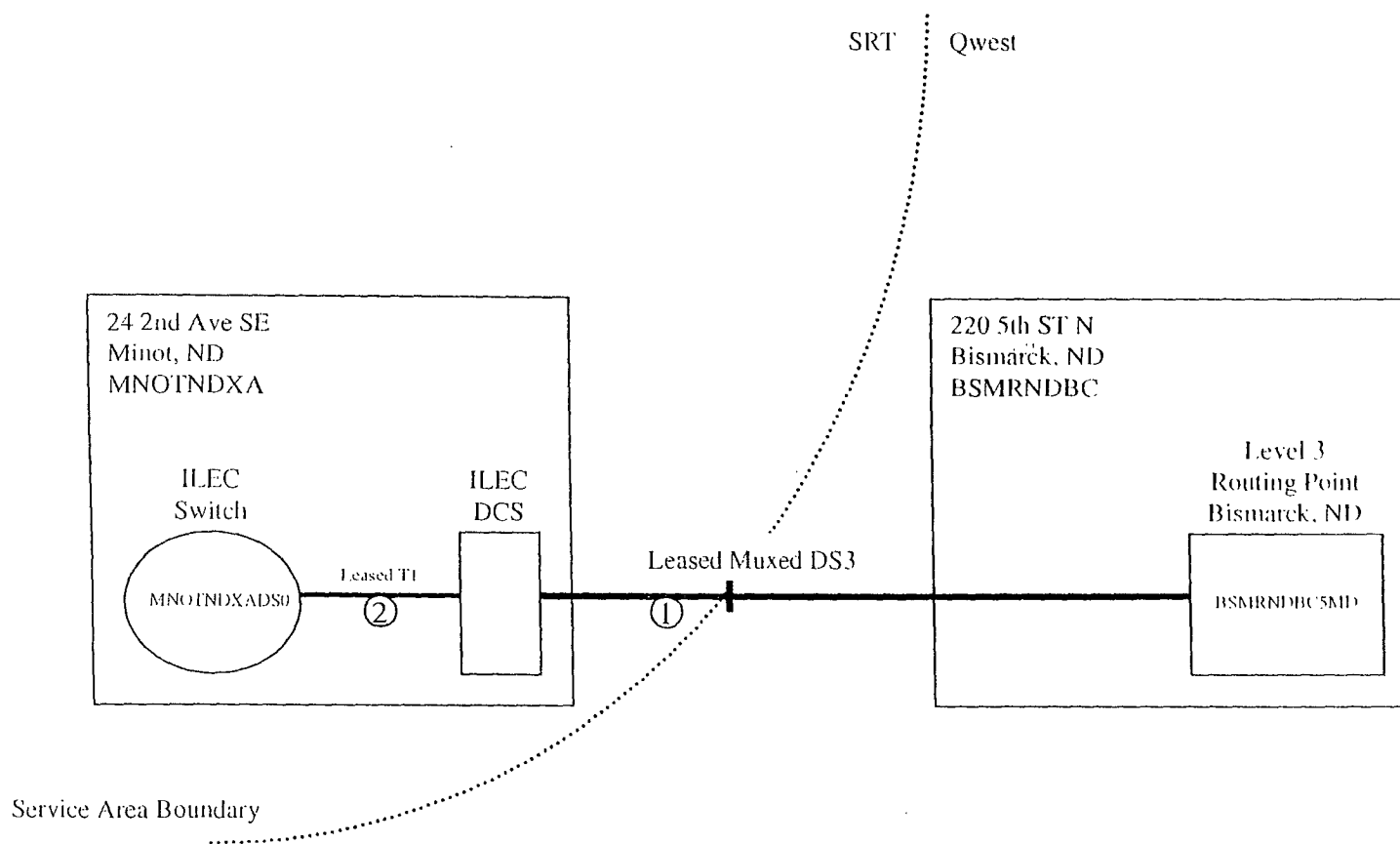
SRT's Interrogatories and Request for Production of Documents

ATTACHMENT 9

-- CONFIDENTIAL AND PROPRIETARY --

Level 3 Network Interconnection with SRT

deliver the difference
(3)



To interconnect with SRT's network, Level 3 will lease muxed DS3 facilities (1) from the Level 3 Routing Point in the Qwest Central Office in Bismarck to the SRT Central Office in Minot. The DS3's will be on fiber meet arrangements between SRT and Qwest. Both SRT and Qwest in North Dakota will receive monthly recurring revenue. In addition, Level 3 will lease the T1 facilities from the muxing location ("ILEC DCS") to the SRT End Office Switch in Minot (2).

CHANNEL TYPE HIGH CAPACITY: SUMMARY OF SPECIAL ACCESS ELEMENTS AND CHARGES

Handbook Page	Element	Rates	Discount Rates	Section	Tariff Page	Effective
7HC-2	Channel Termination	Monthly Rates		17.3.8(A)	17-26	
	- Per Termination (CDP and/or IC-POT)					
	- 1.544 Mbps (DS1)	\$ 178.83				07/02/02*
	- 3.152 Mbps (DS1C)	ICE				
	- 6.312 Mbps (DS2)	ICE				
	- 44.736 Mbps (DS3)	\$2,072.10				07/02/02*
	- 274.176 Mbps (DS4)	ICE				
7HC-4	Channel Termination					
	Capacity Discount Rates - Per Termination ¹					
	- Capacity of 3 DS3 (44.746 Mbps) Interface		\$1,585.16	17.38(A)	17-26	07/02/02*
	- per DS3 Channel Installed		\$1,232.90			07/02/02*
	- Capacity of 6 DS3 (44.736 Mbps) Interface		\$2,983.83	17.38(A)	17-26	07/02/02*
	- per DS3 Channel Installed		\$1,160.38			07/02/02*
	- Capacity of 12 DS3 (44.736 Mbps) Interface		\$ 4,848.73	17.38(A)	17-26	07/02/02*
	- per DS3 Channel Installed		\$ 942.81			07/02/02*
7HC-3	Channel Mileage ²					
	1) Channel Mileage Facility			17.3.8(B)(1)	17-26	
	- Per Mile					
	- 64 kbps ³ (DS0)	\$ 4.00				07/02/02*
	- 1.544 Mbps (DS1)	\$ 19.34				07/02/02*
	- 3.152 Mbps (DS1C)	ICE				
	- 6.312 Mbps (DS2)	ICE				
	- 44.736 Mbps (DS3)	\$ 133.12				07/02/02*
	- 274.176 Mbps (DS4)	ICE				
	2) Channel Mileage Termination			17.3.8(B)(2)	17-27	
	- Per Termination					
	- 64 kbps ³ (DS0)	\$ 40.20				07/02/02*
	- 1.544 Mbps (DS1)	\$ 95.34				07/02/02*
	- 3.152 Mbps (DS1C)	ICE				
	- 6.312 Mbps (DS2)	ICE				
	- 44.736 Mbps (DS3)	\$ 531.00				07/02/02*
	- 274.176 Mbps (DS4)	ICE				

NOTE: 1 Companies offering Capacity Discount Rates must be listed in NECA Tariff F.C.C. No. 5, Section 17.3.10 (B)(1).
2 When mileage measurement is zero, Channel Mileage Facility and Channel Mileage Termination rates do not apply.
3 Applies to through connection of 2.4, 4.8, 9.6, 56 and 64 kbps.

CHANNEL TYPE HIGH CAPACITY: SUMMARY OF SPECIAL ACCESS ELEMENTS AND CHARGES

Handbook Page	Element	Rates	Discount Rates	Section	Tariff Page	Effective
7HC-5	Term Discounts ⁴ 36 Months 60 Months		10% Discount 20% Discount	17.3.8(C)	17-27	01/16/93
7HC-7	Optional Feature and functions 1) Multiplexing			17.3.8(D)(1)	17-27	
	- Per Arrangement					
	- DS4 to DS1		ICB			07/01/96
	- DS3 to DS1		\$474.31			
	- DS2 to DS1		ICB			07/01/96
	- DS1C to DS1		ICB			07/01/96
	- DS1 to Voice		\$183.12			07/01/96
	- DS1 to DS0		\$183.12			07/01/96
	- DS0 to Subrates					
	- Up to 20 2.4 kbps services		\$390.00			07/01/97
	- Up to 10 4.8 kbps services		\$265.00			07/01/97
	- Up to 5 9.6 kbps services		\$235.00			07/01/97
	2) Automatic Loop Transfer					
	- Per Arrangement		\$158.00	17.3.8(D)(2)	17-29	07/01/97
	3) Transfer Arrangement					
	- Per 4 port arrangement (including control channel termination)		\$172.20	17.3.8(D)(3)	17-29	07/01/92
	4) Clear Channel Capability					
	- Per 1.544 Mbps Transmission Path		None	17.3.8(D)(4)	17-28	12/13/92
	5) Shared SONET Ring Interoffice Transport					
	- Per DS3 Channel Mileage Facility		None	17.3.8(D)(5)	17-28	06/01/98
7HC-1	Network Channel Terminating Equipment ⁴					
	- Per Termination where provided			17.3.8(E)	17-28	
	- 1.544 Mbps		\$89.60			07/02/93
	- Automatic Loop Transfer		\$360.00			07/01/97
7HC-7	DSL Access Service Connection			17.3.8(F)	17-28	04/01/99
	- Per 1.544 Mbps		None - \$180.00			
	- Per 44.736 Mbps		None - \$1,250.00			
NOTE:	4	High Capacity Term Discounts apply to Channel Terminations, Channel Mileage Facility and Channel Mileage Terminations. Companies offering Term Discount Rates must be listed in NECA Tariff F.C.C. No. 5, Section 17.3.10 (A) (1).				
	5	NCTE will only be provided under tariff if it existed in the exchange carrier's inventory at November 18, 1983.				

NOTE: 1003 - look at Section 750.

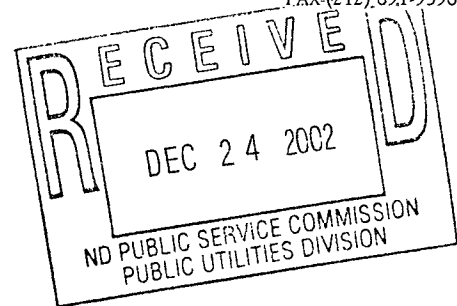
ORIGINAL

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December 23, 2002



VIA FAX & OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480

**Re: Petition of Level 3 Communications, LLC for Arbitration with SRT
Communications, Inc. – Case No. 2065-02-465**

Dear Mr. Mielke:

Enclosed are an original and seven (7) copies of an Errata to Level 3 Communications, LLC's Post-Hearing Brief in the above-referenced matter. Due to an inadvertent error, Level 3's Brief was sent to the Commission for filing without an original signature affixed to page 62. Accordingly, this Errata is submitted along with a signed replacement page 62 to be incorporated with Level 3's Brief.

Should you have any questions with respect to this matter, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamar E. Finn".

Russell M. Blau
Tamar E. Finn

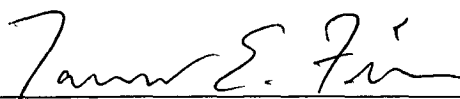
Counsel for Level 3 Communications, LLC

cc: Service List

discrimination among carriers to deny Level 3 the ability to provide the same service subject to the same rates, terms and conditions.

Respectfully submitted,

Level 3 Communications, LLC



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Tamar E. Finn
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and

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Director – State Regulatory Affairs
Level 3 Communications, LLC
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Tel: 571/382-7447
Fax: 571/382-7440
e-mail: mike.romano@level3.com

Its Attorneys

Dated: December 23, 2002

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2002, a true and correct copy of the foregoing was sent via fax and regular mail to the following individuals:

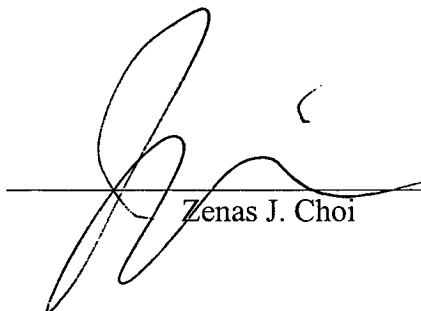
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Zenas J. Choi

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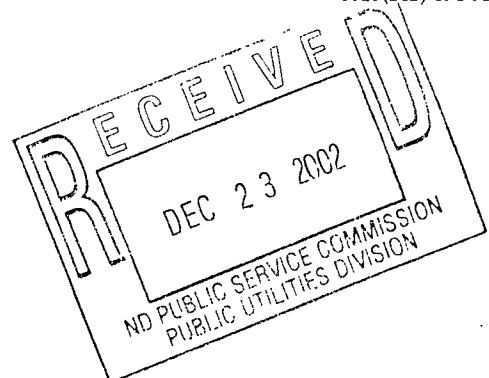
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December 20, 2002

VIA OVERNIGHT DELIVERY

Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept. 408
Bismarck, ND 58505-0480



**Re: Petition of Level 3 Communications, LLC for Arbitration with SRT
Communications, Inc. – Case No. 2065-02-465**

Dear Mr. Mielke:

On behalf of Level 3 Communications, LLC (“Level 3”), enclosed for filing are an original and seven (7) copies of Level 3’s Post-Hearing Brief in the above-referenced matter.

Kindly date-stamp and return the enclosed extra copy of this filing in the postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Zenas Choi at 202/295-8375.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tamar E. Finn".

Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications, LLC

cc: William P. Hunt
Rogier R. Ducloo
Timothy J. Gates
Michael R. Romano
Service List

53 PU-2065-02-465

Pages: 63

Post Hearing Brief

by Level 3 Communications, LLC

12/23/2002

CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of the Petition of)	
)	
Level 3 Communications, LLC)	
)	
For Arbitration Pursuant to	)	Case No. PU-2065-02-265
Section 252(b) of the Telecommunications)	
Act of 1934, as Amended, to Establish)	
an Interconnection Agreement with)	
SRT Communications, Inc.)	

LEVEL 3 COMMUNICATIONS, LLC'S
POST-HEARING BRIEF

Michael R. Romano
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Dated: December 23, 2002

Attorneys for
Level 3 Communications, LLC

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of the Petition of)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to) **Case No. PU-2065-02-265**
Section 252(b) of the Telecommunications)
Act of 1934, as Amended, to Establish)
an Interconnection Agreement with)
SRT Communications, Inc.)

LEVEL 3 COMMUNICATIONS, LLC'S
POST-HEARING BRIEF

Pursuant to Section 69-02-10-27 of the North Dakota Public Service Commission's ("Commission") Rules, Level 3 Communications, LLC ("Level 3") submits its Post-Hearing Brief in the above-captioned matter. Pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act"),¹ the Commission must resolve seven issues that are disputed in this arbitration between Level 3 and SRT Communications, Inc. ("SRT").

SUMMARY OF FACTS AND EVIDENCE

A. Parties and Procedural History

Level 3 is authorized to provide facilities-based local exchange and interexchange services in the State of North Dakota, including in SRT's serving area.² SRT is an incumbent local exchange carrier ("ILEC") for certain portions of the State of North Dakota. Within its operating territory, SRT has, at all relevant times, been an ILEC as that term is defined in

¹ 47 U.S.C. § 252(b).

² *Level 3 Communications, LLC Local Exchange/Interexchange Public Convenience and Necessity*, Case No. PU-2065-02-11, Order (ND PSC Mar. 13, 2002) ("*Level 3 CPCN Order*").

Section 251(h) of the Act.³ On March 26, 2002, SRT received from Level 3 a request for negotiation of an interconnection agreement. (Gates at 5:2-3) Level 3 timely filed its Petition for Arbitration on August 30, 2002. SRT filed a Motion to Dismiss and Response on September 25, 2002, and Level 3 filed an Opposition to the Motion to Dismiss on October 7, 2002. On November 20, 2002, the Commission denied SRT's motion to dismiss. At the hearing on December 9, 2002, Level 3 presented the testimony of three witnesses and SRT presented the testimony of three witnesses.

B. Level 3 Interconnection Proposal

Level 3 seeks to establish interconnection with SRT as a telecommunications carrier so that Level 3 may compete with SRT in the provision of limited services to Internet Service Providers ("ISPs"). (DuCloo at 3:20-21; Hunt at 5:13-17) Level 3 offers ISPs a Direct Inward Dial ("DID") calling capability, providing local connectivity to the public switched telephone network ("PSTN") that only a local telecommunications carrier certificated by a state commission may provide. (Hunt at 4:22-5:10) SRT provides a similar service that it calls One-way Inward Dialing ("OID"). (Gates at 25:6-10; Exhibit WPH-10) Level 3 publishes the rates, terms, and conditions for its DID services in its tariff filed with the Commission. (Exhibit WPH-11) Level 3 obtains local telephone numbers from the numbering administrator to provide local services, and participates in number pooling and local number portability ("LNP"), just as other local exchange carriers do (other than SRT).⁴ (Gates at 13:10-15:14) Level 3 also plans to offer other telecommunications services, including local voice services in 2003, and other services as they are developed and deployed in Level 3's softswitched Internet Protocol ("IP") network.

³ 47 U.S.C. § 251(h).

(Hunt at 5:25-6:2) However, Level 3 proposes to limit the scope of the Parties' interconnection agreement to the exchange of ISP-bound traffic, and will seek to reopen negotiations with SRT once it plans to begin offering additional services in North Dakota.

Level 3's DID service does not limit the customer to requesting DID in the local calling area in which they are physically located. (Hunt at 4:18-20) Therefore, the DID service can be used to provide a foreign exchange-like functionality—the same functionality as the foreign exchange (“FX”) services SRT and other ILECs provide to consumers.⁵ FX service provides customers with the ability to obtain a local presence in a calling area where they do not maintain a physical presence. ILECs, including SRT, offer similar, if not identical, FX and FX-like services to the ISP industry. (Gates at 21:17-22:14) Level 3 intends to offer its services primarily to ISPs who currently do not have points of presence in the exchange areas covered by SRT. Thus, consumers who otherwise would have to dial long-distance for access to these ISPs would benefit by the greater availability of options to reach ISPs by making a local call. (Hunt at 39:13-16)

In North Dakota, Level 3 has inherited some services as a retail customer of SRT as part of its acquisition of certain assets of McLeod USA Information Services, a company that was not a certificated telecommunications carrier. (DuCloo at 4:15-17) As such, SRT currently provides a retail FX-like arrangement to Level 3 as an end user customer. (DuCloo at 4:17-22; Sebby at 19:12-20:1) Level 3 purchases a retail service from SRT that gives Level 3 a Minot telephone number even though Level 3's modem banks are located in Bismarck. (DuCloo at 4:17-21) This is a retail FX-like arrangement provided in part by SRT and in part by Qwest.

⁴ SRT is not LNP capable, and thus is not able to participate in number pooling. (Tr. 199:7)

⁵ See Exhibits WPH-7 (NDTC and Qwest tariff excerpts) and WPH-12 (SRT tariff excerpts).

(DuCloo at 4:21-22) SRT does not impose originating access charges on Level 3 under this retail arrangement. (Hunt at 23:17-18) Nor does SRT impose access charges on any of its FX customers. (Tr. 139:20-23, 199:18-21)

In order to provide its own FX-like telecommunications service that supports the services of an ISP, Level 3 requires interconnection with SRT as a co-carrier. (Hunt at 5:13-17) Contrary to SRT's repeated allegations, from the very beginning of negotiations, Level 3 offered to interconnect with SRT, *directly* or indirectly, including the use of either Party's own facilities or the leasing of facilities from a third party carrier. (Tr. 191:10-14) Because of SRT's rural telephone company status and the network configurations in this specific case, Level 3 proposes to interconnect directly with SRT at SRT's Minot switch. SRT admits that it interconnects directly with CMRS carriers at its Minot switch. (Exhibits WPH-2 & 3) Under Level 3's proposal, Level 3 would bear responsibility for picking up the calls originated by SRT customers by leasing transport from Qwest to reach the meet-point between SRT and Qwest, and then leasing the remaining transport from SRT between the meet-point and the SRT switch. (DuCloo at 7:17-8:3; Exhibit RRD-1) This would be a dedicated trunk group.

Level 3 would pay SRT for this transport at its reasonable generally available rates, just as the CMRS carriers pay SRT "applicable tariffed charges" for transport under their direct interconnection arrangements. Level 3 will incur all transport and termination obligations beyond the SRT switch and is not seeking terminating compensation from SRT. Under Level 3's proposal, SRT need only deliver the traffic to Level 3 *at SRT's switch* (which is where it would take any local call of its own to start), and Level 3 will be responsible for the traffic from there. (DuCloo at 7:13-8:3) In exchange, SRT will not charge Level 3 originating access charges, and SRT will rate the calls as local for its end users.

C. SRT Refused to Negotiate

On April 19, SRT stated in response to Level 3's request for interconnection that it did not wish to meet with Level 3 and, instead, that Level 3 should contact the company's consultant at John Staurulakis, Inc. ("JSI"). (Gates at 6:15-19) Soon after, a letter was sent from SRT to Level 3 stating that SRT concurs in the position that JSI had identified in previous correspondence between Level 3 and JSI (with respect to dealings between Level 3 and other JSI clients) regarding similar Level 3 interconnection requests. (Gates at 7:3-6) Among other things, the letter stated that JSI did not believe that Level 3's request to interconnect to provide services to ISPs was valid, and that the FCC's rules do not allow requesting carriers to obtain interconnection solely for the purpose of offering information services. (Hunt at 11:9-12) Of course, this is in direct conflict with SRT's position that Level 3 is offering *telecommunications* services, but as an interexchange carrier. (Sebby at 5:3-9)

During the negotiations period, SRT never produced draft contract terms or commented on Level 3's proposed terms. (Hunt at 9:18-10:7) Although SRT had ample opportunity to propose contract language and raise any new or additional issues both during the negotiations period and in its Response, it was not until October 28, 2002 – nearly two months *after* the arbitration window closed - that Level 3 received proposed contract language from SRT as part of the Parties' information exchange under Rule 69-02-10-18. Among other things, SRT's proposed contract requires Level 3, but not SRT, to pay access charges to the originating carrier when the terminating carrier terminates a call to a FX-like customer.⁶ (*See* Exhibit WPH-13)

⁶ This further undermines the prior legal conclusions of JSI that Level 3 was not a telecommunications service provider, but rather an ISP – if Level 3 were an ISP in this case as JSI had theorized previously, it could not be compelled to pay access charges such as SRT is now seeking.

D. SRT Provides the Same “FX-Like” Service Level 3 Proposes to Provide

In addition to the FX-like service that SRT provides to Level 3 currently, SRT also provides a service to its own ISP that is substantially the same as the service that Level 3 seeks to provide to its ISP customers. SRT has direct interconnection arrangements to exchange EAS traffic with two ILECs that are contiguous to the SRT service territory. Customers in the northeastern corner of the SRT service territory have EAS arrangements with four exchanges in the service territory of Turtle Mountain Communications, Inc. (“TMC”). (Tr. 219:12-17; Exhibit WPH-6) Customers in the southeastern corner of the SRT service territory have EAS arrangements with three exchanges in the service territory of North Dakota Telephone Company (“NDTC”). (*Id.*) Thus, for example, a TMC customer in the Souris exchange may call an SRT customer in the Landa exchange, and have the call between two different exchanges rated as a local call. (Tr. 221:7, 19-25-222:1) Similarly, an NDTC customer in the Velva exchange may call an SRT customer in the Sawyer exchange, and have that interexchange call rated as a local call. (Tr. 223:4-7) These calls are exchanged at a meet point over EAS trunk groups and each LEC is financially responsible for the transport on its side of the meet point at the SRT exchange boundary. (Tr. 224:16-225:2)

SRT has an affiliate that provides Internet access service, North Dakota Network Company (“SRT-ISP”). (Tr. 218:21-3; Exhibit WPH-14)⁷ SRT-ISP has a single modem pool to serve its entire service territory, and that modem pool is located in Minot. (Tr. 227:6-8) SRT has established unique local access telephone numbers for SRT-ISP subscribers in each of the 25 SRT exchanges. (Level 3 Exh. 6; Tr. 226:21-227:5) These local access numbers are also accessible by the TMC and NDTC customers in the EAS exchanges on the border of the SRT

service territory. (Tr. 227:12-19) Thus, a TMC or NDTC customer may subscribe to SRT-ISP, dial the local access telephone number associated with the EAS exchange, have the call routed to SRT-ISP's modem pool in Minot, many miles away, and have the call rated as a local call to the end user and to SRT-ISP. (*Id.*, Tr. 255:7-256:3) Yet if the same call were made between the EAS exchange and Minot the call would be rated as toll. (Tr. 256:4-7) Thus, SRT-ISP has no facilities in the exchange in which SRT has EAS arrangements, yet a call to SRT-ISP is accessible by a TMC or NDTC customer on an FX-like basis, and the interexchange call terminates at SRT-ISP's modem pool in Minot.

The amount of traffic to SRT-ISP using these arrangements is significant. SRT has established a unique trunk group between Bottineau and Minot to handle only ISP-bound traffic originated by TMC customers. (Tr. 233:8-21; Level 3 Exh. 1; WPH-3-12) Moreover, the average hold time of a call over the EAS trunk group from NDTC is significantly higher than the average hold time across all SRT trunk groups, indicating the presence of ISP-bound traffic on the EAS trunks between NDTC and SRT. (Tr. 229:5-21; 233:3-7; Level 3 Exh. 1, RRD-2) SRT pays no originating access charges to either NDTC or TMC for traffic carried over these EAS trunks. (Tr. 227:18-19)

The service SRT provides to its own ISP is unmistakably an "FX-like" service. SRT provides its own ISP affiliate a service that: (1) provides the SRT-ISP with a telephone number rated to a specific exchange in which the SRT-ISP has no physical presence, (2) permits callers served by other LECs to place interexchange calls to access the SRT-ISP but have the call rated as a local call, and (3) requires SRT to pick up the traffic at its service boundary and transport it to the SRT-ISP modem pool physically located in an SRT exchange other than the one

⁷ Oddly enough, the same entity that is the SRT-ISP also provides wireless service in North Dakota and has

associated with the telephone number dialed. SRT neither receives terminating compensation from the LEC originating the call, nor pays originating access charges to the LEC originating the call. A call from Velva to the Sawyer number associated with the SRT-ISP, for example, never even touches the Sawyer exchange; it would be routed from Velva to Rugby, and then from Rugby to Minot, where it terminates at the SRT-ISP modem pool in Minot.

This is the same service that Level 3 proposes to provide, with one significant difference. Level 3 will incur the transport cost from the Minot switch, rather than from SRT's service boundary as SRT provides to its own ISP. It would be blatantly discriminatory to impose restrictions on the service proposed by Level 3 when SRT provides a virtually identical product.

SUMMARY OF LAST AND FINAL OFFER ARBITRATION AGREEMENT

Pursuant to Section 69-02-10-27 of the Commission's rules, in this section, Level 3 summarizes its Last and Final Offer, which is attached hereto as Exhibit A. Level 3's initial contract proposal was attached as Exhibit A to Level 3's Petition for Arbitration. Level 3 has updated its proposed contract language to reflect the discussions between the parties through the course of the proceeding.⁸ The changes that Level 3 proposes to its initial contract offer are shown by strikethrough (deletions) and double-underline (additions).⁹

The initial section of Level 3's proposed contract defines the scope of the Agreement. In particular, Section 1 states that the purpose of the Agreement is to ensure the seamless

an interconnection agreement with SRT. (Tr. 218:21-3)

⁸ See Sections 69-02-10-27 and 69-02-10-08 of the Commission's Rules which set forth the requirements for the filing of briefs and the last and final offer arbitration agreement. See also Section 69-02-10-26 which encourages the parties to continue negotiating up to, and beyond, the date of submission of the last and final offer arbitration agreement.

⁹ See Level 3 Post-Hearing Brief – Exhibit A.

completion of calls between the parties' customers, and to exchange ISP traffic without disruption or delay. Section 1 also clarifies that Level 3 is not seeking to lift or modify any rural or small carrier exemptions that are consistent with the Act.¹⁰

Section 2 of Level 3's proposed contract reflects the parties' obligations under paragraph 997 of the FCC's *Local Competition Order*.¹¹ Under Section 2, the parties agree to interconnect directly and work cooperatively to implement the most effective and cost-efficient routing of ISP traffic between their respective customers and networks. Call routing and completion is further addressed in Section 2.7, which memorializes the parties' understandings with respect to the exchange of SS7 signaling information.

Interconnection architecture is addressed in greater detail in Sections 2.3 through 2.6, and 4.1. These contract provisions establish the point of interconnection and set forth the parties' rights and responsibilities in connection with the establishment of the POI. The schedule for implementation of the contract is in Section 4.2, which requires the formation of an "Implementation Team" made up of the parties' representatives within 10 business days of the execution of the Agreement to plan the interconnection and business process.¹² Section 4 also addresses the goals of minimizing call blocking and other network disruptions.

Section 3 addresses intercarrier compensation. Under Section 3, the parties agree to compensate one another using "bill and keep" for the exchange of ISP traffic in accordance with

¹⁰ 47 U.S.C. § 251(f).

¹¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996), at ¶ 997 (subsequent history omitted).

¹² *See* Section 69-02-10-28(3) requiring that the last and final offer arbitration agreement provide a schedule for implementation of the terms and conditions by the parties to the agreement.

the FCC's *ISP Order on Remand*.¹³ Section 2.2 further clarifies the regulatory classification of traffic to be exchanged between the parties by incorporating by reference a list of NXX codes that should be rated for billing and compensation purposes as local based on the rate center designation of the NXX code in the LERG.

Although the proposed contract contemplates no compensation for the exchange of ISP traffic, to the extent charges may become due for services rendered, billing and collection is addressed in Section 5. Section 5 states that the parties agree to keep records for 12 months. Section 5.1 also permits either party to request audits of usage data upon written request. Section 5.2 states that normal rules and regulations apply to the provisioning and recording of billing records, and that back-billing is limited to 90 days.

The term of the Agreement is established in Section 6. Level 3 proposes an initial term of two years from the execution date of the contract, with successive automatic one year renewal periods absent written notice 135 days prior to expiration. Section 6 clarifies that the Agreement will remain in effect beyond the expiration of the initial term while negotiations for a successor agreement proceed. Sections 7 through 23 set forth general terms and conditions including, but not limited to, provisions governing limitations of liabilities, confidentiality/nondisclosure, dispute resolution, assignment, default, representations and warranties, and changes of law.

The factual and legal authority that supports adoption of Level 3's proposed contract terms is set forth in the discussion of each issue presented to the Commission for arbitration. Level 3 requests that the Commission resolve each issue by adopting Level 3's Last and Final

¹³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order (rel. Apr. 27, 2001) ("*ISP Remand Order*"), ¶ 81.

Offer contract language relating to each issue, as identified by the section references to Level 3's Last and Final Offer Agreement within each issue header.

ARGUMENT

Issue 1: Has SRT satisfied its duties under the Communications act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request? (Level 3 Agreement §§ 1, 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 4.1, and 4.2)

SRT has not satisfied its duties under Sections 251(a) and 252 to interconnect with Level 3. Neither party disputes that Section 251(a) imposes a general duty on all telecommunications carriers to interconnect, directly or indirectly, with the facilities and equipment of other telecommunications carriers.¹⁴ However, SRT claims that it meets its duty to interconnect indirectly with Level 3 under Section 251(a) by virtue of both parties' connection to the Public Switched Telephone Network ("PSTN").¹⁵ SRT also claims that it is directly interconnected with Level 3 by virtue of the fact that it provides Level 3 with a *retail* ISDN service offered under SRT's tariffs filed with the Commission.¹⁶ SRT is wrong in both regards.

A. SRT is not indirectly interconnected with Level 3.

SRT is not indirectly interconnected with Level 3 simply because both parties are connected to the PSTN. SRT points out that paragraph 176 of the FCC's *Local Competition Order* refers to interconnection as "the physical linking of two networks." (Sebby at 6:9-10) SRT also notes that the FCC's adoption of the Federal Regulations to implement the Act defines the term "interconnection" as the physical linking of two networks for the mutual exchange of

¹⁴ 47 U.S.C. § 251(a); *see Meredith* at 12:2-3.

¹⁵ SRT Response to Level 3 Interrogatory No. 1.

¹⁶ SRT Response to Level 3 Interrogatory No. 1.

traffic. (Sebby at 6:10-14; Meredith at 6:2-3) As Mr. DuCloo explains, indirect interconnection requires a mutually agreed upon physical linking of the parties' networks - one that would in most instances involve a designated third party carrier to facilitate the exchange traffic between them. (DuCloo at 10:7-23)

Level 3 interconnects indirectly to exchange traffic with a number of independent LECs nationwide by using the Bell Operating Company ("BOC"), such as Qwest, as the transit carrier. (DuCloo at 10:7-9) Under such an arrangement, both the independent LEC and Level 3 are directly interconnected with the BOC's tandem switch and each party has its own interconnection agreement or arrangement with the BOC. (DuCloo at 10:9-11) If SRT and Level 3 were to follow this typical indirect interconnection model, SRT would be responsible for delivering a call destined for a Level 3 customer to Qwest's tandem in Bismarck. (DuCloo at 10:11-13) SRT would hand the call off to Qwest at Qwest's tandem. (DuCloo at 10:15) The call would be switched through Qwest's tandem onto its interconnection trunks with Level 3. (DuCloo at 10:15-17) The call would be transported across the interconnection trunk into Level 3's network. (DuCloo at 10:15-17) Level 3 would then switch the call and terminate the call to its ISP customer. (DuCloo at 10:18-19) While this is the typical indirect interconnection model, the question of whether SRT would be willing to satisfy the indirect interconnection duty established under Section 251(a) is unclear because SRT has not even engaged in discussions with Level 3 to determine to what extent it is possible to exchange traffic indirectly.¹⁷

Moreover, SRT's position that it satisfies its obligation under 251(a) by being connected to the PSTN would render section 251(a) meaningless. Mr. Meredith acknowledged that he

¹⁷ See DuCloo at 10:20. Indeed, during the pendency of this proceeding, Level 3 has remained hopeful that a direct solution could be established between the parties. Thus, Level 3 has yet to contact Qwest to determine for sure whether it will agree to transit this traffic.

knew of no LEC that was not connected to the PSTN. (Tr. 129:15-18) The reason, of course, is that the LEC's customers would be unable to talk to the customers of any other LEC, significantly impairing the value of its own network. The value of attaching your network to the network of other carriers is represented by "Metcalfe's Law": "each additional user adds more than a proportionate value to the network, because by being on the network she gives all other users the ability to interact with her."¹⁸ Stated another way, "the usefulness, or utility, of a network equals the square of the number of users."¹⁹ Thus, every LEC is already connected to the PSTN in order to maximize utility, so the requirement under Section 251(a) for indirect interconnection must require some additional obligation to a carrier if it is to have any meaning at all.

While it is true that Level 3 exchanges traffic on a co-carrier basis with many independent LECs through indirect interconnection arrangements, Level 3 approached SRT with a direct interconnection request for a number of reasons. First, given the volume of traffic Level 3 expects to exchange with SRT as a result of competing in the SRT serving area, Level 3 thought it would be in both parties' best interest to interconnect directly. (DuCloo at 9:16-17) Level 3 typically seeks to establish direct interconnection once a threshold of one DS1's worth of traffic is reached for three consecutive months. (Hunt at 17:20-22) In fact, this is the threshold agreed to between Level 3 and many ILECs in their interconnection agreements as a trigger for when direct interconnection would be required between Level 3 and the other carrier.

Second, Level 3 assumed that SRT would prefer to interconnect directly with Level 3 because of the fact that SRT and Qwest do not share a common EAS area and because there is a

¹⁸ See http://www.gsb.stanford.edu/cebc/pdfs/Metcalfe_Note.PDF.

¹⁹ See <http://www.mgt.smsu.edu/mgt487/mgtissue/newstrat/metcalfe.htm>.

great distance between SRT's and Qwest's switches. (Hunt at 17:23-25) In short, if Level 3 were to interconnect indirectly with SRT through Qwest, then SRT, as the originating carrier, would be responsible for transporting traffic originated by its customers over its trunks to the Qwest tandem and may be required to pay Qwest transit charges for switching the traffic from SRT to Level 3. (Hunt at 17:25-18:2) If Level 3 were interconnected directly with SRT as Level 3 has proposed, Level 3 would be responsible for all transport obligations from the SRT switch.

Thus, it seemed reasonable to Level 3 that SRT would actually *prefer* direct interconnection as a means of minimizing its own originating responsibility. In Level 3's experience, most independent LECs prefer to avoid the expense of indirect interconnection and would prefer that Level 3 pick up their originating traffic in the independent LEC's incumbent serving area. (Hunt at 18:2-4) Likewise, most independent LECs prefer direct interconnection because this would avoid the potential that any transit provider might look to SRT as an originating carrier for transit charge reimbursement. (Hunt at 18:4-7) To the extent SRT prefers to exchange traffic with Level 3 through indirect interconnection, Level 3 has expressed willingness to do so in a mutually agreed upon manner.

B. SRT is not directly interconnected with Level 3.

SRT is not directly interconnected with Level 3 either.²⁰ (Tr. 53:6-15) Presently, as a result of an acquisition of certain assets from McLeodUSA Information Services, Inc., Level 3 subscribes to meet point DS1s and PRI ISDNs from SRT as a *retail end user*. (DuCloo at 4:15-17; Tr. 53:12-16) Level 3 purchases these services from SRT as an end user for the purposes of completing calls to an ISP. Under the current arrangement, when a SRT end user dials a number

that SRT has assigned to Level 3, SRT will route the call through its switch over the PRI ISDNs that Level 3 purchases from SRT. (DuCloo at 4:17-19) The call would then be routed over transport that is jointly provided by SRT and Qwest to Level 3's customer modem location in Bismarck. (DuCloo at 4:19-21) At no point in this transmission does the call ever get routed through a Level 3 switching facility such that Level 3 could be considered a co-carrier in completing the communication – Level 3 is simply a retail subscriber of SRT's PRI ISDN service that Level 3 uses to deliver calls to ISPs. (DuCloo at 4:22-5:2)

Level 3 is no more “interconnected” and “exchanging traffic” with SRT today than any other retail customer of SRT might be. (DuCloo at 5:4-7) Until SRT interconnects with Level 3 as a co-carrier – that is, the parties exchange traffic between their two switches – the parties are not directly interconnected. (DuCloo at 5:7-8) Neither party disputes the fact that the services Level 3 purchases from SRT were considered retail end user services when they were being provided to McLeod. In fact, the McLeod Information Services entity was never authorized by this Commission to offer services as a carrier in the state of North Dakota. (Tr. 15:20-23) Nevertheless, SRT would have the Commission believe that just because Level 3 is authorized by the Commission to offer local exchange services, this somehow automatically converts the retail service into a wholesale direct interconnection arrangement. (Sebby at 36:16-37:6) Nothing could be further from the truth. Level 3 is the retail end user customer under the present arrangement, receiving services from SRT just like any other business. (Tr. 53:14-16; DuCloo at 5:4-7) It uses these services to receive calls and convert them for navigation through the Internet. This is indistinguishable from the retail end user arrangement SRT offered to McLeod before Level 3's acquisition of those assets.

²⁰ Cf. SRT Prehearing Statement at 1.

Section 251(a) makes unmistakably clear that it governs interconnection between telecommunications carriers. Thus, direct interconnection under that statute must involve an arrangement between two co-carriers, not a carrier and an end-user.²¹ (DuCloo at 5:1-8) Under the present retail services arrangement provided by SRT, Level 3 would not be able to obtain local numbers for SRT's Minot rate center from NANPA and, in turn, would not be able to assign its own telephone numbers to its customers. (Hunt at 16:14-15) Nor does the present arrangement permit Level 3 to handle traffic using its own switch. (Hunt at 16:15-16) Until SRT interconnects with Level 3 as a co-carrier, that is, until the parties exchange traffic between their two switches, the parties are not interconnected, directly or indirectly, and Section 251(a) is not satisfied. (DuCloo at 5:7-8)

From a network perspective, Level 3 has invested substantial capital in its IP network and its proprietary softswitch. (DuCloo at 6:15-16) In order to reap the benefits and optimize use of that investment, Level 3 must carry its ISP customers' traffic over its own network, using its own softswitch. (DuCloo at 6:16-18) Offering service to ISPs via the retail PRI ISDN services Level 3 purchases from SRT is not a cost-effective solution and impedes Level 3's ability to provide an alternative dial-up service to ISPs. (DuCloo at 6:18-20) When McLeod subscribed to these PRI ISDN services from SRT, it did not have an IP network with softswitch technology. (DuCloo at 6:20-22) Alternatively, if Level 3 cannot move traffic onto its own switching network and migrate away from the PRI-based retail services being used today, it may become too expensive to remain in SRT's serving areas at all – resulting in a situation where SRT would be at a loss of the entire revenue stream associated with Level 3's presence in this market, whether as a retail customer or co-carrier. (Hunt at 17:7-12) Of course, that may be an

²¹ By SRT's reasoning, Level 3 and Verizon would be directly interconnected in Virginia, for example, under

acceptable alternative to SRT, given that competition with its ISP affiliate would be significantly reduced.

It is worthwhile to note that the benefits of such an interconnection arrangement would come at no corresponding burden to SRT. Under Level 3's direct interconnection proposal, Level 3 would interconnect with SRT's network via leased multiplexed DS3 facilities from the Level 3 Routing Point in the Qwest Central Office in Bismarck to the multiplexing location in the SRT Central Office in Minot. (DuCloo at 14:21-15:1). Under this proposal, the DS3's would be on fiber-meet arrangements between SRT and Qwest, and both SRT and Qwest would therefore receive monthly recurring revenue. (DuCloo at 15:1-3) As part of this proposal, Level 3 would lease the DS1 facilities from the multiplexing location to the SRT End Office switch in Minot, resulting in additional revenue to SRT. (DuCloo at 15:1-5). Moreover, Level 3 would be picking up all the traffic at SRT's switch, and SRT would bear no more cost to transport a call to Level 3 than it bears today under the retail arrangement; (DuCloo at 7:1-3) or when it delivers any other locally-dialed voice, or ISP bound call originated by its end user customers for that matter.

C. SRT's refusal to directly interconnect with Level 3 is discriminatory.

SRT argues that "where a direct connection presently exists ... Section 251(a) does not impose on SRT the obligation to negotiate a different arrangement."²² SRT's argument must be rejected for three separate and independent grounds. First, as explained above, the parties' *networks* (e.g. switches) are not directly interconnected; the parties are simply not interconnected as telecommunications carriers. Second, the Section 252 negotiation and arbitration procedures

Section 251(a) because Verizon provides retail dial tone telephone lines for Level 3's office there.

²² SRT Prehearing Statement at 2.

apply to all Section 251 requests – including requests made under Section 251(a) and, even assuming for the sake of argument that the parties were already directly interconnected, nothing in Section 252 insulates an ILEC from negotiating a new interconnection arrangement.²³ Moreover, paragraph 997 of the *Local Competition Order* requires that the parties to an interconnection arrangement consider “*their* most efficient technical and economic choices” (emphasis added).²⁴ There is no support under state or federal law – nor can SRT cite to any – for the contention that an ILEC can refuse to discuss the terms and conditions for interconnection with a requesting carrier and dictate the conditions for interconnection based solely on the incumbent’s preferences.

Third, SRT’s unwillingness to directly interconnect with Level 3 is discriminatory in violation of Section 202(a) of the Act²⁵ and Section 49-21-07 of the North Dakota Century Code.²⁶ (Tr. 26:22-27:7) SRT discriminates against Level 3 in that it has negotiated direct interconnection agreements with other carriers, and directly interconnects with other carriers, but refuses to do so with Level 3. (Tr. 26:22-24) Specifically, SRT has entered into direct interconnection agreements with, and established direct interconnection to, a number of Commercial Mobile Radio Services (“CMRS”) providers. (Hunt at 7:20-22) These agreements provide, for example, that “SRT and WWC exchange calls between their networks and wish to establish Interconnection and Compensation arrangements for these calls.” (Hunt at 7:23-8:3) These interconnection agreements provide that SRT will exchange traffic with the CMRS

²³ *Level 3 Communications, LLC Interconnection Arbitration Application*, Case No. PU-2065-02-465, Order (N.D. P.S.C. Nov. 20, 2002) (“*Order Denying SRT’s Motion to Dismiss*”).

²⁴ *Local Competition Order* at ¶ 997.

²⁵ 47 U.S.C. § 202(a).

²⁶ N.D. Cent. Code § 49-21-07.

carriers as local traffic, even though the CMRS carriers trunk the traffic back to their network points of presence in Bismarck or Grand Forks. (Hunt at 8:3-7)

Level 3 proposes to interconnect directly at SRT's Minot switch – *i.e.*, Level 3 seeks to establish a point of interconnection between SRT's and Level 3's networks at SRT's Minot host switch. (DuCloo at 7:6-9). SRT has established direct interconnection arrangements with CMRS carriers that also identify SRT's Minot switch as the POI. (DuCloo at 7:9-12) Level 3 would also like to set up SS7 trunks to exchange signaling information with SRT, just like SRT has in place with the CMRS carriers. (DuCloo at 8:17-19; Tr. 233:22-234:2) Also, like the CMRS carriers, Level 3 proposes to purchase DS1 transport from SRT from the POI at SRT's switch, which combined with Qwest provided transport, would be used to carry SRT's traffic back to Level 3's network location. (DuCloo at 8:19-22).²⁷ As Mr. DuCloo explained at the hearing, this appears to be similar to the type of interconnection that Level 3 seeks.²⁸ (Tr. 70:9-10) For SRT to provide this type of interconnection to CMRS carriers, and to execute interconnection agreements with CMRS carriers, but not Level 3, is *per se* discriminatory.²⁹

There is no legitimate reason why SRT would negotiate direct interconnection arrangements for the exchange of traffic with Western Wireless under Section 251(a), but refuse to do so with Level 3. One significant difference between the interconnection arrangements

²⁷ According to Section 4.1 of the SRT/SRT Wireless interconnection agreement, SRT Wireless also purchases transport from SRT back to its network location in Bismarck. (Exhibit WPH-4-C-6)

²⁸ There is, however, at least one way to distinguish the interconnection requested by Level 3 and the interconnection provided to the CMRS carriers. SRT Wireless is physically collocated at SRT's Minot switch. (Tr. 217:17-20) Level 3 does not seek to impose collocation obligations on SRT, or any other obligation set forth under Section 251(c) for that matter. (DuCloo at 9:6-11; Hunt at 38:10-12; Exhibit WPH-3)

²⁹ Level 3 is not seeking to dictate the conditions where interconnection would occur, and does not seek interconnection "at any technically feasible point" as might be required under Section 251(c). (cf. Meredith at 14:15-19). However, to the extent SRT has offered interconnection arrangements similar to those Level 3 seeks to other requesting carriers, Level 3 believes it would be discriminatory not to allow Level 3 to interconnect under similar terms and conditions.

between Level 3 and SRT is that CMRS carriers typically originate more traffic than they terminate. (Hunt at 10:13-16) As a result, SRT is well aware that traffic exchanged between SRT and Western Wireless would result in reciprocal compensation payments from Western Wireless to SRT. (Hunt at 10:16-18) It is worth noting that SRT's reciprocal compensation rate is \$0.023450 per minute of use, or almost 2-1/2 cents per minute, which is more than 15 times higher than the reciprocal compensation rate tariffed by Qwest in North Dakota (\$0.001475). (Hunt at 10:19-22) Thus SRT obviously has a more significant financial incentive to interconnect with Western Wireless than with Level 3, but that does not excuse SRT from its legal requirement to interconnect with Level 3.³⁰ (Hunt at 10:22-24) The direct interconnection arrangements that SRT has established with CMRS carriers appear to be consistent with what Level 3 seeks to establish with SRT.

Moreover, SRT has also established direct interconnection with two neighboring LECs – NDTC and TMC, with whom SRT shares Extended Area Service (“EAS”) areas (together, “EAS ILECs”). (Hunt at 8:11-13) SRT exchanges FX-like traffic with these carriers on a bill and keep basis. (WPH-6) That is, SRT does not charge the EAS ILECs for originating traffic from SRT customers or for terminating traffic to SRT customers. This is important because both NDTC and TMC offer foreign exchange service to their customers. (Hunt at 8:19-20) In other words, SRT interconnects directly with independent LECs that provide FX services and exchanges traffic with them on a bill and keep basis, but refuses to do the same with Level 3. (Hunt at 8:21-23) Again, this is *per se* discriminatory in violation of state and federal law.³¹

³⁰ Level 3 has not requested reciprocal compensation pursuant to Section 251(b) of the Act, nor does it believe it is entitled to such compensation. Pursuant to the FCC's *ISP Remand Order*, Level 3 has offered to exchange traffic with SRT on a bill and keep basis.

³¹ See 47 U.S.C. § 202(a); N.D. Cent. Code § 49-21-07.

Further weakening SRT's position on this issue, SRT and the EAS ILECs are responsible for all transport obligations on each carrier's side of the SRT service boundary. (Tr. 224:16-225:19) Thus, for every EAS call to or from the EAS ILECs, SRT incurs a transport obligation between the SRT service boundary and the SRT switch in Minot. Level 3 has proposed that Level 3 will incur that transport obligation from the SRT switch in Minot to the SRT service boundary, so SRT's responsibility under an interconnection arrangement with Level 3 would be significantly less than its responsibility under its interconnection agreements with the EAS ILECs. Moreover, all calls between SRT and the EAS ILECs are necessarily interexchange, yet they are all treated as local calls.

While SRT allows other carriers to use local facilities under their local interconnection arrangements to exchange locally dialed calls, and while SRT continues to use its own local facilities to handle traffic destined for its own ISP customers, SRT would deny Level 3 a local interconnection agreement because of the ISP-bound nature of its traffic. Level 3 is asking that SRT interconnect like it would in the case of any other CLEC (or neighboring ILEC, for that matter) for the purposes of exchanging locally dialed calls between customers, including FX and FX-like traffic. The Commission should not sanction a regime under which SRT could grant itself or other carriers a preference in the type of interconnection used to exchange of traffic.

D. SRT's refusal to directly interconnect with Level 3 is a barrier to entry.

SRT cites to paragraph 997 of the FCC's *Local Competition Order* that states that "telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based on their most efficient technical and economic choices." (Meredith at 6:14-16) While Level 3 and SRT are both "telecommunications carriers"

as that term is defined in the Act,³² and both carriers would be parties to the interconnection arrangement, SRT takes the FCC's language to mean that SRT can impose its preferred manner of interconnection on Level 3 based solely on SRT's preferences. SRT would like the Commission to believe that Section 251(a) interconnection implies that SRT should be permitted to dictate the conditions of interconnection with Level 3 subject only to SRT's most efficient technical and economic choices. Nowhere in paragraph 997 does the FCC refer to interconnection based on the originating carriers' most efficient or economic choices.

Mr. Meredith asserted that his interpretation of assigning all interconnection choices to the originating carrier "was the only way I can . . . examine how the duty [to interconnect under 251(a)] can be fairly applied to both, both providers." (Tr. 125:24-126:1) Yet when presented with a hypothetical situation in which Level 3 would be originating all traffic and thus deciding unilaterally where it would deliver its traffic, Mr. Meredith asserted that "typical practice" would be to exchange traffic at a tandem switch, rather than at the point designated by Level 3. (Tr. 127:23-25) Since the SRT host switch in Minot is functionally similar to a tandem switch, Level 3's proposal is entirely consistent with "typical practice."

SRT's skewed interpretation undermines the intent of the negotiation and arbitration provisions of Sections 251 and 252. Indeed, under SRT's interpretation, a requesting carrier might never obtain an interconnection agreement – a scenario that "would run counter to the concept embodied in section 251(a) that all telecommunications carriers are required to interconnect."³³ Furthermore, because such an interpretation provides SRT an incentive to

³² 47 U.S.C. § 153(44).

³³ Recommended Order of the Arbitrator Concerning SRT's Motion to Dismiss at ¶ 22.

impose only the most expensive interconnection on requesting CLECs, SRT would be given free reign to impose barriers to competitive entry in violation of Section 253(a).

E. Level 3's interconnection request is consistent with the Public Convenience and Necessity.

State law also supports Level 3's request for direct physical interconnection with SRT. North Dakota Century Code Section 49-21-09 provides that the Commission may require interconnection of the facilities of two or more telecommunications companies for the exchange of telecommunications if the public convenience and necessity would be served.³⁴ As Level 3 has demonstrated in this proceeding, and as is highlighted in this brief, the public convenience and necessity would be served if the parties were to interconnect and exchange traffic, with no offsetting injury or detriment to the parties or the facilities involved.

In particular, there are a number of technical and economic reasons why the public would be deprived if Level 3 were denied the right to directly interconnect with SRT as a co-carrier. First, Level 3's interconnection choices are being driven by customer demand. (Tr. 84:24-85:2) Level 3's customers want one-stop shopping. (Hunt at 16:19) They want the ability to call Level 3 and know that Level 3 can provision a service or correct a problem with minimal need to rely on a third-party carrier, such as Qwest or SRT. (Hunt at 16:19-21) Level 3's customers also want the advantages of Level 3's state-of-the-art IP network, which Level 3 cannot provide in its entirety, unless the traffic is switched by Level 3's softswitch platform and carried on its IP network. (Hunt at 19-23) Finally, Level 3's customers prefer specific numbers that follow the same dialing pattern across the country. For example, an ISP may wish to have the number NPA-NXX-4111 in every local calling area where it offers its customers dial-up access to the

³⁴ N.D. Cent. Code § 49-21-09.

Internet.³⁵ (Hunt at 16:23-17:1) If Level 3 controls the assignment of numbers, it can guarantee that its customer gets the numbers it wants. If Level 3 is denied an interconnection agreement and SRT controls the number assignment, this would not always be possible. (Hunt at 17:3-4)

As a result of Level 3 being able to interconnect directly with SRT as a co-carrier rather than as an end user, consumers who might otherwise have to dial long-distance for access to these ISPs would benefit by the greater availability of options to reach ISPs by making a local call. (Hunt at 39:13-16) Under SRT's proposal, ISPs would have to install equipment in every independent LEC's local calling area to obtain local calling capability for their customers. (Hunt at 39:16-19) It is safe to assume that no ISP would do this any time soon due to the inefficiencies of such a network and the associated costs – costs that would ultimately be passed on to North Dakota consumers. (Hunt at 39:19-21) Moreover, SRT quite obviously has an incentive to make Level 3's provision of service to its ISP customers as expensive as possible in order to protect its own ISP affiliate from competition. By allowing Level 3 to interconnect with SRT as a co-carrier, the Commission will serve the public interest by promoting a competitive marketplace, customer welfare, and efficiency in the provision of telecommunications services. Pursuant to state and federal law, the Commission should require that the parties directly interconnect their networks for the exchange of traffic.

³⁵ SRT itself recognizes the virtues of assigning its ISP common number arrangements across multiple NXX codes. Its ISP has a common numbering scheme of NXX-0000 in all 25 SRT exchanges. Level 3 Exh. 6.

Issue 2: Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended? (Level 3 Agreement §§ 1, 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 4.1, 4.2, 5.1, 5.2, and 6-23)

Yes. As an initial matter, this issue has already been decided by the Commission. In denying SRT's Motion to Dismiss the Level 3 Petition, the Commission ruled that "the arbitration provisions in Section 252 are available for all 251 interconnections."³⁶ It follows that SRT had a duty to negotiate with Level 3 in order to frame the issues for the arbitration, and possibly avoid arbitration entirely.

Nevertheless, if somehow negotiation could be divorced from arbitration, SRT's argument fails. SRT suggests that it has fulfilled its legal obligations under Section 251(a) to interconnect, directly or indirectly, such that no negotiation for interconnection arrangements is necessary.³⁷ SRT ignores the fact that it is duty bound to observe the negotiation and arbitration procedures under Section 252, regardless of whether SRT believes it is directly or indirectly connected to Level 3.³⁸ Under SRT's interpretation of its duty to negotiate for interconnection under Sections 251(a) and 252, SRT could unilaterally dictate the terms by which any requesting carrier could interconnect to exchange traffic with SRT, or any other non-dominant carrier – or deny interconnection altogether.

Under Sections 251(a) and 252, SRT has a duty to negotiate fair and reasonable terms and conditions for interconnection with Level 3. Sections 251 and 252 of the Act govern interconnection, without limitation, between telecommunications carriers. (Hunt at 12:16-17)

³⁶ *Order Denying SRT's Motion to Dismiss* at 2.

³⁷ SRT Motion to Dismiss at 12.

Section 251 imposes on *all* telecommunications carriers a general duty to interconnect, and imposes additional obligations on certain classes of service providers, such as LECs and incumbent LECs. (Hunt at 12:17-19) Section 252 grants to the state commissions the authority to approve or reject *all* interconnection agreements and to mediate and arbitrate *all* interconnection disputes involving incumbent LECs. (Hunt at 12:19-21) Indeed, the clear language of the statute shows that the only prerequisite for invoking Section 252 is a request for interconnection made to an incumbent LEC.³⁹ Together, Sections 251 and 252 give the state commissions jurisdiction over all interconnection-related disputes, regardless of the nature of the interconnection requested under Section 251, and regardless of the telecommunications services – intrastate, interstate, or ISP-bound.⁴⁰ (Hunt at 12:22-13:2)

Despite the clear language of the relevant statutes, and the fact that the Commission has ruled that Section 252 provisions apply to all Section 251 interconnections, SRT presses on with its argument that it need not negotiate with Level 3 for interconnection arrangements. SRT bases its argument, in large part, on the mistaken belief Level 3 is an interexchange carrier that requests interconnection solely for the purposes of originating interexchange traffic, rather than for the provision of “telephone exchange” or “exchange access” as those terms are defined

³⁸ See Recommended Order of the Arbitrator Concerning SRT’s Motion to Dismiss at ¶ 19. “SRT ignores that the negotiation and arbitration obligations of telecommunications carriers are not limited exclusively to the provisions of section 251(c).”

³⁹ Section 252(a)(1) provides:

Upon receiving a request for interconnection, services, or network elements *pursuant to Section 251* ... an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and (c) of Section 251 ... The agreement ... shall be submitted to the State commission under subsection (e) of this section.

⁴⁰ See also N.D. Cent. Code § 49-21-02(8). “The Commission has the power to ... Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.”

in the Act.⁴¹ Apparently, SRT believes that since Level 3 does not intend to offer traditional two-way switched local exchange service in SRT's local and EAS service areas in the same manner that SRT would offer them, Level 3 is not entitled to negotiate an interconnection agreement with SRT.⁴² (Sebby at 8:12-9:10). SRT's arguments are wrong both as a matter of law and fact.

Because Level 3 has requested interconnection only under Section 251(a), and not under Section 251(c), and because Section 251(a) interconnection is not limited to "telephone exchange" or "exchange access" services, SRT's arguments are irrelevant and wrong as a matter of law. Even if Level 3 were operating as an interexchange carrier in delivering these services to ISPs – which it is not – SRT would still be required to interconnect with Level 3 under the terms of Section 251(a), which imposes a duty on "telecommunications carriers" generally, and not on local exchange carriers specifically. Intertwined with its duty to interconnect with Level 3 is the expectation that SRT engage in negotiations to establish reasonable terms and conditions for such arrangements. In this regard, Level 3 has proposed terms and conditions that are fair and reasonable, but SRT failed to offer any competing contract language or propose edits or counter-proposals to Level 3's proposed language in the timeframe set forth under Section 252 of the Act. (Tr. 38:25-39:18)

Moreover, SRT's arguments are factually incorrect because Level 3's proposed service is a local telephone exchange service that is consistent with its authority granted by this Commission. (cf. Sebby at 20:16-17) Level 3 is authorized to operate as a competitive local

⁴¹ SRT Motion to Dismiss at 11.

⁴² SRT Motion to Dismiss at 8.

exchange carrier in North Dakota.⁴³ Pursuant to this grant of authority, Level 3 intends to provide DID and private line services in North Dakota. Level 3's proposed DID service would provide its customers with the ability to connect to the PSTN in order to receive inbound calls from other users on the PSTN, just like SRT's one-way inward dial ("OID") service. (Hunt at 4:16-18) The DID service does not limit the customer to requesting DID in the local calling area in which they are physically located, just like SRT's OID service. (Hunt at 4:18-20) Therefore, the DID service can be used to provide a FX-like functionality to the customers where needed, and which provides the same functionality as the retail service SRT provides Level 3 today. Level 3's service is a local exchange service that is no different from SRT's OID service that it offers through its local exchange service tariff. (Hunt at 12:2-5)

SRT suggests that because Level 3 does not follow the "traditional CLEC model" (Meredith at 6:11), and does not offer two-way switched POTS service that SRT offers, in the same manner that SRT offers them, Level 3 is not a CLEC and is not entitled to interconnection with SRT. Nowhere in the Act does the FCC state that CLEC status is conditioned upon the duplication of services offered by the ILEC. Moreover, North Dakota law defines the term CLEC as "any telecommunications company providing local exchange services, whether by its own facilities, interconnection, or resale."⁴⁴ SRT admits that there is no statutory requirement that a CLEC provide two-way service. (Tr. 192:11-13) Level 3 is a telecommunications company proposing to offer a local exchange DID service, and has sought to interconnect with SRT via leased facilities to offer these services. The simple fact that Level 3 does not have POTS customers does not mean that it is not a CLEC. (cf. Sebyy at 12:6-19)

⁴³ *Level 3 Communications CPCN Order* at 2.

⁴⁴ N.D. Cent. Code § 49-21-01(2).

The Commission should find that SRT must establish interconnection arrangements with Level 3, just like SRT has negotiated to establish interconnection to other carriers providing services in SRT's local exchange areas, including neighboring LECs with whom SRT shares an EAS area and CMRS carriers. SRT's position is discriminatory in violation of Sections 202 and 252 because SRT has negotiated interconnection arrangements and entered into interconnection agreements with various CMRS carriers under Section 251(a) without asserting or waiving its rural exemption. (Tr. 26:22-27:7; Hunt at 7:18-20)

SRT claims that it does not discriminate against Level 3 when it denies Level 3 the same interconnection terms as CMRS carriers because Level 3 and CMRS carriers are not alike and "we do not have like service or like carriers here." (Tr. 113:9-10) This position is belied by the fact that SRT cites no authority for its position that CMRS carriers and Level 3 should be treated differently, and that SRT and the CMRS carriers are interconnected under 251(a) for the exchange of intraexchange and interexchange traffic. Thus, Level 3 is entitled to just and reasonable terms and conditions from SRT by virtue of Section 202(a) of the Communications Act of 1934, even if Section 251(c)(2)(D) is not applicable to the interconnection between SRT and Level 3.

In sharp contrast to SRT's approach to this issue, other independent LECs such as ALLTEL, Citizens, Commonwealth, TXU/Fort Bend Telephone, Chillicothe Telephone, and Valor have worked with Level 3 to establish mutually agreeable interconnection arrangements. (Hunt at 18:23-26) To date, Level 3 has entered into interconnection agreements with these carriers that have allowed Level 3 to establish direct interconnection in 35 rate centers that are located in 23 different LATAs. (DuCloo at 11:5-9). In fact, each direct interconnection arrangement Level 3 has entered into with these carriers has two common features – the POI

between the parties' networks is established within the independent LEC's incumbent serving territory, and each party is responsible for the transport facilities on its side of the POI. (DuCloo at 11:13-17) There may have been good faith differences of opinion between Level 3 and these other independent LECs during the negotiation process, but in each case, the parties were able to resolve their differences and complete an interconnection agreement without resorting to arbitration before a state commission. (Hunt at 18:26-19:2)

To facilitate SRT's interconnection obligations, Level 3 has proposed fair and reasonable contract language. Level 3's proposed agreement is not intended to supercede tariffed offerings that Level 3 might require from SRT to provide service. For instance, Level 3 may require tariffed transport services to interconnect with SRT, in which case Level 3 would pay the "applicable tariffed charges" for these services.⁴⁵ Instead, the agreement is aimed at establishing some very basic principles – such as ensuring the deployment of sufficient trunking capability at all times to minimize the likelihood of call blocking for consumers, as well as establishing the general terms and conditions that will govern dealings between the Parties.⁴⁶ In addition, the agreement would also provide SRT assurance that interconnecting with Level 3 does not impact SRT's rural exemption in any way.⁴⁷

The Commission should find that (i) SRT had a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection, (ii) SRT refused to negotiate requiring the parties to arbitrate its dispute, (iii) Level 3's proposed contract language

⁴⁵ See Hunt at 37:16-18.

⁴⁶ Level 3 Petition for Arbitration at 10.

⁴⁷ *Id.*

is fair, reasonable, and consistent with state and federal law, and (iv) Level 3's proposed contract language (as attached as Exhibit A) should be adopted in its entirety.

Issue 3: Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges? (Level 3 Agreement §§ 2.2, 3, and Exhibit A)

Issue 4: For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area. (Level 3 Agreement §§ 1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 3, 4.1, 4.2, 5.1, 5.2, and Exhibit A)

Level 3's proposed services are interexchange local services subject to the transport and termination arrangements in the *ISP Remand Order*. Calls to NXX numbers assigned to the same local calling area are subject to the interconnection and local service customer billing requirements applicable to local traffic.

A. The FCC's *ISP Remand Order* Controls All Issues Related to Intercarrier Compensation

The Commission must keep in mind that the only traffic that is at issue in this proceeding is ISP-bound traffic. Issues related to the compensation for the transport and termination of ISP-bound traffic are governed by the FCC's *ISP Remand Order*, and not the FCC rules and regulations regarding reciprocal compensation or access charges. SRT's assertions that the *ISP Remand Order* does not apply to the FX-like traffic that Level 3 will carry are wrong.

In its April 2001 *ISP Remand Order* the FCC asserted exclusive jurisdiction over compensation issues related to ISP-bound traffic.⁴⁸ In the *ISP Remand Order*, the FCC ruled that traffic to ISPs was excluded from the reciprocal compensation requirements of Section 251(b)(5) by operation of Section 251(g) of the Act.⁴⁹ Further, under its authority to preempt the authority of states over intrastate communications recognized in *Louisiana PSC v. FCC*,⁵⁰ the FCC held that state commissions no longer had jurisdiction to address the issue of intercarrier compensation for ISP-bound traffic.⁵¹ Thus, going forward, the FCC has sole authority to address all questions relating to intercarrier compensation for the exchange of ISP-bound traffic. This ruling necessarily includes intercarrier compensation in the form of access charges in connection with the exchange of ISP-bound traffic.

SRT argues that if the modem bank is within Minot, the call terminates in Minot, but the call is interstate and the FCC has preempted the Commission's jurisdiction to set compensation. (Tr. 117: 13-19; 120:1-6) Yet SRT also contends that if the modem bank with a Minot telephone number is physically located outside of the Minot local calling area, in Bismarck for example, the call is intrastate and the Commission has jurisdiction to impose access charges on Level 3. (Tr. 120:7-9) SRT is wrong on both assertions. The FCC did *not* distinguish "local" ISP-bound

⁴⁸ Although the U. S. Court of Appeals for the D.C. Circuit remanded the *ISP Remand Order* to the FCC for further consideration, the Court did not vacate the Order, leaving the federal compensation regime in place while the FCC deliberates the issue once again. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Accordingly, even though the legal reasoning providing the authority for the FCC to promulgate its federal compensation regime has been rejected, the federal compensation regime itself remains intact and applies in this case.

⁴⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order (rel. Apr. 27, 2001) ("*ISP Remand Order*"), at ¶ 46. This aspect of the *ISP Remand Order* was rejected by the D.C. Circuit. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

⁵⁰ *Louisiana PSC v. FCC*, 476 U.S. 355, 106 S. Ct. 1890 (1986).

⁵¹ *ISP Remand Order* at ¶ 82.

traffic from “non-local” ISP-bound traffic. In fact, the FCC repudiated its earlier distinction between “local” and “non-local” for all traffic:

This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection [251](b)(5) as all “local” traffic. We also refrain from generally describing traffic as “local” traffic because the term “local,” not being a statutorily defined category, is particularly susceptible to varying meanings, and significantly, is not a term used in section 251(b)(5) or section 251(g).⁵²

In fact, the *ISP Remand Order* makes clear that the new federal regime applies to *all* ISP-bound traffic: “We conclude that this definition of ‘information access’ was meant to include *all access traffic* that was routed by a LEC ‘to or from’ providers of information services, of which ISPs are a subset.”⁵³ Nowhere does the *Order* limit its regime to “local” ISP-bound traffic.

SRT doggedly asserts, however, that because the *ISP Remand Order* did not specifically address FX-like ISP-bound traffic, it was not included within its scope. (Tr. 112:3-15). In fact, the FCC was fully aware that CLECs were using FX-like arrangements to serve ISPs long before the *ISP Remand Order* was released. Several carriers—both ILECs and CLECs, including Level 3—asked the FCC to include CLEC-FX traffic within the scope of the order.⁵⁴ Level 3 provided SRT with the *ex parte* notices filed with the FCC summarizing the meetings between Level 3 and FCC officials on this issue. (Tr. 19: 8-20).

Several state commissions have recognized that the *ISP Remand Order* addressed all ISP-bound traffic, including traffic to ISPs using FX-like arrangements. The Public Utilities

⁵² *ISP Remand Order* at ¶ 34.

⁵³ *ISP Remand Order* at ¶ 44 (emphasis added).

⁵⁴ See *ex parte* filings in FCC CC Docket No. 99-68: Letter dated March 28, 2001 from Gary L. Phillips, SBC Telecommunications, Inc., to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 3; Letter dated March 7, 2001 from Susanne Guyer, Verizon, to Dorothy Attwood, at 2-3; Letter

Commission of Ohio stated, “The Commission agrees . . . that all calls to FX/virtual NXX [numbers] that are also ISP-bound are subject to the inter-carrier compensation regime set forth in the ISP Remand Order.”⁵⁵ Likewise, the Connecticut Department of Public Utility Control has ruled, also in the context of FX-like traffic to ISPs, “that intercarrier compensation for ISP-bound traffic is within the jurisdiction of the FCC and that on a going forward basis, the Department has been preempted from addressing the issue beyond the effective date of the ISP Order [June 14, 2001].”⁵⁶ Similarly, the Public Service Commission of Michigan ruled in a Section 252 arbitration proceeding that, with respect to virtual NXX traffic, the *ISP Remand Order* “takes care of ISP traffic.”⁵⁷

An Arbitration Panel of the Texas Public Utility Commission has also considered the issue, and specifically addressed a position similar to the one taken by SRT in this proceeding. The Texas Arbitrators rejected the argument that “the ISP Remand Order does not apply to all types of ISP-bound traffic, but only to ISP traffic that originates and terminates in the same local calling area.”⁵⁸ Because the FCC had said ISP-bound traffic was subject to Section 251(g) rather

dated December 13, 2000 from John T. Nakahata, Counsel to Level 3 Communications, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 1.

⁵⁵ *Allegiance Telecom of Ohio, Inc.’s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award (PUC Ohio Oct. 4, 2001) at 9. *See also, Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (PUC Ohio May 9, 2002) (same result).

⁵⁶ *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Dkt. No. 01-01-29 (Conn. DPUC Jan. 30, 2002) at 41-2 (“*Connecticut VNXX Order*”).

⁵⁷ *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sept. 7, 2001) (“*TDS Metrocom*”).

⁵⁸ *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for “FX-Type” Traffic Against Southwestern Bell Telephone Company*, PUC Docket No. 241015, Revised Arbitration Award (Tex. PUC Aug. 28, 2002) at 31.

than Section 251(b)(5), all compensation for it was governed by the FCC's rules adopted under its Section 201 authority.⁵⁹

The Florida Commission also issued a decision regarding intercarrier compensation and virtual NXX issues stating that “due to the FCC's recent *ISP Remand Order*, which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers.”⁶⁰ (Tr. 139:4-9) Likewise, the Illinois Commerce Commission ruled that “with the adoption of the *ISP Remand Order*, the Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls.”⁶¹ In that proceeding, an independent LEC sought to impose access charges on virtual NXX traffic terminated by a CLEC. The Commission rejected the independent LEC's position.⁶² State commissions in California and New Hampshire also have recognized the FCC's exclusive jurisdiction over intercarrier compensation for ISP-bound traffic to virtual NXX customers.⁶³ Most recently, in Level 3's arbitration with CenturyTel in Wisconsin concerning the same type of FX-like service that is at issue here, the Arbitrator found that the FCC's

⁵⁹ *Id.*

⁶⁰ *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Order on Reciprocal Compensation, Phases II and IIA, Order No. PSC-02-1248-FOF-TP (Fla. PSC Spet. 10, 2002) (“*Florida Decision*”), at 26.

⁶¹ *Essex Telecom, Inc. v. Gallatin River Communications, L.L.C.*, Docket No. 01-0427, Order (Ill. C.C. July 24, 2002) at 8.

⁶² *Id.*

⁶³ *Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.01-11-045, A.01-12-026, Opinion Adopting Final Arbitrator's Report With Modification (Cal. PUC July 5, 2002); *Investigation as to Whether Certain Calls are Local*, DT 00-223, *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas*, DT 00-054, Final Order, Order No. 24,080 (NH PUC Oct. 28, 2002).

intercarrier compensation regime “expressly provides for a single compensation rate without respect to the terminating point of the call.”⁶⁴

Moreover, no state commission has adopted the position that SRT advocates in this proceeding.⁶⁵ Level 3 is not aware of any state commission that has considered the preemption language of the *ISP Remand Order* and decided that virtual NXX traffic was not included within the scope of the FCC’s preemption order. Thus, the FCC *ISP Remand Order* governs all intercarrier compensation arrangements related to ISP-bound traffic, including the payment of access charges.

Under the federal compensation regime established in the *ISP Remand Order*, neither SRT nor Level 3 owe compensation to each other. Where parties did not have an agreement for the exchange of ISP-bound traffic during the first quarter of 2001—as would be the case between SRT and Level 3—the proper intercarrier compensation for ISP-bound traffic is “bill and keep.” At the hearing, Mr. Sebby asserted a fairly disingenuous argument that Level 3 *did* have an interconnection agreement with SRT in April 2001—which would have been prior to the time that Level 3 acquired the assets in question—because services were purchased out of SRT’s tariff and that constitutes a business agreement. (Tr. 196:15-17) Of course, the “agreement” was never filed with the Commission, and thus could not have been an interconnection agreement

⁶⁴ *In the Matter of Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms and Conditions With CenturyTel of Wisconsin*, Docket 05-MA-130, Arbitration Award (WI PSC Dec. 2, 2002) (“*Wisconsin Arbitration Order*”) at 20-21.

⁶⁵ SRT may point to three decisions issued by the Georgia, Tennessee, and South Carolina commissions after the *ISP Remand Order* in support of its position that the Commission has jurisdiction to impose access charges. However, the Georgia and Tennessee decisions were issued within a few months of the *ISP Remand Order* and it is apparent from the plain text of both those decisions, as well as the South Carolina decision, that those three states were not presented with the argument, and therefore did not even consider, that the FCC’s exercise of exclusive jurisdiction over ISP-bound traffic preempted any finding that access charges are owed for ISP-bound traffic to virtual NXX customers.

under Section 252 of the Act.⁶⁶ (Tr. 196:23-25) Under the federal compensation regime, because Level 3 has never had an interconnection agreement with SRT, SRT may not charge Level 3 for the origination of a call to an ISP, and Level 3 may not charge SRT for termination of a call to an ISP.

B. Because the *ISP Remand Order* Resolves the Intercarrier Compensation Matters, the Issues Before the Arbitrator Relate to Physical Interconnection Only

As described above and as nine state commissions have affirmed, the *ISP Remand Order* resolves the intercarrier compensation matters in this proceeding. The ISP-bound traffic carried by Level 3 is not subject to originating access charges to SRT or terminating compensation to Level 3. At the same time, and more critical for the purposes of this proceeding, the FCC assumed exclusive jurisdiction over compensation for ISP-bound traffic, but left in place the jurisdiction of state commissions over other aspects of ISP-bound traffic, such as carriers obligations under Sections 251 and 252 of the Act. As the FCC explained it:

[t]his interim regime affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.⁶⁷

Thus, matters related to interconnection between SRT and Level 3 remain before the Commission. (*See also* Issue 7, below).

Thus, assuming that the Commission agrees with nine other state commissions and rules that FX-like ISP-bound traffic is subject to the intercarrier compensation regime established in the *ISP Remand Order*, the Commission need not address whether FX-like ISP-bound traffic

⁶⁶ 47 U.S.C. § 252(e)(1).

⁶⁷ *ISP Remand Order* at ¶ 78, n. 149 (emphasis in original).

provided by Level 3 is sufficiently similar to FX traffic provided by SRT to warrant like treatment as local exchange service. The traffic is subject to bill-and-keep arrangements, and Level 3 has rights under section 251(a) to interconnect its network with SRT's as a co-carrier rather than as an end user.

Nevertheless, should the Commission not agree that the *ISP Remand Order* resolves the intercarrier compensation issues for FX-like ISP-bound traffic, Level 3's FX-like product is substantially the same as SRT's FX-like products, and both products are subject to treatment as local exchange services.

C. Level 3's FX-like Service Is Functionally Similar to FX or FX-like Services Provided by SRT

The Level 3 service provides the same functionality for consumers as the FX and FX-like services provided by SRT and other ILECs. FX service "Provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area." (Gates at 25) As the Bell System described it, "Foreign exchange (FX) service enables a customer to be served by a distant or "foreign" central office rather than by the nearby central office. " (Gates at 26) Level 3's service is simply a competitive response to the traditional LEC FX service. (Gates at 10)

SRT makes it sound as if Level 3's practice is something that only CLECs do – that only a CLEC would devise a plan to assign a telephone number to a customer who is not physically located in the rate center with which the telephone number is associated.⁶⁸ That is not true. As Mr. Hight admitted at hearing, SRT itself provides FX services. (Tr. 234:13-14) In fact, the FX and FX-like services provided by ILECs and the FX-like service provided by Level 3 and SRT

⁶⁸ SRT Response at 14.

are functionally the same, even if they are provisioned differently.⁶⁹ (Gates at 27:6-15) FX and FX-like services have always provided a customer with a telephone number for a rate center outside the rate center in which the customer's premises are physically located. For example, a car dealership located in Bismarck might obtain a telephone number in Minot to take local calls from Minot-based customers. (Or to consider a more pertinent existing example, a company with modem banks in Bismarck might obtain local telephone numbers from SRT through the purchase of retail FX services in order to support local dial-up availability in Minot.) From the customer's perspective, whether the service is provisioned as a traditional FX service or a newer FX-like service is irrelevant; all that matters to the customer is that the customer receives a telephone number where he or she does not have a physical presence. ILECs have been providing the same functionality for years in response to customer demand. But even ILECs such as SRT no longer limit their FX-like service offerings to traditionally provisioned FX service arrangements.

Many states have found that CLEC FX-like services provide the same functionality to consumers as ILEC FX service has provided for decades. For example, the Florida PSC concluded:

[CLEC] witness Selwyn [states] that the practice of terminating a call in an exchange that is different than the exchange to which the NPA/NXX is assigned is nothing new. He contends that ILECs have been providing this service for decades through their [Foreign Exchange] service. We agree. We believe that virtual NXX is a

⁶⁹ One clear directive in the Act and the FCC's implementing regulations is the recognition that competition will spur technological innovation and change. For example, one rule expressly notes that a CLEC's single switch might be capable of serving a geographic area comparable to that served by an ILEC's tandem, and its subtended end offices. *See* 47 C.F.R. § 51.711. It would be anomalous indeed if the resolution of this case turned on whether Level 3 provisioned and deployed its facilities in precisely the same way that SRT and Qwest historically deployed their FX services. That result would reward the status quo and discourage innovation—hardly a goal contemplated by Congress or the FCC.

competitive response to FX service, which has been offered in the market by ILECs for years.⁷⁰

The Kentucky Commission equated ILEC FX and Level 3 service as follows:

Both utilities offer a local telephone number to a person residing outside the local calling area. BellSouth's service is called foreign exchange ("FX") service and Level 3's service is called virtual NXX service.⁷¹

Neither the Michigan Public Service Commission nor the North Carolina Utilities Commission even refer to "virtual NXX," but instead both agencies identify the service provided by the ILEC and the equivalent service provided by the CLEC as "FX service."⁷² Similarly, in a recent arbitration concerning FX-like service, the Wisconsin Arbitrator concluded that because the Level 3 and CenturyTel services are "similar in purpose, jurisdiction and operation" they should be rated the same.⁷³

D. FX and FX-like Services Are Treated As Local Services

SRT asserts that Level 3 has no interconnection rights because its FX-like service is neither "telephone exchange service" nor "exchange access." (Meredith 14:6-8) Whether or not ILEC FX services have ever been classified formally as "telephone exchange service" under the Act, the fact is that that classification does not matter for purposes of this proceeding. Level 3 is

⁷⁰ *Florida Decision* at 28.

⁷¹ *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2000-404, Order (Ky. PSC Mar. 14, 2001) ("Kentucky Decision"), at 7.

⁷² *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sep. 7, 2001) ("TDS Metrocom"); *Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. P-474, Sub 10, Order Ruling on Objections and Requiring the Filing of the Composite Agreement (NCUC, Aug. 2, 2001) ("MCImetro Decision").

⁷³ *Wisconsin Arbitration Order* at 22.

seeking interconnection under 251(a), and 251(a) is not limited to interconnection for “telephone exchange service” or “exchange access.” That limitation appears in section 251(c), and Level 3 is not seeking interconnection under 251(c).

Second, even though SRT calls FX an “interexchange” service, SRT treats FX as if it is a local, not long distance, service. For decades ILECs have treated FX service as a local service, booking the revenues and expenses as local. (Gates at 42). SRT provides FX service, and treats it as a local service. (Gates at 21-2, 26-7.) The FX terms and conditions are in SRT’s local tariff and the references to rates (monthly and non-recurring) are to the local tariff as well. (*Id.*)

While SRT claims that FX service is not a telephone exchange service (Meredith at 32:14-15), it also admits that it does not treat its own FX service as a “long distance” service that is subject to access charges. End users calling FX numbers assigned to the SRT local calling area do not pay SRT toll charges to reach the FX subscriber, even though the FX subscriber is physically located in another local calling area. (Tr. 199:10-21). Again, SRT also exchanges all EAS traffic, including FX traffic to and from the EAS ILECs, on a local basis. (Tr. 226:8-16; 227:12-19)

The SRT witnesses stated repeatedly that FX traffic is interexchange traffic, and interexchange traffic is toll traffic. (Meredith at 34:14-15; Sebby at 10:4-20; 165:24-166-8) Whether or not FX traffic is interexchange does not mean it is toll traffic. SRT serves 25 local exchanges in its service territory. (Tr. 184:10-23) Any call between SRT exchanges is both an interexchange call and a local call. (Tr. 185:8-15) Moreover, calls between SRT and the EAS ILECs to the EAS exchanges are also interexchange, but rated and routed as local calls. (Tr. 227:18-19) SRT cannot seriously maintain that all interexchange traffic is toll traffic. In fact, by merely providing local service within its own serving area SRT would qualify as an “interexchange telecommunications company” under North Dakota law, which is defined as “a

person providing telecommunications service to end users located in separate local exchange areas.”⁷⁴ Mr. Sebbly hedged when asked, but ultimately could not disagree. (Tr. 187:7-188:7) Moreover, Mr. Meredith read into the record the statement by the FCC that ILECs contend that FX service is a local exchange service.⁷⁵ (Tr. 137:24-138:13) Mr. Sebbly even identified FX service as a local service at one time. (Tr. 202:6)

E. Imposing Access Charges Only on CLEC FX-like Service Would Be Discriminatory in Violation of State and Federal Law

The Commission may not impose access charges on FX-like service provided by CLECs without also imposing access charges on all FX services provided by ILECs in North Dakota. Any other result would discriminate against CLECs in the provision of like services, regardless of whether the CLEC network is designed differently from the legacy network built by ILECs over a hundred years. Such discrimination would violate state and federal law.⁷⁶

The New York Public Service Commission summarized this well in considering the same kind of disputes between independent LECs and CLECs with respect to ISP-bound FX-like calls. Specifically, the New York commission found that FX service should not be defined by “call competition technology,” but rather FX service should be defined “operationally, i.e., making local service possible in an exchange where the customer has no physical presence.”⁷⁷ The New

⁷⁴ N.D. Cent. Code § 49-21-01(9).

⁷⁵ AT&T Corp. v. Bell Atlantic-Pennsylvania, File Nos. E-95-006, E-95-007, E-95-009, E-950010, E-950015, E-95-016, E-95-017, E-95-018, E-95-021, E-95-022, E-95-030, E-95-035, Memorandum Opinion and Order, FCC 98-321 (Rel. Dec. 9, 1998).

⁷⁶ 47 U.S.C. § 202; N.D. Cent. Code § 49-21-07.

⁷⁷ *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies*, Case 00-C-0789, Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates, 4 (NY PSC Sept. 7, 2001) (“September 2001 New York Order”).

York commission further noted that an operational focus was more appropriate than a technological focus because “the architecture of new entrant networks will differ from that of incumbents and . . . CLECs need not replicate the incumbent’s service offerings, rate centers, or customer mix.”⁷⁸

Permitting SRT to impose access charges on Level 3 for ISP-bound traffic would also be discriminatory. Pursuant to federal rules, LECs are prohibited from imposing interstate access charges on enhanced service providers (“ESPs”), of which ISPs are a subset.⁷⁹ Under the arrangement that Level 3 inherited from the McLeodUSA Information Services entity, SRT currently provides an FX-like service that permits end users in SRT’s local calling area to place a local call to reach the ISP. (DuCloo at 4:15-21) SRT does not charge Level 3 originating access charges. (Hunt at 23:16-17) However, if that same ISP wanted to switch its service to Level 3, SRT would impose originating access charges on Level 3. If the Commission adopts SRT’s language, it would permit SRT to impose originating access charges on Level 3 that SRT is prohibited from imposing on ISPs. By imposing costs on Level 3 that SRT may not impose on the SRT ISP customers, SRT unlawfully discriminates against Level 3 and gains a competitive and economic advantage in providing local dial-up Internet services. (Hunt at 23:21-24:7)

F. Even If the Commission Had Jurisdiction to Address Intercarrier Compensation Issues for ISP-Bound Traffic, Access Charges Would Not Be Appropriate

Level 3 shows above and in Issue 7 below that although the Commission has jurisdiction to address the interconnection and traffic exchange aspects of this dispute, it does not have

⁷⁸ *Id.*

⁷⁹ See *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC2d 682, 711 (1983); *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, CC

jurisdiction to address intercarrier compensation issues for ISP-bound traffic. However, even if the Commission possessed such jurisdiction, access charges would not be appropriate. As discussed above, FX and FX-like services are interexchange local services to which access charges do not apply.

Even setting aside the fact that intercarrier compensation for ISP-bound traffic is governed by FCC rules, and that access charges are imposed on traffic other than local traffic, access charges are not cost-based, and it has been federal and state policy in recent years to drive access charges down to forward-looking economic cost. (Gates at 43:9-13) It makes no sense to impose an out-dated compensation regime on a category of traffic that generates no more origination costs than any other local call. Indeed, Mr. Seby could cite no additional costs that SRT would actually incur to interconnect directly as Level 3 has proposed compared to the existing arrangement. (Tr. 200:5-10) Of course, Mr. Seby could point to no such costs because the costs of originating this traffic do not differ from any other local call. (Gates at 39:16-41:14) In fact under Level 3's offer, SRT's costs of origination would be *less* than the costs SRT incurs to deliver traffic to NDTC or TMC. SRT not only would avoid the cost of transport to the SRT boundary, but it would be paid by Level 3 for providing the facilities. Thus there is absolutely no economic or policy justification for imposing switched access charges on Level 3.

Further, SRT is already compensated for carrying the traffic originated by its customers to the POI requested by Level 3. (Gates at 45:7-16) The FCC's *TSR Order* is directly on point. The pertinent language with respect to SRT's compensation is as follows:

The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the

Docket No. 87-215, Order, 3 FCC Rcd 2631, 2633 (1988); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982,16133 (1997).

network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. . . . Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls.⁸⁰

By this reasoning, Level 3 should not have to pay SRT for SRT-originated traffic from the local calling area to the POI, including the use of SRT's switch to originate the call.

Another reason why originating access would be inappropriate in this case can be found in a recent decision from the FCC's Wireline Competition Bureau. In that decision resolving an arbitration between Verizon Virginia and several CLECs, the Bureau considered whether calls to FX numbers would be entitled to reciprocal compensation or whether access charges should apply. In that proceeding, Verizon made many of the same arguments that SRT makes here—principally, that intercarrier compensation should be based on the actual originating and terminating endpoints of the call and that originating access should be paid where a call originates in one calling area and terminates in a different area, even if the NPA/NXX of the called party is associated with the same local calling area as the NPA/NXX of the calling party. In its conclusion, the Wireline Bureau rejected Verizon's arguments entirely, stating as follows:

We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating

⁸⁰ *TSR Wireless, LLC v. US West Communications, Inc.*, Memorandum Opinion And Order; File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18; Released June 21, 2000; ¶34; (*TSR Order*) (emphasis added) (footnotes omitted).

is the established compensation mechanism not only for itself, but industry-wide.⁸¹

In response, SRT asserts that the facts in the FCC arbitration case differed from those in this case. SRT asserts that the CLECs in the FCC proceeding were using the same NXX codes to serve both customers with physical presences in a local calling area, and customers with only virtual presences. (Tr. 108:15-17) While this statement is true as to one of the CLECs in the proceeding, it is not true for the two others.⁸² Further, the discussion of the matter by the Bureau did not limit its approach only to instances in which the same NXX code was used for both physical and virtual presences. The conclusion of the FCC Bureau is applicable here.

G. Level 3's FX-like Service Is Beneficial to Customers Providing Internet Service

There a number of benefits associated with FX and FX-like services. Business customers prefer the FX and FX-like service provided by ILECs and CLECs because it permits them to serve more of their customers without establishing a physical presence in every local calling area. It provides a less expensive way to test markets or to expand to new markets without first spending large amounts of capital. (Gates at 47:8-11)

Benefits of FX-like services are more substantial in the context of the Internet industry. Consumers generally are not willing to pay toll charges to connect with the Internet. (Gates at 47:12-15) Instead, they select providers who can offer local dialing. Indeed, because the Internet is becoming such a fundamental part of American life, at least one state legislature has

⁸¹ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order at ¶ 286 (Wireline Comp. Bureau, rel. July 17, 2002) (“*FCC Arbitration Order*”).

⁸² *Id.* at ¶ 292.

mandated “non-toll dial-up Internet access” for consumers.⁸³ Because of the frequent and regular access to the Internet, local flat-rate calling for access to the Internet is essential. (Gates at 47:18-48:2) Even the Maine Commission that prohibited virtual NXX arrangements recognized this benefit. The Maine Commission stated “we want to ensure that Internet subscribers are able to continue to subscribe to the Internet at reasonable rates, consistent with the legislature’s mandate of ‘affordable’ Internet access.”⁸⁴

The Commission must consider the implications—for consumers, the competitive telecommunications market and the Internet access market—of a decision that precludes or effectively precludes a carrier from assigning FX numbers to ISPs (and other similar customers). For instance, if SRT’s position were adopted in this proceeding, and assuming that position was applied to all carriers, ILECs and CLECs alike, and not just to Level 3, no carrier in North Dakota could ever offer an FX or FX-like product without facing a per-minute switched access charge on every call coming to it. (Gates at 50:4-8) Even the Maine Commission did not go this far. The Maine Commission ordered ILECs to provide services to ISPs at rates below the ILEC toll rates. Verizon responded with its SNS/PRI service that was priced at “a substantial discount from the toll rates for the calling volumes directed to ISPs.”⁸⁵ The service was toll-free to end users, and flat-rated to ISPs. There was no usage component (per-minute or otherwise).⁸⁶

⁸³ 1997 Iowa Gen. Ass’y, House File 730, Sec. 5.

⁸⁴ *Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILEC’s (Order No. 4); *New England Fiber Communications D/B/A Brooks Fiber Proposed Tariff Revisions To Introduce Regional Exchange (RX) Service*, Docket No. 99-593, Order Disapproving Proposed Service (Part 2) (Maine PUC Jun. 30, 2000) (“*Maine Decision*”)

⁸⁵ *Id.* at 23.

⁸⁶ *Id.* at 21.

H. The Level 3 FX-like Service is Not Analogous to 800 Service

Mr. Gates explained how 800 service is not a good analog for Level 3's FX service. First, 800 service is not associated with a particular geographic area. (Gates at 35:5-37:2) Callers may generally access a 800 number on a toll-free basis regardless of their physical location. (Id.) FX services, on the other hand, are associated with a specific local exchange. (Id.) A call to that number from outside that local exchange would be rated as a toll call. Second, 800 calls use a toll dialing pattern. (Gates at 35:7-9) The toll status of an 800 call is evidenced by the indicator digit, the 1 in a 1-800 call. (Id.) FX calls, on the other hand, are dialed like any other local call. (Id.) Third, the call routing and processing requirements for FX and 800 services are dramatically different. FX calls are routed from the local switch to the customer's presence while 800 calls go through an access tandem for billing and routing instructions. (Gates at 35:12-19) 800 calls require a Line Information Database dip to determine the IXC carrying the call and the true ten-digit routing number; FX calls do not. (Id.) Finally, 800 service revenues are booked as toll revenues, but FX revenues are booked as local revenues. (Gates at 36:2-4) Mr. Gates' testimony was admitted as unrefuted when SRT declined to cross-examine Mr. Gates.

I. Several Other States Treat Both ILEC FX and CLEC FX-like Services As Local

Other state commissions have considered the appropriate regulatory treatment for FX-like services. Several states have ruled that CLEC FX traffic should be treated as local traffic, including being subject to reciprocal compensation obligations (which are not even requested here). The Kentucky Public Service Commission found that CLEC FX service should be treated the same as BellSouth's Foreign Exchange service, and both services should be treated as local traffic.

Both utilities offer a local telephone number to a person residing outside the local calling area. BellSouth's service is called foreign exchange ("FX") service and Level 3's service is called virtual NXX service. The traffic in question is dialed as a local call by the calling party. BellSouth agrees that it rates foreign exchange traffic as local traffic for retail purposes. These calls are billed to customers as local traffic. If they were treated differently here, BellSouth would be required to track all phone numbers that are foreign exchange or virtual NXX type service and remove these from what would otherwise be considered local calls for which reciprocal compensation is due. This practice would be unreasonable given the historical treatment of foreign exchange traffic as local traffic.

Accordingly, the Commission finds that foreign exchange and virtual NXX services should be considered local traffic when the customer is physically located within the same LATA a[s] the calling area with which the telephone number is associated.⁸⁷

The Michigan Commission has considered this issue several times, and each time has decided not to reclassify foreign exchange service as non-local exchange traffic exempt from reciprocal compensation requirements.⁸⁸ Likewise, the state of California has ruled that a call should be rated as local or toll by comparing the NXX codes of the calling party and the called party, regardless of customer location.⁸⁹ The North Carolina Utilities Commission ("NCUC") has also ruled that CLEC FX services should be treated as local traffic subject to reciprocal

⁸⁷ *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2000-404, Order, 7 (Ky. PSC March 14, 2001).

⁸⁸ *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sep. 7, 2001), 2001 WL 1335639; *Application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation*, Case No. U-12696, Opinion and Order (Mich. PSC Jan. 23, 2001); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Case No. U-12460, Opinion and Order (Mich. PSC Oct. 24, 2000); *Petition of Coast to Coast Telecommunications, Inc. for arbitration of interconnection rates, terms, conditions, and related arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan*, Case No. U-12382, Order Adopting Arbitrated Agreement (Mich. PSC Aug. 17, 2000); *In re Complaint of Glenda Bierman against CenturyTel of Michigan, Inc. d/b/a CenturyTel*, Opinion and Order, Case No. U-11821 (Mich. PSC Apr. 12, 1999).

⁸⁹ *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, D.99-09-029 (Cal PUC Sept. 3, 1999).

compensation.⁹⁰ The NCUC considered the decisions relied on by SRT in this proceeding, particularly the decision of the Maine Public Utilities Commission regarding CLEC FX service. Nevertheless, the NCUC found the case inapplicable and concluded “that calls within a LATA originated by BellSouth customers to MCI^m FX customers are to be considered local and, therefore, subject to reciprocal compensation.”⁹¹ Although the NCUC limited the geographic scope for FX-like calls to LATA boundaries, as the record in this case shows, SRT is not limited to providing FX-like services that originate and terminate in the same LATA and may provide FX service in any exchange in North Dakota. (Gates at 21:17-22:3) Therefore, it would violate state law to impose such a discriminatory limit on CLECs alone in North Dakota.⁹²

Only the state of Maine has prohibited CLEC FX services outright, and it ordered ILECs to provide a substitute Internet access service that would be available for resale by CLECs. (Of course, leaving facilities-based Internet access in the exclusive hands of the ILECs is itself a questionable policy choice.) Further, it is important to keep in mind that the Maine proceeding was driven first and foremost by number conservation issues. In the *Maine Decision*, the Maine Commission found that because Brooks Fiber was not authorized to provide facilities-based local exchange service for any area outside of Portland, it did not have the requisite local exchange authority for the geographic areas in which it applied for numbering codes.⁹³ Accordingly, the Maine Commission reclaimed the numbers on that basis pursuant to a specific grant of

⁹⁰ *Petition of MCI^mmetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. P-474, Sub 10, Recommended Arbitration Order (NCUC, adopted Apr. 3, 2001).

⁹¹ *Id.*

⁹² N.D. Cent Code § 49-21-07.

⁹³ *See Maine Decision* at 6.

“extended” reclamation authority by the FCC.⁹⁴ As a result, the Maine Commission reclaimed more than 500,000 telephone numbers associated with more than 50 rate centers throughout the entire state. Level 3 intends to use only a single number block to provide its service in Minot, and unlike the CLEC in the Maine case (and SRT in this case), Level 3 is able to pool NXX codes and acquire only 1,000 number blocks at a time. (Tr. 95:11-96:5)

Finally, this Commission should note that the New York Public Service Commission has specifically addressed the situation presented here: what regulations should apply to CLEC FX traffic originated by a customer of an independent LEC, and terminated to a customer of a CLEC. The New York PSC ruled that:

- Calls to CLEC FX codes from independent LEC customers will be rated as local for end user billing purposes;
- Calls to CLEC FX codes from independent LEC customers will be handled on a bill-and-keep basis, and are not entitled to reciprocal compensation;
- CLECs must arrange to transport traffic from the edge of the independent LEC service area;
- Independent LEC s may not charge CLECs access charges for CLEC FX traffic; and

CLECs must establish direct trunking with the independent LEC when call volumes from the independent LEC go beyond the DS-1 level.⁹⁵

In response to petitions for reconsideration of the decision, the New York PSC also made clear how it would rate calls: “The only standard that must be met is that established in the LERG [Local Exchange Routing Guide] which requires calls to be rated based on the NPA-NXX

⁹⁴ See *Maine Decision* at 5-7.

⁹⁵ *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies, Order Establishing Requirements For The Exchange Of Local Traffic* (NY PSC Dec. 22, 2000).

of the called number, not the customer's physical location."⁹⁶ This is consistent with Mr. Sebby's testimony in which he recognized that a comparison of NXX codes, and not a comparison of physical locations, determined how a call is rated as either local or toll. (Tr. 196:4-7) The FX-like service that Level 3 proposes to provide in North Dakota is consistent with these elements of the regime established in New York.

Issue 5: Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act? (Level 3 Agreement §§ 1, 2.1, and 2.3)

Level 3 has no obligation to make a *bona fide* request for interconnection under section 251(f)(1) of the Act. Notwithstanding this fact, SRT has repeatedly argued that the negotiation and interconnection obligations of Sections 251(c) and 252 do not apply to SRT because it is a rural carrier.⁹⁷ Specifically, SRT asserts that it should not be required to negotiate with Level 3 for interconnection because Level 3 has not made a *bona fide* request under Section 251(f)(1)(A) of the Act, and because Level 3 has not filed a petition to terminate SRT's rural exemption. SRT's arguments are without basis. As has been made clear from the outset, Level 3 has not sought to terminate any rural exemptions that SRT may possess, and has not requested interconnection pursuant to Section 251(c).⁹⁸

Level 3 seeks interconnection only under Section 251(a), so any applicable SRT exemptions from obligations set forth in Sections 251(b) and (c) would remain intact. (Hunt at 37:1-3) Section 251(a) does not include a requirement that Level 3 submit a *bona fide* request for interconnection with SRT. Thus, there is no reason why Level 3 would have needed to

⁹⁶ September 2001 New York Order at 4.

⁹⁷ SRT Motion to Dismiss at 17.

present a “bona fide request” under Section 251(f)(1)(A), or present notice of such a request to this Commission. As the FCC has stated, “if Congress had intended to impose a ‘bona fide request’ requirement on requesting carriers as part of their duty to negotiate in good faith, Congress would have made that requirement explicit.”⁹⁹

Moreover, there is precedent in North Dakota for a competitive carrier seeking interconnection with SRT under Section 251(a) rather than Section 251(c), without making a *bona fide* request under Section 251(f). In June 2002, WWC Holding Co. Inc. (“Western Wireless”) filed a Petition for Arbitration with SRT and other rural LECs, seeking interconnection solely under Section 251(a) and Section 251(b). (Hunt at 37:21-23) Western Wireless did not seek interconnection under Section 251(c), and SRT did not allege that Western Wireless was seeking interconnection under 251(c) in violation of SRT’s rural carrier exemption. (Hunt at 37:23-38:3) The parties have resolved their dispute and Western Wireless has withdrawn its Petition.

The Commission should clarify that Section 251(a) does not include a requirement that Level 3 submit a *bona fide* request for interconnection with SRT, and nothing in Section 251(f)(1) affects the authority of a state commission to arbitrate an interconnection dispute arising under Sections 251(a) and 252 involving a rural incumbent LEC, such as SRT.

⁹⁸ *Local Competition Order* at ¶ 156. The FCC has stated that “Section 251(f)(1) provides that a rural telephone company is exempt from the requirements of Section 251(c) until, among other things, it receives a “bona fide request” for interconnection, services, or network elements.”

⁹⁹ *Local Competition Order* at ¶ 156.

Issue 6: Is SRT exempt from negotiation and interconnection obligations pursuant to Section 251(f)(1) of the Communications Act of 1934, as amended? (Level 3 Agreement §§ 1, 2.3, 2.6, and 2.7)

Section 251(f)(1) of the Act does not exempt SRT from negotiation and interconnection obligations related to Section 251(a) interconnection. SRT tries to attribute to Level 3 either an intent to, or a need to, interconnect with SRT under Section 251(c) and to waive SRT's rural exemption. Nothing could be further from the truth. As admitted by SRT,¹⁰⁰ Level 3 requested interconnection under Section 251(a), not 251(c), and is not challenging SRT's rural exemption under Section 251(f). (Meredith at 42:7-9) Nor does Section 251(f)(1) insulate SRT from its duty to establish interconnection arrangements with Level 3. Furthermore, as demonstrated throughout the course of this proceeding, Section 251(a) entitles Level 3 to the interconnection agreement it seeks to enter with SRT.

Section 251(f)(1) makes clear that a requesting carrier need only seek waiver of a rural LEC's Section 251(c) exemption if the requesting carrier seeks to require the rural LEC to comply with its Section 251(c) obligations. As the Washington Commission recently found, "[r]ural companies remain obligated to comply with the provisions of Sections 251(a) and (b)."¹⁰¹ Because Level 3 has not requested interconnection under Section 251(c), those additional duties (unbundling of network elements at forward-looking cost, collocation, resale at a discount, etc.) and accompanying restrictions in Section 251(f) are irrelevant to this dispute. (Tr. 31:4-15) As stated in the Arbitrator's Recommendation Concerning SRT's Motion to Dismiss, "[t]he alleged failure of a requesting telecommunications carrier to comply with the

¹⁰⁰ *SRT Motion to Dismiss* at 2, 6. See Meredith at 42:20-21. SRT acknowledges that the Section 251(f)(1) rural exemption does not apply to Section 251(a) duties.

¹⁰¹ *In the Matter of the Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction (WUTC Oct. 25, 2002).

steps found in section 251(f)(1) necessary to eliminate a rural telephone company's exemption from section 251(c) obligations does not affect the viability of a request for interconnection based on section 251(a). Interconnection under section 251(a) applies to all telecommunications carriers without exception."¹⁰²

Indeed, Western Wireless is certified as an Eligible Telecommunications Carrier ("ETC") in SRT's territory and thus is eligible to provide local service in direct competition with SRT while receiving universal service support to do so. (Hunt at 38:18-21) With ETC status, Western Wireless represents an actual threat to take customers away from SRT's embedded basis of dial tone business and residential customers. Level 3's planned market entry in SRT's incumbent serving area is much less threatening to SRT because it would be limited to ISPs under the contract currently being arbitrated. (Hunt at 39:4-10)

Moreover, the type of competition anticipated by Level 3 would have no impact on SRT's ability to provide universal service, which the rural exemption was intended to address. (Hunt at 39:4-6) Level 3 serves only ISPs, and there are only two ISPs in the SRT local calling area at this time. (Hunt at 39:8-10) Level 3 agrees to limit the terms of its interconnection agreement to serve only ISPs. To the extent Level 3 is competing with SRT at all for customers already in Minot, there are only two to choose from, and the SRT ISP affiliate is an unlikely candidate to switch to Level 3. In addition, the other ISP no doubt has an established modem pool in Minot, which could become a stranded investment if it switched to Level 3. The ability of Level 3 to take customers away from SRT is speculative at best. Level 3 intends to provide service to the ISPs it already serves in North Dakota, and to other ISPs that do not already have a presence in the SRT calling area. SRT will certainly experience competition in the provision of

¹⁰² Arbitrator's Recommendation Concerning SRT's Motion to Dismiss at ¶ 14.

its retail services, but it will be to its ISP affiliate's retail services, which have no entitlement to protection from competition.

Finally, notwithstanding the fact that SRT is not exempt from interconnection with Level 3 pursuant to Section 251(a), the Commission may require SRT to interconnect with Level 3 under North Dakota law. Under Section 49-21-09 of the North Dakota Code,

Whenever a connection can be made reasonably between facilities of two or more telecommunications companies for the transfer of telecommunications and public convenience and necessity will be subserved thereby, the commission may require that such connection be made and may order that telecommunications be transmitted and transferred by the companies[.]¹⁰³

As demonstrated by Level 3, interconnection with SRT can be reasonably made. In addition, interconnection of the SRT network and the Level 3 network as proposed by Level 3 would serve the public convenience and necessity by promoting competition in and the availability of providers of access to the Internet. The Commission should also require SRT to provide interconnection to Level 3 under North Dakota law.¹⁰⁴

Issue 7: Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration? (Entire Level 3 Agreement)

Yes. Section 252 grants to state commissions the authority to approve or reject *all* interconnection agreements, to mediate and arbitrate *all* interconnection disputes, and to enforce *all* the interconnection obligations of Section 251 and the interconnection rules that the FCC may adopt.¹⁰⁵ This jurisdiction applies whether the services are classified as intrastate or interstate.

¹⁰³ N.D. Cent. Code § 49-21-09.

¹⁰⁴ Section 261(c) of the federal Telecom Act, 47 U.S.C. § 261(c), permits these additional obligations under state law.

¹⁰⁵ 47 U.S.C. § 252.

The Commission's jurisdiction has been preempted by the FCC in only one, narrow respect—determining intercarrier compensation for the exchange of ISP-bound traffic. All ISP-bound traffic falls within the scope of the FCC's preemption ruling, including traffic to ISPs using FX-like arrangements. In all other respects, the Commission has jurisdiction to adjudicate and resolve the Parties' interconnection dispute.

In the FCC's August 1996 *Local Competition Order*,¹⁰⁶ the FCC promulgated the rules and regulations necessary to implement the provisions of the Act. Addressing the interconnection requirements set forth in sections 251 and 252 of the Act, which by their terms specifically give state commissions the authority to approve, reject, arbitrate and/or mediate interconnection agreements, the FCC concluded as follows:

[I]n enacting sections 251, 252, and 253, Congress created a regulatory system that differs significantly from the dual regulatory system it established in the 1934 Act. That Act generally gave jurisdiction over interstate matters to the FCC and over intrastate matters to the states. The 1996 Act alters this framework, and expands the applicability of both national rules to historically intrastate issues, and state rules to historically interstate issues.

* * *

We view sections 251 and 252 as creating parallel jurisdiction for the FCC and the states. These sections require the FCC to establish implementing rules to govern interconnection, resale of services, access to unbundled network elements, and other matters, and direct the states to follow the Act and those rules in arbitrating and approving arbitrated agreements under sections 251 and 252.

* * *

¹⁰⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") (subsequent history omitted).

Accordingly, we conclude that sections 251 and 252 address both interstate and intrastate aspects of interconnection services and access to unbundled elements.¹⁰⁷

The Act's delegation of authority to state commissions over interstate matters was upheld by the Supreme Court in *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 378, 119 S.Ct. 721, 630 (1999). In that case, the Supreme Court considered whether the FCC had authority to promulgate rules governing the arbitration and approval of interconnection agreements and to require state commissions to adhere to those rules. Rejecting a challenge from several state commissions and ILECs, the Supreme Court upheld the grant of authority found in the Act. In short, the Supreme Court upheld the FCC's view that the 1996 Act upset entirely the traditional notion of jurisdiction that rested on the interstate/intrastate distinction and reinforced the notion that, in those situations identified by the Act and the FCC, it was appropriate for state commissions to exercise jurisdiction over items that might, in some way, implicate traffic that was jurisdictionally interstate.

Later, in its 1999 *Declaratory Ruling*,¹⁰⁸ the FCC considered the question of whether ISP-bound traffic was eligible for reciprocal compensation under Section 251(b)(5) of the Act. The FCC first addressed the jurisdiction of the traffic and applied its traditional end-to-end analysis to conclude that ISP-bound traffic was jurisdictionally interstate.¹⁰⁹ Most critically, the

¹⁰⁷ *Id.* at ¶¶ 83, 85, 86.

¹⁰⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999) ("*Declaratory Ruling*"), *rev'd and remanded*, *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

¹⁰⁹ *Id.* at 3696, ¶ 12. Notably, in that same discussion, the FCC rejected "the idea that the LEC facilities used to deliver traffic to ISPs must cross state boundaries for such traffic to be classified as interstate."

FCC also directed state commissions to continue to determine whether compensation was due for ISP-bound traffic.¹¹⁰ More particularly, the FCC stated:

state commission authority over interconnection agreements pursuant to section 252 ‘extends to both interstate and intrastate matters.’ Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process.¹¹¹

This conclusion was not impacted at all by the D.C. Circuit’s opinion in *Bell Atlantic* in March 2000.¹¹² In that case, the D.C. Circuit simply concluded that, while the “end-to-end” analysis may be useful to determine the jurisdiction of a call, given the historical practice of treating calls to ISPs as local for other regulatory purposes, the FCC had not adequately explained why the analysis made sense in determining whether reciprocal compensation applied to calls to ISPs.¹¹³

Following the *Bell Atlantic* decision, the FCC revisited whether ISP-bound traffic was eligible for reciprocal compensation. More than a year later, in April 2001, the FCC released its decision on remand from the D.C. Circuit. As discussed above, the FCC preempted the states regarding all intercarrier compensation arrangements for all ISP-bound traffic, but did not alter the authority of states to resolve questions related to other interconnection requirements.¹¹⁴

To be sure, the *ISP Remand Order* was remanded by the D.C. Circuit,¹¹⁵ but the remand was based solely on the FCC’s substantive rationale for excluding ISP-bound traffic from the

¹¹⁰ *Id.* at 3704-05, ¶ 25.

¹¹¹ *Id.* (footnote omitted)

¹¹² *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

¹¹³ *Id.* at 3.

¹¹⁴ *ISP Remand Order*, n.149.

¹¹⁵ *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

scope of carriers' Section 251(b)(5) compensation obligations. It had nothing to do with either the FCC's assertion of exclusive jurisdiction over compensation arrangements for ISP-bound traffic, or the notion that state commissions retained jurisdiction over interconnection arrangements for that traffic.¹¹⁶

In sum, it is clear from the Act and FCC regulations and decisions that state commissions always have had parallel jurisdiction with the FCC to address the interconnection aspects of interstate traffic otherwise within the exclusive jurisdiction of the FCC. That parallel jurisdiction has not been impacted by any FCC decision addressing either the jurisdiction of ISP-bound traffic or compensation arrangements for that traffic. If anything, those decisions have highlighted the FCC's intent to remove only compensation arrangements for ISP-bound traffic from state commission jurisdiction, leaving intact jurisdiction to resolve interconnection related disputes. This has been the conclusion of a number of state commissions. Since the release of the *ISP Remand Order*, the Minnesota,¹¹⁷ New York,¹¹⁸ and Wisconsin¹¹⁹ commissions, among

¹¹⁶ In its summary of the *ISP Remand Order* the D.C. Circuit suggested, incorrectly, that as a result of the FCC's assertion of exclusive jurisdiction over compensation for ISP-bound traffic "the state regulatory commissions would no longer have jurisdiction over ISP-bound traffic as part of their power to resolve LEC interconnection issues under § 252(e)(1) of the Act." 288 F.3d at 432. There is no support for this assertion anywhere in the *ISP Remand Order*. To the contrary, it is in direct conflict with footnote 149 of the *ISP Remand Order*, which states that the interim compensation regime adopted in the Order does not alter carriers' other interconnection obligations, including the obligation to transport traffic to points of interconnection.

¹¹⁷ *Petition of Level 3 Communications, LLC, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Communications*, MPUC P5733,421/IC-02-1372, Arbitrator's Recommended Decision, 9 (Minn. PUC Nov. 1, 2002) ("*Minnesota RD*") (resolving dispute concerning interconnection facilities used for the exchange of ISP-bound traffic). The Arbitrator's Recommended Decision was formally adopted by the Minnesota Commission on November 21, 2002.

¹¹⁸ *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc.*, Case 02-C-0006, Order Resolving Arbitration Issues, 5-10 (NY PSC May 24, 2002) (finding that an interconnecting CLEC has all the rights to interconnection set forth under federal law regardless of whether the CLEC provides service to ISPs or to traditional local voice service customers).

¹¹⁹ *Wisconsin Arbitration Order* at 8-16 (finding jurisdiction to order direct interconnection for the exchange ISP-bound traffic).

others, have all continued to exercise their jurisdiction over the interconnection arrangements for the exchange of ISP-bound traffic.

CONCLUSION

SRT's case relies entirely on three arguments. First, SRT asserts that the *ISP Remand Order* is not applicable to FX-like traffic, but instead applies only to calls to ISPs that "terminate" within the same local calling area as the calling party. Every state commission to have considered the issue has rejected this view, ruling instead that the *ISP Remand Order* makes no distinction between FX-like ISP-bound traffic and "local" ISP-bound traffic, and it applies to all ISP-bound traffic.

Second, SRT asserts that all traffic is either local or interexchange, and that all interexchange traffic is subject to access charges. Thus, to SRT, interexchange FX-like traffic is also subject to access charges. This position is obviously wrong since SRT itself provides the ability to make interexchange calls on a local basis. Further, SRT does not demand access charges from any other LEC providing an FX service, nor does it pay access charges to other carriers when it provides an FX or FX-like service.

Third, SRT claims that it does not discriminate against Level 3 when it denies Level 3 the same interconnection terms as CMRS carriers because Level 3 and CMRS carriers are not alike. Yet Level 3 and CMRS carriers are identical in that both seek interconnection pursuant to Section 251(a) of the Telecom Act and have elected to purchase dedicated transport from SRT at applicable tariffed charges.

As explained above, all three of SRT's arguments are wrong, and the Commission should grant the relief requested by Level 3. Moreover, SRT provides its own "FX-like" product that allows end users of the EAS ILECs to place "FX-like" interexchange calls to the SRT ISP affiliate on a local basis. It would be a violation of state and federal law prohibiting

discrimination among carriers to deny Level 3 the ability to provide the same service subject to the same rates, terms and conditions.

Respectfully submitted,

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8270 Greensboro Drive, Suite 900
McLean, VA 22102
Tel: 571/382-7447
Fax: 571/382-7440
e-mail: mike.romano@level3.com

Its Attorneys

Dated: December 23, 2002

EXHIBIT A

**Level 3 Communications, LLC's
Last and Final Offer Arbitration Agreement**

MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement (“Agreement”) is made effective on the date this Agreement has been executed by and between SRT Communications, Inc. (“ILEC”), and Level 3 Communications, LLC (“Level 3”). ILEC and Level 3 may collectively be referred to as “Parties,” and each individually may be referred to as a “Party.”

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC’s customers, located within ILEC’s incumbent serving area, and Level 3’s Internet Service Provider (“ISP”) customers, located both within and outside of ILEC’s incumbent serving area. Level 3 and ILEC agree to exchange all ~~Local Telecommunications Traffic (“Local Traffic”), Information Access Traffic, and mandatory Extended Area Service Traffic (“EAS”)~~ (together, “Traffic”), Internet Service Provider-bound Traffic (“ISP Traffic”) without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”).

Section 2. Routing, Exchange, and Completion of ISP Traffic

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in ~~good faith and in a prompt manner~~ to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may ~~utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) agree to~~ direct interconnection of the Parties’ networks, subject to the requirements herein.

2.2 ~~Regardless of the means of traffic exchange being employed pursuant to this Agreement,~~ Each Party will ensure that calls to the other Party’s NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide (“LERG”). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party’s NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party’s right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 ~~To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds _____ of traffic for three consecutive months (the “Threshold”), the Parties may complete calls between their customers through~~

~~the Tandem Switch of that other carrier (i.e., through a transit arrangement).~~2.4 At such time as the total amount of Traffic between the Parties exceeds the Threshold, or as may otherwise be mutually agreed to by the Parties, ~~the Parties will begin~~The Parties agree to implement arrangements for direct interconnection of their respective networks. Such interconnection ~~may be achieved by any technically feasible means~~should be established based upon both Parties' most efficient technical and economic choices, including but not limited to the use of either Party's own facilities or the leasing of facilities from a third party carrier. The Parties shall negotiate in good faith and in a prompt manner to establish a mutually agreeable Point of Interconnection ("POI") where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within ILEC's incumbent serving area or at ILEC's incumbent serving area boundary~~further agree, based upon the specific nature of ILEC's network in this case, that a POI will be established at the ILEC host end office switch, which is located at 24 Second Avenue, SE, Minot ND, 58701, and which has been designated in the LERG as of the date of this Agreement with a Common Language Location Identification Code of MNOTNDXADS0. If Level 3 chooses to lease dedicated transport facilities from ILEC to reach this location, because ILEC is a rural telephone company and is therefore not subject to the pricing requirements with respect to interconnection set forth in Section 251(c) of the Act, ILEC will lease such dedicated transport facilities to Level 3 at the applicable tariffed charges.~~

~~2.5~~2.4 Should any dispute arise with respect to the establishment of the POI under Subsection ~~2.4, 2.3,~~ the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange ISP Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.

~~2.6~~2.5 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

2.6 Each Party agrees to assume complete responsibility for the acquisition of, and payment for, all facilities necessary to originate, transport, and terminate ISP Traffic to and from that Party's customers on its side of the POI.

2.7 ILEC will provide Level 3 SS7 signaling information for ILEC-originated calls to Level 3's ISP customers at nondiscriminatory rates, terms and conditions to those offered to any other incumbent LEC, CMRS carrier, or CLEC with whom ILEC exchanges traffic on an EAS and/or local basis.

Section 3. Compensation for Local ISP Traffic and Information Access Traffic Because of anticipated *de minimis* nature of the Local Traffic to be exchanged between the Parties, Level 3 and ILEC agree to exchange Local Traffic on a bill-and-keep basis, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Local Traffic. Level 3 and ILEC further

Level 3 and ILEC agree to compensate one another on a bill-and-keep basis for the exchange of Information Access ISP Traffic minutes in accordance with the Order on Remand released by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Information Access ISP Traffic minutes.

Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (e.g., maintenance contact numbers, escalation contact information) to achieve reliability. Should direct interconnection be employed pursuant to Section 2, the Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of ISP Traffic and to minimize the likelihood of call blocking.

4.2 To optimize the exchange of ISP traffic under this Agreement, the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management, signaling, and overflow contingencies;
- b. the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the interconnections (including signaling);
- c. disaster recovery and escalation provisions;
- d. points of contact and escalation procedures for ordering, provisioning, billing, and maintenance;
- e. service ordering and provisioning procedures, including provision of the trunks and facilities; and
- f. other network planning components including testing and provisioning intervals.

Section 5. Billing

5.1 Each Party shall keep adequate records relating to ISP Traffic usage and all other facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

This Agreement shall be submitted to the North Dakota Public Service Commission for approval pursuant to Section 252 of the Act.

Section 7. Limitation of Liability and Indemnification

7.1 Neither Party shall be liable to the other for any lost profits or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited with respect to its indemnification obligations under this Agreement.

7.2 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In the event said loss, cost, claim, liability, damage or expense to third parties is the result of the fault, in whole or in part, of both Parties, the Parties shall be entitled to indemnification or contribution to the extent permitted by applicable state law governing the apportionment, if any, of said loss, cost, claim, liability, damage or expense. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

7.3 The Indemnified Party shall (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense.

7.4 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

Section 8. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay; provided, however, that the affected Party shall make commercially reasonable efforts to restore service as soon as practicable. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations during the delay.

Section 9. Agency

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

Section 10. Nondisclosure of Proprietary Information

10.1 The Parties desire to protect certain Proprietary Information, as defined herein, should it become necessary to exchange Proprietary Information during the term of this Agreement. Proprietary Information shall include, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information (“CPNI”) as that term is defined by the Act, and similar information. Furthermore, Proprietary Information shall include (i) all information delivered in written form and marked “confidential” or “proprietary” or bearing mark of similar import; and (ii) information derived by the receiving Party from a disclosing Party’s usage of the receiving Party’s network. Proprietary Information is deemed proprietary to the disclosing Party and it shall be protected by the receiving Party in the same manner as the receiving Party would protect its own proprietary information. Proprietary Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

10.2 The receiving Party shall have no obligation to safeguard Proprietary Information (i) which was in the receiving Party’s possession free of restriction prior to its receipt from disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by receiving Party, or (iii) after it is independently developed by personnel of receiving Party to whom the disclosing Party’s Proprietary Information had not been previously disclosed. The receiving Party may disclose Proprietary Information if required by law, a court, or governmental agency; provided, however, that the receiving Party shall provide as much written and other notice as possible (as considered in the context of time frames identified in the legal requirement) to the disclosing Party prior to disclosing any information to the governmental entity so that the disclosing Party an opportunity to consider the legal requirement.

Section 11. Notices

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:

Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Manager – Finance/Network Cost
Contact Phone Number: (720) 888-2876

FOR ILEC:

Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:

Business Name: Level 3 Communications, LLC
Mailing Address: 1025 Eldorado Boulevard
City/State/Zip Code: Broomfield, CO 80021
Attention: Michelle Krezek, Director-Interconnection Services
Contact Phone Number: (720) 888-6330
Facsimile: (720) 888-5271

FOR ILEC:

Business Name:
Mailing Address:
City/State/Zip Code:
Attention:
Contact Phone Number:
Facsimile:

or to such other location as the receiving party may direct in writing.

Section 12. Dispute Resolution

Should a dispute arise between the Parties with respect to implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement, either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 12. Upon receipt of this notice, representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute. If these initial negotiations should fail to resolve the dispute within thirty (30) calendar days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President level (or other position with authority to negotiate and settle on behalf of each Party). If these second-tier negotiations should fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its customers, the affected Party may seek immediate relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its obligations under this Agreement and shall not take any other action with respect to the disputed issue except as set forth in this Section 12. Furthermore, in the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner, and will not be withheld pending resolution of the disputed portion of any bill.

Section 13. Severability

If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which is invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

Section 14. Assignment

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any entity that the assigning Party controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party whether by consolidation, merger, sale or otherwise, or in connection with a financing transaction.

Section 15. Entire Agreement

This Agreement, including all Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. No modification or waiver of any provisions of this Agreement shall be effective unless in writing and signed by both parties.

Section 16. Multiple Counterparts

This Agreement may be executed in counterparts and such counterparts shall together constitute one and the same instrument.

Section 17. Default

If either Party defaults in the payment of any undisputed amount, or if either Party materially breaches any other material provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may move to terminate this Agreement or suspend the provision of any or all services hereunder by providing a second written notice to the defaulting Party and to the State Commission thirty (30) days prior to the intended date of suspension or termination. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period noted above, or the alleged default or violation is the subject of a good faith dispute, the other Party shall not terminate the Agreement or suspend service provided hereunder.

Section 18. Representations and Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, **NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FACILITIES OR ARRANGEMENTS PROVIDED HEREUNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.**

Section 19. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

Section 20. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

Section 21. Headings

The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

Section 22. Change of Law

In the event of a change in applicable law (including, but not limited to, rulings by the FCC or the State Commission) that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action. Unless otherwise agreed to by the Parties, the effective date of such acceptable new terms shall be the date that any amendment or other agreement implementing such terms is executed by the Parties.

Section 23. Governing Law

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the stateState of North Dakota, without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, each Party having been advised by counsel, the Parties hereto have caused this Agreement to be executed as of the date(s) set forth below.

LEVEL 3 COMMUNICATIONS, LLC

SRT Communications, Inc.

~~{ILEC}~~

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

**NXX CODES TO BE RECOGNIZED BY EACH PARTY
AS LOCAL OR EAS FOR CALLING PURPOSES BASED UPON
ORIGINATING AND TERMINATING RATE CENTER**

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2002, a true and correct copy of the foregoing was sent via overnight delivery to the following individuals:

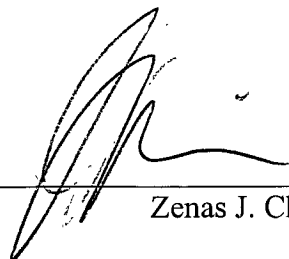
David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
20 SW First Street
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dhogue@ndak.net

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Illona Jeffcoat-Sacco
William Binek, Commerce Counsel
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ijs@psc.state.nd.us
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tgates@qsiconsulting.com



Zenas J. Choi



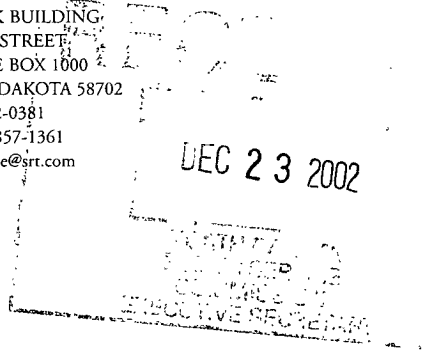
LAW OFFICES OF

PRINGLE & HERIGSTAD, P.C.

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DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON



December 20, 2002

ND Public Service Commission
Attn: Mr. William Binek
600 East Blvd. Ave, Dept. 408
Bismarck, ND 58505-0480

**RE: PETITION OF LEVEL 3 COMMUNICATIONS, LLC FOR ARBITRATION WITH
SRT COMMUNICATIONS, INC.
CASE NO: PU-2065-02-265**

Dear Mr. Binek:

This letter follows up our ongoing conversation with respect to SRT Communications, Inc.'s ("SRT") claim of trade secret/proprietary information for certain documents submitted to Level 3 Communications, LLC ("Level 3") and produced at the December 9, 2002 hearing in Bismarck. I am writing to advise that SRT does not claim that any of the documents submitted by SRT constitute trade secret information.

Very truly yours,

David J. Hogue
DJH/kkr

cc: Michael Flemming

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE
WWW.SWIDLAW.COM

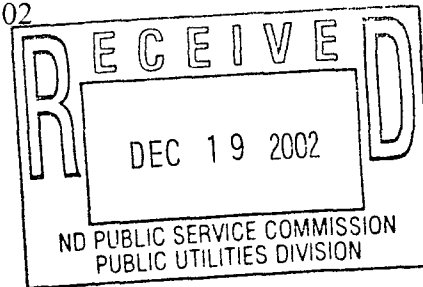
MICHAEL W. FLEMING
DIRECT DIAL: (202) 945-6951
FAX: (202) 424-7645
MWFLEMING@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9596

December 16, 2002

BY OVERNIGHT MAIL

Linda L. Gingery
Emineth & Associates
200 N. 3rd St.
Bismarck, ND 58501



Re: Level 3 Exhibits 5 and 7, ND PSC Case PU-2065-02-465

Dear Ms. Gingery:

Enclosed please find reduced copies of the flip-chart diagrams from the hearing at the North Dakota Public Service Commission on Monday, December 9, 2002. These documents are identified in the record as Level 3 Exhibits 5 and 7.

Please do not hesitate to contact me with any questions.

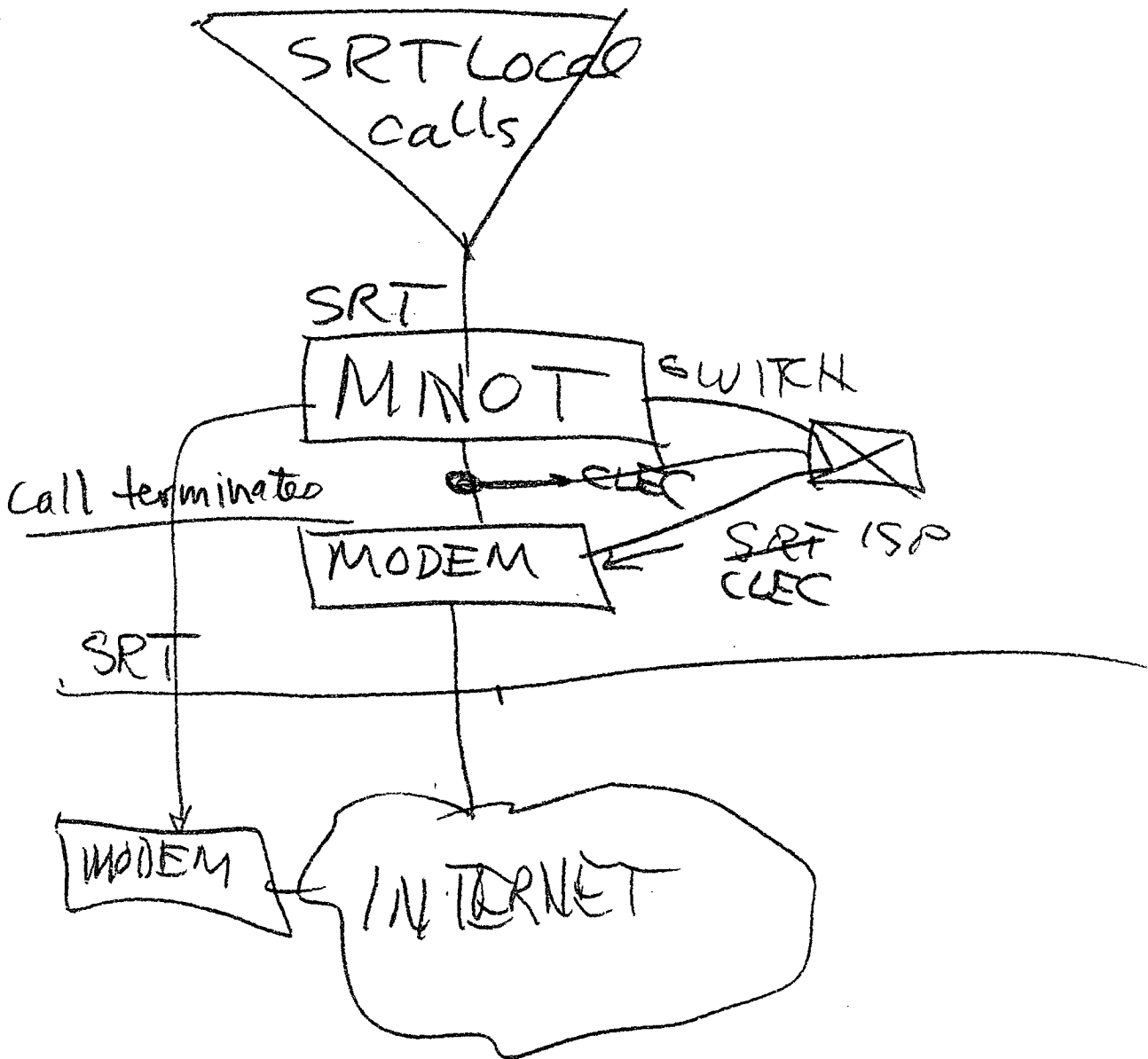
Sincerely,

A handwritten signature in cursive script that reads "Michael W. Fleming".

Michael W. Fleming

Enclosures

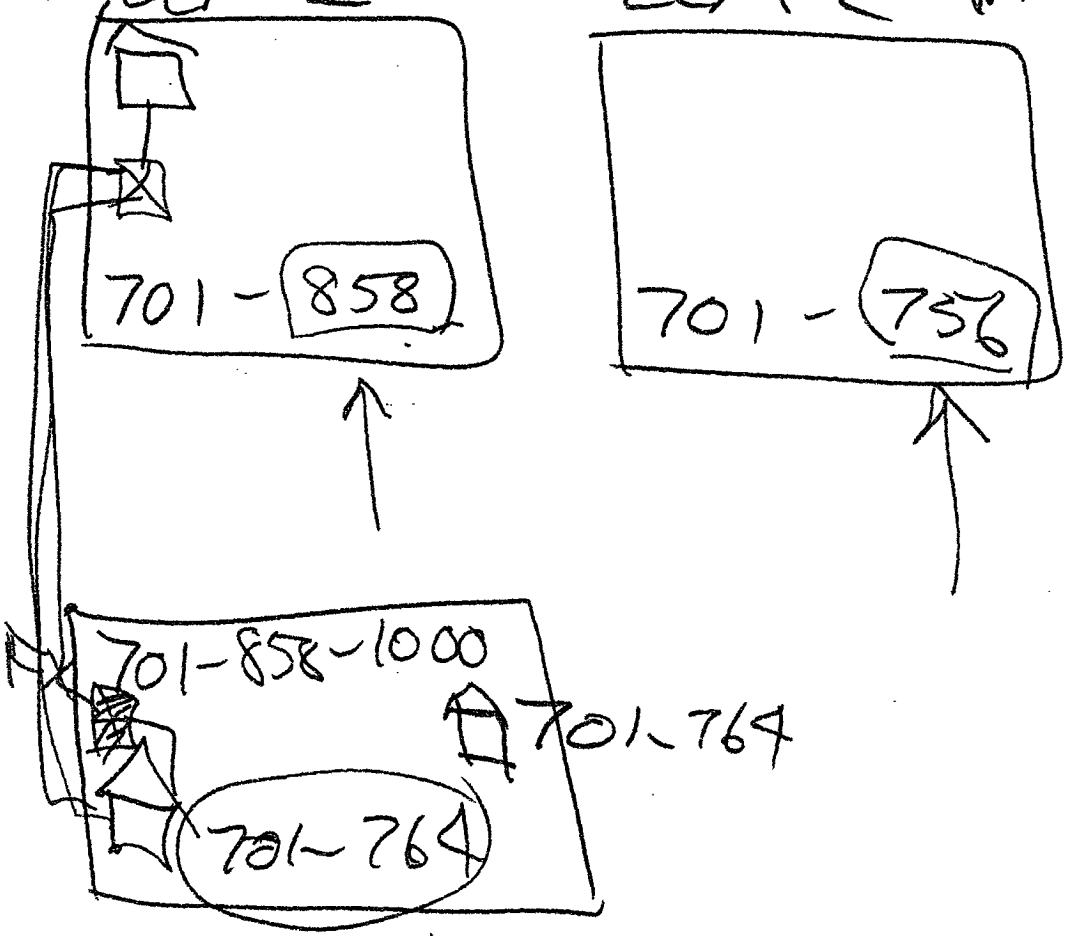
cc (by first class mail): Frank Lamancusa
David Hogue
Jerry Lein



Level 3 Exh. 5

MINOT
LCA 1

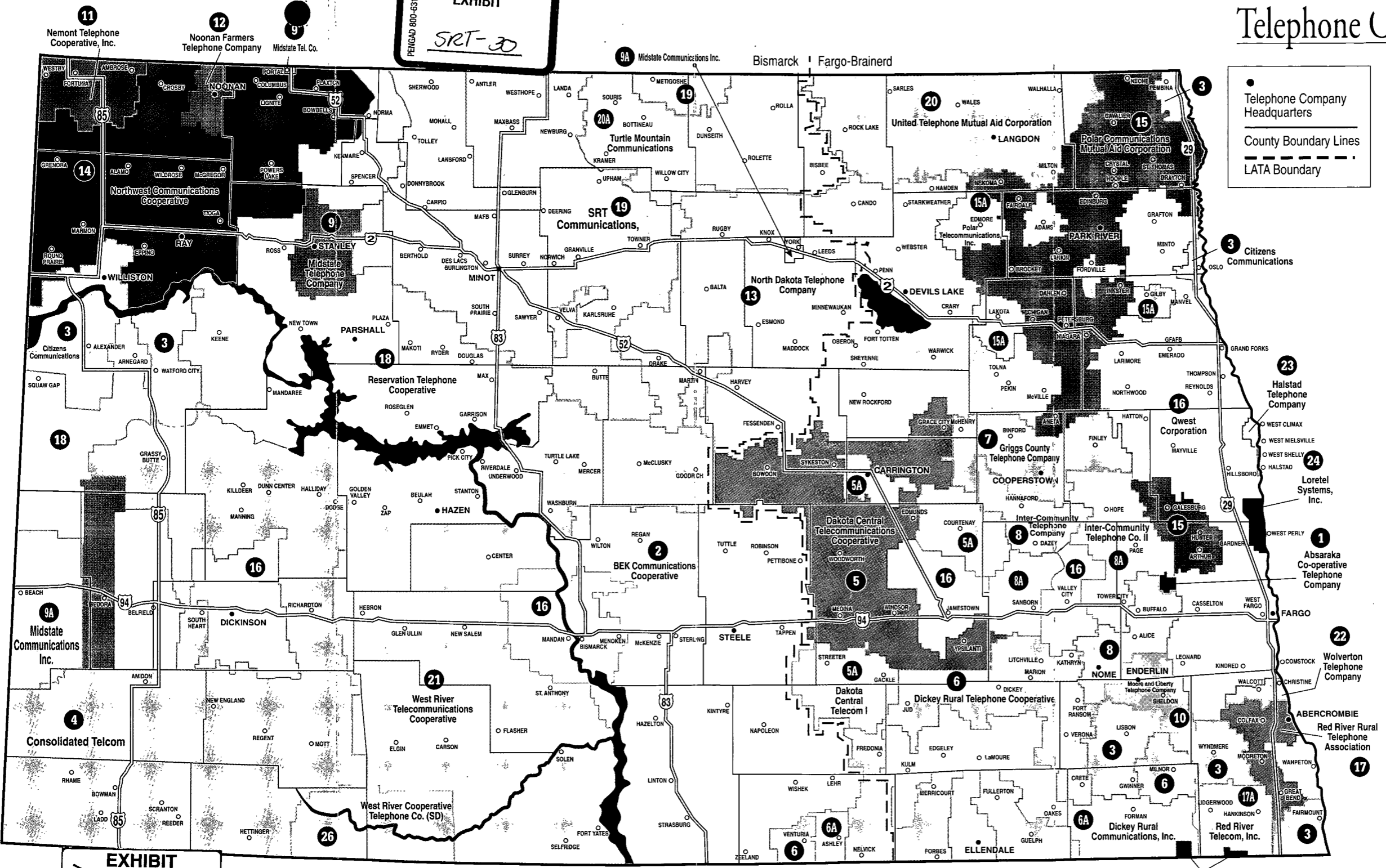
DEVILS LAKE
LCA 2 NPTC



Level 3 Exh. 7

EXHIBIT
SRT-30
PENGDAD 800-631-6989

Telephone Companies Service Areas



● Telephone Company Headquarters
 --- County Boundary Lines
 - - - LATA Boundary

Local Exchange Companies

- 1. Absaraka Co-operative Telephone Company(701) 896-3404
- 2. BEK Communications Cooperative(701) 475-2361
- 3. Citizens Communications(701) 774-7565
- 4. Consolidated Telcom(701) 483-4000
- 5. Dakota Central Telecommunications Cooperative(701) 652-3184
- 5A. Dakota Central Telecom I
- 6. Dickey Rural Telephone Cooperative(701) 349-3687
- 6A. Dickey Rural Communications, Inc.
- 7. Griggs County Telephone Company(701) 797-3301
- 8. Inter-Community Telephone Company(701) 924-8815
- 8A. Inter-Community Telephone Co. II
- 9. Midstate Telephone Company(701) 628-2522
- 9A. Midstate Communications Inc.
- 10. Moore and Liberty Telephone Company(701) 437-3300
- 11. Nemont Telephone Cooperative, Inc.(406) 783-5654
- 12. Noonan Farmers Telephone Company(701) 925-5717
- 13. North Dakota Telephone Company(701) 662-1700
- 14. Northwest Communications Cooperative(701) 568-3331
- 15. Polar Communications(701) 284-7221
- 15A. Polar Telecommunications, Inc.
- 16. Qwest Corporation(701) 222-6959
- 17. Red River Rural Telephone Association(701) 553-8309
- 17A. Red River Telecom, Inc.
- 18. Reservation Telephone Cooperative(701) 862-3115
- 19. SRT Communications, Inc.(701) 858-1200
- 20. United Telephone Mutual Aid Corporation(701) 256-5156
- 20A. Turtle Mountain Communications
- 21. West River Telecommunications(701) 748-2211
- 22. Wolverton Telephone Company(218) 995-2900

Companies From Neighboring States Serving ND Subscribers

- 23. Halstad Telephone Company (MN)(218) 456-2125
- 24. Loretel Systems, Inc. (MN)(218) 784-7171
- 25. Roberts County Telephone Cooperative Assn.(605) 637-5211
- 26. West River Cooperative Telephone Company (SD)(605) 244-5336

EXHIBIT
SRT-1
Updated 10/12

25 Roberts County Telephone Cooperative and RC Communications, Inc. (SD)

Providing Innovative Leadership

North Dakotans are experiencing a technological revolution in the telecommunications industry. Just as railroads and highways radically transformed our society in past decades, advances in telecommunications technology have changed the way we live and work.

New advances in the telecommunications infrastructure have helped North Dakotans meet important economic and social challenges. Businesses operate more efficiently and better serve customers, while competing in a global economy. Rural communities receive critical services such as education and health care through interactive educational TV and telemedicine programs. Disabled citizens are gaining access to economic and social opportunities that many of us take for granted. Internet access, cellular service and cable or satellite TV link North Dakotans to the rest of the world.

Your local telephone company has always been ready to lead the way in introducing and implementing the latest technologies to meet customer needs and maintain the best possible life for all North Dakotans.

The Association

The North Dakota Telephone Association (NDTA) is a trade organization providing information and educational opportunities to the local exchange telephone industry. The Association was organized in 1906 and functioned until it was disbanded in 1973. In 1982 the NDTA was reactivated to address the operational needs of the industry.

Our member companies are the local exchange companies operating under a Certificate of Convenience and Necessity issued by the North Dakota Public Service Commission to provide local telephone service.

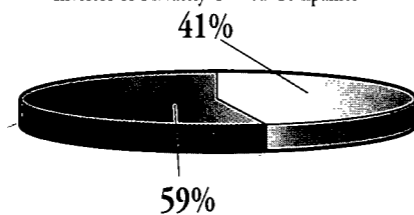
The Association also has over 100 associate members made up of suppliers of equipment and services to the member telephone companies.

The Telephone Companies

Local exchange telephone service is provided by 22 companies and seven subsidiary companies operating 288 exchanges in North Dakota and serving approximately 384,000 access lines to homes and businesses across the state. Five individual companies from neighboring states serve approximately 328 access lines to homes and businesses in North Dakota from exchanges in adjacent states.

"Local Exchange Companies Serving North Dakota"

Investor or Privately Owned Companies



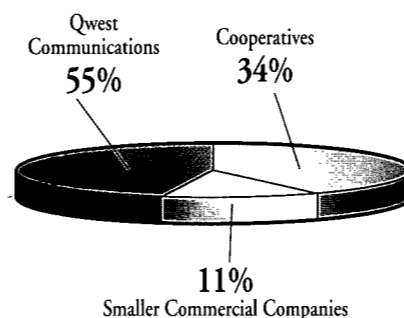
From the beautiful, rugged Badlands of western North Dakota to the Red River Valley of eastern North Dakota, from the Canadian border to the South Dakota border--almost 71,000 square miles--this is our serving territory.

Service to rural Dakota Territory began in the late 1800's. J.L. Grandin, a Dakota Territory farmer, procured a pair of telephones in 1877 and connected two of the several farms the Grandin family operated near the present town of Grandin, North Dakota. Other pairs were obtained shortly thereafter to connect other farms.

By 1950, North Dakota had about 120,000 telephones. Of that number, 91,000 served the larger cities and were owned and operated by five companies, including Northwestern Bell Telephone. Of the remaining 29,000 telephones in the state, 17,000 were owned by 114 telephone companies which operated 140 exchanges; and 11,000 telephones were operated by 700 stock companies. Many of the small telephone companies were family operations.

Since 1950, eleven rural telephone cooperatives have been incorporated in North Dakota. Some began by operating telephone lines that existed before the organization of the cooperatives. Others had constructed a few miles of new line. Dickey Rural Telephone Mutual Aid Corporation, Ellendale, ND, became the first rural telephone cooperative to be incorporated in 1950. By the spring of 1952, nine rural telephone cooperatives had been incorporated, and two more were incorporated within a year.

"Total Access Lines - 401,000"



Today, North Dakota's largest telephone company, Qwest Corporation, provides service to approximately 222,000 (55%) of the state's total telephone customers. Twelve member-owned cooperatives and their subsidiary companies serve approximately 135,000 (34%) customers statewide. The remaining 44,000 (11%) access lines are served by nine investor-owned companies. Of the cooperatives and investor owned companies, eight companies each serve less than 5,000 customers in their certificated North Dakota service areas.

North Dakota's telephone companies employ approximately 1,500 men and women throughout the state. They are experienced with all telecommunications equipment and have the ability and training to satisfy every telecommunications need. These workers also play a vital personal role in their communities where they support numerous civic and community activities.

Your local telephone company brings you complete, advanced technological services.

Next time you pick up your telephone and

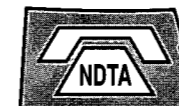
hear that familiar dial tone, or go "Online"

to connect with the rest of the world, remember

the dedicated men and women who are working

to bring you the best service and quality of

life in your community.



North Dakota Telephone Association

1615 Capitol Way, Suite 105

P.O. Box 2614

Bismarck, North Dakota 58502-2614

(701) 223-6022

Fax (701) 223-6023

www.ndta.net

NORTH DAKOTA

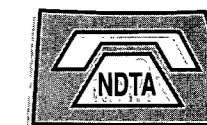
PHONE

FACTS &

SERVICE

AREA

GUIDE



NORTH DAKOTA
TELEPHONE

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Pages: 1

Map of ND designating telephone company service areas by SRT Communications, Inc.

12/09/2002

Exhibit # SRT-30

CC Comm Legal PUD (3)



Staci L. Pies

Director
Federal Regulatory Affairs

(571) 382-7443
(571) 382-7440 - Fax
staci.pies@level3.com

November 26, 2002

Ex Parte via Electronic Filing

Ms. Marlene Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 02-314; CC Docket Nos. 96-98; 99-68; 99-200 and 01-92

Dear Ms. Dortch:

On November 20, 2002, Bill Hunt and I of Level 3 Communications, LLC (Level 3) met with several individuals from the Wireline Competition Bureau, including: Bill Maher, Bureau Chief; Jane Jackson, Assistant Bureau Chief; Jessica Rosenworcel, Legal Counsel; Tamara Preiss, Pricing Policy Division Chief; and Jay Atkinson, Chris Barnekov, Steve Morris, and Victoria Schelsinger also of the Pricing Policy Division. On November 21, 2002. Bill Hunt and I also met with Robert Pepper and Donald Stockdale of the Office of Plans and Policy.

During these meetings Level 3 discussed the consumer benefits of its market expansion of managed modem services. As explained at these meetings, it is critical that the Federal Communications Commission (Commission), state commissions and the industry establish an economically efficient and technology neutral means for interconnection and the exchange of all types of traffic.

Level 3 also discussed specific issues related to several on-going proceedings at the Commission. Level 3 highlighted its belief that in the *ISP-Bound Remand Order*,¹ although the Commission asserted jurisdiction over and established the compensation regime for the termination of ISP-bound traffic, the Commission did not intend to eliminate section 251 interconnection rights and obligations with regard to such traffic. As Level 3 has pointed out in previous *ex parte* filings, footnote 149 of the *ISP-Bound Remand Order* makes this interpretation abundantly clear. Questions of how the Commission's findings in that order affect interconnection obligations and the exchange of ISP-bound traffic have arisen in several Level 3 interconnection negotiations and arbitrations over the past year. Level 3 further discussed how the exchange of traffic under

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation of ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*), remanded sub nom. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

Level 3 Communications, LLC
www.

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PU-2065-02-465

Pages: 2

Nov 6, 2002 letter to FCC from Level 3
regarding ex parte communications
by SRT Communications, Inc.

Exhibit # SRT-20

12/09/2002

CC: Comm Legal PUD (3)

EXHIBIT

tabbles

SRT-20

foreign exchange or virtual NXX arrangements should be compensated in a multi-provider environment.

In the context of Qwest's multi-state 271 application, Level 3 reiterated its position that it is not responsible for the costs of originating traffic on Qwest's network, and that calls placed by Qwest customers to ISPs served by other providers should not be excluded from the relative-use calculation agreed to by the parties to determine the appropriate charges for interconnection facilities (direct trunk transport and entrance facilities).

Furthermore, Level 3 discussed its position regarding AT&T's recent petition for declaratory ruling on whether "phone to phone" voice over the Internet should be exempt from the Commission's current access charge regime. Again, Level 3 encouraged the Commission to adopt a compensation scheme that permits providers to interconnect and exchange traffic in the most economically efficient manner possible.

Finally, Level 3 emphasized that it is of critical importance for the Commission to settle issues such as whether state commissions have jurisdiction to rule on questions arising from the exchange of ISP-bound traffic between LECs, and to determine whether Qwest is violating the Commission's interconnection rules and obligations by attempting to charge Level 3 for facilities used to originate ISP-bound traffic over the Qwest network. These kinds of questions must be settled to ensure that new entrants such as Level 3 are able to deploy innovative services in a timely and competitive manner, and to promote competitive entry into areas beyond the metropolitan regions served by the largest incumbents.

Please do not hesitate to contact the undersigned if you have any questions concerning this filing.

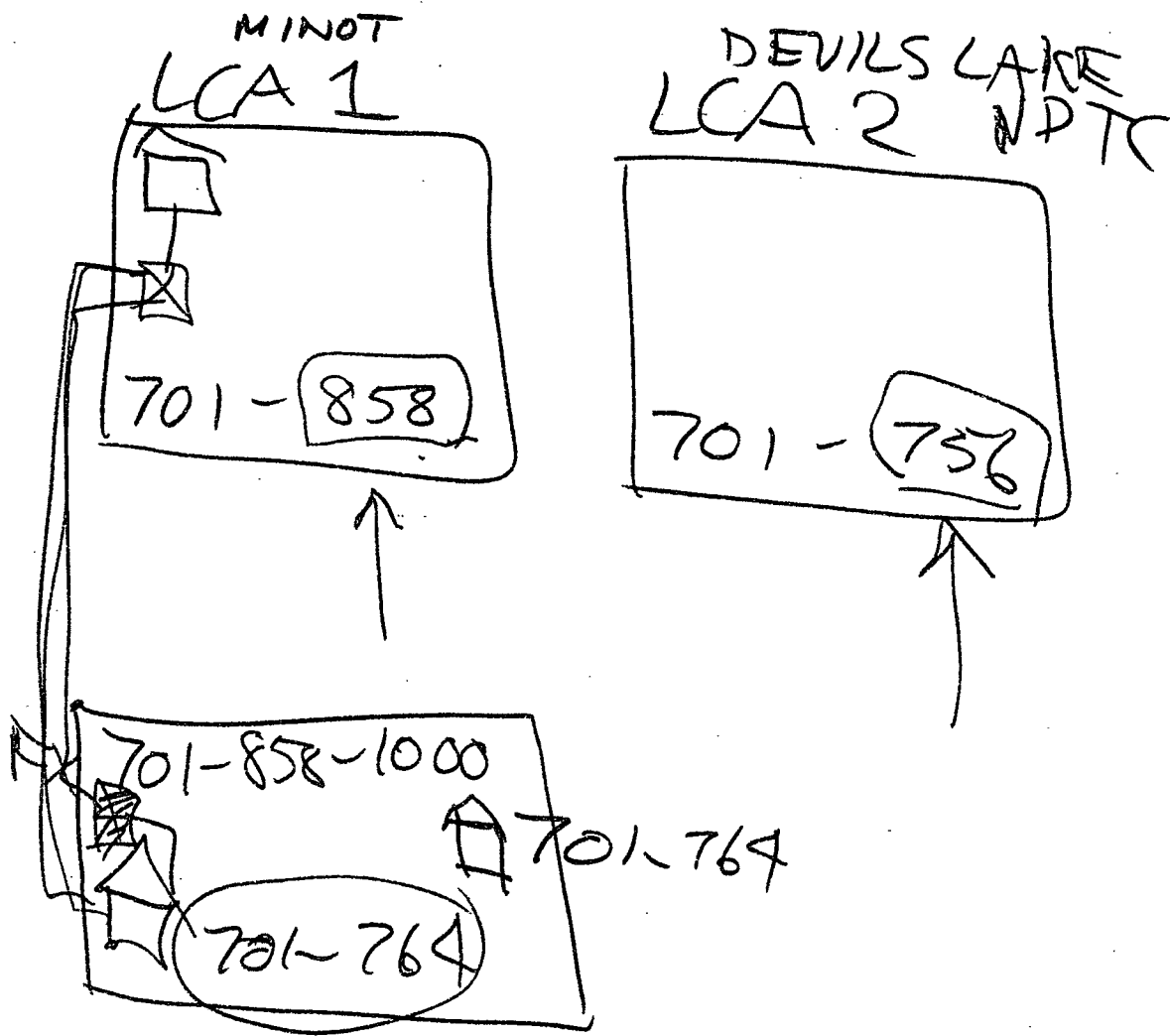
In accordance with the Commission's rules, this letter is being filed electronically in the above captioned dockets.

Sincerely,

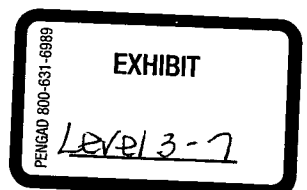
/s/

Staci L. Pies

cc: Bill Maher
Robert Pepper
Jane Jackson
Donald Stockdale
Jessical Rosenworcel
Tamara Preiss
Chris Barnekov
Jay Atkinson
Victoria Schlesinger
Steve Morris



Level 3 Exh. 7





search [] go

home
support
contact us
web mailbox
text messaging

services **internet** wireless telecom long distance digiTEL solutions
broadband | dial-up | dedicated | web hosting | support

Internet Support Access Numbers

Internet

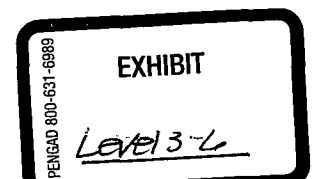


{ Access Numbers ... }

- Antler 267-0000
- Berthold 453-0000
- Butte 626-0000
- Carpio 468-0000
- Deering/Granville 728-0000
- Des Lacs 725-0000
- Donnybrook 482-0000
- Glenburn 362-0000
- Karlsruhe 525-0000
- Landa 295-0000
- Lansford 784-0000
- Martin 693-0000
- Maxbass 268-0000
- Metigoshe 263-0000
- Minot 838-0000
- Minot AFB 727-0000
- Mohall 756-0000
- Newburg 272-0000
- Sawyer 624-0000
- Sherwood 459-0000
- South Prairie 722-0000
- Tolley 386-0000
- Towner 537-0000
- Upham 768-0000
- Westhope 245-0000

internet | telecom | wireless | long distance | digiTEL solutions
SRT home | company | support | contact us | sitemap | FAQ's

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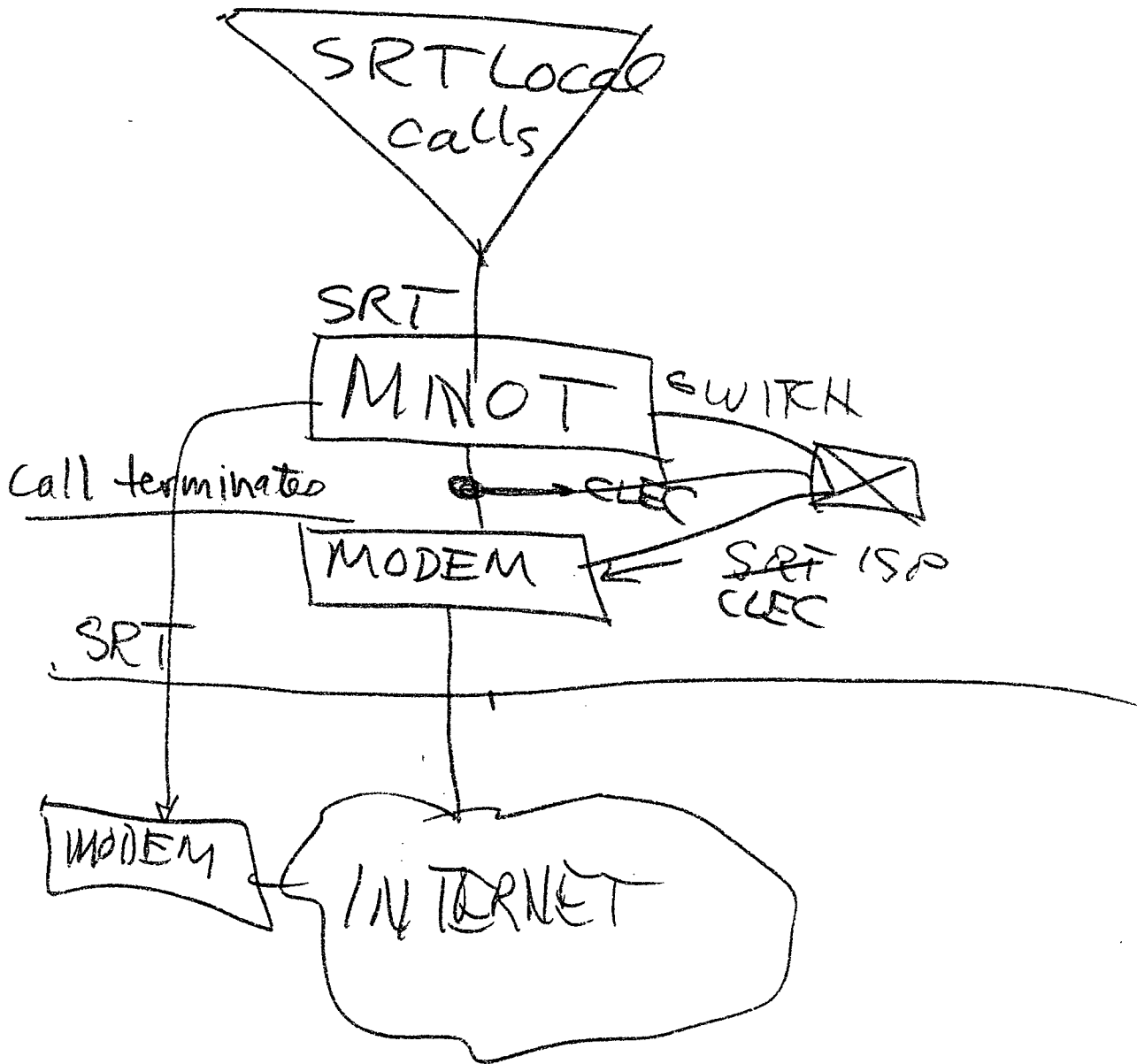
SRT Internet access numbers

by Level 3 Communications, LLC

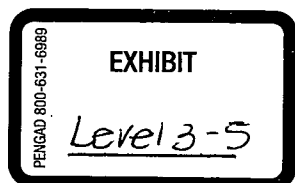
12/09/2002

Exhibit # Level 3 - 6

CC: Comm Legal PUD (3)



Level 3 Exh. 5



PU-2227-00-63

Meredith

SRT COMMUNICATIONS, INC.

STATE OF NORTH DAKOTA

TELEPHONE TARIFF

COVERING

GENERAL RULES AND REGULATIONS

LOCAL EXCHANGE SERVICES

February 1, 2000

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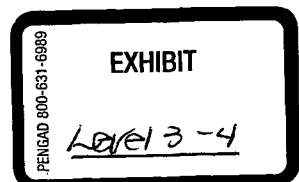
Pages: 3

Cover sheet of State of ND telephone tariff
& Sec 11, sheets 1 & 2
by Level 3 Communications, LLC

Exhibit # Level 3 - 4

12/09/2002

CC: Comm Legal PUD (3)



Level 3 Exhibit 4

FOREIGN EXCHANGE SERVICE

A. General

Foreign Exchange Service is dial tone telephone service designed to meet the requirements of subscriber's who have a substantial amount of communications with subscriber's in an exchange other than the one in which they are located. Foreign Exchange Service may be provided under this rate schedule between contiguous or noncontiguous exchanges located in the State of North Dakota. This service will be provided by the use of interchange facilities between the central office in each exchange.

B. Regulations

1. Foreign Exchange Service is provided in accordance with such methods as are best suited to meet plant and operating requirements of the Company.
2. Foreign Exchange Service will be provided only in connection with individual line and Private Branch Exchange trunks.
3. A subscriber of Foreign Exchange Service is required to have some type of exchange service regularly furnished in the local exchange in which the subscriber's premise is located.
4. Exchange telephone service furnished with Foreign Exchange Service and Foreign Exchange Service for a telephone subscriber of the Company will be provided outside the Company's exchange areas only when interexchange facilities are available from a connecting company having such facilities.

SRT Communications, Inc.

Section: 11

Sheet: 2

General Exchange Tariff

Revision: Original

FOREIGN EXCHANGE SERV

C. Rates (continued)

1. Nonrecurring charges are found in Section 3 of this Tariff. If construction is required, see Section 2 of this Tariff.

2. Where the Company furnishes exchange service, the monthly charge will be:

	<u>Installation</u> <u>Charge</u>	<u>Monthly</u> <u>Rate</u>	<u>Billing</u> <u>Code</u>
a. Local FX trunk		\$ 25.00	
b. Transport Mileage (Mileage Bands)			
• Over 0 to 8			
- Fixed	\$60.50	\$ 15.00	
- Per mile	-	\$ 4.50	
• Over 8 to 25			
- Fixed	\$60.50	\$ 30.00	
- Per mile	-	\$ 5.00	
• Over 25 to 50			
- Fixed	\$60.50	\$ 73.75	
- Per mile	-	\$ 3.25	
• Over 50			
- Fixed	\$60.50	\$148.75	
- Per mile	-	\$ 1.75	
c. Installation Charge			
• Service Provisioning	\$287.00		
• Local Trunk Charge	\$109.50		

RECEIVED
DEC 18 2002
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF)
)
Level 3 Communications, LLC)
)
For Arbitration Pursuant to)
Section 252(b) of the)
Telecommunications Act of 1934,)
as Amended, to Establish an)
Interconnection Agreement with)
SRT Communications Cooperative)
of North America regarding)
standby pay.)

Case No.
PU-2065-02-465

TRANSCRIPT OF ARBITRATION HEARING

North Dakota State Capitol
Public Service Commission Hearing Room
Bismarck, North Dakota
December 9, 2002

Before Frank G. Lamancusa,
Arbitrator

EMINETH & ASSOCIATES
Court Reporters
BISMARCK, NORTH DAKOTA
(701) 255-3513



ORIGINAL

A P P E A R A N C E S

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MR. MICHAEL W. FLEMING of
Swidler Berlin Shereff Friedman, LLP
Attorneys at Law
3000 K Street N.W., Suite 300
Washington, D.C. 20007-5116

FOR LEVEL 3 COMMUNICATIONS,
INC.

MR. DAVID J. HOGUE of
Pringle & Herigstad
Attorneys at Law
20 First Street S.W., Suite 201
P. O. Box 1000
Minot, North Dakota 58702-1000

FOR SRT COMMUNICATIONS,
INC.

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EXAMINATION OF WITNESSES

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<u>Level 3 Witnesses</u>				
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Rogier DuCloo	67	71	83	
Timothy J Gates	86	--	95	
<u>SRT Witnesses</u>				
Douglas Meredith	100	114	151	154
Jan M. Sebby	160	173	210	
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<u>Level 3 Rebuttal Witnesses</u>				
Timothy J Gates	212			

LEVEL 3 EXHIBITS

<u>No.</u>	<u>Off'd</u>	<u>Rec'd</u>	<u>Description</u>
1	14	14	Prefiled testimony of William P. Hunt, III
2	68	68	Prefiled testimony of Rogier R. DuCloo
3	87	87	Prefiled testimony of Timothy J Gates
4	267	267	Cover sheet of State of North Dakota telephone tariff and Section 11, sheets 1 and 2
5	267	267	Drawing
6	267	267	SRT Internet access numbers
7	267	267	Drawing

	<u>SRT EXHIBITS</u>			
	<u>No.</u>	<u>Off'd</u>	<u>Rec'd</u>	<u>Description</u>
1				
2				
3	20	35	35	November 26, 2002 letter to FCC
4				from Level 3 regarding ex parte
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				Meredith
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1 (The following proceedings were had and made of
2 record, Monday, December 9, 2002, commencing at 9:10
3 a.m.)

4 THE ARBITRATOR: My name is Frank
5 Lamancusa. I'm the arbitrator appointed in this
6 matter, Level 3 Communications, LLC, Interconnection
7 Arbitration Application, Case No. PU-2065-02-465.

8 I'd ask if the parties could please
9 identify the counsel at the table.

10 MR. FLEMING: Michael Fleming from the law
11 firm Swidler Berlin Shereff Friedman, on behalf of
12 Level 3 Communications.

13 MR. HOGUE: David Hogue, Pringle &
14 Herigstad, on behalf of the respondent, SRT
15 Communications, Inc.

16 THE ARBITRATOR: Thank you. Before we
17 begin, I have just a few comments. Number one, this
18 proceeding is being recorded and transcribed. It is
19 helpful to the stenographer that we not speak over
20 each other, so to the extent that we can wait until
21 the other one is done talking, that would benefit
22 the clarity of the record.

23 Also, I plan -- so that the witnesses
24 understand it, plan to take a break about an hour
25 and a half, two hours in. Then we'll break

1 around -- just a short 10-minute break. We'll break
2 around lunchtime, around 12:30, is the intent so
3 that the parties can sort of caucus and people can
4 get some lunch, and then we'll reconvene probably
5 within 45 minutes to an hour after that and go until
6 the end of the day. The witnesses will be sworn in
7 by the stenographer as each witness takes the stand.

8 I think without further ado, why doesn't
9 Level 3 begin their summary opening statement.

10 MR. FLEMING: Thank you, Mr. Lamancusa.

11 The story in this case begins before Level
12 3 came into the picture. There was a McLeod
13 Communications entity, McLeod Information Services,
14 that came into the North Dakota market, was not a
15 carrier, purchased retail circuits from SRT in order
16 to provide Internet access service to their customer
17 that had a modem bank in Bismarck. SRT provided the
18 McLeod entity with a telephone number. They
19 provided them with the circuits to provide the
20 Internet access service. They provided some of the
21 transport down to Bismarck. Qwest provided the rest
22 of the transport. A call from an SRT end user to
23 the McLeod telephone number was rated as local SRT,
24 with the understanding that it was Internet traffic
25 and that it was going to Bismarck.

1 That McLeod entity, the business operations
2 were failing. Level 3 purchased that entity and
3 with it came certain assets, including the circuits
4 in Minot, North Dakota, as well as the transport and
5 the customer. Level 3, following the purchase,
6 almost immediately requested interconnection with
7 SRT. Level 3 as a carrier had that right. Level 3
8 wanted to convert these retail circuits into
9 transport circuits as a co-carrier. And Level 3 was
10 also willing to pay the applicable tariff charges
11 for this transport. SRT not only refused
12 interconnection to Level 3 as a co-carrier, but they
13 even refused to negotiate. And that led to this --
14 eventually, this petition for arbitration.

15 Level 3 asserts that the issues here are
16 fairly straightforward. Level 3 serves only ISPs.
17 They have no voice product at this time. Level 3
18 proposes to interconnect as a co-carrier, assign its
19 customer numbers that Level 3 obtains. The calls
20 will be rated to Minot. They will be transported
21 down to Bismarck initially, and they will still
22 continue to buy the interoffice transport that
23 they're currently providing.

24 What we'd like to make clear from the
25 outset is that Level 3 is not seeking free access to

1 the SRT network. Level 3 is willing to pay the
2 going rate for the transfer facilities that they'll
3 be purchasing from SRT similarly to the way --
4 similar to the way that the CMRS carriers are
5 currently providing -- or purchasing transport from
6 SRT. Under their interconnection agreements they
7 pay transport at, quote, the applicable tariff
8 charges.

9 Now, it's important to understand that the
10 Act allows Level 3 to do this under 251(a). It did
11 not allow the McLeod entity to do this. So whatever
12 arrangements may have preexisted Level 3's
13 acquisition of the McLeod entity do not apply
14 necessarily because Level 3 is a carrier and the
15 McLeod entity was not.

16 The Act allows Level 3 to interconnect
17 directly based on its own most efficient technical
18 and economic choices. McLeod did not have that
19 right. Level 3 does, and we will demonstrate that
20 Level 3 is entitled to interconnection under 251(a)
21 as requested in the petition for arbitration.

22 THE ARBITRATOR: Mr. Hogue.

23 MR. HOGUE: Thank you.

24 I wanted to begin by introducing for the
25 court reporter a few of the witnesses who will be

1 testifying just so she knows. This is Mr. Jan
2 Sebby, and this is Mr. Douglas Meredith.

3 Clearly, Level 3 and SRT have a fundamental
4 dispute, and the dispute goes back to March of this
5 year. And if you boil it all down, the dispute
6 relates to whether the proposal that they have put
7 forth involves interexchange telecommunications or
8 local traffic.

9 SRT and Level 3 have an existing
10 arrangement. It has been variously described by
11 Mr. Fleming and some of the witnesses as something
12 they inherited or something they bought, but the
13 fact remains we have a current arrangement. And I
14 wanted the Arbitrator and the Commission to be clear
15 about that. SRT has contended throughout this
16 proceeding that it is directly connected to Level 3.
17 Now, it may have been, as Mr. Fleming implies,
18 through some related or unrelated transaction with a
19 party they acquired, but that doesn't change the
20 fundamental fact that we're directly connected.

21 Today, SRT end users can use their
22 computers and a modem to dial into SRT's switch and
23 the switch routes that traffic out over these
24 so-called PRI trunks, primary rate interface. Those
25 contain 23 channels and one data line, I believe.

1 Those 23 channels allow SRT customers to connect
2 directly to Level 3's modems in Bismarck. That is
3 the present arrangement. Level 3 has -- presently
4 has seven of those PRI trunks. So that means
5 approximately 160 customers of Level 3 can use the
6 Internet at one time. Level 3 has told us they
7 don't like that arrangement. That arrangement is
8 billed on a flat monthly fee. I believe it's
9 approximately \$1,100 per ISDN line. Level 3 wants a
10 different arrangement. As you may have seen through
11 the testimony, Level 3's proposal is to -- using its
12 authority as a CLEC to obtain numbers from the North
13 American Numbering Planning Administrator and rate
14 center those numbers in Minot so that the numbers
15 assigned to their customers would be in SRT's
16 switches and when a local SRT end user dials that
17 number, it would be treated as a local number and
18 rated as such.

19 And that's, I guess, where the parties
20 splinter off into several different subissues and
21 debates. And SRT feels like we've been engaged in
22 this apples-and-oranges debate for about six months.
23 We say apples are not oranges. Level 3 says apples
24 are orange-like, because apples and oranges both
25 grow on trees and apples and oranges are both fruit

1 and apples and oranges are healthy. And so we get
2 into the petitions and the arguments and we have
3 terms thrown about like FX and FX-like. We have
4 virtual NXX, not NXX. And that's, I think, where
5 the parties were at through the negotiations that
6 were commenced in March and through the petition
7 that was filed back in August.

8 Now we come to the prefiled testimony and,
9 really, we don't have any fundamentally different
10 arguments. What we have is additional argument as
11 to why apples are orange-like. In the testimony of
12 the witnesses of Level 3 they compare SRT's
13 arrangement with wireless CMRS providers and say we
14 should be treated like them. They compare the
15 service offering in SRT's area, the EAS offering
16 that we have, with what they propose in Bismarck and
17 try to analogize this to EAS. What they want is
18 EAS-like.

19 But it doesn't change the fundamental
20 nature of the dispute. It is still a dispute about
21 whether this is interexchange traffic or local. And
22 the arguments that Level 3 has advanced in their
23 direct testimony is just a further variation on
24 that. Now we're told that apples and oranges have
25 seeds. We're told that apples and oranges have a

1 high level of Vitamin C, but it really hasn't
2 changed the fundamental nature of that call that
3 would be originated in Minot and terminated in
4 Bismarck or some other foreign exchange where ISP --
5 where Level 3's customers are physically located.

6 And so I think it's helpful for the
7 Commission and it's helpful for you as the
8 Arbitrator to understand that there's a fundamental
9 dispute here and, really, all of these arguments
10 under that are really argument about whether this
11 traffic is local or interexchange. As I said, we
12 believe it's interexchange traffic and we believe
13 we're directly connected with Level 3 already and,
14 as such, there's nothing further to negotiate.

15 Thank you.

16 THE ARBITRATOR: Mr. Fleming, if you could
17 proceed with your direct case.

18 MR. FLEMING: Our first witness is Bill
19 Hunt of Level 3.

20 THE ARBITRATOR: Mr. Hunt, would you please
21 take the stand?

22 WILLIAM P. HUNT, III,
23 having been first duly sworn, was examined and
24 testified as follows:

25

DIRECT EXAMINATION

1

2 BY MR. FLEMING:

3 Q. Good morning, Mr. Hunt.

4 A. Good morning.

5 Q. Could you please state your name and spell
6 it, for the record.7 A. It's William Patrick Hunt, III. Last name
8 is H-u-n-t.

9 Q. And by whom are you employed?

10 A. Level 3 Communications.

11 Q. And what is your position?

12 A. I'm vice-president of public policy.

13 Q. Did you cause to be filed on your behalf 42
14 pages of testimony, plus I believe 15 exhibits?

15 A. Yes, I did.

16 Q. And if I were to -- do you have any changes
17 to make to that testimony at this time?

18 A. No, I do not.

19 Q. And if I were to ask you the same questions
20 today that you were asked in your testimony, would
21 your responses be the same today?22 A. Yes. I would point out, Mr. Fleming, mine
23 has 41 pages. Could be a pagination issue, but I
24 have 41 pages.

25 Q. Okay. Thank you.

1 MR. FLEMING: I move for the admission of
2 Mr. Hunt's testimony into the record, plus the
3 exhibits. Unfortunately, I do not have a copy to
4 give to the reporter at this point, but I will
5 shortly.

6 THE ARBITRATOR: Any objections?

7 MR. HOGUE: No.

8 THE ARBITRATOR: No objections. The
9 testimony is admitted.

10 MR. FLEMING: And we also agreed that the
11 parties would have the opportunity to provide reply
12 testimony to the direct testimony of SRT, and I'd
13 like to ask Mr. Hunt a few questions regarding that.

14 Q. (MR. FLEMING CONTINUING) Mr. Hunt,
15 Mr. Sebby and Mr. Meredith both state that Level 3
16 is seeking free access to the SRT network. How do
17 you respond?

18 A. I believe that both Mr. Meredith and
19 Mr. Sebby misunderstand what Level 3 is trying to do
20 in this case. We're simply trying to change what is
21 currently a retail relationship into a co-carrier
22 relationship, which we are entitled to under the
23 Telecommunications Act and our certificate here in
24 North Dakota.

25 Q. Mr. Meredith also claims in his testimony

1 that Level 3 is seeking reciprocal compensation. Is
2 that correct?

3 A. No, that is not correct. The ISP order on
4 remand is pretty clear that for carriers who are not
5 exchanging traffic under an interconnection
6 agreement in the first quarter of 2001, any traffic
7 exchanged after that date would be on a bill-and-
8 keep basis.

9 Q. Mr. Sebby also says that North Dakota is
10 not a new market for Level 3. Is that correct?

11 A. If North Dakota is not a new market for us,
12 then you would go the other direction of the ISP
13 order and SRT would owe Level 3 reciprocal
14 compensation for traffic to be exchanged, so this
15 really is a new market for us.

16 Q. Mr. Meredith in his testimony says that
17 Level 3 is seeking to impose terms and conditions on
18 SRT. How do you respond?

19 A. I think, again, Mr. Meredith has a
20 misunderstanding of the Act. Level 3 has a right to
21 interconnect with SRT as a co-carrier. The McLeod
22 entity from whom we purchased the assets in the SRT
23 serving area did not have that right. And,
24 remember, the purchase of the McLeod assets, this
25 has been a national integration. This is not

1 something we bought just in North Dakota, but this
2 company had a nationwide footprint.

3 So under the Act, if Level 3 and SRT are
4 unable to negotiate terms and conditions concerning
5 Level 3's rights, then we have the right to submit
6 the dispute to the PSC for resolution and this
7 Commission will decide the issues. We have no
8 ability to impose anything on SRT, other than what's
9 defined as our rights under the Telecom Act.

10 Q. Mr. Meredith in his testimony refers to a
11 decision from the Maine Public Utility Commission
12 regarding an FX service provided by a CLEC. Do you
13 recall that testimony?

14 A. Yes, I do.

15 Q. Are you familiar with that Maine decision?

16 A. Somewhat, yes.

17 Q. Mr. Meredith says that the circumstances in
18 that case are strikingly similar to the present
19 circumstance.

20 A. That's not correct. In Maine, Brooks Fiber
21 had no authority to operate out of one certain
22 exchange and they sought numbers throughout the
23 state. Level 3 has authority to operate in this
24 state and in the Minot territory, and Level 3 is
25 seeking numbers to provide -- or seeking

1 interconnection to provide services in Minot and
2 will then get numbers in Minot. Brooks had also
3 gone out and had kind of hoarded numbers. They've
4 got numbers in like 54 of the rate centers across
5 the state and they weren't providing service in any
6 of those. Two very striking different factual
7 issues.

8 Also, you had a situation at the time where
9 when new carriers were coming into the market, you
10 had so many CLECs requesting numbers that states
11 feared they were going to have numbering exhaust.
12 That issue is past. Many CLECs have died and gone
13 away. Numbers have been returned to the pooling
14 administrator. And I'm not aware of any number
15 exhaust issues here in North Dakota.

16 And the other part of that order was, under
17 the way that Brooks was trying to provide the
18 service, Verizon, the incumbent carrier, was being
19 forced to carry traffic across the state at great
20 expense. That doesn't exist here because in this
21 situation SRT's financial responsibility for the
22 call will end once it gets into its switch. At that
23 point it will go over on the transport that Level 3
24 will lease and then we'll be responsible for taking
25 it back to Bismarck.

1 Q. Mr. Meredith also refers to a decision from
2 the Florida Public Service Commission. Do you
3 recall that testimony?

4 A. Yes, I do.

5 Q. Are you familiar with that decision?

6 A. Yeah. That decision only applied to non-
7 ISP traffic.

8 Q. Mr. Meredith claims in his testimony that
9 Level 3 -- providing the service to Level 3 that it
10 requests will force SRT to discriminate against
11 other interexchange -- against interexchange
12 carriers. Do you recall that testimony?

13 A. Yes, I do.

14 Q. And do you have a response?

15 A. I think it's -- I think he misunderstands
16 what we're trying to do here again. Actually,
17 there's two differences. ISP-bound traffic falls
18 under a very distinct regulatory regime, much like
19 IXC traffic does. They're not the same types of
20 traffic. And that's the distinction that I think he
21 fails to understand.

22 Q. Mr. Sebbly, in his testimony, says that
23 Level 3 has no owned or leased facilities in Minot
24 and for that reason it has no right to
25 interconnection. How do you respond to that?

1 A. Well, we do have facilities we are leasing
2 and we will continue to lease facilities going
3 forward. I don't think there's anything in the Act
4 that requires you to build your network or lease
5 facilities before you can request interconnection.
6 It's kind of putting the cart before the horse,
7 really.

8 Q. Mr. Sebby, in his testimony, says that
9 nothing in the ISP remand order indicates that it
10 was ever considering foreign exchange traffic or
11 virtual NXX traffic. How do you respond to that?

12 A. We provided SRT with copies of a number of
13 the ex partes that Level 3 filed in the Intercarrier
14 Compensation Dockets talking about virtual --
15 talking about FX services. The fact that it's not
16 discussed in the remand order just means the FCC did
17 not treat it any differently than what SRT calls
18 true local ISP service. And a number of states,
19 Florida, New Hampshire, Texas, Ohio, Connecticut,
20 have all come to the same conclusion.

21 MR. FLEMING: I have no further questions
22 in reply and make Mr. Hunt available for cross-
23 examination.

24 THE ARBITRATOR: Mr. Hogue.

25 MR. HOGUE: Thank you.

CROSS-EXAMINATION

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BY MR. HOGUE:

Q. Mr. Hunt, I understand that you are an attorney; is that correct?

A. Yes, I do have a law degree.

Q. And, in fact, you have practiced law for some time --

A. Yes, I have.

Q. -- before your affiliation with Level 3?

A. Yes.

Q. I think for the benefit of the court reporter, you'll probably have to let me complete my question before you answer it because it's hard for her to take down both of us talking at the same time.

If the evidence in this arbitration proceeding shows that Level 3 and SRT are directly connected or indirectly connected and that they were directly or indirectly connected before Level 3 filed its petition, doesn't the PSC have to dismiss your petition?

A. There's -- I think that the question seems to just infer that -- or fails to define what is meant by 251(a), direct and indirect interconnection. And there's a very distinct

1 difference between a retail relationship and that of
2 two co-carriers.

3 Q. Well, you've read FCC decisions before,
4 haven't you, that refer to the obligations under
5 251(a) as being part of a hierarchy, haven't you?

6 A. Yes.

7 Q. Okay. And the least burdensome for the
8 nonrequesting carrier is 251(a), correct?

9 A. That's correct. And if there's a specific
10 decision you want to talk about or look at, we can
11 do that.

12 Q. Okay. No. I just want to establish the
13 hierarchy --

14 A. Okay.

15 Q. -- that the FCC has talked about. 251(a)
16 is the least burdensome, correct?

17 A. Correct.

18 Q. 251(b) is the intermediate level of burdens
19 that are imposed on the nonrequesting carrier,
20 correct?

21 A. It imposes its own obligations, yes.

22 Q. And 251(c) I assume you would agree is the
23 most burdensome and applies to incumbent local
24 exchanges?

25 A. It's the most burdensome for incumbent

1 local carriers, yes.

2 Q. Okay. Do you understand the difference
3 between procedural rights and substantive rights?

4 A. Maybe if we want to go down that road and
5 talk about that, maybe you should give me your
6 definition.

7 Q. Well, I will try to do it in the context of
8 251 and 252. I guess I would ask you, 251 clearly
9 gives you, the requesting carrier, substantive
10 rights, does it not?

11 A. It gives us the right to request
12 interconnection, yes.

13 Q. Well, it gives you more than just that,
14 though, doesn't it? 251(c) gives you the right to
15 demand interconnection at any point you choose so
16 long as it's technically feasible?

17 A. The Act does establish the framework.
18 251(c) isn't relevant to what Level 3 is asking for
19 in this case.

20 Q. Well, we think it is, and we'll have to
21 discuss this even though you don't think it is
22 relevant. Okay. 251(c) and all of 251 gives Level
23 3 certain substantive rights; is that not true?

24 A. Yes, statutory rights; yeah.

25 Q. 252 is, would you agree, the procedural

1 mechanism by which you enforce the rights that you
2 are granted under Section 251?

3 A. 252 establishes the approval process and
4 the arbitration process.

5 Q. You have no substantive rights in 252, do
6 you?

7 A. We have a right to petition for
8 arbitration, yes.

9 Q. But that petition -- the right to petition
10 for arbitration is the means by which you enforce
11 whatever rights you have in 251, correct?

12 A. I think maybe the right to ask -- request
13 arbitration is pretty substantive.

14 Q. But it doesn't give you any rights and
15 doesn't help you deliver services to your customer,
16 does it?

17 MR. FLEMING: Your Honor --

18 THE WITNESS: That's correct.

19 MR. FLEMING: Excuse me. -- I object.

20 This is going down a path that sounds like legal
21 banter, which is probably better served in our
22 briefs. If Mr. Hogue has some specific facts he'd
23 like to obtain from Mr. Hunt, perhaps he could ask
24 those.

25 MR. HOGUE: Well, the witness testified on

1 direct that he felt that Level 3 was entitled to
2 interconnection under 251(a), and I think I'm
3 entitled to explore that. Obviously, this
4 administrative hearing is going to mix a lot of fact
5 and law, and we do want to explore that because
6 that's part of his prefiled testimony and that's
7 part of his direct verbal testimony.

8 THE ARBITRATOR: I'm going to allow the
9 testimony, this questioning to continue, but I would
10 note for the record that the ultimate decision of
11 law will be first held or first rendered by myself
12 and then ultimately by the Commission. And so
13 statements made as far as a particular argument of
14 what the law is ultimately will be decided by myself
15 first and then the Commission. So please continue.

16 Q. (MR. HOGUE CONTINUING) Well, let me back
17 up. Do you recognize that 252 doesn't give you any
18 substantive rights as distinguished from 251?

19 A. You know, I still think the ability to
20 request arbitration is a pretty major right.

21 Q. I want to turn to your direct testimony,
22 Mr. Hunt. I guess the initial discussion would
23 relate to the wireless CMRS providers. And I take
24 it you think that the relationship between SRT and
25 its wireless carriers is sufficiently analogous that

1 you, "you" meaning Level 3, ought to be afforded the
2 same interconnection rights; is that true?

3 A. Yes.

4 Q. Level 3 is not a CMRS provider, are they?

5 A. No, they're not. No, we're not. I'm
6 sorry. No, Level 3 is not a CMRS provider.

7 Q. Okay. Level 3 has no mobile wireless
8 customers in SRT's exchange areas?

9 A. That's correct.

10 Q. SRT does not have a license from the FCC to
11 operate a wireless operation in our area?

12 A. I don't know what SRT has, but I'll take
13 your statement that it doesn't.

14 Q. Okay. Level 3 has no wireless facilities
15 in SRT's exchange area?

16 A. No, it does not.

17 Q. So no customers, no facilities?

18 A. That's correct.

19 Q. You have apparently reviewed the -- I take
20 it the Western Wireless agreement with SRT, as well
21 as the Verizon one; is that true?

22 A. Definitely the Western Wireless, yes. I
23 believe I took a look at the Verizon agreement.

24 Q. Let's explore that comparison that you
25 make. Are you aware that when a landline customer

1 in SRT's exchange calls a Western Wireless customer
2 here in Bismarck, that the call is long distance?

3 A. I don't profess to know how all the
4 different calling patterns would go. I do know, and
5 I think the real point I was trying to make is that
6 CMRS providers have -- can request interconnection
7 under 251(a) much like Level 3. They're entitled to
8 the rights or to get what's under 251(b), the
9 reciprocal compensation obligations, and the
10 infrastructure that they're proposing to use to
11 carry traffic in various places is very similar to
12 what Level 3 is asking for in this proceeding.
13 That's where I think the analogy is. Not to how
14 customers call into the networks. Obviously, two
15 different technologies and they're going to have two
16 different sets of how calls are completed.

17 Q. Well, but let's back up. Your argument is
18 that we are discriminating against Level 3 because
19 we won't provide the same arrangement that we
20 provide with Western Wireless; isn't that what you
21 argue?

22 A. You're discriminating against Level 3
23 because you will not interconnect with Level 3 under
24 251(a). You will not allow us to -- provide us the
25 opportunity to have the same transport or

1 interconnection arrangement to carry traffic from
2 your switch to where we want to, similar to what you
3 have already negotiated with the CMRS providers.
4 I'm not talking about the financial responsibilities
5 of exchanging traffic because that's clear in the
6 FCC order. This traffic will be exchanged at bill
7 and keep.

8 Q. You understand, though, that an SRT
9 landline customer who dials a Western Wireless
10 customer in Bismarck has a long-distance call,
11 correct?

12 A. No, I don't. I mean, I'm not familiar
13 enough with how you've established your wireless
14 relationship for how calls are going to be rated and
15 routed. And how that eventual call is rated and
16 routed and whether access charges are applied to a
17 wireless call, that's not important to Level 3 and
18 it's not important here because ISP-bound traffic,
19 the compensation mechanism has been established.

20 Q. Under the ISP remand order?

21 A. Yes.

22 Q. Okay. We're going to get to that and
23 certainly we're going to get to your arguments about
24 whether there's been some type of waiver here, but I
25 want to just focus on this question.

1 In the opening statement I said the
2 fundamental dispute between the parties was whether
3 the calls that you, Level 3, propose is inter-
4 exchange or local. And maybe you don't agree with
5 that characterization of the dispute, but I want you
6 to accept it for the purposes of my question. Okay?

7 A. (Nods.)

8 Q. A landline customer dials a Western
9 Wireless customer in Bismarck, long-distance charges
10 apply. Do you understand that?

11 A. Yeah, based on how you have set the
12 question up and what you want me to assume to be
13 correct, yes, that would be a long-distance call.

14 Q. Okay. SRT end user dials your customer in
15 Bismarck, you do not want to pay originating access,
16 correct?

17 A. We're not required to pay originating
18 access.

19 Q. Well, you don't want to pay it, correct?

20 A. Right. Shouldn't pay what you're not
21 required to pay.

22 Q. Okay. And you should get paid for what
23 you're entitled to get paid for; true?

24 A. Correct.

25 Q. Okay. So if SRT, based on the

1 compensation, was going to treat you the same way as
2 they were going to treat Western Wireless, they
3 would ask for originating access when the SRT end
4 user dials your customer in Bismarck, wouldn't they?

5 A. No, they wouldn't. Is it a voice call?

6 Q. Which is a voice call?

7 A. Is the call in your example a voice call?

8 MR. FLEMING: Your Honor, Mr. Hogue has
9 asked Mr. Hunt whether he understands that a call
10 from -- a wireless call from Minot to Bismarck is
11 subject to access charges. Mr. Hunt testified he
12 doesn't know that. Now Mr. Hogue is presuming that
13 it is a call subject to access charges. I just want
14 to make clear that this is still -- it's not been
15 established that it's subject to access charges.
16 Just to clarify that Mr. Hunt does not have an
17 understanding about the access charges.

18 MR. HOGUE: That's fair enough. I'm simply
19 exploring his prefiled testimony that SRT is
20 discriminatory because we don't treat Level 3 the
21 way we treat wireless carriers.

22 THE ARBITRATOR: Given that Mr. Hunt is
23 appearing today as an expert witness, I'll allow the
24 hypothetical questions to continue.

25 MR. FLEMING: Thank you, Your Honor.

1 THE ARBITRATOR: But will state that my
2 decision was based upon the record as established in
3 this case.

4 Q. (MR. HOGUE CONTINUING) I want to ask you
5 about 251(a) and the rule exemption issues that are
6 alluded to in your testimony. Are you making some
7 type of waiver argument that SRT has waived its rule
8 exemption because it did not assert it in the
9 negotiations with Western Wireless?

10 A. Is there a specific place in my testimony
11 you'd like to -- you're talking about, or are you
12 speaking generally?

13 Q. Let's see if I can find that for you, sir.
14 Why don't you turn to pages 11 and 12, I guess. I
15 guess the one argument was since --

16 A. I think my -- is there a specific line
17 you're looking at? Because I don't see any
18 discussion on my 11 and 12. Maybe it's my
19 pagination issue.

20 Q. Yes. I guess it would be the bottom of 10.
21 Let me look here. And probably --

22 A. Over to the top of 11.

23 Q. Yeah. The answer, how that starts on line
24 10 of page 11. But regardless of whether it's in
25 the testimony, I guess I'd like to know, is that

1 your contention, that SRT has waived its rule
2 exemption because it did not assert it in the
3 Western Wireless proceedings?

4 A. Level 3 has never sought to challenge SRT's
5 rule exemption, and we are not trying to do that in
6 this proceeding at all. It strikes me as a little
7 strange that some of the things that they would
8 maybe assert their rule exemption to protect from
9 having to do, such as providing collocation, they've
10 agreed to do. But that doesn't mean we're saying
11 they've waived their rule exemption. We've never
12 said that and that's not what this -- Mr. Hogue, if
13 we'd wanted to battle with SRT over the rule
14 exemption, we would have filed under -- asked for
15 interconnection under 251(c) and not 251(a).

16 This was part of a -- just as a little bit
17 of history, this was part of a national market
18 expansion that Level 3 undertook earlier this year
19 to move into independent and rural markets and start
20 providing some services. We had much discussion
21 internally about whether we wanted to try to lift
22 some rule exemptions, and for the purposes of what
23 we're trying to do, we don't need TELREC cost
24 studies. We don't need collocation. We don't need
25 unbundled local loops. So we weren't going to ask

1 the rural carriers and the independent companies to
2 do that. Very simple 251(a) request just to get
3 what we need without imposing all kinds of
4 obligations on SRT or other carriers that we don't
5 need to provide the service.

6 Q. Do you contend that because SRT as part of
7 this coalition of rural companies that negotiated
8 with Western Wireless, because they did not object
9 to interconnecting with Western Wireless under
10 251(a), do you contend that they have waived that
11 argument?

12 A. Yes. If they've interconnected with
13 Western Wireless under 251(a), then we should be
14 entitled to the same interconnection ability.

15 Q. Okay.

16 A. That's one of the things -- "waive" has got
17 a whole, huge legal implication, and I'm not, you
18 know, rendering -- my opinion is that I think they
19 need to interconnect with us because they've done so
20 with Western Wireless.

21 Q. Who owns those modems that are located on
22 Eighth Street here in Bismarck?

23 A. Mr. DuCloo could probably answer that
24 question better for you since he knows the network
25 infrastructure better than I do.

1 Q. Well, I don't have the specific page in
2 your testimony, but I thought at one point in your
3 testimony you said that -- you were talking about
4 the modems in Bismarck and you described the PRI
5 lines as a retail service and so that really Level 3
6 is the ISP and then you described it as Level 3-ISP.
7 Do you recall that testimony?

8 A. That's an example that we used. I don't
9 think we were saying that that was the current
10 situation.

11 Q. Okay. Do you know if Level 3, the party
12 that has the subsidiary that is petitioned here, do
13 you know if they bought the McLeod assets or did
14 they buy all of McLeod's contract rights? What did
15 they do?

16 A. Thank you for giving me the chance to
17 clarify that. When buying the entity, we bought the
18 assets, customer contracts. We stepped into their
19 shoes in some of their vendor contracts. Actually,
20 I think the McLeod Information Services entity
21 stayed with McLeod and then went into the bankruptcy
22 with McLeod. We basically bought certain assets out
23 of the company.

24 Q. Okay. So I'm clear, Level 3 does not
25 contend that it's an ISP?

1 A. Level 3 is not an ISP. We provide strictly
2 transport and telecommunications services. We do
3 not host information. We do not have the
4 relationship with the end user. We're not an ISP.

5 Q. Do you agree that the parties have a
6 dispute over what the FCC said in the ISP remand
7 order?

8 A. I wouldn't be surprised that we have a
9 dispute.

10 Q. Mr. Hunt, I want to show you what I marked
11 as SRT Exhibit 20, and I'm going to ask you if you
12 can identify that?

13 A. Yes.

14 Q. Is that a letter from one of your
15 colleagues at Level 3 to the FCC concerning an ex
16 parte order -- or an ex parte meeting you had with
17 them in November of this year?

18 A. This -- yeah, this is a letter from Staci
19 Pies. She's our federal regulatory director. She
20 works with my group. She works for me. This letter
21 is the required ex parte for two meetings we had
22 with the FCC on two different topics.

23 Q. Does the contents of the letter reasonably
24 and accurately describe the substance of your
25 conversations at this ex parte meeting?

1 A. Yes.

2 MR. HOGUE: I'm going to offer SRT Exhibit
3 20 and --

4 THE ARBITRATOR: Mr. Hogue, do you have
5 copies for the court reporter --

6 MR. HOGUE: I do not.

7 THE ARBITRATOR: -- and for Mr. Fleming?
8 I'd like to make sure that both the record and
9 Mr. Fleming and myself have a copy of this exhibit.
10 Can you hold off for a moment?

11 THE WITNESS: Sure.

12 THE ARBITRATOR: Go ahead, Mr. Hogue, you
13 can now examine the witness.

14 MR. HOGUE: I'm offering it, Your Honor.

15 MR. FLEMING: No objection.

16 Q. (MR. HOGUE CONTINUING) Mr. Hunt, I want to
17 ask you to read the last full paragraph of page 2
18 that begins with the word "finally."

19 A. (Witness reviews document.) Okay.

20 Q. Could you read it out loud, please?

21 A. "Finally, Level 3 emphasized that it is of
22 critical importance for the Commission to settle
23 issues such as whether state commissions have
24 jurisdiction to rule on questions arising from the
25 exchange of ISP-bound traffic between LECs," that's

1 L-E-C, "and to determine whether Qwest is violating
2 the Commission's interconnection rules and
3 obligations by attempting to charge Level 3 for
4 facilities used to originate ISP-bound traffic over
5 the Qwest network. These kinds of questions must be
6 settled to ensure that new entrants such as Level 3
7 are able to deploy innovative services in a timely
8 and competitive manner, and to promote competitive
9 entry into areas beyond the metropolitan regions
10 served by the largest incumbents."

11 Q. Do you think it is well settled whether
12 state commissions have jurisdiction to rule on
13 issues arising from the exchange of ISP-bound
14 traffic?

15 A. The context of what we were talking to the
16 FCC about, we went in to talk to them about one
17 issue of Qwest relating to our arbitration request
18 and how they impact the 271 proceedings that
19 currently are going on.

20 The second had to do with issues that we've
21 encountered as we've tried to expand our footprint.
22 For example, in Iowa it is decided that you don't
23 need a certificate to offer ISP-bound traffic, but
24 without a certificate, you can't get numbers from
25 the North American Numbering Administrator. It's

1 kind of a regulatory Catch-22. We were talking to
2 them about that.

3 Some states, and I'm trying to think here,
4 in all of our arbitrations with Century Tel, one of
5 the prime questions that had to be resolved was
6 whether the states had jurisdiction to determine
7 whether they could arbitrate the interconnection
8 rights. And three out of four states have
9 determined that they do. All states have agreed
10 that they don't have the ability to set the
11 compensation mechanism for ISP-bound traffic.

12 Q. I want to ask you about the second part of
13 that sentence that says or states, and to determine
14 whether Qwest is violating the Commission's
15 interconnection rules and obligations by attempting
16 to charge Level 3 for facilities used to originate
17 ISP-bound traffic over the Qwest network.

18 A. Correct.

19 Q. Where was that at?

20 A. I'm sorry. It's been in our arbitrations
21 with Qwest. We have -- matter of fact, I'm going to
22 be testifying in Salt Lake City tomorrow. We've had
23 five arbitrations with Qwest this year. It's an
24 issue that's unique to Level 3 and Qwest, and if I
25 can maybe use the white board, I can explain it in

1 full context.

2 Q. Well, let me just ask you this. Is Qwest
3 seeking to impose originating access on Level 3; is
4 that part of the dispute?

5 A. No. Qwest wants Level 3 to pay for
6 dedicated facilities that must be deployed under the
7 terms of our interconnection agreement when traffic
8 from Qwest end users exceeds a certain traffic
9 threshold. Their attempt is to use the relative use
10 rules and to exclude ISP traffic from that
11 calculation. That issue is not an issue we would
12 have with SRT.

13 Q. Okay. Is SRT and Level 3 physically linked
14 together?

15 A. Their networks are not, no.

16 Q. But is there a physical link for them to
17 take this ISP-bound traffic from Minot to Bismarck?

18 A. If you define the current retail service
19 that Level 3 is purchasing as a physical link, then
20 yes.

21 Q. I take it in reading your testimony that
22 you believe that SRT -- you believe that SRT has
23 negotiated in good faith; is that right? Or bad
24 faith? Excuse me.

25 A. Yeah. I mean, SRT hasn't negotiated. We

1 had initial conversation -- our interconnection
2 group had an initial conversation with Mr. Hight,
3 which seemed to be very promising, and then we were
4 referred to JSI, and then heard nothing and really
5 did not get -- see any kind of contract language or
6 get any kind of response to what we proposed until
7 October 26th or 28th when we got the most recent --
8 when we got the first and the only contract language
9 that we've seen from SRT.

10 Q. And if I understand your testimony -- and,
11 Mr. Hunt, I would like you to confine your responses
12 to a yes or no, if I ask you a yes or no question.
13 Do you think you can do that?

14 A. Yes.

15 Q. That was good.

16 A. I try.

17 Q. The agreement that SRT provided to you was
18 provided in October, correct?

19 A. Yes.

20 Q. And Level 3 is not willing to sign that
21 agreement, are they?

22 A. That's correct.

23 Q. And if Level 3 -- or excuse me. If SRT
24 would have put that agreement in front of you in
25 March, you would not have been willing to sign it

1 then, either?

2 A. That's correct.

3 Q. Now, you and Mr. Gates have had
4 conversations with Warren Hight and Ms. Sparano; is
5 that correct?

6 A. I have not had a conversation with
7 Mr. Hight. And my only conversation with
8 Ms. Sparano was at a mediation in South Carolina
9 with respect to our request to do similar things in
10 South Carolina. I don't believe there's any other
11 time that we've spoken.

12 Q. But Mr. Gates and Ms. Sparano have spoken
13 about the Level 3/SRT connection, haven't they?

14 A. I would be speculating. You would have to
15 ask Mr. Gates who specifically he's spoken to. He's
16 spoken to a number of companies on our behalf.

17 Q. Okay. You have retained him to deal
18 directly with SRT, correct?

19 A. I believe that was one of the companies
20 they were assigned to, yes.

21 Q. Well, as I understood Mr. Gates' testimony,
22 he wanted to deal with SRT. Did you read that?

23 A. I recall back when we were deciding how we
24 were going to go about this big project we
25 undertook, that Mr. Gates said he wanted to talk to

1 the people at SRT.

2 Q. Well, are you aware of any time from the
3 time that Mr. Gates initiated discussions, where
4 Ms. Sparano or anybody from JSI or from SRT, for
5 that matter, has anybody ever suggested that what
6 Level 3 is proposing is not interexchange traffic?

7 A. I know that that has been JSI's approach or
8 argument in all the discussions that we've had where
9 they've represented their clients. So I don't
10 expect anything different here.

11 Q. And that has been SRT's position, correct?

12 A. Correct.

13 Q. That has never changed?

14 A. Correct.

15 Q. And like you just testified, if we had
16 given you an agreement in March, you wouldn't have
17 signed that because you didn't agree that it was
18 interexchange traffic, correct?

19 A. We would not have signed the agreement that
20 was provided, but at least we would have had a
21 dialog through negotiations and we may have come to
22 some other solution.

23 Q. Well, are you aware --

24 A. You can't talk to yourself.

25 Q. Correct. Are you aware that the parties

1 have had not less than four conference calls to try
2 to resolve this dispute and haven't been able to do
3 so?

4 A. I understand most of them have been
5 subsequent to filing the arbitration petition and as
6 this proceeding has picked up steam and moved closer
7 to this date. And I'm glad that SRT has spoken to
8 us.

9 Q. Well, let me again try to remind you to
10 confine your responses to yes or no, if they're a
11 yes or no question.

12 A. Okay.

13 Q. Pre-petition, post-petition, we've had at
14 least four conference calls, have we not?

15 A. I can't speak to the number, but there have
16 been conference calls.

17 Q. And we have not been able to resolve the
18 conflict; true?

19 A. That's correct.

20 Q. And as I said in the opening, we're still
21 at square one. We still say it's interexchange
22 traffic. You still say it's local; true?

23 A. Correct.

24 Q. Are you familiar with the North Dakota
25 Administrative Code?

1 A. No, I'm not.

2 Q. Are you aware that the parties at the end
3 of this arbitration will need to file what's
4 referred to as final offers?

5 A. No.

6 Q. Would you take a minute to review that
7 section, 69-02-10-28?

8 A. (Witness reviews document.)

9 Q. Why don't you read that out loud so
10 everybody has the benefit of that, sir?

11 A. All three --

12 Q. Yes.

13 A. -- the entire section? 69-02-10-28,
14 "Contents of Final Offers. Final offers submitted
15 by the parties must:

16 "1. Meet the requirements of Section 251
17 of the Act," capital A, "and all rules
18 prescribed by the Federal Communications
19 Commission pursuant to that section.

20 "2. Establish rates for
21 interconnection, services, or access to
22 unbundled network elements according to
23 Section 252(d) of the Act, including all
24 rules prescribed by the Federal
25 Communications Commission pursuant to

1 that section.

2 "3. Provide a schedule for
3 implementation of the terms and
4 conditions by the parties to the
5 agreement. In the event a final offer
6 of one or more of the parties fails to
7 comply with the requirements of this
8 section, the arbitrator may take the
9 action necessary to result in an
10 arbitrated agreement that satisfies the
11 requirements of Section 252(c) of the
12 Act, including requiring the parties to
13 submit new final offers or adopting a
14 result not submitted by any party that
15 is consistent with the requirements of
16 Section 252(c) of the Act and rules
17 prescribed by the Federal Communications
18 Commission pursuant to that section."

19 Q. Would you agree, Mr. Hunt, that following
20 this hearing and as part of the briefing process,
21 we, both Level 3 and SRT, have an obligation to
22 submit a final offer which must be in the form of an
23 agreement?

24 A. Yes, to the extent -- and I haven't seen
25 that there's a requirement that you make a final

1 offer. This just describes what final offers would
2 be, but I have no reason to dispute what you're
3 saying.

4 Q. Okay. So if we turn to your testimony on
5 21, line 12, you state, and tell me if I read this
6 accurately, "Because SRT refused to negotiate a
7 proposed contract language during the negotiation
8 period, and failed to include contract language in
9 its response to our arbitration petition, the
10 Commission should also adopt Level 3's proposed
11 contract language to govern the parties'
12 interconnection and exchange of traffic"?

13 A. I'm sorry, Mr. Hogue. What page are you
14 on?

15 Q. Twenty-one.

16 A. What line?

17 Q. Twelve.

18 A. That's my 20. I'm sorry.

19 Q. Oh, okay. Well, I guess I can shorten this
20 up. I mean, you're proposing as a consequence of
21 SRT not giving you a contract until October, that
22 the Arbitrator and the Commission not consider our
23 contract; is that what you're saying?

24 A. Yes, that's what my testimony says.

25 Q. And you recognize that the agreement we

1 gave you, you wouldn't have signed in March,
2 correct?

3 A. Correct.

4 Q. You won't sign in October when we gave it
5 to you, correct?

6 A. Correct.

7 Q. We have an obligation under the rule that
8 you just read to submit to you another agreement,
9 correct?

10 A. Correct.

11 Q. And these agreements that we're talking
12 about, these traffic exchange agreements, they
13 contain substantially boilerplate language, do they
14 not?

15 A. In many respects, yes.

16 Q. The fundamental or the critical element is
17 the compensation mechanism for the exchange of
18 traffic, correct?

19 A. Correct.

20 Q. And we don't agree on that?

21 A. Obviously.

22 Q. Is that true?

23 A. Yes.

24 Q. And because we didn't send you that
25 agreement back in March, you're saying we

1 shouldn't -- the Commission should just adopt yours
2 completely, correct?

3 A. Correct.

4 Q. You and Mr. Gates analogize in different
5 ways, I think, the EAS arrangement that Level -- or
6 excuse me -- SRT has within the various exchanges of
7 its own and with neighboring exchanges.

8 A. We do discuss it. If you have a particular
9 cite in the testimony, we can go there.

10 Q. Why don't you summarize why you think the
11 EAS arrangements that SRT has entitle you to a
12 similar arrangement?

13 A. I don't know that we're asking for EAS.

14 Q. Well --

15 A. That's why I don't understand the question.

16 Q. Okay. Is it your allegation that SRT is
17 being discriminatory because it has EAS arrangements
18 with neighboring exchanges wherein all of the
19 traffic is bill and keep and such a customer in one
20 of -- for example, North Dakota Tel's exchange could
21 use North Dakota Tel's FX to access an ISP in SRT's
22 service area?

23 A. Correct.

24 Q. Are you aware of whether that is
25 hypothetical or whether there are any facts to

1 support that?

2 A. I think we're speaking in terms of looking
3 where EAS routes exist and where those -- if you had
4 an ISP customer similarly situated, how that traffic
5 would be treated and you look at what we're trying
6 to do and you can see why there is some
7 discriminatory differences in the two.

8 Q. Do you have any understanding as to why --
9 what facts persuade two local exchanges that they
10 should or should not have an EAS arrangement?

11 A. I mean, just as a general policy matter.
12 Many times it can be based on something such as a
13 commonality of interests. They may be two phone
14 companies, but the areas may be very close to each
15 other. May be a lot of population. Maybe the
16 hospital that serves that county is in one phone
17 company's service territory and many of the
18 residents who use that might be in the service
19 territory of another. So I understand, you know,
20 it's kind of a commonality of interest test the PSC
21 will adopt or carriers will adopt because that's
22 kind of what their customers want. They want to be
23 able to call the next close town and not have it be
24 a toll call.

25 Q. Okay. And I think you've probably

1 identified several of them. Commonality or
2 community of interest?

3 A. Yes.

4 Q. Hospital might be in that neighboring
5 exchange. I don't know if you are aware, in North
6 Dakota we've had quite a bit of school
7 consolidation?

8 A. Did not know that.

9 Q. And that's another driving force behind it.
10 Have you looked at and tried to decide whether there
11 would be any community of interest between an EAS
12 arrangement between Minot and your customers in
13 Bismarck?

14 A. No, that's a very different situation.
15 With ISP traffic -- I mean, the ISP, our customer,
16 wants to establish service in the Minot territory.
17 They want to be able to reach SRT's end user
18 customers. And that's really what they're trying to
19 do. What Level 3 seeks is a co-carrier relationship
20 and an interconnection architect that will allow us
21 to provide those services for a very specific form
22 of traffic that has its very own specific regulatory
23 regime and rules.

24 Q. Were you aware that, for example, when SRT
25 has an EAS arrangement, that both SRT and the

1 neighboring exchange have an, I'll call it a bill
2 add-on? What they do is they increase the local
3 rate to offset the lost revenues?

4 A. That's correct.

5 Q. Okay. You were aware of that?

6 A. Yes. I think we were discussing the tariff
7 was like \$2.95 or something, I think is what gets
8 added from the Minot exchange for one of the other
9 EAS arrangements that they have.

10 Q. And the add-on applies to everybody in the
11 exchange who gets the EAS to, I guess I'll call it,
12 the foreign exchange or the neighboring exchange,
13 are you aware of that?

14 A. Well, we couldn't figure it out. It wasn't
15 clear to me whether it was an optional or mandatory
16 EAS, because I know there are both. So it wasn't
17 clear to me whether it was mandatory or whether it
18 was optional, but if it's mandatory, it's mandatory.

19 Q. I think we did answer in Level 3's
20 interrogatory that it's all mandatory.

21 Well, should SRT be imposing on its end
22 user customers in our exchanges an add-on to have
23 this EAS-like arrangement to Bismarck?

24 A. No.

25 Q. You agree that that's not something we

1 should do?

2 A. I don't think you'd be allowed to.

3 Q. Because that's what the FCC has said in the
4 local competition order?

5 A. Because there's no -- there's no lost
6 revenue. I guess I don't understand where the lost
7 revenue would be, the toll revenue that you would
8 lose. End user customers aren't going to make long-
9 distance phone calls to reach an ISP in Minot -- I
10 mean from Minot to Bismarck. The way you described
11 it the add-on was in order to make up for the lost
12 toll revenue. There isn't any lost toll revenue in
13 what Level 3 is proposing to do because that toll
14 revenue probably doesn't exist now. There's no
15 intercarrier compensation under ISP-bound traffic.
16 The FCC has made it very clear that after the first
17 quarter of 2001, it's bill and keep. You can't
18 access originating access charges. So, again,
19 there's no loss.

20 Q. And that ISP, we've talked about that, but
21 is it your contention that all ISP-bound traffic is
22 subject to bill and keep? I mean, all --

23 A. All locally dialed, rated and routed
24 ISP-bound traffic is subject to bill and keep. If
25 an end user, for example, does dial over a one-plus

1 trunk or does dial another mechanism, toll charges
2 would be assessed, but that's the end user's choice,
3 how they rate and route the call.

4 Q. I want to direct you to page 27 of your
5 testimony, line 23. You ask, has the Commission,
6 and I assume you're talking about the North Dakota
7 Commission?

8 A. Correct.

9 Q. "Has the Commission addressed the issue of
10 classifying so-called virtual NXX or FX-like
11 services before"?

12 A. Correct.

13 Q. And you say, no, not to your knowledge?

14 A. Correct.

15 Q. Can they do that?

16 A. I think states can do that, yeah.

17 Q. Do you think the North Dakota Public
18 Service Commission can legislate?

19 A. From Mr. Sebby's testimony, I understand
20 that they don't. They don't have that authority.

21 Q. Okay. Do they have similar authority that
22 the FCC might have to take comments and solicit
23 input from the folks it regulates and adopt rules?

24 A. I don't know. I would think they would.

25 Q. Okay. I assume that you agree with -- is

1 it -- I'm not sure how to pronounce his name. Is it
2 DuCloo?

3 A. Mr. DuCloo, yes. Rogier is the first name.

4 Q. What's that?

5 A. Rogier.

6 Q. Rogier. You agree with him, I take it,
7 that since Level 3 is buying the PRI on a tariff
8 basis, that there's no direct connection between
9 Level 3 and SRT?

10 A. I don't believe for the purpose of 251(a)
11 that is direct or indirect connection.

12 Q. Well, I want to see if I can understand
13 your arguments. Mr. DuCloo described it as a
14 retail. You're getting these PRI trunks as a retail
15 end user?

16 A. Correct.

17 Q. And they're going to the Bismarck modems,
18 correct, after they get on transport?

19 A. Yeah. However the wires work out. That's
20 what Mr. DuCloo does, but I understand it gets to
21 Bismarck.

22 Q. But Level 3 is using that capacity and
23 reselling it to Level 3's customers, are they not?

24 A. I don't want to use the word "resell,"
25 given that I don't want to infer that there's any

1 resale going on in that part of the Act. We're
2 leasing the facilities and we're using those
3 facilities to provide service to our customers.

4 Q. Why don't you explain to me why you can
5 attach the label end user to those PRIs when you use
6 them to deliver service to your Level 3 customers?

7 A. Well, we'll go back to the beginning. When
8 Level 3 purchased the assets, there was an agreement
9 in place. I believe it was a month-to-month
10 agreement or an agreement that expired and then we
11 went to a month-to-month relationship with SRT. SRT
12 has PRIs in their tariff. You can walk into SRT and
13 say, I want a PRI and that's the price that they're
14 going to deliver it to you, subject to facilities
15 being available. It's the same with Level 3 or
16 anybody else. Anybody else who wants to be a retail
17 customer of SRT. It's like walking into the store
18 and buying a dress off the shelf or buying a car
19 with a sticker price. That's what you're going to
20 pay, subject to volume and term discounts.

21 What Level 3 is trying to do and the
22 difference is, acting as a co-carrier, we want to
23 provide our own services on facilities that we will
24 lease. We will put together the infrastructure in
25 which we will offer the services. We will manage

1 that economic relationship and manage the
2 relationship with the customer and not be subject to
3 being the customer of somebody else.

4 250 -- you know, 251(a) doesn't give rights
5 to citizens of the country to walk in. No citizen
6 of North Dakota could walk into SRT and say, I want
7 to interconnect with you under 251(a). Because you
8 have to be a telecommunications carrier to do so.
9 That's the difference between the tariff -- the
10 retail services and the tariff and the rights and
11 the obligations that telecom carriers have under the
12 Act.

13 Q. I want to read to you from Mr. DuCloo's
14 testimony and ask you if you agree with his
15 statement.

16 A. I have his testimony. If you could --

17 Q. Oh, you do. Page 4.

18 A. There's not much that isn't in this binder.

19 Q. Well, I know there's not a signed inter-
20 connection agreement in there.

21 A. Got one you can sign, though.

22 Q. Oh, okay.

23 A. I'm sorry, Mr. Hogue, which page?

24 Q. Page 4, lines, I guess, 11 to 14. Last
25 sentence there. And I ask you this only because I

1 know that you're a lawyer and he is not, but he says
2 on lines 13 to 14 that, "The term, quote, exchange,
3 close quote, implies that the parties are acting as
4 co-carriers and exchanging traffic between their
5 respective switches."

6 A. Correct.

7 Q. Are you aware of any law that would support
8 that statement as far as the meaning of exchange?

9 A. Well, there's a number of FCC rules that
10 set out various obligations and talk about, you
11 know, types of traffic that would be exchanged.

12 Q. But you're not aware of anything that would
13 support that statement as a legal conclusion, are
14 you?

15 A. Mr. Hogue, from -- direct cite we can
16 provide in our brief, but it does talk in the Act
17 and the rules about exchanging traffic. I mean, the
18 basic interconnection obligation is to exchange
19 traffic.

20 MR. HOGUE: Thank you, Mr. Hunt. That's
21 all the questions that I have.

22 THE ARBITRATOR: Mr. Hunt, I have a couple
23 of questions before Mr. Fleming has an opportunity
24 to conduct redirect.

25

EXAMINATION

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BY THE ARBITRATOR:

Q. Does interconnection under Section 251(a) differ from interconnection under 251(c)(2)?

A. Yes, I believe it does.

Q. How?

A. Well, 251(c), obviously, would have the obligation to establish rates and costs that are forelooking costs such as TELREC cost studies. Under 251(a), Level 3 is saying we will lease transport from you at your tariffed rate. We're not going to come in and ask you to do a forelooking cost study when you do the TELREC. Right there there's one difference, just the cost we are willing to pay for that interconnection.

Q. Those are sorts of rates, terms and conditions. What I'm trying to find out is, from a physical interconnection standpoint, plugging one plug into the one slot, is there anything different with respect to interconnection under 251(a) than under 251(c)(2)?

A. I would -- well, as for the actual wires, I would defer you to Mr. DuCloo. I don't -- yeah. I don't know that there's any difference in the actual wires. I think it deals more with the economics of

1 what you have to do and what you pay.

2 Q. Okay. What is your opinion as to why SRT
3 has a duty to negotiate with Level 3 for
4 interconnection pursuant to Section 251(a)?

5 A. 251(a), since it does require you to
6 interconnect directly or indirectly, 251 gets pulled
7 into 252 where they negotiate for the arbitration.
8 Obviously, we're here today because Level 3 was able
9 to -- because we invoked our arbitration rights.

10 The whole scheme of the Federal Act, the
11 whole way of how this was devised was that they
12 wanted carriers to negotiate interconnection
13 agreements with each other. They wanted carriers to
14 resolve the business and the economic issues. They
15 didn't want PSCs or the FCC having to mandate or
16 dictate what interconnection would look like. Only
17 if the business parties failed to do that would we
18 have this dispute resolution mechanism to get a
19 contract so that you could start offering services.
20 I think their duty to negotiate falls when 251 gets
21 pulled into 252 for arbitration purposes.

22 THE ARBITRATOR: I have no further. Go
23 ahead, Mr. Fleming.

24 MR. FLEMING: Just some brief redirect.

25

REDIRECT EXAMINATION

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BY MR. FLEMING:

Q. Mr. Hunt, Mr. Hogue asked several questions about the types of interconnection between SRT and CMRS carriers. Do you recall that?

A. Yes.

Q. And Mr. Hogue suggested that a call from Minot to Bismarck would be an interexchange call subject to access charges if it was between a landline customer and a wireless customer. Do you recall that?

A. Yes.

Q. Now, are you aware of the regulations that apply to -- closely aware of the regulations that apply to CMRS carriers?

A. High level.

Q. Are you aware that there is a provision in the reciprocal compensation language that says reciprocal compensation is owed for all calls within what's call an MTA?

A. Yes.

Q. And do you know whether -- do you know which MTA both Minot and Bismarck are in?

A. I looked at that. Yeah, I believe it's the Minneapolis MTA. It seems huge.

1 Q. So it's your understanding that the whole
2 state of North Dakota is included in the MTA that
3 includes Minneapolis?

4 A. Yes, that's my understanding.

5 Q. And that under the FCC regulations, a call
6 from Minot to Bismarck would be subject to
7 reciprocal compensation?

8 A. Yes.

9 Q. Mr. Hogue also, along the same lines, had
10 asked whether SRT had waived its rights or its
11 position on 251 interconnection because it had
12 entered into interconnection agreements with Western
13 Wireless. Do you recall that testimony?

14 A. I recall the question being whether it
15 waived the rule exemption.

16 Q. Rule exemption?

17 A. Yes. Yes.

18 Q. And Level 3's position is that Level 3
19 would like -- as far as it understands the
20 agreements, it would like similar arrangements that
21 it provides to the CMRS carriers; is that correct?

22 A. Yes, for the interconnection of the network
23 facilities. I mean, obviously, compensation would
24 not apply because it's ISP-bound traffic.

25 Q. If SRT had no interconnection agreements at

1 all with the CMRS carriers, would Level 3 still have
2 rights to interconnect?

3 A. Yes.

4 MR. FLEMING: I don't have any more
5 questions, Your Honor.

6 THE ARBITRATOR: Mr. Hogue, do you have any
7 limited recross?

8 MR. HOGUE: Just a few, Your Honor. Should
9 I address you as Your Honor? I wasn't sure. It's
10 easier than Lamancusa.

11 THE ARBITRATOR: That's fine.

12 RECROSS-EXAMINATION

13 BY MR. HOGUE:

14 Q. I wanted to follow up on a question of
15 Mr. Lamancusa's about the duty to negotiate. I
16 understand your position is that SRT has the duty to
17 negotiate, correct?

18 A. Yes.

19 Q. Okay. I want to see if I can understand --
20 actually, I want to take you back to law school and
21 constitutional law, and I hope that's not too
22 painful. But are you aware of the doctrine, and I
23 guess I'm not sure what the name of it is, but are
24 you aware that the U.S. Supreme Court has said that
25 the first 10 amendments to the Constitution apply to

1 the states through the due process clause of the
2 Fourteenth Amendment?

3 A. Yes.

4 Q. Do you know the name of that doctrine?

5 A. I can't remember, no.

6 Q. Okay.

7 A. I would give it the same name you just gave
8 it.

9 Q. Okay. Well, let's just call it the
10 incorporation doctrine. Are you saying that because
11 there is arbitration and mediation obligations in
12 252, are you saying that that applies to all the
13 subsections in 251?

14 A. Look at 251 and 252 together. 252 -- and I
15 don't remember the exact cite -- talks about
16 grievance reached through voluntary negotiations and
17 the approval process for that, and it goes to the
18 arbitration process, if I've got my sections right.
19 251(a) lists out the tiers of what's intended. I
20 don't think Congress intended that if you want to
21 interconnect under 251(a), nobody talks to each
22 other and then you go right to arbitration. Because
23 if they had, why would you have a 90-day window or,
24 you know, the 135-day window that gets implemented
25 when you file a request for interconnection? The

1 statute talks about 135 days from the date you file
2 your request for interconnection, it says the
3 parties will negotiate and then after that point it
4 starts the arbitration process. So I think you look
5 at the whole process of what they intended together,
6 and I think that they have a duty to negotiate.

7 Q. Okay. You're aware --

8 A. We don't want to make --

9 Q. You're aware that 251(c)(1) specifically
10 does impose on incumbents the duty to negotiate?

11 A. Yes.

12 Q. And that is not contained in 251(a)?

13 A. No. That's correct.

14 Q. And so I guess I'll ask you, does 252 sort
15 of -- is that the mechanisms through which duties to
16 negotiate are carried up to 251(a)?

17 A. Do you have 252?

18 Q. I do. Why don't I give you the version
19 that's in the book.

20 A. (Witness reviews document.) 252(a)(1).
21 Did you want me to read that, Mr. Hogue, or --

22 Q. No. I was just wondering if -- is there
23 something in there that gives you rights that you
24 have under 251?

25 A. I'm sorry. I thought we were talking about

1 whether the incumbent had an obligation to
2 negotiate, and I was talking about the request for
3 251, and in here it says, an incumbent local
4 exchange -- upon receiving a request, it talks about
5 interconnection services or network elements
6 pursuant to Section 251 of this title. An incumbent
7 local exchange carrier may negotiate and enter into
8 a binding agreement with the requesting
9 telecommunications carriers.

10 So you get your request under 251, so you
11 have this voluntary negotiation process. If the
12 voluntary negotiation process doesn't work itself
13 out, then once you hit the 135th day, then you're
14 able to file for arbitration.

15 Q. I think we'll try to have this dialog in
16 post hearing briefs, is probably best.

17 Mr. Fleming did ask you about the MTA, the
18 wireless MTA, and do you know whether or not the
19 reciprocal comp applies when the call is originated
20 by a landline customer?

21 A. I would have to look at the agreement
22 again. I don't have immediate recall.

23 Q. No. I'm talking about -- well, strike
24 that.

25 MR. HOGUE: I guess that completes my

1 questions.

2 MR. FLEMING: I have one more redirect
3 question, if I may?

4 THE ARBITRATOR: One.

5 REDIRECT EXAMINATION

6 BY MR. FLEMING:

7 Q. Mr. Hunt, I want to go back to this idea
8 about SRT's duty to negotiate. Do you recall SRT
9 filing a motion to dismiss in this case?

10 A. Yes, I do.

11 Q. And do you recall how the Commission
12 resolved that?

13 A. Well, they obviously denied it since we're
14 here.

15 Q. And wasn't the conclusion of the Commission
16 that 252 -- 252 rights apply to all 251 requests for
17 interconnection?

18 A. I don't recall what the order said, so it
19 will stand on its own.

20 MR. FLEMING: I have no further questions.

21 THE ARBITRATOR: Let's take a couple-
22 minute break and reconvene at 10 to 11:00. The
23 witness may step down.

24 (Recess was taken at 10:41 a.m. to 10:57
25 a.m., the same day.)

1 THE ARBITRATOR: Back on the record,
2 please.

3 Mr. Fleming, go ahead.

4 MR. FLEMING: Your Honor, first matter of
5 business is to ask that Bill Hunt be excused.

6 THE ARBITRATOR: No objection?

7 MR. HOGUE: No objection.

8 THE ARBITRATOR: Mr. Hunt is now excused.

9 MR. FLEMING: And I've got a copy now of
10 Mr. Hunt's testimony with the exhibits I'd like to
11 submit as an exhibit. It is actually 41 pages of
12 testimony, plus 14 exhibits.

13 THE ARBITRATOR: Just so it's clear, we
14 will use the exhibit designations of the party's
15 testimony. So, for example, to the extent that
16 there is an exhibit number for Mr. Hunt's testimony,
17 we'll use that number for the record.

18 MR. FLEMING: Level 3 now calls Rogier
19 DuCloo.

20 THE ARBITRATOR: Please swear the witness
21 in.

22 ROGIER DuCLOO,
23 having been first duly sworn, was examined and
24 testified as follows:

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DIRECT EXAMINATION

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BY MR. FLEMING:

Q. Good morning, Mr. DuCloo.

A. Good morning.

Q. Could you please spell your name for the record?

A. Yes. It's Rogier, R-o-g-i-e-r. Raymond, R-a-y-m-o-n-d. DuCloo, D-u-c-l-o-o.

Q. And by whom are you employed?

A. Level 3 Communications.

Q. What is your position?

A. I'm a network planning manager.

Q. Did you cause to be filed on your behalf 15 pages of testimony, plus a number of exhibits that we are going to reduce?

A. Yes.

MR. FLEMING: The eventual exhibits are going to be as identified in his prefiled testimony; RRD-1, RRD-2, page 1. RRD-2, pages 60, 61, 62, 63, and 64, and Exhibit RRD-3. These exhibits and some of Mr. DuCloo's testimony was -- contained information that SRT designated as trade secret information. It's my understanding that SRT has now waived that trade secret privilege.

THE ARBITRATOR: With respect to the

1 information that's being presented today?

2 MR. FLEMING: With respect to this
3 information and this testimony.

4 THE ARBITRATOR: Is that an accurate
5 representation, Mr. Hogue?

6 MR. HOGUE: Yes, it is.

7 MR. FLEMING: So I ask it be admitted as
8 evidence without trade secret protection.

9 THE ARBITRATOR: Any objection?

10 MR. HOGUE: No.

11 THE ARBITRATOR: No objection. So entered.

12 Q. (MR. FLEMING CONTINUING) Mr. DuCloo, if
13 you would, please, could you give a brief summary of
14 your testimony?

15 A. I can try. My testimony relates to issues
16 of 1 and 4. Level 3 operates a next-generation
17 proprietary softswitch-based network, and with
18 softswitches each of the components of the switching
19 functionality can be provided by different suppliers
20 and can be distributed in different places in the
21 country. The parts of the softswitch often are
22 placed in different parts. For example, signaling
23 functions for traffic in the Bismarck area are to be
24 performed by equipment located in Seattle,
25 Washington and at this time it is expected that

1 traffic will be terminated in modem banks located in
2 Denver, Colorado. Level 3 uses this softswitch-
3 based network to provide inbound-only services to
4 ISP. And in order to provide the service, we must
5 interconnect our network with ILECs, such as Qwest
6 and SRT.

7 At this time Level 3 -- no traffic is
8 exchanged with SRT. Level 3 is buying retail
9 services from SRT, not unlike what the bank or a
10 florist might buy from SRT. As part of that retail
11 service SRT has assigned Level 3 an SRT telephone
12 number that is local to the SRT Minot exchange. And
13 when an end user, an SRT end user, dials the SRT
14 number assigned to Level 3, SRT routes that call
15 over the circuits that Level 3 purchases to our
16 modem banks in Bismarck, North Dakota.

17 This is basically a retail foreign exchange
18 arrangement provided in part by SRT and in part by
19 Qwest. Level 3 is no more interconnected or
20 exchanging traffic with SRT today than any other
21 retail customer of SRT might be. The current retail
22 arrangement is not technically economically
23 efficient because it does not make full use of Level
24 3's state of the art softswitch and IP network. And
25 moving traffic onto that network as a co-carrier

1 will permit Level 3 to realize its economies of
2 scale in its technology investment, giving Level 3
3 greater incentives to continue to introduce new and
4 innovative technologies.

5 It is my understanding that SRT has
6 established direct interconnection arrangement with
7 commercial mobile radio service carriers, or CMRS,
8 that identify SRT's Minot switch as the point of
9 interconnection. This is similar to the
10 interconnection architecture Level 3 has proposed.
11 Like CMRS carriers, Level 3 proposes to establish a
12 POI at the SRT Minot switch. Like CMRS carriers,
13 Level 3 would like to set up SS7 trunks to exchange
14 signaling information with SRT, and like CMRS
15 carriers, Level 3 would bear financial
16 responsibility for picking up the calls originated
17 by SRT customers at the SRT switch. This would
18 presumably occur at the same rates, terms and
19 conditions that SRT provides these services to CMRS
20 carriers today.

21 In moving from a retail relationship to a
22 co-carrier relationship with SRT, Level 3 may be
23 able to realize significant savings. In addition,
24 Level 3's proposed method of interconnection would
25 cost SRT nothing more from a transfer perspective

1 than it does today in providing retail service to
2 Level 3.

3 Q. Thank you, Mr. DuCloo.

4 MR. FLEMING: Mr. DuCloo is now available
5 for cross-examination.

6 CROSS-EXAMINATION

7 BY MR. HOGUE:

8 Q. Mr. DuCloo, I guess I'll go to that last
9 point you made about the proposal that Level 3 has
10 would not impose any additional costs on SRT. Is
11 that your contention?

12 A. That is correct.

13 Q. Do you think that that -- the issue of
14 additional cost is a relevant issue in this
15 proceeding?

16 A. I can only testify to network implications
17 of providing such an interconnection, and I can say
18 that there would be no additional cost to SRT in
19 providing the service that way.

20 Q. Okay. Well, let's -- what if we went out
21 to Level 3's toll road in Orange County, California
22 and you're sitting at the toll booth and I want to
23 take my vehicle on your road, and I come up to you
24 at the toll booth and say, I want to drive on your
25 road for free because there's no additional cost to

1 you. The road is already built. You're not going
2 to let me on your toll road, are you?

3 A. No, I would not.

4 Q. Okay.

5 A. It's not a fair comparison. It's the SRT
6 end user that is using the toll road to reach
7 Level 3.

8 Q. You don't let people on the Level 3 toll
9 road for free, though, do you?

10 A. No.

11 Q. Charge every one of them, right?

12 A. Correct.

13 Q. And it may well be true that there is no
14 additional cost for that one vehicle to travel down
15 your toll road, correct?

16 A. The toll road itself -- this is a funny
17 analogy. There's no cost, no additional cost for a
18 single user to use that road, that is correct.

19 Q. I guess maybe it's incremental cost?

20 A. No incremental cost to use the facility.

21 Q. I want to turn to your testimony at 4 and
22 5. And I asked Mr. Hunt about it, and I guess I'd
23 like to ask you about it. You do not regard SRT and
24 Level 3 as being interconnected because Level 3 is
25 buying tariff services from SRT, correct?

1 A. That is correct.

2 Q. And as I understand your testimony, until
3 they're exchanging traffic between their switches,
4 there is no interconnection?

5 A. That is correct.

6 Q. Is that rooted in some law, some industry
7 standard? Is that -- Mr. DuCloo, is that your
8 personal opinion?

9 A. Under the current arrangement, the retail
10 PRI ISDN arrangement, the numbers are assigned by
11 SRT. When an end user dials that number, it is
12 recognized to be associated with the Level 3 service
13 and routed to Level 3. Level 3 does nothing more
14 than terminate that call in the modem banks in
15 Bismarck. There's no communication between the
16 switches and there's, you know, no exchange of
17 traffic.

18 Q. But I do want to go back to my question.
19 Is the opinion that you expressed in 4, is that
20 rooted -- what is that rooted in? Is that law? Is
21 that industry standards, or is that, again, just
22 your common understanding among yourself and other
23 Level 3 representatives?

24 A. It would be the latter.

25 Q. Okay. Your understanding?

1 A. My understanding.

2 Q. Okay. Are you saying that tele-
3 communications carriers must have a switch in order
4 to be interconnected to one another?

5 A. As a local exchange carrier, a competitive
6 or incumbent, you would have to operate a switch and
7 the switches have to be interconnected to be able to
8 exchange traffic.

9 Q. But are all carriers interconnected by
10 their switches?

11 A. Not necessarily. There is other carriers
12 and they may not necessarily be connected or their
13 networks may not be connected by means of their
14 switches.

15 Q. Now, you -- in your testimony, I guess I
16 thought you indicated that there are really two
17 reasons that Level 3 wants to, I think the term was
18 migrate, but two reasons that you want to go from
19 the PRI to some direct interconnection. And why
20 don't you just explain what those two were? I know
21 one of them was economy, money.

22 A. The reason Level 3 wants to move from the
23 current PRI arrangement is, the PRI arrangement is a
24 retail product and we are heavily relying on SRT to
25 provide that service, as well as the numbers

1 associated with that service. As a co-carrier, we
2 would like to exchange traffic over co-carrier
3 trunking and SS7 signaling. This will allow us to
4 improve efficiency on our network and the economies
5 of scale and allow us to introduce new and
6 innovative technologies.

7 Q. Today, if somebody is sitting in Minot and
8 dials one of the numbers associated with Level 3,
9 does that call get completed?

10 A. Yes.

11 Q. Is that not conclusive evidence that the
12 parties are directly connected?

13 A. Not as co-carriers.

14 Q. Not as co-carriers. Are you aware of
15 anything in 251(a) that requires that type of co-
16 carrier connection?

17 A. I cannot make any interpretations of the
18 sections in the Act. I'd ask Mr. Gates or Mr. Hunt
19 those questions.

20 Q. Would you agree with me that so far as --
21 Level 3 and SRT are physically linked to one
22 another?

23 A. There's a link that exists, but, again,
24 it's not any different than the florist or the bank
25 on the corner might be connected to SRT and, you

1 know, they don't consider themselves interconnected
2 with SRT.

3 Q. Who says they don't? Is this, again, you
4 and your representatives from Level 3?

5 A. That is correct.

6 Q. If Level 3 gets the type of service that it
7 wants, how will the end user in Minot notice a
8 difference? I guess, how will it affect them as
9 compared to what they have today?

10 A. As compared to what they have today, that
11 is difficult to say, but Level 3 is always one of
12 the first carriers to introduce new technologies in
13 its network, as well as drive down prices. And I
14 think that over time the SRT, the Minot end user,
15 might benefit from reduced pricing and improved
16 technology.

17 Q. But as you sit here today, you cannot
18 identify from the customer's perspective how things
19 will change? It will be a seamless transition, so
20 far as you're concerned?

21 A. If we're interconnected as co-carriers and
22 using SS7 signaling and co-carrier trunking, it will
23 be seamless to the end user.

24 Q. So if there aren't any differences
25 tomorrow, what we're really talking about is cost,

1 are we not?

2 A. No. I think that if we keep the
3 architecture in place today -- one of them is cost.
4 It is not very economic for Level 3 to provide
5 service in Minot and it's unlikely that we'll
6 introduce those new technologies.

7 Q. Okay. Now, one of the -- I think one of
8 the things that perhaps I've been made aware and
9 probably you, too, is that at some point SRT felt
10 that you were oversubscribed with the ISDN trunks
11 that you were currently provisioning; is that true?

12 A. That is true.

13 Q. So one way to save costs might be to cut
14 back on the number of -- the amount of capacity that
15 you don't need; would you agree with that?

16 A. That would reduce the total cost of
17 operating in Minot today. It wouldn't reduce in any
18 way the per-port cost.

19 Q. It would reduce your cost, though?

20 A. Total cost, yes.

21 Q. Total cost. Is there any other cost that
22 would be important? I mean, I know there's
23 different services that you get from SRT, but the
24 overall cost would be reduced if you would simply
25 reduce the overcapacity that you currently have?

1 A. Yeah. I think that the overcapacity that
2 exists today is temporarily the case, temporary
3 situation. And reducing the number of PRIs will
4 reduce the total cost, but, again, per port it will
5 not reduce the cost in any way.

6 Q. Now, on page -- I'm going to page 4 again
7 of your testimony, Mr. DuCloo. You describe on page
8 15 the acquisition of certain assets from McLeodUSA.

9 A. I'm sorry. Are you on page 4 or -- yeah.
10 Sorry.

11 MR. FLEMING: Which page?

12 MR. HOGUE: Four, line 15.

13 MR. FLEMING: Okay.

14 Q. (MR. HOGUE CONTINUING) You describe the
15 arrangement again as a retail end user. And then I
16 need to understand what you're testifying there,
17 too. These trunks allow the calling party in Minot
18 to dial Bismarck and connect to the ISP modems,
19 correct?

20 A. That is correct.

21 Q. And Level 3 is using those ISDN trunks to
22 sell service to Internet service providers, correct?

23 A. That is correct. That is currently the
24 case. Does not mean that in the future and possibly
25 in the near future we'll expand those services, and

1 we'd like to set up the network today so that we can
2 integrate those services seamlessly without having
3 to completely convert the network.

4 Q. But am I -- I'm not understanding why Level
5 3 is an end user if they're using these ISDN trunks
6 to provide services to their customers?

7 A. Well, that's very similar to how an ISP is
8 an end user, yet they offer another service, you
9 know, a function to their subscribers, which
10 utilizes those same facilities and ports that we
11 provide them. So I'm not sure where you're going
12 with that question. I'm sorry.

13 Q. Well, I think I've hit a dead end, so I'll
14 move on. Would you characterize the services that
15 you're currently getting from SRT as an FX or FX-
16 like service?

17 A. Yes, I would.

18 Q. And that is provided at a lower cost than
19 access charges; would you agree with that?

20 A. I wouldn't know. I know that it's a fixed
21 monthly recurrent cost.

22 Q. Okay. Well, generally, that would be the
23 purpose of getting those dedicated trunks, wouldn't
24 it, to avoid access?

25 A. The purpose for us -- or the purpose for, I

1 should say, McLeod Internet Service or Information
2 Services was to carry the traffic -- to offer local
3 dial tone in Minot and carry that traffic or
4 terminate that traffic in modem banks that were
5 physically located in Bismarck.

6 Q. But, I mean, the purpose of having that
7 would be to not have originating access, correct? I
8 mean, that's the reason you get it?

9 A. Another option would be to offer Bismarck
10 numbers and no one would call those numbers.

11 Q. But, I mean, the service that you have from
12 SRT today does not require you to pay access, right?

13 A. Correct.

14 Q. It's not -- it's not billed on the number
15 of minutes that the customer who connects with the
16 ISP stays on the Internet?

17 A. That's correct.

18 MR. HOGUE: Okay. That's all the questions
19 that I have.

20 MR. FLEMING: Some redirect.

21 THE ARBITRATOR: I have a question.

22 EXAMINATION

23 BY THE ARBITRATOR:

24 Q. What is your understanding of the term
25 "indirect interconnection" or the phrase "indirect

1 interconnection"?

2 A. Indirect interconnection is something that
3 we do in other places in the country where an
4 independent carrier uses the RBOC switch for
5 overflow of local traffic. It's a switching
6 hierarchy where there's a path established to the
7 RBOC tandem and where we would then establish direct
8 trunking to that tandem and not to the independent
9 company to pick up the traffic that originates from
10 that company.

11 Q. Could you give an example of what that
12 arrangement would be like using SRT as the incumbent
13 local exchange carrier?

14 A. Yeah. I don't believe it would function
15 very well, and we're not proposing to do that in the
16 case of SRT, because the Qwest tandem is not within
17 the local calling area of the SRT exchanges.

18 Q. But give us an example.

19 A. Yeah. Instead of establishing direct
20 trunking to the Minot switch, we would establish a
21 tandem trunk route to the Qwest Bismarck switch and
22 an end user that picks up the phone -- it requires a
23 special arrangement between SRT and Qwest as well.
24 But an end user picking up the phone in the Minot
25 exchange, the call gets dial tone from the Minot

1 switch, the call gets routed to the Qwest tandem and
2 onto Level 3's network.

3 Q. Do you know if Qwest and SRT currently have
4 any type of arrangement whereby this hypothetical
5 could actually take place?

6 A. No. I don't believe they do. The only
7 trunks that are set up between SRT and Qwest are
8 midpoint billing trunks for the exchange of ISC or
9 toll traffic.

10 Q. And that is not the type of arrangement
11 that would enable this indirect interconnection that
12 we've just discussed?

13 A. It would, although the toll traffic are
14 generally small amounts of traffic, so the group
15 size is probably not appropriate for the traffic, to
16 support the traffic that we expect from the Minot
17 exchange and it would require SRT to build out that
18 trunk route.

19 Q. With indirect interconnection where Level 3
20 would interconnect the Qwest tandem in the Bismarck
21 area, if a Minot local customer made a telephone
22 call to their ISP that was carried via this indirect
23 interconnection, would that customer incur a toll
24 charge?

25 A. If Level 3 has a number that can locally

1 dial into the Minot exchange, no.

2 Q. Would you repeat that?

3 A. If Level 3 can assign a number that is
4 local to the Minot exchange, then the end user would
5 not be subject to toll charges.

6 Q. Okay. Given the indirect interconnection
7 hypothetical that we've just discussed, would
8 Level 3 be able to assign a local Minot exchange?

9 A. It still requires an interconnection
10 agreement, which is a requirement to obtain numbers
11 from the North American Numbering Plan
12 Administration, but the answer is yes.

13 Q. But conditioned upon having an inter-
14 connection agreement?

15 A. Yes.

16 THE ARBITRATOR: I don't have anything.

17 MR. FLEMING: Just a very few questions.

18 THE ARBITRATOR: Go ahead.

19 REDIRECT EXAMINATION

20 BY MR. FLEMING:

21 Q. Mr. DuCloo, Mr. Hogue raised questions
22 about traveling on a toll road for free. Do you
23 recall those questions?

24 A. I do.

25 Q. Is Level 3 seeking to use the SRT network

1 for free?

2 A. No, we are not. We are proposing to
3 interconnect at the Minot switch, the SRT Minot
4 switch, and pay for all facilities from that point
5 back to our location.

6 Q. Mr. Hogue also asked questions about
7 whether a transition to the Level 3 arrangement that
8 you're proposing, whether that would be seamless to
9 the end user in Minot. Do you recall those
10 questions?

11 A. I do.

12 Q. Now, isn't it true that one of the benefits
13 of the proposal is that you will be able to assign
14 your own telephone numbers?

15 A. Correct.

16 Q. So it wouldn't be completely seamless; is
17 that correct?

18 A. No, it's not. If SRT was LNP capable,
19 local number portability, it would be seamless
20 because we would be able to port the numbers that we
21 have today over to the new facilities or the new
22 service, but that is not the case. We would have to
23 change the numbers for our end users.

24 Q. Is client demand driving a lot of the terms
25 that you are seeking in this interconnection

1 arrangement?

2 A. Yes.

3 Q. You mentioned just a minute ago in response
4 to the Arbitrator's question -- his question about
5 NANPA, the North American Numbering Plan assignment
6 and its assignment guidelines. Would the Numbering
7 Administrator consider Level 3 and SRT to be inter-
8 connected if they have no interconnection agreement?

9 A. No.

10 MR. FLEMING: No further questions.

11 THE ARBITRATOR: Mr. Hogue, do you have
12 anything?

13 MR. HOGUE: No, I don't.

14 THE ARBITRATOR: If there are no
15 objections, I'll excuse the witness.

16 MR. HOGUE: None.

17 MR. FLEMING: Thank you, Your Honor.

18 Level 3 now calls Tim Gates.

19 THE ARBITRATOR: Please swear the witness
20 in.

21 TIMOTHY J GATES,

22 having been first duly sworn, was examined and
23 testified as follows:

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DIRECT EXAMINATION

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BY MR. FLEMING:

Q. Good morning, Mr. Gates. How are you?

A. Good morning. Fine. Thank you.

Q. Could you please state your name for the record.

A. My name is Timothy J Gates.

Q. And spell it for the record, please.

A. Timothy, T-i-m-o-t-h-y. J is just a letter, not an initial. And Gates, G-a-t-e-s.

Q. By whom are you employed, Mr. Gates?

A. QSI Consulting.

Q. And what is your position?

A. Senior vice-president.

Q. Did you cause to be filed in this proceeding on your behalf 53 pages of testimony, plus eight exhibits?

A. Yes, I did.

Q. Do you have any changes to make to the testimony?

A. Yes, I do have a couple.

Q. If you would, please.

A. Thank you. At page 15 of my direct, at line 17, the number 2.13 should actually read 2.14. I would make that same correction on line 19,

1 replacing 2.1.3 with 2.14. And then one final
2 change, at page 27, line 4, in the question it
3 should read, how does SRT's FX service, and the word
4 I have there now is s-e-v-v-i-c-e. That should be
5 s-e-r-v-i-c-e. Those are my only changes.

6 Q. Thank you.

7 MR. FLEMING: I move for the admission of
8 Mr. Gate's testimony into the record.

9 MR. HOGUE: No objection.

10 THE ARBITRATOR: So entered.

11 MR. HOGUE: Is that with the attachments?

12 MR. FLEMING: Yes, with all the
13 attachments. And none of them were confidential.

14 Q. (MR. FLEMING CONTINUING) Now, Mr. Gates,
15 we have the opportunity to reply to some of the
16 testimony of SRT's witnesses, Mr. Meredith and
17 Mr. Sebby. Have you had the opportunity to read the
18 testimony of Mr. Meredith and Mr. Sebby?

19 A. Yes, I have.

20 Q. Mr. Gates, Mr. Meredith says that foreign
21 exchange service is neither telephone exchange
22 service nor exchange access and, therefore, Level 3
23 is not entitled to interconnection as a CLEC. Do
24 you recall that testimony?

25 A. Yes, I do.

1 Q. And Mr. Seby says in his testimony that
2 foreign exchange service is long-distance service
3 and is not local service. Do you recall that
4 testimony?

5 A. Yes.

6 Q. How do you respond?

7 A. Certainly I disagree with that statement.
8 While it might be said that FX services are toll
9 substitutes, they have always been treated as local
10 services for purposes of booking revenues and
11 expenses and certainly for purposes of tariffing and
12 for rate design. The fact that an FX service might
13 be an interexchange call does not mean that it's not
14 telephone exchange service. A call from Sherwood to
15 Butte, for instance, is interexchange, but SRT
16 classifies that call as a local call. EAS traffic,
17 with or without other ILECs, is also interexchange,
18 but treated as a local call. So the mere fact that
19 a call might be interexchanged does not in and of
20 itself make it a toll call or a call subject to
21 access charges.

22 Q. Mr. Meredith also provides a definition of
23 foreign exchange service in his testimony that
24 requires Level 3 to have customers physically
25 located in the Minot exchange. Do you recall that

1 testimony?

2 A. Yes, I do.

3 Q. How do you respond to that?

4 A. I believe that testimony and that
5 definition is meant in such a way so that Level 3
6 cannot comply with that definition. The general
7 definition and the definition that I provided in my
8 testimony, the ones that generally occur throughout
9 the country, and they do not speak to a requirement
10 for specific customer locations or specific
11 equipment. So I would disagree with that
12 characterization of Mr. Meredith's.

13 Q. Mr. Meredith and Mr. Seby both claim that
14 foreign exchange service can only be a secondary
15 service to a LEC's primary service offering within a
16 particular local calling area. How do you respond
17 to that?

18 A. Well, that confuses me a bit. I don't know
19 why you'd have to order or have or provide one
20 service in order to provide another. It seems like
21 that would be artificially limiting the types of
22 services that carriers could provide. So certainly
23 I disagree with that characterization. One can
24 offer FX or virtual NXX services without offering
25 any other service.

1 Q. Mr. Meredith, in his testimony, claims that
2 Level 3's proposed service would expand the local
3 calling area of SRT. How do you respond to that?

4 A. Well, that is a curious statement.
5 Certainly there's nothing that Level 3 could do that
6 would expand SRT's local calling area. It's a
7 Level 3 service that we're talking about here today,
8 and after the point of interconnection or from the
9 point of interconnection to the termination point,
10 that call is Level 3's responsibility, not SRT's.

11 And even if one were to agree or to assume
12 that Level 3 were expanding the SRT local calling
13 area, it would be at Level 3's cost, not SRT's. So,
14 again, I disagree with that statement.

15 Q. Mr. Sebby says that so-called basic concept
16 of a CLEC is an entity that provides two-way service
17 within a local calling area in direct competition
18 with the incumbent. Do you agree with that?

19 A. No. I have heard that argument before. I
20 think it's a way to try and distinguish the service
21 that Level 3 is providing, which is generally
22 considered to be a one-way inbound ISP service from
23 the traditional FX-type service, which they contend
24 is two-way. But even when you look at an ISP call,
25 it is, in effect, two-way because people are

1 uploading and downloading information even if it's
2 not a voice call. So the two-way characteristic or
3 requirement that Mr. Seby suggests is a basic
4 concept is not a basic concept at all in terms of
5 treating services. I think it's just an attempt to
6 distinguish the Level 3 services from what SRT
7 provides today.

8 MR. FLEMING: I make Mr. Gates available
9 for cross-examination.

10 THE ARBITRATOR: Mr. Hogue.

11 MR. HOGUE: No questions.

12 THE ARBITRATOR: I have a couple quick
13 questions for Mr. Gates then.

14 EXAMINATION

15 BY THE ARBITRATOR:

16 Q. I noticed in your testimony that you refer
17 to an ATIS Release, Alliance for Telecommunications
18 Industry Solutions, for the Central Office Code NXX
19 Assignment Guidelines, bearing a date of August 16,
20 2002. And I noted that I believe it may be
21 Mr. Meredith, yes, an exhibit Mr. Meredith has, has
22 an exhibit that's dated October 22nd. And what I
23 wanted to find out, is there a substantive
24 difference between those two ATIS reports that
25 impacts the question or the questions that are

1 presented today?

2 A. I don't believe there is a substantive
3 difference. In fact, I pondered that same question
4 when I saw the difference in the dates, and I wasn't
5 sure if it was by virtue of the printing function
6 that would insert a new date. I probably printed
7 mine October 16th, but I'm not sure. I don't
8 believe there have been any substantive changes to
9 the sections, 2.14, that I discussed.

10 Q. Okay. I will raise that question for
11 Mr. Meredith as well.

12 A. That's a good idea.

13 Q. Mr. Gates, are you aware whether SRT is
14 able to participate in number pooling at this point
15 in time?

16 A. I believe, based on responses to discovery,
17 that they are not LNP capable.

18 Q. Which would then prevent them from being
19 able to provide number pooling; is that correct?

20 A. Yes, it would, or to participate in number
21 pooling, yes.

22 Q. They would be unable to participate?

23 A. Yes. That's correct.

24 Q. And is the result of that then that Level 3
25 would need to -- if an interconnection agreement was

1 established and Level 3 needed numbers in the Minot
2 exchange, they would need to obtain numbers in
3 blocks of 10,000?

4 A. They would, unless jeopardy were declared
5 and number pooling were required. Level 3 is LNP
6 capable. Level 3 could require thousand-number
7 blocks or could request thousand-number blocks.

8 Q. But if SRT is unable to provide that type
9 of service, how would you be able to effectuate your
10 request, or how would your request be effectuated?

11 A. That's a good point. I'm not sure that SRT
12 has to provide a service per se. I guess I'm not
13 sure. I do know that Level 3 is LNP capable, so I
14 assumed and I could be wrong, but I assumed that
15 because of that, if jeopardy were declared and
16 number pooling were required, that Level 3 could
17 participate and provide a request, thousand-number
18 blocks, even if SRT did not.

19 Q. What do you mean by if jeopardy were
20 declared?

21 A. If there were a number resource concern in
22 the state and the Number Plan Administrator said
23 that numbering resources in North Dakota are being
24 depleted and we're getting close to needing either
25 an overlay, an NPA overlay or an NPA split, that

1 jeopardy might be declared, and then if carriers
2 were LNP capable, then they would start ordering
3 thousand-number blocks, instead of 10,000-number
4 blocks.

5 Q. Can jeopardy be declared by a carrier or
6 must it be declared by someone else?

7 A. I thought it was declared by the Plan
8 Administrator through input from carriers.

9 Q. And from the North Dakota Public Service
10 Commission as well?

11 A. Yes. I believe they would have input as
12 well.

13 Q. But they are not the arbiter in the sense
14 of whether jeopardy will be declared or not, that
15 being the North Dakota Public Service Commission?

16 A. I'm not sure.

17 Q. Okay. Let me just double-check to see if I
18 have anything else.

19 Mr. Gates, what is your understanding with
20 respect to what SRT's obligations are with respect
21 to local number portability under the Act?

22 A. I don't believe it's required that SRT
23 become local number portability under the Act. I
24 guess it would be their decision whether or not to
25 become LNP capable. I've found throughout the

1 country that many independent local exchange
2 companies are not LNP capable. I assume that if the
3 Act required them to be, that they would be.

4 THE ARBITRATOR: I have no further
5 questions.

6 Mr. Fleming, do you have any redirect?

7 MR. FLEMING: Yes, Your Honor, if I may.

8 THE ARBITRATOR: Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. FLEMING:

11 Q. Mr. Gates, Mr. Lamancusa asked you some
12 questions about NXX number blocks. Are you familiar
13 with the term "contamination" in relation to NXX
14 number blocks?

15 A. Yes, I am.

16 Q. Can you please explain what that means?

17 A. Yes. Perhaps an example would help. I do
18 know that Level 3, when it requests numbers from the
19 plan administrator, for instance, when it receives a
20 10,000-number block, will generally use only the
21 4,000-number block, leaving the other thousand-block
22 groups uncontaminated, so that if and when jeopardy
23 were declared and numbers had to be returned or
24 reclaimed, Level 3 could return those uncontaminated
25 thousand-blocks back to the Plan Administrator for

1 distribution to other carriers.

2 Q. Do you know if Level 3 has ever returned
3 numbers?

4 A. I believe Level 3 has returned numbers,
5 yes.

6 Q. Yeah. Regarding whether carriers have to
7 be LNP capable, can you please give a basic brief
8 discussion of why the Act requires local number
9 portability? What's the benefit of a local number
10 portability?

11 A. The benefit is to allow other carriers to
12 port numbers, as they say, to move consumers'
13 numbers from one carrier to another, which allows
14 basically unfettered or unrestricted competition.
15 Consumers want their numbers. They want to be able
16 to take them with them, so to speak. So that's one
17 issue.

18 The other issue is just number
19 conservation. The thousand-block allows a more
20 efficient use of numbers. For instance, we know
21 that there are some exchanges within Minot's serving
22 territory that have just a few tens of customers,
23 maybe 67, and yet they would have to go and get a
24 10,000-number block to serve those few customers,
25 which on its face isn't very efficient. It's not to

1 say they're doing anything wrong. That's just the
2 way the numbering guidelines are. So under the Act
3 LNP is made for two things; to allow competition,
4 and to make more efficient use of those limited
5 resources.

6 Q. Okay. I'd like to follow up on the first
7 point about competition. The idea is that a carrier
8 is coming into the market, is taking customers away
9 from the incumbent, and in so doing is migrating
10 that customer onto its own network, but carrying the
11 number with it; is that correct?

12 A. Yes. That's correct.

13 Q. So there's no sense in having real local
14 number portability without the presence of
15 competition?

16 A. That's correct. And I think that was the
17 intent of the Act with the LNP requirement.

18 Q. And it's your understanding that SRT is
19 exempt from competition under 251 -- or the 251(c)
20 requirement; is that correct?

21 A. Yes, the rural exemption would apply to
22 this as well.

23 Q. And that probably justifies why they are
24 not LNP capable right now; is that correct?

25 A. Yes. I was not trying to imply they were

1 not in compliance.

2 MR. FLEMING: I have no further questions.

3 THE ARBITRATOR: Mr. Hogue, do you have
4 any?

5 MR. HOGUE: No.

6 THE ARBITRATOR: Hearing no objections,
7 excuse the witness.

8 THE WITNESS: Thank you.

9 THE ARBITRATOR: Do you have anything
10 further?

11 MR. FLEMING: We have no more witnesses,
12 Your Honor.

13 THE ARBITRATOR: Mr. Hogue, are you ready
14 to move on?

15 MR. HOGUE: Well, I was going to suggest --
16 I know you indicated 12:30. I was going to suggest
17 we take lunch now and then come back sooner. I
18 think we're in pretty good shape as far as -- at
19 least as far as my limited direct of my witnesses
20 can be concluded this afternoon. I don't know how
21 long your cross would be, but I would expect that
22 the direct of all three of my witnesses combined
23 would not be more than half-hour or so. So that
24 still -- if we are not doing closing, that would
25 still leave us at least three to four hours for your

1 cross.

2 MR. FLEMING: That sounds fine with us. I
3 think a break would be good right now.

4 THE ARBITRATOR: Okay. Just to set the
5 parties' minds at ease, we're not going to be doing
6 closing arguments, given the assertion, and I think
7 a good one, that it just makes more sense to hear
8 those arguments in the final briefing.

9 Being a quarter to 12 now, let's meet again
10 at a quarter of 1:00, and we'll start right then.

11 Thank you.

12 (Lunch recess was taken from 11:45 a.m. to
13 1:50 p.m., the same day.)

14 THE ARBITRATOR: Back on the record,
15 please.

16 I'd like to welcome everyone back. Thank
17 you.

18 MR. Hogue, why don't you continue.

19 MR. HOGUE: Yes. Thank you. Your Honor,
20 we call Mr. Douglas Meredith, please.

21 DOUGLAS MEREDITH,
22 having been first duly sworn, was examined and
23 testified as follows:

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DIRECT EXAMINATION

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BY MR. HOGUE:

Q. Mr. Meredith, you are a witness in this case and as many others you've produced prefiled testimony; is that correct?

A. Yes.

Q. Did you have a chance to review that prefiled testimony?

A. Yes.

Q. Are there any corrections that you wish to make to that testimony?

A. Yes. There's one typographical error. On the cover page, the second line, the word commission needs a second s.

Q. Any other changes or corrections to your prefiled testimony?

A. No.

Q. I have a copy of your testimony, and is it 50 -- or excuse me -- 45 pages?

A. Yes.

Q. And I understand there was one attachment, which is the ATIS Central Office Code Assignment Guideline; is that correct?

A. Yes, consisting of 51 pages, plus a cover page.

1 MR. HOGUE: I would like to offer
2 Mr. Meredith's testimony, as well as his exhibit.

3 THE ARBITRATOR: Any objections?

4 MR. FLEMING: No objections.

5 THE ARBITRATOR: Hearing no objections, so
6 entered.

7 MR. HOGUE: I forgot what you had said
8 about the numbering. I had numbered as a separate
9 exhibit.

10 THE ARBITRATOR: Use the numbering you have
11 on it. That will make it a lot easier.

12 MR. FLEMING: What's that number?

13 MR. HOGUE: SRT 24.

14 THE ARBITRATOR: That way we don't have
15 multiple stickers.

16 Q. (MR. HOGUE CONTINUING) Mr. Meredith, have
17 you had a chance to review the testimony that -- the
18 prefiled testimony of Mr. Hunt?

19 A. Yes, I have.

20 Q. And how about Mr. Gates?

21 A. Yes.

22 Q. Were you present in the Commission room
23 this morning when both of them were providing live
24 testimony?

25 A. Yes.

1 Q. I want to ask you about their prefiled
2 testimony and some of the testimony they offered
3 this morning. First of all, I want to direct your
4 attention, I guess, to the question of good faith.
5 And good faith is mentioned in 251(c), I believe; is
6 that true?

7 A. Yes, if you're referring to the
8 Telecommunications Act, it's in 251(c).

9 Q. Okay. Do you recall Mr. Hunt's testimony
10 this morning that SRT has a duty to negotiate an
11 interconnection agreement with Level 3 under Section
12 251(a)?

13 A. Yes.

14 Q. Do you agree with Mr. Hunt's testimony in
15 that regard?

16 A. No. I find it somewhat confusing that he
17 goes from a duty expressed in subpart (c)(1),
18 boomerangs -- goes to 252 and boomerangs back to
19 251(a). I find that kind of awkward and confusing.
20 And as a result, I just refer to the FCC's
21 implementation rules. The FCC looked at this
22 particular statute and implemented rules specific to
23 the provisions therein. And in one of its rules,
24 when it talks about duty to negotiate in good faith,
25 it says that ILECs, incumbent local exchange

1 carriers, have the duty to negotiate in good faith
2 for subsection (b) and (c) of Section 251. It
3 doesn't refer -- the FCC does not refer to 251(a) in
4 its duty implementation rule.

5 Q. Does it specifically identify -- in the
6 context of duty to negotiate in good faith, does it
7 specifically identify 251(b) and 251(c)?

8 A. Yes, it does. It's the Code of Federal
9 Regulations, 51-301, subpart (a). And I might add
10 that is consistent with what I've described in my
11 prefiled testimony with regard to this duty. The
12 FCC in paragraph 997 of the local competition order
13 talks about the duty of subpart (a) and says that
14 it's at the discretion -- the duty to interconnect
15 directly or indirectly is really at the discretion
16 of the carrier.

17 Q. The non-requesting carrier?

18 A. In that case, yes. SRT -- yes, that's
19 right. SRT would have that duty, but it would also
20 have the discretion to connect how it sees fit.

21 Q. How about in 251(c), who gets to make --
22 who gets to dictate the terms of interconnection?

23 A. Now, there, in 251(c)(2), the requesting
24 carrier, the CLEC, gets to designate the technical
25 feasible point within the carrier's network, gets to

1 designate how and when that's going to be provided
2 and also, as was mentioned, the pricing. So there's
3 an entire host of provisions that the CLEC has or
4 directs as far as terms and conditions are
5 concerned.

6 Q. Okay. I noticed in both your direct
7 testimony and Mr. Gates' direct prefiled testimony,
8 you both referenced the ATIS Guidelines?

9 A. Yes.

10 Q. Can you tell us what those guidelines are,
11 first of all?

12 A. Yeah. The ATIS Guidelines, which is part
13 of my Exhibit 1, are the Central Office Code
14 Assignment Guidelines that the Alliance for
15 Telecommunications Industry Solutions produces. And
16 these guidelines get updated on a -- not a regular,
17 but a frequent basis. And the exhibit that I have
18 attached is dated November 22nd, 2002. That, in
19 fact, is the most recent ATIS Guideline. It
20 precedes -- it replaces the guideline that was
21 referenced by Mr. Gates.

22 Q. Okay. Just for clarification there, the
23 Arbitrator had asked if anything in either version
24 was implicated for the language that you and
25 Mr. Gates quote and I was wondering if there was?

1 A. Yes. For the section that is quoted, there
2 has been a change in the language. It's not
3 substantive. The ATIS document cleans up some
4 grammatical errors in describing that particular
5 section. With regard to other portions of the
6 document, I have not done a side by side.

7 Q. Sure. Would you turn to page 28 of your
8 testimony? I think that's where you cite to the
9 ATIS Guidelines.

10 A. (Witness complies.) Yes.

11 MR. FLEMING: Your Honor, is this in the
12 form of reply to our testimony, or is this
13 additional direct?

14 MR. HOGUE: Well, I'm -- I guess I don't
15 understand the objection.

16 MR. FLEMING: Well, the objection is that
17 my understanding is that this is reply to testimony
18 that Level 3 filed, rather than restating testimony
19 already filed.

20 MR. HOGUE: Well, I'm examining him in
21 relation to the testimony that has been provided by
22 Mr. Gates and Mr. Hunt, specifically the comparison
23 between his opinion and Mr. Gates' opinion about
24 this ATIS Guideline.

25 THE ARBITRATOR: I'm going to allow it to

1 continue in light of the fact that you had a similar
2 opportunity with your witnesses as well.

3 MR. FLEMING: Thank you, Your Honor.

4 Q. (MR. HOGUE CONTINUING) I notice that both
5 Mr. Gates and you cite us to the same provision,
6 Section 2.14, involving assignments of NXX codes?

7 A. Yes.

8 Q. Can you explain to me, what does that mean?
9 What is that?

10 A. Well, this particular assignment or this
11 discussion in the ATIS talks about how the CO,
12 central office, codes are allocated to wireline
13 service providers. And it talks about that the
14 customers are assumed to be physically located in
15 the same rate center that the CO code blocks are
16 assigned. So it would require that the rule -- the
17 rule or the guideline requires that the customers be
18 physically located in the same area, in the same
19 rate center. And then it also provides that
20 exceptions exist and it gives an example. For
21 example, tariff services such as foreign exchange
22 service.

23 Q. So the FX is specifically identified as an
24 exception to the general rule?

25 A. Yes.

1 Q. So then I take it Level 3 is not precluded
2 from availing itself of the exception to the general
3 rule, are they?

4 A. No, they're not. As I described in my
5 testimony, and I understand that Mr. Gates doesn't
6 agree, but be that as it may, it appears to me that
7 the guideline speaks of a -- what I described in my
8 testimony as a primary service and secondary
9 service, for lack of a better term. I'm sure
10 there's a better way to say that. And the guideline
11 specifies -- the rule is that customers are located
12 or the guideline specifies the customer should be
13 located in the same rate center as the NXX is rated.
14 And in this particular case, we know that there are
15 no customers, Level 3 customers in SRT's serving
16 area. There are no customers in SRT's serving area,
17 and the proposal that was given to SRT for
18 interconnection is emphatic on that point.

19 Now, the guideline speaks for itself, but
20 it is helpful to refer, and as I refer to in my
21 testimony, for example, like the case in Florida
22 where the Florida Commission talks quite extensively
23 on this very point as to whether customers need to
24 be physically located in the same rate center, and
25 they conclude that that's customarily what happens.

1 Q. Let me just interrupt you. Does the
2 Florida case, does it talk about the scenario here
3 where Level 3 proposes that the exception -- no
4 percentage of the customers would be located in
5 SRT's exchange? Does it talk about a situation
6 where 100 percent of the traffic would be such that
7 the customers are not located in the exchange?

8 A. I would say it does not address that
9 specific question directly. It does say that the
10 customary practice of regulators is to require that
11 those customers be located in the rate center that
12 is applied.

13 And we also have a more recent case, the
14 FCC case, the Verizon arbitration case in Virginia.
15 It's a little bit different because it's dealing
16 with an RBOC area and the CLEC has customers in
17 those areas, as well as trying to provide FX service
18 via VNXX. And the FCC permits that allowance, the
19 secondary service, because it really doesn't --
20 really said that we're going to have primary
21 customers in this area and so we can't have the
22 secondary service, but then it also refers to the
23 Maine decision talked about by Mr. Hunt just briefly
24 this morning, in saying if there are abuses to the
25 NXX assignments, then we refer you to the Maine

1 Commission, because they did a fairly good job in
2 making sure there weren't abuses. I'm paraphrasing.

3 Q. What do you mean by abuses? Excessive
4 reliance on --

5 A. They were talking about -- the FCC was
6 talking specifically in the context of VNXX
7 assignments. And Verizon brought up the same case
8 that we have here, essentially, saying we're
9 concerned that customers are going to be -- you
10 know, they're going to use these NXXs as VNXXs,
11 virtual NXX. And the FCC said, if there are
12 abuses -- we don't have to deal with abuses right
13 now because it's a permissible secondary service,
14 but if there are abuses, we refer you to the Maine
15 Commission for the way that this particular abuse
16 could be resolved. And the Maine Commission, I
17 disagree somewhat with what Mr. Hunt described as
18 far as the Brooks Fiber case, but be that as it may,
19 there's some disagreement as to how that case
20 applies in this instance.

21 Q. Is the Maine case the Brooks Fiber case?

22 A. Yes. Yeah. Mr. Hunt talked about the
23 Brooks Fiber case, said that, oh, it's not on point
24 because the Brooks Fiber did not have certification
25 in the areas where the reclamation or the reclaiming

1 of NXXs occurred. That is correct in part. There
2 were other areas where they were certified and those
3 were reclaimed, as I understand that particular
4 order.

5 Q. Did you understand Mr. Hunt's testimony
6 regarding the FCC's treatment of ISP-bound traffic
7 in its remand order?

8 A. Yes.

9 Q. Do you agree with Mr. Hunt's testimony in
10 that regard?

11 A. No. We have a fundamental disagreement in
12 how ISP-bound traffic is defined. We can't even get
13 past the definition of what ISP-bound traffic is.

14 Q. Tell me what you understand Mr. Hunt -- how
15 you understand him to define it and how you define
16 it.

17 A. Well, Mr. Hunt defined ISP-bound traffic
18 this morning as any locally dialed, rated and routed
19 local call. And the FCC was very clear in its
20 declaratory ruling on ISP-bound traffic -- in fact,
21 the FCC coined the term "ISP-bound traffic," and
22 it's been very specific in applying what ISP-bound
23 traffic means. And in its remand order, the FCC
24 describes that ISP-bound traffic refers to traffic
25 that is originating by a customer and terminating to

1 an ISP location in that calling area. The U.S.
2 Court of Appeals -- it's no surprise -- I think that
3 we all know that the ISP order has been playing
4 Ping-Pong on appeal. And the most recent appeal,
5 the Court defines or describes what the FCC order
6 was all about, and I think I have that.

7 In the first paragraph it says, in the
8 order before us, the Federal Communications
9 Commission held that under Section 251(g) of the Act
10 it was authorized to carve out from 251(b)(5) calls
11 made to Internet Service Providers located within
12 the caller's local calling area. So the FCC's
13 fairly clear that ISP-bound traffic is very narrowly
14 defined. And the Court understood that the FCC's
15 order for ISP-bound traffic was narrowly defined for
16 calls -- for ISPs located within the local calling
17 area.

18 Mr. Hunt tries to expand that to include
19 all type of calls that would -- for instance, like
20 the NXX call that would be applied, that would be of
21 issue here.

22 Q. Well, does the current arrangement -- does
23 the remand order address the exchange of ISP traffic
24 that is occurring between SRT and Level 3 today?

25 A. The traffic that SRT and Level 3 exchange

1 today is really FX traffic. And the ISP order would
2 apply to the extent that it applies to FX traffic.

3 Q. Okay. Did the -- is there anything in
4 the -- either in the remand order or in the WorldCom
5 decision that you construe as the FCC removing the
6 obligation to pay originating access for traffic
7 that is interexchange?

8 A. No. The FCC did not address that. That's
9 not -- that's outside the scope of the ISP borders
10 as ISP-bound traffic is defined by the FCC, and so
11 there's no declaration in that regard. I know that
12 Level 3 has, you know, ex partes, you know, back and
13 forth at the FCC, and it's their belief that what
14 they said in ex parte is in the order, but it's not
15 there.

16 Q. Okay. Were you able to hear -- or I
17 shouldn't say hear, but the testimony, both the
18 written and live, that SRT unfairly discriminates
19 against Level 3 because it negotiates and it has
20 interconnection agreements with wireless carriers,
21 but not with Level 3?

22 A. Mm-hmm. Yes.

23 Q. Do you agree with their assessment that
24 it's discriminatory?

25 A. No, I do not. CMRS providers -- in this

1 particular case Western Wireless was mentioned.
2 Western Wireless has customers in the Minot
3 exchange, and so they satisfy the requirements that
4 customers are physically located in that area. As
5 you are aware, the FCC's rules on the local calling
6 scope for CMRS is different than the local calling
7 scope for wireless -- for wireline service. But the
8 discrimination issues -- discrimination requires
9 like service and like carriers, and we do not have
10 like service or like carriers here.

11 Q. This morning Mr. Rogier DuCloo indicated
12 that he didn't think the parties were directly
13 connected because there was not a carrier-to-carrier
14 connection. Do you agree with that?

15 A. No, I don't. I've heard what was said this
16 morning, and I heard Mr. Hunt express that Level 3
17 is not an ISP. We know for a fact that Level 3 is
18 not an ISP. So if customers are calling an ISP over
19 the provision services, then Level 3 is a carrier
20 that collaborates on a call to the ISP. I don't
21 know how else I can -- we have an end user from SRT
22 using SRT's facility. They are obviously a carrier.
23 And then that connection transmission goes on to
24 facilities leased and operated by Level 3 and it
25 terminates to an ISP. That -- I don't know if

1 there's a definition of co-carrier, but it sounds
2 like co-carrier to me. Now, you don't have to be
3 a -- you don't have to have an interconnection --
4 you don't have to request interconnection rates to
5 be a co-carrier. You can pull them out of a tariff.
6 That happens all the time.

7 Q. Okay. I guess on a related note, is Level
8 3 an end user of the tariff service it's buying from
9 SRT?

10 A. From what I heard this morning, no, because
11 the end user is the ISP, and we heard direct
12 testimony saying that Level 3 is not an ISP.

13 MR. HOGUE: That's all the direct questions
14 that I have.

15 THE ARBITRATOR: Go ahead, Mr. Fleming.

16 MR. FLEMING: Can I borrow your easel?

17 MR. HOGUE: Sure. Sure.

18 CROSS-EXAMINATION

19 BY MR. FLEMING:

20 Q. I just want to get a visual of the position
21 you're taking about the ISP remand order.

22 THE ARBITRATOR: To the extent that this
23 testimony can be described orally, I would request
24 that you do so, because I don't think we're going to
25 be able to introduce this, or if we have it as part

1 of the record, you guys are going to have to reduce
2 it and make sure it's --

3 MR. FLEMING: We'll know what's on it here.

4 Q. (MR. FLEMING CONTINUING) Let me -- I'm
5 going to generally describe this as the SRT local
6 calls. All right. So this is all the calls being
7 collected throughout the SRT serving area coming
8 into the Minot switch.

9 MR. HOGUE: Can I move over here to see
10 this?

11 MR. FLEMING: Is there a better place for
12 me -- this is all right.

13 Q. (MR. FLEMING CONTINUING) And then let's
14 say this is the SRT boundary service area and
15 then -- well, that's it. And then this is served by
16 other carriers below here. Your position, as I
17 understand it, is that there's a modem pool here for
18 an ISP?

19 THE ARBITRATOR: "Here" being where?

20 Q. (MR. FLEMING CONTINUING) Here, inside the
21 SRT serving area, and then it goes off to the
22 Internet. For example, this would be the
23 arrangement that SRT's ISP has established; is that
24 correct?

25 A. With regard to your diagram, local calls in

1 Minot in the modem bank within the exchange area,
2 yes.

3 Q. Okay. But the entire SRT serving area is
4 one -- it's all subject to local calling; is that
5 correct?

6 A. I'm not certain on that.

7 Q. Assume that it is.

8 A. Okay.

9 Q. So in this situation the SRT ISP has its
10 modem here within the local calling area.

11 A. I believe -- let's assume that it is. SRT
12 and the other ISPs in Minot would be there, yes.

13 Q. So it's your position that under the ISP
14 remand order, this is the only type of traffic that
15 is being addressed?

16 A. Yes. Intra -- calls from a customer in
17 SRT's serving area or exchange area and delivered to
18 an ISP physically located in that same exchange
19 area.

20 Q. Okay. And why is that?

21 A. That's how ISP-bound traffic, in quotes,
22 was defined.

23 Q. Is that because the call is terminating
24 here at the modem?

25 A. That is a question that the FCC talked

1 about and the Court has rejected the concept that
2 the call goes -- continues on, all of those issues.
3 So I would encourage us not to use the word
4 "terminate" at that location.

5 Q. What word would you like to use, if not
6 terminate?

7 A. The ISP has physical location in the
8 exchange area and receives the calls. The
9 transmission continues. It doesn't terminate at
10 that point.

11 Q. So it doesn't terminate here, it terminates
12 somewhere else?

13 A. The transmission continues. The call
14 actually terminates. It goes off the PSTN, or the
15 public switch telephone network, at that location.

16 Q. Okay. Call terminates at this modem. So
17 if I had a modem down here, let's say in Bismarck,
18 the call terminates here, in your view?

19 A. Yes.

20 Q. And so this is outside the local calling
21 area, that's not subject to the ISP remand order; is
22 that what you're saying?

23 A. That is not ISP-bound traffic, in quotes,
24 that's correct.

25 Q. Okay. The call terminates here. So are

1 you familiar with Section 251(b)(5)?

2 A. Yes.

3 Q. And that says that carriers have to make
4 reciprocal compensation arrangements for the
5 transport and termination of telecommunications?

6 A. Yes.

7 Q. Would you say a call is telecommunications?

8 A. Yes, I would agree with that.

9 Q. So you would agree with me that a call from
10 here -- a call from here to a modem here that
11 terminates here is subject to 251(b)(5) reciprocal
12 compensation, correct? But for the ISP remand
13 order?

14 A. Yes, save all the history of the last four
15 years, three years.

16 Q. So you are agreeing with the CLEC's
17 position that this call, but for the ISP remand
18 order, terminates at this modem?

19 A. I don't know the CLEC position.

20 Q. Okay. Fair enough. So the reason that
21 this is not subject to reciprocal compensation is
22 because of the ISP remand order?

23 A. Yes.

24 Q. All right. So if the Supreme Court were to
25 vacate the D.C. Circuit decision that did not vacate

1 the ISP remand order, when the D.C. Circuit decision
2 goes up to the Supreme Court and they reverse and
3 vacate, your position is that SRT will owe
4 reciprocal compensation at two and a half cents a
5 minute for calls to that modem?

6 A. If, hypothetically, the Supreme Court
7 vacated the U.S. Court of Appeals' decision, the
8 FCC's rule would remain in effect.

9 Q. Well, let's say the Supreme Court did what
10 the D.C. Circuit didn't, and that is not only
11 reversed the D.C. Circuit, but also vacated the ISP
12 remand order?

13 A. Okay. Assuming hypothetically that the
14 Court reverses the FCC's intercarrier compensation
15 regime.

16 Q. Or just vacates it, doesn't have to reverse
17 it. So then this call terminates here --

18 THE ARBITRATOR: Which call? I just want
19 to make sure that you constantly say SRT local calls
20 to a modem bank location.

21 Q. (MR. FLEMING CONTINUING) An SRT local call
22 originating within the local calling area, a call
23 that terminates at this modem, that would constitute
24 transported termination subject to 251(b)(5)?

25 A. Yes, under the FCC's regime, that is true.

1 Q. Okay. So let me make this clear. Let's
2 assume this is Bismarck, so it's outside the local
3 calling area. Your view is that a call from here to
4 here under the ISP remand order is subject to an
5 interstate compensation regime?

6 A. Yes.

7 Q. A call from here past here, to Bismarck, is
8 subject to an intrastate compensation regime?

9 A. Yes.

10 Q. Mr. Meredith, on page 11 of your testimony
11 you say that SRT's obligation to interconnect --
12 duty to interconnect under Section 251(a) is a duty
13 only to connect. It is the physical linkage of two
14 networks and that it has no obligation for the
15 exchange of traffic. Do you see that?

16 A. Yes, that's lines 5 through 10.

17 Q. Now, can you give me an example of why two
18 networks would interconnect without exchanging
19 traffic?

20 A. No. This is not my rule. This is just
21 what the FCC says. They've made the distinction,
22 for some reason, that physical interconnection is
23 different than the mutual exchange of traffic.

24 Q. Isn't it true that SRT is interconnected
25 with CMRS carriers under Section 251(a)?

1 A. Yes, they are.

2 Q. Is traffic flowing between SRT and CMRS
3 carriers?

4 A. I believe so, yes.

5 Q. Even though there's no duty for SRT to send
6 any of that traffic to the CMRS carriers?

7 A. No, there's an agreement under 251(b)(5),
8 if I'm not mistaken, for the mutual exchange of
9 traffic.

10 Q. Doesn't 251(b)(5) address compensation
11 issues related to the exchange of traffic?

12 A. For the mutual exchange of traffic, yes.
13 Yes.

14 Q. On later -- farther down that page, lines
15 12 to 16, you say that interconnection under 251(a)
16 is subject to the most efficient technical and
17 economic choices. Do you see that?

18 A. Based upon the carrier's efficient, most
19 technological -- technical and economic choices,
20 yes.

21 Q. All right. Now, your -- is it correct that
22 SRT's position is that they satisfy that requirement
23 by the current arrangement?

24 A. SRT satisfies its 251(a) obligation two
25 ways; under indirect interconnection. And an

1 example of that would be if you were to give me a
2 Level 3 customer phone number located in Denver, or
3 wherever you have local customers, and we were to
4 hike back up to Minot and make a phone call, that
5 phone call would be completed. And the second way
6 is through the services and facilities that Level 3
7 has ordered from SRT.

8 Q. Based on your understanding of the current
9 arrangement, what do you see is the difference
10 between what SRT is providing now and what Level 3
11 has requested?

12 A. As I expressed in my testimony, the
13 difference is, is that Level 3 is seeking to
14 arbitrage or seeking to avoid the compensation for
15 an interexchange call. The proposed agreement that
16 Level 3 gave SRT, as I understand it, is a -- the
17 traffic is interexchange traffic. And for purposes
18 far beyond just Level 3's interest, but for
19 interexchange -- the interexchange regime, SRT
20 cannot have that type of leakage.

21 Q. By "that type of leakage," are you limiting
22 your answer to only ISP-bound traffic?

23 A. No, because Level 3 is not just an
24 ISP-bound traffic type of carrier. Mr. Hunt
25 expresses that they are going to be providing voice

1 traffic next year. The interrogatory responses that
2 I reviewed say that Level 3 is going to be providing
3 voice traffic, and so when that traffic goes
4 on-line, I don't know how it could be distinguished
5 from AT&T's type of traffic. If SRT allows this
6 type of thing to happen -- and it can't, because
7 it's interexchange traffic, but if it were to say,
8 oh, fine, we'll just do it, we'll have MCI and AT&T,
9 and all the other interexchange carriers asking for
10 similar treatment.

11 Q. Did you hear Mr. Hunt testify this morning
12 that Level 3 recognizes there's a particular
13 regulatory regime that applies to ISP-bound traffic
14 and another regulatory regime that applies to
15 interexchange traditional voice traffic?

16 A. Yes.

17 Q. And let's turn back to the current
18 arrangement that SRT provides. How is the existing
19 arrangement more technically efficient for SRT than
20 the proposed arrangement?

21 A. I don't know if -- I can't speak to the
22 technological efficiency of really either. I'm not
23 the person to talk about that.

24 Q. Do you know who is?

25 A. I would think an engineer, if you want.

1 Q. Is there someone from SRT that can answer
2 that?

3 A. Oh, I'm certain there's engineers at SRT.

4 Q. Right. How is the existing arrangement
5 more economically efficient for SRT than the
6 proposed arrangement?

7 A. The current arrangement is a -- I guess we
8 could call it a jointly-provisioned FX service, that
9 SRT gets compensation for on a per-trunk basis or a
10 per-line basis, on a fixed basis, I should say. The
11 proposed agreement would eliminate the application
12 of interexchange access recovery for interexchange
13 traffic and so it has -- the implications are that
14 if you have interexchange traffic, that some of it
15 is being compensated and other is not being
16 compensated. In my testimony I talk about that that
17 would be -- that would be discriminatory in another
18 context, not in this context, but in another
19 context.

20 Q. Doesn't SRT -- isn't the current
21 arrangement between SRT and Level 3 an
22 interexchange? Doesn't it go from one exchange in
23 Minot down to Bismarck?

24 A. The current arrangement?

25 Q. Yes.

1 A. Yes. It is an FX service.

2 Q. Okay. And so it's your position that
3 converting the ISDN PRIs into dedicated transport
4 trunks in itself is somehow an avoidance of access
5 charges?

6 A. The designation of interexchange traffic as
7 local is an avoidance of the interexchange access
8 regime, yes.

9 Q. And you'll admit that SRT customers can
10 call the Level 3 entity on a local basis now,
11 correct?

12 A. Yes, they can.

13 Q. Would you agree that Section 251(a) allows
14 Level 3 to interconnect based on Level 3's most
15 efficient technical and economic choices?

16 A. For traffic it originates and delivers to
17 all carriers, yes.

18 Q. So the distinction is that the choice goes
19 to the originating carrier?

20 A. I think that's a fair -- yes.

21 Q. And where do you draw that conclusion?

22 A. Well, they both have a duty. And they both
23 have a duty to interconnect indirectly or directly
24 and the -- that was the only way I can, in looking
25 at that particular statute, examine how the duty can

1 be fairly applied to both, both providers.

2 Q. But doesn't that statement suggest that
3 both parties should be able to state their own
4 technical and economic choices and then they would
5 negotiate an outcome?

6 A. No, because a lot of times this traffic is
7 not exchanged -- it's not synchronous. Carrier A
8 chooses one route and carrier B chooses another.
9 Subject to their discretion, they can do that.

10 Q. So if -- let me give you another
11 hypothetical. Let's say Level 3 came into Minot or
12 came into the SRT local calling area and they served
13 a telemarketer that made nothing but outbound calls
14 between 7:00 and 9:00 p.m.

15 A. Okay. Telemarketer is in Minot?

16 Q. Correct.

17 A. And SRT -- or Level 3 is providing local
18 exchange service?

19 Q. Correct. So under your view, Level 3 could
20 decide that it's in their economic and technical
21 efficiency choices to require SRT to take all that
22 traffic up in Sherwood, up on the Canadian border,
23 is that correct, since they're originating the
24 traffic?

25 A. And the -- Level 3 is going to dictate

1 where that interconnection occurs, is that --

2 Q. Yes. Level 3 is interconnecting under
3 251(a) --

4 A. I don't know where Sherwood is.

5 Q. -- and they're serving a telemarketer that
6 has nothing but outbound calls. Your view, Level 3
7 can say, we want to send all the traffic up to
8 Sherwood?

9 A. No. No. If the CLEC or the carrier is
10 going to dictate how and where the technical
11 interconnection is going to occur, that's a
12 251(2)(c) interconnection request.

13 Q. Okay. I'm only asking 251(a), and you said
14 that the choice of how you interconnect is up to the
15 originating carrier?

16 A. Mm-hmm.

17 Q. So in this case Level 3 is the originating
18 carrier.

19 A. Mm-hmm.

20 Q. They make the choice to send it to
21 Sherwood, and under your view, that's acceptable,
22 correct?

23 A. Typical practice would be that that would
24 go to a tandem. It would be delivered over the
25 tandem connection, this type of connection.

1 Q. Because that's more efficient for both
2 sides?

3 A. I can't speak to why that's the most common
4 arrangement right now.

5 Q. But that's -- okay. Are you familiar with
6 what the Public Switch Telephone Network is?

7 A. Yes.

8 Q. Can you please --

9 A. General sense.

10 Q. -- explain what that is?

11 A. Well, the Public Switch Telephone Network
12 is an amorphous entity where all the switches and
13 eventually end user customers are able to dial and
14 connect telecommunications traffic.

15 Q. Are you aware of any local exchange carrier
16 that is not connected to the Public Switch Telephone
17 Network?

18 A. No. They wouldn't be able to -- they would
19 only be able to -- this goes back to the early days.
20 I mean, even before -- you know, pre Bell. The
21 Bell, you know, days of the 1920s when you had
22 independent carriers and a lot of times they would
23 only be able to deliver traffic to their own
24 customers. It's kind of like a PBX in that case.
25 You could only talk to the people who were connected

1 to the PBX. You wouldn't be able to talk to anybody
2 else who is not connected.

3 Q. So there would be no point in having a
4 local exchange carrier that wasn't connected to the
5 Public Switch Telephone Network?

6 A. It can be done. I mean, definitions allow
7 that particular occurrence to exist. You can have a
8 local exchange carrier providing telephone exchange
9 access for hire to a select group of people, but
10 they wouldn't be calling the entire -- they would
11 not have the ability to call the entire nation under
12 that plan.

13 Q. Are you familiar with a term called
14 Metcalf's law?

15 A. Yes.

16 Q. Do you know what that is?

17 A. Is that the -- I believe that is the
18 simplest solution is the -- I can't quote it
19 directly.

20 Q. Okay. Well, that's not it.

21 THE ARBITRATOR: That's Occum's Razor.

22 THE WITNESS: Occum's Razor. Very good.
23 So don't leave me hanging. Tell me what it is.

24 Q. (MR. FLEMING CONTINUING) Read it in our
25 brief.

1 A. Oh, okay.

2 Q. In your discussion of foreign exchange
3 service, you suggest that LECs must provide service
4 the same way that ILECs provide service. Is that
5 your position?

6 A. Where is that? Can you refer to the page?

7 Q. Well, it's on page 26. And it has to do
8 with the idea that under your definition of foreign
9 exchange service, a carrier must have customers
10 within the local exchange area, which conveniently
11 enough is the way that ILECs provide foreign
12 exchange service.

13 A. If you look at figure 3 and figure 4 is FX
14 service. One is provided by an ILEC. One is
15 provided by a CLEC, yes. And figure 5, of course,
16 is a different animal, but I'm talking about that,
17 I'm sure, in a minute.

18 Q. I'd like to ask you a question about the
19 Maine decision, which you cite in -- you assert that
20 the circumstances are similar to the case here. Is
21 there a question whether Level 3 has authority to
22 provide CLEC service throughout North Dakota?

23 A. No.

24 Q. Is there a question about whether an ILEC
25 has to transport an ISP-bound call hundreds of miles

1 to a point of interconnection with Level 3?

2 A. There may be, yes.

3 Q. Explain that, please.

4 A. The proposed agreement that Level 3 gave to
5 SRT describes the practice that common trunks will
6 be used.

7 Q. Well, do you still -- based on everything
8 you've heard today, do you believe that Level 3 is
9 seeking common transport in this arrangement with
10 SRT?

11 A. From what I've heard today, no. No.

12 Q. All right. Thank you. You also said in
13 your testimony that the arrangement proposed by
14 Level 3 would expand the whole calling area of SRT.
15 Do you recall that?

16 A. Yes.

17 Q. Now, under the current arrangement, can't
18 someone that lives, let's say, at the Minot Air
19 Force Base make a phone call to the number
20 designated to the Level 3 PRIs and travel over a
21 circuit down to Bismarck; they can do that now,
22 correct?

23 A. Yes.

24 Q. So by changing the type of interconnection
25 between Level 3 and SRT out of the Minot switch, how

1 does that change where the call originates or where
2 it terminates?

3 A. Right now the service that's provided is
4 designated at a fixed point in Bismarck. If we --
5 if the Commission, the Arbitrator were to permit
6 VNXX to go unabated, then Level 3's customers can be
7 in Denver, can be in Los Angeles, can be anywhere,
8 and SRT's customers would be calling them on a local
9 basis. The interrogatory responses indicate that
10 those modem banks in Bismarck are, in fact, going to
11 move, apparently, to Denver. So we're not talking
12 about transport to -- we're not talking about a call
13 to Bismarck. We're talking about a transmission
14 that goes all the way to Colorado.

15 Q. I have a question about foreign exchange
16 service. Foreign exchange service is not always
17 two-way, is it?

18 A. No.

19 Q. In fact, often it's one-way foreign
20 exchange service?

21 A. Dictated by the use of the customer, yes.

22 Q. Correct. And would you agree that the use
23 of the customer such as an ISP -- well, strike that.
24 The use of an ISP for foreign exchange service would
25 dictate only one-way service, correct?

1 A. Generally, yes.

2 Q. I'd like to mark this exhibit for
3 identification as Exhibit 4. I'm handing you what's
4 been marked for identification as Exhibit 4, Level 3
5 Exhibit 4. And it's a three-page document, and the
6 first page is a cover page of the SRT Local Exchange
7 Services Tariff, Section 11, sheet 1 and Section 11,
8 sheet 2.

9 THE ARBITRATOR: Can we hold for a second?
10 While you guys sort that out, we have to sort out
11 our taping mechanism as well.

12 (Discussion off the record.)

13 THE ARBITRATOR: Back on the record.

14 Q. (MR. FLEMING CONTINUING) I've handed you a
15 document that's been identified as Level 3, Exhibit
16 4, and, Mr. Meredith, it's the cover page of the SRT
17 Local Exchange Services Tariff, Section 11, sheet 1
18 and Section 11, sheet 2. If you turn to Section 11,
19 sheet 1, this describes SRT's foreign exchange
20 service offering, is that correct?

21 A. Yes. It's entitled Foreign Exchange
22 Service.

23 Q. Now, have you seen this document before?

24 A. I do not believe I have.

25 Q. Can you read this document, please, and

1 tell me where it says in here that a carrier must
2 have customers within the local calling area before
3 it may provide foreign exchange service.

4 A. I've read the document during our brief
5 interlude, and it does not speak to that particular
6 statement.

7 Q. Can you look then at B.4.?

8 A. Yes.

9 Q. Can you read that into the record, please?

10 A. B.4., "Exchange telephone service furnished
11 with foreign exchange service and foreign exchange
12 service for a telephone subscriber of the company
13 will be provided outside the company's exchange
14 areas only when interexchange facilities are
15 available from a connecting company having such
16 facilities."

17 Q. Now, do you see the phrase that says, "will
18 be provided outside the company's exchange areas"?

19 A. Yes.

20 Q. Does that not mean that SRT can provide a
21 foreign exchange service to a customer in, say,
22 Bismarck?

23 A. Yes, I'm certain this is an example of my
24 figure 3. I have it on my page 25. This is exactly
25 what this is describing.

1 Q. It's a Qwest customer in Bismarck obtaining
2 foreign exchange service from SRT?

3 A. Yes. That's an example, yes.

4 Q. On page 23 of your testimony you cite the
5 AT&T versus Bell Atlantic decision.

6 A. I'm not getting that on page 23.

7 Q. Well, maybe I wrote my notes wrong. I'm
8 sorry. It's footnote 23 on page 24.

9 A. Yes.

10 Q. And it actually is quoting from the order.
11 The quote is on page 23, with the footnote appearing
12 on page 24 --

13 A. Yes.

14 Q. -- is that correct?

15 A. Mm-hmm.

16 Q. Now, I'm handing you a document that has
17 the caption AT&T Corporation versus Bell Atlantic.
18 It's dated December 9, 1998. Is this the decision
19 that you were citing?

20 A. Let me check. It appears to be.

21 Q. Can you turn to paragraph 71, please?

22 A. Yes.

23 Q. And can you -- on that document that I've
24 handed you there's language in a box; is that
25 correct?

1 A. Yes.

2 Q. Can you compare the language in the box
3 with the language that you've quoted?

4 A. Okay. There's a few -- let me see. Yes,
5 there's a sentence --

6 Q. Is that the last sentence?

7 A. Yes. It looks like there's a paraphrasing
8 in the second to last sentence. The document you
9 handed me says, quote, "The home end is known as the
10 closed-end, while the foreign end is known as the
11 open-end." And I have it down in a paraphrase, "It
12 is common to define the home end as the closed-end,
13 while the foreign end is known as the open-end."

14 Q. Is the next sentence the same as well?

15 A. And then your sentence says, in effect --
16 let me just read it. "In effect, this gives the
17 subscriber a dial-tone presence in the distant
18 exchange without additional toll charges." And the
19 testimony reads, "This service gives the subscriber
20 a dial-tone presence in the distant exchange without
21 incurring permanent toll charges."

22 Q. Is there -- do you notice a difference
23 between the first sentence and the last sentence?

24 A. Yes. There's a bit of a difference in the
25 last two sentences. It appears to me that my quote

1 should actually end before those started to occur.

2 Q. Now, the last sentence that you read that's
3 in the order compared to the last sentence you wrote
4 here in the quote, the meaning is a little bit
5 different, isn't it?

6 A. This service gives the subscriber a dial-
7 tone presence in the distant exchange without
8 incurring permanent toll charges. And your document
9 says, in effect, this gives the subscriber a dial-
10 tone presence in the distant exchange without
11 incurring additional toll charges. There's slight
12 difference in that we have permanent here in my
13 summary --

14 Q. But in the order by the FCC it doesn't
15 actually say that the subscriber has a dial-tone
16 presence? It's in essence or in effect a dial-tone
17 presence?

18 A. In effect, this gives the subscriber a dial
19 tone presence.

20 Q. Now, could you please turn to paragraph 76?

21 A. Of the same document?

22 Q. Yes.

23 A. Mm-hmm. Yes.

24 Q. Could you read the first three sentences of
25 that paragraph into the record?

1 A. The LECs contest the IXC's characterization
2 of the connection between the intraLATA FX
3 subscriber and the home and office, and in some
4 cases the link from there to the foreign end office
5 as a private line. Private line is in quotes. They
6 maintain that an FX service subscriber purchases
7 basic local exchange service, including common line,
8 and that FX service merely extends the subscriber's
9 local loop to a different local calling area within
10 the same LATA.

11 Q. And the next sentence?

12 A. Thus, the LECs argue that intraLATA FX
13 service is a type of local exchange service.

14 Q. Thank you. Now, on, I believe it's page --
15 well, somewhere in your testimony -- actually, on
16 page 36 you refer to the Florida PSC decision?

17 A. Yes.

18 Q. I'm handing you a document that has the
19 same citation as in your footnote 31, dated
20 September 10, 2002. And I'm turning it to page 28,
21 which I think the pages are different from your
22 version, but is the language that I boxed the same
23 as the language you were referring to in your
24 testimony?

25 A. Yeah, they appear to be the same.

1 Q. Could you turn back to page 25 of that
2 document and read into the record the section that
3 I've boxed for you?

4 A. Sure. It says, quote, we note that due to
5 the FCC's recent ISP remand order, which removes
6 ISP-bound traffic from state jurisdiction, this
7 issue is limited to intercarrier compensation
8 arrangements for traffic that is delivered to non-
9 ISP customers.

10 Q. And could you turn to page 31, please?

11 A. Yes.

12 Q. And there's another -- some more text
13 boxed, if you would read that into the record?

14 A. The last sentence?

15 Q. Yeah.

16 A. While we hesitate to impose a particular
17 compensation mechanism, we find that virtual NXX
18 traffic and FX traffic shall be treated the same for
19 intercarrier compensation purposes.

20 Q. That's it. So based -- if that ruling were
21 applied here in North Dakota -- let me back up a
22 second. Are FX calls subject to access charges?

23 A. No, generally they're not.

24 Q. So if the ruling in Florida were to apply
25 in North Dakota, then FX service would be subject --

1 virtual NXX services would be subject to the same
2 treatment as FX services and neither would be
3 subject to access charges; is that correct?

4 A. For, I believe, Qwest in North Dakota. I
5 don't believe that was a -- I don't recall the
6 parties on that citation, on the caption.

7 Q. Would you like to read the caption?

8 A. Yeah. I'm just looking to see who the
9 parties were. Yeah. I'd have to review again the
10 document to see if there was an issue as to whether
11 NXX was the exclusive and only use. I mean, that
12 the only use of those NXXs was virtual NXX.

13 Q. But you would agree --

14 A. If the CLECs had customers in those areas,
15 then it's permissible to have VNXX be treated as FX.
16 I mean, that's a permissible act.

17 Q. Fair enough.

18 A. Okay. I don't --

19 Q. But if there were no customers -- you would
20 agree that if there were no customers in the Florida
21 regime, that virtual NXX is treated in Florida the
22 same as foreign exchange traffic?

23 A. Under the hypothetical, yes, but I'd have
24 to look -- I'd have to re-read that really briefly.

25 Q. Do you mind reading that caption into the

1 record, since you looked at it?

2 A. Sure. Before the Florida Public Service
3 Commission in re investigation into the appropriate
4 methods to compensate carriers for exchange of
5 traffic subject to Section 251 of the
6 Telecommunications Act of 1996.

7 Q. Thank you. Now I'd like to ask you a few
8 questions about your exchange with Mr. Hogue earlier
9 today. You were paraphrasing, weren't you, when you
10 were discussing the FCC order regarding the Virginia
11 arbitration?

12 A. Yes. I cite that directly in my testimony
13 and discuss that, and so I was paraphrasing in my
14 colloquy with him.

15 Q. So the FCC didn't really say that the Maine
16 Commission did a fairly good job; is that correct?

17 A. No. They referred to the Maine Commission
18 as the example to stem the abuses of NXX.

19 Q. Right. But they didn't say Maine did a
20 fairly good job?

21 A. What they said is what they said. I have
22 it in my testimony.

23 Q. And they also did not say FX is a
24 permissible secondary service, did they?

25 A. No. We had that -- that was not a Maine

1 discussion I had with Mr. Hogue. That was in
2 talking about the ATIS requirement -- ATIS document.

3 Q. No, but you were referring to the Virginia
4 arbitration order and you were paraphrasing what the
5 FCC Enforcement Bureau or the Wireline Competition
6 Bureau said.

7 A. Yes. The case of having exclusive VNXX
8 didn't exist in that case, because the competitors
9 in question have CLEC customers in those exchanges,
10 so that didn't arise. I was just noting that that
11 was the case.

12 Q. You also talked about Section 2.14 of the
13 ATIS Guidelines. Do you recall that?

14 A. Yes.

15 Q. Do you know when that section was added?

16 A. Originally? The first time, no.

17 Q. Do you know when the language about foreign
18 exchange code was added?

19 A. The language from the documents -- from the
20 summer document to the document that I produced,
21 there was a change in that language. Are you
22 referring to the original grammatically incorrect
23 sentences?

24 Q. Yes, I am.

25 A. No.

1 Q. Now, you said that, as I recall, Level 3
2 can interconnect as a carrier with SRT without an
3 interconnection agreement; is that correct?

4 A. Level 3 can deliver traffic to SRT's
5 network without an interconnection agreement, yes.
6 And SRT can do the same and can do it right now, if
7 we hike up to Minot and called a Level 3 customer in
8 Denver.

9 Q. And you also said that Level 3 can -- and I
10 hope I get this quote right -- can pull them,
11 referring to transport services and facilities --
12 can pull them out of a tariff all the time?

13 A. They have the option to -- for pricing for
14 interconnection, carriers can select prices out of
15 tariff or they can go to interconnection requests.

16 Q. So is it your position that if Level 3
17 wants the same transport arrangements that SRT is
18 offering the CMRS carriers, that Level 3 doesn't
19 need an interconnection agreement, we can just take
20 it straight out of the tariff?

21 A. No. There's not a like carrier like
22 service there. You wouldn't be eligible for that.

23 MR. FLEMING: No further questions.

24 THE ARBITRATOR: I have a couple.

25

EXAMINATION

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BY THE ARBITRATOR:

Q. Can Level 3 provide local service to a current SRT local service customer without an interconnection agreement with SRT?

A. Yes, they could.

Q. How?

A. They would deliver traffic to the Qwest tandem and that traffic would be -- the call would be connected.

Q. So every call -- but, I mean, in that situation every call that that local customer would make -- excuse me. That customer that's located in the Minot local calling area would then be subject to intraLATA toll since that call would need to travel to a Qwest tandem before it called a neighbor next-door?

A. Not necessarily, because the rating and routing of the calls are from the customer originating the call to the customer, the rate center of the phone number that's terminated.

Q. So the rating is?

A. The delivery -- the transmission of the call can go in various different ways, but the customer would not necessarily be -- not necessarily

1 incur toll charges for that type of call.

2 Q. What I'm trying to make sure I understand
3 is, where in either the Telecommunications Act or in
4 the FCC order does it state that in order for a CLEC
5 to provide service in an area, they have to have
6 customers in that area?

7 A. In order for a CLEC to provide service in
8 an area they have to have customers in that area?

9 Q. Yes.

10 A. Let's take, for example, a case where the
11 FCC has full jurisdiction, CMRS. They define a
12 compensation and exchange of traffic regime that is
13 specific to where the customers are physically
14 located at the originating point of the call. And
15 so they have a specific calling scope that they
16 define for local compensation and exchange. For
17 wireline competition the FCC defers those decisions
18 to the state commission.

19 Q. What decision?

20 A. The calling scope.

21 Q. The definition of local calling?

22 A. Definition of calling scope, because your
23 question addresses can I have a customer in Bismarck
24 and is actually treated like he's a customer in
25 Minot. That is a calling scope question for the

1 appropriate regulatory body.

2 Q. Let me make sure I get -- you understand my
3 question. SRT's local calling area includes a
4 calling area at Minot; is that correct?

5 A. Correct.

6 Q. A Minot local customer therefore -- excuse
7 me. Therefore, if SRT is to be able to interconnect
8 with -- did I say SRT? Excuse me. If Level 3 is to
9 interconnect with SRT, Level 3 has to be providing
10 some service to that Minot customer before an
11 interconnection agreement can be approved?

12 A. For local interconnection, yes.

13 Q. Where is your authority for that?

14 A. Well, as I understand the question and my
15 response is, that a Level 3 customer exists or is
16 residing in Minot.

17 Q. No. There is no -- Level 3 has to -- the
18 question is, how can Level 3 get a customer in the
19 Minot local exchange area if it can't interconnect
20 with SRT?

21 A. It can interconnect with SRT.

22 Q. Okay. Interconnect via these PRIs?

23 A. Through the PRIs. If it were wanting to
24 provide local service, it would likely interconnect
25 a different way. You know, they're not limited to

1 the PRIs in that case for local service.

2 Q. Is direct inward dialing a local service?

3 A. Mm-hmm. Yes.

4 Q. Does Level 3 provide direct inward dialing?

5 A. To customers apparently in Denver and other
6 areas of the country where the customers are
7 located, yes.

8 Q. But does Level 3 provide direct inward
9 dialing service in the SRT local serving areas?

10 A. Not right now, no.

11 Q. Do they have a tariff on file with the
12 North Dakota Public Service Commission with respect
13 to DIDs?

14 A. I believe they do. They answered that in
15 interrogatories.

16 Q. Is that tariff restricted in any way from
17 being able to be purchased, so to speak, in the SRT
18 serving area?

19 A. I don't know.

20 Q. So if there were a customer in Minot -- if
21 there was a person in Minot, a person, business,
22 whatever, and they wanted to purchase Level 3's DID
23 service, they basically would purchase pursuant to
24 the tariff; is that correct?

25 A. I would imagine, subject to availability of

1 facilities, yes.

2 Q. I understand. And in that situation Level
3 3 would then have a customer in the SRT local
4 calling area which would then enable Level 3 to be,
5 in a sense, eligible for an interconnection
6 agreement with SRT?

7 A. Yes, they would. If traffic were indeed
8 going via exchange, they would not only deal with
9 251(a), but I'm sure they would want to address
10 251(b)(5), the compensation for the mutual exchange
11 of traffic, yes.

12 Q. So let me make sure I understand. The
13 local service that needs to be provided is not
14 necessarily local dial tone to be the triggering
15 service before Level 3 is entitled to seek 251(a)
16 interconnection?

17 A. I don't understand the distinction between
18 local service and local dial tone. I guess you're
19 describing --

20 Q. DID is not -- direct inward dialing is not
21 local dial tone. It's not tariffed as local dial
22 tone.

23 A. Yes. In this case Level 3 is not saying
24 that they're going to have customers in SRT's area.
25 In fact, they're emphatic that they are not going to

1 have customers in SRT's area.

2 Q. I understand, but they appear to be
3 emphatic about the fact that they are going to
4 provide DID service, a local service in the SRT
5 serving area. The customers, sometimes called end
6 users, whatever, customers happen to be located
7 elsewhere; is that your understanding as well?

8 A. Yeah, I believe that's a fair
9 characterization. The customers that order the DID
10 service are the customers that are located
11 elsewhere, in Denver and in Bismarck, wherever.
12 Could be anywhere.

13 Q. Anywhere outside of the local calling area
14 for SRT?

15 A. Mm-hmm.

16 Q. Could you go to page 23 of your prefiled
17 testimony? The question that's asked on that is,
18 "Are Level 3's proposed services identified in the
19 petition for arbitration of telephone exchange
20 services?" And you said, "No. The proposed
21 services are interexchange services." Are those
22 interexchange services subject to access charges?

23 A. They would be subject to an access charge
24 regime, yes.

25 Q. Would that be an intra -- excuse me. An

1 intraLATA access charge regime or an interexchange
2 access charge regime, or some other?

3 A. Let's see. If I'm not mistaken, there's
4 only one LATA in North Dakota, so --

5 Q. There's one LATA, but multiple exchanges;
6 is that correct?

7 MR. FLEMING: Actually, there are two
8 LATAs.

9 THE WITNESS: I've gotten the answer. So
10 it would be an intra -- it could be either. It
11 could be either intraLATA or interLATA, depending on
12 where the call is terminated.

13 Q. (THE ARBITRATOR CONTINUING) And so the
14 call termination with respect to traffic that is
15 destined for ISB -- or ISPs is wherever the modem
16 bank is located?

17 A. It's the ISP's physical location, yes.

18 Q. And if that physical location of the modem
19 bank were within a local calling area, then that
20 traffic would fall within the ISP remand order
21 articulated by the FCC; is that your understanding?

22 A. Yes.

23 Q. And if that modem bank were to fall outside
24 of the exchange in which the call was initiated,
25 then that traffic would be subject to the

1 interexchange rules?

2 A. Correct.

3 THE ARBITRATOR: Go ahead, Mr. Hogue.

4 REDIRECT EXAMINATION

5 BY MR. HOGUE:

6 Q. Mr. Meredith, in response to some
7 questions, you indicated that in 2003 Level 3
8 intends to offer voice service. Why is that
9 important in terms of resolving the dispute in this
10 proceeding?

11 A. I mentioned that because of the concept
12 that this is not just a dial-up ISP-type traffic,
13 that the proposal on the table is for Level 3 to
14 provide far more than ISP traffic.

15 Q. And would they be subject to access for
16 that voice traffic as well if they call back to
17 outside of the SRT exchanges?

18 A. My position is, yes, if the customers are
19 not -- the end user customers receiving those calls
20 are not located in the calling area of SRT, that
21 that would be interexchange traffic and would be
22 subject to the interexchange access regimes.

23 Q. Going back to Section 251(a), do you have
24 any opinions as to whether the requesting carrier
25 under 251(a) has the ability to dictate how the call

1 will be routed?

2 A. Given the hierarchy of the FCC in subparts
3 (a), (b), and (c), and what the FCC has said in its
4 local competition order, the carrier originating the
5 call -- both carriers originating the call can
6 provide indirect or direct connection, direct
7 interconnection under their own discretion. It's
8 their choice.

9 Q. You talked or testified about the delivery
10 of a call to a modem in Denver or Los Angeles. Is
11 that something that you have picked up from the
12 discovery response that Level 3 has provided?

13 A. Yes. Denver, not Los Angeles. In the
14 example -- in the interrogatory responses, Level 3
15 indicates, as I understand them, subject to check,
16 that they intend to actually take those modems that
17 are in Bismarck right now and place them in Denver.

18 Q. So if that's the scenario, can you describe
19 for us what would be, I guess, the open-end and the
20 closed-end of an FX-like arrangement using that fact
21 pattern?

22 A. For the current provision of service?

23 Q. No, for the proposed.

24 A. Oh.

25 Q. Using the modems in Denver or the switch in

1 Denver.

2 A. Yes. Traffic destined to those customers,
3 be they in Denver or elsewhere, SRT end user
4 customer would be able to dial local and that call
5 would be delivered to Denver or points elsewhere and
6 would be rated as a local call.

7 Q. So the exchange -- I guess the foreign
8 exchange would be -- or the open exchange would be
9 the Minot exchange?

10 A. Yes.

11 Q. And where would the closed exchange be?

12 A. Closed-end would be where the customer is
13 located. In this case, in our example, it's Denver,
14 Colorado.

15 MR. HOGUE: Okay. Did you introduce the FX
16 part of the tariff?

17 MR. FLEMING: Yeah. It's our Exhibit 4.

18 Q. (MR. HOGUE CONTINUING) Do you see any
19 restrictions in SRT's current foreign exchange
20 tariff that restricts FX service to exchanges within
21 North Dakota?

22 A. Yes. It is a North Dakota -- it's
23 contiguous or noncontiguous exchanges located in
24 North Dakota. So for SRT's existing service, which
25 refers to my figure 3 in my testimony, where a CLEC

1 does not exist, this service is limited to North
2 Dakota exchanges.

3 MR. HOGUE: Thank you.

4 MR. FLEMING: I have a couple more
5 cross-examination questions.

6 THE ARBITRATOR: Go ahead.

7 RECROSS-EXAMINATION

8 BY MR. FLEMING:

9 Q. Mr. Meredith, you present a scenario in
10 which, you know, sort of a camel under the tent, and
11 that is, if you allow the service that Level 3
12 wants, then who knows what's going to happen next,
13 and then we'll be providing voice and everything
14 else and then the whole access charge regime will
15 fall apart. Is that a fair characterization?

16 A. This is a very important precedent, yes.
17 This is a case of first impression. The Commission
18 has never dealt with VNXX before, and if the VNXX is
19 permitted, yes, there is a potential for that
20 camel -- is it getting under the tent or getting out
21 of the tent? Whichever.

22 Q. We're trying to get under the tent.

23 A. Okay.

24 Q. But if Level 3 was willing to take voice
25 over Internet protocol off the table here and limit

1 their interconnection to serving only ISPs for a
2 dial-up modem product, would your interests or your
3 views in this case change?

4 A. No. Because the ISP-bound traffic
5 definition by the FCC and the Court limits ISP-bound
6 traffic to calls within the local exchange area.

7 Q. Did you hear Mr. Hunt testify this morning
8 that Level 3 would amend its tariff and seek
9 additional authority when it did provide a voice
10 product over its platform?

11 A. I don't recall that, but that certainly
12 could be the case. I don't know how that relates to
13 an interconnection agreement with SRT. I mean, I
14 don't think he said he would amend the
15 interconnection agreement or anything.

16 Q. So is it fair to say that we can disregard
17 the issue of interexchange voice traffic from this
18 case now, and that the only issue is this issue of
19 where a call terminates?

20 A. Well, certainly in the final offer
21 agreements that could be drafted that way and that
22 would take that off the table.

23 Q. So I'm just trying to understand what the
24 position is here. You're saying that if voice-over
25 Internet protocol were not in this case, you still

1 would resist interconnecting because of the issue of
2 whether this is an interexchange call or not?

3 A. Yes. The way that Level 3 is approaching
4 this request would be -- still have problems. Still
5 has problems.

6 Q. Just sort of a wrap-up question.

7 Mr. Meredith, in your testimony you go into
8 a lot of different things. You go into economics.
9 You can into regulatory policy. You even go into
10 the law. But I don't see anywhere where you've
11 stated your credentials.

12 A. Oh, yes. I believe that paragraph is not
13 there, as I read that. I have a -- the first
14 paragraph was truncated, yes. I have a master's in
15 economics from the University of Maryland. A
16 bachelor's in economics from the University of Utah.
17 I have a -- I'm a Ph.D. candidate at the University
18 of Maryland. I'm what we would call in the trade an
19 ABD. I have qualified everything, except for my
20 dissertation, which was not finished.

21 Q. In economics?

22 A. In economics.

23 Q. Do you have a law degree?

24 A. No.

25 Q. Are you a professional engineer?

1 A. No.

2 MR. FLEMING: No further questions.

3 FURTHER EXAMINATION

4 BY THE ARBITRATOR:

5 Q. If I may indulge the witness with a couple
6 more. Are you familiar with the terms Type I or
7 Type II interconnection?

8 A. Yes, generally.

9 Q. And what's your general understanding of
10 that type of interconnection?

11 A. My understanding, limited as it is, is Type
12 II interconnection refers to interconnection at a
13 tandem location. Type I refers to an
14 interconnection at an end office or a class IV
15 switch.

16 Q. Do you know what types of entities
17 traditionally ask for those types of
18 interconnection?

19 A. No. I know that in the past, in the recent
20 past, you know, we have CMRS carriers asking for
21 both types. Carriers seeking interconnection seek
22 both types, depending on their configurations.

23 Q. Do you know under what section of the
24 Communications Act CMRS carriers request
25 interconnection with SRT?

1 A. I believe that their request for
2 interconnection under -- for SRT usually comes in to
3 a mutual exchange agreement, exchange of traffic
4 agreement involving 251(a), 251(b)(5).

5 Q. But do you know whether they initiate it by
6 making some -- I don't know if they use the
7 verbiage, but I'm trying to find out what your
8 understanding is. That they make a request pursuant
9 to 251(a) or 251(b)(5)?

10 A. They usually -- my experience is they
11 usually ask for 251(b)(5) request, and that's what
12 triggers the discussion and the agreements. They
13 tend to shy away from whether it's 251(a) or
14 251(c)(2), that kind of thing, because traffic is
15 exchanged already. They're indirectly connected
16 already with the networks and so, really, it's a
17 compensation issue more than a physical connection
18 issue. CMRS providers existed prior to 1996 and so
19 when the Act came on line, the issues were largely
20 compensation issues that needed to be resolved.

21 Q. Okay.

22 MR. FLEMING: If I can -- I'm sorry. I was
23 going to ask for clarification, if I could?

24 THE ARBITRATOR: Go ahead, quickly.

25 MR. FLEMING: Mr. Hunt has Exhibit No. 8 to

1 his testimony. That is the Western Wireless
2 petition for arbitration that identifies the
3 provisions of the Act that they are seeking
4 interconnection on it.

5 THE ARBITRATOR: Thank you. Mr. Hogue, do
6 you have anything else?

7 MR. HOGUE: No.

8 THE ARBITRATOR: Thank you, Mr. Meredith.
9 Mr. Hogue, do you want to excuse Mr. Meredith?

10 MR. HOGUE: Yes.

11 THE ARBITRATOR: Any objections?

12 MR. FLEMING: No objections.

13 THE ARBITRATOR: Witness is excused.

14 MR. HOGUE: Mr. Sebby is our next witness,
15 and I see he stepped out for a bathroom break.

16 THE ARBITRATOR: Why don't we take a five-
17 minute break then.

18 (Recess was taken at 2:26 p.m. until 2:35
19 p.m., the same day.)

20 THE ARBITRATOR: Mr. Hogue, why don't you
21 start us off here.

22 MR. HOGUE: Thank you, Your Honor. SRT
23 calls Mr. Jan Sebby.

24 THE ARBITRATOR: Will the reporter please
25 swear Mr. Sebby in?

1 JAN M. SEBBY,

2 being first duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. HOGUE:

6 Q. Mr. Sebby, have you caused or produced
7 prefiled direct testimony in this case?

8 A. Yes, sir, I have.

9 Q. And does that consist of 46 pages?

10 A. Yes.

11 Q. And as attachments do you attach various
12 documents that you allude to, specifically discovery
13 responses from Level 3?

14 A. There were no attachments to my testimony,
15 although there were several references to other
16 documents filed in this case.

17 Q. Right. Do you have any changes? Or I
18 should ask you, have you reviewed your testimony
19 since it's been prepared and printed?

20 A. Yes, I have.

21 Q. Do you have any changes to the testimony as
22 it was printed?

23 A. I have three modifications, all of which I
24 regard as typographical.

25 Q. Okay.

1 A. On page 35, at line 5, near the end of the
2 line, one will see the letters "r-e." That's a
3 truncated spelling of the word "are." That should
4 be a-r-e. So the sentence or the phrase is Level's
5 claims are unsupported. On page --

6 MR. FLEMING: Excuse me. I don't see that.
7 What page are you on?

8 THE WITNESS: Page 35, line 5.

9 MR. FLEMING: My line 3.

10 THE WITNESS: Okay. The next change was --
11 is on page 38, and I would say this was an omission
12 of a word which is important to the testimony. At
13 line 17 between the word "affecting" and the
14 abbreviation "ISP," there should appear the word or
15 words "interexchange," so it would be -- the whole
16 line would read access charges affecting
17 interexchange ISP-bound traffic.

18 And on page 45, at line 18, this is a
19 grammatical correction. The word "about" appears a
20 few lines above and it should be repeated in line 18
21 between the words "and" and "the." So the first few
22 words of line 18 would read, keep regime, close
23 quote, and about the FCC's authority. Those are all
24 the corrections I have.

25 MR. HOGUE: Okay. I'm going to offer

1 Mr. Sebby's prefiled direct testimony, as well as
2 the exhibits that he alludes to.

3 MR. FLEMING: He didn't allude to any
4 exhibits.

5 THE ARBITRATOR: Referenced.

6 MR. HOGUE: Well, he alluded to discovery
7 responses, I guess.

8 MR. FLEMING: Okay. Which are they,
9 because they weren't part of his testimony?

10 MR. HOGUE: Okay. Well, he references -- I
11 guess we can go through his direct testimony again
12 and explain what he's talking about in each exhibit.

13 THE ARBITRATOR: Can you identify which
14 documents that were produced in the document
15 requests that are now being submitted as exhibits to
16 this hearing?

17 MR. HOGUE: Okay. Request No. 1, which is
18 Level 3's tariff.

19 THE ARBITRATOR: This is the tariff for
20 North Dakota?

21 MR. HOGUE: Yes. Request No. 4, which
22 contains an attachment about the (3)Connect Modem.
23 Request No. 6, with attachments. Request Nos. 7, 8,
24 9, 10, 14, 17, 25, and 31.

25 THE ARBITRATOR: Are those responses by

1 Level 3 to document requests issued to them by SRT?

2 MR. HOGUE: Yes.

3 THE ARBITRATOR: Are those the complete
4 Level 3 responses to each one of those requests?

5 MR. HOGUE: They are. The written
6 narrative, as well as the attachments.

7 THE ARBITRATOR: Okay.

8 MR. FLEMING: What was the second one? I
9 go from 1 to 6.

10 MR. HOGUE: Four.

11 THE ARBITRATOR: Obviously, I assume you
12 are familiar with your responses, Mr. Fleming.

13 MR. FLEMING: Yes, Your Honor, we are
14 familiar with our responses. And provided that it's
15 the complete set as we responded, we do not object
16 to their introduction.

17 THE ARBITRATOR: Mr. Hogue, you represent
18 that?

19 MR. HOGUE: I represent that it is, yes.

20 THE ARBITRATOR: Without further objection,
21 they are so entered. Just so it's clear, we're
22 going to place numbers on those for the official
23 record.

24 MR. HOGUE: Okay. I would note for the
25 record that it's all part of SRT Exhibit 23, which

1 is Mr. Sebby's testimony and the Level 3 responses
2 that he alludes to in that testimony.

3 THE ARBITRATOR: When you say allude, just
4 so that I'm clear, are these documents upon which he
5 relies in forming his testimony? I can just ask the
6 witness.

7 THE WITNESS: Yes. Yes, they are, sir. In
8 many cases I make statements of fact and the facts
9 are substantiated by the exhibits that have been
10 identified.

11 THE ARBITRATOR: Okay. Thanks.

12 Q. (MR. HOGUE CONTINUING) Mr. Sebby, have you
13 read Level 3's prefiled testimony as presented by
14 its three witnesses?

15 A. Yes, I have.

16 Q. Were you present when all three of them
17 testified this morning?

18 A. Yes, I was.

19 Q. Did you hear the discussion or testimony
20 about the managed modem traffic?

21 A. Yes, I did.

22 Q. What is your view of the so-called managed
23 modem traffic?

24 A. Well, as I understand, in my viewpoint,
25 based upon managed modem traffic, Level 3's program,

1 as described by Mr. Hunt, Level 3 is a tele-
2 communications carrier whose end users are ISPs;
3 that is, information service providers. Level 3 is
4 certified in North Dakota as both a CLEC,
5 competitive local exchange carrier, and as an IXC,
6 interexchange carrier, and it is also registered as
7 a reseller of both local and interexchange
8 telecommunications services. Where Level 3 carries
9 traffic from one local exchange to another under its
10 managed modem traffic program, that traffic is
11 interexchange traffic, not local traffic.

12 Q. If Level 3 obtains numbers and rate centers
13 them in Minot, doesn't that make them local calls?

14 A. No.

15 Q. Why not?

16 A. Because the numbering scheme is not what is
17 important, it is where does a call originate and
18 where does it terminate. That's what's important in
19 this case.

20 Q. Well, can you explain that further? Why
21 should we continue to be concerned about that in
22 light of Mr. Hunt's testimony about ISP-bound
23 traffic?

24 A. Well, where two or more carriers
25 collaborate in handling traffic, the existing --

1 excuse me -- the existing regime of state and
2 federal laws provides different arrangements for
3 those carriers to compensate one another for
4 handling traffic. So it is important to identify
5 whether traffic is interexchange or is it local.
6 The interexchange rules are -- would require Level 3
7 to pay more to SRT than Level 3 would prefer to pay.
8 They would prefer to pay less under the local rules.

9 Q. Well, as I understand Mr. Hunt's testimony,
10 he says that any ISP traffic that is rated and
11 routed locally is local, and --

12 A. Well, I think that a statement like that
13 sort of begs the question. Rating and routing
14 locally is what they're after, but whether that
15 should be the case is part of what this proceeding
16 is all about. If traffic is originated in one
17 exchange and routed to some point in some other
18 exchange, then it is my position that is
19 interexchange traffic and it should be rated
20 accordingly. It should not be rated as local
21 traffic.

22 Q. Are you -- have you read the ISP remand
23 order?

24 A. Too many times.

25 Q. Okay. Are you aware of anything in the

1 order that would rate the proposed traffic that
2 Level 3 wants as local?

3 A. I believe the ISP remand order is clear
4 enough. When you take the time to read it a few
5 times, it is clear enough in making it very clear
6 that the ISP remand order addresses only ISP traffic
7 that originates with an end user, an Internet user
8 with a computer in one local exchange area and
9 terminating at a modem or similar facility of an ISP
10 that is physically located in the same local
11 exchange area in which the modem call originates.

12 Q. You heard the testimony, I think from
13 Mr. Hunt and certainly in Mr. Gates' prefiled
14 testimony, about discriminatory treatment that SRT
15 is exerting in this case because it apparently --
16 while it will interconnect and negotiate with the
17 wireless carriers under 251(a), it will not do so or
18 at least it won't sign an interconnection agreement
19 with Level 3. Do you agree that that is
20 discriminatory treatment?

21 A. Well, yes and no. It is discriminatory in
22 the sense that situations that are fundamentally
23 different are treated differently. It is not
24 discriminatory in the sense that it is illegal,
25 unjust, or unreasonable. The discriminatory

1 treatment -- if Level 3's words were to be employed,
2 the discriminatory treatment that SRT proposes is
3 appropriate to the unique situation that Level 3 has
4 presented in its request.

5 Q. Turning to Mr. Gates' prefiled testimony --

6 A. Yes.

7 Q. -- let me just ask you, do you have any
8 reaction to his testimony?

9 A. Well, I've got a couple of reactions to his
10 prefiled testimony, and just about even fewer, just
11 one to the testimony he delivered in person this
12 morning.

13 Regarding his testimony this morning, I've
14 got two reactions. One of them is very general and
15 the other is quite specific. And generally I would
16 say that Mr. Gates' testimony is a masterful job of
17 presenting a policy perspective of what the law
18 could be or might be and what it should be from his
19 point of view, from the point of view of the
20 business for whom he's an advocate. But I believe
21 his testimony does not address accurately what is
22 the state of the law today. And so I'm satisfied,
23 if you'll pardon the expression, to simply dismiss
24 his testimony as out of place in this proceeding.
25 All of his arguments are certainly appropriate in

1 the notice of proposed rulemaking that I referred to
2 in my prefiled testimony, but they're out of place
3 here.

4 Specifically as to his testimony, I take
5 some exception to his testimony about the Verizon
6 case, and if you pardon me, I've made a couple of
7 notes about that. First, I think it's important to
8 note that the Verizon case arose out of the state of
9 Virginia, but it was decided by the Federal
10 Communications, one of its bureaus, because the
11 Virginia Commission acknowledged that it didn't
12 really have the jurisdiction to address the issues
13 under the laws of Virginia. And that's similar to a
14 position that I suggest and more than suggest it, I
15 support it in my prefiled testimony. And that is,
16 that the North Dakota Commission doesn't have the
17 jurisdiction to do for Level 3 what Level 3 wants.
18 So perhaps that point should be noted and perhaps
19 Level 3 should take this case to the FCC.

20 Secondly, in that case, and I think it was
21 also referred to this afternoon in examination of
22 Mr. Meredith, there was some attention to abuse of
23 numbering systems and the potential that abuse might
24 be sanctioned in one way or another by a state
25 commission. In our view -- in my view, the North

1 Dakota Public Service Commission should look through
2 the transparent proposal that Level 3 brings to it
3 and recognize that this is simply a bypass scheme
4 that would be accomplished by abuse of numbering
5 systems, and it should not be allowed. Don't do
6 like Maine did or as some other states have been
7 asked to do, fix a problem. When you see a problem
8 presented to you as clearly as Level 3 has presented
9 theirs, don't allow it to get off the ground. I
10 think that about covers it.

11 Concerning his testimony this morning, I
12 believe he was asked by Level 3's counsel whether it
13 was appropriate to offer FX or NXX types of service
14 without offering any other services. And my quick
15 notes with quotes around them may not be an exact
16 quote, but the paraphrase is pretty close. I
17 believe Mr. Gates said, one can offer FX or NX
18 without offering any other service. To which my
19 response in conversation would be "one what." And
20 the "what" answer should be an IXC can offer FX or
21 NXX without offering any other service. Because, as
22 I testified in my prefiled material, that kind of
23 service is interexchange. It's long distance and if
24 it's the only service that a carrier offers, it's
25 interexchange service and it's not competitive local

1 exchange service. If a carrier has authority to do
2 both, but it is only exercising one, then it ought
3 to be treated for the one that it is.

4 MR. FLEMING: Your Honor, if I could
5 interrupt just for a second. I'm sorry, Mr. Hogue,
6 but Mr. Sebby is going to -- he's addressing --
7 replying to testimony that was given today. And I
8 just want to make sure that the record reflects that
9 Level 3 would like to reserve the right to bring up
10 one of its witnesses to address testimony presented
11 today.

12 THE ARBITRATOR: Well, I think that when I
13 laid out the procedure as to what would happen, you
14 would have that opportunity. So you do have that
15 opportunity.

16 MR. FLEMING: Thank you.

17 MR. HOGUE: And, likewise, Your Honor, I
18 thought the only real issue was whether we would get
19 surrebuttal?

20 THE ARBITRATOR: Right. That's correct,
21 Mr. Hogue.

22 THE WITNESS: That ends my commentary or my
23 answer to your question about Mr. Gates' testimony.

24 Q. (MR. HOGUE CONTINUING) Did you have an
25 opportunity to listen to Mr. Rogier DuCloo's

1 testimony?

2 A. Yes, I did, and I also read his prefiled
3 testimony.

4 Q. Did you hear him describe the so-called
5 retail nature of the relationship between Level 3
6 and SRT?

7 A. Yes, I did.

8 Q. Okay. Did you agree with his
9 characterization of it as a retail and not a
10 carrier-to-carrier relationship?

11 A. Well, as I testified in the prefiled
12 material, one who purchases telecommunications
13 services usually purchases for one of two purposes;
14 either as an end user or as a carrier in its
15 provisions of service to end users. And it seems
16 clear to me from Mr. DuCloo's testimony, both
17 written and oral, that he's testified that Level 3
18 is a carrier that provides service to ISPs, and in
19 providing that service it is using service. You may
20 call it resale, if you want to, or anything else,
21 but it's a carrier-provided service that Level 3 is
22 providing to some ISP entity here in Bismarck.

23 Q. Thank you, Mr. Sebby.

24 MR. HOGUE: That's all the questions I
25 have.

1 THE ARBITRATOR: Cross-examination,
2 Mr. Fleming.

3 MR. FLEMING: Thank you.

4 CROSS-EXAMINATION

5 BY MR. FLEMING:

6 Q. Good afternoon, Mr. Sebby.

7 A. Good afternoon, sir.

8 Q. Let's start with that last question first.

9 A. Okay.

10 Q. Is that there are two uses, you say, two
11 purposes, when the -- SRT has an ISP affiliate,
12 correct?

13 A. Yes, sir.

14 Q. Are you familiar with their operations?

15 A. Vaguely, but probably if you ask a question
16 that I can't answer because I'm not familiar, I'll
17 let you know.

18 Q. Now, SRT, the ISP -- SRT ISP purchases
19 facilities from SRT, correct?

20 A. Purchases service from SRT.

21 Q. And what type of service is that?

22 A. DID, OID. I think they're, you know,
23 synonymous.

24 Q. And do they purchase ISD and PRI trunks?

25 A. That's a technical question. I don't know.

1 Q. But it's reasonable to assume they could?

2 A. It's a reasonable assumption.

3 Q. Now, the SRT ISP packages that
4 telecommunications product with an Internet access
5 product and sells it to end users, doesn't it?

6 A. Yes, sir.

7 Q. Would you consider the SRT ISP to be a
8 carrier?

9 A. The SRT ISP to be a carrier?

10 Q. Yes.

11 A. No. An ISP is not a carrier. An ISP is an
12 end user.

13 Q. Mr. Hogue also just asked you a question
14 about so-called abuse of NXX codes. Are you
15 familiar with the current arrangement between Level
16 3 and SRT?

17 A. Yes.

18 Q. And would you agree with me that SRT is
19 providing Level 3 with a Minot telephone number?

20 A. Yes.

21 Q. And it is allowing SRT end users to dial
22 that local telephone number and have a call
23 terminated in Bismarck at a modem in Bismarck?

24 A. Yes, that's its function.

25 Q. And a call to that telephone number

1 provided by SRT to Level 3 is rated as a local call,
2 correct?

3 A. This is -- that's correct.

4 Q. Is the current arrangement in which SRT
5 provides --

6 A. Excuse me. I should say it is rated as a
7 local call to the person who places the call.

8 Q. Okay. Is the current arrangement in which
9 SRT provides an NXX code to Level 3 associated with
10 the Minot exchange, does that represent an abuse of
11 numbering resources?

12 A. I don't believe it does.

13 Q. You testified regarding the ISP remand
14 order, correct?

15 A. Yes, I did.

16 Q. And were you here when Mr. Meredith
17 discussed the ISP remand order?

18 A. Yes, I was.

19 Q. And do you recall this diagram?

20 MR. FLEMING: That I would like to now mark
21 as Exhibit 5, Level 3 Exhibit 5.

22 THE ARBITRATOR: Are you going to get it
23 reduced?

24 MR. FLEMING: Yes.

25 THE ARBITRATOR: Just doesn't copy very

1 well on an 8-by-10.

2 MR. HOGUE: I was going to suggest that he
3 reduce it now.

4 THE WITNESS: Before you begin your
5 questions, I'd just like to inform you from where I
6 was sitting and where you were standing when
7 Mr. Meredith was sitting here, I could not see the
8 diagram so you may have to start at square one with
9 me.

10 Q. (MR. FLEMING CONTINUING) All right. I'd
11 be happy to do that. What I've drawn here is a
12 representation of calls to -- calls between SRT end
13 users and their ISP. And I've got a triangle at the
14 top of the page that says "SRT local calls" and it
15 has a line connecting it to the Minot switch, which
16 I will identify as the SRT Minot switch, and then
17 another line to a box called "modem." And there's a
18 line here labeled "SRT." This represents the
19 service area boundary of SRT. There's another
20 modem, a box down here with another modem outside
21 the SRT service area, and the modem -- I'll connect
22 both modems. Both modems are connected to this
23 cloud, which is traditionally what we use to
24 represent the Internet. Let's also assume that this
25 SRT, this modem is being used by the SRT ISP.

1 Now, Mr. Meredith stated this afternoon
2 that a call from an SRT end user terminates at this
3 modem. Do you recall that?

4 A. I recall that.

5 Q. And he said that but for the ISP remand
6 order, a call between here and here would be subject
7 to reciprocal compensation under Section 251(b)(5).
8 Do you recall that?

9 A. I recall that he said that, yes.

10 Q. Would you agree with that assessment?

11 A. No.

12 Q. Why would you not agree with that?

13 A. Because 251(b)(5) refers to the terms of
14 agreements that are made between carriers. And as I
15 understand, and I believe your first few questions
16 are consistent with my understanding, the SRT ISP
17 affiliate is purchasing its service from SRT local
18 exchange company out of the local tariff.

19 Q. Okay. If I can interrupt there?

20 A. Yes.

21 Q. One thing that I guess I left out is that
22 reciprocal compensation would apply between two
23 carriers.

24 A. That's correct.

25 Q. So I would have to introduce a CLEC right

1 here. It's interconnected at your Minot switch that
2 would serve a modem, an ISP. With that added
3 element -- and we'll just call this a CLEC ISP
4 instead.

5 A. You didn't want me to assume that SRT's ISP
6 was going to buy service from another --

7 Q. Well, we can assume that, if you would
8 like.

9 A. It would be a wonderful assumption for the
10 purpose of clarifying the issue, absolutely.

11 Q. All right. We'll change the facts a little
12 bit. That it's now a CLEC. We are past the rural
13 carrier exemption. That's been terminated. We have
14 got real competition in Minot. I understand we are
15 assuming ladders here.

16 CLEC is interconnected here. The call is
17 exchanged with the CLEC, it goes to a modem, and the
18 call terminates at the modem?

19 A. Yes, sir.

20 Q. Would you agree in that situation that that
21 call is subject -- but for the ISP remand order
22 subject to reciprocal compensation?

23 A. I would not agree with that, either.

24 Q. Okay. Is there some reason you would not
25 agree with your expert witness on the topic?

1 A. It's the nature of the game, I guess. We
2 disagree with one another on a team from time to
3 time. I disagree with him, and maybe I wouldn't say
4 that he said something that's flat wrong. I would
5 say perhaps he misunderstood your question.

6 I would say that arrangement might be
7 subjected to an agreement that provided reciprocal
8 compensation, but if that CLEC that you have just
9 installed in the middle of that diagram were
10 satisfied to purchase service from SRT out of its
11 local tariff or if it were just a reseller, then
12 reciprocal compensation would not necessarily apply.
13 Reciprocal compensation applies when a CLEC and a
14 LEC make an interconnection agreement.

15 Q. Okay. Let's assume an interconnection
16 agreement. Level 3 is not going to bill SRT for
17 recip comp as a result of this hearing I don't think
18 any time soon.

19 A. No, I understand that.

20 Q. What I'm getting at is this idea of call
21 termination.

22 A. Excuse me. Yes.

23 Q. Let's say the CLEC, it's a full-blown CLEC,
24 they've got a central office in Minot. They've got
25 a switch. They're interconnected at your Minot

1 switch. The call is routed through the switch into
2 the cable modem -- not the cable -- to the modem.
3 It's within the SRT local calling area.

4 Mr. Meredith testified that the call terminates at
5 that modem.

6 A. Okay.

7 Q. And all I'm asking is, would you agree that
8 this represents transport and termination for which
9 recip comp would be owed under this scenario?

10 A. Before or after the ISP remand?

11 Q. But for the ISP remand.

12 A. But for the ISP remand order, then I would
13 agree with you.

14 Q. Okay. And you also would agree that a call
15 from here to here, now under the ISP remand order,
16 is subject to an interstate regulatory regime?

17 A. Yes, I would agree with that.

18 Q. And a call from here to Bismarck is subject
19 to an intrastate regulatory regime?

20 A. I would say that.

21 Q. Okay. I just want to make sure that -- you
22 disagreed with him before. I want to make sure that
23 you agree with him now.

24 A. The line that you have drawn across between
25 the two modems.

1 Q. This one here?

2 A. That one right there. You can change the
3 color, if you wanted to, to make it stand out. That
4 line makes all the difference.

5 Q. That's what I understand your argument to
6 be.

7 Mr. Sebby, are you familiar with the rating
8 and routing of calls?

9 A. Vaguely.

10 Q. Okay. Well, let's try something. Let's
11 call this local exchange area one and local exchange
12 area two. 701. 701. That's the NPA for North
13 Dakota, correct?

14 A. All of North Dakota is 701, even though
15 there are two LATAs.

16 Q. Okay. 858 and 756. I'm just making up
17 numbers. This NXX code is associated with this
18 local calling area. This NXX code, 756, is
19 associated with local calling area two.

20 A. Okay. 858, by the way, is a real number in
21 the Minot area.

22 Q. I got lucky.

23 A. Got lucky.

24 Q. We'll call this Minot then. And let's call
25 this Devils Lake.

1 A. Call it Squaw Gap.

2 Q. I don't know Squaw Gap, but I know Devils
3 Lake.

4 A. That's another story about Squaw Gap.
5 Devils Lake is a good example.

6 Q. Devils Lake is served by -- as I understand
7 it, served by the North Dakota Telephone Company?

8 A. That's my understanding --

9 Q. Okay.

10 A. -- today, yes.

11 Q. And a call from Minot to Devils Lake would
12 be a toll call, correct?

13 A. Yes.

14 Q. And the way that you know it's a toll call
15 is that this information is loaded into a local
16 exchange routing guide and you look up this number
17 and you look up this number and it makes a
18 translation that says that a call from here to here
19 is a toll call and, therefore, your billing
20 mechanism triggers and you start recording minutes
21 and you generate a bill?

22 A. Yes, I understand. So now you have
23 addressed both rating and routing.

24 Q. Right.

25 A. Yes.

1 Q. By comparing these numbers, the switches,
2 the SRT switch and the NDTC switch knows how to rate
3 the call to get from one end user to the other?

4 A. Yes.

5 Q. Now, are you familiar with the FX products
6 that SRT provides?

7 A. I am familiar with FX service generally. I
8 have reviewed the tariff sheets that you had out
9 here before, but I don't have them memorized.

10 Q. Okay. And you're familiar with the current
11 arrangement between Level 3 and SRT, correct?

12 A. Yes.

13 Q. Would you agree that under the current
14 arrangement with Level 3, SRT customers can place
15 calls to Level 3 modems outside the SRT exchange
16 areas?

17 A. Yes.

18 Q. And would you agree that the existing
19 arrangement includes compensation for the
20 interexchange aspect?

21 A. Yes.

22 Q. Mr. Sebby, I've put up on the easel a road
23 map from a road atlas of the state of North Dakota.
24 And I have outlined in black what I understand to be
25 the SRT local calling area. Is that a reasonable

1 depiction of the SRT local calling area?

2 A. Yes, it is.

3 Q. And it includes a big block in northern
4 North Dakota up to the Canadian border. It's got a
5 doughnut hole in the middle, and it's got two
6 satellite exchanges, correct?

7 A. I wouldn't call them satellite exchanges,
8 but they are noncontiguous.

9 Q. Okay. That's a better word, noncontiguous.
10 And I've also identified -- SRT serves 25 local
11 exchanges, correct?

12 A. That's my recollection that's a correct
13 number, yes.

14 Q. And I've identified what I found on the map
15 to be those 25 exchanges. Would you agree that's a
16 reasonable representation?

17 A. Excuse me. If I may, we brought another
18 map that would help me answer your questions.

19 Q. Okay.

20 A. Yes. You've approximately identified them.

21 Q. Okay. Let's look at Sherwood up here near
22 the Canadian border.

23 A. Yes.

24 Q. It's a small town, correct?

25 A. Shrinking, like too many of them are.

1 Q. And Minot --

2 A. Yes.

3 Q. -- largest city that you serve, correct?

4 A. Yes.

5 Q. Sherwood is an exchange and Minot is an
6 exchange, correct?

7 A. Yes.

8 Q. So a call from Sherwood to Minot is
9 interexchange, correct?

10 A. Yes. It goes from one exchange to another.

11 Q. Right. And that call under your tariff now
12 is a local call, correct?

13 A. I'm not sure that I should say it's under a
14 tariff, because I'm not sure that's exactly right,
15 but it is a local call.

16 Q. And let's back up a bit.

17 A. Sure.

18 Q. SRT merged with SRT Cooperative a couple
19 years ago, correct?

20 A. Yes.

21 Q. And at that time calls from Sherwood to
22 Minot were toll calls, correct?

23 A. I'm not sure of that exactly, but I believe
24 that's true. The reason I'm not sure exactly is
25 there were a number of different EAS arrangements,

1 and now it's all toll-free calling within the SRT
2 system.

3 Q. Right. And it's all toll-free calling
4 within the SRT system, largely a result of the
5 merger, correct?

6 A. Yes.

7 Q. So before the merger these were toll calls,
8 correct?

9 A. Yes.

10 Q. Or some exchange was a toll call to Minot?

11 A. Yes.

12 Q. And so now they -- so previously they were
13 interexchange toll calls, now they're interexchange
14 local calls, correct?

15 A. They are EAS calls now.

16 Q. SRT assigns an NXX code for each -- at
17 least one NXX code for each of its 25 exchanges,
18 correct?

19 A. If I looked at a telephone book and started
20 counting numbers, I'd probably come up with 25, yes.
21 In Minot there are four or five three-digit NXXs.

22 Q. Mr. Sebby, if you would please turn to page
23 13 of your testimony.

24 A. I have it.

25 Q. And looking at the second Q&A on the page,

1 it begins with, "what definitions are you referring
2 to." Do you see that?

3 A. Yes, I do.

4 Q. Do you see the sentence that says "under
5 North Dakota statutes"?

6 A. Yes, I do.

7 Q. You say there that Level 3 would be
8 considered an interexchange telecommunications
9 company because it provides service to end users
10 located in separate local exchange areas; is that
11 correct?

12 A. Yes.

13 Q. Couldn't the same definition apply to SRT?

14 A. No.

15 Q. Why is that?

16 A. Well, excuse me. SRT also provides
17 interexchange services outside its exchange area.
18 It's my understanding that when a company is
19 providing EAS service --

20 Q. Well, I understand your --

21 A. -- particularly -- it's my opinion,
22 particularly when they -- its EAS service is between
23 its own exchanges, that is all local service. And
24 we're sitting astride the best example. Bismarck
25 and Mandan have EAS service even though they're

1 separate exchanges served by Qwest.

2 Q. But isn't it correct that the North Dakota
3 code defines an interexchange carrier as a
4 telecommunications service provider to end users
5 located in separate local exchange areas?

6 A. I believe I correctly quoted the statute,
7 and you just did also, yes, sir.

8 Q. Thank you. I'd like to ask some questions
9 about the SRT ISP subsidiary, and if you don't know
10 them, perhaps Mr. Hight will be able to fill in the
11 details.

12 A. I promise not to testify about anything I
13 don't know anything about.

14 Q. Thank you. Would you agree that SRT
15 provides local access numbers to its SRT ISP
16 affiliate for each one of the 25 exchanges?

17 A. I don't know the answer to that. I just
18 don't know.

19 MR. FLEMING: I ask that this document be
20 marked for identification as Level 3 Exhibit 6.

21 Q. (MR. FLEMING CONTINUING) Mr. Sebby, do you
22 see Level 3 Exhibit 6?

23 A. I do.

24 Q. And do you see that this appears to be a
25 page reproduced from the SRT Website?

1 A. Yes, I do.

2 Q. And do you see that it says it provides
3 Internet support and access numbers?

4 A. Yes, I do.

5 Q. And do you see that all 25 of the SRT
6 exchanges has a unique telephone number?

7 A. Yes, I do.

8 Q. And these telephone numbers provide local
9 access since they're related -- they're associated
10 with the same NXX code for each of these exchanges?

11 A. That's what the document appears to say.

12 Q. Where is the SRT ISP modem pool?

13 A. Where is it?

14 Q. Yes, sir.

15 A. I couldn't give you an address, but I
16 believe it's within the municipal limits of Minot,
17 North Dakota or very close.

18 Q. Where is the modem pool that serves
19 Sherwood?

20 A. The modem pool?

21 Q. The ISP modem pool that serves the Sherwood
22 exchange.

23 A. I do not know.

24 Q. Is it the same one that's in Minot?

25 A. I think it's a safe -- reasonable

1 assumption. To be certain, you suggested you might
2 call Mr. Hight, and you know he's here and you can
3 ask him. I'm sure he'll give you the exact answer.

4 Q. Thank you. In your testimony you say that
5 Level 3 has no right to interconnection because it
6 has no owned or leased facilities in Minot. Do you
7 recall that?

8 A. I recall that.

9 Q. Is it your position that Level 3 must
10 deploy facilities in Minot before it can request
11 interconnection with SRT?

12 A. No, I'm not saying that.

13 Q. But how can both statements be true, that
14 they cannot have a right to interconnection and they
15 do not need to deploy facilities until they have an
16 interconnection?

17 A. I began my work in this project for SRT by
18 reading the petition that was filed by Level 3 and
19 the attachments that were apparently the original
20 invitation to negotiate. And it was my
21 understanding at the very beginning that Level 3
22 intended to establish arrangements for its ISP
23 traffic to be carried over common trunks. And
24 understanding that they wanted numbers to be loaded
25 into their switches that would then carry ISP

1 traffic over common trunks, I saw no facilities that
2 Level 3 was proposing for physical linking with
3 SRT's physical facilities.

4 Q. And have you heard the testimony of the
5 Level 3 witnesses today?

6 A. Yes, I have.

7 Q. And do you understand that they are not
8 seeking interconnection using common trunk
9 transports?

10 A. I understand that they have changed their
11 approach. They now want dedicated circuits, leased
12 lines, and I recognize that a leased line is a
13 facility that qualifies for physical linking or
14 interconnection.

15 Q. In your testimony you say that the basic
16 concept of being a CLEC is two-way switch
17 telecommunications in a local exchange area as a
18 competitive alternative to the ILEC. Do you recall
19 that?

20 A. Yes, I do.

21 Q. Would you agree that that definition of a
22 CLEC cannot be found in any statute or regulation
23 under federal law or under North Dakota law?

24 A. I would agree that it can't be found under
25 federal law, and just a moment while I check the

1 state statute. In North Dakota, competitive local
2 exchange company means any telecommunications
3 company providing local exchange service, other than
4 an incumbent local exchange carrier, whether by its
5 own facilities, interconnection or resale. I have
6 just quoted North Dakota Century Code Section
7 49-21-01, which is titled "definitions," and this is
8 definition number two. I think my statement is
9 fairly consistent with the North Dakota statutory
10 definition of a CLEC.

11 Q. But you would have to agree that the word
12 "two-way" is nowhere in that definition, correct?

13 A. Oh, no, it's not in the definition.

14 Q. Now, when we were talking about the rating
15 and the routing of a telephone call, we discussed a
16 comparison of NXX codes, correct?

17 A. Yes.

18 Q. And would you agree with me that the
19 physical location of the customer does not determine
20 how a call is rated?

21 A. No, I would not agree with that.

22 Q. I'm sorry?

23 A. I said, no, I would not agree with that.

24 Q. Say this is an end user outside SRT's local
25 calling area. And it's not in Devils Lake. It's

1 somewhere else contiguous to the Minot -- to SRT's
2 serving area.

3 A. Excuse me. What was your last word?

4 Q. I'm sorry. I'm mumbling. This customer
5 purchases a foreign exchange service from SRT.

6 A. That's your assumption on your drawing.

7 Q. Okay. And so this person obtains a
8 telephone number. This is their -- I'll call it
9 their local number, and they get a number from SRT.
10 Let's call it 858-1000. I know somebody else has
11 that number, but this is an FX number. So what it
12 allows this person to do, is that an end user here
13 in Minot can call 701-858-1000, it will get routed
14 through the Minot switch down to this carrier's
15 switch -- actually, it's not going to go through the
16 switch. It's just going to go like this. It's
17 going to be a direct trunk. Would you agree, from
18 that switch served by SRT to its physical
19 presence --

20 A. Mm-hmm.

21 Q. -- that's a foreign exchange?

22 A. Yes.

23 Q. A call from 701-764 to 858, let's say, is a
24 toll call.

25 A. Excuse me?

1 Q. From this local exchange area to this local
2 exchange area is a toll call?

3 A. Yes.

4 Q. Between these two numbers. That's one
5 reason why this carrier -- this customer wants a
6 foreign exchange number from SRT so that calls to
7 this telephone number will be rated as local up
8 here?

9 A. To the calling party?

10 Q. To the calling party, correct.

11 THE ARBITRATOR: Could you stop for a
12 second while we fix our recording? I'm sorry about
13 that, Mr. Fleming.

14 (Recess was taken in place.)

15 THE ARBITRATOR: Okay. Go ahead. I'm
16 sorry.

17 Q. (MR. FLEMING CONTINUING) Under this
18 example, this customer has a telephone number,
19 701-764. It also has a telephone number
20 701-858-1000. Do you understand the example?

21 A. I believe so.

22 Q. Okay. Now, there's an end user across the
23 street in the same local calling area served by the
24 same telephone company, 764 exchange. So if this
25 end user calls this end user, that's going to be

1 rated as a local call, correct?

2 A. That's my understanding of your diagram,
3 yes.

4 Q. Now, let's say these two are golfing
5 buddies or something and he has a card made up with
6 two telephone numbers. This person has a card made
7 up with two telephone numbers and he gives it to his
8 friend over here and his friend calls him to play
9 golf one day, but instead of dialing 701-764, he
10 dials 701-858. So this call is going to be routed
11 to the switch here in this local calling area and it
12 will be sent up to here, because it's associated
13 with the Minot exchange, and then it comes over this
14 transport facility back to this person's home,
15 correct?

16 A. I think it's possible for that to happen.

17 Q. Well, this person can make calls to
18 701-858, correct, this person here?

19 A. Yes.

20 Q. And if --

21 A. Anyone in that exchange can.

22 Q. I'm sorry?

23 A. Anyone in that exchange can.

24 Q. So a call to 701-858 is going to be rated
25 as toll, correct? So he's making a call to

1 701-858-1000 to this person in this local exchange.
2 The call is being routed up to Minot and down to
3 this transport facility into the same local calling
4 area. So both of these customers are physically
5 located in the same local calling area, yet it's
6 being rated as a toll call, correct?

7 A. Yes, as I understand your example.

8 Q. Did Level 3 have an interconnection
9 agreement with SRT in April 2001?

10 A. I think it's fair to say that Level 3 or
11 its predecessor in interest had an interconnection
12 agreement with SRT in April of 2001.

13 Q. And what was the nature of that
14 interconnection agreement?

15 A. The predecessor purchased services from SRT
16 out of the local tariff. That's a business
17 arrangement. That's an agreement. It's a contract.

18 Q. So you consider that to be an
19 interconnection agreement?

20 A. As Level 3 and its predecessor used it,
21 yes. They were a carrier using that service to
22 provide service to an end user.

23 Q. Was that interconnection agreement
24 submitted to the Commission for approval?

25 A. It wasn't necessary because the person --

1 the entity that initiated the arrangement chose to
2 purchase out of a tariff, rather than pursuing a
3 separate interconnection agreement. It had a choice
4 and it made it.

5 Q. So it's your position that purchasing
6 service out of a retail tariff satisfies the
7 requirement in the ISP remand order that a carrier
8 must have an interconnection agreement in order to
9 obtain rights under the ISP remand order to
10 compensation; is that correct?

11 A. The ISP remand order was a limitation upon
12 CLECs' collection of reciprocal compensation from
13 ILECs in the same local exchange area.

14 Q. In your testimony you say that this issue
15 is a matter of policy and that the North Dakota
16 Commission does not have authority over policy
17 matters; is that correct?

18 A. I am saying that the arguments that are
19 presented by Level 3 are policy arguments. Its
20 arguments about virtual NXX and FX-like and all of
21 its similar arguments to obtain interexchange
22 connections without paying compensation under the
23 access charge rules, all of that is policy argument.

24 Q. So you're saying this dispute can be
25 resolved as a matter of policy and not as a matter

1 of law?

2 A. Well, law adopts policy, one or another of
3 competing policies or maybe a compromise, but the
4 proposal that Level 3 is presenting, as I understand
5 it, is a policy that is not enshrined in the
6 existing regime of telecommunications law, rules and
7 regulations.

8 Q. But you would agree that the North Dakota
9 Commission has jurisdiction over matters of telecom
10 law in North Dakota, correct?

11 A. North Dakota has jurisdiction over
12 telecommunications law to the extent it is delegated
13 authority by the North Dakota Legislature.

14 Q. Mr. Sebby, does SRT have a long-distance
15 affiliate?

16 A. It's been a number of years since I've been
17 intimately familiar with SRT's corporate structure.
18 They have a long-distance business. I do not know
19 if it is operated by a separate affiliate or not.

20 Q. So it would be a long-distance business,
21 and I don't mean -- well, there is no interserving
22 area. Let me back up.

23 Regardless of who the entity is that
24 serves -- provides long distance, SRT does provide
25 long-distance service, correct?

1 A. Local exchange customers in Minot may have
2 SRT or an SRT affiliate picked as their long-
3 distance carrier.

4 Q. Does SRT also provide an 800 product?

5 A. I do not know.

6 Q. Is the SRT switch in Minot LNP capable?

7 A. I don't believe it is, and I don't believe
8 there's any reason for it to be in the present
9 environment.

10 Q. Speaking generally of SRT's foreign
11 exchange service, does SRT impose access charges on
12 its foreign exchange customers?

13 A. Access charges are imposed, to use your
14 word, under the part 69 rules of the Code of Federal
15 Regulation, the Federal Communications Commission,
16 if you will, and under comparable provisions of
17 North Dakota law as to intrastate, interexchange
18 switched telecommunications service. As such, FX
19 service, being a private line dedicated type of
20 service, is not subject to access charge rules under
21 either the state or federal law.

22 Q. Would you agree that SRT incurs a cost
23 under the current arrangement in providing service
24 to Level 3?

25 A. It incurs a cost?

1 Q. Incurs a cost from taking -- I'll use that
2 word -- taking a call from the end user to the Minot
3 switch?

4 A. Yes.

5 Q. Does that cost change under Level 3's new
6 proposal?

7 A. Perhaps it does and perhaps it doesn't, but
8 I don't believe that's really relevant to the issues
9 in this proceeding. This is not a cost-based
10 proceeding. This is a price proceeding.

11 Q. Would you agree that under Level 3's
12 proposal, Level 3 and not SRT would pay the cost of
13 delivering the call outside of Minot to wherever the
14 call goes?

15 A. I would say, yes, they would pay -- under
16 their proposal, they would pay what they want to pay
17 under their proposal that SRT has not accepted.

18 Q. Would you agree that end users generally
19 will not pay toll rates to access the Internet as
20 long as there is a local access alternative?

21 A. My impression is that Internet users select
22 service based on cost and convenience that is
23 charged to them by their ISP provider and they're
24 looking for toll-free calling and it's usually
25 available to them in one way or another; 1-800

1 service or from an ISP that has a modem in the
2 immediate calling area where the Internet user is
3 located.

4 Q. The SRT ISP has an 800 number, correct?

5 A. I'm not certain, but I believe that's true.

6 Q. And is it your understanding --

7 A. Maybe I should check your sheet that's so
8 far been identified, but not introduced. I don't
9 see a 1-800 number here, but I would imagine that
10 they provide for Internet users outside these 25
11 exchanges to access their modems on a toll-free
12 basis. As you mentioned before, Mr. Hight will be
13 here. He's still here. He may be able to answer
14 that question.

15 MR. FLEMING: We have no further questions.

16 THE ARBITRATOR: Mr. Sebby, I have just a
17 couple clarification questions for my purposes.

18 EXAMINATION

19 BY THE ARBITRATOR:

20 Q. It's my understanding from your testimony
21 that traffic basically falls into one of two
22 baskets. It's either interexchange or local
23 traffic; is that fair?

24 A. Yes, as a initial matter, yes.

25 Q. And when we talk about local traffic, is

1 that synonymous with the term basically
2 intraexchange?

3 A. Intraexchange, and occasionally including
4 EAS as has been described here today, and in unique
5 exceptional circumstances, as Mr. Meredith
6 testified, FX service is a local service.

7 Q. Just so I understand, there are on occasion
8 traffic that crosses exchange boundaries that is
9 still under your definition classified as local
10 traffic; the FX service, the EAS service?

11 A. I would say it is provided as local traffic
12 and, again, using the EAS example is probably the
13 best.

14 Q. Now, I'm trying to make sure I understand
15 this. You're saying provided as local traffic. Who
16 determines how that traffic is provided?

17 A. Are you addressing EAS again?

18 Q. That's a fine example. We can talk about
19 FX next.

20 A. Well, if you're talking North Dakota, EAS
21 is kind of a strange animal partly because of the
22 way North Dakota -- the way North Dakota's law
23 regulates local telephone service and prices.

24 Historically, a great number of EAS routes,
25 so to speak, were established as small rural

1 communities either linked service together or as
2 they might have linked to a larger center city.
3 Most EAS arrangements in North Dakota are historical
4 under -- they're old. The EAS arrangement that
5 presently exists in the SRT area is relatively new,
6 as I testified in response to one of the questions,
7 and it was a consequence of the merger of SRT, a
8 number of exchanges into a single entity.

9 Q. Okay. But just so I'm clear, a call
10 between two local calling areas --

11 A. Yes.

12 Q. -- that are part of an EAS serving area --

13 A. Yes.

14 Q. -- that call would be treated -- provided
15 as if it were local traffic even though it crosses
16 an exchange boundary?

17 A. Yes.

18 Q. Okay. So the originating caller would not
19 incur a toll charge when placing that call to
20 someone located in another serving area, subject to
21 the EAS requirements?

22 A. That is true, but I should add the proviso
23 that when EAS is established, usually the local rate
24 for an exchange area will be increased, you know, to
25 compensate for the value of the increased calling

1 scope.

2 Q. But on a per-call basis?

3 A. On a per-call basis, that's correct. It's
4 part of the flat rate local service.

5 Q. Okay. Let's take the FX service as well.

6 A. Okay.

7 Q. Business, we've talked -- I've heard
8 florists. I've heard banks. I usually use plumbers
9 when I talk about this. But the concept is a
10 business located in one local calling area wishes to
11 establish a presence in a second local calling area
12 without actually having to have an office there in
13 that second local calling area, and in that second
14 local calling area requests a number and that number
15 to be carried when a call is placed to that second
16 number, to their original place of business, which
17 is located in local calling area one.

18 This is, in general, a definition of FX
19 service; is that fair?

20 A. I would say that fits, although sometimes
21 the business owner might have physical business
22 locations in both exchange areas.

23 Q. But wants to receive calls --

24 A. Wants to receive calls in the central
25 office, if you pardon the pun.

1 Q. Okay. And that's another example where a
2 call that originates under my sort of hypothetical
3 in local calling area two, being transported to
4 local calling area one and crosses an exchange
5 boundary?

6 A. That is right.

7 Q. Okay. But those types of services that
8 we've just described, EAS and FX, are examples where
9 traffic may cross an exchange boundary, yet is
10 provided consistent with the other local traffic?

11 A. Consistent with other local traffic, that
12 is correct.

13 Q. Okay. With respect to the ISP remand
14 order --

15 A. Yes.

16 Q. Okay. -- is that another example of
17 traffic that is arguably interexchange in nature,
18 but is treated when -- as local when the call
19 originates within a local calling area and is
20 transported to an ISP modem bank in that same local
21 calling area?

22 A. I don't think the ISP remand order has
23 anything to do with identifying whether Level 3's
24 proposed service is intraexchange or interexchange.

25 THE ARBITRATOR: Okay. Could you read back

1 my question?

2 Q. (THE ARBITRATOR CONTINUING) Because I want
3 to make sure that you're answering what I'm asking,
4 because I don't remember adding Level 3 into my
5 question.

6 A. No. I know you did not, but read it again,
7 anyway.

8 THE ARBITRATOR: Could you, please?

9 (The last question was read.)

10 THE WITNESS: Would you mind if I pause for
11 a moment and take a look at the ISP remand order?

12 Q. (THE ARBITRATOR CONTINUING) Go right
13 ahead. I don't want you to make an uninformed
14 decision.

15 A. The words of the ISP remand order I think
16 address your question without me saying a simple yes
17 or no. I think I'm saying yes, but I'd rather use
18 the words of the ISP remand order itself. The FCC
19 said it was addressing a situation where, and I'm
20 quoting now, an ISP's end user customers typically
21 access the Internet through an ISP server located in
22 the same local calling area. I'm reading from
23 paragraph 10 of that order.

24 Q. Does the ISP remand order reach a
25 conclusion -- we're just talking the ISP remand

1 order now.

2 A. Yes.

3 Q. -- reach a conclusion whether ISP-bound
4 traffic is interexchange in nature?

5 A. No, I don't believe it does.

6 Q. Are you aware of the GTE declaratory ruling
7 that I believe was issued by the FCC in 1999 that
8 discussed interexchange and ISP-bound traffic?

9 A. I've heard of it cited, but I can't say I'm
10 familiar with it.

11 Q. Okay. Do you recall any definition of
12 ISP-bound traffic in that order being interexchange?

13 A. No, I don't.

14 Q. Okay. Are calls to CMRS carriers, from a
15 landline customer to a CMRS wireless provider, are
16 those also treated as local traffic, or is that
17 interexchange traffic?

18 A. I would say it depends upon the number or
19 the -- the number assigned to the exchange from
20 which the call is originated and also the number
21 used by the wireless carrier -- I'll back up. I
22 presume you're talking about a call originated at a
23 landline and answered on a wireless phone?

24 Q. That's correct.

25 A. Then I think it's local if the wireless

1 carrier has local numbers in the same exchange as
2 where the call originates.

3 Q. And if the wireless customer has a number
4 assigned to it that's outside of the wireline
5 customer's local calling area, then a call placed
6 from the wireline customer to that wireless customer
7 would not be considered local and would be
8 considered interexchange; is that correct?

9 A. That's my understanding, based upon the
10 number that the wireline -- the wireless company has
11 established, yes.

12 Q. But a call from a wireless customer in that
13 other exchange to that same wireline customer that
14 we talked about that's in -- let me make it a little
15 bit more clear.

16 A wireless customer whose telephone number
17 has an NXX assigned to local calling area two calls
18 a wireline customer whose telephone number, NXX, is
19 assigned to local calling area one. Is that call
20 considered local, or is it considered an
21 interexchange call?

22 A. I think if it's initiated by a wireless
23 carrier, then it is not considered local in the
24 sense that we're using the word here today, because
25 wireless carriers are not bound by exchange

1 boundaries. Their boundaries are different, these
2 MTAs. And so I think it is neither local nor
3 interexchange, because those terms do not apply to
4 calls initiated by a wireless end user. That's my
5 understanding.

6 Q. Mr. Sebby, are you familiar with Type I and
7 Type II interconnection?

8 A. No. That's one of my benefits of my
9 decision to retire when I did.

10 Q. Are you aware of the type of
11 interconnection that was sought by the CMRS carriers
12 of SRT?

13 A. No, I'm not.

14 Q. Have any other competitive local exchange
15 carriers as certified by the North Dakota Public
16 Service Commission sought interconnection with SRT?

17 A. Not to my knowledge. I know there are a
18 number of companies that have obtained certificates
19 in North Dakota and I frankly don't know how many
20 have actually installed competitive local exchange
21 service.

22 Q. So just so I'm clear, there are no
23 competitive local exchange service providers
24 providing local service within the SRT serving
25 areas?

1 A. That's correct.

2 THE ARBITRATOR: I have nothing further.

3 Mr. Hogue.

4 REDIRECT EXAMINATION

5 BY MR. HOGUE:

6 Q. Just a follow-up on what Mr. Lamancusa
7 covered. You qualified an answer and said that --
8 when asked about FX service and EAS, you said that
9 it is provided as a local service. Do you recall
10 that?

11 A. Yes.

12 Q. Why did you qualify that answer?

13 A. I guess I didn't think I was qualifying it.
14 That's just the choice of words that I used in
15 expressing an answer to his question.

16 Q. Okay. Well, do EAS customers in, I'll say
17 exchange one and two, the call is treated by them as
18 local and handled as local and appears to them as
19 local; is that correct?

20 A. It is -- there is no additional charge made
21 for a call from one exchange to another where EAS
22 service is in place, even though a different
23 exchange NXX is employed to make the call. Is
24 that --

25 Q. No additional -- I just want to be clear.

1 No additional charge on a per-call basis?

2 A. There is no additional charge. It's not a
3 measured service, either time or mileage.

4 MR. HOGUE: Thank you. That's all that I
5 have.

6 MR. FLEMING: I have no questions.

7 THE ARBITRATOR: Mr. Sebby, you may step
8 down.

9 MR. FLEMING: If I can interrupt, we have a
10 fairly unusual request. And that is that Mr. Gates
11 has a commitment, but he would also like the ability
12 to respond to the testimony of Mr. Sebby. I know
13 that would be interrupting your case. In order for
14 Mr. Gates to make his flight, we'd ask that he be
15 able to go on the stand now.

16 THE ARBITRATOR: Mr. Hogue?

17 MR. HOGUE: I don't have any objection to
18 that.

19 MR. FLEMING: Thank you very much.

20 THE ARBITRATOR: Mr. Fleming, just so I'm
21 clear, Mr. Gates is testifying as one of your
22 rebuttal witnesses; is that correct?

23 MR. FLEMING: Yes, that's correct. This
24 would constitute our rebuttal of the testimony heard
25 today.

1 And we know that's not the case today.

2 Mr. Sebby suggests that Level 3 service is
3 an interexchange service, but that SRT's foreign
4 exchange service is not. And that doesn't pass the
5 straight-face test. And that is particularly ironic
6 given that SRT's customers, local customers, can
7 make local interexchange calls between and among 25
8 exchanges in North Dakota. And those are
9 interexchange calls between cities such as Minot and
10 Antler and Towner and Rice Lake, and others that I
11 can't think of, but it is an expansive local calling
12 area and those are, indeed, interexchange calls.

13 Level 3 is entering the market or
14 attempting to enter this market by offering a single
15 service, and that's the way new entrants enter
16 markets. You can't be everything to everybody right
17 out of the chute. I remember when I was with MCI
18 years ago and we were telling stories about how the
19 company got started, and MCI had a single route
20 between St. Louis and Chicago for the limited
21 purpose of providing radio service for truckers on
22 that one limited route. Well, that's all they had.
23 You know, they had to provide just that service.
24 I'm sure that Level 3 someday wants to provide more
25 services, and Mr. Hunt alluded to that, but that

1 will be in the future and it will be done properly
2 with adjustments to tariffs and authority.

3 But SRT here, and specifically Mr. Seby in
4 his comments, is attempting to dictate the services
5 that Level 3 provides, the network configuration
6 that is chosen by Level 3, because it is unique, and
7 how Level 3 will interconnect by mischaracterizing
8 the nature of the Level 3 service. In fact, I would
9 suggest that Mr. Seby seems locked in to the
10 traditional network architecture of multiple ILEC
11 switches and specifically circuit switches, as
12 opposed to new technology today. And that type of
13 thinking just isn't helpful today, given the Telecom
14 Act and the desire of new entrants to come into the
15 market.

16 So Level 3 is using a new and innovative
17 way to provide a competitive alternative to the SRT
18 service, generally known as FX service and FX-like
19 services. And in an attempt to prevent competition,
20 this new entrant coming into the market, SRT is
21 trying to characterize Level 3 service as a quote,
22 interexchange service, which would be subject to
23 access charges, when, in fact, SRT doesn't subject
24 its own services to that treatment. And I think
25 that's inconsistent with the way SRT is treating its

1 own services and by definition, it's discriminatory
2 and anticompetitive. Thank you.

3 THE ARBITRATOR: Any further direct?

4 MR. FLEMING: No further direct.

5 THE ARBITRATOR: Cross?

6 MR. HOGUE: No.

7 MR. FLEMING: Thank you, Your Honor, for
8 indulging us.

9 THE ARBITRATOR: Thank you, Mr. Hogue, for
10 indulging us or accommodating our request.

11 MR. HOGUE: I don't have any further
12 witnesses, Your Honor. I think Mr. Fleming was
13 going to call Warren Hight, and I've got a couple
14 questions for him as well, but I'm not -- I don't
15 think it makes much difference as to who calls him.

16 MR. FLEMING: It doesn't matter to me,
17 either. I do have questions for Mr. Hight I'd like
18 to ask. Mr. Hogue can --

19 THE ARBITRATOR: Well, if you're going to
20 call him, we'll still treat him as a hostile witness
21 for you and you can proceed with cross-examination-
22 type questions.

23 MR. FLEMING: Right. I'd like to do that.
24 So we would call Mr. Hight.

25 MR. HOGUE: Okay.

1 THE ARBITRATOR: Just so you know, I'm not
2 calling you hostile. Please swear the witness in.

3 WARREN L. HIGHT,
4 having been first duly sworn, was examined and
5 testified as follows:

6 THE ARBITRATOR: Mr. Fleming.

7 DIRECT EXAMINATION

8 BY MR. FLEMING:

9 Q. Good afternoon, Mr. Hight.

10 A. Good afternoon.

11 Q. Thank you for joining us. Mr. Hight, I'm
12 handing you what's been marked and actually
13 introduced as Exhibit WPH-3-10. This is attached to
14 Mr. Hunt's testimony filed today. This was provided
15 by SRT in response to interrogatories submitted by
16 Level 3. Have you seen this document before?

17 A. Yes.

18 Q. And it is entitled "Current North Dakota
19 Network Company dba SRT Wireless Configuration,"
20 correct?

21 A. Yes.

22 Q. And it has two boxes. One is labeled
23 "public switched telephone network" and it has the
24 SRT Minot end office switch, correct?

25 A. Yes.

1 Q. And it's got another box below it labeled
2 "SRT wireless," correct?

3 A. Yes.

4 Q. And there's a direct line between the two
5 representations of the switch facility, correct?

6 A. Correct.

7 Q. And the address in the top box is 24 Second
8 Avenue Southeast. Do you see that?

9 A. Correct.

10 Q. And the address in the bottom box is 24
11 Second Avenue Southeast?

12 A. Same.

13 Q. Is it reasonable to conclude that the --
14 and the second box below is identified as an SRT
15 wireless switch, correct?

16 A. Yes.

17 Q. Is it reasonable to conclude that SRT
18 wireless is collocated with the Minot switch at 24
19 Second Avenue Southeast?

20 A. Yes, in the same building.

21 Q. Mr. Hight, I'm handing you what's been
22 introduced as Exhibit WPH-15, which is entitled
23 "Interrogatory No. 31," which was produced by SRT in
24 response to interrogatories from Level 3. Have you
25 seen this document before?

1 A. Yes.

2 THE ARBITRATOR: Excuse me for one second.
3 I note that there's an objection that this
4 interrogatory is part of the trade secret objection.
5 Is that trade secret objection still in place?

6 MR. HOGUE: No, it is not.

7 THE ARBITRATOR: Okay. Thank you.

8 Q. (MR. FLEMING CONTINUING) Looking at the
9 response to interrogatory No. 31, SRT responded that
10 there is a wholly-owned subsidiary of SRT called the
11 North Dakota Network Company; is that correct?

12 A. That's correct.

13 Q. And if you'll look at the exhibit that I
14 just handed you, WPH-3-10, it says current North
15 Dakota Network Company dba SRT Wireless, is that
16 correct, as the heading?

17 A. Yes.

18 Q. Are those two the same company?

19 A. Yes. I believe we have both of those
20 companies providing those services.

21 Q. So it's the wireless subsidiary that's
22 collocated is also the SRT ISP, correct?

23 A. Yes.

24 MR. FLEMING: I've just been informed that
25 Mr. Hight wasn't sworn. Was he?

1 THE REPORTER: Yes, he was.

2 MR. FLEMING: I apologize.

3 Q. (MR. FLEMING CONTINUING) I apologize,
4 Mr. Hight. Mr. Hight, I refer you to the map that I
5 put up on the easel here. It's a road atlas map of
6 North Dakota with an outline of what my limited
7 artistry can demonstrate as the SRT exchange. Is
8 that a fair representation?

9 A. For this purpose.

10 Q. Thank you. I'd like to ask you some
11 questions about the EAS arrangements that SRT has.
12 It's my understanding that SRT -- based on the
13 discovery responses, interrogatory responses, is
14 that SRT has EAS arrangements with the ILEC
15 representing this area, which is Turtle Mountain
16 Communications, correct?

17 A. Correct.

18 Q. And that you are -- you've got a direct
19 interconnection between the Minot -- let me back up
20 a second further. These green and yellow circles
21 represent the 25 exchanges in the SRT area, correct?
22 You'll assume?

23 A. For the purpose of this.

24 Q. For the purposes of this. Okay. Each of
25 these 25 exchanges is served out of a remote

1 terminal, correct?

2 A. Yes, it is, tied to a host.

3 Q. And the host is the Minot switch, correct?

4 A. Correct.

5 Q. And the remote terminals have very limited
6 functionality, correct?

7 A. They have calling within their local area
8 or emergency stand-alone in the event that that
9 umbilical cord is severed.

10 Q. Okay. So a call between two end users in
11 the Sherwood exchange, for example, would have the
12 call routed through the remote terminal without any
13 routing down to the Minot switch; is that correct?

14 A. I think the answer would be yes, because
15 under -- and, again, if the link is severed between
16 there and the host, a call between two customers in
17 that exchange could be completed.

18 Q. But a call between, let's say, the Sherwood
19 exchange and the Antler exchange -- which, as I
20 understand, is probably less than 100 people; is
21 that correct?

22 A. Could be.

23 Q. -- would be routed to the remote terminal
24 in Sherwood, would be routed down to the host switch
25 in Minot, be routed back up to the remote terminal

1 in Antler, and then terminated to the customer,
2 correct?

3 A. Correct.

4 Q. Now, if your EAS arrangements -- and that
5 would be the arrangement throughout the local
6 calling area, correct?

7 A. Yes.

8 Q. So that these remote terminals come into
9 here and then come off the host switch to the
10 terminating remote terminal?

11 A. Yes.

12 Q. Okay. For your EAS arrangements, you have
13 direct connection between -- we'll use the Turtle
14 Mountain example, between Minot and Bottineau; is
15 that correct? It is Bottineau?

16 A. Yes.

17 Q. Is that your understanding?

18 A. Yes, it is.

19 Q. And then so a call, let's say, between the
20 Landa exchange and the Souris exchange, which have
21 EAS calling, if a person here in Landa was calling a
22 person here in Souris, the call would be routed from
23 the end user to the remote terminal, down to the
24 Minot switch, back up to the Bottineau facility, and
25 then to the Souris facility?

1 A. Yes, I would believe that would be
2 accurate, as long as that Souris office was hosted
3 off of Bottineau.

4 Q. The other alternative is that this company,
5 Turtle Mountain, is also an affiliate of the company
6 serving over here, which is United Telephone Mutual
7 Aid Corporation; is that correct?

8 A. Yes.

9 Q. And they have a host switch in Langdon,
10 correct?

11 A. Yes.

12 Q. So the call may be routed back to the host
13 switch and then back to Souris, correct?

14 A. Possibly. I don't know that routing.

15 Q. Okay. And the other EAS arrangement that
16 SRT has is with North Dakota Telephone Company,
17 correct?

18 A. Yes.

19 Q. And they serve in this general area,
20 including the exchanges that I've circled in red,
21 correct?

22 A. Again, the representation is basically
23 correct there, yes.

24 Q. Okay. And that includes this doughnut hole
25 that would be the Velva exchange?

1 A. That's one of their exchanges.

2 Q. That's completely surrounded by SRT?

3 A. Yes.

4 Q. And under EAS arrangements the Sawyer
5 exchange, for example, and the Karlsruhe exchange
6 can have local calling into Velva, and vice versa?

7 A. Correct.

8 Q. And I believe the Karlsruhe exchange can
9 have local calling down here to Balfour?

10 A. Could be. It's identified in the front of
11 our phone book. I would need to reference that to
12 remember myself.

13 Q. And it's also identified in one of your
14 interrogatories.

15 A. All right.

16 Q. Just generally, the idea is that these
17 exchanges can make local calls to these neighboring
18 exchanges?

19 A. They can make EAS calls, yes.

20 Q. Okay. EAS calls. And then this Martin
21 exchange can make an EAS call to the Harvey
22 exchange?

23 A. Yes.

24 Q. Which is also operated by North Dakota
25 Telephone Company, correct?

1 A. (Nods.)

2 Q. And just to make clear, you are
3 interconnected with North Dakota Telephone Company
4 via direct trunk to their host switch in Rugby,
5 correct?

6 A. I believe that's correct.

7 Q. And that these are served by remote
8 terminals that subtend this host switch, correct?

9 A. I also believe that's correct.

10 Q. So a call from Martin to Harvey, for
11 example, would be routed from the remote terminal in
12 Martin to the host switch in Minot, to the other
13 host switch in Rugby, to the remote terminal in
14 Harvey, to the end user?

15 A. Yes, I believe so.

16 Q. Thank you. Are you -- what is the nature
17 of the relationship of this trunk facility between
18 Minot and Rugby for this EAS arrangement? Is it a
19 meet point to the service border; is that correct?

20 A. I think so. I think that's correct.

21 Q. Okay. So you are not going to Rugby to
22 pick up calls that are --

23 A. We're handing off at the meet point.

24 Q. At the meet point on the service area
25 border, correct?

1 A. Yes.

2 Q. And that would be the same up here?

3 A. Correct.

4 Q. This Bottineau -- Turtle Mountain actually
5 has a significant amount of transport involved in
6 completing EAS calls, correct? Relative to you, if
7 it's only a handful of exchanges that have EAS right
8 here on the border, correct?

9 A. Well, their facilities are what they are.

10 Q. Right. Fair enough. But neither Turtle
11 Mountain, nor North Dakota Telephone pick up any
12 traffic at the Minot switch, correct?

13 A. No, they do not.

14 Q. They would pick it up through an
15 arrangement at the meet point, correct?

16 A. Yes.

17 Q. Actually, it's going to be here or
18 somewhere around here, correct?

19 A. Yes.

20 Q. Okay. When a customer in, let's say, Landa
21 calls a customer that it has an EAS arrangement in
22 one of these local calling areas, SRT has no idea
23 whether the person that's being called is an FX
24 customer, correct?

25 A. Not know if they're an FX customer out of

1 that Landa exchange?

2 Q. Let me back up. Turtle Mountain can
3 provide FX services, correct?

4 A. I'm sure. I haven't looked at their
5 tariff. I don't know.

6 Q. Let's assume that they can.

7 A. Okay.

8 Q. Let's assume that they have a customer that
9 wants a Souris telephone number. I understand it's
10 a hypothetical. If a Landa customer was calling
11 that Souris FX number, which may actually wind up
12 down here in Rolette or one of these other Turtle
13 Mountain exchanges, SRT would have no idea that that
14 number was a foreign exchange number, correct?

15 A. We may not. We may not have any idea it
16 would be foreign exchange.

17 Q. How would you know?

18 A. Well, just by knowing that that's what the
19 number is, but the call would be routed over the EAS
20 facilities as we have discussed before.

21 Q. Mr. Hight, can you look at Exhibit WPH --
22 I'm sorry. It was Level 3 Exhibit 6. Have you seen
23 this Web page printout before?

24 A. Yes.

25 Q. And would you agree that this represents

1 the local access numbers of the SRT ISP sub?

2 A. Yes.

3 Q. And is there a local access number for
4 Landa?

5 A. Yes, there is.

6 Q. And where is the SRT ISP modem pool
7 located?

8 A. The modem pool is located in Minot.

9 Q. So there is a local access number for
10 Landa, correct?

11 A. (Nods.)

12 Q. So a Souris customer that has an EAS
13 arrangement with Landa, but not a service
14 arrangement with Minot, correct, could call the
15 Landa number, 295-0000, and have the call routed to
16 Minot to be terminated at the SRT ISP modem,
17 correct?

18 A. Yes, over the EAS route. Anything within
19 that EAS area of ours is local to the entire area.

20 Q. Mr. Hight, I'm handing you what has been
21 introduced into the testimony as Mr. Hunt's
22 Exhibit 3. I believe it's 3.1, but it was in
23 response to interrogatory No. 14.

24 Mr. Hight, have you seen this document
25 before?

1 A. Yes, I did.

2 Q. Can you please briefly describe what this
3 document is?

4 A. It's a monthly traffic report regarding the
5 EAS routes between SRT and North Dakota Tel and SRT
6 and United Telephone, month by month.

7 Q. Do you have an EAS agreement with United
8 Telephone?

9 A. Well, it's United on the report, but their
10 subsidiary, Turtle Mountain Telephone is the one
11 that we discussed.

12 Q. So UTC is an abbreviation for United
13 Telephone, which is understood to be Turtle Mountain
14 Telephone, correct?

15 A. Turtle Mountain is their subsidiary.

16 Q. Okay. And EAS is the extended area calling
17 designation, correct?

18 A. Yes.

19 Q. And NDT, on the first page, is North Dakota
20 Telephone, correct?

21 A. Correct.

22 Q. And this is a monthly summary report of
23 traffic exchanged over those trunk groups; is that
24 correct?

25 A. Correct.

1 Q. And these are trunk groups that represent
2 those EAS lines between Bottineau and Minot and
3 Rugby and Minot, correct?

4 A. Correct.

5 Q. Do you see the column four from the right
6 called "average HT minutes"?

7 A. Yes.

8 Q. And do you see that at the bottom it
9 averages about 14.7 minutes?

10 A. Correct.

11 Q. And it varies from 16 down to 12; is that
12 correct?

13 A. Yes.

14 Q. And if you look at the second page, that's
15 identified as the trunk route UTCEAS?

16 A. Yes.

17 Q. It has -- and you see the same average HT,
18 which I understand is hold time minutes, correct?

19 A. Correct.

20 Q. And those are only about 2.43 minutes?

21 A. True.

22 Q. Do you have a reason for the difference?

23 A. I would speculate that this North Dakota
24 Tel EAS, there is just more activity and more
25 calling than most trunk routes. The Velva exchange

1 is very much a bedroom community to Minot, and those
2 other exchanges, Drake, Anamoose, you know, again, I
3 suspect that there would be much more EAS traffic
4 than perhaps we're seeing with the Bottineau
5 situation.

6 Q. But if there was more EAS traffic, that
7 wouldn't necessarily change the average hold time;
8 is that correct?

9 A. Well, not necessarily, but each area. And
10 that's the interesting thing about EAS, that hold
11 times can be very high between communities of
12 interest, depending on the people that are involved
13 that have the service. So there are a lot of people
14 that know each other and they can talk a long time.

15 Q. And so it's your position that the hold
16 time on the North Dakota Tel trunk is seven times
17 higher than the hold time on the UTC trunk because
18 the people in Velva know the people in Sawyer
19 better?

20 A. Well, I don't know if that's a fair
21 characterization. I guess you asked me, showing me
22 this, what I off the top of my head thought might be
23 an answer, and I'm just saying that is one. Without
24 some further research, I guess I couldn't tell you
25 why there's a difference between those two, but I

1 believe what I said would be an accurate statement.

2 Q. Would it also be an accurate statement that
3 the NDTEAS trunk route includes a lot of ISP-bound
4 traffic to the SRT ISP?

5 A. I don't know that.

6 Q. I'm handing you what's been introduced into
7 the record as RDD Exhibit 2. Mr. Hight, have you
8 seen this document before?

9 A. Yes.

10 Q. And is it a summary report of the SRT trunk
11 groups, for the month of -- observation period of
12 October 1st to October 31st, 2002?

13 A. Correct.

14 Q. And if you look down to No. 240, under
15 group number, that is the North Dakota Telephone EAS
16 trunk route?

17 A. That's what it says here it is.

18 Q. And it corresponds to the bottom -- and the
19 numbers on the chart you have now correspond to the
20 bottom line on the monthly summary report that we
21 were just speaking about, correct?

22 A. If you can help me out here? Maybe you can
23 show me where it's at.

24 Q. Actually, it's not.

25 A. For the month of October?

1 Q. Let's look at another one. I might have
2 the month wrong. Well, can you explain why the
3 October line for trunk group 240 on Exhibit RDD-2
4 differs from the October line for the same trunk
5 group on the monthly summary report?

6 A. I do not have an explanation for that.
7 I'm, frankly, not that familiar with traffic
8 reports.

9 Q. Let's go back to RDD-2. And do you see the
10 column "average HT minutes"?

11 A. Which one are we on again?

12 Q. We're on RDD-2. This is the monthly
13 report -- RDD-2. This is the -- all trunks for the
14 month of October.

15 A. All right.

16 Q. And if you'll look at line number -- trunk
17 group number 90 --

18 A. Yes.

19 Q. -- and you'll see that trunk group number
20 90 has an average hold time of 76 minutes?

21 A. Correct.

22 Q. And that that trunk group is identified as
23 SRTINETPRI2?

24 A. Okay.

25 Q. Is it reasonable to believe that that is an

1 abbreviation for SRT Internet Trunk Route?

2 A. Yes.

3 Q. And so a long hold time of 76 minutes is
4 indicative of ISP calling, correct?

5 A. I would agree with that general
6 characterization. ISP calls are generally longer
7 holding times.

8 Q. Okay. Now, could you please look at group
9 number 159. And that's identified as UTCINET; is
10 that correct?

11 A. Yes.

12 Q. And UTC is the abbreviation for Turtle
13 Mountain, correct?

14 A. Yes. I believe that --

15 Q. And INET is the SRT language for an
16 Internet trunk, correct?

17 A. I would assume so, on this report.

18 Q. So is it reasonable to conclude that this
19 is an Internet-bound trunk group from the Turtle
20 Mountain Communications Company?

21 A. Yes.

22 Q. SRT exchanges SS7 signaling with CMRS
23 carriers, correct?

24 A. Yes.

25 Q. And it also exchanges SS7 signaling with

1 IXC's, correct?

2 A. Yes.

3 Q. Are you familiar with the FX product
4 provided by SRT?

5 A. Somewhat.

6 Q. Mr. Hight, I'm curious in that if the
7 entire local calling -- your service area is
8 accessible on a local basis, why would SRT provide
9 FX to any of its customers?

10 A. I'm not sure I'm understanding your
11 question. Are you saying why do all of the
12 exchanges have their own separate number?

13 Q. No. SRT provides FX service, correct?

14 A. Yes.

15 Q. And these are -- in your view they are
16 customers within the local calling area, they have a
17 physical presence within the local calling area of
18 SRT, correct?

19 A. Yes. An FX customer can be within that
20 calling area or outside.

21 Q. So that the SRT -- the customer could be
22 living in Bismarck and seeking an SRT FX number from
23 SRT, correct?

24 A. SRT and Qwest, correct.

25 Q. And if there was a customer that you served

1 that lived in Minot and wanted an FX number in
2 Bismarck, you could also provide that, correct?

3 A. That's correct.

4 Q. In one of your -- in one of SRT's
5 interrogatory responses, Mr. Hight, SRT stated that
6 they only provide FX service to five customers. Do
7 you recall that?

8 A. I believe the number is six.

9 Q. Six customers. Is the service provided to
10 McLeod, which was inherited by Level 3, is that one
11 of the FX services?

12 A. That was not one of the six.

13 Q. Would you agree with Mr. Sebby that --
14 strike that. Would you agree with Mr. Meredith that
15 the service provided to Level 3 right now is an FX
16 service?

17 A. Well, in my simple understanding of what it
18 is that we're doing with Level 3, we're providing
19 them SRT numbers that can be accessed by any of the
20 customers within our 25 exchange areas, and that is
21 handed off to Level 3, to Level 3's modem in
22 Bismarck.

23 MR. FLEMING: Just a minute, Your Honor.
24 No further questions.

25 THE ARBITRATOR: Mr. Hogue.

1 MR. HOGUE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. HOGUE:

4 Q. Mr. Hight, how long have you been in the
5 telecommunications business in North Dakota?

6 A. Since 1973.

7 Q. Can you give us some idea of how these EAS
8 routes get created?

9 A. Sure. As was discussed at this hearing
10 earlier, very much it's community of interest
11 oriented. The customers in one exchange have a
12 reason, whether it's a doctor, some other reason, in
13 which they have a concern to call that other
14 community on a regular basis. School districts come
15 into play. All different kinds of things over the
16 years that have created a majority demand by the
17 customers in those adjacent exchanges to have non-
18 toll calling between them.

19 Q. So it sounds like it's determined on the
20 basis of demographics and where the people are
21 related and doing commerce within the exchange
22 areas?

23 A. Very much so.

24 Q. Have you -- speaking of the Velva exchange,
25 have you ever been approached by North Dakota

1 Telephone to have EAS as between the Minot exchange
2 and the Velva exchange?

3 A. Yes, we have.

4 Q. And am I correct in understanding there is
5 not EAS between Velva and the Minot exchange?

6 A. You are correct. There is not EAS. That's
7 a long-distance toll call from Minot to Velva or
8 vice versa.

9 Q. Why did SRT reject the proposal to have EAS
10 from Velva to Minot?

11 A. There certainly are costs associated with
12 establishing extended area service routes to have
13 those facilities in. Generally speaking, when an
14 EAS route is established, people -- you need more
15 than the existing toll circuits to handle the
16 traffic because it's now non-toll so that the usage
17 and the holding times go up, as was discussed
18 earlier. So there were some costs associated with
19 doing that.

20 Likewise, the North Dakota Tel people
21 considered what it would cost from a mandatory EAS
22 standpoint for their customers in Velva, what kind
23 of an EAS adder that they would have to place on
24 their customers, as well as in our particular case
25 we looked at the cost associated with providing that

1 route to Velva. To make a long story short, it
2 didn't match up and has not been offered.

3 Q. Okay. What is the hub city in SRT's
4 exchanges?

5 A. The trade center city, if you will?

6 Q. Yes.

7 A. Minot, North Dakota.

8 MR. HOGUE: I'll mark that. I think what
9 I'm going to do is, I'll use this for illustrative
10 purposes, but I've got a blowup -- or excuse me -- a
11 reduction of this that I'll use to introduce.

12 MR. FLEMING: Mr. Lamancusa, can we take a
13 short break? I'm sorry. While you are setting this
14 up so I can talk to my client so that he can get to
15 the airport, if that's all right.

16 MR. HOGUE: Sure. That's fine.

17 THE ARBITRATOR: That's fine. 10 of we'll
18 start back up.

19 (Recess was taken from 4:45 p.m. to 4:52
20 p.m., the same day.)

21 Q. (MR. HOGUE CONTINUING) Mr. Hight, I'm
22 showing you a map, a similar map of North Dakota
23 that's been marked as SRT Exhibit 30. Would you
24 look at that?

25 A. Yes.

1 Q. Can you describe for me what that map
2 depicts?

3 A. It depicts all of the local telephone
4 exchange companies located throughout the state of
5 North Dakota and a pretty good display of their
6 service areas.

7 Q. Is it accurate, to the best of your
8 knowledge?

9 A. Yes, it is.

10 MR. HOGUE: I will offer SRT Exhibit 30.

11 MR. FLEMING: Is that the same as the
12 blowup?

13 MR. HOGUE: Yes, it is.

14 MR. FLEMING: No objection.

15 THE ARBITRATOR: So entered.

16 Q. (MR. HOGUE CONTINUING) Mr. Hight, you've
17 heard testimony that the ISP modems or their
18 customers' modems are located in Bismarck, correct?

19 A. Yes.

20 Q. Who operates the local exchange in
21 Bismarck?

22 A. Qwest operates Bismarck.

23 Q. What is the, I guess, the commercial hub
24 for the Qwest operated exchanges?

25 A. I would say very much Bismarck, as far as

1 within this LATA, this part of the state.

2 Q. Okay. Is there any -- I guess we've used
3 various terms to describe community of interest or
4 common interest. Is there any community of interest
5 between Bismarck and Minot?

6 A. No, I would say not. The Minot community,
7 that's a trade center for that radius around Minot,
8 the hospitals, the schools. All the things we
9 discussed earlier today are resident within that
10 trade area. Minot -- the Bismarck area has its own
11 trade area, if you will. So they're separate and
12 distinct trade areas in our state.

13 Q. If you had some type of EAS arrangement
14 with Qwest in the Bismarck exchange, how many local
15 calling areas would you cross over?

16 A. Looking at the map that shows the telephone
17 companies' service areas, and there are probably
18 several exchanges in between what is pictured on
19 that map, is the green area of SRT and the white
20 areas down in the lower center part that is the
21 Qwest territory, so certainly there would be a
22 number of exchanges that would have to be
23 leapfrogged and two separate, possibly even three
24 telephone companies.

25 Q. Well, yeah. I think there would be three,

1 wouldn't there? You've got West River, right?

2 A. Yes.

3 Q. Reservation Telephone?

4 A. Yes.

5 Q. And Beck?

6 A. That's true.

7 Q. Do you have any EAS arrangements where you
8 leapfrog three other companies?

9 A. None.

10 Q. Are you aware of any such arrangement in
11 North Dakota?

12 A. No, I'm not. My only experience with
13 extended area service was always with two adjacent
14 exchanges. That's where the interests always came
15 up and that's where the resolution would be, between
16 exchanges that were adjacent to each other.

17 Q. Mr. Hight, you have a copy of Level 3
18 Exhibit 6, correct?

19 A. Yes, I do.

20 Q. You were asked about the various exchanges
21 and what the dial-up number is for the Internet to
22 Minot's ISP or to SRT's ISP service, correct?

23 A. Yes, I was.

24 Q. Was it always the case that customers in
25 these exchanges could dial a toll-free number and

1 get access to the SRT ISP?

2 A. The situation from the customers'
3 standpoint, that was true. Initially when this was
4 offered, that was a toll call. Many of these
5 exchanges that was a toll call to Minot. So the --
6 when the service was rolled out, each of these
7 numbers were identified for each exchange, but each
8 one of them was pointed to a 1-800 number that SRT's
9 ISP paid all of the cost associated with the 1-800
10 number for all of the calls coming in from all of
11 the exchanges.

12 I think it was previously testified today
13 that at some point SRT merged its two companies and
14 provided the extended area service to all exchanges,
15 and at that time these numbers were left in place,
16 primarily so that the customers did not have to
17 change all of their modem numbers, but at one time
18 most of these calls would have been toll related
19 based on 1-800.

20 Q. If we look at, Mr. Hight, the green area,
21 that is the SRT exchange, correct?

22 A. Correct.

23 Q. Everyone living within the SRT exchanges
24 can call the SRT Internet company without paying
25 toll, correct?

1 A. Correct.

2 Q. They can call the ISP that's based in Minot
3 without incurring toll, correct?

4 A. Correct.

5 Q. And they can dial Level 3's numbers
6 anywhere within the SRT exchange without incurring
7 toll?

8 A. That is also true.

9 Q. Yep. Is that true?

10 A. Yes.

11 MR. HOGUE: That's all the questions that I
12 have.

13 THE ARBITRATOR: I have a couple,
14 Mr. Hight.

15 EXAMINATION

16 BY THE ARBITRATOR:

17 Q. First of all, what is your position at SRT?

18 A. I'm the general manager, CEO.

19 Q. Thank you. If a company were to start an
20 ISP in the Minot area, how would it go about
21 obtaining service from SRT?

22 A. By requesting connection. There is an ISP
23 operating in Minot, has been for a number of years,
24 that is a direct competitor with our ISP company,
25 located in Minot and has many, many customers.

1 Q. So they order a number of lines or I guess
2 they're direct inward dialing lines, probably, or
3 are they just normal local service lines?

4 A. They could do either.

5 Q. And then calls within the SRT serving area
6 to that number would, pursuant to the EAS
7 arrangement, then be local for purposes of the
8 originating caller; is that correct?

9 A. That's correct.

10 Q. If a competitive local exchange carrier as
11 certified by the state of North Dakota went into
12 Minot and said, look, I want to obtain a business
13 number, I assume they could just purchase it out of
14 the business tariff, which would be, I guess, time
15 and distance, or it would just be minutes of use, I
16 guess, for normal business tariffs; is that fair?

17 A. For just their local service as a business
18 operating in our service area?

19 Q. Well, that's how they present it to you,
20 that they want to get a number in Minot. And Minot
21 is for, we'll say for want of a better example,
22 Frank Clec, and as Frank Clec I asked for a local
23 number and I purchase out of the business tariff.
24 That's normally how I would obtain some type of
25 local service?

1 A. Yes.

2 Q. Okay. Now, let's say that, you know, one
3 of your employees discovers that on their doorstep
4 that there's -- that Frank Clec is advertising that
5 I'm not just a business line that you're calling,
6 but this is access to the Internet. You call my
7 line. It's a local number. I have a particular
8 rate that's somehow attractive. Therefore, all of a
9 sudden my line is busy all the time because -- and I
10 start ordering more lines. Let's say I just keep it
11 small number so I try to stay under the radar
12 screen, so to speak.

13 What happens in that situation when you
14 discover that I'm potentially using my line for
15 something that is different than what you had
16 intended? Or would you never know?

17 A. Well, we may never know. You've laid out a
18 pretty sneaky plan.

19 Q. You mean you don't know about my current
20 service is what you're saying. Okay. Thank you.

21 A. But as you describe it, that business would
22 have -- our local customers from our telco, that
23 business would be located in our local service area
24 and its customers would also be in our local service
25 area, so they maybe could grow their business and we

1 may not know.

2 Q. Well, let's say that I had a change of
3 heart and I decided to come clean, and I approach
4 your company and say, you know, the last seven
5 months I've been basically providing an Internet
6 service provider service at this business number. I
7 want to continue to provide Internet service. I
8 don't want the SRT police to hit me.

9 So what do I need to do to convert my
10 current service to one in which I can obtain --
11 basically, remain an ISP? What would I need to do
12 at that point? I recognize the hypothetical nature
13 of the question, but I'm trying to understand.

14 A. Well, I'm not sure. I suspect that you
15 would want to discuss with one of our account exec
16 business representatives the nature of your
17 business, the capacity requirements of your business
18 and where you needed facilities and the type of
19 facilities that you needed.

20 Q. Would I have to change the nature of my
21 service? Could I retain the business line, or would
22 I have to purchase some other type of line given the
23 fact that I primarily have calls coming in?

24 A. I think you could retain that service.

25 Q. Okay. And we wouldn't -- now, what is your

1 general -- what is your familiarity with the ISP
2 remand order?

3 A. I've learned more today than I care to
4 know. I'm sorry, but I'm not that familiar with
5 some of the questions that have been fielded here
6 earlier today.

7 Q. Okay. And let's make sure that I
8 understand. To the extent that I'm a CLEC and I
9 have a presence in Minot and I'm functioning as an
10 ISP in Minot. I just want to make sure that's
11 clear. I'm functioning as an ISP in Minot. So
12 calls that are placed to my ISP are not routed and
13 not rated any differently than any other call to an
14 end user in the Minot service area; is that correct?

15 A. Yes.

16 Q. Okay. So calls to me would be considered
17 local within the SRT service area?

18 A. Yes, for that ISP located in our service
19 area as you have identified.

20 Q. Okay. Now, as I also identified, I'm a
21 CLEC. And now we're going to take that next step,
22 and the next step is that I'm going to try to gain
23 some local customers in your area. And I happen to
24 find someone who doesn't really care about calling
25 anyone else, except the people that are currently

1 connected to my network, whether they be in Minot or
2 not. The issue being that I'm not connected to you,
3 to SRT. Okay. I just have my ISP lines come in,
4 but now I start to build my network and I'm starting
5 to get local customers. Now, I'm a CLEC that is in
6 the Minot area and I tell my local customers that
7 not only do I provide dial tone, but I provide ISP
8 service. Okay. Now, when those calls -- I'm just
9 trying to think -- can I get calls to me as a CLEC
10 without entering into an interconnection agreement
11 with you?

12 A. I would say as a CLEC, no.

13 Q. Because there would be no way for me to get
14 the call from the house to my business?

15 A. Through the CLEC's switch out to his
16 customer.

17 Q. So I need to have an interconnection
18 agreement in place before I can get that local
19 service customer?

20 A. Yes, as what I would consider a standard
21 competitive local exchange carrier in the area
22 serving local customers just as the ILEC is serving
23 local customers. I think you would have to have the
24 interconnection agreement between the two companies,
25 the ILEC and the CLEC.

1 Q. To mutually exchange traffic?

2 A. Yes.

3 Q. If -- but SRT and Level 3 and your counsel
4 represent SRT is currently considered a rural telco;
5 is that correct?

6 A. Correct.

7 Q. And as a rural telco, it's SRT's position
8 that they are not subject to interconnection
9 pursuant to 251(c)(2), which is the interconnection
10 requirements under the Communications Act.

11 Is that your understanding as well, that
12 SRT is exempt from that type of interconnection at
13 this point in time?

14 A. Yes.

15 Q. Okay. And that to go about removing that
16 exemption, a company, any company would need to go
17 through a series of hoops that to date haven't been
18 done?

19 A. That's correct.

20 Q. Okay. So because a CLEC cannot provide
21 local service in your local service area without an
22 interconnection agreement, but can't receive an
23 interconnection agreement so long as SRT is exempt
24 from that requirement pursuant to the Act, how can
25 anyone ever provide a local service in SRT's region?

1 A. Well, my understanding, though, of the
2 exemption is not that it prohibits that kind of
3 activity from ever taking place, it just means that
4 again, to my understanding, that a competitive
5 carrier must first make a bona-fide request that
6 they're going to provide competitive local exchange
7 services within the exchange and seek local
8 customers within the exchange, and that that filing
9 is made before the state commission, who determines
10 whether or not that is in the public interest for a
11 rural company.

12 And if the conclusion of that hearing is
13 that, yes, it is in the public interest, well then,
14 I think that barrier is broken and then you move on
15 to the other means of providing, you know, the
16 interconnection, but it's not -- the rural
17 exemption, in my mind, has never been a free get out
18 of jail card, so to speak, for small companies. So
19 the rural exemption, I guess, is there, but it's a
20 means that is available to any competitive local
21 exchange area to exercise that avenue before the
22 Public Service Commission.

23 Q. When we talk about local service, I want to
24 make sure that I understand what you mean by
25 provision of local service. I assume that means at

1 least local dial tone. The definition of local
2 service includes the provision of dial tone; is that
3 correct?

4 A. Yes.

5 Q. Okay. In your opinion, can someone provide
6 local service and not provide local dial tone?

7 A. I don't think so.

8 Q. Is that from a technical standpoint or a
9 regulatory standpoint?

10 A. Well, just from a practical standpoint.
11 For example --

12 Q. Which clearly that is neither of the other
13 ones.

14 A. -- when a customer goes off hook, they need
15 dial tone. And it has to be provided either by the
16 ILEC or a CLEC. Someone has to provide dial tone in
17 order for them to be competing for local customers
18 within the local exchange. If it is only looking
19 for access out, maybe that's what we have, our
20 customers, our SRT local customers, there's not dial
21 tone on those ISDN lines going out. They just dial
22 a number and the modem takes them on to Bismarck and
23 on to Denver. But they're not, in my understanding
24 or my looking at this, they're not providing local
25 service.

1 Q. And if someone were to approach SRT and
2 simply say, look, we know you have these -- you have
3 lines that run from one of your exchanges to
4 another, and let's say it's a significant distance
5 and they have been in the ground for 35 years, and
6 someone approaches you and says, look, I have a new
7 technology that I'm going to install from local
8 service area one to local service area two that's
9 going to cut transmission costs, we're going to
10 reduce it because of whatever, some technology,
11 technological breakthrough.

12 I want to make sure I understand. The
13 provision of that transport mechanism is not what
14 you consider local service; is that fair?

15 A. I think that's fair. That transport could
16 be handled in maybe lots of different ways versus
17 the local dial tone piece.

18 Q. Okay. And if I approached -- now let's
19 take the bank example because I always like the bank
20 example, because banks have branches all over the
21 place. So we have a bank that has a branch in local
22 service area one and a bank with a branch in local
23 service area two. And oftentimes the branch manager
24 at one wants to call the branch manager at two and,
25 frankly, they don't want to dial all seven digits or

1 ten digits as the case may be in certain
2 jurisdictions. They want to dial 4321, whatever,
3 and sometimes that's handled under the PBX
4 arrangement or a private branch exchange or could be
5 handled by centrex-type service.

6 But let's say that my -- this new
7 competitor in the market place, and I'm not
8 classifying it as a local or not local. A new
9 competitor moves into the marketplace and approaches
10 the bank and says, we are going to interconnect all
11 your branches together, and we're going to cross
12 exchange boundaries like stepping across the street.
13 We don't care. So what we have is a situation that
14 a company is going to provide connectivity between
15 the branch in local service area one, the branch in
16 local service area two ad infinitum until all the
17 branches are interconnected.

18 Would that be a local service offering, in
19 your opinion?

20 A. No. I think that branch and all of it's
21 -- the bank and all of its branches could be tied
22 together with private line facilities that make that
23 functionality work for that business. But, again,
24 wouldn't necessarily be local dial tone and access
25 for all users within the exchange to have access to

1 that network. That's just for the bank.

2 Q. And I don't get access -- as that provider
3 of that private line service, I don't get access to
4 the switch network until I gain access to the SRT
5 network, would that be correct, in that region?

6 A. In that region. Although, I mean, that
7 would make sense. If you had a branch within the
8 region, you would want some local connectivity.

9 Q. I hope my customers would call.

10 A. Right. But it certainly wouldn't have to
11 be that way. It could be toll, but I would think,
12 absolutely, they would want some local connectivity
13 for their branches, in addition to their own private
14 network.

15 THE ARBITRATOR: Okay. I have nothing
16 further.

17 MR. FLEMING: I have a handful of redirect.

18 THE ARBITRATOR: Is this like your one
19 question this morning that turned into four? Okay.
20 Go ahead.

21 MR. FLEMING: I'm not going to say how many
22 it is.

23 REDIRECT EXAMINATION

24 BY MR. FLEMING:

25 Q. Mr. Hight, you had an exchange with

1 Mr. Hogue regarding telephone calls from Velva to
2 Minot. Do you recall that?

3 A. Yes.

4 Q. And it was -- and you testified that that
5 was a toll call; is that correct?

6 A. That's correct.

7 Q. Now, can you look at Level 3 Exhibit 6? Do
8 you have it in front of you?

9 A. (Indicating.)

10 Q. Do you see halfway down the second column
11 there's a local telephone access number for Sawyer?

12 A. Yes.

13 Q. 622-4000. And isn't it correct that Velva
14 and Sawyer have an EAS arrangement so that a
15 telephone call from Velva to Sawyer would be rated
16 as local?

17 A. A call from Velva to Sawyer would be
18 part -- would be the EAS route between those two
19 exchanges, yes.

20 Q. So if the Velva customer dialed the Sawyer
21 access number, it would be on a local basis even
22 though the call was being routed to the modem pool
23 in Minot, correct?

24 A. Yes. On his computer, if he placed the
25 call to the ISP.

1 Q. Using the Sawyer telephone number?

2 A. Yes. It would be picked up at Sawyer and
3 brought into the modem bank in Minot.

4 Q. Now, if that same customer called the Minot
5 ISP access telephone number, that would be a toll
6 call, correct?

7 A. Correct.

8 Q. Mr. Hogue asked you some questions about
9 how many telephone company service areas you'd have
10 to leapfrog in order to get down to Bismarck. Do
11 you recall that?

12 A. Yes.

13 Q. Now, isn't it true, looking at this
14 exhibit, that West River Telecommunications
15 Cooperative is contiguous with SRT?

16 A. Yes.

17 Q. Isn't it also true that West River
18 Telecommunications Cooperative is contiguous with
19 Bismarck?

20 A. Yes.

21 Q. So isn't it true that you could -- you
22 would only really have to cross one telephone
23 company to get from the SRT serving area to the
24 Bismarck serving area?

25 A. One company from what you're saying,

1 multiple exchanges.

2 Q. That may be true, but it is one company?

3 A. Yeah, but I've never experienced that
4 situation, as far as EAS is concerned.

5 Q. Even crossing the boundary of one company?

6 A. I don't think so.

7 Q. Mr. Hight, are you familiar with a company
8 called Covad?

9 A. No.

10 Q. Are you familiar with a product called DSL?

11 A. Yes.

12 Q. Do you know of any competitive providers of
13 a DSL product?

14 A. The vendors that make the equipment?

15 Q. No. A CLEC providing only a DSL product.

16 A. I'm not familiar with any.

17 Q. Do you need dial tone to provide a DSL
18 product?

19 A. It rides on the normal telephone line.
20 There's dial tone associated with that line.

21 Q. Are you familiar with DSL technology?

22 A. Not the real technical. You're getting
23 pretty deep already.

24 Q. Would you accept, subject to check, that on
25 a line-sharing arrangement, your local telephone

1 line, there's a splitter --

2 A. Yes.

3 Q. -- that splits the voice signal away from
4 the DSL signal?

5 A. Yes, there is.

6 Q. And that in the central office the call is
7 separately terminated, the loop goes into your
8 switch for the voice signal and it also goes into a
9 product called a D-slam --

10 A. That's correct.

11 Q. -- for the DSL signal? So from that would
12 you conclude -- is it reasonable to conclude you can
13 provide a DSL product without providing dial tone?

14 MR. HOGUE: I'm going to object. He's
15 already said he doesn't know the answer to that
16 question.

17 MR. FLEMING: I asked him if it's
18 reasonable to conclude based on information I just
19 elicited.

20 THE ARBITRATOR: I'll let the question go
21 and I'll just weigh its admissibility based upon the
22 witness's testimony. Excuse me. Not admissibility.
23 I'll place certain weight on the answer based upon
24 the witness's previous testimony.

25 Q. (MR. FLEMING CONTINUING) So, Mr. Hight, if

1 I can just restate it, based on what we just
2 discussed, is it reasonable to conclude you can
3 provide a DSL product without providing dial tone?

4 A. It would seem to someone like me that that
5 would be right, if you can split it on one end and
6 split it on the other end, you ought to be able to
7 have the two pieces, but I don't know. I really
8 don't know.

9 Q. I understand.

10 MR. FLEMING: I have no further questions.

11 RE-CROSS-EXAMINATION

12 BY MR. HOGUE:

13 Q. Just one follow-up, Mr. Hight. How many
14 customers are in the Minot exchange?

15 A. Customers or access lines?

16 Q. I'll ask access lines as well, but
17 customers.

18 A. Customers in the Minot exchange, probably
19 28,000.

20 Q. Okay. And how about access lines?

21 A. Thirty-eight.

22 Q. Thirty-eight?

23 A. Thirty-eight, 40,000.

24 Q. Okay. Let's go to the rural areas, the 24
25 exchanges that surround the Minot exchange. And

1 let's talk about exchanges like Sawyer. How many
2 customers are in Sawyer?

3 A. Six, 700.

4 Q. Okay. Would it be -- just for the sake of
5 understanding, would it be fair to say that the
6 rural exchanges might have on average about 500
7 customers per exchange?

8 A. Yes. I think that's a pretty good number
9 to use.

10 MR. HOGUE: Okay. No further questions.

11 THE ARBITRATOR: I don't have anything
12 further. The witness may -- do you have something?

13 MR. FLEMING: Just a second. No. No
14 further questions.

15 THE ARBITRATOR: The witness may step down.

16 Given our discussion at the beginning of
17 the hearing, we're not going to have any closing
18 arguments. I just want to remind the parties with
19 respect to what the remaining schedule is as
20 currently laid out in previous orders.

21 The transcript will be provided to the
22 parties, by our understanding, by December 16th.
23 We've sort of arranged for how that is to be
24 distributed. The parties have until December 23rd
25 in which to file their post-hearing briefing

1 material, which presumably will also include
2 references to the transcript. But also the parties
3 are required at that point in time as laid out in
4 the procedural order to establish -- to put their
5 final offer of arbitration out, provisions.

6 Now, I want to point out that the
7 Commission requires that that be filed
8 contemporaneous with the post-hearing briefing
9 material. There are several different methods by
10 which the final offer language can be submitted.
11 There's either -- and reviewed. It's either look at
12 the entire package or it's issue by issue. What
13 we're going to use is the issue-by-issue final offer
14 arbitration, which is described more fully -- I'll
15 make sure I get that exactly right -- 69-02-10-28.
16 That's the contents of the final offer.

17 But the form of the final offer is found in
18 69-02-10-26. At the discretion of the Arbitrator,
19 that's me, the final offer arbitration process may
20 take the form of either entire package final offer
21 arbitration or issue-by-issue final offer
22 arbitration. We're going to do the issue-by-issue
23 final offer arbitration, recognizing that the
24 Commission may within its authority later modify
25 that. I just want to make sure the parties were

1 aware.

2 Pursuant to the other procedural order,
3 after the parties submit the final offer arbitration
4 agreements, there is basically what I like to phrase
5 as a cooling-off period, but it's basically a time
6 in which the parties can continue to negotiate, if
7 appropriate, to reach some type of resolution.
8 Basically, that is a time frame in which I will not
9 issue my order. January 17 is the close of that
10 post final offer negotiation period, so I will not
11 issue an order before that date and I have until
12 January 31st, pursuant to Commission order, to
13 render my decision.

14 The provisions of the North Dakota
15 Administrative Code also designate what happens
16 after that. My decision will be issued pursuant to
17 69-02-10-29. After that point in time, if
18 appropriate, I note that, if appropriate, the
19 parties would be required to submit an
20 interconnection agreement consistent with my
21 decision within 30 days of my decision. That's
22 found in 69-02-10-30. After the submission of that
23 interconnection agreement, there is a 15-day comment
24 period, and that's laid out in 69-02-10-31, in
25 which, also, in addition to public comment, the

1 arbitrating parties may file comment as well. That
2 is my understanding and I believe -- and as
3 discussed with the Commission staff, the first
4 opportunity or actually the opportunity that the
5 parties have to comment on my decision, is during
6 the public comment time frame.

7 That is if, of course, the decision is one
8 that an interconnection agreement should go forward.
9 If the decision is that there is no interconnection
10 agreement to go forward, then presumably there would
11 be some review by the Commission of that decision
12 since that decision would be dispositive of the --
13 and I'm not exactly sure what the time frame would
14 be of that, but I think we'll need to explore that
15 as well.

16 The Commission has 30 days pursuant to
17 69-02-10-32, subsequent to the filing of the
18 interconnection agreement in which it will reach a
19 decision either approving or rejecting that
20 agreement. I wanted to make sure that the parties
21 were aware of these time frames so that you can sort
22 of plot out where we're going to be, potentially
23 could be at the end of January, at the end of
24 February and presumably then maybe at the end of
25 March. So in many respects, this case isn't over

1 yet.

2 I will need to talk with -- and I guess if
3 my decision is that there is no need for any
4 submissions of an interconnection agreement, I will
5 discuss with the staff what the appropriate
6 timetable will be with respect to presumably then
7 Level 3 filing objections to my decision, to the
8 extent that the Commission would also have to
9 ultimately rule on my decision on that, on those
10 grounds.

11 Unless there's any further comments on the
12 procedural schedule -- yes. Mr. Hogue.

13 MR. HOGUE: I did have a question on
14 69-02-10-29(3).

15 THE ARBITRATOR: Yes.

16 MR. HOGUE: It describes that as part of
17 your decision you'll be issuing a proposed agreement
18 of the arbitrated issues. And I guess I wasn't
19 clear whether that meant resolution -- your
20 recommended resolution or whether you'll be looking
21 at our final offer agreements and be crafting your
22 own agreement?

23 THE ARBITRATOR: When the issue by issue --
24 let me make sure I get this exactly right. When the
25 parties submit issue-by-issue final offer

1 arbitration, then I have to pick and choose between
2 the two. Basically, I get to pick the provision
3 that SRT chooses or suggested or I pick the
4 provision that Level 3 suggested. Okay. Issue by
5 issue. The Commission does retain the authority,
6 and it's specifically laid out in the rules, of
7 being able to apply a modification or a modified
8 issue-by-issue final offer arbitration proceeding.
9 In other words, the Commission can craft their own.
10 They can say we don't like SRT's and we don't like
11 Level 3's. We think this should be a blending of
12 the two or we think one overstates.

13 But as it stands right now, all I'm going
14 to do is select between two and not seek to modify.
15 Now, what that may end up being -- let's sort of
16 play this scenario out. Let's say I can't agree
17 with -- we're going to assume a series of
18 hypotheticals, but let's assume an interconnection
19 agreement is appropriate, and let's assume for the
20 sake of argument that neither provision, in my
21 opinion, is the best answer. I think what would
22 happen in that situation is that I would make a
23 recommendation of that very fact; that neither one
24 of the proposed -- excuse me. That neither of the
25 proposed provisions had the appropriate language and

1 given the fact that the parties are then to submit
2 an interconnection agreement 30 days subsequent to
3 my decision, you would have an opportunity, you
4 collectively, SRT and Level 3, would have an
5 opportunity to craft language that would conform
6 with the deficiencies that I identified in the
7 arbitration decision.

8 In a sense it would be a pass. I would say
9 I can't -- I don't know if one or two is right. I'm
10 going to say what I think is right, let the parties
11 have an opportunity to sort of reach an agreement.
12 Ultimately, though, the Commission will decide
13 whether to approve or reject the interconnection
14 agreement, if appropriate. They will also have the
15 opportunity, presumably within their authority, to
16 modify that agreement, if they felt it was within
17 their best interests or within -- like I said,
18 within the authority granted to them.

19 Does that --

20 MR. HOGUE: Yeah, that helps.

21 THE ARBITRATOR: -- at least explain what
22 I'm going to do? Anything else? Okay.

23 MR. FLEMING: Mr. Lamancusa, I'd like to,
24 if we could, clean up the issue of the exhibits.

25 THE ARBITRATOR: We can do that.

1 MR. FLEMING: On the record.

2 THE ARBITRATOR: Okay. Go ahead.

3 MR. FLEMING: Well, I just want to make
4 sure the exhibits have been identified. I also move
5 that the exhibits of Level 3 that have been
6 identified also be introduced and admitted into the
7 record.

8 THE ARBITRATOR: That's fine.

9 MR. HOGUE: That's fine.

10 MR. FLEMING: I think that would be it.

11 THE ARBITRATOR: Okay. I close this
12 arbitration.

13 (Concluded at 5:40 p.m., the same day.)

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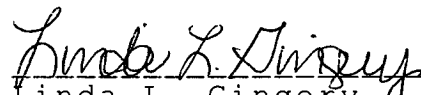
CERTIFICATE OF COURT REPORTER

I, Linda L. Gingery, a Registered Professional Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated at Bismarck, North Dakota, this 13th day of December, 2002.


Linda L. Gingery
Registered Professional Reporter

DL 2065-02-468

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CASE NO. PU-2065-02-465

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November 14, 2002

VIA E-MAIL & OVERNIGHT DELIVERY

David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
20 SW First Street
Minot, ND 58701

Re: **Petition of Level 3 Communications, LCC for Arbitration with SRT
Communications, Inc. - Case No. PU-2065-02-268**

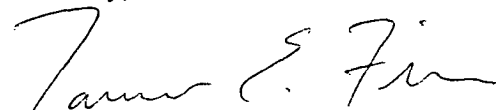
445

Dear Mr. Hogue:

Enclosed are Level 3 Communications LLC's ("Level 3") Responses to SRT Communications, Inc.'s ("SRT") Interrogatories and Requests for Production of Documents. Pursuant to the mutual agreement between Level 3 and SRT, the Responses are being exchanged on November 14, subject to the non-disclosure agreement reviewed and agreed upon by and between the Parties.

If you have any questions, please do not hesitate to contact Zenas Choi at 202/295-8375.

Sincerely,



Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications LLC

Enclosure

cc: Jon Mielke, Executive Secretary (cover letter and certificate of service)
Michael Romano
Service List (cover letter and certificate of service)

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of November 2002, a true and correct copy of the foregoing Level 3 Communications, LLC's Responses to SRT Communications, Inc.'s Interrogatories and Requests for Production of Documents was served on counsel for SRT Communications, Inc., by electronic mail and overnight mail:

David J. Hogue
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Minot, ND 58701
dhogue@ndak.net

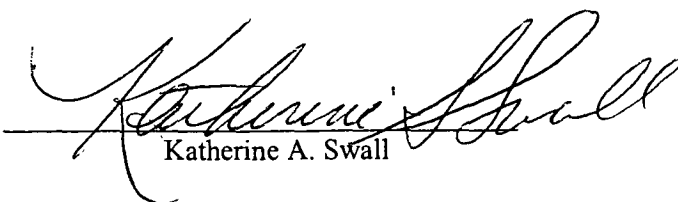
And that copies of the cover letter and service list were served on the following by first-class mail:

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Firm: North Dakota Public Service *Fax No.:* (701) 328-2410
 Commission

From: Zenas J. Choi *Telephone No.:* (202) 295-8375
Account #: 14088.0708 *Sender's Fax No.:* (202) 424-7643
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Re: Petition of Level 3 Communications, LLC for Arbitration with SRT Communications, Inc. – Case No. PU-2065-02-265

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November 14, 2002

VIA E-MAIL & OVERNIGHT DELIVERY

David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
20 SW First Street
Minot, ND 58701

Re: **Petition of Level 3 Communications, LCC for Arbitration with SRT
Communications, Inc. - Case No. PU-2065-02-265**

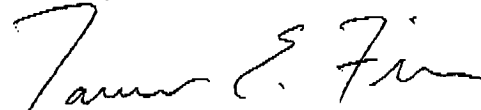
465

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If you have any questions, please do not hesitate to contact Zenas Choi at 202/295-8375.

Sincerely,



Russell M. Blau
Tamar E. Finn

Counsel for Level 3 Communications LLC

Enclosure

cc: Jon Mielke, Executive Secretary (cover letter and certificate of service)
Michael Romano
Service List (cover letter and certificate of service)

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of November 2002, a true and correct copy of the foregoing Level 3 Communications, LLC's Responses to SRT Communications, Inc.'s Interrogatories and Requests for Production of Documents was served on counsel for SRT Communications, Inc., by electronic mail and overnight mail:

David J. Hogue
Pringle & Herigstad, P.C.
2nd Floor, Bremer Bank Building
20 SW First Street
Minot, ND 58701
dhogue@ndak.net

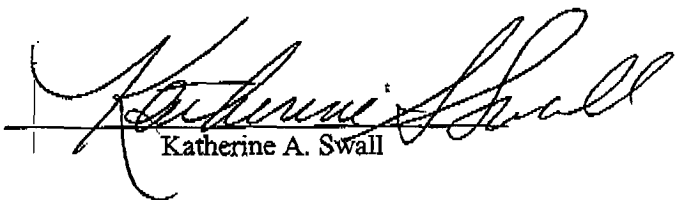
And that copies of the cover letter and service list were served on the following by first-class mail:

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Katherine A. Swall

SRT's Interrogatories and Request for Production of Documents

ATTACHMENT 9

-- CONFIDENTIAL AND PROPRIETARY --