Exhibit No:
Issues: IC-2, IC-4, ITR-18, ITR-19, GTC-2, GTC-3, GTC-17b, SS7-1, OET-3
Witness: Jeannie Harris
Type of Exhibit: Direct Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P., d/b/a/ SBC Missouri
Case No: TO-2005-0166

SOUTHWESTERN BELL TELEPHONE, L.P.,

d/b/a SBC MISSOURI

CASE NO. TO-2005-0166

DIRECT TESTIMONY

OF

JEANNIE HARRIS

Dallas, Texas

January 24, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) Of the Communications Act of 1934, as Amended By the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms and Conditions of the Interconnection with Southwestern Bell Telephone Company, L.P., d/b/a SBC Missouri	)	Case No. TO-2005-0166

AFFIDAVIT OF JEANNIE E. HARRIS

STATE OF TEXAS

COUNTY OF DALLAS)

I, Jeannie E. Harris, of lawful age, being duly sworn, depose and state

1. My name is Jeannie E. Harris. I am presently Area Manager-Emerging Technologies for SBC Operations, Inc.

2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Jeannie Harris
Jeannie E. Harris

Subscribed and sworn to before me this 19th day of January, 2005

LYNDA CREECH NOTARY PUBLIC STATE OF TEXAS EXPIRES 01-30-2006

Lynda Creech
Notary Public

My Commission Expires: 01-30-2006

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, ADDRESS, AND ACADEMIC BACKGROUND.

A. My name is Jeannie Harris. My business address is Three SBC Plaza, 308 South Akard, Room 720, Dallas, Texas 75202. I have an Associate of Commerce degree in Computer Science from Monroe County Community College, Monroe, Michigan.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR CURRENT POSITION?

A I am employed by SBC Operations, Inc. as Area Manager - Network Regulatory. I am responsible for advising and supporting the SBC network organization on regulatory issues, including developing network policies, negotiating interconnection agreements, providing support for teams implementing regulatory mandates, and testifying in regulatory proceedings. I also assist in developing corporate strategy associated with new technologies, including Internet Protocol ("IP")-based technologies and services.

Q. CAN YOU PLEASE SUMMARIZE YOUR WORK EXPERIENCE?

A. Yes, I have 4 years of Network Operations experience and 23 years experience in telecommunications planning, design, and implementation. Prior to coming to SBC I was employed by Citizens Communications as Engineering Manger – Network Development where I was responsible for the planning and implementation of all new network services including the deployment of ATM/Frame Relay switches, DSLAM's, and Multi-Service Gateways. In 2001 I joined SBC as a Fundamental Network Planner responsible for long range planning and evolution (3-5 years) spanning multiple SBC affiliates. Beginning in July 2004 I started operating in Network Regulatory with core responsibilities for Emerging Technologies, including IP-based services.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony addresses how traffic that relies on IP technology should be treated for purposes of intercarrier compensation and traffic routing and trunking arrangements in the parties' Interconnection Agreement. I will explain why this Commission should adopt SBC's proposed contract language and reject Level 3's attempt to exclude all such Internet Protocol-based traffic from appropriate access charges. SBC's proposals reflect and apply the FCC's existing rules associated with intercarrier compensation and switched access traffic. SBC recognizes that the FCC is examining potential changes to those rules in the pending proceeding *In the matter of IP-Enabled Services Notice of Proposed Rulemaking*, WC Docket No. 04-36. Until new FCC rules are issued, however, the parties' Interconnection Agreement should comply with the FCC's existing rules and, in accordance with those rules, make clear the applicable rates, terms and conditions that apply for the exchange of such traffic between the companies. My testimony also articulates SBC's position on SS7 issues.

Q. WHAT IS IP-ENABLED SERVICES TRAFFIC?

A. "IP-Enabled Services Traffic" is a new term that Level 3 has created for the purpose of this arbitration. Level 3 defines "IP-Enabled Services Traffic" very broadly as "services and applications relying on the Internet Protocol family ('IP')." Level 3 proposes that all "IP-Enabled Services Traffic" should be exempt from access charges.

Q. DOES SBC AGREE WITH LEVEL 3'S DEFINITION OF "IP-ENABLED SERVICES TRAFFIC"?

A. No. Although the FCC is conducting a rulemaking to determine how to define "IP-Enabled Services," the FCC has not adopted any final rules defining the term. Several parties, including SBC, have urged the FCC to adopt a narrower and more focused definition of IP-Enabled Services than that proposed by Level 3 in this arbitration. Moreover, as I explain below, the FCC has already rejected arguments that one form of

service that "relies" on IP should be exempt from access charges. (See my discussion below of PSTN-IP-PSTN traffic.) Accordingly, Level 3's proposed definition of "IP-Enabled Services Traffic" is overbroad and in conflict with FCC precedent.

Q. DOES SBC PROPOSE A MORE APPROPRIATE WAY TO IDENTIFY THE TYPE OF TRAFFIC AT ISSUE IN THIS ARBITRATION?

A. Yes. Because the term "IP-Enabled Services Traffic" or "Voice over Internet Protocol (VoIP)" could apply to many different types of technology and traffic transmitted over both an IP network and the circuit switched network, SBC's proposed contract language does not use the term IP-Enabled Services Traffic or VoIP. Instead, SBC's proposed language classifies calls based on the call path (i.e. PSTN-IP-PSTN and IP-PSTN). Indeed, in a forbearance petition filed with the FCC in December 2003, Level 3 itself shunned generic descriptions of IP-based traffic and chose to define such traffic based on the particular call path at issue. Thus, to avoid confusion and potential conflict with existing and future FCC decisions, this Commission should adopt the traffic definitions proposed by SBC.

Q. WHAT IS PSTN-IP-PSTN TRAFFIC OR IP-IN-THE-MIDDLE TRAFFIC?

A. PSTN-IP-PSTN Traffic (also known as "IP-in-the-middle" Traffic) is traffic that originates over a local exchange carrier's ("LEC's") circuit-switched network and is delivered to an interexchange carrier ("IXC") that converts the traffic to IP format, transports that traffic across its network, reconverts the traffic to the circuit-switched format, and delivers the traffic (either by itself or by partnering with other service providers) to a different exchange for termination over a LEC's circuit-switched network. This use of IP technology is entirely transparent to the end user and does not enhance or change the content of the communications traffic in question or make the interexchange service any more functional or flexible to the end user. Indeed, the interexchange

services that use IP technology in the transport component of the call are marketed, sold, and priced no differently than interexchange services that do not employ IP technology.

Q. WHAT IS IP-PSTN TRAFFIC?

A. IP-PSTN Traffic is traffic that originates from the end user's premises in IP format and is transmitted in IP format to the switch of its service provider. The service provider then converts that traffic to circuit-switched format and delivers that traffic (either by itself or by partnering with other service providers) to a local exchange carrier for termination on the PSTN over that carrier's circuit-switched local network. Stated another way, one end of the call is on an IP network and the other end of the call is on the PSTN.

II. INTERCARRIER COMPENSATION (IC) AND INTERCONNECTION TRUNKING REQUIREMENTS (ITR) ISSUES

IC ISSUE 2: WHAT IS THE PROPER ROUTING, TREATMENT AND COMPENSATION FOR SWITCHED TRAFFIC INCLUDING, WITHOUT LIMITATION, ANY PSTN-IP-PSTN TRAFFIC AND IP-PSTN TRAFFIC?

Agreement Reference: IC Section 3.2

IC ISSUE 4: IS IT APPROPRIATE FOR THE PARTIES TO AGREE ON PROCEDURES TO HANDLE SWITCHED ACCESS TRAFFIC THAT IS DELIVERED OVER LOCAL INTERCONNECTION TRUNK GROUPS SO THAT THE TERMINATING PARTY MAY RECEIVE PROPER COMPENSATION?

Agreement Reference: IC Section 4.7 – 4.7.2.1 & 16.2

ITR ISSUE 18: Level 3 Issue (a): WHAT IS THE PROPER ROUTING, TREATMENT AND COMPENSATION FOR IP ENABLED TRAFFIC?

Level 3 Issue (b): SHOULD THE PARTIES BE REQUIRED TO ESTABLISH SEPARATE TRUNKS FOR THE EXCHANGE OF IP-ENABLED TRAFFIC?

SBC Issue (a): WHAT IS THE PROPER ROUTING, TREATMENT AND COMPENSATION FOR SWITCHED ACCESS TRAFFIC INCLUDING, WITHOUT LIMITATION, PSTN-IP-PSTN TRAFFIC AND IP-PSTN TRAFFIC?

Agreement Reference: ITR Section 12

ITR ISSUE 19: SHOULD THIS APPENDIX INCLUDE A PROVISION THAT STATES THE PARTIES AGREE TO SUCH PROVISIONS GOVERNING "IP

ENABLED SERVICES" AS MAY APPEAR ELSEWHERE IN THE APPENDIX?

Agreement Reference: ITR Section 13

Q. WHAT IS THE DISPUTE ON THESE ISSUES?

A. These issues detail the proper handling and compensation of PSTN-IP-PSTN traffic and IP-PSTN traffic. Level 3's proposal would nullify the current access charge regime preserved by Section 251(g) of the 1996 Act and violate existing FCC rules in 47 C.F.R. § 69 and 47 C.F.R § 701 by exempting all IP-PSTN traffic from access charges and subjecting that traffic to reciprocal compensation. In contrast, SBC's proposal complies with the FCC's existing rules and preserves the status quo relating to access charges, consistent with the FCC's intention to maintain the current intercarrier compensation regime for all calls terminating to the PSTN, unless and until the FCC reforms that compensation regime.

Q. WHAT IS THE PROPER ROUTING, TREATMENT AND COMPENSATION FOR PSTN-IP-PSTN TRAFFIC?

A. Interexchange traffic that originates and terminates on the PSTN and that is routed or transported in whole or in part using IP technology is a telecommunications service subject to applicable intrastate (and interstate) switched access charges. The FCC has, in fact, conclusively resolved the debate over the application of switched access charges to PSTN-IP-PSTN traffic. In its *Access Avoidance Order*,[1] the FCC concluded that PSTN-IP-PSTN services are telecommunications services, and that as a result, interexchange carriers who carry PSTN-IP-PSTN traffic must pay applicable access charges. According

[1] FCC Order, In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephone Services are Exempt from Access Charges, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) ("*Access Avoidance Order"*).

to the FCC, access charges are due for "calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN."[2] PSTN-IP-PSTN traffic that is covered by Section 251(b)(5), *i.e.*, traffic that originates and terminates within the same local calling area, should be treated in the exact same manner as all other Section 251(b)(5) traffic and is subject to reciprocal compensation.

Q. DOES LEVEL 3 AGREE THAT INTEREXCHANGE PSTN-IP-PSTN TRAFFIC IS SUBJECT TO ACCESS CHARGES?

A. Level 3's position on the applicability of access charges to interexchange PSTN-IP-PSTN traffic is internally inconsistent. On one hand, Level 3 argues that all "IP-Enabled Services Traffic," which it defines as all "services and applications relying on" IP, is exempt from access charges. This broad definition of "IP-Enabled Services Traffic" would appear to include PSTN-IP-PSTN traffic, in direct conflict with the FCC's decision in the *Access Avoidance Order* that interexchange PSTN-IP-PSTN traffic is subject to access charges. On the other hand, Level 3 proposes defining "Circuit Switched IntraLATA Toll Traffic," which would be subject to access charges, in a way that appears to include interexchange IntraLATA PSTN-IP-PSTN traffic. This internal inconsistency is further evidence that Level 3's overbroad definition of IP-Enabled Services Traffic is inappropriate and will lead to confusion.

Q. DOES THE MISSOURI PUBLIC SERVICE COMMISSION ("COMMISSION") AGREE THAT ACCESS CHARGES ARE APPROPRIATELY APPLIED TO PSTN-IP-PSTN TRAFFIC?

A. Yes. As noted in its May 2004 comments in the FCC's *Matter of IP-Enabled Services NPRM* the Commission compared PSTN-IP-PSTN and IP-PSTN traffic with traditional PSTN traffic and reached the following conclusion: "any IP-enabled service that

[2] *Access Avoidance Order*, ¶19.

connects to the public switched network…should be treated similarly."[3] Furthermore, the Commission stated that "[t]o the extent an IP-enabled call connects with and utilizes the public switched network, the traffic should be subject to access charges absent further determination by the [FCC] in the unified intercarrier compensation regime docket."[4]

Q. WHAT IS THE PROPER COMPENSATION FOR INTEREXCHANGE IP-PSTN TRAFFIC?

A. Under existing FCC precedent and rules, providers of IP-PSTN services, like all users of access services, are subject to the obligation to pay intrastate and interstate access charges when they send traffic to the PSTN, unless specifically exempted from doing so. In its comments on the FCC's *IP-Enabled Services NPRM*, SBC has argued that IP-PSTN traffic is jurisdictionally interstate and should be subject exclusively to interstate access charges, unless and until the FCC completes its intercarrier compensation reform efforts. Unless and until the FCC redefines its compensation scheme for such traffic, however, this Commission should adopt SBC's proposed language, which provides that SBC should be compensated for terminating interexchange IP-PSTN traffic at the applicable "jurisdictionalized" access rate (interstate or intrastate) for such traffic in accordance with SBC's existing switched access tariffs. IP-PSTN traffic that originates and terminates in the same local calling area would continue to be subject to reciprocal compensation, just as all other Section 251(b)(5) traffic is today.

Q. ON WHAT BASIS DOES SBC ASSERT THAT ACCESS CHARGES SHOULD BE ASSESSED ON INTEREXCHANGE IP-PSTN TRAFFIC?

[3] Comments of the Public Service Commission of the State of Missouri in Matter of IP-Enabled Services, WC Docket No. 04-36, p. 8.
[4] Id., at p. 12.

A. The FCC has "a general policy that all users of local exchange access should pay for the use of those facilities".[5] Furthermore, the FCC has clearly ruled that Enhanced Service Providers are indeed users of such access services.[6] This is fully consistent with the FCC's statement in the *IP Enabled Services NPRM* that "As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways."[7] This policy was reiterated in the *Access Avoidance Order* where the FCC again stressed that IP Enabled Services Providers "impose the same burdens on the local exchange as do other interexchange carriers".[8] By adopting SBC's proposed contract language, this Commission will preserve the regulatory *status quo* for intercarrier compensation until the FCC completes its *IP-Enabled Services NPRM*.

Q. HAS THE COMMISSION COMMENTED ON THE DANGERS OF NOT APPLYING ACCESS CHARGES TO IP-PSTN TRAFFIC?

A. Yes, the Commission commented in the *IP-Enabled Services NPRM* "[t]hat to the extent that IP-enabled service that connect to the public switched network are determined to be information services, or telecommunications services not subject to access charges or some other means of compensation, IP-enabled services could increase the cost of

[5] WATS Related and Other Amendments of Part 69 of the Commission's Rules, 3 FCC Rcd 496 ¶ 3 (1988)
[6] Petitions for Reconsideration of MTS and WATS Market Structure, Memorandum Opinion and Order, 97 F.C.C. 2d 682 ¶ 78 (1983)
[7] Matter of IP-Enabled Services, WC Docket No. 04-36, ¶ 25
[8] AT&T Access Avoidance Order ¶ 8

providing service."[9] The Commission continued that "if the Commission determines that some lesser form of compensation is appropriate, revenue neutrality will be necessary to prevent an increase in the cost of providing service."[10] The Commission concluded that such a scenario would be "substantially greater"[11] to rural providers.

Q. BY GRANTING VONAGE'S PETITION DIDN'T THE FCC STATE THAT IP-ENABLED SERVICES ARE INTERSTATE IN NATURE?

A. Yes, the FCC made clear that Vonage's DigitalVoice and similar services are interstate in nature.[12] However, the FCC reached this conclusion specifically in regards to limiting states from requiring such providers to comply with a state's certification, tariffing, or other related requirements as a condition to offering service in that state. The FCC carefully explained it had not made any changes to the existing rules for intercarrier compensation and that any such changes would be addressed in the *IP-Enabled Services NPRM.*

Q. HOW DOES SBC PROPOSE TO DETERMINE WHICH IP-PSTN CALLS ARE INTEREXCHANGE AND THEREFORE SUBJECT TO ACCESS CHARGES?

A. To effectuate such compensation for IP-PSTN traffic, which may be geographically indeterminate on the IP side of a call, SBC would apply the provisions in its existing tariffs to jurisdictionalize a call, such as by use of calling party number ("CPN") information together with other data. Thus, for example, to the extent the CPN associated with a particular IP-PSTN call identifies that call as an intrastate interexchange call, intrastate access charges would apply – unless and until the FCC rules otherwise in

[9] Comments of the Public Service Commission of the State of Missouri in the Matter of IP-enabled NPRM (Docket No. 04-36) p. 17.
[10] *Id*, p. 18.
[11] *Id*, p. 6.
[12] Vonage petition for Declaratory ruling concerning an Order from the Minnesota Public Utilities Commission, WC 03-211 (2004).

its pending proceedings. To the extent an IP-PSTN call originates and terminates within the same local calling area, then reciprocal compensation would apply.

Q. HOW SHOULD "INTEREXCHANGE" IP-PSTN TRAFFIC BE ROUTED?

A. Just as interexchange PSTN-PSTN traffic and PSTN-IP-PSTN traffic is correctly routed over Switched Access Trunks so too should interexchange IP-PSTN traffic. Level 3 should not be allowed to evade tariffed switched access charges by routing such interexchange traffic over local interconnection trunk groups, which are not intended for access traffic and do not permit SBC to accurately bill access charges to Level 3, as discussed in more detail by SBC witness Sandra Douglas.

Q. SHOULD THE PARTIES ESTABLISH PROCEDURES FOR HANDLING CERTAIN SWITCHED ACCESS TRAFFIC THAT IS IMPROPERLY DELIVERED OVER LOCAL INTERCONNECTION TRUNK GROUPS SO THAT THE TERMINATING PARTY WILL RECEIVE PROPER COMPENSATION?

A. Yes. As discussed by SBC witness Scott McPhee, SBC has proposed contract language that provides that the parties will establish procedures for handling improperly routed interexchange switched access traffic delivered to either party over local interconnection trunk groups by a third party when the traffic is destined to the other party.

Q. HOW DOES SBC PROPOSE TO HANDLE PSTN-IP TRAFFIC THAT ORIGINATES FROM THE SBC PSTN AND TERMINATES TO LEVEL 3'S IP NETWORK?

A. PSTN-IP traffic would be treated identically as calls to all other carriers, regardless of whether those carrier's networks are IP-based or not. Traffic destined to a service provider using IP technology is presently treated in this manner by necessity, as the end office switches are incapable of identifying if the destination of the call is an IP-based network or the PSTN. For example, when an SBC end user dials a customer served by Level 3, the SBC end office switch analyzes the number dialed and determines if it falls

within the local calling scope of the SBC end user. If so, then SBC routes the call to Level 3 and SBC pays reciprocal compensation to Level 3 for the call. If the call is not local, then SBC sends the call to the presubscribed IXC for that end user. Both SBC and the terminating carrier would then receive access charges from the IXC for the call. As far as SBC is concerned, the functions it performs in originating a call are identical, regardless of whether the call is ultimately bound for an end user that uses the traditional PSTN or one that uses a VoIP service. As discussed in the testimony of SBC witness Timothy Oyer, Level 3 has trunking in place to deliver this traffic appropriately.

Q. IS SBC'S POSITION IN THIS ARBITRATION REGARDING THE PROPER COMPENSATION FOR IP-PSTN TRAFFIC CONSISTENT WITH ITS POSITION BEFORE THE FCC?

A. Yes, SBC's position in the FCC's *IP-Enabled Services NPRM* is entirely consistent with its position in this arbitration. In fact, SBC has explained in both proceedings that, under existing law and FCC rules, interexchange IP-PSTN traffic and interexchange PSTN-IP traffic is subject to access charges, and should remain so unless and until the FCC changes its rules as part of a comprehensive overhaul of its intercarrier compensation mechanisms. One need only read SBC's comments in the FCC's *IP-Enabled Services NPRM* to confirm the consistency of its position. Further, SBC's comments in the *IP-Enabled Services NPRM* focus on its proposed views for how certain IP-based calls should be regulated in the *future*, if and when the FCC adopts new intercarrier compensation rules for interexchange traffic. However, until the FCC has weighed those comments and the comments of all other interested parties, and issued new intercarrier compensation rules, SBC has no intention of "taking the law into its own hands" and declaring its proposals for future FCC rules as substitutes for valid, existing FCC rules. Obviously, it would be inappropriate for any carrier to refuse to pay access charges based

solely on comments that they may have filed in such FCC proceedings. Indeed, allowing carriers to avoid access charges on this traffic before the FCC comprehensively reforms its intercarrier compensation rules would not only violate existing law, but would also likely have serious negative consequences on universal service objectives.

Q. PLEASE SUMMARIZE YOUR POSITION ON THESE ISSUES IN DISPUTE.

A. To ensure the consistent application of switched access rules and regulations to all carriers and to interexchange traffic, and to ensure that SBC and its customers are protected from inappropriate access charge avoidance schemes that could jeopardize the affordability of local rates, the Commission should maintain the regulatory *status quo* by approving SBC's proposed contract language. This language provides that all interexchange switched access traffic, including interexchange PSTN-IP-PSTN traffic and interexchange IP-PSTN traffic, is subject to intrastate (and interstate) switched access and delivered over Feature Group access trunks to ensure proper billing. Local PSTN-IP-PSTN and IP-PSTN calls that originate and terminate within the same local calling area would continue to be subject to reciprocal compensation. This Commission should also adopt SBC's proposed language that requires Level 3 to use local interconnection trunks for local traffic and Switched Access trunks for toll traffic not covered by the FCC's limited exceptions.

III. GENERAL TERMS AND CONDITIONS – DEFINITIONS (GT&C – DEF)

GT&C - DEF ISSUE 2:

IN THE EVENT THAT THE COMMISSION AGREES WITH LEVEL 3 THAT IN THE INTERCARRIER COMPENSATION APPENDIX SECTION 4.5 THE PARTIES SHOULD NOT BE REQUIRED TO USE "CPN" IN THE CALL FLOW FOR IP-PSTN TRAFFIC BUT RATHER SHOULD USE "CALL RECORD", SHOULD THE COMMISSION INCORPORATE LEVEL 3'S PROPOSED DEFINITION OF "CALL RECORD"?

Agreement Reference: GT&C – Def Section 7.2

Q. CAN YOU PLEASE SUMMARIZE THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?

A. Yes. Under existing FCC rules and SBC tariffs, traffic is routed and billed based on the CPN associated with that traffic. CPN is a well-defined, widely recognized, industry standard term, which the FCC defines as the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message.[13] Rather than routing and billing traffic based on CPN, however, Level 3 proposes to route and bill IP-PSTN traffic based on the "Call Record." This Call Record would include some type of code, created by Level 3, to identify the traffic at issue as IP-PSTN traffic for routing and billing purposes. While some SS7 parameters exist today that identify various types of traffic such as payphone, hotel, or inmate, there is no current industry-recognized method for identifying a call as IP-PSTN. As a result, neither SBC nor the industry has any industry-recognized method to identify these calls. In the event that Level 3 has conceived some method to differentiate IP-PSTN traffic from traditional TDM (Time Division Multiplexing) traffic, Level 3 should take its proposal to the appropriate industry forums where various carriers can comment and discuss the proposal at length. Such industry input would ensure that no carrier imposes "solutions" on other carriers in a vacuum without first consulting, and achieving consensus among, industry experts. The significance of the distinctions between CPN and Call Record are further discussed in association with Intercarrier Compensation Issue 8 in testimony provided by SBC witness Scott McPhee. For these reasons, and for the reasons further explained by

[13] 47 CFR 64.1600(c).

Mr. McPhee, the Commission should adopt SBC's proposed language and reject Level 3's proposed language.

GT&C - DEF ISSUE 3:

SHOULD THE CATEGORIZATION OF CIRCUIT SWITCHED TRAFFIC BE CONSISTENT WITH THE FCC'S ORDERS THAT DISTINGUISH CIRCUIT SWITCHED TRAFFIC FROM IP-PSTN TRAFFIC?

<u>SBC Issue (a):</u> SHOULD THE COMMISSION ADOPT A DEFINITION OF "CIRCUIT SWITCHED INTRALATA TOLL TRAFFIC"?

<u>SBC Issue (b):</u> IF THE ANSWER TO (a) IS YES, SHOULD CIRCUIT SWITCHED INTRALATA TOLL TRAFFIC BE IDENTIFIED CONSISTENT WITH FCC ORDERS AS THAT TRAFFIC BETWEEN THE PARTIES' LOCAL CALLING AREAS WITHIN ONE LATA IN THE STATE?

Agreement Reference: GT&C Def Section 7.2, 7.7 – 7.10

Q. CAN YOU PLEASE SUMMARIZE THE ISSUE IN DISPUTE?

A. Level 3 proposes to use the term "Circuit Switched IntraLATA Toll Traffic" to identify interexchange traffic that is subject to intrastate access charges. Under Level 3's definition, IP-PSTN traffic would be excluded from this definition. Contrary to Level 3's proposal, however, industry practices, and perhaps most importantly, the FCC's existing rules, do not exempt interexchange traffic from access charges based on the technology (*i.e.*, circuit-switching or IP) used on the originating end of the call. Rather, the FCC's rules provide that interexchange traffic is subject to access charges. Because Level 3's proposed definition is contrary to FCC rules and could lead to future disputes concerning ITR Issues 2, 5, 13, 15 and 18 (I specifically addressed ITR Issue 18 earlier in my testimony), the Commission should reject Level 3's proposed language and adopt SBC's.

GT&C - DEF ISSUE 17b:

SHOULD THE DEFINITION OF "OUT OF EXCHANGE TRAFFIC" INCLUDE IP-ENABLED SERVICES?

Agreement Reference: GT&C – Def Section 13

Q. CAN YOU PLEASE SUMMARIZE THE ISSUE AT DISPUTE BETWEEN THE PARTIES?

A. Level 3 proposes to define "Out of Exchange Traffic" to include Telecommunications Services, IP-enabled Services, and transit traffic. SBC proposes to define "Out of Exchange Traffic" as "Section 251(b)(5) traffic, ISP-bound traffic, and InterLATA Section 251(b)(5) traffic."

Q. SHOULD LEVEL 3'S DEFINITION OF "OUT OF EXCHANGE TRAFFIC" BE ADOPTED?

A. No. The definition of "Out of Exchange" traffic, or "OET", proposed by Level 3 is too broad. Level 3's proposal, including the terms "Telecommunications Services" and "IP Enabled Services," expands the definition to include all forms of voice and data services. As I discussed in detail above, unless and until the FCC issues new rules on the matter, this is an inappropriate assumption to make. SBC witness Scott McPhee additionally explains why SBC's definition is more accurate and should not include transit traffic.

IV. SS7

SS7 ISSUE 1: SHOULD THE PARTIES COMPENSATE EACH OTHER FOR SIGNALING SYSTEM SEVEN (SS7) QUAD LINKS FOR IXC CALLS AT ACCESS RATES OR ON A BILL AND KEEP BASIS?

Agreement Reference: Appendix SS7, Section 2.1.1.

Q. PLEASE EXPLAIN THE CONTEXT THAT GIVES RISE TO THE PARTIES' DISAGREEMENT ABOUT SECTION 2.1.1 OF THE SS7 APPENDIX.

A. Level 3 has the right to use, and subsequently change, its third party SS7 Provider ("TPSSP") in the event it is using a TPSSP, or to provide SS7 services for itself. Level 3 is entitled to make that choice, and the parties have therefore agreed to the following language in Section 2.1:

> Either party may choose to provide its own SS7 signaling for its facility-based services, or to the extent available, it may purchase SS7 signaling from the other party under the terms and conditions of that party's tariff offering. Alternatively, either party may choose to obtain SS7 signaling

from a third-party provider.

That agreed Section 2.1 language is followed by Section 2.1.1, which addresses the situation where Level 3 exercises its right to act as its own SS7 service provider. Section 2.1.1 begins with agreed language that states:

> In the event that Level 3 chooses to act as its own SS7 service provider, the parties will effectuate a Bill and Keep arrangement and shall share the cost of the SS7 quad links in each LATA between their STPs

Then, each party proposes a proviso that would follow that language, and the disagreement lies in the competing provisos. SBC proposes:

> Provided, however, that said Bill and Keep arrangement and use of SS7 quad links apply to Level 3 CLEC calls and not to calls that are subject to traditional access compensation as found between a long distance carrier and a local exchange carrier, including Level 3 acting as a long distance carrier.

Level 3, on the other hand, proposes:

> The parties agree that Level 3 may act as its own SS7 provider or contract with third parties to provide that function. In that event, the parties agree to establish one set of SS7 quad links per LATA. The parties agree to share the cost of the SS7 quad links between their respective networks (e.g. between the Signal Transfer Points.) Each party will bear the cost of all SS7 quad links on its side of the Point of Interconnection.

Q. WHAT IS THE FUNDAMENTAL DIFFERENCE BETWEEN THE PARTIES' PROPOSALS?

A. The core difference is that SBC's proposed language provides that the "***use of SS7 quad links***" applies only to Level 3 CLEC calls, and not to calls that are subject to traditional access compensation as found between an IXC and a LEC, including Level 3 acting as an IXC. On the other hand, Level 3's proposed language provides that the "the parties agree to establish one set of SS7 quad links per LATA.**"** The difference between the two is actually enormous. SBC is saying that the only Level 3 calls that can use the SS7 quad links that are referenced in Section 2.1.1 are Level 3's CLEC calls. In other words, Level

3 (and SBC as well) cannot use these quad links for calls that are subject to traditional LD IXC to LEC access compensation. Level 3's language, on the other hand, would allow Level 3 to use the quad links for *both* kinds of calls, as explained in their testimony in previous states. As recently as the Nevada Level 3 arbitration, Level 3 states that they would like to exchange all the traffic over a single SS7 quad link (attached hereto as Schedule JEH-2).[14] Again, their intent is the same; however, it is still unlawful.

Q. WHY SHOULD THE COMMISSION ADOPT SBC'S LANGUAGE AND NOT LEVEL 3'S LANGUAGE?

A. The arrangements contemplated by Section 2.1 of the SS7 Appendix, including Section 2.1.1 are, by definition, for the traffic that is within the scope of SBC's obligations under the Telecommunications Act of 1996 ("1996 Act"), not for access traffic. This arbitration under Section 252 of the 1996 Act, in other words, cannot properly be used to impose obligations on SBC concerning access traffic. SBC has separate and distinct legal obligations regarding what it must make available, and the manner of connection that it is required to provide, to Level 3 as a CLEC versus Level 3 acting as, in essence, an IXC carrying IP originating calls. The interconnection agreement that is the subject of this proceeding pertains to Level 3 as a CLEC, and it governs the interconnection of the parties' networks pursuant to Section 251 of the 1996 Act. Thus, for example, when the parties say in the agreed language of Section 2.1 that either party may choose to provide its own SS7 signaling or may purchase SS7 signaling from another party, they are saying that to each other in their capacity as carriers who are interconnecting their networks pursuant to Section 251 – Level 3 as the CLEC and SBC as the ILEC. Similarly, when

[14] Docket No. 04-5032, Testimony by Rogier Ducloo of Level 3, NV Transcript Volume 1, pp. 54-55. (January 12, 2005).

the parties say, in the agreed language of Section 2.1, that if Level 3 chooses to act as its own SS7 service provider, the parties will exchange traffic on a bill and keep basis and share the cost of quad links, they are saying that to each other in their capacities as CLEC and ILEC. Consistent with that, SBC's language appropriately requires the parties to deal elsewhere with the exchange of SS7 messages associated with traffic that they are not exchanging in that capacity.

Q. WHAT IF THE COMMISSION REJECTS SBC'S LANGUAGE PROHIBITING THE COMMINGLING OF TRAFFIC ON THE QUAD LINKS?

A. That should not happen, but if the Commission were to reject SBC's proposed language, it still should not accept Level 3's because SBC has no legal obligation to enter into a bill and keep arrangement for access traffic with a CLEC and such a mandate is outside the scope of this section 251 arbitration. Consequently, if the Commission were to reject SBC's position and allow the commingling of traffic on the quad links in the situation we are discussing, then the Commission would need to make clear that it is inappropriate to adopt such language in an ICA and that Level 3 should be required to purchase their SS7 services from SBC's access tariffs.

Q. IS THERE A STATE COMMISSION DECISION THAT SHEDS LIGHT ON THIS ISSUE?

A. There are two. First, the Indiana Utility Regulatory Commission ("Indiana Commission"), in the parallel arbitration between Level 3 and SBC Indiana (IURC Cause No. 42663 INT-01) resolved this issue in favor of SBC in the arbitration decision it issued on December 22, 2004. As of the date of this testimony, the Indiana Commission is the only state commission that has issued a final arbitration decision in parallel Level 3/SBC arbitration. The Indiana Utility Commission ruled that Section 2.1.1 of Appendix SS7 should incorporate the language proposed by SBC, and should not include the

alternative language proposed by Level 3 due to the technical inability of SBC's billing systems to be able to segregate SS7 messages between local and access traffic.[15]

Also, the Illinois Commerce Commission ("Illinois Commission") sustained the position that SBC is taking here when it rejected an AT&T request to "improperly extend" an Illinois Commission decision concerning local SS7 traffic "to include access SS7 traffic." In its decision, the Illinois Commission, recognizing that it would not be possible for the parties to segregate and measure SS7 messages for access traffic as opposed to SS7 messages for local traffic if both types were sent over the same link, approved SBC's language that required AT&T to separate the two types of traffic and send them over "different links."[16]

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The billing systems supporting SBC Missouri cannot segregate SS7 messages between local and access traffic. Thus, the Commission should adopt SBC's proposed language and reject Level 3's proposed language. If the Commission does not adopt SBC's proposed language, and instead permits Level 3 to commingle SS7 messages for inter-state traffic and local traffic on the same quad links, it should nonetheless not adopt Level 3's proposed language, but should instead require the parties to exchange all traffic exchanged over the quad links subject to the terms of SBC's SS7 access tariffs.

OET ISSUE 3: SHOULD LANGUAGE RELATING TO THE PASSING OF SS7 SIGNALING INFORMATION THAT WAS AGREED TO FOR USE IN

[15] Level 3 Arbitration Ruling, IURC Cause No. 42663, Dec. 22, 2004, at p. 176.
[16] *Clarifying Order*, ICC Docket 03-0239 (Oct. 20, 2003) (attached hereto as Schedule JEH-1) (emphasis added).

THE ITR APPENDIX ALSO BE INCLUDED IN THE OET APPENDIX?

Agreement Reference: OET Appendix, Section 3.1

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE WITH RESPECT TO SECTION 3.1 OF THE OUT OF EXCHANGE APPENDIX.

A. SBC has proposed language for Section 3.1 of the OET Appendix that is identical to language that has already been agreed to by the parties in ITR section 5.4.8 and that reads as follows:

> 5.4.8 LEVEL 3 shall provide and SBC-13STATE shall pass all SS7 signaling information including, without limitation, charge number, and originating line information ("OLI"). For terminating Circuit Switched Traffic, such as traffic exchanged over FGD trunks, SBC-13STATE will pass all SS7 signaling information including, without limitation, and CPN if it receives CPN from FGD carriers. All privacy indicators will be honored. Where available, each Party shall pass or provide network signaling information such as transit network selection ("TNS") parameter, carrier identification codes ("CIC") (CCS platform) and CIC/OZZ information (non-SS7 environment) wherever such information is needed for call routing or billing. The Parties will follow all OBF adopted or other mutually agreeable standards pertaining to TNS and CIC/OZZ codes.

Q. IN BRIEF, WHAT DOES THIS LANGUAGE PROVIDE?

A. The language simply affirms what is already reflected in Telcordia industry guidelines. These guidelines describe SS7 protocol parameters that allow carriers to determine the jurisdictional nature of calls for the purpose of accurate billing. The language also affirms Telcordia guidelines for other parameters, including, but not limited to, privacy indicators and for those that enable SBC to route an end user call to that end user's chosen long distance carrier.

Q. WHAT IS LEVEL 3'S CONCERN WITH REPEATING THIS LANGUAGE IN THE OET APPENDIX?

A. It is not clear. And it is not clear from Level 3's position statement in the OET DPL what the concern is. All Level 3 says in its DPL position statement is that "the Agreement

should not limit itself to strictly listed interphase or technologies" and "the Agreement should be flexible enough to allow for adoption of certain other technologies."

Q. WHAT DOES LEVEL 3 MEAN BY THE TERM "INTERPHASE"?

A. I do not know what Level 3 means by "interphase." It is not an interconnection term with which I am familiar.

Q. DOES THE LANGUAGE THAT SBC PROPOSES LIMIT TECHNOLOGIES, OR PREVENT THE AGREEMENT FROM BEING FLEXIBLE ENOUGH TO ALLOW FOR ADOPTION OF CERTAIN OTHER TECHNOLOGIES UPON AGREEMENT OF BOTH PARTIES OR APPLICABLE LAW, AS LEVEL 3 ASSERTS?

A. Certainly not. While the proposed language is specific to the two most common types of signaling protocols used for customer call set up (Multi Frequency ("MF") and Signaling System 7 ("SS7")), it merely relates a few of the available, but necessary, parameters that may be sent using MF or SS7 signaling**.** On occasion, originating carriers have failed to send some of the parameters mentioned in the proposed language that are necessary for parties to properly bill and route calls. This is why the contract should reflect that the parties will send necessary parameters that are required for successful call processing and billing.

There is absolutely nothing in SBC's proposed language that limits the parties' consideration and use of other technologies. Level 3 has already agreed to this language in ITR Section 5.4.8, and neither its testimony nor its position statement provides any reason why the same language should not be included here.

Q. WHY IS IT NECESSARY TO INCLUDE THIS LANGUAGE IN APPENDIX OET IF IT IS ALREADY IN APPENDIX ITR?

A. Appendix ITR addresses CLEC interconnection within SBC's operating territory. Thus, that Appendix, including the agreed-to language in ITR section 5.4.8, pertains only to interconnection within SBC's operating territory. The OET Appendix applies to Level 3

connectivity to SBC in the event Level 3 is situated in the same LATA as SBC, but is not situated within SBC's operating territory in the LATA. Since there are two appendices, covering two different types of traffic, it is appropriate to include identical language in each when the language applies in each. Telcordia standards for call signaling protocols are largely static once the protocol passes the development stage and is deployed in live networks. Depending on the call type, signal protocols remain constant if two carriers are in the same LEC operating territory, if they are in separate operating territories in the same LATA, in separate LATAs, or across the country.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, but I reserve the right to modify it as needed.