BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
GT&C-1 §§ 7.2, 7.2.1, 7.2.3 7.3.2	Should the assurance of payment requirements be state-specific or state-interdependent?	7.2 Assurance of payment may be request by **SBC-12STATE separately with respect to a specific State** if **in that State:** 7.2.1 at the Effective Date **LEVEL 3** had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to **SBC-13STATE in that State** for undisputed charges and/or appropriate escrow payments pursuant to Section 8 for disputed charges incurred . . . . 7.2.3 **LEVEL 3** fails to timely pay a bill rendered to **LEVEL 3** by **SBC-12STATE for the individual State** (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which **LEVEL 3** . . . 7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to **SBC-12STATE**	The assurance of payment requirements should be state specific. Under the SBC's proposed terms, SBC would be able to terminate Level 3's end users in the event that Level 3 allegedly fails to timely pay a bill, no matter if that bill is for services rendered in another state. Level 3's proposals make the common sense approach that links such a termination with the failure to pay for services rendered in that specific state. Under SBC's proposal, SBC would be able to terminate Level 3's Illinois end users for amounts allegedly unpaid for services rendered in California. Such a drastic measure as termination of service must be limited in scope.	The parties have agreed that SBC may request an assurance of payment (namely, a deposit) under circumstances that give SBC reason to be concerned that Level 3 may not timely pay its bills. Those circumstances include Level 3's failure to establish satisfactory credit; failure to pay an undisputed bill; admission of inability to pay its debts due to bankruptcy, and the like. If Level 3 finds itself in those circumstances in one or more other states (even if not *this*) state), SBC has reason to be insecure, and therefore should be permitted to request an assurance of payment.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		naming the SBC owned ILEC(s) designated by **SBC-12STATE for that State** as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to **SBC-12STATE** ("Letter of Credit").		
GT&C-2 § 7.2.1	What are the appropriate criteria for determining satisfactory credit as of the effective date of the agreement?	7.2 Assurance of payment may be request by **SBC-12STATE separately with respect to a specific State** if **in that State:** 7.2.1 at the Effective Date **LEVEL 3** had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to **SBC-13STATE in that State** for undisputed charges and/or appropriate escrow payments pursuant to Section 8 for disputed charges incurred as a **LEVEL 3 (with no more than two (2) valid past due notices for undisputed amounts within that twelve (12) month period),** or	Level 3 is concerned that the Agreement provide it with appropriate protections against SBC's unilateral demands for assurance of payments with little or no justification. Level 3 proposes a minimal requirement that it must have complied at least two past due notices for undisputed amounts billed by SBC with the prior twelve months before SBC can demand an assurance of payment. This proposal merely requires SBC to take into account Level 3's positive past payment history. If Level 3 is	Due to the current economic climate, the number of CLEC bankruptcies, and the number of CLECs over-extended financially, SBC has revised its policy to define satisfactory credit as twelve consecutive months of remitting payment by the bill due date. It is important to note that late payment notices are only sent on past due accounts that are both unpaid and undisputed. It is not appropriate for Level 3 to withhold undisputed payment and also avoid an increase in assurance of payment or payment

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			unable to maintain a positive past history of payment, then it rightly can be asked to make an assurance of payment.	altogether.
GT&C-3 § 7.2.2	How should the ICA describe the impairment that will trigger a request for assurance of payment?	[7.2 Assurance of payment may be request by **SBC-12STATE separately with respect to a specific State** if **in that State:**] 7.2.2 at any time on or after the Effective Date, there has been a **significant and material** impairment of the established ***credit, financial health, or credit worthiness of*** **LEVEL 3** as compared to its status on **the Effective Date** ***August 1, 2004***. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about **LEVEL 3** that may be considered includes, but is not limited to, investor warning	Level 3 is concerned that the Agreement provide it with appropriate protections against SBC's unilateral demands for assurance of payments with little or no justification. Level 3 proposes that there must be a significant and material impairment to Level 3's financial status prior to SBC demanding an assurance of payment. With such a safeguard, the Commission will protect Level 3 from unilateral and improper demands for assurance of payment demands by SBC.	If Level 3's creditworthiness is impaired, as reflected in the standard sources upon which the parties have agreed (Moody's, for example), then Level 3's creditworthiness is impaired; SBC's entitlement to request an assurance of payment should not depend on the amorphous (and dispute-provoking) question whether the impairment is "significant" or "material" – whatever that may mean. SBC does not know, and cannot imagine, the basis for Level 3's objection to the words "credit, financial

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		briefs, rating downgrades, and articles discussing pending credit problems; or		health or creditworthiness."
GT&C-4 §7.2.3	In order for failure to timely pay a bill to trigger a request for assurance of payment, which party(ies) must comply with the presentation and dispute resolution requirements of the Agreement and to what extent?	7.2.3 **LEVEL 3** fails to timely pay a bill rendered to **LEVEL 3** by **SBC-12STATE for the individual State** (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which **LEVEL 3** has **substantially** complied with all requirements set forth in Section 9.3) **provided that SBC-12STATE has likewise substantially complied with all requirements of this Agreement with respect to presentation of invoices and dispute resolution);** or	Level 3 is concerned that the Agreement provide it with appropriate protections against SBC's unilateral demands for assurance of payments with little or no justification. Level 3 proposes that SBC is precluded from demanding an assurance of payment from Level 3 if SBC has failed to comply with the Agreements terms of issuing invoices and dispute resolution. The Agreement should make clear that neither Party can unilaterally terminate service or demand assurance of payment without first following all of the applicable contractual and legal	Level 3's proposed language would allow Level 3 to circumvent its payment obligations, because SBC would be forced to pursue dispute resolution on charges that are not even disputed.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			requirements contained therein.	
GT&C-5 §§ 7.8, 7.8.1	Should Level 3 be permitted to dispute the reasonableness of an SBC request for assurance of payment?	7.8 Notwithstanding anything else set forth in this Agreement, if **SBC-12STATE** makes a request for assurance of payment in accordance with the terms of this Section, then **SBC-12STATE** shall have no obligation thereafter to perform under this Agreement until such time as **LEVEL 3** has furnished **SBC-12STATE** with the assurance of payment requested; **unless LEVEL 3 raises a good faith bona fide dispute**	Yes. If the Agreement is going to allow SBC to demand an assurance of payment, the Agreement must also allow Level 3 the opportunity to dispute the reasonableness of that demand. Level 3 proposes that it have the opportunity to raise good faith bona fide disputes with respect to such SBC demand within ten days of SBC making it.	SBC cannot request an assurance of payment unless certain very specific criteria, set forth in sections 7.2.1, 7.2.2, 7.2.3, have been met. The parties are arbitrating those criteria, and the criteria that wind up in the Agreement will have been approved by this Commission. The whole point of having the criteria is that if they met, SBC can request an assurance of payment. If SBC makes such a request and Level 3 believes the request is not well founded because in reality the criteria have not been met, then of course Level 3 is entitled to dispute SBC Illinois' request on that basis. But it would be nonsensical to

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		with respect to the reasonableness of the request by SBC-13STATE; provided, however, that SBC-12STATE will permit LEVEL 3 to raise a good faith bona fide dispute within 10 days with regard to the reasonableness of such a request. ***Provided, however that SBC-12STATE will permit LEVEL 3 a minimum of 10 (ten) Business Days to respond to a request for assurance of payment before invoking this Section.***		permit Level 3 to also dispute SBC Illinois' request on the ground that it is "unreasonable." Either the criteria are met, in which case a deposit is in order, or the criteria are not met, in which case a deposit is not in order. "Reasonableness" is being taken into account in establishing the criteria. If Level 3 were allowed to dispute a request for assurance of payment even when the Commission-approved (i.e. reasonable) critera are met on the ground that the request is nonetheless not "reasonable," then Level 3 could thwart every deposit request just by asserting (at Level 3's whim) that the request is not "reasonable."

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		7.8.1 If **LEVEL 3** fails to either furnish the requested adequate assurance of payment on or before the date set forth in the request **or raise a good faith, bona fide dispute with respect to the reasonableness of the request, SBC-12STATE** may also invoke the provisions set forth in Section 9.5 through Section 9.7.		
GT&C-6 § 8.8.1	Under what circumstances may SBC disconnect services for nonpayment?	8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be grounds for termination of the Interconnection, Resale Services, Network Elements, Collocation,	Level 3 is concerned that the Agreement provide it with appropriate protections against SBC's unilateral disconnection of Level 3's end users with little or no justification. Level 3 proposes the	SBC's proposed language allows SBC, after due notice and a reasonable amount of time, to disconnect any and all services if Level 3 fails to pay or dispute amounts due. SBC's language

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		functions, facilities, products and services provided under this Agreement; **provided, however that the Billing Party shall comply then with all procedures set forth under this Section 8 and otherwise set forth in applicable law regarding discontinuance of service and/or termination of this Agreement.**	Agreement contain terms that require SBC to apply with all	contemplates a tiered process; notification of overdue amounts, suspension of new and pending order if such amounts remain unpaid and finally, disconnection if, after two notices, such amounts remain both unpaid and undisputed. It is important to recognize that this issue concerns amounts that Level 3 does not dispute and are due to SBC. SBC does not propose disconnection for amounts that are subject to a billing dispute. Level 3 proposes that SBC should be limited to disconnection of only those services for which Level 3 has not paid. This approach is problematic because it permits a CLEC to avoid disconnection by moving, for example, UNE

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				lines that are not paid for to resale. A CLEC could avoid payment and disconnection in perpetuity. If Level 3 refuses to pay an undisputed amount, SBC should have the right to disconnect service.
GT&C-7 § 9.2	Should Level 3's failure to pay undisputed charges entitle SBC to discontinue providing all products and services under the Agreement , or only the product(s) or service(s) for which Level 3 has failed to pay undisputed charges?	9.2 Failure to pay undisputed charges ***shall*** **<u>may</u>** be grounds for disconnection of ***services*** **<u>the specific Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services for which undisputed payment has not been rendered</u>** under this Agreement. If a Party fails to pay any undisputed charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges (**"Unpaid Charges"**), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party	Level 3 is concerned that the Agreement provide it with appropriate protections against SBC's unilateral demands for assurance of payments with little or no justification. Level 3 proposes that SBC only be allowed to disconnect the specific service or products for which Level 3 has failed to pay the undisputed amount. SBC's proposed language allows it to disconnect any and all services or products purchased by Level 3 for	First, this provision should say that failure to pay "shall be" grounds for disconnection, not that it "may" be. The use of "shall" does not mean that disconnection is automatic, but only that under this Agreement, nonpayment is in fact a ground for disconnection *under the circumstances described*. If the Agreement were to say "may," the question would arise. "How does one determine when it is?" Level 3 would say it is a ground when the

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services **for which undisputed payment has not been rendered** under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within **thirty (30) Calendar** *ten (10) Business Days* following receipt of the Billing Party's notice of Unpaid Charges.	alleged failure to pay undisputed amounts for only a subset of those services. Such an overreach leaves Level 3 at risk of loosing its entire customer base subject to the whims of SBC.	circumstances described in the provision are present – but that is exactly why the provision should say "shall." Second, charges submitted pursuant to the Agreement should be disputed or paid. Level 3's proposed language not only allows 30 calendar days to respond to a notice of termination, but also to avoid payment on undisputed charges indefinitely. If an amount is not disputed, there is no reason that Level 3 cannot pay such amount by the bill due date, but without question Level 3 should remit after two late payment notices. SBC's proposed language in Section 9.2 applies when Level 3 has failed to remit payment by the bill due

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				date and not responded to two late payment notices.
GT&C-8 § 9.3	What is a reasonable interval to respond to notice of non-payment in the manner required under the Agreement?	9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than **thirty (30) Calendar** ***ten (10) Business*** Days following receipt of the Billing Party's notice of Unpaid Charges. 9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed (**"Disputed Amounts"**) and the specific details listed in Section 10.1 of this Agreement, together with the reasons for its dispute; and	Level 3 proposes that the Parties allow for thirty calendar days following receipt of the notice of unpaid charges before a formal dispute must be filed. Level 3 believes that this reasonable period of time will allow the Parties adequate time to investigate, audit and settle the dispute prior to relying on the dispute terms. SBC's proposed ten day period does not allow the Parties adequate time for such discussions, and will only result in the disputing party filing additional disputes, and invoking the dispute resolution terms of the Agreement.	SBC's proposed language appropriately allows Level 3 10 days to respond to a late payment notice. Pursuant to Section 8.1.1, remittance is due within 30 calendar days of each bill date.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and 9.3.3 pay all Disputed Amounts into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and 9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		into that account. Subject to Section 8.4 preceding, until evidence that the full amount of the Disputed Charges has been deposited into an escrow account is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.		
GT&C-9 §§ 9.5.1, 9.5.1.1, 9.5.1.2, 9.6.1.1, 9.6.1.2, 9.7.2.2	(a) Should acceptance of new order and pending orders be suspended if undisputed charges are outstanding on the day the Billing Party has sent a second late payment notice? (b) Should the Billing Party be permitted to disconnect and discontinue providing	9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d)	(a) Level 3 should not be precluded from submitting, and SBC accepting and acting upon, new or pending orders in the event that SBC has sent out a second payment notice. As described in Issue GTC-8, Level 3 is proposing that the billed party have an additional 30 calendar days after receipt of the notice of late payment prior to	SBC's proposed language applies only in extreme cases of non-payment and comes into play when a party fails to pay or dispute charges, even after receiving a second late payment notice. Under those circumstances, the answer to question (a) is yes, and the answer to (b) is that SBC Illinois should be permitted to discontinue

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	all products and services under the Agreement on the day the Billing part has sent a second late payment notice, or only those specific network elements and services for which undisputed payment has not been rendered?	make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. ***On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:*** 9.5.1.1 ***suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or***	formalizing the dispute. Unless and until such a determination is made, SBC does not know whether a formal dispute exists and should be precluded from freezing Level 3's orders. (b) Level 3 proposes that SBC only be allowed to disconnect the specific service or products for which Level 3 has failed to pay the undisputed amount. SBC's proposed language allows it to disconnect and discontinue providing any and all services or products purchased by Level 3 upon the issuance of a second payment notice for only a subset of those services. Such an overreach leaves Level 3 at risk of loosing its entire customer base subject to the whims of	providing services to Level 3 under this Agreement altogether.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		9.5.1.2 ***suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement.*** 9.6.1.1 ***cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and*** 9.6.1.2 discontinue providing **the specific** Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services **for which undisputed payment has not been rendered** under this Agreement after notice to Non-Paying Party set forth in Section 9.5.1	SBC.	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		9.7.2.2 disconnect **the specific** Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services **for which undisputed payment has not been rendered** under this Agreement after notice to Non-Paying Party set forth in Section 9.5.1.		
GT&C-10 §§ 21.1, 21.2, 21.3, 21.4	Should SBC's language regarding intervening law be incorporated into this agreement?	21. INTERVENING LAW 21.1 This Agreement is entered into as a result of both negotiations between the Parties and the incorporation of results of orders, rules and arbitration decisions of the Commissions, and/or FCC. If any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any effective action of any state or federal regulatory or legislative bodies or courts of competent	Level 3 believes the state of the law at the time of the Effective Date is what it is, and that SBC's proposed language buries the Agreement into minutia that is not needed and will only lead to confusion as to the intended meaning. SBC's proposed language goes beyond the basic "if the law changes, the Parties will notify and negotiate", which is the real intent of the Intervening Law provisions, into a confusing, distorted	SBC's language clearly defines when each party may invoke change of law and what process the parties should follow in negotiating change of law language, including a time line for negotiation and dispute resolution. By providing more clarity in the interconnection agreement, the parties will avoid disputes regarding how to interpret the change of law clause which SBC proposes to eliminate the section complete. See global issues DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		jurisdiction, ***including any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999) or Ameritech v. FCC, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event,*** the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement.	attempt to list every case that could, may or might possibly impact any of the terms of the Agreement. If the particular case impacts the terms of the Agreement such that SBC believes that it qualifies as an Intervening Change in Law in any particular jurisdiction, then it can and should make the appropriate notice to Level 3. To burden the Agreement with such a confusing and unneeded list is not appropriate.	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the Dispute Resolution process provided for in this Agreement. ***Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in Ameritech v. FCC, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its rights under this Intervening Law paragraph.***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		21.2 ***This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s).*** In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review. ***: the United States Supreme Court's opinion in Verizon v. FCC, et al, 535 U.S.***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		467 (2002); the D.C. Circuit's decision in United States Telecom Association, et al. ("USTA") v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		(FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including any amendments to this Agreement), SBC-13STATE shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and LEVEL 3's own elements or UNEs in commingled		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. 21.3 ***The Parties acknowledge and agree that they have previously executed a Amendment Superseding Certain Compensation, Interconnection and Trunking Provisions ("First Amendment") and a Second Amendment Superseding Certain Compensation, Interconnection and Trunking Provisions ("Second Amendment"), in which they have waived certain rights they may have under the Intervening/Change in Law provisions of the Agreement with respect to any reciprocal compensation or Total Compensable Local Traffic (as defined in the Second Amendment), POIs or trunking requirements that are subject to the First Amendment and the***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Second Amendment for the period from September 1, 2000 through December 31, 2004. Notwithstanding anything to the contrary in this Amendment or elsewhere in the Agreement, nothing in this Amendment is intended nor should be construed as modifying or superseding the rates, terms and conditions in the First Amendment and Second Amendment. With the exception of the explicit waivers in the First Amendment and Second Amendment for the time period of September 1, 2000 through December 31, 2004, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement.		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		The Parties further acknowledge and agree that SBC Indiana, SBC Ohio, SBC Texas, SBC Wisconsin, SBC Arkansas, SBC Michigan, SBC California and SBC Illinois have provided on the dates below notice of the invocation of the intercarrier compensation plan adopted by the FCC in its ISP Compensation Order as that order was released on April 27, 2001 ("FCC Plan"), subject to the terms of the First Amendment and the Second Amendment, in (1) Indiana, Ohio, Texas and Wisconsin, effective June 1, 2003; (2) Arkansas and Michigan, effective July 6, 2003; (3) California, effective August 1, 2003; and (3) Illinois effective September 1, 2003 and that in entering into this Agreement, SBC Indiana, SBC Ohio, SBC Texas, SBC Wisconsin, SBC Arkansas, SBC Michigan, SBC California and SBC Illinois, and the other SBC incumbent telephone operating		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		companies ("ILECs") are reserving their right to seek conforming modifications to the Agreement to formally incorporate the rates, terms and conditions of such FCC Plan into the Agreement in each applicable state and any of the other states in which SBC-13STATE may hereafter invoke the FCC Plan, subject to the terms of the First Amendment and the Second Amendment. The Parties agree that on or before March 31, 2004, they shall commence negotiations regarding the specific FCC Plan rates, terms and conditions that shall be effective between the Parties the day immediately after expiration of the Parties' Second Amendment; provided, however, that both Parties reserve all rights with respect to the proper implementation of the FCC Plan. In the event that specific FCC Plan rates, terms and conditions have not been incorporated into this Agreement upon expiration		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		of the Parties' Second Amendment (and provided further that there has been no change in law with respect to the matters addressed in the FCC's ISP Compensation Order including, but not limited to, the FCC Plan by that date of expiration), then the Parties acknowledge and agree that effective the day immediately following expiration in the states identified in this Section and any other states where SBC ILECs invoke the FCC Plan, ISP-Bound Traffic shall be subject to the FCC Plan rates, terms and conditions or whatever other arrangements the Parties may have mutually negotiated and are approved and in effect as of the date of expiration. Although the Parties agree that the FCC Plan will be implemented with respect to ISP-Bound Traffic the day immediately following expiration of the Parties' Second Amendment (subject to any		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		change of law) as described above, each Party reserves any rights it may have as to the proper implementation of the Plan except as such implementation has been agreed to herein. Notwithstanding anything contrary herein, if at any time <u>LEVEL 3</u> is compensated under the rates, terms and conditions of the underlying Appendix Reciprocal Compensation (excluding the First and Second Amendment) in the states identified in this Section or any other states where an SBC ILEC(s) invokes the FCC Plan, ISP-Bound Traffic in those States shall be subject to the FCC Plan rates, terms, and conditions immediately, subject to any changes in law. 21.4 ***With the exception of the explicit waivers in the First Amendment and Second Amendment for the time period of September 1, 2000 through***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		December 31, 2004, if any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.		
GT&C-11 § 29.1	Should Level 3 be allowed to assign or transfer this agreement to an affiliate with whom SBC already has an interconnection agreement?	29.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of the Other Party, however, such consent shall not be unreasonably withheld; provided however, that the withholding of consent to an assignment or transfer that has been approved by all jurisdictional bodies whose approval is required by law shall	SBC attempts to limit Level 3's ability to assign or otherwise transfer this Agreement to an affiliate if that affiliate already has an existing interconnection agreement. This imposes an unnecessary burden on Level 3 that prohibits it from freely assigning its rights to an affiliate, but allows SBC the ability to assign the agreement to another affiliate with	SBC-13STATE would object to an assignment of Level 3's agreement to an Affiliate who already had an executed agreement with SBC-13STATE in that particular state. Notice of this assignment is needed because SBC-13STATE's administrative systems and billing systems and tables are not able to handle more than one agreement per entity in

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		be unreasonable. Either Party may assign or transfer this Agreement to its Affiliate by providing ninety (90) days' prior written notice to the Other Party of such assignment or transfer; provided, further, that such assignment is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain proper Commission certification and approvals) or the terms and conditions of this Agreement. ***Notwithstanding the foregoing,*** **LEVEL 3** ***may not assign or transfer this Agreement (or any rights or obligations hereunder) to its Affiliate if that Affiliate is a party to a separate interconnection agreement with SBC-13STATE under Sections 251 and 252 of the Act.*** Any attempted assignment or transfer that is neither permitted by this Section 29.1 nor otherwise agreed to by the Parties in writing is void ab initio.	whom Level 3 may have an agreement without impunity.	a state with the same name and/or OCN/AECN number. The OCN is used as the CLEC identifier in these systems. SBC-13STATE also needs to remain in compliance with the agreement.
DEF 1	Should the definition of	**"Access Tandem Switch"** is **a**	The definition of Access	The network architectures

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Access Tandem Switch be limited to IXC-carried traffic or should it include IntraLATA toll Traffic, Section 251(b)(5) Traffic and ISP-Bound Traffic?	**local exchange carrier switching system that provides a concentration and distribution function for originating and/or terminating traffic between a LEC end office network and IXC points of presence** ***defined as a switching machine within the public switched telecommunications network that is used to connect and switch trunk circuits between and among office switches for IXC-carried traffic (SBC-SOUTHWEST) and IXC-carried, IntraLATA Toll traffic, Section 251(b)(5) traffic and ISP-bound Traffic (SBC CALIFORNIA, SBC-NEVADA, SBC-MIDWEST and SBC- CONNECTICUT)***.	Tandem Switch should refer only to IXC-carried traffic, which is consistent with FCC orders and regulations. Access tandem switch is used when there is interexchange carrier, circuit switched traffic, not in the next-generation of technology. "For long distance calls, by contrast, the long-distance carrier collects from the user and pays both LECs--the one originating and the one terminating the call. *Local Competition Order*, 11 FCC Rcd at 16013, ¶ 1034." WorldCom, Inc. v. F.C.C., 288 F.3d 429, 431 (DC Cir. 2002). Level 3's proposed definition is taken directly from the Newton's telecom Dictionary, 14th Edition.	employed in SBC's ILEC region have been established for many years. Within those designs are tandems that have been provisioned to handle specific types of traffic. One of these types of switches is an Access Tandem. In certain states, an Access Tandem handles only IXC carried traffic. In other states, it is used for IntraLATA Toll traffic, Section 251(b)(5) traffic and ISP-bound Traffic as well. It is important to define each type of tandem because not all the tandem provisions within the contract apply to all the different types of tandems. Level 3's definition does not reflect the actual networks in use in the SBC states.
DEF 2	In the event that the	**"Call Record" shall include**	This issue is directly linked	SBC opposes the use of the

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Commission agrees with Level 3 in the Intercarrier Compensation Appendix Section 4.5 that the Parties should not be required to use "CPN" in the call flow for IP-Enabled Traffic but rather should use "Call Record", should the Commission incorporate Level 3's proposed definition for "Call Record"?	**identification of the following: charge number, Calling Party Number ("CPN"), Other Carrier Number ("OCN"), or Automatic Number Identifier ("ANI"), Originating Line Indicator ("OLI"), and will include an OLI identification of whether a call is IP Enabled. In the alternative, a "Call Record" may include any other information agreed upon by both Parties to be used for identifying the jurisdictional nature of the calling party or for assessing applicable intercarrier compensation charges.**	with Level 3's proposals in the Intercarrier Compensation Appendix, Section 4.5. Level 3 proposes utilizing the phrase "Call Record" when discussing the Parties' obligations to provide identification data within the call flow of circuit switched traffic, as compared to SBC's proposed use of the CPN data for all traffic. Level 3 believes the "Call Record" reference allows for more flexibility for the Parties to agree to new or different technologies in recording. SBC's proposed "CPN" reference limits the Parties to only that form of technology. Further, the technology does not exist that will allow for "CPN" to be included in the call flow of	term "Call Record," which Level 3 proposes to use in lieu of "CPN." "CPN" is a term used and known in the industry, unlike Level 3's "Call Record." Whether this definition should be included depends on how the Commission resolves the parties' dispute with respect to Section 4.5 of the Intercarrier Compensation Appendix.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			IP-Enabled Traffic. In practical terms, the issue of whether the "call record" definition should be included will be determined when the Commission addresses Level 3's proposed language in Section 4.5 of the Intercarrier Compensation Appendix.	
DEF 3	**Level 3 Issue (a):** Should the categorization of Circuit Switched Traffic be consistent with the FCC's orders that distinguish Circuit Switched Traffic from IP enabled traffic? **SBC Issue (a):** Should the Commission adopt a definition of "Circuit Switched IntraLATA Toll Traffic"?	**"Circuit Switched IntraLATA Toll Traffic" is Telecommunications Services traffic between one SBC-13STATE's local calling area and the local calling area of another SBC-13STATE or LEC within one LATA within the respective state.**	(a) Yes, the Agreement should include the definition of Circuit Switched intraLATA Toll Traffic. This definition follows the FCC's latest pronouncement on what constitutes this type of traffic in its AT&T IP Order. In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Docket No. 02-	(a) No. For the reasons set forth in connection with various ITR issues (including Nos. 2, 5, 13, 15 and 18), Level 3's references to Circuit Switched IntraLATA Toll Traffic are inappropriate and the term should not appear in the Agreement. (b) No. Level 3's definition is not consistent with an IntraLATA call that is exchanged outside of a local calling area as

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	SBC Issue (b) 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?		361 (rel. April 21, 2004)	defined by applicable Commission rules. Accordingly, this ambiguity could lead to future intercarrier compensation disputes between the parties and as such the Commission should use the definition of IntraLATA Toll Traffic already agreed to by the parties. *See also* SBC Position Statement, Issues ITR 2, 5, 13, 15 and 18.
DEF 4	**Level 3 Issue:** Does the FCC's Interim Order maintain the status quo as of June 15, 2004 of the parties' existing interconnection agreement with respect to the availability of UNEs? **SBC Issue (a):** Should the Commission adopt definitions of "Declassified" and	***"Declassified" or "Declassification" means the situation where a network element, including a network element referred to as a Lawful UNE under this Agreement, ceases to be a Lawful UNE under this Agreement because it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders.***	Yes. The Interim Order adopted by the FCC on July 21, 2004 (rel. August 20, 2004) maintains the status quo that existed as of June 15, 2004 for the provision of unbundled network elements from SBC to Level 3. As of June 15, 2004, Level 3 was entitled to receive unbundled network elements pursuant to the terms and conditions of the	(a) Yes. For the reasons set forth in connection with various UNE issues, SBC's references to "Declassified" and "Declassification" are appropriate and the terms should appear in the Agreement. (b) Yes. Given the history of court review of unbundling decisions and the likelihood that

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	"Declassification"? **SBC Issue (b):** If the answer to (a) is yes, should the definition of "Declassified" and "Declassification" take into account FCC rules and judicial orders regarding which network elements must be provided as UNEs?	***Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified."***	parties' Interconnection Agreement that was approved by the Commission. Level 3 does not wish to waive its rights to obtain unbundled network elements pursuant to those existing terms and conditions. In addition, the FCC has held that Level 3 and SBC may not arbitrate new agreements until after the FCC adopts permanents rules for the provision of unbundled network elements: "Moreover, if the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into other carriers' new contracts. The interim approach adopted here, in contrast, does not enable	additional UNEs will be declassified in the future, the ICA should make clear that SBC is only required to unbundle network elements that are lawfully required to be unbundled under Section 251 at the time they are requested. Accordingly, SBC proposes the defined term "Lawful UNE" in the UNE Appendix to mean UNEs that are required under 251(c)(3), pursuant to valid FCC and judicial orders. Of course, introducing a defined term for when a UNE is properly required under the Agreement, means that there needs to be a corresponding term for when the UNE is no longer properly required, such as when the FCC, a court, or any other body with authority determines that the UNE is no longer

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			competing carriers to do either." ¶23. According to the FCC, "such litigation would be wasteful in light of the [FCC's] plan to adopt new permanent rules as soon as possible." ¶17. The FCC recognizes that "the implementation of a new interim approach could lead to further disruption and confusion that would disserve the goals of section 251." In light of the foregoing, Level 3 does not waive any rights to those UNEs to which it is entitled by agreeing to terms and conditions other than what is in its existing Interconnection Agreement. Level 3 will also oppose any effort by SBC to attempt to arbitrate UNEs in light of the FCC Interim Order.	required under applicable law -- hence the proposal of this defined term "Declassified" or "Declassification." In the UNE Appendix, SBC's proposed language explains the consequences of a UNE becoming declassified, and SBC refers to the position statements made in the UNE DPL for an explanation of its declassification position.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			The dispute resolution process adopted by the Commission at the conclusion of this proceeding can be used by the parties to adjudicate the terms and conditions for SBC's provision of UNEs after the FCC has issued revised rules.	
DEF 5	**Level 3 issue:** Should the Demarcation Point be defined consistent with the FCC's definition and regulations? **SBC Issue:** Should the Demarcation Point serve as the legal, technical and financial boundary between the Parties networks?	**"Demarcation Point"** is the point of demarcation and/or interconnection between the communications facilities of a provider of wireline telecommunications, and terminal equipment, protective apparatus or wiring at a subscriber's premises. Demarcation Point defines the boundary between the Parties' networks **for determining legal, technical and financial responsibility** for their respective facilities.	Consistent with FCC orders and regulations, including 47 CFR 68.43, Level 3 proposes clearly articulating the fact that the Demarcation Point serves as the boundary line between the Parties' network, but also the legal, technical and financial responsibilities. This is also consistent with the manner in which SBC's tariff operates. Level 3 believes this clarification will remove confusion and	Level 3 is improperly attempting to expand the definition of "Demarcation Point" to delineate the parties' respective substantive legal, technical and financial rights and obligations. Language delineating the "boundary" for determining legal, technical and financial responsibilities of the parties is more appropriately included in specific substantive appendices, and is in fact

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			possible litigation in the future, as it clearly draws a line where the two parties responsibilities end.	already included in various appendices. Moreover, the rights and obligations of the respective parties will depend on the context in which the term "Demarcation Point" is being used. Level 3's language is overly simplistic. SBC's proposed language comports with the accepted, industry-wide accepted notion of what a "Demarcation Point" is.
DEF 6	Definition of DSX Panel -- RESOLVED			
DEF 7	**Level 3 Issue:** Should the Commission define an ISP according to MTS and WATS Market Structure Order, CC Docket No. 78-72, adopted in 1983, or should the commission adopt a more current statement of the law as adopted by the FCC?	**"Internet Service Provider" (ISP)** is **defined consistent with the FCC in its Orders and regulations** ***an Enhanced Service Provider that provides Internet Services and is defined in paragraph 341 of the FCC's First Report and Order in CC Docket No. 97-158***.	Level 3 notes that in the FCC's First Report and Order in CC Docket No. 97-158 specifically incorporated by SBC, the FCC goes back to a definition of ISP that stems from the Modified final Judgment, adopted in 1983. Thus, SBC is asking this Commission to adopt a	SBC's language provides clarity to the definition for "Internet Service Provider" by referencing the specific paragraph of the FCC's First Report and Order in CC Docket No. 97-158 where the definition is found. Level 3's issue description

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	SBC Issue: Should the definition of Internet Service Provider include reference to paragraph 341 of the FCC's First Report and Order in Docket No. 97-158?		definition for ISP that is more than 20 years old. Level 3 believes that Commission should adopt a more flexible definition, which will allow for the incorporation of more recent FCC orders defining the term.	is confusing and misleading. SBC proposes a definition of ISP that was embraced by the FCC in a 1997 Order. The implication of Level 3's issue description that SBC is proposing an outdated definition from 1983 is not accurate.
DEF 8	**Level 3 Issue:** Should ISP-Bound Traffic be identified as originating as a call that originates on the circuit switched network and terminates to an Internet Service Provider? **SBC Issue:** Should the definition of "ISP-Bound Traffic" reference the FCC's ISP Compensation Order and be limited to certain physical locations of the	"ISP-Bound Traffic" means traffic that is limited to telecommunications traffic exchanged between CLEC and SBC-I3STATE in accordance with the FCC's Order on Remand Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"). **Accordingly, ISP-Bound Traffic**	(a) Level 3's proposed language clarifies that ISP-Bound Traffic is originated as Circuit switched traffic terminating at an ISP customer of the other Party. This language is consistent with the language used in the FCC orders. It does not place a geographic limitation on the traffic, as SBC attempts to do.	Since SBC has invoked the FCC ISP Plan in several states, it must include a definition for ISP-Bound Traffic, in accordance with the FCC's Order. The FCC affirmed that ISP-bound traffic and local calls are communication between two parties that remain squarely in the same local calling area. This is

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	end user and terminating ISP?	**shall mean Telecommunications Services Traffic exchanged between the Parties where the originating Customer of one Party places a Circuit Switched Traffic call over the circuit-switched network to an Internet Service Provider ("ISP") customer of the other Party.** ***"ISP-Bound Traffic" is traffic in which the originating end user of one Party and the terminating ISP of the other Party are:*** ***(i) both physically located in the same SBC-13-STATE Local Exchange Area as defined by SBC-13STATE Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or*** ***(ii) both physically located within neighboring SBC-***		illustrated in paragraph 90 of the ISP Compensation Order which specifically states that the FCC intended the same intercarrier compensation rates, terms and conditions to apply to voice and ISP-Bound Traffic. *See FCC ISP Compensation Order*, 16 FCC Rcd at 9194-95, ¶ 90. Additional detail regarding this position can be found throughout the Intercarrier Compensation DPL. Level 3's proposed definition suffers from the same infirmities as its several other attempts to insert "Circuit Switched" into the parties' Agreement. See Issues DEF 2 and ITR 2, 5, 13, 15 and 18.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		13STATE Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.		
DEF 9	**Level 3:** Should the definition of "Local/Access Tandem Switch" also include a substantive provision that would require Level 3 to build duplicative interconnection trunks? **SBC Issue (a):** Should the Commission adopt a definition of "Local/Access Tandem	***"Local/Access*** Tandem Switch***" is defined as*** **an intermediate switch or connection between an originating telephone call location and the final destination of the call** ***a switching machine within the public switched telecommunications network that is used to connect and switch trunk circuits between and among other central office switches for Section 251(b)(5)/IntraLATA Traffic and***	(a) No. Level 3 takes the position throughout this arbitration that SBC has the obligation under Section 251 to interconnect its network for the exchange of traffic between the parties. SBC also has the obligation to interconnect in a manner that allows Level 3 to exchange traffic in a manner consistent with the manner in which SBC	(a) Yes. This term is used throughout various appendices, including the GTC Definitions and ITR Appendices, in both agreed-to and contested provisions. This term therefore should be defined. (b) SBC's network architecture includes tandems that have been provisioned to handle

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Trunk "? **SBC Issue (b):** Should the definition of "Local/Access Tandem Switch" reflect that such switches are used for Section 251(b)(5)/ IntraLATA Traffic and IXC-carried traffic?	***IXC-carried traffic***.	exchanges traffic with itself, its affiliates and any other party. This would include the obligation to allow for Level 3 to exchange all types of traffic over the local interconnection trunks and facilities of SBC, which SBC does for itself and other CLECs. By inserting in the definitions an aspect applying a "local" requirement, SBC is, in effect, prohibiting Level 3 from exchanging anything other than "local"" traffic over these facilities. To the extent that the Commission agrees with Level 3 that it is able to carry all forms of traffic over the interconnection trunks and facilities, then SBC's proposed language is not consistent with that determination, and must be rejected.	specific types of traffic. One of these types of tandems is a Local/Access Tandem. A Local/Access Tandem is provisioned to handle Section 251(b)(5)/IntraLATA and IXC carried traffic. It is important to define each type of tandem because not all of the tandem provisions within the contract apply to all the different types of tandems. Some provisions apply only to the Local/Access Tandem. Level 3 opposes defining *Local/Access* Tandem Switch at all (it would strip out "Local/Access" and merely define "Tandem Switch"), even though the term is used as agreed language in several places in the parties' Agreement, including in the GTC Definitions and the ITR

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			To the extent that the Commission requires the Parties to define the tandem functionality, Level 3 has proposed its language, which is taken directly from Newton's Telecom Dictionary, 15th Edition, commonly accepted within the telecommunications industry.	Appendix. Moreover, Level 3's issue description is nonsensical. SBC's proposed definition does not create any substantive obligations; it simply defines a term.
DEF 10	Level 3: Should the definition of "Local Interconnection Trunk" also include a substantive provision that would require Level 3 to build duplicative interconnection trunks? SBC Issue (a): Should the Commission adopt a definition of "Local Interconnection Trunk	*"Local* Interconnection Trunk Groups" *are* **two-way trunk groups that Level 3 and SBC establish pursuant to Section 251(c)(2) of the Act over which the carriers may exchange Telecommunications Traffic regardless of the compensation rate that currently applies or eventually could apply to such traffic. Interconnection Trunk Groups are separate and distinct from "meet point trunk groups" which carry traffic to and from**	See Level 3 Position/Support for Issue DEF 9 above (Local/Access Tandem Switch)	(a) Yes. The term is used throughout various appendices, including the OET, NIM and ITR Appendices, in both agreed-to and contested provisions (including some provisions that Level 3 is advocating.) This term therefore should be defined. (b) SBC proposes a definition that is specific as

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Groups"? SBC Issue (b): If the answer to (a) is yes, should "Local Interconnection Trunk Groups" be defined as trunks used to carry Section 251(b)(5)/IntraLATA Traffic only?	**third party interexchange carriers.** *two-way trunk groups used to carry Section 251(b)(5)/IntraLATA Traffic only.*		to the types of traffic that can be delivered over these local trunk groups and only includes traffic types that both parties have been openly negotiating. Because of recent system gaming to avoid appropriate access charges by the improper routing of InterLATA and IntraLATA Traffic carried by an IXC over Local Interconnection Trunk Groups, there is now a need to clearly define what constitutes various traffic types and what traffic should be permitted over these local trunk groups. Level 3 has not proposed any definition, despite the fact that the term is used in numerous agreed-to provisions in the ITR and OET Appendices, as well as provisions that Level 3

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				is advocating. Moreover, Level 3's issue description is nonsensical. SBC's proposed definition does not create any substantive obligations; it simply defines a term.
DEF 11	**Level 3:** Should the definition of "Local/IntraLATA Tandem Switch also include a substantive provision that would require Level 3 to build duplicative interconnection trunks? **SBC Issue (a):** Should the Commission adopt a definition of "Local/IntraLATA Tandem Switch"? **SBC Issue (b):** If the answer to (a) is yes, should the definition of "Local/IntraLATA	***"Local/IntraLATA Tandem Switch" is defined as a switching machine within the public switched telecommunications network that is used to connect and switch trunk circuits between and among subtending central office switches for Section 251(b)(5)/IntraLATA Traffic.***	See Level 3 Position/Support for Issue DEF 9 above (Local/Access Tandem Switch)	(a) Yes. The term is used throughout the ITR Appendix, in both agreed-to and contested provisions. This term therefore should be defined. (b) Yes. Within SBC -13-STATE's network architecture are tandems that have been provisioned to handle specific types of traffic. One of these types of tandems is a Local/IntraLATA Tandem. A Local/IntraLATA Tandem is provisioned to handle Section 251(b)(5) Traffic, ISP-Bound Traffic

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Tandem Switch" reflect that such switches are used for Section 251(b)(5)/ IntraLATA Traffic?			and IntraLATA traffic. It is important to define each type of tandem because not all the tandem provisions within the contract apply to all the different types of tandems. Some provisions apply only to the Local/IntraLATA Tandem. Level 3 has not proposed any definition, despite the fact that the term is used in numerous agreed-to provisions in the ITR and OET Appendices, as well as provisions that Level 3 is advocating. Moreover, Level 3's issue description is nonsensical. SBC's proposed definition does not create any substantive obligations; it simply defines a term.
DEF 12	**Level 3:** Should the definition of "Local only Tandem Switch	***"Local Only Tandem Switch" is defined as a switching machine within the public switched***	See Level 3 Position/Support for Issue DEF 9 above	(a) Yes. The term is used throughout the OET and ITR Appendices, in both

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	also include a substantive provision that would require Level 3 to build duplicative interconnection trunks? **SBC Issue (a):** Should the Commission adopt a definition of "Local Only Tandem Switch"? **SBC Issue (b):** If the answer to (a) is yes, should the definition of "Local Only Tandem Switch" reflect that such switches are used for Section 251(b)(5) and ISP-Bound Traffic?	***telecommunications network that is used to connect and switch trunk circuits between and among other central office switches for Section 251(b)(5) and ISP Bound Traffic.***	(Local/Access Tandem Switch)	agreed-to and contested provisions. This term therefore should be defined. (b) Yes. One of the types of tandems in SBC 13-STATE (except in SBC California and SBC Nevada) network is a Local Only Tandem. A Local Only Tandem is provisioned to only handle Section 251(b)(5) traffic and ISP Bound Traffic. It is important to define each type of tandem because not all the tandem provisions within the contract apply to all the different types of tandems. Some provisions apply only to the Local Only Tandem. Level 3 has not proposed any definition, despite the fact that the term is used in numerous agreed-to provisions in the ITR and

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				OET Appendices, as well as provisions that Level 3 is advocating. Moreover, Level 3's issue description is nonsensical. SBC's proposed definition does not create any substantive obligations; it simply defines a term.
DEF 13	**Level 3:** Should the definition of "Local only Trunk Groups" also include a substantive provision that would require Level 3 to build duplicative interconnection trunks? **SBC Issue:** Should the definition of "Local Only Trunk Groups" reflect that such trunk groups are used for Section 251(b)(5) Traffic only?	**"Local Only Trunk Groups**" are two-way trunk groups used to carry ***Section 251(b)(5)*** **Telecommunications Services** Traffic only**.**	See Level 3 Position/Support for Issue DEF 9 above (Local/Access Tandem Switch)	Sections 251(b) and (c) address only the traffic exchanged between Level 3 and SBC-13STATE. Level 3's proposed language would improperly allow for a commingling of non-251/252 traffic such as transit traffic.
DEF 14	**Level 3:** Should the	***"Local Tandem" refers to any***	See Level 3	(a) Yes. The term is used

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	definition of "Local Tandem" also include a substantive provision that would require Level 3 to build duplicative interconnection trunks? **SBC Issue (a):** Should the Commission adopt a definition of "Local Tandem"? **SBC Issue (b)**: If the answer to (a) is yes, should the definition of "Local Tandem" include any Local Only, Local/IntraLATA, Local/Access or Access Tandem Switch, as defined, serving a particular LCA?	***Local Only, Local/IntraLATA, Local/Access or Access Tandem Switch serving a particular LCA (defined below).***	Position/Support for Issue DEF 9 above (Local/Access Tandem Switch)	throughout the NIM, IC and ITR Appendices, in both agreed-to and contested provisions (including some provisions that Level 3 is advocating.) This term therefore should be defined. (b) Yes. Within SBC 13-STATE's network architecture there are tandems that have been provisioned to handle specific types of traffic. Among these types of tandems are Local Only, Local/IntraLATA and Local/Access Tandems. Each of these tandems are provisioned to handle Section 251(b)(5) and ISP-Bound Traffic. This term is used to easily combine all three of these tandem types into a term that can be easily used throughout the contract.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				Level 3 has not proposed any definition, despite the fact that the term is used in numerous agreed-to provisions in the NIM, IC and ITR Appendices, as well as provisions that Level 3 is advocating. Moreover, Level 3's issue description is nonsensical. SBC's proposed definition does not create any substantive obligations; it simply defines a term.
DEF 15	Should "Network Inter-connection Methods" be limited to the specific methods set forth in the parties' Agreement and those mutually agreed to by the parties, or should the definition include other methods recognized by Applicable Law, as defined?	**"Network Interconnection Methods" (NIMs)** include, but are not limited to, Physical Collocation Interconnection; Virtual Collocation Interconnection; Leased Facilities Interconnection; Fiber Meet Interconnection; and other methods as mutually agreed to by the Parties **or according to Applicable Law.** One or more of these methods may be used to	During the course of the Agreement's terms, there may be an occasion where either the legislature or the Commissions will modify the regulatory world in such a way that it is considered to qualify under the definition of "Applicable Law". Level 3's proposed language merely incorporates and	Definitions are meant to provide clarity within the context of this Agreement. References to "applicable law" are vague and can create additional, unnecessary disputes. If an intervening law alters the rights of one or both of the parties, either party may invoke the change of law provisions in the General

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		effect the Interconnection.	acknowledges the existence of such events, and clarifies that the Parties are obligated to incorporate any methods of interconnection captured in such modifications. Level 3 does not want the parties to waive by default their ability to incorporate into this Agreement and operate pursuant to such methods.	Terms and Conditions Appendix.
DEF 16	Should the definition of "Out of Exchange LEC" include a reference to a successor-in-interest to SBC?	"Out of Exchange LEC" (OE-LEC) means LEVEL 3 operating within **in areas where** SBC-13STATE***'s*** **or its successor in interest's is defined as an ILEC pursuant to Section 251(h) of the Act** ***incumbent local exchange area*** and providing telecommunications services utilizing NPA-NXXs identified to reside in a Third Party Incumbent LEC's local exchange area.	Level 3 is concerned of the event that SBC sells off its ILEC operations in a particular service area, and the impact that would have on the ability of Level 3 to continue its operation in those areas. Level 3 proposes to define the OET obligation according to Section 251(h) of the Act which would require that OET obligations survive sale of an exchange because they apply	Level 3's proposed inclusion of "or its successor in interest's" is unnecessary and confusing.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			regardless of whether ownership of an exchange changes.	
DEF 17	(a) Should the definition of "Out of Exchange Traffic" include all Telecommunications Traffic, as defined, or be limited to "Section 251(b)(5) Traffic," "InterLATA Section 251 (b)(5) traffic" and "ISP-bound traffic," as defined? (b) Should the definition of "Out of Exchange Traffic" include IP-Enabled Services? (c) Should the definition of "Out of Exchange Traffic" include Transit Traffic?	**"Out of Exchange Traffic"** is defined as **Telecommunications Services, IP-enabled Services, *Section 251 (b)(5) Traffic,*** ISP-bound traffic, and **transit traffic, *InterLATA Section 251 (b)(5) traffic,* and including any such traffic** exchanged pursuant to an FCC approved or court ordered InterLATA boundary waiver, or intraLATA traffic to or from a non-SBC ILEC exchange area.	The Agreement should not make any reference to "section 251(b)(5) Traffic", as that phrase is not defined in any FCC Order or regulation. Level 3's proposed use of the term "Telecommunications Traffic" is defined in the federal Act, and should be incorporated into the Agreement. (b) Yes, the Agreement should include reference to "IP-Enabled Traffic". From a practical perspective, what is the impact of SBC's proposed language? In fact, adoption of SBC's proposed language will result in Level 3 being blocked from exchanging	(a) SBC's definition more accurately reflects the type of traffic exchanged between the parties. SBC proposes to define the types of traffic addressed by Appendix Out of Exchange Traffic with more specificity than merely "telecommunications services." This Appendix should clearly identify the type of traffic to which it applies in order to avoid later disputes. (b) For a discussion of SBC's opposition to the term "IP-enabled traffic," see *inter alia* its discussion of Section 3.2 *et seq.* of the IC Appendix.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			this form of traffic with SBC. SBC has a duty under Section 251 to exchange all forms of traffic with telecommunications carriers, not selective forms of traffic with certain carriers. (c) Yes, the definition should include reference to Transit Traffic. Section 251 mandates that SBC interconnect its network to all other telecommunications carriers, either directly or indirectly. Level 3 believes that includes the exchange of Transit Traffic. Level 3's proposed language in this definition clarifies, consistent with Level 3's position, that SBC will exchange Transit Traffic that falls under the Out of	(c) Level 3's reference to Transit traffic should be rejected because this issue is not arbitrable because neither Section 251, nor any other provision of the Act, requires ILECs to provide transit service.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			Exchange Traffic definition.	
DEF 18	(a) Should the Commission adopt a definition of "Section 251(b)(5) Traffic"? (b) If the answer to (a) is yes, should "Section 251(b)(5) Traffic" be limited to certain physical locations of the originating and terminating end users?	***"Section 251(b)(5) Traffic" means traffic that is limited to telecommunications traffic exchanged between CLEC and SBC-13-STATE in which the originating end user of one Party and the terminating end user of the other Party are:*** ***(i) both physically located in the same SBC-13STATE Local Exchange Area as defined by SBC-13STATE Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or*** ***(ii) both physically located within neighboring SBC-13STATE Local***	(a) No. It is not reasonable to include in the Agreement SBC'S attempt to create and insert a definition for "Section 251(b)(5) Traffic". First, the proposed term is not defined in any FCC order or regulation. Rather, it is SBC's interpretation of the Act and FCC actions, to which Level 3 neither agrees nor accepts in the Agreement. SBC's crafting of a self-serving definition and attempting to argue that the definition should be used throughout the Agreement is improper.	(a) Yes. This term should be defined. It is used at various points in the ITR, NIM and IC appendices of the Agreement that SBC advocates be adopted and the same reasons why those provisions should be adopted necessarily support adopting a definition for the term. (b) "Section 251 (b)(5) traffic" is more precise than "Local traffic" since SBC has invoked the FCC ISP Plan in several states. Under the FCC's ISP Compensation Order, the FCC utilizes the term Section 251 (b)(5) rather than Local traffic. In addition, since SBC has

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.		invoked the FCC ISP Plan, it must include a definition for ISP-Bound Traffic, in accordance with the FCC's Order The FCC affirmed that ISP-bound traffic and local calls are communication between two parties that remain squarely in the same local calling area. This is illustrated in paragraph 90 of the ISP Compensation Order which specifically states that the FCC intended the same intercarrier compensation rates, terms and conditions to apply to voice and ISP-Bound Traffic. *See FCC ISP Compensation Order*, 16 FCC Rcd at 9194-95, ¶ 90. Additional detail regarding this position can be found throughout the

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				Intercarrier Compensation DPL.
DEF 19	**Level 3:** Whether SBC should be permitted to inflate definition with language that is and should remain in its tariffs. **SBC Issue:** Should the definition of "Switched Access Service" describe the means by which a two-point communications path between a customer's premises and an end user's premises is established or simply reference a tariff?	**"Switched Access Service" <u>means an offering of facilities for the purpose of the origination or termination of traffic from or to Exchange Service customer in a given area pursuant to a Switched Access tariff</u>** ***provides a two-point communications path between a customer's premises and an end user's premises through the use of common terminating, common switching, Switched Transport facilities, and common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where service is provided***. Switched Access Services include: Feature	Switched Access refers to the connection between a phone and a long distance carrier's POP when a customer makes a call over regular phone lines. Newton's Telecom Dictionary, 15th Ed. SBC's proposed language is derived directly from its Switched Access Tariff, which governs services to which Level 3 is not purchasing. It is unnecessary to burden this Agreement with superfluous tariff language. Level 3's proposed language is consistent with industry standards, and the more reasonable approach for the Commission to adopt.	SBC's proposed definition is consistent with FCC orders and regulations defining "Switched Access Service," and should therefore be adopted. Level 3's definition is vague and likely to lead to future disputes between the parties.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Group A, Feature Group B, Feature Group D, 800 Series, and 900 access. Switched Access does not include traffic exchanged between LECs for purpose of local exchange interconnection.		
DEF 20	Definition of "Trunk" or "Trunk Group" – RESOLVED			
DEF 21	**Level 3 Issue (a):** In light of the fact that the FCC recognizes that ISP bound traffic should not be rated with regard to geography, should the Commission adopt a definition for federal information access traffic that specifically relies upon the geographic locations contained in and defined by state-approved local exchange tariffs? **Level 3 Issue (b):**	**"Virtual NXX Traffic" is traffic that originates in one local exchange area and is dialed to a telephone number assigned to a customer who is not physically located in the rate center to which the NXX code of that telephone number has been assigned. This traffic is also sometimes referred to as "Virtual Foreign Exchange", FX type, or "Virtual FX" traffic.** ***"Virtual Foreign Exchange (FX) Traffic" and "FX-type Traffic" shall refer to those calls delivered to telephone numbers that are***	(a) No, the definition for Virtual NXX Traffic should not include language that imposes a geographic element on this type of traffic. The FCC has been clear that NXX Traffic, including the type at issue in this definition, cannot be rated based upon the geographic location of the calling parties. SBC's attempt to do so is in direct conflict with the FCC's determinations. (b) Yes. In accordance with the industry standard	(a) Yes. SBC's definitions for Virtual Foreign Exchange Traffic and FX-type Traffic accurately describes the call flow between the parties that constitutes FX Service. Level 3's definition does not include any references to Dedicated FX Services and excludes any reference to the Commission prescribed mandatory local calling area which is fundamental for defining the jurisdiction of a call and its associated intercarrier compensation.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Should the definition of Virtual NXX be based upon the NPA-NXX of the calling parties? **SBC Issue (a):** Should Virtual Foreign Exchange Traffic, Virtual NXX Traffic and FX-Type Traffic be defined as traffic delivered to telephone numbers that are rated as local but routed outside of that mandatory local calling area? **SBC Issue (b):** Should "FX Telephone Numbers" be defined as telephone numbers with different rating and routing points relative to a given mandatory local calling area?	***rated as local to the other telephone numbers in a given mandatory local calling area, but where the recipient end user's station assigned that telephone number is physically located outside of that mandatory local calling area. Virtual FX Service also permits an end user physically located in one exchange to be assigned telephone numbers resident in the serving Central (or End) Office in another, foreign," exchange, thereby creating a local presence in the "foreign" exchange. Virtual FX Service differs from Dedicated FX Service, however, in that Virtual FX end users continue to draw dial tone or are otherwise served from a Central (or End) Office which may provide service across more than one Commission-prescribed mandatory local calling area, whereas Dedicated FX Service end users draw dial tone or are otherwise served from a Central***	that has been in place for a number of years, Virtual NXX Traffic must be rated based upon the NPA-NXX of the calling parties. This is also in complete accord with FCC determinations, as well as number of state commission orders. SBC's proposed reliance on the geographic location of the calling parties is a radical departure of the current industry standard. Further, SBC's proposed reliance eon the geographic location of the calling parties is not practical, as neither party has the capability of knowing the exact physical location of calling parties when using IP-Enabled services. That is one of the most basic benefits of advanced forms of technology, that a calling party is not restricted to a single	(b) Yes. Since the actual use of the FX Telephone Number determines the associated compensation regime between the Parties (i.e., FX Telephone Numbers that deliver second dial tone are subject to the originating and terminating carrier's tariffed Switched Exchange Access rates), this differentiation is needed in the definition section to avoid future billing disputes.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		(or End) Office located outside their mandatory calling area. ***"FX Telephone Numbers" (also known as "NPA-NXX" codes) shall be those telephone numbers with different rating and routing points relative to a given mandatory local calling area. FX Telephone Numbers that deliver second dial tone and the ability for the calling party to enter access codes and an additional recipient telephone number remain classified as Feature Group A (FGA) calls, and are subject to the originating and terminating carrier's tariffed Switched Exchange Access rates (also known as "Meet Point Billed" compensation), or if jointly provisioned FGA service.***	geographic area.	
REC-1 (§3.13)	Should the ICA provide that when LEVEL 3 is the recording Company, it will provide usage detail according to MECAB standards?	***3.13 When LEVEL 3 is the Recording Company, LEVEL 3 will provide its recorded billable messages detail and access usage record detail data to SBC-13STATE under the terms and conditions of this Appendix***.	Level 3's position is that there is no need to have MECAB/MECOD as the exclusive billing/recording language. Level 3 proposes that in light of anticipated	The terms and conditions of this Appendix require that recorded billable messages detail and access usage record detail data be provided as set forth in the

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			reforms to the access charge system, that the parties include language that permits them to discuss mutually agreeable ways of exchanging the same data, but in formats or by means that might make more sense once these reforms take effect.	MECAB document. The MECAB industry document is used throughout the industry for Meet Point Billing (MPB) of jointly provided IXC switched access services. More specifically, MECAB requires the exchange of Access Usage Records (AURs). The AUR is the industry standard format for providing usage measurement information used to bill IXCs. The protocols and format that these AURs adhere to are necessary to ensure that each company's billing systems can correctly interpret the information. Accepting a different method, especially for just one CLEC, would place undue burden and cost on SBC-13State when a proven method currently exists.
REC-2 (§ 4.1)	Should the ICA require LEVEL 3 to provide Access Usage Records	4.1 **SBC-13STATE** as the Recording Company, agrees to provide recording, assembly and	Level 3 can provide this information; it is just a formatting issue. Level 3	Access Usage Records (AURs) is the industry standard for providing

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	in accordance with MECAB standards in all instances, or should it provide for the use of alternatives in some circumstances?	editing, message processing and provision of message detail for Access Usage Records (AURs) ordered/required by LEVEL 3 in accordance with this Appendix on a reciprocal, no-charge basis. LEVEL 3, as the Recording Company, agrees to provide **to the extent that LEVEL 3 has deployed systems supporting AUR** ***any and all*** **those** ***Access Usage Records (****AURs)* required by **SBC-13STATE** on a reciprocal, no-charge basis. **To the extent LEVEL 3 is unable to provide AURs the Parties agree to explore additional options for recording, assembling and editing of message detail records necessary to accurate billing of traffic.** The Parties agree ***that this*** **to reciprocally exchange** ***mutual exchange of*** records at no charg***e to either Party shall otherwise be conducted*** and according to the guidelines and specifications contained in the Multiple Exchange Carrier Access Billing (MECAB) document.	wants to be able to discuss whether and how the parties can share the information and have the option of sharing the information in a different format. SBC only bills in EMI category 11 records.	usage measurement information used to bill IXCs. An AUR contains information such as service feature group, duration, and time of day. The protocols and format that the AURs adhere to are necessary to ensure that each company's network and systems can correctly read and interpret this information. To request that SBC-13STATE accept a different method would place undue burden and cost on SBC-13STATE when a proven method currently exists and is adhered to at an industry level.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		4.1.1 Where level 3 is unable to provide AUR, such as with IP enabled traffic, Level 3 will provide Call Records [as defined in this agreement] at intervals to assure SBC of accurate billing. At a minimum, Level 3 will provide Call Records on a monthly basis reflecting all traffic exchanged between the parties, for the exchange of intercarrier compensation.		
PC-1 §§ 4.4; 7.3; 7.3.3 *Related to Issue VC-1*	Should this Appendix be the exclusive document governing physical collocation arrangements between Level 3 and SBC, or should Level 3 be permitted to order collocation both from this Appendix and state tariff?	4.4 ***This Appendix contains the sole and exclusive terms and conditions pursuant to which LEVEL 3 will obtain physical collocation from SBC-13STATE pursuant to 47 U.S.C. § 251(c)(6). For the term of this Agreement, SBC-13STATE will process any LEVEL 3 order for any 251(c)(6) physical collocation as being submitted under this Appendix. In addition, SBC-13STATE will, starting on the Effective Date of this Agreement, bill any existing section 251(c)(6) physical***	Section 252(i) requires that a local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved by a state commission to any other requesting telecommunications carrier. Level 3 does not agree with SBC's interpretation of the cases upon which it relies in support of its positions.	Level 3 should not be able to pick and choose rates, terms and conditions from both its interconnection agreement with SBC and a state tariff, to the extent one is available. As at least two federal courts of appeal have held, interconnection agreements are the exclusive process by which a CLEC obtains rates, terms and conditions for interconnecting with an ILEC or obtaining access

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		collocation arrangements that were provided under tariff prior to the Effective Date at the prices that apply under this Agreement. <u>SBC-13STATE</u> will not impose any charge(s) for performing such conversion(s), and the conversions will affect only pricing. 7.3 **<u>LEVEL 3</u>** shall pay **<u>SBC-13STATE</u>** all associated non-recurring and recurring charges for use of the Dedicated Collocation Space. These charges may be generated on an ICB basis or may be contained in **<u>the state specific tariffs or</u>** the Appendix Pricing attached. 7.3.3 ICBs An ICB quote is prepared by **<u>SBC-13STATE</u>** to estimate non-recurring and recurring charges associated with the requested Physical Collocation Space where	SBC's proposals could serve as a waiver of Level 3's independent rights under the federal act, FCC orders and regulations, as well as any existing state orders and regulations. Level 3 cannot and will not make such a waiver. Further, the tariff may be amended from time to time with new rates, terms and conditions that are more favorable than what the parties have placed in their interconnection agreement. Level 3 should be entitled, as any other carrier is entitled, to purchase services at rates, terms and conditions that may be offered to any other carrier whether it is more favorable in the interconnection agreement or as updated in the SBC tariff. Level 3 is willing to	to an ILEC's UNEs as provided for in Section 251 of the Telecommunications Act of 1996. *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441, 442-45 (7th Cir. 2003); *Indiana Bell Tel. Co. v. Indiana Util. Reg. Comm'n*, 359 F.3d 493, 497-98 (7th Cir. 2004); *Verizon North, Inc. v. Strand*, 367 F.3d 577, 584 (6th Cir. 2004); *Verizon North, Inc. v. Strand*, 309 F.3d 935, 940-41 (6th Cir. 2002). Moreover, permitting Level 3 to pick and choose from two different sets of rate, terms and conditions would be administratively confusing and burdensome for SBC. There is no compelling reason to allow Level 3 to order out of a tariff, in addition to ordering from its interconnection agreement

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		a state specific rate element does not exist in **a tariff or** the attached Appendix Pricing. This ICB quote is prepared specifically for collocation requests and is not associated in any way with the Bona Fide Request ("BFR") process used to request UNEs or other unique items not contained in **LEVEL 3's** ICA.	be bound by the terms and conditions inextricably linked to the tariff services and rates it elects to purchase, but Level 3 should not lose the benefit of the terms and conditions negotiated under the Agreement in order to avail itself of the publicly available tariffs SBC-Illinois makes available to all carriers.	with SBC.
PC-2 § 6.13 Related to Issue VC-2	Should Level 3 be permitted to collocate equipment that SBC has determined is not necessary for interconnection or access to UNEs or does not meet minimum safety standards?	***6.13 In the event that LEVEL 3 submits an application requesting collocation of certain equipment and SBC-13STATE determines that such equipment is not necessary for interconnection or access to UNEs or determines that LEVEL 3's equipment does not meet the minimum safety standards or any other requirements of this Appendix, LEVEL 3 must not collocate the equipment unless and until the dispute is resolved in its favor. LEVEL 3 will be given ten***	SBC should not be allowed to preemptively block the placement of equipment as it sees fit until it is determined the equipment is acceptable for placement; such action could unnecessarily delay Level 3's ability to compete and provide services to its customers. 47 C.F.R.51.323(c) states that if an ILEC "objects to	Level 3 should not be permitted to collocate equipment that SBC has determined is not necessary for interconnection or access to UNEs or does not meet minimum safety standards. Permitting such collocation threatens the integrity of SBC and others' networks and would permit Level 3 to ignore federal law. SBC's language also

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		(10) business days to comply with the requirements and/or remove the equipment from the collocation space if the equipment was already improperly collocated. **6.13. If SBC 13State objects to collocation of equipment by Level 3 for purposes within the scope of Section 251(c)(6) of the Act, SBC13-State shall prove to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in Section 251(b) of the Act. SBC13-State may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that SBC13-State applies to its own equipment. SBC13-State may not object to the collocation of equipment on the ground that**	collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in paragraph (b) of this section." This rule does not allow SBC to preemptively deny collocation. In addition, 47 C.F.R.51.323(c) states, in part, that an ILEC "may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that	provides a reasonable time period for Level 3 to remove any offending equipment. Contrary to Level 3's suggestion, nothing in SBC's language permits it to impose safety or engineering requirements that are more stringent than those that apply to SBC's own equipment.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards. If SBC13-State denies collocation of Level 3's equipment, citing safety standards, SBC13-State must provide to Level 3 within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; SBC13-State's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and SBC13-State's basis for concluding why collocation of	are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment." SBC's language not only is preemptive, but also creates ambiguity with respect to the proper level of safety standards.	

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		equipment not meeting this safety requirement would compromise network safety.		
PC-3	RESOLVED			
VC-1 §§ 1.2; 1.10 *Related to Issue PC-1*	Should this Appendix be the exclusive document governing virtual collocation arrangements between Level 3 and SBC, or should Level 3 be permitted to order collocation both from this Appendix and state tariff?	1.2 ***This Appendix contains the sole and exclusive terms and conditions pursuant to which LEVEL 3 will obtain physical collocation from SBC-13STATE pursuant to 47 U.S.C. § 251(c)(6). For the term of this Agreement, SBC-13STATE will process any LEVEL 3 order for any 251(c)(6) physical collocation as being submitted under this Appendix. In addition, SBC-13STATE will, starting on the Effective Date of this Agreement, bill any existing section 251(c)(6) physical collocation arrangements that were provided under tariff prior to the Effective Date at the prices that apply under this Agreement. SBC-13STATE will not impose any charge(s) for performing such***	Section 252(i) requires that a local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved by a state commission to any other requesting telecommunications carrier. Level 3 does not agree with SBC's interpretation of the cases upon which it relies in support of its positions. SBC's proposals could serve as a waiver of Level 3's independent rights under the federal act, FCC orders and regulations, as well as any existing state orders and regulations.	Level 3 should not be able to pick and choose rates, terms and conditions from both its interconnection agreement with SBC and a state tariff, to the extent one is available. As at least two federal courts of appeal have held, interconnection agreements are the exclusive process by which a CLEC obtains rates, terms and conditions for interconnecting with an ILEC or obtaining access to an ILEC's UNEs as provided for in Section 251 of the Telecommunications Act of 1996. *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441, 442-45 (7th Cir. 2003); *Indiana Bell Tel.*

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		conversion(s), and the conversions will affect only pricing. 1.10 ***The rate elements provided in this Appendix are required when* LEVEL 3 *uses virtual collocation equipment to access UNEs.*** Such access is provided through cross connects purchased from the Agreement. Unbundled network elements including associated cross connects are obtained from the Agreement between **LEVEL 3** and **SBC-13STATE**.	Level 3 cannot and will not make such a waiver. Further, the tariff may be amended from time to time with new rates, terms and conditions that are more favorable than what the parties have placed in their interconnection agreement. Level 3 should be entitled, as any other carrier is entitled, to purchase services at rates, terms and conditions that may be offered to any other carrier whether it is more favorable in the interconnection agreement or as updated in the SBC tariff. Level 3 is willing to be bound by the terms and conditions inextricably linked to the tariff services and rates it elects to purchase, but Level 3 should not lose the benefit of the terms and conditions	*Co. v. Indiana Util. Reg. Comm'n*, 359 F.3d 493, 497-98 (7th Cir. 2004); *Verizon North, Inc. v. Strand*, 367 F.3d 577, 584 (6th Cir. 2004); *Verizon North, Inc. v. Strand*, 309 F.3d 935, 940-41 (6th Cir. 2002). Moreover, permitting Level 3 to pick and choose from two different sets of rates, terms and conditions would be administratively confusing and burdensome for SBC. There is no compelling reason to allow Level 3 to order out of a tariff, in addition to ordering from its interconnection agreement with SBC.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			negotiated under the Agreement in order to avail itself of the publicly available tariffs SBC-Illinois makes available to all carriers.	
VC-2 § 1.10.10 Related to Issue PC-2	Should Level 3 be permitted to collocate equipment that SBC has determined is not necessary for interconnection or access to UNEs or does not meet minimum safety standards?	***1.10.10 In the event SBC-13STATE believes that collocated equipment is not necessary for interconnection or access to UNEs or determines that LEVEL 3's equipment does not meet the minimum safety standards, LEVEL 3 must not collocate the equipment unless and until the dispute is resolved in its favor. LEVEL 3 will be given ten (10) business days to comply with the requirements and/or remove the equipment from the collocation space if the equipment already is collocated. If the Parties do not resolve the dispute pursuant to the dispute resolution procedures set forth in the Agreement, SBC-13STATE or LEVEL 3 may file a complaint at the Commission seeking a formal***	SBC should not be allowed to preemptively block the placement of equipment as it sees fit until it is determined the equipment is acceptable for placement; such action could unnecessarily delay Level 3's ability to compete and provide services to its customers. 47 C.F.R.51.323(c) states that if an ILEC "objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the	Level 3 should not be permitted to collocate equipment that SBC has determined is not necessary for interconnection or access to UNEs or does not meet minimum safety standards. Permitting such collocation threatens the integrity of SBC and others' networks and would permit Level 3 to ignore federal law. SBC's language also provides a reasonable time period for Level 3 to remove any offending equipment. Contrary to Level 3's suggestion, nothing in

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		resolution of the dispute. If it is determined that LEVEL 3's equipment does not meet the minimum safety standards above, LEVEL 3 must not collocate the equipment and will be responsible for removal of the equipment and all resulting damages if the equipment already was collocated improperly. **1.10.10 If SBC 13State objects to collocation of equipment by Level 3 for purposes within the scope of Section 251(c)(6) of the Act, SBC13-State shall prove to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in Section 251(b) of the Act. SBC13-State may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or**	state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in paragraph (b) of this section." This rule does not allow SBC to preemptively deny collocation. In addition, 47 C.F.R.51.323(c) states, in part, that an ILEC "may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment." SBC's language not only is preemptive, but also	SBC's language permits it to impose safety or engineering requirements that are more stringent than those that apply to SBC's own equipment.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		engineering standards that SBC13-State applies to its own equipment. SBC13-State may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards. If SBC13-State denies collocation of Level 3's equipment, citing safety standards, SBC13-State must provide to Level 3 within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; SBC13-State's basis for	creates ambiguity with respect to the proper level of safety standards.	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		concluding that the requesting carrier's equipment does not meet this safety requirement; and SBC13-State's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.		
NIM 1	RESOLVED			
NIM 2	RESOLVED			
NIM 3	RESOLVED			
NIM 4	RESOLVED			
NIM 5 (§ 2.5)	Should the Interconnection Agreement govern the network architecture and exchange of all traffic between the parties, or just local traffic?	2.5 Each Party is responsible for the appropriate sizing, operation, and maintenance of the transport facility to the POI(s). The parties agree to provide sufficient facilities for the ***Local*** Interconnection Trunk Groups ~~**trunk groups**~~ required for the exchange of traffic between LEVEL 3 and SBC-13STATE.	The federal Communications Act provides that parties shall establish interconnection agreements for the exchange of all traffic, not merely local exchange traffic. SBC's proposed language would limit the use of the interconnection trunks under this agreement to be used only to exchange local traffic. Level 3's language is intended to make clear that	Section 251(b)(5) of the 1996 Act provides that carriers shall establish interconnection for the transport and termination of telecommunications traffic. Level 3 would expand SBC's obligations for interconnection facilities to the POI(s) beyond the scope of the Act. Facilities that carry Ancillary trunks and trunks that support IXC carried

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			the parties shall establish trunk groups, not limited to the exchange of only local traffic.	traffic on behalf of Level 3's end users are the responsibility of Level 3. These trunks and associated facilities provide services to Level 3's end users that neither originates or terminates to SBC's end users.
NIM 6	RESOLVED			
NIM 7 (§§ 3.1.1 3.2.1)	**LEVEL 3:** Should the agreement contain language to account for the fact that the physical collocation appendix or SBC's tariff may not accurately reflect the applicable law? **SBC**: Should the Agreement, in addition to allowing Level 3 to interconnect pursuant to the Physical Collocation Appendix and to the applicable state tariff, also	3.1.1 When **LEVEL 3** provides its own facilities or uses the facilities of a 3rd party to a **SBC-13STATE** Tandem or End Office and requests to place its own transport terminating equipment at that location, **LEVEL 3** may Interconnect using the provisions of Physical Collocation as set forth in Appendix Physical Collocation, applicable state tariff **or according to Applicable Law**. 3.2.1 When **LEVEL 3** provides its own facilities or uses the facilities of a 3rd party to a **SBC-13STATE** Tandem or End Office and requests that **SBC-13STATE** place transport terminating equipment at that location on **LEVEL 3**'s behalf, **LEVEL 3** may Interconnect using	Yes. This language is necessary to make clear that SBC's tariffs and the physical collocation appendix may not reflect the applicable law.	The whole purpose of the interconnection agreement is to set forth as precisely as possible the parties' rights and duties with respect to the matters that are subject to section 251 of the 1996 Act. Innocuous as Level 3's language may appear at first blush, it should be rejected. If Level 3 has in mind some source of law that it believes should inform the parties' contract language, it should identify that source of law so that the parties can come to

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	allow Level 3 to interconnect pursuant to unspecified applicable law?	the provisions of Virtual Collocation as set forth in Appendix Virtual Collocation or applicable state tariff **or according to Applicable Law**. Virtual Collocation allows **LEVEL 3** to choose the equipment vendor and does not require that **LEVEL 3** be Physically Collocated.		grips with it now. If Level 3's proposed reference to "applicable law" were appropriate for this section of the agreement, it would be equally appropriate for virtually every other section of the agreement. To the extent that Level 3's concern is that some applicable law that may come into existence in the future should be taken into account, it already is – by the intervening law provision in the Agreement.
NIM 8	RESOLVED			
SS7 1	Should the Parties compensate each other for SS7 quad links for IXC calls at access rates or on a bill and keep basis?	2.1.1 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; ***provided, however, that said Bill and Keep arrangement and use of SS7 quad links apply only to LEVEL 3 CLEC calls and not to calls that are subject to***	The Agreement should clarify that such IXC traffic exchanged via SS7 quad links are subject to access charges. This particular type of IXC traffic is subject to traditional access compensation. The Bill and Keep billing provisions should apply only in the case of traffic	Level 3's proposed language is vague, unduly complex, and almost certain to breed disputes rather than resolve them.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		traditional access compensation as found between a long distance carrier and a local exchange carrier, including <u>LEVEL 3</u> acting as a long distance carrier. **<u>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</u>**	where one party acts as an IXC and the other as a LEC.	
ITR 1 (§ 1.2)	**Level 3 Issue:** Should Level 3 and SBC exchange all types of Telecommunications Traffic over the interconnection trunks?	1.2 This Appendix provides descriptions of the trunking requirements between **<u>LEVEL 3</u>** and **<u>SBC-13STATE</u>**. All references to incoming and outgoing trunk groups are from the perspective of **<u>LEVEL 3</u>**. The paragraphs below	The Agreement should classify traffic in the manner proposed by Level 3. SBC's proposed classifications mischaracterize the types of traffic that is exchanged between the parties. Level 3	SBC proposes to define the types of traffic addressed by Appendix ITR with more specificity than merely "telecommunications traffic." Appendix ITR does not address ALL traffic exchanged between the

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	SBC Issue: Should the list of types of traffic that will be carried over trunk groups include "Telecommunications Traffic" or "Section 251(b)(5) Traffic, ISP Bound Traffic, IntraLATA toll [and] InterLATA 'meet point'" traffic?	describe the required and optional trunk groups for the exchange of ***Section 251(b)(5) Traffic***, **Telecommunications Traffic,** ***ISP Bound Traffic, IntraLATA toll***, ***InterLATA "meet point"***, mass calling, E911, Operator Services and Directory Assistance traffic.	would propose that the characterization of traffic follow the definitions set forth in the federal Communications Act.	parties. For example, as set forth in issues 5-9 below, Appendix ITR does not address transit traffic. It also does not address interLATA toll traffic that is not routed over "meet point" trunks. The ICA should clearly identify the type of traffic to which it applies in order to avoid later disputes.
ITR 2 (§ 3.3)	**Level 3 Issue:** Should Level 3 and SBC exchange Transit Traffic over the interconnection trunks. **SBC Issue:** Should Local Interconnection Trunk Groups and Meet Point Trunk Groups be limited to the exchange of traffic between the parties' end users?	**Level 3 terms:** 3.3 **Level 3 and SBC shall establish Two-way Interconnection Trunk Groups for the exchange of Telecommunications Traffic between the parties' respective Points of Interconnection. All Telecommunications Traffic shall be combined on these Interconnection Trunk Groups.**	The agreement should contain the terms and conditions governing Transit Traffic. Section 251(a)(1) of the Federal Act requires every telecommunications carrier, including SBC, to interconnect directly or indirectly with each other telecommunications carrier. Transit Traffic would constitute such interconnection. It is also far more efficient to utilize the currently existing	SBC does not agree that its proposed language addresses transit traffic as argued by Level 3. SBC's language is intended to ensure that the local interconnection trunks are used only for the exchange of traffic between Level 3 and SBC end users and are not used to terminate third-party IXC traffic. As set forth below, SBC seeks to have carriers utilize local interconnection trunk groups for Section

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		3.3 Two-way ***Local*** Interconnection Trunk Group(s) for ***local/ IntraLATA*** **the exchange of** traffic shall be established between a **LEVEL 3** switch or **LEVEL 3** routing point representing a switch location and an **SBC-12STATE** Tandem or End Office switch ***for the exchange of traffic between each Party's End Users only.***	interconnection facilities between SBC and the numerous RLEC, ILEC and CLEC carriers in the service area. Forcing Level 3 to build out additional interconnection trunks to each other carrier to whom traffic may flow is overly costly and inefficient. Also, SBC is fully reimbursed for all expenses associated with Transit Traffic, including a reasonable profit.	251(b)(5), intraLATA toll, and ISP-Bound traffic, and Feature Group D trunks groups for interLATA traffic and intraLATA traffic carried by an IXC. This is necessary in order for SBC to be able to properly bill the originating carrier.
ITR 3	RESOLVED			
ITR 4	RESOLVED			
ITR 5 (§ 4.3)	**Level 3 Issue:** Should Level 3 establish direct trunk arrangements with other carriers once there is a sufficient volume of traffic exchange between Level 3 and the other carriers? **SBC Issue:** Is a non-Section 251 service –	4.3 "**Transit Traffic" is local Telecommunications Traffic or Circuit Switched intraLATA toll Telecommunications Traffic originated by or terminated to LEVEL 3 from another Local Exchange Carrier, CLEC or wireless carrier that transit SBC-13STATE's network. When transit traffic through the SBC-13STATE Tandem from**	The agreement should contain the terms and conditions governing Transit Traffic, for the reasons set forth in Issue ITR-4 above. Level 3's proposed language in Section 4.3 would allow for Level 3 to establish direct trunking with other carriers, once the level of traffic	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	transit service, in this instance – subject to arbitration under 252 of the 1996 Act?	**LEVEL 3 to another Local Exchange Carrier, CLEC or wireless carrier requires a DS-1's or greater worth of traffic over a consecutive 3 month period, as measured during the busy hour, LEVEL 3 will undertake commercially reasonable efforts to establish direct interconnection with that third party. LEVEL 3 may route Transit Traffic via SBC-13STATE's local Tandem or End office switches.**	reaches a DS1 level of volume on a consistent basis.	
ITR 6 (§ 4.3.1)	**Level 3 Issue**: Once Level 3 establishes direct trunk arrangements with other carriers, should SBC use reasonable efforts to minimize the amount of traffic directly routed through the Level 3 network to that terminating carrier? **SBC Issue:** Is a non-Section 251 service – transit service, in this	4.3.1 **When transit traffic between the LEVEL 3 network and SBC-13STATE, such as Telecommunications Traffic to another Local Exchange Carrier, CLEC or wireless carrier exceeds a DS-1's worth of traffic as measured during the busy hour, for three consecutive months, SBC-13STATE shall undertake commercially reasonable efforts to establish a direct interconnection between itself and the other Local Exchange**	Level 3's proposed language in Section 4.3.1 would allow for Level 3 to establish direct interconnection with other carriers, once the level of traffic reaches a DS1 level of volume on a consistent basis. In addition, this section would require SBC to use reasonable efforts to minimize the amount of transit traffic it directly routes through the Level 3	No. This issue is not arbitrable because neither Section 251, nor any other provision of the Act requires ILECs to provide transit service. If the Commission rules that this issue is arbitrable, SBC objects to Level 3's language. SBC's proposed language on transit is set forth in the Transit Appendix filed by SBC.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	instance – subject to arbitration under 252 of the 1996 Act?	**Carrier, CLEC or wireless carrier. ~~By establishing this trunk group, SBC-13STATE agrees to use reasonable efforts to minimize the amount of transit traffic it directly routes through the LEVEL 3 network to the third party terminating carrier.~~**	network.	
ITR 7	Connecticut only issue			
ITR 8 (§ 4.3.3)	**Level 3 Issue:** Should the Agreement provide for a transition period that would allow Level 3 to transit traffic through SBC until its direct interconnection arrangements are in place with other carriers? **SBC Issue:** Is a non-Section 251 service – transit service, in this instance – subject to arbitration under 25 of the 1996 Act?	4.3.3 **While the Parties agree that it is the responsibility of the originating carrier to enter into arrangements with each third party carrier (ILECs, IXCs, Wireless Carriers or other CLECs) to deliver transit traffic, each Party acknowledges that such arrangements may not currently be in place and an interim arrangement will facilitate traffic completion on an temporary basis. Accordingly, until the earlier of (i) the date on which either Party has entered into an arrangement with third-party carrier to exchange transit traffic to the other party and (ii) the date transit traffic volumes**	The agreement should contain the terms and conditions governing Transit Traffic. Level 3's proposed language provides that SBC and Level 3 shall provide transit service to each other, until such time as a direct interconnection arrangement is in place with other carriers. This language is necessary to clarify the parties' obligation to continue to transit each other's traffic for the limited period of time that it takes to establish the arrangement necessary with the other carriers for the exchange of	No. This issue is not arbitrable because neither Section 251, nor any other provision of the Act requires ILECs to provide transit service. If the Commission rules that this issue is arbitrable, SBC objects to Level 3's language. SBC's proposed language on transit is set forth in the Transit Appendix filed by SBC.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		exchanged by either party exceed the volumes specified in Section 4.2.2, each party will provide the other Party with transit service. Each party agrees to use commercially reasonable efforts to enter into agreements with third-party carriers to whom it sends traffic as soon as possible after the Effective Date.	traffic.	
ITR 9 (§ 4.3.4)	**Level 3 Issue:** Should Level 3 establish direct trunk arrangements with other carriers once there is a sufficient volume of traffic exchange between Level 3 and the other carriers? **SBC Issue:** Is a non-Section 251 service – transit service, in this instance – subject to arbitration under 25 of the 1996 Act?	4.3.4 **Once SBC13-State notifies LEVEL 3 that that more than a DS1's worth of traffic has been exchanged with a 3rd party carrier for more than three months, LEVEL 3 use commercially reasonable efforts to establish interconnection arrangements with the 3rd party carriers.**	The agreement should contain the terms and conditions governing Transit Traffic. Level 3's proposed language would require Level 3 to establish direct interconnection with other carriers, once the level of traffic reaches a DS1 level of volume on a consistent basis.	No. This issue is not arbitrable because neither Section 251, nor any other provision of the Act requires ILECs to provide transit service. If the Commission rules that this issue is arbitrable, SBC objects to Level 3's language. SBC's proposed language on transit is set forth in the Transit Appendix filed by SBC.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
ITR 10 (§ 5.2)	**NOTE: This is an issue only in ARK, KAN, MO, OKLA and TX.** **SBC Issue (a):** Should Level 3 be required to establish trunks in each local exchange area in which Level 3 Offers Service? [§ 5.2.1] **SBC Issue (b):** Should Level 3 be required to establish Local Only Trunk Groups to connect with SBC tandems that can handle only local traffic? [§ 5.2.1] **SBC Issue (c)**: Should	5.2 **SBC SOUTHWEST REGION 5-STATE** ***Local Interconnection Trunk Group(s)*** **Interconnection Trunk Group(s)** in each Local Exchange Area where Level 3 Offers Service. **Except in an over-flow situation to avoid call blocking on calls routed to Level 3,** ***Inter-Tandem switching is not provided,*** ***5.2.1*** A Two-way Local Only Trunk Group(s) shall be established between LEVEL 3's switch and each SBC SOUTHWEST REGION 5-STATE Local Only Tandem Switch in the local exchange area. 5.2.2 A two-way ***Local Interconnection Trunk Group(s)*** ~~**Interconnection Trunk Group(s)**~~ shall b***e established between LEVEL 3 switch and each SBC SOUTHWEST REGION 5-STATE Local/IntraLATA Tandem***	(a) Yes. Level 3 is able to establish a Single Point of Interconnection in each LATA in which it serves. Under Section 251(c)(2), each CLEC, like Level 3, is authorized to establish a SPOI in each LATA. The FCC has repeatedly held that the FCC's rules allow a CLEC to request interconnection at the technically feasible point, including the right to request a single POI in the LATA. SBC's proposed language disregards that right, and would force Level 3 to establish points of interconnection at each Local Exchange Area. (b) With respect to the issue of whether Level 3 should be able to combine	(a) Yes. Level 3 should be required to establish Local Interconnection Trunk Groups to every local calling area in which Level 3 Offers Service to achieve efficient use of both Parties' networks. Nothing in the Act or FCC's Orders requires that SBC must permit a single point for trunking. Such a requirement would tie up SBC switch and transport facilities that have already been stretched very thin. Further, Level 3's language does not take into account the unique network architecture in reference to how the SBC tandems are provisioned. SBC should not be required to double switch calls in its network. (b) Yes. This type of "Local Only Trunk Group" must be established in the

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Level 3 be required to establish Local Interconnection Trunk Groups to every local calling area in which Level 3 offers service? [§5.2.2] **SBC Issue (d):** Is a one-way IntraLATA trunk group appropriate where SBC end users are calling a Level 3 NPA/NXX from a local exchange area that is outside of the local exchange area where Level 3 is interconnected? [§ 5.2.3] **SBC Issue (e):** Should the ITR make reference to the parties' financial responsibilities for trunk orders? [5.2.3]	***Switch or Local/Access Tandem Switch in the local*** exchange area. 5.2.3 **SBC SOUTHWEST REGION 5-STATE** may initiate one-way or two-way IntraLATA trunk groups to LEVEL 3 where required to provide trunk switch port relief in SBC SOUTHWEST REGION 5-STATE Tandems when a community of interest is outside the local exchange area in which LEVEL 3 is Interconnected. 5.2.6 When **SBC SOUTHWEST REGION 5-STATE** has a separate Local Only Tandem Switch in the local exchange area and a Local/IntraLATA, Local/Access, and/or Access Tandem Switch that serves the same local exchange area, a two-way trunk group shall be established to the **SBC SOUTHWEST REGION 5-STATE** Local/IntraLATA, Local/Access, or Access Tandem Switch. ***In addition, a two-way Local Only Trunk Group shall be***	both local and non-local traffic on a single interconnection trunk, Level 3 believes it should be able to do so. Under the unambiguous requirements of the Act, SBC is obligated pursuant to Section 251 (c)(2)(B) to provide Level 3 with interconnection "at any technically feasible point within its network". This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn, must provide the facilities and equipment for interconnection at that point. Further, under the congressional mandates contained in Section 251(c)(2)(C), SBC is obligated to provide interconnection to Level 3 that is at least equal in quality to that provided SBC's affiliates or any other	Local Exchange Area that is served by a Local Only Tandem. This trunk group will be used to exchange only Section 251(b)(5) and ISP Bound Traffic in that Local Exchange Area.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	SBC Issue (f): Should Level 3 be required to establish a two-way IntraLATA toll trunk group to the SBC Access Tandem when SBC has a separate Local Only Tandem Switch in the local exchange area? [§ 5.2.6] **SBC Issue (g):** Should two-way Local Interconnection Trunk Groups carry only Section 251(b)(5)/IntraLATA Traffic? [5.2.7 , 5.2.8, 5.2.9]	***established from the LEVEL 3 switch to the SBC SOUTHWEST REGION 5-STATE Local Only Tandem switch.*** 5.2.7 When **SBC SOUTHWEST REGION 5-STATE** has a Local/Access Tandem Switch in a local exchange area, a two-way ***Local Interconnection Trunk Group*** **Interconnection Trunk Group** shall be established. 5.2.8 When **SBC SOUTHWEST REGION 5-STATE** has more than one combined Local/Access Tandem Switch in a local exchange area, a two-way ***Local Interconnection Trunk Group*** **Interconnection Trunk Group** shall be established to each SBC SOUTHWEST REGION 5-STATE Local/Access Tandem Switch that the Parties may mutually agree upon.	carrier. SBC has been allowed to combine for itself and other CLECs a mix of local and non-local traffic over the same trunk groups. Under Section 251 (c)(2)(C), it must also do so for Level 3.	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		5.2.9 When **SBC SOUTHWEST REGION 5-STATE** has more than one Local/Access Tandem Switch or combined local/Access Tandem in a local exchange area, a two-way ***Local Interconnection Trunk Group*** **Interconnection Trunk Group** shall be established to each **SBC SOUTHWEST** REGION 5-STATE Local/Access Tandem Switch(es) that the Parties may mutually agree upon.		
ITR 11 (§§ 5.3, 5.3.1.1 5.3.2.1)	**NOTE: This issue is not an issue in ARK, KAN, MO, OKLA or TX.** **Level 3 Issue (a):** Should Level 3 be able to establish a Single Point of Interconnection in each LATA? **Level 3 Issue (b):** Should Level 3 be	5.3 ***Local*** Interconnection Trunk Group(s) in each LATA: **SBC MIDWEST REGION 5-STATE**, **SBC CONNECTICUT**, **SBC CALIFORNIA** and **SBC NEVADA** 5.3.1.1 Where **SBC CALIFORNIA, SBC NEVADA** or **SBC MIDWEST REGION 5-STATE** has a single Local/IntraLATA, Local/Access Tandem or Access Tandem Switch	(a) Yes. With respect to the issue of whether Level 3 should be able to combine both local and non-local traffic on a single interconnection trunk, Level 3 believes it should be able to do so. Under the unambiguous requirements of the Act, SBC is obligated pursuant to Section 251 (c)(2)(B) to provide Level 3 with interconnection "at any	SBC does not agree that Level 3's Issue Statement for Issue (a) accurately states the dispute for this language. This language does not address the POI, it addresses what types of traffic may go over what types of trunks. The POI is established via facilities and not trunks. (a) Yes. The heading for

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	obligated to build out separate interconnection trunks for local and non-local traffic? **SBC Issue (a)** Should section 5.3 address only Local Interconnection Trunk Groups? **SBC Issue (b)** Should InterLATA Toll Traffic be routed over separate trunk groups from Section 251(b)(5)/ IntraLATA Traffic when there is a single access tandem in CA, NV and Midwest states? [5.3.1.1, 5.3.2.1]	in a LATA, traffic shall be combined on a single ***Local*** Interconnection Trunk Group for calls destined to or from all **SBC** End Offices that subtend the Tandem within that LATA. 5.3.2.1 Where **SBC CALIFORNIA**, **SBC NEVADA**, **SBC CONNECTICUT** **SBC MIDWEST REGION 5-STATE** has more than one Access Tandem Switch and/or Local/IntraLATA Tandem Switch in a LATA, traffic shall be combined on a single ***Local*** Interconnection Trunk Group at every **SBC CALIFORNIA**, **SBC NEVADA**, **SBC CONNECTICUT** or **SBC MIDWEST REGION 5-STATE** Tandem(s) where Level 3 Offers Service within the area served by that tandem for calls destined to or from all **SBC** End Offices that subtend each Tandem in the LATA.	technically feasible point within its network". This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn, must provide the facilities and equipment for interconnection at that point. In addition, Level 3 is not required to establish interconnection trunk groups to carry only Section 251(b)(5) traffic. Such a requirement would require Level 3 to duplicate a network of trunks to carry different types of traffic. This is not only inefficient, but also could lead to increased blockage. (b) No. Section 251(c)(2) requires an ILEC, like SBC, to provide interconnection. This issue is directly linked to the position/support detailed in (a) above, and	Section 5.3 and the purpose of Section 5.3 are to define Local Interconnection Trunk Group requirements based on SBC's network architecture. Section 5.3 only addresses Local Interconnection Trunk Groups and not other types of trunk groups. Interconnection Trunk Groups should only carry Section 251(b)(5) Traffic/IntraLATA toll traffic to ensure proper billing. To ensure that Level 3 and SBC are properly compensated for local, intraLATA Exchange Access, and interLATA Exchange Access, these different traffic types must be routed on separate trunk groups. The Parties need to route Section 251(b)(5)/IntraLATA Traffic on different trunk

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			Level 3 incorporates these arguments herein. For years, the FCC has allowed SBC to establish and use its network facilities to carry both local and non-local traffic, and permitted carriers to interconnect with those network trunk facilities to complete calls. The same is true for other CLECs and CMRS providers. Thus, under § 251(c)(2)(C), SBC is obligated to provide the same form of interconnection with Level 3.	groups from InterLATA traffic in order to accurately record and bill based on reciprocal compensation or the appropriate intraLATA or interLATA Exchange Access as found in Attachment 12 Intercarrier Compensation. Physically separating the traffic types in this manner is the only way to ensure accurate billing and will reduce potential disputes between the parties that the Commission would need to resolve and would result in more efficient billing by the parties. b. Yes. Level 3 should route traffic to the SBC tandem where an End Office is subtended according to the LERG, to ensure traffic is routed and billed properly. Misrouted traffic can result in blocked calls and can create

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				inefficiencies in the network.
ITR 12 (§5.3.3.1)	**Level 3 Issue (a):** Should Level 3 and SBC exchange all types of Telecommunications Traffic over the interconnection trunks? **Level 3 Issue (b):** Should the Agreement contain a specific time period under which Level 3 must exceed one DS1s worth of traffic before it is obligated to establish direct End Office trunk groups [resolved]. **SBC Issue (a):** Should direct End Office trunks	5.3.3.1 The Parties shall establish direct End Office primary high usage ***Local*** Interconnection Trunk Groups for the exchange of traffic where actual or projected traffic demand exceeds one DS1's worth of traffic for three (3) consecutive months as measured during the busy hour.	(a) Yes. With respect to the issue of whether Level 3 should be able to combine both local and non-local traffic on a single interconnection trunk, Level 3 believes it should be able to do so. Under the unambiguous requirements of the Act, SBC is obligated pursuant to Section 251 (c)(2)(B) to provide Level 3 with interconnection "at any technically feasible point within its network". This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn, must provide the facilities and equipment for interconnection at that	a. Yes. Only Section 251(b)(5)/IntraLATA traffic should be carried on Direct End Office trunks to ensure traffic is properly billed. b. SBC agrees with Level 3's proposed language "for three (3) consecutive months as measured during the busy hour."

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	terminate only section 251(b)(5)/IntraLATA Traffic? **SBC Issue (b) :** Should Level 3's obligation to establish direct End Office trunk groups if traffic demand exceeds a certain level be conditioned on demand exceeding that level for three consecutive months? [resolved].		point. In addition, Level 3 is not required to establish interconnection trunk groups to carry only Section 251(b)(5) traffic. Such a requirement would require Level 3 to duplicate a network of trunks to carry different types of traffic. This is not only inefficient, but also could lead to increased blockage. (b) The Agreement should include a statement that clarifies that Level 3 must exceed one DS1s worth of traffic for a minimum of three consecutive months before it is obligated to build out a direct end office trunk to the End Office. Without this clarification, SBC could demand at any time that Level 3 make such a build out, even if the actual traffic flow is sporadic, and only exceeds the DS1 level a single time.	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			Level 3's clarification provides a rationale timeframe over which a realistic sample of the actual traffic flow is possible.	
ITR 14	Resolved			
ITR 15	Resolved			
ITR 16	Resolved			
ITR 17	Resolved			
ITR 18 (§ 12.1)	**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? **Level 3 Issue (c):** Should the Agreement include SBC's proposed definition of Switched Access Traffic?	12 **Circuit Switched Traffic** ***12.1*** **The Parties agree to the definition, terms, and conditions applicable to Circuit Switched Traffic as stated in Sections 3.4 and 16 of Appendix IC to this Agreement.** ***12. SWITCHED ACCESS TRAFFIC.*** ***12.1 For purposes of this Agreement only, Switched Access Traffic shall mean all***	(a) Access charges do not and have not ever applied to IP-Enabled Traffic. There is no FCC order, rule or regulation that concludes that Level 3 should pay access charges when an SBC customer terminates an IP-Enabled call to a Level 3 customer. The United States Court of Appeals for the District of Columbia held in *Worldcom v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) that Section 251(g) of the Act preserves the pre-1996 Act access charge	(A) SBC's position is that, unless and until the FCC rules otherwise, all Switched Access Traffic, as defined below, must be terminated over feature group access trunks (B or D)(except certain types of IntraLATA toll and Optional EAS traffic) and all such traffic is subject to applicable interstate and intrastate switched access charges. Switched Access Traffic means all traffic that originates from an end user

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	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? **SBC Issue (b)**: Should the Agreement specify procedures for handling interexchange circuit-switched traffic that is delivered over Local Interconnection Trunk Groups so that the terminating party may receive proper compensation?	***traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP***	rules. Because there was no pre-1996 Act rule governing intercarrier compensation between LECs for IP-enabled service traffic, such traffic must be exchanged at cost-based rates pursuant to Section 251(b)(5) of the Act. (b) No. Level 3 is not required to establish separate trunks for the exchange of IP-enabled traffic and other telecommunications traffic. Under the unambiguous requirements of the Act, SBC is obligated pursuant to Section 251 (c)(2)(B) to provide Level 3 with interconnection "at any technically feasible point within its network". This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn,	physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		technology and terminates over a Party's circuit switch. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks: ***(i) IntraLATA toll Traffic or Optional EAS Traffic from a <u>Level 3</u> end user that obtains local dial tone from <u>Level 3</u> where <u>Level 3</u> is both the Section 251(b)(5) Traffic provider and the intraLATA toll***	must provide the facilities and equipment for interconnection at that point. (c) No, the Agreement should not include SBC's proposed definition of Switched Access Traffic. Level 3 notes that SBC's proposed definition imposes a requirement that the definition includes traffic that originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology (also referred to as "IP-PSTN). Access charges do not and have not ever applied to IP-Enabled Traffic. There is no FCC order, rule or regulation that concludes that Level 3 should pay access charges when an SBC customer	circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) (also referred to as "PSTN-IP-PSTN") and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		provider, ***(ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;*** ***(iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or*** ***(iv) Switched Access Traffic delivered to either Party from a third party competitive local***	terminates a call to a Level 3 customer. The United States Court of Appeals for the District of Columbia held in *Worldcom v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) that Section 251(g) of the Act preserves the pre-1996 Act access charge rules. Because there was no pre-1996 Act rule governing intercarrier compensation between LECs for IP-enabled service traffic, such traffic must be exchanged at cost-based rates pursuant to Section 251(b)(5) of the Act.	voice communication applications or services when such switch utilizes IP technology (also referred to as "IP-PSTN). SBC's position that all Switched Access Traffic is subject to switched access charges is supported by long-standing FCC precedent and rules, under which any provider that uses ILEC local exchange switching facilities, including an information service provider, is subject to the baseline obligation to pay access charges, unless specifically exempted. With respect to PSTN-IP-PSTN traffic (also referred to as "IP-in the Middle Traffic"), the FCC recently held that a

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party. ***Notwithstanding anything to the contrary in this Agreement, each Party reserves it rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004).***		voice service that originates and terminates on the PSTN and relies on IP technology only for transport without offering customers any enhanced functionality associated with the IP format is a telecommunications service subject to access charges under the FCC's rules. *See 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 Charge Avoidance Order*). Consistent with the FCC's *Access Charge Avoidance Order*, this Commission should find that this type of Switched Access Traffic is subject to intrastate access charges. Furthermore, to ensure the proper compensation is paid on this traffic, this Commission should find

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				that Switched Access Traffic must be routed over feature group access trunks. With respect to IP-PSTN traffic, it is SBC's position that under current FCC rules and regulations, providers of IP-PSTN services are subject to the baseline obligation to pay access charges when they send traffic to the PSTN. The enhanced service provider (ESP) exemption does not, as some claim, change this result. The ESP exemption applies only when an information service provider uses the PSTN to connect with its own customers. It has never been extended to a situation where an information service provider uses the PSTN to send traffic to non-customer third parties to whom the information service provider is not providing an information

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				service not exempt from the obligation to pay intrastate or interstate access charges when they make use of the PSTN for purposes other than connecting with their *own* subscribers for the use of their own services. The Enhanced Service Provider (ESP) exemption does not, as some claim, apply to such IP-PSTN services. The ESP exemption applies only when information service providers use the PSTN to connect with their own subscribers, but it has never been extended to a situation in which information service providers use the PSTN to connect with third parties to whom they are not providing an information service. Since no exemption applies to IP-PSTN Traffic, SBC should continue to charge "jurisdictionalized" compensation rates for such

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				traffic (notwithstanding SBC's position that it is interstate in nature) in accordance with its existing switched access tariffs until the FCC rules in its intercarrier compensation proceeding on this type of traffic. SBC's existing tariffs contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number information together with other data. This Commission should find IP-PSTN is subject to intrastate and interstate switched access charges to ensure SBC is protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates until the FCC rules on IP-PSTN traffic.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				(B) SBC also recognizes that some Switched Access Traffic may be improperly delivered to SBC or Level 3 by third parties over local trunk interconnection groups. Consequently, SBC acknowledges that if Switched Access Traffic is improperly delivered to either Party from a third Party CLEC over local interconnection trunk groups, SBC or Level 3 may in turn deliver such traffic to the terminating Party over local interconnection trunk groups. However, when the delivering Party is notified that such interexchange traffic is being improperly routed over its local interconnection trunk groups, both Parties will cooperatively work together to have such traffic removed off those trunk groups including seeking

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				Commission permission to block such traffic. This procedure will assist both Parties in obtaining the proper terminating access charges associated with Switched Access Traffic.
ITR 19 (§ 13.1)	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?	13. IP TRAFFIC **13.1 The Parties agree to the definition, terms, and conditions applicable to IP Enabled Services Traffic as stated in Sections 3.2 and 17 of Appendix IC to this Agreement.**	Yes. For purposes of clarity and consistency, Level 3 includes reference to the IC Appendix in this ITR Appendix. Level 3 believes that this clarity will lower the likelihood of confusion over the terms related to IP Enables Services, and possibly future disputes between the Parties.	SBC believes this issue is intextricably intertwined with s Issue ITR 18. SBC's position relative to this language and all of Level 3's language relating to IP traffic is set forth in ITR 18 above.
IC-1 **Level 3** (§ 3.1 § 3.1.1. § 3.1.2 § 3.1.3 § 3.1.4	**Level 3 Issue:** 1. Should the Interconnection Agreement classify the traffic exchanged between the parties using the definitions from the Act, or should	3.1**Telecommunications Traffic exchanged between LEVEL 3 and SBC-13STATE will be classified as either:** 3.1.1**Telephone Toll Service defined according to 47 U.S.C. §153(48);** 3.1.2**Telephone Exchange**	The Agreement should classify traffic in the manner proposed by Level 3. Level 3 proposes that the characterization of traffic follow the definitions set forth in the federal Communications	1. 2. SBC's categories of traffic accurately capture the appropriate classifications of traffic for purposes of intercarrier compensation.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
§ 3.1.5) **SBC** (§ 3.1)	the Agreement classify the traffic according to SBC's interpretation of "Section 251(b)(5) Traffic", FX Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as 'Optional Calling Area Traffic'), IntraLATA Toll Traffic, or InterLATA Toll Traffic, Meet Point Billing or FGA Traffic"? **SBC Issue:** 1. Which party's proposed classifications of traffic should be used in the Agreement?	**Service defined according to 47 U.S.C. §153(47);** 3.1.3**Exchange Access Service defined according to 47 U.S.C. §153(16); or** 3.1.4**Telecommunications Services defined according to 47 U.S.C. §153(46); and** 3.1.5 **Information Services defined according to 47 U.S.C. §153(20).** ***3.1 For purposes of compensation under this Agreement, the telecommunications traffic exchanged between LEVEL 3 and SBC-13STATE will be classified as either Section 251(b)(5) Traffic, FX Traffic , ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic"), IntraLATA Toll Traffic, or InterLATA Toll Traffic, Meet***	Act. The Agreement should not classify traffic in the manner proposed by SBC. SBC's proposed classifications mischaracterize the types of traffic that is exchanged between the parties and is unfounded as a matter of law.	Level 3's language provides no differentiation in treatment between "local" and ISP-Bound Traffic and instead refers generically to "telecommunications services." For compensation purposes, this category of traffic is too broad to be useful. For example, in the *ISP Compensation Order* the FCC, in imposing a compensation mechanism for ISP-Bound traffic noted that: "Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and not the universe of traffic that falls within subsection (b)(5). This analysis differs from our analysis in the Local

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Point Billing or FGA Traffic.		Competition Order, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all "local" traffic. 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)." Because this appendix deals with the appropriate forms of compensation for many types of traffic and because the compensation for each type varies, it is more appropriate to describe the categories of traffic with specificity as SBC's proposed language

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				does.
IC-2 Level 3 (§ 3.2 - (§ 3..4.5) SBC (§16-§ 16.1)	Level 3 Issues: 3a. Should the Agreement contain terms and conditions for the compensation of IP-Enabled Traffic? 3b. Is IP-enabled traffic interstate in nature? 3c. Should the agreement contain language that is consistent with SBC's publicly-stated position as presented to the FCC that IP-Enabled Traffic is "indivisibly" interstate in nature? 3d. Should IP-enabled traffic be classified by the geographic location of the calling and called parties , or should the Agreement be consistent with SBC's publicly-	3.2 **IP ENABLED SERVICES TRAFFIC** *3.2.1* **DEFINITION OF IP-ENABLED SERVICES** **3.2.1.1 IP-Enabled Services are defined as, and include, services and applications relying on the Internet Protocol family ("IP), which could include digital communications of increasingly higher speeds that rely upon IP, as well as higher level software services that could be invoked by the end user or on the end user's behalf to make use of communications services. Thus, the term IP-enabled Services includes "applications" and "services" because communications over the Internet are possible with both forms.**	. (a) Yes, the Agreement should contain terms related to IP-Enabled Traffic. While Level 3 and SBC seem to be in agreement that IP-Enabled Traffic is interstate in nature from a jurisdictional perspective, the network facilities and routing terms are certainly within the jurisdiction of this Commission. These issues address the terms and conditions related to how SBC will interconnect its local interconnection facilities with Level 3's traffic. SBC is obligated to provide interconnection for the exchange and termination of Level 3's traffic, irrespective of the jurisdictional nature of the traffic. As such, Level 3 has proposed the disputed terms related to IP-Enabled Traffic, in order to clearly	Level 3's proposed language for section 3.2 and all of its sub-parts (which are the subject of IC Issues 5 through 14 and 16) are countered by SBC's proposed Section 16., which presents the question of the proper routing treatment and compensation scheme for IP traffic. 3. SBC's position is that all Switched Access Traffic, as defined below, must be terminated over feature group access trunks (B or D) (except certain types of IntraLATA toll and Optional EAS traffic) and all such traffic is subject to applicable interstate and intrastate switched access charges. Switched Access Traffic means all traffic that originates from an end user physically located in one

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	stated position that it is not technically possible to track the jurisdictional nature of IP-Enabled Traffic? 3e. Should the agreement recognize that a net-protocol conversion occurs in IP enabled traffic? 3f. Should the parties include in the SS7 call setup message an indicator identifying IP originated traffic? 3g. Should SBC be able to force Level 3 to build out a separate FGD network for the exchange of IP enabled traffic when the parties do and can continue to exchange such traffic over existing interconnection facilities and compensate each	**3.2.1.1.1 Because IP-enabled Services are enabled by use of IP and the Internet, IP-enabled Services share the non-geographic nature of electronic communications conducted over the Internet:** **3.2.1.1.1.1 IP-enabled Services Traffic includes communications traffic containing voice communications (i.e. Voice embedded IP Communications).** **3.2.1.2 The Parties recognize that although state public utility commissions may have jurisdiction over underlying telecommunications facilities, the FCC has determined that IP-enabled Services are interstate in nature and has preempted state jurisdiction over such services.** **3.2.1.3 In order for Parties**	define the term as used throughout the Appendix. For these reasons, the Commission should adopt Level 3's proposed language. (b) Level 3 believes the IP-Enabled Traffic itself is jurisdictionally interstate in nature. Thus, Level 3 proposes Section 3.2.1.2, which recognizes that position. SBC is opposing that language in this arbitration. However, in its comments before the FCC in a recent FCC investigation into IP Services, SBC argued that, in fact, IP-Enabled Traffic is interstate in nature. Thus, SBC is arguing to this Commission that IP-Enabled Traffic is not interstate in nature, and before the FCC that it is. In light of the admissions before the FCC that IP—	local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) (also referred to as "PSTN-IP-PSTN") and/or (ii) originates from the end user's premises in IP format and is transmitted

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	other according to a Percentage of IP Use allocator, which allocator they could later revisit once the FCC determines how to handle this traffic in several pending rulemaking proceedings? 3j. Should the Parties compensate each other for IP-enabled Services at $0.0005 to terminate IP-enabled Services Traffic? 3k. Should the categorization of Circuit Switched Traffic be consistent with the FCC's orders that distinguish Circuit Switched Traffic from IP enabled traffic? SBC Issue: 3. What is the proper routing, treatment and compensation for	**communicating via IP-enabled Services to interact with end users connected to the Internet by means of circuit switched telecommunications services addressed by NPA-NXX codes, the underlying telecommunications provider must effect a net protocol conversion from IP to TDM in order to permit the Internet to connect an end users served by a device addressed via the NPA-NXX codes and connected over a legacy circuit switched telephone network.** *3.2.2* **Identification of IP-enabled Services Exchanged Between the Parties** **3.2.2.1 The parties recognize that neither party has a billing system capable of determining the physical location of their customers;**	Enabled Traffic is interstate in nature, the Commission should adopt Level 3's language consistent with that position. (c) Especially considering that SBC in comments in a pending FCC rulemaking proceeding on VoIP contends that IP-Enabled Services Traffic is categorically interstate and falls within the express FCC's Title 1 jurisdiction over such communications, Level 3 sees no rationale as to how SBC can apply in intrastate tariff to this service. In fact, SBC is taking before this Commission a position that is diametrically in opposition to that it takes before the FCC. On page 8 of its July 14, 2004 Reply Comments in FCC Docket No. 04-36 (In the matter of IP-Enabled Services), SBC	to the switch of a provider of voice communication applications or services when such switch utilizes IP technology (also referred to as "IP-PSTN). SBC's position that all Switched Access Traffic is subject to intrastate and interstate switched access charges is supported by section 69.5(b) of the FCC's rules, which states that access charges "shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services." In particular, with respect to PSTN-IP-PSTN traffic (also referred to as "IP-in the Middle Traffic"), the FCC recently held that a voice service that originates and terminates on the PSTN and relies on IP

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?	**rather consistent with industry practice nationwide both Parties' billing systems capture the originating and terminating NPA-NXX, which they subsequently compare to tariff databases and the Local Exchange Routing Guide ("LERG") to identify the location of the switch serving the called or calling NPA-NXX codes and then they rate those calls according to the terms and conditions of this Agreement and their respective tariffs.** 3.2.2.2 **Because customers of IP-enabled Services Traffic desire to make calls to the PSTN as well as to other IP-enabled Services Traffic customers, Level 3 provides a service that permits them to make calls to and from devices that are addressed using NPA-NXX codes.** 3.2.2.3 **In order to ensure that**	says the following about IP-Enabled Traffic: "These services are also indivisibly interstate because their inherent geographic indeterminacy and portable nature, combined with their capacity to facilitate multiple simultaneous communications with a variety of information sources, make it infeasible to segregate any intrastate component for regulatory purposes. As such, IP-enabled services fall categorically within the Commission's exclusive jurisdiction, and the Commission should resolve any uncertainty on this point by explicitly preempting any state- level common carrier regulation of information services" Thus, while SBC would have this Commission	technology only for transport without offering customers any enhanced functionality associated with the IP format is a telecommunications service subject to section 69.5(b) of the FCC's rules. See 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 Charge Order). This Commission should follow the FCC's Access Charge Order and find that this type of Switched Access Traffic is subject to intrastate access charges. Furthermore, to ensure the proper compensation is paid on this traffic, this Commission should find that Switched Access Traffic must be routed over

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		IP-enable Services Traffic is correctly billed and to ensure that no Circuit Switched Traffic is misbilled and that no other carrier can utilize Level 3's network for toll-bypass, Level 3 will insert into the SS7 call setup message an indicator identifying traffic that originates as IP on Level 3's network. 3.2.2.4 **Level 3 recognizes that ILEC billing systems generally, and in this case, SBC13-State's switches may not capture information out of the SS7 stream at the moment the traffic is exchanged. Accordingly, the Parties agree to develop a Percentage of IP Use ("PIPU") factor that will be applied to all minutes of usage exchanged between them over the Local Interconnection Trunk Groups. This factor will be**	impose intrastate tariffs to what it admits is interstate traffic, it is arguing just the opposite at the FCC. SBC has proposed its Section 16, which governs its Switched Access Compensation terms for calling parties. In its proposal, SBC mandates that any IP-Enabled Traffic is subject to Switched Access Charges, irrespective of where the call originates or terminates. This is a vast departure from the industry standard, which has relied upon the NPA-NXX of the calling parties to determine the appropriate rating to impose. (d) No, IP-Enabled Traffic should not be classified by the geographic location of the calling parties. First, in the Parties current Agreement, a local call is defined as a call that originates and terminates	feature group access trunks. With respect to IP-PSTN traffic, it is SBC's position that under current FCC rules and regulations, providers of IP-PSTN services are not exempt from the obligation to pay intrastate or interstate access charges when they make use of the PSTN for purposes other than connecting with their own subscribers for the use of their own services. The Enhanced Service Provider (ESP) exemption does not, as some claim, apply to such IP-PSTN services. The ESP exemption applies only when information service providers use the PSTN to connect with their own subscribers, but it has never been extended to a situation in which information service providers use the PSTN to connect with third

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		based upon Level 3's actual and verifiable records of IP-originated traffic. It will be calculated as follows: **3.2.2.4.1 In the case of calls originating from SBC13-State over the Interconnection Trunks under this Agreement ("Level 3 Terminating Traffic"), Level 3 shall provide a PIPU factor to identify the percentage of that traffic that is in fact terminating to an IP Customer and therefore falls within the definition of IP-enabled Services Traffic under this Agreement.** **3.2.2.4.2 In the case of calls originating from Level 3 over the Interconnection Trunks under this Agreement ("SBC13-State Originating Traffic"), Level 3 shall provide a PIPU factor to identify the percentage of**	within the same wire center, as determined by the NPA-NXX of the calling parties. SBC's attempts to alter the landscape are completely at odds with the industry standards, as incorporated in the existing agreement. Level 3 seeks merely to extend the status quo. Second, even SBC admits on Page 10-11 of its FCC Reply Comments in Docket No. 04-36 (In the Matter of IP-Enabled Services) that there is not technical manner at present to allow for any carrier to track the jurisdictional nature of IP-Enabled Services: "The California commission is simply wrong in claiming that it would be feasible, using current technology, to segregate the "interstate" and "intrastate" components of IP-enabled services. As attested to by	parties to whom they are not providing an information service. Since no exemption applies to IP-PSTN Traffic, SBC should continue to charge "jurisdictionalized" compensation rates for such traffic (notwithstanding SBC's position that it is interstate in nature) in accordance with its existing switched access tariffs until the FCC rules in its intercarrier compensation proceeding on this type of traffic. SBC's existing tariffs contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number information together with other data. This Commission should find IP-PSTN is subject to intrastate and interstate switched access charges to

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		that traffic that is in fact originating from an IP Customer and therefore falls within the definition of IP-enabled Services Traffic under this Agreement. **3.2.2.4.3 Level 3 will provide separate PIPU factors for Level 3 Terminating Traffic and Level 3 Originating Traffic. These PIPU factors shall be applied to all originating or terminating minutes of use (as applicable) exchanged over the Interconnection Trunks between the Parties under this Agreement.** **3.2.2.5 To the extent SBC13-State offers services in and outside of its operating territories that support either origination from or termination to an SBC13-State IP-enabled Services Traffic Customer and the exchange of traffic with the**	the equipment and software manufacturers on the cutting edge of this field, there is today no practicable means for identifying geographic locations on the Internet that would enable "intrastate" traffic to be carved out for separate regulation by state commissions.28/ In particular, there are a variety of reasons why a packet's source IP information or IP address cannot currently be used to determine a physical location." Once again, SBC is telling this Commission one thing, while telling the FCC a completely different story. Third, the Act and FCC decisions require that the jurisdiction of the traffic be determined by the origination and termination points of a call. Thus, if a	ensure SBC is protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates until the FCC rules on IP-PSTN traffic.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		PSTN. To ensure that this traffic is correctly billed and to ensure that no Circuit Switched Traffic is misbilled and that no other carrier can utilize SBC13-State's network for toll-bypass, SBC13-State agrees to develop methods for accurately identifying traffic that originates as IP on SBC13State's network and shall likewise provide its own originating and terminating PIPU factors in the same manner as Level 3 under this Section. **3.2.2.6 Level 3 shall provide, at SBC's request, a monthly report of the Call Records reflecting the traffic exchanged between the parties. These Call Records may be used by the parties in addition to PIU, PLU, and PIPU factors to determine the compensation for the**	call originates and terminates within the SBC-defined local calling area, the call is local. SBC would have the Parties define a call on the basis of the mileage between the calling parties, in direct conflict with the Act and FCC orders. (e) Yes, the Agreement should acknowledge that a net protocol conversion takes place in IP-Enabled Traffic. In fact, it is a statement of fact. This point has been discussed and relied upon by the FCC in recent IP-related investigations, and should be acknowledged in the Agreement. (f) Yes. In its proposed language, in the event that the Commission determines it appropriate to include IP-Enabled Traffic terms in the Agreement, Level 3	

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		exchange of Telecommunications Traffic. *3.2.3* **Compensation for IP-enabled Services Traffic** **3.2.3.1 The Parties shall compensate each other for termination of all minutes of traffic identified as IP-enabled Services Traffic pursuant to application of a PIPU factor at $0.0007 per minute of use to terminate IP-enabled Services Traffic to either Party's end user customer.** 3.3 **ISP-Bound Traffic shall mean Telecommunications Services Traffic exchanged between the Parties where the originating Customer of one Party places a Circuit Switched Traffic call over the circuit-switched network to an Internet Service Provider ("ISP") customer of the other Party.**	proposes to have it insert into the SS7 call setup message an indicator identifying traffic that originates as IP on Level 3's network. This will allow the Parties to identify any traffic that originates on the Level 3 network, and will assist in the tracking and billing process. This is a common-sense approach that will greatly benefit both SBC and Level 3. (g) SBC should not be able to force Level 3 into building out a separate FGD network just so that it can track and bill Level 3 for IP-Enabled Traffic. From a common sense perspective, it does not make any sense to force Level 3 to go through the crushing expense of building out this network, when the FCC currently has before it several	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		3.3.1 ~~End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through IXC traditional circuit-switched long distance service; and~~ *3.3.2* ~~The call originates and terminates on the public switched telephone network (PSTN); and~~ ~~3.3.2.1 The call undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology; and '~~ *3.3.3* ~~Obtains the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers by virtue of the switched access network. Customers of Circuit Switched Traffic receive no enhanced~~	proceedings investigation the appropriate manner in which the route such traffic. Before forcing Level 3 to undergo expensive and time-consuming build out, the Commission should allow the FCC the opportunity to determine the appropriate manner in which to handle this traffic. Further, until the FCC acts, SBC is not going to be financially harmed. Level 3 is proposing the Parties use a PIPU allocator on all traffic that is originated on the Level 3 network to determine jurisdictional breakdown of its traffic. These types of allocators have a long history in the telecommunications industry, including use by SBC in tracking and billing its traffic. Additionally, as another protection for SBC,	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		~~functionality by using the service. Circuit Switched Traffic obtains the same circuit-switched interstate access for its specific service as obtained by other interexchange carriers, and, therefore, phone to phone circuit switched service imposes the same burdens on the local exchange as do circuit-switched interexchange calls because it makes use of the access network.~~ **3.4 Circuit-Switched Traffic is defined as any Telecommunication Services traffic that:** **3.4.1 uses ordinary customer premises equipment (CPE) with no enhanced functionality; and** **3.4.2 Customers using a Circuit-Switched service place and receive calls with the same telephones they use for all other**	Level 3 will provide SBC with auditable records that will provide SBC the opportunity to review the accuracy of the PIPU based on actual call records. These systems should protect both parties until such time as the FCC makes its determinations, and are far superior to forcing Level 3 to develop, build and pay for a new FGD network. (h) Yes, the parties should continue their current compensation scheme and pay each other $0.0005 to terminate IP-Enabled Traffic. Level 3 and SBC have an existing ISP Compensation Plan in place that will remain in place until December 31, 2004. However, the FCC is expected to release its much anticipated ISP Remand Order at the October 2004 FCC meeting. This	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Circuit-Switched calls. So, for example, where the customer dials an NPA-NXX that appears in ILEC tariffs as Telephone Toll Service, the customer would initiate the call by dialing 1 plus the called party's number (NPA-NXX-XXXX), just as in any other circuit-switched long distance calls, which calls are traditionally routed over Feature Group D trunks; and **3.4.3 End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through IXC traditional circuit-switched long distance service; and** **3.4.4 The call originates**	Agreement's ISP Compensation terms would not take effect until after that date. Thus, Level 3 is proposing that the Parties agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order. SBC's proposed new compensation scheme is not only a newly crafted scheme based upon a regime that will go replaced shortly, but also will likely not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time. This is the effect of Level 3's proposed language. (i) Yes. Level 3 has proposed a definition of Circuit Switched Traffic that is consistent with both FCC orders and regulations. In addition, the Level 3	

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		and terminates on the public switched telephone network (PSTN); and **3.4.4.1 The call undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology; and** **3.4.5 Obtains the same circuit-switched access as obtained by other interexchange carriers, and therefore imposes the same burdens on the local exchange as do other interexchange carriers by virtue of the switched access network. Customers of Circuit Switched Traffic receive no enhanced functionality by using the service. Circuit Switched Traffic**	proposal for IP-Enabled Traffic is consistent with the FCC's pronouncements in a recent order addressing IP-Enabled Traffic. See, See 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). In these orders, the FCC has distinguished the manner in which these two types of traffic are routed on the network. Level 3 seeks to incorporate this distinction in the Agreement	

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		obtains the same circuit-switched interstate access for its specific service as obtained by other interexchange carriers, and, therefore, phone to phone circuit switched service imposes the same burdens on the local exchange as do circuit-switched interexchange calls because it makes use of the access network. *16. Switched Access Traffic* *16.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic*		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology and terminates over a Party's circuit switch. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		(i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider, *(ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;* *(iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or* *(iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic*		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		(hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party. *Notwithstanding anything to the contrary in this Agreement, each Party reserves it rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004).* .		
IC-3 **SBC**	**Level 3 Issue:** 2. Should SBC's proposed definition of	***3.2 Section 251(b)(5) Traffic shall mean telecommunications traffic in which the original***	No. Under the Telecommunications Act of 1996, Section 251(b)(5)	2. Yes. Reciprocal compensation under section 251(b)(5) applies only to

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
(§ 3.2)	"Section 251(b)(5)" restrict the categories of traffic to only the categories identified by SBC's proposed language. **SBC Issue:** 2. Should the Agreement define Section 251(b)(5) traffic to mean calls in which the originating end user and the terminating end user are both physically located in the SBC Local Exchange Area or common mandatory local calling area?	***End Use of one Party and the terminating End User of the other Party are:*** ***a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or*** ***b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.***	applies to the exchange of "telecommunications" which applies to all forms of traffic. SBC applies a self-serving definition to this traffic that attempts to reverse not only where the law stands today but resists where the law and policy is headed at the federal level. It is well known that the FCC will soon issue an order updating its intercarrier compensation regime. SBC's efforts here are directed toward presupposing a result highly beneficial to SBC in bilateral interconnection setting when the issue is properly before the FCC and will soon be decided. Moreover, the parties have already agreed to and have operated under a reasonable compensation regime.	calls that originate and terminate within the same ILEC local calling area – without regard to the NPA/NXX's of the calling party and the called party. Accordingly, SBC's proposed language properly excludes from Section 251(b)(5) reciprocal compensation calls terminated to customers not physically located in the same SBC local calling area as the calling party – *i.e.,* Foreign Exchange (FX) calls. In addition, bill and keep is the proper compensation mechanism not only for FX voice traffic, but also for FX ISP traffic.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
IC-4 Level 3 § 4.7-4.7.1 SBC §16.2	**Level 3 Issue** 4a. Should Level 3 and SBC continue to exchange all types of Telecommunications Traffic over a single set of already constructed and fully operational interconnection trunks or should SBC be permitted to force Level 3 to construct unnecessary FDG trunks which will unjustifiably increase Level 3's cost and delay Level 3's provision of the next generation of voice services to business and residential customers? 4 b. Should SBC be able to block the other's traffic without following the dispute resolution procedures in the event of a dispute	4.7 **PARTIES AGREE TO ERECT NO BARRIERS TO IP ENABLED SERVICES TRAFFIC** 4.7.1 **In order for Parties communicating via IP-enabled Services to interact with end users connected to the Internet by means of circuit switched telecommunications services addressed by NPA-NXX codes, the underlying telecommunications provider must effect a net protocol conversion from IP to TDM or TDM to IP format in order to permit the Internet to connect an end users served by a device addressed via the NPA-NXX codes and connected over circuit switched telephone networks.** 4.7.2 **The Parties agree, that they will exchange any and all IP Enabled Services traffic over Local Interconnection Trunk Groups.**	(a) Level 3 and SBC should continue the status quo and exchange all types of Telecommunications Traffic over a single set of interconnection trunks, especially in light of the fact that those trunks are already fully operational and carrying traffic. It is technically feasible to exchange the various types of traffic over the local interconnection trunks. Further, Section 251(c)(2) mandates that SBC allow Level 3 to combine multiple types of traffic on single interconnection trunk. (b) No. When read in conjunction with SBC's proposed mandate that Level 3 must build out separate trunks to each SBC end office in the local exchange area, this would	4. SBC also recognizes that some Switched Access Traffic may be improperly delivered to SBC or Level 3 by third parties over local trunk interconnection groups. Consequently, SBC acknowledges that if Switched Access Traffic is improperly delivered to either Party from a third Party CLEC over local interconnection trunk groups, SBC or Level 3 may in turn deliver such traffic to the terminating Party over local interconnection trunk groups. However, when the delivering Party is notified that such interexchange traffic is being improperly routed over its local interconnection trunk groups, both Parties will cooperatively work together to have such

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	over the jurisdictional nature or classification of traffic? **SBC 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?	4.7.2.1 **Should any dispute arise over the jurisdictional nature or classification of traffic, the Parties agree to resolve such disputes through the dispute resolution process contained within this Agreement and in no event will either party block the other's traffic without following the dispute resolution procedures contained in this Agreement and according to Applicable Law.** ***16.2 In the limited circumstances in which a third party competitive local exchange carrier delivers Switched Access Traffic as described in Section 16.1 (iv) above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection***	have the effect of imposing a default blocking device in which SBC could prohibit the exchange of IP-Enabled Traffic between these carriers. Neither Party should be able to do this. Neither Party should be able to unilaterally block the other Party's traffic without complying with the dispute resolution procedures. Level 3's proposal merely clarifies that position.	traffic removed off those trunk groups including seeking Commission permission to block such traffic. This procedure will assist both Parties in obtaining the proper terminating access charges associated with Switched Access Traffic.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked		
IC-5 (§ 3.3)	Level 3 Issue: 5. Should ISP-Bound Traffic be identified as originating as a call that originates on the circuit switched network and terminates to an Internet Service Provider? SBC Issue: 5. Should the Agreement define ISP-Bound traffic to mean calls in which the originating end user	**3.3 ISP-Bound Traffic shall mean Telecommunications Services Traffic exchanged between the Parties where the originating Customer of one Party places a ~~Circuit Switched Traffic~~ call ~~over the circuit-switched network~~ to an Internet Service Provider ("ISP") customer of the other Party.** ***3.3In accordance with the FCC's Order on Remand and***	Yes. The agreement should make clear that ISP-bound traffic is traffic that is originated over the circuit switched network, and terminated to an ISP customer of the other party. This definition is consistent with the FCC's orders and rules related to ISP-Bound Traffic. The terms "Physical" or "physically located" do not appear in the FCC's April 27, 2001 ISP Compensation Order. Thus, SBC's proposed language cannot be	5. Yes. When the FCC's ISP Compensation Order classified and developed an inter-carrier compensation mechanism for ISP-Bound traffic, the FCC made clear that the ISP-bound traffic it was addressing, like traffic that is subject to Section 251(b)(5) reciprocal compensation, is traffic between two parties in the same local calling area. ISP-Bound Traffic, like reciprocal compensation under Section 251(b)(5),

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	and the terminating ISP are both physically located in the SBC Local Exchange Area or common mandatory local calling area?	***Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"), "ISP-Bound Traffic" shall mean telecommunications traffic exchanged between LEVEL 3 and SBC-13STATE in which the originating End User of one Party and the ISP served by the other Party are*** ***a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or***	considered consistent with that Order. Footnote 82 of order specifically states that the call need not terminate in the local calling area.	applies only to calls that originate and terminate within the same ILEC local calling area – without regard to the NPA/NXX's of the calling party and the called party. Accordingly, SBC's proposed language properly excludes from Section 251(b)(5) reciprocal compensation and ISP-Bound intercarrier compensation such calls that are terminated to customers not physically located in the same SBC local calling area as the calling party – i.e., Foreign Exchange (FX) calls. In addition, bill and keep is the proper compensation mechanism not only for FX voice traffic, but also for FX ISP traffic.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes. ***In states in which SBC-13STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, traffic is presumed to be ISP-Bound Traffic in accordance with the rebuttable presumption set forth in Section 6.6 of this Appendix.***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	**Issue Description**	**Disputed Contract Language**	**Level 3 Position/Support**	**SBC Position/Support**
IC-6 **Joint** (§ 3.6) **Level 3** (§1.6)	**Level 3 Issues:** 6a. Should the parties compensate each other for circuit switched tariff according to the FCC';s orders defining such traffic? 6b. Should the agreement refer to SBC's improper definition of "Section 251(B)(5) traffic"? **SBC Issues:** 6a. Should the Party whose End User originates Section 251(b)(5) Traffic compensate the Party who terminates such traffic to its End User for the transport and termination of such traffic?	3.6 For ***Section 251(b)(5) Traffic*, <u>ISP-Bound Traffic, and Circuit Switched Traffic</u> including** Optional EAS Traffic, and Intra LATA toll, the Party whose End User originates such traffic shall compensate the Party who terminates such traffic to its End User for the transport and termination of such traffic at the applicable rate(s) provided in this Appendix and Appendix Pricing and/or the applicable switched access tariffs. **<u>As of the date of this Agreement, ULECs in</u>** ***In*** **<u>SBC CONNECTICUT, cannot seek intercarrier compensation for Circuit Switched Traffic</u>** ***calls*** **<u>that they originate from or terminate to their end users over a loop provided by SBC-Connecticut to the ULEC pursuant to unbundling obligations or other wholesale</u>** ***originated over UNEs are not***	(a) Level 3 is not aware of any FCC order or regulation that defines the phrase "Section 251(b)(5) Traffic", and does not believe it appropriate to confuse the terms of the Agreement with undefined phrases. Further, Level 3 cannot agree with SBC's interpretation of Section 251(b)(5). Thus, reference to an undefined phrase based upon SBC's own interpretation of the term is inappropriate and will not be agreed to by Level 3. Level 3 believes that more clearly defined terms are required under the agreement, and since "Section 251(b)(5) Traffic" is not defined, and will only lead to confusion and disputes between the Parties, the Commission should reject SBC's proposals.	6a. Yes. SBC proposes to continue to bill reciprocal compensation in accordance with current practice in which the originating party will compensate the Party who terminates Section 251(b)(5) Traffic to its End User for the transport and termination of such traffic at the applicable rates provided with the Appendix Pricing. Level 3 inappropriately excludes Section 251(b)(5) Traffic as a compensable form of traffic between the Parties. 6b. Yes. Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic originated by CLEC's end users are not subject to intercarrier compensation when CLEC utilizes **<u>SBC CONNECTICUT's</u>**

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	6b.Is a CLEC that utilizes **SBC CONNECTICUT's** Lawful Unbundled Local Switching to provide service to its end users, the only type of carrier that can not seek Intercarrier compensation by **SBC CONNECTICUT**? 6c. Should the Agreement define the term ULEC?	***subject to intercarrier compensation since*** **arrangements since** the rates for unbundled local switching reflect and include the costs of call termination. ***In SBC CONNECTICUT, when LEVEL 3 utilizes SBC CONNECTICUT's Lawful Unbundled Local Switching to provide service to its end users, all Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic originated by LEVEL 3's end users are not subject to intercarrier compensation as addressed in Section 5.6.4 below.*** **1.6 ULEC means A Competitive Local Exchange Carrier that purchases and combines unbundled network elements from the incumbent local exchange carrier in order to provide telecommunications service to customers. Network element includes the facility or**	(b) As for the issue of whether the intercarrier compensation for Circuit Switched calls, Level 3 disagrees with SBC's proposed listing of the various types of traffic flows ("Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic"). Rather, the Level 3 proposed use of the term "Circuit Switched Traffic" more closely tracks the orders related to this issue, and more closely relates the actual state of the law.	Lawful Unbundled Local Switching to provide service to its end users. The UNE-RS tariff (Section 18.6.2.10, page 18-50.16) provides the MOU rate terms and conditions. It includes both On-Net and Off-Net rates. Off-Net rates are for all calls that are PIC'd to an IXC. On-Net is everything else. When a Lawful ULS end user makes an On-Net call, the Lawful ULS CLEC does ***NOT*** have to pay Intercarrier compensation or terminating access on that call. **SBC CONNECTICUT** pays terminating access on the CLEC's behalf. Likewise, when a Lawful ULS end user receives an On-Net call, it does not collect intercarrier compensation

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		equipment and its features, functions and capabilities used to provide telecommunications service.		or terminating access. 6c. No. The contract should not define a term that it does not use. If the Commission resolves Issue SBC IC-15 below as SBC contends it should, this contract will have no occasion to include the term "ULEC." "ULEC" is a term that Level 3 proposes solely for the purpose of using it in the provision that SBC opposes in connection with Issue SBC IC-15.
IC-7 (§ 3.7)	**Level 3 Issues:** 7a. Should the Parties impose intercarrier compensation charges on traffic that is used to test connections or equipment connected to each other's network? 7b. Should SBC be in	3.7 The Parties' obligation to pay intercarrier compensation **arises from traffic that originates from and terminates to customers subscribing to services provided by either party Accordingly, no reciprocal compensation, access charges or any other form of compensation arises when the**	(a) No. Level 3 believes that the purpose of intercarrier compensation is to make each other whole when traffic originates from and terminates to customers subscribing from each other's services. This would not include test	7a. The Parties' obligation to pay Intercarrier Compensation to each other should commence after the CLEC furnishes confirmation that it has 9-1-1 agreements in place with Public Safety Answering Points (or after Level 3 secures a 9-1-1

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	the position to enforce compliance with state rules relating to 911 service, by withholding compensation? **SBC Issues:** 7a. When should the Parties' obligation to pay Intercarrier Compensation to each other commence? 7b. When should the Parties' obligation to pay access charges commence?	**Parties exchange traffic that is used to test connections or equipment connected to either Party's network.** ***to each other shall commence on the date the Parties agree that the interconnection is complete (i.e., each Party has established its originating trunks as well as all ancillary traffic trunking such as Operator Services, 911 or Mass Calling trunks).***	calls. As such, such test calls should not result in the completion of traffic between the customers subscribing from each other's services. Thus, testing should not be included in the intercarrier compensation regime. (b) No. In short, SBC is not a regulatory agency, nor does it have the authority to enforce any state rules. SBC cannot and should not be able to unilaterally make the legal determination as to when another carrier is in or not in compliance with a state regulation. Only the Commission has that authority. Thus, SBC should not be able to withhold any compensation due Level 3 based solely upon its own self-interested	waiver from SBC). Absent a waiver, SBC does not turn the Interconnection trunks up for service until 9-1-1 confirmation is provided. Once confirmation is received, SBC considers that the network is complete and a CLEC is capable of originating and terminating traffic for end users, not simply test traffic. Once the trunks are turned up for service billing of Intercarrier Compensation should begin. 7b. The parties' obligations to pay access charges are governed by the terms of the applicable access tariffs. Level 3's attempt to limit such charges here is improper.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			determinations.	
IC-8 (§ 4.1, 4.2, 4.3, 4.4, 4.5)	**Level 3 Issue:** 8. Should the parties be required to deliver Call Record on all traffic regardless nature of the traffic, and the cost and technical feasibility of developing such technical systems. **SBC Issue:** 8. Should the duty to provide CPN with the call flow be imposed on all traffic the parties exchange, or just the Circuit Switched Traffic the parties exchange?	4.1 Each Party to this Agreement will be responsible for sending the **Call Records** ***Calling Party Number (CPN) as defined in 47 C.F.R. § 64.1600(c) ("CPN")*** for calls originating on its network and passed to the network of the other Party, and neither Party shall strip, alter, modify, add, delete, change, or incorrectly assign any such **Call Records** ***CPN*** for any Telecommunications Traffic. Each Party to this Agreement will be responsible for passing on any **Call Records** ***CPN*** it receives from a third party for traffic delivered to the other Party. 4.2 To the extent that either party identifies improper, incorrect, or fraudulent use of local exchange services (including but not limited to PRI, ISDN and/or smart trunks	No, it is not technically feasible or economically reasonable to include CPN in the call flow for IP-Enabled Traffic. CPN should only apply to circuit switched traffic, not IP-Enabled traffic. SBC's proposed language would require Level 3 and SBC to develop new and costly systems in order to place the CPN in the call flow for IP-Enabled calls. The technology is not currently available, and there are industry groups established to address this issue. Level 3 is not attempting to get out of its obligation to provide information identifying the jurisdictional nature of the traffic. Rather than being limited	8. Standard telephone industry practice requires carriers to pass along the calling party number (CPN) for calls originating on their network to the carriers that terminate the calls. As such, Level 3's language is too restrictive if CPN was only required on Circuit Switched Traffic. This information is critical for the purposes of determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied to them. If this standard is not met, the terminating carrier should have the option to bill the calls without CPN at its intrastate switched exchange access service

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		or to the extent either party is able to identify stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned **Call Records** ***CPN***, the Parties agree to cooperate with one another to investigate and take corrective action. 4.3 Reserved for future use. 4.4 If one Party is passing **Call Records** ***CPN*** but the other Party is not properly receiving such information, the Parties will work cooperatively to correct the problem. 4.5 Where either **LEVEL 3** or **SBC-13STATE** delivers **Circuit Switched Traffic** ***traffic*** to the other Party for termination to the other Party's customer, each Party will provide **Call Records** ***CPN*** with such traffic or use commercially reasonable efforts to deliver the equivalent information to the other party on at least Ninety Percent (90%), of all calls	to using just CPN for IP-Enabled Traffic, Level 3 suggests the Agreement identify the Parties use a Call Record to identify the traffic, a much more general term that allows for other forms of technology already in existence and not requiring costly new or additional development. obviates the need for CPN on IP-enabled traffic.	rate. This provision protects against unscrupulous CLECs overriding call identification to slip interLATA traffic in with local traffic.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		exchanged between the Parties in direct proportion to the MOUs of calls exchanged with **Call Records *CPN***. If the percentage of calls passed with **Call Records *CPN*** is less than Ninety Percent (90%), then all ***calls*** passed without **Call Records *CPN*** will be billed according to the receiving Party's applicable, valid and effective FCC Interstate Access Tariff or Rate Sheet as permitted and filed according to, inter alia, Part 64 of the FCC's Rules.		
IC-9 **Level 3** (§ 4.7.2.1) **SBC** (§ 5.6)	**Joint Issue:** 9a. Should the dispute resolution process for ISP-Bound Traffic be the same as dispute resolution process for Section "251(B)(5) traffic"? **Level 3 Issue:** 9b. Should SBC be able to block the other's	4.7.2.1 **Should any dispute arise over the jurisdictional nature or classification of traffic, the Parties agree to resolve such disputes through the dispute resolution process contained within this Agreement and in no event will either party block the other's traffic without following the dispute resolution procedures contained in this Agreement and according to**	(a) Yes. Level 3 proposes the common-sense approach to dispute resolution that all forms of traffic be subject to the same dispute resolution process. There is not a legal basis for creating a new process for just this single form of traffic. In fact, creating such a disparate process can only	9a. Yes. Since the rates, terms and conditions for both Section 251(b)(5) Traffic and ISP-Bound Traffic are addressed within the framework of this agreement, any disputed minutes of use for such traffic should follow the dispute resolution procedures contained

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	traffic without following the dispute resolution procedures in the event of a dispute over the jurisdictional nature or classification of traffic? **SBC Issue:** 9b. Should the ICA specify that disputes related to the jurisdictional nature of traffic be subject to the dispute resolution process contained in this agreement?	**Applicable Law.** ***5.6 All ISP-Bound Traffic for a given usage month shall be due and owing at the same time as payments for Section 251(b)(5) under this Appendix. The parties agree that all terms and conditions regarding disputed minutes of use, nonpayment, partial payment, late payment, interest on outstanding balances, or other billing and payment terms shall apply to ISP-Bound Traffic the same as for Section 251(b)(5) Traffic under this Appendix***.	lead to confusion in the future as the parties will then be forced to dispute not only the billing error, etc., but also the type of traffic that is subject to the dispute. All of this, for no ascertainable rationale. Thus, Level 3's proposed language is more practical. (b) No. When read in conjunction with SBC's proposed mandate that Level 3 must build out separate trunks to each SBC end office in the local exchange area, this would have the effect of imposing a default blocking device in which SBC could prohibit the exchange of IP-Enabled Traffic between these carriers. Neither Party should be able to do this. Neither Party should be able to unilaterally block the other	within the Agreement. 9b. No. The dispute may involve traffic outside the scope of this agreement, and should be resolved in accordance with applicable tariffs for such traffic. If a dispute arises concerning the jurisdictional nature of traffic and Level 3 wants to contend at that time that the dispute falls within the dispute resolution provision of the Agreement, Level 3 may do so. The determination of whether the dispute does or does not fall within that provision must be decided based on the particular facts of the dispute and the specific type of traffic involved.). Accordingly, Level 3's proposed language should be rejected, and the Agreement should remain

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			Party's traffic without complying with the dispute resolution procedures. Level 3's proposal merely clarifies that position.	silent on this subject.
IC-10 Level 3 (§ 5.1 5.2 5.2.1 5.2.1.1 5.2.2 5.2.2.1 5.2.2.2 5.3) SBC (§5.1-§5.5)	Level 3 Issues: 10a. Does SBC properly define the term "Section 251(b)(5)" traffic such that it should be included in a heading of the agreement? 10b. Assuming that the parties have agreed to a compensation scheme for ISP-Bound traffic, do those terms apply to what SBC defines as "Section 251(b)(5) Traffic"? 10c. Should the Parties exchange compensation for ISP-bound Traffic at the rates agreed to in the parties existing agreement pending the	**5. RECIPROCAL COMPENSATION FOR TERMINATION OF SECTION 251(B)(5)TRAFFIC TELECOMMUNICA-TIONS TRAFFIC** *** * *** **5.2 All circuit switched Local Traffic (intra exchange and mandatory EAS), ISP-Bound Traffic, and will be combined to determine the Total Reciprocal Compensation Traffic.** **5.2.1 In determining the Total Reciprocal Compensation Traffic, Circuit Switched Intrastate Toll Traffic**	(a) No. It is not reasonable to include in the Agreement SBC'S attempt to create and insert a definition for "Section 251(b)(5) Traffic". First, the proposed term is not defined in any FCC order or regulation. Rather, it is SBC's interpretation of the Act and FCC actions, to which Level 3 neither agrees nor accepts in the Agreement. SBC's crafting of a self-serving definition and attempting to argue that the definition should be used throughout the Agreement is improper. (b) No. Level 3 and SBC have an existing ISP Compensation Plan in place that will remain in place	10a. Section 5.0 of the agreement speaks specifically to the application of reciprocal compensation for Section 251(b)(5) Traffic and does not include the other classifications of traffic that fall under the all-encompassing term of "Telecommunications Traffic. The term, "Telecommunications Traffic" is used to address multiple classifications of traffic under this agreement which include Section 251(b)(5) Traffic, FX Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	FCC's ISP Remand Order? SBC Issues: 10a. Should the Reciprocal Compensation terms of the Agreement apply to "Telecommunications Traffic" , or to Section 251(b)(5) Traffic"? 10b. What intercarrier compensation arrangements should apply until SBC offers to exchange traffic pursuant to the compensation arrangement set forth in the FCC's ISP Remand Order? 10c. Should the Commission adopt	**(including Optional EAS Traffic), Interstate Toll Traffic and any third party IXC-carried toll Traffic, or alternatively Meet point Billing Traffic are excluded, and will be subject to each Party's applicable state-approved or FCC-approved tariffs, or FCC approved or sanctioned terms, rates and conditions, or in the case of Meet Point Billing Traffic the MECAB Guidelines and as outlined in the Interconnection Agreement.** **5.2.1.1 The rates for the origination and termination of Circuit Switched intrastate toll and Originating 8YY traffic are governed by each Party's applicable state-approved or FCC-approved tariffs or FCC approved or sanctioned terms, rates and conditions, provided however, that 8YY Traffic bearing translated NPA-NXX codes that are local to NPA-NXX codes at the point where**	until December 31, 2004. This Agreement's ISP Compensation terms would not take effect until after that date. Thus, Level 3 is proposing that the Parties agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order, which is expected to be adopted in the October 2004 meeting. Thus, SBC's proposed new compensation scheme is not only a newly crafted scheme, but also will likely not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time. Further, as stated in (a) above, "Section 251(b)(5) Traffic" is not defined in any FCC order or regulation. Nor does the FCC's Interim ISP	Area Traffic"), IntraLATA Toll Traffic, or InterLATA Toll Traffic, Meet Point Billing or FGA Traffic that is exchanged between SBC and Level 3. Therefore, Level 3's proposed heading for Section 5.0 is inaccurate and should not be included in the ICA. 10b. The same intercarrier compensation rates, terms and conditions apply to voice and ISP-Bound Traffic until such time that SBC chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	SBC's Bifurcated Rate Structure for the exchange of what SBC defines as "Section 251(b)(5) traffic? 10d. Should SBC's proposed language regarding Tandem Serving Rate Elements and End Office Serving Rate Elements be incorporated into this Appendix? 10e. Is Level 3 entitled to charge the tandem reciprocal compensation rate?	**the traffic originated will be included in the Total Reciprocal Compensation Traffic and rated as Local Traffic.** **5.2.2 Furthermore, in determining the Total Reciprocal Compensation Traffic, Transit Traffic will be excluded from the calculations.** **5.2.2.1 The rates for Transit Traffic will be governed by this Interconnection Agreement.** **5.2.2.2 Subject to applicable confidentiality guidelines, SBC-13STATE and LEVEL 3 will cooperate to identify Circuit Switched toll and Transit Traffic; originators of such Circuit Switched toll and Transit Traffic; and information used for settlement purposes with such Circuit Switched toll and Transit Traffic originators, including but not limited to, OCNs associated**	Compensation Plan makes any reference to "Section 251(b)(5) Traffic", so Level 3 does not believe that it is appropriate to insert such a reference in the portions of the Agreement specifically related to the ISP-Bound Traffic. As such, it is improper to apply a compensation scheme for a type of traffic for which the FCC has never adjudicated or defined. In juxtaposition to SBC's undefined term, the FCC has addressed the appropriate compensation regimes for circuit switched Local Traffic (intra exchange and mandatory EAS), ISP-Bound Traffic as proposed by Level 3. (c) Yes. The FCC is expected to release shortly its long awaited order on Remand in the ISP Compensation docket. It is expected that the FC's order	Since SBC-12STATE has invoked the FCC's ISP compensation plan in all states except Connecticut, ISP-Bound traffic is subject to the terms and conditions of that plan and therefore, rates, terms and conditions relative to the FCC's plan should be included in this agreement so as to minimize the potential for disputes in implementation of the plan. While Level 3 appears to agree that the FCC ISP plan's rates and terms apply to ISP-Bound traffic, it does not agree that the FCC plan applies to 251(b)(5) traffic. In fact, Level 3 provides no rate for "Total Compensable Local Traffic". 10c. Yes. A bifurcated rate structure more accurately reflects the actual costs incurred to terminate local traffic. The call set up is a

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		with traffic originated by carrier customers purchasing SBC UNE-P products or their equivalent. **5.2.3 Compensation for Total Reciprocal Compensation Traffic.** **The Parties shall compensate each other for Total Reciprocal Compensation Traffic at $0.0007 per minute of use.** **5.1 Until and unless SBC-13STATE chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan, the compensation set forth below in Sections 5.2 through 5.6 will also apply to all Section 251(b)(5) Traffic in Section 3.2 of this Appendix and ISP-Bound Traffic as defined in Section 3.3 of this Appendix in that particular state.**	will fully and comprehensively address all aspects of the intercarrier compensation regime for ISP-Bound Traffic, including the appropriate rate the carriers should be assessing each other. It makes practical sense, then, to extend the status quo until such time as the FCC has announced its findings, as recommended by Level 3. In short, Level 3 is recommending the Commission change nothing until the FCC has clarified the state of the law. (d) (as related to section 7.2). Yes, the Parties should pay each other cost-based Reciprocal Compensation for FX and FX-like traffic based upon the NPA-NXX of the calling parties. In Section 7.2, SBC attempts to impose either non-cost-based access charges or bill	per message charge for each call, which contemplates the costs associated with establishing a circuit and creating a billing record. Call Duration which is tracked on a MOU basis is the rate associated with the cost of keeping the circuit open. This Commission should adopt bifurcated rates and reject Level 3's proposal to have one rate for all Local, Virtual Foreign Exchange, Mandatory Local and Optional EAS traffic, and ISP-Bound traffic. 10d. Yes. SBC proposes its current TELRIC based rates which are supported by cost studies for Section 251(b)(5) Traffic. The billing of such traffic on a MOU basis and per message basis was developed to provide a more accurate way of recovering actual costs

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		At such time as SBC-13STATE chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC's interim terminating compensation plan, the compensation set forth below in Sections 5.2 through 5.6 will apply only to Section 251(b)(5) Traffic in that state on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. The Parties acknowledge that SBC Indiana, SBC Ohio, SBC Texas, SBC Wisconsin, SBC Arkansas, SBC Michigan, SBC California and SBC Illinois each have made such offer in its respective state of (i) Indiana, Ohio, Texas and Wisconsin effective on and after June 1, 2003, (ii) Arkansas and Michigan effective on and after July 6, 2003, California effective on and after August 1, 2003, and (iv) Illinois effective on and after	and keep regimes for FX and FX-like services, even though its own tariffs treat such traffic a local in nature (and, thus, subject to cost-based compensation). First, the physical location of the calling parties has never been used as the determiner of what form of compensation is applied to a particular call. Rather, the industry standard is a comparison of the NPA-NXXs of the calling parties to determine the appropriate rating of the call. Second, for purposes of intercarrier compensation for next-generation IP-Enabled Traffic like Level 3's traffic, imposition of these SBC-requested regimes is not appropriate. With IP-Enabled Traffic, the physical location of the calling parties is not relevant. Rather, as has been the case with	incurred, for call duration which is supported by cost studies. 10e. No. For the state of Connecticut, Level 3 has not demonstrated that its switch qualifies for the tandem rate under FCC Rule 711(a)(3). For other states, SBC has invoked the FCC ISP plan, and Level 3 chose to negotiate from the "All Traffic" appendix, under which compensation does not vary based on tandem or end office switching.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		September 1, 2003;(v Kansas, Missouri, Oklahoma, and Nevada on and after June 1, 2004; therefore, the compensation set forth in Sections 5.2 through 5.6 below will apply only to Section 251(b)(5) Traffic in Indiana, Ohio, Texas, Wisconsin, Arkansas, Michigan, California, Illinois, Kansas, Missouri, Oklahoma, Nevada and such other states in which SBC-13STATE makes an offer on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. At such time as the FCC issues a successor order to the current interim termination compensation plan, the parties agree to compensate each other according to such Order immediately upon the effective date of the FCC order. **5.2 Bifurcated Rates (Call Set Up and Call Duration). The Parties agree to compensate each other for the termination of**	intercarrier compensation regimes for years, the NPA-NXX of the calling parties will determine the rating of a call. This is exactly the regime Level 3 recommends continue.	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Section 251(b)(5) Traffic and ISP-Bound Traffic (if applicable in accordance with Section 5.0), on a "bifurcated" basis, meaning assessing an initial Call Set Up charge on a per Message basis, and then assessing a separate Call Duration charge on a per Minute of Use (MOU) basis, where ever per Message charges are applicable. The following rate elements apply, but the corresponding rates are shown in Appendix Pricing; 5.3 Tandem Serving Rate Elements 5.3.1 Tandem Switching - compensation for the use of tandem switching only. 5.3.2 Tandem Transport - compensation for the transmission facilities between the local tandem and the end offices subtending that tandem.		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		5.3.3 End Office Switching in a Tandem Serving Arrangement - compensation for the local end office switching and line termination necessary to complete the transmission in a tandem-served arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate. 5.4 End Office Serving Rate Elements 5.4.1 End Office Switching - compensation for the local end office switching and line termination necessary to complete the transmission in an end office serving arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate. 5.5 LEVEL 3 shall only be paid End Office Serving Rate Elements.		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
IC-11 **Joint** (§8.1-8.2, §14-§14.1) **SBC** (§7.2, §8.3,)	**Level 3 Issues:** 11a. Should Reciprocal Compensation apply to FX or FX-like services exchanged between the Parties based upon the NPA-NXX of the calling parties? 11b. Should the compensation for the exchange of OCA traffic under this agreement be limited to Circuit Switched OCA traffic? **SBC Issues:** 11a. What is the appropriate form of intercarrier compensation for FX and FX-like traffic including ISP FX Traffic?	7.2 ***Foreign Exchange (FX) services are retail service offerings purchased by FX customers which allow such FX customers to obtain exchange service from a mandatory local calling area other than the mandatory local calling area where the FX customer is physically located, but within the same LATA as the number that is assigned. FX service enables particular end-user customers to avoid what might otherwise be toll calls between the FX customer's physical location and customers in the foreign exchange. FX Telephone Numbers" (also known as "NPA-NXX" codes) shall be those telephone numbers with different rating and routing points relative to a given mandatory local calling area. FX Telephone Numbers that deliver second dial tone and the ability for the calling party to enter access codes and an additional recipient telephone***	(a) Yes, the Parties should pay each other cost-based Reciprocal Compensation for FX and FX-like traffic based upon the NPA-NXX of the calling parties. In Section 7.2, SBC attempts to impose either non-cost-based access charges or bill and keep regimes for FX and FX-like services, even though its own tariffs treat such traffic a local in nature (and, thus, subject to cost-based compensation). First, the physical location of the calling parties has never been used as the determiner of what form of compensation is applied to a particular call. Rather, the industry standard is a comparison of the NPA-NXXs of the calling parties to determine the appropriate rating of the call. Second, for purposes	**11A. LEVEL 3 IS PROPOSING THAT <u>FOREIGN EXCHANGE TRAFFIC SHOULD BE COMPENSATED AS "LOCAL" TRAFFIC,</u> <u>WHICH IS INAPPROPRIATE.</u> FX TRAFFIC IS AKIN TO INTRALATA TOLL TRAFFIC THAT TERMINATES OUTSIDE THE APPLICABLE LOCAL CALLING AREA. SUCH TRAFFIC IS NON-SECTION 251(B)(5) TRAFFIC AND AS SUCH**

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	11b. What is the appropriate form of Intercarrier compensation for Optional EAS Traffic? 11c. Is it appropriate to include all IntraLATA toll traffic under an MPB arrangement? 11d. What is the appropriate treatment and form of intercarrier compensation for intraLATA 8YY traffic? 11e. Should non-section 251/252 services such as Transit Services be arbitrated in this section 251/252 proceeding? 11f.	***number remain classified as Feature Group A (FGA) calls, and are subject to the originating and terminating carrier's tariffed Switched Exchange Access rates (also known as "Meet Point Billed" compensation), or if jointly provisioned FGA service, subject to the terms and conditions of Appendix FGA. FX Traffic is not Section 251(b)(5) Traffic and instead the transport and termination compensation for FX Traffic is subject to a bill and keep arrangement. Neither Party will assign a telephone number to an End User where such telephone number is assigned to an exchange in a different LATA than the End User is physically located. To the extent that ISP-Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to a Bill and Keep arrangement***.	of intercarrier compensation for next-generation IP-Enabled Traffic like Level 3's traffic, imposition of these SBC-requested regimes is not appropriate. With IP-Enabled Traffic, the physical location of the calling parties is not relevant. Rather, as has been the case with intercarrier compensation regimes for years, the NPA-NXX of the calling parties will determine the rating of a call. This is exactly the regime Level 3 recommends continue. (b) Yes, the Agreement should specify that compensation for the exchange of OCA traffic under this agreement be limited to Circuit Switched OCA traffic. This is consistent with FCC	**WOULD TYPICALLY BE SUBJECT ONLY TO INTERSTATE AND INTRASTATE ACCESS CHARGES. HOWEVER, BILL AND KEEP IS THE PROPER COMPENSATIO N MECHANISM FOR VOICE AND ISP FX TRAFFIC IN ARKANSAS, ILLINOIS, INDIANA, KANSAS, MISSOURI, NEVADA, OKLAHOMA, TEXAS, AND WISCONSIN. THE FCC'S *FIRST REPORT AND ORDER* STATES THAT**

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Should SBC be required to use Level 3 as a transit provider to reach third parties that are already interconnected with SBC?	8.1 Compensation for Optional Calling Area (OCA) **Circuit Switched** Traffic is for the termination of intercompany **Circuit Switched** traffic to and from the one-way or two-way optional exchanges(s) and the associated metropolitan area 8.2 ***In the context of this Appendix,*** **The Parties agree to comply with Applicable Law with regard to** Optional Calling Areas (OCAs). ***exist only in the states of Arkansas, Kansas and Texas, and are outlined in the applicable state Local Exchange tariffs. This rate is independent of any retail service arrangement established by either Party. LEVEL 3 and SBC ARKANSAS, SBC KANSAS and SBC TEXAS are not precluded from establishing its own local calling areas or prices for purposes of retail telephone service; however the terminating rates to be used***	Orders and regulations.	**"TRAFFIC ORIGINATING OR TERMINATING OUTSIDE OF APPLICABLE LOCAL AREA WOULD BE SUBJECT TO INTERSTATE AND INTRASTATE ACCESS CHARGES," AND NOT RECIPROCAL COMPENSATIO N.** ***SEE IN RE IMPLEMENTATI ON OF THE LOCAL COMPETITION PROVISIONS IN THE TELECOMMUNI CATIONS ACT OF 1996; INTERCONNECT***

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		for any such offering will still be administered as described in this Appendix. ***8.3 When LEVEL 3 uses unbundled local switching to provide services associated with a telephone number with a NXX which has an expanded 2-way area calling scope (EAS) in a SBC ARKANSAS, SBC KANSAS or SBC TEXAS end office, LEVEL 3 will pay the charge contained in Appendix Pricing UNE - Schedule of Prices labeled "EAS Additive per MOU". The additives to be paid by LEVEL 3 to SBC ARKANSAS, SBC KANSAS or SBC TEXAS are $0.024 per MOU for toll-free calls made by a SBC ARKANSAS, SBC KANSAS or SBC TEXAS customer from a metro exchange to an exchange contiguous to a metro exchange and $0.0355 per MOU for toll free calls made by a SBC ARKANSAS, SBC KANSAS or***		***ION BETWEEN LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS*, 11 FCC RCD. 15499, 16013, ¶ 1035 (1996).** In Connecticut, FX Traffic should be compensated at the applicable switched access rates as provided in the applicable tariffs, excluding IntraLATA ISP FX Traffic which is subject to a bill and keep arrangement in accordance with the Commission's order in Docket No. 01-01-29. In Ohio, FX Traffic should be subject to

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		SBC TEXAS customer to LEVEL 3's optional 2-way EAS customer for contiguous exchanges other than those contiguous to a metro exchange within the scope of the 2-way calling area. These additives will apply in addition to cost-based transport and termination rates for Optional EAS service set forth in the rates spreadsheet. These additives are reciprocal in nature, and LEVEL 3 is entitled to receive compensation from SBC ARKANSAS, SBC KANSAS or SBC TEXAS if LEVEL 3 agrees to waive charges for its customers who call SBC ARKANSAS, SBC KANSAS or SBC TEXAS optional two-way EAS customers. **14. INTRALATA TOLL TRAFFIC COMPENSATION** 14.1 For **Circuit-Switched Traffic** that is correctly rated as intrastate intraLATA toll ***traffic*,**		applicable switched access rates. In California, calls should be rated in reference to the rate center of the assigned NXX prefix of the calling and called parties' numbers and SBC should receive tandem switching and transport compensation for its facilities used in the carriage of traffic from the originating rate center (local NXX) to the rate area where Level 3 delivers traffic to its customer, less 16 miles. Level 3 may avoid paying the costs associated with transport from origination to their point of interconnection if Level 3 establishes a point of interconnection at the appropriate local or access tandem serving the rate

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff***. but such compensation shall not exceed the compensation contained in an SBC-13STATE's tariff in whose exchange area the End User is located.*** For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff**,** *but such compensation shall not exceed the compensation contained in the SBC-13STATE's tariff in whose exchange area the End User is located*. Common		center or at any mutually agreed end office within the rate center where Level 3 has established a dialable telephone number local to such rate center or ports any number established by other local exchange carriers (including ILEC companies) within such rate center. 11b. Level 3 is also proposing that Optional EAS traffic should be compensated as "local" traffic, which is inappropriate Optional Calling Area (Optional EAS) is not Section 251(b)(5)Traffic because the calls do not originate from an end user and terminate to an end user both physically located within the same Commission-defined local calling area.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		transport, (both fixed and variable), as well as tandem switching and end office rates apply only in those cases where a Party's tandem **or switch providing equivalent geographic coverage** is used to terminate traffic.		The state Commissions of Arkansas, Kansas, and Texas have determined specific optional calling areas and approved specific rates for transport and termination of traffic to these areas. 11c. Level 3 is proposing that IntraLaTA Toll Traffic will be subject to Meet Point Billing which is inappropriate. See SBC's position on the appropriate form of Intercarrier Compensation for IntraLATA Toll in Issue IC-20, and for MPB in Issue IC-19. 11d. See Issue IC-18 for the appropriate treatment and form of intercarrier

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				compensation for intraLATA 8YY traffic 11e. Transit Service is a non 251/252 service and as such is not an arbitrable issue. Unlike Intercarrier Compensation, there are no provisions of the Act that impose a duty upon ILECs to provide or facilitate indirect interconnection and transit services between two other carriers. As a non-Section 251/252 service, Transit Service should be negotiated separately and as such SBC is prepared to offer Level 3 a separate agreement to address Transit Service. In the event that the Commission decides, over SBC's

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				objection, to address Transit Service in this proceeding, it should adopt SBC's proposed language in the Transit Traffic Service Appendix submitted herewith. Sections 3.10-3.12 of SBC's Transit Traffic Service Appendix better address the obligations of the parties. The Commission should also reject Level 3's proposal to require SBC to be billed as the default originator for traffic where CPN is not received from the originating third party. Level 3 should seek compensation directly from the originating carrier, not the transit provider, as specified in Section 3.15 of the Transit Traffic Service Appendix. **COMMIS**

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				SION PRECEDENT: In Docket No. 00-TCGT-571-ARB (August 7, 2000), the Commission adopted SBC's position that it should not be required to accept transit traffic from TCG, and that all parties wanting to terminate traffic on SBC's network should have their own interconnection agreements with SBC. 11f. As stated under 13(e) above, the Commission should not arbitrate issues related to Transit Service in this proceeding. Should the Commission nonetheless decide to reach those issues, it should decide that SBC is not required to accept transit traffic from a third party via Level 3 when SBC is already directly connected to that third

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				party (see Sections 3.10 and 6.0 of the attached Transit Traffic Service Appendix). Level 3's proposal would result in inefficient use of all parties' networks. **COMMISSION PRECEDENT:** In Docket No. 00-TCGT-571-ARB (August 7, 2000), the Commission adopted SBC's position that it should not be required to accept transit traffic from TCG, and that all parties wanting to terminate traffic on SBC's network should have their own interconnection agreements with SBC.
IC-12 **SBC**	**Level 3 Issue:** 12.	***5.7 Intercarrier Compensation for ULS Traffic***	No. The Interim Order adopted by the FCC on July 21, 2004 (rel. August	12. In SBC CONNECTICUT, when Level 3 utilizes SBC

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
(§ 5.7.1 § 5.7.2 § 5.7.3 § 5.7.4)	Should the agreement contain terms, conditions and rates for compensation for exchange of unbundled local switching in light of the FCC's Interim UNE Order? **SBC Issue:** 12. What is the appropriate form of intercarrier compensation for Unbundled Local Switching Traffic?	***5.7.1 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC MIDWEST REGION 5-STATE end users and LEVEL 3's end users where LEVEL 3 utilizes SBC MIDWEST REGION 5-STATE's ULS (including UST) of, such traffic shall be paid for reciprocally at the ULS Reciprocal Compensation rate contained in Appendix Pricing. For the states of Wisconsin, Michigan and Illinois, [LEVEL 3 shall pay SBC WISCONSIN, SBC MICHIGAN and SBC ILLINOIS the FCC Plan rate specified in Section 6.2.2 for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic.] the ULS Reciprocal Compensation rate is the same as the End Office Switching rate found in the Reciprocal Compensation section of Appendix Pricing.*** ***5.7.2 For interswitch Section***	20, 2004) maintains the status quo that existed as of June 15, 2004 for the provision of unbundled network elements from SBC to Level 3. As of June 15, 2004, Level 3 was entitled to receive unbundled network elements pursuant to the terms and conditions of the parties' Interconnection Agreement that was approved by the Commission. Level 3 does not wish to waive its rights to obtain unbundled network elements pursuant to those existing terms and conditions. In addition, the FCC has held that Level 3 and SBC may not arbitrate new agreements until after the FCC adopts permanents rules for the provision of unbundled network	CONNECTICUT's Lawful Unbundled Local Switching to provide service to its end users, SBC CONNECTICUT will be solely responsible for compensating the terminating third party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from CLEC's end users as explained further in SBC IC-6(b). In other states, the FCC plan applies.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC California, SBC Nevada and SBC Southwest Region 5-STATE end users and LEVEL 3's end users where LEVEL 3 utilizes ULS (including UST) of SBC California, SBC Nevada or SBC Southwest Region 5-STATE, such traffic shall be paid for reciprocally at the FCC Plan rate specified in Section 6.2.2 for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic. End Office Switching compensation rate contained in the Reciprocal Compensation section of Appendix Pricing. ***5.7.3 For the purposes of compensation where LEVEL 3 utilizes SBC-12STATE's Lawful ULS (including UST), LEVEL 3 has the sole obligation to enter into a compensation agreement with third party carriers that LEVEL 3 originates traffic to and***	elements: "Moreover, if the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into other carriers' new contracts. The interim approach adopted here, in contrast, does not enable competing carriers to do either." ¶23. According to the FCC, "such litigation would be wasteful in light of the [FCC's] plan to adopt new permanent rules as soon as possible." ¶17. The FCC recognizes that "the implementation of a new interim approach could lead to further disruption and confusion that would disserve the goals of section 251." In light of the foregoing, Level 3 does not waive any	

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		terminates traffic from, including traffic carried by Shared Transport Facilities and traffic carried on the IntraLATA Transmission Capabilities. In no event will SBC-12STATE have any liability to LEVEL 3 or any third party if LEVEL 3 fails to enter into such compensation arrangements. In the event that traffic is exchanged with a third party carrier with whom LEVEL 3 does not have a traffic compensation agreement, LEVEL 3 will indemnify, defend and hold harmless SBC-12STATE against any and all losses including without limitation, charges levied by such third party carrier. The third party carrier and LEVEL 3 will bill their respective charges directly to each other. SBC-12STATE will not be required to function as a billing intermediary, e.g., clearinghouse. SBC-12STATE may provide information regarding such traffic to other	rights to those UNEs to which it is entitled by agreeing to terms and conditions other than what is in its existing Interconnection Agreement.	

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		telecommunications carriers or entities as appropriate to resolve traffic compensation issues. ***5.7.4 In SBC CONNECTICUT, when LEVEL 3 utilizes SBC CONNECTICUT's Lawful Unbundled Local Switching to provide service to its end users, SBC CONNECTICUT will be solely responsible for compensating the terminating third party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from LEVEL 3's end users. LEVEL 3 utilizing Lawful Unbundled Local Switching cannot seek intercarrier compensation from SBC CONNECTICUT for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from either an SBC CONNECTICUT end user or a third party carrier's end user.***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
IC-13 **SBC** (§ 6-§ 7.5)	**Level 3 Issue:** 13. For those states where SBC has elected to exchange ISP-Bound Traffic according to the FCC's plan adopted in the ISP Remand Order should the agreement reflect an already-agreed to compensation plan between Level 3 and SBC, which plan would be updated upon the soon expected issuance of an updated Reciprocal Compensation Order from the FCC? **SBC Issues:** 13a.Should this Intercarrier Compensation Appendix include SBC's proposed terms and conditions concerning application	***6. RATES, TERMS AND CONDITIONS OF FCC'S INTERIM ISP TERMINATING COMPENSATION PLAN*** ***6.1 The Parties hereby agree that the following rates, terms and conditions set forth in Sections 6.2 through 6.6 shall apply to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic exchanged between the Parties in each of the applicable state(s). SBC-13STATE has made an offer as described in Section 5 above effective on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in the particular state and that all ISP-Bound Traffic is subject to the growth caps and new market restrictions stated in Sections 6.3 and 6.4, below***. ***6.2 Intercarrier Compensation for all ISP-Bound***	Level 3 and SBC have an existing ISP Compensation Plan in place that will remain in place until December 31, 2004. This Agreement's ISP Compensation terms would not take effect until after that date. Thus, Level 3 is proposing that the Parties agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order, which is expected to be adopted in the October 2004 meeting. Thus, SBC's proposed new compensation scheme is not only a newly crafted scheme, but also will likely not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time.	13a. Yes. Since SBC has invoked the FCC's ISP compensation plan, ISP-Bound traffic is subject to the terms and conditions of that plan and therefore, rates, terms and conditions relative to the FCC's plan should be included in this agreement so as to minimize the potential for disputes in implementation of the plan. To date, SBC's has invoked the FCC compensation plan in AR, CA, IN, IL, KS, MI, MO, NV, OH, OK, TX and WI. Level 3 appears to agree that the FCC ISP plan's rates and terms apply to ISP-Bound traffic but has deleted SBC's proposed language. In fact, Level 3 provides no rate for "Total Compensable Local Traffic".

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	of the FCC's ISP Compensation Plan? 13b. Should the Agreement provide for a Growth Cap on the compensation for ISP-Bound Traffic? 13c. Should the Agreement provide for Bill and Keep for ISP-Bound traffic in New Markets? 13d. Should the Agreement provide for a rebuttable presumption that if the "Section 251(b)(5) Traffic" and ISP-Bound Traffic exchanged between the Parties exceeds a 3:1 terminating to originating ratio, it is presumed to be ISP-Bound Traffic subject to	***Traffic and Section 251(b)(5) traffic*** ***6.2.1 The rates, terms, conditions in Sections 6.2 through 6.6 apply only to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic as defined in Section 3.2 and Section 3.3 above and is subject to the growth caps and new market restrictions stated in Sections 6.3 and 6.4 below.*** ***6.2.2 The Parties agree to compensate each other for the transport and termination of all Section 251(b)(5) and ISP-Bound Traffic and traffic on a minute of use basis, at $.0007 per minute of use.*** ***6.2.3 Payment of Intercarrier Compensation on ISP-Bound Traffic and Section 251(b)(5) Traffic will not vary according to whether the traffic is routed***		13b. Yes. Pursuant to Paras.8 and 78 of the *ISP Compensation Order* the FCC imposed a growth cap on the total ISP-Bound minutes in which the carrier could receive compensation. SBC's proposed language memorializes the growth caps established by the FCC. Pursuant to Paras. 8 and 78 of the *ISP Compensation Order*, any ISP-Bound Traffic that exceeds the growth cap will be subject to bill and keep. 13c. Yes. Pursuant to Para. 81 of the *ISP Compensation Order* the FCC established new market restrictions on ISP-Bound minutes whereby if the Parties had not exchanged ISP-Bound

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	the compensation and growth cap terms in Section 6.3? 13e. Should terms and conditions be included in the Agreement that provide that the Party that terminates more billable traffic must calculate the amount of traffic to be compensated under the FCC plan and the amount of traffic that is subject to bill and keep?	***through a tandem switch or directly to an end office switch.*** ***6.3 ISP- Bound Traffic Growth Cap*** ***6.3.1 On a calendar year basis, as set forth below, the Parties agree to cap overall ISP-Bound Traffic minutes of use based upon the 1st Quarter 2001 ISP minutes for which the LEVEL 3 was entitled to compensation under its Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule:*** ***Calendar Year 2001 1st Quarter 2001 compensable ISP-Bound Traffic minutes, times 4, times 1.10*** ***Calendar Year 2002 Year 2001***		Traffic in any one or more LATAs in a particular state prior to April 18, 2001, Bill and Keep will be the reciprocal compensation for all **ISP-Bound Traffic between the Parties for the remaining term of this Agreement in any such LATAs in that state.** SBC's proposed language memorializes the new market restrictions established by the FCC. b) 13d. Yes. Pursuant to Paragraph 79 of the *ISP Compensation Order*, the FCC adopted a rebuttable presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is "subject to the compensation mechanism of [the] Order" including the growth caps. A carrier

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		compensable ISP-Bound Traffic minutes, times 1.10 ***Calendar Year 2003 Year 2002 compensable ISP-Bound Traffic minutes*** ***Calendar Year 2004 and thereafter Year 2002 compensable ISP-Bound Traffic minutes*** ***6.3.2 Notwithstanding anything contrary herein, in Calendar Year 2004, the Parties agree that ISP-Bound Traffic exchanged between the Parties during the entire period from January 1, 2004 until December 31, 2004 shall be counted towards determining whether LEVEL 3 has exceeded the growth caps for Calendar Year 2004.*** ***6.3.3 ISP-Bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. "Bill and***		may rebut the presumption by demonstrating to a commission that traffic above the 3:1 ratio is in fact local traffic (Section 251(b)(5) traffic) delivered to non-ISP customers. SBC's proposed language sets forth the methodology for calculating the 3:1 ratio under the *ISP Compensation Order* and provides certainty on how the Parties will bill under the FCC plan. The Party that transports and terminates more Section 251(b)(5) and ISP-Bound Traffic must calculate the 3:1 ratio in accordance with the provisions of the Agreement. Further, each party should be responsible for tracking, billing, recording, and invoicing of traffic the

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Keep" refers to an arrangement in which neither of two interconnecting parties charges the other for terminating traffic that originates on the other party's network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party. ***6.4 Bill and Keep for ISP-Bound Traffic in New Markets*** ***6.4.1 In the event the Parties have not previously exchanged ISP-Bound Traffic in any one or more LATAs in a particular state prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-Bound Traffic between the Parties for the remaining***		party terminates. As such, both parties incur costs associated with the exchange of traffic. 13e. Yes. Each party should be responsible for tracking, billing, recording, and invoicing of traffic the party terminates. As such, both parties incur costs associated with the exchange of traffic.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		term of this Agreement in any such LATAs in that state. ***6.4.2 In the event the Parties have previously exchanged traffic in a LATA in a particular state prior to April 18, 2001, the Parties agree that they shall only compensate each other for completing ISP-Bound Traffic exchanged in that LATA, and that any ISP-Bound Traffic in other LATAs shall be Bill and Keep for the remaining term of this Agreement.*** ***6.5 Growth Cap and New Market Bill and Keep Arrangements*** ***6.5.1 Wherever Bill and Keep for ISP-Bound traffic is the traffic termination arrangement between the Parties, both Parties shall segregate the Bill and Keep traffic from other compensable traffic either (a) by excluding the Bill and Keep minutes of use***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties. ***6.5.2 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-Bound Traffic, and does not include Optional EAS traffic, Intra LATA Inter exchange traffic, or Inter LATA Inter exchange traffic*** ***6.6 ISP-Bound Traffic Rebuttable Presumption*** ***6.6.1 In accordance with Paragraph 79 of the FCC's ISP Compensation Order, the Parties agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		originating ratio is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in this Section 6.3. Either Party has the right to rebut the 3:1 ISP-Bound Traffic presumption by identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to Section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		presumption, the Parties will remain obligated to pay the presumptive rates (the rates set forth in Section 5 for traffic below a 3:1 ratio, the rates set forth in Section 6.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission. ***6.7 For purposes of this Section 6, all Section 251(b)(5) Traffic and all ISP-Bound Traffic shall be referred to as "Billable Traffic" and will be billed in accordance with Section 15.0 below. The Party that transport and terminates more "Billable Traffic" ("Out-of-Balance Carrier") will, on a monthly basis, calculate (i) the amount of such traffic to be compensated at the FCC's interim ISP terminating compensation rate set forth in Section 6.2.2 above and***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		(ii) the amount of such traffic subject to bill and keep in accordance with Sections 6.3, 6.4 and 6.5 above. The Out-of-Balance Carrier will invoice on a monthly basis the other Party in accordance with the provisions in this Agreement and the FCC's interim ISP terminating compensation plan.		
IC-14 (§ 7-§ 7.1)	**Level 3 Issue:** 14. Should this Agreement recognize in a neutral manner that intercarrier compensation mechanisms contained in state and federal tariffs may or may not apply to traffic exchanged between the parties? ? **SBC Issue:** 14. Should this Agreement specifically provide that reciprocal compensation does not	7. ***OTHER*** **TELECOMMUNICATIONS TRAFFIC** 7.1 **Telecommunications Traffic which is governed by the terms, rates and conditions contained in either party's filed and effective federal or state tariffs, or which is determined to be interstate interexchange services and permissively detariffed (See, e.g., 47 C.F.R. § 61 (2003)) will be governed by the rates, terms and conditions of either Party's tariff or of Level 3's terms, rates and conditions subject to Applicable**	Level 3's language more accurately applies the most recent FCC determinations on rating of IP-Enabled Traffic. Level 3 has incorporated into its proposed language the results of the FCC's Pulver and AT&T decisions, and follow FCC rules on net protocol conversion language which is consistent with the fact that there is an open NPRM on VoIP traffic. Level 3's language should be adopted to allow the Parties the opportunity to	14. Yes. The FCC's Rule at 47 CFR 51.701 clearly states that telecommunications traffic (and therefore Section 251(b)(5) traffic) does not include "telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). This rule remains in effect to this day.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	apply to interstate or intrastate exchange access traffic, Information access traffic, exchange services for access, or any other type of traffic found by the FCC or the Commission to be exempt from reciprocal compensation?	**Law including but not limited to state law or federal law.** ***The compensation arrangements set forth in Sections 5 and 6 of this Appendix are not applicable to (i) interstate or intrastate Exchange Access traffic, (ii) Information Access traffic, (iii) Exchange Services for access or (iv) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission, with the exception of ISP-Bound Traffic which is addressed in this Appendix. All Exchange Access traffic and IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of applicable federal and state tariffs.***	incorporate the results of those proceedings.	
IC-15 **SBC** (§7.4-§7.5)	**Level 3 Issue:** 15. Should higher intercarrier compensation rates contained in SBC's state or federal tariffs apply to ISP-bound	***7.4 The Parties recognize and agree that ISP and Internet traffic (excluding ISP-Bound Traffic as defined in Section 3.3) could also be traded outside of the applicable***	SBC's Section 7.4 assumes that ISP-bound traffic can be treated as if it was rated as local / toll whatever. It is Level 3's position that, per the FCC's ISP Remand orders, such ISP-Bound	15. ISP calls (like voice calls) that originate and terminate outside the local mandatory calling areas are intraLATA and/or interLATA toll traffic subject to access tariffs.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	traffic or calls bound to the Internet where SBC physically hands off such traffic to Level 3 within the same LATA (and often within the same local calling area or at least at the tandem to which such call's end office subtended) in which SBC originated such traffic? **SBC Issue:** 15. What is the appropriate treatment and compensation of ISP traffic exchanged between the Parties outside of the local calling scope?	***local calling scope, or routed in ways that could make the rates and rate structure in Sections 5 and 6 above not apply, including but not limited to ISP calls that fit the underlying Agreement's definitions of:*** □ ***FX Traffic*** □ ***Optional EAS Traffic*** □ ***IntraLATA Interexchange Traffic*** □ ***InterLATA Interexchange Traffic*** □ ***800, 888, 877, ("8YY") Traffic*** □ ***Feature Group A Traffic*** □ ***Feature Group D Traffic*** ***7.5 The Parties agree that, for the purposes of this Appendix, either Parties'***	traffic cannot be re-rated. It is interstate traffic subject to a single compensation provision. Moreover, since SBC has elected to go with the FCC plan in all states but Connecticut, this language is out of date and inapplicable.	Level 3's potentially misleading language suggests imposing interstate switched access to all forms of Switched Access Traffic, regardless of where the originating and terminating party of the call (or the ISP) are physically located.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		End Users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent such ISP calls are placed, the Parties agree that Sections 5 and 6 above do not apply. The Agreement's rates, terms and conditions for, FX Traffic, Optional EAS Traffic, 8YY Traffic, Feature Group A Traffic, Feature Group D Traffic, Intra LATA Traffic and/or InterLATA Traffic, whichever is applicable, shall apply.		
IC-16 (§ 9-§9.1.2)	**Level 3 Issue:** 16a. Should this agreement contain terms specific to Missouri and which could only be approved by the Missouri commission in	**9. MCA TRAFFIC -- <u>SBC MISSOURI</u>** 9.1 For compensation purposes in the state of Missouri, **<u>Circuit Switched</u>** ***Section 251(b)(5) Traffic and ISP-Bound Traffic shall be further defined as***	This matter is not being litigated in Missouri. The Parties were unable to timely remove it from the DPL.	16. The Missouri state commission adopted a Metropolitan Area Calling plan (MCA Plan) in Case No. TO-92-306 and T)-99-483 (MCA Orders) that includes both SBC

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	state outside of Missouri? 16b. If the answer to (a) is yes, then are the terms of the underlying Missouri Commission Orders related to MCA Traffic applicable to Circuit Switched MCA Traffic, or Section 251(b)(5) and ISP-Bound Traffic as argued by SBC? **SBC Issue:** 16. How should Metropolitan Calling Area Traffic be compensated in the state of Missouri?	***"Metropolitan Calling Area (MCA) Traffic" and "Non-MCA Traffic."*** MCA Traffic is traffic originated by a party providing a local calling scope plan pursuant to the Missouri Public Service Commission Orders in Case No. TO-92-306 and Case No. TO-99-483 (MCA Orders). ***and the call is a Section 251(b)(5) Traffic based on the calling scope of the originating party pursuant to the MCA Orders. Non-MCA Traffic is all Section 251(b)(5) Traffic and ISP-Bound Traffic that is not defined as MCA Traffic.*** 9.1.1 Either party providing Metropolitan Calling Area (MCA) service **for Circuit Switched Traffic** shall offer the full calling scope prescribed in Case No. TO-92-306 **according to the terms of the MCA Orders or as otherwise ordered by the Missouri Public Service Commission. ,** ***without regard to the identity of the called party's local service provider***.		Missouri customer's and customers of other ILECs. Under this plan, customers surrounding the St. Louis, Kansas City and Springfield metropolitan areas may choose an expanded local calling plan which has both an outgoing and a return calling component (i.e. calls originated by an MCA subscriber to numbers within the MCA calling area are rated as local instead of toll; calls terminated to the MCA subscriber from another party from within the MCA calling area are rated as local). Intercarrier Compensation for MCA Traffic is required to be on a bill and keep basis. SBC can accept Level 3' language that says "***according to the terms of the order"*** and "***Only to***

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		The parties may offer additional toll-free outbound calling or other services in conjunction with MCA service, but in any such offering the party shall not identify any calling scope other than that prescribed in Case No. TO-92-306 as "MCA" service **subject to Applicable Law**. 9.1.2 Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, **Circuit Switched** MCA Traffic shall be exchanged on a bill-and-keep intercompany compensation basis meaning that the party originating a call defined as MCA Traffic shall not compensate the terminating party for terminating the call**, subject to Applicable Law**.		***the extent required by the Missouri Public Service Commission Order in Case No. TO-99-483."*** However the following language in this section will still remain disputed: ***"Circuit Switched Traffic"*** and ***"subject to the requirements of Applicable Law."***
IC-17 (§ 10.1)	**Level 3 Issue:** 17. Should Level 3 be obligated to build out separate interconnection trunks for "local" and "non-local" traffic?	10.1 ***A Primary Toll Carrier (PTC) is a company that is designated by the state Commission to transport IntraLATA Toll Traffic. The PTC receives end user intraLATA toll***	No. Under the unambiguous requirements of the Federal Act, SBC is obligated pursuant to Section 251 (c)(2)(B) to provide Level 3 with	17. SBC requires that CLECs use Local Interconnection Trunk Groups for Intrastate, Intralata toll traffic that is not pre-subscribed to an

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	SBC Issue: 17. What is the proper routing and treatment of IntraLATA Toll Traffic that is subject to a Primary Toll Carrier (PTC) arrangement?	***traffic revenues and pays and bills originating and terminating access charges.*** In those **SBC-13STATE**s where Primary Toll Carrier (PTC) arrangements are mandated, for intraLATA Toll Traffic which is subject to a PTC arrangement and where **SBC-13STATE** is the PTC, **SBC-13STATE** shall deliver such intraLATA Toll Traffic to the terminating carrier in accordance with the terms and conditions of such PTC arrangement **and Applicable Law, but this in no way shall restrict either Party from exchanging such traffic over the Parties' existing Local Interconnection Trunk Groups**. Upon receipt of verifiable Primary Toll records, **SBC-13STATE** shall reimburse the terminating carrier at **SBC-13STATE's** applicable tariffed terminating switched access rates **for Circuit Switched Traffic**. When transport mileage cannot be determined, an average transit	interconnection "at any technically feasible point within its network". This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn, must provide the facilities and equipment for interconnection at that point. Further, under the congressional mandates contained in Section 251(c)(2)(C), SBC is obligated to provide interconnection to Level 3 that is at least equal in quality to that provided SBC's affiliates or any other carrier. SBC has been allowed to combine for itself and other CLECs a mix of local and non-local traffic over the same trunk groups. Under Section 251 (c)(2)(C), it	intrastate/intraLATA toll carrier and that is subject to a Primary Toll Carrier arrangement. As such, Level 3's language is not required and incorrectly suggests that SBC provides an option relevant to the routing and treatment of such traffic. **In an effort to settle this issue, SBC is prepared to add a definition to section 10.1 as Level 3 requested as the first two sentences, "*A Primary Toll Carrier (PTC) is a company that is designated by the state Commission to transport IntraLATA Toll Traffic. The PTC receives end user intraLATA toll traffic revenues and pays and bills originating and terminating access charges.*"**

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		transport mileage shall be applied as set forth in Appendix Pricing.	must also do so for Level 3.	
IC-18 (§ 11.1)	**Level 3 Issue:** 18a. For intraLATA 800 calls, should the Agreement require exclusive adherence to a single format or allow the parties to mutually agree to alternative formats to accommodate technological changes? **SBC Issue:** 18a. For intraLATA 800 calls, should the Agreement require the parties to provide 800 Access Detail Usage, or should it permit the parties to provide the equivalent? **Joint Issue:** 18b. What is the appropriate treatment	**11. INTRALATA 800 *TELECOMMUNICATIONS* TRAFFIC** 11.1 The Parties shall provide to each other intraLATA 800 Access Detail Usage **or equivalent** Data for Customer billing and intraLATA 800 Copy Detail Usage **or equivalent** Data for access billing in Exchange Message Interface (EMI) format **or other mutually agreeable format**. The Parties agree to provide this data to each other on a monthly basis at no charge. In the event of errors, omissions, or inaccuracies in data received from either Party, the liability of the Party providing such data shall be limited to the provision of corrected data only. If the originating Party does not send an End User billable record to the terminating Party, the originating Party will not bill the terminating	(a) The Parties should not unnecessarily limit themselves to a specific form of technology or formatting designs. In the event that the Parties are able to agree to the implementation of a new or different format, then they should not be precluded from doing so because of the failure to account for that possibility in the Agreement. Level 3 merely recommends language that provides the Parties with flexibility, and specifically requires both Parties to agree to any new or different format prior to implementation. (b) In Section 11.2, SBC attempts to impose non-cost-based access charges	18a. For intraLATA 800 calls, the Agreement should require the parties to provide 800 Access Detail Usage, Any service provider that sends 800 copy detail usage records for access billing should adhere to the industry developed and nationally accepted EMI format. Any other format would require extensive modifications to its systems for billing access charges. 18b. 8YY traffic that does not terminate within a mandatory local calling area is not eligible for reciprocal compensation. 8YY service is an optional Feature Group D service available to carriers from

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	and form of intercarrier compensation for intraLATA 8YY traffic that bears translated NPA-NXX codes that are local to the point where the traffic is exchanged?	Party any interconnection charges for this traffic. 11.2 **Non-local** IntraLATA 800 Traffic calls are billed to and paid for by the called or terminating Party, regardless of which Party performs the 800 query. Billing shall be based on originating and terminating NPA/NXX. **8YY Traffic bearing translated NPA-NXX codes that are local to NPA-NXX codes at the point where the traffic is handed off will be rated and compensated as Local Traffic.**	for all 8YY calls, even when the associated NPA-NXX is assigned within the local calling area and, thus, local in nature. First, the physical location of the calling parties has never been used as the determiner of what form of compensation is applied to a particular call. Rather, the industry standard is a comparison of the NPA-NXXs of the calling parties to determine the appropriate rating of the call. Second, for purposes of intercarrier compensation for next-generation IP-Enabled Traffic like Level 3's traffic, imposition of these SBC-requested regimes is not appropriate. With IP-Enabled Traffic, the physical location of the calling parties is not relevant. Rather, as has	SBC's access tariffs. SBC modifies existing network architecture in order to support this service; in turn, 8YY service providers recover charges associated with 8YY service by billing the terminating end users whom have purchased the 800 services.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			been the case with intercarrier compensation regimes for years, the NPA-NXX of the calling parties will determine the rating of a call. This is exactly the regime Level 3 recommends continue.	
IC-19 (§12.-§12.3, §12.5-§12.6, §12.9)	**Level 3 Issues:** 19a. **S**hould the Agreement require the parties to use only MECAB and MECOB billing formats as the exclusive format, or allow the parties to mutually agree to alternative formats to accommodate technological changes? 19b. Should the agreement contain terms that allow the parties to properly apply state and federally tariffed rates, terms and conditions to	**12. MEET POINT BILLING (MPB) AND SWITCHED ACCESS TRAFFIC COMPENSATION** 12.1 Intercarrier compensation for ***Switched Access*** **Circuit Switched** Traffic shall be on a Meet Point Billing ("MPB") basis as described below. **To the extent Level 3 is unable to provide records formatted according to Ordering and Billing Forum's MECOD and MECAB guidelines, the Parties agree to explore additional options for recording, assembling and editing of message detail records necessary to accurate billing of traffic.**	(a) The Parties should not unnecessarily limit themselves to a specific form of technology or formatting designs. In the event that the Parties are able to agree to the implementation of a new or different format, then they should not be precluded from doing so because of the failure to account for that possibility in the Agreement. Level 3 merely recommends language that provides the Parties with flexibility, and specifically requires both Parties to agree to any new	19a. Yes. Consistent with the FCC's NPRM on IP services, any service provider that sends traffic over the Public Switched Telephone Network (PSTN) should adhere to industry developed and nationally accepted compensation arrangements in place. Therefore, Level 3 must adhere to the OBF MECAB default billing arrangement (multiple bill/single tariff). Records must be exchanged in an EMI Category 11-0X detail format for MPB.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	traffic while ensuring that these terms are not misapplied to IP Enabled Services? **SBC Issues:** 19a. Is Level 3 required to follow MECOD and MECAB billing format for Meet Point Billing? 19b. What is the appropriate form of Intercarrier compensation for MPB Traffic? 19c. Is it appropriate to limit Meet Point Billing Arrangements to IXC Switched Access Services traffic jointly handled by the Parties?	12.2 The Parties will establish MPB arrangements in order to provide ***Switched Access Services*** **for Circuit Switched Traffic** via the respective carrier's Tandem Office Switch in accordance with the MPB guidelines contained in the Ordering and Billing Forum's MECOD and MECAB documents, as amended from time to time. 12.3 Billing for the ***Switched Exchange Access Services*** ***for*** **Circuit Switched Traffic** jointly provided by the Parties via MPB arrangements shall be according to the multiple bill/single tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates **to the extent permitted by Applicable Law**. The residual interconnection charge (RIC), if any, will be billed	or different format prior to implementation. (b) Yes. Level 3's language more accurately applies the most recent FCC determinations on rating of IP-Enabled Traffic. Level 3 has incorporated into its proposed language the results of the FCC's Pulver and AT&T decisions verbatim and follow FCC rules on net protocol conversion language. This is also consistent with the fact that there is an open NPRM on VoIP traffic. Further, SBC itself contends in comments to the FCC that the FCC has exclusive jurisdiction over IP-Enabled Traffic.	19b. For any traffic that is sent to or received from an IXC, SBC will apply Switched Access charges. This is consistent with the FCC's NPRM for IP traffic that utilizes the PSTN. It is unclear as to why Level 3 is attempting to modify the terms of an industry established MPB arrangement. 19c. Yes. Level 3 is incorrect in proposing that IntraLaTA Toll Traffic be subject to Meet Point Billing. Meet Point Billing Arrangements are in place to address only IXC Switched Access Services traffic jointly handled by the Parties. 19d. SBC maintains Access Usage Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	19d. In the event of a loss of data, what is a reasonable time frame for both Parties to reconstruct the lost data??	by the Party providing the end office function **to the extent permitted by Applicable Law**. 12.5 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for ***Switched Access Services*** **for Circuit Switched Traffic** ***traffic*** jointly handled by the Parties via the Meet Point Billing arrangement. Information shall be exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI records cannot be transferred due to a transmission failure, records can be provided via a mutually acceptable medium. The exchange of Access Usage Records ("AURs") to accommodate MPB will be on a reciprocal, no charge basis. Each Party		(AUR) files for only 90 days. Level 3's proposed 90-days will not provide adequate time for SBC to mechanically reconstruct the data.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		agrees to provide the other Party with AURs based upon mutually agreed upon intervals. 12.6 MPB shall also apply to all jointly provided Switched Access MOU **for Circuit Switched Traffic** ***traffic*** bearing the 900, ***or toll free NPAs (e***.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs **to the extent that those calls bear translated NPA-NXX codes that are local to NPA-NXX codes at the point where the traffic is handed off will be rated as Local Traffic.**). The Party that performs the SSP function (launches the query to the 800 database) will bill the 800 Service Provider for this function. 12.9 In the event of a loss of data, both Parties shall cooperate		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		to reconstruct the lost data within ***ninety (90)*** days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.		
IC-20 (14.-14.1)	**Level 3 Issue:** 20. Should the compensation under this Agreement apply to interstate or intrastate exchange access traffic, Information access traffic, exchange services for access, or any other type of traffic which is interstate in nature? **SBC Issues:** 20a.	**14. INTRALATA TOLL TRAFFIC COMPENSATION** 14.1 For **Circuit-Switched Traffic** that is correctly rated as intrastate intraLATA toll ***traffic***, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate	Level 3's language more accurately applies the most recent FCC determinations on rating of IP-Enabled Traffic. Level 3 has incorporated into its proposed language the results of the FCC's Pulver and AT&T decisions verbatim and follow FCC rules on net protocol conversion language which is consistent w/ the fact that there is an open NPRM on VoIP traffic and b/c SBC itself contends in	20a. For intrastate intraLATA toll traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	What is the proper treatment and compensation for IntraLATA toll traffic? 20b. Should Level 3 be permitted to charge an Access rate higher than the incumbent? 20c. Is Level 3 eligible to charge a tandem interconnection rate for intraLATA toll traffic?	Access Service Tariff. ***but such compensation shall not exceed the compensation contained in an SBC-13STATE's tariff in whose exchange area the End User is located***. For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff***, but such compensation shall not exceed the compensation contained in the SBC-13STATE's tariff in whose exchange area the End User is located***. Common transport, (both fixed and variable), as well as tandem switching and end office rates apply only in those cases where a Party's tandem **or switch providing equivalent geographic coverage** is used to terminate traffic.	comments to the FCC that the FCC has exclusive jurisdiction over IP enabled traffic	20b. No. SBC's proposed language that caps Level 3's interstate switched access rates is consistent with the intent of the FCC's access charge reform and with the current rule at 47 C.F.R. § 61.26(b)(1) (providing that a "CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of" the "rate charged for such services by the competing ILEC" or the lower of an FCC benchmark or the CLEC's rate charged prior to June 2001). While Level 3 may promulgate a rate that differs from SBC's, it must make a showing as to the legitimacy of that newly-promulgated rate. 20c. Level 3's language relating to transport,

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				tandem switching and end office rates is inappropriate for IntraLATA Toll traffic.
IC-21 (§15-§15.2)	**Level 3 Issue:** 21. Should the agreement contain terms that allow the parties to properly apply state and federally tariffed rates, terms and conditions to traffic while ensuring that these terms are not misapplied to IP Enabled Traffic? **SBC Issues:** 21a. What is the appropriate form of Intercarrier compensation for ISP-Bound Traffic in accordance with the FCC's ISP Terminating Compensation Plan? 21b. Should SBC	**15. BILLING ARRANGEMENTS FOR TERMINATION OF *SECTION 251(B)(5),* CIRCUIT SWITCHED OPTIONAL EAS, ISP-BOUND AND CIRCUIT SWITCHED INTRALATA TOLL TRAFFIC** 15.1 In **SBC-13STATE** each Party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard recordings made within the terminating carrier's network for ***251(b)(5) Traffic,* Circuit Switched Traffic, Circuit Switched** Optional EAS Traffic, ISP-Bound Traffic and **Circuit Switched** IntraLATA Toll Traffic. These recordings are the basis for each Party to generate bills to the other	IP-Enabled Traffic is not circuit switched, and thus, the Agreement should ensure that the billing arrangement terms for circuit switched services should not apply. Thus, Level 3 has proposed language that clearly segregates such different forms of traffic.	21a. See SBC's position in Issue IC-13. 21b. Yes. SBC has set forth the methodology for calculating the 3:1 ratio under the FCC's *ISP Compensation Order* and this provides certainty on how the Parties will bill under the FCC plan. The Party that transports and terminates more Section 251(b)(5) and ISP-Bound Traffic must calculate the 3:1 ratio in accordance with the provisions of the Agreement. 21c. No. CPN is the proper call information that should be used to

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	provide Level 3 with originating carrier number on calls that Level 3 cannot bill through the use of terminating records? 21c. For billing purposes, should ISP-Bound Traffic be calculated using the 3:1 Presumption?	Party. 15.1.1 Where a terminating **LEVEL 3** is not technically capable of billing the originating carrier through the use of terminating records, **SBC-13STATE** will provide the appropriate originating Category of records **including Originating Carrier Number ("OCN")**. 15.2 **The Parties agree that they will exchange ISP-bound traffic at rates set by the FCC and will update these rates immediately upon the effective date of any subsequent FCC order.** ***In states in which SBC-13STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC's interim ISP terminating compensation plan set forth in the FCC ISP Compensation***		jurisdictionalize traffic. OCN is not appropriate for that purpose, because it is not part of the actual call transmission and does not identify the geographic area from which the call originated. For the purposes of billing compensation to the appropriate party, Facility Based CLECs receive the appropriate category of records for calls that terminate to end users served by a CLEC utilizing SBC's Lawful ULS which will contain the OCN to aid them in billing the proper party. In addition, the CLEC may utilize the LERG and the LNP Database to help identify the appropriate party to bill.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Order, ISP-Bound Traffic will be calculated using the 3:1 Presumption as set forth in Section 6.6 of this Appendix.		
IC-22 (§18.1-§18.6)	**SBC Issue:** 22. Should the Agreement include SBC's proposed reservation of rights concerning intercarrier compensation on ISP-Bound traffic and the FCC's ISP Compensation Order?	**18. RESERVATION OF RIGHTS AND SPECIFIC INTERVENING LAW TERMS** 18.1 The Parties acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic* (the "ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). The Parties agree that by executing this Appendix and carrying out the intercarrier compensation terms and conditions herein, neither Party	Level 3 is not opposed to including reservation rights in the Agreement, but SBC's attempts to have Level 3 agree with its interpretations of various orders or regulations is inappropriate. Level 3 and SBC have an existing ISP Compensation Plan in place that will remain in place until December 31, 2004. However, the FCC is expected to release its much anticipated ISP Remand Order at the October 2004 FCC meeting. This Agreement's ISP Compensation terms would not take effect until after that date. Thus, Level 3 is	22. Given the pending FCC rulemaking and the unique administrative aspects of intercarrier compensation, a special change in law provision is appropriate to address the FCC's Order on intercarrier compensation which will result from its Notice of Proposed Rulemaking Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime*.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		waives any of its rights, and expressly reserves all of its rights, under the ISP Compensation Order or any other regulatory, legislative or judicial action, ***including, but not limited to, the right to elect to invoke (to the extent the ILEC has not already elected to offer to exchange traffic pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan as of the Effective Date of this Agreement) on a date specified by SBC-13STATE the FCC's interim ISP terminating compensation plan, after which date ISP-Bound traffic exchanged between the Parties will be subject to Sections 6.0 through 6.6 above.*** ***18.2 To the extent SBC-13STATE has not already provided notice of its offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic pursuant to the terms and***	proposing that the Parties agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order. SBC's proposed new compensation scheme is not only a newly crafted scheme based upon a regime that will go replaced shortly, but also will likely not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time. This is the effect of Level 3's proposed language.	

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		conditions of the FCC's interim terminating compensation plan in a particular state as of the Effective Date of this Agreement, SBC-13STATE agrees to provide 20 days advance written notice to the person designated to receive official contract notices in the Interconnection Agreement of the date upon which the SBC-13STATE designates that the FCC's ISP terminating compensation plan shall begin in such state. Notwithstanding anything contrary in this Agreement, LEVEL 3 agrees that on the date designated by SBC-13STATE in a particular state, the Parties will begin paying and billing Intercarrier Compensation for ISP-Bound Traffic to each other at the rates, terms and conditions specified in Sections 6.0 through 6.6 above. ***18.3 SBC-13STATE and LEVEL 3 agree to carry out the FCC's interim ISP terminating***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		compensation plan on the date designated by SBC-13STATE in a particular state without waiving, and expressly reserving, all appellate rights to contest FCC, judicial, legislative, or other regulatory rulings regarding ISP-Bound traffic, including but not limited to, appeals of the FCC's ISP Compensation Order. By agreeing to this Appendix, both Parties reserve the right to advocate their respective positions before courts, state or federal commissions, or legislative bodies. ***18.4 Should a regulatory agency, court or legislature change or nullify the SBC-13STATE's designated date to begin billing under the FCC's ISP terminating compensation plan, then the Parties also agree that any necessary billing true ups, reimbursements, or other accounting adjustments shall be made symmetrically and to the***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		same date that the FCC terminating compensation plan was deemed applicable to all traffic in that state exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by Intervening Law, to apply uniformly to all traffic among SBC-13STATE, LEVEL 3 and Commercial Mobile Radio Service (CMRS) carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix. ***18.5 The Parties further acknowledge that federal or state court challenges could be sustained against the FCC's ISP Compensation Order in particular, or against ISP intercarrier compensation generally. In particular, a court***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		could order an injunction, stay or other retroactive ruling on ISP compensation back to the effective date of the FCC's ISP Compensation Order. Alternatively, a court could vacate the underlying Order upon which the compensation was based, and the FCC (either on remand or on its own motion) could rule that past traffic should be paid at different rates, terms or conditions. ***18.6 Because of the possibilities in Section 17.5, the Parties agree that should the ISP Compensation Order be modified or reversed in such a manner that prior intercarrier compensation was paid under rates, terms or conditions later found to be null and void, then the Parties agree that, in addition to negotiating appropriate amendments to conform to such modification or reversal, the Parties will also agree that any billing true ups,***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		reimbursements, or other accounting adjustments on past traffic shall be made uniformly and on the same date as for all traffic exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to apply to all traffic among SBC-13STATE, LEVEL 3, and CMRS carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix.		
CH 1	**NOTE: This issue applies only to ARK, KAN, MO, OKLA and TX.** Should this appendix provide that SBC will bill reciprocal compensation according to terminating records instead of the Category 92 process?	2.1 **SBC SOUTHWEST REGION 5-STATE** operates a CH for the purpose of facilitating the exchange of certain alternatively billed intrastate intraLATA message toll call records and the reporting of settlement revenues owed by and among participating LECs and CLECs, including **SBC SOUTHWEST REGION 5-STATE** and **LEVEL 3**. **SBC**	The common practice between carriers is to generally rely upon the records of the party that remits a service (e.g. the terminating carrier) and submits a bill to the recipient of that service (e.g., the originating carrier). Therefore, where technically feasible, the terminating carrier's	No, because, among other reasons, this appendix has nothing to do with reciprocal compensation.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		SOUTHWEST REGION 5-STATE agrees to bill reciprocal compensation according to terminating records instead of the Category 92 process.	records should be used to bill originating carriers (excluding transiting carriers) for reciprocal compensation, unless both the originating and terminating carriers agree to use originating records. the use of terminating records among the parties to bill for reciprocal compensation is a more efficient and less burdensome method to track the exchange of traffic. Terminating records impose less cost upon the terminating carriers than the previous regulatory scheme that used SWBT's 92/99 originating records to bill for reciprocal compensation. Level 3 also notes that this position is consistent with the business practices between the Parties in the other	

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			SBC states. In fact, SBC SOUTHWEST REGION FIVE STATE is the only ILEC that requires Level 3 to bill based on SBC's Category 92 records. Level 3 would also note that its position is consistent with orders by state commissions addressing the issue (e.g., Texas Public utility Commission, Docket No. 21983).	
UNE 1	**Level 3 Issue**: Does the FCC's Interim TRO Order maintain the status quo as of June 15, 2004 of the parties' existing interconnection agreement with respect to the availability of UNEs? **SBC Issue**: Under the FCC's Interim Order, is the Commission	Pursuant to the FCC Order and Further Notice of Proposed Rulemaking, FCC 04-179, WC Dkt. No. 04-313 (Rel. Aug. 20, 2004), the terms and conditions addressing Unbundled network elements in the interconnection agreement between SBC and Level 3 in force as of June 15, 2004 shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission	Yes. The Interim Order adopted by the FCC on July 21, 2004 (rel. August 20, 2004) maintains the status quo that existed as of June 15, 2004 for the provision of unbundled network elements from SBC to Level 3. As of June 15, 2004, Level 3 was entitled to receive unbundled network elements pursuant to the	NOTE: A few days before filing this DPL, Level 3 advised that, in light of the FCC's August 20, 2004 Interim Order, its position had changed, as set forth in Level 3's position statement. As a result of Level 3's position change, Level 3 removed all of its previously proposed contract language. SBC is therefore commenting in

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	required to adopt the parties' existing interconnection agreement as it pertains to UNEs?	or six months after Federal Register publication of that Order (except to the extent that they are or have been superseded by (1) voluntarily negotiated agreements, (2) an intervening Commission order affecting specific unbundling obligations (*e.g.*, an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements.) In the event the FCC has not issued final rules after the prescribed six month period and/or the Parties have been unable to reach an agreed upon amendment based upon a change in law as to UNEs, the dispute resolution process as reflected in this Agreement can be utilized to resolve remaining disputes on the terms and conditions of SBC's provision of network elements to	terms and conditions of the parties' Interconnection Agreement that was approved by the Commission. Level 3 does not wish to waive its rights to obtain unbundled network elements pursuant to those existing terms and conditions. In addition, the FCC has held that Level 3 and SBC may not arbitrate new agreements until after the FCC adopts permanents rules for the provision of unbundled network elements: "Moreover, if the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into other carriers' new contracts. The interim approach adopted here, in	this DPL on language that the parties previously had agreed upon (denoted in regular font), as well as SBC-proposed language that Level 3 had not agreed to and SBC language that Level 3 had not commented on (both indicated in bold italics). The FCC's Interim Order has not yet been published in the Federal Register, is not yet effective, and is subject to challenges that may prevent it from ever becoming effective. Even assuming that the Interim Order were to become effective at some future date, its effect is the opposite of what Level 3 describes. Pursuant to the Interim Order, Level 3 may not seek to include declassified UNEs (as defined below) in a new

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		SBC in a way that will ensure that the Agreement complies with federal and state law. In light of the FCC Interim Order, Level 3 requests that the Commission adopt the UNE terms and conditions that have been approved by the Commission in the parties existing Interconnection Agreement.	contrast, does not enable competing carriers to do either." ¶23. According to the FCC, "such litigation would be wasteful in light of the [FCC's] plan to adopt new permanent rules as soon as possible." ¶17. The FCC recognizes that "the implementation of a new interim approach could lead to further disruption and confusion that would disserve the goals of section 251." In light of the foregoing, Level 3 does not waive any rights to those UNEs to which it is entitled by agreeing to terms and conditions other than what is in its existing Interconnection Agreement. Level 3 will also oppose any effort by SBC to attempt to arbitrate UNEs in light of the FCC	interconnection agreement. Interim Order, ¶ 23. Level 3 mistakenly interprets the Interim Order as barring the creation of new interconnection agreements until the FCC issues new unbundling rules. However, nothing in the Interim Order suggests that parties cannot continue negotiating and arbitrating new interconnection agreements. To the contrary, the FCC expected parties to do so. And that is why, in paragraph 23 of the Interim Order, the FCC made clear that in entering such new agreements, CLECs *cannot* attempt to rely on any interim unbundling rules or any of the unbundling rules that are no longer valid in light of the Triennial Review Order (TRO) and the D.C. Circuit decision on review

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			Interim Order. The dispute resolution process adopted by the Commission at the conclusion of this proceeding can be used by the parties to adjudicate the terms and conditions for SBC's provision of UNEs after the FCC has issued revised rules.	of that order (USTA II). SBC's position that the parties should continue to arbitrate the new Agreement without regard to the Interim Order or interim rules is consistent with the FCC's specific instruction that ILECs can continue to seek to change existing interconnection agreements, and thus also to enter into new agreements, based on the law as it stands in light of the TRO and USTA II and in anticipation of the FCC's permanent unbundling rules. Interim Order, ¶¶ 22-23. By contrast, Level 3's request to include old contract language from its existing agreement does not account for TRO or USTA II, which dramatically impacted

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				prior unbundling obligations. Retreating to old contract language that does not comply with those rulings, much less with Section 251(c)(3), is not proper under the Act and would lead to plainly incorrect decisions. For example, the TRO declassified enterprise switching, and the Interim Order does not affect that ruling at all. The dispute resolution process is not the proper method of addressing the FCC's permanent unbundling rules when they are released. First, such new rules could well be released before the new Agreement becomes final. Second, even if the permanent rules take effect after this Agreement becomes final, the Interim

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				Order directs parties to anticipate the outcome of those rules by attempting in advance to develop contract language that will enable prompt implementation of those new rules when they take effect. That is precisely what SBC is attempting to do through its proposed language here, and why it opposes Level 3's attempt to defy paragraph 23 of the Interim Order and and propagate unlawful unbundling requirements in a new Agreement. By seeking to repeat the terms of its prior contract, Level 3 is effectively seeking to arbitrate rates, terms, and conditions for network elements that are not required to be unbundled (*i.e.*, "Declassified" elements, as

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				discussed under Issue 3 below). Declassified network elements are not subject to Sections 251 and 252 of the Act and thus are not arbitrable in this proceeding. Pursuant to the Fifth Circuit's decision in *Coserv LLC v. Southwestern Bell Telephone Co.,* 350 F.3d 482 (5th Cir. 2003)*("Coserv"),* non-251(b) and (c) items are not arbitrable unless both parties voluntarily consent to the negotiation/arbitration of such items. SBC has not consented to negotiate/arbitrate the terms, conditions, and rates for Declassified elements, and does not do so here. Accordingly, the Commission must decline Level 3's attempt to have the Commission arbitrate

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				this issue, and must reject Level 3's proposal relating to rates, terms, and conditions for Declassified network elements or Section 271 offerings. Without waiving the foregoing and instead, expressly reserving all of its rights under *Coserv*, SBC suggests that the ICA could include language (as proposed by SBC in various sections of the Appendix) stating that non-251 elements will not be provided under the Agreement.
UNE 2	Is the scope of SBC's obligation to provide access to UNEs defined solely by Section 251 of the federal Act and lawful and effective FCC rules and associated lawful and effective FCC and	1.1 This Appendix UNE sets forth the terms and conditions pursuant to which the applicable SBC Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish **LEVEL 3** with access to unbundled network elements as specifically defined in this		ILEC unbundling obligations stem from Section 251(c)(3) (and the Section 251(d)(2) necessary and impair standards), not any other provision of the Act. Accordingly, SBC's proposed language refers

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	judicial orders?	Appendix UNEs for the provision by **LEVEL 3** of a Telecommunications Service (Act, Section 251***(c)(3)***. For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.		only to Section 251(c)(3) and not, for example, Section 271, which does not impose any duty regarding UNEs.
UNE 3	(a) Is the scope of SBC's obligation to provide access to UNEs defined solely by Section 251 of the federal Act and lawful and effective FCC rules and associated lawful and effective FCC and judicial orders? (b) How should a "declassified" UNE be defined, and does that include, at a minimum, the elements listed in SBC's proposed Section 2.1? Should SBC be	2. Terms and Conditions **2.1 UNEs *and Declassification.*** This Agreement sets forth the terms and conditions pursuant to which **SBC-13STATE** will provide **LEVEL 3** with access to unbundled network elements under ***Section 251(c)(3) of*** the Act in **SBC-13STATE**'s incumbent local exchange areas for the provision of Telecommunications Services by **LEVEL 3*; provided, however, that notwithstanding***		(a) "Lawful UNE" Issue SBC's proposed language clarifies that SBC is only required to unbundle network elements that have lawfully been found to meet the federal standards for unbundling and that the FCC has required to be unbundled in its orders pursuant to Section 251(c)(3), where those orders and rules remain in force and effect. Given the history of court review of unbundling decisions by

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	required under the Agreement to provide access to declassified former UNEs?	***any other provision of the Agreement, SBC-13STATE shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that SBC-13STATE is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as "Lawful UNEs.***" A network element, including a		regulatory agencies, it is appropriate to make clear that SBC is only required to provide "lawful" UNEs. (b) Declassification issue In order to have clear language governing the treatment of network elements that are (or may be declared to be) no longer subject to unbundling, SBC proposes "Lawful UNE" language that specifically addresses the declassification of UNEs, including that which occurred in the TRO and the USTA II decision and which may occur when the FCC issues new permanent unbundling rules in the near future. Rather than rely on standard (vague) change in law language as the means of addressing the

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		network element referred to as a Lawful UNE under this Agreement, will cease to be a UNE under this Agreement if it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified." 2.1.2 ***Without limitation, a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified, upon or by (a) the issuance of the mandate in United States Telecom Association v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I"); or (b) operation of the Triennial Review Order released by the FCC on in CC Docket Nos. 01-338, 96-98 and 98-147, FCC 03-36, 18 FCC***		declassification of UNEs, SBC's language clearly defines when and how SBC will be obligated to provide UNEs under Section 251(c)(3) and how, once SBC is no longer required to provide those UNEs, the parties will transition smoothly to a commercial environment where Level 3 can obtain products and services from SBC on a wholesale basis via such options as resale, access tariffs and separately negotiated agreements. Under SBC's language, the parties will have a clear understanding of the consequences of certain legal and regulatory rulings rather than being required to debate 1) whether a change in law has occurred, 2) the scope of the change, 3) the consequences of the change, and 4) the

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Rcd 16978 (rel. August 21, 2003), as modified by the Errata issued by the FCC in that same proceeding, FCC 03-227, 18 FCC Rcd 19020 (rel. Sept. 17, 2003) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals' decision, United States Telecom Association v. FCC, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II"); or (e) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that SBC-13STATE is not required, or is no longer required, to provide a network element on		modification required to the contract, if any. As this Commission is well aware, leaving even one issue open for debate typically results in the parties having to seek Commission intervention to settle their disputes. SBC's language will avoid that situation. SBC's language sets forth a definition of declassification that depends upon judicial and regulatory action for the declassification of network elements that have previously been required to be unbundled under Section 251. The decision whether something has been declassified rests with those bodies, not with SBC or Level 3, but once the declassification event

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		an unbundled basis pursuant to Section 251(c)(3) of the Act. By way of example only, a network element can cease to be a Lawful UNE or be Declassified on an element-specific, route-specific or geographically-specific basis or a class of elements basis. Under any scenario, Section 2.5 "Transition Procedure" shall apply. ***2.1.2.1 By way of example only, and without limitation, network elements that are Declassified and are not provided under this Agreement include at least the following: (i) entrance facilities (ii) dedicated transport, at any level, including but not limited to DSO, OCn, DS1, DS3, or Dark Fiber Transport (iii) Local Switching (as defined in Section 11 of this Appendix (iv) OCn Loops, , DS1 or DS3 Loops, or Dark Fiber Loops; (v) the Feeder portion of the Loop; (vi) Line Sharing; (vii)***		has occurred, the parties can conform their agreement and business relationship using the Lawful UNE transition process. Section 2.1.2.1 gives several examples of Declassified UNEs). This list of examples, which includes items that have been declassified by USTA I, TRO and USTA II, is designed to provide clarity regarding what the parties are agreeing to. They are items to which the FCC or judiciary have already spoken and should be noncontroversial. The inclusion of this list will likely lessen the likelihood of post-execution disputes between the parties.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with LEVEL 3's use of SBC-13STATE's Lawful ULS (as no local switching constitutes Lawful UNE local switching, SBC-13STATE is not obligated to provide, and LEVEL 3 shall not request such Call-Related Databases, other than the 911 or E911 databases, under this Agreement)); (viii) SS7 signaling that is not provisioned in connection with LEVEL 3's use of SBC-13STATE's Lawful ULS (as no local switching constitutes Lawful UNE local switching, SBC-13STATE is not obligated to provide, and LEVEL 3 shall not request, SS7 signaling under this Agreement); (ix) Packet switching, including routers and DSLAMs; (xiii) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Hybrid Loops (as defined in 47 CFR § 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; (xiv) Fiber-to-the-Home Loops (as defined in 47 CFR 51.319(a)(3)) ("FTTH Loops"), except to the extent that SBC-13STATE has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC-13STATE will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis; ***2.1.2.2 Additional network elements that may be Declassified and be subject to this Section 2.1 include any element or class of elements as to which a general***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		determination is made that requesting Telecommunications Carriers are not impaired without access to such element or class of elements ***2.1.2.3 At a minimum, at least the items set forth in this Section 2.1 shall not constitute Lawful UNEs under this Agreement.***		
UNE 4	Is SBC's obligation to unbundle network elements or combine or commingle UNEs under this Agreement limited to "Lawful" UNEs, and to the extent the Agreement appears to require the provision of Lawful UNEs or unbundling (or combining or commingling) without using the term "Lawful," should the Agreement be deemed	2.1.3 It is the Parties' intent that ***only Lawful*** UNEs shall be available under this Agreement; ***but have agreed, for ease of administration, that they will not require the insertion of the defined term "Lawful UNE" throughout the Agreement***; ***accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Lawful," the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful***		See Position Statements for Issues 2 and 3 above. Given that SBC is only required to provide UNEs that have lawfully been required to be unbundled and that have not been declassified, this section clarifies that references to "UNEs" throughout the Agreement refer only to Lawful, non-Declassified UNEs. The language also clarifies that SBC's obligation to combine UNEs or commingle only

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	to be referring only to "Lawful" UNEs?	***unbundling, as defined in this Section 2.1.*** ***2.1.4 By way of example only, if terms and conditions of this Agreement state that SBC-13STATE is required to provide a UNE or UNE combination or other arrangement including a "UNE Loop," and Loops are Declassified or otherwise no longer constitute a UNE, then SBC-13STATE shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.*** ***2.2 Nothing contained in the Agreement shall be deemed to constitute consent by SBC-13STATE that any item identified in this Agreement as a UNE, network element or Lawful UNE is a network element or UNE***		applies to Lawful, non-Declassified UNEs that are being used for a permissible purpose under federal law. That proposition should not be controversial.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that SBC-13STATE is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities. ***2.3 The preceding includes without limitation that SBC-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC-13STATE network elements that do not constitute UNEs, or where UNEs are not requested for permissible purposes.***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	**Issue Description**	**Disputed Contract Language**	**Level 3 Position/Support**	**SBC Position/Support**
UNE 5	If a UNE is declassified or is otherwise no longer required to be unbundled, can SBC discontinue provision of the Declassified UNE (either alone or as part or a combination or commingling arrangement), and should SBC's proposed transition procedures for Declassified UNEs apply?	***2.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or UNE in this Agreement is Declassified or is otherwise no longer a UNE, then the Transition Procedure defined in Section 2.5, below, shall govern***. 2.5 ***Transition Procedure. <u>SBC-13STATE</u> shall only be obligated to provide UNEs under this Agreement. To the extent an element described as a UNE or an unbundled network element in this Agreement is Declassified or is otherwise no longer a UNE, <u>SBC-13STATE</u> may discontinue the provision of such element, whether previously provided alone or in combination with or***		See Position Statements for Issues 2 and 3 above regarding Declassified UNEs. SBC's Lawful UNE declassification transition language states that it will provide Level 3 with reasonable notice (in this case, 30 days) that an item or category of items otherwise included in the UNE Attachment as a Lawful UNE has been declassified. Upon that notice, Level 3 has a choice: it can request that SBC discontinue the item, in which case SBC will do so; or, if it doesn't request discontinuance, SBC will replace and/or reprice the item accordingly. This process will minimize disruption and disputes.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		as part of any other arrangement with other UNEs or other elements or services. Accordingly, in the event one or more elements described as UNEs or as unbundled network elements in this Agreement is Declassified or is otherwise no longer a UNE, SBC-13STATE will provide written notice to LEVEL 3 of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, SBC-13STATE agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, LEVEL 3 will cease ordering new elements that are identified as Declassified or as otherwise no longer being a UNE in the SBC-13STATE notice letter referenced in this Section 2.5.		SBC will continue to provide the item as a "UNE" during the 30-day period between the notice and the discontinuance or repricing and/or replacement of the product. If, for some reason, there is no analogous product available, SBC's language provides for the parties to negotiate and incorporate terms and conditions for a replacement product. SBC's approach is reasonable and orderly and should help avoid disputes at the Commission. As SBC's detailed language in Section 2.5 illustrates, SBC believes that there is no need to wait until the end of a lengthy change in law process (which

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		SBC-13STATE reserves the right to audit LEVEL 3 orders transmitted to SBC-13STATE and to the extent that LEVEL 3 has processed orders and such orders are provisioned after this 30-day transitional period, such elements are still subject to this Section 2.5, including the options set forth in (a) and (b) below, and SBC-13STATE's rights of discontinuance or conversion in the event the options are not accomplished. During such 30-day transitional period, the following options are available to LEVEL 3 with regard to the element(s) identified in the SBC-13STATE notice, including the combination or other arrangement in which the element(s) were previously provided: LEVEL 3 may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s)		inevitably requires not only negotiation, but also often involves dispute resolution proceedings) to decide on how to deal with the declassification of certain UNEs by virtue of state impairment decisions. This self-executing language does not shift the burden of developing implementation of a finding of "no impairment" to the Commission. Incorporating detailed terms and conditions on implementation on a product-by-product basis now, rather than later, will simplify and clarify the parties' contractual relationship and business behavior in the future. SBC's language minimizes disruption by providing for reasonable

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		and/or the combination or other arrangement in which the element(s) were previously provided; or SBC-13STATE and LEVEL 3 may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available. ***Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that thirty (30) day transitional period, unless LEVEL 3 has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a), above, and if LEVEL 3 and SBC-13STATE have failed to reach agreement, under (b), above, as to a substitute service arrangement or element, then SBC-13STATE may, at its sole option, disconnect the element(s), whether***		notice to Level 3 of declassification and the effect declassification would have on a particular element.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.		
UNE 6	Is the scope of SBC's obligation to provide access to UNEs limited to network elements that have been held to satisfy the "necessary" and "impair" requirements of Section 251(d)(2) of the Act and that have not otherwise been absolved from unbundling?	2.7 **SBC-13STATE** will provide **LEVEL 3** nondiscriminatory access to UNEs **(:** Act, Section 251(c)(3),; 47 CFR § 51.307(a)): 2.7.3 In a manner that allows **LEVEL 3** to provide ***a*** **any** Telecommunications Service that may be offered by means of that UNE Section 251(c)(3); 47 CFR § 51.307 (c)); 2.7.4 In a manner that allows access to the facility or functionality of a requested UNE to be provided separately from access to other elements, and for a		See Position Statements for Issues 2-3 and 5 above. As the D.C. Circuit found in USTA I, 290 F.3d at 425, the "necessary" and "impair" requirements are the "touchstone" of the Act's unbundling provisions, and no unbundling requirement can be imposed unless those requirements are satisfied.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		separate charge 47 CFR § 51.307(d)); 2.7.5 With technical information regarding **SBC-13STATE**'s network facilities to enable **LEVEL 3** to achieve access to UNEs 47 CFR § 51.307(e)); 2.7.6 Without limitations, restrictions, or requirements on requests that would impair **LEVEL 3**'s ability to provide a Telecommunications Service in a manner it 47 CFR § 51.309(a)); 2.7.7 ***Reserved for future use.*** 2.7.8 Where applicable, terms and conditions of access to UNEs shall be no less favorable than terms and conditions under which **SBC-13STATE** provides such elements to itself 47 CFR § 51.313(b)).		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		2.7.9 ***Only to the extent it has been determined that these elements are required by the "necessary" and "impair" standards of the Act (Act, Section 251(d)(2)).*** 2.7.10 Except upon request of **LEVEL 3**, **SBC-13STATE** shall not separate **LEVEL 3**-requested UNEs that ***are currently combined*** 47 CFR § 51.315(b)) **SBC-13STATE** is not prohibited from or otherwise limited in separating any UNEs not requested by **LEVEL 3** or a Telecommunications Carrier, including without limitation in order to provide a UNE(s) or other **SBC-13STATE** offering(s). 2.8 As provided for herein, **SBC-13STATE** will permit **LEVEL 3** exclusive use of a ***UNE*** facility for a period of time, and when **LEVEL 3** is purchasing access to a feature, function, or capability of such a facility, **SBC-**		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		13STATE will provide use of that feature, function, or capability for a period of time 47 CFR § 51.309(c)). 2.9 **SBC-13STATE** will maintain, repair, or replace UNEs § 51.309(c)) as provided for in this Agreement.		
UNE 7	Is SBC obligated to provide Level 3 access to UNEs beyond the extent to which it is technically feasible to do so?	2.10 ***To the extent*** technically feasible, the quality of the UNE and access to such UNE shall be at least equal to what **SBC-13STATE** provides itself or other telecommunications carriers requesting access to such UNE SBC agrees that it must discharge these duties in compliance with Applicable Law including but not limited to the following: Act, 47 CFR § 51.311(a), (b)).		Level 3 objects to SBC's use of the "to the extent" before the words "technically feasible." The FCC's unbundling rules, however, make clear that unbundling is required only to the extent it is technically feasible to do so. 47 CFR §§ 51.307(a) and 51.311(b) and (c); *Verizon Comms. Inc. v. FCC*, 535 U.S. 467, 536 (2002).

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
UNE 8	Do UNEs, once leased by Level 3, become the property of Level 3, or do they remain SBC's property?	2.12 ***UNEs provided to LEVEL 3 under the provisions of this Appendix shall remain the property of SBC-13STATE.***		A CLEC leases UNEs "for a period of time" only (*e.g.*, by the month); it does not actually buy them. 47 CFR § 51.309(c). Thus, while the CLEC has use of the UNE during the lease, the UNE does not actually become the property of the CLEC at any time, particularly when the IELC retains the duty to repair and maintain the UNE. *Id.*
UNE 9	Should UNEs be provided in accordance with SBC's Technical Publications and/or other written descriptions?	2.13 Performance of UNEs 2.13.1 Each UNE will be provided in accordance with ***SBC-13STATE Technical Publications or other written descriptions, if any, as changed from time to time by SBC-13STATE at its sole discretion.*** 2.13.2 Nothing in this Appendix will limit either Party's ability to modify its network through the incorporation of new equipment, new software or		SBC's technical publications are in compliance with all applicable industry standards and, therefore, are the appropriate references to govern how SBC provides UNEs.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		otherwise **SBC 13STATE** will provide the other Party written notice of any upgrades in its network which will materially impact the other Party's service consistent with 47 CFR § 51.325. - ***51.335*** **()**		
UNE 10	In the event of SBC switch conversions, should Level 3's UNE orders be suspended for three days before and one day after the conversion date?	2.13.3 **SBC-13STATE** may elect to conduct Central Office switch conversions for the improvement of its network. During such conversions, ***orders for*** UNEs **(**from ***that*** switch. ***shall be suspended*** for a period of three days prior and one day after the conversion date, consistent with the suspension **SBC-13STATE** places on itself for orders from its End Users**.**		SBC already has a notification of switch conversion processes in place based upon FCC requirements, and those processes are in parity with all SBC customers (47 CFR §§ 51.325-51.335). SBC must have the ability to manage its network during conversions. The decision to suspend service order activity, if necessary, is SBC's, not Level 3's. If SBC is not allowed to have this control over its network, confusion would occur and may cause service

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				disruptions.
UNE 11	In order to obtain UNEs, must Level 3 be a telecommunications carrier, and must it use the UNE(s) to provide a telecommunications service?	2.14.2 In order to access and use UNEs, **LEVEL 3** must be a Telecommunications Carrier (Section 251(c)(3), and must use the UNE(s) for the provision of a Telecommunications Service (Section 251(c)(3)). ***Together, these conditions are the "Statutory Conditions" for access to UNEs. Accordingly,*** **LEVEL 3** ***hereby represents and warrants that it is a Telecommunications Carrier and that it will notify SBC-13STATE immediately in writing if it ceases to be a Telecommunications Carrier. Failure to so notify SBC-13STATE shall constitute material breach of this Agreement.***		Section 251(c)(3) provides that only telecommunications carriers may use UNEs and that UNEs must be for telecommunications services. SBC has no obligation to provide UNEs to a non-telecommunications carrier or solely for non-telecommunications services, and, therefore, must be notified if, for example, Level 3's certificate to provide services as a telecommunications carrier is revoked.
UNE 12	Is Level 3 permitted to obtain a UNE to provide service to itself or for other administrative purposes rather than to provide a	***2.14.2.1.1 By way of example, use of a UNE (whether on a stand-alone basis, in combination with other UNEs with a network element possessed by LEVEL 3, or***		See Position Statement for Issue 11 above. Level 3 cannot use a UNE to provide service to itself or for other administrative purposes if the UNE is not

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	telecommunications service?	***otherwise) to provide service to LEVEL 3 or for other administrative purpose(s) does not constitute using a UNE pursuant to the Statutory Conditions.***		also being used to provide a telecommunications service. 47 CFR § 51.309(b). The Act defines telecommunications services as "offering[s] of telecommunications for a fee directly to the public," and service to Level 3 itself or for administrative purposes does not meet this definition.
UNE 13	See Issues 2-3 above regarding "Lawful" UNEs.	2.14.3 Other conditions to accessing and using any UNE (whether on a stand-alone basis or in combination with other network elements or UNEs ***(Lawful or otherwise)*** may be applicable under ***lawful and effective,*** FCC rules ***and associated lawful and effective FCC and judicial orders .:***		See Position Statements on Issues 2-3 and 5 above.
UNE 14	(a) Is the scope of SBC's obligation to combine UNEs subject to the Supreme Court's	2.16 New Combinations Involving UNEs 2.16.1 Subject to the provisions		(a) The Supreme Court's decision in *Verizon Comms. Inc. v. FCC*, 535 U.S. 467 (2002),

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	decision in *Verizon*? (b) Is any combining obligation of SBC limited to the combining of UNEs? (c) If SBC declines to combine UNEs, must any dispute be addressed through the dispute resolution provisions of the Agreement? (d) Should the scope of SBC's contractual obligation to perform the functions necessary to create the combinations listed in the Schedule(s) – UNE Combinations be subject to the limitations in SBC's proposed Sections 2.16.3.1.1 through 2.16.3.1.3?	hereof and upon **LEVEL 3**'s request, **SBC-13STATE** shall meet its combining obligations involving UNEs**.** ***as and to the extent required by FCC rules and orders, and Verizon Comm. Inc. v. FCC, 535 U.S. 467(May 13, 2002) ("Verizon Comm. Inc.") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.*** ***2.16.1.1 Any combining obligation is limited solely to combining of UNEs; accordingly, no other facilities, services or functionalities are subject to combining, including but not limited to facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.*** 2.16.2 In ***the*** event ***that*** **s** den***ies*** a request to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements		recognized various limits on the scope of an ILEC's duty to combine UNEs for CLECs. *Id*. at 535-37. SBC's proposed contract language properly reflects those limits. Courts have held that such limits should be reflected in interconnection agreements. *E.g.*, *Indiana Bell Tel. Co., Inc. v. McCarty*, 362 F.3d 378, 390-91 (7th Cir. 2004). (b) The FCC's rules (Rule 51.315) and Section 251(c)(3) of the Act speak only of combining UNEs (that is, Lawful, non-declassified UNEs required under Section 251(c)(3)) with other UNEs. SBC's proposed contract language properly recognizes that fact. (c) The proper means of

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		possessed by **LEVEL 3**, shall provide written notice to **LEVEL 3** of such denial and the basis thereof Any dispute over such denial ***shall*** be addressed using the dispute resolution procedures applicable to this Agreement In any dispute resolution proceeding, **SBC-13STATE** shall ***have*** the burden ***to prove*** that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, *Verizon Comm. Inc.* and the Agreement, including Section 2.16 of this Appendix. 2.16.3 In accordance with and subject to the provisions of this Section 2.16, including Section 2.16.5, the new UNE combinations set forth in the Schedule(s) UNE Combinations***, if any,*** attached and incorporated into this Appendix shall be made available to **LEVEL 3** as specified in the specific Schedule***, if any,***		addressing disputes over combinations is the dispute resolution process. (d) To the extent future decisions change the scope of SBC's duty to combine UNEs, Level 3 should take responsibility for performing any functions that SBC is no longer required to perform.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		for a particular State. 2.16.3.1 ***The Parties acknowledge that the United States Supreme Court in Verizon Comm. Inc. relied on the distinction between an incumbent local exchange carrier such as <u>SBC-13STATE</u> being required to perform the functions necessary to combine UNEs and to combine UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, <u>SBC-13STATE</u> is willing to perform the actions necessary to also complete the actual physical***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		combination for those new UNE combinations set forth in the Schedule(s) – UNE Combinations to this Appendix, subject to the following: ***2.16.3.1.1 Section 2.16, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC-13STATE from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to Verizon Comm. Inc., the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by SBC-13STATE. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect SBC-13STATE from taking any position with***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		respect to combinations including UNEs or any issue or subject addressed or related thereto. ***2.16.3.1.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, <u>SBC-13STATE</u> shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and LEVEL 3 shall thereafter be solely responsible for any such non-included functions or other actions. This Section 2.16.3.3.2 shall apply in accordance with its terms, regardless of change in law, intervening***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		law or other similarly purposed provision of the Agreement and, concomitantly, the first sentence of this Section 2.16.3.2.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence. ***2.16.3.1.3 Without affecting the application of Section 2.16.3.3.2 (which shall apply in accordance with its provisions), upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		***SBC-13STATE* obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.**		
UNE 15	Should the fees SBC charges for work performed by SBC under Section 2.16.1 in providing new UNE Combinations, aside from work covered by the charges applicable per Section 2.16.3.5, be	2.16.3.4 Upon notice by **SBC-13STATE**, the Parties shall engage in good faith negotiations to amend the Agreement to include a fee(s) for any work performed by **SBC-13STATE** in providing the new UNE combinations***, if any,*** set forth in Schedule(s) UNE Combinations,		If work related to combining UNEs is not required to be performed by SBC under Section 251 and the FCC's and courts' lawful rules and orders, then, to the extent SBC agrees to perform such work, it may do so at

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	market-based?	which work is not covered by the charges applicable per Section 2.16.3.5. For any such work done by **SBC-13STATE** under Section 2.16.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by **SBC-13STATE**, any such fee(s) shall be at a ***market-based*** rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.		market-based rates.
		2.16.4 In accordance with and subject to the provisions of this Section 2.16, any request not included in Section 2.16.3 in		See Position Statement for Issue 15 above.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		which **LEVEL 3** wants **SBC-13STATE** to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by **LEVEL 3** (as well as requests where **LEVEL 3** also wants **SBC-13STATE** to complete the actual combination), shall be made by **LEVEL 3** in accordance with the bona fide request (BFR) process set forth in this Agreement.		
UNE 16	Should the fees SBC charges for combining work not required by Section 2.16.1 be market-based?	2.16.4.2 In addition to any other applicable charges, **LEVEL 3** shall be charged a reasonable cost-based fee for any combining work done by **SBC-13STATE** under Section 2.16.1. Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. **SBC-13STATE**'s Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which **LEVEL 3** requests **SBC-**		(a) As noted above, the Supreme Court's *Verizon* decision and the FCC's rules place limits on the scope of an ILEC's duty to combine UNEs for CLECs. 535 U.S. at 535-37. The subparts of Section 2.16.5 simply reflect these limits. (b) Level 3 is able to combine UNEs for itself at premises where Level 3 is physically collocated or has an adjacent collocation

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		13STATE to perform work not required by Section 2.16.1, **LEVEL 3** shall be charged a ***market-based*** rate for any such work.		arrangement. The Supreme Court's *Verizon* decision held that ILECs are not required to combine UNEs for CLECs where the CLEC can make the combination itself (535 U.S. at 535 (citing *First Report and Order*, ¶ 294)), and SBC's language merely reflects instances where Level 3 can combine UNEs for itself. (c) Section 2.17 merely states that Section 2.16.5.5 will not begin to apply until SBC provides written notice.
UNE 17	(a) Should SBC's UNE combining obligations be subject to the conditions listed by SBC in proposed Section 2.16.5? (b) Should Level 3 be	2.16.5 Without affecting the other provisions hereof, the UNE combining obligations referenced in this Section 2.16 apply where each of the following is met: it is technically feasible, including		(a) SBC has no present duty to convert a wholesale service to UNEs, as any such obligation was removed by USTA II. (b) To the extent SBC agrees to convert a

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	deemed to be able to combine UNEs by itself when the UNEs are available to Level 3 in the manner described in SBC's proposed Section 2.16.6? (c) When should Section 2.16.5.5 begin to apply (see SBC proposed Section 2.16.7)?	that network reliability and security would not be impaired; 2.16.5.2 ***SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would not be impaired;*** 2.16.5.3 ***SBC-13STATE would not be placed at a disadvantage in operating its own network;*** 2.16.5.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with **SBC-13STATE**'s network***; and*** ***2.16.5.5 LEVEL 3 is*** ***2.16.5.5.1*** ***unable to make the combination itself; or***		wholesale service or services to UNEs, it needs do so only if the wholesale service(s) is composed entirely of Lawful UNEs. This must be the rule, because SBC has no obligation to provide Declassified UNEs, whether alone or as part of the combination that makes up a wholesale service. (c) Because SBC has no duty to provide Declassified UNEs (see Position Statements on Issues 2-3 and 5 above) or to provide UNEs that do not meet the FCC's eligibility criteria, SBC seeks to be able to convert a UNE or UNE combination or commingling arrangement to the equivalent wholesale service if a UNE or combination of UNEs

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		2.16.5.5.2 a new entrant and is unaware that it needs to combine certain UNEs to provide a Telecommunications Service, but such obligation under this Section 2.16.5.5 ceases if SBC-13STATE informs LEVEL 3 of such need to combine. ***2.16.6 For purposes of Section 2.16.5.5 and without limiting other instances in which LEVEL 3 may be able to make a combination itself, LEVEL 3 is deemed able to make a combination itself when the UNE(s) sought to be combined are available to LEVEL 3, including without limitation:*** ***2.16.6.1 at an SBC-13STATE premises where LEVEL 3 is physically collocated or has an on-site adjacent collocation arrangement;***		ceases to meet the eligibility criteria. By merely proposing to convert such combinations to wholesale services, SBC would ensure no disruption in service to Level 3 or the end user.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		2.16.6.2 for SBC CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement. ***2.16.7 Section 2.16.5.5 shall only begin to apply thirty (30) days after notice by SBC-13STATE to LEVEL 3. Thereafter, SBC-13STATE may invoke Section 2.16.5.5 with respect to any request for a combination involving UNEs.***		
UNE 18	(a) Is SBC currently obligated to perform Conversion of Wholesale Services to UNEs? (b) To the extent SBC converts a wholesale service or group of service to UNEs, must the wholesale service or group of service be comprised solely of UNEs offered or	2.17 Conversion of Wholesale Services to UNEs ***With the issuance of the Court's mandate in USTA II, and in the absence of any effective FCC rules or orders requiring conversion of special access services to combinations of UNE Loop(s) and Lawful UNE Dedicated Transport(s), SBC-13STATE is not obligated to and shall not perform such***		(a) Level 3 can obtain a commingling arrangement only if it involves a Lawful UNE. 47 CFR § 51.318(e). If a commingling arrangement encompasses an offering that is not a Lawful UNE under Section 251(c)(3), Level 3 has no right to obtain it under this Agreement. (b) As for the services in a commingling arrangement,

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	otherwise provide for in this Appendix? (c) To the extent Level 3 fails or ceases to meet the eligibility criteria applicable to a UNE or combination of UNEs, or commingled arrangement, may SBC convert the UNE or UNE combination or commingled arrangement to the equivalent wholesale service or group of wholesale services upon written notice to Level 3?	***conversions, and LEVEL 3 shall not request such conversions.. If lawful and effective FCC rules or orders require conversion of wholesale services to UNEs, such conversion(s) and for all other conversion requests the following shall apply:*** 2.17.1 Upon request, **SBC-13STATE** shall convert a wholesale service, or group of wholesale services, to the equivalent UNE, or combination of UNEs, that is available to **LEVEL 3** under terms and conditions set forth in this Appendix, so long as **LEVEL 3** and the wholesale service, or group of wholesale services, meets the eligibility criteria that may be applicable for such conversion. (By way of example only, the ***statutory conditions would constitute*** is one such eligibility criterion.) 2.17.2 Where processes		they must be services obtained at wholesale from SBC, as required by the FCC's rules. 47 CFR § 51.318(e) & (f). Together, these provisions ensure that any commingling arrangement includes and is entirely composed of SBC wholesale services and Lawful UNEs, and nothing else, for that is all the law entitled Level 3 to obtain.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		for the conversion requested pursuant to this Appendix are not already in place, **SBC-13STATE** will develop and implement processes, subject to any associated rates, terms, and conditions The Parties will comply with mutually agreeable applicable Change Management guidelines. 2.17.3 ***Reserved for future use.*** 2.17.3.1 **SBC-13STATE**'s may charge applicable service order charges and record change charges. 2.17.4 ***This Section 2.17 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of UNEs offered or otherwise provided for in this Appendix.*** 2.17.5 If **LEVEL 3** does not meet the applicable eligibility		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent UNE, or combination of UNEs, **LEVEL 3** shall not request such conversion or continue using such the UNE or UNEs that result from such conversion. ***To the extent LEVEL 3 fails to meet (including ceases to meet) the eligibility criteria applicable to a UNE or combination of UNEs, or Commingled Arrangement (as defined herein), SBC-13STATE may convert the UNE or UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to LEVEL 3.***		
UNE 19	(a) May commingling or a commingled arrangement include, involve or encompass an offering that is not a	2.18.1.2 ***Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an SBC-13STATE offering***		(a) SBC's obligation to commingle UNEs or combinations of UNEs with facilities or services obtained at wholesale is

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Lawful UNE under 47 U.S.C. § 251(c)(3)? (b) Must any commingling arrangement be limited solely to commingling of one or more facilities or services that Level 3 has obtained at wholesale from SBC with Lawful UNEs?	***pursuant to 47 U.S.C. § 271 that is not a UNE under 47 U.S.C. § 251(c)(3***). ***2.18.1.4 Any commingling obligation is limited solely to commingling of one or more facilities or services that LEVEL 3 has obtained at wholesale from SBC-13STATE with Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to commingling, including but not limited to facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.*** 2.18.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement , **SBC-13STATE** shall permit **LEVEL 3** to Commingle a UNE or a combination of UNEs with facilities or services obtained at wholesale from **SBC-13STATE** to the extent required by FCC		generally narrower, as defined by the FCC in its TRO, than SBC's obligation to combine UNEs. As the FCC and USTA II court noted, the obligation to combine UNEs is based on a non-discrimination obligation. There is no such overarching obligation to commingle. Further, the FCC did not indicate in its TRO that ILEC commingling obligations were to be treated any differently than similar obligations under Section 251. Accordingly, the limitations on UNE combining that are found in the Supreme Court's Verizon decision, *Verizon Comms. Inc. v. FCC*, 535 U.S. 467, 535-37 (2002) should also apply to commingling. Thus, these same limitations are

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		rules and orders.		reflected in SBC's proposed language. (b) As just explained, the federal-law limitations on an ILEC's duty to combine UNEs apply with at least equal force in the commingling context. Thus, the situations in which Level 3 should be deemed to commingle for itself (thus relieving SBC of any duty to be able to do the work necessary to commingle) should be the same as in the UNE-combination context. SBC's proposed language achieves this. (c) SBC merely proposes to give written notice before Section 2.18.3(i) would begin to apply. (d) Section 2.18.6 merely recognizes that FCC rules

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				and orders govern commingling and that UNEs may be obtained only as long as they are used for permissible purposes under the FCC's rules. All of this language on commingling is intended to avoid potential post-arbitration disputes and claims that the limitations set forth in SBC's proposed language somehow do not or no longer apply in the commingling contest.
UNE 20	(a) Should SBC have any obligation to provide commingling or complete a commingling arrangement where one or more of the conditions listed in SBC proposed Section 2.18.3(i) through (v)	2.18.3 ***Upon request, and subject to this Section 2, SBC-13STATE shall perform the functions necessary to Commingle a UNE or a combination of UNEs with one or more facilities or services that LEVEL 3 has obtained at wholesale from SBC-13STATE (as well as requests where LEVEL 3 also wants SBC-***		This section merely clarifies SBC's obligation regarding commingling of UNEs that have been declassified. There can be no question that SBC is not required to commingle UNEs with non-UNE 271

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	exist? (b) Should the circumstances in which Level 3 is deemed able to perform commingling for itself include those listed in SBC's proposed Sections 2.18.3.1.1 through 2.18.3.1.2? (c) When should SBC proposed Section 2.18.3(i) begin to apply? (d) Is SBC's obligation to allow or permit commingling limited by FCC rules and FCC and judicial orders, and is SBC entitled to refuse to commingle where the relevant UNEs are not requested for permissible purposes?	***13STATE to complete the actual Commingling), except that SBC-13STATE shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) LEVEL 3 is able to perform those functions itself; or (ii) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) SBC-13STATE would be placed at a disadvantage in operating its own network; or (v) it would undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to Interconnect with SBC-13STATE's network Where LEVEL 3 is a new entrant and is unaware that it needs to Commingle to provide a***		checklist items. As explained by the FCC at ¶ 655, n.1990 of the *Triennial Review Order* (as modified by the *Errata*), the Section 251(c) unbundling obligation does not require SBC to perform that function for CLECs, and the FCC declined to impose any such obligation under 271. And in USTA II (359 F.3d at 589-90), the Court upheld that FCC decision. The terms and conditions under which the checklist items are offered are questions solely for the FCC, in the same way that interstate access services are outside of the jurisdiction of any state commission. Attempting to require or permit commingling of Section 271 checklist items would be directly contrary to FCC

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Telecommunications Service, SBC-13STATE's obligation to commingle ceases if SBC-13STATE informs LEVEL 3 of such need to Commingle. ***2.18.3.1 For purposes of Section 2.18.3 and without limiting other instances in which LEVEL 3 may be able to Commingle for itself, LEVEL 3 is deemed able to Commingle for itself when the UNE(s), UNE combination, and facilities or services obtained at wholesale from SBC-13STATE are available to LEVEL3, including without limitation:*** ***2.18.3.1.1 at an SBC-13STATE premises where LEVEL 3 is physically collocated or has an on-site adjacent collocation arrangement;*** ***2.18.3.1.2 for SBC CALIFORNIA only,***		rulings, and thus preempted under 47 U.S.C. 261(c).

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		within an adjacent location arrangement, if and as permitted by this Agreement. [***2.18.3.2 Section 2.18.3(i) shall only begin to apply thirty (30) days after notice by SBC-13STATE to LEVEL 3. Thereafter, SBC-13STATE may invoke Section 2.18.3(i) with respect to any request for Commingling.*** 2.18.6 Nothing in this Agreement shall impose any obligation on **SBC-13STATE** to allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit **LEVEL 3** to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, as determined by ***lawful and*** effective FCC rules and associated ***lawful and*** effective FCC and judicial orders.		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		The preceding includes without limitation that **SBC-13STATE** shall not be obligated to Commingle network elements that do not constitute UNEs ***or where UNEs are not requested for permissible purposes.***		
UNE 21	Is commingling required when the offerings requested to be commingled do not involve or encompass Lawful UNEs required by Section 251(c)(3)?	2.18.9 ***Commingling in its entirety (including its definition, the ability of LEVEL 3 to Commingle, SBC-13STATE's obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass SBC-13STATE offerings pursuant to 47 U.S.C. § 271 that are not UNEs under 47 U.S.C. § 251(c)(3).***		The Change Management process is a collaborative between CLECs (including Level 3, if it elects to participate) and SBC. During the Change Management process, SBC makes every effort to mechanize service ordering at the request of CLECs. SBC tries to accommodate CLECs' needs for conversion with the ability to submit an electronic LSR. Once flow-through enhancements are completed, Level 3 should be required to comply with them.
UNE 22	Should the Parties comply with any	2.20 Where processes for any UNE requested pursuant to this		(a) Under the plain terms and structure of Section

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	applicable Change Management guidelines that apply or relate to the provisioning of UNEs?	Agreement, whether alone or in conjunction with any other UNE(s) or service(s), are not already in place, **SBC-13STATE** will develop and implement processes, subject to any associated rates, terms, and conditions. The Parties will comply with ***any applicable*** Change Management guidelines.		252, CLECs are to obtain UNEs exclusively under interconnection agreements that go through the Section 252 process of negotiation, arbitration, and approval. *E.g.*, *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003); *Verizon North, Inc. v. Strand*, 367 F.3d 577, 584 (6th Cir. 2004). SBC simply seeks to make clear that the terms and conditions on which Level 3 can obtain UNEs are defined exclusively by this Agreement, and that Level 3 cannot end-run or evade the agreement by attempting to obtain UNEs from any tariff. (b) Consistent with the above paragraph, SBC also proposes language making it clear that if Level 3 submits a UNE order under a tariff, SBC can either

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				reject the order (because Level 3 has no right to seek UNEs under tariff) or else treat it as having been submitted under the Agreement (thus ensuring that Level 3's customer still receives prompt service).
UNE 23	(a) Does this Appendix contain the sole and exclusive terms and conditions on which Level 3 will obtain UNEs from SBC, meaning that Level 3 has no right to attempt to purchase UNEs under tariff? (b) If Level 3 seeks to order a UNE pursuant to tariff, should SBC have the option of either rejecting the order or	2.22 The Parties intend that this Appendix UNEs contains the ***sole and exclusive*** terms and conditions by which **LEVEL 3** will obtain UNEs from **SBC-13STATE**. ***Accordingly, except as may be specifically permitted by this Appendix UNEs, and then only to the extent permitted, LEVEL 3 and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to purchase any unbundled network element (whether on a stand-alone basis, in combination with***		SBC is unable to anticipate each and every possible commingled arrangement that Level 3 may actually wish to order. As the desired commingled arrangements are identified and defined, SBC will develop processes and those arrangements will likely no longer require a BFR. Until then, and then for new/other arrangements, Level 3 shall submit BFRs. This simply treats new types of

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	treating it as having been submitted under this Appendix UNE?	***other UNEs (or otherwise), with a network element possessed by LEVEL 3, or pursuant to Commingling or otherwise) directly from any SBC-13STATE tariff, and agree not to so purchase or attempt to so purchase from any such tariff. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to enforce the foregoing (including if SBC-13STATE fails to reject or otherwise block orders for, or provides or continues to provide, unbundled network elements, or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, SBC-13STATE may either reject any such order submitted under tariff, or without***		commingling requests the same way that Level 3 has already agreed to treat requests for a previously undefined UNE or UNE combination.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		the need for any further contact with or consent from LEVEL 3, SBC-13STATE may process any such order as being submitted under this Appendix UNE and, further, may convert any element provided under tariff, to this Appendix UNE, effective as of the later in time of the (i) Effective Date of this Agreement/Amendment, or (ii) the submission of the order by LEVEL 3.		
UNE 24	Should the Bona Fide Request (BFR) process apply to a previously undefined commingling arrangement?	6.3.1 A Bona Fide Request (**"BFR"**) is the process by which **LEVEL 3** may request **SBC-10STATE**, **SBC NEVADA** to provide **LEVEL 3** access to a previously undefined UNE, UNE Combination ***and/or Commingling arrangement*** that constitute or involve a UNE required to be provided by **SBC-10STATE, SBC NEVADA** but that is not available under this Agreement at the time of **LEVEL 3**'s request**.**		SBC is unable to anticipate each and every possible type of UNE NID not included with the loop that Level 3 may actually wish to order. As the desired NIDs are identified and defined, SBC will develop processes and those arrangements will likely no longer require a BFR. Until then, and then for new/other arrangements, Level 3 shall submit BFRs. This simply treats new

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				types of UNE NID requests the same way that Level 3 has already agreed to treat requests for a previously undefined UNE or UNE combination.
UNE 25	Should the BFR process govern the situation wherein Level 3 purchases a different type of UNE NID that is not included in the Loop?	7.9 ***If LEVEL 3 requests a different type of UNE NID not included with the loop, SBC-12STATE will consider the requested type of UNE NID to be facilitated via the Bona Fide Request (BFR) Process.***		Because this Appendix does not include rates, terms, and conditions for unbundled local loops used to provide xDSL-based service, "line sharing," or "line splitting," the Appendix should make clear that loops used for those purposes will not be provided under this Agreement.
UNE 26	Should this Appendix clarify that unbundled local loops will not be provided to Level 3 for purposes of line splitting, line sharing or xDSL services because the Agreement does not	8.2 A UNE Local Loop is a transmission facility between a distribution frame (or its equivalent) in an **SBC-13STATE** Central Office and the loop demarcation point at an End User premises. **SBC-13STATE** will make available the UNE Local		In light of the TRO and USTA II, SBC is not obligated to unbundle DS1, DS3, or higher-capacity loops, or dark fiber loops. USTA II, 359 F.3d at 573-74. Accordingly, the

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	contain any rates, terms or conditions for line sharing, line splitting, or xDSL services?	Loops set forth herein below between a distribution frame (or its equivalent) in an **SBC-13STATE** Central Office and the loop demarcation point at an End User premises. The Parties acknowledge and agree that **SBC-13STATE** shall not be obligated to provision any of the UNE Local Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the UNE Local Loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by **SBC-13STATE**. The UNE Local Loop includes all features, functions and capabilities of the transmission facility, including attached electronics except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access		Agreement should make clear that SBC has no duty to provide such loops or any other types of unbundled loops not provided for in the Agreement.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Multiplexers), and **LEVEL 3** requested line conditioning ***for purposes of the deployment of xDSL-based technologies***. UNE Local Loop ***are*** copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [*e.g.*, DS0s and integrated services digital network lines]), as well as two-wire and four-wire copper loops conditioned, at **LEVEL 3** request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services **LEVEL 3** agrees to operate each UNE Local Loop type within applicable technical standards and parameters. ***The Parties acknowledge and agree that DSL, Line Sharing and Line splitting rates, terms, and conditions are not included in this Agreement and therefore Local Loops for purposes of Line Sharing, Line Splitting and xDSL services will not be provided to Level 3.***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
UNE 27	Is SBC obligated under this Section 251/252 Agreement to provide any other type of loop, including, but not limited to, DS1, DS3 or higher capacity loops, or dark fiber loops?	***8.3.4 As no other type of loop constitutes a UNE loop (other than 2-wire and 4-wire xDSL loops provided for elsewhere in this Agreement), SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of loop, including, but not limited to DS1, DS3 or higher capacity loops, or dark fiber loops. LEVEL 3 shall not request such loops under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides a loop(s) that is not described or provided for in this Agreement, SBC-13STATE may, at any time, even after the loop(s) has been provided to LEVEL 3, discontinue providing such loop(s) (including any combination(s) including that loop) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other***		(a) The FCC requires ILECs to make routine network modifications only if the requested work is also of the kind routinely done for the ILEC's own retail customers. TRO, ¶ 632. The Agreement should make this clear, and should also clarify that modifications that, when done for a retail customer, require additional charges or minimum term commitments are not "routine" network modifications. (b) The duty to perform routine network modification applies only to existing cable and equipment. TRO, ¶¶ 632, 636. The Agreement should include the word "existing" to make this clear.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to such loop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.		(c) One purpose of requiring ILECs to perform routine network modifications for CLECs is to ensure treatment similar to that received by the ILECs' retail customers. Consistent with that purpose, when SBC attaches electronic or other equipment to a loop, it should do so in the same manner and under the same conditions as it does when doing the same work for its own retail customers. TRO, ¶¶ 632, 635. (d) Because there may be disputes over what constitutes a routine network modification and the type of work SBC must do, SBC proposes specific language in Sections 8.5.3 and 8.5.4 to help define the scope of its duties. These provisions are fully

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				consistent with the FCC's discussion of routine network modifications in the TRO and again ensure equal treatment with SBC's own retail customers. TRO, ¶¶ 634037. (e) Again, to ensure equal treatment with retail customers, SBC should be allowed to use the same network or outside plant engineering principles when doing routine network modifications for CLECs that it does when doing work for its own retail customers.
UNE 28	(a) Should a routine network modification be defined as one SBC regularly undertakes for its retail customers with no additional charges or term commitments? (b) If a routine network	8.5.2 A routine network modification is an activity that **SBC-13STATE** regularly undertakes for its own ***retail*** customers ***where there are no additional charges or minimum term commitments***. Routine network modifications include rearranging or splicing of ***existing***		Because this Appendix does not include rates, terms, and conditions for unbundled local loops used to provide xDSL-based service, "line sharing," or "line splitting," the Appendix should make clear that loops used for

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	modification involves rearranging or splicing of cable, must it be existing cable? (c) If a routine network modification involves attaching electronic and other equipment to a loop, should SBC perform the work under the same conditions and in the same manner it does for its own retail customers? (d) Should SBC's obligation to perform routine network modifications be limited in the manner described in SBC proposed Sections 8.5.3 and 8.5.4 and exclude the tasks listed there as not being routine network modifications?	cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loop for its own ***retail*** customers, ***under the same conditions and in the same manner that SBC-13STATE does for its own retail customers*** even if such electronics are not attached to a particular loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include constructing new loops; installing new cable; splicing cable at any location other than an existing splice point or at any location where a splice		those purposes will not be provided under this Agreement, and may be discontinued on written notice.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	(e) When deciding whether and how to perform routine network modifications, should SBC be allowed to use the same network or outside plant engineering principles that would be applied in providing service to its own retail customers?	enclosure is not already present; securing permits, rights-of-way, or building access arrangements; constructing and/or placing new manholes, handholes, poles, ducts or conduits; installing new terminals or terminal enclosures (e.g., controlled environmental vaults, huts, or cabinets); or providing new space or power for requesting carriers; removing or reconfiguring packetized transmission facility; or the provision of electronics for the purpose of lighting dark fiber (i.e., optronics). SBC-13 STATE is not obligated to perform those activities for a requesting telecommunications carrier. SBC-13STATE shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC-13STATE's retail customers.		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		This Agreement does not require SBC-13STATE to deploy time division multiplexing-based features, functions and capabilities with any copper or fiber packetized transmission facility to the extent SBC-13STATE has not already done so; remove or reconfigure packet switching equipment or equipment used to provision a packetized transmission path; reconfigure a copper or fiber packetized transmission facility to provide time division multiplexing-based features, functions and capabilities; nor does this Agreement prohibit SBC-13STATE from upgrading a customer from a TDM-based service to a packet switched or packet transmission service, or removing copper loops or subloops from the network, provided SBC-13STATE complies with the copper loop or copper subloop retirement rules in 47 C.F.R. 51.319(a)(3)(iii).		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
UNE 29	(a) Should this Appendix contain any DSL, line splitting, or line sharing rates, terms, and conditions? (b) Should SBC be required to provide any type of UNE subloop or UNE xDSL subloop other than those defined in this Agreement and Appendices, and can SBC discontinue provision of any such other type of subloop upon proper notice?	***9.4.3 The Parties acknowledge and agree that DSL, Line Sharing and Line splitting rates, terms, and conditions are not included in this Agreement and UNE xDSL Subloops will therefore not be provided to Level 3.*** ***9.4.4 As no other type of Subloop constitutes a UNE subloop, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of subloop. LEVEL 3 shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides a subloop(s) that is not described or provided for in this Agreement, SBC-13STATE may, at any time, even after the subloop(s) has been provided to LEVEL 3, discontinue providing such***		SBC merely seeks to add an additional type of NID subloop.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		subloop(s) (including any combination(s) including that subloop) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to such subloop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.		
UNE 30	Should Section 9.9 also include a SPOI NID UNE subloop?	9.9 **LEVEL 3** may request access to the following copper UNE Subloop segments:		In light of the USTA II ruling, local switching (both enterprise and mass market) is no longer required to be

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		FROM: TO: 1.Serving Area Interface or Feeder Distribution Interface 2. Serving Area Interface or Feeder Distribution Interface Network Interface Device 3. Terminal 4. NID 5. SPOI (Single Point of Interface) ***6. SPOI (Single Point of Interface) Network Interface Device***		provided as a UNE. USTA II, 359 F.3d at 567-72. Level 3 may certainly acquire these capabilities by other means outside of the 251 unbundling requirements, and in fact, SBC is more than willing to discuss further with Level 3 outside of the 251/252 context. In light of the TRO and the Court's vacatur of the local switching obligations, SBC's language should be adopted. In addition, it is important to note that Level 3 previously agreed to remove contract language on unbundled local switching because Level 3 does not use it.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
UNE 31	Is SBC obligated to provide Level 3 with unbundled local switching as a UNE?	*11. Local Switching (ULS)* ***11.1 As no local circuit switching constitutes Lawful UNE switching, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of local circuit or other switching, and CLEC shall not request local circuit or other switching under this Agreement, whether alone, in combination or Commingled. Accordingly, if***		In light of the USTA II ruling local switching, shared transport is no longer required to be provided as a UNE. USTA II, 359 F.3d at 367-72. Under the TRO, shared transport was required to be unbundled only where local switching was unbundled. 47 CFR § 51.319(d)(4)(i)(C). As noted above, the TRO and USTA II have removed any requirement to provide unbundled local switching,

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		CLEC requests and SBC-13STATE provides local circuit or other switching under this Agreement, SBC-13STATE may, at any time, even after the local circuit or other switching has been provided to CLEC, discontinue providing such local circuit or other switching (including any combination(s) including local circuit or other switching) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to local circuit or other switching (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not		and thus any requirement to provide unbundled shared transport. Level 3 may certainly acquire these capabilities by other means outside of the 251 unbundling requirements, and in fact, SBC is more than willing to discuss further with Level 3 outside of the 251/252 context. In light of the TRO and the Court's vacatur of the shared transport/local switching obligations, SBC's language should be adopted.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. ***11.1.1 For purposes of this Appendix, local circuit switching (Local Switching) is defined as follows:*** ***11.1.1.1 all line-side and trunk-side facilities as defined in TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and*** ***11.1.1.2 all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Centrex, as well as any technically feasible customized routing functions.		
UNE 32	Is SBC obligated to provide Level 3 with shared transport as a UNE?	*12. SHARED TRANSPORT (UST)* ***12.1 As no local circuit switching constitutes Lawful UNE switching, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of shared transport. CLEC shall not request shared transport under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and SBC-13STATE otherwise provides shared transport under this Agreement, SBC-13STATE may, at any time, even after the shared transport has been provided to CLEC, may discontinue providing such shared transport (including any combination(s) including shared transport) upon***		In light of the USTA II ruling, local dedicated transport is no longer required to be provided as UNEs. 359 F.3d at 573-74. Level 3 may certainly acquire these capabilities by other means outside of the 251 unbundling requirements, and in fact, SBC is more than willing to discuss further with Level 3 outside of the 251/252 context. In light of the TRO and the Court's ruling on dedicated transport obligations, SBC's language should be adopted.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to shared transport (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.		
UNE 33	Is SBC obligated to provide Level 3 with dedicated transport as a UNE?	13. DEDICATED TRANSPORT 13.1 ***As no dedicated transport constitutes Lawful UNE***		In light of the USTA II ruling, dark fiber and dark fiber transport are no longer required to be provided as UNEs. *See* 359 F.3d at 573-74. Level 3 may

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		dedicated transport, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of dedicated transport, and LEVEL 3 shall not request dedicated transport under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides dedicated transport under this Agreement, SBC-13STATE may, at any time, even after the dedicated transport has been provided to LEVEL 3, discontinue providing such dedicated transport (including any combination(s) including dedicated transport) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE		certainly acquire these capabilities by other means outside of the 251 unbundling requirements, and in fact, SBC is more than willing to discuss further with Level 3 outside of the 251/252 context. In light of the TRO and the Court's vacatur of the dark fiber and dark fiber transport obligations, SBC's language should be adopted.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		provides or continues to provide, access to dedicated transport (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by <u>LEVEL 3</u>, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.		
UNE 34	Is SBC obligated to provide Level 3 with dark fiber or dark fiber transport as a UNE?	14. DEDICATED TRANSPORT AND LOOP DARK FIBER 14.1 ***As no dark fiber dedicated transport or dark fiber loop constitutes Lawful UNE dark fiber dedicated transport or dark fiber loop, <u>SBC-13STATE</u> is not obligated under this Section 251/252 Agreement to provide any type of dark fiber dedicated transport or dark fiber loop. <u>LEVEL 3</u> shall not request dark fiber dedicated transport or dark***		In light of the TRO and USTA II rulings, call-related databases are no longer required to be provided as UNEs. TRO, ¶ 551; 47 CFR § 51.319(d)(4)(i)(B); USTA II, 359 F.3d at 567-72 and 587-88. Level 3 may certainly acquire these capabilities by other means outside of the 251 unbundling requirements, and in fact, SBC is more than willing to discuss further with Level 3 outside

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		fiber loop under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and SBC-13STATE provides dark fiber dedicated transport or dark fiber loop under this Agreement, SBC-13STATE may, at any time, even after the dark fiber dedicated transport or dark fiber loop has been provided to LEVEL 3, discontinue providing such dark fiber dedicated transport or dark fiber loop (including any combination(s) including dark fiber dedicated transport or dark fiber loop) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to dark fiber dedicated transport or		of the 251/252 context. In light of the TRO and the Court's ruling on call-related databases, SBC's language should be adopted.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		dark fiber loop (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.		
UNE 35	Is SBC obligated to provide call related databases such as LIDB and CNAM-AS, LIDB and CNAM Queries, 800, or Access to AIN as UNEs?	16. CALL-RELATED DATABASES 16.1 ***Access to the SBC-13STATE 911 or E911 call related databases will be provided as described in the Lawful 911 and E911 Appendix. As no local circuit switching constitutes Lawful UNE switching, SBC-13STATE is not obligated to provide, and LEVEL 3 shall not request, call related databases under this Agreement (other than 911 and E911), including LIDB and CNAM-AS, LIDB and CNAM Queries, 800, or Access to***		Whatever obligations SBC may have to combine UNEs upon a CLEC request, it has no obligation to leave them connected once they are no longer leased by the CLEC.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		AIN. LEVEL 3 access to any call related databases (other than 911 and E911) shall be pursuant to another agreement, including, where applicable, effective tariffs. ***16.2 For purposes of this Section 16.2 only, references to Call-Related Databases shall not include 911 and E911 databases. As set forth herein, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any type of unbundled access to Call-Related Databases. LEVEL 3 shall not request access to Call-Related Databases under this Agreement, whether alone, in combination or Commingled. Accordingly, if LEVEL 3 requests and/or SBC-13STATE otherwise provides access to Call-Related Databases under this Agreement, SBC-13STATE may refuse to provide and, at any time, even after any such access has been provided to LEVEL 3, discontinue providing access to Call-Related Databases***		

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		(including any combination(s) that include Call-Related Databases) upon 30 days' advance written notice to LEVEL 3. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to Call-Related Databases (whether on a stand-alone basis, or in combination with UNEs (Lawful or otherwise) or with a network element possessed by LEVEL 3, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.		
UNE 36	Is SBC 7STATE obligated to connect or leave connected any two or more UNEs?	18.2 The cross connect is the media between the **SBC-7STATE** UNE and a **LEVEL 3** designated point of access as described in		Given the ongoing nature of litigation and disputes over UNEs and unbundling obligations,

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		various sections of this Appendix, or the media between a **SBC-7STATE** UNE and a Collocation area for the purpose of permitting **LEVEL 3** to connect the **SBC-7STATE** UNE to other UNEs or to **LEVEL 3's** own facilities **or another CLEC** Where **SBC-7STATE** has otherwise committed to connect one UNE to another UNE on behalf of **LEVEL 3**, or to leave connected one UNE to another UNE on behalf of **LEVEL 3** the cross connect is the media between one **SBC-7STATE** UNE and another **SBC-7STATE** UNE. ***Nothing in this section is a commitment to connect or leave connected any two or more UNEs.***		it is appropriate for the agreement to include reservation of rights language making clear that by agreeing to language in this agreement, neither party is waiving any right it may have to challenge past, pending, or future FCC, state commission, or court decisions, or to obtain the benefits or any favorable ruling by such bodies. SBC's language is evenhanded and will prove useful in removing any future disputes about whether either party waived any future rights simply by agreeing to contract language based on the law that was in effect at the time.
UNE 37	What are the appropriate reservation of rights terms to adopt in the Agreement?	20.1 ***SBC-13STATE's provision of UNEs identified in***		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d). By entering into this Agreement which makes available certain UNEs, or any Amendment to this Agreement, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including but not limited each Party's right to dispute whether any elements identified in the Agreement must be provided as UNEs under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement, including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		subject of further government review: Verizon v. FCC, et. al, 535 U.S. 467 (2002); USTA, et. al v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		anything to the contrary in this Agreement (including without limitation, this Appendix), SBC-13STATE shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and LEVEL 3's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. If any action by any state or In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		effectuate the subject order upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.		
OET 1 (§ 2.1)	Should the applicability of the OET Appendix be limited to Level 3's operations solely outside of SBC-13STATE's incumbent local exchange areas?	2.1 For purposes of this Appendix, **LEVEL 3** intends to operate and/or provide telecommunications services outside of SBC-13STATE ***incumbent local exchange areas*** and desires to interconnect	Level 3 is concerned of the event that SBC sells off its ILEC operations in a particular service area, and the impact that would have on the ability of Level 3 to continue its operation in	SBC's language properly reflects that SBC does not always operate as an incumbent LEC throughout an entire state and that this Appendix addresses those situations. Level 3's

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		LEVEL 3's network with **SBC-13STATE**'s network(s).	those areas. Level 3 proposes to define the OET obligation according to Section 251(h) of the Act which would require that OET obligations survive sale of an exchange because they apply regardless of whether ownership of an exchange changes.	opposition to the words "incumbent local exchange areas" ignores this reality and is nonsensical and inconsistent with the language that it is proposing in its Transiting Appendix at Section 1.2, which would define an Out of Exchange Local Exchange Carrier as a carrier "that interconnect[s] with **SBC-13STATE's** network but operate and/or provide Telecommunications Services outside of **SBC-13STATE's** incumbent local exchange area." See also SBC's Position Statement for Issue OET 2.
OET 2 (§ 2.3)	**Level 3 Issue:** Should the OET Appendix expressly limit the obligation of SBC to provide UNEs and access to UNEs to Section 251 of the	2.3 **This Agreement contains terms and conditions related to SBC-13STATE's obligations under Applicable Law.** ***Other Appendices to this Agreement set forth the terms and conditions pursuant to which SBC-***	No, the Agreement should not limit SBC's obligation to provide interconnection, UNEs and access to UNEs to just those placed on it by Section 251 of the federal Act. SBC is also obligated	Yes. SBC has offered Level 3 a separate appendix governing out of exchange traffic. SBC's obligations under the 1996 Act are only as extensive as SBC's ILEC territory; the Act does not

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	federal Act, or should it acknowledge other applicable laws that mandate such an obligation? **SBC Issue:** Should the OET Appendix provide that in those areas that are outside SBC's incumbent territory, SBC is not obligated to provide UNEs, Collocation, resale or interconnection pursuant to Section 251 of the Act?	***13STATE agrees to provide LEVEL 3 with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC-13STATE's incumbent local exchange areas for the provision of LEVEL 3's Telecommunications Services. The Parties acknowledge and agree that SBC-13STATE is only obligated to make available UNEs and access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to LEVEL 3 in SBC-13STATE's incumbent local exchange areas. SBC-13STATE has no obligation to provide such UNEs, Collocation, Interconnection***	under other provisions of the federal Act (i.e., Section 271), federal law and regulations, as well as particular state laws and commission orders and regulations. SBC's proposed language could serve as a default waiver of Level 3 with regard to these other rights, to which Level 3 would not and does not so waive. Level 3's proposed language, on the other hand, makes reference to all such Applicable Law, and would not unnecessarily limit the obligations as proposed by SBC. Further, SBC's summarization of the state of the law is unfounded and incorrect. Thus, the Commission should adopt Level 3's more reasonable approach.	impose unbundling or interconnection duties on SBC in areas where it is not the incumbent, which are the areas addressed in this appendix. This interconnection agreement is limited by the Act to those obligations imposed on SBC under Section 251.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		and/or Resale to LEVEL 3 for the purposes of LEVEL 3 providing and/or extending service outside of SBC-13STATE's incumbent local exchange areas. In addition, SBC-13STATE is not obligated to provision UNEs or to provide access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC-13STATE's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in SBC-13STATE's current Interconnection Agreement, and any associated provisions set forth elsewhere in LEVEL 3's current Interconnection Agreement (including but not limited to the rates set forth in		

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		this Agreement associated with UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall apply only to the Parties and be available to LEVEL 3 for provisioning telecommunication services within an SBC-13STATE incumbent local exchange area(s) in the State in which LEVEL 3's current Interconnection Agreement with SBC-13STATE has been approved by the relevant state Commission and is in effect.		
OET 3 (§ 3.1)	Should language relating to the passing of SS7 signaling information that was agreed to for use in the ITR Appendix also be included in the OET Appendix?	***3.1 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***	Consistent with Level 3s positions in the Intercarrier Compensation Appendix disputes, Level 3 believes that the Agreement should not limit itself to strictly listed interphase or technologies. The	Language identical to SBC's proposed language for this Section 3.1 was agreed to by the parties in ITR Section 5.4.8. It is similarly appropriate to include this language here as part of the parties'

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		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.	Agreement should be flexible enough to allow for adoption of certain other technologies upon agreement of both parties or Applicable Law.	Agreement regarding Out of Exchange Traffic.
OET 4 (§ 3.3-3.6)	**Level 3 Issue (a):** Should the OET Appendix include language that trumps the Performance Measures Appendix with respect to the	***3.3 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End-Users are able to establish connections***	**Level 3 Issue (a):** No. The service levels should be covered by the Performance Measures, which are included in the Performance Measure Appendix, not this	(a) Language identical to SBC's proposed language for this Section 3.3 was agreed to by the parties in GTC Section 36.2. It is similarly appropriate to include this language here

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Parties' obligations to ensure acceptable service levels? **SBC Issue (a):** Should each party be required to administer its network to ensure acceptable service levels to all users of its network services? (b) Should the OET Appendix include terms preserving each party's right to implement protective network management controls and traffic reroutes? (c) Should the OET Appendix include a provision that the parties will cooperate and share information regarding expected temporary increases in call volumes?	***with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center.*** ***3.4 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.***	arbitrary clause. Level 3 also notes that the Performance Measurements may also be governed by certain orders of state commissions, as well as FCC regulations, al of which SBC's proposed language ignores. Level 3 cannot agree to language that would waive its rights under the Performance Measurements Appendix or these orders and regulations, which the net result of SBC's proposed language. (b) Level 3 does not take issue with the need to maintain the technical integrity of the network system. Level 3 however, is concerned over SBC's ability to negatively impact the reliability of the services provided to Level 3's customers over these	as part of the parties' Agreement regarding Out of Exchange Traffic. Level 3's suggestion that this language "trumps" the Performance Measures Appendix is baseless, and at odds with Level 3's Agreement to include the language in the GTC Appendix. (b) Language identical to SBC's proposed language for Sections 3.4 and 3.5 was agreed to by the parties in ITR Sections 10.1.1 and 10.2.1. It is similarly appropriate to include this language here as part of the parties' agreement regarding Out of Exchange Traffic. Level 3's suggestion that this language "trumps" the Performance Measures Appendix is baseless, and at odds with Level 3's

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		3.5 Where the capability exists, either Party may implement originating or terminating traffic reroutes to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Such alternative routing shall be used only when mutually agreed to by the Parties. ***3.6 <u>LEVEL 3</u> and <u>SBC-13STATE</u> shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes.***	switched-network systems, either through network rerouting or protective control actions. As detailed above, in the event of a so-called "protective control action", Level 3 believes that the terms of the Performance Measurements Appendix and other state and federal regulations would provide adequate coverage. As such, SBC's proposed language should be denied. (c) SBC's proposed Section 3..6 should be denied. While Level 3 acknowledges the need for the two Parties to cooperate in the interconnection process, SBC's proposed language is far too broad and vague. SBC has not attempted to define what level of call-ins would qualify as "large	agreement to include the language in the ITR Appendix. (c) Language identical to SBC's proposed language for Section 3.6 was agreed to by the parties in ITR Section 10.3.1. It is similarly appropriate to include this language here as part of the parties' Agreement regarding Out of Exchange Traffic. Level 3's suggestion that this language "trumps" the Performance Measures Appendix is baseless, and at odds with Level 3's agreement to include the language in the ITR Appendix.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			and focused", nor what is meant by sharing pre-planning information. This lack of detail leaves both Parties open to allegation so f abuse and failure to cooperate with Section 3.6, when one party has a good faith belief that such an event would not meet the speculative standards that SBC attempts to impose. Level 3 cannot agree to language that places it at such risk.	
OET 5 (§ 4.1)	**Level 3 Issue (a):** Should Section 4.1 reference Level 3 having a POI within a LATA or within an exchange area? **Level 3 Issue (b):** Should the scope of the OET Appendix govern the exchange of "Telephone Traffic,	**4.1 LEVEL 3** operates as a CLEC within **SBC-13STATE** exchange areas and has a Point of Interconnection ("POI") located within **SBC-13STATE LATAs** ***exchange areas*** according to Appendix NIM of this Agreement, for the purpose of exchanging **Telephone Traffic, ISP-Bound Traffic and IP-enabled Services Traffic** ***Section 251 (b)(5) Traffic and***	(a) This issue is directly related to the disputed language in the NIM and ITR Appendices, in which SBC attempts to force Level 3 into building out interconnection facilities to each SBC End Office. The FCC has clearly and unambiguously stated that a CLEC need only establish a single POI in	(a) The Agreement should reference Level 3 having a POI within an exchange area for the reasons set forth in SBC Position Statement for Issue NIM 2. (b) It is important to clearly define each type of traffic so that the parties can accurately

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	ISP-Bound Traffic and IP-Enabled Services Traffic," or "Section 251 (b)(5) Traffic" and ISP-Bound Traffic"? **Level 3 Issue (c):** Should the Agreement provide that SBC will accept Level 3's "OET Traffic" or "Telecommunications Traffic"? **Level 3 Issue (d):** Must Level 3 build out Direct End Office Trunks to a third party carrier for transit traffic? **SBC Issue (d):** Should Level 3 be required to direct end office trunk once traffic between the parties exceed one DS1 (or 24 trunks)?	***ISP-bound traffic*** in such **SBC-13STATE** exchange areas. Based upon the foregoing, the Parties agree that **SBC-13STATE's** originating traffic will be delivered to **LEVEL 3's** existing POIs arrangements in the LATA where the traffic originates in accordance with the POI requirements set forth in Appendix NIM of this Agreement. **SBC-13STATE** will accept **LEVEL 3** ***Out of Exchange*** **Telecommunications** Traffic at its tandem switch or other switch where the Parties have established interconnection over ***local interconnection facilities*** **Local Interconnection Trunk Groups** that currently exist or may exist in the future between the Parties ***When such Out of Exchange Traffic is Section 251 (b)(5) Traffic and ISP-bound traffic that is exchanged between the end users of LEVEL 3 and SBC-13STATE, the Parties agree to***	each LATA in which it is interconnected. SBC's attempt to expand that requirement to each exchange area is unsupported by federal law, and numerous state commission orders. In the event that the Commission agrees with Level 3 on these larger issues, then its proposed language herein should be adopted in order to be consistent. (b) The Agreement should not be limited in the manner suggested by SBC. SBC's proposed classifications mischaracterize the types of traffic that is exchanged between the parties, including SBC's newly crafted (and legally undefined) term "Section 251(b)(5) Traffic". Level 3 would propose that the	route and be compensated for carrying such traffic. SBC proposes to define the types of traffic addressed by Appendix Out of Exchange Traffic with more specificity than Level 3's proposed "telephone traffic." This Appendix should clearly identify the type of traffic to which it applies in order to avoid later disputes. For a discussion of SBC's opposition to the term "IP-enabled traffic," see *inter alia* its discussion of Section 3.2 *et seq.* of the IC Appendix. (c) The third sentence of this section should reference Out of Exchange Traffic, rather than "Telecommunications Traffic," which is too vague and overbroad.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	SBC Issue (e): Should a non-251/252 service such as Transit Service be negotiated separately?	***establish a Direct Final ("DF") end office trunk group when traffic levels exceed one DS1 (24 DS0s) to or from an SBC-13STATE End Office.*** **When such Out of Exchange Traffic is Transit Traffic as defined in the underlying Agreement, LEVEL 3 agrees to establish a Direct End Office Trunk group ("DEOT") to any third party carrier's end office when traffic levels exceed one DS1 (24 DS0s) to or from that end office.**	characterization of traffic types follow the definitions set forth in the federal Communications Act. (c) SBC is obligated pursuant to Section 251 to provide Level 3 with interconnection for the exchange of Telecommunications Traffic, which is captured by Level 3's proposed language in this section. (d) No. Section 251(a)(1) of the Federal Act requires every telecommunications carrier, including SBC, to interconnect directly or indirectly with each other telecommunications carrier. Transit Traffic would constitute such indirect interconnection. It is also far more efficient to utilize the currently existing interconnection	(d) Yes. SBC requests all carriers to establish direct end office trunks (DEOTs) at a DS1 threshold, which is the threshold it uses to determine when SBC must establish DEOTs itself. DEOTs are necessary to protect SBC's network and minimize tandem exhaust. Concerns for tandem exhaust, cost, and the ability to serve multiple CLECs together suggest that a particular CLEC, like Level 3, should be required to establish DEOT once traffic rises to a level sufficient to justify the expense given the risks to the existing tandem. SBC has determined that the appropriate traffic threshold for the DEOT requirements is DS1. (e) Yes. It is SBC's

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			facilities between SBC and the numerous RLEC, ILEC and CLEC carriers in the service area. Forcing Level 3 to build out additional interconnection trunks to each other carrier to whom traffic may flow is overly costly and inefficient. Also, SBC is fully reimbursed for all expenses associated with Transit Traffic, including a reasonable profit.	position that this issue is not arbitrable because neither Section 251, nor any other provision of the Act, requires ILECs to provide transit service. Pursuant to the Fifth Circuit's recent decision in *Coserv LLC v. Southwestern Bell Telephone Co.,* 350 F.3d 482 (5th Cir. 2003)*("Coserv"),* non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items, which SBC has not done.
OET 6 (§ 4.2)	**Level 3 Issue:** Should the OET Appendix include an agreement that the Parties will reference the terms and conditions of ITR Appendix between the arbitration	**4.2 The parties agree to reference the relevant terms and conditions from Appendix ITR following arbitration and before submitting a final agreement to the relevant state commission for approval.** ***The Parties agree, that at a***	Yes. Level 3 believes that adoption of its proposed language will provide clarity on the duties and roles of the Parties in the interim period between the arbitration and the submission of an	**(for Midwest, California, Nevada, Connecticut)** It is SBC's position that Level 3 should establish interconnection trunks to every SBC tandem switch in the LATA. SBC should not be required to route

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	and submission of a final agreement to the state Commission? **SBC Issue: (for Midwest, California, Nevada, Connecticut):** Should Level 3 be required to trunk to each tandem in the LATA? **SBC Issue (for Southwest region):** Should Level 3 be required to trunk to each tandem in the Local Exchange Area?	***minimum, LEVEL 3 shall establish a trunk group for Section 251 (b)(5) Traffic Local Calls, ISP-bound traffic and IntraLATA traffic from LEVEL 3 to each SBC-13STATE serving tandem in a LATA in SBC CONNECTICUT, SBC CALIFORNIA, SBC NEVADA and SBC MIDWEST REGION 5-STATE and to all Tandems in the local exchange area in SBC SOUTHWEST REGION 5-STATE. This requirement may be waived upon mutual agreement of the parties.***	agreement incorporating the commission's final determinations. With respect to SBC's attempt to force Level 3 into building out trunks to each tandem in the LATA or the Local Exchange Area, such attempt is directly in conflict with federal law. The FCC has held that each Party is responsible for all costs and facilities on its side of the POI. Thus, Level 3 is responsible for all trunks and other facilities on its side of the POI in each LATA. SBC is responsible for transporting and trunking on its side of the POI, including those trunks serving SBC's tandems.	Level 3 end user traffic through two switches in its network, or to aggregate such traffic at only one tandem switch. Such a practice reduces network efficiency and increases the risk of tandem exhaust. Level 3's language is vague, insofar as it does not identify what the relevant terms and conditions from the ITR Appendix it believes ought to be referenced. This is an invitation for further disputes. Moreover, where practical, SBC believes that it is more sensible to include the actual language that will govern the parties' relationship with respect to OET than to reference sections from another Appendix that addresses a different product or service.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				(for Southwest region) It is SBC's position that Level 3 should establish interconnection trunks to every SBC tandem switch in the Local Exchange Area. SBC should not be required to route Level 3 end user traffic through two switches in its network, or to aggregate such traffic at only one tandem switch. Such a practice reduces network efficiency and increases the risk of tandem exhaust. Level 3's language is vague, insofar as it does not identify what the relevant terms and conditions from the ITR Appendix it believes ought to be referenced. This is an invitation for further disputes. Moreover, where practical, SBC believes

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				that it is more sensible to include the actual language that will govern the parties' relationship with respect to OET than to reference sections from another Appendix that addresses a different product or service.
OET 7 (§ 4.3)	Should language relating to trunk groups for ancillary services that was agreed to for use in the ITR Appendix also be included in the OET Appendix?	4.3 **The parties agree to reference the relevant terms and conditions from Appendix ITR following arbitration and before submitting a final agreement to the relevant state commission for approval.** ***Trunk groups for ancillary services (e.g. OS/DA, BLVI, mass calling, and 911) and Meet Point Trunk Groups can be established between a LEVEL 3 switch and an SBC-13STATE Tandem as further provided in Appendix ITR to the Agreement***	Yes. Level 3 believes that adoption of its proposed language will provide clarity on the duties and roles of the Parties in the interim period between the arbitration and the submission of an agreement incorporating the commission's final determinations.	Language nearly identical to SBC's proposed language for this Section 4.3 was agreed to by the parties in ITR Section 3.2. It is similarly appropriate to include this language here as part of the parties' agreement regarding Out of Exchange Traffic. Level 3's language is vague, insofar as it does not identify what the relevant terms and conditions from the ITR Appendix it believes ought to be referenced. This is an invitation for further

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				disputes. Moreover, where practical, SBC believes that it is more sensible to include the actual language that will govern the parties' relationship with respect to OET than to reference sections from another Appendix that addresses a different product or service.
OET 8 (§ 4.9)	**Level 3 Issue (a):** Should the OET Appendix include an agreement that the Parties will reference the terms and conditions of ITR Appendix between the arbitration and submission of a final agreement to the state Commission? **Level 3 Issue (b):** Should the Agreement recognize that SBC will accept Level 3's OET	**4.9 The parties agree to reference the relevant terms and conditions from Appendix ITR following arbitration and before submitting a final agreement to the relevant state commission for approval.** ***Connection of a trunk group from LEVEL 3 to SBC-13STATE's tandem(s) will provide LEVEL 3 accessibility to End Offices, IXCs, LECs, WSPs and NXXs which subtend that tandem(s). Connection of a trunk group from one Party to the other Party's End Office(s)***	(a) Yes. Level 3 believes that adoption of its proposed language will provide clarity on the duties and roles of the Parties in the interim period between the arbitration and the submission of an agreement incorporating the commission's final determinations. (b) It is far more efficient and effective to allow Level 3 to exchange its	(a) No. It is SBC's position that Level 3 should establish interconnection trunks to every SBC tandem switch in the LATA for SBC Midwest or every tandem switch in the local exchange area for SBC Southwest. SBC should not be required to route Level 3 end user traffic through two switches in its network, or to aggregate such traffic at only one tandem switch. Such a practice reduces

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
	Traffic at switches to which the Parties have established interconnection, or just to SBC's tandem switches? **SBC Issue (a):** Should SBC be required to double tandem switch calls to/from Level 3? **Level 3 Issue (b):** Should SBC End Office(s) provide Level 3 accessibility only to the NXXs that are served by that End Office?	***will provide the connecting Party accessibility only to the NXXs served by that individual End Office(s) to which the connecting Party interconnects. Direct End Office Trunk groups that connect the Parties End Office(s) shall provide the Parties accessibility only to the NXXs that are served by that End Office(s).***	OET Traffic with SBC at any switch to which Level 3 and SBC have interconnected. Further, under the unambiguous requirements of the Act, SBC is obligated pursuant to Section 251 (c)(2)(B) to provide Level 3 with interconnection "at any technically feasible point within its network". This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn, must provide the facilities and equipment for interconnection at that point.	network efficiency and increases the risk of tandem exhaust. (b) Yes. SBC should not be required to route Level 3 end user traffic through two switches in its network, or to aggregate such traffic at only one tandem switch. Such a practice reduces network efficiency. Level 3's language is vague, insofar as it does not identify what the relevant terms and conditions from the ITR Appendix it believes ought to be referenced. This is an invitation for further disputes. Indeed, SBC is not aware of any section in ITR with similar terms and conditions. Moreover, where practical,

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				SBC believes that it is more sensible to include the actual language that will govern the parties' relationship with respect to OET than to reference sections from another Appendix that addresses a different product or service.
OET 9 (§ 5.1)	**Level 3 Issue:** Should Level 3 and SBC exchange all types of Telecommunications Traffic over the interconnection trunks? **SBC Issue:** Should the OET Appendix govern the exchange of "Telecommunications Traffic and IP-Enabled Services Traffic" or "Section 251 (b)(5) Traffic and ISP-Bound Traffic"?	5.1 The compensation arrangement for ***Section 251 (b)(5) and ISP-Bound Traffic*** **Telecommunications Traffic and IP-Enabled Traffic** exchanged between the Parties shall be as set forth in the Intercarrier Compensation Appendix of this Agreement.	The Agreement should not be limited in the manner suggested by SBC. SBC's proposed classifications mischaracterize the types of traffic that is exchanged between the parties, including SBC's newly crafted (and legally undefined) term "Section 251(b)(5) Traffic". Level 3 would propose that the characterization of traffic types follow the definitions set forth in the federal Communications Act.	It is important to clearly define each type of traffic so that the parties can accurately route and be compensated for carrying such traffic. SBC's definition is derived from section 251(b)(5) of

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				the Act and more clearly defines the type of traffic than Level 3's proposal. SBC proposes to define the types of traffic addressed by Appendix Out of Exchange Traffic with more specificity than merely "telecommunications traffic." This Appendix should clearly identify the type of traffic to which it applies in order to avoid later disputes For a discussion of SBC's opposition to the term "IP-enabled traffic," see *inter alia* its discussion of Section 3.2 *et seq.* of the IC Appendix.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
OET 10 (§ § 6.0-6.3)	Should the OET Appendix include terms detailing the compensation due each other for exchanging Transit Traffic?	**6. TRANSIT TRAFFIC COMPENSATION** ***INTENTIONALLY LEFT BLANK*** **6.1 The terms and conditions for Transit Traffic exchanged between the Parties shall be as set forth in this Agreement.** **6.2 In SBC SOUTHWEST REGION 5-STATE the transiting rate is outlined in Appendix Pricing as Transiting-Out of Region.** **6.3 In the SBC MIDWEST REGION 5-STATE, SBC CALIFORNIA and SBC NEVADA the transiting rate is outlined in Appendix Pricing as Transiting Service.**	The agreement should contain the terms and conditions governing Transit Traffic. Section 251(a)(1) of the Federal Act requires every telecommunications carrier, including SBC, to interconnect directly or indirectly with each other telecommunications carrier. Transit Traffic would constitute such interconnection. It is also far more efficient to utilize the currently existing interconnection facilities between SBC and the numerous RLEC, ILEC and CLEC carriers in the service area. Forcing Level 3 to build out additional interconnection trunks to each other carrier to whom traffic may flow is overly costly and inefficient. Also, SBC is fully reimbursed for all	No. It is SBC's position that this issue is not arbitrable because neither Section 251, nor any other provision of the Act, requires ILECs to provide transit service. Pursuant to the Fifth Circuit's recent decision in *Coserv LLC v. Southwestern Bell Telephone Co.,* 350 F.3d 482 (5th Cir. 2003)*("Coserv"),* non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items, which SBC has not done.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			expenses associated with Transit Traffic, including a reasonable profit.	
OET 11 (§ § 9-9.1, 9.3, 9.7)	**Level 3 Issue (a):** Should Level 3 and SBC exchange all types of Telecommunications and IP-Enabled Traffic over the interconnection trunks? **SBC Issue (a):** Should the OET Appendix govern the exchange of "Telecommunications Traffic and IP-Enabled Services Traffic," or "Section 251 (b)(5) Traffic, and ISP-Bound Traffic"? (b) Should SBC be allowed to use a two-way direct final trunk group to exchange traffic with Level 3?	**9. INTERLATA *SECTION 251 (B)(5) AND ISP-BOUND TRAFFIC* <u>TELECOMMUNICATIONS TRAFFIC AND IP-ENABLED TRAFFIC</u>** **<u>9.1 SBC-13STATE</u>** will exchange InterLATA ***Section 251 (b)(5) and ISP-Bound*** traffic **<u>Telecommunications Traffic and IP-Enabled Traffic</u>** with **<u>LEVEL 3</u>** that is covered by an FCC approved or court ordered InterLATA boundary waiver. **<u>SBC-13STATE</u>** will exchange such traffic using two-way ***direct final*** trunk groups (i) via a facility to **<u>LEVEL 3</u>**'s POI in the originating LATA, or (ii) via a facility meet point arrangement at or near the exchange area boundary ("EAB"), or (iii) via a mutually agreed to meet point	(a) The Agreement should not be limited in the manner suggested by SBC. SBC's proposed classifications mischaracterize the types of traffic that is exchanged between the parties, including SBC's newly crafted (and legally undefined) term "Section 251(b)(5) Traffic". Level 3 would propose that the characterization of traffic types follow the definitions set forth in the federal Communications Act. (b) No. Level 3 disagrees with the position that telecommunications and IP-Enabled Traffic will need to alternate route, thus obviating the need to	(a) It is important to clearly define each type of traffic so that the parties can accurately route and be compensated for carrying such traffic. SBC's definition is derived from section 251(b)(5) of the Act and more clearly defines the type of traffic than Level 3's proposal.

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		facility within the **SBC-13STATE** exchange area covered under such InterLATA waiver. If the exchange where the traffic is terminating is not an **SBC-13STATE** exchange, SBC Region shall exchange such traffic using a two-way ***direct final*** trunk group (i) via a facility to **LEVEL 3**'s POI within the originating LATA or (ii) via a mutually agreed to facility meet point arrangement at or near the EAB. **SBC-13STATE** will not provision or be responsible for facilities located outside of **SBC-13STATE** exchange areas. ….. **9.3 LEVEL 3** must provide **SBC-13STATE** a separate ACTL and Local Routing Number (LRN) specific to each InterLATA ***Section 251 (b)(5)and ISP-Bound*** local calling arrangement covered by an FCC approved or court ordered InterLATA	include SBC's proposed language. This traffic should route exactly as all other local traffic routes.	SBC proposes to define the types of traffic addressed by Appendix Out of Exchange Traffic with more specificity than merely "telecommunications traffic." This Appendix should clearly identify the type of traffic to which it applies in order to avoid later disputes. For a discussion of SBC's opposition to the term "IP-enabled traffic," see *inter alia* its discussion of Section 3.2 *et seq.* of the IC Appendix. (b) Yes. Currently, when SBC routes its own InterLATA Section 251(b)(5) and ISP Bound Traffic, SBC establishes a two-way DF trunk group. SBC believes Level 3 should follow the same

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		boundary waiver. ….. 9.7 The compensation arrangement for InterLATA ***Section 251 (b)(5) and ISP Bound*** Traffic **Telecommunications Traffic and IP-Enabled Traffic** shall be governed by the compensation terms and conditions for ***Section 251 (b)(5) and ISP Bound*** **Telecommunications Traffic and IP-Enabled Traffic** Calls in Intercarrier Compensation Appendix in this Agreement.		practice.
OET 11 (§ 9.2)	Should the Agreement require the Parties to use a two-way direct final trunk groups to exchange traffic with Level 3?	***9.2 The Parties agree that the associated traffic from each SBC-13STATE End Office will not alternate route.***	No. Level 3 disagrees that telecommunications and IP-Enabled Traffic will not alternate route, thus obviating the need for SBC's proposed traffic. This traffic should route exactly as all other local traffic routes.	Yes. Currently, when SBC routes its own InterLATA Section 251(b)(5) and ISP Bound Traffic, SBC establishes a two-way DF trunk group. SBC believes Level 3 should follow the same practice.

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
CHC 1 (§§ 3., 3.2)	Whether the prices for Coordinated Hot Cuts should be based on forward looking economic costs approved by the Commission?	3.1 CHC is a time sensitive labor operation. Total charges are **TELRIC rates approved by the Commission and appended hereto.** ***determined by a number of factors including the volume of lines, day of the week, and the time of day requested for the cut over.*** 3.2 When CLEC orders CHC service, SBC-13STATE shall charge and **LEVEL 3** agrees to pay for CHC service **the TELRIC rates established by the relevant Commission.** ***at the "additional labor" or "Time and Material" rates set forth in the following applicable Tariffs or Appendix Pricing, Schedule of Prices***: ***3.2.1 SBC MIDWEST REGION*** ***5-STATE - FCC No. 2*** ***Access Services Tariff,*** ***Section 13.2.6 (c) FN [1]*** ***[See below.]***	Level 3 believes that Coordinated Hot Cut services should be rated at the TELRIC rate of the associated service. SBC's proposal would have the Commission adopt some nebulous quasi-formula that would result in inconsistent charges varying by day, carrier and lines. These TELRIC rates should be based on the forward looking economic costs approved and adopted by the state commission.	The cost associated with the provisioning of unbundled loops – included the cost of performing a hot cut – are covered by TELRIC-based rates as required for the provision of UNE elements. In addition to the work activities required to actually provision the loop (including the performance of a hot cut), SBC also allows CLECs to request that SBC provide *optional* coordination of the hot cut activity. This coordination is not necessary for the provision of the loop, but is offered to CLECs upon request. The time-sensitive charge that SBC proposes apply only to the time associated with the actual coordination. (The time sensitive CHC charge does not apply to any of the time associated with the actual provisioning of the UNE.) SBC's proposed language

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		3.2.2 SBC NEVADA – PUCN, Section C13A, 13.2.6(c) ***3.2.3 SBC CALIFORNIA – Access Tariff 175-T, Section 13.2.6(c*** ***3.2.4SBC SOUTHWEST REGION 5-STATE – Appendix Pricing, Schedule of Prices, "Time and Materials Charges"*** ***3.2.5 SBC CONNECTICUT – Connecticut Access Service Tariff, Section 18.1(3))*** ***FN 1: SBC-13STATE will not charge the additional labor rate in a particular state in the SBC MIDWEST 5-STATE region until the effective non-recurring dockets: IL - 98-0396, IN - Cause 40611-S1, MI - U-11831, OH - 96-922-TP-UNC, and WI - 6720-TI-120, are superceded by that state's commission order approving new non-recurring UNE rates.***		should be adopted, because the coordination to which the charges apply is an optional offering, and the charges are for the time-sensitive labor that the coordination entails.
CH 1	Tier III, Issue 3	**NOTE: This issue applies only to ARK, KAN, MO, OKLA and TX.**	2.1 **SBC SOUTHWEST REGION 5-STATE** operates a CH for the purpose of	The common practice between carriers is to generally rely upon the records of the party that

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		Should this appendix provide that SBC will bill reciprocal compensation according to terminating records instead of the Category 92 process?	facilitating the exchange of certain alternatively billed intrastate intraLATA message toll call records and the reporting of settlement revenues owed by and among participating LECs and CLECs, including **SBC SOUTHWEST REGION 5-STATE** and **LEVEL 3**. **SBC SOUTHWEST REGION 5-STATE agrees to bill reciprocal compensation according to terminating records instead of the Category 92 process.**	remits a service (e.g. the terminating carrier) and submits a bill to the recipient of that service (e.g., the originating carrier). Therefore, where technically feasible, the terminating carrier's records should be used to bill originating carriers (excluding transiting carriers) for reciprocal compensation, unless both the originating and terminating carriers agree to use originating records. the use of terminating records among the parties to bill for reciprocal compensation is a more efficient and less burdensome method to track the exchange of traffic. Terminating records impose less cost upon the terminating carriers than the previous regulatory scheme that

BEFORE THE PUBLIC SERVICE COMMISSION
OF MISSOURI

Case No. TO-2005-_____
Level 3 – SBC DPL

Issue No.	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				used SWBT's 92/99 originating records to bill for reciprocal compensation. Level 3 also notes that this position is consistent with the business practices between the Parties in the other SBC states. In fact, SBC SOUTHWEST REGION FIVE STATE is the only ILEC that requires Level 3 to bill based on SBC's Category 92 records. Level 3 would also note that its position is consistent with orders by state commissions addressing the issue (e.g., Texas Public utility Commission, Docket No. 21983).