

Exhibit No:  
Issues: IC-11a and 11e, OET 9 and 10;  
GT&C Definitions 7a  
Witness: J. Scott McPhee  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: Southwestern Bell  
Telephone, L.P., d/b/a/  
SBC Missouri  
Case No: TO-2005-0166

SOUTHWESTERN BELL TELEPHONE, L.P.,  
d/b/a SBC MISSOURI

CASE NO. TO-2005-0166

REBUTTAL TESTIMONY

OF

J. SCOTT MCPHEE

San Ramon, California  
February 7, 2005

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

**AFFIDAVIT OF SCOTT McPHEE**

STATE OF CALIFORNIA             )  
  )  
COUNTY OF CONTRA COSTA    )

I, Scott McPhee, of lawful age, being duly sworn, depose and state:

My name is Scott McPhee. I am presently Associate Director-Regulatory Support for Southwestern Bell Telephone, L.P.

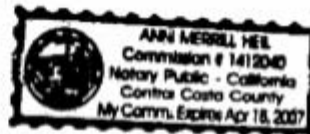
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Scott McPhee

Subscribed and sworn to before me this 26<sup>th</sup> day of February, 2005

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 4/18/07



## **I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San Ramon, California, 94583.

**Q. ARE YOU THE SAME SCOTT MCPHEE THAT FILED DIRECT TESTIMONY IN THIS CASE?**

A. Yes. My Direct Testimony was filed in this docket on January 24, 2005.

## **II. PURPOSE**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to rebut testimony filed by Level 3 witnesses Hunt, Cabe, and Wilson as it pertains to certain intercarrier compensation, Out of Exchange Traffic ("OET"), and GT&C issues. Specifically, I address intercarrier compensation issues 11a and 11e; OET issues 9 and 10; and GT&C issue 17a.

## **III. FOREIGN EXCHANGE TRAFFIC**

*IC Issue 11a: What is the appropriate form of intercarrier compensation for FX and FX-like traffic including ISP FX Traffic?*

**Q. ON PAGE 28 OF HIS DIRECT TESTIMONY REGARDING FOREIGN EXCHANGE TRAFFIC, MR. CABE ASSERTS "SBC SEEKS...TO IMPLEMENT STANDARDS THAT WOULD APPLY TO LEVEL 3 BUT NOT TO ITSELF." DO YOU AGREE?**

A. No, I do not agree. Mr. Cabe erroneously states that SBC Missouri intends to have Level 3 distinguish and treat its FX traffic in a manner different than SBC Missouri is proposing for itself. As SBC Missouri's proposed contract language in Section 7.2 of Appendix Intercarrier Compensation shows, the bill and keep arrangement for FX traffic applies to *both parties*, not just Level 3. Mr. Cabe goes on to observe that, based upon his experience throughout the country, ILECs have never made an attempt to determine

1 the physical location of their customers for purposes of rating or routing a call.<sup>1</sup> SBC  
2 Missouri's proposed language does not propose tracking of the physical location of the  
3 end user; instead, SBC Missouri proposes that the parties identify those end users whose  
4 NPA-NXXs are located in an exchange that differs from the tradition assignment of the  
5 NXXs. For end users whose NPA-NXX is located outside the traditional assigned NXX  
6 area, SBC Missouri's language simply states that no reciprocal compensation will be  
7 billed to the originating carrier. In short, it is each carrier's responsibility to provide an  
8 accurate bill for their intercarrier compensation services, and as such, it is each  
9 terminating carrier's responsibility to not bill for termination to FX numbers.

10 **Q. DOES SBC MISSOURI HAVE THE ABILITY TO IDENTIFY CALLS**  
11 **TERMINATING TO FX TELEPHONE NUMBERS OF SBC MISSOURI END**  
12 **USERS IN ORDER TO WITHHOLD INTERCARRIER COMPENSATION**  
13 **BILLING?**

14 A. Yes. A billing project was completed in 2002 which allows SBC Missouri to identify its  
15 own retail FX customers such that, if the contract allows, SBC Missouri can apply a rate  
16 of 'zero' (bill and keep) to intercarrier calls completed to those FX telephone numbers.  
17 While I do not believe this billing system is currently being used in Missouri, the ability  
18 to identify calls destined to FX customers exists such that proper billing can be  
19 accomplished to exclude calls to FX numbers from intercarrier compensation.  
20 Additionally, it appears that Level 3 (or any carrier, for that matter) could similarly  
21 identify their FX customers in order to exclude locally-dialed calls to those FX numbers  
22 from intercarrier compensation billing. On Page 29 of his Direct Testimony, Mr. Cabe  
23 indicates that Level 3 knows which of its customers are providing FX service, and as

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<sup>1</sup> Cabe Direct, pp. 28-29

1 such, Level 3 would know which telephone numbers are most-likely FX numbers not  
2 subject to intercarrier compensation.<sup>2</sup>

3 **Q. BEGINNING ON PAGE 75 OF HIS DIRECT TESTIMONY, MR. HUNT**  
4 **DISCUSSES THE DIFFERENCES IN DEPLOYMENT OF LEVEL 3'S FX**  
5 **SERVICE COMPARED TO SBC MISSOURI'S FX SERVICES. ARE THE TWO**  
6 **PARTIES' DIFFERENT METHODS SIGNIFICANT IN ANY WAY WITH**  
7 **REGARD TO THE PROPER COMPENSATION DUE ON FX TRAFFIC?**

8 A. No. The fact that SBC Missouri uses dedicated circuits and Level 3 uses virtual NXX  
9 assignments has no bearing whatsoever on how FX calls should be compensated. Mr.  
10 Hunt erroneously believes that SBC Missouri proposes that Level 3 deploy FX service in  
11 a manner similar to SBC Missouri, when in fact, SBC Missouri does not make *any*  
12 proposal as to *how* Level 3 uses its network to serve its FX customers.<sup>3</sup> The true issue is  
13 the compensation for the traffic

14 **Q. MR. HUNT ARGUES THAT FX TRAFFIC SHOULD BE SUBJECT TO**  
15 **RECIPROCAL COMPENSATION BECAUSE THE COSTS ASSOCIATED WITH**  
16 **DELIVERING A FX CALL TO THE LEVEL 3 POI IS THE SAME AS THE**  
17 **COSTS ASSOCIATED WITH DELIVERING A LOCAL CALL TO THE POI.<sup>4</sup>**  
18 **DO YOU AGREE?**

19 A. No. Mr. Hunt is glossing over the fact that FX calls are not local calls which originate  
20 and terminate to end users within the same Missouri Local or Mandatory Local  
21 Exchange. FX calls are inter-exchange calls, and therefore not subject to reciprocal  
22 compensation. Reciprocal compensation for ("local") calls is based upon the costs  
23 associated with terminating those calls. The problem with Mr. Hunt's rationale, however,

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<sup>2</sup> Cabe Direct, p. 29: "While Level 3's circuit switched traffic services may or may not include longer transport in its service than in traditional ILEC FX service (the cost of which is borne entirely by *Level 3 and its customer*)..." *emphasis added*

<sup>3</sup> Hunt Direct, p. 75: "SBC's proposed scenario of a "dedicated circuit" from the "home exchange" to the "foreign exchange" is flawed from a policy perspective because it locks the foreign exchange product into the network configuration offered by SBC and forces all other carriers to mirror that."

<sup>4</sup> Hunt Direct, p. 78.

1 is that other types of calls are sent to the POI which are rated differently than local calls;  
2 yet these other calls, too, have the same “cost” associated to get to the POI. An example  
3 is an intraLATA toll call which presumably incurs the same cost to reach the POI as a  
4 call subject to reciprocal compensation, yet it is a call that is *not* subject to reciprocal  
5 compensation. The same applies to calls destined for FX customers; while the costs  
6 associated with delivering the call to the POI may be the same, the intercarrier  
7 compensation rate differs.

8 Another flaw in Mr. Hunt’s rationale regarding the application of reciprocal  
9 compensation for FX traffic occurs on page 75 of his direct testimony: “Level 3’s service  
10 is a ‘retail service offering’ offered to customers such as ISPs, which have long been  
11 treated as end user customers by the FCC.” As discussed in my Direct Testimony, the  
12 provisioning of an FX service is indeed a retail offering whereby the service provider  
13 should be receiving their revenue from their end user customer. Level 3 apparently  
14 understands this concept of charging their customer; yet they seek to double-recover the  
15 costs associated with their value-added service provided *to their customer* by attempting  
16 to charge SBC Missouri reciprocal compensation on traffic terminated to that distant FX  
17 end user customer.

18 **Q. MR. HUNT MENTIONS THAT SBC AND LEVEL 3 PREVIOUSLY**  
19 **COMPENSATED FX TRAFFIC UNDER AN AGREEMENT TITLED**  
20 **“AMENDMENT TO LEVEL 3 CONTRACTS SUPERSEDING CERTAIN**  
21 **COMPENSATION, INTERCONNECTION AND TRUNKING PROVISIONS”<sup>5</sup>**  
22 **DOES THAT AMENDMENT HAVE ANY BEARING ON THIS ARBITRATION?**

23 **A.** No, it does not. The “Amendment to Level 3 Contracts Superseding Certain  
24 Compensation, Interconnection and Trunking Provisions” (“Amendment”) was a

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<sup>5</sup> Hunt Direct, p. 71.

1 negotiated agreement between SBC Missouri and Level 3. The provisions of the  
2 Amendment contemplated various network and intercarrier compensation terms and  
3 conditions between the Parties; and it contained various “gives and takes” for both sides.  
4 The Parties have not agreed to extend the terms of that Amendment. For Level 3 to now  
5 point to a single provision of the Amendment without contemplating the entire agreement  
6 as a whole is to attempt to receive a “benefit” without any of its previously associated  
7 “costs.”

#### 8 **IV. TRANSIT SERVICE**

*IC Issue 11e: Should non-section 251/252 services such as Transit Services be arbitrated in this section 251/252 proceeding?*

*OET Issue 10: Should the OET Appendix include terms detailing the compensation due each for exchanging Transit Traffic?*

9 **Q. MR. HUNT EXPRESSES CONCERN THAT SBC MISSOURI WILL “...FORCE**  
10 **LEVEL 3 TO INTERCONNECT WITH EVERY OTHER CARRIER IN**  
11 **BUSINESS, WHERE ONLY A SMALL AMOUNT OF TRAFFIC IS**  
12 **EXCHANGED.”<sup>6</sup> IS HIS ASSERTION CORRECT?**

13 **A.** Not at all. As I stated in my Direct Testimony, SBC Missouri will continue to offer a  
14 transit service for carriers that would prefer to use SBC Missouri’s network to reach third  
15 party carriers. In fact, much of the language within SBC Missouri’s proposed Transit  
16 Traffic Service Agreement contains the same or similar provisions as in Level 3’s  
17 expiring Agreement. However, because transit service is not contemplated under  
18 Sections 251 (b) or (c) of the Act, the terms of SBC Missouri’s transit service are  
19 contained in a separate commercial agreement outside the scope of a Section 251/252  
20 negotiation. SBC Missouri has made this Transit Traffic Service Agreement available for

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<sup>6</sup> Hunt Direct, p. 46.

1 all carriers interested in having SBC Missouri transit traffic for them; at no time has SBC  
2 Missouri indicated it would cease to offer transit services.

3 **Q. WOULD YOU DISAGREE WITH MR. CABE'S ASSERTIONS THAT SBC**  
4 **MISSOURI IS REFUSING TO HANDLE TRANSIT TRAFFIC? <sup>7</sup>**

5 A. Absolutely. SBC Missouri has offered transit services in the past and continues to offer  
6 to provide transit services to any interested carrier. As my Direct Testimony states, there  
7 are definitely efficiencies gained for all carriers by using a third party transit provider; it  
8 is not SBC Missouri's intent to discontinue those associations, but only to formalize such  
9 Transit Traffic Service Agreements in a more appropriate manner-outside the scope of  
10 Sections 251/252.

11 **Q. MR. CABE OPINES – BEYOND THE AFOREMENTIONED FALSE**  
12 **UNDERSTANDING THAT SBC MISSOURI WOULD REFUSE TO PROVIDE**  
13 **TRANSIT SERVICES – THAT SBC MISSOURI'S NON-251/252 TRANSIT**  
14 **OFFERING WOULD NECESSITATE THAT LEVEL 3 "...ESTABLISH**  
15 **CONTRACTUAL RELATIONSHIPS WITH EACH AND EVERY POTENTIAL**  
16 **CARRIER..."<sup>8</sup> IS THIS ANY DIFFERENT THAN TODAY?**

17 A. No. When SBC Missouri acts as a transit service provider, it is neither the call originator  
18 nor the call terminator. Under the intercarrier compensation regime, the call originator  
19 pays the call terminator reciprocal compensation. In those circumstances where Level 3  
20 uses SBC Missouri's transit service, Level 3 is obligated to pay the terminating carrier  
21 the appropriate intercarrier compensation. As such, presumably Level 3 has some sort of  
22 arrangement already in place between Level 3 and the carriers with which it exchanges  
23 transit traffic. Additionally, the expiring ICA between Level 3 and SBC Missouri  
24 contains provisions within Appendix Reciprocal Compensation:

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<sup>7</sup> Cabe Direct, p. 21.

<sup>8</sup> Cabe Direct p. 25.



1  
2  
3 6.2 The Parties agree to enter into their own agreement with third party  
4 Telecommunications Carriers to the extent required by and as  
5 provided in Appendix ITR. The terminating party and the tandem  
6 provider will bill their respective portions of the charges directly to  
7 the originating party, and neither the terminating party nor the  
8 tandem provider will be required to function as a billing  
9 intermediary, e.g. clearinghouse.

10  
11 Mr. Cabe's concerns about having to enter into multiple agreements is misplaced because  
12 this obligation is no different than how Level 3 should be functioning today as it pertains  
13 to the compensation payments for traffic which Level 3 originates and sends to third  
14 party carriers via SBC Missouri's transit service.

15  
*OET Issue 9: 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"?*

*GT&C Definitions Issue 17a: 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?*

16 **Q. SHOULD TRAFFIC GOVERNED BY APPENDIX OUT OF EXCHANGE**  
17 **TRAFFIC BE DEFINED UNDER THE SAME TERMS AS THE UNDERLYING**  
18 **ICA, IN LIEU OF "LOCAL TRAFFIC" AND "LOCAL CALLS"? (OUT OF**  
19 **EXCHANGE TRAFFIC ISSUE 9; GT&C DEFINITIONS ISSUE 17a)**

20 **A.** Yes. As I described in my Direct Testimony, Appendix Out of Exchange Traffic  
21 ("OET") contains additional provisions to the underlying Agreement, and as such should  
22 use the same definitions for the types of traffic as exchanged under other sections of the  
23 Agreement, namely Appendix Intercarrier Compensation. SBC Missouri advocates that  
24 the same definitions should be used in Appendix OET as in the underlying ICA.

25 **Q. NOTWITHSTANDING THE DISPUTE OVER CATEGORIZATION OF**  
26 **TRAFFIC WITHIN THE DEFINITION, HAS LEVEL 3 AGREED TO INCLUDE**  
27 **A DEFINITION FOR "OUT OF EXCHANGE TRAFFIC?"**

1 A. Yes. Appendix GT&C Definitions includes the terms “Out of Exchange LEC” and “Out  
2 of Exchange Traffic.” While there is no agreement for the categorization of traffic, Level  
3 3 appears to agree in concept that the two terms should be defined in this Agreement.  
4 Curiously, this contradicts Level 3 witness Wilson’s assertions in his Direct Testimony  
5 (p. 5). Mr. Wilson seems bewildered by the entire concept of “Out of Exchange Traffic,”  
6 calling it “a confusing attachment that . . .is both vague and ambiguous.” Yet, as I just  
7 mentioned, the definition itself is not in dispute – just how the parties seek to categorize  
8 (and label) the different types of traffic within the definition.

9 In addition to Mr. Wilson’s contradictory position on the concept of Out of  
10 Exchange Traffic, Mr. Wilson later expounds (at p. 47) that the Commission should  
11 “remove this Appendix from the Interconnection Agreement.” Again, this is clearly  
12 inconsistent, as Level 3 chose to only dispute portions of Appendix Out of Exchange  
13 Traffic, not the Appendix in its entirety. Mr. Wilson’s testimony goes beyond the  
14 scope of the disputed language; by blanketing the entire Appendix Out of Exchange  
15 Traffic as “confusing,” Mr. Wilson neglects to address his client’s specific concerns  
16 with the portions of the Appendix that are actually disputed. As such, the Commission  
17 should dismiss Level 3’s opposition to the Appendix and should approve the definitions  
18 that SBC Missouri has proposed.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes.