

Exhibit No:

Issues: IC-1,3,5,6a,7a,7b,8, 9a,
IC-9b,10a,10c,10d,11a,11e,12
IC-13a, 13d,13e,14,15,
IC16,20b,20c,21a, 21b, GTC-7,
GTC-8,15,16,17a,17c,18a,18b
OET-9,10, NIM-7

Witness: J. Scott McPhee

Type of Exhibit: Direct Testimony

Sponsoring Party: Southwestern Bell

Telephone, L.P., d/b/a/

SBC Missouri

Case No: TO-2005-0166

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

CASE NO. TO-2005-0166

DIRECT TESTIMONY

OF

J. SCOTT McPHEE

San Ramon, California
January 24, 2005

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)

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA)

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

Scott McPhee 1/24/05

Subscribed and sworn to before me this 21 day of January, 2005.



Emilio Quinn
Notary Public

My Commission Expires: Feb 12, 2008

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

A. I am an Associate Director – Local Interconnection Services for Southwestern Bell Telephone, L.P. I work in SBC Communications Inc.’s (“SBC’s”) 13-state Local Interconnection Marketing group on behalf of its incumbent local exchange carriers (“ILECs”) throughout SBC’s 13-state region.

Q. WHAT ARE YOUR RESPONSIBILITIES AS ASSOCIATE DIRECTOR-WHOLESALE MARKETING?

A. I am responsible for researching, supporting, and communicating SBC’s product policy positions in regulatory proceedings across thirteen states, including this one.

Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A. I began employment with SBC in 2000 in the Wholesale Marketing – Industry Markets organization as Product Manager for Reciprocal Compensation throughout SBC’s 13-state region. My responsibilities included identifying policy and product issues to assist negotiators and witnesses for SBC’s reciprocal compensation and interconnection arrangements. In June of 2003, I moved into my current role as an Associate Director in the Wholesale Marketing Product Regulatory organization. In this position, my responsibilities include helping define SBC’s positions on certain issues for Wholesale Marketing, and ensuring that those positions are consistently articulated in proceedings before state commissions. Prior to joining SBC, I spent nine and a half years working in the insurance industry, primarily as an underwriter of worker’s compensation insurance.

1 My responsibilities included risk assessment of business entities, financial analysis,
2 contract pricing negotiations, and working with clients to initiate or enhance their
3 workplace safety programs. I had direct contact with large accounts and their
4 representative brokers, and managed various aspects of their relationship with my
5 company.

6 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

7 A. I received my Bachelor of Arts degree with a double major in Economics and Political
8 Science from the University of California at Davis in 1990.

9 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY**
10 **COMMISSIONS?**

11 A. Yes, I have filed testimony and appeared in hearings in the state of Michigan, Lucre, Inc.
12 v. SBC Michigan; MPSC Case No. U-13785; as well as in Ohio, In the Matter of the
13 Commission's Investigation into the Implementation of Section 276 of the
14 Telecommunications Act of 1996 Regarding Pay Telephone Services; Case No. 96-1310-
15 TP-COI. I have also filed written testimony in the states of Illinois (*MCIMetro Access*
16 *Transmission Services LLC et al., Petition for Arbitration*, Docket 04-0469), Michigan
17 (*In re the Application of Hiawatha Telephone Company et al.*, Case No. U-14100)
18 Nevada (*In re Petition of Autotel for Arbitration of an ICA with Nevada Bell*, Docket No.
19 02-8016); Ohio (*In re Implementation of the Federal Communications Commission's*
20 *Triennial Review Regarding Local Circuit Switching in SBC Ohio's Mass Market*, Case
21 No. 04-34-TP-COI); and Texas (*Arbitration of Non-Cost Issues for Successor ICAs to the*
22 *Texas 271 Agreement*, Docket No. 28821). In addition, I have filed testimony in the
23 parallel proceedings between Level 3 and SBC in other states, and have appeared in
24 hearings in several of those proceedings.

II.
PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. My testimony explains SBC Missouri's position on certain issues related to reciprocal compensation and interconnection, including: calling scopes and definitions, rate issues, foreign exchange, the FCC *ISP Compensation Plan* and other billing issues. In particular, I direct the Commission's attention to the following key issues discussed in my testimony: (1) the appropriate classifications of intercarrier traffic and the compensation applicable to the various intercarrier traffic types; (2) the treatment of transit traffic; and (3) the FCC's Compensation Plan for certain ISP-bound traffic.

III.
CALLING SCOPES AND TRAFFIC DEFINITIONS

SBC MISSOURI'S PROPOSALS REGARDING THE DEFINITION AND SCOPE OF SECTION 251(B)(5) TRAFFIC AND ISP-BOUND TRAFFIC ARE REASONABLE AND CONSISTENT WITH THE FCC'S *ISP REMAND ORDER*. (INTERCARRIER COMPENSATION ISSUES 1, 3, 5, 10A, 15, 21A; OET ISSUES 9; GT&C DEFINITIONS ISSUES 8, 17A, 17C 18A, AND 18B)¹

IC Issue 1: Which Party's Proposed Classifications Of Traffic Should Be Used In The Agreement?

IC Issue 3: 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?

IC Issue 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?

¹ Level 3 typically refers not only to the agreed issue numbers that appear in the left-hand column on the DPLs, but also to the tiers and issue numbers that Level 3 used in its petition for arbitration. SBC Missouri does not find Level 3's tiers and issue numbers helpful, so I do not refer to them in my testimony.

1
2 **IC Issue 10a:** *Should The Reciprocal Compensation Terms Of The*
3 *Agreement Apply To “Telecommunications Traffic” Or*
4 *To “Section 251(B)(5) Traffic”?*

5
6 **GT&C Definitions Issue 18a:** *Should The Commission Adopt A Definition Of “Section*
7 *251(B)(5) Traffic”?*

8
9 **GT&C Definitions Issue 18b:** *If The Answer To (A) Is Yes, Should “Section 251(B)(5)*
10 *Traffic” Be Limited To Certain Physical Locations Of*
11 *The Originating And Terminating End Users?*

12
13 **Q. WHAT TERMS DOES SBC MISSOURI PROPOSE TO DESCRIBE TRAFFIC**
14 **TYPES IN THIS INTERCONNECTION AGREEMENT (“ICA”)?**
15 **(INTERCARRIER COMPENSATION ISSUES 1, 3 AND 10A; GT&C**
16 **DEFINITIONS ISSUES 18A AND 18B).**

17 A. SBC Missouri proposes to use the term “Section 251(b)(5) traffic” to describe the type of
18 traffic subject to reciprocal compensation under Section 251(b)(5) of the Federal
19 Telecommunications Act of 1996 (“the Act”)², and the term “ISP-bound Traffic” to
20 describe the type of traffic compensated under the FCC’s interim *ISP Compensation Plan*
21 (*“ISP Compensation Plan”*). SBC Missouri defines these terms pursuant to the FCC’s
22 Order on Remand and Report and Order, *In the Matter of Implementation of the Local*
23 *Competition Provisions in the Telecommunications Act of 1996, Intercarrier*
24 *Compensation for ISP-bound Traffic*, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel.
25 April 27, 2001) (*“ISP Remand Order”*), which was remanded but not vacated in
26 *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). Section 251(b)(5) traffic
27 originates from an end user and is destined to another end user that is physically located
28 within the same ILEC mandatory local calling scope. ISP-bound traffic originates from
29 an end user that is served by an Internet Service Provider (“ISP”) physically located
30 within the same ILEC mandatory local calling scope. Note that the FCC used these terms

² All references to Section 251 or 252 in my testimony are to sections of the Act.

1 instead of the potentially ambiguous term “Local Traffic” it had used in past rules (and
2 which led to disputes over the interpretation of prior ICAs). In addition to these terms,
3 SBC Missouri also proposes several categories that track those used to rate traffic or to
4 assign it to a particular jurisdiction, which I discuss later on in this testimony.

5 **Q. PLEASE PROVIDE BACKGROUND REGARDING THE RATING OF CALLS.**

6 A. Calls are compensated or “rated” based upon the geographic points of origination and
7 termination (often called the jurisdiction) of the call. The jurisdiction of a call may be
8 local, intraLATA or interLATA. Each phone number or NPA-NXX (area code and three
9 digit central office prefix) corresponds with a designated geographic point within an
10 exchange and is assigned to a rate center. Each rate center has a Vertical and Horizontal
11 (“V&H”) coordinate analogous to longitude and latitude lines used in navigation. The
12 V&H coordinates are used to calculate distance in miles between rate centers for purpose
13 of rating a call and deeming whether it is local. Thus, each NPA-NXX has a
14 corresponding V&H coordinate that identifies its rate center. State commissions govern
15 the local calling areas and administer the local rates via Local Exchange Tariffs. Calls
16 that require 1+ dialing are generally carried beyond the local calling area as defined by the
17 local exchange tariff and thus are not subject to local rating. The FCC in the *ISP Remand*
18 *Order* replaced the term “local traffic” with the more precise term “traffic subject to
19 section 251(b)(5),” and reaffirmed that reciprocal compensation does not apply to
20 interstate or intrastate access traffic. Consequently, the jurisdictional (*i.e.*, geographical)
21 nature of the call, as determined by the rating previously discussed, determines whether
22 reciprocal compensation applies.

1 **Q. WHAT ESTABLISHES HOW THE JURISDICTION OF TRAFFIC IS**
2 **DETERMINED?**

3 A. In part 36 of its Separations Manual, the FCC describes the method for determining the
4 jurisdiction of traffic. This method is based upon the actual geographical locations of the
5 originating end user and the terminating end user. Thus, the jurisdiction of a call is
6 determined on the physical end to end points of the call and not on the artificial rating
7 points of a call (as in a virtual FX arrangement). In the case of ISP-bound traffic,
8 requiring that the ISP provider be located in the same local exchange area as the call
9 originator in order for the call to be treated under the *ISP Compensation Plan* is
10 consistent with the FCC's *ISP Remand Order*.

11 **Q. WHAT TRAFFIC TYPES DOES SBC MISSOURI PROPOSE FOR APPENDIX**
12 **INTERCARRIER COMPENSATION?**

13 A. As shown in SBC Missouri's proposed Section 3.1, the following traffic types should be
14 identified for purposes of this ICA: Section 251(b)(5) traffic, Foreign Exchange ("FX")
15 traffic, ISP-bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area
16 Traffic"), intraLATA toll traffic, interLATA toll traffic, meet point billing and FGA
17 traffic.³ Some of these terms, such as Section 251(b)(5) traffic, ISP-bound traffic, and
18 FX traffic are disputed, and I discuss them elsewhere in my testimony. However, Feature
19 Group A, intraLATA toll traffic and meet point billing are agreed-upon terms in the
20 Definitions portion of General Terms and Conditions ("GT&C"). Furthermore, in
21 sections of Appendix Intercarrier Compensation, Level 3 does not dispute the use of SBC

³ While all of these traffic types are not *governed* by the ICA, it is necessary to include a pointer to identify what does govern such traffic. IntraLATA Toll traffic, for example, is subject to the access charges as contained within each ILEC's respective tariff. While the specific access rates are not listed within the ICA here, the ICA refers to the tariffs to provide the proper rates and terms to settle access traffic compensation payments.

Missouri's traffic terminology. As an example, in Section 3.6, Level 3 accepts use of the terms "Optional EAS Traffic" and "IntraLATA Toll."

Q. WHY DOES SBC MISSOURI OPPOSE LEVEL 3'S PROPOSED TRAFFIC TERMS?

A. Because Level 3's proposed terms do not adequately reflect the purpose of this appendix: intercarrier compensation. First, Level 3's proposed Section 3.1 lists terms for traffic classifications and cites to various sections of the Act. Of the five classifications Level 3 lists, three are agreed-upon, and contained within Appendix GT&C Definitions (Telephone Exchange Service, Exchange Access and Telecommunications Service). But the other terms incorporated in Level 3's Section 3.1 are not used in any meaningful way within Appendix Intercarrier Compensation⁴ and should be rejected.

In addition to the aforementioned definitions proposed in Section 3.1, Level 3 improperly *omits* any reference to Section 251(b)(5) and instead proposes to create and use the term "Circuit Switched Traffic" to determine when intercarrier compensation is due. As I previously discussed, intercarrier compensation is applied based upon the jurisdictional characteristics of a call; Level 3's term "Circuit Switched Traffic" speaks nothing of call jurisdiction. Instead, Level 3's term is used to describe technical characteristics of equipment (customer premise equipment), retail calling plans (Section 3.4.3), and even the public switched telephone network ("PSTN") in general. With this proposed term and its application to intercarrier compensation, Level 3 proposes to redefine the current intercarrier compensation regime (including the existing interexchange access charge regime) by eliminating the actual characteristics of a telephone call (such as geographic and jurisdictional identifiers), and substituting the

⁴ "Telephone Toll Service" is used in an illustrative example in Level 3's proposed Section 3.4.2.

technical and physical construction of a carrier's network in its place. Level 3's proposed traffic "definition" for purposes of applying intercarrier compensation, flies in the face of the currently established intercarrier compensation regime and should be rejected.

IC Issue 5: *Should The Agreement Define ISP-Bound Traffic To Mean Calls In Which The Originating End User And The Terminating ISP Are Both Physically Located In The SBC Local Exchange Area Or Common Mandatory Local Calling Area?*

IC Issue 21a: *What Is The Appropriate Form Of Intercarrier Compensation For ISP-Bound Traffic In Accordance With The FCC's ISP Terminating Compensation Plan?*

IC Issue 15: *What Is The Appropriate Treatment And Compensation Of ISP Traffic Exchanged Between The Parties Outside Of The Local Calling Scope?*

GT&C Definitions Issue 8: *Should The Definition Of "ISP-Bound Traffic" Reference The FCC's ISP Compensation Order And Be Limited To Certain Physical Locations Of The End User And Terminating ISP?*

Q. WHAT IS "ISP-BOUND TRAFFIC?" (INTERCARRIER COMPENSATION ISSUES 5 AND 21A; GT&C DEFINITIONS ISSUE 8)

A. SBC Missouri proposes to define "ISP-bound Traffic" as traffic that originates from an end user and is delivered to an ISP within the same mandatory local calling area. From there, the traffic proceeds to distant Internet web sites and applications. This definition is consistent with the definition of ISP-bound Traffic in the *ISP Remand Order*.

Prior to 2001, there was little agreement on the definition of ISP-bound traffic or the compensation for the termination of such traffic. In the *ISP Remand Order*, however, the FCC distinguished between two types of traffic. First, the FCC identified Section 251(b)(5) traffic, or voice traffic, that originates with and terminates to end users in the same mandatory local calling area. The FCC also identified ISP-bound Traffic (traffic that originates from an end user and is delivered to an ISP within the same mandatory

1 local calling area), found that it was excluded from Section 251(b)(5), and established a
2 plan for compensation of ISP-bound Traffic. However, the FCC’s compensation plan for
3 ISP-Bound traffic does not apply to *all* traffic that is delivered to an ISP. Rather, the *ISP*
4 *Remand Order* targeted only a narrow category of ISP traffic: ISP traffic where the ISP
5 is served by a CLEC in the same exchange as the originating caller.⁵ The FCC repeatedly
6 states that it is dealing only with traffic that would otherwise be subject to state
7 commission-established reciprocal compensation, *i.e.*, traffic that is not interexchange.⁶
8 Similarly, in its recent *Core Forbearance Order*, the FCC described its *ISP Remand*
9 *Order* compensation plan as “an exception to the reciprocal compensation requirements
10 of the Act for calls made to ISPs *located within the caller’s local calling area.*” *Core*
11 *Forbearance Order*, n.25

12 SBC Missouri has invoked the *ISP Compensation Plan* described in the *ISP*
13 *Remand Order*. Accordingly, the parties' interconnection agreement (“ICA”) should
14 distinguish ISP-bound Traffic that is subject to the rates, terms and conditions of the *ISP*
15 *Compensation Plan* from other traffic types within the ICA. ISP traffic that originates
16 and is delivered to an ISP within the same local mandatory calling areas is ISP-bound
17 Traffic subject to the *ISP Compensation Plan*. ISP traffic that is delivered to an ISP
18 outside the originator’s local mandatory calling area is not ISP-bound traffic subject to

⁵ The limited scope of the *ISP Remand Order* is evident in Paragraph 13, where the FCC discusses the basis of its ruling:

13. As a result of this determination [“that section 251(b)(5) reciprocal compensation obligations ‘apply only to traffic that originates and terminates within a local area’ as defined by state commissions”], the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC’s end-user customer to an ISP in the same local calling area that is served by a competing LEC.

⁶ *ISP Remand Order* ¶ 90.

1 the *ISP Compensation Plan*. Instead, such ISP traffic remains intraLATA and/or
2 interLATA toll traffic subject to access tariffs.

3 **Q. IS ALL ISP TRAFFIC TREATED THE SAME UNDER THE PROPOSED**
4 **AGREEMENT? (INTERCARRIER COMPENSATION ISSUE 15)**

5 A. No. As I previously discussed, only calls that originate from an end user and are
6 delivered to an ISP within the same ILEC mandatory local calling area are subject to the
7 *ISP Compensation Plan*. If, for whatever reason, an end user were to make a long-
8 distance call to access the Internet through an ISP, the end user would likely be assessed
9 toll charges by its long distance provider (or the call would apply toward its toll-call
10 minutes-of-use). In addition, ISPs frequently employ FX-type service arrangements
11 where they have a virtual presence within a local calling area.⁷ ISP FX-type calls should
12 be compensated in the same manner voice FX-type calls are compensated. SBC Missouri
13 proposes language within the ICA to clarify this point and to avoid future possible
14 disputes arising from the circumstance that one carrier's end user may access another
15 carrier's ISP customer via a long distance call.

16 ***OET Issue 9:*** ***Should The OET Appendix Govern The Exchange Of***
17 ***"Telecommunications Traffic And IP-Enabled Services***
18 ***Traffic" Or "Section 251 (B)(5) Traffic And ISP-Bound***
19 ***Traffic?"***

20
21 ***GT&C Definitions Issue 17a:*** ***Should The Definition Of "OET" Include All***
22 ***Telecommunications Traffic, As Defined, Or Be Limited***
23 ***To "Section 251(B)(5) Traffic," "InterLATA Section 251***
24 ***(B)(5) Traffic" And "ISP-Bound Traffic," As Defined?***
25

⁷ An FX – or Foreign Exchange – service allows a carrier to have a local presence in a given calling area even though it is not physically located in that area. This is done by assigning an NPA-NXX that is local to the desired calling area, even though the actual end user may be located in a distant exchange or LATA. Please see my testimony under the section entitled “FX Service” for further discussion on this subject.

1 **Q. SHOULD TRAFFIC GOVERNED BY APPENDIX OET BE DEFINED UNDER**
2 **THE SAME TERMS AS ABOVE, IN LIEU OF “LOCAL TRAFFIC” AND**
3 **“LOCAL CALLS?” (OET ISSUE 9; GT&C DEFINITIONS ISSUE 17A)**

4 A. Yes. Appendix Out of Exchange Traffic (“OET”) should use the same definitions for the
5 same types of traffic that are addressed in other portions of the ICA, namely Appendix
6 Intercarrier Compensation. Appendix OET contemplates the exchange of traffic between
7 SBC Missouri and Level 3 that originates with or terminates to a Level 3 customer in
8 regions that are not within SBC Missouri’s ILEC territory. While there is a need to
9 address this type of traffic separately from traffic exchanged under Appendix Intercarrier
10 Compensation, the traffic *types* remain the same, and should be defined the same
11 throughout the entire ICA and all its appendices. OET Section 5.1 (Issue OET-9)
12 references terminology in Appendix OET that should refer to Section 251(b)(5) Traffic
13 instead of Level 3’s vague “Telecommunications Traffic” and “IP-Enabled Traffic”
14 nomenclature. In order to maintain clarity and consistency, the same terminology must
15 be used throughout the entire ICA. For the same reasons, the definition of OET in the
16 GT&C Definitions should refer to “Section 251(b)(5) Traffic,” “InterLATA Section 251
17 (b)(5) traffic” and “ISP-bound traffic,” instead of “Telecommunications Traffic and IP-
18 enabled Traffic.”

19 ***GT&C Definitions Issue 17c: Should The Definition Of OET Include Transit Traffic?***
20

21 **Q. SHOULD THE DEFINITION OF OET INCLUDE TRANSIT TRAFFIC? (GT&C**
22 **DEFINITIONS ISSUE 17C)**

23 A. No, transit traffic should not be included in the definition of OET. As I previously
24 described, traffic definitions between Appendix Intercarrier Compensation and Appendix
25 OET should be the same for purposes of contractual consistency and clarity. Later in my
26 testimony, I will further discuss transit traffic and why it should not be included as a form
27 of traffic within this ICA generally.

1 **SBC MISSOURI'S PROPOSALS APPROPRIATELY CONTEMPLATE AND ADDRESS**
2 **OTHER FORMS OF INTERCARRIER TRAFFIC, SUCH AS UNE-P TRAFFIC, AND**
3 **INTRASTATE AND INTERSTATE ACCESS TRAFFIC. (INTERCARRIER**
4 **COMPENSATION ISSUES 6a, 12, 14, 16, 20a)**

5
6 **Q. YOU HAVE DESCRIBED WHAT SHOULD AND WHAT SHOULD NOT BE**
7 **INCLUDED WITHIN THE DEFINITIONS OF SECTION 251(B)(5) AND ISP-**
8 **BOUND TRAFFIC. SHOULD THIS AGREEMENT CONTEMPLATE OR**
9 **ADDRESS OTHER FORMS OF INTERCARRIER TRAFFIC, SUCH AS**
10 **INTRASTATE AND INTERSTATE ACCESS TRAFFIC?**

11 A. Yes. The parties will exchange other types of traffic that are not included within the
12 terms of Section 251(b)(5) traffic or ISP-bound traffic. The ICA should contain terms
13 and conditions to address the treatment of that traffic, whether it is by specifically
14 applying a different rate within the contract, or by reference to another determining
15 document, such as a state or federal tariff. SBC Missouri's proposed Appendix
16 Intercarrier Compensation attempts to contemplate all the various types of traffic that
17 may be exchanged between the parties: InterLATA and intraLATA toll, Meet Point
18 Billing, FX Traffic, and Feature Group A traffic.

19 **Q. WHAT IS THE APPROPRIATE FORM OF INTER-CARRIER**
20 **COMPENSATION FOR INTRALATA TOLL TRAFFIC? (INTERCARRIER**
21 **COMPENSATION ISSUE 20A)**

22 A. IntraLATA Toll traffic is subject to the access charges as contained within each ILEC's
23 respective tariff. While the specific access rates are not and should not be listed within
24 the ICA here, the ICA refers to the tariffs to provide the proper rates and terms to settle
25 access traffic compensation payments.

26 *IC Issue 12:*

*What Is The Appropriate Form Of Intercarrier
Compensation For Unbundled Local Switching Traffic?*

1 **Q. SHOULD TRAFFIC ORIGINATED OR TERMINATED VIA AN UNBUNDLED**
2 **NETWORK ELEMENT PLATFORM (UNE-P) BE TREATED THE SAME AS**
3 **OTHER SECTION 251(B)(5) TRAFFIC THAT IS ENTIRELY FACILITIES-**
4 **BASED? (INTERCARRIER COMPENSATION ISSUE 12)**

5 A. Yes, UNE-P traffic should be compensated the same as traffic that originates and/or
6 terminates via a facilities-based provider. By opposing the inclusion of any contract
7 language addressing UNE-P,⁸ Level 3, however, is asking this Commission to establish
8 separate compensation regimes for the same types of traffic (Section 251(b)(5), ISP-
9 bound, Optional EAS, etc.) based solely upon the technology used to originate or
10 terminate the call (UNE-P versus facilities-based). Level 3 also confuses aspects of
11 UNE-P usage charges with aspects of call-termination charges. These two types of
12 charges are separate and distinct charges that are applied for different reasons, and are
13 intended for SBC Missouri and the CLEC to recover different costs. This Commission
14 has already established separate rates for each of these functions: unbundled local
15 switching for UNE-P usage charges, and reciprocal compensation for call termination
16 charges. Furthermore, the Commission established call termination charges are
17 applicable to Section 251(b)(5) traffic regardless of whether it is facilities-based or UNE-
18 P. Nothing in the FCC's *ISP Remand Order* suggests that traffic originated through
19 UNE-P usage should be treated any differently than facilities-based traffic. Accordingly,
20 SBC Missouri's proposed language addressing intercarrier compensation for UNE-P
21 traffic in Section 5.7 clarifies the appropriate application of rates for the termination of
22 UNE-P traffic.

⁸ While Level 3 and SBC Missouri have disputes in Sections 1.6 and 3.6 which address UNE traffic, that dispute is limited to the state of Connecticut. Elsewhere, Level 3 opposes SBC Missouri's Section 5.7 in its entirety.

1 In addition to providing contractual certainty for the treatment of UNE-P –
2 originated traffic, Section 5.7.3 clarifies the obligations of the parties with respect to third
3 party carriers that exchange traffic with Level 3. The elimination of Section 5.7 from
4 Appendix Intercarrier Compensation would leave a potentially significant amount of
5 traffic without terms and conditions governing intercarrier compensation.

6 **IC Issue 16:** **How should Metropolitan Calling Area Traffic be**
7 **compensated in the state of Missouri?**
8

9 **Q. IS THERE DISAGREEMENT OVER THE TREATMENT OF METROPOLITAN**
10 **CALLING AREA (“MCA”) TRAFFIC? (INTERCARRIER COMPENSATION**
11 **ISSUE 16)**

12 A. No. According to the proposed contract language in Section 9 of Appendix Intercarrier
13 Compensation, the parties agree that MCA traffic should be subject to Bill and Keep
14 pursuant to Case Nos. TO-92-306 and TO-99-483. The dispute surrounds the
15 characterization of the MCA traffic. Level 3 proposes the inclusion of its vague term
16 “Circuit Switched Traffic.” As discussed in Intercarrier Compensation Issue 2 by SBC
17 Witness Jeannie Harris, this term should be rejected.

18 **IC Issue 14:** ***Should This Agreement Specifically Provide That***
19 ***Reciprocal Compensation Does Not Apply To Interstate***
20 ***Or Intrastate Exchange Access Traffic, Information***
21 ***Access Traffic, Exchange Services For Access, Or Any***
22 ***Other Type Of Traffic Found By The FCC Or The***
23 ***Commission To Be Exempt From Reciprocal***
24 ***Compensation?***
25

26 **Q. SHOULD RECIPROCAL COMPENSATION ARRANGEMENTS APPLY TO**
27 **ANY OTHER TYPE OF TRAFFIC FOUND TO BE EXEMPT BY THE FCC OR**
28 **THIS COMMISSION? (INTERCARRIER COMPENSATION ISSUE 14)**

29 A. No, they should not apply to any other type of traffic found to be exempt by either the
30 FCC or this Commission, subject to any change of law provisions contained within the
31 contract.

1 **Q. WHAT IS THE APPROPRIATE FORM OF INTER-CARRIER**
2 **COMPENSATION FOR INTERLATA INTEREXCHANGE TRAFFIC?**

3 A. As with intraLATA toll traffic, intercarrier interLATA interexchange traffic is subject to
4 the rates contained within each carrier's respective federal and state access tariffs. SBC
5 Missouri witness Sandra Douglas will further discuss the appropriate treatment of
6 interLATA interexchange traffic, and the necessity for specific network provisions for the
7 handling of that traffic in her testimony.

8 **IV.**
9 **FOREIGN EXCHANGE TRAFFIC**

10
11 *IC Issue 11a: What Is The Appropriate Form Of Intercarrier*
12 *Compensation For FX And FX-Like Traffic Including*
13 *ISP FX Traffic?*
14

15 **Q. WHAT IS AT ISSUE?**

16 A. The parties disagree as to how Foreign Exchange ("FX") traffic should be compensated
17 under this ICA.

18 **Q. WHAT IS FX TRAFFIC?**

19 A. FX is the industry term for calls that originate in one local exchange and terminate to an
20 NPA-NXX that is assigned to the same local calling area as the originating caller, but
21 where the called party is physically located in a different local calling area. An FX call
22 therefore travels to an exchange that is not local, called "foreign," to the originating
23 exchange. The key is that FX traffic is dialed by the originating caller as a local
24 telephone number, and thus the dialing end user does not incur any toll charges for
25 placing the call.

26 **Q. HOW DOES SBC MISSOURI PROVIDE FX SERVICE?**

27 A. SBC Missouri offers FX service by retail tariff, basically charging the recipient of the FX
28 call a discounted, flat and usage sensitive combination rate for the toll charges that would
29 have applied if the call had been placed as an ordinary toll call. SBC Missouri provisions

1 its FX service via a dedicated circuit from the end office where the customer's NPA-
2 NXX is assigned (e.g. the St. Louis exchange), to the end user's premises (e.g. the Fenton
3 exchange), which is outside the service area of the end office to which the NPA-NXX is
4 assigned. Therefore, when another party calls that end user's telephone number (e.g. a
5 St. Louis telephone number), the call is routed to the proper resident end office switch
6 (e.g. in Fenton), and from there the call is diverted over the dedicated circuit to the end
7 user's remote location (e.g. in Fenton).

8 **Q. HOW DO CLECS PROVIDE FX SERVICE?**

9 A. CLECs could establish competing FX service in the same manner as SBC Missouri, by
10 building dedicated circuits to deliver dial tone outside the local calling scope. Instead,
11 however, CLECs typically create an "FX-type" arrangement by reassigning the
12 telephone number to a switch that is different than the "home" central office switch where
13 that NPA-NXX is assigned as a local number. The assignment of NPA-NXX codes is
14 governed by the North American Numbering Code Administrator.⁹ The CLEC tells the
15 Code Administrator where it wishes to obtain numbers, and the Code Administrator goes
16 to its database of available numbers for that location and makes the appropriate NPA-
17 NXX assignment. To provide FX service, the CLEC takes the assigned NPA-NXX code
18 and deploys it in a switch miles away from the geographic location to which it applies.
19 Level 3 seeks to have calls rated and compensated as local if they are dialed as local,
20 regardless of whether the end user is physically located within the same mandatory local
21 exchange.

⁹ The North American Numbering Code Administrator is currently NeuStar Technologies, working under a governmental grant of authority from the North American Numbering Council, comprised of the U.S., Canadian, Caribbean and Mexican telecommunications regulatory agencies.

1 **Q. WHAT ARE THE IMPLICATIONS OF THE CLECS' "FX-LIKE" SERVICE**
2 **FOR RECIPROCAL COMPENSATION?**

3 A. The end result of the CLECs' FX-type service and SBC Missouri's dedicated circuit FX
4 service is the same: it allows an end user customer to be assigned a telephone number
5 and to receive calls as if he or she was located in a given exchange, regardless of the
6 physical location of that customer. The obvious result is that dialing end users are more
7 likely to call a local telephone number than a toll number. In this manner, a CLEC could
8 – if reciprocal compensation applied to such calls – use FX-like service to generate
9 artificially high intercarrier reciprocal compensation revenues from the originating
10 network (SBC Missouri's) without having to charge the CLEC subscriber for the benefits
11 of the FX-like service. This creates precisely the type of arbitrage and imbalanced
12 competition that the FCC and some state commissions, including this one, have sought to
13 avoid in the regulations surrounding intercarrier compensation.

14 **Q. IS SBC MISSOURI ATTEMPTING TO DICTATE LEVEL 3'S LOCAL**
15 **CALLING AREAS?**

16 A. No. Each local exchange carrier has the ability to define its own local calling areas for
17 purposes of its retail calling plans, and SBC Missouri's proposed contract language so
18 provides. SBC Missouri does not dispute Level 3's right to assign NPA-NXX codes
19 associated with one local calling area to subscribers that physically reside in another local
20 calling area. Thus, SBC Missouri's concern is not the assignment of such numbers or the
21 service provided by Level 3 to its customers. Rather, it is the appropriate intercarrier
22 compensation associated with the delivery of calls to those customers. Calls that appear
23 to be local because of the NXX assigned, but that are terminating to customers physically
24 located outside of the originating party's local calling area should not be classified as
25 local calls subject to local reciprocal compensation.

1 **Q. DOES SBC MISSOURI'S PROPOSED BILL AND KEEP REGIME FOR FX AND**
2 **FX-LIKE SERVICES EXTEND TO ISP-BOUND FX TRAFFIC?**

3 A. Yes. Bill and keep is clearly the appropriate mechanism for both voice and ISP-bound
4 FX traffic.

5 **V.**
6 **TRANSIT SERVICE**

7
8 **IC Issue 11e:** *Should Non-Section 251/252 Services Such As Transit*
9 *Services Be Arbitrated In This Section 251/252*
10 *Proceeding?*

11
12 **OET Issue 10:** *Should The OET Appendix Include Terms Detailing The*
13 *Compensation Due Each Other For Exchanging Transit*
14 *Traffic?*

15
16 **NIM Issue 5e:** *Should a non-251/252 service such as Transit Service be*
17 *negotiated separately?*

18
19 **Q. PLEASE DESCRIBE TRANSIT TRAFFIC.**

20 A. Transit traffic originates on the network of a third-party carrier, is handed off by that
21 carrier to SBC Missouri, and then is handed off by SBC Missouri to another carrier for
22 termination on that carrier's network.

23 SBC Missouri charges the originating carrier a fee to transit the traffic, and the
24 terminating carrier is entitled to charge the originating carrier for services it provides in
25 completing the call. Most transit traffic carries with it calling party originating
26 information that includes the originating company's identity as part of the call setup
27 information. Thus, SBC Missouri receives the identifying information from the
28 originating carrier and passes that information along to the terminating CLEC when it
29 hands the call off to that CLEC. Based on the originating telephone number and other
30 information, the terminating CLEC can identify the originating carrier and can charge the
31 originating carrier the appropriate reciprocal compensation. In these instances, SBC

1 Missouri merely serves as an intermediate provider of facilities over which traffic is
2 transported; SBC Missouri neither originates nor terminates the traffic.

3 Level 3 has attempted to insert terms and conditions addressing the treatment of
4 transit traffic in both Appendix Intercarrier Compensation and Appendix OET. Transit
5 traffic, however, is not within the scope of the obligations the Act imposes on SBC
6 Missouri, and therefore is not subject to inclusion within this ICA. Although SBC does
7 not agree that transit service is appropriate for inclusion in an ICA, it does offer transit
8 service to CLECs via a separate commercial agreement.

9 **Q. SHOULD TRANSIT TRAFFIC BE INCLUDED UNDER THE SCOPE OF**
10 **§ 251(b)(5) TRAFFIC? (INTERCARRIER COMPENSATION ISSUE 11E; OET**
11 **ISSUE 10)**

12 A. No, transit traffic is not within the scope of Section 251(b)(5). Not only does Level 3
13 attempt to include transit traffic within the definition of Section 251(b)(5), it also
14 inappropriately attempts to shift the responsibility for paying reciprocal compensation
15 from the originating carrier to the transiting provider. There is nothing in the Act that
16 requires SBC Missouri to provide transiting services. Under the plain terms of the Act,
17 SBC Missouri is only obligated to provide direct or indirect interconnection with its
18 network.¹⁰ Direct interconnection is straightforward: the parties physically connect their
19 networks for the mutual exchange of traffic. The duty to provide indirect interconnection
20 relates to the obligation to terminate traffic on SBC Missouri's network provided
21 indirectly from another carrier. That is, a third party intermediary transports traffic so
22 that SBC Missouri's and the originating carrier's networks are not directly, physically
23 linked, but are connected indirectly. In all events, direct and indirect interconnection

¹⁰ See 47 U.S.C. §251(c)(2).

1 under the Act involves the mutual exchange of traffic with SBC Missouri's network (*i.e.*,
2 traffic must originate or terminate on SBC Missouri's network).

3 Level 3's transiting service issues implicate neither of these forms of
4 interconnection. Instead, transiting service relates solely to Level 3's efforts to compel
5 SBC Missouri to serve as an intermediary by transporting traffic between Level 3 and
6 third party CLECs. Importantly, however, this transiting service does not constitute
7 interconnection with SBC Missouri. Transiting service, which is nothing more than
8 transporting traffic, does not involve "interconnection" with SBC Missouri's network,
9 and SBC Missouri is not required to provide – or negotiate – such service.¹¹ Transiting
10 service lies beyond the duties set forth in Section 251 and is beyond this Commission's
11 compulsory arbitration jurisdiction.

12 **Q. WILL SBC MISSOURI CONTINUE TO OFFER TRANSIT SERVICES TO**
13 **CARRIERS THAT REQUEST IT?**

14 A. Yes, SBC Missouri will continue to offer a transit service for carriers that
15 would prefer to use SBC Missouri's network to reach third party carriers. However, the
16 terms of SBC Missouri transit service are contained in a separate commercial agreement
17 outside the scope of Section 251/252. The Transit Traffic Service Agreement is an
18 offering made by SBC Missouri for CLECs to negotiate if they desire. Like other non-
19 Section 251 offerings, transit traffic services are simply not properly a part of the Section
20 251/252 negotiation and arbitration process; rather it is an optional service that SBC
21 negotiates separately with carriers.

¹¹ See 47 U.S.C. § 251(b), (c).

1 **Q. IF THIS COMMISSION DETERMINES THAT TRANSIT TRAFFIC TERMS**
2 **SHOULD BE INCLUDED IN THE ICA, DOES SBC MISSOURI ADVOCATE**
3 **CERTAIN PARAMETERS FOR THE USE OF ITS NETWORK FOR TRANSIT**
4 **PURPOSES?**

5 A. Yes, all parties need to abide by certain terms and conditions to ensure the proper routing
6 and billing of Transit Traffic. In the event this Commission rules that transit provisions
7 must be included under the ICA at issue here, then SBC Missouri has proposed contract
8 language to provide clarity and certainty as to each party's responsibilities. That
9 language would be contained within Appendix Intercarrier Compensation of the ICA.

10 **Q. WHAT PRICE DOES SBC MISSOURI PROPOSE FOR TRANSITING IF THE**
11 **COMMISSION DOES REQUIRE THE PARTIES TO INCLUDE IT IN THE ICA?**

12 A. Although SBC Missouri is not required to do so (because transiting service is neither a
13 UNE nor part of section 251(c)(2) interconnection), SBC Missouri will offer transiting at
14 the same rate as in current ICAs, for the first 13 million minutes of use per month. After
15 this threshold is met – which is a very high threshold that Level 3 has never come close to
16 approaching – SBC Missouri proposes a modest increase in the price of transiting. This
17 threshold serves two important purposes. *First*, it provides an incentive for Level 3 to
18 establish direct connections with other carriers when traffic levels are high. *Second*, if
19 Level 3 does not establish direct connections, the increased prices would help
20 compensate SBC Missouri for the high cost of additional tandems that would be required
21 to transit large volumes of traffic. An additional tandem can cost \$15,000,000 or more,
22 and can take up to 3 years to install.

23 **VI.**
24 **FCC ISP COMPENSATION PLAN**
25

26 *IC Issue 13a:*

27 *Should This Intercarrier Compensation Appendix*
28 *Include SBC's Proposed Terms And Conditions*
29 *Concerning Application Of The FCC's ISP*
Compensation Plan?

1 **Q. IS IT APPROPRIATE TO INCLUDE CONTRACT LANGUAGE FOR THE**
2 **TREATMENT OF SECTION 251(B)(5) AND ISP-BOUND TRAFFIC**
3 **CONSISTENT WITH THE FCC *ISP REMAND ORDER* WITHIN THIS**
4 **SUCCESSOR AGREEMENT? (INTERCARRIER COMPENSATION ISSUE 13A)**

5 A. Yes. In accordance with the *ISP Remand Order*, SBC Missouri offers two different
6 compensation options for the termination of Section 251(b)(5) traffic and ISP-bound
7 traffic. The two options are: 1) the CLEC can elect the Commission-approved reciprocal
8 compensation rate for Section 251(b)(5) traffic, and the *ISP Compensation Plan* rate of
9 \$0.0007 per MOU for ISP-bound Traffic; or 2) the CLEC may elect to exchange all
10 Section 251(b)(5) and ISP-bound traffic at the same *ISP Compensation Plan* rate of
11 \$0.0007 per MOU. Under the *ISP Remand Order*, an ILEC like SBC Missouri can utilize
12 the new rate caps for ISP-bound Traffic if the ILEC offers to exchange *all* Section
13 251(b)(5) traffic at that same lower rate – now \$0.0007 per MOU. The FCC established
14 the first option so that CLECs could elect to be paid at the state Commission-approved
15 rate for Section 251(b)(5) traffic and the lower *ISP Compensation Plan* rate for ISP-
16 bound traffic. The FCC established the second option so that certain carriers that
17 terminate more traffic to the ILEC, including CMRS providers, would be able to benefit
18 from lower reciprocal compensation payments:

19 It would be unwise as a policy matter, and patently unfair, to allow
20 incumbent LECs to benefit from reduced intercarrier compensation rates
21 for ISP-bound traffic, with respect to which they are net payors, while
22 permitting them to exchange traffic at state reciprocal compensation rates,
23 which are much higher than the caps we adopt here, when the traffic
24 imbalance is reversed. Because we are concerned about the superior
25 bargaining power of incumbent LECs, we will not allow them to “pick and
26 choose” intercarrier compensation regimes, depending on the nature of the
27 traffic exchanged with another carrier. The rate caps for ISP-bound traffic

1 that we adopt here apply, therefore, *only* if an incumbent LEC offers to
2 exchange all traffic subject to section 251(b)(5) at the same rate.¹²

3 Since SBC Missouri has offered, under the second option, to exchange all Section
4 251(b)(5) traffic and ISP-bound traffic at the *ISP Compensation Plan* rate in Missouri
5 effective June 1, 2004, the ICA must include language allowing for the possibility that a
6 CLEC may want to accept that offer. Additionally, some CLECs may *not* want to
7 exchange their Section 251(b)(5) traffic at the *ISP Compensation Plan* rate, which is
8 lower than the current Commission-approved reciprocal compensation rates. Therefore,
9 that first option is also made available. Regardless of which rate a CLEC chooses for
10 compensation of Section 251(b)(5) traffic, the *ISP Compensation Plan* rate of \$.0007
11 properly applies to all ISP-bound traffic.¹³

12 It appears that Level 3 is electing to exchange traffic under the *ISP Compensation*
13 *Plan* for all Section 251(b)(5) and ISP-bound Traffic at the ISP rate of \$0.0007 per MOU.
14 My testimony reflects this understanding; however, if Level 3 has not yet truly indicated
15 its intent with this regard, I reserve the right to readdress this subject.

¹² *ISP Remand Order* ¶ 89 (footnotes omitted).

¹³ There is an exception to the payment of \$0.0007 per MOU on ISP-bound traffic. If a call to an ISP is a "1+" long distance call, switched access rates apply.

1 **Q. HAS SBC MISSOURI INVOKED THE FCC ISP COMPENSATION PLAN?**

2 A. Yes. And since SBC Missouri has invoked the *ISP Compensation Plan* pursuant to the
3 *ISP Remand Order*, ISP-bound traffic is subject to the terms and conditions of that order
4 and therefore, rates, terms and conditions relative to the Plan should be included in this
5 ICA so as to minimize the potential for disputes in implementation of the *ISP*
6 *Compensation Plan*. Since SBC Missouri has invoked the *ISP Compensation Plan* in
7 Missouri, ISP-bound traffic is no longer subject to intercarrier compensation at the state
8 approved rates for reciprocal compensation. ISP-bound traffic is compensated in
9 accordance with the *ISP Compensation Plan*.

10 Level 3 appears to agree that the *ISP Compensation Plan* rates and terms apply to
11 ISP-bound traffic but proposes deleting SBC Missouri's proposed language.¹⁴ Since
12 Level 3 chose to negotiate from the "All Traffic" Appendix, Section 251(b)(5) Traffic
13 and ISP-bound traffic will be compensated at the FCC's rate of \$.0007 per MOU.

14 *IC Issue 21c: For Billing Purposes, Should ISP-Bound Traffic Be*
15 *Calculated Using The 3:1 Presumption?*

16
17 **Q. THE FCC HAS PROVIDED FOR A PROXY FACTOR TO DETERMINE WHAT**
18 **TRAFFIC IS PRESUMED VOICE AND WHAT TRAFFIC IS PRESUMED ISP**
19 **BY THE USE OF A 3:1 TERMINATING-TO-ORIGINATING RATIO. SHOULD**
20 **TERMS REFLECTING THE PROXY FACTOR BE INCLUDED IN THE**
21 **AGREEMENT? (INTERCARRIER COMPENSATION ISSUE 21C)**

22 A. Yes. In order to maintain contractual clarity and certainty, all terms and conditions
23 pertaining to the *ISP Compensation Plan* should be included in the ICA.

24 **Q. SHOULD ALL TRAFFIC ABOVE THE 3:1 RATIO AUTOMATICALLY BE**
25 **PRESUMED TO BE ISP-BOUND TRAFFIC?**

¹⁴ Level 3, in Section 15.2, provides a reference that the parties will agree to exchange ISP-Bound Traffic at rates set by the FCC, however Level 3's proposed language fails to outline the terms of the ISP Compensation Plan as SBC Missouri has proposed in its Section 6.

1 A. Yes. The FCC established the 3:1 terminating-to-originating ratio as a means to provide
2 a reasonable proxy for identifying ISP-bound Traffic versus Section 251(b)(5) (voice)
3 traffic:

4 We understand that some carriers are unable to identify ISP-bound traffic.
5 In order to limit disputes and avoid costly efforts to identify this traffic, we
6 adopt a rebuttable presumption that traffic delivered to a carrier, pursuant
7 to a particular contract, that exceeds a 3:1 ratio of terminating to
8 originating traffic is ISP-bound traffic that is subject to the compensation
9 mechanism set forth in this Order.¹⁵

10 While this proxy factor is a rebuttable presumption that either party may
11 challenge, it is to be used in the event neither party elects to provide data to support a
12 different ratio or amounts of ISP-bound Traffic-to-§ 251(b)(5) Traffic. The *ISP Remand*
13 *Order* instructs the application of compensation for the presumed ISP-bound Traffic that
14 falls above that 3:1 ratio.

15 *IC Issue 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 The
Compensation Terms In Section 6.3?*

22 **Q. WHAT ARE THE APPROPRIATE TERMS AND CONDITIONS FOR**
23 **REBUTTING THE PRESUMPTION IN ACCORDANCE WITH THE FCC’S ISP**
24 **COMPENSATION PLAN? (INTERCARRIER COMPENSATION ISSUE 13D)**

25 A. In paragraph 79 of the *ISP Compensation Order*, the FCC adopted a rebuttable
26 presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to
27 originating traffic is ISP-bound traffic that is “subject to the compensation mechanism of
28 [the] Order.” A carrier may rebut the presumption by demonstrating to a commission
29 that traffic above the 3:1 ratio is in fact local traffic (Section 251(b)(5) traffic) delivered

¹⁵ *ISP Remand Order*, ¶ 79.

to non-ISP customers. Specific provisions should be included within the ICA in order to preserve both parties' rights with respect to the ability to rebut the FCC presumption.

Q. WHENEVER A CARRIER ELECTS TO REBUT, AND SUCCESSFULLY REBUTS, THE 3:1 TERMINATING TO ORIGINATING PRESUMPTION, AND A DISPUTE ENSUES, WHAT DATE SHOULD THE PARTIES USE FOR PURPOSES OF TRUE-UP?

A. The parties should true up compensation payments effective as of the date that a party first sought appropriate relief from a commission. The FCC's *ISP Remand Order* clearly provides for true-up back to the date a party seeks relief, provided the party continues to pay on the disputed amounts during the pendency of the proceeding.¹⁶ By including these specific terms in the contract, the parties are ensured certainty as to how to handle a dispute over any rebutted presumption of the ratio of Section 251(b)(5) traffic versus ISP-bound traffic. Furthermore, to leave the contract 'open' with respect to an effective true-up date creates unnecessary uncertainty in the ICA.

IC Issue 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?

Q. SHOULD THE PARTY THAT TERMINATES MORE BILLABLE TRAFFIC (THE "OUT OF BALANCE" CARRIER) BE RESPONSIBLE FOR CALCULATING THE TRAFFIC TO BE COMPENSATED UNDER THE ISP COMPENSATION PLAN? (INTERCARRIER COMPENSATION ISSUE 13E)

A. Yes. The party that terminates more billable traffic (the "out of balance" carrier) should be responsible for calculating the traffic to be compensated under the *ISP Compensation Plan*. Each party has the responsibility to accurately bill the other party for the termination of traffic on its respective network. SBC Missouri does not intend to shift

¹⁶ *ISP Remand Order* ¶ 79: "During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings."

1 undue burden upon others, but rather to memorialize each party's duty to prepare
2 accurate billing based upon the parameters of the ICA. However, if Level 3 terminates
3 more traffic from SBC Missouri than SBC Missouri terminates from Level 3, Level 3
4 should be obligated to render an accurate bill, complete with accurate calculations
5 utilizing the *ISP Compensation Plan*'s terms and conditions. This obligation includes
6 such calculations relating to the application of the 3:1 terminating-to-originating ratio; the
7 proper application of rates above and below that threshold; and the identification and
8 segregation of non-compensable traffic or traffic subject to bill and keep.

9 Under its proposal, SBC Missouri will have the same obligations as Level 3; SBC
10 Missouri still has its own recording and billing obligations to ensure that it renders
11 accurate bills to Level 3 as well. There is no shift in burden here – just an
12 acknowledgement of each party's responsibilities to use whatever means are necessary to
13 render accurate bills with regard to conforming to the *ISP Compensation Plan*.

14 **VII.**
15 **INTERCARRIER COMPENSATION BILLING**
16

17 ***IC Issue 7a:***

***When Should The Parties' Obligation To Pay Intercarrier
18 Compensation To Each Other Commence?***

1 **Q. WHEN SHOULD THE PARTIES BEGIN TO PAY EACH OTHER**
2 **COMPENSATION FOR INTERCARRIER TRAFFIC? (INTERCARRIER**
3 **COMPENSATION ISSUE 7A)**

4 A. The parties should begin paying each other compensation for intercarrier traffic on an
5 agreed-upon date. That date should be the day the parties agree the network is complete
6 and ready to handle traffic of all pertinent types. This includes traffic types other than
7 Section 251(b)(5) and ISP-bound traffic, such as 911 traffic and traffic routed over High
8 Volume Call-In (“Choke”) trunks for purposes of taking large volumes of calls for high-
9 volume bursts of traffic such as radio station contests. With regard to 911 provisioning,
10 the network is considered complete only after Level 3 furnishes confirmation that it has
11 911 agreements in place with Public Safety Answering Points (or after Level 3 secures a
12 911 waiver from SBC Missouri). Absent a waiver, SBC Missouri does not turn the
13 Interconnection trunks up for service until 911 confirmation is provided. Once
14 confirmation is received, SBC Missouri considers that the network is complete and a
15 CLEC is capable of originating and terminating traffic for end users, not simply test
16 traffic.

17 Even though intercarrier compensation arrangements may not apply on all
18 different traffic types, such as Information Services traffic, the network must be
19 considered “complete” by both parties prior to exchanging and compensating for “live”
20 traffic. Before passing live traffic, carriers often send test calls over various portions of
21 the network to ensure that the network is routing and completing calls in an appropriate
22 manner. SBC Missouri’s contract language clarifies that under no circumstances is this
23 test traffic – no matter the volume of it – to be subject to the intercarrier compensation
24 provisions in the contract.

1 **IC Issue 7b:** *When Should The Parties' Obligation To Pay Access*
2 *Charges Commence?*
3

4 **Q. DO THE SAME PROVISIONS APPLY FOR THE COMMENCEMENT OF**
5 **PAYMENT FOR ACCESS TRAFFIC? (INTERCARRIER COMPENSATION**
6 **ISSUE 7B)**

7 A. No. As with other provisions governing the treatment of access traffic, the parties'
8 respective tariffs govern the terms and conditions for the commencement of intercarrier
9 compensation for this type of traffic.

10 **IC Issue 21b:** *Should SBC Provide Level 3 With Originating Carrier*
11 *Number On Calls That Level 3 Cannot Bill Through The*
12 *Use Of Terminating Records?*
13

14 **Q. SHOULD THE ORIGINATING PARTY BE RESPONSIBLE FOR PROVIDING**
15 **ORIGINATING CARRIER NUMBER ("OCN") INFORMATION TO THE**
16 **TERMINATING PARTY FOR BILLING PURPOSES? (INTERCARRIER**
17 **COMPENSATION ISSUE 21B)**

18 A. No, because OCN is not the proper record from which carriers bill intercarrier traffic.
19 Calling Party Number ("CPN") is the proper call information that should be used to
20 assign traffic to the appropriate jurisdiction. OCN is not appropriate for that purpose,
21 because it is not part of the actual call transmission. For the purposes of billing
22 compensation to the appropriate party, facilities-based CLECs receive the appropriate
23 category of records for calls that terminate to end users served by a CLEC utilizing SBC
24 Missouri's Lawful ULS which will contain the OCN to aid them in billing the proper
25 party. In addition, the CLEC may utilize the Local Exchange Routing Guide ("LERG")
26 and the Local Number Portability ("LNP") database to help identify the appropriate party
27 to bill.

28 **IC Issue 8:** *Should The Duty To Provide CPN With The Call Flow Be*
29 *Imposed On All Traffic The Parties Exchange, Or Just*
30 *The Circuit Switched Traffic The Parties Exchange?*
31

32 **Q. SHOULD THE CONTRACT REFLECT THE PARTIES' OBLIGATION TO**
33 **PASS CPN ON ALL TRAFFIC? (INTERCARRIER COMPENSATION ISSUE 8)**

1 A. Yes. Standard telephone industry practice requires carriers to pass along the CPN for
2 calls originating on their network to the carriers that terminate the calls. Level 3's
3 proposed term in lieu of "CPN" is "Call Records." Level 3's term may or may not
4 include CPN, Automatic Numbering Information ("ANI") or information agreed upon by
5 the parties.

6 CPN is the standard call identification known and used throughout the industry
7 for the billing of intercarrier traffic. CPN information is critical for determining whether
8 calls are local, intraLATA, or interLATA so that appropriate charges can be applied. If
9 the originating carrier does not provide CPN, the terminating carrier should have the
10 option to bill the associated calls at its intrastate switched exchange access service rate.
11 This provision protects against the possibility that an unscrupulous CLEC would
12 fraudulently override call identification or delete CPN so that it can slip interLATA
13 traffic in with local traffic.

14 **Q. SHOULD CPN INFORMATION BE PASSED ON ALL TYPES OF TRAFFIC?**

15 A. Yes. While I do not discuss issues surrounding IP telephony in this case, the current
16 standard is that CPN information should be passed on all intercarrier traffic. Level 3
17 seeks to exclude calls originated in the Internet Protocol format, yet there is an
18 underlying telephone number associated with the end user that originates IP calls. SBC
19 Missouri simply seeks to obtain that underlying telephone number to appropriately rate
20 and bill for the call.

21 **VIII.**
22 **RATES**

23
24 *IC Issue 10d:*

*Should SBC's Proposed Language Regarding Tandem
Serving Rate Elements And End Office Serving Rate
Elements Be Incorporated Into This Appendix?*

1 **Q. WHAT IS ISSUE 10D ABOUT?**

2 A. Issue 10D concerns the proper inclusion of clarifying contract language. While Level 3
3 proposes one rate for its supposed “Total Reciprocal Compensation Traffic,” SBC
4 Missouri proposes that the contract include language which specifically addresses the
5 various types of traffic I have previously described. Further, there are four rate elements
6 for the payment of reciprocal compensation, the End Office switching rate element, the
7 Tandem Switching rate element, the Tandem Transport Termination rate element, and the
8 Tandem Transport (mileage) rate element. SBC Missouri spells out the application of
9 these rate elements for each traffic type in its proposed Section 5 of Appendix Intercarrier
10 Compensation.

11 **Q. WHY DOES LEVEL 3 OPPOSE THE USE OF THESE RATE ELEMENTS?**

12 A. Level 3 appears to propose that the parties continue to apply a compensation mechanism
13 which was previously agreed-upon under the existing ICA via an “*Amendment to Level 3*
14 *Contracts Superseding Certain Compensation, Interconnection and Trunking*
15 *Provisions.*” In that Amendment, SBC Missouri and Level 3 agreed to various aspects of
16 network architecture and compensation. During the course of that Amendment,
17 compensation for various types of traffic was under one single rate, which Level 3
18 appears to be proposing in this proceeding. However, both SBC Missouri and Level 3
19 entered into the 13-state Amendment voluntarily, during a time when there was less
20 certainty as to the treatment of ISP-bound traffic, FX traffic, and even Points of
21 Interconnection requirements. The Amendment had “gives and takes” for both parties.
22 With the above rate proposal, Level 3 is attempting to parse one single aspect of the
23 former ICA’s Amendment without reflecting *all* aspects of that amendment.

1 Now that there is more certainty in the marketplace with regard to
2 interconnection, different contract terms are better suited to the current environment.
3 Due to more recent rulings addressing ISP Traffic, FX traffic, as well as the FCC's
4 pending release of its Notice of Proposed Rulemaking ("NPRM") with regard to
5 intercarrier compensation, the parties' new ICA should adhere to the current industry
6 practice and rules, as proposed by SBC Missouri, until such time as subsequent changes
7 are issued by the release of the NPRM.

8 *IC Issue 10c: Should The Commission Adopt SBC's Bifurcated Rate*
9 *Structure For The Exchange Of What SBC Missouri*
10 *Defines As "Section 251(b)(5) Traffic?"*
11

12 **Q. WHAT IS A "BIFURCATED RATE?"**

13 A. While I am not a cost expert, the principles behind the bifurcated rate structure are
14 simple. A non-bifurcated end office reciprocal compensation rate contains rate
15 components that account for different costs associated with the use of that switch to
16 terminate calls. There are two different functions performed by an end office switch –
17 the initial set-up of the call, and the switch port remaining "open" during that call. Both
18 of these functions incur costs, and the end office rate is intended to recover those costs.
19 When reciprocal compensation rates were first promulgated, an assumption was made as
20 to the average length of a call in order to associate the "duration" portion of a typical call
21 with the "set up" portion of the call. These two costs were blended into one rate.

22 A bifurcated rate allows each of these portions of the call to be individually
23 tracked and charged as they are actually incurred. The assumption that a non-bifurcated
24 rate uses for the length of a call is inexact. The original rate only assumed a short call
25 (typically 3-4 minutes), and that "set up" charge was built-in to the rate over 3 minutes.
26 But as noted above, the characteristics of telephone calls have evolved dramatically over

1 the past several years. While, as of 2000, a typical voice call averaged approximately 3
2 minutes, ISP traffic is much longer, averaging 29 minutes in length. The reciprocal
3 compensation paid for longer calls of a longer duration was well above the cost incurred,
4 since the one-time set up cost was paid for many times over. This bifurcated rate
5 structure, while initially intended to more accurately account for the costs associated with
6 ISP-bound Traffic, continues to be the most accurate measurement for determining costs
7 incurred by each parties' end office call termination functions. Since bifurcated rates are
8 more accurate, SBC Missouri proposes that the Commission use them for purposes of
9 applying reciprocal compensation to Section 251(b)(5) traffic.

10 *IC Issue 20b:*

*Should Level 3 Be Permitted To Charge An Access Rate
Higher Than The Incumbent?*

11
12
13 **Q. SHOULD LEVEL 3 BE ABLE TO CHARGE AN ACCESS RATE FOR**
14 **INTRALATA TOLL CALLS THAT IS HIGHER THAN THE INCUMBENT?**
15 **(INTERCARRIER COMPENSATION ISSUE 20B)**
16

17 A. No. As the Commission is aware, in its Order Granting Certificate to Provide Basic
18 Local Telecommunications Service,¹⁷ the Missouri Public Service Commission granted
19 Level 3 a certificate to provide basic local telecommunications service. As a condition of
20 certification and competitive classification, Level 3 agreed that, unless otherwise ordered
21 by the Commission, Level 3's originating and terminating access rates would be no
22 greater than the lowest Commission approved corresponding access rates in effect at the
23 date of certification for the large ILEC(s) within whose service areas Level 3 sought to
24 provide service. Subsequently, in its Report and Order, the Commission concluded that
25 the public interest would be best served by capping CLEC exchange access rates at the

¹⁷ In the Matter of the Application of Level 3 Communications, L.L.C. for a Certificate of Service Authority to Provide Basic Local Exchange Telecommunications Services in the State of Missouri and for Competitive Classification, Case No. TA-99-171, February 2, 1999.

1 level of the access rates of the directly competing ILEC.¹⁸ The Commission adopted this
2 as an interim solution and established a separate case in which to examine all of the
3 issues affecting exchange service and to establish a long-term solution which would
4 result in just and reasonable rates for exchange access service. Finally, in a subsequent
5 Report and Order, the Commission made this interim cap permanent.¹⁹

6 Level 3 agreed in its Section 14.1 to charge for termination of intraLATA toll
7 calls in accordance with each party's access tariffs, as opposed to reciprocal
8 compensation. SBC Missouri proposes additional language that would prevent Level 3
9 from charging SBC Missouri intercarrier intraLATA toll rates greater than the rates SBC
10 Missouri charges Level 3. This proposal is consistent with Case Nos. TO-99-596 and
11 TR-2001-65. Level 3 objects to SBC Missouri's proposed language and contends that
12 each carrier's tariff should apply, even if the switched access rates are asymmetrical.
13 Level 3's proposal is contrary to established Commission precedent and should be
14 rejected.

15 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

16 A. The Commission should adopt SBC Missouri's proposed language in Section 14.1 of
17 Appendix Intercarrier Compensation, which caps Level 3's access rates at SBC
18 Missouri's level, consistent with Case Nos. TO-99-596 and TR-2001-65.

19 ***IC Issue 20c:***

***Is Level 3 Eligible To Charge A Tandem Interconnection
Rate For IntraLata Toll Traffic?***

¹⁸ In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri, Case No. TO-99-596, June 1, 2000, page 24.

¹⁹ In the Matter of an Investigation of the Actual Costs Incurred in Providing Exchange Access Service and the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri, Case No. TR-2001-65, August 26, 2003, page 20.

1 **Q. IS LEVEL 3 ELIGIBLE TO CHARGE A TANDEM INTERCONNECTION RATE**
2 **FOR INTRALATA TOLL TRAFFIC? (INTERCARRIER COMPENSATION**
3 **ISSUE 20C)**

4 A. No, Level 3 is not eligible to charge a tandem switching rate per se for intraLATA traffic.
5 The rate that Level 3 charges for intraLATA traffic is governed by Level 3's applicable
6 switched access tariff. With the exception of the above recommended limitation on the
7 rate levels charged to SBC Missouri, Level 3 can charge the applicable elements as
8 allowed by their tariff.

9 **IX.**
10 **APPENDIX GT&C DEFINITIONS**
11

12 *GT&C Definitions Issue 7: Should The Definition Of Internet Service Provider*
13 *Include Reference To Paragraph 341 Of The FCC's First*
14 *Report And Order In Docket No. 97-158?*
15

16 **Q. SHOULD THE DEFINITION OF "INTERNET SERVICE PROVIDER" ("ISP")**
17 **INCLUDE REFERENCE TO THE FCC'S FIRST REPORT AND ORDER IN CC**
18 **DOCKET 97-158? (GT&C DEFINITIONS ISSUE 7)**

19 A. Absolutely. ISP is a fairly common term in today's society, and it may mean slightly
20 different things to different people. In order to ensure that the term is properly used
21 within the context of this ICA, the definition must include reference to the FCC's
22 understanding and definition of the phrase. The FCC's understanding and intent are
23 made clear in paragraph 341 of the *First Report and Order* in CC Docket 97-158. The
24 FCC has not changed its definition or meaning of the term ISP since this Order was
25 issued, and as such, it remains the appropriate reference for defining this term.

26 *GT&C Definitions Issue 16: Should The Definition Of "Out Of Exchange LEC"*
27 *Include A Reference To A Successor-In-Interest To SBC?*
28

29 **Q. SHOULD THE DEFINITION FOR "OUT OF EXCHANGE LEC" ("OE-LEC")**
30 **INCLUDE A REFERENCE TO SUCCESSORS-IN-INTEREST? (GT&C**
31 **DEFINITIONS ISSUE 16)**

1 A. No. It should not. Although Level 3 offered no testimony supporting the inclusion of a
2 reference to "successor-in-interest," its statement in the DPL for GT&C Definition, seems
3 to reflect a concern with what would happen if SBC Missouri sells off part of its
4 incumbent service area. Under Level 3's language, if SBC Missouri sold off part of its
5 ILEC service territory (e.g., it sold the St. Louis exchange to Sprint), SBC Missouri's
6 incumbent service area would continue to be defined to include the St. Louis service area.
7 This is nonsensical. The OET Appendix is intended to apply when Level 3 is not
8 operating within SBC Missouri's ILEC territories but is exchanging traffic with SBC
9 Missouri. Yet, if SBC Missouri is no longer the ILEC in St. Louis, it should not have
10 obligations as an ILEC for that area.

11 ***GT&C Definitions Issue 15:*** ***Should "Network Inter-Connection Methods" Be Limited***
12 ***To The Specific Methods Set Forth In The Parties'***
13 ***Agreement And Those Mutually Agreed To By The***
14 ***Parties, Or Should The Definition Include Other Methods***
15 ***Recognized By Applicable Law, As Defined?***
16

17 ***NIM Issue 7:*** ***Should The Agreement, In Addition To Allowing Level 3***
18 ***To Interconnect Pursuant To The Physical Collocation***
19 ***Appendix And To The Applicable State Tariff, Also Allow***
20 ***Level 3 To Interconnect Pursuant To Unspecified***
21 ***Applicable Law?***
22

23 **Q. PLEASE DESCRIBE THESE ISSUES.**

24 A. In both of the above issues, Level 3 seeks to insert a vague qualifier ("or applicable law")
25 to effect possible future changes upon either the definition of "Network Interconnection
26 Methods" ("NIM") (*GT&C Definitions Issue 16*), or upon terms contained within
27 Appendix NIM which address the application of Appendix Physical Collocation under
28 the terms of Appendix NIM.

29 The Commission should reject Level 3's proposed language. The purpose of the
30 parties' interconnection agreement is to set forth as precisely as possible the parties'

rights and obligations with respect to the matters that are subject to section 251 of the 1996 Act. To the extent that there is any pertinent “applicable law” that would allow Level 3 to interconnect by some method other than those specifically identified in Appendix NIM, Level 3 should have brought that law to the Commission’s attention and should have advocated its express inclusion in the Agreement. And to the extent that Level 3 is concerned that some “applicable law” that needs to be taken into account may come into existence in the future, that concern is already addressed by the intervening law provision in Section 21 of the General Terms and Conditions portion of the Agreement, which will allow Level 3 to incorporate that specific applicable law into the Agreement.

X.
MISCELLANEOUS ISSUES

IC Issue 9a:

Should The Dispute Resolution Process For ISP-Bound Traffic Be The Same As Dispute Resolution Process For Section “251(b)(5) Traffic”?

IC 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?

1 **Q. SHOULD THE ICA SPECIFY THAT DISPUTES RELATED TO**
2 **JURISDICTIONAL NATURE OF TRAFFIC ARE SUBJECT TO THE DISPUTE**
3 **RESOLUTION PROCESS CONTAINED IN THIS AGREEMENT?**
4 **(INTERCARRIER COMPENSATION ISSUE 9B)**

5 A. No. The dispute may involve traffic outside the scope of this ICA, and should be
6 resolved in accordance with applicable tariffs for such traffic. If a dispute arises
7 concerning the jurisdictional nature of traffic and Level 3 wants to contend at that time
8 that the dispute falls within the dispute resolution provision of the ICA, Level 3 may do
9 so. The determination whether the dispute does or does not fall within that provision can
10 be decided then (and may never have to be decided, because the issue may never arise).
11 It makes no sense for the Commission to undertake to determine now whether such a
12 hypothetical dispute does or does not fit within the dispute resolution provisions of this
13 ICA. Accordingly, Level 3's proposed language should be rejected, so that the ICA
14 remains silent on this subject.

15 **Q. SHOULD DISPUTES OVER ISP-BOUND TRAFFIC BE INCLUDED IN THIS**
16 **AGREEMENT, EVEN THOUGH ISP-BOUND TRAFFIC IS NOT WITHIN THE**
17 **DEFINITION OF SECTION 251 TRAFFIC? (INTERCARRIER**
18 **COMPENSATION ISSUE 9A)**

19 A. Yes, disputes arising from ISP-bound Traffic should be included under the dispute
20 resolution process for Section 251(b)(5) Traffic. Even though ISP-bound Traffic is
21 technically beyond the scope of Section 251/252, as I have described above, the FCC
22 determined how carriers should appropriately treat ISP-bound Traffic. The FCC's
23 determination currently incorporates the treatment of ISP-bound Traffic within the scope
24 of ICA, and as such, it should be treated the same as other traffic within the ICA
25 (Section 251(b)(5) traffic). For this reason, SBC Missouri's proposed language in
26 Section 5.6 clearly delineates that Section 251(b)(5) Traffic and ISP-bound Traffic should
27 be treated similarly.

OET Issue 1:

Should The Applicability Of The OET Appendix Be Limited To Level 3's Operations Solely Outside Of SBC's 13-State Incumbent Local Exchange Areas?

Q. TO WHAT GEOGRAPHIC EXTENT SHOULD THIS ICA APPLY FOR PURPOSES OF EXCHANGING TRAFFIC?

A. The scope of an ICA is to establish specific rates, terms and conditions for the exchange of traffic within a specified geographic area. Section 251 of the Act governs how parties are to interconnect their networks for purposes of exchanging local (non long-distance) traffic. SBC Missouri's proposed language in this arbitration complies with Section 251.

Furthermore, Section 251 of the Act provides guidance as to the geographic scope over which ICAs will apply. Section 251(c) states that the service territory (where the contract will be applicable) is confined to the ILEC's operating territory.

§ 251(c)(2): INTERCONNECTION- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

These provisions provide for the interconnection of a carrier's network for the exchange of traffic with the ILEC within its own operating territory. The obligation does not go beyond the ILEC's territory.

Q. IS LEVEL 3 ATTEMPTING TO EXPAND THE SCOPE OF SBC MISSOURI'S INTERCONNECTION OBLIGATIONS UNDER SECTION 251(C)?

A. Yes. Level 3's proposed deletion of "incumbent local exchange areas" from Section 2.1 of Appendix OET implies that the language would obligate SBC Missouri to provide products and services, through the ICA, to territories that are beyond SBC Missouri's incumbent services areas.

1 **Q. DOES SBC MISSOURI OPERATE OUTSIDE OF ITS OWN INCUMBENT**
2 **SERVICE AREAS?**

3 A. Not as an ILEC. SBC Missouri would simply be another competitor within *another*
4 *ILEC's* incumbent territory.

5 **Q. HOW IS SBC MISSOURI OPERATING IN ANOTHER ILEC'S TERRITORY**
6 **ANY DIFFERENT THAN A CLEC OPERATING IN SBC MISSOURI'S**
7 **INCUMBENT TERRITORY?**

8 A. There is no difference. If SBC Missouri were to operate in areas outside its own
9 incumbent territories, it would simply be another CLEC, competing with the ILEC and
10 other CLECs for end user customers.

11 **Q. DOES LEVEL 3 PROPOSE THAT SBC MISSOURI CONTINUE TO PROVIDE**
12 **SERVICE OBLIGATIONS UNDER SECTION 251(C) IN THOSE REGIONS**
13 **WHERE SBC MISSOURI IS "JUST ANOTHER CLEC" COMPETING WITH**
14 **ANOTHER ILEC?**

15 A. Yes. Level 3 wants SBC Missouri to continue to provide products and services as
16 provided in the Act in those regions outside of SBC Missouri's incumbent territory where
17 SBC Missouri is just another competitor. These products and services include UNEs,
18 collocation, and interconnection. This issue is discussed in greater detail in OET Issue 2,
19 addressed by SBC Missouri Witness Carol Chapman.

20 *IC Issue 22: Should The Agreement Include SBC's Proposed*
21 *Reservation Of Rights Concerning Intercarrier*
22 *Compensation On ISP-Bound Traffic And The FCC's*
23 *ISP Compensation Order?*
24

25 **Q. PLEASE PROVIDE BACKGROUND AS TO THE FCC'S NOTICE OF**
26 **PROPOSED RULEMAKING ("NPRM") ON INTERCARRIER**
27 **COMPENSATION. (INTERCARRIER COMPENSATION ISSUE 22)**

28 A. At the same time that the FCC issued its *ISP Remand Order*, it also issued an NPRM to
29 address intercarrier compensation on a more general basis. The FCC recognized that
30 current market distortions in the intercarrier compensation regime would not be

1 completely addressed within the *ISP Remand Order* regarding the treatment of ISP-
2 bound traffic:

3 We recognize that the existing intercarrier compensation mechanism for
4 the delivery of this traffic, in which the originating carrier pays the carrier
5 that serves the ISP, has created opportunities for regulatory arbitrage and
6 distorted the economic incentives related to competitive entry into the
7 local exchange and exchange access markets. As we discuss in the
8 *Unified Intercarrier Compensation NPRM*,²⁰ released in tandem with this
9 Order, such market distortions relate not only to ISP-bound traffic, but
10 may result from any intercarrier compensation regime that allows a service
11 provider to recover some of its costs from other carriers rather than from
12 its end-users. Thus, the *NPRM* initiates a proceeding to consider, among
13 other things, whether the Commission should replace existing intercarrier
14 compensation schemes with some form of what has come to be known as
15 “bill and keep.” The *NPRM* also considers modifications to existing
16 payment regimes, in which the calling party’s network pays the
17 terminating network, that might limit the potential for market distortion.²¹

18 In reality, then, the FCC’s *NPRM* is a continuation of its *ISP Remand Order*. It
19 will provide long-term guidance as to the treatment of intercarrier traffic in addition to
20 the interim remedies offered in the *ISP Remand Order*.

21 Because the record indicates a need for immediate action with respect to
22 ISP-bound traffic, however, in this Order we will implement an interim
23 recovery scheme that: (i) moves aggressively to eliminate arbitrage
24 opportunities presented by the existing recovery mechanism for ISP-bound
25 by lowering payments and capping growth; and (ii) initiates a 36-month
26 transition towards a complete bill and keep recovery mechanism while
27 retaining the ability to adopt an alternative mechanism based upon a more
28 extensive evaluation in the *NPRM* proceeding.²²

29 **Q. SHOULD THE SUCCESSOR AGREEMENT CONTAIN PROVISIONS**
30 **ACKNOWLEDGING THE FCC’S NPRM, INCLUDING LANGUAGE**
31 **ADDRESSING HOW TO IMPLEMENT ANY RESULTING CHANGES?**

²⁰ Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) (“*Unified Intercarrier Compensation NPRM*” or “*NPRM*”).

²¹ *ISP Remand Order*, ¶ 2. [footnote omitted]

²² *ISP Remand Order*, ¶ 7.

1 A. Yes. The FCC clearly acknowledged within the *ISP Remand Order* that the
2 compensation mechanism contained in the Order was meant to be interim, with more
3 direction to follow as a result of the *NPRM*. The FCC clearly intends to further review
4 and potentially revise intercarrier compensation. The parties should include contractual
5 terms to ensure a smooth transition to whatever changes the FCC orders. By
6 acknowledging that a change of law event is imminent upon release of the FCC's pending
7 intercarrier compensation order, parties to the ICA can continue to operate with
8 contractual certainty as to when and how that order will be implemented.

9 **Q. CAN SBC MISSOURI RELY UPON OTHER GENERAL CHANGE OF LAW**
10 **PROVISIONS CONTAINED WITHIN THE CONTRACT IN ORDER TO**
11 **IMPLEMENT ANY FCC CHANGES THAT RESULT FROM THE NPRM?**

12 A. Because the FCC specifically expressed its imminent intent to further review and revise
13 the intercarrier compensation regime, it is only reasonable to acknowledge that fact and
14 to provide for an efficient transition to whatever new compensation regime is ordered.

15 **XI.**
16 **CONCLUSION**
17

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

19 A. Yes.