BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE PETITION FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT BETWEEN **LEVEL 3 COMMUNICATIONS, LLC,** and **CENTURYTEL OF WASHINGTON, INC.,** PURSUANT TO 47 U.S.C. § 252	DOCKET NO. UT-023043

DIRECT TESTIMONY OF TIMOTHY J. GATES

ON BEHALF OF

LEVEL 3 COMMUNICATIONS, LLC

OCTOBER 18, 2002

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is Timothy J Gates. My business address is QSI Consulting, 917 W. Sage Sparrow Circle, Highlands Ranch, Colorado 80129.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulated industries, econometric analysis and computer aided modeling. I currently serve as Senior Vice President.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. I have taken additional post-graduate classes and I have attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MWCOM for 15 years in

various positions within the public policy group. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MWCOM's use of external consultants.

Prior to joining MWCOM, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. I also worked at the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst doing total electric use forecasts while I attended graduate school. Prior to doing my graduate work, I worked for ten years as a forester in the Pacific Northwest for multinational and government organizations. Exhibit TJG-2 to this testimony is a summary of my work experience and education.

Q. HAVE YOU EVER TESTIFIED BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION ("COMMISSION")?

A. Yes. I testified in Docket Nos. U-88-2052-P, UT-96-0338, UT-97-0325, and UT-003013 on behalf of MCI and WorldCom. Likewise, I have testified more than 200 times before other state commissions in 42 states and filed comments with the FCC on various public policy issues ranging from costing, pricing, local entry and universal service to strategic planning, merger and network issues.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have been asked to address certain factual and policy issues pertinent to this proceeding. Specifically, I will address the manner in which Level 3 Communications, LLC ("Level 3") is providing service to its customers, how it intends to rely upon interconnection services provided by CenturyTel of Washington ("CenturyTel") to provide those services and the extent to which services offered by Level 3 are similar to service offerings provided by other Washington incumbent local exchange carriers ("ILECs"). I will also address certain industry practices associated with the Telecom Act of 1996 and the efficient operations of companies under co-carrier arrangements.

Q. PLEASE PROVIDE SOME BACKGROUND FOR THIS PROCEEDING.

A. As I understand it, Level 3 has requested an interconnection agreement with CenturyTel in Washington. During the ensuing negotiations certain differences of opinion developed which could not be overcome. As such, Level 3 filed for arbitration.

The Petition of Level 3 and the Response filed by CenturyTel, detail the unresolved issues that remain between the parties. My testimony will address the manner in which Level 3 currently provides service and how that service compares to existing foreign exchange ("FX") service that has been provided for years in the industry. In short, I will show that the interconnection arrangements Level 3 is seeking are relatively common within the industry, and that the services they support are in the public interest. Likewise, I will show that CenturyTel's reluctance to continue providing those interconnection arrangements to Level 3, has far more to do with CenturyTel attempting to protect its existing revenue streams from competition, more so than any

cost-based, or technology driven concern. I will also address the impact of accepting CenturyTel's proposals in this case and some of the operational issues that have been raised. Mr. Hunt, Level 3's Vice President of Public Policy, addresses key legal and other policy issues.

Q. WHAT KEY POSITIONS OF THE PARTIES WILL YOU ADDRESS IN YOUR TESTIMONY?

A. CenturyTel makes certain arguments in this proceeding with which I take exception. For instance, CenturyTel argues that the calls originated by its customers to Level 3 customers are interexchange in nature and should not be considered local calls regardless of how the calls are dialed and routed, and regardless of how CenturyTel treats its own similar calls. CenturyTel also suggests that Level 3's service is more like 800 service than FX service. Further, CenturyTel states that the virtual NXX calls increase its costs, threaten local rates and universal service and that access charges should be paid by Level 3.

My testimony shows that CenturyTel is trying to create a distinction without a difference with respect to Level 3's service. The calls are dialed and routed like any other local call between the companies' customers. Indeed, Level 3's service is a competitive response to CenturyTel and other ILEC FX services. The fact that Level 3 uses a different technology to offer the service, and that Level 3's customers might be more distant than CenturyTel's FX customers, does not change the nature of the functionality provided to customers. CenturyTel cannot show that Level 3's service

increases its costs or that a punitive or non-cost causative compensation scheme (access charges) should apply.

The ultimate result of CenturyTel's arguments, if accepted, would be to impose unwarranted costs on new entrants, impede the development of competition in the local exchange and in the ISP industry, and increase the cost of Internet access for consumers in Washington. CenturyTel's positions should be seen for what they are – a not so transparent attempt to prevent competition in its serving territory.

III. SUMMARY OF FINDINGS AND RECOMMENDATIONS

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AND STATE YOUR RECOMMENDATIONS.

A. Based upon my review of the interconnection agreement language at issue between the parties, an in-depth understanding of Level 3's interconnection request and the services Level 3 currently provides using the interconnection arrangements it has requested, as well as an intimate understanding of related public policy and regulatory rules impacting the issue, I conclude as follows:

- Level 3's service offering is consistent with similar offerings of CenturyTel and other ILECs within Washington. As such, Century Tel's objections to the services provided by Level 3, and its subsequent refusal to allow interconnection arrangements that support those services, are unpersuasive. FX services are ubiquitous and being provided in response to consumer demand.

- FX and FX-type (Remote Call Forwarding ("RCF"), Extended Area Service ("EAS"), Qwest Wholesale Dial, etc.) services provide important benefits to subscribers and the industry. Such services have been in demand for years because they represent a cost-effective manner by which to provide a local

presence in a foreign exchange, without the need for toll charges (or use of the toll network).

- If FX-type services are banned, or if the cost of providing those services increases, the public interest will be harmed. Absent FX service and competitive alternatives to such service, providers would have to duplicate expensive local facilities. Perhaps more importantly, without FX-type services, consumers would have fewer options for service and would be forced to make toll calls to businesses that they heretofore had dialed on a local basis. This is especially true for the Internet access business. Consumers demand local dial-up access for the Internet, and FX services like those offered by Level 3 provide that local connectivity in the most cost effective manner possible.

- Despite CenturyTel's claims, services offered by Level 3 are not comparable to 800 services. 800 services provide a completely different functionality for consumers than does FX service, and requires significantly differently rating/routing and general handling (i.e., use of the access tandem, database dips, number conversion, etc.). A comparison of the manner in which the two types of services are provided indicates that Level 3's service is directly comparable to FX service and is dramatically different from 800 services.

- Calls are conventionally rated and routed throughout the U.S. telephone industry based upon the NXX code of the originating and terminating telephone number. There is no reason to deviate from this convention now. So-called virtual NXX and FX calls are routed to the same point as other local traffic and handed off just as any other local call would be. This practice should be continued such that calls between an originating and terminating NXX associated with the same local calling area are rated and routed as local.

- Access charges are not appropriate for FX-type services. FX services have been offered by Washington LECs such as Qwest and CenturyTel for many years, and they are and have been treated or viewed as "local" services since their inception, even though they offer customers a presence in a different exchange. FX services are exchange services not exchange access, and as such access charges cannot be applied. Further, because of the FCC's policy to encourage the growth of the Internet, access charges that include a myriad of non cost-based subsidies are never appropriately applied to enhanced service providers ("ESPs"), including ISPs, consistent with the FCCs rules.[1]

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

- Level 3's service is a new and competitive response to Century Tel's FX service. The service is in demand and provides significant benefits to the ISP industry and consumers alike. Level 3 should be allowed to provide this service in Washington without additional charges or conditions as suggested by CenturyTel.

IV. LEVEL 3'S DID OFFERING – A COMPETITIVE ALTERNATIVE TO ILEC FX AND ISP SERVICE

Q. PLEASE DESCRIBE LEVEL 3'S DID OFFERING.

A. Level 3 builds its network and provides for interconnection with other local exchange carriers ("LECs") primarily for purposes of providing customers local connectivity to packet switched networks like the Internet. Level 3 accomplishes this local connectivity by providing its customers a Direct Inward Dial ("DID") service whereby the customer is provided a local telephone number that directs the ILEC customer's calls directly from his/her local exchange carrier, to the Level 3 network. Level 3 then terminates the call to its customer – in this case an Internet Service Provider ("ISP").

Level 3's DID service necessarily requires that Level 3 "turn up" local numbers within its target markets, and as such, requires that Level 3 work closely with the North American Number Plan Administrator ("NANPA) for purposes of being assigned relevant "NXX" codes specific to the geography of its target market.

Q. MUST A CARRIER REQUEST NUMBERS IN ORDER TO PROVIDE SERVICE?

A. Yes. Carriers need to obtain telephone numbers in every rate center in which they wish to offer service. Those numbers must then be loaded into the Local Exchange Routing Guide ("LERG") and incorporated into the local switch serving the NXX code associated with rate centers.[2]

Q. DO THE NUMBERING GUIDELINES PROHIBIT THE ASSIGNMENT OF NUMBERS FOR FX OR SIMILAR SERVICES?

A. No. In fact Section 2.13 of the Numbering Guidelines specifically identifies FX services as being eligible for number assignment:

> 2.13 It is assumed from a wireline perspective that CO Codes/blocks allocated to a Wireline Service Provider are to be utilized to provide service to a customer's premise physically located in the same rate center that the CO Codes/blocks are assigned. **Exceptions exist, for example tariffed services such as with the exception of foreign exchange service.** [3] (emphasis added)

If it were improper or a violation of the guidelines to use virtual NXX codes then all ILECs currently providing FX and FX-type services would be in violation today.

Q. WHAT ARE NXX NUMBER BLOCKS?

A. NXX number blocks are groups of numbers assigned to carriers for distribution to customers. The blocks contain 10,000 numbers, or where number pooling is in place, blocks of 1,000 numbers. The NXX codes are the fourth through sixth digits of a ten-

[2] A rate center is a geographic location with specific vertical and horizontal coordinates used for determining mileage, for rating local or toll calls.
[3] Alliance for Telecommunications Industry Solutions; Sponsor of Industry Numbering Committee; Central Code (NXX) Assignment Guidelines; Released August 16, 2002.; hereinafter referred to as "Numbering Guidelines".

digit telephone number. These codes are used as rate center identifiers for rating and routing of calls.

Q. MUST A CARRIER BE LOCAL NUMBER PORTABILITY ("LNP") CAPABLE TO PARTICIPATE IN NUMBER POOLING?

A. Yes. Level 3 is LNP capable and able to participate in number pooling. Further, Level 3 normally utilizes only numbers in the 4,000 block within a 10,000 block. By not contaminating the numbers in the other thousand blocks, should jeopardy occur and pooling be imposed, Level 3 could return numbers to the administrator.

Q. HOW ARE CUSTOMERS ASSIGNED AN NXX CODE?

A. Carriers who meet the criteria for the assignment of central office codes, like Level 3 and CenturyTel, request and are assigned blocks of telephone numbers by the numbering administrator.[4] The numbers are loaded into Level 3's switch and referenced in the LERG for routing by other carriers. Level 3 then assigns numbers from within those blocks to its customers as requested.

Q. HOW IS THE RATING OF CALLS IMPACTED BY THE NUMBERS ASSIGNED TO CUSTOMERS?

A. Standard industry practice and procedure provides that each NXX code is associated with a particular rate center within a local calling area. A single rate center may have more than one NXX code, but each code is assigned to one and only one rate center. This uniquely identifies the end office switch serving the NXX code, so that each carrier that is routing a call knows which end office switch to send the call to.

Q. IS IT UNCOMMON FOR NXX CODES TO BE ASSIGNED TO CUSTOMERS WHO ARE NOT PHYSICALLY LOCATED IN THE LOCAL CALLING AREA WHERE THE NXX IS "HOMED" OR ASSIGNED?

A. No. It is also not uncommon for the "routing" point for an NXX code to differ from the "rating" point for the same code. In other words, although an NXX may be rated or homed to a specific end office switch, the routing information in the LERG may specify that calls to that NXX code be routed to a different wire center, for instance, a tandem.

Q. IS IT IMPROPER OR AGAINST ANY RULES FOR CLECS TO PROVIDE NUMBERS TO THEIR CUSTOMERS?

A. No, not at all. In fact, as noted above, carriers must request numbers in order to provide service in a particular exchange. Based on my review of Level 3's practices, Level 3 utilizes and abides by the Numbering Guidelines.[5] In fact, Level 3 has developed its own LNP solution and has established stringent guidelines that result in very efficient use of numbering resources.

Q. FOR LEVEL 3'S SERVICE, HOW ARE THOSE NUMBERS USED AND THE CALLS COMPLETED?

A. Level 3 assigns a number from its switch -- or several numbers -- to one or more of its ISP customers from an exchange where Level 3 is authorized to provide service. As the Commission is well aware, consumers are not willing to pay toll charges – at least in

[4] See Numbering Guidelines, Section 4.0.
[5] The Numbering Guidelines require compliance as a condition of receiving numbers.

most cases – to connect to the Internet. The ISP customers therefore make these numbers available so that consumers (residential and business alike) can connect to the Internet on a local – not a toll – basis. The actual routing and handling of the call is transparent to the consumer.

Consumers enter the local ISP number into their dial-up modem instructions, and the modem dials the local number to connect with the ISP.[6] The calls are routed to the appropriate central office per the LERG instructions associated with the number. The calls are then directed to Level 3 for completion. Once Level 3 receives the call, it is financially and operationally responsible for terminating the call that was originated by the LEC's customer.

Once Level 3 receives the call destined to its customer, it transports the call over its own network, or over the network of other providers, to get the call to the ISP modem banks. Once the call is connected, the consumer can navigate the Internet.

Q. DOES LEVEL 3'S SERVICE PROVIDE THE SAME FUNCTIONALITY FOR CONSUMERS AS THE FX AND FX-TYPE SERVICES PROVIDED BY CENTURYTEL AND OTHER ILECS?

A. Yes, it does. Like ILEC FX services (and similar, alternative FX-type services offered by ILECs), Level 3 provides the customer the ability to obtain a "virtual" presence in a local calling area where the customer is not physically located. Level 3's service is a

[6] In my computer, I go to "My Computer" and then select "Dial-Up Networking." Within this screen I select "New Connection" or modify the number in my existing Earthlink connection. You are instructed to "Type the phone number for the computer you want to call" and then you type in the new ISP number. The computer saves the number and uses it whenever you instruct it to sign-on to the Internet.

competitive response to the traditional LEC FX service. In fact, in considering this question, many states have found that it provides the same functionality to consumers as the FX service has provided for decades.

In a proceeding in Florida, the Commission Staff there concluded the following:

> [CLEC] witness Selwyn [states] that the practice of terminating a call in an exchange that is different than the exchange to which the NPA/NXX is assigned is nothing new. He contends that ILECs have been providing this service for decades through their [Foreign Exchange] service. Staff agrees. **Staff believes that virtual NXX is a competitive response to FX service, which has been offered in the market by ILECs for years**.[7] (emphasis added)

In an Order in Kentucky, that Commission also equated ILEC FX and Level 3 service as follows:

> Both utilities offer a local telephone number to a person residing outside the local calling area. BellSouth's service is called foreign exchange ("FX") service and Level 3's service is called virtual NXX service.[8]

Q. DO ILECS AROUND THE COUNTRY OFFER SIMILAR SERVICES TO THEIR CUSTOMERS AND THE ISP INDUSTRY?

A. Yes. All RBOCs that I have investigated provide services that are targeted directly at the ISP industry and provide similar advantages to Level 3's service.

Q. DOES QWEST OFFER A SERVICE SIMILAR TO THE OTHER ILEC ISP OFFERINGS DISCUSSED ABOVE?

[7] Memorandum to Director, Division of the Commission Clerk & Administrative Services, from Division of Competitive Services and Division of Legal Services, Docket No. 000075-TP, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996,* Issue 15(b), Staff Analysis (Fl. P.S.C. Nov. 21, 2001) (emphasis added).

A. Yes. In addition to standard offerings such as EAS, FX and its new Market Expansion Line service, Qwest offers its "Wholesale Dial" service. According to its online literature, Qwest's service "…provides a secure, reliable, cost-effective dial-up network infrastructure solution for Internet service providers (ISPs). The service provides the ISPs' end users with seamless dial-up functionality that remains transparent." One of the benefits touted by Qwest is the availability of "local access telephone numbers." So, as you can see, this is yet another example of services provided to ISPs for the purpose of providing local dial-up access for consumers in areas where the ISPs may or may not have a physical presence.

Q. DOES VERIZON PROVIDE FX AND FX TYPE SERVICES IN WASHINGTON AS WELL?

A. Yes. Verizon provides FX, Enhanced Call Forwarding, Call Forwarding, and Extended Area Service.

Q. DO THESE ILEC SERVICES PROVIDE THE SAME FUNCTIONALITY AS LEVEL 3'S SERVICE?

A. Yes. The ILEC services provide the same functionality as Level 3. These ILEC-provided FX-type services provide the customer a local number in a local calling area where the customer is not physically located, permitting the customer to establish a "virtual" presence in that local calling area without incurring the expense of deploying

[8] *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc.*

additional facilities in that area. Level 3's service is just provided in a new manner with an innovative network.

Q. WHAT IS "NEW" OR "INNOVATIVE" IN THE WAY LEVEL 3 PROVIDES SERVICE?

A. Level 3 uses a "softswitch" technology to provide service, as opposed to traditional circuit switches. The company just recently received a patent for this new switching technology. Level 3 also uses a completely scaleable packetized IP protocol network to transport traffic. Indeed, the Smithsonian Institution recognized this significant achievement by awarding Level 3 with a medal. The point is that Level 3's network is unique and allows the company to provide service in new and efficient ways. While this technology is transparent to the consumer, it does allow Level 3 to provide alternatives to traditional services in new and more efficient ways.

Q. ARE THERE OTHER ILEC SERVICES WHICH ARE SUBSTITUTES FOR FX SERVICE OR THAT PROVIDE SIMILAR FUNCTIONALITIES?

A. Yes. Two such services include Remote Call Forwarding ("RCF") and Extended Area Service ("EAS"). RCF automatically forwards calls to another station designated by the RCF customer. CenturyTel's Washington tariff describes the service as follows:

> Remote Call Forwarding (RCF) is furnished in central offices where facilities and operating conditions permit. It is an arrangement to automatically forward all incoming calls placed to the remote call forwarding number, to another telephone number.[9]

Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Case No. 2000-404, Order (Ky. PSC March 14, 2001) at 7.

[9] Telephone Utilities of Washington, Inc. Exchange and Network Services Tariff; Section 5, 1st Revised Sheet 117.

CenturyTel describes its EAS service as follows:

> Extended Area Service (EAS) is interexchange access service furnished at flat or measured rates between two or more exchanges for which no toll rates apply.[10]

These services – FX, RCF and EAS – provide a similar or identical functionality for consumers as the FX-type offering of Level 3, with a single carrier giving its customers the ability to extend their local calling presence on a wider geographic scale.

In summary, Level 3 should not be constrained in its offering to ISPs because similar services are being offered by other carriers. Consistent with policy goals discussed later in this testimony, Level 3 is using a creative and innovative network solution to bring Internet access to consumers in Washington. Such innovation should not be discouraged. This is especially true when you consider that the only complaints about the offering are coming from Level 3's competitors for those ISPs' business.

V. LEVEL 3 IS OFFERING A FOREIGN EXCHANGE FUNCTIONALITY

Q. YOU HAVE MADE SEVERAL REFERENCES TO FX SERVICE. PLEASE DESCRIBE FX SERVICE.

A. FX service is defined in Newton's Telecom Dictionary as follows:

> Provides local telephone service from a central office which is outside (foreign to) the subscriber's exchange area. In its simplest form, a user picks up the phone in one city and receives a dial tone in the foreign city. This means that people located in the foreign city can place a local call to get the user. The airlines use a lot of foreign exchange service.

[10] Id. at Section 5.1.1.

> Many times, the seven digit local phone number for the airline you just called will be answered in another city, hundreds of miles away. (Newton's Telecom Dictionary, 16th Edition, 2000, at 354)

The Bell System defined foreign exchange service as follows:

> Foreign exchange (FX) service enables a customer to be served by a distant or "foreign" central office rather than by the nearby central office. Calls to other customers in the distant exchange area are then treated as local calls instead of toll calls. For customers who make enough calls to a particular distant exchange area, the monthly charge for FX service is less than the sum of the toll charges they would otherwise pay. Customers who find FX service economical include residence customers who often call friends or relatives in towns outside their local calling area and businesses such as firms in New Jersey who often call companies in New York City. (Engineering and Operations in the Bell System; Second Edition, AT&T Bell Laboratories, 1983, at 63)

Q. DOES CENTURYTEL PROVIDE FX SERVICE? IF SO, HOW DOES CENTURYTEL DEFINE THE SERVICE?

A. Yes, CenturyTel provides FX service. It defines FX service as follows:

> Foreign exchange service is exchange service furnished from an exchange or [sic] other than the one from which it would normally be furnished. The local exchange (local company) is the exchange in which the subscriber is located. The foreign exchange (serving company) is the exchange from which service is furnished.[11]

Q. BASED ON YOUR REFERENCES ABOVE, IT SEEMS FX SERVICE HAS BEEN OFFERED FOR YEARS. IS THAT CORRECT?

[11] Id. at Section 5.1.4.

A. Yes, FX service has been offered by ILECs for decades. When it was initially offered it was for situations as described by the Bell System above – a local calling plan to minimize what would otherwise be a large toll expense.

Q. DOES CENTURYTEL CONSIDER FX SERVICE TO BE A LOCAL SERVICE?

A. Yes, it does. I would note that CenturyTel provided a definition of a "local" call as "Traffic that is originated by an end user of one Party and terminated to the end user of the other Party within CenturyTel's then current local calling area, including mandatory local calling arrangements."[12] That definition, if adopted in a literal sense, would force CenturyTel to take FX services out of its local tariff and treat those services as something other than local.

It's curious that CenturyTel provides the FCC definition of FX service, but fails to provide its own definition in this proceeding.[13] CenturyTel's suggestion that Level 3's service differs significantly from the FX service defined by the FCC is clearly wrong.

Q. PLEASE EXPLAIN.

A. CenturyTel attempts to distinguish Level 3's service from a traditional FX service based on the technology employed to deliver the service. It suggests that because Level 3 does not provide a dedicated line from the home to the foreign exchange that it is not somehow a FX service. CenturyTel's position should be rejected for at least three reasons. First, nothing in the Commission's own definition of FX in its Substantive

[12] See Response to Level 3's Petition for Arbitration; Docket No. UT-023043; (Hereinafter referred to as "CenturyTel Response"; at 8.

Rules that I cited above indicates that a "dedicated" line is needed to connect a customer between the home and foreign exchanges. Second, it is odd to claim that providing a dedicated line to the customer to a foreign exchange somehow gives that customer a "physical presence" in the foreign exchange such that FX service is appropriate while competitive approaches using different architectures are not. If one were to ask the CenturyTel customer where his or her physical presence is, I doubt that the customer would consider himself or herself to reside at the line circuit interface in the foreign exchange. Third, CenturyTel is trying to "pigeon hole" Level 3's service into a traditional, pre-divestiture framework. In this regard, CenturyTel is just defining physical presence in a peculiar way that favors its switch-intensive legacy network over competitors' networks built more recently. As can be seen above, Qwest offers a comparable service using a distinctly different network architecture than does CenturyTel or Level 3, but from the customer's perspective the functionality is the same.

The Commission should not force carriers – and especially not new entrants – to use the same technology as the incumbents. To do so would discourage the development and deployment of new technologies.

Q. HOW DOES THE FX SERVICE THAT YOU'VE DEFINED ABOVE COMPARE TO LEVEL 3'S SERVICE?

A. FX service has always provided a customer with a telephone number for a rate center outside the rate center in which the customer's premises are physically located. While perhaps different in scale and in technology utilized, Level 3's service – referred to

[13] Id. at 10.

sometimes as a virtual NXX or VNXX service – is the functional equivalent of this traditional ILEC service in that it gives a customer located in one exchange a telephone number in another exchange. As shown by the service descriptions above, Qwest's services provide the same functionality as Level 3's service, but with different network architecture. CenturyTel offers FX, RCF, EAS and other optional local calling service to its customers as well, but again with a different network architecture.

VI. THE FX CALLING SCOPE DOES NOT DEFINE THE SERVICE

Q. IS THE LOCATION OF THE ISP, OR THE ISP'S MODEM BANKS, AN IMPORTANT DISTINCTION BETWEEN TRADITIONAL FX SERVICE AND THE SERVICE PROVIDED BY LEVEL 3?

A. No. While Level 3's service may or may not include longer transport in its FX service than in traditional ILEC FX service (the cost of which is borne entirely by Level 3 and its customer), the fact is that what is offered from a functional perspective – a telephone number in a rate center where the customer is not present – is the same. In fact, CLECs offering the kinds of services provided by Level 3 here are doing so for the very same reasons that drove LECs to offer FX services in the first instance – efficiency and customer demand. CLECs can just offer these services over greater distances because of the broader scope of their networks. By contrast, the Bell Operating Companies

such as Qwest were prohibited from offering anything other than intraLATA service by the MFJ and then Section 271 of the Act.[14]

Q. SO YOU'RE SUGGESTING THAT THE CALLING SCOPE OF THE FX SERVICE IS NOT AN IMPORTANT DISTINCTION FROM A POLICY PERSPECTIVE?

A. That's correct. The point is that even though the manner in which Level 3 is offering this service may be "wider" in scope than traditional FX service, that is just because Level 3 and other CLECs have not faced the same historical limitations – either imposed upon or internally determined – as the ILECs. The Bell Operating Companies had geographical and line of business restrictions in place for many years after divestiture, and some still do. Those restrictions have been lifted now in many states. The independent LECs, which were not subject to the MFJ restrictions, expanded their networks per their internal business plans.

Q. GIVEN THE NATURE OF FX AND FX-TYPE SERVICE PROVISIONING, DOES THE GEOGRAPHICAL LIMITATION SUGGESTED BY CENTURYTEL MAKE SENSE?

A. No. If the Commission were to adopt CenturyTel's reasoning, the fact that the modem banks are located in the exchange next door would be alright, but the fact that the ISP modem banks are outside of the LATA or perhaps outside of the state would not be. That's an artificial distinction that should not be imposed on CLECs, and an improper

[14] Modification of Final Judgment or MFJ – United States v. Western Electric Co., 552 F. Supp. 131 (Dist. C.C. 1982).

one. The courts have noted that ISP-bound traffic is jurisdictionally mixed.[15] And the FCC has noted that the "largely interstate nature" of ISP-bound traffic does not, in any event, remove interconnection for ISP-bound traffic from the state-commission supervised negotiation and arbitration process.[16] The geographical distinction is also harmful because it just introduces artificial inefficiencies into the network. Why does a modem bank located two exchanges away make a call more "local" than a modem bank located two LATAs away? Both scenarios involve an ISP customer who isn't physically located in the exchange where the telephone number is assigned.

Q. DO YOU HAVE ANY FURTHER COMMENT WITH RESPECT TO THE LOCATION OF THE ISP MODEM BANKS?

A. Yes. A new entrant such as Level 3 should not be punished for using its network in an efficient, but different manner than the ILECs to provide a FX functionality to ISP customers – particularly when the CLEC's use of its network to serve ISPs in this manner doesn't generate any additional costs for the ILECs as compared to the origination of any other local call.[17] As such, the CLEC service does not harm the ILEC, but it does provide a benefit to the ILEC local customers and the ISP industry.

[15] *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1, 5 (D.C. Cir. 2000) (noting that "[c]alls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a continuation, in a conventional sense, of the initial call to the ISP.").

[16] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd. 3689, 3705, ¶ 25 (1999) (noting that "[a]s we observed in the *Local Competition Order*, state commission authority over interconnection agreements pursuant to section 252 'extends to both interstate and intrastate matters.' Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process.") (citations omitted), *vacated and remanded Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

Thus, the Commission should encourage carriers such as Level 3 to respond to ISP customer demand and to serve their customers in this innovative and efficient manner.

Q. DOESN'T THE LOSS OF ISP CUSTOMERS TO LEVEL 3 CONSTITUTE HARM TO THE INCUMBENT LEC?

A. Customers leaving one carrier for another carrier is not the type of impact that the Commission should try to prevent. Indeed, it is the goal of regulation to encourage effective and efficient competition, so as to bring the benefits of competition to consumers in the State. Competitive entry will provide the market discipline required to incent the ILECs to be more responsive to customer needs and to offer new and innovative services at more competitive prices.

Q. WOULD THE DEMAND FOR LOCAL DIAL UP INTERNET ACCESS EXIST IN CENTURYTEL'S SERVING TERRITORY EVEN IF LEVEL 3 WERE NOT PRESENT?

A. Yes, it would. Consumers would simply be limited to fewer choices – perhaps only one choice – for this dial up capability. As such, the calls will be made and originated by CenturyTel regardless of who terminates those calls. Absent some provider coming in and duplicating CenturyTel's entire local network, that will always be the case. The cost of those calls is already being recovered through CenturyTel's local rate structure. Given that tautology, CenturyTel's claims that Level 3's service will impose additional costs are not supportable.

[17] CenturyTel Response at 13.

Q. HAS LEVEL 3 HAD THE BENEFIT OF MONOPOLY RATE PAYERS OR A REVENUE REQUIREMENT SINCE ITS INCEPTION?

A. No. During the past few years Level 3 has spent about $13 billion on the deployment of its network without any support from monopoly ratepayers. All of Level 3's customers were the result of its own marketing efforts, network deployment, and network management. Perhaps more importantly, if Level 3 fails in its market entry strategy in Washington, Level 3's stockholders, and not consumers, will bear the burden of that failure. As such, consumers and the State have only an upside associated with Level 3's entry into the market. All Level 3 is asking is to be allowed to offer a service to compete with the services that CenturyTel is already offering today. Let's let the consumers decide whether Level 3's services are providing benefits and not preclude consumer choice by preventing competitive entry.

As I noted above, it is not in the public interest to protect CenturyTel from competition, nor is it in the public interest to constrain competition based upon some arbitrary technological differences or on the location of the customers. It is clear that Level 3 is providing a competitive service. Instead of addressing the potential loss of customers directly, through offering innovative services and competing more efficiently, CenturyTel has instead tried to mislead the Commission based upon technological arguments and inconsistent statements about the location of customers. Such arguments should be rejected.

VII. CENTURYTEL IS WRONG TO SUGGEST THAT LEVEL 3'S SERVICE IS SIMILAR TO 800 SERVICE

Q. CENTURYTEL ARGUES THAT LEVEL 3'S SERVICE IS MORE AKIN TO 800 SERVICE THAN TO FX SERVICE.[18] DO YOU AGREE?

A. No. The following characteristics should be considered when comparing various services:

1. How the service is perceived by consumers;
2. How the service is dialed by consumers;
3. How the calls are routed and processed in the network; and,
4. The impact of the service on the ILEC.

I will compare generally the two services in debate – FX or virtual NXX service, and 800 service.

Consumer perception is important for a properly operating market. As noted in my direct testimony, and as all parties generally agree, consumers are not willing to pay toll charges to connect to the Internet. As such, ISPs make arrangements (purchase services) for local dial up for their customers. From the consumer's perspective FX and 800 services offer similar results – free dial up access to the Internet.

The other consumer in this analysis is the Level 3 customer. That customer, in this case an ISP, sees Level 3's DID service as an alternative to CenturyTel's FX (or perhaps RCF) service. The ISP is looking for a service that provides a local presence

[18] See CenturyTel Response at 11-13.

in a foreign exchange. The local presence can be accomplished with all of the services I have identified in my testimony. From the ISP's perspective, the Level 3 service – with a broader geographic reach and a uniquely efficient transport technology – is attractive. While the ISP could go to an IXC and purchase 800 service, it is clear that consumers (the customers of the ISPs) want a local access number – the ILEC-offered, ISP-targeted FX-type services are perhaps the best proof of that demand. As such, from the ISP's perspective in order to meet consumer demand it must purchase a service that provides local dial up access.

The dialing arrangements are quite different for FX and 800 services. Customers generally never know when they are dialing a FX number because it is dialed on a seven or ten digit basis, just like any other local number. An 800 number, with its distinctive toll dialing pattern, is clearly a toll call – albeit a free one in most cases. To be fair, however, once the number is entered into the consumer's modem dialing instructions, the additional digits required are transparent to the consumer.

The call routing and processing requirements for FX and 800 services are dramatically different. FX calls are routed to the local switch like any other local call. They are then routed to the foreign exchange via some form of transport for termination. Further, the FX number is almost always associated with one exchange. Calls utilizing an 800 service, on the other hand, are routed from the customer premise, through the local central office to the access tandem for additional routing and billing instructions. The call requires a Line Information Database ("LIDB") dip for information on the IXC

carrying the call and the true ten digit terminating routing number associated with the 800 number. Plus, unlike FX calls, the 800 calls could be coming from numerous, even hundreds of exchanges in a large geographic area (i.e. eastern United States), while FX service is generally associated with just one foreign exchange. Finally, the ILECs have always booked FX revenues and expenses as local, while they booked 800 service revenues and expenses as toll.

FX and 800 services also impact the ILEC in different ways. FX service routes calls just like other local calls. There is no need to take a FX call to the access tandem, although depending upon network configuration, a FX call could be routed through a local tandem. I'm not aware of any ILEC claiming that virtual NXX/FX calls impose additional costs on their network or operations. There is an additional cost associated with 800 service calls because the toll dialing pattern automatically routes the call to the access tandem. At the tandem there is the additional cost associated with a database dip and number conversion.

Level 3's service, which is provided in essentially the same manner as FX service, is therefore clearly distinct from 800 service. Customers perceive the service as local and the ISPs use the service to acquire a "local presence" for their customers, just like CenturyTel's customers who purchase FX service. (Indeed, one might wonder why ILECs need to offer FX service when 800 service is available to consumers? The reason, of course, is consumer demand to which any reasonable carrier wants to respond.) The Level 3 service is dialed and routed on a local, as opposed to a toll

basis. Like FX service, the Level 3 service does not require sophisticated database dips or number conversions, and as such, does not impose those additional costs on the ILEC. The Level 3 service is associated with a specific exchange, and not hundreds or thousands of exchanges normally associated with 800 service.

Q. THROUGHOUT CENTURYTEL'S RESPONSE, IT SUGGESTS THAT LEVEL 3'S SERVICE IS REALLY 800 SERVICE. COULD LEVEL 3 PROVIDE AN 800 SERVICE?

A. Level 3 could provide 800 service, but that is not in its business plan – because that is not what customers demand. Instead, Level 3 is offering a local service to its customers, which is what customers are demanding. Indeed, one might very well say the same thing about CenturyTel FX services, or FX-type services that I've discussed earlier as offered by SBC. The goal should be to ensure that carriers can respond to customers to provide the service they want, in the most efficient manner possible, and through means that do not generate additional costs for other carriers. CenturyTel should not be permitted to dictate the services provided by other carriers just to ensure a particular revenue stream – in this case access charges.

Q. DOES CENTURYTEL OFFER LOCAL DIAL-UP ACCESS TO ITS CUSTOMERS AS WELL?

A. Yes. CenturyTel's online literature at its "Internet Services Customer Portal" discusses the availability of local access numbers in Washington. It also provides information on its "14,000 local dial-up numbers in 150 countries". CenturyTel notes one of the

advantages of using these local numbers as, "Significantly cheaper than long distance charges." While CenturyTel may offer 800 service access for dial-up Internet services, it is not advertised as such on its website.

VIII. LEVEL 3'S FX-TYPE SERVICE DOES NOT IMPOSE ANY ADDITIONAL COSTS ON INCUMBENT LECS

Q. YOU STATED THAT LEVEL 3'S SERVICE DOES NOT IMPOSE ANY ADDITIONAL COSTS ON THE ILECS. PLEASE EXPLAIN.

A. There is no additional cost incurred by CenturyTel when a customer purchases a FX-type service from the CLEC, because from an interconnection perspective the ILEC carries the call the same distance and incurs the same costs regardless of whether the call is terminated to a CLEC customer with a physical location in the NXX rate center, or to a CLEC customer with a virtual presence. The ILEC's obligations and costs are therefore the same in delivering a call originated by one of its customers, regardless of whether the call terminates at a so-called "virtual" or "physical" NXX behind the CLEC switch. Indeed, CenturyTel has admitted in other states in response to data requests that its costs would not differ depending upon the location of the Level 3 customer. I should also note that Level 3 has agreed to interconnect with each of the CenturyTel ILECs in this case within each ILEC's local calling areas, so that the CenturyTel ILECs will actually have no responsibility at all to take a call beyond the local calling area in which it originates. In this regard, CenturyTel is bearing no greater

cost in originating a locally dialed call to *any* Level 3 customer than it might in originating a locally dialed call to one of its own customers.

Q. CENTURYTEL ARGUES THAT BECAUSE THE CALL IS "INTEREXCHANGE" IT IMPOSES ADDITIONAL COSTS ON CENTURY TEL. DO YOU AGREE?

A. Absolutely not. As noted above, even CenturyTel itself has acknowledged that these calls impose no additional costs, and certainly they have not proved that they impose any additional costs. The only support that CenturyTel provided to support this allegation was a cite from a California order that said, "[incumbent] may incur additional costs for facilities used to transport a call outside its originating local calling area to hand off the call to Level 3 at a point of interconnection in a different local calling area."[19] The language quoted says that the ILEC "may" incur additional costs, not that it would incur additional costs. I should also note that the California order did *not* direct the specific payment of originating access charges, and that the California order continued to permit CLECs to provide these FX-type services. More discussion of this California order, and why it is a curious case for CenturyTel to cite here, will be found in Level 3's briefs in this proceeding.

Q. DO YOU BELIEVE THAT COST IS THE ISSUE IN THIS PROCEEDING?

A. No. In the many cases in which this issue has been litigated, I can't recall any ILEC stating that the manner in which Level 3 offers its service imposes additional costs on the company. Instead, and as CenturyTel has alluded to in its Response, the argument is

one of supposed foregone *revenues* (as opposed to *costs*). CenturyTel is attempting to classify these calls as something other than local to justify a different cost recovery mechanism. If accepted, CenturyTel would over-recover its costs, impede competition and increase costs for consumers and the ISP industry.

Q. PLEASE EXPLAIN HOW A CALL IS ROUTED TO A CUSTOMER WHO IS PHYSICALLY LOCATED IN THE SAME RATE CENTER AS HER TELEPHONE NUMBER IN A COMPETITIVE ENVIRONMENT.

A. Assuming a CenturyTel customer originates a call to a Level 3 customer, CenturyTel is responsible for getting the call to Level 3's point of interconnection or "POI".[20] CenturyTel is responsible for switching and transporting the call to the POI. From the POI, Level 3 is responsible for terminating the call for CenturyTel – again, switching and transporting the call to the called party, wherever that party might be located.

Q. HOW DOES THIS DIFFER FOR A CALL PLACED TO A CUSTOMER WHO PURCHASES AN FX-TYPE SERVICE, AND HAS A VIRTUAL PRESENCE?

A. It does not differ at all. CenturyTel routes the call to the POI or to the Qwest tandem that performs transit functions in exactly the same manner. And, again, it should be noted that the points of interconnection under this agreement would be established in each local calling area, meaning that CenturyTel would have no obligation to carry any call destined for any Level 3 customer beyond its own local calling area boundary. Any

[19] See CenturyTel Response at 13.

additional transport costs beyond the originating local calling area would be Level 3's responsibility.

Q. DOES THE USE OF SO-CALLED VIRTUAL NXX CODES IMPACT THE HANDLING OR PROCESSING OF A CALL TO A LEVEL 3 CUSTOMER?

A. No. The ILEC would always be responsible for carrying the call to the POI (or the designated location for hand-off of transit traffic) and then handing off the call to Level 3 to transport and terminate the call. The use of a virtual NXX does not impact the ILEC's financial and/or operational responsibilities. Indeed, Level 3's customer has a presence in the local calling area of the originating caller, it is just a virtual presence, not a physical one, but the way the call is handled is the same from the incumbent's perspective. This is no different than the case in which two neighboring ILECs exchange calls between each LEC's FX and FX-type customers today – CenturyTel would hand the call off to a neighboring ILEC at the same point as any other call, and would not route the call differently based upon the fact that the other LEC's customer might be a FX or FX-type customer. (In fact, I am not certain that CenturyTel would even know which of the other LEC's customers had a "physical" or "virtual" presence in a given rate center.)

IX. ACCESS CHARGES ARE NOT APPROPRIATE FOR EXCHANGE SERVICES INCLUDING FX AND ISP BOUND TRAFFIC

[20] The POI is the physical interconnection between the two networks and represents the point where

Q. CENTURYTEL HAS ASKED THAT ACCESS CHARGES BE APPLIED TO THE LEVEL 3 FX-TYPE SERVICE.[21] DO YOU BELIEVE THAT ACCESS CHARGES ARE APPROPRIATE FOR THIS TYPE OF TRAFFIC?

A. Absolutely not. FX service is a "local" service to which access charges do not apply. For decades ILECs have treated FX service as a local service, booking the revenues and expenses as local. Indeed, CenturyTel's FX offering is provided under its own local tariff. Further, access charges could only be applied to FX and FX-type services if they were comparable to exchange access. Exchange access is defined as, "Exchange access means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone calls."[22]

Q. DOES CENTURYTEL OR QWEST APPLY ACCESS CHARGES TO THEIR FX OR FX-TYPE SERVICES?

A. No. A quick review of their respective tariffs shows that access charges are not applied to any portion of the ILEC FX service. Further, the ESP exemption specifically exempts ESPs and their services from interstate access charges. ESPs – including ISPs – are treated as end users, rather than carriers, for purposes of the FCC's interstate access charges. ISPs are allowed to purchase their services from local tariffs and are not subject to access charges.

Even setting aside the fact that intercarrier compensation for ISP-bound traffic is governed by FCC rules, and that access charges are generally imposed on traffic other

financial and operational responsibility for handling local calls changes.
[21] See CenturyTel Response at 14.

than local traffic, access charges are not cost-based, and it has been federal and state policy in recent years to drive access charges down to forward-looking economic cost. It makes no sense to impose an out-dated compensation regime on an artificial category of traffic. At a time when regulators and the industry are looking to move to more competitive market models by eliminating implicit subsidies in telecommunications rates and intercarrier payments, it would seem contrary to that movement to foist originating switched access charges on only one certain type of local traffic.

The costs of originating this traffic do not differ from any other local call, and thus there is absolutely no economic or policy justification for imposing switched access charges on Level 3 for local traffic originated by CenturyTel customers.

Q. IS CENTURYTEL COMPENSATED FOR CARRYING THE TRAFFIC ORIGINATED BY ITS CUSTOMERS TO THE POI OR DESIGNATED TRANSIT POINT?

A. Yes, it is. The FCC's *TSR Order* is directly on point. The language in this order is very straightforward. The pertinent language with respect to ILEC compensation is as follows:

> According to Defendants, the *Local Competition Order*'s regulatory regime, which requires carriers to pay for facilities used to deliver their originating traffic to their co-carriers, represents a physical occupation of Defendants property without just compensation, in violation of the Takings Clause of the Constitution. We disagree. *The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation.* In essence, the

[22] 47 U.S.C. § 153(16).

> originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. *Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls*. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[23]

By this reasoning, Level 3 should not have to pay CenturyTel for CenturyTel-originated traffic to the POI or designated transit point.[24]

Q. THIS QUOTE SAYS THAT ILECS WOULD RECOVER THEIR COSTS THROUGH THE RATES THEY CHARGE THEIR OWN CUSTOMERS. DO LOCAL RATES COVER THE COST OF CARRYING THIS TRAFFIC TO THE POI OR DESIGNATED TRANSIT POINT?

A. Yes. The FCC has stated that ILEC rates cover these costs. This does not just refer to CenturyTel's basic local rates. Local rates and revenues include not only the basic local rate, but other revenues from subscriber line charges, vertical services (i.e., call waiting, call forwarding, anonymous call rejection and other star code features), universal service surcharges, extended area service charges and contribution from access charges for intraLATA and interLATA toll.

[23] In the Matters of TSR WIRELESS, LLC, et al, Complainants, v. US WEST COMMUNICATIONS, INC. et al, Defendants; **MEMORANDUM OPINION AND ORDER;** File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18; Released June 21, 2000; ¶34; (*TSR Order*) (emphasis added) (footnotes omitted).

[24] The Commission should keep in mind that Level 3 is not seeking compensation for performing the important function of terminating these calls for CenturyTel and its customers.

Q. IS THERE ANOTHER REASON WHY IMPOSING ACCESS CHARGES ON VIRTUAL NXX CALLS IS INAPPROPRIATE?

A. Yes. As noted above, the ILECs do not impose access charges on their own FX services so to impose such charges on Level 3's service would be discriminatory and anti-competitive. This is in stark contrast to CenturyTel's mistaken position that to **not** impose access charges on Level 3 would "…constitute discrimination on CenturyTel's part."[25]

CenturyTel refers to discriminatory treatment "against other carriers." CenturyTel's arguments are not consistent or convincing. As CenturyTel admits, FX calls are interexchange calls to which access charges do not apply. Level 3's service is an FX-type service that is dialed, routed and processed in the same manner as all other local calls and access charges should not apply. It would be discriminatory for CenturyTel to impose access charges on Level 3, but not on its own services or those of other ILECs.

Q. TO YOUR KNOWLEDGE, HAS THE FCC ADDRESSED THE ISSUE OF COMPENSATION FOR FX OR VIRTUAL NXX SERVICES?

A Yes, in a recent decision resolving an arbitration between Verizon Virginia and several CLECs, the FCC's Wireline Competition Bureau considered whether calls to FX numbers would be entitled to reciprocal compensation or whether access charges should apply. In that proceeding, Verizon made many of the same arguments that CenturyTel makes here, principally, that intercarrier compensation should be based on

the actual originating and terminating endpoints of the call and that originating access should be paid where a call originates in one calling area and terminates in a different area, even if the NPA/NXX of the called party is associated with the same local calling area as the NPA/NXX of the calling party. In its conclusion, the Wireline Bureau rejected Verizon's arguments entirely, stating as follows:

> We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[26]

X. THE BENEFITS OF FX AND FX-TYPE SERVICES ARE SUBSTANTIAL

Q. PLEASE DESCRIBE THE BENEFITS TO CONSUMERS AND BUSINESSES ASSOCIATED WITH FX AND FX-TYPE SERVICES.

A. Business customers prefer FX and FX-type service provided by ILECs and CLECs because it permits them to serve more of their customers without establishing a physical presence in every local calling area. It provides a less expensive way to test markets or to expand to new markets without first spending large amounts of capital. The ILEC

[25] CenturyTel Response at 13.

[26] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order at ¶ 286 (Wireline Comp. Bureau, rel. July 17, 2002).

product descriptions I provided earlier certainly suggest that their products provide these benefits.

From a consumer perspective, it allows cheaper and easier access to businesses. For instance, consumers will rarely dial a toll call to talk to a business about its products. It is for that very reason that companies provide consumers with 1-800 or local dialing capabilities to reach them.

Q. ARE THE BENEFITS OF FX-TYPE SERVICES SUBSTANTIAL FOR THE INTERNET INDUSTRY?

A. Yes. As I noted above, consumers generally are not willing to pay toll charges to connect with the Internet. Instead, they select providers who can offer local dialing. Indeed, because the Internet is becoming such a fundamental part of American life, many legislatures have either mandated or recommended "local" access to the Internet for consumers. Families are becoming more and more reliant on the Internet to manage their investments, communications, education and training, research for work and school, and for their general information and connectivity. Because of the frequent and regular access to the Internet, local flat-rate calling for access to the Internet is essential.

The FCC has made numerous pronouncements regarding the need to encourage the ubiquitous availability of the Internet to consumers and businesses. As far back as 1997, the FCC issued an OPP White Paper entitled, "Digital Tornado: The Internet and Telecommunications Policy." That paper addressed numerous issues but

also identified key national policies regarding the Internet. For instance, it provides the FCC's policy on investment and innovation with regard to the Internet as follows:

> **Facilitate network investment and technological innovation.**
>
> The Internet encourages the deployment of new technologies that will benefit consumers and produce jobs. The Commission should not attempt to pick winners, but should allow the marketplace to decide whether specific technologies become successful. By eliminating regulatory roadblocks and other disincentives to investment, the FCC should encourage both incumbents and new entrants to develop innovative solutions that transcend the capabilities of the existing network. (OPP Working Paper Series; March 1997; at ii.)

It is for this same reason that the FCC has exempted enhanced service providers from access charges. The ESP exemption, as it is called, has been in place since 1983. At paragraph 20 of the *ISP Order*, the FCC states as follows:

> Our determination that at least a substantial portion of dial-up ISP-bound traffic is interstate does not, however, alter the current ESP exemption. ESPs, including ISPs, continue to be entitled to purchase their PSTN links through intrastate (local) tariffs rather than through interstate access tariffs.[27]

Q. PLEASE EXPLAIN WHY YOU BELIEVE THAT THESE NATIONAL PRINCIPLES AND POLICY GOALS ARE PERTINENT TO THIS PROCEEDING.

A. This principles and goals are pertinent because they reflect the kind of innovation and creative use of technology that Level 3 is using to provide service to the ISP industry. This is the type of innovation that brings substantial benefits to consumers in Washington

[27] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; **Declaratory Ruling in CC Docket no. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68;** Released: February 26, 1999 (*ISP Order*).

and it should be encouraged. While I would never suggest that a State Commission adopt FCC principles and goals without review or serious investigation, I would recommend that this Commission consider these principles and goals. I believe they are consistent with what this Commission is ultimately attempting to do in Washington – encourage competition and the further deployment of competitive services to consumers.

Q. IF VIRTUAL NXX CALLS WERE TO BE SUBJECT TO ORIGINATING ACCESS AS CENTURYTEL SUGGESTS, WHAT WOULD BE THE IMPACT ON CONSUMERS?

A. Today, the Internet market depends significantly upon local, dial-up access. If such calls were now to be banned or treated like toll calls, individuals would face sharp increases in their cost to access the Internet. Further, schools, libraries, hospitals and charitable or other public interest organizations would face insurmountable increases in costs – thereby eliminating the availability of world-wide information to these groups and organizations.

The Commission must consider the implications — for consumers, the competitive telecommunications market and the Internet access market – of a decision that effectively precludes a carrier from assigning virtual NXXs to ISPs (and other similar customers). For instance, if CenturyTel's position were adopted in this proceeding, and assuming that position were applied to all carriers, ILECs and CLECs alike, and not just to Level 3, no carrier in Washington could ever offer a FX or FX-

type product without facing a per-minute switched access charge on every call coming to it. What incentive will any carrier have to serve ISPs when the economics of such service are so discouraging, and have no relationship to cost? What ISP will want to expend the funds necessary to establish a physical presence in every single rate center in order to avoid being perceived as a "costly" customer?

Q. WOULD CENTURYTEL'S PROPOSAL GIVE IT A COMPETITIVE ADVANTAGE IN THE ISP MARKET?

A. Yes. CenturyTel and Qwest market certain products to ISPs, as discussed above. These service offerings appear to be no different from what CLECs such as Level 3 offer their own ISP customers using a virtual NXX arrangement. By precluding Level 3 from providing this service, or by imposing access charges on each call, the Commission would create an economic barrier to any other carriers providing service to ISPs. Moreover, imposing these *artificial costs* on new entrants such as Level 3 would give the ILECs a significant competitive advantage. This clear advantage for ILECs would not only stifle the ability of CLECs such as Level 3 to provide service to ISPs, but would essentially eliminate the prospect for competition in this market.

Q. WHAT DO YOU MEAN BY ARTIFICIAL COSTS?

A. Artificial costs are any costs that are not associated with the efficient offering of the service. For instance, imposing access charges on a service that has heretofore been a local service would artificially increase the cost of that service. CenturyTel's suggestion to impose switched access charges on Level 3's service would result in an artificial cost

increase. Forcing Level 3 to offer a different service (800 service) or to offer a "joint" FX service with another provider would also impose artificial costs that are not cost-based. All such cost increases harm the efficient operation of the market and result in higher costs for consumers. This is all the more troubling a result when one considers that carriers such as Qwest, Verizon, and even CenturyTel itself would continue to be able to offer their own FX and FX-like services without the same kind of cost impositions.

Q. WHAT DO YOU MEAN WHEN YOU REFER TO "HIGHER COSTS FOR CONSUMERS"?

A. If Level 3 incurs additional costs those costs could result in several different impacts. If the market permits, Level 3 could increase its rates to cover the costs. The higher costs for the ISPs may ultimately translate into higher rates for Internet access for consumers, or simply reduce the profitability of the ISPs. Reduced profitability obviously slows down market penetration and the introduction of new and innovative services. This is especially true in more rural parts of the country.

If the market doesn't allow Level 3 to pass along the artificial cost increase, then Level 3 has two choices – accept the reduced earnings based on the lower margin, assuming that margin is sufficient to cover its costs, or do not enter the market.

Q. IN YOUR OPINION, IS IT GOOD POLICY TO ARTIFICIALLY INCREASE THE COST OF MARKET ENTRY FOR CLECS?

A. No. New entrants should not be punished for developing new products or for providing existing products in new and innovative ways. At a time when competition is failing and the industry has seen a two trillion dollar reduction in the value of the industry, new entrants should not be artificially handicapped while legacy providers are protected. Even CenturyTel cannot argue that handling FX-like traffic will result in higher costs for CenturyTel than the exchange of any other locally dialed call. Absent proof of additional cost and similar treatment for its own service, CenturyTel should not be entitled to compensation from Level 3. Instead, the Commission should see CenturyTel's position for what it is – an attempt to generate a revenue windfall by passing non-existent costs onto a competitor.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. Level 3 is a relatively new company offering a competitive product in one of the few segments of telecommunications showing signs of competition. While the service is offered in a new and innovative way, the functionality provided to consumers and to Level 3's customers are comparable to those of traditional FX services. Level 3's service should be treated just as those other, more traditional LEC services are treated – to do otherwise would be discriminatory and harmful to the effective operation of the market. Indeed, new entrants should not be punished or disadvantaged for developing

new services or using new technology to provide competitive responses to existing services.

CenturyTel is attempting to prevent Level 3 from offering a service it has offered for some time in other areas of the country. Its refusal to interconnect on fair terms and conditions and its demands for discriminatory treatment of Level 3's service vis a vis other LEC services, are simply an attempt to prevent competition in its serving territory.

CenturyTel recognizes the "unique competitive advantage" it enjoys as the owner of the local exchange facilities required for carriers to originate and terminate traffic. In its 2001 annual report it candidly described that advantage as follows:

> Unique Competitive Advantage
>
> Our investment in the local exchange telephone business provides CenturyTel with a unique competitive advantage. Owning the "local loop" and having a direct relationship with customers allows us to offer value-added services such as long distance, Internet and other data services with the convenience of one company, one bill and one telephone call for service.

It is clear that CenturyTel is attempting to maintain and extend this unique competitive advantage by imposing unwarranted costs on its competitors and limiting the types of services that they may offer. Such a strategy should be seen for what it is and rejected.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.