EXHIBIT NO. _____ (WPH-4T)
WUTC DOCKET NO. UT-023043
NOVEMBER 1, 2002

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**

REBUTTAL TESTIMONY OF WILLIAM P. HUNT ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC

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I. BACKGROUND AND INTRODUCTION

Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR THE RECORD.

A: My name is William P. Hunt. I am Vice President of Public Policy for Level 3 Communications, LLC ("Level 3"). My business address is 1025 Eldorado Boulevard, Broomfield, Colorado 80021.

Q: ARE YOU THE SAME WILLIAM P. HUNT WHO SUBMITTED DIRECT TESTIMONY IN THIS PROCEEDING?

A: Yes, I am.

Q: PLEASE STATE THE PURPOSE OF YOUR REPLY TESTIMONY.

My testimony responds to the points raised by CenturyTel ("CT") witnesses R. Craig Cook and William H. Weinman. *First*, I will address why CT's arguments with respect to interconnection for the exchange of traffic destined for Internet Service Providers ("ISPs") – and how ISP-bound traffic must be segregated from local traffic for interconnection purposes – are contrary to federal rules and orders, including the decision that CT cites to in support of this mistaken proposition. *Second*, I will discuss how Mr. Weinman's testimony fails to address the important policy considerations raised by CT's over-reaching proposed definition of "local traffic" in the interconnection agreement. *Third*, I will discuss why Mr. Cook's and Mr. Weinman's positions with respect to foreign exchange-type or so-called "Virtual NXX" services are contrary to law, industry practice, and a public policy that should promote competitive innovation in a

technologically neutral manner. *Fourth*, I will discuss why CT's refusal to define "bill-and-keep" pursuant to the most recent order from the Federal Communications Commission ("FCC") would be contrary to that order.

II. ARBITRATION ISSUES

A. ISSUE 1: ISP-BOUND TRAFFIC

Q: CAN YOU RESTATE THE DISPUTE WITH RESPECT TO ISSUE 1?

A: Yes. Issue 1 is a dispute over whether ISP-bound traffic must be treated differently from other types of local traffic for *interconnection purposes* simply because the FCC has decided to treat it differently for *intercarrier compensation purposes*.

Q: HAVE THERE BEEN ANY STATE COMMISSION DEVELOPMENTS ON ISSUE 1 SINCE YOU FILED YOUR DIRECT TESTIMONY?

A: Yes. Seven days ago this Commission concluded that it has jurisdiction to conduct this arbitration.[1]

The Commission held that Section 252(b)(1) continues to give it jurisdiction to arbitrate Level 3's request for interconnection in Washington, and in so doing explicitly rejected CenturyTel's jurisdictional arguments. For example, the Commission disagreed with CenturyTel's argument that the *ISP Order on Remand* preempted state commission jurisdiction over ISP-bound traffic, instead stating that "[w]e agree with Level 3 that the FCC preempted state

[1] *Third Supplemental Order Confirming Jurisdiction, In re Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC & CenturyTel of Washington, Inc.*, Docket No. UT-023043 (Oct. 25, 2002).

commission authority over compensation for ISP-bound traffic, and did *not* preempt state commission authority to arbitrate other issues relating to ISP-bound traffic."[2] CenturyTel's argument that jurisdiction was lacking because Level 3 intends to provide "interexchange traffic [that] is not subject to the local competition provisions of 47 U.S.C. §§ 251 and 252"[3] also was rejected:

> The Commission rejects CenturyTel's argument that because the traffic is interstate, it is, therefore, not subject to the arbitration provisions of 47 U.S.C. § 252. We hold that the provisions of 47 U.S.C. §§ 251 and 252 apply to both interstate and intrastate services.[4]

Similarly, three days ago an arbitrator recommended that the North Dakota Public Service Commission deny the motion of SRT Communications Cooperative ("SRT") to dismiss Level 3's arbitration petition for lack of jurisdiction.[5] SRT, like CenturyTel in the instant proceeding, sought dismissal partly on the ground that FCC rules did not allow requesting carriers to obtain interconnection solely for the purpose of delivering ISP-bound traffic,[6] while Level 3 argued that its proposed ISP-bound services were local exchange services "subject to negotiated transport and termination arrangements, rather than interexchange services subject to access charges."[7] In recommending denial of SRT's motion, the arbitrator recognized the validity of Level 3's request for interconnection pursuant to § 251(a), and noted that "[s]ection 252 applies to all

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[2] *Id.* at 4 (¶ 18) (emphasis added).

[3] *Id.* at 5 (¶ 20).

[4] *Id.* at 5 (¶ 22).

[5] *See Recommended Order of the Arbitrator Concerning SRT Communications Cooperative's Motion for Dismissal, In re Level 3 Communications, LLC Interconnection Arbitration Application,* North Dakota PSC Case No. PU-2065-02-465 (Oct. 29, 2002).

[6] *Id.* at 3.

section 251 requests for interconnection and therefore section 252 provisions apply to Level 3's request for interconnection under section 251(a)."[8]

Finally, this Commission yesterday denied the Washington Independent Telephone Association's petition to intervene in this arbitration, noting that "an arbitration proceeding under the Telecommunications Act of 1996 generally is an unsuitable forum for participation by parties other than the negotiation parties."[9]

Q: WHAT REMAINS TO BE DECIDED UNDER ISSUE 1?

A: Despite the Commission's decision in the *Third Supplemental Order*, Level 3 expects that CT will continue to argue that all ISP-bound traffic should be exchanged under an agreement separate and distinct from a local interconnection agreement. Mr. Weinman calls this separate agreement an "Information Access Traffic Exchange Agreement," and indicates at page 20 that this would govern the exchange of ISP-bound traffic wherever it is delivered to an ISP.

Q: COULD YOU PLEASE EXPLAIN WHY LEVEL 3 OPPOSES CT'S "INFORMATION ACCESS TRAFFIC EXCHANGE AGREEMENT"?

A: There are four significant problems with the proposed Information Access Traffic Exchange Agreement ("IATEA").

First, the IATEA treats ISP-bound traffic differently from local traffic for interconnection purposes, in clear contravention of FCC rules and orders that

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[7] *Id.*

[8] *Id.*

[9] *Fourth Supplemental Order: Denying Petition to Intervene, In re Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC & CenturyTel of Washington, Inc.*, Docket No. UT-023043 (Oct. 31, 2002), at 2.

differentiate ISP-bound traffic for intercarrier compensation purposes *only*.[10] For example, the IATEA would force Level 3 to set up a separate interconnection network with CT, without reference to what would be required in a local interconnection network. Under CT's proposed IATEA, Level 3 would have none of the Section 251 rights available, such as the ability to choose interconnection points or to obtain cost-based transport. Instead of specifying one interconnection point per LATA, or per serving area, or even per local calling area, the IATEA provides no interconnection standards and gives CT sole discretion to reject any Level 3-proposed interconnection architecture. This could result in Level 3 having to trunk to every CT end office in the serving area, or in prolonged anticompetitive delay as the parties haggle over interconnection details.

The FCC made clear even in adopting new rules for ISP-bound intercarrier compensation that carriers remain subject to interconnection obligations for ISP-bound traffic under Section 251 of the Act. In the *ISP Order on Remand*, for example, the FCC stated its "unwilling[ness] to take any action that results in the establishment of separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic."[11] The FCC did this largely to prevent incumbent LECs such as CenturyTel from dictating terms on interconnecting carriers: "Because we are concerned about the superior bargaining power of

[10] The FCC stated that its changes "affect[] only the intercarrier *compensation (i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand & Report & Order*, 16 FCC Rcd 9151, 9187 (¶ 78) n.149 (2001) ("*ISP Order on Remand*"), *remanded by WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("*WorldCom*").

incumbent LECs, we will not allow them to 'pick and choose' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier."[12] CT should not be permitted to impose the terms of interconnection for the exchange of ISP-bound traffic by pretending that such traffic is no longer subject to Commission jurisdiction or governed by federal interconnection rules.

Second, the IATEA allows CT to impose unspecified originating usage charges on certain ISP-bound calls. As will be discussed in the context of Issue 3, this is contrary to the FCC's directive that where a new entrant and ILEC begin exchanging ISP-bound traffic after the first quarter of 2001, the intercarrier compensation for that exchange of ISP-bound traffic shall be "bill and keep."[13] In other words, even as CT looks to the FCC's *ISP Order on Remand* for its erroneous jurisdictional arguments about interconnection, it overlooks the specific intercarrier compensation requirements that were the focus of that order.

Third, it should be noted that IATEA's focus on "information access" traffic is inappropriate given that the FCC's reliance upon this term prompted the reviewing court to reverse and remand the *ISP Order on Remand*. As Level 3's jurisdictional briefs discuss, the court in *WorldCom v. FCC* rejected the FCC's justification for considering ISP-bound traffic as "information access" under Section 251(g) of the Act. The Court sent the matter back to the FCC for further

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11 *Id.* at 9196-97 (¶ 90).

12 *Id*. at 9196 (¶ 89).

13 *ISP Order on Remand*, 16 FCC Rcd at 9155 (¶ 6).

consideration as to whether there were other grounds for imposing separate intercarrier compensation rates for ISP-bound traffic.[14] The parties should not structure an agreement around a term that was the primary cause for a reviewing court to remand a FCC order.

Finally, the IATEA is discriminatory. It requires a CLEC that serves ISPs to set up a separate network just to handle ISP-bound traffic.[15] This imposes additional costs on competitors and introduces incredible inefficiencies and in contravention of federal law. To my knowledge, CT serves its own ISP customers out of its local service tariffs, and does not maintain a separate network to route calls to them – rather, it would use the same local network that is used to route any other locally-dialed call to route calls to its own ISP customers. Thus, requiring that a competitor set up a separate, distinct, and higher cost trunking network just for the exchange of ISP-bound traffic would result in discrimination against the CLEC and the ISPs it serves.

Q: OTHER THAN THE ARGUMENT THAT THIS COMMISSION LACKS JURISDICTION—WHICH THE COMMISSION REJECTED—DOES MR. WEINMAN STATE WHY HE BELIEVES A SEPARATE AGREEMENT IS NEEDED TO HANDLE ISP-BOUND TRAFFIC?

A: No.

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[14] *WorldCom*, 288 F.3d at 434.

[15] While Level 3 intends only at this time to exchange ISP-bound traffic with CT, the concept that a separate network subject to different terms and conditions than those that apply for local traffic is objectionable, discriminatory, and wrong as a matter of law. As discussed further below, Level 3 intends to expand its service offerings over the next several years, and is concerned that a separate network just for the exchange of ISP-bound traffic would still be

Q: WHAT IS YOUR RECOMMENDATION WITH RESPECT TO ISSUE 1?

A: Now that this Commission has affirmed its jurisdiction to arbitrate and resolve interconnection disputes relating to ISP-bound traffic (except for those regarding intercarrier compensation rates), it should exercise its authority to require that CT interconnect with Level 3 for the exchange of ISP-bound traffic on the same terms and conditions as apply to other local traffic.

B. ISSUE 2: DEFINITION OF LOCAL TRAFFIC

Q: WOULD YOU PLEASE RESTATE THE DISPUTE WITH RESPECT TO ISSUE 2?

A: Yes. Level 3 objects to CT's proposal to include the terms "Internet" and "Internet Protocol based long distance telephony" in defining what does not constitute Local Traffic. Also, while this is dealt with separately in Issue 3, Level 3 objects to the second sentence in CenturyTel's definition, which attacks so-called "Virtual NXX" or foreign exchange-type traffic.

Q: HAS CT EXPLAINED WHY IT WANTS TO INCLUDE THESE TERMS IN ITS DEFINITION?

A: No. Neither Mr. Weinman nor Mr. Cook discusses these issues, despite the fact that Level 3 identified these specific terms as being of concern in the Joint Issues List. Instead, CT again focuses on foreign exchange and so-called "Virtual NXX" issues (Issue 3) in its testimony in discussing the local traffic definition (Issue 2).

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required once Level 3 expands its service offerings. Footnote 149 of the *ISP Order on Remand* further makes clear that the FCC intended for ISP-bound traffic to remain subject to the same interconnection rules as local traffic.

Q: CAN YOU BRIEFLY SUMMARIZE LEVEL 3'S CONCERNS OVER THE USE OF "INTERNET" AND "INTERNET PROTOCOL BASED LONG DISTANCE TELEPHONY" IN THE CONTRACT?

A: I identified three different objections to these terms in my direct testimony.

First, Level 3 objects to the inclusion of such undefined terms. Given that CT is concerned about the definition of Local Traffic, it is unreasonable to expect Level 3 to accept these vague phrases in that definition.

Second, Level 3 objects to these terms because, by virtue of how vague they are, CT could use them to attack all kinds of voice services regardless of whether those services may qualify as local telecommunications, toll telecommunications, or enhanced services under federal or state law. This would be contrary to the cautious approach advocated by the FCC and taken by many state commissions with respect to nascent Internet Protocol-based services. Moreover, the FCC has explicitly rejected the disparate treatment of ISP-related traffic that is CT's goal in proposing these definitions. The *ISP Order on Remand* stated that the FCC was "unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic."[16] The FCC did not want to allow incumbent LECs such as CenturyTel to control the system: "Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to 'pick and choose' intercarrier compensation regimes, depending on the nature

[16] *Id.* at 9196-97 (¶ 90).

of the traffic exchanged with another carrier."[17] Taking an over-reaching approach as suggested by CT here could lead to a misclassification of traffic and result in Washington consumers losing out on the benefits of newer technologies that have been considered more carefully on a case-by-case basis in other jurisdictions.

Third, Level 3 objects to CT's proposal because this arbitration is not the right place to determine state policy on enhanced voice services. This is a bilateral, expedited proceeding in which no evidence has been offered with respect to the nature of any given "Internet" or "Internet Telephony" service. Either a generic proceeding to consider such policies, or a complaint proceeding that involves a detailed consideration of the nature of any specific service, would present a better forum .

Q: WHAT COURSE OF ACTION DO YOU RECOMMEND?

A: CT has provided no reason to include broad and vague terms such as "Internet" and "Internet Telephony" in the interconnection agreement. Rather than prejudging how to regulate new services that might be deployed, the Commission should remove these terms from the interconnection agreement. If the Commission determines further investigation is warranted, it should open a generic proceeding. In the alternative, if a carrier feels aggrieved by a provider of some kind of "Internet" or "Internet Telephony" service, it can complain to the Commission at that time. For now, like other state commissions that have

[17] *Id*. at 9196 (¶ 89).

considered this issue, this Commission should defer judgment on the broad regulatory classification of these kinds of services.

C. ISSUE 3: FOREIGN EXCHANGE OR "VIRTUAL NXX"

Q: PLEASE RESTATE THE DISPUTE WITH RESPECT TO ISSUE 3.

A: This is a dispute over the proper intercarrier compensation methods to apply to the exchange of calls originated by a CT customer that are destined for a Level 3 ISP customer who does not maintain a physical presence in the rate center with which the ISP's telephone number is associated.

Q: WHAT POSITION HAS CT TAKEN WITH RESPECT TO THIS ISSUE?

A: Nearly all of the testimony of Mr. Cook is devoted to this issue, and most of Mr. Weinman's testimony focuses on Issue 3 as well. My review of their testimony reveals three distinct arguments by CT to support originating compensation for these foreign exchange-type calls. First, CT asserts that Level 3 will not be providing any service similar to foreign exchange service. Weinman at 9:6-11:19; Cook at 9:9-15:5, 33:18-36:9. Second, CT argues that Level 3 will be providing a service more analogous to interexchange "800 Service." Weinman at 11:20-13:16; Cook at 15:7-17:3, 21:16-25:7, 30:1-31:2. Finally, CT contends that Level 3 will be violating industry guidelines by assigning telephone numbers to a customer in a rate center where the customer has no physical presence. Cook at 7:16-9:7, 39:6-40:19. I will address the first and third points in my testimony; Mr. Gates will address all three points.

1. NATURE OF THE SERVICE

Q: AT PAGE 8 OF HIS TESTIMONY, MR. WEINMAN DEFINES "VIRTUAL NXX" AS "A PRACTICE WHEREBY A CARRIER ASSIGNS TELEPHONE NUMBERS FROM A BLOCK OF NPA-NXX CODES TO ITS CUSTOMERS THAT ARE NOT LOCATED WITHIN A GEOGRAPHIC AREA OF THE RATE CENTER ASSOCIATED WITH THE NPA-NXX, AS DEFINED IN THE LOCAL EXCHANGE ROUTING GUIDE ('LERG')." DO YOU AGREE?

A: I agree in part. First, I am not aware an industry-standard definition of "Virtual NXX." I know of no carrier who specifically offers any product called "Virtual NXX." The term "Virtual NXX" typically comes up in regulatory proceedings where carriers are battling over how a CLEC might assign telephone numbers to certain customers and the implications of those assignments for interconnection and intercarrier compensation. Thus, the definition becomes a contested matter.

Second, CT makes it sound as if a "Virtual NXX" practice is something that only CLECs do – that only a CLEC would devise a plan to assign a telephone number to a customer who is not physically located in the rate center with which the telephone number is associated. ILECs have been doing this for years in response to customer demand. Traditionally, this was called foreign exchange ("FX") service, and it gave the customers the *exact* functionality that Mr. Weinman describes at page 8 for Virtual NXX. For example, a florist located 30 miles away might obtain a foreign exchange telephone number in Seattle to take

local calls from Seattle-based customers. From the customer's perspective how the carrier provisions the service is irrelevant; all that matters to the customer – and for purposes of Mr. Weinman's definition – is that the ILEC's FX customer receives a telephone number where he or she does not have a physical presence.

Q: MR. COOK ARGUES (AT PAGE 14) THAT LEVEL 3 "IS SEEKING TO ESTABLISH VNXX CODES IN ORDER TO PROVIDE A MEANS OF RECEIVING TOLL-FREE INTEREXCHANGE CALLS FROM A WIDE GEOGRAPHIC AREA BY COMPELLING ORIGINATING CARRIERS SUCH AS CENTURYTEL TO ENTER INTO LOCAL RETAIL CALLING ARRANGEMENTS WITH LEVEL 3'S END USERS." HOW DO YOU RESPOND?

A: Despite Mr. Cook's assertions, Level 3's "primary purpose" in obtaining telephone numbers and interconnection with CT is not to deny access charges or toll revenue to CT. As a preliminary matter, in terms of lost toll revenue and access charges, one must consider how unlikely it would be that customers would choose to dial a toll call to connect to the Internet. It is not as if by Level 3's mere presence in the market, customer dialing patterns to the Internet will shift from toll to local, thereby depriving CT of toll calling revenues it would otherwise have obtained. Indeed, based upon the financial documents and annual report from CT attached to the Level 3 petition, I believe that CT is concerned about losing its own ISP customers – or end user customers leaving its ISP affiliate – when Level 3 begins to offer competitive services to ISPs.

Contrary to Mr. Cook's assertions, Level 3's "primary purpose" in entering the market is to serve ISP customers, who for practical reasons require a local calling presence to serve their own end users. If the ISP is not physically located where the telephone number is, this is no different than the FX services that ILECs developed in response to customer demands. Likewise, Mr. Cook's statement about compelling CT to enter into local retail calling arrangements with Level 3 end users does not follow. Level 3 is asking that CT interconnect like it would in the case of any other CLEC (or neighboring ILEC, for that matter) for the purposes of exchanging locally dialed calls between customers, including FX and FX-like traffic.

Thus, so-called "Virtual NXX" number assignment is not some kind of nefarious CLEC scheme, as Mr. Weinman and Mr. Cook imply. It is the same service functionality that ILECs deliver to their own FX customers – albeit through what may be different technologies and network platforms – to respond to customer demand for local telephone numbers in different exchanges. Indeed, as Level 3 witness Gates has pointed out, several major ILECs, such as Verizon and Qwest, appear to offer FX-like or "Virtual NXX" products in Washington today that are similar to what Level 3 proposes. Yet, from what I can tell, CT does not appear to be collecting originating access or demanding that new facilities be built just to handle those calls with other ILECs.

Q: YOU HAVE STATED THAT LEVEL 3'S INTENT IS ONLY TO SERVE ISPs AT THIS TIME. HOW DO YOU RESPOND TO MR. COOK'S TESTIMONY (AT PAGE 7) DISCUSSING A LEVEL 3 VOICE PRODUCT?

A: Initially, Level 3's intent is to serve ISPs. We limited our interconnection request and market entry in this manner both because it fit our existing business plan and because we wanted to address any concern on the part of CT that we would unnecessarily challenge any "rural exemption". However, we are exploring the possibility of a broader suite of services – including voice services – and would hope to be able to deliver those at some point to customers throughout our service footprint. At that time, we would need to consider what more might be required to provide such services. Until then, however, Level 3's entry in the CT serving area in Washington will be limited to the delivery of services to ISPs. And of course, Level 3's service to its ISP customers is going to be local exchange service. Mr. Cook overreaches when he tries to interpret the way in which we limited our request for interconnection and market entry as evidence that we are not providing a local service to these specific customers. And Mr. Cook's conclusion that "even Level 3's voice product … will be an Interexchange voice service offering" is incorrect, unless every ILEC foreign exchange service offering is also "Interexchange."

Q: HOW WOULD YOU DESCRIBE LEVEL 3'S PROPOSED SERVICE THAT IS AT ISSUE IN THIS ARBITRATION?

A: Level 3's proposed service offering can be described as providing local direct-inward-dial capability, which may or may not include a foreign exchange-like capability depending upon the location of any given customer, to its ISP customers. By virtue of this product, Level 3's customers receive local connectivity to the public switched telephone network to receive local telephone calls from their own customers. This is no different than the DID, FX, and FX-like products offered by other local exchange carriers in Washington today.

Q: IS MR. COOK RIGHT IN SUGGESTING THAT THE SERVICE LEVEL 3 PROPOSES TO OFFER IS NOT LOCAL SERVICE?

A: No. At pages 27-29 of his direct testimony, Mr. Cook suggests that Level 3's FX-like traffic would not constitute local traffic for purposes of either Section 251 of the Act or Washington law. He is incorrect on both counts.

Q: WHY IS MR. COOK'S CONCLUSION ABOUT THE DEFINITION OF "LOCAL TRAFFIC" ERRONEOUS?

A: In Mr. Cook's view, the traffic does not originate and terminate in the same exchange, and that is the end of the analysis. There is no authority for his conclusion. There is no analysis as to why this would not similarly exclude even what Mr. Cook describes as traditional FX services (or any traffic associated with remote call forwarding services or other FX-like services offered by CT and other ILECs) from the scope of Section 251. In interpreting an Act intended to spur

technological innovation and competitive market responses, Mr. Cook's rigid focus on how ILECs have chosen to provision their equivalent service is misplaced. While we can address this issue further in briefs, the fact is that Mr. Cook's testimony provides no basis for the conclusion that Level 3's request for interconnection falls outside of Section 251.

Q: WHY IS MR. WEINMAN'S CONCLUSION ABOUT THE DEFINITION OF "FX" SIMILARLY IN ERROR?

A: Mr. Cook, at page 10 of his testimony, adopted such a literal reading of the FCC definition of FX that it no longer makes sense. In a single proceeding in which the parties did not dispute the meaning of "FX" (partly because it was not a notice-and-comment rulemaking), the FCC described FX as "service that connects a subscriber ordinarily served by a local (or 'home') end office to a distant (or 'foreign') end office through a dedicated line from the subscriber's premises to the home end office, and then to the distant end office."[18] This definition presupposes a circuit-switched environment with its discussion of the "home" end office of another exchange. But the proposed interconnection arrangement is not part of that circuit-switched environment. For that definition to make sense, therefore, one would need to examine equivalent functionality in a non-circuit-switched environment. Which is exactly what Level 3 has advocated.

[18] *AT&T Corp. v. Bell Atlantic, Memorandum Opinion & Order*, 14 FCC Rcd 556, 587 (¶ 71) (1998).

Q: HOW DO YOU RESPOND TO MR. COOK'S CLAIM (AT PAGE 9) THAT LEVEL 3'S SERVICE IS DIFFERENT FROM TRADITIONAL FX IN THAT THE LATTER "IS A RETAIL SERVICE OFFERING WHICH PROVIDES A DIRECT CONNECTION TO THE CALLED PARTY, NOT A WHOLESALE SERVICE WHICH PROVIDES A CONNECTION TO AN INTERMEDIATE CARRIER"?

A: Mr. Cook's statement indicates that he does not fully understand the service in question or the nature of a call flow in a competitive, multi-provider environment. First, Level 3's service is a "retail service offering," offered to ISPs, which have long been treated as end user customers by the FCC. Those ISPs will purchase local telecommunications connectivity to the public switched telephone network. Second, Level 3's service offers a "direct connection" to the ISP – the call is delivered to the customer once it comes onto the Level 3 network without going through any intermediate carrier. While it is true that Level 3 and CT are both involved in routing the call between their customers, that is not a function of the way in which Level 3 proposes to provide service – rather, what Mr. Cook seems to miss is that such multi-provider routing is going to be the product of *any* competitive telecommunications marketplace. Any call from a CT customer to a Level 3 customer – even if both customers were "truly local" in his understanding – would require that CT and Level 3 both be involved. Thus, his comment about the call going through an "intermediate carrier" is irrelevant and indicative of CT's confusion over the call flow when a competitive provider is involved.

Q: MR. WEINMAN LIKEWISE ARGUES (AT PAGES 9-11) THAT WHAT LEVEL 3 PROPOSES TO OFFER TO ISPs IS DIFFERENT THAN WHAT AN ILEC WOULD PROVIDE THROUGH TRADITIONAL FX SERVICE. HOW DO YOU RESPOND?

A: Level 3 witness Gates addresses this in more detail, but I would state that the "distinctions" that Mr. Weinman highlights in his testimony (and those asserted by Mr. Cook in his testimony at pages 9 and 10) are irrelevant in considering the functionality delivered to the customer. For example, Mr. Weinman asserts at page 12 that FX service "is typically designed for two-way traffic." That assertion may be true enough (although CT offers no support for that proposition), but consider the facts at hand – what ISP is ever going to need two-way service? Is CT really saying that if an ISP wanted to buy FX or Remote Call Forwarding service from it, it would tell the ISP that such service was unavailable because the ISP only needs the service for a one-way connection? And what about ILECs like Qwest and Verizon who, as Mr. Gates notes, offer similar one-way FX-like services targeted at ISPs – why hasn't CT raised similar concerns about those services? Focusing upon the two-way nature of the service is irrelevant in this context.

Likewise, Mr. Weinman's focus on the "dedicated circuit" (at pages 9-10) proceeds from the inappropriate premise that if CLECs want to provide comparable services to ILECs, they have to build their networks and charge their customers in the same exact way the ILECs do. Adopting CT's proposal would

certainly discourage innovation and punish efficiency. New entrants design networks differently, but that doesn't necessarily change the basic functionality delivered to customers. The Commission should avoid CT's suggestion to treat a foreign exchange-like service – the assignment of telephone numbers to a customer who is not physically located in the exchange to which the telephone number is assigned – differently based upon the way in which a carrier's technology and/or network supports that service. I would instead encourage this Commission to focus not on "call competition technology," but rather on technology-neutral regulations that consider the functionality delivered to consumers.[19]

Q: HOW DO YOU RESPOND TO THE ASSERTIONS MADE BY MR. WEINMAN AND MR. COOK THAT LEVEL 3'S SERVICE IS MORE ANALOGOUS TO AN "800 SERVICE"?

A: Mr. Gates will discuss why Level 3 disagrees with those assertions.

2. NUMBER ASSIGNMENT ISSUES

Q: HOW DO YOU RESPOND TO MR. COOK'S CLAIM (AT PAGE 8) THAT "THE ASSIGNMENT OF TELEPHONE NUMBERS TO CUSTOMERS NOT PHYSICALLY LOCATED WITHIN THE RATE CENTER BOUNDARIES VIOLATES" INDUSTRY NUMBERING GUIDELINES?

[19] *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements between Telephone Companies*, Case 00-C-0789, Order Denying Petitions for Rehearing, Clarifying NXX Order, and Authorizing Permanent Rates (N.Y.P.S.C. Sept. 7, 2001) ("*September 2001 New York Order*"), at 4.

A: If that is the case, then CT, Qwest, Verizon, and other ILECs and their affiliates have been violating numbering guidelines by offering FX and other similar services (such as CyberPOP or IPRS or the other services noted by Mr. Gates) that assign telephone numbers, in Mr. Cook's words, "to customers not physically located within the rate center boundaries" with which the numbers are assigned. Again, CT may claim that it provides these services in a different way, but in the end, the customer who is buying the service is getting a telephone number where the customer is not physically present to place or answer the phone call – which is exactly what Mr. Cook asserts is contrary to number assignment guidelines. The guidelines do not prohibit number assignment to customers in the manner proposed by Level 3 any more than they prohibit CT or any other carrier in Washington from assigning telephone numbers to FX customers or customers purchasing similar services who do not have a physical presence in the places where they are seeking a telephone number. Level 3 follows industry numbering guidelines in securing and assigning telephone numbers.

I'd further note that Mr. Cook's testimony with respect to this number assignment issue is based upon mistaken assertions about Level 3's proposed operations. For example, he argues at page 9 that one of the reasons that Level 3 is violating number assignment policy is because Level 3 does not "seek to establish a POI in CenturyTel territory." To the contrary, Level 3 has already agreed to establish not only a point of interconnection in CT territory, but in *each CT local calling area*. So Mr. Cook is plain wrong.

Q: CAN YOU PROVIDE OTHER EXAMPLES OF HOW MR. COOK ERRS IN HIS ANALYSIS OF COMPLIANCE WITH NUMBERING ASSIGNMENT GUIDELINES?

A: Yes. At pages 8-9, he asserts that the possibility of Level 3 assigning telephone numbers to customers without a physical presence in a rate center "contradicts industry established rating practices, threatens the nation's limited numbering resources and may accelerate future area code splits and overlays within Washington." He is wrong in each respect.

Q: PLEASE EXPLAIN.

A: Let's start with his premise that the assignment of customers in a "Virtual NXX" or FX-like scenario contradicts established rating practices. That is incorrect for at least two reasons. First, as discussed above and in further detail in the testimony of Mr. Gates, the service that Level 3 delivers to its end user customers is no different from the customer's perspective than what CT and other carriers gives their own FX and FX-like customers. Second, Mr. Cook's comment about established rating practices is contrary to a recent FCC decision. In an arbitration case involving several CLECs and Verizon-Virginia, Inc., the FCC's Wireline Competition Bureau considered arguments by Verizon – similar to those raised by CT here – that CLECs' use of Virtual NXX-type services changed traditional call rating in a manner detrimental to Verizon.[20] WorldCom noted that the industry

[20] *In re Petition of WorldCom, Inc. Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission re Interconnection Disputes with Verizon Virginia, Inc., & for Expedited Arbitration, Memorandum Opinion & Order*, 2002 FCC LEXIS 3544, at ¶ 299 (July 17, 2002) ("*Federal Arbitration Order*").

standard, used by "every carrier in the country, including Verizon," was to rate calls "by comparing originating and terminating NPA-NXX codes."[21] The Bureau ruled in favor of WorldCom and the other CLECs, finding that Verizon had failed to identify any "viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."[22] Thus, contrary to Mr. Cook's claims that FX-like services contradict established industry rating practices, the FCC has found that such services fit within the existing rating structure.

Q: COULD YOU PLEASE EXPLAIN WHY YOU DISAGREE WITH MR. COOK'S CONTENTION THAT LEVEL 3'S NUMBER ASSIGNMENT PRACTICES WOULD "THREATEN[] THE NATION'S LIMITED NUMBERING RESOURCES AND MAY ACCELERATE FUTURE AREA CODE SPLITS AND OVERLAYS WITHIN WASHINGTON"?

A: Yes. Mr. Cook's testimony is similar to the cries that the "sky is falling" that one hears from ILECs every time the question of "Virtual NXX" or FX-like services comes up. However, the fact is that other than the Maine Public Utilities Commission – in a decision discussed further in Mr. Gates' testimony – no state commission has ever found that these kinds of services (including FX service) contribute to number exhaust to any greater or lesser degree than any other service offering. The offering of either Virtual NXX or FX service by incumbents

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[21] *Id*. at ¶ 294.

[22] *Id*. at ¶ 301.

or new entrants does not cause number exhaust. Rather, it is the historical architecture of the North American Numbering Plan that exacerbates any problem, not the kinds of services offered by carriers or which carriers offer them.

Q. DO FACILITIES-BASED LOCAL EXCHANGE CARRIERS REQUIRE NUMBERING CODES THROUGHOUT THEIR SERVICE AREA?

A. Yes. Both incumbents and competitive carriers require numbering resources throughout their service areas to provide facilities-based local exchange services – although Level 3 tries to choose rate centers that encompass large calling areas in order to minimize its need for telephone numbers to serve ISPs. This means we need fewer telephone numbers to serve ISPs in the same area as compared to an ILEC network.

Q. DOES THE PROVISION OF VIRTUAL NXX OR FX SERVICE HAVE ANY RELATIONSHIP TO A CARRIER'S ABILITY TO CONSERVE OR EFFICIENTLY ASSIGN NUMBERING RESOURCES?

A. No. These services are simply telecommunications services like any other, e.g. voice, facsimile or wireless. The mere offering of Virtual NXX or FX service does not by itself result in inefficient or wasteful use of numbering resources.

Q. IN TERMS OF NUMBER ADMINISTRATION, WHAT STEPS HAS LEVEL 3 TAKEN TO ENSURE EFFICIENT USAGE?

A. Level 3 shares the concerns of the industry and regulators regarding number exhaust, and ensures that the telephone numbers that it has been assigned by the

North American Numbering Plan Administrator are utilized in a manner that will support number conservation. Level 3 avoids contaminating thousand blocks and follows sequential numbering requirements as required by the FCC. Specifically, when it first begins offering service in any given rate center, Level 3 only assigns numbers from the 4000 number block to customers. In places where we assigned numbers outside of the 4000 block prior to sequential numbering assignment, Level 3 has moved all numbers into the 4000 block. This is consistent with the applicable requirements and ensures that the other thousand blocks are preserved for number pooling efforts. Level 3 has also worked over the past several years to develop a local number portability ("LNP") solution for softswitch networks when no solution was commercially available, thereby allowing us to participate in number pooling conservation efforts.

Q. HAS THE COMPANY ESTABLISHED ANY POLICIES IN REGARD TO WHEN IT WILL UTILIZE ADDITIONAL NUMBERING RESOURCES?

A. Yes. Level 3 will not request additional numbering codes or utilize a new thousand block of numbers until it is utilizing at least 750 of the 1000 numbers assigned to it. Although numerous states require only 65% utilization, Level 3's nationwide policy is to reach 75% utilization.

Q: MR. COOK MENTIONS (AT PAGE 12) THAT LEVEL 3 HAS ALREADY OBTAINED 21 NPA-NXX CODES IN WASHINGTON. HOW MANY RATE CENTERS DO THOSE NPA-NXX CODES COVER?

A: Each NPA-NXX code that we have obtained is for a different rate center.

Q: IS THAT COUNT STATEWIDE?

A: Yes. I believe that those are all of the numbering resources that Level 3 has obtained and is using in Washington at this time. While Mr. Cook tries to paint this as a sizeable number, a closer examination reveals that Level 3 is not amassing NPA-NXX codes in any significant degree such that its practices are contributing to number exhaust.

Q: PLEASE EXPLAIN.

A: It is my understanding that Washington has 294 rate centers. By Mr. Cook's own count, Level 3 is using NPA-NXX codes for 7 percent of the rate centers in the state. Moreover, as I understand it, the only Washington NPA in which Level 3 holds telephone numbers that is in "jeopardy" status is the 360 NPA. I also understand that the other NPAs in which Level 3 presently holds telephone numbers in Washington may reach exhaust no earlier than between 2008 and 2014. These facts and figures show that Level 3 is not putting any significant strain on Washington numbering resources based upon any "virtual" or "non-virtual" service offerings. Taking this overview together with the fact that Level 3 has pioneered LNP softswitch capability and can participate in number pooling, the fact that FX and FX-like services put no more strain on numbering resources than any other service, and the fact that Level 3 promptly returns NXX codes where it will not use them, it should be clear that Mr. Cook's claims about the perils of number exhaust are without merit.

Q: DO YOU HAVE ANY FINAL COMMENTS ON CT'S ASSERTIONS WITH RESPECT TO NUMBER ASSIGNMENT?

A: Yes. One very interesting part of Mr. Cook's testimony comes at pages 31-33, where he suggests options to resolve this matter. In his testimony, Mr. Cook states that one solution would be for Level 3 to purchase FX services from CT in order to serve Level 3's ISP customers. According to Mr. Cook, "Level 3 can provide its customers an FX service through the use of existing CenturyTel NPA-NXX codes." This suggestion demonstrates perhaps more than any other the monopolistic mindset behind CT's positions. Mr. Cook is saying that while Level 3 cannot itself provide the service in question to its customers because it would violate number assignment guidelines, it would be no problem for CT to use telephone numbers to provide the same underlying function to Level 3. If CT truly believes that Level 3's use of telephone numbers to provide this service would violate number assignment guidelines, it is impossible to see how CT's use of telephone numbers to provide the same service fits within those guidelines.

3. DISCRIMINATION/COMPENSATION ISSUES

Q: CT WANTS TO ASSESS A PER-MINUTE ORIGINATION CHARGE ON FX-LIKE OR VIRTUAL NXX CALLS. HOW DO YOU RESPOND TO THAT PROPOSAL?

A: This proposal is based upon CT's misperceptions and mistaken assumptions as outlined in my testimony above, my direct testimony, and the testimony submitted

by Mr. Gates. At bottom, assessing originating access (or any other originating compensation rate) on Level 3 would be discriminatory and should be rejected .

Q: WHY WOULD IT BE DISCRIMINATORY TO GIVE CT THE ABILITY TO ASSESS ORIGINATING COMPENSATION?

A: To my knowledge, CT does not assess originating compensation on similarly situated calls to ILEC FX or FX-like customers. While Mr. Gates discusses this issue in more detail, consider the hypothetical example of a CT customer located in Exchange "A" in Washington. Assume further that the Exchange "A" rate center shares a local calling area with Exchange "B," which is a Verizon rate center. Thus, customers in Exchanges A and B can call each other locally even though they are served by two different telephone companies. Now assume that there is an ISP located somewhere else in Verizon's region outside of the Exchange B rate center and local calling area, and that the ISP wants a telephone number in Exchange B. That ISP goes to Verizon, and decides to purchase Verizon's IPRS service. The literature on Verizon's website describes this as an ISP-targeted service that delivers calls to hubs "where ports into an access server assigned to you are located."[23] It further states that the service "collects and aggregates your customer traffic and delivers it over a fast-packet connection to your POP." This sounds quite a bit like Level 3's proposed service.

In this example, the ISP would buy the service from Verizon and obtain a remote presence in Exchange B even though the ISP's equipment (its "POP")

[23] *See* https://www22.verizon.com/enterprisesolutions/ProductDetail/ProductDetail.jsp?productName= IPRS&url=dataiprs.html.

might be located across the LATA or even across the state of Washington. Thus, Verizon assigns a telephone number to the ISP for Exchange B. Unless CT asks Verizon each month (or each day, for that matter) for a list showing which telephone numbers are assigned to customers physically located in Exchange B, CT will have no way of knowing that the Verizon ISP's Exchange B telephone number is actually routed back to a more distant location in the LATA (or even to a location outside of the LATA). CT would just send the calls to that ISP's Exchange B telephone number over the same trunks used to route all other calls to Exchange B, and it would not know to charge Verizon something different for that particular call. The point of this hypothetical is that unless CT is making such demands on Qwest and Verizon and other carriers with whom it exchanges locally-dialed traffic to show where their customers are located on a number-by-number basis and then imposing originating access charges on each locally-dialed call to "virtual" or FX telephone numbers, it should not be permitted to assess such charges on Level 3. Originating access is also an inappropriate compensation arrangement for several other reasons spelled out in Mr. Gates' testimony.

CenturyTel's failure to assess originating compensation on other similarly situated calls to ILEC FX or FX-like customers would violate the Revised Code of Washington. Section 80.36.180 of the Code prohibits CenturyTel from charging Level 3 more for FX-like service than it charges other ILECs for their "like and contemporaneous" FX service. By imposing such compensation

arrangements on Level 3, CenturyTel would grant an unreasonable preference and advantage to other carriers vis-à-vis Level 3, which would be unreasonably prejudiced and disadvantaged. Mr. Cook claimed in his testimony at page 38 that allowing Level 3 to implement its proposed "foreign exchange" service throughout Washington would violate the Code. But in fact, his analysis is exactly backwards.

Q: WOULD IT BE LEGAL FOR CT TO ASSESS ORIGINATING COMPENSATION?

A: No. FCC Rule 51.703(b) states unequivocally that "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."[24]

Q: IF ORIGINATING ACCESS IS INAPPROPRIATE, WHAT IS THE PROPER COMPENSATION MECHANISM FOR THE EXCHANGE OF THIS TRAFFIC?

A: The proper compensation for the exchange of FX-like or Virtual NXX traffic between CT and Level 3 is a "bill and keep" arrangement.

Q: WHY IS "BILL AND KEEP" THE CORRECT COMPENSATION ARRANGEMENT?

A: It is the correct compensation arrangement for two reasons. First, that is presumably how CT handles FX and FX-like calls that it exchanges with carriers like Qwest and Verizon as described in the example above. Second, bill and keep

[24] 47 C.F.R. § 51.703(b).

is the appropriate compensation arrangement in light of the FCC's *ISP Order on Remand*. That order, which established a federal intercarrier compensation regime for ISP-bound traffic, requires that new entrants who begin providing service in an ILEC's serving area after the first quarter of 2001 exchange ISP-bound traffic with the ILEC on a bill and keep basis. I know that CT and Level 3 continue to disagree over the scope of the FCC's order, but we find nothing in that order that indicates that the FCC intended to limit its intercarrier compensation ruling to traffic terminating to ISPs physically located in the same local calling area as the originating caller. To the contrary, as explained on pages 29-31 of my direct testimony, it would be odd for one to conclude that on the one hand the FCC found ISP-bound traffic to be interstate – and therefore not subject to reciprocal compensation – based upon the fact that the calls do not terminate at an ISP's modem banks, while arguing on the other hand that the location of modem banks is critical for purposes of originating compensation.

Q: COULD YOU PLEASE SUMMARIZE YOUR POSITION WITH RESPECT TO ISSUE 3?

A: Yes. Internal inconsistencies throughout the CT testimony should cause the Commission to reject CT's position. CT argues on the one hand that the FCC has taken exclusive jurisdiction over ISP-bound traffic for all purposes, while on the other hand arguing that the Commission should find that Level 3 owes CT originating intercarrier compensation for certain kinds of ISP-bound traffic. CT argues on the one hand that Level 3's proposed service violates numbering

assignment guidelines, while on the other hand claiming that this could be resolved if CT would just provide the telephone numbers to Level 3. CT argues on the one hand that Level 3's proposed service should be subject to originating access, while on the other hand ignoring the fact that other ILECs (including CT itself) are not subject to the same requirement it would impose on Level 3.

CT's testimony also demonstrates a fundamental misunderstanding of the product nature and the call flows involved. CT focuses on the technology used by carriers to provide telephone numbers to customers, ignoring that in the end, the customers obtain the same basic functionality in terms of obtaining telephone numbers where they have no physical presence. CT focuses on the purported two-way nature of FX service, overlooking that ISPs have no need for two-way services as a practical matter. CT argues that Virtual NXX practices will somehow lead to number exhaust without providing a single iota of evidence or hard data to back up that claim.

The Commission should reject CT's position on Issue 3 as contrary to law, policy, and industry practice. Level 3's proposed service is a competitive response to FX services that the ILECs have offered for decades. Level 3's proposed interconnection would result in no more cost for CT in terms of originating a FX-like call than in originating any other locally-dialed call. Level 3's proposal would establish compensation arrangements consistent with those that exist between neighboring ILECs and consistent with the FCC's mandates on

intercarrier compensation for ISP-bound traffic. The Commission should adopt Level 3's proposal with respect to Issue 3.

D. ISSUE 4: DEFINITION OF "BILL AND KEEP"

Q: WOULD YOU PLEASE RESTATE THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 4?

A: Level 3 has proposed defining "bill and keep" by reference to the most recent pronouncement with respect to this issue – footnote 6 of the FCC's *ISP Order on Remand*. CT objects primarily because of its erroneous belief that the FCC's order applies only to ISP-bound traffic terminating to a modem bank in the same local calling area as the dialing customer.

Q: WHAT HAS CT SAID ABOUT THIS ISSUE IN ITS DIRECT TESTIMONY?

A: Mr. Cook argued at pages 17-18 that the *ISP Order on Remand* addressed only ISP-bound traffic in which the connection from the ISP customer to the ISP modem is entirely within a single local calling area. This is incorrect. In *Bell Atlantic*, the D.C. Circuit vacated and remanded the original *ISP Order* because the FCC failed to support its conclusions that LEC traffic terminated to ISPs was not local.[25] Responding to the D.C. Circuit's remand, the FCC abandoned any attempt at a distinction between "local" and "non-local" traffic, and removed the word "local" from the definition of "telecommunications traffic" in FCC Rule

[25] *See Bell Atlantic Tel Cos. v. FCC*, 206 F.3d 1, 9 (D.C. Cir. 2000).

51.701(b)(1).[26] Moreover, as explained above and in my prior testimony, calls from CT end-user customers to Level 3 ISP customers will be dialed as local calls and will be handed off at local points of interconnection. These calls are no more "Interexchange" in nature than any other FX-like service.

Level 3's definition tracks the controlling FCC statement as to what "bill and keep" means, and the Commission should approve Level 3's proposal.

III. SUMMARY

Q. AFTER REVIEWING THE TESTIMONY FILED BY MR. WEINMAN AND MR. COOK, WHAT IS YOUR RECOMMENDATION TO THE COMMISSION WITH RESPECT TO THE ARBITRATION ISSUES?

A. My recommendations remain the same. CT's positions are based upon misinterpretations of federal and state law, and would stall the development of competition in its serving areas in Washington. As discussed in my direct testimony, a ruling in favor of Level 3's positions in this arbitration will help to promote competitive entry in markets such as CT's, where competition has been slow to arrive. Level 3's positions are fair to CT and consistent with federal and state law, and would allow consumers in CT's serving areas to begin enjoying some of the same kind of competitive benefits (limited as they may be, in some cases) as consumers in other ILEC serving areas have seen since 1996. Level 3's positions will promote more efficient competition not only in the telecommunications market, but also in the ISP services market in which Level

[26] *ISP Order on Remand*, 16 FCC Rcd at 9164 (¶ 26).

3's end user customers operate. As noted in my direct testimony, it is important to remember that the end-user customers seeking to dial into ISPs are end-user customers of CT. As a telephone company, CT should want its customers to have greater choices and greater demand for applications such as the Internet, since these applications will drive telecommunications demand as well.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes, it does.