

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an	))	
Interconnection Agreement Between	))	
	))	
LEVEL 3 COMMUNICATIONS, LLC	))	
	)	DOCKET NO. UT-023043
and	)	
CENTURYTEL OF WASHINGTON, INC.,		
Pursuant to 47 U.S.C. Section 252		

**REPLY TESTIMONY OF R. CRAIG COOK**  
**(RCC-7T)**

**ON BEHALF OF**  
**CENTURYTEL OF WASHINGTON, INC.**

**NOVEMBER 1, 2002**

**DOCKET NO. UT-023043**

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**INDEX**

	<u>Page(s)</u>	<u>File Name</u>
Reply Testimony of R. Craig Cook		RCC-7T.doc
I. Introduction	3	
II. Summary of Testimony	3-4	
III. Level 3's Proposed Service Offering	5-13	
IV. Section 251(a) Interconnection Obligations	14-18	
V. Appropriate Regulatory and Compensatory Treatment of Level 3's Proposed Service	18-29	
VI. Competition and Discriminatory Treatment	29-36	
VII. Market and Consumer Implications	36-40	
VIII. Conclusion	40-41	

**I. INTRODUCTION**

**Q. Please state your name, job title, employer, and business address.**

A. My name is R. Craig Cook, and I am employed by John Staurulakis, Inc. (JSI) as Staff Director of Regulatory Affairs. My office address is 9430 Research Boulevard, Echelon Building II, Suite 200, Austin, Texas, 78759.

**Q. Did you previously submit direct testimony in this matter wherein you described JSI, your duties at JSI, your background and your experience?**

A. Yes, I did.

**Q. Was the reply testimony you are presenting here prepared by you or under your direct supervision?**

A. Yes, it was.

**II. SUMMARY OF TESTIMONY**

**Q. What is the purpose of your testimony in this proceeding?**

A. The purpose of my testimony is to address the issues presented by Mr. Gates, and Mr. Hunt, in part, in their direct testimony filed on behalf of Level 3 with the Washington Utilities and Transportation Commission (Commission) on October 18, 2002. My testimony will

1 demonstrate that Level 3 is not providing a local exchange service in CenturyTel's local service  
2 area, rather an Interexchange service that is not subject to the local interconnection requirements  
3 of Section 251(a) and 251(c) of the federal Telecommunications Act of 1996 (Act). I will  
4 address the Commission's recent supplemental Order confirming its jurisdiction in this case and  
5 specifically demonstrate that CenturyTel has met its obligations pursuant to Section 251(a). I  
6 will respond to Level 3's claims that CenturyTel is acting in an anti-competitive manner, and  
7 demonstrate that in fact, Level 3's proposed actions are discriminatory as Level 3 seeks to  
8 arbitrage the regulatory requirements for Interexchange traffic under the guise of "local  
9 interconnection" in violation of the requirements outlined in the FCC's *Local Competition*  
10 *Order*.<sup>1</sup> Contrary to Level 3's assertions, I will explain how Level 3's proposed service  
11 offering, Virtual NXX (VNXX), violates the established industry guidelines developed to  
12 protect the nation's limited numbering resources. I will also show the appropriate regulatory  
13 and compensatory treatment that applies to the specific proposition that Level 3 presents in this  
14 arbitration. Finally, I will demonstrate that Level 3's intended actions have negative implications  
15 to both the telecommunications market in general and consumers in particular.

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<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*"), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F3d 1068 (8<sup>th</sup> Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *aff'd in part and remanded*, *AT&T Corp. v. Iowa*

**III. LEVEL 3'S PROPOSED SERVICE OFFERING**

**Q. Level 3 claims its proposed service is consistent with ILEC local service offerings. Do you agree?**

A. No. Level 3's contention that its proposed services are similar to ILEC's Foreign Exchange (FX) service, Remote Call Forwarding (RCF) service, and Extended Area Service (EAS) is completely incorrect. I disagree that Level 3's service is similar to any one of these ILEC local tariffed service offerings. Level 3's proposed service is however, very similar to Interexchange services currently provided by CenturyTel to other Interexchange Carrier (IXC) customers. In particular, Level 3's proposed service appears to be materially identical to the 800-type services offered by IXCs purchasing access services from CenturyTel.

**Q. Can you briefly describe Level 3's proposed service offering?**

A. Level 3 is seeking interconnection arrangements with CenturyTel for the primary purpose of providing originating dial-up data services to its ISP customers who are not physically located within the local calling area of CenturyTel's customers. Level 3 has obtained NPA-NXX codes from the North American Numbering Plan Administrator (NANPA) and plans to establish rate center designations for those NXXs in CenturyTel rate centers or within the expanded local calling scope of CenturyTel's rate centers, in an attempt to have the NXX(s) appear in the Local Exchange Routing Guide (LERG) as "local" within CenturyTel's exchanges. Level 3

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*Utils. Bd.*, 119 S. Ct. 721 (1999), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*.

1 intends to assign multiple telephone numbers from these NPA-NXX codes to its customers who  
2 are located outside the designated rate center boundaries to which these codes are assigned and  
3 is requesting that CenturyTel route calls to these “local” numbers to Level 3’s facilities for  
4 delivery to Level 3’s customers located outside of CenturyTel’s local calling area. It is clear  
5 that Level 3’s proposed service relies upon the use of a “Virtual NXX” or VNXX arrangement.  
6 As described above, the practice of a carrier assigning an NXX to its customers who are not  
7 physically located in the exchange to which the NXX is rate centered is a VNXX arrangement.  
8 As defined in the FCC’s *Unified Intercarrier Compensation NPRM*, a VNXX code is a  
9 central office code that corresponds with one geographic area but is assigned to a customer  
10 located in a different geographic area.<sup>2</sup> The purpose of the VNXX arrangement is to provide  
11 the customers of the VNXX code-holding carrier, who are physically located in the terminating,  
12 non-local rate center the ability to receive toll-free calls from the rate center with which the  
13 NXX is associated.

14  
15 **Q. Is Level 3’s use of VNXX codes significant in this case?**

16 A. Yes. Mr. Gates testifies that based on his review of Level 3’s practices, “...Level 3 utilizes and  
17 abides by the Numbering Guidelines.”<sup>3</sup> I disagree. The simple fact that some carriers may be  
18 employing VNXX arrangements does not make its use appropriate. Level 3’s use of NPA-  
19 NXX codes to provide VNXX services is not consistent with the existing Central Office Code

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<sup>2</sup> Notice of Proposed Rulemaking In the Matter of Developing a Unified Intercarrier Compensation Regime, FCC 01-132, CC Docket No. 01-92, at fn 188, rel. April 27, 2001 (“*Unified Intercarrier Compensation NPRM*”).

1 Assignment Guidelines<sup>4</sup> and is not an efficient use of the nation's numbering resources. In fact,  
2 the Maine Public Utilities Commission has already prohibited a CLEC from providing a VNXX  
3 service and ordered NANPA to reclaim such NPA-NXX codes in an effort to prevent future  
4 number exhaust in Maine.<sup>5</sup>

5  
6 Level 3's attempt to utilize VNXX codes is for the intent purpose of preventing the  
7 presubscribed toll carrier (IXC) of the end user from assessing standard "toll" charges for calls  
8 to Level 3's ISP customer's VNXX number. Likewise, the VNXX arrangement would prevent  
9 the ILEC from assessing Exchange Access charges to its IXC customers. By assigning multiple  
10 NPA-NXX codes, each from a different rate center, to an individual customer in a distant  
11 location, Level 3 can offer its customer(s) the ability to receive incoming toll-free Interexchange  
12 calls from the entire geographic area of each NPA-NXX rate center, thereby effecting an 800-  
13 type service without incurring the customary Exchange Access charges. Level 3 claims that its  
14 service is not similar to 800-type service. However, if Level 3 were to obtain enough NXX  
15 codes, it could offer LATA-wide, state-wide, and potentially nation-wide, inbound toll-free  
16 Interexchange calling to its customers.

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<sup>3</sup> Direct Testimony of Gates at pg. 10.

<sup>4</sup> Direct Testimony of Cook (Exhibit RCC-3, Section 2.13).

<sup>5</sup> *Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758 and *New England Fiber Communications D/B/A Brooks Fiber Proposed Tariff Revisions to Introduce Regional Exchange (RX) Service*, Docket No. 99-593; (June 30, 2000) ("*Maine VNXX Decision*").



1   **Q.     Level 3 claims that their proposed service offering is functionally equivalent to FX**  
2       **Service. Do you agree?**

3   A.   No. In addressing the FX-type nature of its service, Level 3 claims that “While perhaps  
4       different in scale and in technology utilized, Level 3’s service referred to sometimes as a virtual  
5       NXX or VNXX service – is the functional equivalent of this traditional ILEC service in that it  
6       gives a customer located in one exchange a telephone number in another exchange.”<sup>6</sup> There are  
7       a number of distinctions however, between the service that Level 3 proposes and CenturyTel’s  
8       FX service. FX is a retail service offering which provides a direct connection to the called  
9       party, not a wholesale service providing a connection to an intermediate carrier. Additionally,  
10      FX is a two-way service. Level 3’s Direct Inward Dialing (DID) service is one-way inward  
11      only, which is characteristic of 800 service and not FX service. With a tariffed ILEC FX  
12      service offering, the subscriber purchases local exchange service from the “foreign” or distant  
13      end office in addition to dedicated interoffice transport between the subscriber’s location and  
14      the “foreign” or distant end office, and is provided a telephone number from the existing central  
15      office codes assigned to the distant end office.

16  
17      According to the FCC’s definition of FX, an FX customer purchases a dedicated line “from the  
18      subscriber’s premises to the home end office, and then to the distant end office.”<sup>7</sup> Level 3 is not  
19      requesting a dedicated line between their customer and the foreign end office. Level 3 has

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<sup>6</sup> Direct Testimony of Gates, at pgs. 18-19.

<sup>7</sup> *AT&T Corporation, MCI Corporation v. Bell Atlantic*, 14 FCC Rcd 556, at ¶ 71 (1998).

1 attempted to designate its proposed service as an “FX-type” service in an effort to avoid the  
2 standard tariffed charges such as transport, switching, and other access charges associated with  
3 properly classified Interexchange 800-type service. When an end user purchases a tariffed FX  
4 service arrangement from the ILEC, the end user compensates each provider whose facilities  
5 are used to provision the FX service. However, with Level 3’s proposed service, the ISP end  
6 user and Level 3, as the carrier, do not pay for the local exchange rates of the foreign central  
7 office.

8  
9 As previously discussed, Level 3’s service would be one-way traffic only in which an ISP  
10 subscriber is using the Level 3 service to connect to the ISP provider (Level 3’s customer), who  
11 may be located outside of the LATA, or indeed the state. In contrast, it is believed that a  
12 majority of CenturyTel’s FX customers are business customers who use FX services to  
13 facilitate a more efficient and cost effective means of conducting business through two-way  
14 communication. As stated in the direct testimony of Mr. Gates, referring to the definition of FX  
15 as provided in Newton’s Telecom Dictionary, FX service:

16 “Provides local telephone service from a central office which is outside (foreign  
17 to) the subscriber’s exchange area. In its simplest form, a user picks up the  
18 phone in one city and receives a dial tone in the foreign city. This means that  
19 people located in the foreign city can place a local call to get the user.”<sup>8</sup>  
20 (Emphasis added.)

21  
22 Clearly, even outside of CenturyTel’s own definition of FX service, the industry recognizes the  
23 fact that FX service is intended to be a two-way communication. Likewise, with FX service the

1 end user has the capability of receiving dial tone in the foreign exchange by purchasing dial tone  
2 from the provider serving the foreign exchange. Level 3's proposed service does not allow for  
3 either of these two critical elements of FX service.

4 Additionally, because the FX service customer receives a telephone number from an existing  
5 NPA-NXX code, there are no implications with regard to telephone number exhaust. With  
6 Level 3's service, there must be a new block of numbers assigned to each rate center,  
7 regardless of the number of NXXs needed to serve Level 3's customers.

8  
9 **Q. Level 3 states that its service is comparable to Remote Call Forwarding ("RCF") and**  
10 **Extended Area Service ("EAS"). Is this true?**

11 A. No. It is unclear as to why Level 3 chooses to make a comparison between two ILEC tariffed  
12 service offerings that each require the end user customer to pay a tariffed charge to receive such  
13 service, when Level 3 has clearly indicated their intent to receive service from CenturyTel with  
14 no compensatory obligations. The only similarity between RCF and Level 3's proposed service  
15 is the extent to which a call can be forwarded to a distant, non-local exchange. However, with  
16 CenturyTel's tariffed RCF service, the end user is responsible for any toll charges incurred in  
17 delivering the call to the non-local terminating premises. CenturyTel's Washington tariff  
18 (Telephone Utilities of Washington, Inc.) addresses the appropriate charges associated with  
19 RCF service and states that "Rates for Remote Call Forwarding are in addition to applicable

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<sup>8</sup> *Newton's Telecom Dictionary*, 16<sup>th</sup> Edition, 2000, at 354

1        rates and charges for other services and equipment provided.”<sup>9</sup> (Emphasis added.) Additionally,  
2        CenturyTel’s tariff states: “The RCF customer is responsible for all message and/or toll charges  
3        for the portion of a forwarded call between the RCF number location and the terminating  
4        telephone.”<sup>10</sup> (Emphasis added.) In addition, CenturyTel’s tariff states that “RCF service may  
5        be denied or may be subject to immediate disconnection if the use of the service would  
6        constitute fraud or avoid toll charges with or without the use of the EAS Network.”<sup>11</sup>

7        Because Level 3 has stated its belief that toll charges should not apply to its traffic, it is difficult  
8        to understand why Level 3 has made a comparison with RCF service.

9  
10       With respect to EAS service, CenturyTel provides such service through its local exchange  
11       tariffs, and classifies EAS service as “Interexchange telephone service furnished at flat or  
12       message rates between one or more exchanges.”<sup>12</sup> This definition clearly envisions a rate above  
13       and beyond the standard subscriber line charge the end user incurs for basic local telephone  
14       service. In addition, the Revised Code of Washington (RCW) addresses EAS programs and  
15       provides “After determining the amount of any additional rate, the commission shall notify the  
16       subscribers who will be affected by the increased rate and conduct a poll of those subscribers.

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<sup>9</sup> See Telephone Utilities of Washington, Inc., WN-U1, Fifth Revised Sheet No. 30.1, Cancelling WN U-1 Fourth Revised Sheet No. 30.1, Advice No. 97-1, effective April 15, 1997.

<sup>10</sup> See Telephone Utilities of Washington, Inc., WN-U1, Original Sheet No. 30.2, Advice No. 86-27, effective October 15, 1986.

<sup>11</sup> See Telephone Utilities of Washington, Inc., WN-U1, Original Sheet No. 30.2, Advice No. 86-27, effective October 15, 1986.

<sup>12</sup> See Telephone Utilities of Washington, Inc., WN-U1, Revised Definition Sheet No. 5, Cancelling WN-U1 Original Definition Sheet No. 5, Advice No. 87-21, effective January 1, 1988.

1 If a simple majority votes its approval the commission shall order extended area service...”<sup>13</sup>

2 Although Level 3 characterizes its proposed service as being similar to a “local” service  
3 offering, it is undeniable that the local services such as EAS and RCF that Mr. Gates references  
4 in his testimony, take into account that for calls terminating outside of the local calling area,  
5 appropriate tariffed rates will apply. Under Level 3’s reasoning, if their proposed service is  
6 indeed so similar to EAS and RCF service, perhaps they would agree that applicable tariffed  
7 charges should apply to traffic that terminates outside of the local or tariffed EAS calling scopes.  
8 Additionally, under both EAS and RCF, customers are assigned telephone numbers from the  
9 rate center in which they are physically located.

10  
11 **Q. Is Level 3’s service comparable to 800-type services?**

12 A. Yes. Level 3’s service arrangement is nearly identical to the toll-free 800 Interexchange service  
13 offered by IXC’s. In an attempt to draw a distinction between its proposed service and 800-  
14 type service, Level 3 claims that its proposed service is similar to FX service in an attempt to  
15 classify its service as a “local” service offering. However, the only distinction between Level  
16 3’s proposed service and 800-type service is that Level 3 seeks to avoid the tariffed access  
17 rates for 800 service, as are currently paid by IXC’s offering the same service. As with “800”  
18 service, Level 3’s proposed service would enable CenturyTel end user customers to place toll-  
19 free Interexchange calls to Level 3’s customers not located within the CenturyTel customer’s

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<sup>13</sup> Revised Code of Washington (RCW), Title 80 RCW – Public Utilities, RCW 80.36.855, Extended area service program.

1 local calling area. Thus, Level 3's customers (ISPs) in distant exchanges would be able to  
2 receive calls that are ordinarily considered "Interexchange" service calls with no liability for  
3 compensating CenturyTel for the use of its network as normally associated with 800 service.  
4 Although CenturyTel end users will be dialing a seven digit number in lieu of a traditional 800  
5 number, through Level 3's use of VNXXs, the call would be routed by CenturyTel utilizing the  
6 same facilities and switching functions as required for interexchange calls. Just because an end  
7 user dials seven digits does not change the fact that the call itself is not "local" because it does  
8 not originate and terminate to customers physically located within the same local calling area. As  
9 stated in my direct testimony, state commissions have commented on the similarity between  
10 VNXX service and 800-type service offerings. The South Carolina Public Utility Commission  
11 stated that "'Virtual NXX' also closely parallels 800 service."<sup>14</sup> Another Commission noted  
12 that Virtual NXX service "is a variant of '800' service, which is a recognized interexchange  
13 service."<sup>15</sup> It is evident that Level 3's proposed service is comparable to 800-type service.

14  
15 **Q. Why does Level 3 claim that its proposed service is not comparable to 800 services?**

16 **A.** The only significant difference between 800-type service and Level 3's proposed service is the  
17 attempt to use VNXXs to avoid compensating CenturyTel for Interexchange service. By

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<sup>14</sup> *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration*, (S.C. P.U.C., Jan. 16, 2001) at 5.

<sup>15</sup> Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber, Docket No. 98-758 and New England Fiber Communications D/B/A Brooks Fiber Proposed Tariff Revisions to Introduce Regional Exchange (RX) Service, Docket No. 99-593; (June 30, 2000) ("Maine VNXX Decision").

1 classifying its service as “local,” Level 3 believes that a “bill and keep” scenario will prevail,  
2 thereby enabling Level 3’s use of Interexchange services with no compensatory obligations.

3  
4  
5 **IV. SECTION 251(a) INTERCONNECTION OBLIGATIONS**

6  
7 **Q. Have you read the Commission’s Third Supplemental Order (Order) confirming its**  
8 **jurisdiction in this case?**

9 A. Yes, I have.

10  
11 **Q. In its Order, the Commission states that CenturyTel is obligated to interconnect with**  
12 **Level 3 pursuant to Section 251(a). Do you agree?**

13 A. Yes. The Commission’s Order, confirming its jurisdiction in this case, stated that  
14 “...CenturyTel, as a rural carrier, is not exempt from the interconnection requirements of 47  
15 U.S.C. § 251 (a).”<sup>16</sup> To my knowledge, CenturyTel has no objection to interconnecting with  
16 Level 3 pursuant to Section 251(a). In fact, CenturyTel has already met its obligations to  
17 interconnect with Level 3 under Section 251(a)(1) because it is already interconnected with  
18 Level 3 under the existing access charge regime.

19  

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<sup>16</sup> Washington Utilities and Transportation Commission Third Supplemental Order Confirming Jurisdiction,  
Docket No. UT-023043, *In the Matter of the Petition for Arbitration of an Interconnection Agreement*

1   **Q.     What are the federal requirements for interconnection under Section 251(a)?**

2   A.     Section 251(a) requires a telecommunications carrier (as defined by the Act) to “interconnect”  
3           with all other telecommunications carriers, to the extent any such carrier is engaged in providing  
4           telecommunications services to the public.<sup>17</sup> The *Local Competition Order* also distinguishes  
5           the “duty to interconnect” under Section 251(a) from the obligations imposed under Section  
6           251(c)(2), “Interconnection.”<sup>18</sup> The duty to interconnect under Section 251(a) is a duty only to  
7           connect, directly or indirectly. Section 251(a)(1) of the Act states “[e]ach telecommunications  
8           carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other  
9           telecommunications carriers.” It should be noted that CenturyTel is currently interconnected  
10          with Level 3 through the Public Switched Telephone Network (PSTN) and therefore  
11          CenturyTel has met its obligations under Section 251(a), under the FCC’s *Local Competition*  
12          *Order*.<sup>19</sup>

13  
14   **Q.     How has the FCC characterized a telecommunications carrier’s obligations under**  
15   **Section 251(a)?**

16  
17   A.     The FCC has determined that a telecommunications carrier’s obligations under Section 251(a)  
18           are limited to an obligation to connect its network to the public switched telecommunications  
19           network and did not include an obligation to transport and terminate telecommunications traffic

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*Between Level 3 Communications, LLC., and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C.*  
*Section 252, pg. 5, October 25, 2002.*  
<sup>17</sup> *Local Competition Order* at ¶ 992.



1 to another party. The FCC's rules define "Interconnection" as "the linking of two networks for  
2 the mutual exchange of traffic. This term does not include transport and termination."<sup>20</sup>  
3 (Emphasis added.) In a case before the FCC, a party argued that the term "interconnection" as  
4 used in Section 251(a) included an obligation to transport and terminate traffic to another  
5 telecommunications carrier.<sup>21</sup> The FCC disagreed and found that "section 251(a) only requires  
6 AT&T to provide direct or indirect physical links between itself and Complainants."<sup>22</sup> In regard  
7 to Section 251(c)(2) obligations, because CenturyTel is a Rural Telephone Company, it is  
8 currently exempt from such obligations. Accordingly, the only statutory obligations imposed on  
9 CenturyTel are contained under Section 251(a), which CenturyTel has already met by  
10 connecting its network to the public switched telephone network and offering to exchange traffic  
11 with Level 3 under the access charge regime.

12  
13 **Q. Does Section 251(a) require CenturyTel to classify traffic routed to Level 3 as**  
14 **"local"?**

15 A. No. As discussed above, CenturyTel is currently in compliance with Section 251(a) through an  
16 existing indirect interconnection with Level 3. As such, CenturyTel has no obligation to route  
17 Level 3 traffic as "local". CenturyTel end-user customers can call Level 3's ISP customers  
18 regardless of the classification of the traffic. However, Level 3 insists that its proposed service

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<sup>18</sup> *Id.* at ¶ 997.

<sup>19</sup> *Id.*

<sup>20</sup> 47 C.F.R. 51.5.

<sup>21</sup> *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation*, File No. E-97-003, FCC 01-84, rel. March 13, 2001, (*Atlas Order*).

1 be categorized as “local” for the purpose of avoiding the compensatory obligations associated  
2 with the provision of their Interexchange service offering. If the Commission, as it suggests in its  
3 Order, does not have jurisdiction to arbitrate compensation issues related to ISP-bound traffic,  
4 then the scope of this arbitration appears to be greatly reduced with the primary issue becoming  
5 CenturyTel’s obligations to interconnect with Level 3 pursuant to Section 251(a). However, as  
6 previously discussed, CenturyTel is currently abiding by its interconnection obligations under  
7 Section 251(a).

8  
9 **Q. The Commission also addressed the applicability of Sections 251 and 252 to ISP-bound**  
10 **traffic in their Order. Do you agree with the Commission’s analysis?**

11 A. In its Order, the Commission states: “...the FCC preempted state commission authority over  
12 compensation for ISP-bound traffic, and did not preempt state commission authority to arbitrate  
13 other issues relating to ISP-bound traffic.”<sup>23</sup> It is important to remember however, that the term  
14 “ISP-bound traffic” as used by the FCC in the *ISP Remand Order*, and referred to by the  
15 Commission in its Order, refers to traffic in which the end-user customer obtains modem access  
16 to its ISP within the end-user customer’s “local calling area.”<sup>24</sup> The issue of Interexchange ISP-  
17 bound traffic was not before the FCC, and its order only considered whether “local traffic”  
18 reciprocal compensation arrangements included “local” ISP-bound traffic. In addressing this

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<sup>22</sup> *Id.* at ¶ 27.

<sup>23</sup> Washington Utilities and Transportation Commission Third Supplemental Order Confirming Jurisdiction, Docket No. UT-023043, *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. Section 252*, pg. 4, October 25, 2002.

1 question in the *ISP Remand Order*, the FCC reaffirmed its prior conclusion that ISP-bound  
2 traffic that originates and terminates within a local calling area is not subject to Section  
3 251(b)(5) obligations because it is interstate in nature, and therefore subject to the FCC's  
4 jurisdiction over interstate traffic under Section 201 of the Act. Therefore, with regard to  
5 compensation for "local" ISP-bound traffic, the Commission is accurate in its assessment of its  
6 jurisdiction.

7  
8 With regard to Interexchange telecommunications traffic (whether terminating to an ISP or not)  
9 between two local calling areas, such traffic continues to fall within the existing access charge  
10 regime. When Congress passed revisions to the Act, under Section 251(g), it carved out  
11 Interexchange traffic from the then new Section 251(b)(5) obligations and explicitly preserved  
12 the pre-1996 intercarrier compensation mechanisms associated with such traffic.  
13 Telecommunications traffic that originates and terminates outside of a single local calling area fell  
14 under the regulatory authority of FCC and Commission approved access tariffs before the Act  
15 and such traffic continues to fall under these access tariffs today. Therefore, the FCC has not  
16 modified the access charge regime for ISP-bound traffic *that originates and terminates*  
17 *outside of a single local calling area* and such traffic continues to fall within the intercarrier  
18 access charge regime for Interexchange traffic.

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<sup>24</sup> *ISP Remand Order* at ¶¶ 13, 24, and 63.

**V. APPROPRIATE REGULATORY AND COMPENSATORY TREATMENT OF  
LEVEL 3'S PROPOSED SERVICE**

**Q. Based on Level 3's own description of its proposed service, how would you classify  
Level 3's service?**

A. Level 3's proposed service is unmistakably an Interexchange service offering. Through the use of VNXX codes, Level 3 is proposing an inbound toll-free Interexchange service that is currently being offered by other interexchange carriers (IXCs) in CenturyTel's service territory. The most pertinent aspect pertaining to the classification of Level 3's proposed traffic is the fact that the service that Level 3 is intending to provide is not "local" because it does not originate and terminate within the same local calling area.

As discussed in my direct testimony, the state of Washington maintains authority over the definitions that constitute local service. As reviewed and approved by the Commission, the services provided under the premise of local service must be within the same local service area.<sup>25</sup> However, Level 3 is not intending to provide any type of local service within a CenturyTel service territory.<sup>26</sup> Nor do Level 3's proposed services constitute "basic local exchange service and business access line and usage service within a local calling area."

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<sup>25</sup> See Telephone Utilities of Washington, Inc., WN-U1, Third Revised Definition Sheet No.8, Cancelling WN U-1 Second Revised Definition Sheet No. 8, Advice No. 94-21, effective March 1, 1995.

<sup>26</sup> Direct Testimony of Cook (Exhibit RCC-2 at pg. 1).

1 Furthermore, the Federal Communications Commission (FCC) addresses local service in the  
2 Act. The Act defines “telephone exchange service” as “...service within a telephone exchange,  
3 or within a connected system of telephone exchanges within the same exchange area...”<sup>27</sup>  
4 Based on Level 3’s descriptions of its proposed service, it is apparent that Level 3 does not  
5 intend to provide service within a telephone exchange or within an exchange area.  
6

7 **Q. As Level 3 is not providing a local service, is Level 3 entitled to a local interconnection**  
8 **arrangement with CenturyTel as allowed for under Section 251(c)(2)?**

9 No. The FCC specifies that local interconnection is limited to the provision of Telephone  
10 Exchange service and Exchange Access within a local calling area. As discussed in the previous  
11 section, Level 3 will not be providing Telephone Exchange service or Exchange Access service  
12 to end users within CenturyTel’s local calling area. As such, Level 3 is not entitled to local  
13 interconnection with CenturyTel under Sections 251(c)(2) of the Federal Act, and as previously  
14 discussed, CenturyTel has already met its obligations to interconnect with Level 3 under Section  
15 251(a)(1) by offering to interconnect with Level 3 under the existing access charge regime.  
16

17 Moreover, Level 3’s request for interconnection, for the purpose of providing an Interexchange  
18 Service, is not allowed by the Act or the FCC rules. Under Section 251(c)(2), a requesting  
19 telecommunications carrier is not entitled to receive interconnection solely for the purpose of

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<sup>27</sup> 47 U.S.C 153 (47).

1           originating its Interexchange traffic,<sup>28</sup> as stated by the FCC in the *Local Competition Order*.

2           Because Level 3's proposed VNXX service does not originate and terminate within the same  
3           local calling area, it is subject to the interconnection obligations established under the FCC's  
4           authority under Section 201 applicable to interstate Interexchange traffic, rather than Telephone  
5           Exchange or Exchange Access traffic subject to Section 251 local interconnection obligations.

6  
7           Similar language is used in the FCC's rules, which state that "[a] carrier that requests  
8           interconnection solely for the purpose of originating or terminating its *interexchange* traffic on  
9           an incumbent LEC's network and not for the purpose of providing to others telephone  
10          exchange or exchange access, or both, *is not entitled to receive interconnection pursuant to*  
11          *Section 251(c)(2) of the Act.*"<sup>29</sup> (Emphasis added.) In the *Local Competition Order*, the  
12          FCC envisioned that Section 251(c)(2) interconnection obligations would be used to obtain  
13          interconnection "for the purpose of terminating calls originating from *their customers residing*  
14          *in the same telephone exchange (i.e., non-interexchange calls).*"<sup>30</sup> (Emphasis added.)

15  
16          Level 3 has already admitted that it "is NOT seeking to compete for local customers"<sup>31</sup> in  
17          CenturyTel's service area and therefore does not intend to provide Telephone Exchange or  
18          Exchange Access to end users within CenturyTel's service area. Level 3's proposed VNXX  
19          service merely seeks to arbitrage the existing intercarrier compensation mechanisms for

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<sup>28</sup>       *Local Competition Order* at ¶ 191.

<sup>29</sup>       47 C.F.R. § 51.305(b).

<sup>30</sup>       *Id.* at ¶ 190.

1 Interexchange traffic by attempting to obtain interconnection from CenturyTel under Section  
2 251 rather than Section 201. This is in violation of the FCC's *Local Competition Order*.

3  
4 **Q. Level 3 suggests that the calling scope of its proposed service is not of importance**  
5 **from a policy perspective. Do you agree?**

6 A. Definitely not. This issue is of key relevance to the case at hand. It is clear that Level 3 seeks to  
7 have this Commission ignore the importance of jurisdiction as it relates to Level 3's proposed  
8 service, by disregarding the location of Level 3's customers. As such, Level 3 claims that the  
9 physical location of an ISP's modem banks is "...an artificial distinction that should not be  
10 imposed on CLECs, and an improper one."<sup>32</sup> (Emphasis added.) In fact, this distinction is not  
11 artificial, as it is a distinction clearly endorsed by the FCC. The term "ISP-bound traffic" as  
12 used by the FCC in the *ISP Remand Order*, refers to traffic in which the end user customer  
13 obtains modem access to its ISP within the end user customer's "local calling area."<sup>33</sup> In the  
14 *ISP Remand Order*, the FCC reaffirmed its prior conclusion that ISP-bound traffic that  
15 originates and terminates within a local calling area is not subject to Section 251(b)(5)  
16 obligations due to its interstate nature, and is therefore subject to the FCC's jurisdiction over  
17 interstate traffic under Section 201 of the Act. With regard to Interexchange  
18 telecommunications traffic between two local calling areas, such traffic continues to fall within

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<sup>31</sup> Direct Testimony of Cook (Exhibit RCC-2).

<sup>32</sup> Direct Testimony of Gates at pg. 20.

<sup>33</sup> *ISP Remand Order* at ¶¶ 13, 24, and 63.

1           the existing access charge regime. The FCC's decision that ISP-bound traffic originating and  
2           terminating between end user and  
3



1       ISP modems within a single local calling area was largely interstate in nature, merely added  
2       “local” ISP-bound traffic to the FCC’s existing authority under Section 201 over interstate  
3       Interexchange ISP-bound traffic. The only distinction between the two was that the FCC  
4       pronounced that when ISP-bound traffic originated and terminated *within a single local*  
5       *calling area*, the proper intercarrier compensation mechanism was “bill and keep.” The FCC  
6       has not modified the access charge regime for ISP-bound traffic *that originates and*  
7       *terminates outside of a single local calling area* and such traffic continues to fall within the  
8       intercarrier access charge regime for Interexchange traffic.

9  
10       Additionally, state commissions have addressed calling scope issues and the importance of  
11       jurisdiction as it relates to the treatment of telecommunications traffic. One state commission  
12       stated: “We believe that the classification of traffic as either local or toll has historically been,  
13       and should continue to be, determined based upon the end points of a particular call. We  
14       believe this to be true regardless of whether a call is rated as local for the originating end  
15       user...”<sup>34</sup> The commission went on to say: “...we agree...that the FCC’s revision of Rule  
16       51.701 has no effect on the jurisdiction of virtual NXX traffic. We agree ...that traffic that  
17       originates in one local calling area and terminates in another local calling area would be  
18       considered intrastate exchange access under the FCC’s

<sup>34</sup> Florida PSC Order No. PSC-02-1248-FOF-TP, 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* (Phases II and IIA), pg. 30, September 10, 2002.

1 revised Rule 51.701(b)(1).”<sup>35</sup>

2  
3 **Q. Level 3 claims that access charges are not applicable to local services, including ISP-**  
4 **bound traffic. Do you agree?**

5 A. With respect to local service, yes. When discussing ISP-bound traffic, this issue is not as simple  
6 as claiming an Enhanced Service Provider (ESP) exemption as does Level 3.<sup>36</sup> As previously  
7 addressed, the FCC has indicated that the location of the customer, in this case, Level 3’s ISP  
8 customer, is imperative to determine the jurisdiction of the call, thereby enabling a determination  
9 of the appropriate charges applicable to the call.

10  
11 When an end user places a call to an ISP that is located outside of the local calling area, the call  
12 is Interexchange in nature and subject to access charges. Level 3’s VNXX arrangement  
13 enables CenturyTel end user customers to place toll-free Interexchange calls to Level 3’s  
14 customers located in non-local exchanges without incurring the appropriate toll charges.  
15 Likewise, CenturyTel’s access charges have been approved by the Commission and FCC and  
16 allow for recovery of CenturyTel’s cost for providing the service. As with other toll-free  
17 services that CenturyTel provides, CenturyTel is compensated for the provision of service.  
18 With FX service for example, the customer must subscribe to local exchange service in the  
19 foreign exchange and pay transport charges. For the provision of 800-type services, the

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<sup>35</sup> *Id.* at 31.

<sup>36</sup> Direct Testimony of Gates at pgs. 32-33.

1 customer must pay toll charges for calls received, in addition to the interexchange carrier's  
2 responsibility to pay originating access charges to CenturyTel.

3  
4 In his direct testimony, Mr. Gates references a decision by the FCC's Wireline Bureau in an  
5 interconnection agreement arbitration in Virginia. The Wireline Bureau recommended adoption  
6 of the CLECs' proposed contract language stating that the rating of calls should be based upon  
7 their originating and terminating NPA-NXX codes, rather than their geographic end points.<sup>37</sup>

8 The basis for the Wireline Bureau's conclusion was that "rating calls by their geographical  
9 starting and ending points raises billing and technical issues that have no concrete, workable  
10 solution at this time."<sup>38</sup> In other words, the Bureau based its decision on its own doubts as to  
11 the technical feasibility of detecting, measuring, and billing such interexchange traffic. However,  
12 Level 3 does not address certain FCC decisions that contradict the Wireline Bureau's  
13 assessment. The FCC has considered and rejected use of assigned NPA-NXX in place of  
14 actual geographic end points of a call in *AT&T Corp. v. Bell Atlantic-Pennsylvania*.<sup>39</sup> In this  
15 case, the FCC considered the intercarrier compensation associated with AT&T's offering of an  
16 interLATA FX service. The FCC ruled that even though the call was rated as local for the  
17 caller, AT&T was required to pay access charges for the call, because AT&T was still using

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<sup>37</sup> Direct Testimony of Gates at pg. 36 (citing *Wireline Bureau Order*).

<sup>38</sup> *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).

<sup>39</sup> *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 587, ¶ 71 (1998), *reconsideration denied*, 15 FCC Rcd 7467 (2000).

1 access service to complete an interLATA call. The use of a VNXX arrangement in this case is  
2 similar to Level 3's proposed service and was considered immaterial to the proper regulatory  
3 treatment of the call for compensation purposes.

4  
5 **Q. Level 3 claims that CenturyTel seeks to assess access charges on a Level 3 FX**  
6 **service? Is this true?**

7 A. Not at all. As previously discussed, the service that Level 3 seeks to provide is not FX service,  
8 rather an Interexchange service that necessitates the application of access charges. If however,  
9 Level 3 were to order FX service from CenturyTel, CenturyTel would only assess Level 3 the  
10 appropriate tariffed rates for its FX service.

11  
12 **Q. Mr. Hunt references an arbitration case in Texas that addressed the equivalent nature**  
13 **of FX and FX-type services with regard to compensatory treatment. Do you agree**  
14 **with Mr. Hunt's assessment of this case?**

15 A. Not completely. It is important to consider the Texas Commission's specific comments in its  
16 *Revised Arbitration Award* in Docket No. 24015 which responded to AT&T's proposed  
17 VNXX service offering. The Commission stated the following:

18 Turning to the individual parties' arguments, the Arbitrators reject AT&T's proposal to  
19 use the rate center to which an NPA-NXX is assigned to rate calls for compensation  
20 purposes. (Emphasis added.) AT&T's proposal is problematic in that AT&T (and  
21 perhaps, other carriers) admittedly allow their customers to choose their NPA-NXX  
22 irrespective of geographic location. Since there is no longer a correlation between the  
23 geographic location of the customer and the NPA-NXX, rating calls for compensation  
24 purposes via the rate center to which the NPA-NXX is assigned creates an opportunity

1           for regulatory arbitrage. For example, carriers could assign NPA-NXXs to customers  
2           geographically outside of the mandatory local calling area, thereby bypassing the access  
3           charges that might otherwise apply. (Emphasis added.) This proposal is not unlike  
4           AT&T's proposal propounded in Docket No. 21982 that was rejected by the  
5           Commission. In that docket, AT&T advocated a cost-based reciprocal compensation  
6           rate structure that covered all traffic that originated and terminated within the same  
7           LATA. The Commission rejected this AT&T LATA-wide proposal because of the  
8           implications to ILEC revenue streams, such as switched access charges, which were not  
9           fully examined in Docket No. 21982. The Arbitrators reject the AT&T NPA-NXX  
10          rate center proposal for the same reason.<sup>40</sup>  
11

12          If Level 3's VNXX service offering is allowed, it will be able to further expand its toll-free  
13          calling area by opening additional NPA-NXX codes, resulting in exactly the regulatory arbitrage  
14          the Arbitrators eluded to above. If Level 3 is permitted to do this, additional carriers will be  
15          forced to violate the Central Office Code Assignment Guidelines through their own number  
16          assignment procedures simply to compete with Level 3's VNXX service offering.  
17

18   **Q.    Level 3 claims that CenturyTel is imposing artificial cost on Level 3. How do you**  
19   **respond?**

20   A.    This is simply not the case. Level 3 states that: "...imposing access charges on a service that  
21          has heretofore been a local service would artificially increase the cost of that service.  
22          CenturyTel's suggestion to impose switched access charges on Level 3's service would result in  
23          an artificial cost increase."<sup>41</sup> The argument of artificial cost is fundamentally flawed and  
24          misplaced in the present case. CenturyTel has not suggested the application of access charges

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<sup>40</sup> Docket No. 24015, *Revised Arbitration Award* at page 36, (August 28, 2002).

<sup>41</sup> Direct Testimony of Gates at pgs. 40-41.

1 on a “local” service as implied by Mr. Gates in his testimony. In contrast, Level 3’s service is  
2 an Interexchange service offering, clearly subject to access charges. Alternatively, if Level 3  
3 requires CenturyTel to provide a portion of what it refers to as an “FX-type” service, in this  
4 case, the open-end of the FX-type service, then CenturyTel must be compensated for the  
5 provision of such service, just as it is compensated by any other carrier for the arrangement of  
6 the same service. It should be noted however, that the issue of compensation in this case is not  
7 a cost based issue but rather an issue based upon the proper regulatory treatment of the traffic  
8 in question. CenturyTel is not requesting compensation that is artificial in nature, only the same  
9 compensation that is currently required for the same service arrangements provided to other  
10 carriers and end-user customers, as provided for in CenturyTel’s FCC and Commission  
11 approved tariffs.

12  
13 **Q. Will CenturyTel incur additional cost to provision Level 3’s service?**

14 A. Depending upon the network architecture and switching functions required, the cost for routing  
15 Level 3’s traffic may not differ from the cost CenturyTel incurs to route similar traffic.  
16 However, the cost incurred by CenturyTel to provision Level 3’s service is not of importance in  
17 this case. The only relevant factor in addressing the appropriate compensation is the jurisdiction  
18 of the call. Therefore, if Level 3 seeks to originate Interexchange traffic from CenturyTel’s  
19 serving areas, CenturyTel will assess Interexchange access charges, just as it currently does with  
20 its other IXC customers. It is important to recall that the FCC has not abandoned the access  
21 charge regime for ISP-bound traffic *that originates and terminates outside of a single local*

1        *calling area*. Such traffic continues to fall within the intercarrier access charge regime for  
2        Interexchange traffic. State commissions have also commented on this issue. The Florida  
3        Commission stated:

4                “We acknowledge that an ILEC’s cost in originating a virtual NXX call do not  
5                necessarily differ from the costs incurred originating a normal local call.  
6                However, we do not believe that a call is determined to be local or toll based  
7                upon the ILEC’s costs in originating the call. In addition, we do not believe that  
8                the proper application of a particular intercarrier compensation mechanism is  
9                based upon the costs incurred by a carrier in delivering a call, but rather upon  
10               the jurisdiction of a call as being either local or long distance.”<sup>42</sup> (Emphasis  
11               added.)

12  
13        Ultimately, it is the jurisdiction of the call that is used to determine regulatory treatment of the  
14        call.

15  
16        **VI. COMPETITION AND DISCRIMINATORY TREATMENT**

17  
18        **Q. Level 3 claims that CenturyTel is acting in an anti-competitive manner. Do you agree?**

19        A. Not at all. Mr. Gates states in his direct testimony that “...the ILECs do not impose access  
20        charges on their own FX services so to impose such charges on Level 3’s service would be  
21        discriminatory and anti-competitive.”<sup>43</sup> If CenturyTel was attempting to levy access charges on  
22        a tariffed FX service, I would agree that such action would be discriminatory. However, as  
23        previously addressed, Level 3 is not providing an FX service. CenturyTel is only seeking to

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<sup>42</sup> Florida PSC Order No. PSC-02-1248-FOF-TP, 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* (Phases II and IIA), September 10, 2002.

<sup>43</sup> Direct Testimony of Gates at pg. 35.

1           assess appropriate tariffed charges for the Interexchange service that Level 3 is proposing to  
2           provide.

3  
4           Based upon the manner in which Level 3 is proposing that CenturyTel provision service, it  
5           appears that Level 3 is the party utilizing anti-competitive or discriminatory practices. In  
6           contrast to Level 3's assertion that its service is a competitive response to CenturyTel's FX  
7           service, Level 3's service is in fact, an anti-competitive response to IXC's 800-type  
8           Interexchange service. When other carriers choose to provide Interexchange services, the  
9           carriers order access services and compensate CenturyTel in accordance with CenturyTel's  
10          access service tariffs. By requesting Interexchange services for free or at "bill and keep"  
11          compensation, Level 3 is asking CenturyTel to provision service contrary to existing and  
12          effective tariffs, thereby requesting that CenturyTel discriminate against other Interexchange  
13          carriers.

14  
15          Additionally, Level 3 implies that CenturyTel is trying to prevent an interconnection arrangement  
16          with Level 3 in an attempt to protect its existing revenue streams.<sup>44</sup> This is not accurate. As  
17          discussed in further detail below, CenturyTel currently provides services to other ISPs in  
18          CenturyTel serving territory and has no dispute with the argument that ISP competition is

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<sup>44</sup> Direct Testimony of Gates at pg. 3.



1           inherently good because consumers have additional choices. However, other ISPs competing in  
2           CenturyTel's serving areas utilize the appropriate

3

1 regulatory mechanisms to purchase their needed service.

2  
3 **Q. Are local dial-up ISPs available today in CenturyTel's serving areas?**

4 A: Yes. CenturyTel currently provides service to other ISPs who provide local dial-up services to  
5 CenturyTel customers. CenturyTel's ISP customers purchase CenturyTel's tariffed services to  
6 facilitate the deployment of their service.

7  
8 **Q. Level 3 claims their proposed service is a "competitive response" to the**  
9 **traditional ILEC FX service offerings. Do you agree?**

10 A. No. Although Level 3 claims that their service "is a competitive response to the traditional LEC  
11 FX service,"<sup>45</sup> this statement conflicts dramatically with Level 3's previous indications that it "is  
12 NOT seeking to compete for local customers" in CenturyTel's service area.<sup>46</sup> If one assumed  
13 however, that Level 3 was seeking to compete with CenturyTel on a local service basis, it  
14 would then become evident that Level 3 is not seeking to provide an FX service to the same  
15 class of customers that CenturyTel is currently providing tariffed FX service to today. For  
16 Level 3 to claim that they are providing an alternative to the ILEC's FX service, Level 3 implies  
17 that it is seeking to improve upon CenturyTel's existing service by providing an alternative FX  
18 service option to CenturyTel's existing customer base. This is not the case. As previously  
19 demonstrated, Level 3 is only seeking to administer an Interexchange dial-up service for its

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<sup>45</sup> Direct Testimony of Gates at pg. 4.

<sup>46</sup> Direct Testimony of Cook (Exhibit RCC-2).

1 remotely located ISP customer. In contrast, it is believed that a preponderance of CenturyTel's  
2 FX customers are business customers who use the FX  
3 service to facilitate two-way communication.  
4

5 **Q. Level 3 claims that CenturyTel is withholding a local interconnection agreement from**  
6 **Level 3 to protect its revenue streams. Is an interconnection arrangement with**  
7 **CenturyTel necessary for Level 3 to provide its proposed service?**

8 A. No. Mr. Gates states that "...CenturyTel's reluctance to continue providing those  
9 interconnection arrangements to Level 3, has far more to do with CenturyTel attempting to  
10 protect its existing revenue streams from competition, more so than any cost-based, or  
11 technology driven concern."<sup>47</sup> This is simply not the case. CenturyTel remains prepared to  
12 provide Level 3 its necessary interconnection in accord with its tariffs for such Interexchange  
13 service offerings. Level 3's desire to obtain a local interconnection agreement with CenturyTel  
14 is not for purposes of providing Telephone Exchange or Exchange Access to customers within  
15 CenturyTel's service territory, but rather to take advantage of the exclusion of reciprocal  
16 compensation provisions afforded to local "ISP-bound traffic" covered in such an  
17 interconnection agreement. Perhaps of more importance, Level 3 must provide proof to the  
18 numbering administrator, NANPA, that it has obtained or is in the process of obtaining an  
19 interconnection agreement with the incumbent LEC whose territory Level 3 will be requesting  
20 NPA-NXXs to be rate centered on. Without such an agreement, NANPA will not furnish

1 NPA-NXXs that are rate centered on CenturyTel's exchanges. As such, Level 3's distant ISP  
2 customer could not provide the semblance of a "local" number to its targeted end users in  
3 CenturyTel's serving territory.

4  
5 Although Level 3 believes it is entitled to a local interconnection agreement, the requirements for  
6 the provision of local interconnection, and CenturyTel's responsibilities under Section 251 of the  
7 Act remain clear. CenturyTel currently has no obligation to provide local interconnection under  
8 Section 251(c)(2) to Level 3 because Level 3's stated service offering is Interexchange service.  
9 Level 3's request for interconnection is not for the exchange of local traffic, but rather, for the  
10 origination of Interexchange traffic, since Level 3's traffic does not originate and terminate in the  
11 same local calling area.

12  
13 CenturyTel has tariffed service options that will accommodate Level 3's intended service  
14 offering, including FX and 800-type services. Level 3 will not have to negotiate a local  
15 interconnection agreement to receive either of these two services. Likewise, CenturyTel is  
16 willing to work with Level 3 to find alternative Interexchange tariffed options that will facilitate  
17 Level 3's proposed service deployment.

18  
19 **Q. Level 3 suggests that CenturyTel is attempting to impose ILEC technology on Level 3.**  
20 **Is this the case?**

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<sup>47</sup> Direct Testimony of Gates at pgs. 3-4.

1 A. No. Level 3 states that “CenturyTel is trying to “pigeon hole” Level 3’s service into a  
2 traditional, pre-divestiture framework” and goes on to say that “The Commission should not  
3 force carriers – and especially not new entrants – to use the same technology as the incumbents.  
4 To do so would discourage the development and deployment of new technologies.”<sup>48</sup>  
5 CenturyTel is in no way attempting to dictate to Level 3 how it should engineer its network. If  
6 Level 3 has advanced technology it seeks to deploy for the betterment of its customers,  
7 CenturyTel has no desire or intent to stifle such an offering. Likewise, if Level 3 chooses not to  
8 employ CenturyTel’s “legacy” network and rather, use its own network or the network of  
9 another carrier to provision its service, CenturyTel has no issue with such a decision. However,  
10 to the extent that Level 3 chooses to enter CenturyTel’s territory and originate Interexchange  
11 traffic on CenturyTel’s network, CenturyTel is obligated by its FCC and Commission approved  
12 tariffs to provide such Interexchange services at the same quality and rates afforded to any  
13 carrier who requests such services. It is misleading for Level 3 to characterize its service as  
14 being technologically advanced or superior to CenturyTel’s network when in fact, there appears  
15 to be no advanced or distinctive Level 3 “technology” offered within the local calling area of  
16 CenturyTel, only an NXX that would be assigned to a CenturyTel rate center to bypass  
17 standard Interexchange access charges.

18  
19 **Q. Does CenturyTel object to the type of service Level 3 proposes to provide to its**  
20 **customer?**

---

<sup>48</sup> Direct Testimony of Gates at pgs. 18.

1 A: No. Level 3's attempt to provide dial-up transport services to its ISP customers in distant  
2 localities is not objectionable. Only the manner in which Level 3 seeks to obtain an  
3 Interexchange service with no regulatory or compensatory obligations is problematic.  
4 CenturyTel currently offers Interexchange services to other IXC's as well as the necessary,  
5 regulated services that other ISPs require to provide their services, all at appropriate  
6 Commission approved rates and terms. CenturyTel's objection relates to Level 3's attempt to  
7 obtain a regulated Interexchange service offering without accepting any of the regulatory or  
8 compensatory responsibilities associated with the acquisition of such service. Level 3 may  
9 provide any service it chooses to its customers, but should not expect for CenturyTel to  
10 subsidize its service to the detriment of CenturyTel's customers.

11  
12 **Q. Is Level 3 requesting CenturyTel and its end users to subsidize its proposed service?**

13 A. Yes. As previously discussed, for CenturyTel to accommodate Level 3's proposed  
14 Interexchange service offering any differently than it furnishes the same service to other  
15 telecommunications providers who provide the identical inbound Interexchange service, and  
16 who are assessed the appropriate tariffed charges for access service, would clearly be  
17 discriminatory on the part of CenturyTel, and a subsidy to the benefit of Level 3. As the FCC  
18 recognized in its *Unified Intercarrier Compensation NPRM*, "access charge rules ... govern  
19 the payments that interexchange carriers ("IXCs") ... make to LECs to originate and terminate  
20 long-distance calls; and reciprocal compensation rules ... govern the compensation between

1 telecommunications carriers for the transport and termination of local traffic.”<sup>49</sup> To designate  
2 Level 3’s service as “local” would, in effect, grant it a waiver of access charges for traffic that is  
3 not between two end users in the same local calling area. Such an allowance would disrupt the  
4 intrastate and interstate intercarrier access charge compensation mechanisms the Commission  
5 and the FCC have established.

6  
7 Through the use of VNXX codes, Level 3 is attempting to provide below-cost toll-free dial-up  
8 service to its ISP customers, allowing CenturyTel to pick up the tab. Any costs associated with  
9 Level 3’s service should be borne by Level 3, who as standard economic principles dictate, will  
10 pass the cost of service on to its customers, the ISPs. In turn, the ISPs will price their products  
11 to consumers as market conditions allow. CenturyTel’s local customers should not have to pay  
12 for Level 3’s cost of providing this service to end users who are located outside the local calling  
13 area.

14  
15 **VII. MARKET AND CONSUMER IMPLICATIONS**

16  
17 **Q. Level 3 claims that without “FX-type” services, consumers will have fewer options and**  
18 **would be forced to make toll calls. Do you agree?**

19 **A:** No. Consumers currently use many alternatives to avoid toll charges, such as local number dial-  
20 up ISP service, FX service, and 800-type services. Level 3 contends however, that the market

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<sup>49</sup> *Unified Intercarrier Compensation NPRM* at ¶ 6.

1 will somehow be in turmoil if Level 3 is not permitted to offer its virtual NXX products in  
2 concurrence with complete relief from the standard regulatory obligations associated with such  
3 services. Level 3 questions “What incentive will any carrier have to serve ISPs when the  
4 economics of such service are so discouraging, and have no relationship to cost?”<sup>50</sup> The  
5 answer to that question is the proposition of another question: What incentive do carriers and  
6 ISPs currently have to provide such service? There are currently many carriers and ISPs that  
7 provide the type of toll-free dial-up ISP access that Level 3 proposes, while properly  
8 compensating the affected carriers for their costs.

9  
10 **Q. Level 3 claims that if VNXX calls are treated as toll calls, consumers face “sharp”**  
11 **increases in their cost to access the internet. Do you agree?**

12 A. Absolutely not. As stated above, consumers currently have a wide array of choices available  
13 for access to the internet. Just because Level 3 is not provided a “free ride” to the extent that  
14 tariffed Interexchange offerings would be provided at no charge, this does not correlate to  
15 increased cost to the consumers. In fact, competition is currently so great that ISPs are  
16 continuing to lower their prices for dial-up access – without the type of subsidy that Level 3 is  
17 requesting in this case.

18  
19 **Q. Is Level 3 providing a “creative” or “innovative” network solution?**

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<sup>50</sup> Direct Testimony of Gates at pg. 40.



1     A.     As previously discussed, it appears that Level 3 is simply seeking regulatory arbitrage through  
2           the use of VNXX codes. Whether or not there is a real innovative solution that Level 3 is  
3           providing its ISP customers is not in question. With respect to any “innovative” solution that  
4           Level 3 proposes to offer to end user consumers who may utilize Level 3’s supposed “local”  
5           dial-up number to access their ISP, it appears that the only innovation is the proposed  
6           implementation of a relatively new mechanism, VNXX codes, that would enable Level 3 to  
7           bypass the toll charges that are normally associated with the type of Interexchange traffic that  
8           Level 3 seeks to provide. The method of obtaining originating Interexchange traffic from  
9           CenturyTel’s end-users through the establishment of a Point of Interconnection (POI) within  
10          CenturyTel’s serving territory appears to be the same method of interconnection used by any  
11          interexchange carrier seeking to originate Interexchange switched access traffic from  
12          CenturyTel’s end user’s today.

13  
14    **Q.     Does CenturyTel’s proposal provide for a competitive advantage?**

15    A:     No. CenturyTel currently provides service to ISPs in its serving territory and those ISP  
16           customers abide by the same regulatory requirements as any carrier to obtain access to  
17           CenturyTel end users. CenturyTel does not and will not impede the entry of competition.  
18           However, CenturyTel should not be expected to subsidize the business of new market entrants  
19           or the business of their ISP customers, through the disregard of existing Commission and FCC  
20           approved tariffs for such Interexchange service.

1   **Q.     Level 3 claims it is common for NXX codes to be assigned to customers who are not**  
2       **located in the local calling area where the NXX is assigned. Is Level 3’s proposed use**  
3       **of VNXXs compliant with industry standard number assignment practices?**

4   **A.**   No. The full magnitude of VNXX utilization throughout the industry cannot be completely  
5       calculated at this time. However, it is safe to say that regardless of the extent to which VNXX  
6       code utilization has burgeoned, the use of VNXX codes in general, and the use of VNXX  
7       codes that Level 3 proposes in the present case, are not compliant with industry standards and  
8       will certainly have an impact on numbering resources.

9  
10       As stated in my direct testimony, the Central Office Code Assignment Guidelines establish  
11       uniform, industry-wide procedures for the assignment of codes to all qualifying carriers in  
12       competitive markets and protect the nation’s limited numbering resources. In order to receive  
13       an NPA-NXX code, a carrier represents to NANPA that when it assigns numbers from these  
14       codes to its customers, it will do so for customers physically located in the designated rate  
15       center boundary. In the case of the services Level 3 is providing to its customers, this  
16       representation is incorrect.

17  
18       State commissions have agreed with this assessment. The Florida Commission stated: “We  
19       believe that a comparison of NPA/NXXs is used as a proxy for determining the actual physical  
20       location of the particular customer being called. In other words, the NPA/NXX provides a  
21       reasonable presumption of the physical location of a customer as being within the calling area to

1 which the NPA/NXX is homed.”<sup>51</sup> The result of Level 3’s proposed service will clearly violate  
2 the established industry guidelines governing the assignment of NPA-NXX codes.  
3

4 **Q. Should the rating of calls be based upon the jurisdiction of the end user or the rate**  
5 **center upon which the NXX is assigned?**

6 A. As previously discussed, this question is one of the most important issues addressed in this case.  
7 It is Level 3’s contention that the location of the called party (Level 3’s ISP customer) is not  
8 relevant for purposes of determining the jurisdiction and ultimately the appropriate rating of such  
9 traffic being sent to that customer. However, other Commissions have disagreed. For example,  
10 the Florida Commission stated: “We disagree with the ALEC position that jurisdiction of traffic  
11 should be determined based upon the NPA/NXXs assigned to the calling and called parties.  
12 Although presently in the industry switches do look at the NPA/NXXs to determine if a call is  
13 local or toll, we believe this practice was established based upon the understanding that  
14 NPA/NXXs were assigned to customers within the exchanges to which the NPA/NXXs are  
15 homed.”<sup>52</sup> (Emphasis added.)  
16

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<sup>51</sup> Florida PSC Order No. PSC-02-1248-FOF-TP, 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* (Phases II and IIA), pg. 30, September 10, 2002.

<sup>52</sup> Florida PSC Order No. PSC-02-1248-FOF-TP, 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* (Phases II and IIA), pg. 30, September 10, 2002.

**VIII. CONCLUSION**

It is clear that Level 3 is attempting to employ regulatory arbitrage through its use of VNXX codes, and claims that its proposed service is “local” in an effort to avoid the standard and regulatory treatment afforded its Interexchange service. I have illustrated the fact that CenturyTel not only recognizes its interconnection obligations pursuant to Section 251(a), but in fact, is currently abiding by these obligations. I have shown that the jurisdiction of the Level 3’s service is a crucial element in determining the appropriate regulatory and compensatory treatment that applies to its traffic. As such, the Commission should find that intercarrier compensation is based on the geographical beginning and end point of the calls, and conclude that Level 3 must pay CenturyTel originating access charges. As I have demonstrated, CenturyTel is in no shape or form, acting in an anti-competitive or discriminatory manner. In fact, it is Level 3’s proposed service that is discriminatory in nature. I have explained how Level 3’s proposed service offering, Virtual NXX (VNXX), violates the established industry guidelines and threatens the nation’s limited numbering resources. Finally, CenturyTel’s local customers should not be required to defray Level 3’s or its ISP customer’s costs of providing this service to end users who are located outside of the local calling area.

