RUTLEDGE, ECENIA, PURNELL & HOFFMAN

ORIGINAL

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE

November 1, 2000

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

Re: Docket No. 000907-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Level 3 Communications, LLC ("Level 3") are the following documents:

1. Original and fifteen copies of the Prefiled Rebuttal Testimony of Gregory L. Rogers; 14157-00
2. Original and fifteen copies of the Prefiled Rebuttal Testimony of Anthony Sachetti; 14158-00
3. Original and fifteen copies of the Prefiled Rebuttal Testimony and Exhibits TJG-8 through TJG-9 of Timothy J. Gates; 14159-00
4. Original and fifteen copies of the Prehearing Statement and in disk in Word Perfect 6.0 containing a copy of the Prehearing Statement; and 14160-00
5. Original and one copy of the Notice of Service of Attachment 1 to Level 3's First Set of Interrogatories to BellSouth Telecommunications, Inc. 14161-00

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Copies of the above-referenced testimony have been provided to Staff counsel and counsel for BellSouth Telecommunications, Inc. in accordance with the attached Certificate of Service.

APP
CAF
CMP Hunter 3-1060
COM
CTR
ECR
LEG 2
OPC
PAI
RGO
SEC 1
SER
OTH Hearing (Appearance)

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

KAH/rl
Enclosures
cc: Parties of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery(*) and United States Mail to the following this 1st day of November, 2000:

T. Michael Twomey, Esq.
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375

Michael Goggin, Esq.
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Felicia R. Banks, Esq.(*)
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Kenneth A. Hoffman, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

Petition of Level 3 Communications, LLC for arbitration of certain terms and conditions of proposed agreement with BellSouth Telecommunications, Inc.	)	Docket No. 000907-TP
	)	Filed: November 1, 2000

PREFILED REBUTTAL TESTIMONY OF GREGORY L. ROGERS ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC

Michael R. Romano
Attorney
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
(720) 888-7015 (Tel.)
(720) 888-5134 (Fax)
e-mail: mike.romano@level3.com

Kenneth A. Hoffman
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe Street
Suite 420
Tallahassee, Florida 32301-1841
(850) 681-6788 (Tel.)
(850) 681-6515 (Fax)

Russell M. Blau
Tamar E. Finn
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 945-6917 (Tel.)
(202) 424-7645 (Fax)

Its Attorneys

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

A: My name is Gregory L. Rogers. I am an Attorney for Level 3 Communications, LLC ("Level 3"). My address is 1025 Eldorado Boulevard, Broomfield, Colorado, 80021.

Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3 AND YOUR PROFESSIONAL BACKGROUND.

A: I am an attorney licensed in the State of Colorado since May, 1994. I have been employed by Level 3 since June, 1998. I have worked in a number of capacities at Level 3 including as Network Cost Analyst and Tariff Specialist. In these capacities I became familiar with Level 3's network, its product and service offerings, and the various regulatory requirements of state Public Utility Commissions ("PUCs") as they affect Level 3. In September, 1999, I joined the Legal Department at Level 3 where I work primarily on regulatory matters before federal and state regulatory agencies. Included in my current duties is serving as liaison to state and federal regulatory agencies. I analyze orders and regulations of state PUCs, help to explain Level 3's operations to local governmental bodies and PUCs, and testify in proceedings before those agencies when appropriate.

Q: DID YOU SUBMIT TESTIMONY IN THIS DOCKET ON OCTOBER 5, 2000?

A: No, I did not. However, for purposes of the hearing in this matter, I am adopting the Direct Prefiled Testimony of William P. Hunt, III.

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of my testimony is to respond to the legal and competitive policy arguments Ms. Cox makes in support of BellSouth's position on Interconnection Points (Issue 1). Although Ms. Cox calls it a Point of Interconnection ("POI") in her testimony, I will continue to use the phrase Interconnection Points ("IPs") because the parties agreed to use IPs in defining Issue 1.

Q: MR. HUNT PREVIOUSLY TESTIFIED CONCERNING ISSUE 8, HOW THE AGREEMENT SHOULD DEFINE SWITCHED ACCESS TRAFFIC. WILL YOU ADDRESS THAT ISSUE ALSO?

A: No. Level 3 and BellSouth have reached a compromise on Issue 8 and no longer require the Commission's assistance.

Q: BELLSOUTH WITNESS COX STATES THAT "ALL OF THE DISCUSSION CONCERNING WHO GETS TO ESTABLISH POINTS OF INTERCONNECTION, HOW MANY POINTS THERE WILL BE, WHAT COMPENSATION APPLIES TO THE FACILITIES, ETC. IS SIMPLY A MEANS TO AN END. AND THAT END IS WHETHER CUSTOMERS THAT LEVEL 3 DOES

NOT SERVE SHOULD BEAR THE ADDITIONAL COSTS THAT RESULT FROM LEVEL 3'S NETWORK DESIGN..." (COX AT 3:13-17). DO YOU AGREE WITH MS. COX?

A: No, I do not. Although Ms. Cox later admits that the processes required to implement network interconnection are complicated, she ignores not only the factual complexity of interconnecting competing networks, but also the policy decisions made by both the U.S. Congress and the FCC. Both Congress and the FCC recognized that ILECs would have to make modifications to their networks to open the local exchange market to competition. Both Congress and the FCC also anticipated the introduction of new technologies and network architectures and crafted rules so as not to penalize competitive carriers that seek to provide innovative networks and/or technologies. Imposing the cost of interconnecting different network designs solely on ALECs defeats the policy of encouraging network innovation and ignores the fact that BellSouth's own customers cause BellSouth to incur the cost of delivering traffic to Level 3.

Q: HOW DID CONGRESS RECOGNIZE THAT ILECS WOULD HAVE TO MODIFY THEIR NETWORKS IN OPENING UP LOCAL EXCHANGE MARKETS TO COMPETITION?

A: In crafting ILECs' interconnection obligations, Congress chose to require ILECs to provide interconnection at any technically "feasible" point. As the FCC found:

> use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated. For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the facilities and equipment" of the new entrant. Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements.[1]

By choosing the word "feasible," Congress indicated that ILECs would have to consider new uses of, and modifications to, their networks in order to provide interconnection to ALECs. It should also be noted that the FCC barred a consideration of cost in determining technical feasibility.

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, para. 202 (1996) (*"Local Competition Order"*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1069 (9th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T Corp. et al. v. Iowa Utils. Bd. et al.*, 119 S.Ct. 721 (1999), *vacated in part on remand, Iowa Utils. Bd. v FCC*, 219 F.3d 744 (8th Cir. 2000), *motion for partial stay granted, Iowa Utils. Bd. v. FCC*, Case no. 96-3321 et al., Order Granting Motion for Partial Stay of the Mandate (8th Cir. Sept. 22, 2000).

Specifically, the FCC found that "the 1996 Act bars consideration of costs in determining 'technically feasible' points of interconnection or access. In the 1996 Act, Congress distinguished 'technical' considerations from economic concerns." The FCC pointed out that the legislative history showed a conscious decision to remove cost from consideration under Sections 251(c)(2) and (c)(3), whereas other sections of the Act retained references to "economically burdensome" or "economically reasonable" obligations on carriers.[2]

Q: HOW DID THE FCC RECOGNIZE THAT ILECS WOULD HAVE TO MODIFY THEIR NETWORKS IN OPENING UP LOCAL EXCHANGE MARKETS TO COMPETITION?

A: In the FCC's Local Competition proceeding, the United States Telephone Association ("USTA") argued that the Act only requires ILECs to provide interconnection to their networks as they are "configured presently."[3] The FCC rejected USTA's interpretation of the Act, finding that:

> the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.[4]

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2 *Local Competition Order* at para. 199.

3 *Id.* at para. 195.

4 *Id.* at para. 198.

In many instances, the Act and the FCC's rules show that neither Congress nor the FCC want to constrain the ability of an ALEC to innovate and deploy services, technologies, and network architectures that differ from the historical services, technologies, and network architectures deployed by ILECs. For example, Congress provided two alternative definitions of "telephone exchange service:"

> The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.[5]

The FCC has also recognized differences in incumbent and competitive technologies in its reciprocal compensation rules, which, for example, define transport as:

> the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent

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[5] 47 U.S.C. § 153(47) (emphasis added).

> facility provided by a carrier other than an incumbent LEC.[6]

Examples such as these show that Congress and the FCC anticipated differences between incumbent and competitive networks and crafted rules to ensure that ALECs would not be required to mimic ILECs. If the Commission were to require Level 3 to establish an IP in each local calling area, the Commission would be undermining Congressional and FCC intent to promote competition and innovation in network design.

Q: BELLSOUTH WITNESS COX CLAIMS THAT BELLSOUTH SHOULD NOT BE RESPONSIBLE FOR "COLLECTING" TRAFFIC ORIGINATED BY BELLSOUTH'S CUSTOMERS IN EACH BELLSOUTH LOCAL CALLING AREA AND DELIVERING THAT TRAFFIC TO LEVEL 3 AT A SINGLE IP PER LATA (COX AT 5:8-18). IS BELLSOUTH'S POSITION SUPPORTED BY THE FCC?

A: No. In fact, the opposite is true. The FCC has established "rules of the road" that address BellSouth's obligation to interconnect with Level 3. The first rule is that Level 3 is entitled to select a single IP in a LATA for the exchange of traffic with BellSouth.

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This

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[6] 47 C.F.R. § 51.701(c) (emphasis added).

> means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.[7]

Consistent with the FCC's approach, and recognizing that many LATAs in BellSouth's network are served by more than one access tandem, this Commission has, where requested by an ALEC (Sprint), found that it is technically feasible to require a single IP within a LATA.[8]

The second FCC rule is that BellSouth bears the burden of delivering traffic originated by BellSouth customers to Level 3's network and recovers such costs in the rates charged to its end users.

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

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[7] *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, para. 78 (rel. June 30, 2000) ("*Texas 271 Order*").

[8] *Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996*, Docket No. 961150-TP, Final Order on Arbitration, Order No. PSC-97-0122-FOF-TP, 9 (Feb. 3, 1997).

> possible for one company's customer to call any other customer even if that customer is served by another telephone company.[9]

BellSouth's obligation to deliver its originating traffic to Level 3 is not conditioned on Level 3 accepting such traffic within the local calling area in which it originated.

Although BellSouth attempts to paint a picture of Level 3 as the sole cost causer, that is not accurate. The "costs" BellSouth incurs to exchange traffic with Level 3 are the result of BellSouth's historic network design, BellSouth's continued monopoly share of local service customers in Florida, the need to interconnect numerous competitive networks to introduce competition in BellSouth's territory, the demands of its own customers, and the specific network interconnection architecture mandated by the FCC or agreed to by BellSouth and Level 3. Although I imagine BellSouth would prefer to retain its monopoly and not interconnect with Level 3, it no longer has that luxury. Under the FCC's "rules of the road," BellSouth has the obligation to exchange traffic with Level 3 at a single IP within a LATA and the obligation to deliver its originating traffic to that IP at no cost to Level 3. As Timothy Gates testifies (Gates Direct at 22:4-23:2), BellSouth recovers the costs of originating its own customers'

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[9] *TSR Wireless, LLC et al. v. U S West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, FCC 00-194, para. 34 (rel. June 21, 2000) ("*TSR Wireless*").

traffic through the rates it charges those customers. BellSouth is not entitled to recover the costs of its originating traffic from Level 3.

Q: WHAT ABOUT MS. COX'S CLAIM (COX AT 13:12-24) THAT IF BELLSOUTH MUST INTERCONNECT WITH LEVEL 3 AT A SINGLE IP, LEVEL 3 MUST PAY FOR THE COSTS OF THIS "NOVEL" FORM OF INTERCONNECTION?

A: Interconnection at a single IP per LATA is not "novel," it is required by the FCC and Section 251(c)(2). If BellSouth ever hopes to receive Section 271 authority, it will have to show that it meets its Section 251(c)(2) obligation by offering interconnection at a single IP per LATA.[10] Indeed, as Level 3 explained through the previous testimony of Kevin Paul (Paul Direct at 5:24-6:3), the Parties today use one IP per LATA for local traffic in Florida. Given that we are operating in this manner today and given that the option to establish the single IP per LATA came from a 1997 contract between MCI and BellSouth that Level 3 adopted, our request here is not "novel." Furthermore, the cite upon which Ms. Cox relies does not support BellSouth's position.

Q: PLEASE EXPLAIN.

A: Ms. Cox cites the FCC's Local Competition Order at paragraph 199 as support for BellSouth's position that ALECs must pay for costs associated

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[10] *See, Texas 271 Order* at para. 78.

with the ALEC's chosen form of interconnection. Ms. Cox relies upon the last sentence which reads:

> Of course, a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.[11]

Ms. Cox claims that this sentence requires Level 3 to pay for dedicated facilities to haul both BellSouth-originated and Level 3-originated traffic from the single IP to each BellSouth local calling area. However, as Anthony Sachetti explains in his testimony, if BellSouth requires Level 3 to pay for dedicated facilities to each local calling area, it is requiring Level 3 to establish multiple IPs in each LATA, a result prohibited by FCC rules. BellSouth cannot use economic considerations to undermine the FCC's and Commission's determination that interconnection at a single IP per LATA is technically feasible and avoid providing Level 3 interconnection at a single IP.

If, as BellSouth claims, interconnection at a single IP per LATA causes BellSouth to incur additional costs, BellSouth must prove what those costs are under Section 252(d)(1) and must show that it does not recover such costs from its own customers. BellSouth has provided no evidence in this proceeding that it has incurred additional costs to

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[11] *Local Competition Order* at para. 199.

accommodate Level 3's current single IP per LATA interconnection architecture. It has not shown that traffic exchanged today, or traffic it predicts it will exchange tomorrow, with Level 3 originates from or terminates to BellSouth customers at some distance from the single IP. It has not shown that it had to build or will have to build additional facilities solely to exchange traffic with Level 3. Nor has BellSouth provided any evidence that if such costs exist, it is not already compensated by the charges it receives from its end users. In short, BellSouth cannot rely on paragraph 199 of the Local Competition Order because BellSouth has not shown, through submission of concrete cost evidence, that interconnection at a single IP per LATA is expensive.

Q: HAS LEVEL 3 MADE ANY PROPOSALS THAT ADDRESS BELLSOUTH'S CONCERN THAT A SINGLE IP PER LATA COULD BECOME UNREASONABLY EXPENSIVE FOR BELLSOUTH?

A: Yes. As explained in more detail in Anthony Sachetti's testimony (including the Direct Testimony of Kevin Paul which Mr. Sachetti adopted), Level 3 has proposed language that would require the parties to establish additional IPs when a certain traffic threshold is reached.

Q: MS. COX CLAIMS THAT BELLSOUTH'S RECIPROCAL COMPENSATION RATES DO NOT COVER THE COST OF DELIVERING LEVEL 3 ORIGINATED TRAFFIC FROM A

SINGLE IP IN THE LATA TO THE BELLSOUTH END USER (COX AT 24-25). DO YOU AGREE?

A: No. The BellSouth reciprocal compensation rate structure and agreed-to terms in the proposed contract flatly contradict her claim. These terms also show that BellSouth does recover any cost incurred in picking up Level 3-originated traffic at a single IP in the LATA and delivering it to one of BellSouth's "specialized local networks." BellSouth proposed, and this Commission accepted, elemental reciprocal compensation rates. That is, BellSouth is compensated for tandem switching, transmission, and end office termination. Furthermore, in instances where BellSouth must switch Level 3-originated traffic through more than one tandem, BellSouth has proposed, and Level 3 has agreed to, additional rates to reflect such additional tandem switching and transmission (BellSouth calls this "Multiple Tandem Access"). Together, the elemental rate structure and the agreement to charge additional tandem switching and transmission charges when BellSouth switches Level 3-originated traffic through multiple tandems permit BellSouth to charge Level 3 for each element of the BellSouth network used to deliver the call from the IP to the called party. In Ms. Cox's example, therefore, BellSouth has established a mechanism to recover its costs of hauling Level 3-originated traffic from Jacksonville to Lake City.

Q: DO YOU AGREE WITH MS. COX THAT THE ACT AND FCC ORDERS SUPPORT BELLSOUTH'S ABILITY TO DESIGNATE THE IP FOR ITS ORIGINATED TRAFFIC (COX AT 15:16-20, 16:20-21)?

A: No. Ms. Cox is incorrect when she claims that "nothing in the Act limits BellSouth's ability to designate a POI for traffic it originates to Level 3." (Cox at 15:19-20) BellSouth is wrong to suggest that because the Act may not explicitly address this issue, BellSouth somehow has the ability and right to designate IPs. By placing the obligation to provide interconnection at any technically feasible point in Section 251(c)(2), which applies only to incumbent LECs, Congress did address this issue. If Congress had wanted ALECs to bear the same obligation to provide interconnection at any technically feasible point, it would have specifically stated that outcome by placing this duty under Section 251(b), which applies to all LECs.

Q: MS. COX CLAIMS THE FCC'S CONSIDERATION OF MCI'S IP PROPOSAL SUPPORTS BELLSOUTH'S POSITION (COX AT 16:1-16:21). DO YOU AGREE WITH HER ANALYSIS?

A: No. Ms. Cox quotes selectively from the FCC's order and ignores the FCC's consideration of Bell Atlantic's IP proposal. Although Ms. Cox relies on a quote from paragraph 220 of the FCC's order, she omits the

footnote from that quote and the context created by contrasting the MCI and Bell Atlantic proposals.

Q: COULD YOU PLEASE RESTATE THE QUOTE FROM MS. COX'S TESTIMONY?

A: Yes. Ms. Cox relies on the following quote for the proposition that the FCC's order permits BellSouth to designate IPs for its originated traffic:

> We also conclude that MCI's POI proposal, permitting interconnecting carriers, both competitors and incumbent LECs, to designate points of interconnection on each other's networks, is at this time best addressed in negotiations and arbitrations between parties.[12]

The footnote that Ms. Cox failed to quote provides that:

> Of course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2).

The footnote reaffirms the ALEC's right to select IPs for the exchange of traffic with BellSouth, including receipt of BellSouth-originated traffic. In the Intermedia arbitration, this Commission rejected BellSouth's one-sided definition of the IP, recognizing that at the IP "traffic is mutually exchanged between carriers."[13]

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[12] *Local Competition Order* at para. 220.

[13] *Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.*, Docket No. 991854-TP, Final Order on Arbitration, Order No. PSC-00-1519-FOF-TP, 48 (Aug. 22, 2000).

Ms. Cox also ignores the beginning of paragraph 220, and rejection of Bell Atlantic's IP proposal, which supports Level 3's position that Congress has addressed this issue:

> Finally, as discussed below, we reject Bell Atlantic's suggestion that we impose reciprocal terms and conditions on incumbent LECs and requesting carriers pursuant to section 251(c)(2). Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. The obligations of LECs that are not incumbent LECs are generally governed by sections 251(a) and (b), not section 251(c). Also, the statute itself imposes different obligations on incumbent LECs and other LECs (*i.e.*, section 251(b) imposes obligations on all LECs while section 251(c) obligations are imposed only on incumbent LECs). We do note however, that 251(c)(1) imposes upon a requesting telecommunications carrier a duty to negotiate the terms and conditions of interconnection agreements in good faith.[14]

Taken in context, the FCC's rejection of MCI's IP proposal establishes that while the default rule permits ALECs to designate the IP for the exchange of both parties' originated traffic, ALECs nevertheless have a duty to negotiate in good faith when ILECs request additional IPs. As addressed in more detail in Anthony Sachetti's testimony, Level 3 has met that duty and has offered at least two compromise proposals to govern the establishment of additional IPs.

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[14] *Local Competition Order* at para. 220 (footnotes omitted).

Q: WHAT ACTION DO YOU RECOMMEND THE COMMISSION TAKE?

A: The Commission should find that Level 3 has the right to interconnect with BellSouth at a single IP in each LATA. Since BellSouth has presented no evidence supporting its claim that it incurs costs to deliver BellSouth-originated traffic to the single IP, and has presented no evidence that any alleged costs are not recovered from its end users, the Commission should adopt one of Level 3's proposed alternatives as a proxy for measuring when interconnection at a single IP per LATA becomes "expensive" for BellSouth such that additional IPs are warranted.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes, it does.