

LEVEL 3 - SBC 13State – DPL – Intercarrier Compensation

Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
<p>IC-1</p> <p>Level 3 (§ 3.1 § 3.1.1. § 3.1.2 § 3.1.3 § 3.1.4 § 3.1.5)</p> <p>SBC (§ 3.1)</p>		<p>Level 3 Issue: 1. Should the Interconnection Agreement classify the traffic exchanged between the parties using the definitions from the Act, or should the Agreement classify the traffic according to SBC’s interpretation of “Section 251(b)(5) Traffic”, FX Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as ‘Optional Calling Area Traffic’), IntraLATA Toll Traffic, or InterLATA Toll Traffic, Meet Point Billing or FGA Traffic”?</p> <p>SBC Issue: 1. Which party’s proposed classifications of traffic should be used in the Agreement?</p>	<p><u>3.1 Telecommunications Traffic exchanged between LEVEL 3 and SBC-13STATE will be classified as either:</u></p> <p><u>3.1.1 Telephone Toll Service defined according to 47 U.S.C. §153(48);</u></p> <p><u>3.1.2 Telephone Exchange Service defined according to 47 U.S.C. §153(47);</u></p> <p><u>3.1.3 Exchange Access Service defined according to 47 U.S.C. §153(16); or</u></p> <p><u>3.1.4 Telecommunications Services defined according to 47 U.S.C. §153(46); and</u></p> <p><u>3.1.5 Information Services defined according to 47 U.S.C. §153(20).</u></p> <p><i>3.1 For purposes of compensation under this Agreement, the telecommunications traffic exchanged between LEVEL 3 and SBC-13STATE will be classified as either Section 251(b)(5) Traffic, FX Traffic , ISP-Bound Traffic, Optional EAS Traffic (also known as “Optional Calling Area Traffic”), IntraLATA Toll Traffic, or InterLATA Toll Traffic, Meet Point Billing or FGA Traffic.</i></p>	<p>The Agreement should classify traffic in the manner proposed by Level 3. Level 3 proposes that the characterization of traffic follow the definitions set forth in the federal Communications Act. The Agreement should not classify traffic in the manner proposed by SBC. SBC’s proposed classifications mischaracterize the types of traffic that is exchanged between the parties and is unfounded as a matter of law.</p>	<p>1. 2. SBC’s categories of traffic accurately capture the appropriate classifications of traffic for purposes of intercarrier compensation.</p> <p>Level 3’s language provides no differentiation in treatment between “local” and ISP-Bound Traffic and instead refers generically to “telecommunications services.” For compensation purposes, this category of traffic is too broad to be useful. For example, in the <i>ISP Compensation Order</i> the FCC, in imposing a compensation mechanism for ISP-Bound traffic noted that: “Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and not the universe of traffic that falls within subsection (b)(5). This analysis differs from our analysis in the Local Competition Order, in which</p>

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					<p>we attempted to describe the universe of traffic that falls within subsection (b)(5) as all “local” traffic. We also refrain from generically describing traffic as “local” traffic because the term “local,” not being a statutorily defined category, is particularly susceptible to varying meanings and significantly is not a term used in Section 251(b)(5) or Section 251(g).”</p> <p>Because this appendix deals with the appropriate forms of compensation for many types of traffic and because the compensation for each type varies, it is more appropriate to describe the categories of traffic with specificity as SBC’s proposed language does.</p>
<p>IC-2</p> <p>Level 3</p> <p>(§ 3.2 - § 3.4.5)</p>		<p>Level 3 Issues:</p> <p>3a. Should the Agreement contain terms and conditions for the compensation of IP-Enabled Traffic?</p>	<p>3.2 <u>IP ENABLED SERVICES TRAFFIC</u></p> <p>3.2.1 <u>Definition of IP-enabled Services</u></p> <p>3.2.1.1 IP-enabled</p>	<p>. (a) Yes, the Agreement should contain terms related to IP-Enabled Traffic. While Level 3 and SBC seem to be in agreement that IP-Enabled Traffic is interstate in nature</p>	<p>Level 3’s proposed language for section 3.2 and all of its sub-parts (which are the subject of IC Issues 5 through 14 and 16) are countered by SBC’s proposed Section 16.,</p>

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SBC (§16-§ 16.1)		<p>3b. Is IP-enabled traffic interstate in nature?</p> <p>3c. Should the agreement contain language that is consistent with SBC’s publicly-stated position as presented to the FCC that IP-Enabled Traffic is “indivisibly” interstate in nature?</p> <p>3d. Should IP-enabled traffic be classified by the geographic location of the calling and called parties , or should the Agreement be consistent with SBC’s publicly-stated position that it is not technically possible to track the jurisdictional nature of IP-Enabled Traffic?</p> <p>3e. Should the agreement recognize that a net-protocol conversion occurs in IP enabled traffic?</p> <p>3f. Should the parties include in the SS7 call setup message an indicator identifying IP originated traffic?</p>	<p><u>Services are defined as, and include, services and applications relying on the Internet Protocol family (“IP), which could include digital communications of increasingly higher speeds that rely upon IP, as well as higher level software services that could be invoked by the end user or on the end user’s behalf to make use of communications services. Thus, the term IP-enabled Services includes “applications” and “services” because communications over the Internet are possible with both forms.</u></p> <p>3.2.1.1.1 <u>Because IP-enabled Services are enabled by use of IP and the Internet, IP-enabled Services share the non-geographic nature of electronic communications conducted over the Internet:</u></p> <p>3.2.1.1.1.1 <u>IP-enabled Services Traffic includes communications traffic containing voice communications (i.e. Voice embedded IP Communications).</u></p> <p>3.2.1.2 <u>The Parties recognize that although state public utility commissions may have jurisdiction over underlying telecommunications facilities, the FCC</u></p>	<p>from a jurisdictional perspective, the network facilities and routing terms are certainly within the jurisdiction of this Commission. These issues address the terms and conditions related to how SBC will interconnect its local interconnection facilities with Level 3’s traffic. SBC is obligated to provide interconnection for the exchange and termination of Level 3’s traffic, irrespective of the jurisdictional nature of the traffic. As such, Level 3 has proposed the disputed terms related to IP-Enabled Traffic, in order to clearly define the term as used throughout the Appendix. For these reasons, the Commission should adopt Level 3’s proposed language.</p> <p>(b) Level 3 believes the IP-Enabled Traffic itself is jurisdictionally interstate in nature. Thus, Level 3 proposes Section 3.2.1.2,</p>	<p>which presents the question of the proper routing treatment and compensation scheme for IP traffic.</p> <p>3. SBC’s position is that all Switched Access Traffic, as defined below, must be terminated over feature group access trunks (B or D) (except certain types of IntraLATA toll and Optional EAS traffic) and all such traffic is subject to applicable interstate and intrastate switched access charges. Switched Access Traffic means all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC’s local exchange tariffs on file with the applicable state commission) including,</p>

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		<p>3g. Should SBC be able to force Level 3 to build out a separate FGD network for the exchange of IP enabled traffic when the parties do and can continue to exchange such traffic over existing interconnection facilities and compensate each other according to a Percentage of IP Use allocator, which allocator they could later revisit once the FCC determines how to handle this traffic in several pending rulemaking proceedings?</p> <p>3j. Should the Parties compensate each other for IP-enabled Services at \$0.0005 to terminate IP-enabled Services Traffic?</p> <p>3k. Should the categorization of Circuit Switched Traffic be consistent with the FCC’s orders that distinguish Circuit Switched Traffic from IP enabled traffic?</p> <p>SBC Issue:</p>	<p><u>has determined that IP-enabled Services are interstate in nature and has preempted state jurisdiction over such services.</u></p> <p>3.2.1.3 <u>In order for Parties communicating via IP-enabled Services to interact with end users connected to the Internet by means of circuit switched telecommunications services addressed by NPA-NXX codes, the underlying telecommunications provider must effect a net protocol conversion from IP to TDM in order to permit the Internet to connect an end users served by a device addressed via the NPA-NXX codes and connected over a legacy circuit switched telephone network.</u></p> <p>3.2.2 <u>Identification of IP-enabled Services Exchanged Between the Parties</u></p> <p>3.2.2.1 <u>The parties recognize that neither party has a billing system capable of determining the physical location of their customers; rather consistent with industry practice nationwide both Parties’ billing systems capture the originating and terminating</u></p>	<p>which recognizes that position. SBC is opposing that language in this arbitration. However, in its comments before the FCC in a recent FCC investigation into IP Services, SBC argued that, in fact, IP-Enabled Traffic is interstate in nature. Thus, SBC is arguing to this Commission that IP-Enabled Traffic is not interstate in nature, and before the FCC that it is. In light of the admissions before the FCC that IP—Enabled Traffic is interstate in nature, the Commission should adopt Level 3’s language consistent with that position.</p> <p>(c) Especially considering that SBC in comments in a pending FCC rulemaking proceeding on VoIP contends that IP-Enabled Services Traffic is categorically interstate and falls within the express FCC’s Title 1 jurisdiction over such communications, Level 3</p>	<p>without limitation, any traffic that (i) terminates over a Party’s circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) (also referred to as “PSTN-IP-PSTN”) and/or (ii) originates from the end user’s premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology (also referred to as “IP-PSTN).</p> <p>SBC’s position that all Switched Access Traffic is subject to intrastate and interstate switched access charges is supported by section 69.5(b) of the FCC’s rules, which states that access charges “shall be computed</p>

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		<p>3. What is the proper routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?</p>	<p><u>NPA-NXX, which they subsequently compare to tariff databases and the Local Exchange Routing Guide (“LERG”) to identify the location of the switch serving the called or calling NPA-NXX codes and then they rate those calls according to the terms and conditions of this Agreement and their respective tariffs.</u></p> <p><u>3.2.2.2 Because customers of IP-enabled Services Traffic desire to make calls to the PSTN as well as to other IP-enabled Services Traffic customers, Level 3 provides a service that permits them to make calls to and from devices that are addressed using NPA-NXX codes.</u></p> <p><u>3.2.2.3 In order to ensure that IP-enable Services Traffic is correctly billed and to ensure that no Circuit Switched Traffic is misbilled and that no other carrier can utilize Level 3’s network for toll-bypass, Level 3 will insert into the SS7 call setup message an indicator identifying traffic that originates as IP on Level 3’s network.</u></p> <p><u>3.2.2.4 Level 3 recognizes that ILEC</u></p>	<p>sees no rationale as to how SBC can apply in intrastate tariff to this service. In fact, SBC is taking before this Commission a position that is diametrically in opposition to that it takes before the FCC. On page 8 of its July 14, 2004 Reply Comments in FCC Docket No. 04-36 (In the matter of IP-Enabled Services), SBC says the following about IP-Enabled Traffic:</p> <p>“These services are also <i>indivisibly</i> interstate because their inherent geographic indeterminacy and portable nature, combined with their capacity to facilitate multiple simultaneous communications with a variety of information sources, make it infeasible to segregate any intrastate component for regulatory purposes. As such, IP-enabled services fall categorically within the Commission’s exclusive</p>	<p>and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.” In particular, with respect to PSTN-IP-PSTN traffic (also referred to as “IP-in the Middle Traffic”), the FCC recently held that a voice service that originates and terminates on the PSTN and relies on IP technology only for transport without offering customers any enhanced functionality associated with the IP format is a telecommunications service subject to section 69.5(b) of the FCC’s rules. <i>See Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephone Services are Exempt from Access Charges</i>, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) (<i>Access Charge Order</i>). This Commission should follow the FCC’s <i>Access Charge</i></p>

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			<p><u>billing systems generally, and in this case, SBC13-State’s switches may not capture information out of the SS7 stream at the moment the traffic is exchanged. Accordingly, the Parties agree to develop a Percentage of IP Use (“PIPU”) factor that will be applied to all minutes of usage exchanged between them over the Local Interconnection Trunk Groups. This factor will be based upon Level 3’s actual and verifiable records of IP-originated traffic. It will be calculated as follows:</u></p> <p><u>3.2.2.4.1 In the case of calls originating from SBC13-State over the Interconnection Trunks under this Agreement (“Level 3 Terminating Traffic”), Level 3 shall provide a PIPU factor to identify the percentage of that traffic that is in fact terminating to an IP Customer and therefore falls within the definition of IP-enabled Services Traffic under this Agreement.</u></p> <p><u>3.2.2.4.2 In the case of calls originating from Level 3 over the Interconnection Trunks under this Agreement (“SBC13-State Originating Traffic”), Level 3 shall provide a PIPU factor to identify the percentage of that traffic that is in fact</u></p>	<p>jurisdiction, and the Commission should resolve any uncertainty on this point by explicitly preempting any state- level common carrier regulation of information services”</p> <p>Thus, while SBC would have this Commission impose intrastate tariffs to what it admits is interstate traffic, it is arguing just the opposite at the FCC. SBC has proposed its Section 16, which governs its Switched Access Compensation terms for calling parties. In its proposal, SBC mandates that any IP-Enabled Traffic is subject to Switched Access Charges, irrespective of where the call originates or terminates. This is a vast departure from the industry standard, which has relied upon the NPA-NXX of the calling parties to determine the appropriate rating to impose.</p>	<p><i>Order</i> and find that this type of Switched Access Traffic is subject to intrastate access charges. Furthermore, to ensure the proper compensation is paid on this traffic, this Commission should find that Switched Access Traffic must be routed over feature group access trunks.</p> <p>With respect to IP-PSTN traffic, it is SBC’s position that under current FCC rules and regulations, providers of IP-PSTN services are not exempt from the obligation to pay intrastate or interstate access charges when they make use of the PSTN for purposes other than connecting with their <i>own</i> subscribers for the use of their own services. The Enhanced Service Provider (ESP) exemption does not, as some claim, apply to such IP-PSTN services. The ESP exemption applies only when information service providers</p>

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			<p><u>originating from an IP Customer and therefore falls within the definition of IP-enabled Services Traffic under this Agreement.</u></p> <p><u>3.2.2.4.3 Level 3 will provide separate PIPU factors for Level 3 Terminating Traffic and Level 3 Originating Traffic. These PIPU factors shall be applied to all originating or terminating minutes of use (as applicable) exchanged over the Interconnection Trunks between the Parties under this Agreement.</u></p> <p><u>3.2.2.5 To the extent SBC13-State offers services in and outside of its operating territories that support either origination from or termination to an SBC13-State IP-enabled Services Traffic Customer and the exchange of traffic with the PSTN. To ensure that this traffic is correctly billed and to ensure that no Circuit Switched Traffic is misbilled and that no other carrier can utilize SBC13-State’s network for toll-bypass, SBC13-State agrees to develop methods for accurately identifying traffic that originates as IP on SBC13State’s network and shall likewise provide its own originating and terminating PIPU factors in the same</u></p>	<p>(d) No, IP-Enabled Traffic should not be classified by the geographic location of the calling parties. First, in the Parties current Agreement, a local call is defined as a call that originates and terminates within the same wire center, as determined by the NPA-NXX of the calling parties. SBC’s attempts to alter the landscape are completely at odds with the industry standards, as incorporated in the existing agreement. Level 3 seeks merely to extend the status quo. Second, even SBC admits on Page 10-11 of its FCC Reply Comments in Docket No. 04-36 (In the Matter of IP-Enabled Services) that there is not technical manner at present to allow for any carrier to track the jurisdictional nature of IP-Enabled Services:</p> <p>“The California commission is simply wrong in claiming that it would be feasible,</p>	<p>use the PSTN to connect with their own subscribers, but it has never been extended to a situation in which information service providers use the PSTN to connect with third parties to whom they are not providing an information service. Since no exemption applies to IP-PSTN Traffic, SBC should continue to charge “jurisdictionalized” compensation rates for such traffic (notwithstanding SBC’s position that it is interstate in nature) in accordance with its existing switched access tariffs until the FCC rules in its intercarrier compensation proceeding on this type of traffic. SBC’s existing tariffs contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number information together with other data. This Commission should find IP-</p>

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			<p><u>manner as Level 3 under this Section.</u></p> <p>3.2.3 <u>Compensation for IP-enabled Services Traffic</u></p> <p>3.2.3.1 <u>The Parties shall compensate each other for termination of all minutes of traffic identified as IP-enabled Services Traffic pursuant to application of a PIPU factor at \$0.0005 per minute of use to terminate IP-enabled Services Traffic to either Party’s end user customer.</u></p> <p>3.3 <u>ISP-Bound Traffic shall mean Telecommunications Services Traffic exchanged between the Parties where the originating Customer of one Party places a Circuit Switched Traffic call over the circuit-switched network to an Internet Service Provider (“ISP”) customer of the other Party.</u></p> <p>3.3.1 <u>End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through IXC traditional circuit-switched long distance service; and</u></p> <p>3.3.2 <u>The call originates and terminates</u></p>	<p>using current technology, to segregate the “interstate” and “intrastate” components of IP-enabled services. As attested to by the equipment and software manufacturers on the cutting edge of this field, there is today no practicable means for identifying geographic locations on the Internet that would enable “intrastate” traffic to be carved out for separate regulation by state commissions.^{28/} In particular, there are a variety of reasons why a packet’s source IP information or IP address cannot currently be used to determine a physical location.”</p> <p>Once again, SBC is telling this Commission one thing, while telling the FCC a completely different story.</p> <p>Third, the Act and FCC decisions require that the jurisdiction of the traffic be determined by the origination</p>	<p>PSTN is subject to intrastate and interstate switched access charges to ensure SBC is protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates until the FCC rules on IP-PSTN traffic.</p>

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			<p><u>on the public switched telephone network (PSTN); and</u></p> <p><u>3.3.2.1 The call undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology; and ‘</u></p> <p><u>3.3.3 Obtains the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers by virtue of the switched access network. Customers of Circuit Switched Traffic receive no enhanced functionality by using the service. Circuit Switched Traffic obtains the same circuit-switched interstate access for its specific service as obtained by other interexchange carriers, and, therefore, phone to phone circuit switched service imposes the same burdens on the local exchange as do circuit-switched interexchange calls because it makes use of the access network.</u></p> <p><u>3.4 Circuit-Switched Traffic is defined as any Telecommunication Services traffic</u></p>	<p>and termination points of a call. Thus, if a call originates and terminates within the SBC-defined local calling area, the call is local. SBC would have the Parties define a call on the basis of the mileage between the calling parties, in direct conflict with the Act and FCC orders.</p> <p>(e) Yes, the Agreement should acknowledge that a net protocol conversion takes place in IP-Enabled Traffic. In fact, it is a statement of fact. This point has been discussed and relied upon by the FCC in recent IP-related investigations, and should be acknowledged in the Agreement.</p> <p>(f) Yes. In its proposed language, in the event that the Commission determines it appropriate to include IP-Enabled Traffic terms in the Agreement, Level 3 proposes to have it insert into the SS7 call setup message an</p>	

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			<p><u>that:</u></p> <p><u>3.4.1 uses ordinary customer premises equipment (CPE) with no enhanced functionality; and</u></p> <p><u>3.4.2 Customers using a Circuit-Switched service place and receive calls with the same telephones they use for all other Circuit-Switched calls. So, for example, where the customer dials an NPA-NXX that appears in ILEC tariffs as Telephone Toll Service, the customer would initiate the call by dialing 1 plus the called party's number (NPA-NXX-XXXX), just as in any other circuit-switched long distance calls, which calls are traditionally routed over Feature Group D trunks; and</u></p> <p><u>3.4.3 End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through IXC traditional circuit-switched long distance service; and</u></p> <p><u>3.4.4 The call originates and terminates on the public switched telephone network (PSTN); and</u></p> <p><u>3.4.4.1 The call undergoes no net protocol conversion and provides no enhanced</u></p>	<p>indicator identifying traffic that originates as IP on Level 3's network. This will allow the Parties to identify any traffic that originates on the Level 3 network, and will assist in the tracking and billing process. This is a common-sense approach that will greatly benefit both SBC and Level 3.</p> <p>(g) SBC should not be able to force Level 3 into building out a separate FGD network just so that it can track and bill Level 3 for IP-Enabled Traffic. From a common sense perspective, it does not make any sense to force Level 3 to go through the crushing expense of building out this network, when the FCC currently has before it several proceedings investigation the appropriate manner in which the route such traffic. Before forcing Level 3 to undergo expensive and time-consuming build out, the Commission should</p>	

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			<p><u>functionality to end users due to the provider’s use of IP technology; and</u></p> <p><u>3.4.5 Obtains the same circuit-switched access as obtained by other interexchange carriers, and therefore imposes the same burdens on the local exchange as do other interexchange carriers by virtue of the switched access network. Customers of Circuit Switched Traffic receive no enhanced functionality by using the service. Circuit Switched Traffic obtains the same circuit-switched interstate access for its specific service as obtained by other interexchange carriers, and, therefore, phone to phone circuit switched service imposes the same burdens on the local exchange as do circuit-switched interexchange calls because it makes use of the access network.</u></p> <p><i>16. Switched Access Traffic</i></p> <p><i>16.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different</i></p>	<p>allow the FCC the opportunity to determine the appropriate manner in which to handle this traffic.</p> <p>Further, until the FCC acts, SBC is not going to be financially harmed. Level 3 is proposing the Parties use a PIPU allocator on all traffic that is originated on the Level 3 network to determine jurisdictional breakdown of its traffic. These types of allocators have a long history in the telecommunications industry, including use by SBC in tracking and billing its traffic. Additionally, as another protection for SBC, Level 3 will provide SBC with auditable records that will provide SBC the opportunity to review the accuracy of the PIPU based on actual call records. These systems should protect both parties until such time as the FCC makes its determinations, and are far superior to forcing Level 3 to</p>	

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			<p><i>local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE’s local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party’s circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the end user’s premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology and terminates over a Party’s circuit switch. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party’s access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:</i></p>	<p>develop, build and pay for a new FGD network.</p> <p>(h) Yes, the parties should continue their current compensation scheme and pay each other \$0.0005 to terminate IP-Enabled Traffic. Level 3 and SBC have an existing ISP Compensation Plan in place that will remain in place until December 31, 2004. However, the FCC is expected to release its much anticipated ISP Remand Order at the October 2004 FCC meeting. This Agreement’s ISP Compensation terms would not take effect until after that date. Thus, Level 3 is proposing that the Parties agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order. SBC’s proposed new compensation scheme is not only a newly crafted scheme based upon a regime that will go replaced shortly, but also will likely</p>	

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			<p><i>(i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider,</i></p> <p><i>(ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;</i></p> <p><i>(iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or</i></p> <p><i>(iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as “Local Interconnection Trunk Groups”) destined to the other Party.</i></p> <p><i>Notwithstanding anything to the contrary in this Agreement, each Party reserves its rights, remedies, and</i></p>	<p>not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time. This is the effect of Level 3’s proposed language.</p> <p>(i) Yes. Level 3 has proposed a definition of Circuit Switched Traffic that is consistent with both FCC orders and regulations. In addition, the Level 3 proposal for IP-Enabled Traffic is consistent with the FCC’s pronouncements in a recent order addressing IP-Enabled Traffic. See, <i>See Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephone Services are Exempt from Access Charges</i>, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97). In these orders, the FCC has distinguished the manner in which these two types of traffic are routed on the network. Level 3 seeks to incorporate this distinction in</p>	

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			<p><i>arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC’s Order issued in the Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004).</i></p>	<p>the Agreement</p>	
<p>IC-3 SBC (§ 3.2)</p>		<p>Level 3 Issue: 2. Should SBC’s proposed definition of “Section 251(b)(5)” restrict the categories of traffic to only the categories identified by SBC’s proposed language.</p> <p>SBC Issue: 2. Should the Agreement define Section 251(b)(5) traffic to mean calls in which the originating end user and the terminating end user are both physically located in the SBC Local Exchange Area or common mandatory local</p>	<p>3.2 Section 251(b)(5) Traffic shall mean telecommunications traffic in which the original End Use of one Party and the terminating End User of the other Party are:</p> <p><i>a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or</i></p> <p><i>b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS),</i></p>	<p>No. Under the Telecommunications Act of 1996, Section 251(b)(5) applies to the exchange of “telecommunications” which applies to all forms of traffic. SBC applies a self-serving definition to this traffic that attempts to reverse not only where the law stands today but resists where the law and policy is headed at the federal level. It is well known that the FCC will soon issue an order updating its intercarrier compensation regime. SBC’s efforts here are directed toward presupposing a result</p>	<p>2. Yes. Reciprocal compensation under section 251(b)(5) applies only to calls that originate and terminate within the same ILEC local calling area – without regard to the NPA/NXX’s of the calling party and the called party. Accordingly, SBC’s proposed language properly excludes from Section 251(b)(5) reciprocal compensation calls terminated to customers not physically located in the same SBC local calling area as the calling party – <i>i.e.</i>, Foreign Exchange (FX) calls. In addition, bill and</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		calling area?	<i>or other types of mandatory expanded local calling scopes.</i>	highly beneficial to SBC in bilateral interconnection setting when the issue is properly before the FCC and will soon be decided. Moreover, the parties have already agreed to and have operated under a reasonable compensation regime.	keep is the proper compensation mechanism not only for FX voice traffic, but also for FX ISP traffic.
IC-4 Level 3 § 4.7-4.7.1 SBC §16.2		<p>Level 3 Issue 4a. Should Level 3 and SBC continue to exchange all types of Telecommunications Traffic over a single set of already constructed and fully operational interconnection trunks or should SBC be permitted to force Level 3 to construct unnecessary FDG trunks which will unjustifiably increase Level 3’s cost and delay Level 3’s provision of the next generation of voice services to business and residential customers?</p> <p>4 b. Should SBC be able to block the other’s traffic without following the dispute resolution procedures in the</p>	<p><u>4.7 PARTIES AGREE TO ERECT NO BARRIERS TO IP ENABLED SERVICES TRAFFIC</u></p> <p><u>4.7.1 In order for Parties communicating via IP-enabled Services to interact with end users connected to the Internet by means of circuit switched telecommunications services addressed by NPA-NXX codes, the underlying telecommunications provider must effect a net protocol conversion from IP to TDM or TDM to IP format in order to permit the Internet to connect an end users served by a device addressed via the NPA-NXX codes and connected over circuit switched telephone networks.</u></p> <p><u>4.7.2 The Parties agree, that they will exchange any and all IP Enabled Services traffic over Local Interconnection Trunk Groups.</u></p>	<p>(a) Level 3 and SBC should continue the status quo and exchange all types of Telecommunications Traffic over a single set of interconnection trunks, especially in light of the fact that those trunks are already fully operational and carrying traffic. It is technically feasible to exchange the various types of traffic over the local interconnection trunks. Further, Section 251(c)(2) mandates that SBC allow Level 3 to combine multiple types of traffic on single interconnection trunk.</p> <p>(b) No. When read in conjunction with SBC’s</p>	<p>4. SBC also recognizes that some Switched Access Traffic may be improperly delivered to SBC or Level 3 by third parties over local trunk interconnection groups. Consequently, SBC acknowledges that if Switched Access Traffic is improperly delivered to either Party from a third Party CLEC over local interconnection trunk groups, SBC or Level 3 may in turn deliver such traffic to the terminating Party over local interconnection trunk groups. However, when the delivering Party is notified that such interexchange traffic is being improperly</p>

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		<p>event of a dispute over the jurisdictional nature or classification of traffic?</p> <p>SBC Issue: 4. Is it appropriate for the parties to agree on procedures to handle Switched Access Traffic that is delivered over Local Interconnection Trunk Groups so that the terminating party may receive proper compensation?</p>	<p>4.7.2.1 <u>Should any dispute arise over the jurisdictional nature or classification of traffic, the Parties agree to resolve such disputes through the dispute resolution process contained within this Agreement and in no event will either party block the other's traffic without following the dispute resolution procedures contained in this Agreement and according to Applicable Law.</u></p> <p><i>16.2 In the limited circumstances in which a third party competitive local exchange carrier delivers Switched Access Traffic as described in Section 16.1 (iv) above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local</i></p>	<p>proposed mandate that Level 3 must build out separate trunks to each SBC end office in the local exchange area, this would have the effect of imposing a default blocking device in which SBC could prohibit the exchange of IP-Enabled Traffic between these carriers. Neither Party should be able to do this. Neither Party should be able to unilaterally block the other Party's traffic without complying with the dispute resolution procedures. Level 3's proposal merely clarifies that position.</p>	<p>routed over its local interconnection trunk groups, both Parties will cooperatively work together to have such traffic removed off those trunk groups including seeking Commission permission to block such traffic. This procedure will assist both Parties in obtaining the proper terminating access charges associated with Switched Access Traffic.</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p><i>Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked</i></p>		
<p>IC-5 (§ 3.3)</p>		<p>Level 3 Issue: 5. Should ISP-Bound Traffic be identified as originating as a call that originates on the circuit switched network and terminates to an Internet Service Provider?</p> <p>SBC Issue: 5. Should the Agreement define ISP-Bound traffic to</p>	<p><u>3.3 ISP-Bound Traffic shall mean Telecommunications Services Traffic exchanged between the Parties where the originating Customer of one Party places a Circuit Switched Traffic call over the circuit-switched network to an Internet Service Provider (“ISP”) customer of the other Party.</u></p> <p><i>3.3In accordance with the FCC’s Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-</i></p>	<p>Yes. The agreement should make clear that ISP-bound traffic is traffic that is originated over the circuit switched network, and terminated to an ISP customer of the other party. This definition is consistent with the FCC’s orders and rules related to ISP-Bound Traffic. The terms “Physical” or “physically located” do not appear in the FCC’s April 27, 2001 ISP</p>	<p>5. Yes. When the FCC’s <i>ISP Compensation Order</i> classified and developed an inter-carrier compensation mechanism for ISP-Bound traffic, the FCC made clear that the ISP-bound traffic it was addressing, like traffic that is subject to Section 251(b)(5) reciprocal compensation, is traffic between two parties in the same local calling area.</p>

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		<p>mean calls in which the originating end user and the terminating ISP are both physically located in the SBC Local Exchange Area or common mandatory local calling area?</p>	<p><i>Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) (“FCC ISP Compensation Order”), “ISP-Bound Traffic” shall mean telecommunications traffic exchanged between LEVEL 3 and SBC-13STATE in which the originating End User of one Party and the ISP served by the other Party are</i></p> <p><i>a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC’s Local (or “General”) Exchange Tariff on file with the applicable state commission or regulatory agency; or</i></p> <p><i>b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.</i></p> <p><i>In states in which SBC-13STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC’s interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, traffic is presumed to be ISP-Bound Traffic in accordance with the rebuttable presumption set forth in Section 6.6 of this</i></p>	<p>Compensation Order. Thus, SBC’s proposed language cannot be considered consistent with that Order. Footnote 82 of order specifically states that the call need not terminate in the local calling area.</p>	<p>ISP-Bound Traffic, like reciprocal compensation under Section 251(b)(5), applies only to calls that originate and terminate within the same ILEC local calling area – without regard to the NPA/NXX’s of the calling party and the called party. Accordingly, SBC’s proposed language properly excludes from Section 251(b)(5) reciprocal compensation and ISP-Bound intercarrier compensation such calls that are terminated to customers not physically located in the same SBC local calling area as the calling party – <i>i.e.</i>, Foreign Exchange (FX) calls. In addition, bill and keep is the proper compensation mechanism not only for FX voice traffic, but also for FX ISP traffic.</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
<p>IC-6</p> <p>Joint (§ 3.6)</p> <p>Level 3 (§1.6)</p>		<p>Level 3 Issues:</p> <p>6a. Should the parties compensate each other for circuit switched tariff according to the FCC’s orders defining such traffic?</p> <p>6b. Should the agreement refer to SBC’s improper definition of “Section 251(B)(5) traffic”?</p> <p>SBC Issues:</p> <p>6a. Should the Party whose End User originates Section 251(b)(5) Traffic compensate the Party who terminates such traffic to its End User for the transport and termination of such traffic?</p> <p>6b. Is a CLEC that utilizes SBC CONNECTICUT’s Lawful Unbundled Local Switching to provide service to its end users, the only type of carrier that can not seek Intercarrier compensation by SBC</p>	<p><i>Appendix.</i></p> <p>3.6 For <i>Section 251(b)(5) Traffic, <u>ISP-Bound Traffic, and Circuit Switched Traffic</u></i> including Optional EAS Traffic, and Intra LATA toll, the Party whose End User originates such traffic shall compensate the Party who terminates such traffic to its End User for the transport and termination of such traffic at the applicable rate(s) provided in this Appendix and Appendix Pricing and/or the applicable switched access tariffs.</p> <p><u>As of the date of this Agreement, ULECs in In SBC CONNECTICUT, cannot seek intercarrier compensation for Circuit Switched Traffic calls that they originate from or terminate to their end users over a loop provided by SBC-Connecticut to the ULEC pursuant to unbundling obligations or other wholesale originated over UNEs are not subject to intercarrier compensation since arrangements since</u> the rates for unbundled local switching reflect and include the costs of call termination.</p> <p><i>In SBC CONNECTICUT, when <u>LEVEL 3</u> utilizes SBC CONNECTICUT’s Lawful Unbundled Local Switching to provide service to its end users, all Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic originated by</i></p>	<p>(a) Level 3 is not aware of any FCC order or regulation that defines the phrase “Section 251(b)(5) Traffic”, and does not believe it appropriate to confuse the terms of the Agreement with undefined phrases. Further, Level 3 cannot agree with SBC’s interpretation of Section 251(b)(5). Thus, reference to an undefined phrase based upon SBC’s own interpretation of the term is inappropriate and will not be agreed to by Level 3. Level 3 believes that more clearly defined terms are required under the agreement, and since “Section 251(b)(5) Traffic” is not defined, and will only lead to confusion and disputes between the Parties, the Commission should reject SBC’s proposals.</p> <p>(b) As for the issue of whether the intercarrier compensation for Circuit</p>	<p>6a. Yes. SBC proposes to continue to bill reciprocal compensation in accordance with current practice in which the originating party will compensate the Party who terminates Section 251(b)(5) Traffic to its End User for the transport and termination of such traffic at the applicable rates provided with the Appendix Pricing. Level 3 inappropriately excludes Section 251(b)(5) Traffic as a compensable form of traffic between the Parties.</p> <p>6b. Yes. Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic originated by CLEC’s end users are not subject to intercarrier compensation when CLEC utilizes SBC CONNECTICUT’s Lawful Unbundled Local Switching to provide service to its end users. The UNE-RS tariff</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		<p><u>CONNECTICUT?</u></p> <p>6c. Should the Agreement define the term ULEC?</p>	<p><i>LEVEL 3's end users are not subject to intercarrier compensation as addressed in Section 5.6.4 below.</i></p> <p><u>1.6 ULEC means A Competitive Local Exchange Carrier that purchases and combines unbundled network elements from the incumbent local exchange carrier in order to provide telecommunications service to customers. Network element includes the facility or equipment and its features, functions and capabilities used to provide telecommunications service.</u></p>	<p>Switched calls, Level 3 disagrees with SBC's proposed listing of the various types of traffic flows ("Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic, and IntraLATA Toll Traffic"). Rather, the Level 3 proposed use of the term "Circuit Switched Traffic" more closely tracks the orders related to this issue, and more closely relates the actual state of the law.</p>	<p>(Section 18.6.2.10, page 18-50.16) provides the MOU rate terms and conditions. It includes both On-Net and Off-Net rates. Off-Net rates are for all calls that are PIC'd to an IXC. On-Net is everything else.</p> <p>When a Lawful ULS end user makes an On-Net call, the Lawful ULS CLEC does NOT have to pay Intercarrier compensation or terminating access on that call. <u>SBC CONNECTICUT</u> pays terminating access on the CLEC's behalf. Likewise, when a Lawful ULS end user receives an On-Net call, it does not collect intercarrier compensation or terminating access.</p> <p>6c. No. The contract should not define a term that it does not use. If the Commission resolves Issue SBC IC-15 below as SBC contends it should, this contract will have no occasion to include</p>

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					the term “ULEC.” “ULEC” is a term that Level 3 proposes solely for the purpose of using it in the provision that SBC opposes in connection with Issue SBC IC-15.
IC-7 (§ 3.7)		<p>Level 3 Issues: 7a. Should the Parties impose intercarrier compensation charges on traffic that is used to test connections or equipment connected to each other’s network?</p> <p>7b. Should SBC be in the position to enforce compliance with state rules relating to 911 service, by withholding compensation?</p> <p>SBC Issues: 7a. When should the Parties’ obligation to pay Intercarrier Compensation to each other commence? 7b. When should the Parties’ obligation to pay access charges commence?</p>	<p>3.7 The Parties’ obligation to pay intercarrier compensation <u>arises from traffic that originates from and terminates to customers subscribing to services provided by either party</u> <u>Accordingly, no reciprocal compensation, access charges or any other form of compensation arises when the Parties exchange traffic that is used to test connections or equipment connected to either Party’s network.</u> <i>to each other shall commence on the date the Parties agree that the interconnection is complete (i.e., each Party has established its originating trunks as well as all ancillary traffic trunking such as Operator Services, 911 or Mass Calling trunks).</i></p>	<p>(a) No. Level 3 believes that the purpose of intercarrier compensation is to make each other whole when traffic originates from and terminates to customers subscribing from each other’s services. This would not include test calls. As such, such test calls should not result in the completion of traffic between the customers subscribing from each other’s services. Thus, testing should not be included in the intercarrier compensation regime.</p> <p>(b) No. In short, SBC is not a regulatory agency, nor does it have the authority to enforce any state rules. SBC cannot and should not be able to unilaterally make the legal</p>	<p>7a. The Parties’ obligation to pay Intercarrier Compensation to each other should commence after the CLEC furnishes confirmation that it has 9-1-1 agreements in place with Public Safety Answering Points (or after Level 3 secures a 9-1-1 waiver from SBC). Absent a waiver, SBC does not turn the Interconnection trunks up for service until 9-1-1 confirmation is provided. Once confirmation is received, SBC considers that the network is complete and a CLEC is capable of originating and terminating traffic for end users, not simply test traffic. Once the trunks are turned up for service billing of Intercarrier Compensation should begin.</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
				determination as to when another carrier is in or not in compliance with a state regulation. Only the Commission has that authority. Thus, SBC should not be able to withhold any compensation due Level 3 based solely upon its own self-interested determinations.	7b. The parties’ obligations to pay access charges are governed by the terms of the applicable access tariffs. Level 3’s attempt to limit such charges here is improper.
IC-8 (§ 4.1, 4.2, 4.3, 4.4, 4.5)		<p>Level 3 Issue: 8. Should the parties be required to deliver Call Record on all traffic regardless nature of the traffic, and the cost and technical feasibility of developing such technical systems.</p> <p>SBC Issue: 8. Should the duty to provide CPN with the call flow be imposed on all traffic the parties exchange, or just the Circuit Switched Traffic the parties exchange?</p>	<p>4.1 Each Party to this Agreement will be responsible for sending the <u>Call Records Calling Party Number (CPN) as defined in 47 C.F.R. § 64.1600(c) (“CPN”)</u> for calls originating on its network and passed to the network of the other Party, and neither Party shall strip, alter, modify, add, delete, change, or incorrectly assign any such <u>Call Records CPN</u> for any Telecommunications Traffic. Each Party to this Agreement will be responsible for passing on any <u>Call Records CPN</u> it receives from a third party for traffic delivered to the other Party.</p> <p>4.2 To the extent that either party identifies improper, incorrect, or fraudulent use of local exchange services (including but not limited to PRI, ISDN and/or smart trunks or to the extent either party is able to identify stripped,</p>	No, it is not technically feasible or economically reasonable to include CPN in the call flow for IP-Enabled Traffic. CPN should only apply to circuit switched traffic, not IP-Enabled traffic. SBC’s proposed language would require Level 3 and SBC to develop new and costly systems in order to place the CPN in the call flow for IP-Enabled calls. The technology is not currently available, and there are industry groups established to address this issue. Level 3 is not attempting to get out of its	<p>8. Standard telephone industry practice requires carriers to pass along the calling party number (CPN) for calls originating on their network to the carriers that terminate the calls. As such, Level 3’s language is too restrictive if CPN was only required on Circuit Switched Traffic.</p> <p>This information is critical for the purposes of determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied to them. If this</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p>altered, modified, added, deleted, changed, and/or incorrectly assigned <u>Call Records CPN</u>, the Parties agree to cooperate with one another to investigate and take corrective action.</p> <p>4.3 Reserved for future use.</p> <p>4.4 If one Party is passing <u>Call Records CPN</u> but the other Party is not properly receiving such information, the Parties will work cooperatively to correct the problem.</p> <p>4.5 Where either <u>LEVEL 3</u> or <u>SBC-13STATE</u> delivers <u>Circuit Switched Traffic traffic</u> to the other Party for termination to the other Party’s customer, each Party will provide <u>Call Records CPN</u> with such traffic or use commercially reasonable efforts to deliver the equivalent information to the other party on at least Ninety Percent (90%), of all calls exchanged between the Parties in direct proportion to the MOUs of calls exchanged with <u>Call Records CPN</u>. If the percentage of calls passed with <u>Call Records CPN</u> is less than Ninety Percent (90%), then all <i>calls</i> passed without <u>Call Records CPN</u> will be billed according to the receiving Party’s applicable, valid and effective FCC Interstate Access Tariff or Rate Sheet as permitted and filed according to, inter alia, Part 64 of the FCC’s Rules.</p>	<p>obligation to provide information identifying the jurisdictional nature of the traffic.</p> <p>Rather than being limited to using just CPN for IP-Enabled Traffic, Level 3 suggests the Agreement identify the Parties use a Call Record to identify the traffic, a much more general term that allows for other forms of technology already in existence and not requiring costly new or additional development. obviates the need for CPN on IP-enabled traffic.</p>	<p>standard is not met, the terminating carrier should have the option to bill the calls without CPN at its intrastate switched exchange access service rate. This provision protects against unscrupulous CLECs overriding call identification to slip interLATA traffic in with local traffic.</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
<p>IC-9</p> <p>Level 3 (§ 4.7.2.1)</p> <p>SBC (§ 5.6)</p>		<p>Joint Issue: 9a. Should the dispute resolution process for ISP-Bound Traffic be the same as dispute resolution process for Section “251(B)(5) traffic”?</p> <p>Level 3 Issue: 9b. Should SBC be able to block the other’s traffic without following the dispute resolution procedures in the event of a dispute over the jurisdictional nature or classification of traffic?</p> <p>SBC Issue: 9b. Should the ICA specify that disputes related to the jurisdictional nature of traffic be subject to the dispute resolution process contained in this agreement?</p>	<p>4.7.2.1 <u>Should any dispute arise over the jurisdictional nature or classification of traffic, the Parties agree to resolve such disputes through the dispute resolution process contained within this Agreement and in no event will either party block the other’s traffic without following the dispute resolution procedures contained in this Agreement and according to Applicable Law.</u></p> <p><i>5.6 All ISP-Bound Traffic for a given usage month shall be due and owing at the same time as payments for Section 251(b)(5) under this Appendix. The parties agree that all terms and conditions regarding disputed minutes of use, nonpayment, partial payment, late payment, interest on outstanding balances, or other billing and payment terms shall apply to ISP-Bound Traffic the same as for Section 251(b)(5) Traffic under this Appendix.</i></p>	<p>(a) Yes. Level 3 proposes the common-sense approach to dispute resolution that all forms of traffic be subject to the same dispute resolution process. There is not a legal basis for creating a new process for just this single form of traffic. In fact, creating such a disparate process can only lead to confusion in the future as the parties will then be forced to dispute not only the billing error, etc., but also the type of traffic that is subject to the dispute. All of this, for no ascertainable rationale. Thus, Level 3’s proposed language is more practical.</p> <p>(b) No. When read in conjunction with SBC’s proposed mandate that Level 3 must build out separate trunks to each SBC end office in the local exchange area, this would have the effect of imposing a default blocking device in which</p>	<p>9a. Yes. Since the rates, terms and conditions for both Section 251(b)(5) Traffic and ISP-Bound Traffic are addressed within the framework of this agreement, any disputed minutes of use for such traffic should follow the dispute resolution procedures contained within the Agreement.</p> <p>9b. No. The dispute may involve traffic outside the scope of this agreement, and should be resolved in accordance with applicable tariffs for such traffic. If a dispute arises concerning the jurisdictional nature of traffic and Level 3 wants to contend at that time that the dispute falls within the dispute resolution provision of the Agreement, Level 3 may do so. The determination of whether the dispute does or does not fall within that provision must be decided</p>

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				SBC could prohibit the exchange of IP-Enabled Traffic between these carriers. Neither Party should be able to do this. Neither Party should be able to unilaterally block the other Party’s traffic without complying with the dispute resolution procedures. Level 3’s proposal merely clarifies that position.	based on the particular facts of the dispute and the specific type of traffic involved.). Accordingly, Level 3’s proposed language should be rejected, and the Agreement should remain silent on this subject.
<p>IC-10</p> <p>Level 3 (§ 5.1 5.2 5.2.1 5.2.1.1 5.2.2 5.2.2.1 5.2.2.2 5.3)</p> <p>SBC (§5.1-§5.5)</p>		<p>Level 3 Issues:</p> <p>10a. Does SBC properly define the term “Section 251(b)(5)” traffic such that it should be included in a heading of the agreement?</p> <p>10b. Assuming that the parties have agreed to a compensation scheme for ISP-Bound traffic, do those terms apply to what SBC defines as “Section 251(b)(5) Traffic”?</p> <p>10c. Should the Parties exchange compensation for ISP-bound Traffic at the rates agreed to in the parties existing</p>	<p>5. Reciprocal Compensation for Termination of <i>Section 251(b)(5) Traffic</i> Telecommunications Traffic</p> <p align="center">* * *</p> <p><u>5.2 All circuit switched Local Traffic (intra exchange and mandatory EAS), ISP-Bound Traffic, and will be combined to determine the Total Reciprocal Compensation Traffic.</u></p> <p><u>5.2.1 In determining the Total Reciprocal Compensation Traffic, Circuit Switched Intrastate Toll Traffic (including Optional EAS Traffic), Interstate Toll Traffic and any third party IXC-carried toll Traffic, or alternatively Meet point Billing Traffic are excluded, and will be subject to each</u></p>	<p>(a) No. It is not reasonable to include in the Agreement SBC’S attempt to create and insert a definition for “Section 251(b)(5) Traffic”. First, the proposed term is not defined in any FCC order or regulation. Rather, it is SBC’s interpretation of the Act and FCC actions, to which Level 3 neither agrees nor accepts in the Agreement. SBC’s crafting of a self-serving definition and attempting to argue that the definition should be used throughout the Agreement is improper.</p>	<p>10a. Section 5.0 of the agreement speaks specifically to the application of reciprocal compensation for Section 251(b)(5) Traffic and does not include the other classifications of traffic that fall under the all-encompassing term of “Telecommunications Traffic.</p> <p>The term, “Telecommunications Traffic” is used to address multiple classifications of traffic under this agreement which include Section</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		<p>agreement pending the FCC’s ISP Remand Order?</p> <p>SBC Issues:</p> <p>10a. Should the Reciprocal Compensation terms of the Agreement apply to “Telecommunications Traffic” , or to Section 251(b)(5) Traffic”?</p> <p>10b. What intercarrier compensation arrangements should apply until SBC offers to exchange traffic pursuant to the compensation arrangement set forth in the FCC’s <i>ISP Remand Order</i>?</p> <p>10c. Should the Commission adopt SBC’s Bifurcated Rate Structure for the exchange of what SBC defines as “Section 251(b)(5) traffic”?</p> <p>10d. Should SBC’s proposed</p>	<p><u>Party’s applicable state-approved or FCC-approved tariffs, or FCC approved or sanctioned terms, rates and conditions, or in the case of Meet Point Billing Traffic the MECAB Guidelines and as outlined in the Interconnection Agreement.</u></p> <p><u>5.2.1.1 The rates for the origination and termination of Circuit Switched intrastate toll and Originating 8YY traffic are governed by each Party’s applicable state-approved or FCC-approved tariffs or FCC approved or sanctioned terms, rates and conditions, provided however, that 8YY Traffic bearing translated NPA-NXX codes that are local to NPA-NXX codes at the point where the traffic originated will be included in the Total Reciprocal Compensation Traffic and rated as Local Traffic.</u></p> <p><u>5.2.2 Furthermore, in determining the Total Reciprocal Compensation Traffic, Transit Traffic will be excluded from the calculations.</u></p> <p><u>5.2.2.1 The rates for Transit Traffic will be governed by this Interconnection Agreement.</u></p> <p><u>5.2.2.2 Subject to applicable confidentiality guidelines, SBC-13STATE</u></p>	<p>(b) No. Level 3 and SBC have an existing ISP Compensation Plan in place that will remain in place until December 31, 2004. This Agreement’s ISP Compensation terms would not take effect until after that date. Thus, Level 3 is proposing that the Parties agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order, which is expected to be adopted in the October 2004 meeting. Thus, SBC’s proposed new compensation scheme is not only a newly crafted scheme, but also will likely not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time.</p> <p>Further, as stated in (a) above, “Section 251(b)(5) Traffic” is not defined in any FCC order or regulation. Nor</p>	<p>251(b)(5) Traffic, FX Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as “Optional Calling Area Traffic”), IntraLATA Toll Traffic, or InterLATA Toll Traffic, Meet Point Billing or FGA Traffic that is exchanged between SBC and Level 3. Therefore, Level 3’s proposed heading for Section 5.0 is inaccurate and should not be included in the ICA.</p> <p>10b. The same intercarrier compensation rates, terms and conditions apply to voice and ISP-Bound Traffic until such time that SBC chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC’s interim ISP terminating compensation plan.</p>

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		<p>language regarding Tandem Serving Rate Elements and End Office Serving Rate Elements be incorporated into this Appendix?</p> <p>10e. Is Level 3 entitled to charge the tandem reciprocal compensation rate?</p>	<p><u>and LEVEL 3 will cooperate to identify Circuit Switched toll and Transit Traffic; originators of such Circuit Switched toll and Transit Traffic; and information used for settlement purposes with such Circuit Switched toll and Transit Traffic originators, including but not limited to, OCNs associated with traffic originated by carrier customers purchasing SBC UNE-P products or their equivalent.</u></p> <p><u>5.2.3 Compensation for Total Reciprocal Compensation Traffic.</u></p> <p><u>The Parties shall compensate each other for Total Reciprocal Compensation Traffic at \$0.0005 per minute of use.</u></p> <p><i>5.1 Until and unless SBC-13STATE chooses to offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC’s interim ISP terminating compensation plan, the compensation set forth below in Sections 5.2 through 5.6 will also apply to all Section 251(b)(5) Traffic in Section 3.2 of this Appendix and ISP-Bound Traffic as defined in Section 3.3 of this Appendix in that particular state. At such time as SBC-13STATE chooses to offer to</i></p>	<p>does the FCC’s Interim ISP Compensation Plan makes any reference to “Section 251(b)(5) Traffic”, so Level 3 does not believe that it is appropriate to insert such a reference in the portions of the Agreement specifically related to the ISP-Bound Traffic. As such, it is improper to apply a compensation scheme for a type of traffic for which the FCC has never adjudicated or defined. In juxtaposition to SBC’s undefined term, the FCC has addressed the appropriate compensation regimes for circuit switched Local Traffic (intra exchange and mandatory EAS), ISP-Bound Traffic as proposed by Level 3.</p> <p>(c) Yes. The FCC is expected to release shortly its long awaited order on Remand in the ISP Compensation docket. It is expected that the FC’s order will fully and</p>	<p>Since SBC-12STATE has invoked the FCC’s ISP compensation plan in all states except Connecticut, ISP-Bound traffic is subject to the terms and conditions of that plan and therefore, rates, terms and conditions relative to the FCC’s plan should be included in this agreement so as to minimize the potential for disputes in implementation of the plan. While Level 3 appears to agree that the FCC ISP plan’s rates and terms apply to ISP-Bound traffic, it does not agree that the FCC plan applies to 251(b)(5) traffic. In fact, Level 3 provides no rate for “Total Compensable Local Traffic”.</p> <p>10c. Yes. A bifurcated rate structure more accurately reflects the actual costs incurred to terminate local traffic. The call set up is a per message charge for each</p>

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			<p><i>exchange Section 251(b)(5) Traffic and ISP-Bound Traffic in a particular state on and after a designated date pursuant to the terms and conditions of the FCC’s interim terminating compensation plan, the compensation set forth below in Sections 5.2 through 5.6 will apply only to Section 251(b)(5) Traffic in that state on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. The Parties acknowledge that <u>SBC INDIANA</u>, <u>SBC OHIO</u>, <u>SBC TEXAS</u>, <u>SBC WISCONSIN</u>, <u>SBC ARKANSAS</u>, <u>SBC MICHIGAN</u>, <u>SBC CALIFORNIA</u> and <u>SBC ILLINOIS</u> each have made such offer in its respective state of (i) Indiana, Ohio, Texas and Wisconsin effective on and after June 1, 2003, (ii) Arkansas and Michigan effective on and after July 6, 2003, California effective on and after August 1, 2003, and (iv) Illinois effective on and after September 1, 2003;(v) Kansas, Missouri, Oklahoma, and Nevada on and after June 1, 2004; therefore, the compensation set forth in Sections 5.2 through 5.6 below will apply only to Section 251(b)(5) Traffic in Indiana, Ohio, Texas, Wisconsin, Arkansas, Michigan, California, Illinois, Kansas, Missouri, Oklahoma, Nevada and such other states in which SBC-13STATE makes an offer on the later of (i)</i></p>	<p>comprehensively address all aspects of the intercarrier compensation regime for ISP-Bound Traffic, including the appropriate rate the carriers should be assessing each other. It makes practical sense, then, to extend the status quo until such time as the FCC has announced its findings, as recommended by Level 3. In short, Level 3 is recommending the Commission change nothing until the FCC has clarified the state of the law.</p> <p>(d) (as related to section 7.2). Yes, the Parties should pay each other cost-based Reciprocal Compensation for FX and FX-like traffic based upon the NPA-NXX of the calling parties. In Section 7.2, SBC attempts to impose either non-cost-based access charges or bill and keep regimes for FX and FX-like services, even though its own tariffs treat such traffic a local in nature (and, thus,</p>	<p>call, which contemplates the costs associated with establishing a circuit and creating a billing record. Call Duration which is tracked on a MOU basis is the rate associated with the cost of keeping the circuit open. This Commission should adopt bifurcated rates and reject Level 3’s proposal to have one rate for all Local, Virtual Foreign Exchange, Mandatory Local and Optional EAS traffic, and ISP-Bound traffic.</p> <p>10d. Yes. SBC proposes its current TELRIC based rates which are supported by cost studies for Section 251(b)(5) Traffic. The billing of such traffic on a MOU basis and per message basis was developed to provide a more accurate way of recovering actual costs incurred, for call duration which is supported by cost studies.</p>

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			<p><i>the Effective Date of this Agreement and (ii) the effective date of the offer in a particular state. At such time as the FCC issues a successor order to the current interim termination compensation plan, the parties agree to compensate each other according to such Order immediately upon the effective date of the FCC order.</i></p> <p><i>5.2 Bifurcated Rates (Call Set Up and Call Duration). The Parties agree to compensate each other for the termination of Section 251(b)(5) Traffic and ISP-Bound Traffic (if applicable in accordance with Section 5.0), on a "bifurcated" basis, meaning assessing an initial Call Set Up charge on a per Message basis, and then assessing a separate Call Duration charge on a per Minute of Use (MOU) basis, where ever per Message charges are applicable. The following rate elements apply, but the corresponding rates are shown in Appendix Pricing;</i></p> <p><i>5.3 Tandem Serving Rate Elements</i></p> <p><i>5.3.1 Tandem Switching - compensation for the use of tandem switching only.</i></p> <p><i>5.3.2 Tandem Transport -</i></p>	<p>subject to cost-based compensation). First, the physical location of the calling parties has never been used as the determiner of what form of compensation is applied to a particular call. Rather, the industry standard is a comparison of the NPA-NXXs of the calling parties to determine the appropriate rating of the call. Second, for purposes of intercarrier compensation for next-generation IP-Enabled Traffic like Level 3’s traffic, imposition of these SBC-requested regimes is not appropriate. With IP-Enabled Traffic, the physical location of the calling parties is not relevant. Rather, as has been the case with intercarrier compensation regimes for years, the NPA-NXX of the calling parties will determine the rating of a call. This is exactly the regime Level 3 recommends continue.</p>	<p>10e. No. For the state of Connecticut, Level 3 has not demonstrated that its switch qualifies for the tandem rate under FCC Rule 711(a)(3). For other states, SBC has invoked the FCC ISP plan, and Level 3 chose to negotiate from the “All Traffic” appendix, under which compensation does not vary based on tandem or end office switching.</p>

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			<p><i>compensation for the transmission facilities between the local tandem and the end offices subtending that tandem.</i></p> <p>5.3.3 <i>End Office Switching in a Tandem Serving Arrangement - compensation for the local end office switching and line termination necessary to complete the transmission in a tandem-served arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.</i></p> <p>5.4 <i>End Office Serving Rate Elements</i></p> <p>5.4.1 <i>End Office Switching - compensation for the local end office switching and line termination necessary to complete the transmission in an end office serving arrangement. It consists of a call set-up rate (per message) and a call duration (per minute) rate.</i></p> <p>5.5 <u>LEVEL 3</u> <i>shall only be paid End Office Serving Rate Elements.</i></p>		
IC-11 Joint (§8.1-8.2,		Level 3 Issues: 11a. Should Reciprocal Compensation apply to FX or FX-like services exchanged	7.2 <i>Foreign Exchange (FX) services are retail service offerings purchased by FX customers which allow such FX customers to obtain exchange service from a mandatory</i>	(a) Yes, the Parties should pay each other cost-based Reciprocal Compensation for FX and FX-like traffic based	11a. Level 3 is proposing that Foreign Exchange Traffic should be compensated as “local”

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§14-§14.1) SBC (§7.2, §8.3,)		<p>between the Parties based upon the NPA-NXX of the calling parties?</p> <p>11b. Should the compensation for the exchange of OCA traffic under this agreement be limited to Circuit Switched OCA traffic?</p> <p>SBC Issues:</p> <p>11a. What is the appropriate form of intercarrier compensation for FX and FX-like traffic including ISP FX Traffic?</p> <p>11b. What is the appropriate form of Intercarrier compensation for Optional EAS Traffic?</p> <p>11c. Is it appropriate to include all IntraLATA toll traffic under an MPB arrangement?</p> <p>11d. What is the appropriate treatment and form of intercarrier compensation for</p>	<p><i>local calling area other than the mandatory local calling area where the FX customer is physically located, but within the same LATA as the number that is assigned. FX service enables particular end-user customers to avoid what might otherwise be toll calls between the FX customer’s physical location and customers in the foreign exchange. FX Telephone Numbers” (also known as “NPA-NXX” codes) shall be those telephone numbers with different rating and routing points relative to a given mandatory local calling area. FX Telephone Numbers that deliver second dial tone and the ability for the calling party to enter access codes and an additional recipient telephone number remain classified as Feature Group A (FGA) calls, and are subject to the originating and terminating carrier’s tariffed Switched Exchange Access rates (also known as “Meet Point Billed” compensation), or if jointly provisioned FGA service, subject to the terms and conditions of Appendix FGA. FX Traffic is not Section 251(b)(5) Traffic and instead the transport and termination compensation for FX Traffic is subject to a bill and keep arrangement. Neither Party will assign a telephone number to an End User where such telephone number is assigned to an exchange in a different LATA than the End User is physically located. To the extent that ISP-</i></p>	<p>upon the NPA-NXX of the calling parties. In Section 7.2, SBC attempts to impose either non-cost-based access charges or bill and keep regimes for FX and FX-like services, even though its own tariffs treat such traffic a local in nature (and, thus, subject to cost-based compensation). First, the physical location of the calling parties has never been used as the determiner of what form of compensation is applied to a particular call. Rather, the industry standard is a comparison of the NPA-NXXs of the calling parties to determine the appropriate rating of the call. Second, for purposes of intercarrier compensation for next-generation IP-Enabled Traffic like Level 3’s traffic, imposition of these SBC-requested regimes is not appropriate. With IP-Enabled Traffic, the physical location of the calling parties is not relevant. Rather, as</p>	<p>traffic, which is inappropriate. FX traffic is akin to intraLATA toll traffic that terminates outside the applicable local calling area. Such traffic is non-Section 251(b)(5) Traffic and as such would typically be subject only to interstate and intrastate access charges. However, bill and keep is the proper compensation mechanism for voice and ISP FX traffic in Arkansas, Illinois, Indiana, Kansas, Missouri, Nevada, Oklahoma, Texas, and Wisconsin. The FCC’s <i>First Report and Order</i> states that “traffic originating or terminating outside of applicable local area would be subject to interstate and intrastate access charges,” and not reciprocal compensation. <i>See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial</i></p>

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		<p>intraLATA 8YY traffic?</p> <p>11e. Should non-section 251/252 services such as Transit Services be arbitrated in this section 251/252 proceeding?</p> <p>11f. Should SBC be required to use Level 3 as a transit provider to reach third parties that are already interconnected with SBC?</p>	<p><i>Bound Traffic is provisioned via an FX-type arrangement, such traffic is subject to a Bill and Keep arrangement.</i></p> <p>8.1 Compensation for Optional Calling Area (OCA) <u>Circuit Switched</u> Traffic is for the termination of intercompany <u>Circuit Switched</u> traffic to and from the one-way or two-way optional exchanges(s) and the associated metropolitan area</p> <p>8.2 <i>In the context of this Appendix, <u>The Parties agree to comply with Applicable Law with regard to</u> Optional Calling Areas (OCAs). exist only in the states of Arkansas, Kansas and Texas, and are outlined in the applicable state Local Exchange tariffs. This rate is independent of any retail service arrangement established by either Party. <u>LEVEL 3 and SBC ARKANSAS, SBC KANSAS and SBC TEXAS are not precluded from establishing its own local calling areas or prices for purposes of retail telephone service; however the terminating rates to be used for any such offering will still be administered as described in this Appendix.</u></i></p> <p>8.3 <i>When <u>LEVEL 3</u> uses unbundled local switching to provide services associated with a</i></p>	<p>has been the case with intercarrier compensation regimes for years, the NPA-NXX of the calling parties will determine the rating of a call. This is exactly the regime Level 3 recommends continue.</p> <p>(b) Yes, the Agreement should specify that compensation for the exchange of OCA traffic under this agreement be limited to Circuit Switched OCA traffic. This is consistent with FCC Orders and regulations.</p>	<p><i>Mobile Radio Service Providers, 11 FCC Rcd. 15499, 16013, ¶ 1035 (1996).</i></p> <p>In Connecticut, FX Traffic should be compensated at the applicable switched access rates as provided in the applicable tariffs, excluding IntraLATA ISP FX Traffic which is subject to a bill and keep arrangement in accordance with the Commission’s order in Docket No. 01-01-29.</p> <p>In Ohio, FX Traffic should be subject to applicable switched access rates.</p> <p>In California, calls should be rated in reference to the rate center of the assigned NXX prefix of the calling and called parties’ numbers and SBC should receive tandem switching and transport compensation for its facilities used in the carriage of traffic from the originating rate center (local NXX) to the rate</p>

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			<p><i>telephone number with a NXX which has an expanded 2-way area calling scope (EAS) in a <u>SBC ARKANSAS, SBC KANSAS or SBC TEXAS</u> end office, <u>LEVEL 3</u> will pay the charge contained in Appendix Pricing UNE - Schedule of Prices labeled “EAS Additive per MOU”. The additives to be paid by <u>LEVEL 3</u> to <u>SBC ARKANSAS, SBC KANSAS or SBC TEXAS</u> are \$0.024 per MOU for toll-free calls made by a <u>SBC ARKANSAS, SBC KANSAS or SBC TEXAS</u> customer from a metro exchange to an exchange contiguous to a metro exchange and \$0.0355 per MOU for toll free calls made by a <u>SBC ARKANSAS, SBC KANSAS or SBC TEXAS</u> customer to <u>LEVEL 3’s</u> optional 2-way EAS customer for contiguous exchanges other than those contiguous to a metro exchange within the scope of the 2-way calling area. These additives will apply in addition to cost-based transport and termination rates for Optional EAS service set forth in the rates spreadsheet. These additives are reciprocal in nature, and <u>LEVEL 3</u> is entitled to receive compensation from <u>SBC ARKANSAS, SBC KANSAS or SBC TEXAS</u> if <u>LEVEL 3</u> agrees to waive charges for its customers who call <u>SBC ARKANSAS, SBC KANSAS or SBC TEXAS</u> optional two-way EAS customers.</i></p> <p>14. INTRALATA TOLL TRAFFIC</p>		<p>area where Level 3 delivers traffic to its customer, less 16 miles. Level 3 may avoid paying the costs associated with transport from origination to their point of interconnection if Level 3 establishes a point of interconnection at the appropriate local or access tandem serving the rate center or at any mutually agreed end office within the rate center where Level 3 has established a dialable telephone number local to such rate center or ports any number established by other local exchange carriers (including ILEC companies) within such rate center.</p> <p>11b. Level 3 is also proposing that Optional EAS traffic should be compensated as “local” traffic, which is inappropriate. Optional Calling Area (Optional EAS) is not Section 251(b)(5) Traffic because the</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p align="center">COMPENSATION</p> <p>14.1 For <u>Circuit-Switched Traffic</u> that is correctly rated as intrastate intraLATA toll <i>traffic</i>, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party’s Intrastate Access Service Tariff. <i>but such compensation shall not exceed the compensation contained in an <u>SBC-13STATE’s tariff in whose exchange area the End User is located.</u></i> For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party’s interstate Access Service Tariff, <i>but such compensation shall not exceed the compensation contained in the <u>SBC-13STATE’s tariff in whose exchange area the End User is located.</u></i> Common transport, (both fixed and variable), as well as tandem switching and end office rates apply only in those cases where a Party's tandem <u>or switch providing equivalent geographic coverage</u> is used to terminate traffic.</p>		<p>calls do not originate from an end user and terminate to an end user both physically located within the same Commission-defined local calling area.</p> <p>The state Commissions of Arkansas, Kansas, and Texas have determined specific optional calling areas and approved specific rates for transport and termination of traffic to these areas.</p> <p>11c. Level 3 is proposing that IntraLaTA Toll Traffic will be subject to Meet Point Billing which is inappropriate. See SBC’s position on the appropriate form of Intercarrier Compensation for IntraLATA Toll in Issue IC-20, and for MPB in Issue IC-19.</p> <p>11d. See Issue IC-18 for the appropriate treatment and form of intercarrier compensation for intraLATA</p>

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					<p>8YY traffic</p> <p>11e. Transit Service is a non 251/252 service and as such is not an arbitrable issue. Unlike Intercarrier Compensation, there are no provisions of the Act that impose a duty upon ILECs to provide or facilitate indirect interconnection and transit services between two other carriers. As a non-Section 251/252 service, Transit Service should be negotiated separately and as such SBC is prepared to offer Level 3 a separate agreement to address Transit Service.</p> <p>In the event that the Commission decides, over SBC's objection, to address Transit Service in this proceeding, it should adopt SBC's proposed language in the Transit Traffic Service Appendix submitted herewith. Sections 3.10-3.12 of SBC's</p>

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					<p>Transit Traffic Service Appendix better address the obligations of the parties. The Commission should also reject Level 3’s proposal to require SBC to be billed as the default originator for traffic where CPN is not received from the originating third party. Level 3 should seek compensation directly from the originating carrier, not the transit provider, as specified in Section 3.15 of the Transit Traffic Service Appendix.</p> <p>COMMISSION PRECEDENT: In Docket No. 00-TCGT-571-ARB (August 7, 2000), the Commission adopted SBC’s position that it should not be required to accept transit traffic from TCG, and that all parties wanting to terminate traffic on SBC’s network should have their own interconnection agreements with SBC.</p>

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					<p>11f. As stated under 13(e) above, the Commission should not arbitrate issues related to Transit Service in this proceeding. Should the Commission nonetheless decide to reach those issues, it should decide that SBC is not required to accept transit traffic from a third party via Level 3 when SBC is already directly connected to that third party (see Sections 3.10 and 6.0 of the attached Transit Traffic Service Appendix). Level 3's proposal would result in inefficient use of all parties' networks.</p> <p>COMMISSION PRECEDENT: In Docket No. 00-TCGT-571-ARB (August 7, 2000), the Commission adopted SBC's position that it should not be required to accept transit traffic from TCG, and that all parties wanting to terminate traffic on SBC's network should have their own</p>

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					interconnection agreements with SBC.
IC-12 SBC (§ 5.7.1 § 5.7.2 § 5.7.3 § 5.7.4)		<p>Level 3 Issue: 12. Should the agreement contain terms, conditions and rates for compensation for exchange of unbundled local switching in light of the FCC’s Interim UNE Order?</p> <p>SBC Issue: 12. What is the appropriate form of intercarrier compensation for Unbundled Local Switching Traffic?</p>	<p>5.7 Intercarrier Compensation for ULS Traffic</p> <p>5.7.1 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC MIDWEST REGION 5-STATE end users and <u>LEVEL 3</u>’s end users where <u>LEVEL 3</u> utilizes SBC MIDWEST REGION 5-STATE’s ULS (including UST) of, such traffic shall be paid for reciprocally at the ULS Reciprocal Compensation rate contained in Appendix Pricing. For the states of Wisconsin, Michigan and Illinois, <u>LEVEL 3</u> shall pay SBC WISCONSIN, SBC MICHIGAN and SBC ILLINOIS the FCC Plan rate specified in Section 6.2.2 for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic.] the ULS Reciprocal Compensation rate is the same as the End Office Switching rate found in the Reciprocal Compensation section of Appendix Pricing.</p> <p>5.7.2 For interswitch Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC California, SBC Nevada and SBC</p>	<p>No. The Interim Order adopted by the FCC on July 21, 2004 (rel. August 20, 2004) maintains the status quo that existed as of June 15, 2004 for the provision of unbundled network elements from SBC to Level 3. As of June 15, 2004, Level 3 was entitled to receive unbundled network elements pursuant to the terms and conditions of the parties’ Interconnection Agreement that was approved by the Commission. Level 3 does not wish to waive its rights to obtain unbundled network elements pursuant to those existing terms and conditions.</p> <p>In addition, the FCC has held that Level 3 and SBC may not arbitrate new agreements until after the FCC adopts permanent rules for the</p>	<p>12. In SBC CONNECTICUT, when Level 3 utilizes SBC CONNECTICUT’s Lawful Unbundled Local Switching to provide service to its end users, SBC CONNECTICUT will be solely responsible for compensating the terminating third party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from CLEC’s end users as explained further in SBC IC-6(b). In other states, the FCC plan applies.</p>

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			<p><i>Southwest Region 5-STATE end users and <u>LEVEL 3</u>'s end users where <u>LEVEL 3</u> utilizes ULS (including UST) of SBC California, SBC Nevada or SBC Southwest Region 5-STATE, such traffic shall be paid for reciprocally at the <u>FCC Plan rate specified in Section 6.2.2 for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic. End Office Switching compensation rate contained in the Reciprocal Compensation section of Appendix Pricing.</u></i></p> <p><i>5.7.3 For the purposes of compensation where <u>LEVEL 3</u> utilizes <u>SBC-12STATE</u>'s Lawful ULS (including UST), <u>LEVEL 3</u> has the sole obligation to enter into a compensation agreement with third party carriers that <u>LEVEL 3</u> originates traffic to and terminates traffic from, including traffic carried by Shared Transport Facilities and traffic carried on the IntraLATA Transmission Capabilities. In no event will SBC-12STATE have any liability to <u>LEVEL 3</u> or any third party if <u>LEVEL 3</u> fails to enter into such compensation arrangements. In the event that traffic is exchanged with a third party carrier with whom <u>LEVEL 3</u> does not have a traffic compensation agreement, <u>LEVEL 3</u> will indemnify, defend and hold harmless SBC-12STATE against any and all losses including without limitation, charges</i></p>	<p>provision of unbundled network elements: “Moreover, if the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into other carriers’ new contracts. The interim approach adopted here, in contrast, does not enable competing carriers to do either.” ¶23. According to the FCC, “such litigation would be wasteful in light of the [FCC’s] plan to adopt new permanent rules as soon as possible.” ¶17. The FCC recognizes that “the implementation of a new interim approach could lead to further disruption and confusion that would disserve the goals of section 251.”</p> <p>In light of the foregoing, Level 3 does not waive any rights to those UNEs to which it is entitled by agreeing to terms and</p>	

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p><i>levied by such third party carrier. The third party carrier and <u>LEVEL 3</u> will bill their respective charges directly to each other. SBC-12STATE will not be required to function as a billing intermediary, e.g., clearinghouse. <u>SBC-12STATE</u> may provide information regarding such traffic to other telecommunications carriers or entities as appropriate to resolve traffic compensation issues.</i></p> <p><i>5.7.4 In SBC CONNECTICUT, when <u>LEVEL 3</u> utilizes SBC CONNECTICUT's Lawful Unbundled Local Switching to provide service to its end users, SBC CONNECTICUT will be solely responsible for compensating the terminating third party carrier for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from <u>LEVEL 3</u>'s end users. <u>LEVEL 3</u> utilizing Lawful Unbundled Local Switching cannot seek intercarrier compensation from SBC CONNECTICUT for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic that originates from either an SBC CONNECTICUT end user or a third party carrier's end user.</i></p>	<p>conditions other than what is in its existing Interconnection Agreement.</p>	
IC-13 SBC		<p>Level 3 Issue: 13. For those states where SBC has elected to exchange</p>	<p>6. RATES, TERMS AND CONDITIONS OF FCC'S INTERIM ISP TERMINATING COMPENSATION</p>	<p>Level 3 and SBC have an existing ISP Compensation Plan in place that will remain</p>	<p>13a. Yes. Since SBC has invoked the FCC's ISP compensation plan, ISP-</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
<p>(§ 6-§ 7.5)</p>		<p>ISP-Bound Traffic according to the FCC’s plan adopted in the ISP Remand Order should the agreement reflect an already-agreed to compensation plan between Level 3 and SBC, which plan would be updated upon the soon expected issuance of an updated Reciprocal Compensation Order from the FCC?</p> <p>SBC Issues:</p> <p>13a. Should this Intercarrier Compensation Appendix include SBC’s proposed terms and conditions concerning application of the FCC’s ISP Compensation Plan?</p> <p>13b. Should the Agreement provide for a Growth Cap on the compensation for ISP-Bound Traffic?</p> <p>13c. Should the Agreement provide for Bill and Keep for ISP-Bound traffic in New Markets?</p>	<p align="center"><i>PLAN</i></p> <p><i>6.1 The Parties hereby agree that the following rates, terms and conditions set forth in Sections 6.2 through 6.6 shall apply to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic exchanged between the Parties in each of the applicable state(s). SBC-13STATE has made an offer as described in Section 5 above effective on the later of (i) the Effective Date of this Agreement and (ii) the effective date of the offer in the particular state and that all ISP-Bound Traffic is subject to the growth caps and new market restrictions stated in Sections 6.3 and 6.4, below.</i></p> <p><i>6.2 Intercarrier Compensation for all ISP-Bound Traffic and Section 251(b)(5) traffic</i></p> <p><i>6.2.1 The rates, terms, conditions in Sections 6.2 through 6.6 apply only to the termination of all Section 251(b)(5) Traffic and all ISP-Bound Traffic as defined in Section 3.2 and Section 3.3 above and is subject to the growth caps and new market restrictions stated in Sections 6.3 and 6.4 below.</i></p> <p><i>6.2.2 The Parties agree to compensate each other for the transport and termination of all Section 251(b)(5) and ISP-Bound Traffic and</i></p>	<p>in place until December 31, 2004. This Agreement’s ISP Compensation terms would not take effect until after that date. Thus, Level 3 is proposing that the Parties agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order, which is expected to be adopted in the October 2004 meeting. Thus, SBC’s proposed new compensation scheme is not only a newly crafted scheme, but also will likely not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time.</p>	<p>Bound traffic is subject to the terms and conditions of that plan and therefore, rates, terms and conditions relative to the FCC’s plan should be included in this agreement so as to minimize the potential for disputes in implementation of the plan. To date, SBC’s has invoked the FCC compensation plan in AR, CA, IN, IL, KS, MI, MO, NV, OH, OK, TX and WI. Level 3 appears to agree that the FCC ISP plan’s rates and terms apply to ISP-Bound traffic but has deleted SBC’s proposed language. In fact, Level 3 provides no rate for “Total Compensable Local Traffic”.</p> <p>13b. Yes. Pursuant to Paras.8 and 78 of the <i>ISP Compensation Order</i> the FCC imposed a growth cap on the total ISP-Bound minutes in which the carrier could receive compensation. SBC’s proposed language memorializes the growth</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		<p>13d. Should the Agreement provide for a rebuttable presumption that if the “Section 251(b)(5) Traffic” and ISP-Bound Traffic exchanged between the Parties exceeds a 3:1 terminating to originating ratio, it is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in Section 6.3?</p> <p>13e. Should terms and conditions be included in the Agreement that provide that the Party that terminates more billable traffic must calculate the amount of traffic to be compensated under the FCC plan and the amount of traffic that is subject to bill and keep?</p>	<p><i>traffic on a minute of use basis, at \$.0007 per minute of use.</i></p> <p><i>6.2.3 Payment of Intercarrier Compensation on ISP-Bound Traffic and Section 251(b)(5) Traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch.</i></p> <p><i>6.3 ISP- Bound Traffic Growth Cap</i></p> <p><i>6.3.1 On a calendar year basis, as set forth below, the Parties agree to cap overall ISP-Bound Traffic minutes of use based upon the 1st Quarter 2001 ISP minutes for which the <u>LEVEL 3</u> was entitled to compensation under its Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule:</i></p> <p><i>Calendar Year 2001 1st Quarter 2001 compensable ISP-Bound Traffic minutes, times 4, times 1.10</i></p> <p><i>Calendar Year 2002 Year 2001 compensable ISP-Bound Traffic minutes, times 1.10</i></p> <p><i>Calendar Year 2003 Year 2002 compensable ISP-Bound Traffic minutes</i></p>		<p>caps established by the FCC.</p> <p>Pursuant to Paras. 8 and 78 of the <i>ISP Compensation Order</i>, any ISP-Bound Traffic that exceeds the growth cap will be subject to bill and keep.</p> <p>13c. Yes. Pursuant to Para. 81 of the <i>ISP Compensation Order</i> the FCC established new market restrictions on ISP-Bound minutes whereby if the Parties had not exchanged ISP-Bound Traffic in any one or more LATAs in a particular state prior to April 18, 2001, Bill and Keep will be the reciprocal compensation for all ISP-Bound Traffic between the Parties for the remaining term of this Agreement in any such LATAs in that state. SBC’s proposed language memorializes the new market restrictions established by the FCC.</p> <p>b) 13d. Yes.</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p><i>Calendar Year 2004 and thereafter Year 2002 compensable ISP-Bound Traffic minutes</i></p> <p><i>6.3.2 Notwithstanding anything contrary herein, in Calendar Year 2004, the Parties agree that ISP-Bound Traffic exchanged between the Parties during the entire period from January 1, 2004 until December 31, 2004 shall be counted towards determining whether <u>LEVEL 3</u> has exceeded the growth caps for Calendar Year 2004.</i></p> <p><i>6.3.3 ISP-Bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. “Bill and Keep” refers to an arrangement in which neither of two interconnecting parties charges the other for terminating traffic that originates on the other party’s network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.</i></p> <p><i>6.4 Bill and Keep for ISP-Bound Traffic in New Markets</i></p> <p><i>6.4.1 In the event the Parties have not</i></p>		<p>Pursuant to Paragraph 79 of the <i>ISP Compensation Order</i>, the FCC adopted a rebuttable presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is “subject to the compensation mechanism of [the] Order” including the growth caps. A carrier may rebut the presumption by demonstrating to a commission that traffic above the 3:1 ratio is in fact local traffic (Section 251(b)(5) traffic) delivered to non-ISP customers.</p> <p>SBC’s proposed language sets forth the methodology for calculating the 3:1 ratio under the <i>ISP Compensation Order</i> and provides certainty on how the Parties will bill under the FCC plan. The Party that transports and terminates more Section 251(b)(5) and ISP-Bound Traffic must calculate the 3:1</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p><i>previously exchanged ISP-Bound Traffic in any one or more LATAs in a particular state prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-Bound Traffic between the Parties for the remaining term of this Agreement in any such LATAs in that state.</i></p> <p><i>6.4.2 In the event the Parties have previously exchanged traffic in a LATA in a particular state prior to April 18, 2001, the Parties agree that they shall only compensate each other for completing ISP-Bound Traffic exchanged in that LATA, and that any ISP-Bound Traffic in other LATAs shall be Bill and Keep for the remaining term of this Agreement.</i></p> <p><i>6.5 Growth Cap and New Market Bill and Keep Arrangements</i></p> <p><i>6.5.1 Wherever Bill and Keep for ISP-Bound traffic is the traffic termination arrangement between the Parties, both Parties shall segregate the Bill and Keep traffic from other compensable traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.</i></p>		<p>ratio in accordance with the provisions of the Agreement.</p> <p>Further, each party should be responsible for tracking, billing, recording, and invoicing of traffic the party terminates. As such, both parties incur costs associated with the exchange of traffic.</p> <p>13e. Yes. Each party should be responsible for tracking, billing, recording, and invoicing of traffic the party terminates. As such, both parties incur costs associated with the exchange of traffic.</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p><i>6.5.2 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-Bound Traffic, and does not include Optional EAS traffic, Intra LATA Inter exchange traffic, or Inter LATA Inter exchange traffic</i></p> <p><i>6.6 ISP-Bound Traffic Rebuttable Presumption</i></p> <p><i>6.6.1 In accordance with Paragraph 79 of the FCC’s ISP Compensation Order, the Parties agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in this Section 6.3. Either Party has the right to rebut the 3:1 ISP-Bound Traffic presumption by identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to Section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio</i></p>		

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p><i>shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, the Parties will remain obligated to pay the presumptive rates (the rates set forth in Section 5 for traffic below a 3:1 ratio, the rates set forth in Section 6.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.</i></p> <p><u>6.7 For purposes of this Section 6, all Section 251(b)(5) Traffic and all ISP-Bound Traffic shall be referred to as “Billable Traffic” and will be billed in accordance with Section 15.0 below. The Party that transport and terminates more “Billable Traffic” (“Out-of-Balance Carrier”) will, on a monthly basis, calculate (i) the amount of such traffic to be compensated at the FCC’s interim ISP terminating compensation rate set forth in Section 6.2.2 above and (ii) the amount of such traffic subject to bill and keep in accordance with Sections 6.3, 6.4 and 6.5 above. The Out-of-Balance Carrier will invoice on a monthly basis the other Party in accordance with the provisions in this</u></p>		

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
IC-14 (§ 7-§ 7.1)		<p>Level 3 Issue: 14. Should this Agreement recognize in a neutral manner that intercarrier compensation mechanisms contained in state and federal tariffs may or may not apply to traffic exchanged between the parties? ?</p> <p>SBC Issue: 14. Should this Agreement specifically provide that reciprocal compensation does not apply to interstate or intrastate exchange access traffic, Information access traffic, exchange services for access, or any other type of traffic found by the FCC or the Commission to be exempt from reciprocal compensation?</p>	<p><i>Agreement and the FCC's interim ISP terminating compensation plan.</i></p> <p>7. <i>OTHER TELECOMMUNICATIONS TRAFFIC</i></p> <p>7.1 <u>Telecommunications Traffic which is governed by the terms, rates and conditions contained in either party's filed and effective federal or state tariffs, or which is determined to be interstate interexchange services and permissively detariffed (See, e.g., 47 C.F.R. § 61 (2003)) will be governed by the rates, terms and conditions of either Party's tariff or of Level 3's terms, rates and conditions subject to Applicable Law including but not limited to state law or federal law.</u> <i>The compensation arrangements set forth in Sections 5 and 6 of this Appendix are not applicable to (i) interstate or intrastate Exchange Access traffic, (ii) Information Access traffic, (iii) Exchange Services for access or (iv) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission, with the exception of ISP-Bound Traffic which is addressed in this Appendix. All Exchange Access traffic and IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of applicable federal and state tariffs.</i></p>	<p>Level 3's language more accurately applies the most recent FCC determinations on rating of IP-Enabled Traffic. Level 3 has incorporated into its proposed language the results of the FCC's Pulver and AT&T decisions, and follow FCC rules on net protocol conversion language which is consistent with the fact that there is an open NPRM on VoIP traffic. Level 3's language should be adopted to allow the Parties the opportunity to incorporate the results of those proceedings.</p>	<p>14. Yes. The FCC's Rule at 47 CFR 51.701 clearly states that telecommunications traffic (and therefore Section 251(b)(5) traffic) does not include "telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." <i>See WorldCom, Inc. v. FCC</i>, 288 F.3d 429 (D.C. Cir. 2002). This rule remains in effect to this day.</p>
IC-15		<p>Level 3 Issue:</p>	<p>7.4 <i>The Parties recognize and agree that</i></p>	<p>SBC's Section 7.4 assumes</p>	<p>15. ISP calls (like voice calls)</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
<p align="center">SBC (§7.4-§7.5)</p>		<p>15. Should higher intercarrier compensation rates contained in SBC’s state or federal tariffs apply to ISP-bound traffic or calls bound to the Internet where SBC physically hands off such traffic to Level 3 within the same LATA (and often within the same local calling area or at least at the tandem to which such call’s end office subtended) in which SBC originated such traffic?</p> <p>SBC Issue: 15. What is the appropriate treatment and compensation of ISP traffic exchanged between the Parties outside of the local calling scope?</p>	<p><i>ISP and Internet traffic (excluding ISP-Bound Traffic as defined in Section 3.3) could also be traded outside of the applicable local calling scope, or routed in ways that could make the rates and rate structure in Sections 5 and 6 above not apply, including but not limited to ISP calls that fit the underlying Agreement's definitions of:</i></p> <p><i>FX Traffic</i> <i>Optional EAS Traffic</i> <i>IntraLATA Interexchange Traffic</i> <i>InterLATA Interexchange Traffic</i> <i>800, 888, 877, ("8YY") Traffic</i> <i>Feature Group A Traffic</i> <i>Feature Group D Traffic</i></p> <p>7.5 <i>The Parties agree that, for the purposes of this Appendix, either Parties' End Users remain free to place ISP calls under any of the above classifications. Notwithstanding anything to the contrary herein, to the extent such ISP calls are placed, the Parties agree that Sections 5 and 6 above do not apply. The Agreement's rates, terms and conditions for, FX Traffic, Optional EAS Traffic, 8YY Traffic, Feature</i></p>	<p>that ISP-bound traffic can be treated as if it was rated as local / toll whatever. It is Level 3’s position that, per the FCC's ISP Remand orders, such ISP-Bound traffic cannot be re-rated. It is interstate traffic subject to a single compensation provision. Moreover, since SBC has elected to go with the FCC plan in all states but Connecticut, this language is out of date and inapplicable.</p>	<p>that originate and terminate outside the local mandatory calling areas are intraLATA and/or interLATA toll traffic subject to access tariffs. Level 3’s potentially misleading language suggests imposing interstate switched access to all forms of Switched Access Traffic, regardless of where the originating and terminating party of the call (or the ISP) are physically located.</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p align="center"><i>Group A Traffic, Feature Group D Traffic, Intra LATA Traffic and/or InterLATA Traffic, whichever is applicable, shall apply.</i></p>		
<p>IC-16 (§ 9-§9.1.2)</p>	<p>Missouri Issue Only</p>	<p>Level 3 Issue: 16a. Should this agreement contain terms specific to Missouri and which could only be approved by the Missouri commission in state outside of Missouri?</p> <p>16b. If the answer to (a) is yes, then are the terms of the underlying Missouri Commission Orders related to MCA Traffic applicable to Circuit Switched MCA Traffic, or Section 251(b)(5) and ISP-Bound Traffic as argued by SBC?</p> <p>SBC Issue: 16. How should Metropolitan Calling Area Traffic be compensated in the state of Missouri?</p>	<p>9. MCA TRAFFIC -- <u>SBC MISSOURI</u> 9.1 For compensation purposes in the state of Missouri, <u>Circuit Switched Section 251(b)(5) Traffic and ISP-Bound Traffic shall be further defined as "Metropolitan Calling Area (MCA) Traffic" and "Non-MCA Traffic."</u> MCA Traffic is traffic originated by a party providing a local calling scope plan pursuant to the Missouri Public Service Commission Orders in Case No. TO-92-306 and Case No. TO-99-483 (MCA Orders). <u>and the call is a Section 251(b)(5) Traffic based on the calling scope of the originating party pursuant to the MCA Orders. Non-MCA Traffic is all Section 251(b)(5) Traffic and ISP-Bound Traffic that is not defined as MCA Traffic.</u></p> <p>9.1.1 Either party providing Metropolitan Calling Area (MCA) service <u>for Circuit Switched Traffic</u> shall offer the full calling scope prescribed in Case No. TO-92-306 <u>according to the terms of the MCA Orders or as otherwise ordered by the Missouri Public Service Commission., without regard to the identity of the called party's local</u></p>	<p>This matter is not being litigated in Missouri. The Parties were unable to timely remove it from the DPL.</p>	<p>16. The Missouri state commission adopted a Metropolitan Area Calling plan (MCA Plan) in Case No. TO-92-306 and T)-99-483 (MCA Orders) that includes both SBC Missouri customer's and customers of other ILECs. Under this plan, customers surrounding the St. Louis, Kansas City and Springfield metropolitan areas may choose an expanded local calling plan which has both an outgoing and a return calling component (i.e. calls originated by an MCA subscriber to numbers within the MCA calling area are rated as local instead of toll; calls terminated to the MCA subscriber from another party from within the MCA calling area are rated as local). Intercarrier Compensation for</p>

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			<p><i>service provider.</i> The parties may offer additional toll-free outbound calling or other services in conjunction with MCA service, but in any such offering the party shall not identify any calling scope other than that prescribed in Case No. TO-92-306 as “MCA” service <u>subject to Applicable Law.</u></p> <p>9.1.2 Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, <u>Circuit Switched</u> MCA Traffic shall be exchanged on a bill-and-keep intercompany compensation basis meaning that the party originating a call defined as MCA Traffic shall not compensate the terminating party for terminating the call, <u>subject to Applicable Law.</u></p>		<p>MCA Traffic is required to be on a bill and keep basis. SBC can accept Level 3’ language that says “<i>according to the terms of the order</i>” and “<i>Only to the extent required by the Missouri Public Service Commission Order in Case No. TO-99-483.</i>” However the following language in this section will still remain disputed: <i>“Circuit Switched Traffic”</i> and <i>“subject to the requirements of Applicable Law.”</i></p>
<p>IC-17 (§ 10.1)</p>		<p>Level 3 Issue: 17. Should Level 3 be obligated to build out separate interconnection trunks for “local” and “non-local” traffic?</p> <p>SBC Issue: 17. What is the proper routing and treatment of IntraLATA Toll Traffic that is subject to a Primary Toll Carrier (PTC) arrangement?</p>	<p>10.1 <i>A Primary Toll Carrier (PTC) is a company that is designated by the state Commission to transport IntraLATA Toll Traffic. The PTC receives end user intraLATA toll traffic revenues and pays and bills originating and terminating access charges.</i> In those <u>SBC-13STATEs</u> where Primary Toll Carrier (PTC) arrangements are mandated, for intraLATA Toll Traffic which is subject to a PTC arrangement and where <u>SBC-13STATE</u> is the PTC, <u>SBC-13STATE</u> shall deliver such intraLATA Toll Traffic to the terminating carrier in accordance with the</p>	<p>No. Under the unambiguous requirements of the Federal Act, SBC is obligated pursuant to Section 251 (c)(2)(B) to provide Level 3 with interconnection “at any technically feasible point within its network”. This section gives the requesting carrier, Level 3, the right to choose where and how the interconnection will take place. The ILEC, in turn,</p>	<p>17. SBC requires that CLECs use Local Interconnection Trunk Groups for Intrastate, IntraLATA toll traffic that is not pre-subscribed to an intrastate/intraLATA toll carrier and that is subject to a Primary Toll Carrier arrangement. As such, Level 3’s language is not required and incorrectly suggests that SBC provides an option relevant to the routing and</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p>terms and conditions of such PTC arrangement <u>and Applicable Law, but this in no way shall restrict either Party from exchanging such traffic over the Parties’ existing Local Interconnection Trunk Groups.</u> Upon receipt of verifiable Primary Toll records, <u>SBC-13STATE</u> shall reimburse the terminating carrier at <u>SBC-13STATE’s</u> applicable tariffed terminating switched access rates <u>for Circuit Switched Traffic.</u> When transport mileage cannot be determined, an average transit transport mileage shall be applied as set forth in Appendix Pricing.</p>	<p>must provide the facilities and equipment for interconnection at that point. Further, under the congressional mandates contained in Section 251(c)(2)(C), SBC is obligated to provide interconnection to Level 3 that is at least equal in quality to that provided SBC’s affiliates or any other carrier. SBC has been allowed to combine for itself and other CLECs a mix of local and non-local traffic over the same trunk groups. Under Section 251 (c)(2)(C), it must also do so for Level 3.</p>	<p>treatment of such traffic.</p> <p><i>In an effort to settle this issue, SBC is prepared to add a definition to section 10.1 as Level 3 requested as the first two sentences, “A Primary Toll Carrier (PTC) is a company that is designated by the state Commission to transport IntraLATA Toll Traffic. The PTC receives end user intraLATA toll traffic revenues and pays and bills originating and terminating access charges.”</i></p>
<p>IC-18 (§ 11.1)</p>		<p>Level 3 Issue: 18a. For intraLATA 800 calls, should the Agreement require exclusive adherence to a single format or allow the parties to mutually agree to alternative formats to accommodate technological changes?</p> <p>SBC Issue: 18a. For intraLATA 800 calls,</p>	<p>11. INTRALATA 800 TELECOMMUNICATIONS TRAFFIC</p> <p>11.1 The Parties shall provide to each other intraLATA 800 Access Detail Usage <u>or equivalent</u> Data for Customer billing and intraLATA 800 Copy Detail Usage <u>or equivalent</u> Data for access billing in Exchange Message Interface (EMI) format <u>or other mutually agreeable format.</u> The Parties agree to provide this data to each other on a monthly</p>	<p>(a) The Parties should not unnecessarily limit themselves to a specific form of technology or formatting designs. In the event that the Parties are able to agree to the implementation of a new or different format, then they should not be precluded from doing so because of the failure to account for that</p>	<p>18a. For intraLATA 800 calls, the Agreement should require the parties to provide 800 Access Detail Usage, Any service provider that sends 800 copy detail usage records for access billing should adhere to the industry developed and nationally accepted EMI format. Any other format would require</p>

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
		<p>should the Agreement require the parties to provide 800 Access Detail Usage, or should it permit the parties to provide the equivalent?</p> <p>Joint Issue: 18b. What is the appropriate treatment and form of intercarrier compensation for intraLATA 8YY traffic that bears translated NPA-NXX codes that are local to the point where the traffic is exchanged?</p>	<p>basis at no charge. In the event of errors, omissions, or inaccuracies in data received from either Party, the liability of the Party providing such data shall be limited to the provision of corrected data only. If the originating Party does not send an End User billable record to the terminating Party, the originating Party will not bill the terminating Party any interconnection charges for this traffic.</p> <p>11.2 <u>Non-local</u> IntraLATA 800 Traffic calls are billed to and paid for by the called or terminating Party, regardless of which Party performs the 800 query. Billing shall be based on originating and terminating NPA/NXX. <u>8YY Traffic bearing translated NPA-NXX codes that are local to NPA-NXX codes at the point where the traffic is handed off will be rated and compensated as Local Traffic.</u></p>	<p>possibility in the Agreement. Level 3 merely recommends language that provides the Parties with flexibility, and specifically requires both Parties to agree to any new or different format prior to implementation.</p> <p>(b) In Section 11.2, SBC attempts to impose non-cost-based access charges for all 8YY calls, even when the associated NPA-NXX is assigned within the local calling area and, thus, local in nature. First, the physical location of the calling parties has never been used as the determiner of what form of compensation is applied to a particular call. Rather, the industry standard is a comparison of the NPA-NXXs of the calling parties to determine the appropriate rating of the call. Second, for purposes of intercarrier compensation for next-generation IP-Enabled Traffic like Level 3's traffic,</p>	<p>extensive modifications to its systems for billing access charges.</p> <p>18b. 8YY traffic that does not terminate within a mandatory local calling area is not eligible for reciprocal compensation. 8YY service is an optional Feature Group D service available to carriers from SBC's access tariffs. SBC modifies existing network architecture in order to support this service; in turn, 8YY service providers recover charges associated with 8YY service by billing the terminating end users whom have purchased the 800 services.</p>

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				<p>imposition of these SBC-requested regimes is not appropriate. With IP-Enabled Traffic, the physical location of the calling parties is not relevant. Rather, as has been the case with intercarrier compensation regimes for years, the NPA-NXX of the calling parties will determine the rating of a call. This is exactly the regime Level 3 recommends continue.</p>	
<p>IC-19 (§12.- §12.3, §12.5- §12.6, §12.9)</p>		<p>Level 3 Issues: 19a. Should the Agreement require the parties to use only MECAB and MECOB billing formats as the exclusive format, or allow the parties to mutually agree to alternative formats to accommodate technological changes? 19b. Should the agreement contain terms that allow the parties to properly apply state and federally tariffed rates, terms and conditions to traffic while ensuring that these terms</p>	<p>12. MEET POINT BILLING (MPB) AND SWITCHED ACCESS TRAFFIC COMPENSATION 12.1 Intercarrier compensation for <i>Switched Access Circuit Switched</i> Traffic shall be on a Meet Point Billing (“MPB”) basis as described below. <u>To the extent Level 3 is unable to provide records formatted according to Ordering and Billing Forum’s MECOD and MECAB guidelines, the Parties agree to explore additional options for recording, assembling and editing of message detail records necessary to accurate billing of traffic.</u> 12.2 The Parties will establish MPB</p>	<p>(a) The Parties should not unnecessarily limit themselves to a specific form of technology or formatting designs. In the event that the Parties are able to agree to the implementation of a new or different format, then they should not be precluded from doing so because of the failure to account for that possibility in the Agreement. Level 3 merely recommends language that provides the Parties with flexibility, and specifically requires both</p>	<p>19a. Yes. Consistent with the FCC’s NPRM on IP services, any service provider that sends traffic over the Public Switched Telephone Network (PSTN) should adhere to industry developed and nationally accepted compensation arrangements in place. Therefore, Level 3 must adhere to the OBF MECAB default billing arrangement (multiple bill/single tariff). Records must be exchanged in an EMI Category 11-0X detail format</p>

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		<p>are not misapplied to IP Enabled Services?</p> <p>SBC Issues:</p> <p>19a. Is Level 3 required to follow MECOD and MECAB billing format for Meet Point Billing?</p> <p>19b. What is the appropriate form of Intercarrier compensation for MPB Traffic?</p> <p>19c. Is it appropriate to limit Meet Point Billing Arrangements to IXC Switched Access Services traffic jointly handled by the Parties?</p> <p>19d. In the event of a loss of data, what is a reasonable time frame for both Parties to reconstruct the lost data??</p>	<p>arrangements in order to provide <i>Switched Access Services for Circuit Switched Traffic</i> via the respective carrier’s Tandem Office Switch in accordance with the MPB guidelines contained in the Ordering and Billing Forum’s MECOD and MECAB documents, as amended from time to time.</p> <p>12.3 Billing for the <i>Switched Exchange Access Services for Circuit Switched Traffic</i> jointly provided by the Parties via MPB arrangements shall be according to the multiple bill/single tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates <u>to the extent permitted by Applicable Law</u>. The residual interconnection charge (RIC), if any, will be billed by the Party providing the end office function <u>to the extent permitted by Applicable Law</u>.</p> <p>12.5 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for <i>Switched Access Services for Circuit Switched Traffic traffic</i> jointly handled by the Parties via the Meet Point Billing arrangement. Information shall be</p>	<p>Parties to agree to any new or different format prior to implementation.</p> <p>(b) Yes. Level 3's language more accurately applies the most recent FCC determinations on rating of IP-Enabled Traffic. Level 3 has incorporated into its proposed language the results of the FCC’s Pulver and AT&T decisions verbatim and follow FCC rules on net protocol conversion language. This is also consistent with the fact that there is an open NPRM on VoIP traffic. Further, SBC itself contends in comments to the FCC that the FCC has exclusive jurisdiction over IP-Enabled Traffic.</p>	<p>for MPB.</p> <p>19b. For any traffic that is sent to or received from an IXC, SBC will apply Switched Access charges. This is consistent with the FCC’s NPRM for IP traffic that utilizes the PSTN. It is unclear as to why Level 3 is attempting to modify the terms of an industry established MPB arrangement.</p> <p>19c. Yes. Level 3 is incorrect in proposing that IntraLaTA Toll Traffic be subject to Meet Point Billing. Meet Point Billing Arrangements are in place to address only IXC Switched Access Services traffic jointly handled by the Parties.</p> <p>19d. SBC maintains Access Usage Record (AUR) files for only 90 days. Level 3’s proposed 90-days will not provide adequate time for SBC to mechanically</p>

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			<p>exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI records cannot be transferred due to a transmission failure, records can be provided via a mutually acceptable medium. The exchange of Access Usage Records (“AURs”) to accommodate MPB will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.</p> <p>12.6 MPB shall also apply to all jointly provided Switched Access MOU <u>for Circuit Switched Traffic traffic</u> bearing the 900, <i>or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs</i> <u>to the extent that those calls bear translated NPA-NXX codes that are local to NPA-NXX codes at the point where the traffic is handed off will be rated as Local Traffic.</u>) The Party that performs the SSP function (launches the query to the 800 database) will bill the 800 Service Provider for this function.</p> <p>12.9 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within <i>ninety (90)</i> days of notification and if such reconstruction is not possible,</p>		reconstruct the data.

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			shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.		
IC-20 (14.-14.1)		<p>Level 3 Issue: 20. Should the compensation under this Agreement apply to interstate or intrastate exchange access traffic, Information access traffic, exchange services for access, or any other type of traffic which is interstate in nature?</p> <p>SBC Issues: 20a. What is the proper treatment and compensation for IntraLATA toll traffic? 20b. Should Level 3 be permitted to charge an Access rate higher than the incumbent? 20c. Is Level 3 eligible to charge a tandem interconnection rate for intraLATA toll traffic?</p>	<p>14. INTRALATA TOLL TRAFFIC COMPENSATION</p> <p>14.1 For <u>Circuit-Switched Traffic</u> that is correctly rated as intrastate intraLATA toll <i>traffic</i>, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party’s Intrastate Access Service Tariff. <i>but such compensation shall not exceed the compensation contained in an <u>SBC-13STATE’s tariff in whose exchange area the End User is located.</u></i> For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party’s interstate Access Service Tariff, <i>but such compensation shall not exceed the compensation contained in the <u>SBC-</u></i></p>	Level 3's language more accurately applies the most recent FCC determinations on rating of IP-Enabled Traffic. Level 3 has incorporated into its proposed language the results of the FCC’s Pulver and AT&T decisions verbatim and follow FCC rules on net protocol conversion language which is consistent w/ the fact that there is an open NPRM on VoIP traffic and b/c SBC itself contends in comments to the FCC that the FCC has exclusive jurisdiction over IP enabled traffic	<p>20a. For intrastate intraLATA toll traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party’s Intrastate Access Service Tariff.</p> <p>20b. No. SBC's proposed language that caps Level 3's interstate switched access rates is consistent with the intent of the FCC's access charge reform and with the current rule at 47 C.F.R. § 61.26(b)(1) (providing that a "CLEC shall not file a tariff</p>

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			<p><i><u>13STATE's tariff in whose exchange area the End User is located.</u></i> Common transport, (both fixed and variable), as well as tandem switching and end office rates apply only in those cases where a Party's tandem <u>or switch providing equivalent geographic coverage</u> is used to terminate traffic.</p>		<p>for its interstate switched exchange access services that prices those services above the higher of" the "rate charged for such services by the competing ILEC" or the lower of an FCC benchmark or the CLEC's rate charged prior to June 2001). While Level 3 may promulgate a rate that differs from SBC's, it must make a showing as to the legitimacy of that newly-promulgated rate.</p> <p>20c. Level 3's language relating to transport, tandem switching and end office rates is inappropriate for IntraLATA Toll traffic.</p>
<p>IC-21 (§15-§15.2)</p>		<p>Level 3 Issue: 21. Should the agreement contain terms that allow the parties to properly apply state and federally tariffed rates, terms and conditions to traffic while ensuring that these terms are not misapplied to IP Enabled Traffic?</p>	<p>15. BILLING ARRANGEMENTS FOR TERMINATION OF SECTION 251(B)(5), CIRCUIT SWITCHED OPTIONAL EAS, ISP-BOUND AND CIRCUIT SWITCHED INTRALATA TOLL TRAFFIC</p> <p>15.1 In <u>SBC-13STATE</u> each Party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard recordings made within the</p>	<p>IP-Enabled Traffic is not circuit switched, and thus, the Agreement should ensure that the billing arrangement terms for circuit switched services should not apply. Thus, Level 3 has proposed language that clearly segregates such different forms of traffic.</p>	<p>21a. See SBC's position in Issue IC-13.</p> <p>21b. Yes. SBC has set forth the methodology for calculating the 3:1 ratio under the FCC's <i>ISP Compensation Order</i> and</p>

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		<p>SBC Issues:</p> <p>21a. What is the appropriate form of Intercarrier compensation for ISP-Bound Traffic in accordance with the FCC’s ISP Terminating Compensation Plan?</p> <p>21b. Should SBC provide Level 3 with originating carrier number on calls that Level 3 cannot bill through the use of terminating records?</p> <p>21c. For billing purposes, should ISP-Bound Traffic be calculated using the 3:1 Presumption?</p>	<p>terminating carrier’s network for <i>251(b)(5) Traffic, <u>Circuit Switched Traffic, Circuit Switched</u> Optional EAS Traffic, ISP-Bound Traffic and <u>Circuit Switched</u> IntraLATA Toll Traffic. These recordings are the basis for each Party to generate bills to the other Party.</i></p> <p>15.1.1 Where a terminating <u>LEVEL 3</u> is not technically capable of billing the originating carrier through the use of terminating records, <u>SBC-13STATE</u> will provide the appropriate originating Category of records <u>including Originating Carrier Number (“OCN”)</u>.</p> <p>15.2 <u>The Parties agree that they will exchange ISP-bound traffic at rates set by the FCC and will update these rates immediately upon the effective date of any subsequent FCC order. In states in which SBC-13STATE has offered to exchange Section 251(b)(5) Traffic and ISP-Bound traffic pursuant to the FCC’s interim ISP terminating compensation plan set forth in the FCC ISP Compensation Order, ISP-Bound Traffic will be calculated using the 3:1 Presumption as set forth in Section 6.6 of this Appendix.</u></p>		<p>this provides certainty on how the Parties will bill under the FCC plan. The Party that transports and terminates more Section 251(b)(5) and ISP-Bound Traffic must calculate the 3:1 ratio in accordance with the provisions of the Agreement.</p> <p>21c. No. CPN is the proper call information that should be used to jurisdictionalize traffic. OCN is not appropriate for that purpose, because it is not part of the actual call transmission and does not identify the geographic area from which the call originated. For the purposes of billing compensation to the appropriate party, Facility Based CLECs receive the appropriate category of records for calls that terminate to end users served by a CLEC utilizing SBC’s Lawful ULS which will contain the OCN to aid them</p>

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					in billing the proper party. In addition, the CLEC may utilize the LERG and the LNP Database to help identify the appropriate party to bill.
IC-22 (§18.1- §18.6)		SBC Issue: 22. Should the Agreement include SBC’s proposed reservation of rights concerning intercarrier compensation on ISP-Bound traffic and the FCC’s ISP Compensation Order?	<u>18. Reservation of Rights and Specific Intervening Law Terms</u> 18.1 The Parties acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, <i>In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic</i> (the "ISP Compensation Order"), which was remanded in <i>WorldCom, Inc. v. FCC</i> , No. 01-1218 (D.C. Cir. 2002). The Parties agree that by executing this Appendix and carrying out the intercarrier compensation terms and conditions herein, neither Party waives any of its rights, and expressly reserves all of its rights, under the ISP Compensation Order or any other regulatory, legislative or judicial action, <i>including, but not limited to, the right to elect to invoke (to the extent the ILEC has not already elected to offer to exchange traffic pursuant to the terms and conditions of the</i>	Level 3 is not opposed to including reservation rights in the Agreement, but SBC’s attempts to have Level 3 agree with its interpretations of various orders or regulations is inappropriate. Level 3 and SBC have an existing ISP Compensation Plan in place that will remain in place until December 31, 2004. However, the FCC is expected to release its much anticipated ISP Remand Order at the October 2004 FCC meeting. This Agreement’s ISP Compensation terms would not take effect until after that date. Thus, Level 3 is proposing that the Parties	22. Given the pending FCC rulemaking and the unique administrative aspects of intercarrier compensation, a special change in law provision is appropriate to address the FCC's Order on intercarrier compensation which will result from its Notice of Proposed Rulemaking Order, <i>In the Matter of Developing a Unified Intercarrier Compensation Regime</i> .

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			<p><i>FCC's interim ISP terminating compensation plan as of the Effective Date of this Agreement) on a date specified by SBC-13STATE the FCC's interim ISP terminating compensation plan, after which date ISP-Bound traffic exchanged between the Parties will be subject to Sections 6.0 through 6.6 above.</i></p> <p><i>18.2 To the extent SBC-13STATE has not already provided notice of its offer to exchange Section 251(b)(5) Traffic and ISP-Bound Traffic pursuant to the terms and conditions of the FCC's interim terminating compensation plan in a particular state as of the Effective Date of this Agreement, SBC-13STATE agrees to provide 20 days advance written notice to the person designated to receive official contract notices in the Interconnection Agreement of the date upon which the SBC-13STATE designates that the FCC's ISP terminating compensation plan shall begin in such state. Notwithstanding anything contrary in this Agreement, LEVEL 3 agrees that on the date designated by SBC-13STATE in a particular state, the Parties will begin paying and billing Intercarrier Compensation for ISP-Bound Traffic to each other at the rates, terms and conditions specified in Sections 6.0 through 6.6 above.</i></p>	<p>agree to implement whatever compensation scheme the FCC adopts in its ISP Remand Order. SBC's proposed new compensation scheme is not only a newly crafted scheme based upon a regime that will go replaced shortly, but also will likely not take effect because of the anticipated FCC action. The wiser course for the Commission is to hold the status quo until such time. This is the effect of Level 3's proposed language.</p>	

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			<p><i>18.3 SBC-13STATE and LEVEL 3 agree to carry out the FCC's interim ISP terminating compensation plan on the date designated by SBC-13STATE in a particular state without waiving, and expressly reserving, all appellate rights to contest FCC, judicial, legislative, or other regulatory rulings regarding ISP-Bound traffic, including but not limited to, appeals of the FCC's ISP Compensation Order. By agreeing to this Appendix, both Parties reserve the right to advocate their respective positions before courts, state or federal commissions, or legislative bodies.</i></p> <p><i>18.4 Should a regulatory agency, court or legislature change or nullify the SBC-13STATE's designated date to begin billing under the FCC's ISP terminating compensation plan, then the Parties also agree that any necessary billing true ups, reimbursements, or other accounting adjustments shall be made symmetrically and to the same date that the FCC terminating compensation plan was deemed applicable to all traffic in that state exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by Intervening Law, to apply uniformly to all</i></p>		

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			<p><i>traffic among SBC-13STATE, LEVEL 3 and Commercial Mobile Radio Service (CMRS) carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix.</i></p> <p><i>18.5 The Parties further acknowledge that federal or state court challenges could be sustained against the FCC's ISP Compensation Order in particular, or against ISP intercarrier compensation generally. In particular, a court could order an injunction, stay or other retroactive ruling on ISP compensation back to the effective date of the FCC's ISP Compensation Order. Alternatively, a court could vacate the underlying Order upon which the compensation was based, and the FCC (either on remand or on its own motion) could rule that past traffic should be paid at different rates, terms or conditions.</i></p> <p><i>18.6 Because of the possibilities in Section 17.5, the Parties agree that should the ISP Compensation Order be modified or reversed in such a manner that prior intercarrier compensation was paid under rates, terms or conditions later found to be null and void, then the Parties agree that, in addition to negotiating appropriate amendments to conform to such modification or reversal, the</i></p>		

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Iss. No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
			<p><i>Parties will also agree that any billing true ups, reimbursements, or other accounting adjustments on past traffic shall be made uniformly and on the same date as for all traffic exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to apply to all traffic among SBC-13STATE, LEVEL 3, and CMRS carriers in the state where traffic is exchanged as Local Calls within the meaning of this Appendix.</i></p>		