

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

In the Matter of )  
 )  
LEVEL 3 COMMUNICATIONS, LLC )  
 )  
Petition for Arbitration Pursuant to Section 252(b) ) Docket No. 00-0332  
Of the Telecommunications Act of 1996 to )  
Establish an Interconnection Agreement with )  
Illinois Bell Telephone Company )  
d/b/a Ameritech Illinois )

**SUPPLEMENTAL VERIFIED STATEMENT OF TIMOTHY J GATES**

ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC

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Dated: July 11, 2000

1       **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**  
2       **RECORD.**

3       A. My name is Timothy J Gates. My business address is as follows: QSI  
4       Consulting, Inc., 15712 W. 72<sup>nd</sup> Circle, Arvada, Colorado 80007.

5       **Q. WHO EMPLOYS YOU?**

6       A. I am employed by QSI Consulting, Inc., (“QSI”)

7       **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED A VERIFIED**  
8       **STATEMENT IN THIS PROCEEDING?**

9       A. Yes, I am.

10      **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL VERIFIED**  
11      **STATEMENT?**

12      A. The purpose of my testimony is to respond to the testimonies of Dr.  
13      Robert Harris, Mr. Eric Panfil and Mr. Michael Silver. Ameritech, through  
14      the testimonies of Dr. Harris and Mr. Panfil, attempts to focus the  
15      Commission’s attention on traffic flowing to one specific type of customer  
16      – Internet Service Providers, or ISPs. They readily admit that their  
17      recommendations are not consistent with applicable Court rulings or even  
18      this Commission’s recent decisions. Nevertheless, they attempt to isolate  
19      a relatively small subset of traffic, much of which is flowing to customers of  
20      its CLEC competitors. They recommend unique, and therefore  
21      discriminatory, treatment of the ISP-bound traffic, which is provisioned like  
22      any other local call. This testimony will show that isolating ISP-bound

1 traffic and developing unique compensation methods for such traffic is  
2 unnecessary and anticompetitive. Specifically, this testimony shows that  
3 the “negotiated fee” proposal of Dr. Harris is fatally flawed and that the  
4 transitional rate design proposed by Mr. Panfil is unnecessary. Instead,  
5 Level 3 recommends that Ameritech at most be allowed to revise its cost  
6 studies to reflect the most up-to-date traffic data, including the longer  
7 holding times for ISP-bound traffic, as part of a generic proceeding with  
8 respect to this issue. Finally, this statement responds to positions taken  
9 by Mr. Panfil regarding the use of virtual NXX codes, FX service, FGA  
10 service and the vague wording in certain appendices.

11 **Q. PLEASE SUMMARIZE AMERITECH’S POSITION ON THE**  
12 **TREATMENT OF ISP-BOUND TRAFFIC.**

13 **A.** Dr. Harris claims that the existing reciprocal compensation arrangement is  
14 extraordinarily inefficient mechanism. He also maintains that ISP-bound  
15 calls are not local calls and should not be subject to reciprocal  
16 compensation. He claims that the true cost-causer is the ISP service or  
17 the ISP itself and not the customer who places the call to the ISP. Despite  
18 Dr. Harris’ opinion that ISPs are the cost-causer, Ameritech does not seek  
19 compensation (direct or indirect) from the ISP. Instead, Ameritech  
20 recommends direct negotiations between the CLEC and the ISP for  
21 development of a fee-for-service. Dr. Harris ignores the fact that ISPs are  
22 unlikely to stay with CLECs (or perhaps even unlikely to stay in Illinois) to  
23 the extent they face these additional charges, and he also fails to address

1           adequately that the ESP Exemption does not allow ISPs to be treated as  
2           carriers by passing along access charges, even if such charges are  
3           couched in the guise of some other rate structure. Finally, Dr. Harris  
4           suggests negotiations between the parties for a fee for service when  
5           Ameritech has no incentive to negotiate a nondiscriminatory, just and  
6           reasonable rate for such traffic.

7  
8           Mr. Panfil likewise argues that ISP-bound calls are not local, and  
9           recommends that the Commission leave this determination to the FCC.  
10          He also argues that the costs of ISP traffic are caused by the ISP itself  
11          and not by Ameritech or its customers who dial-up the ISP. Mr. Panfil  
12          further argues incorrectly that the pertinent cost for intercarrier  
13          compensation should be Level 3's cost and not Ameritech's cost as  
14          required by the FCC's rules on symmetrical reciprocal compensation. He  
15          identifies ISP-bound traffic as a unique class of service for which a unique  
16          compensation mechanism should apply, and proposes a transitional plan  
17          for the new compensation mechanism.

18  
19          Mr. Panfil also accuses Level 3 of "gaming the system" by using virtual  
20          NXX codes in the manner it and other CLECs have used for years.  
21          Although Level 3 does not use or request FX or FGA service and  
22          Ameritech and Level 3 have apparently had no problems to date in Illinois  
23          without such appendices to their interconnection agreement, Ameritech

1 attempts to pigeon-hole Level 3's virtual NXX offering into its existing tariff  
2 structure. This is yet another attempt by Ameritech to avoid reciprocal  
3 compensation for ISP-bound traffic and to force additional costs onto its  
4 competitors.

5 **Q. PLEASE SUMMARIZE LEVEL 3'S POSITION ON ISP-BOUND**  
6 **TRAFFIC.**

7 A. The Commission should find, as it has in other proceedings, that ISP-  
8 bound traffic is local traffic and subject to reciprocal compensation. To the  
9 extent that Ameritech's rates do not reflect current traffic parameters, it  
10 should be allowed to revise those studies and adjust its rates accordingly  
11 in the course of a generic proceeding to consider this question. It is  
12 unnecessary and improper to isolate a subset of traffic for discriminatory  
13 treatment. Instead of seeking a "regulatory variance" for this traffic,  
14 Ameritech should stop the imbalance of traffic by using their market  
15 prowess to re-attract ISP customers.

16  
17 Ameritech's proposal for a negotiated fee is unworkable and its suggestion  
18 that ISPs pay local exchange companies for carrying traffic that terminates  
19 to the ISPs does not follow cost causation principles and is prohibited by  
20 the FCC's ESP Exemption. Finally, accurately identifying ISP-bound  
21 traffic for separate treatment, as suggested by Mr. Panfil, would be  
22 expensive, unnecessarily burdensome and imprecise.

23 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

1 A. My testimony is organized into sections. The various discussions of the  
2 issues begin on the following pages:

3	Summary of Ameritech's Position	Page 2
4		
5	Summary of Level 3's Position	Page 3
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7	Section 1 – Jurisdictionality of ISP-Bound Calls	Page 5
8		
9	Section 2 – Distinguishing ISP-Bound Calls from	
10	Other Local Calls; Public Interest and Technical	
11	Considerations	Page 8
12		
13	Section 3 – Symmetrical Reciprocal Compensation	
14	Versus Negotiated Fee	Page 15
15		
16	Section 4 – Growth in Internet Usage; Cost	
17	Causation Principles and Application; Virtual	
18	NXX Codes	Page 28
19		
20	Section 5 – Response to Mr. Michael Silver and Mr.	
21	Torsten Clausen on	
22	UNE Combinations and EELs	Page 45
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24  
25 ***SECTION 1 -- JURISDICTIONALITY OF ISP-BOUND CALLS***

26 **Q. BOTH DR. HARRIS AND MR. PANFIL ARGUE THAT ISP-BOUND**  
27 **TRAFFIC IS NOT LOCAL. MR. PANFIL ARGUES THAT THE**  
28 **COMMISSION SHOULD LET THE FCC RULE ON THE JURISDICTION**  
29 **ISSUE. DOES THE ILLINOIS COMMISSION HAVE JURISDICTION TO**  
30 **REGULATE THE RATES AND CONDITIONS FOR ISP-BOUND**  
31 **SERVICE?**

32 A. Yes. The FCC has repeatedly identified state commissions as the proper  
33 entities to decide this issue unless and until the FCC releases a federal  
34 rule governing the matter. The FCC has also encouraged states to decide

1 the issue in a way that is consistent with the FCC's own past practice of  
2 treating ISP-bound traffic "...as if it were local traffic."<sup>1</sup> The District of  
3 Columbia Circuit Court of Appeals, in vacating the FCC's Declaratory  
4 Ruling in CC Docket No. 96-98, further stated that in considering how the  
5 ISPs purchase telecommunications service rather than providing it, they  
6 appear "no different from many businesses . . . which use a variety of  
7 communication services to provide their goods or services to their  
8 customers." *Bell Atlantic Telephone Co.s v. FCC*, 206 F.3d 1 (D.C. Cir.  
9 2000). When one considers ISPs in the manner suggested by the Court,  
10 the local services they purchase would seem to fall within the scope of  
11 services regulated by this Commission.

12 **Q. PLEASE EXPLAIN YOUR CONTENTION THAT THE FCC HAS**  
13 **ENCOURAGED STATE COMMISSIONS TO DECIDE THIS ISSUE**  
14 **CONSISTENT WITH ITS OWN PAST PRACTICE OF TREATING ISP-**  
15 **BOUND TRAFFIC AS IF IT WERE LOCAL.**

16 A. On February 26, 1999, the FCC released its *Declaratory Ruling in CC*  
17 *Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No.*  
18 *96-98* (hereafter "*ISP Order*"). On March 24, 2000, the United States  
19 Court of Appeals for the District of Columbia Circuit vacated the *ISP*  
20 *Order*. Both ILECs and CLECs cite the same order, but our take on these  
21 paragraphs differ dramatically.

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<sup>1</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic; DECLARATORY RULING IN CC

1

2 At paragraph 18 of its *ISP Order*, the FCC states as follows:

3 After reviewing the record, we conclude that, although some  
4 Internet traffic is intrastate, a substantial portion of Internet  
5 traffic involves accessing interstate or foreign websites.

6

7 However, in the *ISP Order* at paragraph 20, the FCC includes the

8 following language:

9 Our determination that at least a substantial portion of dial-  
10 up ISP-bound traffic is interstate does not, however, alter the  
11 current ESP exemption. ESPs, including ISPs, continue to  
12 be entitled to purchase their PSTN links through intrastate  
13 (local) tariffs rather than through interstate access tariffs.  
14 Nor, as we discuss below, is it dispositive of interconnection  
15 disputes currently before state commissions. [Emphasis  
16 added, footnotes removed.]

17

18 The FCC also includes the following language at paragraph 25, which  
19 meant to ensure that state commissions are not misled into believing that  
20 the FCC has preempted their ability to require compensation for ISP traffic  
21 within an arbitration proceeding:

22 Even where parties to interconnection agreements do not  
23 voluntarily agree on an inter-carrier compensation  
24 mechanism for ISP-bound traffic, state commissions  
25 nonetheless may determine in their arbitration proceedings  
26 at this point that reciprocal compensation should be paid for  
27 this traffic. The passage of the 1996 Act raised the novel  
28 issue of the applicability of its local competition provisions to  
29 the issue of inter-carrier compensation for ISP-bound traffic.  
30 Section 252 imposes upon state commissions the statutory  
31 duty to approve voluntarily-negotiated interconnection  
32 agreements and to arbitrate interconnection disputes. As we  
33 observed in the Local Competition Order, state commission  
34 authority over interconnection agreements pursuant to

1 Section 252 "extends to both interstate and intrastate  
2 matters." Thus the mere fact that ISP-bound traffic is largely  
3 interstate does not necessarily remove it from the Section  
4 251/252 negotiation and arbitration process. However, any  
5 such arbitration must be consistent with governing federal  
6 law. While to date the Commission has not adopted a  
7 specific rule governing the matter, we do note that our policy  
8 of treating ISP-bound traffic as local for purposes of  
9 interstate access charges would, if applied in the separate  
10 context of reciprocal compensation, suggest that such  
11 compensation is due for that traffic. (emphasis added,  
12 footnotes removed)

13  
14 Finally, in paragraph 9 of its *ISP Order*, the FCC provides its most  
15 straightforward discussion regarding ISP-bound traffic and the extent to  
16 which it should be treated "...as if it were local traffic:"

17 As explained above, under the ESP exemption, LECs may  
18 not impose access charges on ISP's; therefore, there are no  
19 access revenues for interconnecting carriers to share.  
20 Moreover, the Commission has directed states to treat ISP  
21 traffic as if it were local, by permitting ISPs to purchase their  
22 PSTN links through local business tariffs.

23  
24 Thus, even if we overlook the fact that the FCC's *ISP Order* has been  
25 vacated, the text of that order would have fully supported a decision that  
26 reciprocal compensation is owed for ISP-bound traffic.

27 **Q. HAS THIS COMMISSION RULED ON THE NATURE OF ISP-BOUND**  
28 **TRAFFIC RECENTLY?**

29 A. Yes, it has. In the recent Focal Arbitration, the Commission stated,  
30 "Consistent with our earlier findings in Docket 97-0404/0519/0525, this  
31 Commission finds that ISP bound calls are local and should be due

1 reciprocal compensation.”<sup>2</sup> The Commission directed its Staff to initiate a  
2 proceeding in order to further address the issue of reciprocal  
3 compensation.

4 **Q. WAS AMERITECH’S POSITION ON THE JURISDICTIONALITY OF ISP-**  
5 **BOUND CALLS ESSENTIALLY THE SAME IN THE FOCAL**  
6 **ARBITRATION AS IT IS IN THIS LEVEL 3 ARBITRATION?**

7 A. Yes. In fact, from what I can tell from the descriptions of the Ameritech  
8 proposals from the Focal docket that I have seen, they look virtually  
9 identical to those put forth by Ameritech’s witnesses Panfil and Harris  
10 here.

11  
12 ***SECTION 2 – DISTINGUISHING ISP-BOUND CALLS FROM OTHER***  
13 ***LOCAL CALLS; PUBLIC INTEREST AND TECHNICAL***  
14 ***CONSIDERATIONS***

15 **Q. BOTH DR. HARRIS AND MR. PANFIL ARGUE THAT ISP-BOUND**  
16 **CALLS SHOULD BE TREATED DIFFERENTLY FROM OTHER TYPES**  
17 **OF LOCAL CALLS. IS SUCH A DISTINCTION APPROPRIATE?**

18 A. No. There are several reasons why the Commission should not establish  
19 a separate class of service for ISP-bound traffic. First, the Commission  
20 has determined repeatedly – most recently only a few months ago – that  
21 ISP-bound calls are local. Dial-up Internet traffic uses the exact same

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<sup>2</sup> Focal Communications Corporation of Illinois Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company, d/b/a/ Ameritech Illinois; ARBITRATION DECISION; Docket No. 00-0027; dated May 8, 2000, at 12.

1 public switched network ("PSTN") facilities used by other local calls.

2 Likewise, the costs to carry this traffic are largely identical to other local  
3 calls exhibiting similar calling characteristics (i.e., time of day, duration,  
4 etc.). Hence, to segregate ISP-bound traffic from the larger population of  
5 local-billed calls (thereby separating it from some group of calls that  
6 largely match its calling characteristics, and costs) provides an artificial  
7 distinction between two types of traffic that are actually very similar.

8 **Q. HAS THE FCC SAID ANYTHING ABOUT RATE SETTING BASED ON**  
9 **CLASSES OF CUSTOMERS?**

10 A. Yes. FCC Rule 51.503 (c) states: "The rates that an incumbent LEC  
11 assesses for elements shall not vary on the basis of the class of  
12 customers served by the requesting carrier, or on the type of services that  
13 the requesting carrier purchasing such elements uses them to provide."  
14 To do so would be to discriminate against a particular class of customers  
15 or type of service being provided, based on something other than cost.  
16 Such discrimination is not in the public interest.

17 **Q. WILL CREATION OF THIS ARTIFICIAL DISTINCTION HARM THE**  
18 **PUBLIC INTEREST?**

19 A. Yes. Artificially distinguishing between these two types of calls (i.e., ISP-  
20 bound calls and other local calls) skews the resource allocation decisions  
21 of the consumer, residential and business alike. Specifically, it skews the  
22 consumer's proper economic decision-making as to what level of each  
23 type of call to consume (i.e., if prices for Internet-bound calling are higher

1 than for other types of local calling, the consumer will undoubtedly  
2 suppress his/her demand for Internet calling in comparison to the level  
3 demanded absent such a price differentiation). For example, under  
4 Ameritech's proposal, a customer who makes a large number of local  
5 voice calls (or calls of longer than average length) will pay less than a  
6 customer who uses the same level of local usage for accessing the  
7 Internet. Obviously, under a situation like that described above, even  
8 though both customers consume the same level of local calling resources  
9 and generate equal costs on the network, the Internet subscriber will be  
10 required to pay more. This is problematic in that it provides consumption  
11 incentives that do not match the economically efficient incentives that  
12 would result from pricing identical or similar services at the same rate.

13 **Q. CAN YOU EXPLAIN IN GREATER DETAIL YOUR CONCERN**  
14 **REGARDING A SEPARATE CLASS OF SERVICE FOR ISP-BOUND**  
15 **TRAFFIC?**

16 A. My primary concern in this area is that this approach doesn't encourage  
17 efficient decision-making on the part of local callers. This results from the  
18 fact that even though both voice-grade local calling and calls to the  
19 Internet use the same network in almost exactly the same way (thereby  
20 generating largely identical costs), local callers would be faced with two  
21 different pricing structures for these two identical or similar types of calling.  
22 If the Commission were to introduce such a pricing structure, it would be  
23 somewhat arbitrarily distinguishing between two types of traffic that are

1 largely identical. For example, one hour of local calling from your  
2 computer to the Internet generates exactly the same level of cost on the  
3 network as does one hour of calling from your home to your best friend  
4 who may live across town. Efficient economic results are generated when  
5 consumers are faced with the marginal costs of their decisions. Only  
6 when consumers are faced with a situation where the more local calling  
7 resources they use the more they pay (whether those be for local voice  
8 calls or Internet calling), will they ever be encouraged to make sound  
9 economic decisions with respect to how much local calling to use.

10

11 Separating ISP-bound traffic from all other types of local-billed traffic and  
12 subjecting only ISP traffic to this system will serve only to depress demand  
13 for Internet usage. At the same time, allowing voice grade traffic to remain  
14 under the same pricing structure it currently enjoys will leave in place an  
15 incentive to “over-use” voice grade local calling. In essence, the  
16 Commission would be using its regulatory authority to favor one type of  
17 local-billed traffic (voice traffic) over another type of local-billed traffic (ISP-  
18 bound traffic). This would undoubtedly cause market distortions that could  
19 have long-term effects on the growth of Internet traffic and the efficient  
20 allocation of resources to Illinois’ telecommunications infrastructure. One  
21 such unfortunate result could be an increase in the gap between those  
22 consumers who can afford to use the Internet at these artificially higher  
23 rates, and those that cannot (the so called “digital divide”).

1       **Q. WOULD IT BE IN THE PUBLIC INTEREST TO DISCOURAGE THE USE**  
2       **OF THE INTERNET?**

3       A. No. Increasing the cost of Internet access would be inconsistent with the  
4       Act's mandate for access to advanced services at just, reasonable and  
5       affordable rates. More specifically, Section 230(b)(2) (47 U.S.C. 230) of  
6       the Act states "It is the policy of the United States to preserve the vibrant  
7       and competitive free market that presently exists for the Internet and other  
8       interactive computer services, unfettered by Federal or state regulation."  
9       To the extent Ameritech's proposal to distinguish Internet usage from  
10      other local usage depresses demand for Internet usage, it is not in the  
11      public interest.

12      **Q. MR. PANFIL RECOMMENDS THAT CLECS BE REQUIRED "...TO**  
13      **EXPLICITLY IDENTIFY ALL ISP TRAFFIC TO THE BEST OF THEIR**  
14      **ABILITY." (PANFIL VERIFIED STATEMENT AT 12) IF SUCH A**  
15      **DISTINCTION WERE IN THE PUBLIC INTEREST, WOULD IT BE**  
16      **POSSIBLE TO DISTINGUISH BETWEEN INTERNET TRAFFIC AND**  
17      **OTHER CATEGORIES OF LOCAL TELEPHONE CALLS?**

18      A. It would be very difficult and imprecise to break-out ISP-bound calls from  
19      voice calls. Two separate, and equally ineffective, methods of segregating  
20      ISP-bound traffic from other local calls have emerged to this point. First,  
21      ILECs have asked that interconnecting carriers identify the specific NXX-  
22      XXXX telephone numbers that are assigned to ISP providers as dial-up  
23      access numbers. Then, the traffic that is terminated to these specified

1 dial-in numbers is measured and identified as ISP-bound traffic (and to  
2 this point the ILECs have generally then refused to make any payments to  
3 the CLECs for carrying this traffic). Second, ILECs have argued that by  
4 measuring the average call duration (holding time) for traffic passed  
5 between two carriers, it is possible to estimate the percentage of that  
6 traffic that is bound for an ISP (ILECs generally have argued that calls  
7 longer than 15 – 20 minutes exhibit characteristics similar to ISP-bound  
8 traffic and should therefore be removed from reciprocal compensation  
9 obligations).

10 **Q. DO YOU BELIEVE THAT EITHER OF THESE OPTIONS IS AN**  
11 **EFFECTIVE MECHANISM FOR “DISTINGUISHING INTERNET**  
12 **TRAFFIC” FROM OTHER TYPES OF LOCAL TRAFFIC?**

13 A. No. First, there is no technical or economic distinction between ISP-  
14 bound traffic and other types of local traffic, other than the fact that ISP-  
15 bound calls generally tend to have longer holding times than do average  
16 local calls (and, dial-up ISP-bound calls typically take place in the evening  
17 whereas the majority of voice calls occur during the business day).  
18 However, as I described above, distinguishing between an Internet call  
19 and a local voice call of the same length is nonsensical. A twenty-minute  
20 voice call has exactly the same cost characteristics as does a twenty-  
21 minute Internet call. Hence, distinguishing between these two types of  
22 calls is an artificial distinction that can lead to poor rate design decisions.

1 Further, both methods described above for purposes of distinguishing  
2 between ISP-bound calls and other types of local traffic have major  
3 shortcomings. The first method (i.e., identifying ISP dial-in numbers)  
4 requires a carrier to maintain separate records of the telephone numbers  
5 used by its ISP customers for dial-up capability.<sup>3</sup> To the extent an ISP  
6 customer regularly expands or changes the dial-up numbers it uses for  
7 this purpose (many ISPs may have hundreds of dial-up numbers), it  
8 becomes difficult to ensure that all such numbers are captured effectively  
9 and/or that only dial-in numbers are identified (as opposed to numbers  
10 used by the ISP for its own business uses). The shortcomings of the  
11 second alternative described above are even worse. Simply assuming  
12 that calls of greater than 15-20 minutes (or even 25-30 minutes) are dial-  
13 up calls to the Internet is, by definition, going to provide inaccurate results.  
14 (Going beyond voice calls, think for example of the corporate LAN, where  
15 a customer dials in but does not go to the Internet. The telecommuter  
16 could be dialed in all day to her office, but never reach the Internet. In that  
17 case, such a call would show up as ISP-bound notwithstanding the actual  
18 destination.) Obviously, a good number of local voice calls (and other  
19 non-Internet calls) last longer than 15-30 minutes. Under the second

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<sup>3</sup> Indeed, this ILEC attempt to identify the phone numbers of—and thus all other information becomes readily available—CLECs' ISP customers is potentially anti-competitive. By forcing CLECs to provide customer information to the ILEC, this enables the ILECs to have key information about competitors and their customers. Taken to its logical conclusion, then, the ILEC position is to strip away CLEC compensation for the cost of serving ISP customers, while at the same time using the identification of ISP telephone numbers as a tool to market to these same customers.

1 approach above, however, any call with duration greater than 15-30  
2 minutes is generally considered to be an ISP-bound call. Using the  
3 second method generally tends to overestimate the volume of ISP-bound  
4 calls and underestimate the volume of other local calling on the network.

5

6 ***SECTION 3 – SYMMETRICAL RECIPROCAL COMPENSATION***

7 ***VERSUS NEGOTIATED FEE***

8 **Q. MR. PANFIL SUGGESTS AT PAGES 18 AND 19 THAT BECAUSE**  
9 **LEVEL 3 DOES NOT USE TYPICAL CIRCUIT SWITCHES, THAT**  
10 **RECIPROCAL COMPENSATION IN ITS CURRENT FORM WOULD**  
11 **OVER COMPENSATE LEVEL 3. PLEASE COMMENT.**

12 A. This comment represents a recurring and improper theme in Ameritech's  
13 case. First, the Commission should not seriously consider Ameritech's  
14 proposal that new entrants be regulated and compensated based on the  
15 technology they use to enter the market. The problems with that approach  
16 are obvious and regulators and legislators have wisely avoided attempts  
17 to regulate companies based upon technology. To do so would hamper  
18 innovation, investment and deployment of leading edge technology.

19 Second, the FCC rules specifically state that rates for transport and  
20 termination of local calls shall be symmetrical and equal to the rates that  
21 the ILEC assesses upon the other carrier. (FCC Rule 51.711) Further,  
22 the FCC has specified on several occasions that the proper cost standard

1 for interconnection is the ILEC's TELRIC. For instance, in the Bell  
2 Atlantic New York 271 Order, the FCC stated the following:

3 ...the Commission has determined that prices for  
4 interconnection and unbundled network elements (or UNEs)  
5 must be based on an incumbent LECs forward-looking, long-  
6 run incremental costs for each network element. It adopted  
7 a pricing methodology that encompasses these concepts  
8 called TELRIC, or Total Element Long Run Incremental  
9 Cost. In order to prove compliance with these statutory  
10 provisions, a BOC must show that its prices for  
11 interconnection and unbundled network elements are based  
12 on forward-looking, long-run incremental costs.<sup>4</sup> (emphasis  
13 added; footnotes omitted)  
14

15 Ameritech's suggestion that this Commission should investigate Level 3's  
16 cost of service is improper and meant to shift a significant burden to new  
17 entrants. If such a burden were to be imposed on new entrants, it would  
18 have a chilling effect on the development of competition.  
19 Moreover, given that Ameritech was supposed to have based its  
20 reciprocal compensation rates on a forward-looking, most-efficient  
21 network, it seems incongruous for Ameritech to be complaining that the  
22 reciprocal compensation rates might lead to over-recovery of the costs of  
23 using an efficient network design. The fact that carriers might use what is  
24 perceived as a more efficient network architecture should not be viewed  
25 as a cause for concern – in fact, it fits precisely into what the FCC had  
26 hoped would be the product of using a TELRIC-based methodology.

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<sup>4</sup> In the Matter of Application by Bell Atlantic New York to Provide In-Region, InterLATA Service in the State of New York; **MEMORANDUM OPINION AND ORDER**; CC Docket No. 99-295; Released December 22, 1999; at paragraph 237.

1       **Q. CAN CLECS RECOMMEND COMPENSATION RATES THAT ARE**  
2       **DIFFERENT FROM THOSE OF THE ILEC?**

3       A. Yes. Rule 51.711(b) states as follows:

4                   (b) A state commission may establish asymmetrical rates for  
5                   transport and termination of local telecommunications traffic  
6                   only if the carrier other than the incumbent LEC (or the  
7                   smaller of two incumbent LECs) proves to the state  
8                   commission on the basis of a cost study using the forward-  
9                   looking economic cost based pricing methodology described  
10                  in Secs. 51.505 and 51.511, that the forward-looking  
11                  economic costs for a network efficiently configured and  
12                  operated by the carrier other than the incumbent LEC (or the  
13                  larger incumbent LEC), and consequently, that such higher  
14                  rate is justified.

15  
16       It is clear that the CLEC is to charge the ILEC the ILEC rates unless the  
17       CLEC can prove to the state Commission, through properly conducted  
18       cost studies, that the CLEC requires a “higher” rate than that imposed by  
19       the ILEC.

20       **Q. CAN THE ILEC CHALLENGE THE CLEC’S USE OF THE ILEC RATE**  
21       **FOR RECIPROCAL COMPENSATION, OR REQUIRE THE CLEC TO**  
22       **COST-JUSTIFY THE USE OF THE ILEC RATE?**

23       A. No. The rules do not allow for the ILEC to challenge the CLEC’s use of  
24       the ILEC rate for reciprocal compensation.

25       **Q. DOES THE FCC’S RECIPROCAL COMPENSATION CONSTRUCT**  
26       **HAVE MERIT FROM AN ECONOMIC PERSPECTIVE?**

27       A. Yes, it does. Because CLEC networks are generally immature and carry a  
28       very small portion of the overall local traffic in the marketplace, it would be  
29       difficult for these carriers to conduct an effective TELRIC study that would

1 provide information relevant to the long-run, incremental costs of  
2 terminating the “total demand” of local traffic. On the other hand, the  
3 ILECs continue to carry the vast majority of local traffic and their networks  
4 are sized to accommodate a far more representative sample of “total  
5 demand.” Hence, the cost studies presented by the ILECs serve as the  
6 most reasonable proxy of the market’s TELRIC costs. Further, Ameritech  
7 should be indifferent as to whether it terminates the traffic or it pays Level  
8 3 to terminate the traffic.

9 **Q. PLEASE EXPLAIN YOUR POSITION ON “INDIFFERENCE.”**

10 A. If Ameritech has accurately established its terminating reciprocal  
11 compensation rate based upon its own costs of terminating a call, it should  
12 be economically indifferent with respect to whether a call both originates  
13 and terminates on its own network or whether a call terminates on the  
14 Level 3 network. Ameritech will either incur the terminating cost via its  
15 own facilities or it will incur that cost via a cost-based rate paid to Level 3  
16 for performing the termination function. The reciprocal compensation  
17 arrangement provides a strong incentive for Ameritech to correctly identify  
18 its costs.

19 **Q. BOTH DR. HARRIS AND MR. PANFIL MENTION AT SEVERAL POINTS**  
20 **IN THEIR TESTIMONY THAT THE DURATION OF AN ISP CALL IS**  
21 **LONGER THAN A TYPICAL VOICE CALL. (SEE, FOR INSTANCE,**  
22 **VERIFIED STATEMENT OF DR. HARRIS AT PAGE 4) YOU’VE**  
23 **SHOWN THAT ISP AND OTHER LOCAL CALLS ARE PROCESSED IN**

1           **THE SAME MANNER, BUT DOES THE LONGER DURATION OF ISP**  
2           **CALLS HARM AMERITECH?**

3           A. Not necessarily. The focus on the duration of the calls is a red herring.  
4           This is yet another attempt by Ameritech to distinguish ISP-bound calls  
5           from other calls. The only purpose for such a distinction would be to  
6           artificially disadvantage Ameritech's competitors who have been  
7           successful in attracting ISP customers.

8           **Q. BUT DOESN'T A LONGER CALL DURATION INCREASE THE COST**  
9           **OF CARRYING THE CALL?**

10          A. Generally speaking, if the average call duration increased there might be  
11          an increase in total cost. In that situation, the proper remedy would be to  
12          allow Ameritech to update its cost studies for its reciprocal compensation  
13          rates so as to capture any increase in the duration of an average local call  
14          (including ISP-bound calls). If indeed the average local calling holding time  
15          increased, then the cost might also increase. This is a more sound  
16          approach than taking one cost factor in the model, modifying it slightly to  
17          account for more minutes of use (as Mr. Panfil seems to have done), and  
18          then assuming that the product of that modification truly represents the  
19          costs involved for a call to a particular kind of customer.

20          **Q. ARE DR. HARRIS AND MR. PANFIL CORRECT THAT ISP-BOUND**  
21          **CALLS LONGER THAN AVERAGE?**

22          A. When you develop an arithmetic average for a sample or population, there  
23          are always observations that fall outside the mean – some are below and

1           some are above. The fact that some ISP-bound calls are longer is no  
2           reason to break them out for special treatment; they are a part of the total  
3           population of calls. Not all long duration calls are ISP-bound calls and not  
4           all ISP-bound calls are of long duration. Calls on Mother's day are  
5           undoubtedly longer than calls on other days. Conference calls, calls to  
6           catalog companies during the holidays and calls to friends and family  
7           during holidays tend to be longer than average. Calls to paging  
8           companies, and radio stations are generally shorter than average.  
9           Whenever cost-based rates are developed, the usage includes long calls,  
10          short calls, calls of all durations.

11        **Q. MR. PANFIL ARGUES AT PAGE 18 OF HIS VERIFIED STATEMENT**  
12        **THAT "INTERNET ACCESS CALLS" BECAUSE OF THEIR LONGER**  
13        **DURATION, OVERRECOVER SETUP COSTS UNDER THE EXISTING**  
14        **RECIPROCAL COMPENSATION RATES. DO YOU AGREE?**

15        A. While I think this point is part and parcel of the faulty logic described  
16        above regarding the process of identifying cost characteristics by  
17        customer group, there is some validity to the point that the traditional  
18        process by which network switching costs are incurred (i.e., a combination  
19        of "per call" and "per minute" costs), and the manner by which those costs  
20        are traditionally recovered (predominately on a strictly "per minute of use"  
21        basis) is at odds.

1       **Q. PLEASE EXPLAIN WHY THE TRADITIONAL PROCESS OF COST**  
2       **RECOVERY IS SOMEWHAT AT ODDS WITH THE MANNER BY WHICH**  
3       **NETWORK USAGE COSTS ARE INCURRED.**

4       A. As a general matter, network usage costs are recovered from end-users  
5       and amongst carriers on a per-minute-of-use basis. For every minute a  
6       circuit is open and a call is in progress, a unit of revenue is extracted from  
7       the customer. This “per-minute-of-use” process, however, is not  
8       completely consistent with the manner by which the network actually  
9       generates costs in accommodating network usage caused by the calling  
10      patterns of its customers. Within both BellCore’s *Switching Cost*  
11      *Information System (SCIS)* and other traditional models that measure  
12      switched usage, costs are calculated on a per-minute-of-use basis. These  
13      per-minute-of-use costs are calculated using two fundamental categories  
14      of expenses: (1) *Setup Costs* and (2) *Duration Costs*. *Setup Costs*  
15      attempt to identify and capture the expenses associated with establishing  
16      a circuit within the network necessary to both route, and ultimately  
17      connect, the calling party with his/her called number. *Duration Costs*  
18      attempt to identify and capture the expenses that result from the circuit  
19      remaining open during the duration of a call. *Set-Up* costs, therefore, are  
20      by nature “per call” costs, meaning they are incurred only once per call.  
21      Duration costs, on the other hand, are incurred per unit of time for which  
22      the call remains established and are generally captured within a “minute of  
23      use.”

1

2           Given the per-call and per-minute cost structure underlying switched  
3           usage, in order to arrive at average, per-minute-of-use costs, ILECs have  
4           traditionally “spread” *Setup Costs* over the duration of an average call. By  
5           spreading *Setup Costs* in this way, it is possible to arrive at an average  
6           per minute rate that can be reasonably applied to each minute a call is  
7           connected. The following equation generally captures the process by  
8           which this “spreading” is accomplished:

9

10    [ *Set-Up Costs* + (Average length of call in minutes x *Duration Cost per minute*) ]

11

Average length of call in minutes

12

13           **Q. HOW DO CALLS THAT EXHIBIT LONGER THAN AVERAGE HOLDING**  
14           **TIMES IMPACT THE METHODOLOGY DESCRIBED ABOVE?**

15           A. Obviously, calls that are longer than average recover *set-up* costs more  
16           than once, depending upon their actual length, when the methodology  
17           described above is employed (this is easy to see by populating the  
18           equation above with an average holding time and then populating the  
19           equation with a holding time in excess of the average). Mr. Panfil’s  
20           example of a 26 minute call shows setup costs being recovered over  
21           seven times. Likewise, shorter than average calls fail to fully recover their  
22           set-up costs. ILECs have continually argued that because Internet calls  
23           are longer than average, reciprocal compensation rates based upon the

1 methodology explained above over-compensate carriers who carry a  
2 substantial number of Internet calls.

3 **Q. IS THIS PHENOMENON UNIQUE TO ISP CALLS?**

4 A. No. Ameritech has taken one particular characteristic of Internet bound  
5 traffic, i.e., that these calls tend to be longer in length, and has attempted  
6 to show that this single factor will make these calls less expensive to  
7 carry. This analysis ignores multiple issues. First, Ameritech's criticism  
8 regarding the longer holding times of Internet bound calls is equally  
9 applicable to longer than average voice calls. A 26-minute voice call  
10 would experience the same cost per minute to carry as a 26-minute  
11 Internet bound call. Said another way, Ameritech's point in this regard  
12 does not prove that Internet bound calling is cheaper to accommodate, it  
13 merely proves that longer calls are cheaper to carry on a per-minute-of-  
14 use basis than shorter calls (all else being equal).

15

16 Second, Ameritech's analysis ignores a number of factors that would, if  
17 Internet bound calling was separated for cost analysis (an effort that would  
18 in my mind not be a productive pursuit), tend to generate increased costs  
19 compared to other types of traffic.

20 **Q. HOW COULD AMERITECH'S CONCERNS REGARDING OVER-**  
21 **RECOVERY RESULTING FROM INTERNET CALLS THAT ARE**  
22 **LONGER THAN AVERAGE BE ADDRESSED?**

1       A. These concerns could be addressed by changing the formula used to  
2       spread the setup costs. This would in essence be a change in rate-  
3       design. The Commission could adopt a rate structure that recognizes the  
4       shortcomings of the traditional “spreading” process whereby call *set-up*  
5       costs are recovered over an “average” length of call. Within such a  
6       structure, all *set-up* costs would be recovered in the first minute of use via  
7       a separate “first minute of usage charge.” Likewise, each additional  
8       minute of use would then be recovered by a separate “additional minute of  
9       use charge.” The first minute charge would recover all call set-up costs  
10      and one minute of duration costs. Each additional minute of use would  
11      recover costs associated only with duration (no set-up costs would be  
12      included). In this way, both long calls and short calls would recover both  
13      the setup and duration costs specific to their particular call length.  
14      Ameritech’s apparent concern regarding the over-recovery of costs  
15      associated with the somewhat longer duration of Internet-bound calling  
16      should, via this rate structure, be completely dispelled.

17      **Q. WOULD THIS NEW RATE STRUCTURE APPLY TO BOTH VOICE AND**  
18      **DATA CALLS?**

19      A. This new rate structure should apply to all calls that are subject to  
20      reciprocal compensation. As I described before, there is no difference  
21      between the costs generated by a 26 minute data call versus a 26 minute  
22      voice call (all else being equal). Hence, a 26 minute voice call generates  
23      the same discrepancy between the costs that are incurred and those that

1 are recovered via a traditional “spreading” process as do Internet bound  
2 calls. Hence, this alternative would address such issues for *all* calls of  
3 longer than average (and shorter than average) duration. Both voice and  
4 data calls.

5 **Q. HOW COULD THE COMMISSION ARRIVE AT A RECIPROCAL**  
6 **COMPENSATION RATE PURSUANT TO THE OPTION YOU’VE**  
7 **DESCRIBED ABOVE?**

8 A. The Commission could require as part of the generic proceeding  
9 mentioned in the Focal Arbitration Decision a renewed analysis supporting  
10 Ameritech’s current reciprocal compensation rates and identify the “set-  
11 up” and “duration” costs that are included in that study (prior to being  
12 “averaged” via the process described above). These costs would then  
13 serve as the “first minute” (i.e., the set-up costs) and the “additional  
14 minute” (the duration costs) charges.

15

16 ***SECTION 4 – GROWTH IN INTERNET USAGE; COST CAUSATION***  
17 ***PRINCIPLES AND APPLICATION***

18 **Q. MR. PANFIL RAISES CONCERNS ABOUT THE GROWTH IN**  
19 **INTERNET USAGE. (VERIFIED STATEMENT OF PANFIL AT 9 – 11)**  
20 **PLEASE COMMENT.**

21 A. While I cannot vouch for the numbers in Mr. Panfil’s testimony, I agree  
22 that there is significant growth in Internet usage. Consumer demand for  
23 Internet access is growing dramatically.

1       **Q. GROWTH IN TELECOMMUNICATIONS SECTORS IS GENERALLY**  
2       **VIEWED AS GOOD. WHY, IN YOUR OPINION, IS AMERITECH**  
3       **CONCERNED ABOUT GROWTH IN INTERNET USAGE?**

4       A. Ameritech has failed to adequately serve a customer segment that  
5       represents the fastest growing group of telecommunications users in the  
6       nation. As a result, those customers have taken service from Ameritech's  
7       competitors. Now, Ameritech is suffering financial ramifications  
8       associated with its inability or unwillingness to service these customers  
9       adequately (i.e., reciprocal compensation payments). While perhaps  
10      unenviable from Ameritech's perspective, Ameritech's position should not  
11      sway the Commission from an inter-carrier compensation mechanism that  
12      has obviously aided in fostering competition (i.e., the very competition that  
13      has put Ameritech where it finds itself today). Indeed, the Commission, by  
14      granting Ameritech's request in this proceeding, would be saving  
15      Ameritech from the very harvest it has sown. In doing so, the  
16      Commission would be aiding an individual competitor – Ameritech at the  
17      expense of the competitive marketplace. To highlight this point, the  
18      Commission should ask itself the following question: *If Ameritech were*  
19      *successful in winning back a large proportion of the ISP customer base it*  
20      *has lost to its competitors, would the phenomenon described above*  
21      *dissipate or disappear?* The answer to this question is obviously "Yes."

1       **Q. DESCRIBE HOW AMERITECH COULD OVERCOME ITS TRAFFIC**  
2       **IMBALANCE AND RECIPROCAL COMPENSATION IMBALANCE BY**  
3       **EFFECTIVELY COMPETING FOR ISP CUSTOMERS.**

4       A. Ameritech could easily overcome its traffic imbalance by attracting larger  
5       numbers of ISPs back to its network. This would have a twofold impact on  
6       its traffic imbalance. It would reduce the number of calls that must be  
7       routed to other carriers while at the same time increasing the number of  
8       calls that must be routed to the Ameritech network. As a result, its  
9       reciprocal compensation imbalance would necessarily shrivel. Finally, if  
10      Ameritech were to offer ISPs products and services of sufficient quality to  
11      lure them back to its network, it would in fact be offering a niche marketing  
12      service within its own organization. This is in no way a negative economic  
13      result. Indeed, by paying closer attention to a customer base it has  
14      ignored, Ameritech will have followed the lead of the marketplace in  
15      maximizing the welfare of its consumers. Instead, it appears that  
16      Ameritech is seeking a quick regulatory “fix” aimed at simply changing the  
17      inter-carrier compensation rules to make this traffic less expensive for  
18      Ameritech, and, at the same time, make it more difficult for its competitors  
19      in the marketplace. It is easy to see why Ameritech prefers this approach  
20      to vigorous competition. However, it should be equally obvious that  
21      granting Ameritech its wish in this regard will in fact be a blow to the very  
22      competitive marketplace that has already placed upon Ameritech a  
23      powerful incentive (i.e., to compete).

1       **Q. EXPLAIN THIS POINT IN GREATER DETAIL.**

2       A. Ameritech is attempting to convince the Commission that it must treat the  
3       “symptoms” of a broken marketplace (i.e., traffic imbalance, non-  
4       symmetrical payments of reciprocal compensation, niche marketing, etc.)  
5       by changing the rules of how carriers compensate one another for the  
6       transfer of traffic. It is my hope that the Commission will recognize that  
7       Ameritech’s argument in this respect is a classic *non sequitor*. Ameritech  
8       and other ILECs have made great progress in shaping the issue of  
9       reciprocal compensation for ISP-bound traffic as an attempt on the part of  
10      CLECs to garner large profits at the expense of Ameritech and its  
11      residential customer base. In reality, this is a complicated smokescreen.

12  
13      After the passage of the Telecommunications Act of 1996 and the  
14      subsequent signing of interconnection agreements that actually began the  
15      process of competition, the forces of a competitive marketplace were  
16      beset upon a market that was besieged with a regulatory legacy. Since  
17      that time, competitive market forces have been pounding away at  
18      outdated regulatory policy, outdated and artificial  
19      customer/jurisdictional/technical distinctions, and, most importantly,  
20      outdated products and services. This assault has been difficult for those  
21      stakeholders (carriers, commissions, and customers) who are unwilling or  
22      unable to quickly respond to the wishes of the consuming public (the  
23      ultimate benefactor of a competitive market). One stakeholder group that

1 has felt the sting of the market's disapproval most noticeably is the ILECs  
2 who have miserably failed at providing desirable and affordable services  
3 to one of the market's fastest growing, and largest group of  
4 telecommunications consumers (i.e., Internet service providers). Indeed,  
5 the ILECs have, until recently, generally ignored the specific needs of the  
6 ISP community and, in an even more self-destructive mindset that  
7 appears to manifest itself again and again in the monopolistic genetic-  
8 code of the ILECs, the ILECs have primarily treated ISPs as competitors  
9 instead of customers. As a result, ISP customers have flocked to CLECs  
10 in droves. The result of this rational market reaction is that CLECs serve  
11 ISPs in greater numbers than do ILECs.<sup>5</sup> One of the results of this ISP  
12 migration to CLECs (aided by inbound traffic characteristics of a typical  
13 ISP customer) has been an imbalance of traffic flowing from the ILECs to  
14 the CLECs.<sup>6</sup> Likewise, another result of this imbalance of traffic has been  
15 that ILECs have experienced an imbalance in reciprocal compensation  
16 payments. Not surprisingly, as a result of this imbalance, ILECs have  
17 become increasingly distressed not only that they are making large  
18 payments for purposes of supporting the traffic generated by their own  
19 customer base (heretofore traffic they carried on their own network), they

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<sup>5</sup> While it is unclear whether CLECs serve ISPs in greater total numbers than do the ILECs in total, certainly as a percentage of their customer base CLECs serve a larger percentage of ISP customers.

<sup>6</sup> It is important to note that this imbalance of traffic is also a result of the rather immature customer base of most CLECs. As ISPs flocked to CLECs in large numbers to escape the ILEC's traditional, yet uninspired and inadequate service offerings, they flooded the CLECs with more access lines than CLECs could realistically offset with traditional business and residential access

1 are also writing checks to their competitors. As a result of this distressing  
2 turn of events, ILECS have generally been faced with two options that can  
3 be undertaken to ease their pain: (1) stop the imbalance of traffic by using  
4 their market prowess (or reinventing such) to re-attract ISP customers,  
5 and/or (2) seek the assistance of regulators who can simply change the  
6 rules. While ILECs are undoubtedly beginning to pursue both of these  
7 options, only the first option produces an economically attractive outcome  
8 (i.e., increased competition and customer choice).

9 **Q. MR. PANFIL POSITS A REVENUE SHORTFALL RESULTING FROM**  
10 **THE INCREASE IN INTERNET TRAFFIC. DO YOU AGREE?**

11 A. No. These arguments regarding uncompensated investments and upward  
12 pressure on local rates are identical to arguments that Ameritech and  
13 other ILECs have made before the FCC for many years in an attempt to  
14 remove the “ESP Exemption.”

15 **Q. BRIEFLY EXPLAIN THE “ESP EXEMPTION.”**

16 A. In effect, the ESP Exemption grants ESPs, including ISPs, the right to  
17 access the public switched network as an end user (not a carrier) and  
18 thereby avoid the payment of usage sensitive switched access charges.  
19 ILECs have fought for years to remove the ESP Exemption so that they  
20 can treat ISPs as interexchange carriers (IXCs) to which switched access  
21 charges would be assessed. At paragraph 9 of the *ISP Order*, the FCC

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lines (because it is apparent that traditional customers are not yet as disaffected by the ILECs services and service quality as were the technically sophisticated ISPs).

1 reiterates its prior position on the ESP Exemption. In that order it states  
2 as follows:

3 As explained above, under the ESP exemption, LECs may  
4 not impose access charges on ISPs, therefore there are no  
5 access revenues for interconnecting carriers to share.  
6 Moreover, the Commission has directed states to treat ISP  
7 traffic as if it were local, by permitting ISPs to purchase their  
8 PSTN links through local business tariffs. (emphasis added)  
9

10 ILECs have steadfastly claimed that ISPs (a subset of the larger ESP  
11 family), for example, use large amounts of network usage that generates  
12 substantial usage sensitive costs, yet, the ESP Exemption precludes  
13 ILECs from recovering usage sensitive revenues from those customers.  
14 This “revenue shortfall,” according to the ILECs, places upward pressure  
15 on the local rates of all subscribers.

16 **Q. HAS THE FCC REJECTED THOSE ARGUMENTS?**

17 A. Yes. In its *First Report and Order* in CC Docket No. 96-262 (Access  
18 Charge Reform), released May 16, 1997, the FCC stated as follows when  
19 rejecting ILEC attempts to remove the highly touted “ESP Exemption”  
20 currently in place for ISP end users:

21 346. We also are not convinced that the nonassessment of  
22 access charges results in ISP’s imposing uncompensated  
23 costs on incumbent LECs. ISPs do pay for their connections  
24 to incumbent LEC networks by purchasing services under  
25 state tariffs. Incumbent LECs also receive incremental  
26 revenue from Internet usage through higher demand for  
27 second lines by consumers, usage of dedicated data lines by  
28 ISPs, and subscriptions to incumbent LEC Internet access  
29 services. To the extent that some intrastate rate structures  
30 fail to compensate incumbent LECs adequately for providing  
31 service to consumers with high volumes of incoming calls,  
32 incumbent LECs may address their concerns to state

1 regulators. [emphasis added]  
2

3 **Q. HAS AMERITECH BENEFITED FROM THE SOURCES OF**  
4 **ADDITIONAL REVENUE THAT THE FCC POSITS WILL RESULT FROM**  
5 **INCREASED INTERNET TRAFFIC?**

6 A. Undoubtedly. Second lines are very profitable for ILECs.

7 **Q. DOESN'T THIS INCREASE IN SECOND LINE GROWTH ALSO**  
8 **RESULT IN INCREASED INVESTMENTS?**

9 A. Undoubtedly some increase in capital investment is required to  
10 accommodate such growth. However, it is important to point out that  
11 much of this increased demand can be accommodated by spare facilities  
12 that already exist in the Ameritech network. Bell Atlantic's former CEO,  
13 Raymond F. Smith, properly recognized the attractiveness of selling  
14 second lines in a March 19, 1996, speech to a group of security analysts  
15 at Merrill Lynch:

16  
17 In 1995, sales of secondary lines at Bell Atlantic increased  
18 more than 50 percent, fueled by surging demand for Internet  
19 and telecommuting applications.

20  
21 Unlike traditional horizontal line growth, which would  
22 have significantly added to our capital expenditures, the  
23 vertical growth we experienced in '95 brought most of the  
24 revenues down to the bottom line. That's because we were  
25 able to provision new lines and services from *idle capacity in*  
26 *an existing plant.* (Emphasis added.)  
27

28 **Q. WOULD YOU EXPECT AMERITECH TO BENEFIT FROM IDLE-**  
29 **CAPACITY AS WELL?**

1 A. Yes. Plus, when ILECs design their networks, they engineer a certain  
2 number of lines for each residence. For instance, in my town, U S WEST  
3 installs the capacity for three lines in each home. As such, when the  
4 consumer wants an additional line, not additional labor (outside some  
5 potential jack work) is required to turn up the line.

6 **Q. IF NEW ENTRANTS SUCH AS LEVEL 3 WERE NOT SERVING ISPS,**  
7 **WHO WOULD ORIGINATE AND TERMINATE THE ISP-BOUND**  
8 **TRAFFIC?**

9 A. Ameritech. Mr. Panfil fails to recognize the benefits to Ameritech from the  
10 new entrants such as Level 3. If Level 3 and other new entrants were not  
11 in the market, Ameritech would have to originate and terminate all calls,  
12 including all ISP-bound calls. The investment made by Level 3  
13 ameliorates the additional investment required by Ameritech to meet the  
14 demand for Internet usage. Further, and as I addressed in my initial  
15 Statement, the payment of reciprocal compensation between carriers  
16 reflects the fact that the originating carrier is making use of the terminating  
17 carrier's facilities rather than having to invest in those facilities itself.

18 **Q. DO DR. HARRIS AND MR. PANFIL AGREE ON WHO CAUSES THE**  
19 **GROWTH IN INTERNET USAGE AND THE COSTS ASSOCIATED**  
20 **WITH THAT USAGE?**

21 A. No, although the differences may be just semantic. Dr. Harris argues  
22 against the Level 3 position that Ameritech subscribers originating calls to  
23 an ISP cause the CLECs, including Level 3, to incur costs to terminate

1 those calls. Specifically, Dr. Harris states at page 11 of his Verified  
2 Statement:

3 The intercarrier compensation system for ISP-routed traffic  
4 that is proposed by Level 3 is based on the erroneous  
5 premise that when an ISP customer – who happens to be a  
6 local service customer of Ameritech Illinois – dials up an ISP  
7 that itself is served by a different LEC, it is the subscriber in  
8 his or her role as an Ameritech Illinois customer that causes  
9 the CLEC to incur costs.

10

11 Dr. Harris points out the weakness in this argument on the very next page  
12 wherein he states:

13 The costs of ISP service are not caused by Ameritech Illinois  
14 or by an Ameritech Illinois customer. Instead, it is the ISP's  
15 subscriber that creates costs. There is a huge difference  
16 between these two cases, despite the fact that in many  
17 instances the Ameritech Illinois end-user and the Internet  
18 subscriber are one in the same person. (emphasis added)

19

20 Mr. Panfil appears to recognize that the growth in Internet usage is  
21 generated by Ameritech residential end-users. At pages nine and ten of  
22 his Verified Statement, Mr. Panfil notes:

23 The bulk (over 80%) of the minutes and growth are  
24 generated by residential subscribers rather than business  
25 subscribers – and not by the vast majority of residential  
26 subscribers but rather by only about 25% of residential  
27 subscribers...

28

29 As such, Dr. Harris' suggestion that ISP subscribers, and not Ameritech  
30 subscribers, are causing the explosion in Internet usage is a distinction  
31 without a difference.

1       **Q. DR. HARRIS DEVOTES AN ENTIRE SECTION OF HIS TESTIMONY TO**  
2       **THE ISSUE OF COST CAUSATION. DO YOU AGREE WITH THE**  
3       **BASIC TENETS OF THAT DISCUSSION?**

4       A. I believe we have some agreement on cost causation theory and  
5       principles. We disagree on how to apply that theory.

6       **Q. PLEASE DESCRIBE THE THEORY OF COST CAUSATION.**

7       A. Cost causation is not so much a theory as it is a hypothesis that costs can  
8       be effectively traced to a party who, through its actions, generates the cost  
9       in question. This party is generally labeled as a “cost causer.”

10       Traditionally, cost causation has been traced via the review of decision-  
11       making. A fundamental tenet of the cost causation theory is that costs are  
12       caused by the decisions of market participants and all decisions that result  
13       in actions bear some cost. More simply, in every transaction, a market  
14       participant decides to take an action, the result of which generates costs  
15       for himself/herself and/or other market participants. It can be said that the  
16       decision and subsequent action that begets the transaction (in this case  
17       the completion of a dial-up call to an ISP), is the genesis of costs (in this  
18       case costs incurred by the ILEC, the CLEC and the ISP). As such, the  
19       party exercising the right to act (i.e. the right to place a dial-up Internet  
20       call) is the properly defined cost-causer.

21       **Q. WHY IS IDENTIFYING THE “COST CAUSER” IMPORTANT?**

22       A. Generally an analysis of cost causation is employed for purposes of  
23       deciding who should pay for the costs resulting from particular actions

1 (consumption being the most common action for which cost causation is  
2 employed). It has been shown that competitive markets work most  
3 efficiently, for example, when persons who generate costs are responsible  
4 for bearing the costs of their actions/decisions. In this way, market  
5 participants can make informed economic decisions as to whether they  
6 will act/decide in a similar fashion in the future. Only by bearing the costs  
7 of his/her decisions in this way, can the cost causer (i.e., the decision  
8 maker) make an informed decision regarding the value he/she receives,  
9 compared to the cost he/she must incur. Again, only in this way are  
10 society's resources properly allocated based upon the informed decisions  
11 of its participants regarding their individual judgments of value. Absent  
12 this result, (i.e., the proper allocation of society's resources ensured by an  
13 effective price signal received by the consumer), prices set based upon a  
14 theory of cost causation do not add to economic efficiency.

15 **Q. DO YOU AGREE WITH DR. HARRIS' EXAMPLE AT PAGES 13 AND 14**  
16 **OF HIS VERIFIED STATEMENT WHEREIN HE ATTEMPTS TO SHOW**  
17 **THAT THE ISPS ARE THE COST CAUSERS?**

18 A. No. Dr. Harris' analysis is flawed in several respects. Dr. Harris attempts  
19 to show that the ISP service is the cost causer. A quick review of the  
20 assumptions shows the flawed logic. First, Dr. Harris assumes that ISP  
21 subscribers dropped their Internet subscriptions, and that the ISP  
22 consequently closed up shop and Internet usage went to zero. It is  
23 obvious on its face that the cost causer here is the subscriber, not the ISP

1 service. Second, Dr. Harris assumes that because an ISP provider closed  
2 up shop, that Internet usage would go to zero. This is simply incorrect.  
3 Much like the interexchange market, there are many ISP providers who  
4 are willing to step in and provide service to customers if an ISP provider  
5 leaves the market. It is the customer demand as recognized by Mr. Panfil  
6 and the rest of the industry, and not the existence of the ISP providers  
7 standing alone, that causes the costs.

8

9 It is telling as well that Ameritech has proposed only to identify ISPs as  
10 cost causers under Dr. Harris' reasoning. From the corporate  
11 telecommuter dial-in number and the mail order catalog service to the car  
12 dealership and the pizza parlor, there are any number of entities that  
13 might be considered as cost-causers under Dr. Harris' theories. Yet  
14 Ameritech is proposing here to treat only one category of these alleged  
15 cost-causers as the kind that warrants a separate form of compensation.  
16 This makes it clear that Ameritech's results-oriented analysis is aimed at  
17 one key purpose – eliminating the ISP-bound traffic payments that have  
18 not gone its way over the past few years.

19 **Q. DR. HARRIS SUGGESTS THAT YOU MADE A MISTAKE BY**  
20 **SUGGESTING THAT AMERITECH CUSTOMERS ARE PLACING**  
21 **CALLS THAT IMPOSE COSTS ON LEVEL 3. (VERIFIED STATEMENT**  
22 **OF DR. HARRIS AT 10) DO YOU AGREE?**

1       A. No. As discussed above, it is the Ameritech customer's decision to call  
2       the ISP that results in Level 3's requirement to terminate the call. Neither  
3       the ISP nor the ISP service is the cost causer. Dr. Harris confuses the  
4       concept of *cost causation* and *cost recovery*. Dr. Harris ultimately admits  
5       that it is the ILEC subscriber who causes the costs incurred to establish  
6       and maintain a dial-up Internet call (including the costs of the ILEC, the  
7       CLEC and the ISP). Indeed, there can be no other logical conclusion. It is  
8       the local exchange customer (primarily ILEC residential customers)  
9       making a dial-up Internet call who makes a decision to call, decides how  
10      often to call and decides how long to maintain any single connection. In  
11      this way, it is difficult to deny the fact that the local exchange customer  
12      causes and controls the costs incurred by the ILEC, the CLEC and the ISP  
13      who all combine to provide access to the Internet. Dr. Harris and I  
14      disagree with respect to the manner by which the cost causer should be  
15      made to pay for the costs he/she generates, i.e., the proper method of  
16      *cost recovery* (not *cost causation*).

17      **Q. PLEASE EXPLAIN THE DISAGREEMENT THAT EXISTS REGARDING**  
18      **THE MOST EFFICIENT METHOD BY WHICH TO RECOVER COSTS**  
19      **FROM THE COST CAUSER.**

20      A. Dr. Harris and I disagree as to the most effective method by which to  
21      ensure that the cost causer bears the costs he/she generates. This  
22      emanates from our disagreement on just who is the cost causer. Dr.  
23      Harris recommends that the ISP negotiate with the LECs that provide it

1 with service to arrive at a fee for its service requirements. This process is  
2 flawed in many respects.

3 **Q. PLEASE DESCRIBE THE FLAWS IN THE NEGOTIATED FEE**  
4 **PROPOSAL.**

5 A. First, as noted above, the Ameritech customers placing the calls are the  
6 cost-causers, not the ISP. If the cost-causer is to pay, then the end users  
7 must pay (as he/she does today), not the ISP. The ESP Exemption  
8 specifically prohibits ESPs/ISPs from paying access charges or other  
9 wholesale rates for service.

10 **Q. PLEASE EXPLAIN HOW THE ESP EXEMPTION REMOVES THE ISP**  
11 **FROM ANY ROLE IN RECOVERING EXPENSES ASSOCIATED WITH**  
12 **LOCAL CALLS MADE BY AMERITECH END USERS.**

13 A. The FCC's ESP exemption allows ISPs to access the network as end  
14 users, not as carriers, and hence, it requires local exchange carriers to  
15 provide them access to the network at rates, terms and conditions  
16 identical to those offered to other business customers (indeed they must  
17 be allowed to purchase from the business local exchange tariff). Hence,  
18 ISPs cannot be forced to pay for (or recover from the local subscriber) the  
19 usage sensitive costs that Ameritech and Level 3 incur in providing calling  
20 services that allow a local user to reach the Internet. This is contrary to  
21 the ILEC-CLEC model in place today for long distance. Hence, the ISP,  
22 will not/cannot recover from its subscribers costs associated with using the  
23 Ameritech and Level 3 networks for purposes of reaching its server. This

1 results in a fatal flaw to Dr. Harris's theory that the negotiated fee model  
2 serves as the most effective model of inter-carrier compensation.

3 **Q. UNDER DR. HARRIS' PROPOSAL, COULD CLECS SUCH AS LEVEL**  
4 **3, COLLECT COSTS FROM ISPS?**

5 A. No. The FCC, via its switched access rules requires the IXC to fulfill the  
6 role of collector/distributor of long distance revenues/costs within the  
7 ILEC-CLEC model, but the FCC has specifically exempted ISPs from this  
8 role. As a result, Level 3 cannot, contrary to Ameritech's contention, look  
9 to its ISPs for purposes of recovering the usage sensitive costs it incurs  
10 when Ameritech's local subscribers connect to the Internet (either to  
11 recover its own costs or to recover costs that it would share with  
12 Ameritech). While Ameritech might point CLECs to recovering such costs  
13 through additions to local tariff rates, this is a distinction without  
14 substance. Even if access charges are allowed to sneak in through the  
15 back door in this manner, the ISPs would still be faced with the prospect of  
16 paying the kind of usage-based charges for terminating calls that the FCC  
17 was careful to avoid. In addition, the Commission should consider – as  
18 Ameritech has not (or not cared to explain) – the impact such a structure  
19 would have on the competitive market. Specifically, the Commission  
20 should consider whether an ISP would ever sign up with a CLEC in Illinois  
21 if the CLEC were required to look to the ISP for these costs.

22

1       **Q. AT PAGES 7 THROUGH 9 OF DR. HARRIS' VERIFIED**  
2       **STATEMENT HE CLAIMS THAT THESE NEGOTIATIONS**  
3       **WOULD OCCUR IN A COMPETITIVE MARKETPLACE; A FREE**  
4       **MARKET WITH NO REGULATORY OVERSIGHT. AT PAGE 27**  
5       **HE STATES THAT NEGOTIATIONS WOULD ALIGN RATES**  
6       **WITH THE TRUE COST STRUCTURE. IS DR. HARRIS**  
7       **CORRECT?**

8       A. No. Dr. Harris provides absolutely no information that would  
9       suggest that Ameritech would negotiate in good faith or that it has  
10       any incentive to do so. Without regulatory enforcement, Ameritech  
11       would have no incentive to reduce rates or to move rates more in  
12       line with economic costs. Indeed, in the same FCC Order cited  
13       above, the FCC referenced the Congressional findings on ILEC  
14       incentives for negotiation:

15               Congress recognized that, because of the incumbent  
16               LEC's incentives and superior bargaining power, its  
17               negotiations with new entrants over the terms of such  
18               agreements would be quite different from typical  
19               commercial negotiations. As distinct from bilateral  
20               commercial negotiation, the new entrant comes to the  
21               table with little or nothing the incumbent LEC needs or  
22               wants. (paragraph 15)  
23

24       It is quite clear that relying upon negotiations will fail. If negotiations were  
25       a viable way to resolve these issues, Level 3 would not be in these  
26       proceedings today.

1       **Q. HOW DOES THE RECIPROCAL COMPENSATION MODEL PROVIDE**  
2       **THE BENEFITS OF EFFICIENCY BEYOND THOSE OF THE**  
3       **NEGOTIATED FEE MODEL GIVEN THE CURRENT MARKET**  
4       **DYNAMIC (INCLUDING THE ESP EXEMPTION)?**

5       A. The existing model places the role of collector/distributor upon the local  
6       exchange company who provides the cost causer (i.e., the local  
7       subscriber) with access to the network resources its consumes (both  
8       Ameritech's, and via its interconnection agreement, with Level 3's as well).  
9       It then leaves the local exchange carrier in charge of determining how it  
10      will recover those costs from the cost causer.

11      **Q. DOES THE NEGOTIATED FEE MODEL ADVOCATED BY AMERITECH**  
12      **GIVE LEVEL 3 ANY ABILITY TO RECOVER INTERNET BOUND**  
13      **CALLING COSTS FROM THE COST CAUSER?**

14      A. No, it does not. Level 3 is the only market participant involved in carrying  
15      the Ameritech local subscriber's Internet bound call that has no direct  
16      commercial relationship with the caller. Absent reciprocal compensation  
17      payments, Level 3 receives no revenue from the caller in return for the  
18      costs the caller generates on Level 3's network.

19      **Q. WOULD THE ESP EXEMPTION PREVENT LEVEL 3 FROM**  
20      **COLLECTING TERMINATION COSTS DIRECTLY FROM THE ISP?**

21      A. Yes, it would. As such, without reciprocal compensation, Level 3 would be  
22      forced to terminate calls originated by Ameritech end users with no  
23      compensation whatsoever.

1       **Q. MR. PANFIL SUGGESTS THAT LEVEL 3'S USE OF VIRTUAL NXX**  
2       **CODES IMPOSES "SUBSTANTIAL UNCOMPENSATED COSTS IN**  
3       **TRANSPORTING CALLS FOR LEVEL 3'S FX CUSTOMERS..."**  
4       **(VERIFIED STATEMENT OF PANFIL AT 33) IS THIS A CORRECT**  
5       **STATEMENT?**

6       A. No. First of all, these are not FX customers. Level 3 does not purchase  
7       FX or FGA service from Ameritech. These are customers using a virtual  
8       NXX so as to have a local presence in a calling area that would result in  
9       toll charges absent the use of the virtual NXX. While it may seem to be a  
10      strained difference, it is critical because Ameritech uses this distinction to  
11      avoid compensating Level 3 for terminating calls originated by Ameritech  
12      subscribers.

13      **Q. HOW IS AMERITECH'S FX SERVICE DIFFERENT FROM LEVEL 3'S**  
14      **USE OF VIRTUAL NXX CODES?**

15      A. When FX service is purchased from Ameritech, Ameritech provisions the  
16      entire call. When an Ameritech customer dials a FX number, Ameritech  
17      switches the call, transports it from the foreign exchange to the home  
18      exchange and terminates the call to the FX customer. When an  
19      Ameritech customer dials a virtual NXX number, Ameritech switches the  
20      call and transports it to Level 3's point of interconnection. At that point,  
21      Level 3 is responsible for transporting and terminating the call, not  
22      Ameritech.

23      **Q. IS AMERITECH COMPENSATED FOR CARRYING THESE CALLS?**

1 A. Yes. Calls to ISPs via virtual NXXs are processed in exactly the same  
2 manner as other local calls. The use of a virtual NXX does not add any  
3 expense to Ameritech's handling of the calls. The key difference between  
4 Level 3's service and Ameritech's FX service is that Ameritech only has to  
5 deliver the call to Level 3's point of interconnection – which is a fixed point  
6 that should not change depending upon the customer's physical location.  
7 As a result, there should be no additional origination costs to compensate  
8 since Ameritech always hands the call off to Level 3 at the same place  
9 regardless of the customer's physical location

10 **Q. DO YOU AGREE WITH MR. PANFIL'S "SCENARIO 2" AT PAGE 34 OF**  
11 **HIS VERIFIED STATEMENT?**

12 A. No. Mr. Panfil again confuses the issue by incorrectly comparing an FX  
13 call with a call to a virtual NXX. The appropriate comparison is a call from  
14 a local Ameritech customer to a virtual NXX as compared to a call from  
15 the same Ameritech customer to a physical NXX. Ameritech is opposed  
16 to Level 3's use of virtual NXXs, so this is the appropriate comparison. In  
17 this scenario, the cost to Ameritech is exactly the same. For both calls –  
18 which could originate from the same Ameritech customer – Ameritech  
19 switches the call and transports it to the Level 3 point of interconnection.  
20 The transport and termination of the calls is the responsibility of Level 3 on  
21 the other side of the point of interconnection. Ameritech incurs no  
22 additional costs as a result of the virtual NXX. Further, Mr. Panfil has

1 failed to show that the use of virtual NXX codes has imposed any  
2 additional costs on Ameritech.

3 **Q. IF FX CALLS ARE NOT COMPARABLE TO VIRTUAL NXX CALLS,**  
4 **WHY DOES AMERITECH INSIST ON INCLUDING THE FX APPENDIX**  
5 **AND THE ASSOCIATED FX COMPENSATION SCHEME?**

6 A. The answer is obvious. Ameritech wants to characterize virtual NXX calls  
7 as FX calls to avoid reciprocal compensation; Mr. Panfil admits this at  
8 page 36 of his Verified Statement. It is undeniable that calls originated by  
9 Ameritech subscribers to a virtual NXX must be and are transported and  
10 terminated by Level 3. It is completely inappropriate for Ameritech to not  
11 compensate Level 3, just as it does for other local calls, for terminating  
12 this traffic.

13 **Q. AMERITECH SEEKS LANGUAGE THAT WOULD DEFINE LOCAL**  
14 **CALLS, AS CALLS "...WHICH TERMINATE(S) TO AN END USER**  
15 **PHYSICALLY LOCATED IN THE SAME LOCAL EXCHANGE AREA."**  
16 **(RECIPROCAL COMPENSATION APPENDIX AT 2.2.2) DO**  
17 **AMERITECH'S COSTS CHANGE, AS SUGGESTED BY MR. PANFIL,**  
18 **DEPENDING UPON THE LOCATION OF THE CALLED PARTY?**

19 A. No. All local calls originated by Ameritech customers to a Level 3  
20 customer, are delivered to a Level 3 point of interconnection. The location  
21 of the point of interconnection is what determines Ameritech's cost, not the  
22 location of the Level 3 customer being called. Ms. Aron, testifying on  
23 behalf of Ameritech, appears to agree that the points of interconnection

1 drives the costs for Ameritech, not the customer location. (See Verified  
2 Statement of Aron at 23 and 24)

3 **Q. ARE THERE OTHER PROBLEMS WITH THE FX AND FGA**  
4 **APPENDICES?**

5 A. Yes. Both of these appendices refer to “FX-like” and “FGA-like” services.  
6 Nowhere in these appendices are these services defined, even though  
7 both appendices have a section titled “Definitions.” The only purpose for  
8 including these references is to allow Ameritech to claim that calls from its  
9 subscribers to virtual NXX numbers are “FX-like” or “FGA-like” to avoid  
10 reciprocal compensation. Level 3 is not purchasing FX or FGA service  
11 and the appendices must be removed. In the alternative, if the  
12 appendices are not removed, all references to “FX-like” and “FGA-like”  
13 services must be removed.

14

15 Another obvious problem with the appendices discussed above is their  
16 vague references to compensation. The language in the appendices  
17 refers to tariffed rates for “facilities”, but nowhere in the document are the  
18 facilities identified, referenced or otherwise discussed. Such vague  
19 references should be removed in favor of specific language defining the  
20 compensation required.

21 **SECTION 5 – RESPONSE TO MR. MICHAEL SILVER AND TORSTEN**  
22 **CLAUSEN ON**  
23 **UNE COMBINATIONS AND EELS**

1       **Q. HAVE YOU READ THE TESTIMONY OF MR. MICHAEL SILVER ON**  
2       **BEHALF OF AMERITECH?**

3       A. Yes, I have.

4       **Q. HAVE YOU READ MR. SILVER'S REBUTTAL OF LEVEL 3'S POSITION**  
5       **ON THE COMBINATION OF UNES?**

6       A. Yes.

7       **Q. PLEASE COMMENT ON AMERITECH'S POSITION.**

8       A. Level 3's concern with Section 2.9.8 of the UNE Appendix was that  
9       Ameritech was somehow expanding its legal ability to restrict  
10       combinations of UNEs. After having read Mr. Silver's testimony, I believe  
11       Ameritech and Level 3 agree on the standards for combinations.  
12       Nevertheless, the UNE Appendix language should not prevent Level 3  
13       from combining UNEs with tariffed services in the future, should the FCC  
14       modify previous rulings.

15       **Q. WHAT INDICATIONS DO YOU HAVE THAT THE FCC MIGHT MODIFY**  
16       **ITS PREVIOUS RULINGS ON COMBINATIONS?**

17       A. In the recently released FCC Order on EELs, the FCC noted that it had  
18       not yet made a final resolution on the issue of combining UNEs with  
19       tariffed services. Specifically, the FCC Order states as follows:

20               We emphasize that the co-mingling determinations that we  
21               make in this order do not prejudice any final resolution on  
22               whether unbundled network elements may be combined with

1                   tariffed services. We will seek further information on this  
2                   issue in the Public Notice that we will issue in early 2001.<sup>7</sup>  
3

4                   It seems clear from this order, that the FCC may still allow combinations of  
5                   UNEs and tariffed services in the future. As such, Level 3 should not be  
6                   constrained by an order from this Commission should the FCC allow such  
7                   combinations. As such, Level 3 recommends that Section 2.9.8 of the  
8                   UNE Appendix be modified to reflect the possibility of changes in public  
9                   policy going forward.

10                  **Q. HAVE YOU READ THE TESTIMONY OF MR. TORSTEN CLAUSEN ON**  
11                  **BEHALF OF THE COMMISSION STAFF?**

12                  A. Yes, I have.

13                  **Q. DO YOU AGREE WITH MR. CLAUSEN'S PROPOSAL TO REMOVE**  
14                  **THE LANGUAGE THAT WOULD RESTRICT CLECS' USE OF**  
15                  **TARIFFED SERVICES? (VERIFIED STATEMENT OF MR. CLAUSEN**  
16                  **AT 6)**

17                  A. Yes. While Level 3 would like all restrictions removed, Mr. Clausen's  
18                  proposal is certainly an improvement over the language proposed by  
19                  Ameritech and it would allow more creative use of UNEs in Illinois.

20                  **R. MR. SILVER ALSO ADDRESSES ENHANCED EXTENDED LOOPS**  
21                  **(EELS) IN HIS DIRECT AT PAGES 21 THROUGH 29. HAS ANYTHING**  
22                  **TRANSPIRED SINCE THE PREPARATION OF YOUR DIRECT**  
23                  **TESTIMONY THAT WOULD IMPACT YOUR POSITION?**

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<sup>7</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications

1       A. Yes. The FCC has issued the *Clarification Order* that addresses the  
2       definition of a “significant amount of local exchange service.”<sup>8</sup> In my initial  
3       Statement I argued against the percentage of use restrictions  
4       recommended by SBC. (See, pages 45 through 48 of my Statement) The  
5       FCC’s *Clarification Order* at paragraph 22, adopts the same or similar  
6       percentage of use guidelines as proposed by Ameritech for determining  
7       whether local traffic is a “significant amount.” Given the FCC’s current use  
8       of such guidelines, Level 3 will not argue against those same guidelines in  
9       the interconnection agreement. Our position with respect to the inclusion  
10      of ISP-bound traffic as local traffic for purposes of any EEL certification,  
11      however, remains the same. In fact, the FCC’s comment at footnote sixty  
12      four (64) that traffic subject to a reciprocal compensation arrangement  
13      should be considered to satisfy the “significant amount” threshold of local  
14      traffic fully supports Level 3’s position that ISP-bound traffic should be  
15      considered local for certification purposes.<sup>9</sup> Level 3 also continues to  
16      dispute the potential application of termination charges to the conversion  
17      of special access circuits, as explained in my direct testimony.

18      **Q. IS MR. SILVER CORRECT TO STATE THAT LEVEL 3 BELIEVES IT**  
19      **SHOULD NOT HAVE TO CERTIFY ITS LOCAL EXCHANGE USAGE**  
20      **FOR CONVERSION OF SPECIAL ACCESS TO AN EEL? (SEE DIRECT**  
21      **OF SILVER AT 26)**

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Act of 1996; SUPPLEMENTAL ORDER CLARIFICATION; CC Docket No. 96-98; “*Clarification Order*”; Rel. June 2, 2000; at paragraph 28.

<sup>8</sup> *Id.* at 12-13.

1       A. No. Level 3 is willing to make the certifications required by the FCC for  
2       conversion of special access circuits to EELs. Level 3 does not agree,  
3       however, to Ameritech's certification form. Ameritech's certification would  
4       require Level 3 to provide customer names, addresses, numbers of lines,  
5       circuit numbers and other information that is not required for certification.

6       The FCC's *Clarification Order* states as follows with respect to  
7       certification:

8                 ...we agree with ALTS that a letter sent to the incumbent  
9                 LEC by a requesting carrier is a practical method of  
10                certification. The letter should indicate under what local  
11                usage option the requesting carrier seeks to qualify.  
12                (footnotes omitted)

13  
14       As such, the extensive information requested by Ameritech is not required  
15       of the CLECs. A letter from the CLEC to the ILEC stating the option under  
16       which the certification is being requested is sufficient.

17       **Q. CAN THE ILEC AUDIT THE CLEC INFORMATION IF IT HAS REASON**  
18       **TO BELIEVE THE CERTIFICATION STATEMENT (LETTER) IS NOT**  
19       **VALID?**

20       A. Yes. That same order allows ILECs to conduct "limited audits only to the  
21       extent reasonably necessary to determine a requesting carrier's  
22       compliance with the local usage options." (Id. at para. 29)

23       **Q. ARE THERE LIMITATIONS ON WHEN THE ILEC MAY CONDUCT AN**  
24       **AUDIT?**

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<sup>9</sup> *Id.* at 13 n.64.

1       A. Yes. Footnote 16 of the order mentioned above specifically notes that  
2       “...audits will not be routine practice, but will only be undertaken whe the  
3       incumbent LEC has a concern that a requesting carrier has not met the  
4       criteria for providing a significant amount of local exchange service.  
5       *February 28, 2000 Joint Letter* at 3. We agree that this should be the only  
6       time that an incumbent LEC should request an audit.” (Id. at n. 86;  
7       emphasis in original)

8       **Q. HAS THE FCC INDICATED ANY CONCERN OVER DELAYING CLEC**  
9       **CONVERSIONS OF SPECIAL ACCESS TO EELS?**

10      A. Yes, it has. In fact, the FCC has indicated that it will take swift  
11      enforcement actions if ILECs delay CLEC conversions. Specifically, the  
12      FCC states the following:

13               We expect that allowing requesting carriers to self-certify  
14               that they are providing a significant amount of local  
15               exchange service over combinations of unbundled loops and  
16               transport network elements will not delay their ability to  
17               convert these facilities to unbundled network element  
18               pricing, and we will take swift enforcement action if we  
19               become aware that any incumbent LEC is unreasonably  
20               delaying the ability of a requesting carrier to make such  
21               conversions.<sup>10</sup>

22       **Q. IS THE LETTER SUFFICIENT FOR CERTIFICATION IN YOUR**  
23       **OPINION?**  
24

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<sup>10</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; SUPPLEMENTAL ORDER; CC Docket No. 96-98; Released November 24, 1999; at n. 9.

1       A. Yes. The letter method allows CLECs to quickly certify their local usage  
2           and to get EELs in place. The auditing provision provides protection for  
3           Ameritech should it have cause to question the local usage claims.

4       **Q. HAS THE FCC RELIED UPON LETTERS OF CERTIFICATION IN**  
5       **OTHER PROCEEDINGS AND FOR OTHER ISSUES?**

6       A. Yes. When the FCC deregulated payphones a few years ago, it allowed  
7           the ILECs to certify their compliance with the FCC Payphone Orders with  
8           a letter. Pursuant to FCC Order on Reconsideration at paragraph 131, to  
9           receive compensation a LEC must be able to certify the following:

- 10           1) it has an effective cost accounting manual filing;  
11  
12           2) it has an effective interstate CCL tariff reflecting a reduction for  
13           deregulated payphone costs and reflecting additional multiline  
14           subscriber line charge ;  
15  
16           3) it has effective intrastate tariffs reflecting the removal of charges  
17           that recover the costs of payphones and any intrastate subsidies;  
18  
19  
20           4) it has deregulated and reclassified or transferred the value of  
21           payphone customer premises and related costs as required in the  
22           Report and Order;  
23  
24           5) it has in effect intrastate tariffs for basic payphone services (for  
25           “dumb” and “smart” payphones); and  
26  
27           6) it has in effect intrastate and interstate tariffs for unbundled  
28           functionalities associated with those lines.<sup>11</sup>

29  
30       The interexchange carriers opposed the certification process and the lack  
31       of detailed information provided by the ILECs. Nevertheless, the FCC

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<sup>11</sup> In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; ORDER ON RECONSIDERATION; CC Docket No. 96-128; 91-35; Released November 8, 1996; at 131.

1 stated in a November 8, 1999 order that, “We conclude that U S WEST’s  
2 certification letters satisfy the Commission’s requirement that a LEC ‘must  
3 be able to certify’ as set forth in the *Order on Reconsideration*.”<sup>12</sup>  
4 (emphasis in original)

5 **Q. YOU MENTIONED ABOVE THAT LEVEL 3 IS STILL OPPOSED TO**  
6 **AMERITECH’S NON-RECURRING AND TERMINATION CHARGES**  
7 **FOR CONVERTING SPECIAL ACCESS TO EELS. PLEASE RESPOND**  
8 **TO MR. SILVER ON THIS ISSUE.**

9 A. Mr. Silver is correct that the UNE Remand Order requires CLECs to pay  
10 “any appropriate” termination penalties. Level 3 asks, however, that the  
11 non-recurring charges and any penalties reflect the work that is actually  
12 done to convert a special access circuit to an EEL. The FCC recognized  
13 the difference between the cost of establishing a special access circuit as  
14 compared to merely re-naming a special access circuit. At page 30 of the  
15 FCC’s *Clarification Order* it states the following:

16 ...the conversion should not require the special access  
17 circuit to be disconnected and re-connected because only  
18 the billing information or other administrative information  
19 associated with the circuit will change when a conversion is  
20 requested.

21  
22 Level 3 and other CLECs should not be required to pay charges for taking  
23 down and putting up circuits if the work is not actually done or if it was not

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<sup>12</sup> In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; MEMORANDUM OPINION AND ORDER; File Nos. E-98-51, E-98-53; Released November 8, 1999; at page 11.

1           necessary to do the work. This approach seems to be consistent with Mr.  
2           Clausen's proposal at page 11 of his verified statement.

3           **Q. MR. SILVER STATES AT PAGE 30 OF HIS VERIFIED STATEMENT**  
4           **THAT LEVEL 3 MUST PAY ALL APPLICABLE TERMINATION**  
5           **PENALTIES IN ITS SPECIAL ACCESS SERVICE CONTRACTS.**  
6           **PLEASE COMMENT.**

7           A. It was my understanding in the recent Texas Arbitration that SBC did not  
8           have termination penalties for special access services if the service had  
9           been in place for at least 30 days. If Ameritech has penalties for shifting  
10          from special access to EELs, then the Commission should allow a "fresh  
11          look" period for CLECs. Without a fresh look option, CLECs will be forced  
12          to pay higher rates for access than they would otherwise. In other words,  
13          the termination penalties would prevent CLECs from utilizing the less  
14          expensive EELs. I recommend that the Commission allow a six month  
15          fresh look period during which termination penalties, if they exist, are  
16          waived as CLECs determine whether any of their special access circuits  
17          qualify for EELs.

18          **Q. DOES THIS CONCLUDE YOUR STATEMENT?**

19          A. Yes, it does.