

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

Before: Brian Moline, Chairman
John Wine, Commissioner
Robert Krehbiel, Commissioner

MAY 25 2004

 Docket Room

In the Matter of Arbitration Between)
LEVEL 3 COMMUNICATIONS, LLC and)
SBC COMMUNICATIONS, INC.,)
pursuant to Section 252(b))
of the Communications Act of 1934, as)
amended by the Telecommunications Act)
of 1996, for Rates, Terms, and Conditions)
of Interconnection.)

Docket No. 04-L3CT-1046-ARB

PETITION FOR ARBITRATION

Comes now Level 3 Communications, LLC (“Level 3”), pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996¹ (the “Act”), 47 U.S.C. § 252(b), and petitions the State Corporation Commission of Kansas (“Commission”) for arbitration of the unresolved issues arising out of the interconnection negotiations between Level 3 and SBC Communications, Inc. (“SBC”) (collectively, the “Parties”). Level 3 requests that the Commission resolve each of the issues identified in Section V of this Petition by ordering the Parties to incorporate Level 3's position into an interconnection agreement for execution by the Parties. Specifically, Level 3 requests that the Commission resolve each of the issues designated herein as unresolved by ordering the Parties to incorporate Level 3’s position in the interconnection agreement that is ultimately executed by the Parties. This Petition includes (1) the letter signed by both parties stating the effective date on for this

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the “1996 Act”). The 1996 Act amended the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* Level 3 refers to the amended Communications Act of 1934 as the “Act.”

Petition pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the “Act”), 47 U.S.C. §§ 251, 252 (Appendix A), (2) a list of the unresolved issues (Appendix B); and (3) the proposed interconnection agreement between the Parties, including the agreed language among the parties, the suggested language of Level 3 where there is a dispute on the terms, and Level 3’s understanding of SBC’s proposed language on the disputed terms (the “Proposed Interconnection Agreement”) (Appendix C).

In support of this Petition, Level 3 states as follows:

I. THE PARTIES

1. Level 3 is a facilities-based competitive local exchange carrier (“CLEC”). Level 3 is a Delaware limited liability company with its principal place of business at 1025 Eldorado Boulevard, Broomfield, Colorado, 80021. By orders dated May 14, 1999, in Docket Nos. 99-L3CT-318-COC and 99-L3CC-319-COC, the Commission has authorized Level 3 to provide resold and facilities-based, switched and dedicated, local exchange and intrastate interexchange telecommunications services in Kansas.

2. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals:

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Director – Intercarrier Policy
Level 3 Communications, LLC
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Level 3 agrees to accept service of pleadings and documents by email or electronic means.

3. SBC is an incumbent local exchange carrier (“ILEC”) for portions of the State. Within this operating territory, SBC has at all relevant times been an ILEC as that term is defined in Section 251(h) of the Act, 47 U.S.C. § 251(h).

4. During the negotiations with SBC, the primary contacts for SBC have been:

Nicola Erbe
Attorney
SBC Legal Department
140 New Montgomery Street
Room 1530A
San Francisco, CA 94105
(415) 836-1414 (tel.)
(415) 957-8744 (Fax)

and

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SBC Industry Markets
Area Manager, Negotiations
350 N. Orleans, Flr. 3
Chicago, IL 60654
(312) 335-6757 (tel.)
(312) 245-0254 (Fax)

II. THE INTERCONNECTION NEGOTIATIONS AND RESOLVED ISSUES

5. Since its operations in the state began, Level 3 has operated under the terms and conditions of an Interconnection Agreement with SBC that was previously approved by the Commission. Level 3 and SBC began negotiations toward a successor agreement on November 29, 2002, which was the date upon which SBC received Level 3's request to negotiate a new agreement. (A copy of Level 3's request letter memorializing the starting date of negotiations is attached as Exhibit A hereto.²). During the course of negotiations the parties have agreed to three amendments which the parties have submitted to the Commission, and which the Commission has approved. In addition, the parties executed their first letter to extend the arbitration window on June 25, 2003. From some period thereafter, the Parties held conference calls approximately twice a week, usually for at least 2 hours per call to expedite the negotiation process. Several months later both parties agreed that more time was needed to continue negotiations. On September 4, 2003 the Parties again, by letter agreement, extended the arbitration window for an additional two months. The Parties continued their twice weekly, two-hour negotiation sessions throughout this period. Despite these additional and extended negotiation efforts, the Parties determined more time was still required, so by letter dated October 14, 2003, and executed by both Parties, the arbitration window was extended for an

² The letter is dated November 27, 2002, and was sent by overnight delivery to SBC's negotiator. However, because the next day was Thanksgiving, Level 3's records indicate that the letter was not received by SBC via overnight delivery or facsimile until the following business day, November 29. As such, the applicable date for the start of negotiations is November 29, 2002.

additional four months. This new arbitration window opened on February 19, 2004 and closed on March 15, 2004. As that date approached, the parties significantly narrowed the remaining issues to two. During the last week of February, SBC proposed that the parties start negotiating anew from an entirely different, and what SBC claimed was an “updated” negotiation template. Although Level 3 was hesitant to restart negotiating after having completed substantive negotiations and filed several amendments to their existing agreement over the past fifteen months, in the spirit of good faith negotiations, Level 3 agreed to extend the window a fourth time to permit a full and fair review of SBC’s request for full re-negotiation of a comprehensive agreement. Accordingly, by letter dated March 5, 2004 the Parties agreed extend the Arbitration window until March 29, 2004. On March 26, 2004, the parties then further extended the arbitration window, and to stagger the dates by which petitions for arbitration must be filed in each of the thirteen SBC operating states. Attached as Appendix A is a copy of a stipulation by the parties setting forth the agreed dates by which petitions for arbitration must be filed. Accordingly, this Petition is timely filed within the arbitration window stipulated by the parties.

6. In an effort to reach a mutually agreeable successor to their expiring interconnection agreement, Level 3 and SBC have exchanged correspondence with respect to the proposed contract between them. While the Parties have reached agreement on many provisions of the contract, several issues remain in dispute. The Parties have not resolved differences over contract language and policy issues which are substantial and critical to Level 3’s business plans. Thus, Level 3 seeks arbitration of the remaining disputes with SBC. Level 3 will continue negotiating with SBC in good faith after this Petition is filed, and hopes that many of these issues can be resolved prior to any arbitration hearing. To facilitate resolution of these issues, Level 3 will participate in Commission-led mediation sessions, if available.

7. Level 3 and SBC agreed as part of the initial negotiations to use the existing Level 3-SBC interconnection agreement, approved by the Commission, and as amended by agreement of the parties and the Commission, as the baseline for the new contract. On November 20, 2001, in Docket No. 02-SWBT-246-IAT, the Commission approved of the terms and conditions of the Interconnection Agreement that serves as the baseline agreement of the parties. The parties also reached agreement on several additional amendments to this Agreement, which the Commission has already approved. These amendments are identified as follows:

| Amendment | Case No. | Date | Nature of Amendment |
|------------------------------|-----------------|-------------------|---------------------------------|
| Further Amendment (POI) | | May 2, 2001 | Points of Interconnection |
| 2nd Amendment (Compensation) | | April 19, 2003 | Intercarrier Compensation |
| OE LEC Amendment (NIM) | | May 14, 2003 | Network Interconnection Methods |
| Amendment 5.7 | | November 18, 2003 | General Terms and Conditions |
| | | | |

8. The 2nd Amendment referred to above continues to be enforceable up through December 31, 2004 regardless of the outcome of this arbitration.

III. JURISDICTION

9. Under the Act, parties negotiating for interconnection, access to unbundled network elements, or resale of services within a particular state may petition the state commission for arbitration of any unresolved issues during the 135th to the 160th day of such negotiations. 47 U.S.C. § 252(b). The statutorily prescribed period for arbitration expires on the date set forth in Appendix A. Accordingly, Level 3 files this Petition with the Commission on this date to preserve its rights under Section 252(b) of the Act and to seek relief from the Commission in resolving the outstanding disputes between the Parties. Pursuant to Section 252(b)(4)(C) of the Act, this arbitration is to be

concluded not later than nine months after the applicable request for negotiations, which for purposes of this petition is September 12, 2004.

10. This Commission has jurisdiction over this Petition for Arbitration pursuant to Section 252(b)(1) of the Act.³ Under the Act, parties to a negotiation for interconnection, access to unbundled network elements (“UNEs”), or resale of services within a particular state have a right to petition the state commission for arbitration of any open issues when negotiations between them fail to yield an agreement.

IV. APPLICABLE LEGAL STANDARDS

11. This arbitration must be resolved under the standards established in Sections 251 and 252 of the Act, the rules adopted and orders issued by the Federal Communications Commission (“FCC”) in implementing the Act, and the applicable rules and orders of this Commission. Section 252 of the Act requires that a state commission resolving open issues through arbitration:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; [and]
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252].

The Commission may also, under its own state law authority, impose additional requirements pursuant to Section 252(e)(3) of the Act, as long as such requirements are consistent with the Act and the FCC’s regulations.⁴

12. The Commission should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the requirements of Sections 251(b) and (c) and 252(d) of the Act. Section 251 of the Act provides the minimum

³ 47 U.S.C. § 252(b)(1.)

⁴ 47 U.S.C. 4 252(e); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 13042, ¶¶ 233, 244 (1996) (“*Local Competition Order*”).

standards for SBC in negotiating and providing interconnection to competitive local exchange carriers, including Level 3. Under Section 251(b) of the Act (47 U.S.C. § 251(b)), each local exchange carrier, including SBC, has duties described therein.

13. Section 252(d) of the Act sets forth the applicable pricing standards for interconnection and network element charges as well as for transport and termination of traffic. Section 252(d)(1) states in pertinent part that “[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment. . . and the just and reasonable rate for the network elements . . . , shall be (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit.” Section 252(d)(2)(A) further states in pertinent part that “a State commission shall not consider the terms and conditions for reciprocal compensation [for transport and termination] to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of another carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”⁵

V. UNRESOLVED ISSUES

14. The Proposed Interconnection Agreement consists of the following Appendices:

- General Terms and Conditions
- Interconnection Trunking
- Recording
- Reciprocal Compensation
- Physical Collocation
- Virtual Collocation
- Unbundled Network Elements

⁵ 47 U.S.C. § 252(d)(2)(A).

Network Interconnection Methods
Number Portability
Numbering
Out of Exchange Traffic
Emergency Services / 911
OSS - Resale
Coordinated Hot Cuts
Clearinghouse
Directory Assistance Listing
Performance Measures
Pricing

15. Level 3 and SBC have reached agreement on a substantial number of issues during the course of the negotiations. However, numerous issues remain open and unresolved. A list of unresolved issues is set forth in Attachment B to this Petition, as well as the proposed language of the actual agreement, which is set forth as Appendix C.⁶ Attachment B is organized by topic. Attachment B states each unresolved issue, assigns the issue a number, identifies the section(s) of the Proposed Interconnection Agreement which are affected by the issue, and sets forth the positions and the proposed language for the Interconnection Agreement of Level 3 on each issue.

16. Although the parties originally agreed to prepare a joint “Disputed Points List” (“DPL”), they were unable to do so in part because of the number of drafts exchanged by both parties as negotiations were completed. Accordingly, Level 3 has prepared a DPL to the best of its assessment of where the Parties stand in relation to the issues as Attachment B. Level 3 has also provided space below each issue within which SBC may respond.⁷

⁶ The second amendment to modify provisions of the existing interconnection agreement during a new contract term was provided to SBC on May 2, 2003, after separate concurrent negotiations to renew the parties’ existing intercarrier compensation, interconnection, and trunking amendment failed to reach resolution. Level 3 is willing and eager to negotiate further with SBC regarding the provisions of this second amendment in an effort to narrow the scope of issues presented in this Petition.

⁷ To facilitate further discussions and settlement of issues, upon request, Level 3 will provide SBC with an electronic copy of Level 3’s DPL so that SBC may reflect its understanding of each of these issues in a form that is convenient for the Commission to reference. Level 3 requests, however, that to the extent that SBC represents

17. Attached as Appendix C is Level 3's Proposed Interconnection Agreement. Because of the dispute between the parties on what terms the parties have agreed to, Appendix C contains the Agreement that Level 3 requests that the Commission adopt.⁸

V. UNRESOLVED ISSUES.

18. This part of the Petition contains three sections. The first summarizes the most substantive, critical business issues that Level 3 categorizes as "Tier I Issues." The second summarizes the remaining substantive issues that must be resolved in order for the agreement to be consistent with applicable law, commercially reasonable and certain in effect. Level 3 categorizes these issues as "Tier II Issues." For the Tier I and II Issues, Level 3 provides: (i) a list of the unresolved issues, referencing the section numbers in Appendix C; (ii) a summary of what Level 3 understands to be each Party's position with respect to each such issue (where known), including, where applicable, a statement of the last offer made by each Party; and (iii) a brief statement for each issue describing the legal and/or factual basis supporting Level 3's proposed resolution and the conditions necessary to achieve the proposed resolution. Finally, Level 3 summarizes those issues in the Agreement that must be reconciled so that the Agreement is clear, consistent, commercially reasonable and consistent with applicable law. For these "Tier III Issues," Level 3 references the section numbers in Appendix C and summarizes each Party's position.

A. TIER I ISSUES

issues differently than are in the DPL, that Level 3 be afforded an opportunity to respond to any such proposal from SBC.

⁸ To the extent that SBC asserts in any response that any of the matters that Level 3 understands to be and has identified as resolved are in fact open issues, Level 3 reserves the right to present its position with respect to such matters as part of this arbitration.

19. There are seven unresolved Tier I issues. The first five relate to the terms and conditions and the manner in which Level 3 and SBC will interconnect their networks:

- (1) Whether Level 3 may establish a **Single Point of Interconnection per LATA** within SBC's operating territory.
- (2) Whether Level 3 may use **local interconnection trunks** for all types of traffic
- (3) Whether SBC should be required to **Transit Traffic**, or to exchange traffic to other carriers.
- (4) Whether the definition of a "Local Call" is based on industry standards and conventions (using the NPA-NXX of the calling and calling parties) or whether it should be based on an unknown **Geographic** location of the end users.
- (5) Whether SBC is required to provide certain **Unbundled Network Elements** to Level 3.

The remaining Tier I issues relate to the financial arrangements between SBC and Level 3:

- (6) Whether SBC may create economic barriers to restrict Level 3's ability to use its existing network facilities to route its traffic via **Internet Enabling Facilities** (commonly referred to as **VoIP traffic**.)
- (7) Whether SBC can impose the access charge regime on information services traffic.

TIER I, ISSUE ONE: **Single Point of Interconnection**

Network Interconnection Methods, Sections 2.1, 2.2, 2.3, 2.5, 2.7, 4.1, 4.2.

Interconnection Trunking Requirements, Sections 4.1, 4.2, 4., 5.2.1-5.2.9, 5.3.2, 5.3.3.1, 5.3.4.2 (subject to confirmation for dispute), 5.7.3, 5.7.4.

Intercarrier Compensation, Sections 3.1, 3.5.

Statement of the Issue:

Whether Level 3 is permitted to establish a single point of interconnection within the LATA for the mutual exchange of traffic pursuant to Section 251(c)(2) of the Act?

Level 3 Position:

20. Level 3 requests that the Commission confirm Level 3's legal right to interconnect with SBC's network through a single point of interconnection, and have the ability

to establish additional POIs in a LATA at any technically feasible location. The federal Communications Act permits Level 3 to establish a single point of interconnection within a LATA for the hand off of SBC traffic to Level 3 and forbids SBC from charging for anything other than the one time costs of establishing such interconnection.

SBC Position:

21. SBC seeks to impose an obligation on Level 3 to establish a point of interconnection within each exchange, significantly increasing Level 3's cost in creating interconnection points.

Basis for Level 3's Position:

22. The federal Communications Act permits Level 3 to select a single interconnection point per LATA and requires SBC to deliver traffic originating on its network to that interconnection point at no charge to Level 3, which service Level 3 similarly provides to SBC.⁹ In addition, these statutes and rules require SBC to pay reciprocal compensation to Level 3 for the transport of SBC's originating traffic irrespective of the locations of the POI between SBC and Level 3 or of Level 3's terminating switch. Section 251(b)(5) requires that carriers establish reciprocal compensation arrangements and Section 252(d)(2) states that the agreement shall "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Further, 47 C.F.R. 51.703(a) requires carriers to establish reciprocal compensation for the transport of traffic originating on their networks, and does not provide any exceptions with respect to the location of the POI or the location of the terminating carrier's switch. SBC's contract proposal would enable it to escape its obligation to pay the

⁹ Sections 251(b)(5) and 252(d)(2); 47 C.F.R. 51.701 and 51.703.

transport portion of reciprocal compensation to Level 3 in the circumstances defined by SBC's proposal.¹⁰

23. Five federal Circuit Courts of Appeals¹¹ have upheld the FCC's "rules of the road" for interconnection. Similarly, state public service commissions have held that SBC may not impose an obligation to impose more than a single point of interconnection. In a recent Illinois Arbitration Order¹², the Illinois Commerce Commission held that a CLEC may elect to interconnect with SBC's network using a single POI or using multiple POIs, pursuant to Section 251.

TIER I, ISSUE TWO: Efficient Use of Interconnection Trunks for All Traffic.
Network Interconnection Methods, Sections 1.1, 2.4, 2.7.

¹⁰ See, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, at ¶¶ 1042, 1062 (1996) ("Local Competition Order"); *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, at ¶ 78 (rel. Jun. 30, 2000) ("Texas 271"); *TSR Wireless, LLC et al. v. US West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order (rel. Jun. 21, 2000) ("TSR Wireless"), *aff'd*, *Qwest Corp. et al. v. FCC et al.*, 252 F.3d 462 (D.C. Cir. 2001); *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, at ¶¶ 72, 112 (rel. April 27, 2001) ("Inter-carrier Compensation NPRM"); *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, at ¶ 52 (Wireline Comp. Bureau, rel. July 17, 2002) ("Federal Arbitration Order").

¹¹ *US West Comms. V. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999) (affirming lower court decision permitting single point of interconnection issued by the Nevada Commission); *Southwestern Bell Tel. Co. v. Pub. Utils. Comm'n of Tex.*, 348 F.3d 482, 485 (5th Cir. 2003) (affirming lower court grant of summary judgment that CLEC may choose any technically feasible point for interconnection and may not be charged for delivery of ILEC traffic to that POI); *Mountain Comms. Inc. v. F.C.C.*, No. 02-1255 slip op. at 10 (D.C. Cir. Jan. 16, 2004) (holding that FCC decision requiring CLEC to pay for transporting ILEC traffic to a single POI was arbitrary and capricious in that it directly contradicted, without explanation, prior FCC decision that ILEC could not charge for delivering traffic to single POI); *MCI Metro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc.*, No. 03-1238 Slip Op. at 14 (4th Cir. 2003) (reversing lower court grant of summary judgment for ILEC, finding that district court erred in concluding that the ILEC could charge the CLEC for the cost of transporting local calls originating on the ILEC network, as FCC rules unequivocally prohibit such charges and allowed no exceptions); *MCI Telecomms. Corp. v. Bell Atl. - Pa.*, 271 F.3d 491, 517 (3rd Cir. 2001) (holding that a state commission may not require CLEC to interconnect at other than the CLEC selected, technically feasible point, stating that to require otherwise "would be inconsistent with the policy behind the Act").

¹² *AT&T Communications of Illinois, Inc.*, 2003 WL 22518548 (Ill.C.C. Docket No. 03-0239 (2003))

Interconnection Trunking Requirements, Sections 1.2, 3.2, 3.3, 3.4, 3.6, 4.2, 4.4, 4.4.1, 4.5, 5.2, 5.2.1, 5.2.2, 5.2.1 – 5.2.9, 5.3, 5.3.1.1, 5.3.3.1, 5.4.1, 5.4.2, 5.4.3, 5.4.1-5.4.4, 5.7.1, 5.7.2, 5.7.3, 5.7.4, 8.8.1, 12.1, 12.1.1-12.1.4, 12.2, 12.3, 12.4, 13.1.

Out of Exchange, Sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 9.1, 9.2 , 9.4, 9.5.

Intercarrier Compensation, Section 3.1, 10.1, 13.1.

Statement of the Issue:

Whether SBC can compel Level 3 to reconfigure the Level 3 network to create duplicative interconnecting trunking arrangements which would each carry different types of telecommunications traffic.

Level 3 Position:

24. Level 3 has constructed a nationwide advanced fiber optic backbone. Where it interconnects with incumbent LECs, such as SBC, Level 3 has constructed or paid for extensive co-carrier facilities capable of carrying all forms of traffic. Level 3 asks that the Commission permit Level 3 to pass all forms of traffic over this network without having to construct an additional network.

SBC Position:

25. SBC seeks to require Level 3 to establish separate trunk groups, one for local and IntraLATA traffic and a second for InterLATA traffic for the interconnection of traffic. SBC accomplishes this by refusing to allow multiple traffic types to flow across its interconnection trunks

Basis for Level 3's Position:

26. Section 252(c)(2) of the Act requires SBC to provide interconnection to networks at 'any technically feasible point at 'rates, terms, and conditions that are just, reasonable, and nondiscriminatory.' Level 3, like other facilities-based carriers, provides for the common carriage of a mix of traffic (*i.e.* traffic that is rated according to legacy, geographically based compensation schemes as: interLATA, intraLATA toll, and local) that its customers originate and terminate, which traffic must be exchanged with SBC's network through Local

Interconnection Trunk Groups. In order to serve these customers, Level 3 must also establish facilities to carry calls. Under the Level 3 and SBC Interconnection Agreement, Level 3 has built out its network relying on trunks that carry Level 3's mix of traffic. Level 3 adjusts the size and capacity on the amount of traffic that is exchanged between SBC and Level 3, and the parties pay the appropriate compensation (reciprocal compensation for local and intraLATA and access compensation for interLATA) based on the measurement of the traffic exchanged.

27. For years, the FCC has allowed SBC to establish and use its network facilities to carry multi-jurisdictional traffic, and permitted carriers to interconnect with those network trunk facilities to complete calls. This has been true even though there has historically been different rates of compensation exchanged between carriers depending on whether the calls are deemed interstate or intrastate. The same is true of traffic delivered by a CLEC to an ILEC network.¹³

28. State public service commissions, addressing this issue, have specifically held that "economic entry into the market requires that [CLECs] be permitted to use its existing trunks for all traffic whenever feasible."¹⁴ Level 3's proposed Interconnection Agreement, consistent with this history, while also encouraging true facilities-based competition, permits Level 3 to rely on existing network interconnection configurations (built and established under the existing SBC Interconnection Agreement) to exchange Level 3's customers' traffic to SBC. State Commissions have held that the cost's imposed on CLECs in the development of their

¹³ See e.g. *in the matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 02 – 150, 17 F.C.C.R. 17,595, 17 FCC Rcd. 17,595, Memorandum Opinion and Order, FCC 02-260 ¶ 225-226 (rel. Sept. 18 2002.)

¹⁴ Order Approving Arbitration Agreement with Modifications, *In the matter of the application of Sprint Communications Company, L.P. for arbitration to establish an interconnection agreement with Ameritech Michigan*, Case No. U-11203, pp. 4-5 (1997). See also, *US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124-25 (9th Cir. 1999.)

interconnection plan are key considerations in defining the terms and conditions of an Interconnection Agreement.¹⁵

29. In contrast, SBC intends to impose on Level 3 an obligation to create interconnection trunks that can be exclusively used for either local, interLATA and intraLATA traffic. SBC refuses to allow multiple traffic types to flow across interconnection trunks. SBC's singular justification is to impose an anticompetitive price squeeze on Level 3 by forcing Level 3 to create duplicative, redundant, and therefore, completely inefficient network configuration. SBC's proposed terms would impair the ability of Level 3 develop its network trunking arrangements in a manner that most efficiently meets the technical trunking requirements.

30. Level 3, like SBC has for its own traffic, should have the ability to combine local and access traffic on the same facilities (i.e., multi-jurisdictional trunk groups) and pay SBC the appropriate compensation based on the jurisdiction of the traffic. If the call is local, Level 3 should pay the appropriate local charges and if the call is access, Level 3 should pay the associated access charges. SBC and Level 3 measure the traffic exchanged between the parties, and pay intercarrier compensation based on these measurements.

TIER I, ISSUE THREE: Transit Traffic.

Interconnection Trunking Requirements, Sections 1.3, 3.2, 3.4, 4.3, 4.3.1 – 4.3.4, 12.3.

Intercarrier Compensation, Section 4.6.

Out of Exchange, 6.1, 6.2, 6.3.

Statement of the Issue:

SBC refuses to provide for terms and conditions that would efficiently allow for SBC to interconnect Level 3's network and exchange traffic with the facilities of other carriers.

¹⁵ Re Southwestern Bell Telephone Company, PUC Docket No. 22315, Texas Public Utility Commission, March 14, 2001

Level 3 Position:

31. Level 3's existing interconnection agreement provides that SBC will interconnect, for a fee, Level 3's traffic to other carriers. Level 3 interconnects its network with the network of SBC (and other ILECs in other regions.) If a Level 3 customer attempts to complete a call that would terminate to a customer of an alternative carrier (i.e. an Interexchange carrier or another competitive local exchange carrier), SBC provides "transit." This transit interconnection permits calls to be seamlessly interconnected among carriers. The Commission should compel SBC to provide terms and conditions by which it will interconnect and transit calls from Level 3 to other carriers.

SBC Position:

32. SBC does not wish to transit calls as part of the terms and conditions of a Section 251 Interconnection Agreement. SBC would compel Level 3 to establish a separate set of interconnection trunks (in addition to the trunks described in Issue 2) for the exchange of transit traffic, at a price unconstrained by the Act or Commission orders..

Basis for Level 3's Position:

33. Transit is the functional interconnection of traffic that is originated or terminated by a third party local service provider such as an Independent Phone Company (ICO) or a CLEC other than Level 3. These carriers provide local service within the SBC region and within local calling areas where SBC provides service. SBC has interconnection trunks to these providers and exchanges traffic with them on a regular basis. The Commission should recognize that SBC is obligated, as part of its Interconnection Agreement with Level 3, to exchange traffic (for cost-based rate) with these other carriers.

34. SBC has existing interconnection trunks to all of the carriers in its region. To match the ubiquitous SBC interconnection network, Level 3 and other carriers would need to establish a whole new set of interconnection trunk groups to exchange this traffic. However, Federal and state regulations, as well as simple network economics recognize that SBC can transit traffic among carriers over its ubiquitous network much more efficiently and economically than requiring competing carriers to establish interconnection trunk facilities to every other carrier.

35. If the Commission were to require separate trunk groups for transit traffic, it would be economically unfeasible for carriers to undertake the effort to exchange traffic among each other.

36. While the FCC has held that Sections 251 and 252 of the Act do not impose a specific obligation on SBC to transit traffic,¹⁶ state Commissions adjudicating arbitration proceedings under Section 251 and 252, disagree. The Michigan Public Service Commission has held that “Ameritech Michigan must provide transit service upon request when technically feasible.”¹⁷ The basis for the Commission’s decision is that:

absent transit service, new competitors would face a significant barrier to entry due to their inability to simultaneously interconnect with every other LEC. Further, given that an important purpose of the FTA is to encourage the development of competition in local exchange markets, the Commission is not persuaded that the FTA should be interpreted to allow Ameritech Michigan to refuse to perform transiting services. Indeed, nothing in the FTA suggests that Ameritech Michigan may refuse to resell any element, function, or group of elements and functions to AT&T for use in the transmission, routing, or other

¹⁶ *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expedited Arbitration*, CC Dkt. No. 00-218, 17 F.C.C.R. 27039, Memorandum Opinion and Order (July 17, 2002.)

¹⁷ Arbitration Order, *In the matter of the application of AT&T Communications of Michigan, Inc. and TCG Detroit for arbitration of interconnection rates, terms, and conditions and related arrangements with Ameritech Michigan pursuant to 47 USC 252(b)*, Case No. U-12465, p. *12 (2000.)

provision of the telecommunications service simply because a direct interconnection with AT&T and another telecommunications provider might obviate the necessity for Ameritech Michigan to perform transiting service. For a competitive marketplace to flourish, new entrants must be able to provide service to customers in an economically viable manner.¹⁸

More importantly, SBC has already agreed to transit traffic associated with other carriers as part of its current interconnection obligations. (See e.g. existing Level 3 – SBC Interconnection Agreement, Interconnection and Trunking Requirements, Section 4.) The Commission should adopt Level 3’s suggested appendices and provide that SBC shall Transit traffic.

TIER I, ISSUE FOUR: Defining “Local Call.”

General Terms and Conditions, 1.72.

Interconnection Trunking Requirements, Sections 5.4.3, 12.2.

Intercarrier Compensation, Sections 3.5, 4.7, 4.7.1, 4.7.2, 4.7.2.1, 5.1.1-5.1.2.2.1, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 10.1, 12.6.

Unbundled Network Elements, Section 2.19.4.

Statement of the Issue:

Whether the definition of “local call” should be determined based on the NPA-NXX configurations relied upon by the industry to exchange traffic, or the unknown physical location of the customers.

Level 3 Position

37. SBC and Level 3 have agreed to define Local Calls (for non-ISP bound traffic) as those calls that are routed, based on the NPA-NXX of the calling and called parties. In the parties’ existing interconnection agreement, and according to the 2nd Amendment, a local call is a call that originates and terminates within the same wire center, as determined by the NPA-NXX

¹⁸ *In the matter of the application of Sprint Communications Company, L.P. for arbitration to establish an interconnection agreement with Ameritech Michigan*, MPSC Case No. U-11203, Order Approving Agreement with Modifications, p. 12 (1997.)

of the calling and called parties. Level 3 proposes to maintain this approach, and rely upon the NPA-NXX designations for purposes of defining local calls.

SBC Position

38. SBC, notwithstanding the industry practices in relying upon the NPA-NXX routing codes to define a “Local Call,” would instead attempt to define a “local call” (for reciprocal compensation purposes) based on the unknown geographic location of the originating and terminating caller.

Basis for Level 3’s Position

39. Traditionally, local exchange carriers have relied on NPA-NXX codes associated with a person’s telephone number to rate and route call traffic. Based on this routing convention, local calls, for purposes of applying the local exchange carriers’ rates and tariffs, were defined as calls that originated and terminated to wire centers that shared NPA-NXX codes. Switches within a local calling area know which numbers are associated with the local calling area and which numbers are not. The local switches know which numbers are local numbers, route the calls accordingly, and bill accordingly. A call that is made between two numbers assigned to a local calling area is treated as a local call.

40. The Federal Communications Act and FCC decisions require that the jurisdiction of the traffic be determined by the origination and termination points of the call. In other words, if the call originates and terminates within the SBC defined local calling area (including mandatory EAS), the call is local and not subject to access charges. In the alternative, if the call originates in one local calling area and terminates in a different local calling area, the call is not local and would be subject to the appropriate access charges.

41. The FCC has held that “industry practice among local exchange carriers ... appears to have been that calls are designated as either local or toll by comparing the [phone

numbers] of the calling and called parties."¹⁹ The Commission should adopt this practice for purposes of defining the terms and conditions of the parties' Interconnection Agreement.

TIER I, ISSUE FIVE: Unbundled Network Elements.

Unbundled Network Elements, 3.3.1, 2.3, 2.10 and subsections, 2.12 and subsections, and 2.15 and subsections.

Statement of the Issue:

Whether SBC must comply with state and federal requirements that prohibit SBC from unilaterally withdrawing or restricting the availability of unbundled network elements.

Level 3 Position

42. Level 3 has a statutory right to obtain unbundled network elements from SBC pursuant to 47 U.S.C. § 251, and independent state law. Level 3 requests that the Commission affirm that SBC has an obligation to make network elements available to Level 3 without threat of that SBC may unilaterally determine that it will no longer make network elements available by exercising an unlawful provision in its Interconnection Agreement. Level 3 has proposed terms and conditions to confirm that it is entitled to receive network elements that are made available to competitive local exchange carriers. In addition, so long as Level 3 is providing a qualifying service, SBC should be precluded from interfering with Level 3's provision of any other service, whether qualifying or non-qualifying; once Level 3 has obtained lawful access to a UNE to provide a qualifying service, Level 3 is permitted to use that UNE to provide any additional services, including non-qualifying telecommunications and information services.

SBC Position:

¹⁹ *Starpower Communications v. Verizon South*, EB- 00-MD-19, Memorandum Opinion and Order, ¶ 17, 8 FCC Rcd. 23,265 (Nov. 7 2003.)

43. SBC proposes to grant itself the ability to unilaterally terminate the availability of network elements, regardless of state or federal law. In addition, SBC would restrict the ability of Level 3 to use network elements to serve its customers that purchase more than one type of service from Level 3. SBC would prohibit Level 3 from providing any non-telecommunication service to an end user that Level 3 serves using unbundled network elements.

Basis for Level 3's Position

44. SBC places restrictions on UNEs and UNE combinations that restrict Level 3's use of UNEs in general and UNE combinations in particular. The language in many of the restrictions are vague, such that the terms could be relied upon by SBC to unilaterally assert that SBC is no longer required to provide access to UNE and UNE combinations.

45. One restriction that SBC seeks to impose is the requirement that Level 3 use UNE's only for "qualified services".²⁰ SBC prohibits Level 3 from using network elements where there is a nonqualifying service being provided at any time to an end user that Level 3 serves, even though Level 3 relies, upon UNEs to also provide that customer other qualifying services. SBC also prohibits Level 3 from relying on any UNE to provide a qualifying services if Level 3 simultaneous provides a non-qualifying service. SBC's proposed language would give SBC the discretion to unilaterally convert Level 3's network elements to 'wholesale services' purchased at non-cost based prices. There is no legal authority to support SBC's terms.

TIER I, ISSUE SIX: Using Interconnection Facilities for Internet Enabled Traffic.

Interconnection Trunking Requirements Appendix, Section 13.1

Intercarrier Compensation, Sections 3.1, 4.2, 4.5, 4.7-4.7.2.1, 7.1, 7.2, 16.1, 17.1,

²⁰ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, ¶ 100 FCC 03-36 (Aug. 21, 2003).*

Statement of the Issue:

Whether SBC may prohibit Level 3 from utilizing local interconnection facilities to terminate Internet-enabled traffic.

Level 3 Position:

46. Level 3 seeks to be able to interconnect its network with SBC's network and exchange calls on behalf of its network via Internet enabled signals. Level 3 constructed a network optimized to provide advanced telecommunications and enhanced services to customers throughout the United States and Europe. Because of the advanced features of its network it provides suites of enhanced services that also permit connections to the PSTN. Level 3's name reflects the fact that its network is optimized to permit the end user customer to exploit the full benefits of IP technology, which are delivered via the IP family protocols, which protocols reside at the third layer of the network. Thus, Level 3 requires the ability to interconnect with SBC for a variety of Internet-enabled signals.

SBC Position:

47. SBC's position is that regardless of whether Internet-enabled traffic is an information or telecommunications service, if it originates in one LATA and terminates in another, it is subject to access charges. SBC also attempts to illegally limit the availability of UNEs for use with Internet-enabled traffic.

Basis for Level 3's Position:

48. SBC ignores federal law and seeks to impose access charges upon carriers such as Level 3 who provide interconnection services for enhanced service providers ("ESPs") applications such as VoIP. The FCC has repeatedly determined that for sound public policy reasons, such as to promote the growth of the Internet and to retain a deregulatory environment

in which Internet enabled services can flourish, ESPs are treated as end users.²¹ ILEC access tariffs do not apply to these customers. Thus, ILECs cannot legally charge these customers minute sensitive access charges. Therefore, for purposes of intercarrier compensation, Level 3's ESP customers must be treated like any other business customer of local services and the carriers exchange reciprocal compensation according to 47 U.S.C. § 251(b), 47 C.F.R. § 51.701 and related FCC Orders.

TIER I, ISSUE SEVEN: Intercarrier (Reciprocal) Compensation.

Intercarrier Compensation, Sections 3.1, 3.6, 3.7, 4.7- 4.7.2.1, 5.1, 5.1.1-5.1.2.2.1, 7.1, 7.2, 12.1-12.6, 12.9, 13.1, 14.1, 15.1, 15.2, 15.3, 15.4, 16.1, 17.1,

Statement of the Issue:

Whether SBC can impose the access charge regime on information services traffic.,

Level 3 Position:

49. Level 3 requests that the Commission follow federal law on the treatment of intercarrier compensation for information services.

SBC Position:

50. There are two components to SBC's position. First, SBC asserts that it is permitted to assess non-cost based access charges to Level 3 for the interconnection of information services. In addition, SBC asserts that it is permitted to deny reciprocal compensation for foreign-exchange type traffic.

²¹ *MTS and WATS Market Structure*, 97 FCC 2d 682, ¶¶ 77-8, 83 (1983), *aff'd in principal part and remanded in part, National Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984); *WATS Related and Other Amendments of Part 69 of the Commission's Rules*, 64 RR 2d 503, 3 FCC Rcd 496, ¶ 10 (1988); *Access Charge Reform*, First Report and Order, 12 FCC Rcd. 15982, ¶ 342 (1997) (affirming that "ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, *even for calls that appear to traverse state boundaries.*") (emphasis supplied), *aff'd, Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *Intercarrier Compensation NPRM* at ¶ 6 ("long-distance calls handled by ISPs using IP telephony are generally exempt from access charges under the enhanced service provider (ESP) exemption"); 47 CFR § 69.5(b) (requiring payment of interstate access charges by "*interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.*") (emphasis supplied).

Basis for Level 3's Position:

51. With respect to reciprocal compensation obligations, Section 251(b)(5) of the Act imposes on each local exchange carrier ("LEC") "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." (47 U.S.C. §251(b)(5).)

52. As the FCC ruled in the *ISP Compensation Order*, all telecommunications traffic is subject to reciprocal compensation arrangements unless it falls within the exemptions established by Section 251(g) of the Act (47 U.S.C. §251(g)). Level 3's contract language is consistent with the Act and related precedent. SBC, however, has proposed language for a number of provisions of the Appendix relating to Intercarrier Compensation (Including Reciprocal Compensation) that will have the effect of enabling SBC to avoid its obligation under law to provide compensation to Level 3 for terminating local traffic originating with an SBC retail customer, while preserving SBC's ability to receive compensation from Level 3 for terminating local traffic originating with a LEVEL 3 retail customer.

53. In the *ISP Compensation Order*,²² the FCC stated that ISP-bound traffic fell within the Section 251(g) carve out. This finding, however, was rejected by the D.C. Circuit Court of Appeals which held that the FCC could not subject ISP-bound traffic to the Section 251(g) carve out because that section preserved certain compensation mechanisms that were in effect when Congress enacted the Act.²³ The Court noted that even the FCC acknowledged that there had been no pre-Act obligations relating to intercarrier compensation for ISP-bound traffic. However, concluding that the FCC's analysis of Section 251(g) was erroneous, the Court declined to vacate the *Order* which requires all local telecommunications traffic not "carved out" by Section 251(g) of the Act to be subject to reciprocal compensation. SBC's contract language

²² *In the Matter of Compensation for ISP-Bound Traffic*, Order on Remand, FCC 01-0131 (April 27, 2001.)

²³ *WorldCom, Inc. v. FCC*, 2002 WL 832541 (D.C. Cir.)

proposals, which would provide for numerous exceptions to SBC's reciprocal compensation obligations, limit the type and selectively use the reciprocal compensation regime that the FCC sought to eliminate in the *ISP Compensation Order*:

It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply *only* if an incumbent LEC offers to exchange all traffic subject to 251(b)(5) at the same rate.²⁴

54. With respect to network interconnection issues, SBC has proposed language in Appendix 4 (Transmission and Routing of Telephone Exchange Service pursuant to Section 251(c)(2) of the Act) that is designed to shift to Level 3 a significant part of SBC's financial responsibility for transporting its originating traffic to Level 3's network, contrary to the FCC's rules. Section 51.703(b) of the FCC's rules, 47 C.F.R. § 51.703(b), provides that a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

55. In its April 2001 *ISP Remand Order* the FCC asserted exclusive jurisdiction over compensation issues related to ISP-bound traffic.²⁵ In the *ISP Remand Order*, the FCC ruled that traffic to ISPs was excluded from the reciprocal compensation requirements of Section 251(b)(5)

²⁴ *ISP Compensation Order*, 789 [emphasis in original.]

²⁵ Although the U. S. Court of Appeals for the D.C. Circuit remanded the *ISP Remand Order* to the FCC for further consideration, the Court did not vacate the Order, leaving the federal compensation regime in place while the FCC deliberates the issue once again. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Accordingly, even though the legal rationale supporting the basis for the FCC to promulgate its federal compensation regime has been rejected, the federal compensation regime itself remains intact and applies in this case.

by operation of Section 251(g) of the Act.²⁶ Further, under its authority to preempt the authority of states over intrastate communications recognized in *Louisiana PSC v. FCC*,²⁷ the FCC held that state commissions no longer had jurisdiction to address the issue of intercarrier compensation for ISP-bound traffic.²⁸ Thus, going forward, the FCC has sole authority to address all questions relating to intercarrier compensation for the exchange of ISP-bound traffic. Level 3's position is that it is entitled to intercarrier compensation under the FCC's regime for all locally dialed ISP bound traffic.

56. State Commissions have recognized that the ISP Remand Order has effectively preempted Commission jurisdiction to address compensation issues for ISP bound traffic, and held: "The FCC's intent to preempt a state commission's authority to address reciprocal compensation for ISP bound traffic is clear."²⁹

57. For the purposes of this Agreement, Level 3 would assert that all calls within a LATA will be treated as "local" and access charges will not apply. Upon information and belief, SBC would contend that if the modem bank is within a particular LATA and the call terminates in that LATA, the call is interstate and the FCC has preempted the Commission's jurisdiction to set compensation. Yet SBC would also contend that if the modem bank is physically located outside of the LATA to which the ISP's telephone number is assigned, the call is intrastate and the Commission has jurisdiction to impose bill and keep. SBC is wrong on both assertions. The

²⁶ *ISP Remand Order*, at ¶ 46. This aspect of the *ISP Remand Order* was rejected by the D.C. Circuit. *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

²⁷ *Louisiana PSC v. FCC*, 476 U.S. 355, 106 S. Ct. 1890 (1986).

²⁸ *ISP Remand Order*, at ¶ 82.

²⁹ *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunication's Act of 1996*, Docket No. 000075-TP, Order Approving Stipulation, Phase I, Order No. PSC-02-0634-AS-TP (Florida PSC May 7, 2002).

FCC does *not* distinguish between “local” ISP-bound traffic and “non-local” ISP-bound traffic.

In fact, the FCC repudiated its earlier distinction between “local” and “non-local” for all traffic:

This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection [251](b)(5) as all “local” traffic. We also refrain from generally describing traffic as “local” traffic because the term “local,” not being a statutorily defined category, is particularly susceptible to varying meanings, and significantly, is not a term used in section 251(b)(5) or section 251(g).³⁰

Instead, the *ISP Remand Order* makes clear that the new federal regime applies to *all* ISP-bound traffic: “We conclude that this definition of ‘information access’ was meant to include *all access traffic* that was routed by a LEC ‘to or from’ providers of information services, of which ISPs are a subset.”³¹ Nowhere does the *Order* limit its regime to “local” ISP-bound traffic.

58. The FCC was fully aware that CLECs were using foreign exchange-like (“FX-like”) arrangements to serve ISPs long before the *ISP Remand Order* was released. Several carriers—both ILECs and CLECs, including Level 3—asked the FCC to include FX-like traffic within the scope of the order.³² Several state commissions have recognized that the *ISP Remand Order* addressed all ISP-bound traffic, including traffic to ISPs that do not have a modem bank in the LATA and use FX-like arrangements.³³ An Arbitration Panel of the Texas Public Utility

³⁰ *ISP Remand Order*, at ¶ 34.

³¹ *ISP Remand Order*, at ¶ 44 (emphasis added).

³² See *ex parte* filings in FCC CC Docket No. 99-68: Letter dated March 28, 2001 from Gary L. Phillips, SBC Telecommunications, Inc., to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 3; Letter dated March 7, 2001 from Susanne Guyer, Verizon, to Dorothy Attwood, at 2-3; Letter dated December 13, 2000 from John T. Nakahata, Counsel to Level 3 Communications, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 1.

³³ See *Essex Telecom, Inc. v. Gallatin River Communications, L.L.C.*, Docket No. 01-0427, Order, at 8 (Ill. C.C. July 24, 2002) (“with the adoption of the *ISP Remand Order*, the Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls.”); accord, *Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.01-11-045, A.01-12-026, Opinion Adopting Final Arbitrator’s Report With Modification (Cal. PUC July 5, 2002); *Investigation as to Whether Certain Calls are Local*, DT 00-223, *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas*, DT 00-054, Final Order, Order No. 24,080 (NH PUC Oct. 28, 2002); *Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms, and Conditions*, Docket No. 05-MA-130, Order Approving an Interconnection Agreement, at 8-9 (Wisc. P.S.C. Feb. 13, 2003); *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc.*, Docket No.

Commission has also considered the issue, and specifically addressed a position similar to the one taken by SBC in this proceeding. The Texas Arbitrators rejected the argument that “the ISP Remand Order does not apply to all types of ISP-bound traffic, but only to ISP traffic that originates and terminates in the same local calling area.”³⁴ Because the FCC had said ISP-bound traffic was subject to Section 251(g) rather than Section 251(b)(5), all compensation for it was governed by the FCC’s rules adopted under its Section 201 authority.³⁵ The Commission also issued a decision regarding this issue stating that “due to the FCC’s recent *ISP Remand Order*, which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers.”³⁶

59. Because the FCC has exclusive jurisdiction over locally-dialed calls to ISPs, regardless of whether the ISP has equipment in the LATA and is served through an FX-like arrangement, the Commission should adopt Level 3’s position and apply the FCC’s interim compensation regime to all locally-dialed ISP-bound traffic.

UT-023043, Seventh Supplemental Order: Affirming Arbitrator’s Report and Decision, at 2-4 (Wash. U.T.C. Feb. 27, 2003); *Investigation into the Use of Virtual NPA/NXX Calling Patterns*, UM 1058, Order (Ore. PUC May 27, 2003), *rehearing denied*, Order (Ore. PUC Sep. 16, 2003); *Allegiance Telecom of Ohio, Inc.’s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award, at 9 (PUC Ohio Oct. 4, 2001) (“The Commission agrees . . . that all calls to FX/virtual NXX [numbers] that are also ISP-bound are subject to the inter-carrier compensation regime set forth in the ISP Remand Order.”); *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (PUC Ohio May 9, 2002); *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Dkt. No. 01-01-29, at 41-2 (Conn. DPUC Jan. 30, 2002) (“intercarrier compensation for ISP-bound traffic is within the jurisdiction of the FCC and that on a going forward basis, the Department has been preempted from addressing the issue beyond the effective date of the ISP Order [June 14, 2001].”); *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sept. 7, 2001) (with respect to FX-like traffic, the ISP Remand Order “takes care of ISP traffic.”).

³⁴ *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for “FX-Type” Traffic Against Southwestern Bell Telephone Company*, PUC Docket No. 241015, Revised Arbitration Award, 31 (Tex. PUC Aug. 28, 2002).

³⁵ *Id.*

³⁶ *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Order on Reciprocal Compensation, Phases II and IIA, Order No. PSC-02-1248-FOF-TP, 26 (Fla. PSC Sept. 10, 2002).

B. TIER II ISSUES.

10³⁷. Liability for Hazardous Substances and Environmental Hazards Introduced by SBC or Third Parties. (General Terms and Conditions, Section 32.)

60. Section 32.1 of the General Terms and Conditions of the Proposed Interconnection Agreement contains language that imposes liability on Level 3 for hazardous waste contributed by Level 3 at SBC's central offices. Level 3 has no objection to this term. However, Level 3 should not be liable for removal, treatment, transport, disposal and remediation of hazardous substances and environmental hazards at SBC work sites including, but not limited to central offices where Level 3 is collocated if the hazardous substances or environmental hazards were introduced before, during or after Level 3's occupation of collocation space at the work site by SBC or a third party unrelated to Level 3. It is commercially unreasonable for SBC to attempt to hold Level 3 liable for removal, treatment, transport, disposal, remediation, excavation, storage, and other legal disposition or management of hazardous substances or environmental hazards that SBC itself or a third party with no contractual or other relationship to Level 3 introduces to an SBC work site before, during or after Level 3's occupation of collocation space, access to a right-of-way, pole or conduit. Specifically, Level 3 proposes the parties existing agreement be revised by adding language to Section 32.1 that would clarify Level 3's obligation.

61. Under Level 3's language, Level 3 is responsible for hazardous substances and environmental hazards that Level 3 or its authorized contractors introduce to an affected site. Only when Level 3 or an authorized contractor acting on its behalf introduces hazardous substances or environmental hazards to a site would Level 3 be the cost causer of related remediation, management and disposition expenses. SBC has proposed one-sided and unreasonable language would hold Level 3 liable for remediation and management of hazardous

³⁷ Numbers for Issues 8 and 9 were held in reserve and are intentionally left blank.

substances and environmental hazards that Level 3 had nothing to do with. Level's proposed language allocates responsibility by causation. Under SBC's proposed language Level 3 would be responsible for expenses relating to "all Hazardous Substances and Environmental Hazards introduced to the affected location" even if the Hazardous Substances and Environmental Hazards were introduced to the work site by SBC itself, SBC's contractors, or third parties with no contractual or other relationship to Level 3, and even if these hazardous materials were introduced before Level 3 became collocated at the central office. SBC's language contains no limitation as to time or causality. As a result, under SBC's proposed language, Level 3 is forced to assume liability for any contamination and subsequent remediation of any SBC property where Level 3 has collocated telecommunications equipment or otherwise established a physical presence (such as blowing fiber optic cable through an SBC conduit, or perhaps even leasing an SBC unbundled network element). SBC attempts to have Level 3 assume liability for remediation and other expense relating to Hazardous Substances and Environmental Hazardous that were introduced by SBC, its predecessors in interest, its contractors, or even unrelated third parties years or even decades before, during or after Level 3 has leased collocation space or otherwise somehow "occupied" the affected SBC work site.

62. Other state commissions that have examined the issue have adopted Level 3's proposed position. For example, the Public Service Commission of Missouri in a Section 252(b) arbitration rejected language proposed by SBC because SBC's proposed language "would allow [SBC] to sue [the CLEC] for damages due to hazards introduced at a work site by a third party rather than suing the responsible third party."³⁸

³⁸ *In the Matter of LEVEL 3 Communications of the Southwest, Inc.'s Petition for Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. TO-8-115, 1997 Mo. PSC LEXIS 138, 7 Mo. P.S.C. 3d 54, at *56 (1997).

11. NonPayment and Procedures for Disconnection (General Terms and Conditions §§ 8.8.1, 9.2, 9.3, 9.5, 9.6, and 9.7)

63. The Interconnection Agreement should make clear that neither party can unilaterally terminate services provided pursuant to the agreement without first following all of the applicable contractual and legal requirements with respect to discontinuance of services. SBC has proposed terms that would allow it to terminate services provided under the agreement whenever Level 3 fails to pay charges that SBC believes are owed. Furthermore, SBC wants that ability to extend throughout its thirteen state regions to which Level 3 has already stated its objections.

64. The Commission should reject SBC's proposed terms, and adopt Level 3's more reasonable terms. Termination of services provided under the agreement for nonpayment is a drastic measure that can have significant impact on customers and end users. As such, termination, at a bare minimum, should occur only after a party has not paid money that it either agrees it owes (*i.e.*, that is not subject to dispute resolution) or that a Commission or arbitrator has found it owes. However, in Level 3's experience, SBC has at times "denied" or ignored disputes – thereby claiming that the dispute resolution process is unilaterally closed – and then threatened termination of services for nonpayment. In light of these concerns, Level 3 believes it is critical for the new contract to contain safeguards against SBC's unilateral termination of services. This concern is acute in light of the fact that Level 3 is not in a market position to possess a reciprocal termination of service remedy. SBC as the ILEC and dominant carrier of last resort may well be economically motivated to accelerate termination of services and avoid contractual provisions that do and should inhibit service terminations. SBC's aggressiveness in this regard is patently apparent from SBC's recent actions. In a "UNEs" amendment SBC circulated to CLECs, including Level 3, on or about March 11, 2004 SBC requested that CLECs agree to contract changes permitting SBC the right to terminate UNE

services should the CLEC fail to disconnect a UNE and transition UNE circuits to SBC tariffed services (to the extent SBC deems those services as “available” under its tariff) within 30 days of the date upon which the DC Circuit’s Order in *USTA v. FCC*³⁹ takes effect. SBC also stated in the letter that parties not agreeing to its terms would face dispute resolution complaints within eight (8) days of the date that it filed the letter.

12. Deposits ((General Terms and Conditions, § 7.)

65. Throughout the Agreement, the parties acknowledge the different rights and obligations with respect to different states and jurisdictions, and the parties have specifically tailored their relationship in a way to recognize different regulatory and market factors in each of the 13 different states that SBC provides services to Level 3. Similarly, the payment terms and conditions, and specifically the terms by which SBC would be entitled to receive a security deposit or some other form of reasonable assurance of payment, should conform to the other terms of the agreement where the parties acknowledge these state distinctions. The dispute between Level 3 and SBC with respect to Section 7 relates to the terms and conditions under which SBC may demand that Level 3 provide a deposit. There are three central issues in this Section: a) when should a deposit be required; b) for which states is SBC entitled to receive a deposit; and c) can Level 3 dispute SBC’s demand for a deposit.

66. Section 7 of the General Terms and Conditions governs the rights and responsibilities in the event that a party to the agreement fails to make timely payment. Level 3 proposes language that would require a deposit where Level 3 has substantially failed to comply with the requirements for disputing charges billed by SBC. SBC should not be permitted to demand a deposit (or to demand an increase for an existing deposit) unless there has been a significant and material change

³⁹ *United States Telecom Ass’n v. FCC*, Case No. 00-1012 (D.C. Cir. Mar. 2, 2004) (“*USTA II*”).

in a carrier's financial circumstances since the effective date of the amendment. Furthermore, Level 3 should not be required to provide a deposit where SBC has not itself complied with the relevant provisions of the interconnection agreement relating to presentation of invoices and dispute resolution.

67. SBC does not agree to use the effective date as the window for comparing creditworthiness. Furthermore, SBC objects to conditioning a deposit demand on there being a "significant and material" impairment in credit status. Finally, SBC objects to Level 3's proposal to require only "substantial" compliance with the billing terms, and to conditioning SBC's ability to require assurance of payment on its own substantial compliance with billing and dispute resolution clauses in the agreement.

68. Level 3's proposed terms are fair and reasonable to both parties. Level 3 is not objecting to SBC's demand to include assurance of payment provisions in the contract, but is only trying to define better the circumstances under which such assurance can be sought or increased. For example, it is unclear to Level 3 how SBC would measure a relative impairment in creditworthiness if the reference point for comparison is not defined. Moreover, Level 3's suggestion to add that a change in circumstances must be "significant and material" prior to assurance of payment being demanded is a narrow and reasonable limitation on SBC's ability to seek a deposit; for example, without such a limitation, SBC could conceivably take an unfavorable comment by one investment analyst (regardless of the basis for that report) as justification for demanding additional assurance. Finally, given the complicated nature of intercarrier billing, SBC should only be permitted to seek assurance of payment where Level 3 has failed to substantially comply with payment and dispute resolution requirements – and if such a condition is to be included in the contract at all, it should be reciprocal, such that SBC cannot demand assurance of payment

unless it has likewise complied (substantially or entirely) with the corresponding requirements with respect to billing and dispute resolution.

13. Should Assurance of Payment Apply on a State-by-State Basis or Across the SBC 13-State Region? General Terms and Conditions, § 7.2.)

69. The contract between the parties applies and is approved on a state-by-state basis. The bills and payments apply for services rendered on a state-by-state basis. SBC should not be permitted to request a deposit in all 13 states based upon a failure to timely pay an undisputed bill in any one state. Furthermore, the application of a region-wide remedy based upon a single or subset of state circumstances is contrary to the grant of state responsibility set out in section 253 of the Federal Communications Act.

70. SBC objects to limiting the assurance of payment requirements to a state-by-state basis. SBC has stated that since a carrier will file bankruptcy in all states where it does business, this requirement cannot be limited to a state-by-state consideration. Furthermore, SBC has stated that a carrier may try to “game” the state-by-state circumstance when there is reason for a carrier to not pay in one market but continue service with SBC in its other states.

71. The error in SBC’s logic is clear from its explanation of its position. The assurance of payment provision applies to situations beyond bankruptcy – and in fact, contractual assurance of payment should have nothing at all do with bankruptcy, which is subject to its own set of laws governing relationships between debtors and creditors. Furthermore, nothing in Level 3’s proposal to limit the assurance requirements to a state-by-state application would limit SBC from seeking assurance of payment in all 13 states simultaneously if the contract requirements were triggered in each jurisdiction. Level 3’s proposal would only make clear that where the contract requirements are triggered with respect to only one state – say, for example, Missouri – SBC could not then

demand a separate deposit for Texas, Illinois, Michigan, California, Connecticut, etc. Indeed, as a matter of jurisdiction, the Commission should not approve an assurance provision that gives SBC the ability to recover deposits in other states based upon a single potential problem in Texas – and it should be concerned about a provision that would allow SBC to demand assurance of payment in Texas based upon a problem arising in Michigan or Connecticut. Accordingly, the Commission should approve Level 3’s proposal for these contract sections.

15.⁴⁰ Should Level 3 be Permitted to Dispute a Demand for Assurance of Payment?(General Terms and Conditions, § 7.8, 7.8.1)

72. Level 3 should have the right to dispute whether assurance of payment is required under the terms of the agreement. SBC should not be allowed to cease performing or providing service where such disputes arise.

73. SBC wants the ability to cease all performance under the agreement and to move to terminate the agreement if Level 3 disputes the requirement to furnish assurance of payment. Level 3 understands SBC’s desire to obtain reasonable assurance of payment. SBC cannot be permitted, however, to cease unilaterally all performance under the contract where Level 3 raises a good faith, bona fide dispute with respect to a SBC demand for assurance of payment. If SBC were allowed to do so, it would effectively shut off Level 3’s ability to compete at a moment’s notice should Level 3 feel that a demand for assurance of payment was unwarranted. Indeed, under SBC’s proposal, SBC could even shut Level 3 off over a dispute about the amount of a deposit – for example, if Level 3 thought the proper deposit amount was \$25,000, and SBC thought it was \$50,000, SBC could stop exchanging traffic with Level 3 and cease provisioning services to Level 3 until Level 3 tendered the disputed amount. SBC should not be given the unilateral right to override the dispute resolution provisions of the contract, and Level 3’s position should therefore be adopted.

⁴⁰ The numbers for Issue 14 was held in reserve and is intentionally left blank.

16. Should the Performance Measurements Appendix be included in the Interconnection Agreement? (Entire Appendix)

74. Over the course of the last year, SBC and Level 3 have negotiated the terms of a Performance Measurements Appendix that would establish certain benchmarks related to the manner in which SBC meets its obligation to provide its services under the Agreement. In fact, the two Parties reached an accord on the language to that Appendix several months ago. Thus, at this time, in terms of the underlying language in the Appendix, the parties are in agreement and there are no disputes with the provisions contained in the Appendix.

75. However, after the terms of the Performance Agreement were finalized and in an attempt to not waste resources, the Parties agreed to withhold submission of the Performance Measurements Appendix for regulatory approval until the negotiations related to the present arbitration were finished and an arbitration proceeding was initiated. At that time, the parties agreed to include the Performance Measurements Appendix in the arbitration as an undisputed item. Subsequent to that agreement and as a part of the negotiations leading up to this arbitration, SBC informed Level 3 that it no longer believes the Performance Measurements Appendix should be included in the interconnection agreement.

76. It is Level 3's understanding that SBC believes it no longer is required to include performance measurements as part of an interconnection agreement under its interpretation of a court order in *CoServe Ltd. Liability Corp. v. Southwestern Bell Tel Co.*, 350 F.3d 482 (5th Cir. 2003). ("*CoServe*"). SBC interprets the Court's holding in *CoServe* to indicate that SBC is not under any obligation to include terms in its Section 251 and 252 interconnection agreements that it has not volunteered to provide.

77. Level 3 believes that submission of the Performance Measurements in this arbitration is appropriate. In any event, irrespective of the Court's finding in *CoServe*, SBC has already voluntarily agreed to adhere to the performance measurements when it reached agreement with Level 3 on the terms contained in the Performance Measurement Appendix.

17. Should the Interconnection Agreement include terms in the Out of Exchange Appendix that limits SBC's obligation to provide UNE, collocation and interconnection services pursuant to only federal law? (Out of Exchange Traffic Appendix, § 2.3)

78. SBC-proposed language in the Out of Exchange Appendix, Section 2.3, is a lengthy recitation on SBC's view of the current state of law with respect to its obligation to provide services. The proposed language reads in its entirety:

2.3 The underlying Interconnection Agreement sets forth the terms and conditions pursuant to which **SBC-12STATE** agrees to provide CLEC with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in **SBC-12STATE**'s incumbent local exchange areas for the provision of CLEC's Telecommunications Services. **The Parties acknowledge and agree that SBC-12STATE is only obligated to make available UNEs and access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC-12STATE's incumbent local exchange areas. SBC-12STATE has no obligation to provide such UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC-12STATE's incumbent local exchange areas. In addition, SBC-12STATE is not obligated to provision UNEs or to provide access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC-12STATE's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in SBC-12STATE's current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall apply only to the Parties and be available to CLEC for provisioning telecommunication services within an SBC-12STATE incumbent local exchange area(s) in the State in**

which CLEC's current Interconnection Agreement with SBC-12STATE has been approved by the relevant state Commission and is in effect.

79. Level 3 takes the position that the proposed language specifically limits SBC's obligation to provide UNE and collocation services pursuant only to federal law. SBC's proposed language expressly ignores any applicable state laws and commission orders relating to these issues. The SBC-proposed language serves only as an unnamed waiver of state unbundling, collocation and interconnection obligations, and of any Section 271 unbundling obligations imposed on SBC. As such, Level 3 can not "acknowledge and agree" with SBC's interpretation of the current state of the law.

APPENDIX PHYSICAL COLLOCATION

ISSUE 18. Entire Physical Collocation Appendix.

80. In March 2004, SBC provided Level 3 with a draft appendix for Physical Collocation. However, the draft appendix contained numerous errors and omissions in the appendix that made it difficult, if not impossible to redline and return to SBC. On about May 17, 2004, Level 3 delivered to SBC a proposed alternative Physical Collocation Appendix. This alternative Appendix was similar in form to Collocation appendices that SBC has used in the past, and is similar to the existing SBC-Level 3 Appendix. As of the date of the preparation of this Petition, SBC had not had the opportunity to advise Level 3 on which terms of that Appendix SBC would find acceptable, and which terms it would dispute.

81. Upon information and belief, Level 3 would anticipate that SBC would dispute Level 3's treatment of the following. Level 3 has proposed language that would replace the phrase "eligible structure" with "Premises". To Level 3's knowledge, the term "Eligible Structure" is not defined in any federal regulation or order related to Physical Collocation.

However, Level 3's proposed use of the word "Premises" is defined at 47 CFR § 51.5, in the FCC *Physical Collocation Order*, and is consistent with 47 USC 251(c)(6). For these reasons, Level 3 proposed replacing SBC's phrase "Eligible Structure" with "Premises" throughout the Appendix. SBC opposes Level 3's modifications.

82. SBC has proposed a definition for the term "Multifunctional Equipment" (Physical Collocation, Section 2.24), to which Level 3 objects because SBC's proposal is far different from the FCC definition. The term "Multifunctional Equipment" is defined by the FCC in the exact manner Level 3 has provided at 47 CFR 51.5. In order to remain consistent with the FCC's regulations, Level 3 proposes modifying the term to be consistent with the FCC's definition. SBC opposes Level 3's modification.

83. In addition, Level 3 believes that SBC should use its office space efficiently (see Physical Collocation Sections, 2.1, 2.10, 2.17, 2.26, 5.10), and should allow for reclamation of space for obsolete or unused equipment.

APPENDIX VIRTUAL COLLOCATION

ISSUE 19. Entire Virtual Collocation Appendix.

84. In March 2004, SBC provided Level 3 with a draft appendix for Virtual Collocation. However, the draft appendix contained numerous errors and omissions in the appendix that made it difficult, if not impossible to redline and return to SBC. On about May 17, 2004, Level 3 delivered to SBC a proposed alternative Virtual Collocation Appendix. This alternative Appendix was similar in form to Collocation appendices that SBC has used in the past, and is similar to the existing SBC-Level 3 Appendix. As of the date of the preparation of this Petition, SBC had not had the opportunity to advise Level 3 on which terms of that Appendix SBC would find acceptable, and which terms it would dispute.

COORDINATED HOT CUTS APPENDIX

ISSUE 20. Coordinated Hot Cuts, Sections 3.1, 3.2, 3.2.1, 3.2.1, 3.2.3, 3.2.4, 3.2.5).

85. Level 3 proposes language that confirms SBC's obligation to provide Coordinated Hot Cuts at TELRIC-based rates as approved by the various state commissions. SBC refuses to acknowledge this obligation and, instead, refers to its federal tariff rates with no explanation as to whether those rates are TELRIC-based. In order to avoid the opportunity for gamesmanship, the Commission should clearly articulate that hot cuts must be rated based on TELRIC. SBC opposes Level 3's proposal.

C. TIER III.

86. The Tier III issues concern language within the agreement that requires modification so that the agreement is internally consistent, commercially reasonable, and in compliance with applicable laws. Level 3 does not believe that there is a significant degree of disagreement between the Parties as to these issues. Level 3 hopes and expects that the Parties will be able to resolve most of the Tier III issues through further negotiations prior to hearing. However, in order to preserve its rights, Level 3 provides a brief summary (with references to applicable contract sections) of each Party's position on the remaining issues. Level 3 presents these issues by Attachment.

GENERAL TERMS AND CONDITIONS

Issue GT-1 (General Terms and Conditions, Section. 5.2).

87. Level 3 proposes that the term of the agreement be 3 years. SBC has not provided a response.

ISSUE GT-2 (General Terms and Conditions, Section 21), Clearinghouse Appendix, Section 9.1, 9.2.; Physical Collocation Appendix Section 15.1; Network Interconnection Methods, Section 5.1.

88. Level 3 proposes that the Intervening Law provisions contained in the various portions of the agreement be consolidated into one single Intervening Law section in the General Terms and Conditions. Level 3 believes that the Intervening Law provisions are adequately covered in the General Terms and Conditions Section 49. As such, SBC's separate Intervening Law provisions are duplicative and creates confusion.

ISSUE GT-3 (Definitions from Interconnection Trunking Requirements, Section 1.4-1.26, 2.1-15; Recording Appendix 2.1-2.20; SS7 Appendix 1.1-1.24; Out of Exchange Appendix sections 1.2-1.8; Coordinated Hot Cuts Appendix, Sections 1.2-1.9; Clearinghouse Appendix Sections 1.2-1.24, 1.26-1.27, Physical Collocation Appendix, Sections 2.1-2.24, 2.26-33, UNE Appendix 1.2-1.24; Network Interconnection Methods, Section Appendix, Sections 1.2-1.24; Appendix SS7, Sections 1.2-1.24, 2.2.2, 2.3.1.

89. Level 3 believes that repeating the same basic definitions in each appendix is wasteful and unnecessary since this is one single agreement being adopted. The definitions adopted would be generally applicable throughout the entire agreement. As such, Level 3 proposes moving all of the various definitions in each of the sections listed above into the General Terms and Conditions section of the agreement, rather than sprinkling them throughout the appendices. SBC rejects Level 3's suggestion.

90. Further, of these definitions, Level 3 disputes a number of SBC's proposed definitions.

GT&C - 4 (Network Interconnection Methods, Section 7.1; SS7 Appendix, Section 9.1; Out of Exchange Appendix, Section 10.1; Coordinated Hot Cuts Appendix, Section 4.1; Clearinghouse Appendix, Section 11.1; 911 Appendix, Section 11.1; UNE Appendix, Section 21.1; Interconnection Trunking Requirements Appendix, Section 14.1; Intercarrier Compensation Appendix, Section 19.1; Directory Assistance Listing Appendix, Section 7.1; Appendix SS7, Section 9.1.

91. SBC seeks to have Level 3 confirm SBC's legal interpretation of the terms and conditions of the agreement, and the relation of these provisions to Section 251 of the federal Act. As such, SBC proposes a large list of various provisions in the ICA to which it avers the parties are in agreement. Level 3 cannot agree to this list, as it is clear from this pleading that the parties are not in agreement to all terms and conditions stated in these sections. Level 3 does not believe that it should be compelled to adopt SBC's legal construction of the effect of an agreement. Level 3 further disagrees with SBC's interpretation of 47 U.S.C. § 252(i).

NETWORK INTERCONNECTION METHODOLOGIES APPENDIX

ISSUE NIM-1 (Network Interconnection Methods, Sections 1.25, 1.27, 2.4, 2.5, 2.6, 2.8.3, 3.3.1, 3.4.2).

92. Level 3 proposes language that would make clear that the definition of NIMs includes those methods required by a court of an agency and states that the interconnection may not be used for purposes not permitted under the Federal Telecom Act. Level 3 also proposes language that makes the terms reciprocal in nature. SBC's objection is not clear at the present time.

ISSUE NIM -2 (Network Interconnection Methods, Sections 2.8.2, 2.8.3).

93. Level 3 proposes that the parties clarify in their agreement that the parties will, where necessary, provide exchange of traffic via optical networks. SBC objects to Level 3's proposal and believes optical requirements may vary based on the particular situation.

ISSUE NIM – 3 (Network Interconnection Methods, Sections 3.1.1, 3.2.1, 3.3.1, 3.4.2).

94. Level 3 proposes clarifications that govern the manner in which SBC is obligated to provide collocation services and obligates SBC to provide leased facilities, where available. SBC wants to remove terms for leased facilities from the agreement and offer them outside the context of this agreement.

ISSUE NIM – 4 (Network Interconnection Methods, Section 3.4.2).

95. Level 3 proposes that SBC's preferred use of the point-to-point SONET system in no way restricts the Parties from using any technically feasible method. SBC proposes that point-to-point SONET systems be limited to only trunking interconnection and, as such, opposes Level 3's changes.

ISSUE NIM – 5 (Network Interconnection Methods, Sections 5.1 and 5.2).

96. SBC believes, based on its interpretation of the FCC's TRO and certain court cases, that it is not under an obligation to provide leased facilities to Level 3, and that if it does provide any leased facilities, it will do so only on a "voluntary" basis. Level 3 disagrees with SBC's position because there is no change of law yet in effect with regard to the TRO and SBC has misconstrued the court decision it relies upon.

ISSUE NIM – 6 (Network Interconnection Methods, Sections 4.1, 4.2).

97. This provision establishes a minimum notice and meeting period to establish interconnection methods. Level 3 does not believe such advanced meetings are required where the methods of interconnection are the same as in previous circumstances. Level 3 wants to expedite the interconnection process by waiving the required meetings in those circumstances where the requested interconnection methodology is the same as in previous requests. Level 3 also proposes a 120-day deadline between the requested interconnection and the activation date. SBC's objections are not clear at present.

ISSUE NIM – 7 (Network Interconnection Methods, Section 6.0).

98. SBC proposes to make Out of Exchange traffic either interLATA or interexchange traffic. Level 3 believes this traffic should be treated as local for purposes of reciprocal

compensation. This issue will most likely be addressed in the Commissions deliberations of Tier I Issue 4, and the Commission should make this section consistent with its findings therein.

INTERCONNECTION TRUNKING REQUIREMENTS APPENDIX

ISSUE ITR – 1 (Interconnection Trunk Group, Sections 1.2).

99. Level 3 believes that the terms and obligations adopted in the ITR Appendix should be reciprocal on both parties. Level 3 proposed language that would make clear that the scope of the ITR Appendix is to describe the trunk groups the Parties may use in interconnection for the exchange of Telecommunications Traffic as defined in the General Terms and Conditions of the Agreement. SBC opposes Level 3's changes.

ISSUE ITR – 2. (Interconnection Trunk Group, Sections 3.1.2–3.1.4, 8.8.1).

100. Level 3 does not have OS/DA trunks, so there is no need to establish an ASR process to complete the interconnection. SBC opposes Level 3's changes.

ISSUE ITR – 3 (Interconnection Trunk Group, Sections 3.2, 4.3).

101. These sections in dispute relate to Transit Traffic, which will most likely be contemplated under the Larger ITR issues raised in Tier 1. The Commission must make these sections consistent with its findings therein. SBC opposes Level 3's changes.

ISSUE ITR – 4 (Interconnection Trunk Group, Sections 5.2.1 – 5.2.9, 5.3.1.1, 5.3.3.1, 5.4.1,- 5.4.4, 5.6.3).

102. These sections relate to the definition and scope of the trunking requirements addressed in the Appendix, which will most likely be contemplated under the larger ITR issues raised in Tier I. The Commission must make these sections consistent with its findings therein. SBC opposes Level 3's changes.

ISSUE ITR – 5 (Interconnection Trunk Group, Sections 4.5, 5.7.1, 5.7.3, 5.7.4, 6.2.2).

103. These sections relate to interconnection trunking requirements, and will most likely be addressed in the Tier I ITR issues. The Commission should make these sections consistent with whatever determinations it makes therein. SBC opposes Level 3's changes.

INTERCARRIER COMPENSATION

ISSUE IC – 1 (Intercarrier Compensation, Sections 1.3, 1.4, 3.2 - 3.7).

104. These sections relate to the definition and scope of IC Appendix, which will most likely be contemplated under the larger IC issues raised in Tier I. The Commission must make these sections consistent with its findings therein.

ISSUE IC – 2 (Intercarrier Compensation, Sections 4.2, 4.4, 4.5, 4.6,).

105. The sections relate to the duties of the parties under the IC Appendix, which will most likely be contemplated under the larger IC issues raised in Tier I. The Commission must make these sections consistent with its findings therein.

ISSUE IC – 3 (Intercarrier Compensation, Sections 8.1, 8.2, 8.3, 8.4,).

106. SBC proposes language in Section 8.3 that defines when Level 3 will pay the "EAS Additive per MOU" charge when Level 3 uses unbundled local switching to provide services associated with a number with a NXX in an EAS area. Level 3 believes these EAS calls are local calls, and should be subject to the same rates as any other local call. Level 3 expects this issue to be addressed in the larger Tier I IC Appendix issues. The Commission should make these sections consistent with whatever determinations it makes therein.

ISSUE IC – 5 (Intercarrier Compensation, Sections 11.1 and 11.2).

107. SBC would make the terminating party pay for IntraLATA 800 calls, even if they are local in nature. Level 3 believes that where an SBC end user calls an 800 number that Level 3 terminates to an end user in that same local area, then local rates would apply.

ISSUE IC – 6 (Intercarrier Compensation, Sections 18.1-18.7).

108. SBC proposes various modifications related to possible notice of its decision to opt-in to the FCC's ISP regime adopted in the FCC ISP Order, and any possible court or agency interpretations of that order. Level 3 takes no position at this time, but believes the issue is largely attached to the Commission's deliberations in the Tier I ISP Reciprocal Compensation issue. As such, Level 3 urges the Commission to adopt language in this section consistent with the determinations made under the ISP reciprocal Compensation issue above.

RECORDING

ISSUE REC – 1 (Recording, Section 3.13).

109. This section relates to the obligations of the parties under the Recording Appendix. Level 3 does not believe the parties should limit themselves to just the recording electronic format suggested by SBC, but should be able to reach mutually agreeable formats when the technology and markets allow. SBC rejects Level 3's proposals.

ISSUE REC – 2 (Recording, Section 4.112.1, 12.2, 12.5, 12.9, 14.1).

110. To the extent that Level 3 has developed and provides EMI format capabilities, Level 3 is willing to use them in the Recording Appendix. However, if it has not yet developed those capabilities, then it should not be required to do so just because SBC demands it. Level 3 stands prepared to work with SBC to develop systems that are additional options for recording, assembling and editing of message detail records. SBC argues that its billing systems are not capable of accepting any format other than EMI.

ISSUE REC – 3 (Recording, Section 5.2, 15.3).

111. SBC proposes language that limits the Recording Party's liability by limiting the time period for which message details must be maintained to just 60 days. Level 3 believes that the time period should be longer, and suggests 90 days.

ISSUE REC – 4 (Recording, Section 5.4).

112. Level 3 proposes language that states the Parties will use their best efforts to ensure the timely and accurate delivery of billing data between each Party. SBC opposes this change.

ISSUE REC – 5 (Recording, Section 5.6).

113. Level 3 proposes changes that would exempt the parties from the indemnification section unless the claims arise from willful misconduct or gross negligence. Level 3 believes this is a standard proposal, and imposes a reasonable limit on the parties' ability/need to indemnify each other. Level 3 also points out that the terms are reciprocal. SBC opposes the language.

APPENDIX OUT OF EXCHANGE APPENDIX

ISSUE OET – 1 (Out of Exchange, Section 3.1).

114. Level 3 believes this language is duplicative of language in the ITR Appendix, NIM Appendix and IC Appendix. Also, CPN does not reflect the physical location of the end user as SBC claims, but rather just indicates the phone number. CPN does not provide location of end user for billing either. The CPN issue also located in Reciprocal Compensation, Network Interconnection Methodologies Appendix and the Interconnection Trunking Requirements Appendix, so the Commission should enter make this section consistent with its determinations in those areas. SBC opposes Level 3's proposals.

ISSUE OET – 2 (Out of Exchange, Sections 3.3, 3.4, 3.5, 3.6, 3.8, 4.1, 4.2, 4.3, 4.9, 4.10, 9.6).

115. Level 3 believes this language is duplicative of language in the ITR Appendix, NIM Appendix and IC Appendix. As such, Level 3 proposes making a reference herein to those provisions in order to avoid inconsistencies and confusion. There is no reason to create an opportunity to make inconsistent terms in a number of different appendices. SBC opposes Level 3's proposal.

ISSUE OET – 3 (Out of Exchange, Section 3.7).

116. Level 3 wants to clarify that the quality of such network connections shall be equal to either the existing facilities or as required by Applicable Law. This merely serves as an edification that the Parties are assured their legal rights. SBC's position is not known at this time.

CLEARINGHOUSE APPENDIX

ISSUE CH-1 (Clearinghouse, Section 1.26).

117. It is Level 3's understanding that SBC no longer offers service via a Message Exchange Appendix, and the Parties have not attempted to negotiate the terms thereof. Thus, Level 3 removes the Section. SBC's position is unknown at this time.

ISSUE CH-2 (Clearinghouse, Section 1.27).

118. Carriers nationwide exchange alternately billed intrastate intraLATA message toll call records and the reporting of appropriate settlement revenues owed by and among participating LECs, CLECs and ILECs via the CMDS process. Level 3 bills ILECs in Connecticut for reciprocal compensation based upon its terminating recordings, not the originating carrier's records. SBC seeks to force Level 3 to bill for reciprocal compensation based on SBC's category 92 originating records, not Level 3's own CMDS terminating records.

SBC's intention that such billing is technically infeasible does not comport with the actual experience of Level 3 of exchanging invoices for such traffic over the last several years.

ISSUE CH-3 (Clearinghouse, Section 2.1).

119. Carriers nationwide exchange alternately billed intrastate intraLATA message toll call records and the reporting of appropriate settlement revenues owed by and among participating LECs, CLECs and ILECs via the CMDS process. SBC has not provided an explanation as to why the SWBT territory should be treated any differently for billing reciprocal compensation than the Pac Bell and Ameritech states, which allow for billing based on Level 3's terminating records. ILEC allows for billing on terminating records for reciprocal compensation. SWBT is the only ILEC that requires Level 3 to bill based on SBC's Category 92 records.

120. Further, processing SBC's Category 92 records adds additional costs and delays on Level 3 as recognized by the Texas Commission:

Therefore, the Commission concludes that, where technically feasible, the terminating carrier's records shall be used to bill originating carriers (excluding transiting carriers) for reciprocal compensation, unless both the originating and terminating carriers agree to use originating records. The Commission finds that the use of terminating records among the parties to bill for reciprocal compensation is a more efficient and less burdensome method to track the exchange of traffic. Terminating records impose less cost upon the terminating carriers than the previous regulatory scheme that used SWBT's 92/99 originating records to bill for reciprocal compensation.

Texas PUC order, Dkt. 21982

121. SBC's position is that its systems are set up so as to receive Reciprocal Compensation billing via its Category 92 originating records, not the Level 3 terminating records. As such, it rejects Level 3's position.

E911 APPENDIX

ISSUE ES-1 – (E911, Sections 3.2.2).

122. In a situation where the 911 call fails to provide the ANI, the 911 tandem will not know which PSAP to which it should route the call. Level 3 provides language that would require SBC to route such a 911 call to the appropriate emergency call center, just as it would do if the call was made from its own network. SBC's position is not known at this time.

ISSUE ES-2 – (911, Sections 4.2.11).

123. On an issue as important as properly completing emergency 911 calls to the PSAP, it is critical that the terms are clear where one party's obligations begin and the other's ends. Level 3 proposes that the point at which the 911 obligations and responsibilities cross over is the Demarcation Point between the two parties as defined in 47 CFR 68.3. Each party will be responsible for coordination of all 911 issues on their side of the Demarcation Point. SBC's proposed language does not provide any specific point, but just gives a general example of its intent.

UNBUNDLED NETWORK ELEMENTS APPENDIX

ISSUE UNE – 1 (Unbundled Network Elements, Sections 1.1, 2.1 2.1.1, 2.1.2, 2.1.2.1, 2.1.2.2, 2.1.2.3, 2.1.3, 2.1.4, 2.3, 2.5, 2.5.1, 2.5.2, 2.7., 2.7.1, 2.7.2, 2.7.3, 2.7.4, 2.7.5, 2.7.6, 2.7.7, 2.7.8, 2.7.9, 2.7.10, 2.8, 2.9, 2.10, 2.13.1, 2.13.2, 2.14.1, 2.14.2, 2.14.3, 2.14.3.1.1, 2.14.3.1.1.1, 2.14.3.1.1.2, 2.14.3.1.2.1, 2.14.3.1.2.2, 2.14.3.2, 2.14.3.3, 2.14.4, 2.14.4.1, 2.14.4.2, 2.14.4.3, 2.14.4, 2.14.4.1, 2.14.5, 2.14.5.2, 2.16.2, 2.16.3.4, 2.16.3.5, 2.16.3.6, 2.16.4, 2.16.4.2, 2.16.5, 2.16.5.1, 2.16.5.1.1, 2.16.5.2-2.16.5.5, 2.16.6, 2.16.1-2.16.2, 2.16.7, 2.17, 2.17.2, 2.17.3, 2.17.4, 2.17.5, 2.18.1.2, 2.18.2, 2.18.3, 2.18.3.1, 2.18.3.1.1, 2.18.3.1.2, 2.18.3.2, 2.18.4, 2.18.6, 2.18.9, 2.19.1, 2.19.2, 2.19.2.1, 2.19.2.2, 2.19.2.2.1, 2.19.2.2.7, 2.19.3.2, 2.19.4, 2.19.5, 2.19.7, 2.19.7.1, 2.19.7.4, 2.19.7.4.2, 2.20, 2.21, 2.22, 6.3.1, 6.3.4, 6.3.4.1, 7.2.1, 7.2.1.1, 7.2.1.2, 7.2.1.2.1, 7.2.1.3, 7.2.1.3.1, 8.2.1, 8.5.2, 8.5.3, 13.3.1, 13.3.4.2, 13.3.5.1, 13.5.2, 13.5.3, 14.3.1, 14.4.1, 14.8.1 14.11.3, 15.1, 18.2, 19.6, 19.8.1).

124. Level 3 generally disagrees with SBC's position with respect to the obligations imposed on SBC to provide UNEs. These sections all relate to what Level 3 views as SBC's attempts to force Level 3 to waive certain rights it has under current law. For instance, some of these sections limit the obligation to provide UNEs to just those imposed by 47 CFR § 251.

Level 3 believes that SBC is obligated to provide UNEs not only under § 251, but also □ 252 and 271 of the Act, as well as pursuant to applicable state laws and commission orders. Level 3 believes that the Agreement must acknowledge the existence of unbundling rights under not only Section 251, but 252, 271 and applicable state law.

125. As another example, some of the listed sections present SBC’s interpretation of the FCC’s *Triennial Review Order*, *USTA II*, and *NARUC II*. Level 3 does not agree with SBC that these orders say what SBC alleges them to say. As such, Level 3 cannot agree to the terms based upon SBC’s interpretations of these orders.

126. It is Level 3’s understanding that SBC’s position is that its interpretations of Section 251 and the various orders is correct, and that the Commission should adopt its proposed language.

ISSUE UNE – 2 (Unbundled Network Elements, Sections 1.1, 2.1, 2.6, 2.7, 2.7.3, 2.7.4, 2.7.5, 2.7.7, 2.7.8, 2.7.10, 2.8-2.10, 2.13.1, 2.13.3, 2.14, 2.14.1-2.14.3, 2.14.3.1.1, 2.14.3.2, 2.14.4, 2.14.4.1, 2.14.5, 2.14.5.2, 2.15, 2.15.1, 2.16, 2.16.1-2.16.3.6, 2.16.4, 2.16.4.1, 2.16.5, 2.17, 2.17.1, 2.17.3, 2.17.5, 2.17.5.1, 2.18.1, 2.18.2, 2.18.4.1, 2.18.5-2.18.8, 2.19, 2.19.1, 2.19.2, 2.19.7.4, 2.20-2.22, 3.1-3.3, 3.3.4-3.3.6, 3.3.8, 4.1.3, 4.17, 6.3.1, 6.4.2, 6.4.2.1-6.4.2.3, 7.1-7.9, 8.0, 8.1-8.3, 8.3.4-8.3.5, 8.8.4, 8.5, 8.5.1-8.5.6, 9.1-9.4, 9.6-9.12, 9.12.1-9.12.6, 9.12.8, 9.12.9, 9.11-9.12, 9.13, 9.14.2, 9.15, 9.15.1, 9.15.1.3-9.15.1.6, 9.15.2, 9.16, 9.16.1, 9.16.2, 10.2, 10.3-10.3.1, 10.3.6, 10.4.1.1-10.4.1.3, 10.4.2.3, 10.5, 13.0-13.2.1, 13.3, 13.3.1-13.3.4, 13.3.5-13.3.5.1, 14.0-14.4, 14.4.1, 14.5.1, 14.6.1, 14.6.1.2, 14.6.1.2, 14.6.2, 14.7, 14.7.1-14.7.3, 14.8.1-14.8.3, 14.9-14.9.2, 14.10, 18.1-18.2, 8.4-18.14, 19.1-19.8.1, 19.13.1-19.13.2).

127. Each of these sections contain the phrase “lawful UNEs”, and Level 3 proposes striking the word “lawful”. Level 3 suggests that SBC’s use of the term “lawful” when describing UNEs is inappropriate in the context of an interconnection agreement. The phrase does not appear anywhere in the Telecom Act or any FCC orders or regulations governing UNEs. SBC’s position is not known at this time.

ISSUE UNE – 3 (Unbundled Network Elements Sections 2.2, 2.12, 2.14, 2.16.1, 2.16.2, 2.16.3.3, 2.16.3.3.1, 2.16.3.3.2, 2.16.3.3.3, 2.16.3.4, 2.19.8, 2.22, 20.1, 20.2, 20.3, 20.4).

128. The Appendix contains a detailed section relating to Reservation of Rights, found in Section 20. The original SBC-proposal in Section 2.2 et seq. also serves as a reservation of rights and is not necessary in light of the more detailed language in Section 20. The disputes related to Section 2.2 show how the terms are redundant. SBC's position is not known at this time.

ISSUE UNE – 4 (Unbundled Network Elements Sections 2.4, 2.5, 2.5.1, 2.5.2, 2.14.3.1.1, 2.16.3.3.2, 2.16.3.3.3, 2.17, 2.18.6).

129. The Change of Law provisions in the General Terms and Conditions section of the Agreement fully address SBC's and Level 3's obligations and rights under the Agreement. Level 3 believes that it would be unnecessarily repetitive to replicate those rights again herein, and may lead to inconsistencies between the various provisions in the agreement. Level 3 also is concerned that multiple versions of Change in Law provisions will lead to confusion in the future when there is an event that may or may not classify as a Change in Law depending on which provision in the Agreement would apply. SBC's position is not known at this time.

ISSUE UNE – 5 (Unbundled Network Elements Section 2.13.3).

130. Level 3 believes that the parties should govern the switch conversion process in a manner generally consistent with the FCC Notice of Network Changes regulations found in 47 CFR 51.325, 327 and 329. By doing so, the Central Office Switch Conversions can be done with minimal impact on the network and Level 3's ability to process customer orders. SBC's position is not known at this time.

DIRECTORY ASSISTANCE LISTING

ISSUE DAL – 1 (Directory Assistance Listing, Sections 2.1, 5.1, 5.3).

131. These sections relate to the scope and definition of the obligation under the Appendix. Section 5.3 clarifies that, in the event that CLEC is faces an action that specifically

alleges that an error or omission appears in DA listing information, SBC will assume and undertake its own defense, and assist in the defense of CLEC. Level 3 views these changes as clarifications and not an imposition of additional terms and, as such, should not be controversial. SBC objects to the modifications.

SS7 APPENDIX

ISSUE SS7 – 1 (SS7, Sections 2.4, 2.4.1, 2.4.1.1, 2.4.2.1, 2.5, 2.6, 2.7, 2.8, 2.9.2, 2.9.3, 2.9.4, 2.9.5, 2.9.6, 2.11.1, 2.11.2, 2.12.1, 3.2.1, 3.2.2, 3.2.3, 3.3, 3.4.1, 3.4.4, 3.4.5, 3.4.6, 3.4.7, 4.1, 4.2, 4.3, 4.4, 5.1).

132. SBC’s initial proposal for SS7 Appendix was one-sided in nature. Level 3 proposes that the terms and obligation under the Appendix should be reciprocal in nature, thus binding both parties to its terms. Level 3 also proposed that the terms of the SS7 Appendix will be operable in all 13 SBC states in order to allow for uniformity of network interconnections. As such, Level 3 proposed making all references in the Appendix to “SBC-12STATE” and “CLEC” to either specific party names (i.e., “CLEC” to “Level 3”), “SBC-12STATE” to SBC-13STATE”, or change specific company names to a more inclusive term like “Party”. Level 3 believes these changes will assure reciprocal application of the Appendix. SBC opposes Level 3’s modifications.

ISSUE SS7 – 2 (SS7, Sections 2.8, 2.9.4, 2.10.2, 2.10.3, 2.12.3, 3.2.2, 3.4.2, 3.4.2.1, 3.4.2.2, 3.4.3, 3.4.8, 3.5, 3.5.1, 4.1, 4.3, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 6.1).

133. Level 3 has proposed a series of modifications to the Appendix detailing the technical requirements for SS7 under the Appendix. Level 3’s changes clarify the types of network requirements specifically contemplated in the Appendix and manner in which the two company’s networks will operate. SBC opposes Level 3’s modifications.

ISSUE SS7 – 3 (SS7, Sections 2.9.6, 2.10.4, 2.11.2, 7.1, 7.3, 7.3.1, 7.4, 7.4.1, 7.5, 7.5.1, 7.6, 7.6.1, 8.0, 8.1, 8.2, 8.2.1, 8.2.2, 8.2.3, 8.3, 8.3.1, 8.3.1.1, 8.2, 8.3.2.1, 8.3.2.2, 8.3.3, 8.3.3.1, 8.4, 8.4.1, 8.5, 8.5.1, 8.6, 8.6.1).

134. SBC's initial proposal contained a number of sections imposing terms related to the charges SBC will assess against Level 3 for SS7-related services.

CONCLUSION AND PRAYER

For the reasons outlined above, Level 3 respectfully requests that the Commission arbitrate the unresolved issues described above and resolve them in Level 3's favor. Level 3's contract proposals are consistent with the applicable law and commercially reasonable. Level 3 requests that the Commission adopt its proposed contract language set forth in Exhibit C.

Respectfully submitted,

Level 3 Communications, LLC

By: _____


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Dated: May 25, 2004

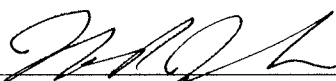
VERIFICATION

State of Missouri)
) ss.
County of Jackson)

Comes now Mark P. Johnson, being of lawful age and duly sworn, and who swears and affirms as follows:


1. My name is Mark P. Johnson, and an attorney for Level 3 Communications LLC in the captioned matter.
2. I am authorized by Level 3 Communications LLC to execute and verify this Petition on its behalf.
3. I have reviewed the foregoing Petition, and its contents are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.



Mark P. Johnson

Sworn to and subscribed before me this 25th day of May, 2004.



Notary public

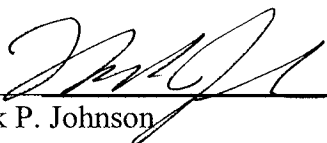
My commission expires:

| |
|---|
| CHERYL L. KOVICH Notary Public - Notary Seal STATE OF MISSOURI Jackson County My Commission Expires: Nov. 22, 2004 |
|---|

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on May 25, 2004, a copy of the foregoing Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 for Rates, Terms, and Conditions with SBC Communications, was served by hand delivery on counsel of record as follows:

Timothy Pickering, Esq.
SBC Communications, Inc.
220 East Sixth Street
Topeka, Kansas 66603-3596



Mark P. Johnson

APPENDIX A

NEGOTIATION LETTERS

Toula Megger
Lead Negotiator

SBC Industry Markets,
350 N Orleans
Floor 3
Chicago, IL 60654
Phone 312 335 6757
Fax 312 335 2928
e-mail am2636@sbc.com



April 23, 2004

VIA FACSIMILE and ELECTRONIC MAIL

Erik Cecil
Regulatory Attorney
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Re: Extension of Arbitration Windows to Arbitrate Successor Interconnection Agreements to the Current Interconnection Agreements between the SBC 13 State ILECs and Level 3 Communications, LLC

Dear Erik:

This letter confirms the agreement between Level 3 Communications, LLC ("Level 3") and the SBC 13-State ILECs ("SBC") (collectively, "Parties") to extend the close of the arbitration windows by thirty (30) days¹ and stagger the close of the window to arbitrate successor agreements ("Successor Agreement") to the current interconnection agreements between the parties ("Agreements") pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996 in the thirteen SBC states. The Parties agree that the arbitration windows shall close in the following states on the following dates:

- Wisconsin, Nevada, Kansas on May 25, 2004
- California, Indiana, Michigan on June 1, 2004
- Connecticut, Illinois and Texas on June 8, 2004; and
- Ohio, Arkansas, Oklahoma and Missouri on June 15, 2004.

The Parties further agree that in the event a Successor Agreement is not reached on or before the respective arbitration window closing dates Level 3 shall petition the appropriate state commissions to arbitrate any open issues on such dates.

¹ By letter of April 16, 2004 (incorrectly dated April 23, 2004), the Parties agreed to the closing of the arbitration window as follows: April 26, 2004 in Illinois, Indiana, May 3, 2004, May 3, 2004 in the states of Missouri, Nevada and Wisconsin, May 10, 2004 in Texas, California and Michigan and May 17, 2004 in Arkansas, Connecticut, Ohio and Oklahoma.

Additionally, the Parties agree to file a joint Disputed Positions/Points List (DPL). The Parties further agree to use their best efforts to work jointly on the joint DPL during the week of May 17, 2004 and to finalize the joint DPL by May 21, 2004.


Additionally, Level 3 shall use its best efforts to provide to SBC redlines to the following appendices by the target dates set forth below.

- Appendix UNE and Appendix Collocation by April 30, 2004;
- Appendix Emergency Services (911), Appendix Number Portability, Appendix Numbering by May 7, 2004;
- Appendix OSS, Appendix Out of Exchange Traffic, Appendix Recording by May 14, 2004; and
- Appendix BCR, Appendix Clearinghouse, Appendix Coordinated Hotcuts by May 19, 2004.


SBC also agrees to use its best efforts to promptly provide Level 3 with any updated language to the Appendices ITR and NIM and any other information SBC previously agree to provide, including an updated version of the UNE Appendix.

Please acknowledge your agreement by signing this letter in the space below.

Sincerely,


 Antonine Megger
 Lead Negotiator

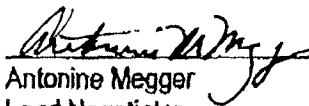
Agreed:



 Level 3 Communications, LLC
 Erik Cecil
 Regulatory Attorney

04/23/04

 Date



 Antonine Megger
 Lead Negotiator
 SBC 13States ILECs by SBC Telecommunications, Inc.,
 its authorized agent

04/23/04

 Date

cc: Rogier Ducloo
Nicola Erbe

Touhae Megger
Lead Negotiator

SBC Industry Markets
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March 26, 2004

VIA FACSIMILE

Erik Cecil,
Regulatory Attorney
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Dear Erik:

This letter confirms the agreement between Level 3 Communications, LLC ("Level 3") and the SBC 13-State ILECs ("SBC") (collectively, "Parties") to extend the close of the window to arbitrate successor agreements ("Successor Agreement") to the current interconnection agreements between the parties ("Agreements") pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996 for a period of four weeks from Monday, March 29, 2004. As a result of this extension, the Parties agree that the arbitration window will close on April 26, 2004. To the extent that Level 3 has already advised state public utility commissions located within SBC's operating territory that Level 3 intended to file arbitration petition(s) with regard to the Agreements on Monday, March 29, 2004, Level 3 will notify those state commissions that it will not be filing a petition.

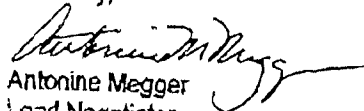
Additionally, SBC agrees that it will not file for formal dispute resolution under the Parties' current Agreement in conjunction with its October 30, 2004 invocation of change in law and its March 11, 2004 letter requesting negotiations of the Lawful UNEs amendment until April 26, 2004. By agreeing to the delay in the commencement of such dispute resolution, neither party waives, but instead reserves all its rights, with regard to the question of conforming the Agreement, including the commencement of dispute resolution, to the current state of the law at any time on or after April 26, 2004.

It is the Parties' intent to complete negotiations on the Successor Agreement and to identify any unresolved issues before the close of the arbitration window. In light of this, the Parties agree to conduct as many negotiations with all relevant members of their respective organizations present, including face to face negotiations, as are necessary and practical, to determine which provisions they can agree upon and which must be resolved in arbitration proceedings before the jurisdictional state public utility commissions. The Parties are currently negotiating the Appendices ITR and NIM and agree to complete negotiations and

to identify any unresolved issues in those appendices before proceeding to negotiate the reciprocal compensation appendices and then the UNE Appendix and subsequently any other appendices, in that order.

SBC also agrees to incorporate the following already agreed upon sections/appendices into the Successor Agreement: General Terms and Conditions, Subsection 4.8 of Section 4 (General Responsibilities of the Parties); Subsections 7.1; 7.2.4; 7.3; 7.4; 7.3.3; 7.3.3.1; 7.6.2; 7.7; 7.9; 7.10 of Section 7 (Assurance of Payment); Subsections 8.1 - 8.7; 8.9 - 8.10 of Section 8 (Billing and Payment of Charges); Subsections 9.1, 9.2.1 9.2.3; 9.3.1- 9.3.4; 9.4; 9.5.2; 9.7 with the exception of 9.7.2.2; 9.8 of Section 9 (Nonpayment and Procedures for Disconnections) ; Section 17.7 (Notices)¹, Section 20 (Confidentiality)² [ok]Section 29 (Assignment); Subsection 32.2 - 32.6 of Section 32 (Hazardous Substances); Section 34 (Taxes); Section 44 (Amendments and Modifications) ; Appendix Merger Conditions, Appendix Structure Access.

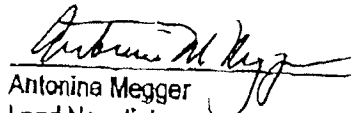
Sincerely,


Antonine Megger
Lead Negotiator

Agreed:


Level 3 Communications, LLC
Erik Cecil, Regulatory Attorney

3/26/04
Date


Antonine Megger
Lead Negotiator
SBC Communications

03/26/04
Date

¹ Parties previously agreed to remove Section 17.7.
² Parties previously agreed to not to renegotiate Section 20.

Tonine Megger
Lead Negotiator

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March 25, 2004

VIA FACSIMILE AND U.S. MAIL

Erik Cecil
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Dear Erik:

This letter addresses several issues raised in your email dated March 17, 2004 and your letter dated March 19, 2004. As an initial matter, we would like to clarify some statements made by you regarding SBC's March 2, 2004 request. As you know, SBC requested that Level 3 negotiate a comprehensive 13-state successor interconnection agreements ("Successor Agreement") to the parties' current 13-state interconnection agreements ("Agreement rather than continuing to negotiate limited sections of the Agreement in exchange for a one year extension of the Agreement via an amendment ("Extension Amendment"). Contrary to the statement in your March 19, 2004 letter that SBC requested that Level 3 waive its rights to arbitrate outstanding dispute issues, SBC is proposing to continue to negotiate to minimize issues both parties will take to negotiations. Just as Level 3 does not believe it should waive its rights, SBC can not be expected to waive its rights in the negotiations process and should be allowed to include issues into the negotiation of a comprehensive successor agreement given that numerous change of law events, regulatory developments and additional product offerings that have rendered the current Agreement outdated. The negotiations process contemplates that the parties would be free to arbitrate any issues the either party presents and are unable to resolve at the completion of the negotiations. Those issues include any of the issues that have been identified by the parties during the attempted negotiations of the Extension Amendment, but are still unresolved. Examples would be the Assurance of Payment or the Hazardous Materials sections of the General Terms and Conditions that the parties negotiated in conjunction with the Extension Amendment, but were unable to resolve. Again, neither party is waiving any rights to arbitrate any additional unresolved issues which it believes must be included in any negotiation/arbitration of a comprehensive successor agreement. However, in order to better understand the other Party's positions on different issues, to identify differences between the parties and in order to minimize the amount of open issues that might eventually be arbitrated, SBC believes it to be beneficial to continue negotiations in the coming weeks. It is important that we work together to come to a meeting of the minds regarding specific contract language that will be arbitrated and have an understanding regarding both parties' positions. This may be accomplished by Level 3 redlining disagreed contract language, providing counter proposals where appropriate, by negotiating and last, by working jointly with SBC to create a Joint DPL for filing in each state and along with a filing schedule so we are not litigating in all states at one time.

SBC also agreed that it would not seek to renegotiate but would instead incorporate any sections the parties had already discussed during the unsuccessful negotiations for the Extension Amendment. Those sections are General Terms and Conditions, Subsection 4.8 of Section 4 (General Responsibilities of the Parties); Subsections 7.1; 7.2.4; 7.3; 7.4; 7.3.3; 7.3.3.1; 7.6.2; 7.7; 7.9; 7.10 of Section 7 (Assurance of Payment); Subsections 8.1 - 8.7; 8.9 - 8.10 of Section 8 (Billing and Payment of Charges); Subsections 9.1, 9.2.1 9.2.3; 9.3.1- 9.3.4; 9.4; 9.5.2; 9.7 with the exception of 9.7.2.2; 9.8 of Section 9 (Nonpayment and Procedures for Disconnections) ; Section 17.7 (Confidentiality)¹; Section 29 (Assignment); Subsection 32.2 - 32.6 of Section 32 (Hazardous Substances); Section 34 (Taxes); Section 44 (Amendments and Modifications) Appendix Merger Conditions, Appendix Structure Access. In addition, in order to clarify SBC's position regarding several issues raised by Level 3 in its March 19, 2004 matrix, we are including SBC's comments in Level 3's matrix of the status of the interconnection negotiations between Level 3 and SBC.

In its Letter of March 19, 2004, Level 3 rejects SBC's Lawful UNE Amendment as a violation of the Act and requests that SBC clarify its intent with respect to the "Lawful UNEs" Amendment proffered to CLECs on March 11, 2004. In light of the previous dealings between our companies we do not understand Level 3's position and would like to clarify some statements you made in your March 19 letter. On October 30, 2004, SBC invoked the change in law provisions of the Level 3 Agreement and provided Level 3 notice of SBC's intent to negotiate modifications to the Agreement to conform it to the findings of the FCC's Triennial Review Order (released on August 21, 2003) in CC Docket Nos. 01-338, 96-98 and 98-147 ("TRO") the D.C. Circuit Court's decision in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I"). On November 14, 2004, Level 3 advised SBC in writing that it was agreeable to the negotiation schedule set forth in the October 30, 2003 letter to discuss conforming negotiations pursuant to USTA I and TRO. Level 3 also agreed that the parties would be able to proceed to dispute resolution after March 12, 2004 if the parties were unable to agree to conforming modifications, or unless they had agreed otherwise. As set forth in our March 11, 2004 letter the language of the Lawful UNE Amendment is intended be part of SBC's proposal to modify the agreements to conform to USTA I and TRO, and to be a part of the dispute resolution proceeding that the parties have already agreed is appropriate in conjunction with the October 30, 2003 notice.

You also state that SBC did not provide substantive responses to Level 3 as a basis for your argument that no negotiations between the parties have taken place. Your statement ignores that after Level 3 had provided initial responses to SBC's proposed TRO amendment on December 29, 2003, and before SBC had an opportunity to reply to Level 3's initial comments/revisions, Level 3's Gary Tucker advised SBC that Level 3 would be providing further comments/language modifications. Level 3 however, never provided any additional language. You also state that at no time between October 2003 and the receipt of SBC's March 11, 2004 letter did Level 3 receive any additional specific communication from SBC, either oral or written, that indicated that SBC desired to focus on and negotiate the UNE section of the agreement. Given that SBC had previously attempted to negotiate the Extension Amendment with your predecessor Gary Tucker, you may not be aware that SBC repeatedly advised Level 3 during the negotiations that it seeks to negotiate UNE provisions that conform to the current state of the law. Further, SBC's letter of March 2, 2004 to Level 3 indicated that any further negotiations were premised on the previous invocation of change of law.

SBC's proposed Lawful UNEs Amendment is consistent with this approach because its purpose is to conform Level 3's Agreement to the current state of the law. The Lawful UNEs Amendment is not, as Level 3 surmises, an invocation of change of law as a result of the D.C. Circuit Court's decision in USTA

¹ Parties agreed to remove Section 17.7.

II,² but is proffered as part of the October 30, 2003 invocation of intervening law in light the FCC's TRO and D.C. Circuit Court's USTA I decision. It is crafted to be suitable for that purpose, and to provide a simpler alternative for the parties to use. The Lawful UNEs Amendment is intended as an amendment to Level 3's current Agreement. It would also be appropriate to incorporate any agreement reached regarding such an amendment into any successor agreement to the current Agreement.


The Lawful UNEs Amendment provides that SBC shall only be obligated to provide UNEs to the extent they are required by Section 251(c) (3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. The rights and obligations set forth in the Lawful UNEs Amendment is intended to be cumulative with the intervening law language of Level 3's underlying agreement in that it provides for a separate transition process for the parties to use in the event of a change in governing that results in a lawful UNE in Level 3's Agreement ceasing to be a lawful UNE. The Lawful UNEs Amendment establishes a reasonable 30-day transition period following written notice by SBC that a particular element is no longer a Lawful UNE. Following receipt of notice, the CLEC must stop ordering new elements (which only makes sense, as it is no longer a Lawful UNE), but has multiple options for obtaining a substitute for the now un-Lawful UNE. The CLEC may either:

- (a) enter into a separate agreement with SBC for a substitute service arrangement or element at market-based rates or via resale;
- (b) request that an available analogous access product or service be substituted; or
- (c) elect to issue an order disconnecting or otherwise discontinuing the element.

On the other hand, if the CLEC elects not to pursue an alternative to unbundling, opting instead to disconnect or discontinue the affected element or arrangement, the CLEC presumably plans to obtain its substitute from any number of third-party sources or to self-provide the element or arrangement. Only if the CLEC fails to make an election under the Lawful UNE Amendment's provisions will SBC be entitled to convert the affected element, and any associated arrangement, to an access analog or other commercial substitute – or to disconnect or otherwise discontinue the item. But that remedy only arises in the vacuum created by the CLEC's failure to make its own business decision.

We believe that the foregoing provides Level 3 with the necessary clarification surrounding our March 11, 2004 letter and hope that it serves as a base for a continued good relationship between the parties. SBC is willing and ready to discuss the Lawful UNE Amendment with Level 3 and continue negotiations for a comprehensive successor Agreement during any of the weekly scheduled meeting dates. We also would like to propose that network experts for both parties attend our regularly scheduled meeting on April 2, 2004 to discuss Level's revisions of the Appendices ITR and NIM. Finally, we continue to recommend that both parties agree to a 4 to 6 week extension of the negotiations window. This can be memorialized in a letter agreement setting forth the negotiations plan, the arbitration filing dates, etc. This will allow Level 3 the opportunity to continue to redline disagreed items. It will also allow the parties to further negotiate those items and identify specific issues which will be arbitrated.

Sincerely,



Antonine Megger
Lead Negotiator

² United States Telecom Association v. FCC, Case No. 00-1012 (D.C. Cir. 2004) ("USTA II").

Tonine Megger
Lead Negotiator

SBC Industry Markets,
350 N Orleans
Floor 3
Chicago, IL 60654
Phone 312 335 6757
Fax 312 335 2928
e-mail am2636@sbc.com


Copy



March 1, 2004

VIA FACSIMILE AND U.S. MAIL

Gary Tucker
Eric Cecil
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Dear Gary and Eric:

As you know, the term of the current multi-state Interconnection Agreements between Level 3 Communications, LLC ("Level 3") and Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, Wisconsin Bell, Inc. d/b/a SBC Wisconsin (collectively "SBC") in the states of Arkansas, Kansas, Missouri, Oklahoma, Texas, California, Connecticut, Illinois, Indiana, Michigan, Nevada, Ohio and Wisconsin ("the Agreements") expired on May 31, 2003. SBC noticed Level 3's Agreements for termination by letter dated November 21, 2002. As a result of this notice, the parties agreed that they would negotiate an amendment to update certain language in the Agreements in exchange for extending the term of the Agreements for one year ("Amendment") rather than renegotiate the entire Agreements. The parties have been diligently negotiating this Amendment for a year now, however, to date have been unable to conclude the Amendment negotiations.

This letter will serve as your official notice pursuant to Section 5.2 the General Terms and Conditions of the Agreements that SBC intends to terminate the Agreements with Level 3 and to negotiate rates, terms and conditions for successor agreements to the Agreements rather than continuing the ongoing Amendment negotiations. Below please find the reasons for such notice.

First, Level 3 has been operating under the expired Agreements for nine months. By the time the Amendment would become effective Level 3 would have had the benefit of operating under its expired Agreements for more than one year. The Amendment that the parties were negotiating was intended to extend the Agreements for the same amount of time. Further, the parties have so far been unable to resolve some issues that arose during the negotiation of the Amendment. Given that the parties were negotiating an Amendment to extend the term of the Agreements rather than negotiating successor agreements to the Agreements, any unresolved issues would not be subject to arbitration pursuant to Sections 251, 252(b)(1) of the Telecom Act but may only be resolved through the dispute resolution procedures of the current

interconnection agreement. By incorporating such unresolved issues in the negotiations for a successor agreement both parties will have the opportunity to arbitrate such issues.

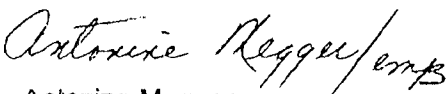
Moreover, the parties agreed not to address certain subject matter areas, such as reciprocal compensation, as part of the Amendment negotiations. Because of the passage of time, this approach is no longer reasonable. Level 3's Amendment Superseding Certain Reciprocal Compensation, Interconnection and Trunking Terms ("Superseding Amendment") will expire on December 31, 2004. As you are aware, SBC has invoked the FCC's interim terminating compensation plan in eight of SBC's thirteen states and wishes to conform the Level 3's underlying Reciprocal Compensation Appendix to the FCC Plan in those states. SBC also wishes to update the language of the Reciprocal Compensation Appendix for the remaining states. In Section 2.3 of the Amendment of Section 5.7 of the General Terms and Conditions, the parties agreed that they would begin renegotiating the underlying reciprocal compensation rates, terms and conditions no later than nine months, i.e. March 31, 2004, before the expiration date of the Superseding Amendment. SBC therefore believes that reciprocal compensation must be addressed in the renegotiation of the Agreements.

Additionally, SBC wishes to include in the renegotiation of the Agreement the subject matters set forth in SBC's letter dated October 30, 2003 notifying Level 3 of a change of law as a result of the FCC's Triennial Review Order, FCC 03-36 ("TRO") (released August 21, 2003 and effective October 31, 2003) and its continued invocation of a change of law as a result of the D.C. Circuit Court of Appeals decision in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002). The subject matters set forth in such letter can be adequately addressed only in conjunction with the renegotiation of the entire Agreements.

For the foregoing reasons, SBC believes that negotiating successor agreements to the Agreements. As already discussed with Level 3, the parties would incorporate into the successor agreements any language that the parties have already negotiated during the Amendment negotiation, including sections from the General Terms and Conditions, Performance Measures, Merger Conditions and Access to Structures. Further, the parties will continue to operate under the expired Agreements during the negotiations of the successor agreements until the successor agreements will become effective. Consequently, the parties will be bound by the provisions of the current Agreements subject to SBC's continued invocation of change of law and any further change of law. Last, SBC does not understand Level 3's comments relating to "curtailing" or "inhibiting" Voice Over Internet Protocol ("VoIP"). Pursuant to the current Superseding Amendment, both parties have reserved their rights relating to VoIP including, without limitation, the right to raise the appropriate treatment of VoIP traffic under the Dispute Resolution provisions of the Agreements or any future interconnection agreement(s) between the parties through December 31, 2004. Therefore, SBC may in fact curtail or inhibit Level 3's activities relating to VoIP by, among other things, the dispute resolution procedures of the Agreements.

Please notify SBC within the next five (5) days whether Level 3 intends to negotiate successor agreements to the Agreements. In the interim, if you have any questions or concerns, I will be the point of contact for any correspondence regarding this matter.

Sincerely,



Antonine Megger
Lead Negotiator



*Erik Cecil, Regulatory - Attorney
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-1319
(720) 888-5134 (Fax)*

Via email and facsimile

March 19, 2004

Nicola Erbe, Esq.
SBC Communications, Inc.
140 New Montgomery Street
Room 1530A
San Francisco, CA 94105

Re: *Continuation of Interconnection Negotiations Between Level 3 Communications, LLC and SBC Communications, Inc.*

Dear Ms. Erbe:

Pursuant to our discussions today, this letter specifically outlines Level 3's concerns and conditions for proceeding with the negotiations requested in its March 1, 2004 letter addressed to Erik Cecil and Gary Tucker in exchange for Level 3 Communications, LLC's ("Level 3") agreement to waive its rights to arbitrate outstanding disputed issues, which have been the subject of negotiations between Level 3 and SBC for at least the past six months and renegotiate an entirely new agreement.

As expressed in my email to you dated March 18, 2004, Level 3 seeks clarification as to SBC's intent to continue with negotiations or proceed directly into arbitration as a result of SBC's March 11, 2004 request that Level 3 agree to a proffered "Lawful UNE" Amendment.

The letter begins by asserting that by letter dated October 30, 2003, SBC invoked the change in law provision(s) of Level 3's interconnection agreements and provided Level 3 notice of intent to negotiate modifications to the interconnection agreements to conform them to findings of the FCC's Triennial Review Order, released August 21, 2003 and effective October 2, 2003 ("TRO"). While the date of the letter is accurate, the assertion that SBC attempted to negotiate a TRO amendment or that such negotiations occurred is not. Level 3 and SBC have been actively negotiating twice a week in two-hour sessions on items arising out of our interconnection agreement. Up until March 1, 2004, Level 3 considered these negotiations highly successful because as of that date, Level 3 and SBC had agreed to many items and limited outstanding disputed items to two sections of the General Terms and Conditions: Section 32, Hazardous Substances and Responsibility for Environmental Contamination, and Section 8.8.1 on Billing and Payment of Charges. Although there were other issues opened at the time, Level 3 and SBC were still negotiating these issues and it was Level 3's belief that these issues were still open to

continued discussion. While SBC had proffered its "TRO" amendment, and Level 3 provided preliminary comments on December 29, 2003, SBC never provided any substantive response to Level 3's redlines. Thus, at no time between October 2003 and the receipt of SBC's March 11, 2004 letter did Level 3 receive any additional specific communication from SBC, either oral or written, that indicated that SBC desired to focus on and negotiate the UNE section of the agreement.

Compounding the fact that the parties have not even negotiated the UNE amendment, contrary to what SBC's letter seems to indicate, SBC's March 11, 2004 "Lawful UNE" notice contains contract provisions that do not address UNEs at all. Rather the amendment attempts to revise change of law provisions contained in our existing agreement to permit SBC to effectuate changes of law immediately upon 30 days' notice to Level 3. Any assertion that SBC has any right to trigger change of law is false on three levels: (1) SBC and Level 3 had already negotiated and agreed to change of law provisions in the interconnection agreement, which were ratified by the parties, filed and approved by state commissions in all 13 states in which SBC operates; (2) nothing contained in the DC Circuit's March 2, 2004 decision in *USTA v. FCC* even remotely addressed parties substantive rights to change of law; and (3) the DC Circuit itself stayed the effect of its mandate in *USTA II*¹ for 60 days from the date the opinion issued, thus no change of law has occurred.

SBC's inconsistent behavior in negotiations with Level 3, therefore gives Level 3 pause to consider whether Level 3 can rely upon SBC to continue in good faith negotiations toward establishing mutually agreeable interconnection terms, conditions and rates pursuant to the Telecommunications Act. Simply put, the question is whether Level 3 should abandon negotiations and seek resolution of older and now, apparently, newly disputed issues. This conundrum is exacerbated by SBC's insistence in its March 11, 2004 "Lawful UNE" letter that Level 3 respond by Friday March 19, 2004 or SBC would trigger dispute resolution. If the latter is the case, then, given the parties' existing arbitration deadline of March 29, 2004, there seems little use in continued negotiations because Level 3 cannot agree to an amendment that patently violates the Act and foists upon Level 3 SBC's interpretation of the impact of the DC Circuit's decision.

Nevertheless, in an attempt to preserve what Level 3 believes were once productive negotiations, Level 3 is still willing to consider SBC's March 1, 2004 offer to continue to negotiate a new agreement while also discussing commercial solutions to unbundling problems, provided that SBC agree to the following:

- (1) Recognizing that Level 3 and SBC have been in good faith negotiations directed toward establishing a comprehensive interconnection agreement since approximately July of 2003, that SBC immediately and in writing acknowledge that it cannot (and will not) invoke dispute resolution procedures with Level 3 as of March 16, 2004 on the UNE section because such invocation violates the dispute resolution procedures contained in the parties agreement.
- (2) That regardless of whether the DC Circuits' decision in *USTA II* is stayed or takes effect, that SBC will not again suddenly invoke dispute resolution or change of law provisions on any terms other than those contained in the parties' now effective interconnection agreement.
- (3) SBC expressly address which provisions it believes the parties have already agreed to and therefore, will be incorporated into a new agreement without change. To accommodate SBC's


¹ *United States Telecom Ass'n v. FCC*, Case No. 00-1012 (D.C. Cir. Mar. 2, 2004) ("*USTA II*").

understanding and ensure lucid communication on this topic Level 3 attaches a spreadsheet that specifically details which provisions have been agreed upon, which ones are open, and which ones may or may not be open depending upon SBC's response to requests one and two immediately above.

- (4) SBC agree to extend the arbitration window until Friday April 16, 2004 to permit Level 3 time to consider the sufficiency of SBC's response and SBC's assurances of reasonable conduct going forward.

Level 3 has previously proven itself as an able, direct and predictable negotiating partner and seeks assurances from SBC that SBC will similarly perform so that the parties may productively negotiate a new agreement. However, Level 3 has already once extended the arbitration window to accommodate SBC's negotiation requests. We will agree to do so a second time, in the spirit of good faith negotiations provided that we receive a satisfactory response to this letter before close of business Monday March 22, 2004. We look forward to your response.

Kind regards,


Erik Cecil
Regulatory Attorney
Level 3 Communications, LLC

cc: Tonine Megger, SBC Industry Markets, Lead Negotiator 350 N. Orleans, Flr 3, Chicago, IL 60654

*** TX REPORT ***

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TX/RX NO 1432
CONNECTION TEL 914159578744
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PGS. SENT 14
RESULT OK



Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-1319
(720) 888-5134 (Fax)

Legal Department

FAX TRANSMITTAL

| | | | |
|-----------------|-----------------------|----------------------|---------|
| TO: | Nicola Erbe, Esq | COMPANY: | SBC |
| FAX NO.: | (415) 957-8744 | DATE: | 3/19/04 |
| FROM: | Erik Cecil | NO. OF PAGES: | 14 |
| E-mail | Erik.Cecil@Level3.com | | |

Attached please find the hard copy of the letter we discussed.

Best regards,

Erik Cecil



Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-1319
(720) 888-5134 (Fax)

Legal Department

FAX TRANSMITTAL

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|-----------------|------------------------------|----------------------|----------------|
| TO: | <i>Nicola Erbe, Esq</i> | COMPANY: | <i>SBC</i> |
| FAX NO.: | <i>(415) 957-8744</i> | DATE: | <i>3/19/04</i> |
| FROM: | <i>Erik Cecil</i> | NO. OF PAGES: | <i>14</i> |
| E-mail | <i>Erik.Cecil@Level3.com</i> | | |

Attached please find the hard copy of the letter we discussed.

Best regards,

Erik Cecil

(If you do not receive all the pages, please call me at (720) 888-2549)

Hard Copy

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Sprong, Aimee

From: Cecil, Erik
Sent: Monday, March 22, 2004 2:45 PM
To: 'ERBE, NICOLA (Legal)'
Cc: MEGGER, ANTONINE M (AIT); Thayer, Rick; Sprong, Aimee; Ducloo, Roger
Subject: RE: Continuation of Interconnection Negotiations Betw Level 3 and SBC Communications, Inc

Nicola,

We are surprised by your refusal to respond. Our issues are simple. Last week Level 3 responded to SBC's request for immediate re-negotiation of the change of law provisions and its statement that it would initiate dispute resolution on March 19th (which SBC stated pertained to its request to effectuate change of the UNE amendment), which section Level 3 had previously redlined and sent to SBC some three months prior. Because SBC's actions occurred during protracted and sensitive negotiations over the issue of whether Level 3 would agree to continue negotiations and reopen negotiations on additional issues, Level 3 requested reasonable assurances that the Parties could continue in productive good faith negotiations toward a comprehensive agreement without this sort of interference.

We are also surprised by SBC's opened ended rejection of our agreed-upon timeframe. Despite the fact that according to our records, you represented to us in telephone negotiations on Thursday (March 18, 2004) that SBC would respond by close of business today (Monday March 22, 2004), your email today provides no indication of whether or when SBC might respond other than "as soon as possible." While that phrase has meaning in typical commercial negotiations, SBC's failure to timely respond on several previous occasions vitiates its effect vis-à-vis SBC's immediate representation.

As we have indicated on several previous occasions, SBC's delay only serves to increase and strand our costs of preparing for arbitrations that might result if Level 3's efforts to resolve outstanding differences fail.

Considering also that during Thursday's call last week, SBC requested additional time in which to respond (from Friday to Monday), that Level 3 granted SBC's request for additional time, that Level 3 on Friday provided further and detailed information to assist SBC's determination and to confirm previous representations, it is clear that Level 3 has acted in good faith. Level 3 can only take SBC's languid two-sentence statement that a response is not forthcoming as promised is anything other than SBC's rejection of Level 3's offer to continue further negotiations.

Level 3, therefore, must commence again its preparations for arbitration. Accordingly, our willingness to consider alternatives is diminished both as a result of SBC's indolence and as a result of Level 3's further expenditure of resources necessary to secure reasonable agreement to outstanding (and SBC's newly raised) disputed issues.

Please expect that on today's call and subsequent calls we will discuss filing details and confirm our disputed issues list, which should closely follow the indications we made on the Excel spreadsheet we attached in our March 19 letter to you.

Best regards,

Erik

Erik Cecil
Regulatory Attorney
Level 3 Communications, LLC
tel: (720) 888-1319

-----Original Message-----

From: ERBE, NICOLA (Legal) [mailto:ne1271@sbccom.com]

3/25/2004

Sent: Monday, March 22, 2004 12:54 PM
To: Cecil, Erik
Cc: MEGGER, ANTONINE M (AIT); Thayer, Rick; Sprong, Aimee
Subject: RE: Continuation of Interconnection Negotiations Between Level 3 Communications, LLC and SBC Communications, Inc

Erik,
We will not be able to respond to your letter by the end of business today, as you requested. Your letter raises several new issues and conditions that require my client's review and input. We will provide a response as soon as we have had a chance to discuss your letter internally. Thanks

Nicola Erbe
Attorney
SBC Legal Department
Tel: 415-836-1414
Fax: 415-957-8744

-----Original Message-----

From: Cecil, Erik [mailto:Erik.Cecil@Level3.com]
Sent: Friday, March 19, 2004 4:22 PM
To: ERBE, NICOLA (Legal)
Cc: MEGGER, ANTONINE M (AIT); Thayer, Rick; Sprong, Aimee
Subject: Continuation of Interconnection Negotiations Between Level 3 Communications, LLC and SBC Communications, Inc
Importance: High

Nicola,

Attached is Level 's letter three hours later than promised, but here it is in all its glory. Thank you for your patience.

Please call with any questions. I look forward to SBC's response.

Have a great weekend.

Best regards,

Erik

Erik Cecil
Regulatory Attorney
Level 3 Communications, LLC
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erik.cecil@level3.com
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Sprong, Aimee

From: ERBE, NICOLA (Legal) [ne1271@sbc.com]
Sent: Monday, March 22, 2004 12:54 PM
To: Cecil, Erik
Cc: MEGGER, ANTONINE M (AIT); Thayer, Rick; Sprong, Aimee
Subject: RE: Continuation of Interconnection Negotiations Between Level 3 Communications, LLC and SBC Communications, Inc

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Nicola Erbe

Attorney

SBC Legal Department

Tel: 415-836-1414

Fax: 415-957-8744

-----Original Message-----

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Sent: Friday, March 19, 2004 4:22 PM
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Please call with any questions. I look forward to SBC's response.

Have a great weekend.

Best regards,

Erik

Erik Cecil
Regulatory Attorney
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Broomfield, CO 80021
tel: (720) 888-1319
fax: (720) 888-5128
erik.cecil@level3.com
www.level3.com

3/25/2004

Sprong, Aimee

From: ERBE, NICOLA (Legal) [ne1271@sbc.com]
Sent: Thursday, March 18, 2004 2:33 PM
To: Cecil, Erik; MEGGER, ANTONINE M (AIT)
Cc: Thayer, Rick; Ducloo, Roger; Sprong, Aimee
Subject: RE: Level 3 Redline of Appendix ITR and updated Redline of Appendix NIM

Erik,
As agreed today during our call, SBC will respond to your email below by Monday.
Nicola Erbe
Attorney
SBC Legal Department
Tel: 415-836-1414
Fax: 415-957-8744

Notice: This e-mail message is confidential and is intended only for the named recipient(s) above. DO NOT FORWARD this mail without my approval. If you are not the intended recipient(s) or have received this message in error, please immediately notify me by reply e-mail or by telephone at (415) 836-1414 and delete the original transmission from your computer. Thank you.

-----Original Message-----

From: Cecil, Erik [mailto:Erik.Cecil@Level3.com]
Sent: Wednesday, March 17, 2004 4:48 PM
To: MEGGER, ANTONINE M (AIT); ERBE, NICOLA (Legal)
Cc: Thayer, Rick; Ducloo, Roger; Sprong, Aimee
Subject: Level 3 Redline of Appendix ITR and updated Redline of Appendix NIM

Nicole,

Please note that I have made substantive changes to the appendix NIM, specifically the addition of Section 2.2. Also attached is our initial redline of appendix ITR. We note that these sections do not reflect the amendments we have previously agreed to. It was our understanding that all previously settled issues were to be incorporated into the new amendments. Accordingly, the attached redlines represent Level 3's attempt to bring SBC's proposed sections into conformance with previously negotiated amendments. At the same time, these redlines include additional information supportive of Level 3's positions. Please let us know whether SBC intends to incorporate previously agreed upon issues or whether we are really starting afresh. Accordingly, we will need to isolate the non-disputed issues in our next round of negotiations, as I thought we had attempted to do on our call last week.

We are in receipt of your request for amendment of the interconnection agreement regarding lawful amendments. This is confusing insofar as SBC and Level 3 have been in negotiations almost continuously since July 2003. Moreover, this request for an amendment on "lawful UNEs" seems at odds with SBC's representations that the matters to which SBC and Level 3 had already agreed to would be imported into the "new" agreement that SBC desired to negotiate with Level 3. As a matter of fact, that very point was one of Level 3's conditions (and still is) for considering SBC's offer to negotiate an agreement according to SBC's latest template. Let me explain.

The attached letter states that Level 3 must agree to SBC's "change of law" amendment by March 19th or SBC will initiate dispute resolution. Unless I am mistaken, Level 3 and SBC had already agreed on the terms of the change of law provisions contained within the general terms and conditions section of the agreement. Level 3 understood that previously agreed upon sections were no longer open to negotiation. Rather, Level 3 understood that SBC would move the non-disputed sections into the new template.

3/25/2004

Surely, this letter was not sent with Level 3 in mind, or sent by mistake, because it undoes the basis upon which Level 3 agreed to consider negotiating according to SBC's desire to reframe our existing agreement within SBC's new template.

Our arbitration window is approaching. Level 3 has advised SBC that it cannot simultaneously prepare for arbitration and negotiate. Thus, both parties agreed to extend the arbitration window for another 2 weeks while Level 3 considered SBC's proposal. Yet, during the very period of time when Level 3 was considering SBC's proposal, SBC sends a letter advising Level 3 of its intent to reopen sections of the agreement Level 3 believed already closed, and to drive new issues into dispute resolution by March 19th, despite the fact that we just agreed upon an arbitration window of March 29th. Thus, we are uncertain as to SBC's intentions. SBC has unilaterally abrogated that agreement it appears and wishes to initiate dispute resolution on not-yet-negotiated issues. SBC's actions in this regard appear to undercut its intent to continue good faith negotiations.

Accordingly, before we can proceed any further in considering whether to re-open negotiations, we request that SBC clarify, in writing, its intentions with regard to our negotiations on or before Friday March 19th.

I look forward to your prompt response and will be available, along with the Level 3 team on the conference bridge tomorrow morning to continue these discussions.

Kind regards,

Erik

Erik Cecil
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erik.cecil@level3.com
www.level3.com

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