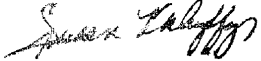


**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

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.)

JUN 21 2004

 Docket Room

Docket No. 04-L3CT-1046-ARB

**SOUTHWESTERN BELL TELEPHONE, L.P.'S RESPONSE
TO PETITION FOR ARBITRATION**

COMES NOW Southwestern Bell Telephone, L.P. ("SWBT") d/b/a SBC Kansas, pursuant to section 252(b)(3) of the Telecommunications Act of 1996 ("Act" or "1996 Act"), respectfully submits its response to the petition for arbitration ("Petition") filed by Level 3 Communications, LLC ("Level 3").¹

Scope and Purpose of Response

1. In keeping with the 1996 Act and the Commission's rules, the attachments to this Response set forth SBC Kansas' understanding of the parties' competing contract language as of the date of this Response; identifies arbitration issues presented by the competing contract language to the extent that the Petition did not identify those issues; sets forth SBC Kansas' position on all the arbitration issues; and sets forth Level 3's positions on the arbitration issues to the extent that SBC Kansas knows them based upon Level 3's Petition and the attachments thereto.

¹ The Petition and its caption incorrectly names SBC Communications Inc., as a party to this arbitration. SBC Communications Inc., is not an "incumbent local exchange carrier" as defined in 47 U.S.C. § 251(h); rather, it is the parent company of Southwestern Bell Telephone, L.P. ("SWBT") d/b/a SBC Kansas, the ILEC doing business in the state of Kansas and the proper party to the arbitration proceeding before the Commission.

2. This Response does not provide detailed support for SBC Kansas' positions, nor does it provide a detailed response to Level 3's positions (or the numbered paragraphs of the Petition). To the extent that the parties are unable to narrow the issues through their ongoing negotiations, SBC Kansas will demonstrate in its testimony and briefs why the issues should be resolved in its favor. Thus, the "SBC Position/Support" that is provided in the attachments is preliminary and partial.²

3. SBC Kansas notes in particular that this Response gives no special attention to the so-called "Tier I Issues" about which Level 3 wrote at some length in its Petition – issues that Level 3 characterizes as "the most substantive, critical business issues." Petition at 9. To be sure, some arbitration issues are more important than others. SBC Kansas does not believe, however, that any useful purpose is served by trying to assign arbitration issues to tiers. Nor, for that matter, does SBC Kansas agree with the particular groupings that Level 3 has chosen. Indeed, at least one of Level 3's supposed "Tier I" issues is not even an issue: Contrary to Level 3's characterization, (see Petition at 11), SBC Kansas does not seek to require Level 3 to establish a point of interconnection within each exchange. Accordingly, the attachments to this response give equal billing to all the arbitration issues.

The Negotiations

4. SBC Kansas knows from experience that arbitrators have little interest in the details of the parties' attempts to negotiate an interconnection agreement – and appropriately so, because the negotiation history virtually never has a role to play in the

² While SBC Kansas does not undertake to answer each numbered paragraph in the Petition, it does not admit or conceded that Level 3 is correct. Rather, SBC Kansas' discussion of the issues and its response to Level 3's positions is contained in the attachments hereto. Thus, SBC Kansas denies each numbered paragraph of the Petition unless it has expressly indicated assent in the attachments hereto.

determination of which party's proposed contract language *as of now* should be included in the parties' agreement. We therefore do not address at length the account set forth in paragraphs 5 through 8 of the Petition. We do note, however, that that account is inaccurate in at least the following respects:

5. This arbitration is not the product of negotiations that began on November 29, 2002, as Level 3 suggests. See Petition ¶¶ 5. The fact is that the parties have been negotiating a complete interconnection agreement for only about three months, which is one reason why there are so many open issues.

6. It is not correct, as Level 3 states (Petition ¶¶ 7), that the parties agreed to use their existing interconnection agreement as the baseline for a new contract.

7. The most distinctive characteristic of SBC Kansas' negotiations with Level 3 is manifest from the sheer volume of disputed contract language: The negotiations were, from the point of view of nailing down agreed language, the least successful interconnection agreement negotiations SBC Kansas has ever engaged in. Indeed, as we further explain below, the parties are far apart not only on contract language and issues, but also on identifying what their disagreements are. As the Commission is aware, the parties to SBC Kansas interconnection arbitrations – even when they have many substantive disagreements – typically collaborate on furnishing the Commission with an orderly identification of the issues, and with a comprehensible display of the disputed contract language. Here, that has not happened.

Inadequacy of Level 3's Identification of Issues and Disputed Contract Language

8. The first time SBC Kansas saw the presentation of issues that Level 3 filed was when Level 3 served SBC Kansas with the Petition. Moreover, SBC Kansas

did not see the bulk of Level 3's competing contract language until shortly before the Petition was filed. During their negotiations, the parties developed a format for issue matrices that, as SBC Kansas understood it, would form the basis for Level 3's filing. That is not to say that Level 3 had no right to depart from the format the parties were using. As the petitioner, Level 3 was free to present the issues as it saw fit. But in order for the arbitration to be manageable – especially with so much disputed contract language – Level 3 needed to present the disputed language accurately, and to tie the disputed language to issues in a comprehensible and orderly way. As SBC Kansas discovered when it studied the Petition and its attachments, however, Level 3 did not do that.

9. First, Level 3's DPL excludes numerous issues that separate the parties. Level 3 presented the disputed contract terms and then provided the primary issue with respect to each contract term from Level 3's perspective. That approach does not provide a corresponding opportunity for SBC Kansas to present the issues raised by the contract term from its own perspective. While Level 3 may prefer that certain issues not be subject to arbitration, SBC Kansas has a right to present those disputed issues for review (indeed, an obligation to present them or run the risk of waiving arbitration). Accordingly, the DPLs that SBC Kansas submits herewith, in order to present a *complete* set of issues, retain (by means of specific cross-references) all of the issues set forth by Level 3 in its DPL, and also identify those additional issues raised by the competing contract language and *not* identified by Level 3. The alternative – marking up the various issues on Level 3's DPL with a repeated statement that "Level 3's DPL

does not fully or accurately state the dispute between the parties” and then adding the omitted issues – would have been inefficient and confusing.

10. Second, there are a significant number of cases where Level 3’s appendix displays competing language, yet this language appears nowhere in the DPL. Again, Level 3’s incomplete presentation of the issues poses the risk that issues presented for review will be overlooked.

11. Third, even where Level 3 did present all of the issues separating the parties with respect to a contract term, there are several instances where Level 3’s DPL does not present the full scope of competing contract language. Such omissions are misleading and would hamper meaningful review by the parties and by the arbitrator. Further, they pose the risk that the parties would be left with “orphan” contract language (language that remains in the agreement even though its purpose is solely to support or relate to language that was removed in the arbitration) after the arbitrator reaches its decision on the disputed language presented.

12. Finally, in all cases (even for those issues where Level 3’s DPL fully presents the disputed contract language and the pertinent issues) Level 3’s DPL fails to concisely present the question that is presented for resolution. Level 3 simply stated the language in dispute, and its proposed answer, without ever formulating the question.

13. As a result of Level 3’s omissions, it was impossible for SBC Kansas to provide a DPL that would allow the arbitrator to “ascertain the position of the parties by reviewing one document” as required by the Commission’s Order 1, simply by “using the electronic format furnished by Level 3.” Rather, to carry out the intent of that order,

SBC Kansas has incorporated Level 3's position statements into a set of complete DPLs that summarize all open issues, as described below.

The Attached "Redlines" and Decision Point Lists

14. The parties' interconnection agreement will consist of a General Terms and Conditions section ("GTC") and a set of appendices, each of which governs a particular subject matter – e.g., Directory Assistance Listings ("DAL"), Intercarrier Compensation ("IC"), Network Interconnection Methods ("NIM"). The GTC and most of the appendices include disputed contract language on which the parties did not agree – i.e., language proposed by one side or the other – or both – that the non-proposing party did not accept. Submitted herewith are "redlined" versions of the GTC and each Appendix that includes such disputed contract language. The redlining displays in ***bold italics*** contract language proposed by Level 3 and opposed by SBC Kansas; in **bold underscore** contract language proposed by SBC Kansas and opposed by Level 3; and in normal font contract language on which the parties have agreed. The few appendices on which the parties have agreed in their entirety are also submitted herewith; since they include no disputed contract language, they are in normal font. *To ascertain the contract language to which Level 3 has agreed, or which Level 3 is proposing, SBC Kansas relied on the materials Level 3 submitted with its Petition, not on any understanding gleaned from the parties' negotiations.* Therefore, the documentation submitted herewith reflects the same Level 3-proposed language as did Level 3's Petition.

15. The disputed contract language is also displayed on the Decision Point Lists ("DPLs") submitted herewith. There is one DPL for the General Terms and Conditions and one DPL for each appendix that includes disputed contract language.

On each DPL, there is a column with the heading “Level 3 Language” and a column with the heading “SBC Language.” Under “Level 3 Language” there is displayed a portion of the contract as it will appear if Level 3 prevails, with the language that SBC Kansas opposes in ***bold italics***. Under “SBC Language” there is displayed the corresponding portion of the contract as it will appear if SBC Kansas prevails, with the language that Level 3 opposes in **bold underscore**. The contract section(s) in which the disputed language resides (e.g., section 3.1.4) are identified in the column with the heading “Section(s).”

16. Each language dispute is associated with an issue, which is shown, in the form of a question, under the heading “Issue Description.” These issues are numbered sequentially within each DPL. Thus, for example, the first issue in the DPL for the Intercarrier Compensation appendix is SBC IC-1. The SBC Kansas issue number is shown on the left, under the heading “Iss. No.” *Also in that column, immediately after the SBC Kansas issue number is the issue number that Level 3 assigned to the same disputed contract language in its Petition.* Thus, the Commission can cross-reference to – and SBC Kansas is not suggesting that the Commission disregard – Level 3’s issue designations. SBC Kansas had to assign its own numbers, however, because there are many instances in which Level 3 has assigned a single issue number (and a single issue description) to disputed contract language that actually calls on the Commission to resolve more than one question. SBC Kansas, in the exercise of its rights under section 252(b)(3) of the 1996 Act, respectfully requests the Commission to resolve all the issues set forth in the DPLs submitted herewith. In so doing, the Commission will resolve all the issues set forth by Level 3 in its Petition.

17. In addition to the Issue No., Issue Description, Section(s), Level 3 Language and SBC Kansas Language, the DPLs also set forth, for each portion of disputed contract language, the “Level 3 Position/Support” and the “SBC Position/Support.” The “Level 3 Position/Support” was copied directly from the DPL that Level 3 filed as an attachment to its Petition. The SBC Position/Support is, as explained above, preliminary and partial. In accordance with Order 1, this column also references “what decision, if any, this Commission has previously made on any issue.” As there are only two issues in which SBC Kansas is aware of such a decision, that information is presented only for those issues, and it is presented in the “SBC Position/Support” column rather than a separate column to facilitate review.

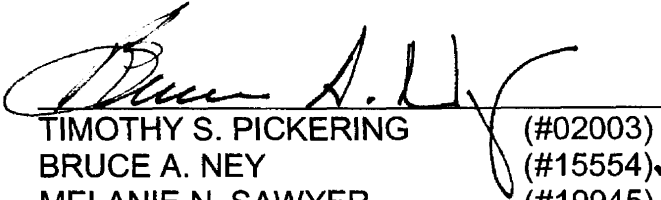
18. As described above, we have left intact everything set forth in the Petition and its attachments that Level 3 has the right to insist remain intact – specifically, Level 3’s proposed contract language; Level 3’s identification of the issues it wants the Commission to resolve; and Level 3’s statements of its positions on the issues. We have corrected Level 3’s misstatements of SBC Kansas’ proposed contract language; identified all the issues that the Commission must resolve in order to address all disputed contract language; and supplied SBC Kansas’ initial positions on the issues. In so doing, SBC Kansas has provided the basis form which “the arbitrator can ascertain the position of the parties by reviewing one document” as called for in Order 1.

CONCLUSION

SBC Kansas will set forth in full in its testimony and briefs the facts, policy considerations and legal arguments that support the positions reflected in its proposed language for the parties’ interconnection agreement, and respectfully urges the

Commission to rule in its favor on the disputed issues in this proceeding and to approve SBC Kansas' proposed language.

Respectfully submitted,


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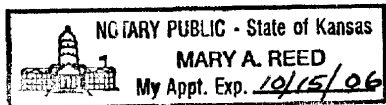
VERIFICATION

I, Michael Scott, of lawful age, and being first duly sworn, now state: I am Area Manager – Regulatory Issues, and have read Southwestern Bell Telephone, L.P.'s Response to Petition for Arbitration, and verify the statements contained herein to be true and correct to the best of my knowledge and belief.

Michael Scott

Michael Scott

Subscribed and sworn to before me this 21st day of June, 2004.



Mary A Reed

Notary Public

My appointment expires: October 15, 2006

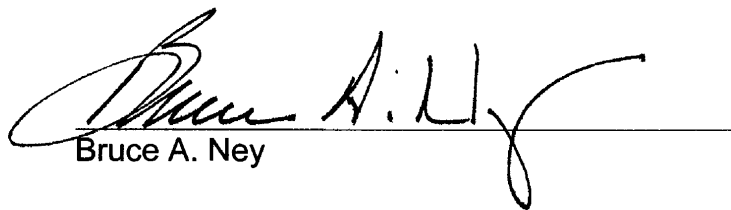
CERTIFICATE OF SERVICE

I hereby certify that a correct copy of Southwestern Bell Telephone, L.P.'s Response to Petition for Arbitration was sent via U.S. Mail or hand-delivered on this 21st day of June, 2004, to:

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Bruce A. Ney

“SOUTHWESTERN BELL TELEPHONE, L.P.’S RESPONSE TO PETITION FOR
ARBITRATION”

FILE DATE: JUNE 21, 2004

TABLE OF CONTENTS FOR
APPENDICES TO “PETITION”

1. Interconnection Agreement—13 State SWBT / Level 3 Communications
2. Level 3 / SBC 13 State – DPL – GT&C
3. Appendix NIM (Network Interconnection Methods)
4. Appendix ITR (Interconnection Trunking Requirements)
5. Level 3 / SBC 13 State – DPL Appendix NIM and ITR
6. Appendix OSS – Resale and UNE
7. Appendix Intercarrier Compensation
8. Level 3 / SBC 13 State – DPL – Intercarrier Compensation
9. Appendix Recording
10. Level 3 / SBC 13 State – DPL Recording
11. Appendix Out of Exchange Traffic
12. Appendix CH
13. Level 3 / SBC 13 State – Out of Exchange Traffic DPL
14. Appendix Coordinated Hot Cut (CHC)
15. Level 3 / SBC 13 State – DPL Coordinated Hot Cut (CHC)
16. Level 3 / SBC 13 State – Clearinghouse
17. Appendix Physical Collocation
18. Level 3 DPL – Physical Collocation
19. Appendix 911
20. Level 3 / SBC 13 State – Emergency Services/911 DPL
21. Appendix Lawful UNE (Lawful Provision of Access to UNEs)
22. Level 3 / SBC 13 State – UNE DPL
23. Appendix Virtual Collocation
24. Level 3 DPL – Virtual Collocation
25. Appendix DAL
26. Level 3 / SBC 13 State – Local Directory Assistance DPL
27. Appendix SS7
28. Appendix SS7 (Redlined Version Filed by Level 3 to SBC)
29. Level 3 / SBC 13 State – SS7 DPL
30. Appendix Number Portability
31. Appendix Numbering
32. Appendix Performance Measurements
33. Level 3 / SBC 13 State – Performance Measurement DPL
34. Transit Traffic Service Appendix
35. Level 3 / SBC 13 Global Issues DPL

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