

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

STATE CORPORATION COMMISSION

JUN 25 2004

In the Matter of Arbitration Between)
Level 3 Communications, LLC and)
SBC Communications, Inc., Pursuant to)
Section 252(b) of the Communications Act)
Act of 1934, as Amended by the)
Telecommunications Act of 1996, for)
Rates, Terms, and Conditions)
of Interconnection)

Docket No. 04-L3CT-1046-ARB

 Docket Room

**LEVEL 3 COMMUNICATIONS, LLC.'S MOTION TO STRIKE SBC'S DISPUTED
POINTS LIST AND COMPEL SBC TO USE LEVEL 3'S DPL**

Level 3 Communications, LLC, ("Level 3"), by its attorneys, respectfully moves the Arbitrator to strike the proposed Disputed Points List ("DPL") of Southwestern Bell Telephone, L.P. d/b/a SBC Kansas (hereinafter "SBC" or "the company"), attached to SBC's Response to the Level 3 Petition filed on June 21, 2004. Further, Level 3 requests the arbitrator compel SBC to use the Level 3 proposed DPL as attached to the Level 3 Petition. In support of this Motion, Level 3 states as follows:

1. On May 25, 2004, Level 3 filed with this Commission its Petition for Arbitration ("Petition"). Level 3 attached as Exhibit B to that Petition its DPL, which contains all of the Level 3 disputed issues and proposed language ("Level 3 DPL"), and Exhibit C, which is a clean version of the Level 3 proposed Interconnection Agreement. The Level 3 DPL provides additional rows dedicated to allow SBC to insert its proposed language modifications and support for its positions. Level 3 drafted the DPL in this manner so as to easily allow SBC to insert its proposed language and issues, and allow the arbitrator to have one document to which it could turn for a complete overview of the parties' positions.

2. Level 3 spent hundreds of personnel hours formatting and preparing for submission its DPL, costing it valuable resources and personnel time. The Level 3 DPL is formatted such that the issues designated in the DPL are consistent with the issues raised in the Petition and in the pre-filed testimony that Level 3's experts have been working on for many weeks. As such, the arbitrator and parties can easily track Level 3's issues between the documents.

3. Level 3 provided counsel for SBC an electronic Microsoft Word version of its DPL at the time Level 3 filed its Petition. Level 3 did so in order to make SBC's task of including its positions and proposed language easier, and allow the arbitrator to have a single document from which Level 3's and SBC's positions are accurately included.

4. In its June 10, 2004 *Order 1, Designating Arbitrator, Setting Out Requirements and Assessing Cost* in this docket, the Commission ordered that “[f]or its response SBC shall, at a minimum, complete the DPL using the electronic format furnished by Level 3 so that the arbitrator can ascertain the position of the parties by reviewing one document.”

5. In its June 21, 2004 Response to the Petition, SBC ignored the Commission's order and FCC Rules and rather than respond to the issues Level 3 presented in its DPL devoted enormous effort (according to SBC's "Response") to preparing an entirely new DPL ("SBC DPL"), which, in effect, substantially modifies the pleadings Level 3 submitted in this arbitration, including Appendix B to the Level 3 Petition.

6. SBC's Response to the Petition is striking both its brevity and its vacuous nature. It is brief because it is nine pages long. It is vacuous because it lacks even a single sentence

remotely responsive the requirement that SBC respond to an arbitration petition with information sufficient to identify the nature and basis for SBC's proposed language.

7. SBC, by this brief and vacuous Response, has deprived all those involved in this action, not the least of which are the arbitrator and Commission staff, of fair notice of the legal basis for asserting that its contract language should be accepted. It is possible that SBC has no basis for its objections. Maybe SBC just doesn't know why it objects to these positions, so has defaulted to saying no to everything and is trying to buy time to determine what to do. Maybe SBC just doesn't want to or even think it has to respond. Whatever the reason, none satisfy the requirement that SBC substantiate its positions nor do any excuse SBC's failure to do so.

8. No resolution is possible unless SBC responds to Level 3's petition. SBC has neither provided the arbitrator nor Level 3 with any information that would permit resolution of this arbitration. Instead, SBC, by its own admission expended enormous effort to concoct an entirely new DPL whose mass is only exceeded by its ability to obfuscate issues. Even more ironically, it complains about having to do so.

9. Federal Rules specifically prohibit ILEC behavior that impede or frustrate the progress of negotiations. *See* 47 C.F.R § 51.301. Whether it was due to intention, inadvertence or incompetence, SBC's failure to respond has delayed and obstructed resolution of this dispute. Rather than moving one step closer to resolution, SBC has devoted itself to creating entirely new and different disputes having nothing to do with the issues Level 3 raised in the Petition. SBC's appears to demonstrate this defiance by the fact that SBC could have easily responded within the format that Level 3 provided to it. This is abundantly obvious as SBC agreed to do so on the record in a prehearing conference in Level 3's parallel Nevada arbitration.

10. Level 3 further notes that preparing testimony on SBC's proposed issues and language is virtually impossible until SBC provides a comprehensive explanation of and foundation for its new issues. That should have taken place in the Response. SBC's failure to even minimally respond to Level 3's Petition impairs and unfairly prejudices Level 3's ability to prepare its case and respond to SBC's positions.

11. Moreover, as described below, SBC's DPL is inaccurate and mischaracterizes statements and positions Level 3 provided in written pleadings in this action. So, in addition to ignoring Commission requirements that it respond substantively to Level 3's arbitration petition, delaying resolution of this arbitration, causing all concerned more work and effort, and obfuscating rather than clarifying the issues, SBC's attempted DPL frustrates and renders useless the substantial efforts Level 3 devoted to setting forth what Level 3 believed to be the issues, making all of the hours and time spent preparing Level 3's DPL a nullity. Moreover, SBC has forced upon Level 3 additional work and effort to go back over SBC's proposed DPL in an effort to determine whether SBC's DPL – despite its obvious deficiencies – could aid Level 3 or this Commission with resolution of this arbitration. To make matters worse, SBC specifically and deliberately rebuffed Level 3's overture to respond to the DPL filed in this proceeding – which Level 3 specifically formatted such that SBC could provide a response.

12. In addition to the foregoing, the SBC DPL in numerous instances directly contradicts Level 3 positions as presented in Level 3's Petition and attached exhibits. Level 3 has invested approximately 40 hours of in-house staff time and 15 hours of outside counsel time comparing portions of the issues and proposed language for several of the underlying Appendices in the Level 3 DPL with the manner in which those were characterized and presented in the SBC DPL. Level 3 terminated its comparison of SBC's four or five hundred

page document (SBC did not consistently number its pages, making use of the document in any arbitration proceeding an adventure in text searches) after it was clear based upon a representative sample of several of the sections that there were too many inaccuracies to justify further review.

13. To substantiate its claims, Level 3 provides below several examples of where SBC's characterization of Level 3 contract language and Level 3 positions are completely inaccurate and misleading. These examples come from General Terms and Conditions, Intercarrier Compensation, and UNE Appendices. If the egregious inaccuracies shown below infect the balance of the General Terms and Conditions and the eighteen appendices that make up the entire agreement, to anything approaching what Level 3 has already discovered, reliance on SBC's DPL can only lead to confusion and additional burden on the arbitrator to sort through the several pounds of pages of SBC's DPL in order to create its recommendations. As examples of the modifications and liberties SBC has taken in its DPL, Level 3 points to the following:

14. **In its DPL, SBC appropriates Level 3's formatting to disastrous result.**

Like a kid in a schoolyard yelling "no mine," SBC's DPL appropriates a simple formatting concept to its own use. The result is disastrous. Level 3's DPL shows language that Level 3 proposes to which SBC has yet agreed as "**bold, underline**". In SBC's DPL, SBC "**bolds and underlines**" language that SBC proposes, to which Level 3 objects. In other words, diametrically opposite terms by different parties would appear exactly the same in printed documents. This would force the arbitrator to sift not only through Level 3's page-numbered and cross-referenced DPL, but to also sort through SBC's even larger, inconsistently numbered, and incorrectly cross-referenced DPL to locate not only the exact section number, but also to cross check both sets of language against each other. Only then can the arbitrator determine whether

there was a dispute, but also to determine who disputed what. Then, had it the benefit of substantive legal justification, the arbitrator might be able to reach a decision. Instead it might reach for the Tylenol because this sort of nonsense can lead to nothing more than confusion, exasperation, and ultimately, exhaustion. Rather, mandating SBC to use the same DPL proposed by Level 3 will meld the two documents into one master document, with one master protocol, and far less confusion. It will force SBC to respond to Level 3's petition instead of crafting a platform from which it can proclaim its version of whatever it thinks the dispute is or whatever new language it wants to introduce into this dispute. Further, as discussed below, any reliance on the SBC DPL is unfounded as SBC has incorrectly incorporated Level 3's language proposals and support into its DPL.

15. SBC recast Level 3's Petition in the DPL. It renumbered Level 3's issues in dispute, which issue numbers are not only tied to Level 3's Petition, but also to Level 3's DPL and Level 3's testimony.

In stark contrast to its vacuous response to the substance of Level 3's Petition, SBC brashly modified Level 3's issue numbering designation as found in the Level 3 DPL and Petition. As stated above, Level 3 has coordinated its issue numbering throughout its Petition, DPL and testimony for ease in drafting and review by the arbitrator. Rather than allow Level 3 to proceed with *its own Petition* as it has designed it, SBC has unilaterally determined that it knows better and changed the designations to suit its own needs. Setting aside the sheer effrontery of such a tactic, SBC's actions are completely outside any cognizable set of rules of civil procedure or of administrative procedures. For instance, attached as Exhibit A to this Motion is a series of pages taken from SBC's DPL. Even a cursory review of these pages indicates that SBC has used at least three different issue designations for Level 3's issues (*i.e.*, L3 IC-1, LT S1.3.1, and LV3 #2). Frankly, for certain of these SBC designations of Level 3's

issues, Level 3 is not clear to which Level 3 issue SBC is referring. Level 3 points out that not only are these issue designations not consistent with the issue designations used in Level 3's DPL and Petition, but SBC has also apparently made no attempt to make its own DPL internally consistent. As such, use of SBC's proposed DPL can only lead to confusion, and should be stricken on that basis alone. However, mandating SBC populate the Level 3 DPL as initially contemplated would assure that Level 3's issue designations (or positions, for that matter) are followed rather than juxtaposed and altered such that neither Level 3 nor the arbitrator can divine their meaning or intent.

16. SBC deleted from its DPL swaths of sections that Level 3 included in the Petition as disputed.

In the pages of SBC's DPL related to the UNE Appendix, it appears that SBC did not include the following sections from the Level 3 DPL: 2.1.2.3; 2.1.3; 2.1.4; 2.2; 2.5.1; 2.5.2; 2.7.1; 2.7.2; 2.7.4; 2.7.5; 2.7.6; 2.7.8; 2.8; 2.9; 2.12; 2.14.3.1-2.14.3.3; 2.14.4; 2.16.3.5; 2.16.5; 2.1.1. SBC provides no explanation for this failure to account for these sections, despite Level 3 designating them as issues of dispute in its DPL. Again, this was discovered only after hours of review by Level 3 comparing selected sections of the two DPLs to determine whether SBC's DPL could aid the resolution of this dispute. SBC could have expended fractions of this effort to simply complete the Level 3 DPL and add in whatever additional language it desired. Even now it would be easier by several orders of magnitude for SBC to simply complete the DPL provided to it.

17. SBC's DPL incompletely and inaccurately represents Level 3's proposed language.

Again, after only briefly reviewing two sections of SBC's DPL, Level 3 found numerous instances where SBC had revised, altered or completely mistaken Level 3's language proposals

(all of which were provided to SBC in the petition and in Level 3's DPL). For instance, for Intercarrier Compensation Appendix Section 4.2, Level 3's DPL shows that Level 3 has recommended language changes in that section Agreement, and explained in its Position/Support column that "Changes are consistent with federal requirements. VoIP traffic has never been assessed access charges. SBC's proposed language is geared towards lumping VoIP services into a switched-based service, and, as such, imposing access charges. ." When drafting its own DPL related to Intercarrier Compensation Appendix, Section 4.2, SBC not only unilaterally combined multiple Level 3 issues into one cell, but then completely fabricated Level 3's Position/Support for its recommended language as "Clarifies the scope of the appendix." Level 3 has attached the relevant pages hereto as Exhibit B. Again, this example was discovered after cursorily reviewing only certain portions of SBC's proposed DPL. There is no telling the scope of other misstatements or errors in SBC's DPL, which can only be discovered by laborious and time consuming side by side comparisons of documents that are formatted differently and that follow different conventions for establishing who disputes what. Adding to SBC's misstatement of Level 3 positions, neither the arbitrator, Commission staff nor Level 3 will ever come close to resolving this arbitration within the statutory limits. So unless the arbitrator strikes SBC's DPL, both the arbitrator and Level 3 will be off on an extraordinarily long march through SBC's proposed DPL line-by-line to ensure Level 3's positions, issues and proposed language is properly incorporated. As stated above, this will cost Level 3 several hundred hours more of time that Level 3 has already spent preparing its own DPL, petition, discovery and testimony; all of which can be avoided if SBC simply populates a document its had since May 25, 2004 with its position to the extent it has a different view.

18. The SBC DPL is not paginated.

Level 3 can attest from personal experience that attempting to reconcile its DPL with SBC's DPL is further complicated by the fact that the hundreds if not thousands of pages in SBC's DPL contain no page numbers. Cross reference, therefore, is impossible. Level 3's initial review has already demonstrated how incredibly time consuming, confusing and wasteful a line-by-line comparison would be if SBC is permitted to use its DPL in this proceeding. Further, it will only lead to confusion on the part of the parties and the arbitrator. For this reason alone, the SBC DPL should be stricken.

19. SBC has actually removed issues raised in the Level 3 DPL and Petition from any mention whatsoever in its DPL.

As if the foregoing did not utterly confuse, obstruct and delay resolution of this proceeding, and in what appears to be either utter lack of attention or simply complete disregard for any rules of conduct in a civil or administrative proceeding, SBC unilaterally removed issues Level 3 raised in the Petition from its DPL. For instance, Level 3's DPL and proposed language for General Terms and Conditions, Section 5.2, shows that Level 3 has proposed the term of the contract be three years. *See*, Level 3 Issue GT-1, attached hereto as Exhibit C. SBC, however, fails to even acknowledge this issue exists in its DPL, as the entire issue does not appear in SBC's DPL. In other words, either SBC failed to include a valid disputed issue in its DPL, or it intentionally left that issue out of its DPL in the hopes that it would not be caught in a review. In either event, SBC's proposed DPL does not accurately list all of the issues raised by Level 3 in its petition, and cannot be given any substantive weight by the arbitrator. As such, the SBC DPL should be stricken, and SBC mandated to populate the Level 3 DPL, which accurately portrays the issues Level 3 raised in the Petition.

20. As should be abundantly clear, SBC's failure to provide a substantive response to the Petition compounded by the fact that it unilaterally created a document that, whether by inattention or design, appropriates Level 3's formatting to SBC's issues, removes Level 3's disputed issues, replaces Level 3's justifications with SBC's own, inaccurately represents Level 3's proposed language, is not paginated and removes entire issues Level 3 provided in its Petition and attached exhibits, testimony and discovery, obstructs and delays resolution of this arbitration. For any one of these reasons, at a minimum, SBC's DPL should be stricken or deemed non-admissible in any proceedings in this arbitration and arising from this arbitration and SBC should be ordered to complete Level 3's DPL.

21. Level 3 views SBC's tactics as SBC's attempt to use its dominant carrier resources to put a financial and personnel squeeze on a much smaller competitor who does not have the resources to create, review and verify multiple versions of the DPL – all done in order for SBC to gain an advantage over Level 3 in the arbitration process. Such legal gamesmanship should not be rewarded.

22. As the Party who initiated this Petition, Level 3 should be the party that controls how its issues and filing should proceed. This is precisely what the Commission envisioned in this arbitration: it specifically ordered SBC to use Level 3's DPL to set out its positions so that the arbitrator would need only *one* document.

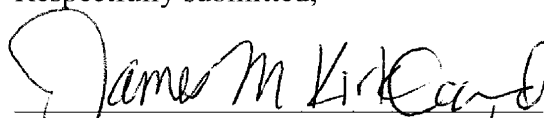
23. Level 3 would also point out that SBC's counsel stated on the record in the ongoing arbitration before the Nevada Commission that SBC would use the same Level 3 DPL

as the basis for which it would provide its response on issues.¹ The Level 3 DPL in Nevada is virtually identical to the DPL filed in this proceeding. There is therefore no reason why SBC should be unable or unwilling to do so in this proceeding as well.

WHEREFORE, for the above state reasons, Level 3 Communications, LLC respectfully requests the arbitrator to strike the SBC proposed DPL as attached to its Response to the Petition filed on June 21, 2004, and compel SBC to populate the Level 3 DPL as attached to the petition and made available to SBC. SBC should be compelled to make such a filing within ten (10) business days and the Commission should provide whatever other additional relief it sees as just, proper and required by its rules and decisions.

¹ Level 3 is currently undergoing arbitrations with SBC in all 13 of the states in which SBC serves as an ILEC. Level 3 raises the same issues, and relies on the same DPL, in each of these arbitrations.

Respectfully submitted,



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COMMUNICATIONS LLC

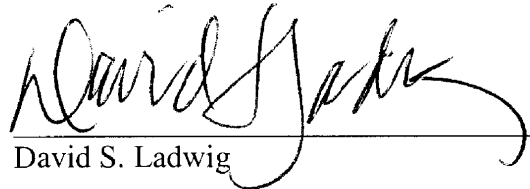
VERIFICATION

State of Missouri)
) ss.
County of Jackson)

I, David S. Ladwig, of lawful age and being first duly sworn, now state:

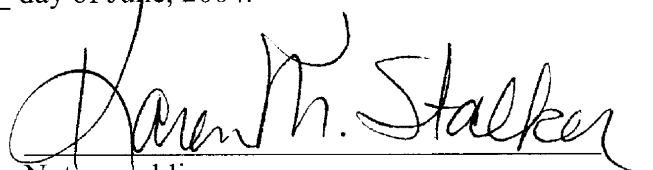
1. I am an attorney at Sonnenschein Nath & Rosenthal LLP and am licensed in the State of Kansas (Bar No. 15947);
2. I am authorized by Level 3 Communications LLC to execute and verify the foregoing Motion to Strike SBC's Disputed Points List and Compel SBC to Use Level 3's DPL;
3. I have reviewed the foregoing, and its contents are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.



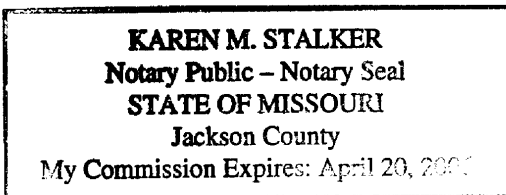
David S. Ladwig

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



Notary public

My commission expires:

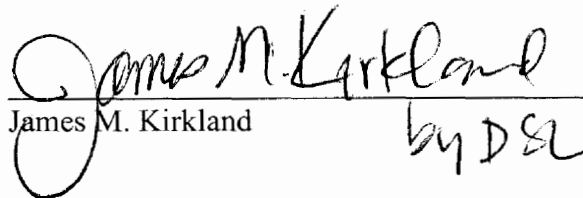


CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 25, 2004, a true and final copy of the foregoing was served via electronic mail and by First Class United States mail, postage prepaid, on counsel of record as follows:

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James M. Kirkland *by DSL KS Bar 1594*

LEVEL 3 - SBC 13STATE - DPL - INTERCARRIER COMPENSATION

EXH. A

Iss. No.	Appendix/Section	Issue Description	Level 3 Language	Level 3 Communications Position/Support	SBC Language	SBC Position/Support	Status
SBC IC-01	Joint 1.2 - 1.3	a) Should this appendix address only section 251/252 obligations?	1.3 The provisions of this Appendix do not apply to traffic originated over services provided under local Resale service pursuant to 251(c)(4) of the Act.	IC-1 S1.3 Clarifies the scope of the appendix.	<u>1.3 The provisions of this Appendix do not apply to traffic originated over services provided under local Resale service. SBC-13STATE will compensate the terminating carrier in accordance with this Appendix for Section 251(b)(3) Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic") and IntraLATA Toll Traffic that originates from an end user that is served by a carrier providing telecommunications services utilizing SBC-13STATE's Resale Service.</u>	a) This appendix should address only traffic exchanged between the parties under Section 251(b)(5) and Section 251(c). Level 3's language is vague and overly broad. It is unclear what "responsibilities" Level 3 is referencing under sections 202 and 271 and they should not be included in a Section 251/252 agreement. Meanwhile, Section 201 is addressed in the intraLATA/interLATA toll sections of this appendix. See sections 13 and 14.	
L3 IC-1 S1.3	SBC 1.4	b) Should this appendix address compensation only for Section 251(b)(5) Traffic, ISP-Bound Traffic, Optional EAS Traffic (also known as "Optional Calling Area Traffic") and IntraLATA Toll Traffic?	1.4 <i>The Parties agree that in light of their responsibilities as common carriers under, inter alia, 47 U.S.C. §§ 201, 202, 251, 252, and 271 and specifically in reference to 47 U.S.C. § 252(a) that the purpose of this Appendix as well as the purpose of this Agreement generally is to ensure that each Party exchanges all forms of traffic including all traffic described in Sections 3 below as well as any information services, CMRS, voice, video, text, or data traffic or any other electronic communications traffic over and between their respective facilities and networks.</i>	GT-3 S1.4 Clarifies the scope of the agreement.	1.4 Reserved for future use.	b) This appendix should address the standard categories of traffic subject to	
L3 IC-1 S1.4	Level 3 1.4-1.5						
L3 GT-3 S1.5							

LEVEL 3 - SBC 13State - DPL - GT&C

06/08/04

Iss. No.	Appendix/Section	Issue Description	Level 3 Language	Level 3 Communications Position/Support	SBC Language	SBC Position/Support
SBC GTC 3 (LT S1.3.1 (12-State only); S1.4.5 (7-State only); S1.2.4 (12-State only); S1.2.5 (12-State only); S1.2.7 (12-State only); (LT S1.7.9); S1.6.6 (5-State only); S1.6.4 (5-State only); S1.7.2 (SNET only); S1.8.3 (SWBT only); S1.8.1 (SWBT only).	GT&C General Definitions	Should certain definitions be made applicable to SBC-13State as opposed to some subset of the SBC ILEC states?	<p>1.3.1 (Definitions Applicable to SBC-12STATE Only). "Accessible Letters" are correspondence used to communicate pertinent information regarding <u>SBC-8STATE</u> to the client/End User community.</p> <p>1.4.5 (Definitions Applicable to SBC-7STATE Only). "Data Interexchange Carrier" (DIXC) is a process designed to facilitate the reciprocal exchange of voice traffic load data between the <u>SBC-7STATE</u> and CLECs interconnecting with its network. This reciprocal exchange of data enables <u>SBC-7STATE</u> and each CLEC</p> <p>1.2.4 (Definitions Applicable to SBC-12STATE Only). "Fiber Meet" means</p> <p>1.2.5 (Definitions Applicable to SBC-12STATE Only). "Interconnection Activation Date" is</p> <p>1.2.7 (Definitions Applicable to SBC-12STATE Only). "Plain Old Telephone Service" (POTS) means telephone service for the transmission of human speech.</p>		<p>1.1.4 "Accessible Letters" are correspondence used to communicate pertinent information regarding <u>SBC-13STATE</u> to the client/End User community.</p> <p>1.1.40 "Data Interexchange Carrier" (DIXC) is a process designed to facilitate the reciprocal exchange of voice traffic load data between the <u>SBC-13STATE</u> and CLECs interconnecting with its network. This reciprocal exchange of data enables <u>SBC-13STATE</u> and each CLEC</p> <p>1.1.56 "Fiber Meet" means</p> <p>1.1.66 "Interconnection Activation Date" is</p> <p>"Plain Old Telephone Service" (POTS) means telephone service for the transmission of human speech.</p>	contract. These definitions should be made applicable to SBC-13State, and not to some subset of the SBC ILECs as Level 3 proposes.

Level 3 language Times New Roman bold Italic
SBC language Arial Narrow bold underlined

Updated 5/18/04

LEVEL 3 - SBC 13State DPL

APPENDIX NIM AND ITR

Iss. No.	Appendix/ Section	Issue Description	Level 3 Language	Level 3 Communications Position/Support	SBC Language	SBC Position/Support
<p>SBC NIM/ITR-2</p> <p>{ LV3 #2</p>	<p>NIM 1.1</p>	<p>Should CLEC be permitted to utilize interconnection facilities solely for originating its own interexchange traffic?</p>	<p>This Appendix describes the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic between the respective Customers of the Parties pursuant to <i>Section 251(c)(2) of the Act</i>; provided, however, Interconnection may not be used solely for <i>the purposes not permitted under the Act</i>.</p>	<p>Level 3's changes clarify the basis by which NIM provisions are authorized.</p>	<p>This Appendix sets forth the terms and conditions that Network Interconnection Methods (NIM) is provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC. This Appendix describes the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic between the respective Customers of the Parties pursuant to Section 251(c)(2) of the Act; provided, however, Interconnection may not be used for purposes <u>prohibited</u> under the Act <u>including, but not limited to, solely for the purpose of originating a Party's own interexchange traffic.</u></p>	<p>No. SBC will not be financially responsible in whole or in part for facilities used by the LEVEL 3 to provide a service to their end user to reach an interexchange carrier.</p> <p>SBC agrees with the insertion of <i>Section 251(c)(2)</i>.</p>
<p>SBC NIM/ITR-3</p> <p>LV3 NIM #1</p>	<p>NIM 1.25</p>	<p>Should SBC be required to interconnect with Level 3 pursuant to unidentified, ambiguous laws?</p>	<p>Network Interconnection Methods (NIMs) include, but are not limited to, Physical Collocation Interconnection; Virtual Collocation Interconnection; Leased Facilities Interconnection; Fiber Meet Interconnection; and other methods as mutually agreed to by the Parties <i>or according to Applicable Law</i>. One or more of these methods may be used to effect the Interconnection.</p>	<p>Level 3's change clarifies that the definition of NIM includes those methods required by a court or an agency and may not be used for purposes not permitted under the law.</p>	<p>Network Interconnection Methods (NIMs) include, but are not limited to, Physical Collocation Interconnection; Virtual Collocation Interconnection; Leased Facilities Interconnection; Fiber Meet Interconnection; and other methods as mutually agreed to by the Parties. One or more of these methods may be used to effect the Interconnection.</p>	<p>Level 3's language is ambiguous, because Level 3 fails to identify any relevant "applicable laws."</p>

Exh. B

LEVEL 3 / SBC 13State – Disputed Points List (“DPL”)

Plain Text indicates where Level 3 believes the Parties have agreed to the text.
 Underlined Text (i.e. text) indicates where Level 3 believes that SBC does not agree with Level 3’s proposal.
 Strikethrough Text (i.e. text) indicates where Level 3 disagrees with what it believes is SBC’s proffered text.
 Italic text (i.e. text) will indicate text that SBC inserts where SBC disagrees with Level 3 text.

Tier 1 = 1-8
 Tier 2 = 9- 20
 Tier 3 = Appendix Abbreviation and number

ISSUE NUMBER	Appendix or Section	Issue Description	Level 3 Communications Position/Support	SBC Position/Support
7, IC-1	IC 3.7	<p>Classification of Traffic</p> <p>The Parties’ obligation to pay intercarrier compensation arises from traffic that originates from and terminates to customers subscribing to services provided by either party. Accordingly, no reciprocal compensation, access charges or any other form of compensation arises when the Parties exchange traffic that is used to test connections or equipment connected to either Party’s network. to each other shall commence on the date the Parties agree that the interconnection is complete (i.e., each Party has established its originating trunks as well as all ancillary traffic trunking such as Operator Services, 911 or Mass-Calling trunks).</p> <p>SBC PROPOSAL</p>	<p>VoIP traffic has never been assessed access charges. SBC’s proposed language is geared towards lumping VoIP services into a switched-based service, and, as such, imposing access charges.</p>	
6, IC-2	IC 4.2	<p>Responsibilities of the Parties</p> <p>To the extent technically feasible, each Party shall provide CPN as defined in 47 C.F.R. § 64.1600(G) (“CPN”) and Originating Carrier Number (“OCN”) for Telecommunications Traffic originating on its network and passed to the network of the other party. Neither Party shall intentionally strip, alter, modify, add, delete, change, or incorrectly assign any such CPN for any Telecommunications Traffic. Each party shall pass the CPN (and OCN) for the traffic it receives from any third party. The parties recognize that neither party has a billing system capable of determining the physical location of their customers; rather consistent with industry practice nationwide both Parties’ billing systems utilize tariff databases and the Local Exchange Routing Guide (“LERG”) to identify the location of the switch serving the called or calling NPA-NXX codes and then rate those calls according to the terms and conditions of this Agreement. To the extent that either party is able to identify improper, incorrect, or fraudulent use of</p>	<p>Changes are consistent with federal requirements. VoIP traffic has never been assessed access charges. SBC’s proposed language is geared towards lumping VoIP services into a switched-based service, and, as such, imposing access charges.</p>	<p>LEVEL 3 POSITION</p>

Exh. B

LEVEL 3 / SBC 13State – Disputed Points List (“DPL”)

Plain Text indicates where Level 3 believes the Parties have agreed to the text.

Underlined Text (*i.e. text*) indicates where Level 3 believes that SBC does not agree with Level 3’s proposal.

Strikethrough Text (*i.e. text*) indicates where Level 3 disagrees with what it believes is SBC’s proffered text.

Italic text (*i.e. text*) will indicate text that SBC inserts where SBC disagrees with Level 3 text.

Tier 1 = 1-8

Tier 2 = 9- 20

Tier 3 = Appendix Abbreviation and number

ISSUE NUMBER	Appendix or Section	Issue Description	Level 3 Communications, LLC Proposed Language SBC Counterproposals	Level 3 Communications Position/Support	SBC Position/Support
			<p>Circuit Switched local exchange services (including but not limited to PRI, ISDN and/or smart trunks or to the extent either party is able to identify stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, the Parties agree to cooperate with one another to investigate and take corrective action. For all traffic including, without limitation, interexchange traffic and interexchange VoIP traffic except wireless traffic, each Party shall provide Signaling Data (as defined below) and shall not strip, alter, modify, add, delete, change, or incorrectly assign any Signaling Data. Signaling Data shall, at a minimum, include information that accurately reflects the geographic location of the end user that originated and/or dialed the call, when including such information is technically feasible. For purposes of this Agreement, Signaling Data includes, but is not limited to, calling party number as defined in 47 C.F.R. Section 64.1600(c) (“CPN”), Automatic Number Identification as defined in 47 C.F.R. Section 64.1600(b) (“ANI”), Charge Number as defined in 47 C.F.R. Section 64.1600(d), Jurisdictional Indicator Parameter (“JMCI”) and any other signaling data that affects the terminating Party’s ability to jurisdictionalize traffic.</p>		
			<p><u>SBC PROPOSAL</u></p>		
IC-2	IC 4.4	Responsibilities of the Parties	If one Party is passing CPN and/ or OCN but the other Party is not properly receiving such information, the Parties will work cooperatively to correct the problem.	Clarifies scope of the appendix.	

LEVEL 3 - SBC 13State - DPL - INTERCARRIER COMPENSATION

SBC RES STATE MEET 3 POSITION

EXH. B

Iss. No.	Appendix/ Section	Issue Description	Level 3 Language	Level 3 Communications Position/Support	SBC Language	SBC Position/Support	Status
SBC IC-10	IC Level 3	a) Should the originating Party be responsible for providing OCN to the terminating party for billing purposes?	4. RESPONSIBILITIES OF THE PARTIES 4.1 Each Party to this Agreement will be responsible for sending the Calling Party Number (CPN) and Originating Carrier Number (OCN) for Circuit Switched Traffic originating on its network and passed to the network of the other Party. <i>This includes all Circuit Switched Traffic including, without limitation, Interexchange, and wireless traffic.</i>	IC-2 S4.2 Clarifies scope of the appendix.	4 RESPONSIBILITIES OF THE PARTIES 4.1 Each Party to this Agreement will be responsible for sending the Calling Party Number (CPN) for calls originating on its network and passed to the network of the other Party. <u>Each Party to this Agreement will be responsible for passing on any CPN it receives from a third party for traffic delivered to the other Party.</u>	a) No. CPN is the proper call information that should be used to jurisdictionalize traffic. OCN is not appropriate for that purpose, because it is not part of the actual call transmission. For the purposes of billing compensation to the appropriate party, Facility Based CLECs receive the appropriate category of records for calls that terminate to end users served by a CLEC utilizing SBC's Lawful U.S. which will contain the OCN to aid them in billing the proper party. In addition, the CLEC may utilize the LERG and the INP Database to help identify the	
L3 IC-2 S4.2	Responsibilities of the Parties 4-4.4	b) Should the Parties' responsibility for stripped, altered, modified, added, deleted, changed, or incorrectly assigned CPN or other signaling information be limited to intentional stripping, alterations, modifications, additions, deletions, changes, or incorrect assignments?	4.2 To the extent technically feasible, each Party shall provide CPN as defined in 47 C.F.R. § 64.1600(c) ("CPN") and Originating Carrier Number ("OCN") for Telecommunications Traffic originating on its network and passed to the network of the other party. Neither Party shall intentionally strip, alter, modify, add, delete, change, or incorrectly assign any such CPN for any Telecommunications Traffic. Each party shall pass the CPN (and OCN) for the traffic it receives from any third party. The parties recognize that neither party has a billing system capable of determining the physical location of their customers; rather consistent with industry practice nationwide both Parties' billing systems utilize tariff databases and the Local Exchange Routing Guide ("LERG") to identify the location of the switch serving	IC-2 S4.6 Clarifies the duties of the parties consistent with the Act.	4.2 To the extent technically feasible, each Party shall provide CPN as defined in 47 C.F.R. § 64.1600(c) ("CPN") for all traffic originating on its network and passed to the other party, including, without limitation, Interexchange Circuit-Switched Traffic, IP Traffic and wireless traffic, in accordance with Section 4.4. Neither Party shall strip, alter, modify, add, delete, change, or incorrectly assign any such CPN. CPN shall, at a minimum, include information that accurately reflects the physical location of the end user that originated and/or dialed the call, when including such information is technically feasible. If To the extent that either party is able to identify improper, incorrect, or fraudulent use of Circuit Switched local exchange services (including, but not limited to PRI,		
L3 IC-2 S4.6		c) Should the requirements related to stripping or otherwise changing or incorrectly assigning CPN, and to investigate and correct improperly used local exchange services,					

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ISSUE NUMBER	Appendix or Section	Issue Description	Level 3 Communications, LLC Proposed Language SBC Counterproposals	Level 3 Communications Position/Support	SBC Position/Support	
4, 9	GT&C 1.72	Definitions – Local calls	<p>“Total Compensable Local Traffic” is Local, Virtual Foreign Exchange, Mandatory Local and Optional EAS traffic eligible for reciprocal compensation will be combined with traffic terminated to Internet Service Providers (ISPs) to determine the Total Compensable Local Traffic. In determining the Total Compensable Local Traffic, InterLATA toll and IXC-carried intraLATA toll are excluded, and will be subject to Meet Point Billing as outlined in the interconnection agreement and applicable tariffs.</p>	SBC had originally agreed to use the GT&C without change but are now changing that position. Level 3 would not have agreed to change the definition of local calls to something that Level 3 opposes.		
			<u>SBC PROPOSAL</u>			
MISSING FROM SBC DPL	GT1	GT&C 5.2	Effective Date, Term, and Termination	Length of the agreement.	<p>The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire <u>three years after the Effective Date (the “Term”)</u>. Absent the receipt by one Party of written notice from the other Party at least within 180 days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term during the period while the parties negotiate a successor agreement.</p>	Level 3 believes a 3 year term is appropriate given the amount of time and resources it must divert from investing in its facilities to negotiating and eventually litigating an interconnection agreement.
					<u>SBC PROPOSAL</u>	