

Exhibit No:  
Issues: PC-1, PC-2, VC-1, VC-2  
Witness: Deborah Fuentes Niziolek  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Southwestern Bell  
Telephone, L.P., d/b/a  
SBC Missouri  
Case No: TO-2005-0166

SOUTHWESTERN BELL TELEPHONE, L.P.,  
d/b/a SBC MISSOURI

CASE NO. TO-2005-0166

DIRECT TESTIMONY

OF

DEBORAH FUENTES NIZIOLEK

Chicago, Illinois  
January 24, 2005

In the Matter of Level 3 Communications, LLC's )  
Petition for Arbitration Pursuant to Section 252(b) )  
Of the Communications Act of 1934, as Amended )  
By the Telecommunications Act of 1996, and the ) Case No. TO-2005-0166  
Applicable State Laws for Rates, Terms and )  
Conditions of the Interconnection with Southwestern )  
Bell Telephone Company, L.P., d/b/a SBC Missouri )

STATE OF ILLINOIS )  
COUNTY OF COOK )

1. My name is Deborah Fuentes Niziolek. I am presently Associate Director-Wholesale Marketing for Ameritech Services, Inc.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Deborah Fuentes Nizolek

*Earlyne M. Berry*  
Notary Public  
EARLYNE M. BERRY

OFFICIAL SEAL  
EARLYNE M. BERRY  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 10-4-2008

1    **I.     INTRODUCTION**

2    **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3    A.     My name is Deborah D. Fuentes Niziolek and my business address is 350 North  
4           Orleans, Chicago, Illinois, 60654.

5    **Q     BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?**

6    A.     I am employed by SBC as Associate Director – Wholesale Marketing.

7    **Q.     PLEASE BRIEFLY DESCRIBE YOUR EDUCATION.**

8    A.     I have a Master of Science in Integrated Marketing Communications (Roosevelt  
9           University in Chicago) and a Bachelor of Arts in Political Science (Loyola  
10          University in Chicago).

11   **Q.     PLEASE BRIEFLY SUMMARIZE YOUR WORK EXPERIENCE.**

12   A.     I began with Ameritech in 1989 in the purchasing organization as a buyer for  
13          Furnish Only and Engineering equipment as well as for Controlled Environmental  
14          Vaults, Huts and Remote Terminals. In May, 1993, I became the Illinois  
15          Marketing Operations Manager, where my responsibilities included product  
16          development, implementation and marketing strategies for certain products. In  
17          November, 1993, I became an Ameritech Regional Product Manager in the  
18          Consumer Business Unit, responsible for development, implementation and  
19          marketing strategy for the five Ameritech states (now SBC Midwest). In May,  
20          1995, I became a Regional Project Manager working within the Strategic Supplier  
21          Implementation organization. In that position, I acted as the single point of  
22          contact for one of six Ameritech Key Suppliers. In November, 1995, I became  
23          Regional Product Manager of Unbundled Local Switching. In May, 1999, I

1 became Regional Product Manager for Unbundled Loops. From December, 1999  
2 through June, 2000, I was the SBC 13-state Product Manager for Sub-Loop  
3 Unbundling. I assumed my present position, Associate Director of Local  
4 Wholesale Marketing in June, 2000.

5 In addition, I have provided either written, oral or both types of testimony  
6 in a number of CLEC arbitration and complaint hearings proceedings.<sup>1</sup> I have  
7 also provided either written, oral or both types of testimony in a number of  
8 cost/tariff dockets.<sup>2</sup>

9 **Q. WHAT ARE YOUR DUTIES IN YOUR CURRENT POSITION?**

10 A. I support Wholesale Marketing product management and associated product  
11 policy for certain Unbundled Network Element (“UNE”) Products, Collocation,  
12 Interconnection, and General Terms and Conditions (“GTC”).

13 **II. PURPOSE OF TESTIMONY**

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. The purpose of my testimony is to identify the differences between SBC’s and  
16 Level 3’s proposed language for both Physical Collocation and Virtual

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<sup>1</sup> These include, for example, MCI Ohio (Docket No. 01-1319-TP-ARB); Allegiance Ohio, (Docket No.01-724-TP-ARB); McLeod Illinois, Michigan and Wisconsin (Docket Nos. 01-0623, U-13124 and 05-MA-128); TDS Illinois and Wisconsin (Docket Nos. 01-0338 and 05-MA-123); AT&T Indiana, Michigan, and Wisconsin (Docket Nos. 40571-INT-03, U-12465, and 05-MA-120); Sage Oklahoma (Docket No. 200100294); GNAPs California, Illinois and Ohio (Docket Nos. 01-11-045, 01-3096-TP-ARB, and 01-0786); Pac West, California (Docket No. A-02-03-059); AccuTel Michigan (Docket No. U-13353); CoreComm Ohio (Docket No 02-579-TP-CSS), GlobalCom Illinois (Docket No. 02-0365), Cinergy Indiana (Cause No. 42218); Digital Dialtone (DDL) Ohio (Docket No. 02-1831-TP-ARB); AT&T Illinois (Docket 03-0239); MCI Michigan ( Docket U-13758) and Verizon Wireless Ohio (Docket 03-515-TP-ARB), Texas Mega Arbitration (Docket No.28821) and Level 3 (SBC-12 states); the Kansas Mega Arbitration (Consolidated Dockets: 05-BTKT-365-ARB;05-AT&T-366-ARB; 05-TPCT-369-ARB and 05-NVTT-370-ARB) and AT&T California (Docket 04-09-023).

<sup>2</sup> These include, for example, Ohio Collocation Tariff (Docket No. 00-1368-TP-ATA);Oklahoma Collocation Tariff Revision (Cause No. 200200518); Missouri UNE Cost Hearing (Docket No. T0-2001-438) and Michigan Collocation Cost (U-13531).

Collocation, as well as to demonstrate why SBC's proposed language should be adopted.

**III. PHYSICAL COLLOCATION ("PC") AND VIRTUAL ("VC")  
COLLOCATION ISSUES**

**PC ISSUE 1/VC ISSUE 1 SHOULD THIS APPENDIX BE THE EXCLUSIVE DOCUMENT GOVERNING PHYSICAL (VIRTUAL) COLLOCATION ARRANGEMENTS BETWEEN LEVEL 3 AND SBC, OR SHOULD LEVEL 3 BE PERMITTED TO ORDER COLLOCATION BOTH FROM THIS APPENDIX AND STATE TARIFF?**

**Agreement References: Physical Collocation Appendix, Sections 4.4, 7.3, 7.3.3; Virtual Collocation Appendix, Sections 1.2, 1.10**

**Q. WHAT IS YOUR UNDERSTANDING OF ISSUES PC-1 AND VC-1?**

A. Level 3 has proposed language that would allow it to "pick and choose" rates, terms and conditions from either its Interconnection Agreement ("ICA") with SBC or from a state tariff, presumably depending on which is the most beneficial to Level 3 at the time. SBC opposes this language. Level 3 chose to negotiate the specific terms and conditions by which it obtains collocation and has agreed that the rates "may be generated on an ICB [Individual Case Basis]" (Section 7.3). It should not be permitted to also retain the option to choose a different set of rates, terms and conditions set forth in a state collocation tariff.<sup>3</sup> Level 3 should either negotiate its own collocation appendix or simply reference the rates, terms and conditions of the preexisting tariff - but it cannot have it both ways. Furthermore,

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<sup>3</sup> Additionally, although SBC previously agreed to set out its terms and conditions for collocation in a tariff as part of the Missouri 271 Agreement ("M2A"), two federal courts have held that negotiation and arbitration of interconnection agreements is the exclusive process by which a CLEC obtains rates, terms and conditions for interconnecting with an ILEC or obtaining access to an ILEC's UNEs. *See, Indiana Bell Tel. Co. v. Indiana Util. Reg. Comm'n*, 359 F.3d 493, 497-98 (7th Cir. 2004); *Verizon North, Inc. v. Strand*, 367 F.3d 577, 584 (6th Cir. 2004).

1           permitting Level 3 to order from a tariff, when it has separate rates, terms and  
2           conditions for collocation in its interconnect agreement, would be  
3           administratively burdensome.

4   **Q.   DO THE TERMS AND CONDITIONS OF A TARIFF SUPPLEMENT THE**  
5   **TERMS AND CONDITIONS OF AN INTERCONNECTION**  
6   **AGREEMENT?**

7   A.   No, they do not. Through the negotiation and arbitration process, interconnection  
8           agreements alone address all the rates, terms and conditions pertaining to physical  
9           and virtual collocation. Level 3 has had the opportunity to request and/or arbitrate  
10          any rates, terms and conditions it felt that it needed in its interconnection  
11          agreement.

12   **Q.   IN JULY, 2004, THE FEDERAL COMMUNICATIONS COMMISSION**  
13   **(“FCC”) REVISED ITS “PICK AND CHOOSE” RULE. DOES THAT**  
14   **DECISION IMPACT THIS ISSUE?**

15   A.   Yes, it does. The FCC adopted “an ‘all-or-nothing’ rule that requires a [CLEC]  
16           seeking to avail itself of terms in an interconnection agreement to adopt the  
17           agreement in its entirety, taking all rates, terms, and conditions from the adopted  
18           agreement.”<sup>4</sup> The FCC’s reasoning squarely applies to the issue between Level 3  
19          and SBC:

20                   On the record now before us, we find that the pick-and-  
21                   choose rule is a disincentive to give and take in  
22                   interconnection negotiations. We also find that other  
23                   provisions of the Act and our rules adequately protect  
24                   requesting carriers from discrimination. Therefore, we  
25                   conclude that the burdens of retaining the pick-and-choose  
26                   rule outweigh the benefits. We also find the all-or-nothing  
27                   approach to be a reasonable interpretation of section 252(i)

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<sup>4</sup> In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Second Report and Order*, CC Docket No. 01-338, 19 FCC Rcd 13494 (2004) (“*Second Report and Order*”), ¶1.

1           that will “restore incentives to engage in give-and-take  
2           negotiations while maintaining effective safeguards against  
3           discrimination.”<sup>5</sup>

4           Allowing Level 3 to “pick and choose” specific sections (or subsection) of  
5           language from a collocation tariff goes against the premise of the FCC’s order.

6           In addition, although I am not an attorney, it is my understanding that the  
7           purpose of this arbitration is to develop terms and conditions to govern the  
8           interconnection relationship and exchange of traffic between the parties, and to  
9           embody those agreements in a single, comprehensive document – an  
10          interconnection agreement. With that in mind, it is simply not appropriate to let  
11          Level 3 arbitrarily add rates, terms or conditions from the tariff on a pick and  
12          choose basis. If Level 3 wanted the rates, terms and conditions in the Missouri  
13          tariffs, it has to take all of the rates, terms and conditions, just as it is required to  
14          take all of the rates, terms and conditions of an ICA it seeks to adopt.

15   **Q.    ARE THERE ANY OTHER REASONS WHY SBC'S LANGUAGE**  
16   **SHOULD BE ADOPTED INSTEAD OF LEVEL 3'S LANGUAGE?**

17   **A.**    Yes. Permitting Level 3 to pick and choose from two different sets of rates, terms  
18           and conditions would be administratively confusing and burdensome for SBC.  
19           For example, there would be no indication from Level 3 as to what rate should  
20           apply, and when (to every instance? only when Level 3 says it should?). Given  
21           this administrative confusion, I am confident that this Commission would see an  
22           increased number of cost disputes in the future. Additionally, resources for both  
23           companies would be additionally taxed, due to the burden of working, reworking,  
24           disputing, and following-up. There is no compelling reason to allow Level 3 to

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<sup>5</sup> Id., ¶11.

1 order out of a tariff, in addition to ordering from its interconnection agreement  
2 with SBC, which is the result of arms-length negotiation and arbitration.

3 **Q. MIGHT LEVEL 3 BE PRECLUDED FROM TAKING ADVANTAGE OF**  
4 **VOLUNTARY OFFERINGS MADE TO OTHER CLECS OR CHANGES**  
5 **OF LAW IF IT CANNOT PURCHASE COLLOCATION FROM A**  
6 **TARIFF?**

7 A. No. When SBC makes voluntary offerings to CLECs, it does so in the context of  
8 a negotiated interconnection agreement or an Accessible Letter, not through a  
9 tariff. In the case of voluntary offerings made through a negotiated  
10 interconnection agreement, Level 3 can opt into such a negotiated agreement  
11 pursuant to the FCC's currently effective "all or nothing" pick and choose rule.  
12 With respect to Accessible Letters, SBC offers each CLEC an opportunity to  
13 amend its existing interconnection agreement in light of changes in law or new,  
14 generally available offerings. To the extent that there is a change in law of which  
15 Level 3 seeks to take advantage and SBC does not publish an Accessible Letter,  
16 Level 3's agreement provides a mechanism for permitting Level 3 to take  
17 advantage of the change in law. (*See* GTC Appendix, Section 21.) Thus, Level 3  
18 does not need to be able to order out of a tariff to ensure it has access to the most  
19 current collocation offerings.

20 **PC ISSUE 2/VC ISSUE 2 SHOULD LEVEL 3 BE PERMITTED TO**  
21 **COLLOCATE EQUIPMENT THAT SBC HAS**  
22 **DETERMINED IS NOT NECESSARY FOR**  
23 **INTERCONNECTION OR ACCESS TO UNES OR**  
24 **DOES NOT MEET MINIMUM SAFETY**  
25 **STANDARDS?**

26  
27 **Agreement References: Physical Collocation Appendix, Section**  
28 **6.13; Virtual Collocation Appendix, Sections 1.10.10**



1    **Q.    WHAT IS YOUR UNDERSTANDING OF ISSUE PC-2 AND ISSUE VC-2?**

2    A.    SBC has proposed language regarding the eligibility of particular equipment to be  
3           placed within a collocation arrangement, as well as equipment safety and  
4           operating practices within the SBC network. SBC's language provides that if the  
5           parties have a genuine dispute regarding whether the equipment that Level 3 seeks  
6           to collocate meets the applicable safety standards or is necessary for  
7           interconnection or access to UNEs, Level 3 shall not be permitted to collocate that  
8           equipment until the parties resolve their dispute (through party-to-party  
9           discussions or Commission intervention). Level 3 opposes SBC's language.

10   **Q.    WHAT IS SBC'S CONCERN WITH LEVEL 3'S POSITION ON THESE**  
11   **ISSUES?**

12   A.    Level 3 does not dispute that it may not collocate equipment that does not comply  
13           with applicable safety standards or is not necessary for interconnection or access  
14           to UNEs. Indeed, Level 3 has repeatedly agreed to provisions in the physical and  
15           virtual collocation appendix that make this clear (*see, e.g.*, Physical Collocation  
16           Appendix, §§ 4.3, 6.1, 6.11, 8.1, 9.7; Virtual Collocation Appendix, §§ 1.1,  
17           1.10.2, 1.10.8, 1.10.11, 1.12.2, 3.1.) Despite this, Level 3 wants to be able to  
18           collocate equipment even when the parties have a good faith dispute regarding  
19           whether the equipment is compliant, while the dispute is resolved. Under Level  
20           3's argument, therefore, it would be allowed to collocate for example, a Class 5  
21           Host telephone switch, so long as Level 3 disputed SBC's conclusion that such  
22           equipment could not be collocated. This is plainly unreasonable. The reasonable  
23           course of action is to not permit Level 3 to collocate its equipment while the  
24           parties work through their dispute.

Moreover, under Level 3's language, it would be able to collocate a piece of equipment that SBC believes to be dangerous and not in compliance with safety standards. Clearly the law does not mandate this. Permitting such collocation threatens the integrity of SBC and others' networks and would permit Level 3. SBC is ultimately responsible for its network, as well as maintaining and testing it not only for itself, but for other CLECs who use it as well. SBC is in a better position than Level 3 to determine what may threaten the integrity of its network, affecting not only SBC's customers, but also those customers of other CLEC's. Again, the most reasonable course of action is to not permit Level 3 to collocate equipment, or to continue to utilize in-place, non-approved equipment, until the dispute about the equipment's safety is resolved.

**Q. DOES FEDERAL LAW SUPPORT SBC'S POSITION ON THESE ISSUES?**

A. Yes. The FCC has squarely determined that, subject to certain limitations, "an incumbent LEC may impose safety standards that must be met by the equipment to be located in its central office."<sup>6</sup> The limitations are reflected in FCC Rule 51.323 (c) which, as applied to SBC, states that if SBC "denies collocation of a competitor's [including, of course, Level 3's] equipment, citing safety standards," then SBC must provide to Level 3 "within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standards that the incumbent LEC contends the competitor's equipment

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<sup>6</sup> In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *First Report and Order*, 14 FCC Rcd 4761 (1999), ¶ 35 (emphasis added).

1 fails to meet.” Additionally, SBC understands, and the rule requires that, this  
2 affidavit “must set forth in detail: the exact safety requirement that the requesting  
3 carrier’s equipment does not satisfy; the incumbent LEC’s basis for concluding  
4 that the requesting carrier’s equipment does not meet this safety requirement; and  
5 the incumbent LEC’s basis for concluding why collocation of equipment not  
6 meeting this safety requirement would compromise network safety.”<sup>7</sup> SBC  
7 intends to fully comply with this rule in connection with Level 3, but the key  
8 point for purposes of my testimony is that the rule allows ILECs to deny  
9 collocation of equipment due to failure to meet safety standards so long as the  
10 incumbent LEC meets the rule’s requirements. Nor would SBC, as Level 3 would  
11 imply, require a CLEC to adhere to “safety or engineering standards that are more  
12 stringent than the safety and engineering standards that the incumbent LEC  
13 applies to its own equipment.”

14 Furthermore, it is important to note that Level 3’s proposed contract  
15 language - albeit non-responsive to the actual issues presented<sup>8</sup> - is a virtual  
16 carbon copy of the language in the FCC’s Rule 51.323(c) (except, for example,  
17 substituting the term “SBC 13-State” for the term “incumbent LEC”). The FCC  
18 has determined that an interconnection agreement “need not contain a recitation  
19 of [the FCC’s] rules” because the FCC already “expect[s] the parties to follow the  
20 procedures set forth in the [FCC’s] rules and use the agreement’s dispute

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<sup>7</sup> As the FCC noted, these requirements are meant to guard against “unreasonable delay” by incumbent LECs: “We find that absent such a requirement, incumbent LECs may otherwise unreasonably delay the ability of competitors to collocate equipment in a timely manner.” *Id.*, ¶ 36.

<sup>8</sup> As I have already stated earlier in my testimony, the actual issue is whether or not Level 3 shall be permitted to collocate the equipment in question, prior to the parties’ resolution of their dispute (through party-to-party discussions or Commission intervention)

1 resolution process as necessary.”<sup>9</sup> For this additional reason, SBC’s proposed  
2 language should be adopted and Level 3’s proposed language should be rejected.

3 **III. CONCLUSION**

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 A. Yes, it does.

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<sup>9</sup> 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*, 17 FCC Rcd 27039 (2002), ¶ 408.