

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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 Applicable State Laws for)
Rates, Terms, and Conditions of)
Interconnection with Southwestern Bell)
Telephone Company, L.P., d/b/a SBC Missouri.

Case No. _____

PETITION FOR ARBITRATION

Request for Negotiations Received:	July 6, 2004
9 Month Negotiation Period Commenced:	July 6, 2004
135th Day Thereafter:	November 18, 2004
160th Day Thereafter:	December 13, 2004
9 Months Thereafter:	April 6, 2005

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Dated: December 13, 2004

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PETITION FOR ARBITRATION

COMES NOW Level 3 Communications, LLC ("Level 3"), by and through its attorneys, and hereby petitions the Missouri Public Service Commission ("Commission") for arbitration of certain terms, conditions, and prices for interconnection and related arrangements with the Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri ("SBC"). This Petition is filed 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 Chapters 2 and 36 of the Commission's Rules (4 CSR 240-2 and 4 CSR 240-36). Level 3 respectfully 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.

This Petition includes background information on the parties, the history of Level 3's interconnection negotiations with SBC, the Commission's jurisdiction and applicable legal standards, and a comprehensive presentation of the unresolved issues including the positions of both parties on all of the major issues. The Appendices to the Petition set forth the following

¹ 47 USC § 252(b); 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 USC § 151 *et seq.* Level 3 refers to the amended Communications Act of 1934 as the "Act."

additional information: (1) the letter stating the date for filing of this Petition, pursuant to Sections 251 and 252 of the Act² (attached hereto as Appendix A); (2) a Disputed Points List (attached hereto as Appendix B); and, (3) the proposed Interconnection Agreement with Level 3's proposed language in **bold/underline** format and SBC's proposed language in ***bold/italics*** format (the "Proposed Interconnection Agreement") (attached hereto as Appendix C). The Pre-filed Direct Testimony of five Level 3 witnesses are also included with this filing, as well as a Motion for Expedited Treatment and a Petition for Leave to Appear by Out-of-State Counsel. Level 3 respectfully requests a reasonable opportunity to supplement this Petition to provide any additional information deemed necessary by the Commission or the Arbitrator.

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

I. THE PARTIES.

1. Level 3 is a facilities-based competitive basic local exchange carrier ("CLEC"). Level 3 provides basic local exchange, interexchange and local exchange telecommunications services in the State of Missouri pursuant to Certificates of Service Authority issued by this Commission.³ Level 3 maintains tariffs on file with the Commission describing the terms, conditions, and rates for its services, and files annual reports on its Missouri operations. Level 3 is a Delaware limited liability company with its principal place of business at 1025 Eldorado Boulevard, Broomfield, Colorado, 80021. Its telephone number is 720-888-1000 and its fax

² 47 USC §§ 251 and 252.

³ MoPSC Case No. TA-99-171, *In the Matter of the Application of Level 3 Communications, LLC for a Certificate of Authority to Provide Basic Local Exchange Telecommunications and Local Exchange Telecommunications Services in the State of Missouri and for Competitive Classification*, "Order Granting Certificate to Provide Basic Local Telecommunications Services" issued February 2, 1999; MoPSC Case No. TA-99-170, *In the Matter of the Application of Level 3 Communications, LLC for a Certificate of Authority to Provide Interexchange Telecommunications Services in the State of Missouri and for Competitive Classification*, "Order Approving Interexchange Certificate of Service Authority and Order Approving Tariff" issued December 17, 1998; MoPSC Case No. TA-2002-376, *Application of Level 3 Communications, LLC to Expand its Certificate of Service Authority to Provide Local Exchange Telecommunications Statewide*, "Order Approving Expansion of Local Exchange Certificate of Service Authority" issued April 18, 2002.

number is 720-888-5134. Level 3's certificate of authority from the Missouri Secretary of State is on file with the Commission in Case No. TA-99-171 and is incorporated herein by reference.

2. Level 3 herein states, in accordance with 4 CSR 240-2.060(1)(K), that there are no pending actions or final unsatisfied judgments or decisions against it in any state or federal agency or court which involve customer service or rates for which action, judgment, or decision has occurred within three (3) years of the date of this Petition.

3. Pursuant to 4 CSR 240-2.060(1)(L), Level 3 hereby states that it does not have any overdue annual reports or assessment fees owed to the Missouri Public Service Commission.

4. Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri is a Texas limited partnership with its principal Missouri place of business located at One Bell Center, St. Louis, Missouri 63101. SBC, a subsidiary of SBC Communications, Inc., is an Incumbent Local Exchange Carrier ("ILEC") in Missouri within the meaning of Section 251(h) of the Act,⁴ and is a noncompetitive large incumbent local exchange company as defined by Sections 386.020, 392.361 and 392.245 RSMo. It is a public utility as defined in Section 386.020, and is the successor to Southwestern Bell Telephone Company ("SWBT"). Its telephone number is 314-235-4300 and its fax number is 314-247-0014. Within its operating territory, SBC has been the incumbent provider of telephone exchange service during all relevant times.

5. According to information available on the Commission's Electronic Filing Information System (EFIS), SBC's regulatory contact for the State of Missouri is:

Paul G. Lane, Esq.
General Counsel – Missouri/Kansas
SBC Missouri
One Bell Center, Room 3520
St. Louis, MO 63101
314-235-4300 (Telephone)

⁴ 47 USC § 251(h).

314-247-0014 (Facsimile)
paul.lane@sbc.com

6. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals for Level 3.

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

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Chicago, Illinois (IL) 60654
Tel.: (312) 335-6757
Fax: (312) 245-0254

II. THE INTERCONNECTION NEGOTIATIONS AND RESOLVED ISSUES.

8. Since its operations in the state began in 1999, Level 3 has operated under the terms and conditions of two Interconnection Agreements with SBC. The first agreement was filed with this Commission on April 7, 1999 and approved on June 23, 1999.⁵ The second agreement was filed on October 12, 2001 and approved by the Commission in November 2001.⁶

9. Level 3 and SBC began negotiations toward a successor agreement on November 29, 2002. During the course of Level 3's operations since 1999, the parties have agreed to five

⁵In the Matter of the Application of Level Three Communications, LLC, for Approval of Interconnection Agreement Under the Telecommunications Act of 1996, MoPSC Case No. TO-99-446, Order Approving Interconnection Agreement (June 23, 1999).

⁶ Level 3's existing Interconnection Agreement (actually, "Interconnection Agreement and Amendment to Interconnection Agreement") in Missouri was approved by the Commission in MoPSC Case No. TO-2002-179, in its Order Approving Interconnection Agreement issued November 21, 2001 and effective December 1, 2001. In the Matter of the Application of Level 3 Communications, LLC, for Approval of an Interconnection Agreement Under the Telecommunications Act of 1996.

amendments to the Existing Agreement which the parties have submitted to the Commission, and which the Commission has approved.⁷

10. On June 15, 2004, Level 3 submitted its original Petition for Arbitration with this Commission, docketed as MoPSC Case No.TO-2004-0606. As a threshold matter, the Regulatory Law Judge indicated that she believed under Missouri law that Parties were unable to stipulate to any particular arbitration window, but that such arbitration window was governed by Section 252(b)(1) as between 135 and 160 days after SBC received the request to negotiate. Rather than having the Commission involuntarily dismiss the Petition on these grounds, Level 3 withdrew its Petition on June 30, 2004, provided SBC with a request to negotiate the terms of an interconnection agreement in Missouri, and entered into those negotiations. (A copy of a letter from SBC to Level 3 memorializing the starting date of current negotiations and related arbitration window is included within Appendix A attached hereto).

11. Level 3 and SBC continued with their negotiations during the month of July 2004. SBC and Level 3 met numerous times during July 2004 with the intent to either come to agreement, or prepare a joint DPL and agreement for presentation of the remaining disputed issues. These negotiations provided resolution to a number of the disputes. However, the Parties have not resolved differences over contract language and policy issues which are substantial and critical to Level 3's business plans.

12. On August 4, 2004, SBC presented Level 3 with another proposed UNE Appendix with different terms than those contained in the negotiated UNE Appendix used during the course of the July negotiations. The Parties have continued their efforts to minimize the

⁷ An amendment was filed by SBC and Level 3 on May 30, 2003, and approved per an approval letter dated June 23, 2003 (MoPSC Tracking No. VT-2002-0060). Additional amendments were filed on June 19, 2002 and approved by letter dated July 23, 2003 (MoPSC Tracking No. VT-2003-0070). Further amendments were filed on December 16, 2003 and approved January 14, 2004 (MoPSC Tracking No. VT-2004-0031) and filed January 23, 2004 and approved soon thereafter (MoPSC Tracking No. VT-2004-0036).

disputed issues, with some success. Attached hereto as Appendix B is the current Disputed Points List (“DPL”) detailing all of the outstanding disputes still remaining. Level 3 asks the Commission to arbitrate each of these remaining disputes, to find in Level 3’s favor, and adopt Level 3’s language.

13. Pursuant to 4 CSR 240-36.040(2), 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.

14. 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. In November 2001, the Commission approved 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.

III. JURISDICTION.

15. 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.⁸ 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

⁸ 47 USC § 252(b).

Act,⁹ this arbitration is to be concluded not later than nine months after the applicable request for negotiations, which for purposes of this petition is April 6, 2005.

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16. This Commission has jurisdiction over this Petition for Arbitration pursuant to Section 252(b)(1) of the Act.¹⁰

IV. APPLICABLE LEGAL STANDARDS.

17. 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].

18. 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.¹¹

⁹ 47 USC § 252(b)(4)(C).

¹⁰ 47 USC § 252(b)(1).

¹¹ 47 USC § 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*”). This Petition sets forth a detailed explanation of Level 3’s position on the key legal issues in dispute between the parties with some references to applicable provisions of the Act, FCC rulings and regulations, and certain state commission rulings. Level 3’s analysis of the Commission’s prior rulings on these issues will be supplemented in the bench book or briefs submitted to the Arbitrator during this proceeding.

19. 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.

20. 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.”¹²

V. UNRESOLVED ISSUES.

21. The Proposed Interconnection Agreement consists of the following numbered Appendices:

General Terms and Conditions
Appendix 1: Interconnection Trunking
Appendix 2: Recording
Appendix 3: Reciprocal Compensation

¹² 47 U.S.C. § 252(d)(2)(A).

Appendix 4: Physical Collocation
Appendix 5: Virtual Collocation
Appendix 6: Unbundled Network Elements
Appendix 7: Network Interconnection Methods
Appendix 8: Number Portability
Appendix 9: Numbering
Appendix 10: Out of Exchange Traffic
Appendix 11: Emergency Services / 911
Appendix 12: OSS - Resale
Appendix 13: Coordinated Hot Cuts
Appendix 14: Clearinghouse
Appendix 15: Directory Assistance Listing
Appendix 16: Performance Measures
Appendix 17: Pricing
Appendix 18: SS7

22. Level 3 and SBC have reached agreement on a 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 Appendix B to this Petition, as well as the proposed language of the actual agreement, which is set forth as Appendix C. Appendix B is organized by topic. Appendix 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 the Parties on each issue.

23. The attached “Disputed Points List” in Appendix B is a joint document prepared by and approved by both Parties.

24. Attached as Appendix C is a Joint Proposed Interconnection Agreement.

25. 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, be 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, 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 identifies certain Tier III language within the agreement that must be modified to be internally consistent, as well as commercially reasonable and in compliance with applicable laws. Level 3 provides a brief summary of each party’s position on these Tier III issues, with references to applicable contract sections in Appendix C.

A. TIER I ISSUES.

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

- (1.) Whether Level 3 may use **local interconnection trunks** for all types of traffic;
- (2.) Whether SBC should be required to **Transit Traffic**, or to exchange traffic to other carriers;
- (3.) Whether SBC is required to provide certain **Unbundled Network Elements** to Level 3.

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

- (4.) 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**); and,
- (5.) Whether SBC can impose the access charge regime on information services traffic.

TIER I

ISSUE ONE: Efficient Use of Interconnection Trunks for All Traffic.

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?

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Requirements, Sections 1.2, 3.6, 4.2, 5.2, 5.2.1 – 5.2.9, 5.3.3.1, 5.4.1, 5.4.3, 5.4.4, 5.5.6, 5.4.7, 5.5.1, 5.5.3, 5.5.4, 8.8.1, 12.1 and 13.1 (DPL Issues ITR-1, 3, 4, 10, 12-19).

Out of Exchange, Sections 4.1, 4.2, 4.3, 5.1, 9.0-9.1, and 9.2 - 9.7 (DPL Issues OET-5, 6, 7, 9, 11 and 12).

Intercarrier Compensation, Section 3.1 3.1.1-3.1.5, 4.1-4.5 and 10.1 (DPL Issues IC-1, 8 and 17).

Level 3 Position:

28. 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 (*i.e.* interLATA, Local, and IntraLATA). Level 3 asks that the Commission confirm Level 3's right to pass all forms of traffic over this network without having to construct an additional network for each type of call.

SBC Position:

29. SBC seeks to require Level 3 to establish at least three separate trunk groups, one for local and IntraLATA traffic, a second for InterLATA and IP-Enabled Traffic (including ISP-Bound), and a third for Transit Traffic. SBC accomplishes this by refusing to allow multiple traffic types to flow across its interconnection trunks.

Basis for Level 3's Position:

30. Section 251(c) reads in part as follows:

(c) Additional Obligations of Incumbent Local Exchange Carriers. – In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

* * * * *

(2) Interconnection – The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other third party to which the carrier provides interconnection; and,

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

31. Pursuant to Section 251(c)(2), SBC is obligated to provide Level 3 with interconnection “at any technically feasible point within its network” for “exchange service and exchange access” transmissions. Section 251(c)(2) does not impose any jurisdictional aspect of the traffic, as SBC avers with its proposed “local” interconnection trunk groups.

32. 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.

33. Currently, Level 3 and SBC have established interconnection trunks for the exchange of traffic that is rated as “local” and “intraLATA toll.” (Traffic exchanged between Level 3 and third party IXC's is exchanged over “meet point” trunk groups.) 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.

34. There are no technical limitations associated with exchanging traffic that is rated as either intrastate InterLATA or interstate InterLATA traffic over these same set of trunks (and associated underlying facilities) as Level 3 has requested of SBC. Level 3 and other ILECs, including BellSouth and Verizon have executed agreements that allow for the parties to exchange all forms of traffic, including interLATA toll and IP Enabled Traffic, *over a single trunk group*.

35. SBC-Missouri has provisioned in the manner requested by Level 3 for a number of years. In the M2A this Commission approved in MoPSC Case No. TO-99-227, the terms expressly mandate that SBC allow the CLEC to combine intraLATA, interLATA traffic over a single trunk group. Section 1.4 of the Appendix ITR of the M2A reads as follows:

1.4 SWBT will allow CLEC to use the same physical facilities (e.g., dedicated transport access facilities, dedicated transport UNE facilities) to provision trunk groups that carry Local, intraLATA and interLATA traffic, provided such combination of traffic is not for the purpose of avoiding access charges, and facility charges associated with dedicated transport used to carry interLATA and intraLATA traffic originated by or terminated to a customer who is not CLEC local exchange service customer. SWBT and CLEC may establish a single two way trunk group provisioned to carry intraLATA (including local) and interLATA traffic where technically feasible. CLEC may have administrative control (e.g., determination of trunk size) of this combined two way trunk group to the extent that it does not require SWBT to redesign its network configuration. When traffic is not segregated according to a traffic type the Parties will provide a percentage of jurisdictional use factors or an actual measurement of jurisdictional traffic.¹³

36. SBC's proposal to split the existing trunk group into multiple trunk groups to carry the various types of traffic actually results in a far less efficient network, with related

¹³ See Appendix D to this Petition for a copy of the M2A ITR Appendix in its entirety.

increases in costs of providing the additional trunk groups. Moreover, SBC's proposal increases the burden on both Parties' networks, requiring duplicative trunk groups connecting each and every tandem switching facility to Level 3's POI – one for local and intraLATA toll traffic, one for non-local access traffic and IP Enabled Traffic (including ISP Bound Traffic) and yet another for transit traffic. This form of network over-utilization is known as Tandem Exhaust.

37. 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 have 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.¹⁴

38. SBC's proposed terms have nothing to do with technical trunking requirements or network design concerns. SBC's insistence that Level 3 exchange interstate traffic over Feature Group D trunks is an attempt by SBC to obtain *access charges* on all traffic that rides through those trunks, and IP Enabled (including VoIP) traffic in particular. This justification, however, is completely without merit. Carriers nationwide, including SBC, have traditionally utilized percentage allocations to determine billing responsibility. Carriers, including Level 3, provide auditable records to verify these traffic percentages. SBC's ruse is further exposed by the fact that even where FGD trunks are employed, the parties may still allocate access revenues according to meet point billing percentages. When viewed in light of long accepted billing norms, SBC's proposal clearly shows no other justification than to impose an anticompetitive price squeeze on Level 3 by forcing Level 3 to create duplicative, redundant, and therefore,

¹⁴ 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 FCC Rcd. 17,595, Memorandum Opinion and Order, FCC 02-260 ¶ 225-226 (rel. Sept 18 2002).

completely inefficient network configurations. SBC's proposed terms impair Level 3's ability to develop efficient and reliable network trunking arrangements.

39. The FCC is currently considering what the appropriate rate of compensation should be for the exchange of IP Enabled traffic. However, if SBC's terms are adopted and all interstate and IP Enabled traffic is required to ride on Feature Group D trunks, then this Commission will be granting SBC the relief it is seeking at the FCC – namely that it will collect access charges on IP Enabled traffic.

40. State Commissions that have addressed this issue, specifically found that “economic entry into the market requires that [the CLEC] be permitted to use its existing trunks for all traffic whenever feasible.”¹⁵ Level 3's proposed Interconnection Agreement, consistent with this history, encourages true facilities-based competition by permitting 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 costs imposed on CLECs in the development of their interconnection plan are key considerations in defining the terms and conditions of an Interconnection Agreement.¹⁶

41. Level 3's position is consistent with the finding of this Commission and the recommendation of its Special Master in the 1997 AT&T arbitration.¹⁷

¹⁵ *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 Arbitration Agreement with Modifications, Jan 15, 1997, pp. 4-5. *See also, US West Communications v. MFS Intelenet, Inc.*, 193 F3d 1112, 1124-25 (9th Cir 1999).

¹⁶ *Re Southwestern Bell Telephone Company*, Tx PUC Docket No. 22315, Mar 14, 2001.

¹⁷ *In the Matter of AT&T 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-98-115, 1997 Mo. PSC LEXIS 138, 7 Mo PSC 3d 54, at 74-75 (1997).

TIER I

ISSUE TWO: Transit Traffic.

Statement of the Issue:

Whether it is appropriate to continue the process currently in place between Level 3 and SBC and include terms and conditions in the Agreement directing that SBC use, for a reasonable fee, its existing interconnection facilities with third party carriers so as to allow Level 3's traffic to flow to those carriers?

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Requirements, Sections 3.3, 4.3 and 4.3.1 – 4.3.4 (DPL Issues ITR-2, 5-9).

Out of Exchange, Sections 6.1, 6.2, and 6.3 (DPL Issue OET-10).

Level 3 Position:

42. Level 3's existing interconnection agreement provides that SBC will interconnect, for a fee, Level 3's traffic to other carriers. If a Level 3 customer attempts to complete a call that would terminate to a customer of a third party carrier (e.g. a rural LEC, CMRS provider, or another competitive local exchange carrier), SBC, like any other RBOC (or any other carrier permitting interconnected carriers to exchange traffic with carriers other than itself and the directly interconnected carrier) "transits" the traffic, at TELRIC rates, to the third party carrier or vice versa. This makes inherent sense for sound economic, technical, and policy reasons. At low volumes, none but a rate-regulated carrier operating under guaranteed rates of return can incur the costs of building such facilities. Should the dominant incumbent LEC be deregulated (which is the effect of SBC's proposal), then, at whim, it could require other carriers – either by imposing uneconomic rates or simply by fiat – to direct interconnect with all other carriers. The result would be massively underutilized capacity as each carrier built trunks to all other carriers. Technically it would choke physical and network capacity throughout. Ironically, this is exactly

the reason Congress in 1934 required, among other things, regulation of telecommunications and non-discriminatory interconnection. Accordingly, for these abundantly reasonable, if not axiomatic reasons, the Commission should compel SBC to transit calls from Level 3 to other carriers and vice versa according to the terms Level 3 provides.

SBC Position:

43. SBC does not wish to transit calls as part of the terms and conditions of a Section 251 Interconnection Agreement or, to the best of Level 3's knowledge, any other regulatory requirement, such as, Sections 201-205 of the Act or analogous state law.

Basis for Level 3's Position:

44. 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 telecommunications services within and without SBC operating areas. SBC has long since constructed interconnection trunks during a rate regulated era with these providers and exchanges traffic with them on a regular basis. Until now, SBC and Level 3 have cooperatively exchanged traffic with these smaller carriers according to accepted transiting practices. The Commission should recognize that SBC is obligated, as part of its obligations under state and federal law, as well as under this Interconnection Agreement with Level 3, to exchange traffic (at reasonable cost-based rates) between these other carriers and Level 3.

45. In parallel arbitrations between Level 3 and SBC in other jurisdictions, SBC has taken the position that it is not required to provide transit services pursuant to an interconnection agreement. According to SBC, Section 251(c)(2) of the Act obligates SBC only to provide direct and indirect interconnection with its network, and transit is not a form of interconnection. SBC

contends that transit is not an interconnection service because indirect interconnection must entail more than the mere transport of traffic, *i.e.*, there must be an exchange of traffic that originates or terminates on SBC's network. SBC's position that transit traffic is not within the Commission's jurisdiction under Sections 251 and 252 is also truly astounding in light of SBC's prior advocacy before the FCC when it was seeking 271 approval.

46. When SBC set out to prove that it had satisfied this interconnection requirement of the fourteen point checklist, it went to great pains to demonstrate that it had opened its market by providing interconnecting carriers with, among others, transit traffic interconnection. In an affidavit which SBC submitted in support of its 271 application to the FCC, SBC witness Deere stated:

Consistent with section 251(c)(2)(A) of the Act and the FCC Rules, **Pacific provides interconnection with its network for the transmission and routing of telephone exchange traffic and/or exchange access traffic.** 47 C.F.R. § 51.305(a)(1); First Report & Order ¶ 184. Pacific currently provides interconnection using three alternatives and will provide other technically feasible alternatives via the BFR process discussed below. In summary, Pacific offers: (1) mid-span fiber interconnection ("MSFI") or "fiber-meet;" (2) collocation interconnection; and (3) leased facilities interconnection. Each of these interconnection arrangements provides a CLEC with the ability to terminate a transport facility in collocation arrangements so that CLEC circuits may be interconnected to the Pacific network. (AT&T, Att. 18 – Interconnection, §§ 1.5.2.1-1.5.2.3 & 1.5.3) A MSFI arrangement may be negotiated at any mutually agreeable, economically, and technically feasible point between a CLEC's premises and a Pacific eligible structure including, without limitation, Tandems, End Offices, designated points of interface (facility or switch) or customer premises. (AT&T, Att. 18 – Interconnection §§ 1.3.1 and 1.5.2.3)

A MSFI may be used to provide interoffice trunking for the purpose of originating and terminating calls between a CLEC's switch and a Pacific switch, and for transit calls to or from a third party via Pacific's tandem switch. 47 C.F.R. § 51.321(b). (AT&T, Att. 18 – Interconnection §§ 1.1 & 1.2 & 2) (Level 3, App. ITR § 4.2.1).

47. SBC's positions taken in the negotiations leading up to this Petition are in direct conflict with its positions before the FCC when it was seeking 271 approval.

48. SBC has existing interconnection trunks to all of the carriers in its region. The Bell System companies like SBC have always performed this transit function for third party service providers. Even at its peak, the Bell System handled only 90 percent of all domestic traffic on the PSTN; ICOs, mostly in rural areas, carried the remaining 10 percent. The Bell System provided transit to these ICOs so that ICOs did not all have to directly connect to each other. Today SBC transports and switches transit traffic for CLECs and CMRS as well as ICOs.

49. 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.

50. 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 and lead to consumers not being able to complete their calls.

51. Because SBC has withdrawn terms for transit services from this Agreement, Level 3 has proposed terms and conditions that would provide the basis by which SBC and Level 3 would not only exchange transit traffic but would also compensate each other for that traffic. Pursuant to these terms, Level 3 will compensate SBC at current, state-approved rates for transit. Such compensation would enable SBC to fully recover its costs for providing transit. In addition, Level 3's proposed language and past practice make clear that if the bandwidth required

to carry the traffic between Level 3 and another carrier exceeds a DS-1 for three consecutive months, Level 3 will establish direct trunks with that other carrier.

52. While the FCC has held that Sections 251 and 252 of the Act do not impose a specific obligation on an incumbent local exchange carrier, such as SBC, to transit traffic, the FCC Wireline Competition Bureau has entered arbitration orders that include the obligation of the ILEC to perform transiting services.¹⁸

53. In addition to the FCC Wireline Competition Bureau, a number of other state Commissions adjudicating arbitration proceedings under Section 251 and 252, have also included Transit terms in the interconnection agreements. The Michigan Public Service Commission, for example, has held that “[SBC] must provide transit service upon request when technically feasible.”¹⁹ The basis for that Commission’s decision is that:

absent transiting, 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 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

¹⁸ *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 FCC Rcd. 27039, Memorandum Opinion and Order (July 17, 2002.)

¹⁹ *In the Matter of the Petition of Michigan Bell Telephone Company, d/b/a SBC Michigan, for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with MCIMetro Access Transmission Services, LLC, Pursuant to Section 252(b) of the Telecommunications Act of 1996*, MPSC Case No. U-13758, Opinion and Order, Aug 18, 2003; *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, Opinion and Order, Nov 20, 2000; *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 Arbitration Agreement with Modifications, Jan. 15, 1997.

competitive marketplace to flourish, new entrants must be able to provide service to customers in an economically viable manner.²⁰

54. More importantly, SBC has already agreed to transit traffic associated with other carriers as part of its current interconnection obligations. (*See, e.g.*, the Existing Level 3 – SBC Interconnection Agreement, Interconnection and Trunking Requirements, Section 4.) SBC has proffered no cognizable reason permitting it to unilaterally remove transiting from the ambit of state and federal requirements and force such provisions into “secret” agreements, much less any other additional reasonable technical or economic consideration for so doing. The Commission should adopt Level 3’s proposed revisions, which are based upon the Parties’ formerly mutually agreeable arrangements, and require SBC to Transit traffic.

TIER I

ISSUE THREE: Unbundled Network Elements.

Statement of the Issue:

Does the FCC’s *Interim Order* maintain the status quo as of June 15, 2004 of the parties’ existing interconnection Agreement with respect to the availability of UNEs?

Sections of the Proposed Interconnection Agreement Affected:

Entire UNE Appendix (DPL Issue UNE-1).

Level 3 Position:

55. The FCC adopted its *Interim Order*²¹ on July 21, 2004 (rel. August 20, 2004), which establishes interim rules governing unbundling of network elements until such time as the FCC adopts permanent rules. The FCC’s adoption of its *Interim Order* greatly changes the

²⁰ *In the Matter of the Petition of AT&T Communications of Michigan, Inc. for arbitration to establish an interconnection agreement with Ameritech Michigan*, MPSC Case Nos. U-11151, U-11152, Order Approving Agreement Adopted by Arbitration, Nov 26, 1996. *See also, In the Matter of the Application of Sprint Communications Company, LP for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan*, MPSC Case No. U-11203, Order Approving Arbitration Agreement with Modifications, Jan 15, 1997.

²¹ *Unbundled Access to Network Elements*, Order and Notice of Proposed Rulemaking, WC Docket No. 04-313, FCC 04-179 (rel. August 20, 2004) (“Interim Order”).

landscape related to UNEs. At the time of filing this Petition, the FCC had not yet adopted its permanent UNE rules pursuant to the remand in *USTA II*²², as contemplated in the *Interim Order*.

56. The *Interim Order* maintains the status quo that existed as of June 15, 2004 for the provision of unbundled network elements from SBC to Level 3. As of June 15, 2004, Level 3 was entitled to receive unbundled network elements pursuant to the terms and conditions of the parties' current Interconnection Agreement that was approved by the Commission. Level 3 does not wish to waive its rights to obtain unbundled network elements pursuant to those existing terms and conditions. As such, it proposes that the Commission find that the UNE provisions found in the Parties' interconnection agreement effective on June 15, 2004 be extended until such time as the FCC adopts permanent unbundling rules.

57. In addition, the FCC has held that Level 3 and SBC may not arbitrate new UNE terms until after the FCC adopts permanent rules for the provision of unbundled network elements: "Moreover, if the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into other carriers' new contracts. The interim approach adopted here, in contrast, does not enable competing carriers to do either." ¶23. According to the FCC, "such litigation would be wasteful in light of the [FCC's] plan to adopt new permanent rules as soon as possible." ¶17. The FCC recognizes that "the implementation of a new interim approach could lead to further disruption and confusion that would disserve the goals of section 251."

58. In light of the foregoing, Level 3 does not waive any rights to those UNEs to which it is entitled by agreeing to terms and conditions other than what is in its existing

²² *United States Telecom Association v. Federal Communications Comm'n*, No. 00-1012 (D.C. Cir. Oct. 6, 2004)

Interconnection Agreement. Level 3 will also oppose any effort by SBC to attempt to arbitrate UNEs in light of the FCC *Interim Order*.

59. The dispute resolution process adopted by the Commission at the conclusion of this proceeding can be used by the parties to adjudicate the terms and conditions for SBC's provision of UNEs after the FCC has issued revised rules.

60. In the event that the Commission disagrees with Level 3's interpretation of the FCC's *Interim Order* and decides to arbitrate the UNE Appendix, Level 3 will provide its perspective on the appropriate UNE language to adopt. This should not be viewed as a waiver of the Level 3 position with respect to the impact of the FCC's *Interim Order*.

61. Level 3 has a statutory right to obtain unbundled network elements from SBC pursuant to, among other sources, Section 251 of the Act.²³ Level 3 requests that the Commission continue to require that SBC provide access to UNEs according to the law rather than SBC's whim. Thus, Level 3 requests the Commission specifically reject any attempts by SBC to unilaterally (and self-servingly) determine whether and how a change of law operates with regard to UNEs and prevent SBC from flash cutting to retail rates or refusing to provide UNEs altogether based upon SBC's view of the state of federal law.

SBC Position:

62. 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.

²³ 47 USC § 251.

Basis for Level 3's Position

63. SBC places limitations 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.

64. One restriction that SBC seeks to impose is the requirement that Level 3 use UNE's only for "qualified services." 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 simultaneously 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. Level 3 knows of no legal authority supporting SBC's position.

65. Purchasing access to a DS-1 in order to provide high speed services is a "qualifying service" under the federal rules. The FCC has held that the term "qualifying services" includes those telecommunications services offered by a CLEC in competition with those services traditionally within the exclusive or primary domain of the ILEC.²⁴ Within the list of services the FCC considers to be a "qualifying service" is high-capacity circuits like DS-1 and DS-3 trunks.²⁵

²⁴ Report and Order on Remand and Further Notice of Proposed Rulemaking, *Triennial Review Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nod. 01-383, 96-98, 98-147, ¶ 140 (rel. August 21, 2003) ("TRO").

²⁵ Id.

66. The language in many of the SBC-proposed “declassified” UNEs is specifically in conflict with the FCC’s *TRO* and the related *USTA II* Orders.

67. The language also fails to account for any unbundling obligations imposed on SBC through Section 271 of the Act or any applicable state laws. In its *TRO Order*, the FCC considered the relationship between Sections 251 and 271 and specifically stated that Section 271(c)(2)(B)(iv) - (vi) and (x) (checklist items four through six and ten) constitute a distinct statutory basis for the requirement that BOCs provide competitors with access to certain network elements *that does not hinge on whether those elements are included among those subject to section 251(c)(3)’s unbundling requirements*.²⁶ The FCC reiterated in the very recent *SBC Broadband Forbearance Order* “even if [the FCC] concluded that requesting telecommunications carriers are not “impaired” without access to one of those elements under section 251, *section 271 would still require the BOC to provide access*.”²⁷

TIER I

ISSUE FOUR: Using Interconnection Facilities for Internet Enabled Traffic.

Statement of the Issue:

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

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Section 13.1 (DPL Issue ITR-19).

Intercarrier Compensation, Sections 3.1, 3.1.1-3.1.5, 4.2, 4.5, 4.7-4.7.2.1, 7.1, 7.2 , 9.0-9.12 (DPL Issues IC-1, 4, 8, 11, 14 and 16).

²⁶ *Triennial Review Order*, 18 FCC Rcd at 17382-91, ¶¶ 649-67, *corrected by Triennial Review Errata*, 19 FCC Rcd at 19022, ¶¶ 30-33.

²⁷ *In the matter of SBC Communications Inc’s Petition for Forbearance Under 47 U.S.C. § 160(c)*, FCC Docket No. 04-254, WC Docket No. 03-235, ¶ 7 (rel. October 27, 2004); citing to *Triennial Review Order* at 17384, ¶ 653.

Level 3 Position:

68. Level 3 seeks to use the interconnection network it has constructed and additional facilities it may construct in the future to exchange Internet-enabled traffic (including Voice embedded IP communications) between its network and SBC's. Level 3's 16,000 route-mile network within the continental United States is optimized to provide advanced telecommunications and enhanced services.²⁸ Level 3's network also extends to Europe and is connected with international routes worldwide. Level 3 also designed its facilities to permit connections to the PSTN. Thus, Level 3 requires the ability to interconnect with SBC for a variety of Internet-enabled signals.

SBC Position:

69. 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:

70. Both the FCC and federal courts have addressed the ability of state commissions to assert jurisdiction over IP-Enabled Services, including what intercarrier compensation is due

²⁸ Level 3's name evokes the fact that Level 3's network is uniquely designed and operated on an end-to-end basis to optimize the end user customer's ability to fully exploit the benefits of IP technology. More specifically, the name itself "Level 3" refers to the fact that Level 3 provides the three essential building blocks of a fully optimized facilities-based network capable of leveraging all of the benefits of Internet enable technologies have to offer. At the physical level ("level 1") Level 3 constructed a 16,000 mile fiber optic backbone within the continental United States. Level 3 has also constructed 2 undersea cables connecting the U.S. network to its approximately 9,000 route mile network in Europe. Level 3 amplifies signals traveling within its network every 60 miles and reconstitutes, reconfigures and regenerates signals every 240 miles to ensure the highest quality transmission with the lowest possible degradation in service. Level 3 also provides interconnection and collocation services at Level 3 gateway facilities nationwide. At the data level ("level 2") Level 3 provides the most advanced network capabilities to permit other carriers and end user customers to exchange vast quantities of traffic every day. At the network level ("level 3") Level 3 has optimized the entire network to seamlessly and transparently permit carrier customers and end users the ability to leverage the full benefits of the IP family of protocols unfettered by constraints imposed by circuit switched or other older technologies.

for such traffic. In an appeal of the Minnesota Public Utilities Commission order asserting jurisdiction over Vonage's IP-Enabled Services, the U.S. District Court in Minnesota found that Vonage's service is an information service, and thereby, not subject to regulation by the states. :

VoIP services necessarily are information services, and state regulation over VoIP services is not permissible because of the recognizable congressional intent to leave the Internet and information services largely unregulated.²⁹

71. On November 12, 2004, the FCC issued the *Vonage Order*³⁰ in which it granted Vonage's request and preempted the Minnesota PUC from exercising jurisdiction over the Vonage's DigitalVoice service, a form of VoIP service. The FCC pre-empted the Minnesota PUC's jurisdiction on the basis of the nature of the Vonage service.³¹

72. For the purposes of this arbitration, the *Vonage Order* makes it clear that the FCC intends to determine how the services will be regulated and will be determining the issue of intercarrier compensation as part of that review. The FCC found that an end-to-end analysis for determination of whether a service is interstate or intrastate, which has been the FCC's traditional test for circuit-switched services, cannot be applied to "IP-based services" like Vonage's DigitalVoice, as the origination point of the communication impossible to determine, and may in fact be multiple locations.³² In addition:

The geographic location of the "termination" of the communication is the other clue; yet this is similarly difficult or impossible to pinpoint. This

²⁹ *Vonage Holding Corp. v. Minnesota Pub. Util. Comm'n*, 290 F. Supp 2d 993, 1002 (D. Minn. 2003), *appeal pending*, *Vonage Holdings Corp. v. Minnesota Pub. Util. Comm'n*, No. 04-1434 (8th Cir. 2004). The MN PUC appealed the MN District Court decision to the United States Court of Appeals for the Eighth Circuit, where the appeal is now pending. The Eighth Circuit had scheduled oral argument for November 17, 2004. As of the filing of this Reply Brief, the Eighth Circuit had delayed oral argument on the matter pending the FCC issuing a decision.

³⁰ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning Order of the Minnesota Public Utilities Commission*, FCC 04-267, Memorandum Opinion and Order (rel. Nov. 12, 2004) (hereafter referred to as the "*Vonage Order*").

³¹ *See, Vonage Order*, ¶ 1.

³² *Id.*

“impossibility” results from the inherent capability of IP-based services to enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously, none of which the provider has a means to track or record.³³

73. According to the FCC, IP-Enabled Services that possess the following features or functionalities are Information Services, not Circuit-Switched Services, subject to the jurisdiction of the FCC:

1. the end user customers using the service must have access to a broadband connection to the Internet to use the service;
2. the service requires the customers to use specialized customer premises equipment (CPE);
3. the service offers customers a suite of integrated capabilities and features that allows the user to manage personal communications dynamically, including but not limited to real-time, multidirectional voice functionality, including the capability to originate and terminate real-time voice communications; and,
4. although the service uses North American Numbering Plan (NANP) numbers as the identification mechanism for the user’s IP address, the NANP number is not necessarily tied to the user’s physical location for either assignment or use, in contrast to most wireline circuit-switched calls.³⁴

74. Level 3’s IP-Enabled Services satisfy each of these requirements and, as such, are Information Services, not Circuit-Switched Services, and are subject to the jurisdiction of the FCC. Further, as an information Service, Level 3’s IP-Enabled Traffic cannot be subject to the imposition of SBC’s access charges unless and until the FCC so mandates. The FCC has not made such a mandate.

75. The FCC noted that in the world of these IP-based services, the NPA-NXX of originating and terminating parties is divorced from geography. A call which appears to originate and terminate in the same NPA-NXX could just as easily, in the IP-Enabled services

³³ *Id.*, ¶ 25. (Footnotes omitted).

³⁴ *Vonage Order*, ¶¶ 5-9.

world, originate and terminate on opposite sides of the globe.³⁵ The FCC noted that it intends to resolve comprehensively the issues of regulation of these IP-Enabled services in its IP-Enabled Services proceeding, including matters of intercarrier compensation.³⁶

76. SBC ignores federal law and seeks to have this Commission impose access charges upon carriers such as Level 3 who provide interconnection services for enhanced service providers (“ESPs”) applications such as Voice embedded IP services. Moreover, this traffic is the subject of ongoing rulemaking proceedings at the FCC³⁷ as well as recent FCC orders.³⁸ 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.³⁹ ILEC access tariffs do not, by their terms, apply to these customers, nor can they. Thus, ILECs cannot legally charge these customers minute sensitive access charges. Therefore, for purposes of intercarrier compensation, Level 3’s

³⁵ *Id.*, ¶ 27.

³⁶ *Id.* at 8, fn. 46. The FCC says, in effect, in this footnote that its jurisdictional ruling is designed to make it clear that there will be no state regulation of these IP-Enabled services, as the FCC sorts out whether and how to regulate IP-Enabled services.

³⁷ See, e.g., *Level 3 Communications, LLC Petition for Forbearance Under 47 USC § 160(c) and Section 1.53 of the Commission’s Rules from Enforcement of 47 USC § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No 03-266 (filed Dec 23 2003) (“*Level 3 Petition*”); *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36 (rel Mar 10, 2004) (“*Voice-enabled Services NPRM*”).

³⁸ *In the Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27 (rel Feb 19, 2004) (“*Pulver Order*”); *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, FCC 04-97 (rel Apr 21, 2004) (“*AT&T Order*”); *Vonage Petition for a Declaratory Ruling*, WC Docket No 03-211, Memorandum Opinion and Order, (rel. November 12, 2004) (“*Vonage Order*”);.

³⁹ *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 (DC 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 F3d 523 (8th Cir 1998); *Inter-carrier 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).

ESP customers must be treated like any other business customer of local services and the carriers exchange reciprocal compensation according to Section 251(b) of the Act⁴⁰ and the Section 51.701 of the FCC's Rules,⁴¹ and related FCC Orders.

TIER I

ISSUE FIVE: Intercarrier (Reciprocal) Compensation.

Statement of the Issue:

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

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation, Sections 3.1, 3.1.1-3.1.5, 3.6, 3.7, 4.7- 4.7.2.1, SBC-proposed Section 6 with subparts, 7.1, 7.2, SBC-proposed 7.4 and 7.5, 8.1, 8.2, 8.3, 10.1, 12.1-12.6, 12.9, 14.1, 15.1, and 15.2 (DPL Issues IC-1, 4, 6, 7, 11, 13, 14, 15, 17, 19, 20 and 21).

Interconnection Trunking Requirements, Section 5.4.3 (DPL Issue ITR-14).

Level 3 Position:

77. The FCC's existing rules, 47 C.F.R. § 69.5(b) provides that "carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services;"

78. IP-PSTN and PSTN-IP traffic is originated by one end-user customer and terminated to another end-user customer. In exchanging this type of traffic, Level 3 or SBC delivers its IP traffic to the POI, and it is the other Party's responsibility to deliver the traffic to its customers. Section 69.5(b) of the FCC's rules does not apply in this exchange because Level 3 does not rely on SBC's local exchange switching facilities. Further, Section 69.5(b) does not

⁴⁰ 47 USC § 251(b).

⁴¹ 47 CFR § 51.701.

permit the imposition of “carrier’s carrier charges” on entities that are not interexchange carriers, and particularly not on ESPs, which are “end users,” not “carriers” under the FCC’s access charge rules. Level 3 requests that the Commission follow federal law on the treatment of intercarrier compensation for information services.

SBC Position:

79. 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.

Basis for Level 3’s Position:

80. With respect to reciprocal compensation obligations, under the federal Act, Section 251(b)(5) applies to all telecommunications traffic, irrespective of where the calling and the called parties are physically located. By its very terms, Section 251(b)(5) applies to “the transport and termination of telecommunications.” 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.”⁴²

81. As the FCC ruled in the *ISP Remand Order*,⁴³ **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

⁴² 47 USC § 251(b)(5).

⁴³ *In the Matter of Compensation for ISP-Bound Traffic*, Order on Remand, FCC 01-0131 (April 27, 2001.)

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.

82. SBC has voluntarily opted into the FCC's compensation regime adopted in the *ISP Remand Order* for all ISP-Bound Traffic. Under the terms of the compensation regime SBC has opted into, all compensation for ISP-Bound Traffic is \$0.007 per minute.

83. In the *ISP Remand Order*, 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.⁴⁴ 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 proposals, which would provide for numerous exceptions to SBC's reciprocal compensation obligations, limit the type of traffic subject to compensation and selectively use the reciprocal compensation regime that the FCC sought to eliminate in the *ISP Remand 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

⁴⁴ *WorldCom, Inc v FCC*, 288 F3d 429 (DC Cir 2002).

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.⁴⁵

84. With respect to network interconnection issues, SBC has proposed language in Appendices NIM and ITR 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,⁴⁶ provides that a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

85. The FCC in the *ISP Remand Order* asserted exclusive jurisdiction over compensation issues related to ISP-bound traffic.⁴⁷

86. State Commissions have recognized that the *ISP Remand Order* has effectively preempted Commission jurisdiction to address compensation issues for ISP bound traffic. The Florida Public Service Commission, for example, determined that "[t]he FCC's intent to preempt a state commission's authority to address reciprocal compensation for ISP bound traffic is clear."⁴⁸

87. According to the FCC's regime, therefore, all calls within a LATA should be treated as "local", and access charges would not apply. However, according to the language proposed by SBC, if the modem bank is within a particular LATA and the call terminates in that

⁴⁵ *ISP Remand Order*, ¶ 89 [emphasis in original.]

⁴⁶ 47 CFR § 51.703(b),

⁴⁷ As noted above, 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. . 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.

⁴⁸ *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).

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 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).⁴⁹

88. 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."⁵⁰ Nowhere does the *ISP Remand Order* limit its regime to "local" ISP-bound traffic.⁵¹

89. 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

⁴⁹ *ISP Remand Order*, at ¶ 34.

⁵⁰ *ISP Remand Order*, at ¶ 44 (emphasis added).

⁵¹ 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 SBC and Level 3—asked the FCC to include FX-like traffic within the scope of the order. 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.

use FX-like arrangements.⁵² An Arbitration Panel of the Texas Public Utility 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.”⁵³ 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.⁵⁴

⁵² See *Essex Telecom, Inc v Gallatin River Comm, 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 USC 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. UT-023043, Seventh Supplemental Order: Affirming Arbitrator’s Report and Decision, at 2-4 (Wash. UTC 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 Sept 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].”).

⁵³ *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for “FX-Type” Traffic Against Southwestern Bell Telephone Company*, TX PUC Docket No. 241015, Revised Arbitration Award, 31, Aug 28, 2002.

⁵⁴ *Id.*

90. In MPSC Case No. U-12952, the Michigan Commission found that the *ISP Remand Order* “takes care of all ISP traffic,” and was “not moved to reverse its prior orders” regarding intercarrier compensation for non-ISP FX-like traffic..⁵⁵

91. SBC has voluntarily opted into the FCC ISP compensation regime developed in the *ISP Remand Order* imposing a \$0.0007 per minute compensation charge for all ISP-Bound Traffic. 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.

B. TIER II ISSUES.

TIER II — ISSUE SIX (DPL ISSUES GTC-6-9)

Statement of the Issue:

Whether SBC can disconnect Level 3’s end user customers for alleged Nonpayment of billed amounts without complying with the contractual and legal requirements for discontinuation of services?

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions, Sections 8.8.1, 9.2, 9.3, 9.5.1, 9.5.1.1-9.5.1.2, 9.6.1.1-9.6.1.2, and 9.7.2.2.

92. 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

⁵⁵ *In the Matter of the Petition for Arbitration to Establish an Interconnection Agreement Between TDS Metrocom, Inc and Ameritech Michigan*, MPSC Case No. U-12952, Opinion and Order, Sept 7, 2001.

ability to extend throughout its thirteen state regions to which Level 3 has already stated its objections.

93. 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 dominant incumbent local exchange carrier 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 (and in contract language proposed to Level 3 on April 26, 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*⁵⁶ takes effect. SBC also stated in the letter that parties not

⁵⁶ *United States Telecom Ass'n v FCC*, 359 F3d 554 (DC Cir Mar 2, 2004) ("*USTA II*").

agreeing to its terms would face dispute resolution complaints within eight (8) days of the date that it filed the letter.

TIER II — ISSUE SEVEN (DPL ISSUE GTC-1-5)

Statement of the Issue:

Under what circumstances should a deposit be required and, if required, can Level 3 dispute SBC's demand for a deposit?

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions, Section 7, 8.8.1, 9.2, 9.3, 9.5.1, 9.5.1.1, 9.5.1.2, 9.6.1.1, 9.6.1.2 and 9.7.2.2.

94. 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.

95. 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 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.

96. 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.

97. 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.

TIER II — ISSUE EIGHT (DPL ISSUE GTC-1)

Statement of the Issue:

Should Assurance of Payment Apply on a State-by-State Basis or Across the SBC 13-State Region?

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions, Sections 7.2, 7.2.1, 7.2.3 and 7.3.2.

98. 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.

99. 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.

100. 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 Missouri 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 Missouri based upon a problem arising in California or Connecticut. Accordingly, the Commission should approve Level 3's proposal for these contract sections.

TIER II— ISSUE NINE (DPL ISSUE GTC-5)

Statement of the Issue:

Should Level 3 be Permitted to Dispute a Demand for Assurance of Payment?

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions, Sections 7.8, and 7.8.1

101. 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.

102. 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.

TIER II— ISSUE TEN (DPL ISSUES OET-1 AND 2)

Statement of the Issue:

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?

Sections of the Proposed Interconnection Agreement Affected:

Out of Exchange Traffic Appendix, Sections 2.1 and 2.3

103. 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 This Agreement contains terms and conditions related to SBC-13STATE's obligations under Applicable Law. Other Appendices to this Agreement set forth the terms and conditions pursuant to which SBC-13STATE agrees to provide LEVEL 3 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-13STATE's incumbent local exchange areas for the provision of LEVEL 3's Telecommunications Services. The Parties acknowledge and agree that SBC-13STATE 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 LEVEL 3 in SBC-13STATE's incumbent local exchange areas. SBC-13STATE has no obligation to provide such UNEs, Collocation, Interconnection and/or Resale to LEVEL 3 for the purposes of LEVEL 3 providing and/or extending service outside of SBC-13STATE's incumbent local exchange areas. In addition, SBC-13STATE 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-13STATE's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in SBC-13STATE's current Interconnection Agreement, and any associated provisions set forth elsewhere in LEVEL 3'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 LEVEL 3 for provisioning telecommunication services within an SBC-13STATE incumbent local exchange area(s) in the State in which LEVEL 3's current Interconnection Agreement with SBC-13STATE has been approved by the relevant state Commission and is in effect.

104. SBC's proposed language specifically limits SBC's obligations to provide UNE and collocation services pursuant only to Section 251(c) of the Act.⁵⁷ SBC's proposed language expressly eschews any applicable state laws and commission orders relating to these issues. Thus, SBC-proposed language amounts to little more than an unnamed unilateral waiver of state unbundling, collocation and interconnection obligations, as well as of any Section 271 unbundling obligations arising under federal law. As such, Level 3 cannot "acknowledge and agree" with SBC's interpretation of the current state of the law.

⁵⁷ 47 USC § 251(c).

105. Out of Exchange is a term invented by SBC. This term cannot be found in *Newton's Telecom Dictionary* nor in Telecordia's "Notes on the Networks", two publications heavily relied upon by the industry. SBC's proposed OET Appendix is unnecessary and duplicative of terms already included in the ITR, NIM and GTC Appendices. As such, is it not necessary for this Agreement, and should be rejected in its entirety. For example, Level 3 attaches hereto Attachment 2,⁵⁸ which is a comparison of the SBC-proposed OET terms, and the related terms from other sections of the Agreement, demonstrating the duplicative and unnecessary nature of the OET Appendix as a whole. For these reasons, the OET Appendix is not necessary and should be rejected.

TIER II — ISSUE ELEVEN (DPL ISSUES PC-1 AND VC-1)

Statement of the Issue:

Should this Appendix be the exclusive document governing physical collocation arrangements between Level 3 and SBC, or should Level 3 be permitted to order collocation both from this Appendix and state tariff?

Sections of the Proposed Interconnection Agreement Affected:

Physical Collocation Appendix, Sections 4.4, 7.3, and 7.3.3.

Virtual Collocation Appendix, Sections 1.2 and 1.10.

106. Section 252(i) requires that a local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved by a state commission to any other requesting telecommunications carrier. SBC's proposals could serve as a waiver of Level 3's independent rights under the federal act, FCC orders and regulations, as well as any existing state orders and regulations. Level 3 cannot and will not make such a waiver.

⁵⁸ See, Appendix E.

107. Further, the tariffs may be amended from time to time with new rates, terms and conditions that are more favorable than what the parties have placed in their interconnection agreement. Level 3 should be entitled, as any other carrier is entitled, to purchase services at rates, terms and conditions that may be offered to any other carrier whether it is more favorable in the interconnection agreement or as updated in the SBC tariff. Level 3 is willing to be bound by the terms and conditions inextricably linked to the tariff services and rates it elects to purchase, but Level 3 should not lose the benefit of the terms and conditions negotiated under the Agreement in order to avail itself of the publicly available tariffs SBC makes available to all carriers.

TIER II — ISSUE TWELVE (DPL ISSUES PC-2 AND VC-2)

Statement of the Issue:

Should Level 3 be able to collocate equipment that SBC has determined is not necessary for interconnection or access to UNEs?

Sections of the Proposed Interconnection Agreement Affected:

Physical Collocation Appendix, Section 6.13.

Virtual Collocation Appendix, Section 1.10.10.

108. SBC should not be allowed to preemptively block the placement of equipment as it sees fit until it is determined the equipment is acceptable for placement; such action could unnecessarily delay Level 3's ability to compete and provide services to its customers.

109. 47 C.F.R.51.323(c) states that if an ILEC

objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the **incumbent LEC shall prove to the state commission** that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in paragraph (b) of this section.

110. 47 C.F.R.51.323(c) does not allow SBC to preemptively deny collocation.

111. In addition, 47 C.F.R.51.323(c) states, in part, that an ILEC “may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment.” SBC’s language not only is preemptive, but also creates ambiguity with respect to the proper level of safety standards.

112. SBC’s language further conflicts with 47 C.F.R. 51.323(c)’s prohibition against an ILEC’s objecting to collocation on grounds of its belief that the collocation may not comply with safety standards.

113. The FCC has recognized that incumbents, like SBC, have incentives to overstate security concerns so as to limit physical collocation arrangements and discourage competition.⁵⁹

114. In the *FCC Collocation Remand Order*, the FCC addressed its rationale for adopting the equipment standard that precludes SBC’s ability to preemptively block Level 3’s chosen collocation equipment.

On one hand, our standard ensures that an incumbent LEC's telecommunications competitors cannot place equipment in collocation space with unfettered discretion, but rather must limit their collocation choices to equipment that is necessary for these carriers to achieve the enunciated statutory purposes of interconnection and access of unbundled network elements. On the other hand, **it ensures that incumbent LECs cannot exercise de facto veto power over their collocated competitors' choice of equipment and network architecture, and instead grants competitors sufficient flexibility with which to make reasonable equipment choices that overcome practical, economic, and operational constraints in a manner that protects the incumbent's property interests.**⁶⁰

⁵⁹ Fourth Report and Order, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 2001 WL 893313 (F.C.C.), 16 F.C.C.R. 15,435, (rel. August 8, 2001) (“*FCC Collocation Remand Order*”).

⁶⁰ *FCC Collocation Remand Order*, 15464, ¶ 54.

TIER II — ISSUE THIRTEEN (DPL ISSUE CHC-1)

Statement of the Issue:

Should SBC provide Level 3 with Coordinated Hot Cuts based on the TELRIC of the service as approved by the Commission?

Sections of the Proposed Interconnection Agreement Affected:

Coordinated Hot Cuts, Sections 3.1, 3.2 and subparts.

115. 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 ISSUES

116. 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 in Appendix C) of each Party's position on the remaining issues. Level 3's proposed language and rationale is also highlighted in Level 3's Disputed Points List, attached hereto as Appendix B.

D. GENERAL TERMS AND CONDITIONS — TIER III ISSUES

TIER III — ISSUE FOURTEEN (DPL ISSUE GTC-10)

Statement of the Issue:

Whether the Intervening Law sections contained in a number of the separate Appendices of the Agreement should be consolidated into a single section of the General Terms and Conditions?

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions, Section 21.1-21.4.

117. 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 create confusion.

TIER III — ISSUE FIFTEEN (DPL ISSUE GTC-11)

Statement of the Issue:

Should Level 3 be allowed to assign or transfer this agreement to an affiliate with whom SBC already has an interconnection agreement?

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions, Section 29.1.

118. Under the terms of the SBC-proposed language, SBC would retain the ability to freely transfer and/or assign the Agreement to another affiliate with whom Level 3 may have an agreement. However, SBC's language in GTC Appendix Section 29.1 precludes Level 3 from making that same transfer and/or assignment to one of its affiliates. This lack of reciprocity is improper and imposes an additional burden on Level 3 that SBC does not impose on itself.

E. GENERAL TERMS AND CONDITIONS, DEFINITIONS — TIER III ISSUES

TIER III — ISSUE SIXTEEN (DPL ISSUE DEF-1)

Statement of the Issue:

Should the definition of Access Tandem Switch be limited to IXC-carried traffic or should it include IntraLATA toll Traffic, Section 251(b)(5) Traffic and ISP-Bound Traffic?

119. Access Tandem Switches historically have only been used to pass traffic through to an IXC. Level 3's definition for Access Tandem Switch is from *Newton's Telecom Dictionary*, 18th edition, a standard reference for telecommunications terminology, and will create a uniform definition throughout the SBC 13-State region. Use of a universally accepted definition such as the *Newton's* definition will avoid disputes over traffic types in the definition of switches, and is the most reasonable approach for resolving this issue.

TIER III — ISSUE SEVENTEEN (DPL ISSUE DEF-2)

Statement of the Issue:

In the event that the Commission agrees with Level 3 in the Intercarrier Compensation Appendix Section 4.5 that the Parties should not be required to use "CPN" in the call flow for IP-Enabled Traffic but rather should use "Call Record", should the Commission incorporate Level 3's proposed definition for "Call Record"?

120. The technology does not exist at present that will allow for "CPN" to be included in the call flow of IP-Enabled Traffic. In practical terms, the issue of whether the "call record" definition should be included will be determined when the Commission addresses Level 3's language in Section 4.5 of the Intercarrier Compensation Appendix.

TIER III — ISSUE EIGHTEEN (DPL ISSUE DEF-3)

Statement of the Issue:

Should the categorization of Circuit Switched Traffic be consistent with the FCC's orders that distinguish Circuit Switched Traffic from IP enabled traffic?

121. Through its orders and regulations, the FCC has distinguished between Circuit Switched Traffic and IP-Enabled Traffic, finding that IP-Enabled Traffic is not a Circuit-Switched form of traffic. The FCC, in a recent ruling on IP-Enabled Traffic, provides the definition that Level 3 uses for Circuit Switched IntraLATA Toll Traffic.⁶¹ Therefore, adopting Level 3's language would be consistent with the FCC's orders and regulations. Adopting Level 3's language would also be consistent with the FCC's finding that IP-Enabled Traffic are not subject to circuit-switched access charges, as SBC proposes.

122. Level 3's language in various parts of the Agreement includes the term Circuit Switched IntraLATA Toll Traffic, so there should be a definition in the Agreement to clarify what is meant when the term is used.

TIER III — ISSUE NINETEEN (DPL ISSUE DEF-4)

Statement of the Issue:

Does the FCC's *Interim Order* maintain the status quo as of June 15, 2004 of the parties' existing interconnection agreement with respect to the availability of UNEs?

123. The FCC has held that Level 3 and SBC may not arbitrate new UNE arrangements until after the FCC adopts its permanent rules for the provision of unbundled network elements: "Moreover, if the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into other carriers' new contracts. The interim approach adopted here, in contrast, does not enable

⁶¹ *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, *Order*, 19 F.C.C. Rcd. 7,457 (RCC Rel. April 21, 2004.) ("FCC AT&T IP-Enabled Services Order")

competing carriers to do either." ¶23. According to the FCC, "such litigation would be wasteful in light of the [FCC's] plan to adopt new permanent rules as soon as possible." ¶17. The FCC recognizes that "the implementation of a new interim approach could lead to further disruption and confusion that would disserve the goals of section 251."

124. At the time of filing this Petition, the FCC had not yet adopted its permanent UNE rules. Thus, the status quo must continue, and inclusion of the term declassification" is not appropriate.

TIER III — ISSUE TWENTY (DPL ISSUE DEF-5)

Statement of the Issue:

Should the Demarcation Point be defined consistent with the FCC's definition and regulations?

125. The FCC regulation related to the Demarcation Point, 47 CFR 68.3, defines that terms as follows:

As used in this part, the point of demarcation and/or interconnection between the communications facilities of a provider of wireline telecommunications, and terminal equipment, protective apparatus or wiring at a subscriber's premises.

126. This is the same definition that Level 3 proposes and the one that the Commission should adopt into this Agreement. Consistent with the FCC orders and regulations, including 47 CFR 68.3 above, Level 3 language reflects the fact that the Demarcation Point serves not only as the boundary line between the Parties' respective network responsibilities, but also as the apportionment of the legal, technical and financial responsibilities.

TIER III — ISSUE TWENTY-ONE (DPL ISSUE DEF-7)⁶²

⁶² Issue DEF-6 was reserved in the DPL, and will not be addressed herein.

Statement of the Issue:

Should the Commission define an ISP according to MTS and WATS Market Structure Order, CC Docket No. 78-72, adopted in 1983, or should the commission adopt a more current statement of the law as adopted by the FCC?

127. SBC's language proposes a definition of ISP that stems from the Modified Final Judgment, adopted in 1983, that is more than 20 years old. The Commission should adopt a more flexible definition, which will allow for the incorporation of more recent FCC orders defining the term, and will incorporate upcoming FCC decisions expected related to IP-Enabled Traffic and intercarrier compensation, which may alter or amend the definition yet again. As such, the Commission should adopt Level 3's proposed definition.

TIER III — ISSUE TWENTY-TWO (DPL ISSUE DEF-8)

Statement of the Issue:

Should ISP-Bound Traffic be identified as originating as a call that originates on the circuit switched network and terminates to an Internet Service Provider?

128. SBC's language in GTC Def Issue 8 attempts to place a geographic requirement to define ISP-Bound Traffic. There is no nexus between the physical locale of the calling party and the ISP for purposes of determining compensation due between the Parties. Rather, the FCC has held that all ISP-Bound Traffic is interstate in nature and subject to the compensation scheme developed in the *ISP Remand Order*.

129. Level 3's proposed language clarifies that ISP-Bound Traffic is originated as Circuit switched traffic terminating at an ISP customer of the other Party. This language is consistent with the language used in FCC orders.

TIER III — ISSUE TWENTY-THREE (DPL ISSUE DEF-9)

Statement of the Issue:

Should the definition of “Local/Access Tandem Switch” also include a substantive provision that would require Level 3 to build duplicative interconnection trunks?

130. SBC’s definition of “Local/Access Tandem Switch” contains embedded traffic distinctions that are unreasonably restrictive, and as such, should not be used. For instance, SBC has excluded ISP-Bound Traffic from the traffic types listed that can be carried over the “Local/Access tandem Switch”. SBC accomplishes this by limiting the definition with its newly-crafted term “Section 251(b)(5) Traffic”, which SBC asserts would exclude ISP-Bound Traffic. By inserting in the definitions an aspect applying a “local” requirement, SBC is, in effect, prohibiting Level 3 from exchanging anything other than “local” traffic over these facilities.

131. To the extent that the Commission requires the Parties to define the tandem functionality, Level 3’s language, which is taken directly from Newton’s Telecom Dictionary, 15th Edition, is commonly accepted within the telecommunications industry. Since tandem switches can and do handle all types of traffic, Level 3’s definition, “an intermediate switch or connection between an originating telephone call location and the final destination of the call,” is the more rational definition and should be adopted by the Commission

TIER III — ISSUE TWENTY-FOUR (DPL ISSUE DEF-10)

Statement of the Issue:

Should the definition of “Local Interconnection Trunk” also include a substantive provision that would require Level 3 to build duplicative interconnection trunks?

132. This issue is related to the disputes found in ITR Appendix sections 5.2, 5.2.1-5.2.3, 5.2.6-5.2.9 (Issue ITR-10), 5.3.1.1, and 5.3.3.1 (Issue ITR-11).

133. SBC is attempting throughout its proposed language in this Agreement to limit the use of the interconnection trunks to a subset of traffic types. As detailed in the allegations herein for Issues ITR-10 and 11, SBC’s attempts to limit the use of the interconnection trunks to a

certain subset of traffic types is improper. Similarly, SBC's definition of "Local Interconnection Trunk" should also be rejected.

134. There is not a technical reason that would prohibit the combination of multiple types of traffic over the interconnection facilities. Pursuant to Section 251(c)(2), then, SBC is obligated to interconnect with Level 3 in the manner requested, and allow Level 3 to combine all of its traffic over a single interconnection trunk group.

TIER III — ISSUE TWENTY-FIVE (DPL ISSUE DEF-11)

Statement of the Issue:

Should the definition of "Local/IntraLATA Tandem Switch" also include a substantive provision that would require Level 3 to build duplicative interconnection trunks?

135. SBC has again attempted to carve out certain traffic types, like ISP-Bound Traffic, from being carried over its "Local/IntraLATA Tandem Switches". On a technical level, Tandem switches can handle any type of traffic. Therefore, SBC's attempt to limit Level 3 to only certain specific traffic types over those switches does not belong in the definition, especially when those traffic types are based upon SBC's own self-serving interpretations of the law and not a rule or order.

TIER III — ISSUE TWENTY-SIX (DPL ISSUE DEF-12)

Statement of the Issue:

Should the definition of "Local Only Tandem Switch" also include a substantive provision that would require Level 3 to build duplicative interconnection trunks?

136. A "Local Only Tandem Switch" is fully able to switch toll traffic in either direction without modification if access billing is done using Percent Local Use ("PLU"). Although the resolution of the IC Appendix Issues will determine the definition of "Local Only Tandem Switch", traffic types should be removed from this definition.

TIER III — ISSUE TWENTY-SEVEN (DPL ISSUE DEF-13)

Statement of the Issue:

Should the definition of “Local only Trunk Groups” also include a substantive provision that would require Level 3 to build duplicative interconnection trunks?

137. SBC’s definition limits the use of “Local Only Trunk Groups” to a certain subset of traffic types, “Section 251(b)(5)” traffic, which does not include any ISP-Bound Traffic. This is an unreasonable restriction on the types of traffic that can be carried over local trunk groups and is not even accurate with respect to the types of traffic that are carried over these trunk groups today. For instance, the network today, including the interconnection trunk groups, carries high volumes of ISP-bound traffic on these trunk groups in the form of dial up Internet service. It would be technically impossible for SBC to restrict local trunks in the manner suggested by this definition.

TIER III — ISSUE TWENTY-EIGHT (DPL ISSUE DEF-14)

Statement of the Issue:

Should the definition of “Local Tandem” also include a substantive provision that would require Level 3 to build duplicative interconnection trunks?

138. SBC’s definition of “Local Tandem” incorporates the above definitions for “Local Only, Local/IntraLATA, Local/Access or Access Tandem Switch serving a particular LCA (defined below)⁶³”. Thus, SBC’s definition includes all of the disputed switch definitions that are addressed in the proceeding GTC DEF Issues above. For the same reasons SBC’s definitions above are improper, so too is its proposed definition of “Local Tandem”.

TIER III — ISSUE TWENTY-NINE (DPL ISSUE DEF-15)

⁶³ Sic. The parenthetical should say, “(defined above)” since all of the switch types included are alphabetically before this switch type.

Statement of the Issue:

Should "Network Inter-connection Methods" be limited to the specific methods set forth in the parties' Agreement and those mutually agreed to by the parties, or should the definition include other methods recognized by Applicable Law, as defined?

139. During the life of this Agreement, there may be an occasion where either the legislature or the Commission will modify the regulatory world in such a manner that it is considered to qualify under the definition of “Applicable Law”. It makes no sense to require the Parties to return to arbitration to take advantage of new interconnection methods when they become available. Such a determination would be a drain on the resources of both Parties and the Commission, which will be forced to address any potential arbitrations stemming from these disputes. The reasonable approach, as Level 3 proposes, is to add the text, “or according to Applicable Law,” to the Agreement, thus eliminating expensive and time-consuming future arbitrations.

TIER III — ISSUE THIRTY (DPL ISSUE DEF-16)

Statement of the Issue:

Should the definition of “Out of Exchange LEC” include a reference to a successor-in-interest to SBC?

140. Out of Exchange is a term invented by SBC. This term cannot be found in *Newton's Telecom Dictionary* nor in Telecordia's “Notes on the Networks”, two publications heavily relied upon by the industry. Additionally, as demonstrated in the Attachment 2,⁶⁴ SBC's proposed OET terms are duplicative of terms already addressed in the NIM, ITR and GTC Appendices. For these reasons, the OET Appendix as a whole is not necessary and should be rejected.

⁶⁴ See Appendix E.

141. Nonetheless, if the Commission is going to include OET terms in the Agreement, then Level 3 has concerns about the situation where SBC sells off some of its ILEC territory, and whether Level 3 would be able to carry on its service in that territory with a new ILEC provider. Thus, Level 3 has proposed language that makes clear the OET terms survive such a sale because the terms apply regardless of whether ownership changes.

TIER III — ISSUE THIRTY-ONE (DPL ISSUE DEF-17)

Statement of the Issue:

(a) Should the definition of “Out of Exchange Traffic” include all Telecommunications Traffic, as defined, or be limited to “Section 251(b)(5) Traffic,” “InterLATA Section 251 (b)(5) traffic” and “ISP-bound traffic,” as defined?

(b) Should the definition of “Out of Exchange Traffic” include IP-Enabled Services?

(c) Should the definition of “Out of Exchange Traffic” include Transit Traffic?

142. Again, if the Commission determines that it is appropriate to include the OET Appendix in the Agreement, then the Agreement should not make any reference to SBC’s newly-crafted term “Section 251(b)(5) Traffic”, as that phrase is not defined in any FCC order or regulation. Level 3’s proposed use of the term “Telecommunications Traffic” is defined in the Act, and should be incorporated into the Agreement.

143. SBC’s proposed language will result in Level 3 being blocked from IP-Enabled Traffic with SBC. SBC has a duty under Section 251 to exchange all forms of traffic with telecommunications carriers, not selective forms of traffic with certain carriers.

144. Section 251 mandates that SBC interconnect its network to all other telecommunications carriers, either directly or indirectly, including Transit Traffic. Level 3's proposed language in this definition clarifies, consistent with Level 3's position in Issues ITR-2 and 5, that SBC will exchange Transit Traffic that falls under the Out of Exchange Traffic definition.

TIER III — ISSUE THIRTY-TWO (DPL ISSUE DEF-18)

Statement of the Issue:

(a) Should the Commission adopt a definition of “Section 251(b)(5) Traffic”?

(b) If the answer to (a) is yes, should “Section 251(b)(5) Traffic” be limited to certain physical locations of the originating and terminating end users?

145. It is unreasonable and misleading to include SBC'S term “Section 251(b)(5) Traffic”, which is not defined in any FCC order or regulation. Rather, it is SBC's interpretation of the Act and FCC orders, to which Level 3 neither agrees nor accepts in the Agreement.

TIER III — ISSUE THIRTY-THREE (DPL ISSUE DEF-19)

Statement of the Issue:

Whether SBC should be permitted to inflate definitions with language that is and should remain in its tariffs?

146. According to *Newton's Telecom Dictionary*, 15th Ed., Switched Access refers to the connection between a phone and a long distance carrier's POP when a customer makes a call over regular phone lines. SBC's proposed language is derived directly from its Switched Access Tariff, which governs services to which Level 3 is not purchasing.

147. Level 3's IP-Enabled Services are not circuit switched services. Rather, they are information services, to which access charges cannot apply.

148. Level 3's proposed language is consistent with industry standards, and the more reasonable approach for the Commission to adopt.

TIER III — ISSUE THIRTY-FOUR (DPL ISSUE DEF-21)⁶⁵

Statement of the Issue:

(a) In light of the fact that the FCC recognizes that ISP bound traffic should not be rated with regard to geography, should the Commission adopt a definition for federal information access traffic that specifically relies upon the geographic locations contained in and defined by state-approved local exchange tariffs?

(b) Should the definition of Virtual NXX be based upon the NPA-NXX of the calling parties?

149. SBC's proposed language would define VNXX Traffic as those calls delivered to phone numbers where the recipient end user is physically located outside of the calling parties' local calling area. However, it is not technically feasible to rate VNXX traffic, including the type at issue in this definition, based on the geographic location of the calling parties. Neither party has the technical capability to know the exact physical location of the calling parties when using IP-Enabled Services.

150. SBC's proposed reliance on the physical location of the calling parties is a departure from the current industry standard. Level 3 proposes continuing the current industry standard of utilizing the NPA-NXX of the calling parties to determine the proper rate to impose on that particular call.

**F. NETWORK INTERCONNECTION METHODOLOGIES APPENDIX —
TIER III ISSUES**

TIER III — ISSUE THIRTY-FIVE (DPL ISSUE NIM-5)⁶⁶

⁶⁵ Issue DEF-20 was reserved in the DPL, and will not be discussed herein.

⁶⁶ Issues NIM-1, 2, 3, 4, 6 and 8 were reserved in the DPL, and will not be discussed herein.

Statement of the Issue:

Should the Agreement clearly recognize that the interconnection obligations contained in the NIM Appendix are those methods required under both state and federal law?

Sections of the Proposed Interconnection Agreement Affected:

Network Interconnection Methods, Sections 2.5.

151. Level 3 proposes language that would make clear that the parties' respective obligations to interconnect are those methods required by a court of competent jurisdiction or the relevant state or federal agency, and states that the interconnection may not be used for purposes not permitted under the Act. Level 3 also proposes language that makes the terms reciprocal in nature. SBC's objection is not clear at the present time.

TIER III — ISSUE THIRTY-SIX (DPL ISSUE NIM-7)

Statement of the Issue:

Whether SBC must provide Collocation and Leased Facilities to Level 3 pursuant to this Section 252 Agreement?

Sections of the Proposed Interconnection Agreement Affected:

Network Interconnection Methods, Sections 3.1.1 and 3.2.1.

152. 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.

G. INTERCONNECTION TRUNKING APPENDIX — TIER III ISSUES

TIER III — ISSUE THIRTY-SEVEN (DPL ISSUE ITR-1)

Statement of the Issue:

Whether Terms in the Interconnection Trunking Appendix should apply to both parties equally?

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Sections 1.2.

153. 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.

TIER III — ISSUE THIRTY-EIGHT (DPL ISSUE ITR-10)

Statement of the Issue:

- a) Which party is responsible for establishing and paying for transporting their original traffic to the POI as specified in the NIM Appendix?**
- b) Whether both parties should use best efforts to complete testing once Level 3 has requested interconnection at the SBC 911 tandem?**

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Sections 5.2.1-5.2.3, 5.2.6-5.2.9.

154. These sections relate to the definition and scope of the trunking requirements addressed in the Appendix, and should be addressed as part of 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.

H. INTERCARRIER COMPENSATION APPENDIX — TIER III ISSUES

TIER III — ISSUE THIRTY-NINE (DPL ISSUES IC-2, 3, 5, 6 AND 7)

Statement of the Issue:

- a) Whether IP enabled services exchanged between the Parties should be billed according to a Percentage of IP Use factor that will be applied to all minutes of usage and based on Level 3's actual and verifiable records of IP originated traffic?
- b) Whether it is appropriate to modify the current treatment of IP enabled traffic and now categorize it as a switched-based service subject to access charges?

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation Appendix, Sections 3.2 - 3.7.

155. These sections relate to the definition and scope of IC Appendix, and should be addressed as part of the larger IC issues raised in Tier I. The Commission must make these sections consistent with its findings therein.

TIER III — ISSUE FORTY (DPL ISSUE IC-8)

Statement of the Issue:

- a) Whether the Intercarrier Compensation Appendix should be consistent with the federal requirements to provide CPN and OCN for telecommunications traffic originating on one party's network and passed to the other party's network?
- b) For purposes of Transit Traffic, whether the transiting party should pass the signaling data to the other party?

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation Appendix, Sections 4.1-4.5.

156. The sections relate to the duties of the parties under the IC Appendix, and should be addressed as part of the larger IC issues raised in Tier I. The Commission must make these sections consistent with its findings therein.

TIER III — ISSUE FORTY-ONE (DPL ISSUE IC-9)

Statement of the Issue:

- a) **Should the dispute resolution process for ISP-Bound Traffic be the same as the dispute resolution process for Section “251(B)(5) traffic”?**
- b) **Should SBC be able to block the other’s traffic without following the dispute resolution procedures in the event of a dispute over the jurisdictional nature or classification of traffic?**

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Section 4.7.2.1.

157. This issue is closely related to the disputed language found in GTC Issue 2, and should be decided consistent with the Commission’s deliberations thereto. Level 3 proposes that the Agreement contain the same dispute resolution procedures for ISP-Bound Traffic as with any other sort of traffic. In the absence of consistency of process as Level 3’s language provides, the parties will be forced to dispute not only the billing error, but also the type of traffic that is the subject of the billing error.

158. Further, there is no legal basis for creating a new dispute resolution process aimed specifically at ISP-Bound traffic.

TIER III — ISSUE FORTY-TWO (DPL ISSUE IC-11)

Statement of the Issue:

Whether the Parties should comply with applicable law with regard to Optional Calling Areas (“OCA”)?

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation, Sections 8.1, 8.2, and 8.3.

159. 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.

TIER III — ISSUE FORTY-THREE (DPL ISSUE IC-12)

Statement of the Issue:

Should the agreement contain terms, conditions and rates for compensation for exchange of unbundled local switching in light of the FCC's *Interim Order*?

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Section 5.7.1-5.7.4.

160. This issue will most likely be decided upon the Commission's deliberations related to UNE Issue 1. For purposes of consistency, the Commission should not adopt SBC's proposed language as the *Interim Order* adopted by the FCC maintains the status quo for UNEs that existed as of June 15, 2004. Once the FCC's final rules are in place, the parties can use the Change in Law provisions of the Agreement to modify the terms to address all UNE issues, including IC Issue 12.

TIER III — ISSUE FORTY-FOUR (DPL ISSUE IC-18)

Statement of the Issue:

Whether a call to an 800 number that terminates in the same local calling area should be deemed a local call?

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation, Sections 11.1 and 11.2.

161. 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.

TIER III — ISSUE FORTY-FIVE (DPL ISSUES IC-10 AND 22)

Statement of the Issue:

- a) **Whether the Parties should abide by any effective and applicable FCC rules or orders regarding the nature of IP enabled traffic and the compensation payable to the Parties for such traffic?**
- b) **What is be the effect of a decision by SBC to opt-in to the regime adopted in the FCC *ISP Remand Order*?**

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation Appendix, Sections 5.0, 5.2-5.3 and subparts, and 18.1-18.7.

162. 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 Remand Order*, and any possible court or agency interpretations of that order. Level 3 takes no position at this time, but believes the issue should be addressed in the Commission's deliberations of 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.

I. RECORDING APPENDIX — TIER III ISSUES

TIER III — ISSUE FORTY-SIX (DPL ISSUE REC-1)

Statement of the Issue:

Should the ICA provide that when Level 3 is the recording company, it will provide usage detail according to MECAB standards?

Sections of the Proposed Interconnection Agreement Affected:

Recording Appendix, Sections 3.13.

163. There is no need to unnecessarily limit the Parties to just the MECAB/MECOD language as the exclusive billing/recording language. In the event that either the Parties or the industry come to an agreement on another form of recording or billing language, the agreement should be acted upon without need for additional negotiations and filing amendments to the agreement. Level 3's language merely provides the flexibility to exchange the same data, but in formats or by means that might make more sense in light of the agreed-upon changes.

TIER III — ISSUE FORTY-SEVEN (DPL ISSUE REC-2)

Statement of the Issue:

Whether the Parties should limit themselves to a single form of electric format for recording or if the agreement should allow the Parties to reach other mutually agreeable formats?

Sections of the Proposed Interconnection Agreement Affected:

Recording Appendix, Sections 4.1.

164. 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 or if those capabilities can be technically replaced in the future, then it should not be required to use EMI 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.

J. OUT OF EXCHANGE APPENDIX — TIER III ISSUES

TIER III — ISSUE FORTY-EIGHT (DPL ISSUE OET-3)

Statement of the Issue:

Whether certain language in the Out of Exchange Appendix is Duplicative of language already in the ITR, NIM and IC Appendices?

Sections of the Proposed Interconnection Agreement Affected:

Out of Exchange Appendix, Section 3.

165. Level 3 believes this language is duplicative of language in the ITR, NIM, and IC Appendices. 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 the location of the end user for billing either. Level 3 addressed this issue in relation to Issue 4, above. The CPN issue also occurs in the Intercarrier Compensation, Network Interconnection Methodologies, and the Interconnection Trunking Requirements Appendices, so the Commission should make this section consistent with its determinations in those areas. SBC opposes Level 3's proposals.

TIER III — ISSUE FORTY-NINE (DPL ISSUES OET-4-8)

Statement of the Issue:

Whether certain language in the Out of Exchange Appendix is Duplicative of language already in the ITR, NIM and IC Appendices?

Sections of the Proposed Interconnection Agreement Affected:

Out of Exchange Appendix, Sections 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, and 4.9.

166. 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 for inconsistent terms in a number of different appendices. SBC opposes Level 3's proposal.

K. CLEARING HOUSE APPENDIX — TIER III ISSUES

TIER III — ISSUE FIFTY (DPL ISSUE CH-1)

Statement of the Issue:

Whether Level 3's own terminating CMDS records should serve as the basis on which Level 3 bills SBC for reciprocal compensation in the SWBT territories?

Sections of the Proposed Interconnection Agreement Affected:

Clearinghouse Appendix, Section 2.1

167. 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. SWBT is the only ILEC that requires Level 3 to bill based on SBC's Category 92 records.

168. 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.⁶⁷

⁶⁷ *Texas PUC order*, Dkt. 21982

169. 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.

L. SS7 APPENDIX — TIER III ISSUES

TIER III — ISSUE FIFTY-ONE (DPL ISSUE SS7-1)

Statement of the Issue:

Should the Parties compensate each other for SS7 Quad Links for IXC calls at access rates or on a bill and keep basis?

Sections of the Proposed Interconnection Agreement Affected:

SS7 Appendix, Section 2.1.1.

170. Level 3 currently uses a third-party provider of SS7 services, but may, during the life of this agreement, make a business decision to provide its own SS7 services. The Parties agree that a Bill and Keep arrangement should govern in the event that Level 3 opts to act as its own SS7 service provider. The disagreement comes with whether Level 3 can carry all of its signaling traffic over a single set of Quad Links or if it must also establish a duplicate second set of Quad Links. SBC's concerns again relate to preserving their access charges by tracking and billing for access traffic. Level 3 proposes that the Bill and Keep regime apply to each Party's CLEC calls. To the extent that the SS7 Quad Links are used for both local and access traffic, then the proper access charges owed will be calculated using the same Percent of Local Usage Allocator system utilized in the Interconnection Trunking Facilities.

171. Under the terms of its tariffs, SBC allows the use of its Quad Links for all forms of traffic. However, under its proposals herein, SBC would force Level 3 to build out an

additional set of Quad Links solely for the purpose of carrying traffic that SBC's own tariffs allow to be carried over a single set of Quad Links.

172. Further, forcing Level 3 to build out an additional set of Quad Links will result in the utilization of an additional four STP Ports per set, further exacerbating tandem and SS7 exhaust.

173. There is no technical reason to force Level 3 to split out its types of traffic and use different sets of Quad Links to exchange that traffic. There is also a demonstratively proven and effective way to address all of SBC's access billing concerns, the same allocators used in the industry for years.

VI. CONCLUSION

In its Proposed Interconnection Agreement (attached hereto as Appendix C), Level 3 has presented reasonable modifications to the Prior Interconnection Agreement that are consistent with the FCC's Rules, this Commission's Orders, public policy, and with the public interest, convenience, and necessity. Level 3's Proposed Interconnection Agreement will help benefit the evolving telecommunications services and economic development within the state, which are long-stated goals of the Missouri Public Service Commission and the Missouri General Assembly.

WHEREFORE, Level 3 Communications, LLC respectfully requests that this Commission:

1. Conduct an arbitration pursuant to Section 252(b) of the Federal Act, 47 USC § 252(b);
2. Resolve the above listed items, disputed between the parties, in Level 3 Communications, LLC's favor;

3. Find that Level 3 Communications, LLC's contract proposals are consistent with the applicable law and commercially reasonable;
4. Issue an Order adopting the Proposed Interconnection Agreement of Level 3 Communications, LLC, attached hereto as Exhibit C; and,
5. Grant such other relief as is fair and justified.

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CO Bar #700100
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Respectfully submitted,

LEVEL 3 COMMUNICATIONS, LLC.

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Attorneys For
Level 3 Communications, LLC

Date: December 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached Petition for Arbitration to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov) and on the following representative of SBC, on this 13th day of December 2004:

Paul Lane, Esq.
General Counsel – Missouri/Kansas
SBC
One Bell Center, Room 3520
St. Louis, MO 63101
paul.lane@sbc.com

/s/ William D. Steinmeier

William D. Steinmeier

VERIFICATION

I, William P. Hunt, III, being duly sworn according to law, depose and say that I am an officer of Level 3 Communications, LLC; that I am authorized to and do make this verification on its behalf; and that the facts set forth in the above Petition are true and correct to the best of my knowledge, information and belief.

SIGNATURE: Wm. P. Hunt III

TITLE: Vice President, Public Policy

SUBSCRIBED AND SWORN to before me this 10th day of December 2004.



Julia Matthews
Notary Public

My Commission Expires 11/15/07

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

* * * * *

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 Applicable State Laws for)
Rates, Terms, and Conditions of)
Interconnection with Southwestern Bell)
Telephone Company, L.P., d/b/a SBC Missouri.)

Case No. _____

PETITION FOR ARBITRATION

APPENDIX A

NEGOTIATION LETTER

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

* * * * *

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 Applicable State Laws for)
Rates, Terms, and Conditions of)
Interconnection with Southwestern Bell)
Telephone Company, L.P., d/b/a SBC Missouri.)

Case No. _____

PETITION FOR ARBITRATION

APPENDIX B

DISPUTED POINTS LIST

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

* * * * *

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)	Case No. _____
Act of 1996, and the Applicable State Laws for)	
Rates, Terms, and Conditions of)	
Interconnection with Southwestern Bell)	
<u>Telephone Company, L.P., d/b/a SBC Missouri.</u>)	

PETITION FOR ARBITRATION

APPENDIX C

PROPOSED INTERCONNECTION AGREEMENT

- General Terms and Conditions
- Appendix 1: Interconnection Trunking
- Appendix 2: Recording
- Appendix 3: Reciprocal Compensation
- Appendix 4: Physical Collocation
- Appendix 5: Virtual Collocation
- Appendix 6: Unbundled Network Elements
- Appendix 7: Network Interconnection Methods
- Appendix 8: Number Portability
- Appendix 9: Numbering
- Appendix 10: Out of Exchange Traffic
- Appendix 11: Emergency Services / 911
- Appendix 12: OSS - Resale
- Appendix 13: Coordinated Hot Cuts
- Appendix 14: Clearinghouse
- Appendix 15: Directory Assistance Listing
- Appendix 16: Performance Measures
- Appendix 17: Pricing
- Appendix 18: SS7

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

* * * * *

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 Applicable State Laws for)
Rates, Terms, and Conditions of)
Interconnection with Southwestern Bell)
Telephone Company, L.P., d/b/a SBC Missouri.)

Case No. _____

PETITION FOR ARBITRATION

APPENDIX D

M2A ITR APPENDIX

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

* * * * *

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 Applicable State Laws for)
Rates, Terms, and Conditions of)
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Telephone Company, L.P., d/b/a SBC Missouri.)

Case No. _____

PETITION FOR ARBITRATION

APPENDIX E

OET COMPARISON CHART