

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, to)
establish an Interconnection Agreement with the)
Southwestern Bell Telephone Company, L.P.)
d/b/a SBC Missouri)
_____)

Exhibit No. _____
Issues: General Terms & Conditions App,
ITR Issue 3, NIM Issue 7, PC1 and VC1
Witness: Victoria R. Mandell
Type of Exhibit: Direct Testimony
Sponsoring Party: Level 3
Communications
Case No. TO-2005-_____
Date: December 13, 2004

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

CASE NO. TO-2005-_____

DIRECT TESTIMONY

OF

VICTORIA R. MANDELL

ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC

December 13, 2004

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1
2
3 **Q: PLEASE STATE YOUR FULL NAME, PROFESSIONAL DESIGNATION, AND**
4 **BUSINESS ADDRESS.**

5 **A:** My name is Victoria R. Mandell. I am Regulatory Counsel at Level 3 Communications,
6 LLC. My business address is 1025 Eldorado Boulevard, Broomfield, Colorado 80021.
7

8 **Q: ON WHOSE BEHALF ARE YOU TESTIFYING HERE TODAY?**

9 **A:** I am testifying on behalf of Level 3 Communications, LLC ("Level 3").
10

11 **Q: PLEASE DESCRIBE YOUR ACADEMIC AND PROFESSIONAL**
12 **BACKGROUND.**

13 **A:** I received a Bachelor of Science degree majoring in international political science from
14 the School of Foreign Service at Georgetown University, a J.D. from the University of
15 Colorado Boulder in 1988 and an M.B.A. in finance from the University of Colorado
16 Boulder in 2001.

17 After graduating from law school I practiced bankruptcy law and general civil litigation.

18 Between 1990 and 2000, I worked as an Assistant Attorney General at the Colorado

19 Attorney General's Office for ten years. For the first seven of those years I represented

20 the Colorado Board of Accountancy, which regulates certified public accountants. That

21 position required civil prosecution litigation involving violations of Generally Accepted

22 Accounting Principles and Generally Accepted Auditing Standards. For the last three

23 years at the Colorado Attorney General's Office I represented the staff of the Colorado

24 Public Utilities Commission in litigated dockets and the Colorado Public Utilities

Commission in appellate matters. Prior to joining Level 3 I worked as a consultant for a year and a half advising energy distribution companies on business and management issues.

Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.

A: At Level 3 I work primarily on interconnection and state and federal regulatory issues. Additionally, my position involves providing legal support for the Level 3 security operations department, European VoIP products and services, and product development.

Q: PLEASE SUMMARIZE YOUR TESTIMONY.

A: The purpose of my testimony is to address the remaining issues dealing with the General Terms and Conditions Appendix, ITR Issue 3, NIM Issue 7, PC1 and VC1. Briefly, I show that the terms that Level 3 proposes are clear, consistent and important to ensure that the agreement is commercially reasonable and in compliance with applicable law. The Commission needs to resolve these issues to avoid unacceptable potential anti-competitive capriciousness on the part of SBC and a degree of business uncertainty that is discriminatory against Level 3, both of which increase risk and deter competition.

Q: PLEASE EXPLAIN HOW YOUR TESTIMONY IS STRUCTURED.

A: I will state the disputed issue, provide the corresponding language in dispute, and then explain the business and legal rationales for Level 3's positions. I explore the remaining General Terms and Conditions issues, ITR Issue 3, NIM Issue 7, PC1 and VC1 which are:

1 **ISSUE NO. GTC 1:** Should the assurance of payment requirements be state-
2 specific (Level 3) or state-interdependent (SBC)?
3

4 **ISSUE NO. GTC 2:** What are the appropriate criteria for determining
5 satisfactory credit as of the effective date of the agreement?
6

7 **ISSUE NO. GTC 3:** How should the ICA describe a CLEC's financial
8 impairment that will trigger a request for assurance of payment?
9

10 **ISSUE NO. GTC 4:** In order for a failure to timely pay a bill to trigger a valid
11 request for assurance of payment, must SBC comply with the presentation of
12 invoices and the dispute resolution requirements of the Agreement?
13

14 **ISSUE NO. GTC 5:** Should Level 3 be permitted to dispute the reasonableness
15 of an SBC request for assurance of payment?
16

17 **ISSUE NO. GTC 6:** Under what circumstances may SBC disconnect services
18 for nonpayment?
19

20 **ISSUE NO. GTC 7:** Should Level 3's failure to pay undisputed charges entitle
21 SBC to discontinue providing all products and services under the Agreement, or
22 only the product(s) or service(s) for which Level 3 has failed to pay undisputed
23 charges?
24

25 **ISSUE NO. GTC 8:** What is a reasonable interval to respond to a notice of non-
26 payment?
27

28 **ISSUE NO. GTC 9:** (a) Should acceptance of new orders and pending orders be
29 suspended if undisputed charges are outstanding on the day the Billing Party has
30 sent a second late payment notice? (b) Should the Billing Party be permitted to
31 disconnect and discontinue providing all products and services under the
32 Agreement, or only those specific network elements and services for which
33 undisputed payment has not been rendered?
34

35 **ISSUE NO. GTC 10:** Should SBC's language regarding intervening law be
36 incorporated into this agreement?
37

38 **ISSUE NO. GTC 11:** Should Level 3 be permitted to assign or transfer this
39 agreement to an affiliate with whom SBC already has an interconnection
40 agreement?
41

42 **ISSUE NO. ITR 3:** Should the agreement provide that the parties may migrate
43 trunks not only via the interconnection methods described in Appendix NIM, but
44 also as permitted by applicable law?
45

ISSUE NO. NIM 7: Should the agreement, in addition to allowing Level 3 to interconnect pursuant to the physical collocation appendix and the applicable state tariff, also allow Level 3 to interconnect pursuant to applicable law?

ISSUE NO. PC 1: 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?

ISSUE NO. VC 1: Should this Appendix be the exclusive document governing virtual collocation arrangements between Level 3 and SBC, or should Level 3 be permitted to order collocation both from this Appendix and state tariff?

ISSUES IN GENERAL TERMS AND CONDITIONS

ISSUE NO. GTC 1: SHOULD THE ASSURANCE OF PAYMENT REQUIREMENTS BE STATE-SPECIFIC OR STATE-INTERDEPENDENT?

Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE NO. GTC 1?

A: The language in dispute is the following (throughout my testimony Level 3's proposed language is in **bold and underlined** text):

7.2 Assurance of payment may be requested by **SBC-13STATE separately with respect to a specific State if in that State:**

7.2.1 at the Effective Date **LEVEL 3** has not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to **SBC-13STATE in that State** for undisputed charges and/or appropriate escrow payments pursuant to Section 8 for disputed charges incurred **as a LEVEL 3 (with no more than two (2) valid past due notices for undisputed amounts within that twelve (12) month period),** or

7.2.3 **LEVEL 3** fails to timely pay a bill rendered to **LEVEL 3** by **SBC-13STATE for the individual State** (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which **LEVEL 3** has **substantially** complied with all requirements set forth in Section 9.3) **provided that SBC-12STATE has likewise substantially complied with all requirements of this Agreement with respect to presentation of invoices and dispute resolution);** or

7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to SBC-13STATE naming the SBC owned ILEC(s) designated by SBC-12STATE for that State as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to SBC-12STATE ("Letter of Credit").

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 1.

A: Level 3 believes that any requirement where the parties are required to give an assurance of payment be based on the specific payment history for the state. In contrast, under SBC's proposed terms, SBC would be able to terminate service to Level 3's customers in one state in the event Level 3 purportedly fails to pay a bill in a timely manner, even if that bill is for services rendered in another state. For example, under SBC's proposal, SBC would be able to terminate Level 3's Illinois customers for amounts allegedly unpaid for services rendered in California. Giving such unilateral discretion to the ILEC has already been reviewed by the FCC and found unwarranted, unreasonable, and unjust. In its *Policy Statement*,¹ the FCC determined that deposit policies similar to those proposed herein by SBC are overly broad, "imposing undue burdens on access customers"² Acknowledging the impact of telecommunications industry bankruptcies, the FCC nonetheless concluded that concerns over an increased risk of nonpayment did not outweigh the potential harm to carrier customers. Such a drastic measure as termination of service in all SBC service territories with its severe impact on customers must be

¹ *Verizon Petition for Emergency Declaratory and Other Relief*, Policy Statement, WC Docket No. 02-202, FCC 02-337 (rel. December 23, 2002) ("*Policy Statement*"). Soon after Verizon filed its Petition, BellSouth filed tariff Transmittal No. 657, proposing new security deposit provisions. BellSouth Telecommunications, Inc., Tariff FCC No. 1, Transmittal No. 657 (July 19, 2002). The FCC suspended Transmittal No. 657 for five months and initiated an investigation to determine whether the new provisions were "unjust, unreasonable or unreasonably discriminatory in violation of sections 201 and 202 of the Act." BellSouth Telecommunications, Inc., Tariff FCC no. 1, Transmittal No. 657, Order, DA 02-2318 (2002). Subsequent to the release of the FCC's *Policy Statement*, BellSouth voluntarily withdrew its tariff.

² *Id.* at ¶ 6.

1 limited in scope. Level 3's proposed language takes a common sense approach that links
2 such a termination with the failure to pay for services rendered in that specific state.

3 **Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.**

4 A: It is my understanding that SBC believes that it should be permitted to request an
5 assurance of payment with a penalty of termination for non-compliance in all states if it
6 believes Level 3 may not timely pay its bills in one state.

7 **Q: WHY IS LEVEL 3'S POSITION MORE RATIONAL THAN SBC'S POSITION?**

8 A: Level 3's proposal does not remove SBC's ability to terminate service or seek an
9 assurance of payment, it simply links the termination or assurance of payment to the
10 respective state where the service is being taken. A customer in Missouri should not have
11 its service put at risk in the unlikely event that Level 3 finds itself in a situation where it
12 is unable to pay its bills in California, for example. Otherwise, SBC has an unfair degree
13 of leverage to treat Level 3's customers in a discriminatory manner. In addition, there are
14 many reasons why a particular bill may be unpaid, including disputes that involve
15 particular state law issues. There may be a pending proceeding in one state that would
16 have an effect on Level 3's obligation to pay a bill for a particular unbundled network
17 element. If Level 3 disputes that bill for a state-specific reason, SBC should have no
18 claim to disconnect customers in other states for failing to provide SBC with some
19 assurance of payment.

20 All obligations relating to payment should be state-specific to ensure that this
21 Commission (rather than some distant state public service commission) can control
22 disputed issues related to this state, and to ensure that this Commission only has to
23 address non-payment questions related to disputes that arise in this state.

1 **Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 1?**

2 **A:** For the reasons outlined above, the Commission should adopt Level 3's proposed
3 changes to Sections 7.2, 7.2.1, 7.2.3, and 7.3.2.

4
5 **ISSUE NO. GTC 2: WHAT ARE THE APPROPRIATE CRITERIA FOR**
6 **DETERMINING SATISFACTORY CREDIT AS OF THE EFFECTIVE DATE OF**
7 **THE AGREEMENT?**

8
9 **Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE**
10 **NO. GTC 2?**

11 **A:** The language in dispute is the following (Level 3's language is shown in **bold,**
12 **underlined** text):

13 7.2 Assurance of payment may be requested by **SBC-13STATE**
14 **separately with respect to a specific State** if **in that State:**

15
16 7.2.1 at the Effective Date **LEVEL 3** has not already established
17 satisfactory credit by having made at least twelve (12) consecutive months
18 of timely payments to **SBC-13STATE in that State** for undisputed
19 charges and/or appropriate escrow payments pursuant to Section 8 for
20 disputed charges incurred as a **LEVEL 3 (with no more than two (2)**
21 **valid past due notices for undisputed amounts within that twelve (12)**
22 **month period),** or

23
24
25
26 **Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 2.**

27 **A:** Level 3 maintains that the Agreement should provide it with appropriate protections
28 against possible SBC unilateral demands for assurance of payments with little or no
29 business justification. Level 3 proposes a minimal requirement that SBC may only seek
30 an assurance of payment in a specific state if Level 3 has received no more than two valid
31 past due notices (in that specific state) for undisputed amounts billed by SBC within the
32 prior twelve months. This proposal merely requires SBC to take into account Level 3's

1 positive past payment history. If Level 3 is unable to maintain a positive past history of
2 payment, then SBC can justifiably seek an assurance of payment from Level 3.

3 **Q: DOES THE FCC HAVE ANY RELEVANT RECOMMENDATIONS THAT**
4 **WOULD SUPPORT LEVEL 3'S PROPOSAL?**

5 **A:** Yes. The FCC has made policy statements in regards to a Verizon petition that support
6 Level 3's position. [See, *In the Matter of Verizon Petition for Emergency Declaratory*
7 *and Other Relief*, WC Docket No. 02-202, Adopted: December 20, 2003, Released:
8 December 23, 2002, hereafter, *Policy Statement*]. Although the FCC was addressing
9 deposit requirement with respect to interstate access charges, the principles are applicable
10 here. Specifically, the FCC recommended that interstate access tariffs should be revised
11 "to define the proven history of late payment trigger for requiring a deposit to include a
12 failure to pay the undisputed amount of a monthly bill in any two of the most recent
13 twelve months, provided that both the past due period and the amount of the past due
14 delinquent payment are more than *de minimus*." (*Policy Statement* at ¶ 26).

15 **Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.**

16 **A:** SBC revised its policy with respect to what it deems "satisfactory credit" due to its
17 perception of the "current economic climate, the number of CLEC bankruptcies, and the
18 number of CLECs over-extended financially."

19 **Q: WHY IS LEVEL 3'S PROPOSAL MORE REASONABLE THAN SBC'S?**

20 **A:** Level 3 should not be penalized for SBC's over generalized perception of the CLEC
21 community. Level 3 has proven its financial and technical abilities in order to be
22 certified as a telecommunications carrier in this state. An assurance of payment reduces
23 Level 3's flexibility to use its capital for its own business purposes and it has a negative

1 impact on the Level 3 balance sheet. Level 3 sees its proposal as not only supporting the
2 FCC's policy statements, but a reasonable compromise to alleviate SBC's concerns.
3 Level 3's proposed language places a reasonable restriction on SBC's ability to seek an
4 assurance of payment and balances the interests of both Parties and Level 3's customers.
5 For the reasons outlined above, the Commission should adopt Level 3's proposed
6 changes to Sections 7.2 and 7.2.1.
7

8 **ISSUE NO. GTC 3: HOW SHOULD THE ICA DESCRIBE LEVEL 3'S**
9 **FINANCIAL IMPAIRMENT THAT WILL TRIGGER A REQUEST FOR**
10 **ASSURANCE OF PAYMENT?**

11
12 **Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE**
13 **NO. GTC 3?**

14 **A:** The language in dispute is the following: (SBC's language is shown in ***bold, italic*** and
15 Level 3's language is shown in **bold, underlined**):

16 7.2 Assurance of payment may be requested by **SBC-13STATE separately**
17 **with respect to a specific State** if **in that State**:
18

19 7.2.2 at any time on or after the Effective Date, there has been a **significant**
20 **and material** impairment of the established ***credit, financial health, or credit***
21 ***worthiness of LEVEL 3*** as compared to its status on **the Effective Date, August**
22 **1, 2004**. Such impairment will be determined from information available from
23 financial sources, including but not limited to Moody's, Standard and Poor's, and
24 the Wall Street Journal. Financial information about **LEVEL 3** that may be
25 considered includes, but is not limited to, investor warning briefs, rating
26 downgrades, and articles discussing pending credit problems; or
27

28 **Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 3.**

29 **A:** As with Issue GTC 2 immediately above, Level 3 maintains that the Agreement should
30 provide it with appropriate protections against possible SBC unilateral demands for
31 assurance of payments with little or no justification. Level 3's proposed language

1 requires that prior to SBC demanding an assurance of payment, there must be a
2 significant and material impairment of Level 3's financial status. Without such a
3 threshold safeguard, the Interconnection Agreement will not protect Level 3 from
4 unilateral and improper demands for assurance of payment by SBC. In the event there is
5 a disagreement over whether the threshold has been met, SBC is free to seek Commission
6 review.

7 **Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.**

8 A: It is my understanding that SBC believes its demand for an assurance of payment should
9 not depend on the meaning of "significant and material".

10 **Q: DOES THE FCC HAVE ANY RECOMMENDATIONS THAT WOULD**
11 **SPECIFICALLY SUPPORT LEVEL 3'S PROPOSAL?**

12 A: Yes, the FCC expressed concerns that incumbent LEC's use of "[b]road, subjective
13 triggers that permit the incumbent LEC considerable discretion in making demands, such
14 as a decrease in 'credit worthiness' or 'commercial worthiness' falling below an
15 'acceptable level,' *are particularly susceptible to discriminatory application.*" (emphasis
16 added). (*Policy Statement* at ¶21). Excluding the terms "significant and material" in
17 Section 7.2.2 would deprive Level 3 of some minimal protection against potential
18 discriminatory abuses by SBC. On this basis, the Commission should adopt Level 3's
19 proposed changes to Sections 7.2 and 7.2.2.

20
21 **ISSUE NO. GTC 4: IN ORDER FOR A FAILURE TO TIMELY PAY A BILL TO**
22 **TRIGGER A VALID REQUEST FOR ASSURANCE OF PAYMENT, MUST SBC**
23 **COMPLY WITH THE PRESENTATION OF INVOICES AND DISPUTE**
24 **RESOLUTION REQUIREMENTS OF THE AGREEMENT?**
25

1 **Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE**
2 **NO. GTC 4?**

3 **A:** The language in dispute is the following (Level 3's language is shown in **bold,**
4 **underlined** text):

5 7.2.3 If **LEVEL 3** fails to timely pay a bill rendered to **LEVEL 3** by **SBC-**
6 **12STATE for the individual State** (except such portion of a bill that is subject to
7 a good faith, bona fide dispute and as to which **LEVEL 3** has **substantially**
8 complied with all requirements set forth in Section 9.3) **provided that SBC-**
9 **12STATE has likewise substantially complied with all requirements of this**
10 **Agreement with respect to presentation of invoices and dispute resolution;**
11 or
12

13 **Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 4.**

14 **A:** As with GTC Issues 2 and 3, Level 3 seeks protection against possible SBC unilateral
15 demands for assurance of payments with little or no justification. Excluding Level 3's
16 terms exposes Level 3 to SBC's unreasonable demands of an assurance of payment
17 where SBC has failed to comply with the Agreement's terms for issuing invoices and
18 dispute resolution. If the Commission omits Level 3's language, Level 3 will not have
19 received sufficient notice and had the opportunity to correct a potential problem. SBC's
20 opposition to Level 3's proposed Section 7.2.3 above would also deprive Level 3 of the
21 same standard that applies to SBC by, namely making the obligation reciprocal to
22 "substantially" comply with applicable process requirements. The Agreement must make
23 clear that neither Party can unilaterally terminate service or demand assurance of
24 payment without first following the prerequisite, applicable contractual and legal
25 procedural requirements contained therein.

26 **Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.**

A: SBC somehow believes Level 3's proposed language would allow Level 3 to circumvent its payment obligations. SBC construes Level 3 proposed language to mean that SBC would be forced to pursue dispute resolution on charges that are not even disputed.

Q: IS SBC'S POSITION VALID? PLEASE EXPLAIN.

A: No. Level 3's proposed language simply assures that both parties comply with procedural contractual requirements. SBC should have to follow the requirements just as Level 3 must follow them.

Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 4?

A: For the reasons outlined above, the Commission should adopt Level 3's proposed changes to Section 7.2.3.

ISSUE NO. GTC 5: SHOULD LEVEL 3 BE PERMITTED TO DISPUTE THE REASONABLENESS OF AN SBC REQUEST FOR ASSURANCE OF PAYMENT?

Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE NO. GTC5?

A: The language in dispute is the following; (SBC's language is shown in *bold, italic* and Level 3's language is shown **bold, underlined**):

7.8 Notwithstanding anything else set forth in this Agreement, if **SBC-13STATE** makes a request for assurance of payment in accordance with the terms of this Section, then **SBC-12STATE** shall have no obligation thereafter to perform under this Agreement until such time as **LEVEL 3** has furnished **SBC-12STATE** with the assurance of payment requested; **unless LEVEL 3 raises a good faith bona fide dispute with respect to the reasonableness of the request by SBC-13STATE; provided, however, that SBC-12STATE will permit LEVEL 3 to raise a good faith bona fide dispute within 10 days with regard to the reasonableness of such a request. Provided, however that SBC-12STATE will permit LEVEL 3 a minimum of 10 (ten) Business Days to respond to a request for assurance of payment before invoking this Section.**

7.8.1 If **LEVEL 3** fails to either furnish the requested adequate assurance of payment on or before the date set forth in the request **or raise a good faith, bona fide dispute with respect to the reasonableness of the request, SBC-12STATE** may also invoke the provisions set forth in Section 9.5 through Section 9.7.

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 5.

A: Level 3 should be permitted to dispute the reasonableness of an SBC request for assurance of payment. If the Agreement allows SBC to demand an assurance of payment, the Agreement must also allow Level 3 the corresponding opportunity to dispute the reasonableness of that demand. Level 3 proposes that it only have the opportunity to raise a good faith bona fide dispute with respect to such SBC demand before SBC can unilaterally impose its sanctions upon Level 3.

Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.

A: SBC states that once the Commission sets the criteria, they are either met or they are not and Level 3 should not be able to dispute the "reasonableness" of the request for an assurance of payment. SBC also states that the "reasonableness" is being taken into account in establishing the criteria and if Level 3 were allowed to dispute a request for assurance of payment then Level 3 could "thwart every deposit request just by asserting that the request is not 'reasonable'."

Q: IS SBC'S CHARACTERIZATION OF LEVEL 3'S POTENTIAL ACTIONS JUSTIFIED OR REASONABLE? PLEASE EXPLAIN.

A: No. Level 3 is in the telecommunications business to provide service to its customers, not to waste time and money litigating "reasonableness" as SBC implies. Level 3's proposed language in fact limits Level 3's options by requiring that the dispute be in good faith and bona fide.

Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 5?

A: For the reasons outlined above, the Commission should adopt Level 3's proposed changes to Section 7.8 and 7.8.1.

**ISSUE NO. GTC 6: UNDER WHAT CIRCUMSTANCES MAY SBC
DISCONNECT SERVICES FOR NONPAYMENT?**

**Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE
NO. GTC 6?**

A: The language in dispute is the following Level 3's language is shown in **bold, underlined** text):

8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be grounds for termination of the Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services provided under this Agreement; **provided, however that the Billing Party shall then comply with all procedures set forth under this Section 8 and otherwise set forth in applicable law regarding discontinuance of service and/or termination of this Agreement.**

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 6.

A: SBC opposes language in Section 8.8.1 that would protect Level 3 against the potential for SBC to unilaterally disconnect Level 3's end users with little or no justification. Level 3 proposes that SBC's termination actions be constrained by relevant applicable law. Level 3 also simply seeks reciprocal billing requirements for both SBC and Level 3.

Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 6?

A: For the reasons outlined above, the Commission should adopt Level 3's proposed changes to Section 8.8.1.

1 **ISSUE NO. GTC 7: SHOULD LEVEL 3'S FAILURE TO PAY UNDISPUTED**
2 **CHARGES ENTITLE SBC TO DISCONTINUE PROVIDING ALL PRODUCTS**
3 **AND SERVICES UNDER THE AGREEMENT, OR ONLY THE PRODUCT(S)**
4 **OR SERVICE(S) FOR WHICH LEVEL 3 HAS FAILED TO PAY UNDISPUTED**
5 **CHARGES?**

6
7 **Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE**
8 **NO. GTC 7?**

9 **A:** The language in dispute is the following (SBC's language is shown in ***bold, italic*** and
10 Level 3's language is **bolded and underlined**):

11 9.2 Failure to pay undisputed charges ***shall may*** be grounds for disconnection
12 of ***services the specific Interconnection, Resale Services, Network Elements,***
13 ***Collocation, functions, facilities, products and services for which undisputed***
14 ***payment has not been rendered*** under this Agreement. If a Party fails to pay
15 any undisputed charges billed to it under this Agreement, including but not
16 limited to any Late Payment Charges or miscellaneous charges ("**Unpaid**
17 **Charges**"), and any portion of such Unpaid Charges remain unpaid after the Bill
18 Due Date, the Billing Party will notify the Non-Paying Party in writing that in
19 order to avoid disruption or disconnection of the Interconnection, Resale Services,
20 Network Elements, Collocation, functions, facilities, products and services **for**
21 **which undisputed payment has not been rendered** under this Agreement, the
22 Non-Paying Party must remit all Unpaid Charges to the Billing Party within
23 **thirty (30) Calendar ten (10) Business Days** following receipt of the Billing
24 Party's notice of Unpaid Charges.
25
26

27 **Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 7.**

28 **A:** In the unlikely event that Level 3 does not pay an undisputed, billed amount, Level 3
29 proposes that SBC only be allowed to disconnect the specific service or products for
30 which Level 3 has failed to pay the undisputed amount. SBC's proposed language is
31 extreme and allows it to disconnect any and all services or products purchased by Level 3
32 for alleged failure to pay undisputed amounts for only a subset of those services. Such an
33 overreach leaves Level 3 at risk of losing its entire customer base subject to the whims of
34 SBC.

1 The interconnection arrangements between Level 3 and SBC are extremely
2 complex, and state commissions are fully aware of the complexity of billing disputes
3 between ILECs and CLECs. There may be many reasons why a particular bill may be
4 unpaid, including disputes that involve particular network elements, collocation facilities,
5 or interconnection arrangements. There may be a pending proceeding that would have an
6 effect on Level 3's obligation to pay a bill for a particular unbundled network element. If
7 Level 3 fails to pay a bill for a particular service or network element, SBC should have no
8 claim to disconnect other Level 3's services. All obligations relating to payment should
9 be service-specific.

10 Level 3's proposed language in Section 9.2 seeks to protect its customers from
11 discontinuance of services that are not part of an unpaid bill. Level 3's customers should
12 not have to suffer in the event that charges are not paid for services that are not affected.
13 Furthermore, Level 3 needs at least thirty days to perform the necessary internal analysis
14 and audit to respond to the unpaid charges notice. Allowing thirty days will allow the
15 parties to thoroughly investigate the problem internally, work together informally, and
16 potentially avoid unnecessary litigation.

17 **Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 7?**

18 **A:** For the reasons outlined above, the Commission should adopt Level 3's proposed
19 changes to Section 9.2.

20
21 **ISSUE NO. GTC 8: WHAT IS A REASONABLE INTERVAL TO RESPOND TO**
22 **NOTICE OF NON-PAYMENT?**

23
24 **Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE**
25 **NO. GTC 8?**

A: SBC's language is shown in ***bold, italic*** and Level 3's language is **bold and underlined**:

9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than **thirty (30) Calendar ten (10) Business Days** following receipt of the Billing Party's notice of Unpaid Charges.

9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("**Disputed Amounts**") and the specific details listed in Section 10.1 of this Agreement, together with the reasons for its dispute; and

9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and

9.3.3 pay all Disputed Amounts into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and

9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts into that account. Subject to Section 8.4 preceding, until evidence that the full amount of the Disputed Charges has been deposited into an escrow account is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 8.

A: Level 3 proposed language in Section 9.3 and its subparts provides that the Parties allow for thirty calendar days following receipt of the notice of unpaid charges before a formal dispute must be filed. SBC offers ten business days. Level 3 believes that thirty calendar days is a more practical period of time to allow the Parties time to investigate, audit and settle the dispute prior to triggering the formal dispute resolution terms in the ICA. SBC's proposed ten business day period does not allow the Parties adequate time for such discussions, and will only result in the disputing party invoking the dispute resolution terms of the Agreement unnecessarily in order to preserve their rights under the agreement.

Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.

1 A: SBC states that its proposed language appropriately allows Level 3 ten business days to
2 respond to a late payment notice and that Section 8.1.1 allows for remittance within thirty
3 calendar days of each bill date.

4 **Q: WHY IS LEVEL 3'S PROPOSAL BETTER THAN SBC'S?**

5 A: As stated above, ten business days is entirely too short a time period to adequately
6 "audit" a bill. Level 3's proposal seeks to prevent undue disputes and litigation. Thirty
7 calendar days is a more reasonable amount of time to accomplish a comprehensive
8 internal review and resolve the problem informally and with less expense.

9 **Q: ARE THE PARTIES' POSITIONS THAT FAR APART? PLEASE EXPLAIN.**

10 A. No. As stated, SBC proposes fourteen *business* days and Level 3 proposes thirty
11 *calendar* days. Thirty calendar days translates into about twenty business days making
12 the difference only six days. Those six days will not pose a significant hardship on SBC,
13 and more likely would help prevent improper billing.

14 **Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 8?**

15 A: For the reasons outlined above, the Commission should adopt Level 3's proposed
16 changes to Section 9.3, 9.3.1, 9.3.2, 9.3.3, and 9.3.4.

17
18 **ISSUE NO. GTC 9: (A) SHOULD ACCEPTANCE OF NEW ORDERS AND**
19 **PENDING ORDERS BE SUSPENDED IF UNDISPUTED CHARGES ARE**
20 **OUTSTANDING ON THE DAY THE BILLING PARTY HAS SENT A SECOND**
21 **LATE PAYMENT NOTICE?**

22
23 **(B) SHOULD THE BILLING PARTY BE PERMITTED TO DISCONNECT AND**
24 **DISCONTINUE PROVIDING ALL PRODUCTS AND SERVICES UNDER THE**
25 **AGREEMENT, OR ONLY THOSE SPECIFIC NETWORK ELEMENTS AND**
26 **SERVICES FOR WHICH UNDISPUTED PAYMENT HAS NOT BEEN**
27 **RENDERED?**
28

1 **Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE**
2 **NO. GTC 9?**

3 **A:** The language in dispute is the following (SBC's language is shown in ***bold, italic*** and
4 Level 3's language is **bold, underlined**):

5 9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid
6 Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the
7 disputed portion of any Unpaid Charges into an interest bearing escrow account
8 that complies with all of the terms set forth in Section 8.4 within the time
9 specified in Section 9.3, (c) timely furnish any assurance of payment requested in
10 accordance with Section 7 or (d) make a payment in accordance with the terms of
11 any mutually agreed payment arrangement, the Billing Party may, in addition to
12 exercising any other rights or remedies it may have under Applicable Law,
13 provide written demand to the Non-Paying Party for payment of any of the
14 obligations set forth in (a) through (d) of this Section within ten (10) Business
15 Days. ***On the day that the Billing Party provides such written demand to the***
16 ***Non-Paying Party, the Billing Party may also exercise any or all of the***
17 ***following options:***

18
19 9.5.1.1 ***suspend acceptance of any application, request or order from the Non-***
20 ***Paying Party for new or additional Interconnection, Resale Services, Network***
21 ***Elements, Collocation, functions, facilities, products or services under this***
22 ***Agreement; and/or***

23
24 9.5.1.2 ***suspend completion of any pending application, request or order from***
25 ***the Non-Paying Party for new or additional Interconnection, Resale Services,***
26 ***Network Elements, Collocation, functions, facilities, products or services under***
27 ***this Agreement.***

28
29 9.6.1.1 ***cancel any pending application, request or order from the Non-Paying***
30 ***Party for new or additional Interconnection, Resale Services, Network***
31 ***Elements, Collocation, functions, facilities, products or services under this***
32 ***Agreement; and***

33
34 9.6.1.2 discontinue providing **the specific** Interconnection, Resale Services,
35 Network Elements, Collocation, functions, facilities, products or services **for**
36 **which undisputed payment has not been rendered** under this Agreement after
37 notice to Non-Paying Party set forth in Section 9.5.1

38
39 9.7.2.2 disconnect **the specific** Interconnection, Resale Services, Network
40 Elements, Collocation, functions, facilities, products or services **for which**
41 **undisputed payment has not been rendered** under this Agreement after notice
42 to Non-Paying Party set forth in Section 9.5.1.
43

1
2 **Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 9.**

3 **A:** With regard to GTC Issue 9(a), Level 3 should not be precluded from submitting, and
4 SBC accepting and acting upon new or pending orders on the day that SBC has sent out a
5 second late payment notice. As described in Issue GTC-8, Level 3 is proposing that the
6 billed party have an additional thirty calendar days after receipt of the notice of late
7 payment prior to formalizing the dispute. Unless and until the dispute is formally
8 invoked, SBC should be precluded from freezing Level 3's orders.

9 As to GTC Issue 9(b), Level 3 proposes that SBC only be allowed to disconnect the
10 specific service or products for which Level 3 has failed to pay the undisputed amount.
11 SBC's proposed language unjustly allows it to disconnect and discontinue providing any
12 and all services or products purchased by Level 3 upon the issuance of a second payment
13 notice, which may only address a narrow subset of those services.

14 **Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.**

15 **A:** SBC states that its proposed language applies only in cases of non-payment and when a
16 party fails to pay disputed charges. Under those circumstances, SBC believes it should
17 be able to suspend new orders and pending orders on the day the day the billing party has
18 sent a second late payment notice, and that SBC should be permitted to discontinue
19 providing services to Level 3 under this Agreement altogether.

20 **Q: DO YOU HAVE A RESPONSE TO SBC'S OPINION? PLEASE EXPLAIN.**

21 **A:** Yes. These issues are similar to issues GTC 7 and GTC 8 above. Level 3 is seeking thirty
22 days as opposed to SBC's shortened timeframe of ten days in order to review a late
23 payment billing matter. Level 3's proposed time period is more practical from a business
24 perspective and encourages efficient, less contentious resolution of disputes

Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 9?

A: For the reasons outlined above, the Commission should reject SBC's proposed changes to Sections 9.5.1, 9.5.1.1, 9.5.1.2, 9.6.1.1, and instead approve Level 3's proposed modifications in Sections 9.6.1.2 and 9.7.2.2.

**ISSUE NO. GTC 10: SHOULD SBC'S LANGUAGE REGARDING
INTERVENING LAW BE INCORPORATED INTO THIS AGREEMENT?**

**Q: GIVEN THE LENGTH OF THE DISPUTED LANGUAGE FOR ISSUE NO. GTC
10, PLEASE PARAPHRASE YOUR UNDERSTANDING OF THE LANGUAGE
IN QUESTION.**

A: The language in dispute is found in Section 21 and its subparts. SBC's proposal seeks to include voluminous language referring to specific FCC Orders and Court rulings in the intervening law section of the agreement. In addition, SBC's language incorporates its own, biased legal conclusions pertaining to the findings of those cases and the thrust of the orders. SBC chooses to include references to certain FCC Orders and Court rulings and chooses to omit references to other significant FCC Orders and Court rulings that are also relevant to this agreement.

21. INTERVENING LAW

21.1 This Agreement is entered into as a result of both negotiations between the Parties and the incorporation of results of orders, rules and arbitration decisions of the Commissions, and/or FCC. If any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any effective action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, *including any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999) or Ameritech v. FCC, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the*

1 interpretation of the actions required or provisions affected by such governmental actions shall be resolved
2 pursuant to the Dispute Resolution process provided for in this Agreement. *Without limiting the general*
3 *applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States*
4 *Supreme Court issued its opinion in AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999) and on*
5 *June 1, 1999, the United States Supreme Court issued its opinion in Ameritech v. FCC, No. 98-1381,*
6 *1999 WL 116994, 1999 Lexis 3671 (1999). The Parties further acknowledge and agree that by executing*
7 *this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such*
8 *decisions and any remand thereof, including its rights under this Intervening Law paragraph.*
9

10 21.2 *This Agreement is the result of negotiations between the Parties and may incorporate certain*
11 *provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this*
12 *Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party*
13 *waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders,*
14 *decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory,*
15 *legislative or judicial action(s), including, without limitation, its intervening law rights relating to the*
16 *following actions, which the Parties have not yet fully incorporated into this Agreement or which may be*
17 *the subject of further government review. the United States Supreme Court's opinion in Verizon v. FCC,*
18 *et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in United States Telecom Association, et al.*
19 *("USTA") v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's*
20 *March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial*
21 *Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling*
22 *Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the*
23 *Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98,*
24 *Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-*
25 *147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its*
26 *Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order*
27 *Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand*
28 *and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27,*
29 *2001) ("ISP Compensation Order"), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429*
30 *(D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier*
31 *Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation*
32 *Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions").*
33 *Notwithstanding anything to the contrary in this Agreement (including any amendments to this*
34 *Agreement), SBC-13STATE shall have no obligation to provide UNEs, combinations of UNEs,*
35 *combinations of UNE(s) and LEVEL 3's own elements or UNEs in commingled arrangements beyond*
36 *those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial*
37 *orders.*
38

39 21.3 *The Parties acknowledge and agree that they have previously executed a Amendment*
40 *Superseding Certain Compensation, Interconnection and Trunking Provisions ("First Amendment")*
41 *and a Second Amendment Superseding Certain Compensation, Interconnection and Trunking*
42 *Provisions ("Second Amendment"), in which they have waived certain rights they may have under the*
43 *Intervening/Change in Law provisions of the Agreement with respect to any reciprocal compensation or*
44 *Total Compensable Local Traffic (as defined in the Second Amendment), POIs or trunking*
45 *requirements that are subject to the First Amendment and the Second Amendment for the period from*
46 *September 1, 2000 through December 31, 2004. Notwithstanding anything to the contrary in this*
47 *Amendment or elsewhere in the Agreement, nothing in this Amendment is intended nor should be*
48 *construed as modifying or superseding the rates, terms and conditions in the First Amendment and*
49 *Second Amendment. With the exception of the explicit waivers in the First Amendment and Second*
50 *Amendment for the time period of September 1, 2000 through December 31, 2004, each Party fully*
51 *reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings,*
52 *including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in*
53 *the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and*
54 *under this Agreement. The Parties further acknowledge and agree that SBC Indiana, SBC Ohio, SBC*
55 *Texas, SBC Wisconsin, SBC Arkansas, SBC Michigan, SBC California and SBC Illinois have provided*

on the dates below notice of the invocation of the intercarrier compensation plan adopted by the FCC in its ISP Compensation Order as that order was released on April 27, 2001 ("FCC Plan"), subject to the terms of the First Amendment and the Second Amendment, in (1) Indiana, Ohio, Texas and Wisconsin, effective June 1, 2003; (2) Arkansas and Michigan, effective July 6, 2003; (3) California, effective August 1, 2003; and (3) Illinois effective September 1, 2003 and that in entering into this Agreement, SBC Indiana, SBC Ohio, SBC Texas, SBC Wisconsin, SBC Arkansas, SBC Michigan, SBC California and SBC Illinois, and the other SBC incumbent telephone operating companies ("ILECs") are reserving their right to seek conforming modifications to the Agreement to formally incorporate the rates, terms and conditions of such FCC Plan into the Agreement in each applicable state and any of the other states in which SBC-13STATE may hereafter invoke the FCC Plan, subject to the terms of the First Amendment and the Second Amendment. The Parties agree that on or before March 31, 2004, they shall commence negotiations regarding the specific FCC Plan rates, terms and conditions that shall be effective between the Parties the day immediately after expiration of the Parties' Second Amendment; provided, however, that both Parties reserve all rights with respect to the proper implementation of the FCC Plan. In the event that specific FCC Plan rates, terms and conditions have not been incorporated into this Agreement upon expiration of the Parties' Second Amendment (and provided further that there has been no change in law with respect to the matters addressed in the FCC's ISP Compensation Order including, but not limited to, the FCC Plan by that date of expiration), then the Parties acknowledge and agree that effective the day immediately following expiration in the states identified in this Section and any other states where SBC ILECs invoke the FCC Plan, ISP-Bound Traffic shall be subject to the FCC Plan rates, terms and conditions or whatever other arrangements the Parties may have mutually negotiated and are approved and in effect as of the date of expiration. Although the Parties agree that the FCC Plan will be implemented with respect to ISP-Bound Traffic the day immediately following expiration of the Parties' Second Amendment (subject to any change of law) as described above, each Party reserves any rights it may have as to the proper implementation of the Plan except as such implementation has been agreed to herein. Notwithstanding anything contrary herein, if at any time LEVEL 3 is compensated under the rates, terms and conditions of the underlying Appendix Reciprocal Compensation (excluding the First and Second Amendment) in the states identified in this Section or any other states where an SBC ILEC(s) invokes the FCC Plan, ISP-Bound Traffic in those States shall be subject to the FCC Plan rates, terms, and conditions immediately, subject to any changes in law.

21.4 With the exception of the explicit waivers in the First Amendment and Second Amendment for the time period of September 1, 2000 through December 31, 2004, if any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 10.

A: Level 3 believes the state of the law at the time of the Effective Date is what it is, and that

SBC's proposed language buries the Agreement in minutia that is not needed and will

1 only lead to confusion as to the intended meaning. SBC's proposed language goes far
2 beyond the basic "if the law changes, the Parties will notify and negotiate", which should
3 be the real intent of the Intervening Law provisions, into a confusing, distorted attempt to
4 list every case that could, may or might possibly impact any of the terms of the
5 Agreement in SBC's favor. If the particular case impacts the terms of the Agreement
6 such that SBC believes that it qualifies as an Intervening Change in Law in any particular
7 jurisdiction, then it can and should give the appropriate notice to Level 3. The same is
8 true for Level 3. To burden the Agreement with such a confusing and unneeded list is not
9 appropriate. SBC's language creates uncertainty and the potential for future litigation.

10 **Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.**

11 A: SBC believes it is adding clarity to the interconnection agreement and that the language
12 will help in avoiding disputes regarding how to interpret the change of law clause.

13 **Q: DO YOU AGREE WITH SBC'S CONTENTIONS?**

14 A: No. As stated above, adding SBC's proposed language will confuse the issues, rather
15 than clarify them. SBC's unilateral interpretations are also self-serving and seek to
16 automatically impose into the agreement conclusions on matters that are still pending and
17 open to interpretation. A simple, concise, clear change in law provision is more than
18 adequate.

19 **Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 10?**

20 A: For the reasons outlined above, the Commission should reject SBC's proposed changes to
21 Section 21.

**ISSUE NO. GTC 11: SHOULD LEVEL 3 BE ALLOWED TO ASSIGN OR
TRANSFER THIS AGREEMENT TO AN AFFILIATE WITH WHOM SBC
ALREADY HAS AN INTERCONNECTION AGREEMENT?**

**Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE
NO. GTC 11?**

A: The language in dispute is the following: (SBC's language is in **bold and italicized text**):

29.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of the Other Party, however, such consent shall not be unreasonably withheld; provided however, that the withholding of consent to an assignment or transfer that has been approved by all jurisdictional bodies whose approval is required by law shall be unreasonable. Either Party may assign or transfer this Agreement to its Affiliate by providing ninety (90) days' prior written notice to the Other Party of such assignment or transfer; provided, further, that such assignment is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain proper Commission certification and approvals) or the terms and conditions of this Agreement. ***Notwithstanding the foregoing, LEVEL 3 may not assign or transfer this Agreement (or any rights or obligations hereunder) to its Affiliate if that Affiliate is a party to a separate interconnection agreement with SBC-13STATE under Sections 251 and 252 of the Act.*** Any attempted assignment or transfer that is neither permitted by this Section 29.1 nor otherwise agreed to by the Parties in writing is void ab initio.

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. GTC 11.

A: SBC attempts to limit Level 3's ability to assign or otherwise transfer this Agreement to a Level 3 Affiliate if that Affiliate already has an existing interconnection agreement with SBC. This imposes an unnecessary burden on Level 3 that prohibits it from freely assigning its rights to an Affiliate. Additionally, SBC is not reciprocally limited in its ability to assign the agreement to another SBC Affiliate with whom Level 3 may have an agreement.

Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.

1 A: SBC objects to an assignment of Level 3's agreement to an Affiliate who already had an
2 executed agreement with SBC in that particular state. SBC cites billing systems
3 difficulties as support for its position.

4 **Q: DO YOU AGREE WITH SBC'S CONTENTION THAT BILLING SYSTEM**
5 **ISSUES WOULD BE A HINDRANCE TO TRANSFERRING AN AGREEMENT**
6 **TO AN AFFILIATE? PLEASE EXPLAIN.**

7 **A:** No. SBC's alleged reliance on billing system limitations in order to constrain Level 3
8 business plans is not justified. It is simply not credible, nor an appropriate balancing of
9 the parties' interests, to allow supposed inflexible billing system processes to inhibit
10 Level 3 from implementing strategic business plans and practices.

11 **Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. GTC 11?**

12 **A:** For the reasons outlined above, the Commission should reject SBC's proposed changes to
13 Section 29.

14
15 **ISSUES IN INTERCONNECTION TRUNKING REQUIREMENTS, NETWORK**
16 **INTERCONNECTION METHODS, PHYSICAL COLLOCATION AND VIRTUAL**
17 **COLLOCATION**
18
19

ISSUE NO. ITR 3: SHOULD THE AGREEMENT PROVIDE THAT THE PARTIES MAY MIGRATE TRUNKS NOT ONLY VIA THE INTERCONNECTION METHODS DESCRIBED IN APPENDIX NIM, BUT ALSO AS PERMITTED BY APPLICABLE LAW?

ISSUE NO. NIM 7: SHOULD THE AGREEMENT, IN ADDITION TO ALLOWING LEVEL 3 TO INTERCONNECT PURSUANT TO THE PHYSICAL COLLOCATION APPENDIX AND TO THE APPLICABLE STATE TARIFF, ALSO ALLOW LEVEL 3 TO INTERCONNECT PURSUANT TO APPLICABLE LAW?

ISSUE NO. PC 1: 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?

ISSUE NO. VC 1: SHOULD THIS APPENDIX BE THE EXCLUSIVE DOCUMENT GOVERNING VIRTUAL COLLOCATION ARRANGEMENTS BETWEEN LEVEL 3 AND SBC, OR SHOULD LEVEL 3 BE PERMITTED TO ORDER COLLOCATION BOTH FROM THIS APPENDIX AND STATE TARIFF?

Q: GIVEN THAT LEVEL 3'S ISSUE IS THE SAME IN ITR 3 AND NIM 7, PLEASE STATE THE PROPOSED LANGUAGE IN DISPUTE CONCERNING BOTH ISSUES?

A: For ITR 3, the language in dispute is the following (Level 3's language is in bold and underlined text):

3.6 The Parties recognize that embedded one-way trunks may exist via end-point meet Interconnection architecture. The Parties may agree to negotiate a transition plan to migrate embedded one-way trunks to two-way trunks via any Interconnection method as described in Appendix NIM **or as permitted by Applicable Law.** The Parties will coordinate any such migration, trunk group prioritization, and implementation schedule. **SBC-13STATE** agrees to develop a cutover plan and project manage the cutovers with **LEVEL 3** participation and agreement.

For NIM 7, the language in dispute is the following:

3.1.1 When LEVEL 3 provides its own facilities or uses the facilities of a 3rd party to a SBC-13STATE Tandem or End Office and requests to place its own transport terminating equipment at that location, LEVEL 3 may Interconnect using the provisions of Physical Collocation as set forth in Appendix Physical Collocation, applicable state tariff or according to Applicable Law.

3.2.1 When LEVEL 3 provides its own facilities or uses the facilities of a 3rd party to a SBC-13STATE Tandem or End Office and requests that SBC-13STATE place transport terminating equipment at that location on LEVEL 3's behalf, LEVEL 3 may Interconnect using the provisions of Virtual Collocation as set forth in Appendix Virtual Collocation or applicable state tariff or according to Applicable Law. Virtual Collocation allows LEVEL 3 to choose the equipment vendor and does not require that LEVEL 3 be Physically Collocated.

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NO. ITR 3 AND NIM 7.

A: The Agreement should acknowledge that there may be legislative, administrative or court proceedings that will impact the interconnection methods by which the two-way trunks are implemented, in addition to those specified in Appendix NIM. Failure to specify the existence of "Applicable Law" will result in a possible waiver of both Parties' rights pursuant to those proceedings. Level 3's proposed language merely incorporates and acknowledges the existence of such events, and clarifies that the Parties are obligated to incorporate any methods of interconnection captured in such modifications. Level 3 does not want the Parties to waive by default their ability to incorporate such changes into this Agreement and to operate pursuant to such new methods.

Q. IN PHYSICAL AND VIRTUAL COLLOCATION ISSUES NUMBERED 1, SBC DISPUTES LEVEL 3'S LANGUAGE THAT WOULD ALLOW LEVEL 3 TO INCORPORATE TERMS AND CONDITIONS IN SBC'S TARIFFS FOR COLLOCATION. SBC PROPOSES TO ADD LANGUAGE RESTRICTING

**LEVEL 3's ABILITY TO INCORPORATE TERMS AND CONDITIONS IN
SBC'S TARIFFS FOR COLLOCATION. PLEASE EXPLAIN THE REASONING
BEHIND LEVEL 3's POSITION.**

A. Physical and Virtual Collocation Issues 1 are the same; both issues center on the question of whether the Agreement should preserve Level 3's ability to acquire collocation services under the applicable state and/or federal Collocation Tariffs filed by SBC. SBC proposes to add the following language that would limit Level 3's rights to tariffed terms and conditions:

Physical Collocation Appendix:

4.4 *This Appendix contains the sole and exclusive terms and conditions pursuant to which LEVEL 3 will obtain physical collocation from SBC-13STATE pursuant to 47 U.S.C. § 251(c)(6). For the term of this Agreement, SBC-13STATE will process any LEVEL 3 order for any 251(c)(6) physical collocation as being submitted under this Appendix. In addition, SBC-13STATE will, starting on the Effective Date of this Agreement, bill any existing section 251(c)(6) physical collocation arrangements that were provided under tariff prior to the Effective Date at the prices that apply under this Agreement. SBC-13STATE will not impose any charge(s) for performing such conversion(s), and the conversions will affect only pricing.*

7.3 LEVEL 3 shall pay SBC-13STATE all associated non-recurring and recurring charges for use of the Dedicated Collocation Space. These charges may be generated on an ICB basis or may be contained in the state specific tariffs or the Appendix Pricing attached.

Similar language is included in Section 1.2 of the Virtual Collocation Appendix.

Q. PLEASE STATE YOUR UNDERSTANDING OF SBC'S POSITION.

A: SBC believes that Level 3's language allows Level 3 to unilaterally designate any method of interconnection and use it without any terms and conditions in the ICA. In addition, SBC believes the parties should set forth rates, terms and conditions for the methods of

1 interconnection in the ICA, and that Level 3 should waive its rights to any other terms that
2 may become available.

3 **Q: IS SBC'S POSITION VALID? PLEASE EXPLAIN.**

4 **A:** No. Clearly, Level 3 cannot unilaterally interconnect without establishing the appropriate
5 terms and conditions with SBC. SBC's language creates an administrative burden for
6 both parties when attempting to implement a new interconnection method that is
7 sanctioned by "applicable law" or a new collocation arrangement that is made available
8 by tariff. The telecommunications industry is constantly evolving. As new developments
9 take place, SBC modifies its retail and wholesale service offerings by changing its state
10 and federal tariffs, including its federal tariffs that offer collocation services (see e.g.
11 Tariff F.C.C. No. 2.) Level 3 should not be precluded from taking advantage of SBC's
12 voluntary offerings that are made available to other companies, or even offerings that are
13 made available through tariffs because of the applicable law. The Agreement should
14 acknowledge that there may be legislative, administrative or court proceedings that will
15 impact the interconnection methods by which the two-way trunks are implemented, in
16 addition to those specified in Appendix NIM. Failure to specify the existence of
17 "Applicable Law" will result in a possible waiver of both Parties' rights pursuant to those
18 proceedings. Level 3's proposed language merely incorporates and acknowledges the
19 existence of such events, and clarifies that the Parties are obligated to incorporate any
20 methods of interconnection captured in such modifications. Level 3 does not want the
21 Parties to waive by default their ability to incorporate such changes into this Agreement
22 and to operate pursuant to such new methods.

1 **Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. PC 1, VC 1, ITR 3**
2 **AND NIM 7?**

3 **A:** For the reasons outlined above, the Commission should adopt Level 3's proposed terms
4 in these sections, and reject SBC's terms.

5 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A:** Yes. I reserve the right, however, to modify or supplement my testimony, as may be
7 appropriate.