

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. _____
Issue: PC/VC 2
Witness: Susan A. Bilderback
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

SUSAN A. BILDERBACK

ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC

December 13, 2004

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

3 **A:** My name is Susan A. Bilderback. I am a Project Manager with Level 3 Communications,
4 LLC. My business address is 1025 Eldorado Blvd, Broomfield, Colorado, 80021

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

6 **A:** I am filing this testimony on behalf of Level 3 Communications, LLC of Broomfield,
7 Colorado. (“Level 3”)

8 **Q: PLEASE DESCRIBE YOUR ACADEMIC AND PROFESSIONAL**
9 **BACKGROUND.**

10 **A:** I received a BA degree in Secondary Education from Adams State College in 1972 and
11 have attended post-graduate classes at Metropolitan State College in Denver.

12 From 1972 to 1988, prior to my career in telecommunications, I taught secondary
13 education (high school and middle school) in several counties in Colorado. In 1989 I
14 changed careers and started working as a billing analyst for Western Telecommunications
15 Inc., a small switchless carrier out of Littleton, Colorado, where I approved circuit
16 designs and verified ILEC billing accuracy until 1992. From 1992 until coming to Level
17 3 in 1998, I was a Facility Engineer with Qwest Communications (formerly SP Telecom).
18 My primary responsibility there was to manage, nation-wide, the ILEC entrance facilities
19 into the Qwest points of presence along their newly constructed fiber routes.

20 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.**

1 **A:** I am currently the single point of contact for all Level 3 Communications, LLC ILEC
2 collocations. For the past six years I have been responsible for managing all new ILEC
3 collocation installations, augments and billing issues for Level 3. I have participated in
4 ILEC Interconnection negotiations for the past four years between Level 3
5 Communications, LLC and Qwest, SBC, Sprint, Verizon and Bell South.

6 **Q: PLEASE SUMMARIZE YOUR TESTIMONY.**

7 **A:** The purpose of my testimony is to address one of the remaining issues dealing with both
8 virtual and physical collocation and one definitional issue. Briefly, I show that SBC
9 should not be allowed to unilaterally deem what is appropriate or necessary for
10 collocation, nor should it be allowed to decide unilaterally what equipment meets
11 minimum safety standards – standards which are ambiguously defined by SBC.

12 **Q: PLEASE EXPLAIN HOW YOUR TESTIMONY IS STRUCTURED.**

13 **A:** Since the issues between physical and virtual collocation overlap, I group these together
14 as indicated at the beginning of the section. I state the issue and the corresponding
15 language in dispute, then provide the rationale for Level 3's position.

16 While Ms. Mandell addresses three collocation issues each in her testimony (denial of
17 Level 3's ability to avail itself of an SBC tariff, and the dispute resolution and escrow
18 related terms, respectively), the issues I address are:

19
20
21 **Issue Nos. PC 2 and VC 2: Should Level 3 be permitted to collocate equipment that**
22 **SBC has unilaterally determined is not necessary for interconnection or access to**
23 **UNEs or does not meet minimum safety standards?**
24
25

1 Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE
2 PC 2?

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

5
6 6.13 If SBC 13State objects to collocation of equipment by Level 3 for purposes within the
7 scope of Section 251(c)(6) of the Act, SBC13-State shall prove to the state commission that
8 the equipment is not necessary for interconnection or access to unbundled network
9 elements under the standards set forth in Section 251(b) of the Act. SBC13-State may not
10 object to the collocation of equipment on the grounds that the equipment does not comply
11 with safety or engineering standards that are more stringent than the safety or engineering
12 standards that SBC13-State applies to its own equipment. SBC13-State may not object to
13 the collocation of equipment on the ground that the equipment fails to comply with
14 Network Equipment and Building Specifications performance standards or any other
15 performance standards. If SBC13-State denies collocation of Level 3's equipment, citing
16 safety standards, SBC13-State must provide to Level 3 within five business days of the
17 denial a list of all equipment that the incumbent LEC locates at the premises in question,
18 together with an affidavit attesting that all of that equipment meets or exceeds the safety
19 standard that the incumbent LEC contends the competitor's equipment fails to meet. This
20 affidavit must set forth in detail: the exact safety requirement that the requesting carrier's
21 equipment does not satisfy; SBC13-State's basis for concluding that the requesting
22 carrier's equipment does not meet this safety requirement; and SBC13-State's basis for
23 concluding why collocation of equipment not meeting this safety requirement would
24 compromise network safety.
25

26 *In the event that LEVEL 3 submits an application requesting collocation of certain*
27 *equipment and SBC-13STATE determines that such equipment is not necessary for*
28 *interconnection or access to UNEs or determines that LEVEL 3's equipment does not*
29 *meet the minimum safety standards or any other requirements of this Appendix,*
30 *LEVEL 3 must not collocate the equipment unless and until the dispute is resolved in*
31 *its favor. LEVEL 3 will be given ten (10) business days to comply with the*
32 *requirements and/or remove the equipment from the collocation space if the equipment*
33 *was already improperly collocated.*
34

35 Q: WHAT IS THE PROPOSED LANGUAGE IN DISPUTE CONCERNING ISSUE
36 VC 2?

37 A: The language in dispute is the following, where SBC's language is shown in bold, italic
38 and Level 3's language bold, underlined:

39 1.10.10 If SBC 13State objects to collocation of equipment by Level 3 for purposes
40 within the scope of Section 251(c)(6) of the Act, SBC13-State 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 Section 251(b) of the Act. SBC13-State 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 SBC13-State applies to its own equipment. SBC13-State may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards. If SBC13-State denies collocation of Level 3's equipment, citing safety standards, SBC13-State must provide to Level 3 within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; SBC13-State's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and SBC13-State's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

In the event SBC-13STATE believes that collocated equipment is not necessary for interconnection or access to UNEs or determines that LEVEL 3's equipment does not meet the minimum safety standards, LEVEL 3 must not collocate the equipment unless and until the dispute is resolved in its favor. LEVEL 3 will be given ten (10) business days to comply with the requirements and/or remove the equipment from the collocation space if the equipment already is collocated. If the Parties do not resolve the dispute pursuant to the dispute resolution procedures set forth in the Agreement, SBC-13STATE or LEVEL 3 may file a complaint at the Commission seeking a formal resolution of the dispute. If it is determined that LEVEL 3's equipment does not meet the minimum safety standards above, LEVEL 3 must not collocate the equipment and will be responsible for removal of the equipment and all resulting damages if the equipment already was collocated improperly.

Q: PLEASE EXPLAIN LEVEL 3'S POSITION REGARDING ISSUE NUMBERS PC 2 AND VC 2.

A: 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 as such action could unnecessarily delay Level 3's ability to compete and provide services to its customers. Acceding to SBC's position provides SBC the unbalanced discretion to deny Level 3 collocation of equipment required to provision services to a customer pursuant to its obligations to such customer. Should the balance of power be shifted to SBC in this instance, there would be a built in incentive to deny Level 3 the ability to collocate

1 equipment in order to inhibit Level 3 from fulfilling its obligations to its customers. The
2 agreement already provides adequate safeguards to SBC and appropriate processes to
3 redress any grievances as to improperly collocated equipment.

4 According to FCC rules, if an ILEC “objects to collocation of equipment by a requesting
5 telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act,
6 the incumbent LEC shall prove to the state commission that the equipment is not
7 necessary for interconnection or access to unbundled network elements under the
8 standards set forth in paragraph (b) of this section.” (47 C.F.R.51.323(c)). The FCC
9 rules make clear that this rule does not allow SBC to *preemptively* deny collocation.

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

16 While the language in the Virtual Collocation Appendix may not be identical to the
17 language used in the Physical Collocation Appendix, the intention is the same. Therefore,
18 Level 3 takes the same position as detailed above.

19 **Q: IS THIS A DEPARTURE FROM SBC’S PRIOR AGREEMENT AND PRACTICE**
20 **WITH SBC?**

21 **A:** Yes. Level 3 and SBC in its prior contract agreed upon language that adequately
22 balanced the respective interests of the parties, such prior language being devoid of the
23 terms SBC seeks to have the Commission adopt in this proceeding. Here SBC is

1 attempting to include new, more onerous language that serves no other purpose than
2 inappropriately vesting a critical, unconstrained determination in the hands of SBC.
3 Given that Level 3 and SBC have not had any difficulties operating under the prior
4 language, there is no reasonable basis to depart from that practice.

5
6 **Q: EARLIER YOU STATED THAT SBC COULD “DENY LEVEL 3 THE ABILITY**
7 **TO COLLOCATE EQUIPMENT IN ORDER TO INHIBIT LEVEL 3 FROM**
8 **FULFILLING ITS OBLIGATIONS TO ITS CUSTOMERS.” DO YOU HAVE**
9 **ANY EXAMPLES TO SUPPORT WHAT YOU BELIEVE *COULD* HAPPEN IN**
10 **THIS TYPE OF SITUATION?**

11 **A:** Yes. I will explain a recent collocation equipment request made by Level 3 that resulted
12 in an unnecessary delay.

13 On September 8, 2004, Level 3 submitted an application to add electronics and
14 DSX and FDP panels in an existing physical collocation site. On September 9, 2004,
15 SBC rejected Level 3’s request. An explanation was sought as to why Level 3 was being
16 asked to provide additional information on a DSX and FDP Panel, given that these panels
17 have been collocated throughout the SBC 13-STATE region for the last six years. A
18 SBC Service Representative, Pam Powell, stated that SBC needed additional information
19 prior to giving its “approval” to collocate equipment requested on Level 3’s application¹.
20 In addition, Ms. Powell stated that she had recently been directed to reject applications
21 that requested equipment that was not on SBC’s AEL (“All Equipment List”) until a
22 completed CLEC Equipment Review Request was filed. An Equipment Review Form

¹ SBC Letter from Pam Powell is attached as Exhibit SB-1.

1 was submitted on September 20, 2004² and notification of approval received on 10/13/04
2 resulting in a full three and a half week delay.

3 This example exhibits SBC's ability to significantly delay, whether on purpose or
4 not, Level 3's right to place electronics that have been proven to be safety compliant; and
5 that Level 3 has testified would be used for the express purpose of interconnection with
6 SBC. SBC's language would also give latitude to require Level 3 remove equipment
7 within 10 days without allowing Level 3 the right to dispute resolution. This is an
8 unreasonable demand and would cause serious outages and delays for Level 3.

9
10 **Q: WERE YOU AWARE OF THE SBC'S "ALL EQUIPMENT LIST"?**

11 A: Yes, but I was not told that this list was being used as an "all inclusive list" and
12 equipment not on this list would be automatically denied entry until SBC determines that
13 Level 3 will use this equipment for interconnection.

14
15 **Q: WERE YOU AWARE OF ANY PROCEDURES REGARDING THE USE OF**
16 **SBC'S "ALL EQUIPMENT LIST"?**

17 A: No.

18
19 **Q: HAS LEVEL 3 MADE SIMILAR REQUESTS TO SBC IN THE PAST THAT DID**
20 **NOT RESULT IN THE USE OF THE UNKNOWN ALL EQUIPMENT LIST**
21 **"PROCEDURES"?**

² Level 3's completed Equipment Review Form is attached as Exhibit SB-2.

1 A: Yes. We have collocated a specific make and model of DSX and FDP panels throughout
2 SBC's 13-State Region without being asked to provide a Equipment Review Request
3 Form . Now we are being required to provide documentation of compliance because the
4 panels are not on the "All Equipment List".

5
6 **Q: IS LEVEL 3 SEEKING TO COLLOCATE EQUIPMENT THAT IS**
7 **"DANGEROUS" OR DOES NOT MEET SAFETY STANDARDS?**

8 A: Absolutely not. It is important to highlight that Level 3 has already agreed in Section
9 6.14 of the Physical Collocation Appendix and Section 1.10.11 of the Virtual Collocation
10 Appendix that "Collocation of equipment or operating practices representing a significant
11 threat to SBC-13STATE personnel, network or facilities, including the Premises, or those
12 personnel, network or facilities of others, is strictly prohibited."

13 Level 3 wants to prevent SBC from unilaterally determining what is non-compliant with
14 safety standards. SBC should not be allowed to preemptively block the placement of
15 equipment as it sees fit until it is determined the equipment is acceptable for placement;
16 such action could unnecessarily delay Level 3's ability to compete and provide services
17 to its customers.

18 Again, as noted above, even SBC agrees that Level 3 has stated that it will not collocate
19 equipment that does not comply with applicable safety standards or is not necessary for
20 interconnection or access to UNEs.

21 **Q: WOULD YOU SUMMARIZE WHAT LEVEL 3 IS SEEKING IN RESPECT TO**
22 **THIS ISSUE?**

23 A: The decision by the Commission needs to strike a balance between Level 3's rights to
24 timely collocate its equipment and SBC's right to require that equipment that is not

1 appropriate to be collocated isn't. It is inappropriate and unreasonable to tip this balance
2 in favor of the incumbent provider and holder of the collocation space to the detriment of
3 a competitor such as Level 3, especially given the incentives that SBC has to deny Level
4 3 collocation space separate and apart from the propriety of equipment to be collocated.
5 SBC has adequate protections and processes in place in the agreement to rectify any
6 collocation situation it believes is improper. For these reasons, the Commission should
7 deny SBC's request and not adopt the language suggested.

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

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

11 **END OF TESTIMONY**