

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

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) Exhibit No. \_\_\_\_\_  
) Issue: NIM 4, 6; OET 5, 6, 7, 10-12; ITR 1-4, 10-14, 17, 18; ITR 5-9, 19; IC 1, 4, 6-9, 14, 17, 19, 20, and 21; CHC 1  
) Witness: William P. Hunt.  
) Type of Exhibit: Rebuttal Testimony  
) Sponsoring Party: Level 3 Communications  
) Case No. TO-2005-01166  
) Date: February 7, 2005

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

**CASE NO. TO-2005-0166**

**REBUTTAL TESTIMONY**

**OF**

**WILLIAM P. HUNT, III**

**ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC**

**February 7, 2005**

**INTRODUCTION**

1  
2 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR THE**  
3 **RECORD.**

4 **A.** My name is William P. Hunt, III. I am Vice President of Public Policy for Level 3  
5 Communications, LLC (“Level 3”). My business address is 1025 Eldorado Boulevard,  
6 Broomfield, CO, 80021.

7 **Q. ARE YOU THE SAME MR. HUNT WHO SUBMITTED DIRECT TESTIMONY**  
8 **IN THIS PROCEEDING?**

9 **A.** Yes.

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

11 **A.** In this testimony, I respond to the policy arguments offered by SBC in four subject areas:  
12 (1) transit; (2) appropriate intercarrier compensation for the exchange of FX-like traffic;  
13 (3) appropriate intercarrier compensation for the exchange of IP-enabled services traffic;  
14 and (4) UNEs.

15 **TRANSIT**

16 **Q. WHAT IS THE CRUX OF THE PARTIES’ TRANSIT DISPUTE?**

17 **A.** The parties disagree about whether the Act requires SBC to provide transit service. Level  
18 3’s position is that the Act imposes an obligation on SBC to include transit traffic in its  
19 interconnection arrangement with Level 3. Level 3 will show in its brief why the Act  
20 imposes this obligation on SBC. My rebuttal testimony addresses the policy faults of  
21 SBC’s position.

22 **Q. WHAT PROVISION IN THE ACT IS THE BASIS OF THE PARTIES**  
23 **DISAGREEMENT?**

24 **A.** The parties fundamentally disagree about whether “traffic” exchanged pursuant to  
25 251(c)(2) interconnection must be between SBC and Level 3 “end users.” I note that Mr.

1 McPhee offers no such limitation in the statute or FCC rules because none exists. (*See*  
2 McPhee at 19-20.) Level 3's brief will explain why both the statute and FCC rules  
3 support Level 3's position that SBC must interconnect with Level 3 for the exchange of  
4 transit traffic.

5 **Q. DO YOU HAVE ANY CONCERNS ABOUT SBC'S PROPOSAL FOR TRANSIT**  
6 **IF THE COMMISSION DETERMINES IT SHOULD BE INCLUDED IN THE**  
7 **INTERCONNECTION AGREEMENT?**

8 **A.** Yes. If the Commission determines SBC must provide transit service under this  
9 agreement, SBC's fallback position is equally ludicrous. SBC proposes to increase its  
10 transit rate once a certain volume threshold is reached. SBC's position is internally  
11 inconsistent, however, because the volume at which the rate increases is not the same as  
12 the volume at which SBC proposes that direct interconnection be required. Mr. Cabe  
13 discusses the problems with SBC's position in his rebuttal testimony. In other words, the  
14 effect of SBC's proposal is to generate additional income for SBC.

15 **Q. ARE THERE OTHER PROBLEMS WITH SBC'S TRANSIT RATE PROPOSAL?**

16 **A.** Yes. One of the basic rules of economics is as volume increases, the costs of providing  
17 that service will decrease. SBC's rate scheme violates that principle by *increasing* the  
18 rate as volume increases. The fact that SBC feels it can increase rates substantially above  
19 cost as usage increases is evidence that SBC is leveraging its position as the domination  
20 provider to extract above cost rents.

21 **Q. IF THE COMMISSION DETERMINES THAT TRANSIT IS NOT REQUIRED**  
22 **UNDER SECTIONS 251/252, DO YOU HAVE A RECOMMENDATION ABOUT**  
23 **WHAT THE COMMISSION SHOULD DO WITH RESPECT TO TRANSIT?**

24 **A.** Yes. Mr. McPhee states that SBC will continue to offer transit pursuant to a separate  
25 commercial agreement. McPhee at 20. If the Commission determines that SBC is not  
26 required to provide transit service under this agreement, it must require SBC to provide

transit service pursuant to state tariff or other filed agreement. Permitting SBC to enter confidential commercial transit agreements with CLECs, CMRS providers, and independent LECs is an invitation to discriminate against CLECs, SBC's primary competitors in the local market.

**Q. DO YOU HAVE REASON TO BELIEVE THAT SBC WOULD PROVIDE TRANSIT SERVICE IN A DISCRIMINATORY MANNER?**

**A.** Yes. In response to our data requests in a parallel arbitration proceeding between Level 3 and SBC in Nevada, SBC stated that it provides transit services to CLECs in Nevada at negotiated rates that vary by contract.<sup>1</sup> For example, for transit tandem common transport, SBC's per mou rate can be \$0.000610 or \$0.0005760 depending on the contract. WPH-4 (SBC Nevada Response 1-24). This shows that the Commission needs to set a TELRIC or other uniform transit rate to ensure that SBC provides non-discriminatory transit service to all interconnectors.

**Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

**A.** The Commission should continue the status quo and approve Level 3's proposed transit language. SBC should be required to provide transit service to all LECs on a non-discriminatory basis and be compensated for this service at a uniform rate.

### **FX-LIKE TRAFFIC**

**Q. WHAT IS THE MAIN DISPUTE CONCERNING FX-LIKE TRAFFIC?**

**A.** Level 3 and SBC have resolved one sub-issue of intercarrier compensation, namely, we have agreed to a rate of \$0.0007 for all "local" and ISP-bound traffic. This is the rate that

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<sup>1</sup> It is my understanding that Level 3 has proffered discovery in Missouri. At the time of submitting this testimony, however, SBC has not provided any responses to those requests.

1 SBC choose when it opted into the FCC's *ISP Remand Order*. What the Parties still  
2 disagree about, however, is what calls qualify for this \$0.0007 compensation rate. Level  
3 3 believes that all locally-dialed calls should qualify for this rate while SBC distinguishes  
4 locally-dialed calls based on the physical location of the called party.

5 **Q. IS IT CLEAR WHETHER SBC IS SEEKING TO SUBJECT FX-LIKE CALLS TO**  
6 **BILL AND KEEP OR ACCESS CHARGES?**

7 **A.** Based upon Mr. McPhee's testimony on page 18, it appears that SBC seeks to impose bill  
8 and keep to FX-like traffic.

9 **Q. MR. OYER TESTIFIES THAT THERE ARE COSTS ASSOCIATED WITH**  
10 **DELIVERY OF A CALL FROM AN SBC END USER TO LEVEL 3'S FX-LIKE**  
11 **CUSTOMER AND CHARACTERIZES LEVEL 3'S PROPOSAL AS REQUIRING**  
12 **SBC TO PROVIDE "FREE TRANSPORT." OYER AT 58. PLEASE RESPOND.**

13 **A.** As SBC has admitted in discovery in the parallel Nevada arbitration, service to a Level 3  
14 customer that has established a "virtual" presence in a local calling area is, from a SBC  
15 network standpoint, indistinguishable from service to a Level 3 customer that has  
16 established a "physical" presence in a local calling area. SBC handles calls to either  
17 customer in the same manner and its costs are the same. WPH-5 (SBC Nevada  
18 Response 1-26). Therefore, calls to either customer should be subject to the same  
19 regulatory treatment. That regulatory treatment calls for compensation to the terminating  
20 carrier, with the originating carrier being paid *by the customer who dialed the local call*.<sup>2</sup>  
21 If SBC has issues with its obligation to bear the cost of transporting calls its customers

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<sup>2</sup> *TSR Wireless, LLC et al. v. U S West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order (rel. Jun. 21, 2000) ("*TSR Wireless*"), *aff'd*, *Qwest Corp. et al. v. FCC et al.*, 252 F.3d 462, 468 (D.C. Cir. 2001); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, ¶¶ 72, 112 (rel. April 27, 2001) ("*Intercarrier Compensation NPRM*").

originate to the point of interconnection with Level 3,<sup>3</sup> SBC should lobby the FCC to change its rules that impose this obligation on SBC.<sup>4</sup> SBC should not be allowed to pick and choose to which types of calls those rules apply.

**Q. MR. MCPHEE TESTIFIES THAT A CALL THAT HAS ORIGINATING AND TERMINATING END POINTS IN DIFFERENT EXCHANGES IS INTRALATA AND/OR INTERLATA TOLL TRAFFIC SUBJECT TO ACCESS TARIFFS. MCPHEE AT 10. PLEASE RESPOND.**

**A.** Contrary to Mr. McPhee's testimony, the end-to-end test is used to determine jurisdiction, *i.e.*, federal or state, not traffic category, *i.e.*, local exchange or exchange access. The DC Circuit already rejected the FCC's attempt to apply an end-to-end test to determine the appropriate intercarrier compensation rate. When the FCC relied on the traditional end-to-end test to conclude that ISP-bound traffic was not "local," the DC Circuit reversed and remanded that decision on the ground that the FCC had failed to explain why the end-to-end analysis was relevant to determining which intercarrier compensation mechanism would apply.<sup>5</sup>

**Q. DOES SBC ALWAYS CLASSIFY CALLS AS INTEREXCHANGE BASED ON A CALL'S END POINTS?**

**A.** No. For example, SBC admits through discovery in the parallel Nevada arbitration that it has billed CLECs, and it may still bill CMRS carriers, for calls to SBC's FX customers, thus treating these interexchange calls as local traffic. WPH-6 (SBC Nevada Responses 1-31, 1-33). SBC also admits through the Nevada discovery that when an SBC customer

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<sup>3</sup> See 47 C.F.R. § 51.703(b).

<sup>4</sup> The FCC is considering ILECs' originating transport obligations in a notice of proposed rulemaking. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, ¶¶ 72, 112 (rel. April 27, 2001) ("*Intercarrier Compensation NPRM*").

<sup>5</sup> *Bell Atlantic v. FCC*, 206 F.3d 1, 5 (DC Cir. 2000).

1 calls an independent LEC's FX or FX-like customer, SBC does not bill access charges to  
2 the independent LEC, thus treating these interexchange calls as local traffic. WPH-7  
3 (SBC Nevada Response 1-32). These two examples show that SBC treats FX traffic as  
4 local when it is exchanged with CMRS carriers and independent LECs, but seeks to  
5 discriminate against CLECs such as Level 3.

6 **Q. MR. McPHEE ALSO ASSERTS THAT THE FCC LIMITED ITS ISP-BOUND**  
7 **COMPENSATION REGIME TO CALLS TO ISP MODEMS LOCATED WITHIN**  
8 **THE SAME LOCAL CALLING AREA AS THE CALLING PARTY. McPHEE**  
9 **AT 9-10. DO YOU AGREE?**

10 **A.** No. As numerous state commissions have held, the FCC did not restrict its ISP-bound  
11 compensation regime to local calls between a calling party and ISP physically located in  
12 the same local calling area. We will include those decisions in our brief. Logically,  
13 however, it makes no sense to say that a locally-dialed call is jurisdictionally *interstate*  
14 and subject to the FCC's rate plan if the ISP's modem is located *in the same local calling*  
15 *area* as the calling party, but the same call is jurisdictionally *intrastate* and subject to  
16 *intrastate* access charges if the ISP's modem is located *outside that local calling area*.

17 **Q. IS THIS POSITION CONSISTENT WITH SBC'S HISTORICAL POSITION**  
18 **THAT CALLS TO ISPs DO NOT TERMINATE AT THE ISP'S MODEM?**

19 **A.** No. It defies logic for SBC to argue that although an ISP-bound call does not terminate  
20 at the ISP's modem bank, the modem bank must be within the same local calling area to  
21 qualify for the FCC rate plan. To believe SBC now would mean that reciprocal  
22 compensation was always owed for ISP-bound traffic, an astonishing reversal of position  
23 by SBC that the Commission should consider with a healthy amount of skepticism.<sup>6</sup>

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<sup>6</sup> See, e.g., SBC Comments, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket 99-68, pp. 16-17, April 12, 1999 (arguing that Internet-bound calls do not terminate at the ISP's node).

1 **Q. MR. MCPHEE IMPLIES THAT CLEC FX-LIKE TRAFFIC IS “ARTIFICIAL”.**  
2 **MCPHEE AT 6, 17. PLEASE RESPOND.**

3 **A.** There is nothing artificial about FX-like calls – both parties provide an FX-like service  
4 and both parties are entitled to compensation for terminating calls to FX-like customers.  
5 As the FCC’s recent Vonage decision shows,<sup>7</sup> the industry is moving towards greater use  
6 of such geographically independent telephone numbers. That is one of the primary  
7 drivers for unifying our current irrational intercarrier compensation schemes.

8 **Q. WHAT IS THE SIGNIFICANCE OF GEOGRAPHICALLY INDEPENDENT**  
9 **TELEPHONE NUMBERS?**

10 **A.** The significance is that a phone number no longer represents a physical location  
11 anymore, but rather it represents an IP address. Phone numbers are becoming a  
12 mediation device, at least on our network, to get to an IP address. A customer is not  
13 going to dial an IP address to reach AOL or her favorite internet website. The customer  
14 is going to dial a phone number. That is what end users expect. That is how the PSTN  
15 was developed. Level 3 does not expect customers to change their dialing habits or to  
16 change their experience with the PSTN, except to make it better and to allow some more  
17 enhanced functionalities. In order to do that, we need rules that let us interconnect with  
18 the PSTN at a cost-based rate, not under access charges that SBC proposes to apply to  
19 calls to customers of Level 3, its direct competitor, but not on calls to CMRS carriers’ or  
20 independent LECs’ customers.

21 **Q. YOU MENTIONED THAT SBC DOES NOT PROPOSE TO IMPOSE ACCESS**  
22 **CHARGES TO FX-LIKE CALLS WHEN THE FX-LIKE SERVICE IS**  
23 **PROVIDED BY A CMRS CARRIER OR INDEPENDENT LECS. ARE YOU**  
24 **AWARE WHETHER SBC APPLIES “LOCAL” COMPENSATION TO ITS**  
25 **EXCHANGE OF FX-LIKE TRAFFIC WITH OTHER CARRIERS?**

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<sup>7</sup> *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (rel. Nov. 12, 2004) (“*FCC Vonage Order*”).



1    **A.**    Yes. In response to our data requests in Nevada, SBC admitted that it billed CLECs  
2           reciprocal compensation for calls terminating to SBC's FX customers in the past, and it  
3           continues to bill CMRS carriers reciprocal compensation for those calls. WPH-6 (SBC  
4           Nevada Responses 1-31, 1-33). SBC also admitted that it does not pay independent  
5           LECs originating access charges for calls to SBC's FX customers. WPH-7 (SBC Nevada  
6           Response 1-32).

7    **Q.    WHAT IS THE INTERCARRIER COMPENSATION TREATMENT OF FX-**  
8           **LIKE TRAFFIC UNDER THE PARTIES' CURRENT INTERCONNECTION**  
9           **AGREEMENT?**

10   **A.**    Under the current contract, Level 3 and SBC have been paying the same rate for all  
11           locally-dialed voice and ISP-bound traffic, regardless of the customer's physical location.  
12           *See* WPH-8 (Amendment to Level 3 Contracts Superseding Certain Compensation,  
13           Interconnection and Trunking Provisions). At a time when the industry is moving toward  
14           a single, unified rate for all traffic, it makes no sense to reverse course and move FX-like  
15           traffic into a separate traffic category with a different rate. Under SBC's proposal, some  
16           locally-dialed calls would be subject to a rate of \$0.0007 and others subject to bill-and-  
17           keep. Rather than consolidating the disparate rate categories, SBC would create yet  
18           another one. This is fundamentally at odds with the goal of policymakers —  
19           consolidating all traffic into a single termination rate.

20   **Q.    WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

21   **A.**    The Commission should adopt Level 3's position that the uniform \$0.0007 intercarrier  
22           compensation rate will apply to all locally-dialed calls. Adopting Level 3's position is  
23           consistent not only with current law and industry practice, it is also good policy. The  
24           industry needs to move away from divergent compensation regimes that impose  
25           unnecessary trunking, tracking and billing costs on the PSTN and consumers. The  
26           commission should therefore maintain the status quo in the parties' compensation  
27           arrangements for FX-like traffic.

**IP-ENABLED SERVICES****Q. WHAT IS THE MAIN DISPUTE ON IP-ENABLED SERVICES?**

A. The Parties disagree about how to apply current law to determine intercarrier compensation for the exchange of IP-enabled traffic. Because the FCC will resolve that disagreement by specifying how the traffic is exchanged and compensated when it rules on Level 3's Forbearance Petition no later than March 22, 2005, this Commission should not resolve these issues here. Instead, it should take steps to ensure that SBC and Level 3 exchange the small amounts of IP-Enabled Traffic until the FCC rules.

**Q. WHAT ABOUT THE PERIOD BETWEEN AN ORDER IN THIS ARBITRATION AND MARCH 22, 2005?**

A. The Commission should maintain the status quo. While the parties disagree about how current law applies to IP-enabled traffic, under the status quo, IP-PSTN traffic is being exchanged over local interconnection trunks and subject to reciprocal compensation arrangements, not access charges. It makes no sense to upset that status quo for the next four months prior to the FCC's ruling.

**Q. ARE YOU FAMILIAR WITH THE FCC'S *VONAGE ORDER*? IF SO, HOW DOES THAT ORDER IMPACT THIS ARBITRATION?**

A. I have reviewed the *Vonage Order*. The Vonage decision that IP-PSTN VoIP traffic is interstate supports deferring to the FCC's resolution of Level 3's Forbearance Petition. This Commission does not have jurisdiction to impose intrastate access charges on an interstate service.

**Q. MS. HARRIS TESTIFIES THAT LEVEL 3'S PROPOSAL WOULD RESULT IN PSTN-IP-PSTN TRAFFIC BEING EXEMPT FROM ACCESS CHARGES. HARRIS AT 10. DO YOU AGREE?**

A. No. SBC misunderstands the interplay between Level 3's definition of IP-Enabled Services and the intercarrier compensation Level 3 proposes to apply to the exchange of different types of traffic that incorporate an IP component. Level 3 does not propose to exempt all IP-Enabled Services Traffic from access charges. Level 3's intercarrier

1 compensation provisions make very clear that AT&T-type VoIP traffic, which is PSTN-  
2 IP-PSTN, is subject to access charges. Level 3 agrees that PSTN-IP-PSTN traffic is  
3 subject to access charges and provides for access charges in its contract proposal.

4 **Q. DO YOU HAVE ANY OTHER COMMENTS ON MS. HARRIS' ARGUMENT**  
5 **THAT LEVEL 3'S DEFINITION OF IP-ENABLED SERVICES IS TOO BROAD?**

6 **A.** IP-Enabled Services should be defined broadly. If it is not, technological changes will  
7 outpace narrow regulatory definitions, creating new opportunities for litigious line-  
8 drawing.

9 **Q. PLEASE COMMENT ON SBC'S DEFINITION OF IP-ENABLED SERVICES.**

10 **A.** SBC's definition of IP-PSTN traffic is too narrow because it does not include PSTN-IP  
11 traffic, which is also traffic where "one end of the call is on an IP network and the other  
12 end of the call is on the PSTN." Harris at 4. SBC's position is apparently that each  
13 narrowly-defined call path should be subject to different forms of intercarrier  
14 compensation specific to each path, regardless of the characteristics that are common to  
15 two paths subject to different compensation regimes under SBC's proposal. Again, SBC  
16 is moving further away from the FCC's goal of bringing all intercarrier compensation to a  
17 single system and rate.

18 **Q. MS. HARRIS TESTIFIES THAT ACCESS CHARGES APPLY TO**  
19 **INTEREXCHANGE TRAFFIC. HARRIS AT 5. DO YOU AGREE?**

20 **A.** No, access charges do not always apply to interexchange traffic. As I noted with respect  
21 to FX-like traffic, there are numerous examples of interexchange traffic that SBC does  
22 not subject to access charges. There are also numerous call flows in which access  
23 charges do not apply, including calls to an information service that is interexchange, such  
24 as PSTN-IP services. Level 3 will show in its brief why IP-PSTN traffic (and vice versa)  
25 does not meet the legal definition of exchange access traffic on which SBC is entitled to  
26 impose access charges.

1 **Q. DID MS. HARRIS ACKNOWLEDGE THAT THE GEOGRAPHIC END POINTS**  
2 **OF IP-PSTN TRAFFIC MAY BE DIFFICULT TO DETERMINE?**

3 **A.** Yes. Ms. Harris acknowledged that IP-PSTN traffic may be “geographically  
4 indeterminate on the IP side of a call.” Harris at 9. In short, both parties agree that it is  
5 not technically feasible to determine the IP endpoint of an IP-PSTN communication.  
6 SBC’s solution to this problem is to impose access charges by comparing the NPA-NXXs  
7 of the calling and called parties. Harris at 9-10. The fact that SBC is *not* willing to make  
8 this NPA-NXX comparison for applying “local” compensation to FX-like traffic shows  
9 that SBC is taking inconsistent positions in this arbitration.

10 **Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?**

11 **A.** The FCC is under a statutory deadline to decide Level 3’s Forbearance Petition. The  
12 status quo should be preserved until March 22, 2005 when the FCC issues its decision. It  
13 is time for the parties to stop litigating and turn their attention to realizing the promise IP-  
14 based services hold for the communications consumer.

15 **UNES**

16 **Q. PLEASE SUMMARIZE THE PARTIES’ UNE DISAGREEMENTS.**

17 **A.** The parties’ disagreements on UNES can be boiled down to three questions: (1) does the  
18 *FCC Interim Order* only apply to CLECs whose interconnection agreements terminate on  
19 or after March 13, 2005?; (2) if the *FCC Interim Order* applies to all CLECs, should the  
20 Commission arbitrate now the parties’ dispute concerning which UNES SBC must  
21 provide under the *FCC Interim Order*?; and (3) notwithstanding the FCC’s imminent  
22 UNE order, which is expected to be adopted December 15, 2004, should the Commission  
23 arbitrate now the *TRO* UNES that would remain available to CLECs after applying *USTA*  
24 *II*?

25 **Q. PLEASE EXPLAIN THE FIRST QUESTION.**

1    **A.**     SBC’s position on applying the *FCC Interim Order* comes down to a question of timing  
2           that permits SBC to provide UNEs on a discriminatory basis. Level 3’s contract, which  
3           included UNEs and was in effect on June 15, 2004, had an expiration date prior to March  
4           13, 2005. Based on this fact, SBC takes the position that if this arbitration is concluded  
5           prior to March 13, 2005, SBC will no longer be required to provide Level 3 enterprise  
6           market loops and dedicated transport, both of which it is required to provide under the  
7           *FCC Interim Order*. Level 3 will show in its brief why sound legal analysis supports  
8           Level 3’s position.

9    **Q.     PLEASE EXPLAIN THE SECOND QUESTION.**

10   **A.**     SBC notes a number of provisions in the current UNE appendix that it claims are in  
11           conflict with the *TRO* and *FCC Interim Order*. While Level 3 does not necessarily agree  
12           with SBC’s interpretation, that doesn’t matter. The FCC has placed a “freeze” on  
13           carriers’ obligations as they stood on June 15, 2004 with respect to UNEs available under  
14           interconnection agreements, *regardless of whether the old contracts had been updated*  
15           *to incorporate the TRO*: “Thus by freezing in place carriers’ obligations as they stood on  
16           June 15, 2004, we are in many ways preserving contract terms that *predate* the vacated  
17           rules.”<sup>8</sup>

18   **Q.     SHOULD THE COMMISSION RESOLVE HERE THE ISSUE OF WHAT UNEs**  
19           **SBC MUST PROVIDE UNDER THE *FCC INTERIM ORDER*?**

20   **A.**     No. As a practical matter, Level 3 does not purchase UNEs from SBC and it is very  
21           unlikely that this theoretical disagreement will have to be decided prior to March 13,  
22           2005. Therefore, as the FCC stated, this Commission should not waste its time sorting

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<sup>8</sup> *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, Order and Further Notice of Proposed Rulemaking, FCC 04-179, ¶ 23 (rel. Aug. 20, 2004) (“*FCC Interim Order*”).

1 out the parties' theoretical disagreements. If the Commission adopts Level 3's  
2 recommendation and preserves the parties' existing UNE appendix, it is possible that  
3 Level 3 will never use that appendix. Moreover, if Level 3 places a UNE order and SBC  
4 believes that it is not required to provide that UNE under the *FCC Interim Order*, SBC  
5 can use the dispute resolution process.

6 **Q. WHAT IS YOUR POSITION WITH RESPECT TO THE THIRD QUESTION?**

7 **A.** SBC puts the cart before the horse by proposing to change UNE unbundling language  
8 before the FCC adopts rules. The correct approach is to put the horse before the cart and  
9 allow the FCC to issue final rules. After the rules are issued, SBC may invoke the  
10 change in law and dispute resolution provisions of the interconnection agreement.

11 In short, the answer to my third question is no, the Commission should not  
12 determine whose contract language will apply with respect to UNEs until the FCC  
13 resolves the underlying rules. Any such determination would be guessing at what FCC's  
14 UNE rules will be. What will Level 3's remedy be if Commission guesses wrong?

15 **Q. DOES SBC'S RIDER MAKE ITS UNE APPENDIX ACCEPTABLE?**

16 **A.** No. SBC's rider does not make its UNE proposal consistent with the FCC's interim  
17 rules. SBC seeks to incorporate the *FCC Interim Order* requirements for a specified  
18 period while at the same time asking this Commission to guess at what the FCC's  
19 permanent unbundling rules will be at the close of that period (by adopting its UNE  
20 appendix now). While this puts off until another day any dispute about SBC's  
21 obligations under the interim rules, it would still require this Commission to guess at  
22 what the FCC's new UNE rules will require. The Commission should decline SBC's  
23 invitation.

24 **Q. HAS THE FCC RELEASED ITS PERMANENT UNE RULES?**

1    **A.**    Yes. Late in the afternoon on February 4, 2005 (one business day prior to this  
2           submission), the FCC released the text of its decision reforming its UNE rules in  
3           response to the D.C. Circuit's *USTA II* remand order. Because of the volume and detail  
4           contained in the order, there was not adequate time to account for the FCC's findings in  
5           this round of testimony.

6    **Q.    WHAT IS YOUR RECOMMENDATION ON THE UNE DISPUTE?**

7    **A.**    Given that the scope of SBC's UNE obligations are most likely detailed in the February  
8           4, 2005 FCC order, the Commission should not waste its time evaluating SBC's proposed  
9           UNE appendix. Now that the FCC has released its rules, this Commission should direct  
10          the Parties to enter into negotiations for a UNE Appendix that properly comports with the  
11          FCC's determinations. Upon completion of those negotiations, the Parties can submit a  
12          UNE Appendix for approval, or Petition the Commission to arbitrate disputed issues.

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

14   **A.**    Yes.

**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. TO-2005-0166

**AFFIDAVIT**

I, William P. Hunt, III, of lawful age, being duly sworn upon his oath, deposes and states the following:

1. My name is William P. Hunt, III. I am employed by Level 3 Communications, LLC as Vice President .
2. Filed herewith and made a part hereof for all purposes is my Rebuttal Testimony in this case.
3. I hereby affirm that my testimony filed herewith, including all answers to the questions therein, is true and correct to the best of my knowledge, information and belief.

Signed:

Wm. P. Hunt III  
William P. Hunt, III

Subscribed and sworn to before me this 4<sup>th</sup> day of February 2005.

Julia Matthews Notary Public

My Commission expires: 11/18/07

