

Exhibit No:
Issues: GT&C DEF-5, REC-1, REC-2
Witness: Roman Smith
Type of Exhibit: Direct Testimony
Sponsoring Party: Southwestern Bell
Telephone, L.P., d/b/a/
SBC Missouri
Case No: TO-2005-0166

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

CASE NO. TO-2005-0166

DIRECT TESTIMONY

OF

ROMAN SMITH

Dallas, Texas
January 24, 2005

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

[illegible]

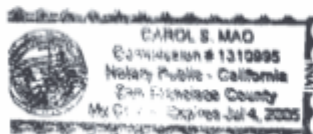
1. My name is Roman Smith. I am presently Associate Director-Regulatory Support
for Southwestern Bell Telephone, L.P.

2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to
the questions therein propounded are true and correct to the best of my knowledge
and belief.

Roma Smith
Roman Smith

Subscribed and sworn to before me this day of January, 2005





Notary Public

My Commission Expires: 7-4-2005

TABLE OF CONTENTS

	<u>Page(s)</u>
I. Introduction.....	1
II. General Terms & Conditions (“GT&Cs”) Definitions	2
GTC-DEF Issue 5	2
III. Recording	4
Recording Issue 1.....	4
Recording Issue 2.....	6

I.
INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME, EMPLOYER, TITLE, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Roman A. Smith. I am employed by Southwestern Bell Telephone, L.P.
4 (“SBC”), and my business address is Four Bell Plaza, Room 1220.01, Dallas, Texas,
5 75202. I am currently an Associate Director in Wholesale Marketing.

6 **Q. WHAT ARE YOUR RESPONSIBILITIES AS ASSOCIATE DIRECTOR-**
7 **WHOLESALE MARKETING?**

8 A. I am responsible for researching, supporting, and communicating SBC’s product policy
9 positions, and representing SBC’s incumbent local exchange carriers, including SBC
10 Missouri, in state regulatory proceedings.

11 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

12 A. I received my Bachelor of Business Administration in Finance and International Business
13 from Baylor University in 1996.

14 **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.**

15 A. I began employment with SBC in 1997 in the Finance organization as Manager of
16 Remittance Operations within the payment and balance reconciliation center for
17 Missouri, Arkansas, Oklahoma, Kansas, and Texas. My responsibilities included
18 overseeing the payment operations and reconciliation for banking operations. In August
19 of 1999, I became an Area Manager in the MFN organization in Wholesale Marketing-
20 Industry Markets. My responsibilities included identifying policy and product issues to
21 assist negotiations and witnesses for SBC’s xDSL, Broadband, Poles, Conduits, Rights of
22 Ways, and Performance Measure offerings. In July of 2001, I moved into my current role
23 as an Associate Director in the Wholesale Marketing product Regulatory organization. In

1 this position, I am responsible for representing product policy for Wholesale Marketing
2 in proceedings before state commissions, including this Commission.

3 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS?**

4 A. Yes. I have submitted testimony in regulatory proceedings in Arkansas, California,
5 Kansas, Illinois, Indiana, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and
6 Wisconsin.

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

8 A. I present SBC Missouri's policy positions regarding General Terms and Conditions
9 Definition Issue 5 and Recording Issues 1 & 2.

II. GENERAL TERMS AND CONDITIONS ("GT&Cs") DEFINITIONS

**GTC-DEF Issue 5¹: Should The Demarcation Point Serve As The Legal, Technical
And Financial Boundary Between The Parties' Networks?**

Agreement Reference: GT&C Definition of "Demarcation Point"

10 **Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE DEFINITION**
11 **OF "DEMARCATIION POINT?"**

12 A. The disagreement stems from Level 3's attempt to introduce improper contract
13 obligations in the definitions section of the GT&C. The parties have agreed on the
14 definition of "Demarcation Point" as follows, except that Level 3 proposes adding the
15 language below in bold italics:

16 **"Demarcation Point"** is the point of demarcation and/or interconnection
17 between the communications facilities of a provider of wireline
18 telecommunications, and terminal equipment, protective apparatus or
19 wiring at a subscriber's premises. Demarcation Point defines the boundary
20 between the Parties' networks **for determining legal, technical and**
21 **financial responsibility** for their respective facilities.

¹ Level 3 typically refers not only to the agreed issue numbers that appear in the left-hand column on the DPLs, but also to the tiers and issue numbers that Level 3 used in its petition for arbitration. SBC Missouri does not find Level 3's tiers and issue numbers helpful, so I do not refer to them in my testimony.

1 **Q. WHY DOES SBC MISSOURI OPPOSE LEVEL 3’S PROPOSED PHRASE?**

2 A. The FCC, in 47 C.F.R § 68.3, has defined the demarcation point as “the point of
3 demarcation and/or interconnection between the communications facilities of a provider
4 of wireline telecommunications, and terminal equipment, protective apparatus or wiring
5 at a subscriber's premises.” SBC Missouri’s language tracks the FCC definition. Level
6 3’s language does not track the FCC’s definition, because the FCC’s definition does not
7 say anything about legal, technical or financial responsibility.

8 **Q. ARE THERE OTHER REASONS FOR NOT INCLUDING LEVEL 3’S**
9 **PROPOSED LANGUAGE ABOUT LEGAL, FINANCIAL AND TECHNICAL**
10 **RESPONSIBILITY?**

11 A. Yes. Definitions are supposed to be just that—definitions of terms used in the agreement.
12 Technical definitions are not the proper place for setting forth legal principles that may be
13 associated with a given term. Thus, SBC Missouri’s definition—*i.e.*, the language on
14 which the parties have agreed—says everything that needs to be said about what a
15 demarcation point *is*; the demarcation point is a certain, specified physical point.
16 Delineating legal principles associated with that physical point has no place in a
17 definition.

18 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

19 A. Level 3’s proposed additional language should be rejected, for two reasons. First, the
20 agreed definition of “Demarcation Point,” without Level 3’s proposed addition, exactly
21 tracks the FCC’s definition, and there is no substantive basis for Level 3’s additional
22 language. Second, Level 3’s language would not belong in a definition even if the
23 concepts it embodied were accurate.

III. **RECORDING**

Recording Issue 1: Should The ICA Provide That When Level 3 Is The Recording Company, It Will Provide Usage Detail According To MECAB Standards?

Agreement Reference: Recording Section 3.13

1 **Q. WHAT IS THE DISPUTED CONTRACT LANGUAGE FOR ISSUE REC-1?**

2 A. The language in dispute is proposed by SBC Missouri and opposed by Level 3:

3 *When LEVEL 3 is the Recording Company, LEVEL 3 will provide its*
4 *recorded billable messages detail and access usage record detail data to*
5 *SBC-13 STATE under the terms and conditions of this Appendix.*

6 **Q. WHAT “TERMS AND CONDITIONS OF THIS APPENDIX” IS THAT**
7 **LANGUAGE REFERRING TO?**

8 A. The terms and conditions of the Appendix that require recorded billable message detail to
9 be provided are set forth in the Multiple Exchange Carrier Access Billing (“MECAB”) document. The reason for this requirement is that MECAB is the format that has
10 historically been used and that is used today for access records that are exchanged
11 between incumbent local exchange carriers (“ILECs”) and interexchange carriers
12 (“IXCs”). Level 3 has taken the unreasonable position that the MECAB should not serve
13 as the exclusive billing and recording standard.
14

15 **Q. WHAT EXPLANATION DOES LEVEL 3 GIVE FOR ITS POSITION?**

16 A. Level 3 proposes that in light of anticipated reforms to the access charge system, the
17 parties should “include language that permits them to discuss mutually agreeable ways of
18 exchanging the same data, but in formats or by means that might make more sense once
19 these reforms take effect.”²

20 **Q. HAS LEVEL 3 PROPOSED ANY COUNTER LANGUAGE ON THIS ISSUE?**

² LEVEL 3 Position Statement: DPL Issue- REC-1.

1 A. No. Level 3 has proposed no counter language.

2 **Q. IS SBC MISSOURI DEAD SET AGAINST DISCUSSING MUTUALLY**
3 **AGREEABLE ALTERNATIVES IF THAT MAKES SENSE LATER?**

4 A. Of course not. We are always open to reasonable discussion, and, by definition, we are
5 always open to a “mutually agreeable alternative.” But at least for now, the
6 interconnection agreement should provide for the parties to use what Level 3
7 acknowledges is, as of today, the industry standard format.

8 **Q. YOU SAY THAT SBC MISSOURI IS ALWAYS OPEN TO A MUTUALLY**
9 **AGREEABLE ALTERNATIVE. SHOULD LANGUAGE TO THAT EFFECT BE**
10 **ADDED TO SECTION 3.13?**

11 A. No, such language is unnecessary. At least as I understand it, the parties are always free
12 to agree to depart from what their contract requires—and that is true not only here, but
13 with respect to all the provisions of the contract. It would be a waste of time and space to
14 add, after each provision of the contract, a sentence to the effect that the parties can arrive
15 at a mutually agreeable alternative if they wish.

16 **Q. WHAT FORMAT IS LEVEL 3 PROPOSING THE PARTIES MIGHT USE TO**
17 **DELIVER RECORDED BILLABLE MESSAGES?**

18 A. Level 3 has not made that clear.

19 **Q. DOES LEVEL 3 PROPOSE TO PAY FOR THE COSTS OF SBC MISSOURI**
20 **DEVELOPING NEW STANDARDS REGARDING THE MESSAGE FORMAT?**

21 A. No.

22 **Q. WHAT SHOULD LEVEL 3 DO IF IT IS INTENT ON EFFECTING A FORMAT**
23 **CHANGE FOR RECORDED BILLABLE MESSAGES?**

24 A. SBC Missouri recommends that Level 3 make use of normal channels available to all
25 industry stakeholders, such as forums which set standards like AUR/MECAB (“Access
26 Usage Records/Multiple Exchange Carrier Access Billing”). This is the best means to
27 effect changes to any industry standards that Level 3 finds an impediment to its business
28 operations.

Recording Issue 2: Should The ICA Require Level 3 To Provide Access Usage Records In Accordance With MECAB Standards In All Instances, Or Should It Provide For The Use Of Alternatives In Some Circumstances?

Agreement Reference: Recording Section 4.1-4.1.1

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING RECORDING SECTIONS 4.1-4.1.1?

A. The disputed language is as follows, with Level 3's proposed language bolded and underlined and SBC Missouri's proposed language bolded and in italics:

4.1 **SBC-13STATE** as the Recording Company, agrees to provide recording, assembly and editing, message processing and provision of message detail for Access Usage Records (AURs) ordered/required by **LEVEL 3** in accordance with this Appendix on a reciprocal, no-charge basis. **LEVEL 3**, as the Recording Company, agrees to provide **to the extent that LEVEL 3 has deployed systems supporting AUR any and all those Access Usage Records** (AURs) required by **SBC-13STATE** on a reciprocal, no-charge basis. **To the extent LEVEL 3 is unable to provide AURs the Parties agree to explore additional options for recording, assembling and editing of message detail records necessary to accurate billing of traffic.** The Parties agree *that this to reciprocally exchange mutual exchange of* records at no charge *to either Party shall otherwise be conducted* and according to the guidelines and specifications contained in the Multiple Exchange Carrier Access Billing (MECAB) document.

4.1.1 **Where Level 3 is unable to provide AUR, such as with IP enabled traffic, Level 3 will provide Call Records (as defined in this Agreement) at intervals to assure SBC of accurate billing. At a minimum, Level 3 will provide Call Records on a monthly basis reflecting all traffic exchanged between the parties, for the exchange of intercarrier compensation.**

Q. WHAT IS THE ESSENCE OF THE DISAGREEMENT?

A. As on Recording Issue 1, Level 3 is proposing that SBC Missouri be required to develop new standards or unique processes and support for Level 3 alone. SBC Missouri believes that the parties should use the same processes under this ICA that SBC Missouri uses with all other CLECs. Moreover, Level 3's proposed process to provide SBC Missouri

1 Call Records in Section 4.1.1 is inappropriate because SBC Missouri can only accept call
2 records according to MECAB and the set intervals in place.

3 **Q. WHY IS SBC MISSOURI OPPOSED TO ESTABLISHING NEW GUIDELINES**
4 **OR FORMATTING?**

5 A. Access Usage Records (“AURs”) is the industry standard format for providing usage
6 measurement information used to bill IXC’s. Further, as part of the industry standard
7 formats, companies use certain protocols that are necessary to ensure that each
8 company’s network and systems can correctly read and interpret the usage information.
9 SBC Missouri’s current method of operating is basic and inherent to the subsystems and
10 infrastructure utilized to support these types of recordings. In other words, SBC Missouri
11 has already applied standard procedures to the exchange of data and corresponding
12 records.

13 **Q. WHAT IS LEVEL 3’S POSITION?**

14 A. It is a bit inconsistent. On the one hand, it asserts it can provide the AURs in the standard
15 format required by SBC Missouri. However, that is not what Level 3’s proposed
16 language says. And to the extent that Level 3 wants to leave open the possibility of using
17 a mutually agreeable alternative format, there is no need for the contract to say so. By
18 definition, if the alternative format is “mutually agreeable,” SBC Missouri will agree to it
19 – the parties are always free to mutually agree to depart from what their contract says.

20 **Q. PLEASE EXPLAIN AURS.**

21 A. Access Usage Records (AURs) is the industry standard for providing usage measurement
22 information used to bill IXC’s. An AUR contains information such as service feature
23 group, duration, and time of day. The protocols and format that the AURs adhere to are
24 necessary to ensure that each company’s network and systems can correctly read and
25 interpret usage information.

1 **Q. AS MATTERS STAND TODAY, COULD SBC MISSOURI ACCEPT A FORMAT**
2 **OTHER THAN AUR?**

3 A. No, as matters stand today, accepting a different method, especially one for a single
4 CLEC, would place an undue burden and expense on SBC Missouri when a proven
5 method currently exists – and that is another reason to reject Level 3’s proposed
6 language. But again, if circumstances change and another format becomes “mutually
7 agreeable,” the parties are free to agree to it.

8 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

9 A. The Commission should adopt SBC Missouri’s proposed language and reject Level 3’s.

10 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

11 A. Yes.