

Exhibit No:
Issues: PC-1, PC-2, VC-1, VC-2
Witness: Deborah Fuentes Niziolek
Type of Exhibit: Rebuttal 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

REBUTTAL TESTIMONY

OF

DEBORAH FUENTES NIZIOLEK

Chicago, Illinois
February 7, 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)

STATE OF ILLINOIS)
)
)
COUNTY OF COOK)

My name is Deborah Fuentes Niziolek. I am presently Associate Director-Wholesale Marketing for Ameritech Services, Inc.

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

Deborah Fuentes Nizolek

Subscribed and sworn to before me this 1st day of February, 2005

Earlyne M. Berry
Notary Public
EARLYNE M. BERRY

My Commission Expires: 10-04-08



1 **INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Deborah D. Fuentes Niziolek and my business address is 350 North
4 Orleans, Chicago, Illinois, 60654.

5 **Q BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?**

6 I am employed by SBC as Associate Director – Wholesale Marketing.

7 **Q ARE YOU THE SAME DEBORAH FUENTES NIZIOLEK WHO**
8 **PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?**

9 A Yes, I am.

10 **II. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

12 A. The purpose of my Rebuttal Testimony is to respond to the direct testimony
13 provided by Level 3 witnesses Ms. Mandell and Ms. Bilderback regarding
14 Physical and Virtual Collocation Issues PC-1 and VC-1 (which present the same
15 issue) and regarding Collocation Issues PC-2 and VC-2 (which also present the
16 same issue).

17
18 **III. PHYSICAL COLLOCATION ("PC") AND VIRTUAL ("VC")**
19 **COLLOCATION ISSUES**
20

21 **PC ISSUE 1/VC ISSUE 1 SHOULD THIS APPENDIX BE THE EXCLUSIVE**
22 **DOCUMENT GOVERNING PHYSICAL (VIRTUAL)**
23 **COLLOCATION ARRANGEMENTS BETWEEN**
24 **LEVEL 3 AND SBC, OR SHOULD LEVEL 3 BE**
25 **PERMITTED TO ORDER COLLOCATION BOTH**
26 **FROM THIS APPENDIX AND STATE TARIFF?**
27

28 **Agreement References: Physical Collocation Appendix,**
29 **Sections 4.4, 7.3, 7.3.3; Virtual Collocation Appendix,**
30 **Sections 1.2, 1.10**

1
2 **Q. WHAT IS YOUR UNDERSTANDING OF ISSUES PC-1 AND VC-1?**

3 A. SBC has proposed language for inclusion in both the Physical Collocation
4 Appendix and the Virtual Collocation Appendix stating that the appendix
5 “contains the sole and exclusive terms and conditions” pursuant to which Level 3
6 will obtain collocation from SBC. Level 3 opposes this language. For its part,
7 Level 3 agrees to language stating that recurring and non-recurring charges “may
8 be generated on an ICB basis” or “may be contained in the Appendix Pricing
9 attached,” but further proposes language that such charges may also “be contained
10 in the state specific tariffs.” SBC opposes Level 3’s proposed language.

11 As I stated in my Direct Testimony (pp. 3-5), Level 3 wants to be allowed
12 to “pick and choose” rates, terms and conditions from either its interconnection
13 agreement (“ICA”) with SBC or from a state tariff, presumably depending on
14 which is the most beneficial to Level 3 at the time. SBC submits that the terms,
15 conditions and rates by which Level 3 obtains collocation are supposed to be set
16 forth in a negotiated or arbitrated interconnection agreement, not in a state
17 collocation tariff. In addition, permitting Level 3 to order from a tariff is
18 unnecessary and would be administratively burdensome.¹

19 **Q. LEVEL 3 WITNESS MANDELL ARGUES THAT LEVEL 3 MAY BE**
20 **PRECLUDED FROM TAKING ADVANTAGE OF VOLUNTARY**
21 **OFFERINGS MADE TO OTHER CLECS OR CHANGES OF LAW IF IT**
22 **CANNOT PURCHASE COLLOCATION FROM A TARIFF. (MANDELL**
23 **DIRECT, AT P. 32). IS SHE CORRECT?**

¹ Moreover, these considerations are particularly compelling given that Level 3 appears to also want the ability to pick and choose between state and federal tariffs. (Mandell Direct, at p. 32).

1 A. No, she is not. When SBC makes a voluntary offerings to CLECs, it does so in
2 the context of a negotiated interconnection agreement or an Accessible Letter, not
3 through a tariff. In the case of voluntary offerings made through a negotiated
4 interconnection agreement, Level 3 can opt into such a negotiated agreement
5 pursuant to the FCC's currently effective "all or nothing" pick and choose rule.
6 With respect to Accessible Letters, SBC offers each CLEC an opportunity to
7 amend its existing interconnection agreement in light of changes in law or new,
8 generally available offerings. To the extent that there is a change in law of which
9 Level 3 seeks to take advantage and SBC does not publish an Accessible Letter,
10 Level 3's agreement provides a mechanism for permitting Level 3 to take
11 advantage of the change in law. (*See* GTC Appendix, Section 21.) Thus, Level 3
12 does not need to be able to order out of a tariff to ensure it has access to the most
13 current collocation offerings.

14 **Q. MS. MANDELL ALSO CLAIMS THAT SBC'S PROPOSAL WOULD BE**
15 **AN ADMINISTRATIVE BURDEN AND RESULT IN A WAIVER OF THE**
16 **PARTIES' RIGHTS (MANDELL DIRECT, AT P. 32). DO YOU AGREE?**

17 A. No. There is nothing administratively burdensome about SBC's accessible letter
18 process or the change in law provision agreed to by the parties. Ms. Mandell
19 certainly does not identify any such burdens.

20 It is not at all clear, either, why Ms. Mandell thinks that Level 3 will be waiving
21 any rights that it has to take advantage of collocation offerings. As I explained
22 above, Level 3 will have access to any and all types of collocation arrangements
23 that SBC makes available to CLECs. Purchasing out of a tariff is simply not
24 necessary.

1 **Q. ARE THERE ANY DEVELOPMENTS WHICH HAVE OCCURRED**
2 **AFTER THE FILING OF MS. MANDELL’S TESTIMONY THAT**
3 **IMPACT THIS ISSUE?**

4 A. Yes. SBC would point out to the Commission the views of the Indiana Utility
5 Regulatory Commission (“Indiana Commission”), which ruled in SBC’s favor on
6 this precise issue on December 22, 2004, in companion Level 3/SBC arbitration
7 proceedings, and thus concluded that “we adopt SBC’s language for PC Issue 1
8 and VC Issue 1.”²

9 **PC ISSUE 2/VC ISSUE 2 SHOULD LEVEL 3 BE PERMITTED TO**
10 **COLLOCATE EQUIPMENT THAT SBC HAS**
11 **DETERMINED IS NOT NECESSARY FOR**
12 **INTERCONNECTION OR ACCESS TO UNES OR**
13 **DOES NOT MEET MINIMUM SAFETY**
14 **STANDARDS?**

15
16 **Agreement References: Physical Collocation Appendix,**
17 **Section 6.13; Virtual Collocation Appendix, Sections**
18 **1.10.10**

19 **Q. WHAT IS YOUR UNDERSTANDING OF ISSUE PC-2 AND VC-2?**

20 A. As stated in my Direct Testimony (at pp. 6-10), SBC has proposed language
21 regarding the eligibility of particular equipment to be placed within a collocation
22 arrangement, as well as equipment safety and operating practices within the SBC
23 network. SBC's language provides that if the parties have a dispute regarding
24 whether the equipment that Level 3 seeks to collocate meets the applicable safety
25 standards or is necessary for interconnection or access to UNEs, Level 3 shall not
26 be able to collocate that equipment until it is determined (through party-to-party
27 discussions or Commission intervention) that the equipment, in fact, complies

² 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, L.P. d/b/a SBC Indiana, Cause No. 42663 INT-01, Order, December 22, 2004, (“Indiana Order”), at p. 162.

1 with all safety requirements and is necessary for interconnection or access to
2 UNEs. Level 3 opposes SBC's language.

3 **Q. LEVEL 3 WITNESS BILDERBACK CITES AN FCC RULE THAT**
4 **PROVIDES THAT SBC MAY NOT IMPOSE SAFETY REQUIREMENTS**
5 **ON CLECS THAT ARE MORE STRINGENT THAN WHAT IT IMPOSES**
6 **ON ITSELF AND THEN ASSERTS THAT SBC'S PROPOSED**
7 **LANGUAGE "CREATES AMBIGUITY WITH RESPECT TO THE**
8 **PROPER LEVEL OF SAFETY STANDARDS." (BILDERBACK DIRECT,**
9 **AT P. 6). DO YOU AGREE?**

10 A. No. Nothing in the disputed language proposed by SBC creates any ambiguity at
11 all with respect to the applicable safety standards. And, contrary to Level 3's
12 apparent belief, nothing in the language permits SBC to impose on Level 3 safety
13 or engineering requirements that are more stringent than those that apply to SBC's
14 own equipment. SBC's proposed language is completely consistent with FCC
15 Rule 51.323(c), as I demonstrated in my Direct Testimony (at pp. 8-9).

16 **Q. MS. BILDERBACK ALSO SUGGESTS THAT SBC WILL "DENY**
17 **LEVEL 3 THE ABILITY TO COLLOCATE EQUIPMENT IN ORDER TO**
18 **INHIBIT LEVEL 3 FROM FULFILLING ITS OBLIGATIONS TO ITS**
19 **CUSTOMERS." (BILDERBACK DIRECT, AT PP. 5-6). WOULD YOU**
20 **LIKE TO RESPOND?**

21 A Yes. Ms. Bilderback's suggestion has no merit. There is no evidence to support it
22 and Ms. Bilderback does not present any. Moreover, it would make no sense for
23 SBC to engage in the type of behavior that Ms. Bilderback imagines. Unless SBC
24 genuinely believes that the equipment Level 3 is seeking to collocate is not
25 compliant, SBC has no reason to incur the costs of dispute resolution that would
26 ultimately require SBC to have to allow placement of the equipment anyway.
27 Placing non-compliant equipment is not appropriate for the several operational
28 reasons I discussed in my Direct Testimony (at p. 8) and deprives other CLECs

1 with legitimate requests access to such collocation space. It is also telling that
2 Ms. Bilderback's Direct Testimony does not even mention, much less address, the
3 FCC's determination that, subject to certain limitations discussed in my Direct
4 Testimony (at pp. 8-9), "an incumbent LEC may impose safety standards that
5 must be met by the equipment to be located in its central office."³ Moreover, Ms.
6 Bilderback's discussion of an isolated incident, as I show in the next portion of
7 my testimony, did not result in a denial of collocation, but rather, resulted in
8 actual placement of Level 3's equipment.

9 **Q MS. BILDERBACK CITES A SINGLE EXAMPLE FROM CALIFORNIA**
10 **THAT SHE CLAIMS SUPPORTS HER ASSERTION THAT SBC CAN**
11 **"INHIBIT LEVEL 3 FROM FULFILLING ITS OBLIGATIONS TO ITS**
12 **CUSTOMERS." (BILDERBACK DIRECT, AT P. 5). PLEASE**
13 **COMMENT.**

14 A. The example cited by Ms. Bilderback actually shows that SBC successfully works
15 with Level 3 to address issues as they arise. SBC has processes in place to verify
16 that the equipment a CLEC requests to collocate is safe and non-threatening to the
17 network. SBC maintains an All Equipment List ("AEL"), a list of equipment that
18 has been reviewed for safety compliance. If a piece of equipment is on the AEL,
19 a CLEC may collocate it. If the equipment requested is not found on the AEL,
20 then the CLEC can submit an Equipment Review Request Form ("ERRF"); SBC
21 then reviews the equipment to ensure it complies with all applicable safety
22 requirements. SBC uses a team of personnel to test and review the specific
23 equipment, who then provide follow-up to the requesting CLEC. SBC is required
24 to provide a technical response approving or denying a collocation application

³ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *First Report and Order*, 14 FCC Rcd 4761 (1999), ¶ 35. (emphasis added).

1 within seven calendar days. SBC has 20 business days to complete the safety
2 evaluations.

3 In the case Ms. Bilderback noted, Level 3 submitted a collocation
4 application that included equipment that did not appear on SBC's AEL.
5 Apparently, the equipment had never been added to the AEL, even though
6 Level 3 had included it in prior collocation applications and was currently using
7 it. This was due to an oversight by SBC in connection with Level 3's earlier
8 applications, which SBC explained to Level 3 at the time of the September 2004
9 application.

10 Even though the equipment was in use, it had never undergone the
11 appropriate safety review. Consistent with its procedures, SBC told Level 3 that
12 Level 3 could not collocate the equipment until additional information was
13 provided and the safety review was completed. SBC worked with Level 3 to
14 expedite SBC's review process; in fact, SBC waived the requirement that Level 3
15 submit an ERRF for the equipment that was already collocated in Level 3's
16 collocation space elsewhere. Once the review was complete (on October 13,
17 2004), Level 3 was told it could collocate the equipment. As Ms. Bilderback
18 concedes, the issue was fully resolved in less than four weeks. In any case, this
19 isolated California example – a single instance in just one SBC state - hardly
20 constitutes a "significant" delay, and there is certainly no evidence that SBC
21 purposely did anything wrong (despite Ms. Bilderback's unfounded insinuation.)

22 **Q. MS. BILDERBACK ATTACHED AN ERRF TO HER TESTIMONY THAT**
23 **SHE SAYS LEVEL 3 SUBMITTED. (BILDERBACK DIRECT, AT P. 7,**
24 **AND EX. SB-2). DIDN'T YOU JUST TESTIFY THAT YOU WAIVED**
25 **THAT REQUIREMENT?**

1 A. Yes, I did. SBC waived the requirement with respect to the Fiber Distribution
2 Panel (“FDP”) and Digital Cross Connect (“DSX”) panels that were already
3 collocated by Level 3 elsewhere. As can be seen from Bilderback Exhibit SB-1,
4 however, the application was rejected because three pieces of equipment were not
5 on the AEL. The ERRF submitted by Level 3 was for the Ciena™ Add-Drop
6 Multiplexer (“ADM”), not the FDP or DSX3 panels. *See*, Bilderback Ex. SB-2, at
7 p. 2. The Ciena™ ADM had not been collocated by Level 3 or anyone else, so
8 SBC did require an ERRF for it. The ERRF for the Ciena™ ADM was submitted
9 on September 20, 2004; Level 3 was notified two days later that its ERRF was
10 missing some information, and subsequently furnished that information.
11 Consistent with the 20 business day deadline for evaluating ERRF, Level 3 was
12 informed on October 13, 2004, that all three pieces of equipment had been added
13 to the AEL and Level 3's application was approved.

14 In actuality, because Level 3 had to submit an ERRF for the Ciena™
15 ADM anyway, the mistake made by SBC in not adding the FDP and DSX3 panels
16 to the AEL did not result in any delay to Level 3 that it would not have
17 experienced anyway.

18 **Q MS. BILDERBACK CLAIMS THAT SHE WAS NOT AWARE OF THIS**
19 **COLLOCATION PROCESS. (BILDERBACK DIRECT, AT P. 8.) DOES**
20 **SBC INFORM CLECS ABOUT THIS PROCESS AS WELL AS A LIST OF**
21 **EQUIPMENT WHICH MEETS SBC’S SAFETY REQUIREMENTS?**

22 A. Yes. SBC provides this information to all CLECs via the on-line SBC CLEC
23 handbook, located at www.clec.sbc.com/clec. Should CLECs still have any
24 questions or concerns after reviewing the collocation section of the handbook,
25 they can simply request additional information from their Account Manager. This

1 process has been in place for several years, and has been available in the
2 handbook just as long. In my experience, no Account Manager has suggested to
3 me that CLECs have objected or complained about the process, nor that the
4 information posted on the website is somehow incomplete.

5 **Q. FINALLY, MS. BILDERBACK ASSERTS THAT SBC'S LANGUAGE IS A**
6 **DEPARTURE FROM THE PARTIES' PRIOR AGREEMENT?**
7 **(BILDERBACK DIRECT, AT P. 6.) CAN YOU RESPOND?**

8 A. I can only respond partially, because it is not clear what agreed-upon language
9 Ms. Bilderback is referring to since she fails to cite any. In any event, there is, in
10 fact, no language in the parties' current agreement that addresses the precise issue
11 raised here, which is: In those instances where SBC and Level 3 have a genuine
12 dispute about whether the equipment that Level 3 seeks to collocate is "necessary"
13 and/or meets applicable safety standards, may SBC deny placement of collocation
14 equipment while the parties resolve their dispute?

15 **Q. ARE THERE ANY DEVELOPMENTS WHICH HAVE OCCURRED**
16 **AFTER THE FILING OF MS. BILDERBACK'S TESTIMONY THAT**
17 **IMPACT THIS ISSUE?**

18 A. Yes. The Indiana Commission ruled against SBC on this issue in the Level 3
19 arbitration contested in Indiana.⁴ However, it is important to note that, with
20 respect to the subject of collocating "necessary" versus "unnecessary" equipment,
21 the Indiana Commission relied on the FCC's rule and its *Collocation Order on*
22 *Remand*, but did not specifically discuss the application of either of these
23 authorities to the limited period of time during which parties have a dispute
24 whether the equipment is "necessary." SBC submits that its position in the event

⁴ Indiana Order, at pp. 165-166.

1 of a dispute is the correct one. Equally important, if not more so, is that the
2 Indiana Commission did not address in its order whether SBC could deny
3 placement of equipment during the pendency of a dispute as to whether the
4 equipment is compliant with safety standards. As noted earlier, the FCC has
5 expressly stated that an ILEC may impose safety standards that must be met by
6 equipment sought to be collocated, and the FCC's rule is consistent in that it says
7 nothing to the contrary. Thus, this Commission should regard the "necessary"
8 and "safety" aspects of the PC-2 and VC-2 issue as two separate and distinct
9 matters for which resolution is needed.

10 **IV. CONCLUSION**

11 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

12 **A.** Yes, it does.