

LEVEL 3 - SBC 13State – DPL – VIRTUAL COLLOCATION

Issue No.	Petition Issue	Issue Description	Disputed Contract Language	Level 3 Position/Support	SBC Position/Support
VC-1 §§ 1.2; 1.10 <i>Related to Issue PC-1</i>	19	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?	<p>1.2 <i>This Appendix contains the sole and exclusive terms and conditions pursuant to which <u>LEVEL 3</u> will obtain physical collocation from <u>SBC-13STATE</u> pursuant to 47 U.S.C. § 251(c)(6). For the term of this Agreement, <u>SBC-13STATE</u> will process any <u>LEVEL 3</u> order for any 251(c)(6) physical collocation as being submitted under this Appendix. In addition, <u>SBC-13STATE</u> 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. <u>SBC-13STATE</u> will not impose any charge(s) for performing such conversion(s), and the conversions will affect only pricing.</i></p> <p>1.10 <i>The rate elements provided in this Appendix are required when <u>LEVEL 3</u> uses virtual collocation equipment to access UNEs. Such access is provided through cross connects purchased from the Agreement. Unbundled network elements including associated cross connects are obtained from the Agreement between <u>LEVEL 3</u> and <u>SBC-13STATE</u>.</i></p>	<p>Section 252(i) requires that a local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved by a state commission to any other requesting telecommunications carrier. Level 3 does not agree with SBC’s interpretation of the cases upon which it relies in support of its positions. SBC’s proposals could serve as a waiver of Level 3’s independent rights under the federal act, FCC orders and regulations, as well as any existing state orders and regulations. Level 3 cannot and will not make such a waiver.</p> <p>Further, the tariff may be amended from time to time with new rates, terms and conditions that are more favorable than what the parties have placed in their interconnection agreement. Level 3 should be entitled, as any other carrier is entitled, to purchase services at rates, terms and conditions that may be</p>	<p>Level 3 should not be able to pick and choose rates, terms and conditions from both its interconnection agreement with SBC and a state tariff, to the extent one is available. As at least two federal courts of appeal have held, interconnection agreements are the exclusive process by which a CLEC obtains rates, terms and conditions for interconnecting with an ILEC or obtaining access to an ILEC's UNEs as provided for in Section 251 of the Telecommunications Act of 1996. <i>Wisconsin Bell, Inc. v. Bie</i>, 340 F.3d 441, 442-45 (7th Cir. 2003); <i>Indiana Bell Tel. Co. v. Indiana Util. Reg. Comm’n</i>, 359 F.3d 493, 497-98 (7th Cir. 2004); <i>Verizon North, Inc. v. Strand</i>, 367 F.3d 577, 584 (6th Cir. 2004); <i>Verizon North, Inc. v. Strand</i>, 309 F.3d 935, 940-41 (6th Cir. 2002).</p> <p>Moreover, permitting Level 3 to pick and choose from two different sets of rates, terms and</p>

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				<p>offered to any other carrier whether it is more favorable in the interconnection agreement or as updated in the SBC tariff. Level 3 is willing to be bound by the terms and conditions inextricably linked to the tariff services and rates it elects to purchase, but Level 3 should not lose the benefit of the terms and conditions negotiated under the Agreement in order to avail itself of the publicly available tariffs SBC-Illinois makes available to all carriers.</p>	<p>conditions would be administratively confusing and burdensome for SBC. There is no compelling reason to allow Level 3 to order out of a tariff, in addition to ordering from its interconnection agreement with SBC, which is the result of arms-length negotiation and arbitration.</p> <p>To the extent that there is a change in law of which Level 3 seeks to take advantage, the Agreement provides a mechanism for doing do.</p>
<p>VC-2 § 1.10.10 <i>Related to Issue PC-2</i></p>	<p>19</p>	<p>Should Level 3 be permitted to collocate equipment that SBC has determined is not necessary for interconnection or access to UNEs or does not meet minimum safety standards?</p>	<p><i>1.10.10 <u>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</u></i></p>	<p>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; such action could unnecessarily delay Level 3's ability to compete and provide services to its customers.</p> <p>47 C.F.R.51.323(c) states that if an ILEC "objects to collocation of equipment by a requesting telecommunications carrier for</p>	<p>Level 3 should not be permitted to collocate equipment that SBC has determined is not necessary for interconnection or access to UNEs or does not meet minimum safety standards. Permitting such collocation threatens the integrity of SBC and others' networks and would permit Level 3 to ignore federal law. SBC's language also provides a reasonable time period for Level 3 to remove any offending equipment.</p>

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			<p><i>resulting damages if the equipment already was collocated improperly.</i></p>	<p>purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC 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 paragraph (b) of this section.” This rule does not allow SBC to preemptively deny collocation.</p> <p>In addition, 47 C.F.R.51.323(c) states, in part, that an ILEC “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 the incumbent LEC applies to its own equipment.” SBC’s language not only is preemptive, but also creates ambiguity with respect to the proper level of safety standards.</p>	<p>Contrary to Level 3's suggestion, nothing in SBC's language permits it to impose safety or engineering requirements that are more stringent than those that apply to SBC's own equipment.</p>