

SUPPLEMENTAL TESTIMONY

OF

DEBORAH FUENTES NIZIOLEK

ON BEHALF OF

SBC ILLINOIS

SBC Illinois Exhibit 5.1

Dated: October 14, 2004

ISSUES

Physical Collocation 1 and 2
Virtual Collocation 1 and 2

1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

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

3 A. My name is Deborah Fuentes Niziolek. My business address is 350 N. Orleans,
4 Chicago, IL, 60654.

5 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
6 **DOCKET?**

7 A. Yes, I submitted direct testimony on September 21, 2004.

8 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

9 A. The purpose of my supplemental testimony is to respond to portions of the
10 testimony of Staff witness Mr. A. Olusanjo Omoniyi regarding several of the
11 collocation disputes between SBC Illinois and Level 3. Specifically, I will
12 address Physical/Virtual Collocation Issue 1 (PC1/VC1) and Physical/Virtual
13 Collocation Issue 2 (PC2/VC2).

14 **ISSUE PC 1/VC 1**

15 **Q WHAT IS MR. OMONIYI'S RECOMMENDATION ON BEHALF OF**
16 **STAFF REGARDING PHYSICAL/VIRTUAL COLLOCATION ISSUE 1?**

17 A Mr. Omoniyi recommends that the Commission accept SBC's proposed language
18 with some minor modifications. Specifically, he endorses SBC Illinois's position
19 except that he suggests that "Level 3 should only be permitted to order from [the]
20 effective SBC tariff or any tariff SBC might file in the future as long as this
21 agreement does not contain rates, terms and conditions for the products or
22 services Level 3 seeks to purchase out of the tariff." (Staff Ex. 2.0 at 20-21.)

23 **Q. WHAT IS SBC ILLINOIS'S RESPONSE TO STAFF'S PROPOSAL?**

24 A. SBC Illinois will not object to Staff's proposed modification. SBC Illinois'
25 willingness to make this concession for purposes of this arbitration should not,
26 however, be construed as a waiver of its legal position that interconnection
27 agreements are the sole means by which parties negotiate and arrive at rates,
28 terms and conditions for specific products, including physical and virtual
29 collocation arrangements. Moreover, SBC Illinois does not concede that Staff's
30 proposed language is necessary. To the extent a new type of collocation
31 arrangement is offered, a CLEC will be able to obtain access to it through an SBC
32 Accessible Letter (which would offer an amendment to the existing
33 interconnection agreement) or by invoking the change of law provision in its
34 interconnection agreement. Thus, Level 3 will not need to be able to order out of
35 a tariff to ensure it has access to all of SBC Illinois's collocation arrangements.
36 (SBC Ill. Ex. 5.0 at 5-6.) Nevertheless, in an attempt to resolve this issue, SBC
37 Illinois will not object to Staff's proposal to add language that makes clear that, if
38 a type of collocation arrangement were available only through a tariff, Level 3
39 may order such collocation arrangement through that tariff.

40

41 Mr. Omoniyi's position that Level 3's ability to order out of a tariff should be
42 limited to products that are not available through its interconnection agreement is
43 consistent with the decision by the Commission in the 2003 AT&T arbitration.
44 There, the Commission concluded that "AT&T should not be permitted to
45 purchase products or services from SBC's tariffs when they were already included
46 in the ICA, unless AT&T incorporated the tariff terms and all legitimately related

47 rates, terms and conditions into the ICA." The language adopted by the
48 Commission for use in the AT&T/SBC Illinois arbitration makes absolutely clear
49 that a CLEC is not entitled to order from a tariff if the product or service is
50 already available through the interconnection agreement:

51 Section 1.30.2 – Except as provided in Section 1.30.4 below, the Parties
52 agree that the rates, terms and conditions of this Agreement will not be
53 superceded by the rates, terms and conditions of any tariff SBC may file,
54 absent Commission order to the contrary. The Parties agree that AT&T is
55 not precluded from ordering products and services available under any
56 effective SBC tariff or any tariff that SBC may file in the future provided
57 that AT&T satisfies all conditions contained in such tariff and provided
58 that the products and services are not already available under this
59 Agreement. . . .

60 **Q. DO YOU HAVE ANY LANGUAGE IN MIND THAT WOULD**
61 **EFFECTUATE STAFF'S PROPOSAL?**

62 A. Yes. SBC Illinois would not object if the following language were added to
63 Section 4.4 of the Physical Collocation Appendix and Section 1.2 of the Virtual
64 Collocation Appendix:

65 Notwithstanding the above, if a type of collocation arrangement is not
66 available to Level 3 through this interconnection agreement with SBC
67 Illinois but is available through an effective tariff, Level 3 may purchase
68 such type of collocation arrangement from the effective tariff, so long as
69 such type of collocation arrangement would not have been available to
70 Level 3 through this interconnection agreement had Level 3 exercised its
71 rights under the change of law provision in this Agreement or an SBC
72 Illinois Accessible Letter.

73 **Q. DO YOU AGREE WITH MR. OMONIYI'S ASSERTION THAT LEVEL**
74 **3'S POSITION ON THIS ISSUE DOES NOT PRESENT A "PICK-AND-**
75 **CHOOSE' SITUATION" (STAFF EX. 2.0 AT 21)?**

76 A. No. Level 3 proposes language for Section 7.3 of the Physical Collocation
77 Appendix that would permit Level 3 to apply rates contained in a state-specific

78 tariff, rather than the rates contained in the interconnection agreement's Appendix
79 Pricing, to collocation. Accordingly, it appears that Level 3 does seek the right to
80 “pick-and-choose” between tariff and contract rates without reference to the other
81 terms and conditions of the collocation tariff. As I discussed in my direct
82 testimony, Level 3’s proposal that it have the right in the future to “pick-and-
83 choose” specific provisions from a collocation tariff is at odds with the FCC’s
84 recent order replacing its “pick-and-choose” rule with a rule requiring that a
85 CLEC that opts into another CLEC’s interconnection agreement must adopt all of
86 the rates, terms and conditions of that other agreement. *In the Matter of Review of*
87 *the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,*
88 *Second Report and Order*, CC Docket No. 01-338 (July 13, 2004) (“*Second*
89 *Report and Order*”). (SBC Ill. Ex. 5.0 at 4-5.) In a recent arbitration case
90 involving XO Communications, Staff recognized that the “essential logic” of the
91 FCC’s decision to eliminate the “pick-or-choose” rule supported rejection of
92 XO’s proposal, similar to Level 3’s position in this case, that it be allowed to
93 order facilities or services via a tariff, even when those facilities and services are
94 available under the interconnection agreement. *Staff of the Illinois Commerce*
95 *Commission’s Revised Initial Brief*, Docket 04-0371, pp. 98-99 (July 19, 2004).

96 **ISSUE PC 2/VC 2**

97 **Q REGARDING PHYSICAL/VIRTUAL COLLOCATION ISSUE 2, WHAT**
98 **IS MR. OMONIYI’S RECOMMENDATION TO THE COMMISSION ON**
99 **BEHALF OF STAFF?**

100 A. Mr. Omoniyi's recommends to the Commission that SBC's proposal be accepted
101 with one minor modification. Specifically, Mr. Omoniyi recommends that "SBC
102 []make its list of equipment that meets its collocation requirement known to Level
103 3 as soon as there is a request for collocation of equipment from Level 3." (Staff
104 Ex. 2.0 at 27.)

105 **Q. WHAT IS SBC ILLINOIS'S RESPONSE TO STAFF'S PROPOSAL**
106 **REGARDING PC2/VC2?**

107 A. Mr. Omoniyi's recommendation is acceptable to SBC Illinois. At present, SBC
108 provides CLECs with public access to an AEL (all equipment list) which
109 identifies all equipment which is currently deployed in one or more central offices
110 in the SBC network. All of the equipment identified on the AEL has met the
111 minimal NEBS level 1 safety requirements. This list is made available to CLECS
112 via the SBC-CLEC online Web site: <https://clec.sbc.com/clec/>.

113
114 When a CLEC submits an application that includes equipment, SBC reviews the
115 request to see if the equipment is already approved for CLEC use. Should Level 3
116 want to install a piece of equipment which has not been previously approved for
117 use within SBC, Level 3 is asked to submit an Equipment Review Request Form
118 (ERRF) so the equipment may be evaluated for NEBs compliance and to
119 determine if the equipment is necessary for interconnection or access to UNEs.
120 SBC will promptly review the request and return the information to Level 3.

121 **Q. DO YOU HAVE ANY LANGUAGE IN MIND THAT WOULD**
122 **EFFECTUATE STAFF'S PROPOSAL ON ISSUE PC/VC 2?**

123 A. Yes. SBC Illinois would not object if the following language were added to
124 Section 6.13 of the Physical Collocation Appendix and Section 1.10.10 of the
125 Virtual Collocation Appendix:
126 Following receipt of an application for collocation from Level 3, SBC
127 Illinois will make available to Level 3 a list of equipment that is currently
128 deployed within SBC Illinois's central offices.

129 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

130 A Yes, it does.