

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

LEVEL 3 COMMUNICATIONS, LLC)	
)	
Petition for Arbitration Pursuant to)	
Section 252(b) of the Telecommunications)	Docket No. 00-_____
Act of 1996 to Establish an Interconnection)	
Agreement with Illinois Bell Telephone)	
Company d/b/a Ameritech Illinois)	

PETITION FOR ARBITRATION

Negotiated Request:	November 30, 1999
135 th Day Thereafter:	April 13, 2000
160 th Day Thereafter;	May 11, 2000
9 Months Thereafter;	August 30, 2000

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Dated: May 8, 2000

STATE OF ILLINOIS
BEFORE THE
ILLINOIS COMMERCE COMMISSION

LEVEL 3 COMMUNICATIONS, LLC)
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Petition for Arbitration Pursuant to)
Section 252(b) of the Telecommunications) Docket No. 00-_____
Act of 1996 to Establish an Interconnection)
Agreement with Illinois Bell Telephone)
Company d/b/a Ameritech Illinois)

PETITION FOR ARBITRATION

Level 3 Communications, LLC ("Level 3"), pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. § 252(b), and Part 761 Rules of Arbitration Practice (83 Ill. Adm Code 761), petitions the Illinois Commerce Commission ("Commission") for arbitration of the unresolved issues arising out of the interconnection negotiations between Level 3 and Illinois Bell Telephone Company d/b/a Ameritech Illinois, a subsidiary of SBC Communications, Inc. ("SBC") (collectively, the "Parties"). Level 3 requests that the Commission resolve each of the issues identified in Section V of this Petition by ordering the Parties to incorporate Level 3's position into an interconnection agreement for execution by the Parties. In support of this Petition, Level 3 states as follows:

I. THE PARTIES

1. Level 3 is a Delaware limited liability company, and a wholly-owned subsidiary of Level 3 Communications, Inc., a publicly traded Delaware corporation. Level 3 is authorized to provide competitive local exchange, exchange access, and interexchange services in the State of Illinois.¹

2. SBC is an incumbent local exchange carrier ("ILEC") for portions of the State of Illinois. Within this operating territory, SBC has at all relevant times been an ILEC as that term is defined in Section 251(h) of the Act, 47 U.S.C. § 251(h).

3. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals:

Russell M. Blau
Edward W. Kirsch
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3000 K Street, N.W., Suite 300
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and

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Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-7015 (Tel)
(720) 888-5134 (Fax)
e-mail: **Error! Bookmark not defined.**

4. During the negotiations with SBC, the primary legal contact for SBC has been:

Tracy N. Turner
Southwestern Bell Telephone Company

¹ Level 3 was granted its certificate to provide facilities-based telecommunications services within the state of Illinois in Docket No. 97-0676.

One Bell Plaza, 208 S. Akard Street
Dallas, TX 75202
(214) 464-7551 (Tel)
(214) 464-2250 (Fax)
e-mail: **Error! Bookmark not defined.**

II. THE INTERCONNECTION NEGOTIATIONS AND RESOLVED ISSUES

5. Level 3 and SBC began negotiations toward an interconnection agreement on November 30, 1999. Accordingly, the 160-day negotiating period ran from November 30, 1999 to May 8, 2000. The arbitration window opened on April 13, 2000 and closes on May 8, 2000. This Petition is timely filed within the arbitration window.

In an effort to reach a mutually agreeable successor to their expiring interconnection agreement, Level 3 and SBC have met in good faith on at least three occasions, engaged in approximately ten, multi-hour negotiations by telephonic conference calls, and exchanged correspondence with respect to the proposed contract between them. While the Parties have reached agreement on many provisions of the contract, they have not been able to resolve all of the specific differences over contract language and policy issues. Thus, with the statutorily prescribed arbitration window set to close on May 8, 2000, Level 3 has been compelled to seek arbitration of the remaining disputes with SBC. Level 3 will continue negotiating with SBC in good faith even after this Petition is filed and hopes that many of these issues can be resolved prior to any arbitration hearing. Level 3 will participate in Commission-led mediation sessions, if applicable. SBC has also indicated its willingness to continue negotiating.

6. To assist in the review of the unresolved issues and to provide an overview of the many issues on which the Parties have already reached agreement, Level 3 has attached hereto as Exhibit A a

redlined copy of the Level 3-SBC proposed interconnection agreement.² Sections appearing in Exhibit A in normal type represent those matters on which Level 3 believes the Parties to be in agreement.³ Level 3 has accepted SBC's proposed contract, or, through numerous negotiating sessions, reached resolution with SBC concerning the majority of the Appendices to the Agreement, including: Appendices 800 Database; Direct; Directory Assistance; Directory Assistance Listing; Emergency Services; FCC Merger Conditions; Inward Assistance Operator Services; Message Exchange; Numbering; Operator Services; Performance Measurements; Recording; Resale; Signaling System 7; White Pages; Billing; Collection and Remittance; Clearinghouse; Hosting; Line Information Database-Administration; Line Information Database Service; Illinois Pricing; and Illinois Pricing Merger Promotion Template. These sections of the proposed contract are the result of negotiation and do not discriminate against any telecommunications carrier.

III. JURISDICTION

7. Under the Act, parties negotiating for interconnection, access to unbundled network elements, or resale of services within a particular state may petition the state commission for arbitration of any unresolved issues during the 135th to the 160th day of such negotiations. 47 U.S.C. § 252(b). The statutorily prescribed period for arbitration expires on May 8, 2000. Accordingly, Level 3 files this Petition with the Commission on this date to preserve its rights under Section 252(b) of the Act and to seek relief from the Commission in resolving the outstanding disputes between the Parties. Pursuant to Section 252(b)(4)(C) of the Act, this arbitration is to be concluded on or about August 30, 2000.

² Because Level 3 requested interconnection negotiations with SBC in multiple states, the Parties began negotiations from SBC's 13-State template contract.

IV. APPLICABLE LEGAL STANDARDS

8. This arbitration must be resolved under the standards established in Sections 251 and 252 of the Act, the rules adopted and orders issued by the Federal Communications Commission ("FCC") in implementing the Act, and the applicable rules and orders of this Commission. Section 252 of the Act requires that a state commission resolving open issues through arbitration:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; [and]
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252].

9. The Commission should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the requirements of Sections 251(b) and (c) and 252(d) of the Act.

V. UNRESOLVED ISSUES

10. In this section of the Petition, Level 3 will provide: (i) a listing of the issues between the Parties that remain unresolved; (ii) a summary of what Level 3 understands to be each Party's position with respect to each issue (where known), including, where applicable, a statement of the last offer made by each Party; and (iii) a statement for each issue describing the legal and/or factual basis supporting Level 3's proposed resolution of that issue and the conditions necessary to achieve the proposed resolution.

³ To the extent that SBC asserts in any response that any of the matters that Level 3 understands to be and has identified as resolved are in fact open issues, Level 3 reserves the right to present its position with respect to such matters as part of this arbitration.

11. Text appearing in strike-through language in Exhibit A is text that Level 3 has proposed deleting from SBC's standard template contract offer to all competitive local exchange carriers ("CLECs"). Text that is underlined in Exhibit A represents the language proposed by Level 3 for various sections of the contract to which SBC has not yet agreed.

12. The numbers listed in parenthesis with each issue below refer to the section numbers of the draft contract provided as Exhibit A. As Level 3 understands it, the remaining disputes between the Parties appear in the following sections of the Agreement: General Terms and Conditions, Appendix UNE, Appendix Collocation, Appendix Network Interconnection Methods, Appendix Interconnection Trunking Requirements, Appendix Reciprocal Compensation, Appendix OSS Resale and UNE, and Appendix Digital Subscriber Line.

ISSUE 1: Reciprocal Compensation

A. Definition of "Local Calls" And Reciprocal Compensation (General Terms & Conditions ("GT&C") 1.1.74, New 1.1.67; ITR App. 1.5, 5.2.4, 5.6.3; Reciprocal Compensation Appendix ("Recip. Comp. App.") 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.9)

Level 3's Position: SBC's language to define local calls as originating and terminating to parties "physically located" within the same local calling area and related restrictions on the definition of local traffic should be deleted from the contract, and language should be substituted making it clear that ISP-bound traffic is to be treated no differently than other local traffic for reciprocal compensation purposes. SBC is required to pay reciprocal compensation for all local traffic under existing law. SBC's obligation to pay reciprocal compensation should not be contingent upon Level 3's completion of network testing that is not needed for the services it offers.

SBC's Position: SBC's proposed agreement contains language intended to exclude calls destined for ISPs from the definition of "Local Calls," and to define local traffic by making reference to physical end points and voice traffic.

Proposed Resolution: SBC's proposed 13 State Agreement contains language intended to exclude calls destined for Internet Service Providers ("ISP") from the definition of "Local Calls"⁴ for the purpose of reciprocal compensation. For example, section 2.5 of the Reciprocal Compensation Appendix provides: "[t]he Parties agree that Internet Calls are not subject to reciprocal compensation under this Appendix nor under the Act." Similarly, section 2.9 provides: "[t]raffic that is delivered directly to an ISP is not subject to intercarrier compensation." SBC's position does not conform to current Illinois and federal law. Under the Commission's prior rulings, carriers have been directed to pay reciprocal compensation for calls delivered to ISPs.⁵ The Commission's prior rulings regarding reciprocal compensation for calls delivered to ISPs have been affirmed by the Court of Appeals for the Seventh Circuit. Specifically, the Court of Appeals determined that the Commission's conclusion that reciprocal compensation should apply for calls to ISPs does not violate the Act or the FCC's interpretation of the Act.⁶

⁴ See, e.g., SBC-13 State Agreement, General Terms at § 1.1.74; Appendix ITR at § 5.2.4; Appendix Reciprocal Compensation at §§ 2.1, 2.2, 2.2, 2.6, 2.9.

⁵ See, e.g., Order, *Teleport v. Illinois Bell, et al.*, Docket No. 97-0404, 97-0519, 97-0525 (Consolidated (Ill. Com. Comm'n March 11, 1998), *aff'd*, *Illinois Bell Tel Co. v. WorldCom, Techs, Inc.* 1998 WL 419493 (N.D. Ill. 1998), *aff'd*, *Illinois Bell Tel. Co. v. WorldCom Techs., Inc.*, 179 F.3d 566 (7th Cir. 1999).

⁶ *Illinois Bell Tel. Co. v. WorldCom Techs., Inc.*, 179 F.3d 572-574.

The Court of Appeals for the D.C. Circuit also recently concluded that calls to ISPs appear to fit the FCC's definition of terminating local traffic.⁷ The D.C. Circuit agreed with the CLEC argument that an ISP appears "no different from many businesses, such as . . . travel reservation agencies, credit card verification firms, or taxi cab companies," and other "communications-intensive business end user[s] selling a product to other consumer and business end-users."⁸ Although the D.C. Circuit remanded the issue of reciprocal compensation for ISP traffic to the FCC, it is clear that it views calls to ISPs as local traffic. Level 3 asks that its new agreement reflect the current state of the law in Illinois and federal law by stating that ISP-bound traffic is to be treated no differently than any other local traffic.

There is no reason for the Commission or the Parties to spend a significant amount of time in this proceeding revisiting yet again the questions of how to define local calls or how to compensate carriers for ISP-bound traffic. The Commission has already spoken to these issues previously, and determined that carriers should pay one another reciprocal compensation for such traffic -- SBC does not deserve another "bite at the apple" here. A recent Hearing Examiner's Proposed Arbitration Decision addressing the same issue, for example, provides: "Calls to the Internet are, from a functional and technical perspective, indistinguishable from the entire universe of local calls and should be treated as such for purposes of establishing appropriate levels of reciprocal compensation."⁹ All that Level 3

⁷ *Bell Atlantic Telephone Companies v. Federal Communications Commission*, 206 F.3d 1, *6 (D.C. Cir. 2000).

⁸ *Id.* at *7.

⁹ Level 3 acknowledges that the Hearing Examiners' Proposed Arbitration Decision is not a final decision of the Commission. However, the proposed arbitration decision is consistent with the Commission's previous decisions. *Focal Communications Corporation of Illinois Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an*

seeks is contract language that reflects the results of those prior decisions. Level 3's proposals for defining local calls as reflected in Section 1.1.67, 1.1.74 of the General Terms, Sections 2.1, 2.2, 2.4, 2.5, 2.6, and 2.9 of Appendix Reciprocal Compensation, and Sections 1.5, 5.2.4, and 5.6.3 of Appendix ITR (Exhibit A) should be adopted.

B. Eligibility for Tandem Compensation (GT&C 1.1.29.2; Recip. Comp. App. 2.9)

Level 3's Position: Level 3 proposes to modify the definition of tandem switch to make clear that CLEC switches can qualify for treatment as a tandem switch for compensation purposes under the contract, notwithstanding the physical location of the switch in the network architecture.

SBC's Position: SBC apparently believes that Level 3's proposed definition does not adequately distinguish between tandem and end office switches from a network architecture perspective.

Proposed Resolution: Level 3 is not asking at this point that SBC necessarily pay it both the tandem and end office reciprocal compensation rates for transport and termination of local traffic. Rather, Level 3 is merely asking that the contract reflect no more than what is already required under FCC rules -- that Level 3's switch be considered a tandem switch for compensation purposes when it meets certain criteria.¹⁰ Level 3's changes to the definition of "Tandem Switch" are further intended to remove any doubt that Level 3's switch might qualify as a tandem switch for compensation purposes

Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Docket No. 00-0027, Hearing Examiners Proposed Arbitration Decision (April 3, 2000), at 11.

¹⁰ Under Section 51.711 of the FCC's Rules, 47 C.F.R. § 51.711, a CLEC's switch may qualify for tandem treatment where it "serves a geographic area comparable to the area served by the incumbent LEC's tandem switch." The FCC has further explained that "where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Implementation of the Local Competition Provisions in the*

notwithstanding its physical location in the network architecture. Level 3's changes are consistent with federal law and should be adopted.

ISSUE 2: Deployment of NXX Codes (GT&C 1.1.52, 1.1.55; ITR App. 5.4.6; Recip. Comp. App. 2.2, 2.6, 2.7, delete Appendices FX & FGA)

Level 3's Position: Level 3 opposes SBC's efforts to restrict arbitrarily the assignment of NXX codes by referring to customers' physical locations. SBC's proposals represent an effort to evade the payment of reciprocal compensation by preventing its own customers from placing local calls.

SBC's Position: SBC would not allow calls to end user customers with NXX codes in a certain rate center to be treated as local calls unless those end user customers actually maintain a physical presence in that rate center.

Proposed Resolution: SBC's proposal should be denied because it would not only enable SBC to evade its reciprocal compensation obligations under the Act, but would also undermine the competitive deployment of affordable advanced services throughout the state. The Commission should instead adopt Level 3's proposal which facilitates one of the fundamental goals of the Act - - the rapid deployment of competitive advanced services.¹¹ SBC itself targets ISPs through service offerings in Illinois such as OmniPresence Virtual Point of Presence, Ensemble, and others. A flexible approach to the use of NXX codes, has enabled ISPs to provide low cost advanced services throughout the state, including lightly populated areas. SBC seeks to rollback this established policy which would result in

Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16042, ¶ 1090 (1996) (“*Local Competition Order*”).

¹¹ Among the fundamental goals of the Act is the promotion of innovation, investment, and competition among all participants for all services in the telecommunications marketplace, including advanced services. *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Third Report and Order, at 1 (rel. Dec. 9, 1999).

increased toll charges to consumers and/or increased charges or equipment costs imposed upon ISPs. SBC's proposal would make it more difficult for competitors to provide advanced services, especially in sparsely populated areas.

ISSUE 3: Relationship of Agreement and Tariffs (GT&C 2.5.1, 2.6.3)

Level 3's Position: The agreement between the Parties should prevail over an applicable tariff where the agreement and the tariff conflict.

SBC's Position: SBC's tariffs reflect generally available terms that apply to all carriers. Level 3 should not be able to obtain individual terms that vary from those applicable to other carriers.

Proposed Resolution: The interconnection agreement will reflect the results of the Parties' efforts to negotiate and arbitrate individual terms and conditions. By contrast, the tariff is a general document that does not reflect the specific understanding of the Parties to this contract. While it may be reasonable to incorporate specific tariff provisions by reference at certain points in the agreement, there is no reason to have each and every provision of a SBC tariff trump each and every provision of the contract to the extent an inconsistency arises. Section 2.5 should provide that the agreement will prevail over the tariff where there is a conflict between the two.

SBC's position undermines the purpose of negotiating agreements. If SBC and Level 3 reach agreement on a contract provision, that provision should not be unilaterally overruled simply because SBC may have a tariff on file that has differing terms, or SBC later files a tariff with terms that conflict with the contract. This is not to say that Level 3 believes that a Commission-ordered rate that is tariffed should not apply because it differs from the contract rates. Indeed, Level 3's proposal for Section 2.5 recognizes that where the Commission adopts new rates for certain services under the contract, those rates should prevail over the contract rates pursuant to Section 2.11.2. However, a voluntary tariff filing

by SBC that alters the terms in its tariffs should not allow SBC to avoid its contractual obligations to which it has agreed with Level 3. Accordingly, the language proposed by Level 3 for Section 2.5 should be adopted, and the Commission should strike Section 2.6.3 from the agreement.

ISSUE 4: Severability and MFN (GT&C 2.8.1, 43.1, 49.1)

Level 3's Position: The last sentence of Section 2.8.1, which requires that the agreement be considered a nonseverable package, should be stricken as it is inconsistent with the preceding portion of this section. Level 3 has the right to “pick and choose” services, interconnection and UNEs for other agreements approved by the Commission under Section 252 of the Act. Level 3 adds Section 49.1 regarding most-favored-nation rights to underscore its pick and choose rights under Section 252, and has deleted portions of SBC’s Section 43.1 which would preclude Level 3 from obtaining unbundled access to EELs and other interconnection and services which SBC has refused to incorporate into the agreement.

SBC's Position: SBC has not expressed a position as to this issue.

Proposed Resolution: The first several sentences of Section 2.8.1 as proposed by SBC appear to support the concept of severability -- if a provision of the agreement is held invalid or unlawful, the remaining provisions of the agreement will remain intact and the Parties will negotiate to replace the invalidated terms. Yet the last sentence of this section states that the agreement is considered to be a "total arrangement" and "nonseverable." While Level 3 supposes that SBC is insisting on this language because of concerns about other carriers subsequently adopting certain parts of the agreement pursuant to Section 252(i) of the Act, this language has no place in the severability clause and is inconsistent with the remainder of the section. SBC should not be permitted to use the severability clause to limit its exposure under Section 252(i), and this transparent and inapposite attempt to do so should be rejected.

In order to preclude SBC from engaging in similar efforts to constrain the adoption rights of other carriers under Section 252(i) of the Act, the Most Favored Nations language proposed by Level 3 in Section 49.1 should be adopted. In order to protect Level 3's rights under Section 252(i) of the Act, the Commission should modify Section 43.1 as proposed by Level 3.

ISSUE 5: Charges for CLEC Name Changes (GT&C 4.9, 4.10, 29.2)

Level 3's Position: SBC should not be permitted to include contract language that would allow it to collect open-ended charges from CLECs for processing name changes. Indeed, SBC has not identified the specific costs involved in such processing functions.

SBC's Position: SBC incurs costs in making all the systems changes necessary to reflect a CLEC's new name or other CLEC identifier. These costs are incurred on an individual case basis and cannot be specified in the contract.

Proposed Resolution: As the proponent of Section 4.9, SBC has not provided an adequate explanation as to why it must retain the right to impose charges on an unfettered individual case basis whenever a CLEC changes its name or some other identifier or otherwise accepts an assignment of interconnection trunks. Nor has SBC explained why it would not allow Level 3 to impose similar charges to the extent SBC's language remains in the contract. The language in Section 4.9 should therefore be stricken. Alternatively, the Commission should require SBC to specify the precise nature of the TELRIC charges that would be imposed to make the necessary systems changes, and also permit Level 3 to recoup its own costs under similar circumstances through a new Section 4.10.

ISSUE 6: Term of the Agreement (GT&C 5.2)

Level 3's Position: Level 3 would have the contract expire after three (3) years because of the certainty and cost savings associated with such a reasonable term.

SBC's Position: SBC initially proposed a one-year term, although e-mail correspondence dated April 17, 2000 appeared to indicate that it would agree to a term of two (2) years.

Proposed Resolution: A two (2) year term would lead to unnecessary repetitive negotiation (and possibly litigation), and would generate uncertainty and inefficiency in the Parties' interconnection operations.¹² No CLEC could hope to implement a business plan and deploy its network architecture throughout the SBC region if the contract provisions upon which it relies will expire in such a short time. Moreover, the costs (both in terms of time and financial resources) associated with negotiating and arbitrating a new agreement are significant. If there are changes in law or in technology such that changes to the agreement are needed, the Parties are entirely free to negotiate amendments to the agreement, and Section 21 of the General Terms (as proposed by Level 3) would actually compel renegotiation where material changes in law occur. By contrast, forcing CLECs to negotiate anew for all relevant terms of interconnection with SBC so often would effectively constitute a barrier to entry into the Illinois local exchange market. The Commission should approve a three-year term for this agreement so that Level 3 may rely upon the agreement as it deploys its network and services in Illinois.

ISSUE 7: Deposits, Billing, and Payments (GT&C all of Section 7, 8.2, 8.3, 8.4, 8.4.4.5.2, 8.4.4.5.3, 8.5, 8.8, 9.1, 9.2, 9.2.1, 9.2.2, 9.3, 9.3.1, 9.3.3, 9.3.4, all of 9.5, 9.6.1, 9.6.1.1, 9.6.1.2, 9.6.2, 9.6.3, 9.6.3.1, 9.6.8)

Level 3's Position: A CLEC should not be required to provide to each SBC affiliated ILEC an initial cash deposit ranging from \$17,000 to upwards of two to four months of projected average monthly billings as a precondition for SBC's furnishing of resale services or Unbundled Network Elements ("UNEs"). Level 3 proposes to delete the entire deposits section because SBC is protected

by the Billing and Payment of Charges provisions of the agreement. Further, as publicly announced on April 18, 2000, Level 3 and its affiliates had approximately \$8.6 Billion of funds available at the end of its most recent quarter. Level 3 should not be required to make the advanced deposits demanded by SBC as a precondition to exercising its rights under the Act to obtain UNEs, interconnection, collocation and other services.

The deposits, billing and payment provisions applied to the Party's should at a minimum be bilateral and equal. For example, the deposits provisions proposed by SBC do not apply to CLEC furnished services (*See, e.g.,* Sections 7.1, 7.2). Level 3 is opposed to either Party requiring deposits of the other; however, if such deposits are required then SBC should be required to provide deposits for services provided by CLEC, including reciprocal compensation payments, in the same manner that SBC requires Level 3 to provide deposits. The Parties should not be required to provide written notice of any billing disputes and a detailed explanation of the dispute prior to the bill due date as demanded by SBC in Section 8.4 of the General Terms. SBC's position is inconsistent with its own proposed language in Section 10.12 of the Dispute Resolution clause which provides that such notice shall be provided "within sixty (60) days" of [a Party's] receipt of the invoice containing such disputed amount." The Parties should have at least thirty (30) days from notice of unpaid amounts to place funds in escrow and perform the other actions required by Sections 9.2 and 9.3 of SBC's payment terms. Level 3 is willing to place disputed amounts in an escrow account and furnish SBC with evidence that it has deposited the disputed amounts in an escrow account upon request by SBC. The furnishing of such evidence should not be required before any amounts are "deemed to be 'disputed' under Section 10

¹² Because of the impending arbitration deadline, Level 3 and SBC have not had the opportunity to fully discuss what appears to be a new offer by SBC for a two-year term. Level intends to address

[Disputes Clause] of the Agreement” as required by SBC’s proposed Section 9.3.4. Level 3 should be provided at least sixty (60) days from the Bill Due Date before service is disconnected to customers and other adverse actions are taken by SBC under Sections 9.2, 9.5, and 9.6.

SBC's Position: SBC deals with numerous CLECs of dubious financial condition. SBC, therefore, reserves the right to require a separate initial deposit for resale services and UNEs, each deposit potentially amounting to between two to four months of projected billings, based upon SBC’s discretionary evaluation of the CLEC’s credit worthiness.

Proposed Resolution: Level 3 should not be required to provide the initial cash deposits demanded by SBC as a condition for SBC’s furnishing of resale and UNE services. These deposit requirements could preclude smaller carriers from providing services. SBC has provided no basis for asserting that such funds must be held as a guaranty of Level 3’s ability to pay. Level 3 has substantial financial resources and does not represent a credit risk to SBC. Further, SBC is more than adequately protected from financial loss by the General Terms of the Agreement, including Section 8.1.5 which permits SBC to assess interest on any late payments, and Sections 9.2 and 9.6 which permit SBC to disconnect services and take other actions in the event a CLEC fails to make timely payments to SBC. These provisions are sufficient to protect SBC and there is no need for an initial cash deposit. Accordingly, Level 3 proposes that all of Section 7 be deleted.

The Parties should not be required to provide notice of any billing disputes prior to the bill due date. It is often not practical to assemble and analyze the required information prior to the bill due date to determine whether charges should be disputed. A requirement to provide notice of billing disputes prior to the bill due date could lead to unnecessary disputes, and is inconsistent with SBC’s proposed

the issue during a conference call with SBC scheduled for May 8, 2000.

procedures for resolving billing disputes in Section 10.12 of the General Terms. Level 3 should have a reasonable time to resolve billing issues prior to drastic actions by SBC such as the discontinuance of service. Accordingly, Level 3's proposed changes to the payment and billing sections of the agreement should be adopted.

ISSUE 8: **Dispute Resolution (GT&C 10, 10.12.3, 10.12.4, 10.13.2, 10.13.3)**

Level 3's Position: With respect to disagreements other than disputed amounts, including but not limited to service affecting disputes, the Parties should be permitted to proceed directly to formal dispute resolution rather than first pursuing informal resolution. The informal dispute resolution process relating to disputed amounts should be limited to thirty (30) calendar days, for a total of ninety (90) days after the delivery of the notice of disputed amounts. The negotiations and documents exchanged during the informal dispute resolution process should be subject to the Confidentiality provisions of the General Terms in Section 20.1. The Parties should be able to pursue immediate injunctive relief from a court or agency with competent jurisdiction to the extent it deems necessary.

SBC's Position: For all disputes, the Parties should be required to pursue first pursue dispute resolution in the normal course of business for sixty (60) days to be followed by an informal dispute resolution process for forty five (45) days after the appointment of designated representatives prior to seeking more formal relief. SBC's other positions are unclear.

Proposed Resolution: The Parties should be able to proceed directly to formal dispute resolution where the need exists. While certain billing disputes may be amenable to a more prolonged negotiation process, other disputes -- such as service-affecting transgressions by the other party -- may require more expedited resolution. Level 3 therefore submits that preventing the Parties from seeking formal relief until a total of one hundred five (105) days have elapsed is unreasonable and could lead to irreparable harm to a Party under certain circumstances.

ISSUE 9: **Limitation of Liability (GT&C 1.1.78, 13.1)**

Level 3's Position: Neither Party should be able to contract away its liability for willful misconduct or criminal conduct. Simply stating that a Party's liability for negligent acts or omissions will be limited as set forth in this section of the contract should be sufficient to protect each Party.

SBC's Position: SBC's proposed contract language would limit either Party's liability for negligent or willful acts or omissions, and criminal conduct.

Proposed Resolution: It is generally against public policy to allow a Party to escape in any manner liability for its willful misconduct. Section 13.1 of the General Terms and Conditions should be revised in the manner shown by Level 3 in Exhibit A to this Petition.

ISSUE 10: Third Party Intellectual Property Rights (GT&C 14.5, 14.5.1, 14.5.2, 14.5.3, 14.6, 16.1, 16.1.1, 16.1.2, 16.1.3, 16.2, 16.2.1)

Level 3's Position: SBC is solely responsible to obtain any consents, authorizations or licenses for any third party intellectual property rights that are required to meet its obligation to provide interconnection to CLECs under Section 251(c)(2) of the Act, its obligation to provide UNEs under Section 251(c)(3) of the Act, and its obligation to provide CLECs with access to its Operations Support Systems ("OSS"). SBC is in the best position to identify the needed consents, authorizations or licenses as only it has complete knowledge of which vendors have provided SBC with protected technology and the extent of its rights. SBC may recover the forward looking cost of these consents, authorizations or licenses through its UNE and interconnection prices. Because it is SBC's obligation to obtain such consents, authorizations or licenses from third parties, CLECs should not be required to indemnify SBC against infringement actions.

SBC's Position: CLEC is responsible to obtain any consents, authorizations or licenses for any third party intellectual property rights necessary for CLEC's use of UNEs and interconnection. SBC

will provide a list of licensors within seven (7) days of CLEC's request. SBC will indemnify CLEC for any infringement claims within the scope of any "right to use" agreement negotiated by SBC for CLEC. Otherwise, CLEC will indemnify SBC for any losses or claims relating to third party intellectual property rights embedded in SBC's UNEs, OSS or network.

Proposed Resolution: Some of the hardware and software that comprise SBC's network, UNEs and OSS are most likely licensed from third party patent and copyright holders. If Level 3 uses the UNEs in SBC's network or SBC's OSS, as the Act gives it the right to do, it will be exposed to potential intellectual property infringement claims. The terms and conditions proposed by SBC discriminate against CLECs in violation of the Act because they do not provide consents, authorizations or licenses for CLECs to use the intellectual property embedded in SBC's network, UNEs and OSS equal to that SBC provides to itself.¹³ In order to preclude such discriminatory conduct by ILECs, the FCC recently ordered ILECs to use their "best efforts" to obtain intellectual property rights from equipment manufacturers and software suppliers for CLECs when the CLECs utilize network elements provided by the ILEC. The best efforts standard articulated by the FCC requires ILECs "to use best efforts to obtain equal rights for [CLECs] that are equal to the terms and conditions that the incumbent LECs have secured for themselves."¹⁴ Accordingly, the Commission should adopt the provisions and

¹³ *MCI Telecommunications Corp. v. Bell Atlantic – Virginia, Inc.*, 197 F.3d 663, 670-671 (4th Cir. 1999) (Holding that "Bell Atlantic must exercise its best efforts to obtain licensing for CLECs on the terms that it has obtained for itself"); *FCC Takes Action to Clarify the Intellectual Property Rights Obligations of ILECs*, Press Release (April 27, 2000), at 1; *Implementation of Infrastructure Sharing Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-237, 12 FCC Rcd. 5470, at ¶ 70 (1997) (requiring that incumbent LECs renegotiate terms of intellectual property licenses when necessary to satisfy the infrastructure sharing requirements of 47 U.S.C. § 259).

¹⁴ *FCC Takes Action to Clarify the Intellectual Property Rights Obligations of ILECs*, *supra*, at 1.

modifications proposed by Level 3 in Sections 14.5.1, 14.5.2, 14.5.3, 14.6, 16.1, and 16.2 of the General Terms.

ISSUE 11: Disclosure of Proprietary Information (GT&C 20.5)

Level 3's Position: Level 3 wishes to make Section 20.5 of the General Terms and Conditions reciprocal, such that either Party could disclose "Proprietary Information" upon request to "regulatory agencies" if the Party has first obtained an order for protective relief.

SBC's Position: SBC's language permits only it to release information to regulatory agencies upon request if it first obtains a protective order.

Proposed Resolution: SBC has provided no reason to make this section unilateral in nature. Level 3 should have the same ability as SBC to respond to requests for information from this Commission or other regulatory agencies, provided that Level 3 takes reasonable steps to ensure the continued protection of such information.

ISSUE 12: Intervening Law (GT&C 21.1)

Level 3's Position: A provision of the agreement should not be automatically invalidated or voided if a court or regulatory agency's action dictates a change in the contract. Rather, the Parties should work cooperatively in good faith to renegotiate the affected provision to avoid an abrupt interruption of service and ensure a reasonable and orderly transition to the new regime.

SBC's Position: SBC's language provides that the affected provision shall be immediately invalidated, modified, or stayed consistent with the action of the court or regulatory agency.

Proposed Resolution: Significant details often need to be discussed and negotiated between the Parties when a change in law prompts a change in the Agreement. The Agreement should provide an

opportunity for such cooperative negotiations to occur. Accordingly, Level 3's proposed modifications should be adopted.

ISSUE 13: Governing Law (GT&C 22.1)

Level 3's Position: Level 3 should not be required to waive any objections it may have to venue in the cities listed by SBC. These cities are convenient for SBC because it has operations and offices in these areas. Some of the SBC locations may impose needless expense and hardship on Level 3. Denver, Colorado should be considered a possible venue, in part because some of the negotiations have taken place there.

SBC's Position: SBC has not stated a position.

Proposed Resolution: The right to object to venue is well established in American judicial procedure. Accordingly, Level 3 should not be required to waive its potential objections to venue and its modifications to the Agreement should be adopted.

ISSUE 14: Assignment (GT&C 29)

Level 3's Position: Both Parties should be required to seek prior written approval of assignments and transfers of the Agreement. Such approval should not be unreasonably withheld by either Party. Thirty (30) days advance notice should be required for assignments or transfers of the Agreement rather than the ninety (90) days proposed by SBC.

SBC's Position: SBC seeks a unilateral right to require ninety (90) days advance written notice and to approve all CLEC assignments and transfers of the Agreement.

Proposed Resolution: As the proponent of Section 29.1, SBC has not explained why it must retain a unilateral right to approve assignments and transfers of the Agreement that it is not willing to extend to CLECs. The language proposed by SBC in Section 29.1 should therefore be stricken and

Level 3's alternative language adopted. SBC's proposal for ninety (90) days advanced notice of assignments and transfers imposes unneeded obstacles to a CLEC's ability to raise capital in an expeditious manner. The required notice period should therefore be reduced to thirty (30) days as proposed by Level 3.

ISSUE 15: Force Majeure (GT&C 33.1)

Level 3's Position: Level 3 maintains that many equipment failures are within the control of the Party because each Party is responsible for the proper maintenance of its equipment and the design and operation of its network. Therefore, many equipment failures do not constitute a force majeure event. Further, each Party should treat the other Party in parity with the manner in which it treats itself and any other entities with regard to a force majeure event.

SBC's Position: Equipment failures constitute a force majeure event beyond the reasonable control of the Parties.

Proposed Resolution: The Parties are in control of the acquisition, operation and maintenance of their network hardware and software. Equipment failures cannot always be characterized as a force majeure event. To the extent an equipment failure is truly beyond a Party's control it would be encompassed by the general definition of a force majeure event in the agreement in any event. Accordingly, Level 3's proposed modifications should be adopted.

ISSUE 16: Scope of Agreement (GT&C 43.1)

Level 3's Position: Level 3 has the right to obtain from SBC other UNEs and services that SBC is required to provide under the Act that may not be described or fully described in the Agreement.

SBC's Position: SBC has not stated a position on this issue.

Proposed Resolution: The Commission should adopt Level 3’s modifications to Section 43.1 of the Agreement in order to preserve Level 3’s rights under the Act.

ISSUE 17: Access to CLEC Network Elements (GT&C 45.7.11)

Level 3's Position: Level 3 has no obligation under the Act to provide access to Level 3’s unbundled network elements under the same terms and conditions applicable to SBC’s provision of UNEs set forth in Appendix UNE.

SBC's Position: SBC has not stated a definitive position on this issue.

Proposed Resolution: Level 3 is not an ILEC in any territory, therefore, Level 3 has no obligation under Section 251(c)(3) of the Act to provide UNEs to SBC. Accordingly, the Commission should adopt Level 3’s proposed modifications.

ISSUE 18: Combinations of Unbundled Network Elements Generally (App. UNE 2.9.8)

Level 3's Position: SBC seeks to impose usage restrictions on Level 3’s ability to combine UNEs with other services that do not comport with current law.

SBC's Position: SBC maintains that ILECs may preclude CLECs from combining UNEs with other ILEC services.

Proposed Resolution: Section 253(c)(3) of the Act requires ILECs to provide to requesting carriers access to UNEs “for the provision of a telecommunications service .

...”¹⁵ The FCC codified in rule 51.309(a) its view that the plain meaning of Section 253(c)(3) of the Act does not permit usage restrictions such as those imposed by SBC in Section 2.9.8 of the General Terms. Specifically, the FCC concluded that an ILEC “shall not impose limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that would impair the ability of a

requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends.”¹⁶ Rule 51.319(a) was not challenged in court by any Party. The Commission should uphold Level 3’s deletion of the broad usage restrictions imposed in Section 2.9.8 of the General Terms.

ISSUE 19: Enhanced Extended Loops (App. UNE New 9.0, 14.1)

Level 3’s Position: Level 3 maintains that under existing law SBC has an obligation to provide unbundled access to existing combinations of loops, transport and multiplexing, commonly referred to as Enhanced Extended Loops (“EELs”), regardless of whether or not SBC is providing access to unbundled local switching in a specific market.

Level 3 notes that until June 30, 2000, the FCC has permitted ILECs to “constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access services” until it addresses the issue in a pending rulemaking.¹⁷ This constraint, however, does not affect the ability of CLECs to use EELs to provide local exchange service.¹⁸

SBC’s Position: SBC maintains that it has no obligation to provide EELs under the Act, in part, because it is offering unbundled local switching in all of its markets in which SBC is an ILEC. Additionally, SBC seeks to impose unreasonable conditions regarding the amount of local exchange traffic that must be carried before SBC will permit CLEC to utilize combinations of transport and loops. For example, SBC proposes that Level 3 certify, for the conversion of services to EELs, that (1) at least 50% of the activated channels are used to provide originating and terminating local dial tone

¹⁵ 47 U.S.C. § 251(c)(3).

¹⁶ 47 C.F.R. § 51.309(a).

¹⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, at 2-5 (rel. Nov. 24, 1999).

service and at least 50% of the traffic on each of these local dial tone channels is local voice traffic; and (2) the entire loop facility has at least 33% local voice traffic.¹⁹

Proposed Resolution: The FCC held in its *Local Competition Order* and rule 51.315(b) that ILECs may not separate requested network elements that the ILEC “currently combines” in its network.²⁰ The FCC determined that “currently combines” means “ordinarily combined within [the ILEC] network, in the manner in which they are typically combined.”²¹ The FCC elaborated on the issue in its recent *UNE Remand Order* and stated that “to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the [Act] and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form.” The FCC concluded that “in specific circumstances, the incumbent is presently obligated to provide access to the EEL.”²²

Notwithstanding these directives,²³ SBC has only offered to provide Level 3 sixty (60) days advance notice if SBC ever determines to offer the EEL under its 13 State Agreement,²⁴ and to reconfigure special access arrangements as unbundled loop/transport combinations under restrictive conditions that have not been approved by this Commission or the FCC. Specifically, SBC seeks to impose unreasonable unilateral conditions regarding the amount of local exchange traffic that must be carried before SBC will permit CLECs to reconfigure Special Access arrangements to UNE-based

¹⁸ *Id.*, ¶ 5.

¹⁹ SBC’s certification is attached to this Petition as Exhibit C.

²⁰ *Local Competition Order*, 11 FCC Rcd. 15648, at ¶ 296; 47 C.F.R. § 51.315(b).

²¹ *Id.*

²² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, at ¶¶ 479-480, 486 (rel. Nov. 5, 1999) (“*UNE Remand Order*”).

²³ During interconnection negotiations, SBC has drawn a distinction between EELs and loop/transport combinations that has not been fully explained to Level 3. These Comments reflect Level 3’s present understanding of SBC’s positions regarding EELs and loop/transport combinations.

²⁴ SBC 13 State Agreement, Appendix UNE, at § 8.2.3.

combinations of transport and loops. SBC proposed these unreasonable conditions to the FCC in an *ex parte* filing on February 29, 2000.²⁵ In an effort to implement these unreasonable conditions, SBC insists that CLECs provide a certification, attached as Exhibit C, that each of the identified circuits a CLEC provides to a specified end user customer meets one of the following three options:²⁶

Option 1

1. The carrier is the exclusive provider of the end user's local exchange service.

Option 2

1. Carrier handles at least one third of the identified customer's local traffic; and
2. On the loop portion of the UNE loop-transport service, at least 50 percent of the activated channels have at least 5 percent local voice traffic individually and,
3. For the entire facility, at least 10 percent of the traffic is local voice traffic.
4. If the unbundled loop/transport combination includes multiplexing (e.g. DS1 multiplexed to DS3 level), each of the individual DS1 circuits meets the above criteria for this option.

Option 3

1. At least 50% of the channels are used to provide local dial tone service and at least 50% of the traffic on each of those local dial tone channels is local voice traffic
2. The entire loop facility has at least 33% local voice traffic and

²⁵ The conditions are attached as Exhibit B. *Ex Parte, CC Docket No. 96-98; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, (filed Feb. 29, 2000), at 2-3.

²⁶ SBC's certification form and rules regarding reconfiguration of Special Access services can be found on its website at <https://clec.sbc.com/clecb/unrestr/custguide/>. The certification form is invoked in the SBC 13 State Agreement in sections 7.3 and 14.1 of Appendix UNE. Level 3 does not object generally to providing a certification regarding significant local traffic, but rather, Level 3 objects to SBC's unilateral and unreasonable definition of significant local traffic embodied in the certification form.

3. If a loop/transport combination includes multiplexing (e.g. DS1 multiplexed to DS3 level), each of the individual DS1 circuits meets the above criteria for this option.

The restrictions embodied in SBC's certification are not binding law merely because SBC has filed them with the FCC. Level 3 recognizes that the FCC is currently considering the question of how Special Access reconfigurations should be governed, and Level 3 has proposed to abide by such a determination. Nonetheless, SBC is unyielding in insisting upon its unilateral interpretation of significant local traffic as embodied in its certification.

These restrictions on reconfiguration of Special Access arrangements to UNE based services are unreasonable, and deny customers the benefits of state of the art technologies. Level 3 has deployed one of the world's most advanced Internet Protocol based networks. Level 3's advanced network architecture incorporates state-of-the-art soft switches and network components that enable Level 3 to leverage advanced, cost efficient technologies to provide customers with innovative services at highly competitive prices that were often unavailable in the legacy networks. SBC's conditions would in many instances preclude Level 3 from offering innovative services, including local voice service over IP. SBC must be prevented from imposing such competitive roadblocks. Accordingly, the Commission should adopt the provisions proposed by Level 3 in new Section 9 to Appendix UNE and should reject the conditions regarding significant local traffic that SBC seeks to impose through Exhibits B and C.

ISSUE 20: Local Loop Definition (App. UNE 7.1, GT&Cs 1.6.6, 1.7.7)

Level 3's Position: The definition of Local Loop includes dark fiber loops, high capacity loops, and inside wire owned and controlled by the ILEC. The definition should specify higher capacity loops including OC-3, OC-12, and OC-48 to the extent they are deployed in SBC's network. SBC should be required to provide written notice of the availability of higher capacity loop offerings, including but

not limited to OC-192, within sixty (60) days of deploying such higher capacity loops in its network, unless SBC has tariffed the higher capacity loop offering within sixty (60) days of deploying such loops in its network. Without such written notice, CLECs will not be aware that such higher capacity loops have been deployed in SBC's network and are available as UNEs.

SBC's Position: SBC refuses to add dark fiber loops to the definition of the Local Loop. SBC's position on inside wire and higher capacity loops is unclear. SBC will consider deleting the redundant definitions of Local Loop.

Proposed Resolution: The *UNE Remand Order* defined the Local Loop to include high speed loops, dark fiber loops and inside wire that is owned and controlled by the ILEC.²⁷ The definitions of Local Loop set forth in the General Terms by SBC are redundant with the definition proposed at Section 7.1 of Appendix UNE and do not conform to the *UNE Remand Order* at least to the extent that they do not expressly include high capacity loops, inside wire or dark fiber. The Commission should delete the redundant definitions of the loop in the General Terms and adopt the modifications proposed by Level 3 to the definition provided in Appendix UNE (*See*, Exhibit A).

ISSUE 21: Subloops (Appendix UNE New Sections 8.1 to 8.10)

Level 3's Position: SBC is required to provide access to subloops on an unbundled basis in conformity with the FCC's *UNE Remand Order*. Specifically, SBC must provide as a subloop network element any portion of the loop that is technically feasible to access at terminals in SBC's outside plant, including inside wire.²⁸ Level 3 has clarified SBC's proposal to provide for access to subloops at any technically feasible terminal and to clarify that the list of subloops provided in the agreement is illustrative

²⁷ *UNE Remand Order*, at ¶¶ 165-167, 174-177.

and not exhaustive. Level 3 should be able to obtain access to the subloop UNE, regardless of whether it has obtained collocation through an interconnection agreement, tariff, or stand-alone agreement. SBC has limited its subloop UNE offering to “Spare” subloops and existing “spare” portions of the local loop without adequately defining the term. Level 3 proposes to strike the vague term “spare.” In Section 8.8, SBC apparently seeks to incorporate its unreasonable certification regarding significant local traffic (Issue 19 herein) and apply it to the use of DS-1 and DS-3 unbundled subloops. SBC has provided no justification for applying any such restriction to the use of subloops, and Level 3 further objects to this unreasonable certification for reasons set forth in its discussion of EELs (Issue 19). In Sections 8.9 and 8.10, Level 3 seeks to add language consistent with the *UNE Remand Order* regarding SBC’s obligations to provide a single point of interconnection and to bear the burden of demonstrating to the Commission that it is not technically feasible to unbundle a subloop at a particular point.

SBC's Position: SBC declined to negotiate terms or respond to Level 3’s proposal for the subloop UNE until it provided its own proposal for subloops on May 1, 2000. Due to the late arrival of SBC’s proposal, Level 3 has not had an opportunity to discuss its proposed revisions to SBC’s proposal with SBC. SBC’s position on the modifications proposed by Level 3 is unknown. The Parties have scheduled a conference on May 8, 2000, during which Level 3 intends to address the subloop UNE.

Proposed Resolution: In the *UNE Remand Order*, the FCC concluded that ILECs must provide unbundled access to subloops nationwide, where technically feasible.²⁹ Level 3 has proposed modifications to SBC’s contract language that closely follow the rules promulgated in the *UNE Remand*

²⁸ *UNE Remand Order*, at ¶ 206; 47 C.F.R. § 51.319(a)(2).

²⁹ *UNE Remand Order*, at ¶¶ 205-207.

Order and serve to clarify SBC's provisions. Accordingly, the Commission should adopt Level 3's proposed modifications to new Sections 8.1 to 8.10 of Appendix UNE regarding subloop unbundling.

ISSUE 22: Dedicated Transport (App. UNE 9.1, 9.3.1, 9.3.2, 9.3.3.1)

Level 3's Position: SBC should provide unbundled access to dedicated transport between Level 3 designated locations including wire centers, switches, equipment locations, and network components owned by either Party, or other carrier network components, or to customer premises. Examples of possible application of the dedicated transport UNE include but are not limited to: (1) transport between a Level 3 gateway (switch or point of presence) and a Level 3 collocation arrangement; (2) transport between a Level 3 gateway and a Level 3 collocation arrangement at one SBC central office and another Level 3 collocation arrangement at another SBC central office; (3) transport between a Level 3 gateway and another carrier's equipment or central office. The Parties may not use dedicated transport to replace access services except as provided by the FCC and as specifically set out in the Agreement. SBC should be required to provide Level 3 with written notice of the availability of higher capacity dedicated transport offerings within sixty (60) days of when it deploys higher speed dedicated transport in its network, unless SBC has tariffed such higher capacity dedicated transport offering within sixty (60) days of deploying such transport in its network. Without such written notice, CLECs will not be aware that such higher capacity dedicated transport has been deployed in SBC's network and is available as a UNE.

SBC's Position: Unbundled dedicated transport is only available between switches or wire centers owned by one of the Parties.

Proposed Resolution: Level 3 has deployed one of the world's most advanced Internet Protocol based networks. Level 3's advanced network architecture incorporates state-of-the-art soft

switches and network components that enable Level 3 to leverage advanced, cost efficient technologies to provide customers with innovative services at highly competitive prices that were often unavailable in the legacy networks. SBC's proposed restrictions on CLEC's application of dedicated transport would stifle innovation, unnecessarily increase costs, force Level 3 to mirror SBC's network architecture and reduce the cost savings available to customers through the use of state-of-the-art technology. Level 3's proposed modifications should be adopted.

ISSUE 23: Payload Mapping (App. UNE 9.3.2)

Level 3's Position: SBC is required under the Act to perform logical payload mapping in connection with its provision of the transport UNE.³⁰ Specifically, SBC is required to provide payload mapping in any technically feasible manner, including but not limited to: fully concatenated (e.g., the OC12 is mapped at 1 x STS-12c); (2) fully channelized (e.g., the OC12 is mapped at 12 x STS-1); and (3) any possible combination of concatenated and channelized (e.g., the circuit is mapped at 9 x STS-1 and 1 STS-3c).

SBC's Position: SBC's position on this issue is unclear.

Proposed Resolution: The Commission should adopt Level 3's proposed addition to Section 9.3.2 of Appendix UNE.

ISSUE 24: Dark Fiber (App. UNE New 9.4, 17.4.1, 17.5.1, 17.6.1, 17.6.2, 17.6.3, 17.7.2)

Level 3's Position: The Commission should add a provision to the Agreement in a new section 9.4 to Appendix UNE that follows the language of the FCC's new rule 51.319 promulgated in the

³⁰ *UNE Remand Order* at ¶ 323 (“this definition includes all technically feasible capacity-related services, including those provided by electronics that are necessary components of the functionality of capacity-related services...”).

UNE Remand Order. SBC first submitted a proposal for dark fiber on March 29, 2000 that has been attached to the end Appendix UNE as Section 17 (Exhibit A). The Commission should adopt Level 3's modifications to these provisions.

The term "defective fiber" should be defined through technical and testing standards mutually agreed to by the Parties (Section 17.5.1). SBC's definition of spare fiber removes defective fibers from the inventory of fibers available to CLECs on an unbundled basis. The definition of defective fiber is critical to a determination of the inventory of available fiber and is important to ensure that only non-defective fibers are provisioned to CLECs. If the term is not defined, SBC will possess unbounded discretion to determine the amount of spare fiber available to CLECs on an unbundled basis.

A single CLEC should be able to order up to 50% of the spare dark fiber contained in the requested segment. SBC's definition of spare fiber removes maintenance spares, defective fibers, and fibers reserved for SBC's forecasted growth from the pool of available spare fibers, and requires that fibers be ordered in multiples of two. In light of these constraints, relatively few fibers will be available; therefore, a CLEC must have the ability to order up to 50% of the available spare fibers, particularly with respect to cables of less than 24 fibers, in order to obtain a practical quantity (Sections 17.4.1, 17.6.1).

SBC should not be permitted to reserve fiber for itself unless SBC forecasted growth indicates that it will use the fiber within six (6) months rather than the twelve (12) months proposed by SBC (Section 17.5.1).

SBC must provide twenty four (24) months notice to revoke a CLEC's right to use dark fiber, provided the CLEC is not merely hoarding the fiber by failing to use it within twelve months (Section 17.7.2). Carriers need sufficient certainty in order to rely on leased fiber resources and need sufficient

time to build or identify an alternative to ILEC dark fiber facilities. In order to exercise its right of revocation, SBC must demonstrate that it has a need for the fiber within the six (6) months following the revocation (Section 17.7.2).

Until the Commission establishes a permanent rate for a dark fiber facility inquiry, the interim rate should be zero dollars subject to true-up (Section 17.6.2).

SBC's Position: A definition of defective fiber should not be included because it is difficult to define. An individual CLEC cannot order more than 25% of the spare fiber contained in the requested segment. If SBC forecasts that it will need dark fiber that has been provided to Level 3 within the twelve (12) months following revocation, then SBC may revoke CLECs right to use the dark fiber upon twelve (12) months written notice to CLEC.

Proposed Resolution: The Commission should adopt Level 3's proposed Section 9.4 which closely follows FCC's new rule 51.319 promulgated in the *UNE Remand Order*.³¹ SBC's right to revoke CLEC's use of dark fiber upon twelve (12) months notice would enable SBC to unreasonably perturb a CLEC's business plan and established customer relationships. Accordingly, SBC's position should be rejected and Level 3's modifications adopted. The Commission should adopt Level 3's modifications to SBC's latest dark fiber proposal, including but not limited to, Sections 17.4.1 and 17.6.1 regarding the percentage of spare fiber a CLEC may order, section 17.5.1 regarding the definition of defective fibers, and 17.7.2 regarding SBC's revocation rights.

³¹ *UNE Remand Order*, at ¶¶ 325-328.

ISSUE 25: Diversity (App. UNE 9.4.2)

Level 3's Position: When requested by CLEC, and only where such interoffice facilities exist, SBC is required to provide physical diversity for unbundled dedicated transport at TELRIC rates in accordance with Section 251(d) of the Act.

SBC's Position: Physical diversity will be provided on an individual case basis at rates negotiated between the parties.

Proposed Resolution: The Commission should adopt Level 3's proposed modifications to Section 9.4.2 of Appendix UNE.

ISSUE 26: Cross Connects (App. UNE 13.3, 13.4, new 13.6)

Level 3's Position: Level 3 proposes to list in the agreement as many of the possible permutations of cross connects that it anticipates it may require for access to UNEs. For example, Level 3 has added optical cross connects, cross connects for DS-3 digital loops, and cross connects for DSL capable loops to the list of cross connects required to be provided by SBC in Sections 13.3 and 13.4 of Appendix UNE. Level 3 also seeks to require SBC to provide cross connects between its collocation facility and the collocation arrangement of a third party within same Central Office.

SBC's Position: OC192 cross connects should not be specified because they are not deployed in SBC's network. SBC has not clearly stated a position on the remaining issues.

Proposed Resolution: In the *Local Competition Order*, the FCC concluded that ILECs must provide cross connect facilities between, *inter alia*, an unbundled loop and a requesting carrier's collocated equipment for access to that loop.³² The FCC views cross connects as a means of interconnection with a network element, and broadly requires that ILECs provide cross connect

facilities “at any technically feasible point that a requesting carrier seeks access to the loop.”³³ In the *UNE Remand Order*, the FCC underscored the importance of cross connects to full and open competition by observing that cross connects are “a potential bottleneck,” and that ILECs “may have the incentive to impose unreasonable rates, terms, and conditions for cross-connect facilities.”³⁴ In order to ensure that SBC will not impede competition by exploiting its control over this crucial bottleneck facility, Level 3 has prudently sought to list in the agreement as many of the possible permutations of cross connects that it anticipates it may require for access to UNEs. For example, Level 3 has added optical cross connects, cross connects for DS-3 digital loops, and cross connects for DSL capable loops to the list of cross connects provided by SBC in Sections 13.3 and 13.4 of Appendix UNE. SBC’s position on these modifications is unclear and it has provided no reason why it should not be required to provision these types of cross connects. Accordingly, the Commission should adopt Level 3’s proposed modifications.

ISSUE 27: Points of Interconnection (App. NIM 1.9, 2.1, 2.2, 2.3, 2.4, 2.6, 2.8, 3.4.1, 4.1, 5.2.1, 5.2.3, 5.3.1.1, 5.3.2.1; App. ITR 5.2, 5.2.1, 5.2.3, 5.2.7, 5.3.2.1)

Level 3’s Position: Level 3 would like to establish a single point of interconnection (“POI”) in each local access and transport area (“LATA”) in which Level 3 provides local exchange service. Each carrier should be responsible for providing facilities and trunking to the POI for the hand off of local and toll traffic, and each carrier should be responsible for completing calls to all end users on its network.

SBC’s Position: SBC would like Level 3 to establish multiple points of interconnection, one at each Tandem in a LATA in which Level 3 provides local exchange service.

³² *Local Competition Order*, 11 FCC Rcd. at 15693, ¶ 386.

³³ *UNE Remand Order*, at ¶ 179.

³⁴ *Id.*

Proposed Resolution: Under 47 U.S.C. § 251(c)(2)(B), SBC must provide interconnection at any technically feasible point within its network selected by Level 3. As the FCC noted:

Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.³⁵

Furthermore, the 1996 Act bars consideration of costs in determining "technically feasible" points of interconnection.³⁶

SBC's multiple POI structure requires Level 3 to mirror SBC's legacy network architecture, which may not be the most efficient, forward-looking architecture for an entrant deploying a new network, and therefore represents a barrier to entry. Level 3 should be free to deploy least cost, forward-looking technology, such as the combination of a single switch with a SONET ring to serve an area that SBC may serve through a hub-and-spoke, switch-intensive architecture. Initial interconnection at the tandem level and at a single POI per LATA is crucial to providing Level 3 this flexibility. For a new entrant to begin service, it requires a single connection capable of handling all of its calls, including local, toll, and access traffic. While co-carriers may establish different trunk groups for various traffic types, new entrants generally require a single POI per LATA.

Level 3 agrees that as traffic volumes increase, sound engineering principles may dictate that Level 3 add new points of interconnection at other SBC switches. However, those traffic volumes do not yet exist, and there is no reason, or legal basis, for the Commission to compel initial interconnection

³⁵ *Local Competition Order* at ¶ 209.

³⁶ *Local Competition Order* at ¶ 199.

in each local exchange area or at each Tandem. Level 3 should be permitted to select the initial POI and, as required by the terms of the contract, negotiate the architecture to optimize and minimize investment through the process established in Section 2.2 and 2.3 of Appendix NIM. The Commission should adopt Level 3's position on this issue.

ISSUE 28: Optical Interconnection (App. NIM 2.9.2)

Level 3's Position: Level 3 has requested that SBC interconnect at the optical level where it is technically feasible to do so.

SBC's Position: SBC has stated in Section 2.9.2 of Appendix NIM that it will only interconnect at the DS-1 or DS-3 (electrical) level. SBC appears to be willing to consider optical interconnection only through the Bona Fide Request ("BFR") process.

Proposed Resolution: Optical facilities are the least cost facilities that are deployed in a forward-looking network design. Optical facilities are capable of carrying greater traffic loads at higher speeds for a lower cost. Electrical interconnection requires Level 3 to deploy Digital Access and Cross-connect Systems ("DACs") or Add/Drop Multiplexers ("ADMs") to multiplex multiple DS-1s or DS-3s into an optical signal. The costs of these devices would not be incurred in an optical interconnection. Further, if the POI is established at a Level 3 collocation arrangement, the DACs or ADM will take up valuable space within that collocation arrangement. Therefore, Level 3 prefers interconnection at the optical level.

As an IXC, Level 3 has ordered and received optical interconnection from an SBC-affiliated ILEC pursuant to its access tariff in Missouri. With respect to the technical interconnection of networks, there is no distinction between IXCs and LECs. If it is technically feasible for SBC to interconnect with IXCs at the optical level, it is technically feasible for them to interconnect with Level 3

at the optical level. The only distinction is one of price. The 1996 Act requires that SBC provide interconnection to Level 3 at cost-based rates that comply with 47 U.S.C. § 252(d).

Unless the right to obtain optical interconnection is specified in the contract, it has been Level 3's experience that ILECs will force Level 3 to request optical interconnection through the BFR Process. This process is unnecessary where an ILEC has provided optical interconnection to IXCs, because it can technically provide the same level of interconnection to a CLEC. Forcing CLECs to go through the BFR process to obtain the same type of interconnection offered to IXCs via tariff is time consuming and unduly delays the turn-up of interconnection. The Commission should therefore adopt Level 3's position.

ISSUE 29: Transit Traffic (GT&C 38.1; App. ITR 4.2.1, 4.3)

Level 3's Position: Level 3 requests that SBC continue to provide transit service to Level 3 until a threshold of two DS-1s, or 48 trunks, of traffic is established between Level 3 and the other LEC or wireless carrier. Furthermore, Level 3 requests that the contract only require Level 3 to make commercially reasonable efforts to negotiate contracts with third parties for the exchange of traffic.

SBC's Position: In Sections 4.2.1 and 4.3 of Appendix ITR, SBC proposes to cease providing transit to Level 3 once traffic between Level 3 and another LEC or wireless carrier requires 24 or more trunks. SBC also requests that Level 3 indemnify SBC for all charges imposed on SBC, plus attorneys fees and costs, related to the traffic delivered to the third-party carrier on behalf of Level 3.

Proposed Resolution: The Regional Bell Operating Companies ("RBOCs") have traditionally performed the function of a transit carrier for smaller LECs and wireless carriers. Once traffic between two carriers passes a certain threshold, Level 3 agrees that it is more efficient for those carriers to exchange traffic directly rather than through SBC transit service. However, SBC's provision could be

read to require that Level 3 interconnect directly with the third party at the moment the traffic requires 24 trunks. There is no provision to permit Level 3 to measure and recognize the flow of traffic between it and third-party carriers, nor a provision to permit Level 3 to negotiate and turn-up direct interconnection with the third-party carrier. Level 3 has proposed language to address these concerns. Level 3 should not be required to interconnect directly with a third-party carrier until the traffic volume between the two has reached two DS-1s. Two DS-1s is also the standard that Level 3 typically uses throughout its network architecture, not just in SBC's territory. Many of the independent telephone companies possess or claim an exemption or suspension of the requirements of sections 251(b) and (c) of the Act. These rural or small telephone companies are reluctant to enter into traffic exchange agreements with CLECs. Level 3 has no statutory authority to compel rural or small telephone companies to enter into agreements in a timely manner. In light of this situation, Level 3 should be permitted the time to conclude commercially reasonable, good faith efforts to negotiate direct interconnection and/or a compensation agreement with third-party carriers.

ISSUE 30: End Office Trunking (App. ITR 4.2.1, 4.4, 5.2.1, 5.3.3.1, 6.6)

Level 3's Position: Level 3 should not be required to order trunks directly to an end office until the traffic volume between Level 3 and the end office has reached two DS-1s.

SBC's Position: SBC would like Level 3 to order direct trunks to an end office once the traffic volume to that end office reaches one DS-1.

Proposed Resolution: The Parties' current agreement requires the Parties to negotiate in good faith issues of network capacity and forecasting and no trigger is specified. Two DS-1s is the standard that Level 3 typically uses throughout its network architecture, not just in SBC's territory. This standard

is reasonable, provides certainty in terms of network deployment, and Level 3 therefore requests that the Commission adopt Level 3's position.

ISSUE 31: Forecasting (App. ITR 6.1, 6.2, 6.2.1, 6.2.2, 6.2.3, 6.3, 6.6)

Level 3's Position: Level 3 has requested modifications to SBC's proposed forecasting provisions in three areas. First, Level 3 would like the Parties to exchange non-binding forecasts on a quarterly basis and would like the forecast to cover a period of six months, rather than one year. Second, Level 3 would like to receive written confirmation from SBC that SBC has received Level 3's forecast and included such information in SBC's own forecast. Third, Level 3 prefers that the contract explicitly state SBC's obligation to provide Level 3 notice of tandem exhaust situations and, pursuant to applicable FCC rules, notice of any network expansions, software and hardware upgrades, or other network changes that will preclude SBC from completing Level 3's orders.

SBC's Position: SBC has objected to Level 3's proposed changes. SBC states that it only provides forecasting reports on a semi-annual basis and does not have a system in place to provide written confirmation of receipt of Level 3's forecasts. SBC has not stated a position on the notification requirements.

Proposed Resolution: As co-carriers, Level 3 and SBC must work cooperatively to ensure a seamless exchange of traffic. Each carrier is, in large part, dependent on the other for information concerning the expected volume of traffic, the turn-up of facilities necessary to exchange such traffic, and network planning. It is therefore imperative that the Parties exchange accurate information and update such information when necessary.

As a new entrant in the local exchange market, Level 3's network and customer base changes rapidly. Furthermore, Level 3 does not have 100 years of experience upon which to base its forecasts.

Quarterly forecasts that cover a six-month period permit Level 3 to produce more accurate forecasts than speculative semi-annual forecasts covering a one-year period. Moreover, if SBC requires Level 3 to provide forecasts, it is only reasonable that SBC acknowledge receipt of those forecasts. The Commission should adopt Level 3's position.

ISSUE 32: Trunk Blocking (App. ITR 7.1)

Level 3's Position: Level 3 has requested a blocking objective of 0.5% for all trunk groups.

SBC's Position: SBC's contract proposal calls for a blocking objective of 1% for all trunk groups except Local Direct End Office (Final) with a blocking objective of 2% and InterLATA (Meet Point) Tandem with a blocking objective of 0.5%.

Proposed Resolution: Level 3 has deployed one of the world's most advanced Internet Protocol based networks. Level 3's advanced network architecture incorporates state-of-the-art soft switches and network components that enable Level 3 to leverage advanced, cost efficient technologies to provide customers with innovative services at highly competitive prices that were often unavailable in the legacy networks. Level 3's advanced network architecture enables it to provide the high quality of service demanded by today's most sophisticated customers. Level 3's ability to leverage its advanced network and differentiate its services by providing a higher rate of call completion is compromised by a blocking standard of 1% or 2%. These high blocking standards effectively force Level 3 to mirror SBC's network architecture, service offerings, and reduces the cost savings and quality of service available to customers through the use of state-of-the-art technology. Level 3's proposed modifications should be adopted.

ISSUE 33: Trunk Utilization (App. ITR 8.4)

Level 3's Position: Level 3 desires the ability to order additional trunks, based on trunk forecasts, when its existing trunks are at a 50% utilization level. Level 3 would also like the contract to specify that Level 3 may place orders to augment trunks to an initial utilization level of 35% at the time the additional trunks are turned up.

SBC's Position: In Section 8.4 of Appendix ITR, SBC proposes to restrict Level 3's orders for additional trunks until Level 3 has reached a 75% utilization level for existing trunks. SBC's position is that a 75% utilization trigger would prevent switch exhaustion and prevent CLECs from deploying more trunks than are necessary to carry traffic loads.

Proposed Resolution: Level 3 believes that SBC's concerns about over-deployment of trunking facilities and switch exhaust are better addressed by the network forecasting provisions Level 3 has proposed than utilization triggers which put Level 3 at a competitive disadvantage *vis-a-vis* SBC. Level 3 needs the ability to order additional trunks to grow its network. By requiring a utilization rate of 75%, SBC is attempting to dictate how quickly Level 3 can grow its network and therefore add new customers. This gives SBC a competitive advantage over Level 3. It is not unusual for Level 3 to sign up new customers that require turn-up of a significant number of trunks. Under a 75% utilization level, it would not be possible to add such a high volume customer to Level 3's network. Rather, Level 3 would have to request that the customer agree to phase-in its service over a period of time so that Level 3 could order additional trunks according to SBC's utilization schedule to accommodate the traffic generated by that customer.³⁷ If the customer were to request service, SBC would not be similarly

³⁷ Although not explicitly stated in the contract, based on prior experience, Level 3 believes that SBC would also restrict orders for additional trunks to the number of trunks necessary to achieve a utilization level of 75% at the time the additional trunks are turned up.

restricted. In a competitive market, therefore, Level 3 would likely lose the customer to SBC, who could meet all of the customers' needs immediately, rather than over a period of time, as Level 3 would be forced to do under SBC's proposed 75% utilization rate.

Because a 75% utilization requirement permits SBC to restrict Level 3's competitive growth and SBC's concerns can be addressed through the forecasting process, the Commission should adopt Level 3's position on this issue.

ISSUE 34: Indemnity (App. OSS Resale & UNE 3.2.1, 3.2.2, 3.4, 3.11)

Level 3's Position: The indemnity provisions of the General Terms and other sections of the Agreement more than adequately protect SBC from any reasonably foreseeable loss. The additional indemnity clauses in Appendix OSS Resale & UNE are unreasonably broad and should be deleted. Level 3 will not agree to an open-ended provision requiring to pay unspecified charges associated with inaccurate ordering or usage of the Operations Support Systems ("OSS"). Level 3 cannot agree in advance to conform to hardware and software interface requirements and standards that it has not had the opportunity to review because they have not yet been developed or promulgated by SBC.

SBC's Position: SBC requires specific indemnity clauses for any liability related to any unauthorized entry or access into, or use or manipulation of SBC's OSS including that of third parties. Level 3 is responsible to obtain software and hardware to access OSS that conforms to any documents or interface requirements subsequently generated by SBC.

Proposed Resolution: The Commission should adopt the modifications proposed by Level 3.

ISSUE 35: Significant Degradation of Services Caused by Deployment of Advanced Services (App. DSL 13.6.4, 4.9.2.3, GT&Cs 1.1.97)

Level 3's Position: Where SBC claims that a deployed advanced service is significantly degrading the performance of other advanced services or traditional voiceband services, that carrier must notify the deploying carrier and allow the deploying carrier a reasonable opportunity to correct the problem. If SBC claims that services are being degraded, it must establish before the relevant state commission that a particular technology deployment is causing the significant degradation. If this burden is met, then the carrier causing the significant degradation shall discontinue deployment of the technology and migrate its customers to technology that will not significantly degrade the performance of other such services. However, where the degraded service is itself a known disturber and the newly deployed technology is presumed acceptable for deployment, then the degraded service shall not prevail over the newly deployed technology.

SBC's Position: SBC has not stated a position on this issue.

Proposed Resolution: Level 3 maintains that the Parties should adopt the standards and procedures promulgated by the FCC in its Line Sharing Order³⁸ to resolve disputes regarding claims that a deployed advanced service is significantly degrading the performance of other advanced services or traditional voiceband services. Level 3's proposed revisions conform to the FCC's Line Sharing Order. Accordingly, Level 3's proposed changes should be adopted.

ISSUE 36: Intervals for Adjacent Structure Collocation (App. Collocation 3.7.5.1)

Level 3's Position: SBC should provide specific construction intervals for adjacent structure collocation.

SBC's Position: Adjacent structure collocation will be provided only on an individual case basis.

³⁸ *Deployment of Wireline Services Offering Advanced Services Capability*, CC Docket No. 98-147, ¶¶ 195, 205, 206-211 (rel. Dec. 9, 1999); 47 C.F.R. § 51.233.

Proposed Resolution: SBC should provide specific construction intervals for adjacent structure collocation. SBC has not explained why such construction intervals should not be incorporated into the interconnection agreement between the Parties. Accordingly, Level 3 proposes a maximum interval of ninety (90) calendar days from CLEC acceptance of SBC's quotation.

ISSUE 37: Continuation of Services (GT&C 2.13)

Level 3's Position: Services provided under the previous agreement should be continued without interruption under the rates, terms, and conditions of this agreement to prevent an adverse impact on customers. Level 3 should not be required to resubmit service orders, information, or repeat other actions that were taken under the previous agreement unless the requirements of this agreement are inconsistent with the arrangements previously in place between the Parties.

SBC's Position: SBC has proposed to delete Level 3's suggested provisions.

Proposed Resolution: Level 3's proposed modifications should be adopted in order to avoid any adverse affects upon end user customers and to avoid the economic inefficiency associated with needlessly repeating completed actions.

VI. CONCLUSION AND PRAYER

Level 3 requests that the Commission arbitrate the unresolved issues described above and resolve them in Level 3's favor. In particular, Level 3 requests that the Commission reaffirm its prior decisions and conclude that ISP-bound traffic be treated as local exchange traffic for purposes of reciprocal compensation. Level 3's proposed interconnection agreement is reasonable and consistent with the law. Level 3 requests that the Commission adopt its proposed interconnection agreement (Exhibit A), and grant such other and further relief as the Commission deems appropriate.

Respectfully submitted,

Level 3 Communications, LLC

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Dated: May 8, 2000

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VERIFICATION

I, Michael R. Romano, do on oath depose and state that the facts contained in the foregoing Petition for Arbitration, Exhibits and Data Requests are true and correct to the best of my knowledge and belief.

Michael R. Romano
Level 3 Communications, LLC

Subscribed and Sworn to
before me this ___ day of
May, 2000.

CERTIFICATE OF SERVICE

The undersigned attorney for Level 3 Communications, LLC hereby certifies that on May 5, 2000, he has caused copies of the attached Petition for Arbitration and discovery requests to be served on each of the persons listed below via first-class mail postage prepaid:

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