

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

LEVEL 3 COMMUNICATIONS, LLC)
) Docket No. 00-0332
Petition for Arbitration Pursuant to Section)
252(b) of the Telecommunications Act of 1996)
to Establish an Interconnection Agreement with)
Illinois Bell Telephone Company d/b/a)
Ameritech Illinois)

AMENDED BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

Note: This Amended Brief is being filed to replace the Initial Brief of the Staff of the Illinois Commerce Commission filed on July 31, 2000 which inadvertently contained proprietary information. This Amended Brief has been modified solely to include the designations that it is "Public" and "Amended", to delete the proprietary information and to identify its filing date as August 2, 2000. In all other respects, it remains the same as the aforementioned Initial Brief. A Proprietary Version of this brief will also be filed.

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I. INTRODUCTION

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and, pursuant to Section 761.440 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 761.440, submits its Initial Brief in the instant arbitration proceeding.

II. PROCEDURAL BACKGROUND

This proceeding was initiated pursuant to a Petition (hereinafter, the “Arbitration Petition”) for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois (hereinafter “Ameritech”), filed on May 8, 2000 by Level 3 Communications, Inc. (hereinafter, “Level 3”). The Arbitration Petition included a draft of the Interconnection Agreement under negotiation by the parties, identified 37 unresolved issues with respect to such Interconnection Agreement and detailed the position of each of the parties with respect to those issues.

On May 16, 2000, Hearing Examiners Eve Moran and Sherwin H. Zaban held a pre-hearing conference. As a result of such conference, the Hearing Examiners set a schedule for party filings and continued the hearings to July 14 and 17, 2000. On May 31, 2000, Level 3 filed its verified statements in connection with this proceeding as well as a Motion to Defer Consideration of Issue 1(a) in the Arbitration Proceeding. On June 5, 2000, Ameritech filed its Response to the Arbitration Petition and on June 6, 2000, Ameritech then filed its Response to Level 3’s Motion to Defer.

Pursuant to a request by Ameritech for an extension of time with respect to its verified testimony, a revised schedule was adopted in this proceeding. On June 5, 6 and 12, 2000, Ameritech filed the verified statements of its witnesses. On July 6 and 7, 2000, Staff of the Illinois Commerce Commission filed the verified statements of its witnesses, which statements addressed only those issues identified in the Arbitration Petition as Issue Nos. 3 (Relationship of Agreement and Tariffs), 7 (Deposits, Billing and Payments), 18 (Combinations of Unbundled Networks Generally), 19 (Enhanced Extended Link), 27 (Points of Interconnection) and 32 (Trunk Blocking). On June 23, 2000, the Hearing Examiners denied Level 3's Motion to Defer Consideration of Issue 1(a). On July 11, 2000, supplemental verified statements were filed by Level 3 and Ameritech.

Evidentiary hearings with respect to this proceeding were held in Chicago, Illinois on July 14 and 17, 2000. Prior to and during the hearings, Ameritech and Level 3 resolved a number of issues raised in the Arbitration Proceeding. With respect to the issues addressed by Staff, the parties resolved issue No. 3 (Relationship of Agreement and Tariffs). At the conclusion of the July 17, 2000 evidentiary hearing, the parties set a briefing schedule which provided for the filing of simultaneous briefs on July 31, 2000, briefs on exceptions on August 11, 2000 and reply briefs on exceptions on August 14, 2000. The record was then marked "Heard and Taken".

III. SUMMARY OF STAFF'S POSITION

The remaining unresolved issues which Staff addressed in its testimony are the following: Issue No. 7 (Deposits, Billing and Payments), Issue No. 18 (Combinations of Unbundled Networks Generally), Issue No. 19 (Enhanced Extended Link), Issue No. 27

(Points of Interconnection) and Issue No. 32 (Trunk Blocking). Staff has attempted to delineate its position on a limited number of issues raised in this arbitration to provide some guidance for the Commission's benefit.

With respect to Issue No. 7, Staff reasons that an initial deposit is commercially acceptable but recommends that any initial deposit required should be in an amount that is based upon objective criteria, fairly applied, and related to the credit history of the CLEC. Staff points out that requiring a substantial deposit based upon Ameritech's delivery of a delinquency notice in any twelve month period is subject to error and abuse. Staff also recommended a notice period of 30 days commencing after the bill due date for notice of disputed amounts and payment of deposits. In the case of payment disputes (where no deposit is made), Staff recommends that at least a 15 day notice be given (after failure to pay deposit when due) prior to disconnection.

With respect to Issue 18 (Combinations of Unbundled Networks Generally), Staff recommends that Section 2.9.8 should read: "Unbundled Network Elements may not be connected to or combined with Ameritech Illinois access services.

With respect to Issue No. 19 (Enhanced Extended Link), Staff argues that the "practical method of self-certification" adopted by the FCC should be all that is required of a CLEC. In other words, Staff recommends that a CLEC should only be required to send a letter to the ILEC, indicating under what local usage option the requesting carrier seeks to qualify. Staff argues that Ameritech's requirement for Level 3 to pay applicable termination charges for special access converted to EELs is consistent with FCC rules. Any such termination penalties must, however, be reasonable and comply with the Uniform Commercial Code and common law. Similarly, Staff argues that Ameritech's requirement for Level 3 to pay applicable

service ordering charges and other administrative charges when it converts special access service to EELs is reasonable provided that the service ordering charges are themselves reasonable and also reflect the costs actually incurred by Ameritech with respect to such conversion.

With respect to Issue No. 27 (Points of Interconnection), Staff recommends that, in the interest of fostering competition, a requirement of a new POI at the OC-12 level is reasonable and would encourage deployment of efficient competitive fiber networks as the traffic volume grows.

With respect to Issue No. 32 (Trunk Blocking), Staff recommends that Ameritech's blocking objective of 1% for all trunk groups, measured during peak usage, should be adopted because it is consistent with the standards stated in the Administrative Code.

IV. ARGUMENTS

Issue No. 7: Deposits, Billing and Payments.

Deposits

Level 3 argues it should not be required to provide to each SBC-affiliated ILEC an initial cash deposit as a precondition for Ameritech's furnishing of resale services or Unbundled network Elements ("UNEs"). Level 3 opposes the payment of deposits. Level 3 proposes to delete the entire deposits section of the draft Interconnection Agreement. Joint Unresolved Issues Matrix at 2. In the case of billing disputes, Level 3 requests that, if deposits are required, the Non-Paying Party (as defined in Section 8.4 of the General Terms and Conditions) should have 60 days following the disputed bill due date to give notice of billing disputes and to deposit disputed amounts. Level 3 also argues that

Ameritech's position is inconsistent with the 60-day notice period for Dispute resolution set forth in Section 10.12 of the General Terms and Conditions. Finally, Level 3 requests that a notice be given 30 days after a bill due date prior to disconnection under Sections 9.2 and 9.6 of the General Terms and Conditions

Ameritech argues that its proposed language, which requires any CLEC that has not yet established a minimum of 12 consecutive months of good credit history with Ameritech to make an initial cash deposit, is both fair and nondiscriminatory to all CLECs. Ameritech insists that a deposit is necessary with respect to any bona fide dispute prior to the bill due date particularly if and when a CLEC has not established a credit history with Ameritech. Ameritech has demanded payment of a "deposit ranging from \$17,000 to upwards of two to four months of projected average monthly billings."¹ As clarified at the evidentiary hearings, Ameritech's language applicable to Illinois CLECs requires a deposit ranging from 2 to 4 months of projected average monthly billings. Tr. At 554. Also, Ameritech prefers that notice be provided prior to the bill due date contrary to Level 3's suggested 60-day notice period commencing on the bill due date.

Staff witness Omoniyi testified that although both parties offered reasonable arguments, Ameritech's position, with respect to requesting deposits, as enumerated in various testimonies, had been formed by two historical antecedents. ICC Staff EX. 1.0 at 8. Mr. Omoniyi first noted that Ameritech had incurred financial loss as a result of numerous CLECs bankruptcies. He also noted that Ameritech had written off substantial bad debts from CLECs that were still operating.²

¹ See, Level 3 Communications' Petition for Arbitration, p.14, filed on May 8, 2000.

² See Ameritech Illinois' Response to Level 3's Petition for Arbitration, pp. 14-7, filed on June 5, 2000.

Mr. Omoniyi testified that, assuming *arguendo*, these occurrences did not occur, it was still contractually acceptable and reasonable to demand deposits. ICC Staff EX. 1.0 at 8. Further, he averred that a provision which requires payment of a deposit should not itself be viewed as onerous or burdensome. Rather, the amount of the deposit should be analyzed to determine if it is onerous or burdensome. *Id.*

Mr. Omoniyi also testified that Level 3 was apparently not a credit risk or in danger of bankruptcy, based on the information provided by Level 3, which indicated that Level 3 has substantial financial resources of about \$8.6 billion.³ Mr. Omoniyi concluded in his verified statement that Level 3 should not be exempted from paying an initial deposit because it was neither a credit risk nor in danger of bankruptcy. ICC Staff Ex. 1.0 at 9.

He noted, however, that Level 3 offered two arguments against the deposits. First, it claimed it has “approximately \$8.6 billion” of funds available to it and secondly, Ameritech’s demand for a deposit could become a barrier for small carriers from providing services. In Staff’s opinion, the first argument indicates that Level 3 is supposedly financially capable to pay Ameritech’s bills while the second argument appears not to be germane to the issues in this particular arbitration. Mr. Omoniyi concluded that Ameritech’s demand for a deposit would need to be examined based upon a standard of reasonableness and whether the imposition of an initial deposit would be onerous and/or a barrier to competition.

Staff avers the issue is whether the payment of an initial deposit, which may range from two to four months of projected average monthly billings, is reasonable and that the decision of whether the deposit should be two months, three months or four months should

be made based upon objective criteria, fairly applied, and related to the credit history of the CLEC. See, Tr. at 567-570.

Based upon information obtained at the evidentiary hearings, Staff is of the opinion that Ameritech's proposed definition of "good credit history" as the absence of a CLEC's receipt of one or more delinquency notices in a consecutive 12 month period, while arguably objective, is subject to error and abuse. Tr. at 573-567. Consequently, if that definition or a similar definition is to be adopted, it should be modified to protect a CLEC from delinquency notices sent by Ameritech in error, or for de minimis defaults. Further, delinquency notices sent with respect to disputed amounts (that are deposited in escrow) should be excluded from the definition.

At the time of the filing of its verified statement, Staff did not have a discernible projection of Level 3's "average monthly billings" from either Ameritech or Level 3. Staff noted that if additional facts were to reveal that Level 3's projected billing, and therefore, the projected required deposits, would be, for example, in the range of \$xxxxxx or more, this large deposit might not be appropriate and would be burdensome.

During the evidentiary hearings, evidence submitted regarding the range of possible deposits was contradictory which prevents Staff from making a recommendation supported by the evidence. Therefore, Staff must defer to the hearing Examiner and the Commission to resolve the question of whether the amount of the initial deposit would be unreasonable and a potential barrier to competition.

Billing Disputes And Disconnection

³ See Level 3's Statement of William P. Hunt, III, pp. 17-8, filed on May 31, 2000.

Level 3 argues it should not be required to provide notice of any billing disputes prior to the bill due date. Joint Unresolved Issues Matrix at 2. Level 3 avers that the Parties should have at least thirty (30) days from the bill due date to produce the detailed information required by Ameritech in Section 10.4.1. Id. Level 3 argues it should have at least thirty (30) days from Ameritech's notice of unpaid amounts to place funds in escrow and perform the other actions required by Section 9.3. Id.

Level 3 also argues that Ameritech should not be permitted to refuse to accept new orders or to complete pending orders, increase existing deposits and disconnect service if Level 3 does not pay or deposit into escrow disputed amounts by the bill due date and within five (5) days of a written demand as required by Section 9.5. Id. Finally, Level 3 argues that it should be provided at least sixty (60) days from the bill due date to remit unpaid charges before service is disconnected to customers and other adverse actions are taken by Ameritech.

Ameritech prefers a shorter duration and specifically proposes that the parties provide notice of any billing disputes in order to encourage informal resolution of such issues. Ameritech also wants any deposits to be paid prior to the bill due date.⁴

Staff witness Omoniyi recommended the Commission mandate a notice period of 30 days commencing after the bill due date for notice of disputed amounts and payment of deposits into an escrow account to cover the disputed amounts. ICC Staff Ex. 1.0 at 10. In the case of payment disputes (where no escrow deposit is made), Mr. Omoniyi also recommended that at least a 15 day notice be given (after failure to pay deposit when due) prior to disconnection. Id.

Mr. Omoniyi testified that in some circumstances, disputed amounts may be known prior to the due date but typically, billing disputes do not arise until after the party is billed. *Id.* at 10-11. According to the billing procedures in most commercial transactions, bills are usually disputed within 10 to 15 business days after the invoice is received. In considering mailing time, an opportunity to respond and the depositing of funds, Staff believed it was appropriate that the Non-Paying Party have 30 days after the bill due date to give notice and deposit the disputed amounts. The evidentiary hearings provided clarification that the “bill due date” will be 30 days after the invoice has been sent. Staff recognizes that Staff’s recommendation allows 60 days after the invoice is sent (or 30 days after it is due) for disputed amounts to be deposited into escrow. Nevertheless, Staff maintains that in this situation, where disputed amounts are deposited as a prerequisite to continued negotiation and investigation of disputes, as well as for the reasons articulated in testimony⁵, Staff’s recommendation should be adopted.

Mr. Omoniyi testified that Ameritech’s position that bills should be disputed prior to their due dates without a specific period was too difficult to enforce, vague, ambiguous and could create frequent disagreement between the parties. *Id.* at 11. He averred that a more practical approach would be to mandate an adequate period of 30 days commencing after the bill due date to notify the other party of disputed amounts and to deposit such amounts in escrow. He further averred that the required deposit, no matter how large, would be in the amount of the disputed payment and therefore, but for the dispute, would have been available to be paid.

⁴ See Ameritech Illinois’ Response to Level 3’s Petition for Arbitration, p. 15, filed on June 5, 2000.

⁵ Staff articulated three reasons for additional time to deposit disputed funds, namely, mailing time,

Staff recommends that until such time as the Commission sets guidelines on deposits, including how deposits are to be held, with respect to these two parties, the Non-Paying Party should be required to pay a deposit of disputed amounts and that any such deposit should be held separately in an interest-bearing account as set forth in Section 8.4 of the General Terms and Conditions. Finally, the balance in such account and the interest accrued should be returned to the Non-Paying Party (as defined in Section 8.4) promptly after resolution of the dispute.

With respect to disconnection notices, Mr. Omoniyi testified that it would be appropriate that at least 15 days notice be given prior to disconnection in the case of payment disputes (where no deposit was made when due). *Id.* at 11. If a deposit of disputed amounts is paid within 30 days after a bill due date, disconnection should not be an option and the parties would be protected until the dispute is resolved. Also, non-payment disputes would not be subject to disconnection. Mr. Omoniyi testified that the 15-day's notice should apply only to payment disputes where no deposit is made. Staff's recommendation is predicated on the principle that it is in the public interest to avoid service disconnection if issues can be resolved within a reasonable period.

Issue No. 18: Combinations of Unbundled Network Elements Generally.

Level 3 argued initially that there should be no restrictions on the use of UNEs at all and that Section 2.9.8 should be deleted in its entirety. Level 3 subsequently accepted Staff's position that Section 2.9.8 should read: "Unbundled Network Elements may not be connected to or combined with Ameritech Illinois access services. Joint Unresolved Issues

opportunity to respond and the depositing of funds.

Matrix at 4.

Ameritech disagrees, however, and maintains that Section 2.9.8 should include the full language proposed which prohibits UNEs from being combined with Ameritech access services or other Ameritech tariffed services, other than tariffed collocation services.

Staff witness Clausen opined that Level 3 may have taken its initial position based on FCC rule 51.309(a) which states 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.”⁶ ICC Staff Ex. 2.0 at 3. However, Staff disagreed with Level 3’s interpretation of the FCC rule.

Mr. Clausen noted that the FCC, in its *Supplemental Order*, placed restrictions on the use of UNEs. *Id.* In particular, the FCC imposed an interim constraint on using UNEs solely to provide exchange access service.⁷ Mr. Clausen testified that this interim period was extended until the FCC issues its Fourth FNPRM in CC 96-98, which is estimated to occur early next year.⁸ ICC Staff Ex. 2.0 at 3. The *Supplemental Order*, as extended, shows that there are restrictions in place that govern the use of UNEs and thus, Level 3’s position is incorrect. Mr. Clausen averred that striking the entire section 2.9.8 would, therefore, be based upon an inaccurate characterization of existing law. *Id.*

Mr. Clausen reasoned, in his verified statement, that the proposed deletion of Section 2.9.8 was so important to Level 3 because Level 3 is required to pay access

⁶ 47 C.F.R. § 51.309(a)

⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999) (“*Supplemental Order*”).

charges to the local exchange carrier (LEC) for the termination and origination of InterLATA traffic. *Id.* at 4. He noted that if the IXCs can purchase UNEs and use them as a substitute for exchange access service, they effectively avoid paying access charges. Mr. Clausen further noted that this potential to avoid access charges was the reason the FCC prohibited the use of UNEs solely for the provision of exchange access services and concluded that the controversy over section 2.9.8 of the Appendix UNE was, in reality, just a pricing issue. Nevertheless, since Level 3 has accepted Staff's recommendation, avoidance of access charges is no longer at issue in this proceeding.

Mr. Clausen also testified that Ameritech was not required to combine UNEs and tariffed services for Level 3 and that there was no FCC requirement that an ILEC must combine UNEs with tariffed services for the benefit of a CLEC⁹. However, he noted that pursuant to FCC Rule 51.315(b), which was upheld by the Supreme Court, ILECs are prohibited from separating requested *network elements* that the ILEC "currently combines" in its network.¹⁰

Finally, Mr. Clausen testified that Level 3 was not prohibited from combining UNEs and tariffed services generally and noted that the FCC prohibited CLECs from combining UNEs with tariffed special access services. He noted that it does not follow automatically that combinations of UNEs and other tariffed services are prohibited in general. Mr. Clausen referred to the FCC's *Supplemental Order Clarification* wherein it stated that "...the co-mingling determinations that we make in this order do not prejudice any final

⁸ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 (rel. June 2, 2000) ("*Supplemental Order Clarification*" at ¶ 8.

⁹ In Docket 96-0486/96-0569 Consolidated, the Commission did require certain combinations of *network elements*. See also, Iowa Utilities Board v. FCC, Docket No. 96-3321, Slip Opinion (8th Cir. July 18, 2000)

resolution on whether unbundled network elements may be combined with tariffed services.”¹¹ Allowing Ameritech to prohibit a CLEC from combining UNEs and other tariffed services in general is not appropriate at this time.

Therefore, in order to accurately reflect current legal requirements, (but subject to any future FCC action), Staff witness Clausen recommended that the second part of the sentence in Section 2.9.8 should be stricken. In other words, Section 2.9.8 should read “Unbundled Network Elements may not be connected to or combined with [Ameritech Illinois] access services.” Finally, Staff noted that its recommendation of this revision to Section 2.9.8 should not be construed as to prevent the combination of UNEs with other tariffed service offerings.

Issue 19: Enhanced Extended Loops.

Level 3 initially took the position that ILECs have a general obligation to provide unbundled access to existing combinations of loops, transport and multiplexing, commonly referred to as EELs. Based upon the absence of this position on the most recent Joint Issues matrix, Level 3 may have conceded this sub-issue of Issue 19. Joint Unresolved Issues Matrix at 4. With respect to the issues surrounding conversion of special access to EELs, Level 3 argues that it should be able to meet the certification requirement for converting special access to a loop-transport UNE combination by providing a letter that identifies the FCC option under which conversion is sought. Joint Unresolved Issues Matrix at 4. In making such certifications, Level 3 should be able to treat ISP-bound traffic

¹⁰ 47 C.F.R. § 51.315(b)

¹¹ Supplemental Order Clarification at ¶ 28.

as local exchange service. Level 3 also opposes provisions requiring it to pay the full non-recurring charge for each network element of which the EEL is comprised.

Ameritech argues that when converting special access to a loop-transport UNE combination, Level 3 should use Ameritech's standard certification form. Ameritech's standard form of certification requires information to be submitted to Ameritech which is in addition to the FCC certification requirements. According to Ameritech witness Michael D. Silver, this additional information is required in order to allow Ameritech to determine if Ameritech should question the information in the certification and require an audit. Tr. at 580-581. Ameritech further argues that in making such certifications, Level 3 should not be allowed to treat ISP-bound traffic as local exchange service.

Staff witness Clausen testified that Level 3 relied on FCC rule 51.315(b) to justify its position that ILECs must provide unbundled access to existing EELS. ICC Staff Ex. 2.0 at 6. Specifically, Rule 51.315(b) states that ILECs may not separate requested network elements that the ILEC currently combines in its network.¹² He noted that Level 3 witness William P. Hunt, III cites the FCC's First Report and Order in Docket No. CC 96-98 in which the FCC defined "currently combines" as "ordinarily combined within [the ILEC] network, in the manner in which they are typically combined".¹³

Mr. Clausen noted that there have been recent developments since that First Report and Order. Specifically, he noted that in the *UNE Remand Order* the FCC declined to reaffirm its prior definition of "currently combines" since this matter was then pending

¹² 47 C.F.R. § 51.315(b)

¹³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, 15648 ("*First Report and Order*") at ¶ 296.

before the Eighth Circuit.¹⁴ Recently, the Eighth Circuit ruled that the additional combination requirements rule (which is contained in FCC rules 51.315(c)-(f)) should remain vacated but did not address the FCC definition of “currently combines”¹⁵. Moreover, the FCC stated specifically that it does not want to define the EEL as a separate network element.¹⁶ The FCC feared that IXCs would be able to bypass access charges before the reform of universal service and access charges was fully implemented.

Mr. Clausen testified that there are circumstances under which Level 3 may order an EEL. First, he noted that Ameritech is required to offer unbundled local switching (ULS) in all of its markets, unless it chooses to offer the EEL as a substitute to ULS in the top 50 metropolitan statistical areas (MSAs).¹⁷ Since Ameritech currently chooses to offer ULS in all markets it is not required to offer unbundled access to EELs at this time. If Ameritech would withdraw the ULS offering in one of the top 50 MSAs, Level 3 would be permitted to order the EEL as an alternative.

Second, Mr. Clausen noted that in certain other specific circumstances, the ILEC is obligated to offer the EEL, since it may not separate loop and transport elements that are currently combined and purchased through special access tariffs. He concluded that Level 3 is entitled to obtain such existing loop-transport combinations at UNE prices under those certain conditions.¹⁸

¹⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (“*UNE Remand Order*”) at ¶ 479 and ¶ 480.

¹⁵ *Iowa Utilities Board v. FCC*, Docket No. 96-3321, Slip Opinion (8th Cir. July 18, 2000). According to the Court, the additional combinations rule required ILECs to combine their own network elements in new ways or with elements provided by the requesting carriers.

¹⁶ *UNE Remand Order* at ¶ 480.

¹⁷ *Id.* at ¶ 278-290.

¹⁸ *Id.* at ¶ 480.

In addressing the issue of conditions attached to the conversion of special access to EELs, Mr. Clausen testified that requesting carriers may not convert special access services to combinations of unbundled loops and transport network elements unless they use these combinations to provide a significant amount of local exchange service to a particular customer. The carriers can then offer other services, such as exchange access over those same lines.¹⁹

Mr. Clausen also noted that the FCC specified what constitutes a significant amount of local exchange service. Specifically, the FCC, in its Supplemental Order on Clarification, set forth three options the requesting carrier can choose to certify that it is providing a significant amount of local service to a particular customer.²⁰

Staff witness Clausen concluded that Ameritech's definition of significant local traffic did conform with the FCC's mandate and noted that in its Terms and Conditions, Appendix UNE, Ameritech had specified a significant amount of local traffic similar to the FCC's descriptions. In light of the recent Supplemental Order Clarification, in his supplemental verified statement, Ameritech witness Michael D. Silver agreed with Staff witness Clausen to replace the existing wording in Appendix UNE with a reference to the criteria established by the FCC.²¹ Staff witness Clausen agreed with Mr. Silver's recommendation to replace Ameritech's current language with the FCC's specifications contained in the Supplemental Order Clarification.

Staff witness Clausen testified that Level 3 should not be prohibited from counting ISP-bound traffic towards the local traffic requirement. He noted that although the FCC

¹⁹ *Supplemental Order* at ¶ 5.

²⁰ *Supplemental Order Clarification* at ¶ 22.

maintains jurisdiction over calls to the Internet, the Commission ruled in Docket 00-0027 that for purposes of complying with the FCC's directive in the Supplemental Order, a requesting carrier should be allowed to count ISP bound traffic as local exchange service by self certifying that it will be providing a significant level of local exchange service through an EEL.²²

Mr. Clausen also testified that the FCC did not specify the precise form that a self certification must take but that the FCC stated that a letter sent to the ILEC by a requesting carrier, indicating under what local usage option the requesting carrier seeks to qualify, would be “a practical method of certification”.²³

With respect to the issue of whether Ameritech could conduct audits to ensure compliance with respect to the local traffic requirements, Mr. Clausen testified that the FCC stated ILECs could conduct limited audits, but that an incumbent carrier “may not require a requesting carrier to submit to an audit prior to provisioning combinations of unbundled loop and transport network elements”.²⁴

Mr. Clausen also noted that Ameritech's requirement for Level 3 to pay applicable termination charges for special access that are converted to EELs would be consistent with FCC rules. Specifically, the FCC's UNE Remand Order states that appropriate termination penalties required under volume or term contracts may be applied when converting special access to EELs. Termination penalties must, however, be reasonable and comply with the Uniform Commercial Code and common law.

²¹ Supplemental Verified Statement of Michael D. Silver at 5.

²² Arbitration Decision in 00-0027 at 15.

²³ *Supplemental Order Clarification* at ¶ 29.

²⁴ *Id.* at ¶ 31.

Finally, Mr. Clausen noted that Ameritech's requirement for Level 3 to pay applicable service ordering charges and other administrative charges when it converts special access service to EELs would be reasonable. He averred, however, that the service ordering charges need to be reasonable and need to reflect the costs incurred by Ameritech resulting from the conversion. He further averred that the FCC suggests using the Access Service Request process to deploy unbundled loop-transport combinations will allow requesting carriers to avoid material provisioning delays and unnecessary costs to integrate unbundled loop-transport combinations into their networks. Since only the billing information or other administrative information associated with the circuit would change, the conversion should not require the special access circuit to be disconnected and re-connected.²⁵

Issue No. 27: Points of Interconnection

Level 3 argues that, initially, it should be permitted to establish a single point of interconnection ("POI") in each local access and transport area (LATA) in which Level 3 provides local service. Level 3 agrees that, once the traffic exchanged between Level 3 and Ameritech with respect to an Ameritech access tandem and subtending offices meets or exceeds an OC-12 level, an additional POI should be established at the Ameritech access tandem.

Ameritech initially argued that Level 3 should be required to establish a single POI to each tandem in any LATA in which Level 3 provides local exchange service. At the evidentiary hearings, Ameritech suggested that one POI be established initially in a LATA and that additional POIs be established at any Ameritech access tandem once the traffic

²⁵ Id. at ¶ 30.

exchanged between Level 3 and Ameritech with respect to that Ameritech access tandem and subtending end offices meets or exceeds a DS-3 level.

Based on the foregoing, it appears that the dispute centers on the level of traffic existing at an Ameritech access tandem and subtending end offices which would trigger the requirement of an additional POI. Further, based on an on the record data request tendered by Staff to Level 3, the following exhibit was prepared to illustrate the difference in the call volume between an OC-12 and a DS-3:

LEVEL 3 RESPONSE TO RECORD REQUEST NO. 1

Provided below is a table showing the number of simultaneous voice grade (DS0) calls that can be transported over a given facility.

Facility	DS0 (VG Calls)
DS0	1
DS1	24
DS3	672
OC3	2016
OC12	8064
OC48	32256
OC192	129024

The above table reflects that the difference in voice grade call volume between a DS-3 level and an OC-12 level is 7392 voice grade calls.

During testimony it was determined that Level 3 currently has in excess of xxxxx trunks with a forecast for xxxxx trunks within a year. If there is enough traffic volume requiring an OC-12 to a given tandem, this would be a small percentage of Level 3's total volume needs relative to its forecast. Currently, the existing POI is an OC-48 (4 increments of OC-12 capacity). Staff therefore believes that, in the interest of fostering competition, a

requirement of a new POI at the OC-12 level is reasonable and would also encourage deployment of efficient competitive fiber networks as the traffic volume grows.

Based on the foregoing, Staff recommends the position of Level 3 be adopted by the Hearing Examiner and the Commission in the final Order.

Issue No.32: Trunk Blocking

Level 3 has requested a blocking objective of 0.05% for all trunk groups measured during peak usage. Level 3 states that, in order to benefit from its advanced network architecture, Ameritech Illinois should be required to provide this higher than normal level of service. Level 3 Petition for Arbitration at 42.

Ameritech proposes a blocking objective of 1% for all trunk groups measured during peak usage. Ameritech Illinois states that it utilizes the industry standard blocking criteria, which is that 99 calls out of 100 will be successfully completed in the busy hour. Ameritech further claims that the cost to rebuild the network to the Level 3's specifications would be enormous. Ameritech Illinois Ex. 2.0 (Mindell) at 22-25.

Staff witness Green concurs with Ameritech Illinois' position on Issue 32. Mr. Green noted that the telecommunications industry has for decades engineered its trunking facilities at a P.01 and P.02 level of service which equates to 1 or 2 calls in 100 being blocked in the busy hour. This standard is further reflected in the 83 Illinois Administrative Code 730 standards of service for telephone utilities at Section 730.520.

Mr. Green also disagreed that the higher standards requested by Level 3 should be required of Ameritech Illinois.. He testified that Ameritech Illinois should only be required to provide the standards stated in the Administrative Code. He noted that to require

Ameritech Illinois to provide such higher level of service would force it to either enhance the current network that it provides to itself and to other CLECs or to build a separate network just for Level 3. He further noted that both solutions would require Ameritech Illinois to incur substantial costs with little or no perceived benefit to telecommunication services in Illinois.

Based on the foregoing, Staff recommends the position of Ameritech be adopted by the Hearing Examiner and the Commission in the final Order.

V. CONCLUSION

In conclusion, Staff recommends the Commission enter an Order consistent with the arguments set forth herein.

Respectfully submitted:

Staff of the Illinois Commerce Commission

BY: _____
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