

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Level 3 Communications, Inc.** :  
 :  
**Petition for Arbitration Pursuant to** : **00-0332**  
**Section 252 (b) of the Telecommunications** :  
**Act of 1996 to Establish an Interconnection** :  
**Agreement with Illinois Bell Telephone** :  
**Company d/b/a Ameritech Illinois.** :

**HEARING EXAMINERS**  
**PROPOSED ARBITRATION DECISION**

By the Commission:

**I. JURISDICTIONAL STATEMENT**

When the parties are unable to reach accord on an interconnection agreement through negotiations, either party may ask a state commission to arbitrate any open issues. Section 252 (b) of the federal Telecommunications Act of 1996 (“the Act”) sets out the procedures for the arbitration of agreements between incumbent local exchange carriers and other telecommunications carriers requesting interconnection. It prescribes the duties of the petitioning party, provides an opportunity for the non-petitioning party to respond, and includes the time frames for each action. Section 252 (b) (4) limits a State commission’s consideration to the issues set forth in the petition and the response, and further provides that a State Commission will resolve each issue by imposing appropriate conditions upon the parties to the agreement as required to implement subsection (c), i.e., Standards for Arbitration. Section 252 (d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic charges and wholesale prices.

In resolving, by arbitration, any open issues and imposing conditions upon the parties to the agreement, a State Commission is required to apply the following Section 252 (c) standards:

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

- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

## II. BACKGROUND AND PROCEDURAL HISTORY:

On November 30, 1999, Level 3 Communications, LLC (“Level 3”) and Illinois Bell Telephone Company d/b/a Ameritech Illinois (“Ameritech Illinois” or “AI”), a subsidiary of SBC Communications, Inc., began negotiations for an interconnection agreement pursuant to Section 252 of the Act.

The instant proceeding arises out of a 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, which was filed by Level 3 on May 8, 2000. This pleading identified 37 open issues which the parties were unable to resolve through their negotiations and also set out their respective positions on each of those issues. On June 5, 2000, Ameritech Illinois filed a response to the petition for arbitration.

Pursuant to proper notice, a pre-hearing conference was held on May 16, 2000, before duly authorized Hearing Examiners at the Commission’s offices in Chicago, Illinois. Appearances were entered by respective counsel on behalf of Level 3, Ameritech Illinois and the Staff of the Commission (“Staff”). On this date a schedule was set for further filings and for the evidentiary hearing.

At the evidentiary hearings held on July 14 and 17, 2000, there were admitted into evidence the verified statements of Andrea Gavalas, Timothy Gates, and William Hunt, III, on behalf of Level 3; Robert Harris, Craig Mindell, Eric Panfil, Timothy Oyer, Debra Aron, and Michel Silver on behalf of Ameritech Illinois; and Tortsen Clausen, Bud Green, and Olusanjo Omoniyi on behalf of Staff. At the close of cross-examination of the witnesses on July 17, 2000, the record was marked “Heard and Taken.”

As the parties continued to negotiate throughout the pendency of this proceeding, several issues were resolved through their efforts. Post-hearing Briefs were filed by Level 3, Ameritech Illinois, and Staff on July 31, 2000. At the time of these filings, only 20 out of the original 37 issues, remained for arbitration.

On August 7, 2000, the Hearing Examiners’ Proposed Arbitration Decision was served on the parties.

## III. ISSUES SUBJECT TO ARBITRATION

Level 3 initially sought arbitration of 37 issues. During the pendency of this proceeding, Level 3 and Ameritech Illinois settled issues 3, 4, 8, 9, 11-13, 15-17, 21, 26, 28-30, 35-37. By our count, the parties briefs reflect that there are 20 issues which remain

to be resolved through arbitration. We review each of these in order and as numbered by the parties.

**1. Reciprocal Compensation**

(a) Definition of "Local Calls

Level 3's Position

ISP traffic is local for the purposes of reciprocal compensation. The concept of reciprocal traffic was to compensate carriers for terminating the local traffic of other carriers. ISP traffic falls into that carrier and is indistinguishable from vocal traffic for that purpose. The matter has previously been considered by this Commission and the Seventh Circuit Federal Court upheld the decision that it was local.

The FCC issued an order declaring ISP traffic as interstate but that ruling was overturned by the D.C. Circuit Court. Of the State Commissions that have ruled on this issue 33 or 37 have found this to be subject to reciprocal compensation. That Level 3 agrees to be bound by an findings of a generic docket on reciprocal compensation.

There exists no real difference between vocal and ISP calls, all the LEC's use the same facilities to transport and terminate calls. The methods and the suggestion that ISP calls be separated from vocal call are impractical.

Ameritech's Position

AI's proposal excludes ISP-bound traffic from the definition of local calls. Local calls must actually originate and terminate with parties physically located within the same local calling area. Reciprocal compensation is only applicable for the voice portion of local calls. Internet calls are not subject to reciprocal compensation under this agreement or the Act.

Analysis and Conclusion:

Most recently this issue was visited at this Commission in docket 00-0027, In the Matter of Focal. The Commission determined after considering the same issues that ISP is local for the purposes of reciprocal compensation. In entering this order the Commission is aware that this issue to be considered later as part of a generic docket. Further, that there is a possible changing attitude regarding the Internet and its rapid growth. However, there is not anything on this record that would change the Commission's opinion at time.

(b) Eligibility for Tandem Compensation

Level 3's Position

Level 3 proposes language allowing any one of its switching entities to qualify for tandem compensation if it meets the criteria regarding geographic coverage set forth in section 51.711 of the FCC's rules.

Ameritech's Position

Level 3 should not receive the rate for either tandem or transport elements of termination unless and until the following conditions are satisfied: (i) Level 3 proves that its switch serves a geographic area comparable to that served by Ameritech Illinois' tandem switch and (ii) Level 3 proves that its switch performs the same functions on behalf of Ameritech Illinois as Ameritech Illinois' tandem performs. To satisfy the second of those two conditions, Level 3 must show that (a) it gives Ameritech Illinois the option to connect directly to Level 3's end office function and thus avoid payment of the tandem rate (perhaps also the transport rate) if it so chooses, and (b) it defines its switches and offers interconnection on a nondiscriminatory basis for both the termination of local traffic by other LEC's and the termination of toll traffic by long distance interexchange carrier.

Analysis and Conclusion:

This issue has not come to fruition as yet. The decision of functionality rests as stated in the Focal decision whether this Commission is desirous of setting disparate reciprocal compensation rates for the transport and termination of traffic depending upon whether the traffic is terminated in an end office switch or a tandem switch. This is a matter that is best left for the generic docket to decide that issue. Only because we are not at that point where Level 3 is prepared to seek charges can this matter be deferred to the Commission.

**2. Deployment of NXX Codes**

Level 3's Position

Level 3 would delete Appendices FX and FGA and related language included elsewhere in the contract that require it to pay AI for the use of unspecified facilities at unidentified "tariffed rates" for FX, FX-like, FGA and FGA-like services. Level 3 claims that AI has not defined "FX-like" or "FGA-like" services nor has it demonstrated that any additional compensation should be paid to it based on customer location. It opposes the proposal that Level 3 pay AI some undefined amount for the facilities and services it ostensibly provides in getting calls to virtual NXX customers.

Level 3 also takes issue with AI's Section 2.7 of the Appendix Reciprocal Compensation, which specifies that Level 3 cannot receive reciprocal compensation where its customer is physically located outside the local calling area of the calling party.

### Ameritech Illinois' Position

AI should not have to provide free interexchange transport and switching to subsidize Level 3's competing Foreign Exchange ("FX") services. It proposes contract language that would require each party to be compensated for the portion of the FX service it actually provides. Level 3 should not be permitted to charge reciprocal compensation on FX calls because such calls are, by definition, not local exchange calls. Level 3 also must have some revenue-sharing arrangement in place for FGA service and it has offered no alternative to the Appendix FGA.

### Discussion

NXX codes (the first three digits of a seven-digit number) are assigned to specific geographic areas and carriers' billing systems will classify a call as toll or local by comparing the caller's NXX with the terminating party's NXX. Foreign exchange service ("FX") allows a customer physically located in one exchange to have a telephone number with an NXX code that is associated with a different exchange in a different geographic area. In giving a customer a number with an NXX code from a distant geographic area, FX service allows callers from that distant area to reach the FX customer for the price of a local call. To a billing system, such a call appears to be within a single NXX area, while in reality, it travels a distance which would normally require toll charges. FX service is attractive to customers, such as ISPs, that want persons located in various geographic locations to reach them for the price of a local call.

Both AI and Level 3 provide FX services. AI asserts that the need for the Appendix FX and specific inter-carrier compensation arrangements with respect to FX services arises from the manner in which Level 3 is able to obtain an undue financial advantage at its expense through use of this service. AI explains that when AI provides an FX service, its FX customer pays AI for the transport and switching costs incurred in carrying the call from the caller's rate center to the FX customer's physical location. In contrast, when Level 3 provides FX service, AI provides the very same interexchange transport and switching to carry the call from the caller's rate center to Level 3's point of interconnection. Unlike the AI FX customer, however, neither Level 3 nor its customer pays AI anything for use of AI's network. As a result, AI maintains, Level 3 enjoys a "free ride" on AI's interexchange network which gives it an unearned cost advantage because Level 3 can offer its customers a rate with no interexchange transport or switching costs whereas AI must recover those costs from its FX customer. Even more egregiously, AI contends, Level 3 charges AI reciprocal compensation on calls to Level 3's FX customers, on the theory that these are "local" calls.

AI indicates, for example, that a call from an AI customer in Elgin to downtown Chicago travels a distance of some 40 miles and would normally constitute an intraLata toll

call. If, however, the recipient of the call in Chicago is an FX customer assigned to the same NXX code as the originating caller in Elgin, the originating Elgin caller would only be billed for a local call because AI's billing systems recognize an intra-NXX call as a local call.

AI maintains that allowing a CLEC this "free ride" distorts all of its incentives to invest and undermines the integrity of the competitive process. AI also contends that nothing in its proposals prevents Level 3 from providing FX service to whomever it wants. It would simply require Level 3 to pay something for its use of AI's network in providing this service. AI's witness explained that, if CLECs do not have to compensate AI for the use of its network in providing FX services, Level 3 will have little or no incentive to construct its own transport facilities. So too, AI maintains, other CLECs competing with Level 3 in the provision of FX services, would face a competitive disadvantage vis-a-vis Level 3 unless they also took advantage of the free ride on AI's network instead of constructing their own facilities. As such, facilities-based competition would be further reduced.

AI further points out that at least two state commissions have agreed with AI's position in their recent decisions and cites to relevant language on the issue set out by the Maine Public Service Commission, on June 30, 2000 and the California Public Utility Commission on September 8, 1999; the Public Utility Commission of Texas on July 13, 2000. Each of these state commissions agreed, in essence, that reasonable interexchange intercarrier compensation is warranted for the routing of FX traffic.

Level 3 argues that AI's position that virtual NXX calls are actually toll calls was rejected by this Commission in the Focal arbitration. Also, according to Level 3, a Michigan Arbitration Panel concluded that virtual NXX calls are "local" and rejected provisions proposed by Ameritech to impose additional transport costs on CLECs.

Level 3 contends that Ameritech Illinois is only responsible to carry a virtual NXX call to the Level 3 POI - just as it does for every other local call. Once AI delivers the call to the POI, it is Level 3's responsibility to terminate the call to wherever the customer may be physically located, such that there is no additional transport based upon the customer's location. As such, Level 3 sees no difference between physical local calls and virtual or FX calls.

Level 3 contends that putting the focus on the location of the called party is meaningless to a determination of how much responsibility each carrier actually bears in transporting a given call. Level 3 claims that customer location will not cause AI's costs or function to differ in the context of a call placed by an AI customer. Given that it always has to deliver a call originating from a particular area to the same point - AI should be economically indifferent as to whether the call terminates to a physical or to a virtual NXX.

Level 3 maintains that AI's costs are the same whether the call terminates to a virtual or physical NXX customer served by Level 3. When one looks at how calls are

always delivered to the POI irrespective of customer location, there is no “free ride” according to Level 3.

Level 3 opposes AI’s efforts to restrict or inhibit the assignment of NXX codes by referring to customers’ physical locations. It claims that AI’s proposal would permit AI to inappropriately avoid payment of reciprocal compensation to Level 3 by reclassifying these calls as toll and preventing its own customers from placing local calls.

According to Level 3, if AI succeeds in impairing Level 3 or any other CLEC from providing virtual NXXs by actually making CLECs pay AI for such calls. Not only would AI customers no longer be able to reach their ISP’s by dialing a local number but, because calls to the ISP will effectively be re-classified as toll calls. AI would no longer be obligated to pay the reciprocal compensation associated with local calls.

### Analysis and Conclusion

We note that AI’s proposal in this case is different from that presented in the Focal arbitration. Our finding in Focal was based on the question as to whether Focal should be required to establish a POI with 15 miles of the rate center for any NXX code that it uses to provide FX service and our consideration of the Focal’s evidence as to the number of POI’s being established. Here, AI is asserting that the lack of POI’s require it to carry a call long distances with no compensation for the haul.

Both the record and the time constraints that drive these proceedings mitigate against any meaningful review and analysis of the intercarrier compensation portion of the dispute. While we see some merit to AI’s position, the language it proposes is not detailed or developed enough or supported by the type of evidence necessary to gain our confidence. To the extent that AI did not get all the evidence in discovery that it required to make its showing, it could have and should have brought the matter to our attention. Moreover, while the premise AI offers may be meritorious to some degree, the particular methodology advanced does not show itself as the most reasonable for the task. Hence, we agree with Level 3 to the extent that AI’s proposal is ill-defined and cannot be included in this agreement.

The reciprocal compensation portion of the issue is a different matter. As we are told, the FCC’s regulations require reciprocal compensation only for the transport and termination of “local telecommunications traffic” which is defined as traffic “that originates and terminates within a local service area established by the state commission.” 47 C.F.R. 51.701 (a)-(b)(1). According to AI, FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as “virtual NXX” which Level 3 uses, or as “FX” which AI prefers, this service works a fiction. It allows a caller to believe and be billed for a local call when, in reality, such call is travelling to a distance that, absent this device, it would constitute a toll call. The virtual NXX or FX call is local only from the caller’s perspective and not from any other standpoint. There is no reasonable basis to suggest that calls

under this fiction can or should be considered local for reciprocal compensation. Moreover, we are not alone in this view. The Public Utility Commission of Texas recently determined that, to the extent that FX-type calls do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation. See, Docket No. 21982, July 13, 2000. All in all, the agreement should make clear that if an NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

Finally, with respect to the Appendix FGA, the only proposal on the table is that of AI, and Level 3 has not apprised us fully as to the specifics of its objections. Hence, on the understanding that the FCC requires such action, the AI language should be adopted.

3. **(Resolved)**
4. **(Resolved)**
5. **Charges for CLEC Name Changes**

Who should bear the costs for CLEC names changes to the records, systems and data bases if the CLEC changes its name during the course of the agreement?

Level 3's Position:

AI should not be able to charge Level 3 on an individual case basis for processing name changes. To the extent that Ameritech absorbs the cost of processing customer name changes as a cost of business in the retail context, Level 3 maintains that there is no principled reason for it to foist the costs of processing name changes on its wholesale customers.

Ameritech Illinois' Position:

AI incurs actual costs to implement a CLEC Change and it should have the right to charge appropriate non-recurring, cost-based rates with CLEC's, as is already covered by tariffs. More than just changing the master database may be involved. CLEC can require the changing of the individual customers to reflect the correct CLEC information. Why should AI be responsible for paying for changes occasioned by the actions of the CLEC. There is real cost involving in making all these changes and the burden should be on the party requesting the changes.

## Analysis and Conclusion

When a CLEC seeks to change its name there are costs associated with that name change. Ameritech contends that some of the costs are borne by the ILEC to change their records in their Operation Support Systems (“OSS”) and the costs are not part of OSS administration. (Ameritech brief at 6.) Level 3 asserts that Ameritech does name changes every day and its customers are not charged. That to hold a wholesale customer to a different standard, which happens to be its competitor is discriminatory.

The question is, “Are name changes merely the cost of doing business as asserted by Level 3 or are they a burden unfairly imposed on Ameritech?” Level 3 asserts that hundreds of customers a day required changes for which Ameritech renders this service without charge. The customers of the CLEC, therefore, should not be treated any different. Ameritech’s charge is based solely upon the fact that Level 3 is a wholesale customer. This argument is persuasive to the extent that Level 3 customers are entitled to the same service as Ameritech’s customers. The sheer number of accounts Ameritech changes should not matter. The argument that Level 3 causes the name change is no different than saying that the individual customers also cause the change. To that extent Ameritech should bear any costs of making changes to its master billing accounts of the CLEC’s.

Ameritech points out that at the direction of the CLEC it must update the accounts of each of the CLEC’s customers in the database to reflect the correct CLEC information. That service is not normally provided to other customers. Therefore, any additional services requested other than changing the master billing database should be paid by the requesting party.

### **6. Term of Agreement (GT&C 5.2)**

When should the instant agreement expire?

#### Level 3’s Position:

Level 3 would have the agreement expire after three (3) years.

A three-year term would provide certainty and cost savings. According to Level 3, requiring it to renegotiate all relevant terms of interconnection on intervals of less than three years, makes it difficult for the entity to effectuate a stable long-term plan for entry and development of operations in Illinois. It maintains that there is no need to throw out the entire contract after one year simply because changes in law or technology might occur within the next year or so.

Ameritech Illinois' Position:

AI would have the agreement expire after one (1) year.

A one-year term is appropriate given the frequent changes in technology and regulatory schemes. Ameritech Illinois maintains that it is reasonable to allow for shorter term interconnection agreements so that parties can keep pace with and renegotiate in light of changed market conditions. It points out that negotiation increases costs and uncertainty for both parties such that the incentive to renegotiate is minimal absent any changed market conditions. In the final analysis, Ameritech indicates that it is amenable to a two-year term.

Analysis and Conclusion

We believe it true that a company cannot implement its business plan efficiently if the contracts on which it relies expire within a short interval of time. We further recognize that there are significant costs to negotiating and/or arbitrating a new agreement in terms of time, money and human resources. On the other hand, the telecommunications field is changing rapidly such that contract provisions which are reasonable under the law and circumstances at one point in time may be rendered obsolete, ineffective or burdensome under the law and circumstances which develop at a later point in time.

Level 3 tells us that the undisputed intervening law clause of the contract, i.e., Section 21, provides that if a change in the law affects a provision in the contract, the Parties "shall" renegotiate the affected provision. Likewise, Level 3 maintains, changes in technology can be addressed through renegotiations and amendment. AI, however, raises the point that while the parties are entirely free to negotiate amendments to the agreement if there are changes in the market or technology, this is no guarantee that "both parties will be willing" to renegotiate. Only a shorter term will ensure that terms, that have become onerous or outdate due to market changes, are renegotiated.

In balancing all of these interests, we reject both the one year and the three year proposals. To be sure, Level 3 notes that in the Focal arbitration, the parties agreed to a three-year term with no need to arbitrate the issue. We observe, however, that the Focal Order only decided five issues whereas in this case there are 19 or 20 issues in dispute between the parties. Not only the vast number of open issues but also the type of issues we review here persuades us that a reasonable term for the instant agreement is two years.

**7. Deposits, Billing and Payments**

Should the CLEC be required to post a deposit at the onset of the agreement, absent a satisfactory credit history, and if so under what conditions, terms and amounts. Secondly, what method shall be employed to handle legitimate disputed amounts between the parties?

### Level 3's Position

Level 3 should not be required to provide to each Ameritech affiliated ILEC an initial cash deposit ranging from two to four months of projected average monthly billings as a precondition for Ameritech's furnishing of resale services or UNEs. It proposes to delete the entire deposit section because AI has not shown Level 3 to be a credit risk such that protection against nonpayment is needed.

Level 3 implies that if the section were modified to set out objective criteria, that could not be manipulated, to identify when a deposit would be required, it might agree to a deposit reference being in the Agreement.

### Ameritech Illinois' Position

CLEC's without a satisfactory credit history should be required to provide an initial deposit before obtaining resale services and UNEs. AI also maintains that CLEC's should provide notice of billing disputes before the bill due date.

According to AI, the Commission first must decide whether (as AI maintains) CLEC's without a satisfactory credit history should be required to make a deposit (which earns interest and will be returned if the CLEC pays its bills) before obtaining resale services or UNEs from AI. If the Commission agrees that a deposit is appropriate, it must decide whether AI's amount is proper. Finally, it must also resolve disagreements concerning details of the contract language that will excuse Level 3 (and other CLEC's) from the deposit requirement.

AI contends that it is common business practice to obtain a form of security when extending credit. AI claims that it is extending credit to a CLEC because its services or UNEs are provided before a bill is rendered and the CLEC is not obliged to pay the bill until 30 days after the bill is rendered.

### Staff's Position

Staff views an initial deposit to be commercially acceptable, but recommends that the amount of such deposit be based on objective criteria, fairly applied, and related to the credit history of the CLEC. According to Staff, requiring a substantial deposit based upon AI's delivery of a delinquency notice in a twelve-month period is subject to error and abuse. Staff recommends a notice period of 30 days to commence after the bill due date for notice of disputed amounts and payments of deposits. In instances of payment disputes (where no deposits is made), Staff would recommend that, at the least, a 15 day notice be given (after failure to pay deposit when due) prior to disconnection.

### Analysis and Conclusion:

It is common business practice for a party to protect its interest by requesting some type of security in the form of a deposit. The criteria for determining who is required to post

a deposit is not just the ability to pay but whether a party pays promptly. Other jurisdictions have determined that a deposit by a CLEC is appropriate where either there is no, inadequate or poor credit history. Ameritech suggests that a determination of whether deposit is required should be examined in relation to late payment notices. Ameritech asserts that a four-month deposit based upon projected billings is necessary to protect its interests. Level 3 asserts because of its good financial standing that it should not be required to post any deposit and that the agreement is too vague because it fails to define good credit history, further late notice may be sent out in error.

Ameritech wants written notice of billing disputes and what the basis for the dispute so that it may be resolved within a reasonable time. Level 3 claims that when a dispute arises it often takes more than the date the bill is due to determine what the actual disputed amount is.

It is a common practice in business to require a deposit for new clientele. However, that is usually based upon something other than merely lack of time of doing business, especially in the Utility Industry. When a deposit is required of a new customer it is generally because he has shown him/herself to be unreliable in the past or a poor credit risk based upon accepted business practices. Ameritech has failed to show that CLEC's pose any greater risk than does any other business customer at large. The amounts claimed as losses are meaningless unless they relate to overall charges or similar risks with other customers. They are merely dollar amounts and while they may constitute significant numbers do they represent 1% or 25% or 50% of billings of CLEC's. What percentage of business losses did Ameritech suffer during that period? It is hard ascertain from the testimony whether is an acute problem or just regular business occurrence. There is nothing in the record to indicate that CLEC's should be treated differently from any other business customer. Level 3 correctly points out in its argument (Level 3 brief at 52) that the terms of this agreement are different that Ameritech treats its own business customers.

The marriage of CLEC's and ILEC's is a governmental arrangement. It was contemplated that it was also a business arrangement. Care must be taken to insure that CLEC's are afforded an opportunity to enter and compete in the market. To the extent ILEC's may be placed at a disadvantage was contemplated by the Act. The method by which Ameritech determines the necessity for a deposit of its business is an adequate determiner for this agreement, as established retail local services tariff with a slight modification. It must also be recognized that CLEC charges will generally pose a larger exposure on the part of Ameritech than a regular business customer will. To add a measure of protection we tie the number of months of deposit to the number of months the CLEC is late in paying. If the CLEC is late in paying three times in 12-month period a deposit of two month's estimated billing, four late payments justify three months and five late payments or more four months deposit. This will protect Ameritech against CLEC's as it would against any of its other business customers. This Commission is not persuaded or dissuaded by the amount finances a CLEC has on hand. It is its willingness to part with it in a timely fashion, which establishes its credit history. Further, this will not act, as a bar to other CLEC's since the amount of potential deposit will be in relation to their size.

Level 3 claims that it will not have enough time to properly examine its bills and resolve disputes within the time set for payment of bills. That 30 days is adequate for payment of undisputed bills but a longer period is required for determining disputed amounts. Ameritech asserts that Level 3 will be able to delay payment for up to 90 days by claiming that it has a disputed a bill.

Although Level 3 claims to be unable to determine the extent of a dispute within 30 days it should be able determine that a dispute does exist within that time frame. It is not unduly burdensome on Level 3 to give notice within the 30-day period that it is disputing the bill. Further, within another 30 days after the bill is due Level 3 shall pay all undisputed amounts to Ameritech and further full identify what the nature of the dispute is and the amount disputed. An escrow deposit of the disputed amount shall not be required unless the number of disputes exceeds two per 12-month period. Further, to protect Ameritech from frivolous disputes, if Level 3 fails to substantiate 75% of the disputed amount of any disputed billing period it shall constitute a late payment.

8. **(Resolved)**

9. **(Resolved)**

10. **Third Party Intellectual Property Rights**

Level 3's Position:

At issue, according to Level 3, is the extent to which AI is required to obtain any consents, authorizations, or licenses to or for any Third Party Intellectual Property rights that may be necessary for Level 3's use of Interconnection, Network Elements, functions, facilities, products and services furnished under the Agreement. AI must use its "best efforts" to obtain intellectual property rights for Level 3, as required by the FCC and as defined in Level 3's proposal. Level 3 further claims that the terms and conditions proposed by AI discriminate against it in violation of the Act and the FCC's direction, because they would require Level 3 to indemnify AI if its interconnection with AI or its use of AI's UNEs or services infringe upon any third-party intellectual property right.

### Ameritech Illinois' Position

AI must use its “best efforts” to obtain intellectual property rights for Level 3 as required by the FCC and as defined in AI’s proposal. AI, however, cannot be required to indemnify Level 3 against claims or losses arising from Level 3’s use of such intellectual property.

### Analysis and Conclusion

We believe it settled that AI will use its “best efforts” to obtain third-party intellectual property rights for CLECs to use Ameritech’s UNEs, OSS and interconnection. Indeed, under the FCC’s Intellectual Property Order, as AI recognizes, an incumbent LEC must use its “best efforts” to obtain such intellectual property licenses.

The question might remain, however, whether AI should be required to indemnify Level 3 against any “claims or losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right.” (GT7C 14.5.3). On this point, which Level 3 does not address, AI refers us to the FCC’s recent pronouncement that its Intellectual Property Order did not require incumbent LECs to indemnify competitive LECs for any intellectual property liability associated with their use of UNEs. (See, Texas 271 Order)

Level 3 also maintains that the FCC requires the incumbent to use best efforts to obtain co-extensive rights for CLEC use of UNEs. To this end, Level 3 suggests a flaw in AI’s latest proposal to the extent it states that AI has no obligation to seek rights for CLECs “to use any unbundled network element in a different manner than used by [Ameritech]. According to Level 3, the CLEC is entitled to the panoply of rights obtained by AI - not merely those that AI uses in its network.

Given that the FCC language Level 3 cites in footnote 163 appears to support AI’s proposal, we request Level 3 to state its objection, if still viable, with more specificity in its next brief.

Level 3 also claims that AI commits only to obtaining “commercially reasonable terms” for the CLEC and that this may not be equal to the FCC’s requirement that co-extensive rights be obtained on terms and conditions “equal in quality” and at “the lowest reasonable cost.” We require AI to respond to these assertions in its next brief.

On the whole, we must be certain that the parties are on the same page and that the actual open issues are set out with clarity.

11. **(Resolved)**

12. **(Resolved)**

13. **(Resolved)**

14 **Assignment**

Should both parties be required to seek prior written approval of assignments and transfers of the agreement and how notice should be required?

Level 3's Position

Level 3 proposes that both parties should be required to seek prior written approval of assignments and transfers of the Agreement, including sales and exchanges. In Level 3's view, the parties should not unreasonably withhold consent of assignments. Level 3 also proposes that 30 days advance notice of assignments, rather than AI's proposed 90 days, is sufficient.

Ameritech Illinois's Position

A CLEC may not assign or transfer its Agreement to third persons without the prior written consent of Ameritech Illinois; provided that a CLEC may assign or transfer its Agreement to an Affiliate by providing ninety (90) days prior written notice to Ameritech Illinois of such assignment or transfer.

Analysis and Conclusion

Level 3 and Ameritech both want the parties to seek prior approval of the transfer or assignment of this agreement to another party. Ameritech objects stating that this is not symmetrical situation, it should not be required to get the approval of CLEC's to transfer or assign agreements.

The purpose of seeking this type of approval is to insure the parties that in the event of transfer or assignment that they will not receive any less than they bargained for. We agree with the position of Ameritech. As the ILEC they bear most of the burdens in these transactions. It is almost certain should they transfer or assign any rights it will be to an equal or superior status. The same can not be true of all CLEC's. As the incumbent Ameritech is here to stay and the transfer or assignment to another company would involve close scrutiny by many regulating bodies before it became effect. However, a CLEC transfer could occur in short time and compel the ILEC to do business on terms, which it normally would otherwise do. For that reason we believe that it necessary for Level 3 to seek prior approval from Ameritech prior to transfer or assigning its rights under the agreement. We do not hold that the same is necessary for Ameritech.

15 **(Resolved)**

16 **(Resolved)**

17. **(Resolved)**

## 18 **Combinations of Unbundled Network Elements Generally**

### Level 3's Position

In Appendix UNE, Section 2.9.8, AI would prohibit Level 3 from combining UNEs with any Ameritech tariffed service offering except collocation. Level 3 proposes amending the language of Section 2.9.8 to read "Unbundled Network Elements may not be connected to or combined with Ameritech Illinois Access Services."

### Ameritech Illinois' Position

Section 2.9.8 should include the language, in full, as proposed by AI - which prohibits UNEs from being combined with AI access services or other AI tariffed services, other than tariffed collocation services.

According to AI, the 1996 Act does not require AI to allow combinations of UNEs with tariffed services other than tariffed collocation services.

According to AI, the issue here is whether the Agreement should bar Level 3 from combining UNEs with other AI tariffed services.

To the extent that Level 3 relies on 47 C.F.R. 51.309(a) which states that an incumbent LEC may not restrict the use of UNEs in a manner that would "impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends," AI maintains its proposed language does not violate the rule.

AI maintains that there is nothing in the 1996 Act or FCC rules which entitles Level 3 to combine UNEs and tariffed services. Moreover, AI contends that Level 3 has not shown that its present, future or potential business plans would in any way be affected by the inability to combine UNEs and services.

### Staff's Position

Staff recommends Section 2.9.8. to read as follows: "Unbundled Network Elements may not be connected to or combined with Ameritech Illinois access services."

### Analysis and Conclusion

In this issue, Level 3 seeks the ability to combine UNEs with tariffed services other than access services. To that end, Level 3 seeks to limit the language of Appendix UNE, § 2.9.8 to only preclude combination of UNEs with access services. Ameritech Illinois asserts that the 1996 Act does not require it to allow combinations of UNEs and tariffed services other than tariffed collocation services. We agree with Ameritech Illinois that Level 3 is barred from combining UNEs with other tariffed services.

Ameritech Illinois notes that, when the FCC addressed loop-transport UNE combinations, that Commission discussed three options in which CLECs could meet the conditions to lease such a combination. In each option, the FCC stated that “[t]his option does not allow loop-transport combinations to be connected to the incumbent LEC’s tariffed services.” *Supplemental Order Clarification*, para. 22(a), (b), and (c). The plain meaning of this language, repeated in each option presented to the CLECs, is a clear indication that UNEs are not to be combined with tariffed services. Although the *Supplemental Order Clarification* discusses this issue in terms of Enhanced Extended Loops, Level 3 does not offer evidence that the principle set forth by the FCC should not apply to other UNEs.

Level 3 relies on § 251(c)(3) of the Act, *codified at* 47 C.F.R. 51.309(a), which states that an ILEC may not restrict UNEs in a manner that would “impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends.” Level 3 brief at 59. We agree with Ameritech Illinois that, inasmuch as Level 3 could not identify any existing or hypothetical situation where Level 3 seeks to combine a UNE and a tariffed service, that Level 3 is not “impair[ed]” in its ability “to offer a telecommunications service in the manner the requesting carrier intends.” Intent requires a certain degree of specificity in determining a business plan or strategy. When an organization lacks any concrete example or desired outcome, as is the situation here, it cannot then argue that it is hampered in pursuing its strategy or service offering.

#### 19. **Enhanced Extended Loops (E.E.L.’s)**

Should CLEC be allowed to count ISP traffic as local for the purposes of qualifying for Enhanced Extended Loops (EEL’s)?

Is CLEC required to use Ameritech Illinois’ standard certification form? What if any,

Termination and nonrecurring charges must Level 3 pay for Ameritech Illinois to  
Perform such special access conversions?

#### Level 3’s Position

ISP traffic should be counted as local traffic for the purpose of obtaining EEL’s. The current position of the Illinois Commerce Commission is that ISP traffic is local. That Level 3 should not be required to use AI’s certification form. All the FCC requires is a letter setting out the request and the basis under which Level 3 would qualify. The form of AI goes beyond the FCC requirements and would hinder competitiveness in the market. Level 3 should not be required to pay termination and recurring charges for the implementation of EEL’s.

#### Ameritech Illinois’ Position

Level 3 should use Ameritech Illinois' standard certification form; cannot treat ISP-bound traffic as local for these purposes; and must pay applicable termination and nonrecurring charges.

### Staff's Position

Staff contends that the "practical method of self-certification" adopted by the FCC is all that should be required of a CLEC. Thus, a CLEC should only be required to send a letter to the ILEC indicating under what usage option the requesting carrier seeks to qualify. Staff maintains that Ameritech's requirement for Level 3 to pay applicable termination charges for special access converted to EELs is consistent with FCC rules. Any termination penalties, however, must be reasonable and comply with the Uniform Commercial Code and common law. Similarly, Staff believes 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 reflect the costs actually incurred by AI.

### Analysis and Conclusion

Ameritech has a standard certification form that it uses when seeking a special access conversion. Level 3 avers that all the FCC requires is letter setting forth a request and the local usage option the requesting carrier seeks to qualify. Staff has filed an opinion on this issue and in essence agrees with Level 3.

Under the FCC rules a letter is all that is required and is sufficient for the purposes of this agreement. Ameritech's certification goes beyond the requirements of the FCC and would tend to hinder not promote CLEC growth. Would Ameritech be able to deny an EEL if a party failed to fill out part of the form but in all other respects complied with the FCC requirements? The additional requirements are surplus and should be voluntary if a party seeks to do so.

In accordance with the decision of issue 1 and the previous decisions by this commission for the purposes of EEL's ISP traffic should be regarded as local. However, the CLEC must clearly state in the letter which of the three grounds that it is seeking certification.

The FCC and various State Commission have consistently held that the CLEC should remain responsible for termination fees. There is no reason at this point to take a fresh-look at termination charges. We agree with Ameritech that if the FCC felt a fresh look was mandated or appropriate would have so state in its UNE remand.

We also agree that Ameritech is entitled to recurring charges for special access conversions. As Ameritech points out these reimbursement are to compensate for the

actual costs involved in the conversion. However, those charges should reflect the actual costs incurred by Ameritech on a TELRIC Basis

## 20. **Local Loop Definition**

### Level 3's Position

Level 3 seeks to have AI provide it with notice of the availability of new high capacity loops, that are not tariffed, within 60 days of deploying such loops in AI's network. According to Level 3, AI's testimony indicates that AI will provide Level 3 with notice when it is deploying a high capacity loop through a tariff, but it is unknown if all loop offerings will be tariffed. As such, Level 3 contends that if a high capacity loop offering is not tariffed, it will have no way of knowing that such loops have been deployed. Hence, it requests some type of written notification to that effect.

### Ameritech Illinois' Position

AI should not be required to provide notice to CLECs of the availability of higher capacity loops after they are deployed in its network other than the notice already provided via tariff filing. AI's proposed language in Appendix UNE 7.1 faithfully implements ILEC obligations under the FCC's UNE Remand Order and, therefore, AI's language should be adopted. The notice requested by Level 3 should not be required.

### Analysis and Conclusion

This dispute centers on whether AI should be required to give notice to Level 3 of the availability of untariffed new high capacity loops, within 60 days of deployment. We view this "notice" request as reasonable and believe that, for the convenience of both parties, such notice requirement can be best satisfied by a posting on AI's website.

## 21. **(Resolved)**

## 22. **Dedicated Transport**

Is Ameritech required to provide unbundled dedicated transport to not only locations required by FCC rule 319 but also between Ameritech and another carrier where Level 3 has a presence? Is Ameritech required to give notice to Level 3 within 60 days of the deployment of high capacity dedicated transport in the Ameritech Illinois network?

### Level 3's Position

Level 3 maintains that it should be able to order unbundled transport from AI to a point of presence it maintains in a third-party carrier's office where such transport exists. Further, AI should provide Level 3 with notice of the availability of new high capacity

transport offerings that are not tariffed within 60 days of deploying such transport in its network.

### Ameritech Illinois' Position

Unbundled dedicated transport is required only between the locations designated by the FCC in Rule 319 (d)(1)(I) and offices owned by third parties do not fall within this definition. There is no reason why Level 3 should require notice of new facilities in a form any different than any other CLEC.

### Analysis and Conclusion

Just as Level 3 has pointed out that FCC on required a letter not a form for certification, the FCC Rule 319 has designated dedicated transport obligation to locations "owned" by the requesting carrier or the ILEC. We agree with Ameritech that they do not have and obligation to provide dedicated transport the third party locations even if Level 3 has a presence there. That there is another method available does not diminish Ameritech's argument, in fact, it actually enhances the argument. Level 3 is not foreclosed from obtaining the transport, but may obtain it by having the third party order the dedicated transport and then Level 3 could obtain access through a cross connect. This would be in accord with the FCC position on this matter. While it may not be the most efficient method it still the one mandated by the rules.

Ameritech's position on notice that it is sufficient to post notice on its web site (Ameritech brief at 57). We agree that this is a proper method that affords all CLEC's an equal opportunity to obtain such notice. While the original method of posting as part of its tariff was a method that tended to divert attention from the announcement the web site is readily available to all CLEC's. Ameritech is directed to post within 60 days, at its web site TCNET.Ameritech.com, high capacity transport offerings and updates.

## **23. Payload Mapping**

### Level 3's Position

AI should be required to provide Level 3 with payload mapping in any technically feasible manner.

### Ameritech Illinois' Position

AI will provide payload mapping to Level 3 to the same extent that AI provides payload mapping to itself or to any other CLEC. Specifically, AI will provide Dedicated Transport as a point-to-point circuit dedicated to the CLEC at the following speeds: DS1 (1.544 Mbps); DS3 (44.736 Mbps); OC3 (155.52 Mbps); OC12 (622.08 Mbps); and OC 48 (2488.32 Mbps). AI will provide higher speeds to CLECs as they are deployed in the AI network.

### Analysis and Conclusion

It appears that all Level 3 wants is for AI to treat Level 3 the same way it treats itself and other carriers. To this end, we believe it reasonable and hereby direct AI to provide payload mapping to Level 3 to the same extent (neither more nor less) than AI provides payload mapping to itself or to any other CLEC in Illinois.

#### **24. Dark Fiber**

What percentage of spare dark fiber should a CLEC be allowed to request in a requested segment?

### Level 3's Position

Level 3 seeks to obtain access for up to 50% of AI's spare dark fiber. Level 3, like any carrier, contends it needs to access enough fiber along any given route to assure adequate redundancy in the provision of services. Level 3 agrees with AI's definition of spare parts that already excludes maintenance spares, defective fibers, and fibers reserved for Ameritech's forecasted growth from the fiber that will be accessible by CLEC's. As such, relatively few fibers may be available to CLEC's in any given segment and the 25% limitation AI proposes could prevent a CLEC from obtaining necessary redundancy along that route.

### Ameritech Illinois' Position

AI maintains that Level 3, and all other CLEC's, should be permitted to obtain access to up to 25% of Ameritech Illinois' spare dark fiber. Given that the supply of dark fiber in AI's network is limited, as even Level 3 concedes, it is appropriate to place reasonable limits on the amount that any one CLEC may request.

AI further points out there is no support for Level 3's assertion that it requires up to 50% of the spare dark fiber, or that 50% somehow constitutes a "practical quantity." Finally, AI claims that there is no conceivable reason for allowing Level 3 access to 50% while other CLEC's are limited to 25%.

### Analysis and Conclusion

Level 3 points out that the only time that 50% of available fiber is significant is when only few fibers remain and it needs what addition fiber is available. It then seems that the figure of 25% is acceptable for most situations. In light of the fact that there are other CLEC's who will be making demands on Ameritech it appears that 25% is the appropriate amount. However, when the smallest amount of available fiber in a segment is greater than 25% Level 3 shall be entitled to next percentage of fiber that is available. This should address the concerns of Level 3 and assure that Ameritech has available fiber for other CLEC's.

## **25. Diversity**

### Level 3's Position

Upon Level 3's request, and where such interoffice facilities exist, AI should be required to provide Level 3 with physical diversity for unbundled dedicated transport at rates compliant with the Act. Level 3 asserts that diversity should be made available at specifically defined TELRIC rates in accordance with Section 251(d) of the Act whereas AI would price diversity on an individual case basis because diversity could involve both equipment and transport. If diversity is provided by Ameritech using any of the unbundled dedicated transport offerings priced in the Agreement, those prices should apply.

### Ameritech Illinois' Position

Ameritech Illinois has no legal obligation to provide individual CLECs physical diversity that does not already exist on AI's network. If Level 3 requests diversity that does not currently exist, it is reasonable for the parties to negotiate appropriate rates that will allow AI to recover its costs for providing such service. While Level 3 would strike language to that effect, it offers no legal, technical or policy basis for its position. To the extent that Level 3 suggests that it might be willing to pay "TELRIC" rates, AI maintains that diversity is not a UNE or form of interconnection and thus, not subject to the FCC's TELRIC rules. According to AI, if it provides diversity for a CLEC at that CLEC's request, AI may incur significant additional costs for the additional facilities, equipment, and work needed to achieve such diversity and hence, must be allowed recovery of those costs. This is what AI's proposed Section 9.4.2 of Appendix UNE would require.

### Analysis and Conclusion

"Diversity" is the general term for network arrangements that allow a call to be completed over an alternative route if, for some reason, the usual route is not available. AI is correct where it maintains that diversity is not a UNE or a form of interconnection and, therefore, is not subject to the FCC's TELRIC rules. Nevertheless, we believe it proper that to the extent that any of the individual elements in diversity would constitute a UNE, they should be priced at TELRIC.

26. **(Resolved)**

27. **Point of Interconnection**

After having established a POI (Point of Interconnection) at each LATA in which Level 3 provides local exchange service, at what level of traffic should Level 3 be required to establish a POI at the Ameritech access tandems?

Level 3 Position:

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

Ameritech Illinois' Position

Given that Level 3 will initially establish a single POI in each LATA in which it provides local exchange service, Level 3 should be required to establish an additional POI at each AI access tandem once the traffic exchange between Level 3 and Ameritech with respect to that tandem and its subtending offices meets or exceeds a DS-3 level.

Staff's Position

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

**Analysis and Conclusion**

Level currently has one POI in the Chicago LATA. The POI is located in downtown Chicago at the Wabash Tandem. From there Level 3 traffic is routed to the Level 3 switch about 8 blocks away. Ameritech has 8 tandems located throughout the Chicago Area. NXX calls are transported by Ameritech to the POI downtown and then by Level 3 to its switch. Ameritech wants Level 3 to establish POI's at the tandems around the area. Once transferred to a POI then Level 3 would bear the cost of the transport. The closer to the initial call is the POI the less Ameritech has to pay for transport. The parties have each suggested a level of traffic that a POI should be installed.

Ameritech suggests a DS-3 level or approximately 672 calls being transmitted simultaneously. Level 3 suggests an OC-12 level or about 12,000 calls occurring simultaneously over the network. Staff agrees that OC-12 is an acceptable level. A DS-3 represents about .5% at a tandem, while OC-12 is about 5.7%. Level 3 admits that 95% of

its traffic is ISP. The rapid continuous growth of the internet suggests that it is only a matter of time before Level 3 will have to install additional POI's in the Chicago LATA.

The installation of POI's effects other issues in this and future arbitrations. With a POI installed in a tandem the issue of the cost of regular and virtual NXX numbers transport all but disappears. The question then is what is the appropriate level of traffic?

The average tandem in the Chicago area services about 2-3 hundred thousand terminus sites. At 672 peak calls POI installation would be accelerated but would place an unfair burden on CLEC's. Once again the purpose of the 1996 Telecommunications Act was to encourage and foster CLEC competition through various protective schemes. To set the figure to high would place an extra burden on the ILEC's and not encourage fiber and technical growth in the Chicago LATA.

We feel that the threshold should be on an optical carrier level. The FCC only requires a CLEC to have a single POI per LATA where technically feasible and multiple switching access charges has no bearing on technical feasibility. Both Level 3 and Staff have stated that OC-12 is an applicable standard. Level 3 should be afforded every opportunity to establish itself in the Chicago LATA and progress at a speed that is commensurate with sound economic growth. By allowing sufficient time and traffic to build up before requiring a POI be established would accomplish this end and further assure that Level 3 would be able to supply up to date technology. We agree that OC-12 represents the appropriate level of traffic before requiring a POI be established.

- 28. **(Resolved)**
- 29. **(Resolved)**
- 30. **(Resolved)**
- 31. **Forecasting**

Level 3's Position:

Level 3 asks to receive written confirmation from AI stating that AI has received Level 3's forecast and included such information in its own forecast. According to Level 3, if AI uses such forecasts in its own planning, it may help AI to meet its obligations for provisioning trunks to Level 3. Further, Level 3 believes that AI should be obligated to provide Level 3 with notice of tandem exhaust situations and, pursuant to FCC rules, notice of any network expansions, software and hardware upgrades or other network changes that would preclude AI from completing Level 3's orders. Such information is critical, Level 3 claims, to its planning process and reasonably related to improving Level 3's ability to serve its customers and add new customers to its network.

Ameritech Illinois' Position

AI's brief indicates that this matter is resolved.

### Analysis and Conclusion

The particular notices which Level 3 seeks are, in our view, both reasonable and necessary. To be sure, each of these measures are intended to improve Level 3' ability to serve its customers and add new customers to its network. To the extent this imposes any undue burden on AI, we have not been so informed and will not speculate. The request put forth by Level 3 is granted.

## **32. Trunk Blocking**

### Level 3's Position

Level 3 has requested a blocking objective of 0.05% for all trunk groups measured during peak usage.

### Ameritech Illinois' Position

AI proposes a blocking objective of 1% for all trunk groups measured during peak usage. It asserts that there is no legal or policy basis for Level 3's request that the Commission require AI, whose network functions at the industry standard and long-established 1% blockage level, to redesign its network in order to achieve the 0.5% level that Level 3 desires. AI states that its network is designed so that during the busiest hour of an average day on the busiest month, 10 out of every 1,000 calls will be blocked because no trunk is available to carry them. According to AI, this 1% blockage rate is standard in the industry and has been the accepted norm in Illinois for Ameritech and all other carriers, for years.

### Staff's Position

Staff recommends that Ameritech's blocking objective of 1% for all trunk groups, as measured during peak usage, be adopted on grounds that it is consistent with the standards set out in the Administrative Code.

### Analysis and Conclusion

Staff witness Green concurs with AI's position noting 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. His testimony shows that AI should only be required to provide the standards set out in the Administrative Code and not to the higher standards requested by Level 3 which would force AI 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. According to Staff, both of these measures would require AI to incur substantial costs with little or no benefit to telecommunications services in Illinois. We are convinced by the evidence and the underlying analysis here presented that AI's position is correct, reasonable, and should be followed.

### **33. Trunk Utilization**

#### Level 3 Position

Level 3 would like the ability to order additional trunks, based on trunk forecasts, when its existing trunks are at the 50% utilization level. In Section 8.4 of Appendix ITR, however, AI proposes to restrict orders for additional trunks until Level 3 has reached a 75% utilization level for existing trunks.

#### Ameritech Illinois Position

Level 3 should be permitted to order additional trunks, based on trunk forecast, when its existing trunks are at a 75% utilization level. When Level 3's existing trunks reach a utilization level of 50%, AI would like to accommodate projected increases in Level 3 traffic by (1) increasing Level 3's utilization of existing trunks to 75% and (2) allowing Level 3 to order new trunks when its utilization reaches 75%.

### Analysis and Conclusion

The issue is whether Level 3's trunks are to be configured for 50% utilization, as Level 3 proposes, or 75% utilization, as AI proposes. AI maintains that its proposal encourages Level 3 to make efficient use of the network without imposing inefficient build out costs for new trunks before they are necessary. Level 3 argues that AI's proposal, will require it to plan carefully in several ways and on several levels. We see no problem to having Level 3 "plan carefully" as opposed to AI expending any unnecessary costs. Thus, AI's position will prevail on this issue.

### **34. Indemnity**

Ameritech seeks specific protection for any unauthorized misuse of its OSS that is achieved via Level 3's systems.

#### Level 3 Position

The agreement already adequately protects Ameritech and Level 3 should not be held responsible for the actions of other parties beyond its control.

#### Ameritech Illinois Position

Ameritech needs the additional protection from the unauthorized misuse of its OSS that might be achieved via Level 3 users. Ameritech asserts that it should not be liable from the acts of others.

#### Analysis and Conclusion

While the concerns of Ameritech regarding the potential dangers to its OSS may be valid it is unreasonable to require Level 3 indemnify Ameritech for acts of others. The fact that a customer of Level 3 causes harm to the OSS of Ameritech is not the responsibility of Level 3. It is the equivalent of asking Level 3 to vouch for the good conduct and behavior of all its subscribers. It amounts to a near impossibility. Even employers are not required to vouch for the certain conduct of their employee unless they knew or should have know of the propensity, how can you then ask Level 3 to vouch for strangers.

35. **(Resolved)**

36. **(Resolved)**

37. **(Resolved)**

#### IV. COMPLIANCE WITH ARBITRATION STANDARDS

Pursuant to Section 252© of the Act, state commission are required to apply three standards when resolving open issues and imposing conditions upon parties to an Interconnection agreement in arbitration. The First standard requires the state commission to assure compliance with Section 251 and any rules promulgated under Section 251. The Commission has reviewed each of the conclusions reached above and finds that they are in compliance with the relevant statutes and rules. Under the Second standard, the State Commission is required to establish rates according to Section 252(d). The Third Standard requires the State Commission to provide a schedule for implementation of the terms and conditions by the Parties to the agreement.

As a final implementation matter, the Parties shall file, no later than fifteen calendar days from the date of service from this arbitration decision, the complete interconnection agreement for Commission approval pursuant to Section 252(e) of the Act.

DATED: August 7, 2000

BRIEFS ON EXCEPTIONS AND REPLY BRIEFS ON EXCEPTIONS ARE DUE ON THE SCHEDULED DATES PREVIOUSLY DECIDED.