

October 28, 2011

David S. Danner
Secretary and Executive Director
c/o Washington Utilities and Transportation Commission
Records Department
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

VIA E-FILE

Re: Rulemaking to Implement SESH B 1087, Chapter 50, Laws of 2011,
Establishing Regulatory Fees
WUTC Docket No. UT-111634

Dear Mr. Danner:

On October 7, 2011, the Commission issued a Notice of Opportunity to File Written Comments on a number of questions relating to possible rules implementing Second Engrossed Substitute House Bill 1087 (SESHB 1087), Chapter 50, Laws of 2011, which authorizes the Commission to establish fees to recover the specific costs of performing activities caused by telecommunication company filings, specifically reviewing, and if necessary arbitrating, interconnection agreements (ICAs) and analyzing petitions requesting eligible telecommunications carrier (ETC) certifications and subsequent reporting requirements if the Commission grants ETC status. Level 3 Communications, LLC ("Level 3") and Global Crossing Local Services, Inc. ("Global Crossing") submit the following comments in response to the second question raised in the Notice, which asks: "Should the petitioning party for arbitration bear the full cost of an arbitration fee, or should it be split between the parties in some fashion?"

Level 3 and Global Crossing are registered and competitively classified telecommunications companies authorized to provide both intraexchange and interexchange telecommunications services throughout Washington. Level 3 and Global Crossing currently obtain interconnection and related services from incumbent telecommunications companies in the provision of Level 3's and Global Crossing's telecommunications services. And, Level 3 and Global Crossing maintain local interconnection agreements with those incumbents entered into pursuant to sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, 47 U.S.C. Sections 151 *et. seq.* (the "Act").

Level 3 and Global Crossing respectfully submit that any fees the Commission may decide to impose to recover the costs of an arbitration conducted pursuant to WAC 480-07-630

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and sections 251 and 252 of the Act should be split in equal shares between the parties to the negotiation that gave rise to the arbitration.

It is important to recognize that a petition for arbitration under section 252(b)(2) of the Act gets filed only because the parties to a negotiation over the terms and conditions of an interconnection agreement have not been able to resolve all of the issues involved. That inability to reach agreement can be the result of the actions of either party. Since under section 251 of the Act both incumbent and requesting telecommunications carriers have the duty to negotiate in good faith and under section 252 the duty to cooperate with the State commission in carrying out its function as an arbitrator, it is only fair that both parties to the negotiation share equally in paying any fee the Commission decides to impose. There is no reason or justification for burdening the petitioning party with the entire cost.

Sincerely,

ATER WYNNE LLP

A handwritten signature in black ink, appearing to read "Arthur A. Butler", with a stylized flourish at the end.

Arthur A. Butler