

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

	)	
In the Matter of the Petition for	)	DOCKET NO. UT-023043
Arbitration of an Interconnection	)	
Agreement Between	)	
	)	FIFTH SUPPLEMENTAL ORDER
LEVEL 3 COMMUNICATIONS, LLC,	)	
	)	ARBITRATOR'S REPORT AND
and	)	DECISION
	)	
CENTURYTEL OF WASHINGTON,	)	
INC.,	)	
	)	
Pursuant to 47 U.S.C. Section 252.	)	
.....	)	

**Synopsis**—This Arbitration decision determines that: (1) ISP-bound traffic is not subject to different interconnection requirements than local traffic and does not require a separate agreement; (2) the term “local traffic” should be defined to exclude ISP-bound traffic only for purposes of intercarrier compensation requirements; (3) ISP-bound calls enabled by virtual NXX should be treated the same as other ISP-bound calls for purposes of determining intercarrier compensation requirements consistent with the FCC’s ISP Order on Remand; and (4) the term “bill-and-keep” should be defined in a manner consistent with the FCC’s ISP Order on Remand and implemented by the parties’ interconnection agreement in a manner consistent with the FCC’s order.

**I. BACKGROUND**

**A. Procedural History**

1 On March 4, 2002, Level 3 Communications, LLC (Level 3) initiated negotiations with CenturyTel of Washington, Inc. (CenturyTel) with the intention to achieve an Interconnection Agreement between Level 3 and CenturyTel in Washington.

On August 8, 2002, Level 3 filed with the Commission a petition for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.* (Act).

2 Level 3 is a Competitive Local Exchange Carrier (CLEC) that wishes to establish local interconnection to provide direct inward dialing capability to its Internet Service Provider (ISP) customers in Washington. CenturyTel is a rural incumbent local exchange company (ILEC) as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services in various local exchange areas in Washington. The Commission has jurisdiction over the petition and the parties pursuant to 47 U.S.C. §§ 251-252 and RCW 80.36.610. The parties have negotiated and agreed to the majority of terms that would be included in an interconnection agreement between them. Four issues remain in dispute.

3 The Commission entered an Order on Arbitration Procedure and appointed an Arbitrator on August 16, 2002. The procedural order is consistent with the Commission's Interpretive and Policy Statement that establishes guidelines for conducting arbitrations under the Act, as codified.<sup>1</sup>

4 CenturyTel filed its response to Level 3's petition on September 3, 2002. On September 24, 2002, the Arbitrator held a prehearing conference to establish a procedural schedule and to consider other matters that would facilitate an efficient arbitration process. On September 27, 2002, the Arbitrator entered the Second Supplemental Order: Pre-Arbitration Conference Order. The Second Supplemental Order included a schedule agreed to by the parties.

5 The Second Supplemental Order also required the parties to file briefs to address CenturyTel's contention that the Commission lacks jurisdiction to conduct this

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<sup>1</sup> *Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 (June 1996).

arbitration. The Arbitrator certified the question to the full Commission. On October 28, 2002, the Commission entered its Third Supplemental Order Confirming Jurisdiction.

6 Level 3 and CenturyTel filed their respective direct testimonies and exhibits on October 18, 2002, and their respective rebuttal cases on November 1, 2002. The exhibit list attached to this Report as Appendix A reflects the admission of these documents at hearing, and the admission of various exhibits that were introduced on cross-examination during the arbitration hearing.

7 The Commission conducted its arbitration hearing on October 28, 2002, before Administrative Law Judge Dennis J. Moss. The parties filed briefs on November 7, 2002.

### **B. Appearances.**

8 Michael R. Romano, attorney, Level 3 Communications, LLC, McLean, Virginia, and Rogelio E. Peña, Peña & Associates, LLC, Boulder, Colorado, represent Level 3 Communications. Calvin K. Simshaw, Associate General Counsel, CenturyTel, Vancouver, Washington, represents CenturyTel.

### **C. Unresolved Issues**

9 CenturyTel and Level 3 have engaged in largely successful negotiations toward an interconnection agreement. Although Level 3's Petition stated 15 issues to which the parties had not agreed, the number was reduced to 4 by the time of the arbitration hearing. The Arbitrator commends the parties for their substantial progress toward agreement.

10 The issues, as stated in the parties' briefs, are:

ISSUE ONE: Is ISP-bound traffic subject to different interconnection requirements than local traffic under federal law such that it should be handled by separate agreement?

ISSUE TWO: What is the proper definition of "local traffic"?

ISSUE THREE: What is the proper treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes?

ISSUE FOUR: How should the parties define "bill-and-keep" to implement the FCC's *ISP Order on Remand*?<sup>2</sup>

#### **D. Resolution of Disputes and Contract Language Issues**

11 As a general matter, the Arbitrator's report is limited to the disputed issues presented for arbitration. *47 U.S.C. § 252(b)(4)*. The parties were required to present proposed contract language on all disputed issues to the extent possible, and the Arbitrator reserves the discretion to either adopt or disregard proposed contract language in making decisions. Each decision by the Arbitrator is qualified by discussion of the issue. Contract language adopted pursuant to arbitration remains subject to Commission approval. *47 U.S.C. § 252(e)*.

12 This Report is issued in compliance with the procedural requirements of the Act, and it resolves all issues that the parties submitted to the Commission for arbitration. The parties are directed to resolve all other existing issues consistent

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<sup>2</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 16 FCC Rcd. 9151, 9188, ¶ 81 (2001) ("*ISP Order on Remand*"), *remanded WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("*WorldCom*").

with the Arbitrator's decisions. If the parties are unable to submit a complete interconnection agreement due to an unresolved issue they must notify the Commission in writing prior to the time set for filing the Agreement. At the conclusion of this Report, the Arbitrator addresses procedures for review to be followed prior to entry of a Commission order approving an interconnection agreement between the parties.

## II. MEMORANDUM

### A. The Commission's Duty Under the Telecommunications Act of 1996

13 Two central goals of the Telecommunications Act are the nondiscriminatory treatment of carriers and the promotion of competition. The Act contemplates that competitive entry into local telephone markets will be accomplished through interconnection agreements between ILECs and CLECs, which will set forth the particular terms and conditions necessary for the ILECs to fulfill their duties under the Act. *47 U.S.C. § 251(c)(1)*. Each interconnection agreement must be submitted to the Commission for approval, whether the agreement was negotiated or arbitrated, in whole or in part. *47 U.S.C. § 252(d)*.

### B. Standards for Arbitration

14 The Telecommunications Act provides that in arbitrating interconnection agreements, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. *47 U.S.C. § 252(c)*.

### C. Background

- 15 Level 3 is a facilities-based competitive local exchange carrier (“CLEC”) that provides telecommunications services in Washington and throughout the United States. Through its own network and interconnection with other LECs, Level 3 provides customers local connectivity to packet-switched networks like the Internet. Level 3 provides its customers a direct inward dial (“DID”) service, whereby the customer is provided a local telephone number that directs the end-user’s calls from his/her local exchange carrier to the Level 3 network. Level 3’s DID service requires that it “turn up” local numbers within its target markets, through assignment of “NXX” codes specific to the geography of its target market.<sup>3</sup>
- 16 CenturyTel is an incumbent provider of local exchange services in Washington, and in several other states. CenturyTel is a “telecommunications company” and a “public service company,” as those terms are defined in RCW 80.04.010, and an Incumbent Local Exchange Carrier (“ILEC”) under 47 U.S.C. § 251(h). Certain of CenturyTel’s operating divisions are entitled to the rural exemption under 47 U.S.C. § 251(f)(1)(A), and therefore not subject to the requirements of 47 U.S.C. § 251(c).
- 17 Level 3 plans to establish a telecommunications network in Washington that is based on proprietary technology optimized to transmit Internet Protocol (IP) packet-switched traffic. Level 3’s proposed network can be used to provide several different telecommunications services, but its initial focus is on providing service to Internet Service Providers (ISPs) that require a local calling presence to serve their own end users whether or not the ISP is physically located in the ISP customer’s local calling area.

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<sup>3</sup> See generally Direct Testimony of Timothy J. Gates, Exhibit No. 1, at 7:10-22.

18 The issues in this proceeding involve traffic that would originate on CenturyTel's telephone network when a CenturyTel customer dials a seven-digit telephone number, using so-called virtual NXX capability, to connect to the customer's chosen ISP. Level 3 would route the call over its network to the ISP's modem bank that may be physically located in another exchange or even in another state. The ISP then routes the call to one or more Internet sites during the course of the customer's Internet session.

#### **D. Issues, Discussion, And Decisions**

##### **1. Is ISP-bound traffic subject to different interconnection requirements than local traffic under federal law such that it should be handled by separate agreement?**

19 CenturyTel initially framed this issue in terms of jurisdiction, asserting "ISP-bound traffic is not within the jurisdiction of the state PUCs."<sup>4</sup> On brief, CenturyTel continues to insist that "Level 3's traffic would not be local and therefore, . . . should not be subject to a local interconnection agreement under the provisions of sections 251 and 252 of the Act."<sup>5</sup>

20 The Commission resolved the question of its jurisdiction in its Third Supplemental Order, in part, as follows:

We agree with Level 3 that the FCC preempted state commission authority over compensation for ISP-bound traffic, and did not preempt state commission authority to arbitrate other issues relating to ISP-bound traffic.

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<sup>4</sup> *CenturyTel Response at 3.*

<sup>5</sup> *CenturyTel Brief at 16.*

The Commission determines that the FCC's ISP Remand Order does not preempt our jurisdiction to arbitrate issues regarding CenturyTel's obligation to interconnect with Level 3 to facilitate ISP-bound traffic. The FCC preempted only the Commission's authority to arbitrate the compensation for ISP-bound traffic . . .

[T]he provisions of 47 U.S.C. §§ 251 and 252 apply to both interstate and intrastate services. The obligations of 47 U.S.C. § 251(a) apply to all telecommunications carriers. The duties set forth in 47 U.S.C. §§ 251(b) and (c) apply to "local exchange companies," which include carriers that provide telephone exchange service or exchange access. 47 U.S.C. § 153(26). "Exchange access" is "the offering of access to telephone exchanges services or facilities for the purpose of origination or termination of telephone toll services." 47 U.S.C. § 153(16). Therefore, a local exchange company may provide both intrastate and interstate services and fall within the obligations of 47 U.S.C. § 251. State commissions, therefore, are authorized to consider both intrastate and interstate service when arbitrating issues that arise from 47 U.S.C. § 251.

- 21 Stated in terms of the issue framed by the parties, the Commission's Third Supplemental Order establishes that ISP-bound traffic is not subject to different interconnection requirements than local traffic under federal law such that it should be handled by separate agreement. That result controls for purposes of this Arbitrator's Report and Decision.
- 22 In general, then, the starting point for the parties' interconnection agreement should be CenturyTel's standard template interconnection agreement, not the CenturyTel "Information Access Traffic Exchange Agreement" that CenturyTel apparently tendered to Level 3 at some point during the parties' negotiations.<sup>6</sup>

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<sup>6</sup> See *CenturyTel Response* at 2.

The interconnection agreement template should be modified to reflect the parties' agreements and the Arbitrator's resolution of the remaining issues, as discussed in this Report and Decision.

## **2. What is the proper definition of Local Traffic?**

23 Level 3's proposed definition of "local traffic," for purposes of an interconnection agreement with CenturyTel, is as follows:

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local serving area, including mandatory local calling arrangements. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Pursuant to applicable law, Local Traffic excludes ISP-bound Traffic for purposes of intercarrier compensation.

24 CenturyTel proposes a definition that would modify Level 3's suggested language as indicated below in legislative format (*i.e.*, deletions indicated by strikethrough, additions indicated by underlining):

Traffic that is originated by an end user of one Party and terminates to the end user of the other Party within CenturyTel's then current local calling area, including mandatory local calling arrangements. Traffic to or from an end user not within CenturyTel's local calling area will be subject to access charges to the extent it does not

constitute Information Access Traffic. A mandatory local calling area arrangement, ordered by the Commission, is an arrangement that provides end users a local calling area, Extended Area Service (EAS) or Extended Community Calling (ECC), beyond their basic exchange serving area. Local Traffic does not include optional local calling area's (i.e., optional rate packages that permit the end user to choose a local calling area beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Local Traffic excludes Information Access Traffic, including but not limited to Enhanced Service Provider (ESP) and [Internet](#) Service Provider (ISP) traffic, Internet, 900-976, etc., and Internet Protocol based long distance telephony.

- 25 CenturyTel argues that the Arbitrator should reject Level 3's proposed definition "for the simple reason that it includes non-local traffic."<sup>7</sup>
- 26 Level 3 argues that CenturyTel's proposed definition is both vague and overbroad; that it would exclude from treatment as local traffic several existing and developing Internet protocol based technologies that it would be better to consider on a case-by-case basis as one carrier or another seeks to implement new services.
- 27 Insofar as it concerns the issues in this proceeding, and the purpose for which Level 3 seeks an interconnection agreement with CenturyTel, Level 3's proposed definition is limited in reach to the one question that truly remains at issue in this proceeding: the treatment of ISP-bound traffic for purposes of intercarrier compensation. Level 3's definition, which would exclude ISP-bound traffic from the definition of local traffic for purposes of intercarrier compensation, is consistent with the FCC's *ISP Order on Remand*.

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<sup>7</sup> CenturyTel Brief at 16.

- 28 By contrast, CenturyTel's proposed definition is not narrow in its effect; it includes a sweeping exclusion of various forms of Internet protocol based services that are not squarely at issue in this proceeding and that may not have even been developed yet to the point of any practical application. As Level 3 argues in its brief, the record in this proceeding is inadequate to support adoption of a definition of local traffic that has broad implications in terms of services that Level 3 does not seek to implement through an interconnection agreement with CenturyTel at this time.<sup>8</sup>
- 29 The FCC's *ISP Order on Remand* discusses, at paragraph 34, the agency's view of the impracticability of using the term "local traffic" as a basis to define parties' respective rights and obligations under Section 251 of the Act: "We also refrain from generically describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in Section 251(b)(5) or Section 251(g)." In addition, the FCC discusses, at paragraph 51 of the *ISP Order on Remand*, its view that Section 251(i) of the Act offers flexibility in the pricing and regulation of innovative services, and acknowledges the importance of maintaining an open-minded regulatory environment:

We expect that, as new network architectures emerge, the nature of telecommunications traffic will continue to evolve. As we have already observed, since Congress passed the 1996 Act, customer usage patterns have changed dramatically; carriers are sending traffic over networks in new and different formats; and manufacturers are adding creative features and developing innovative network architectures. Although we cannot anticipate the direction that new technology will take us, we do expect the dramatic pace of change to continue. Congress clearly did not expect the dynamic, digital broadband driven telecommunications

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<sup>8</sup> See generally, *Level 3 Brief at 13-20*.

market place to be hindered by rules premised on legacy networks and technological assumptions that are no longer valid.

30 Adopting CenturyTel's proposed definition of local traffic, with its several exclusions, would take us significantly beyond any result that the record on this arbitration can support. Moreover, the exclusions CenturyTel advocates are not well-defined and to adopt them here might have unintended consequences in the future. Indeed, adopting CenturyTel's proposed definition of local traffic conceivably could forestall the introduction of innovative technologies and increased competition in favor of preserving legacy network dominance and a narrower range of service options for customers now and in the future. Such a result could be antithetical to the fundamental goals of competition and innovation that are the driving force behind telecommunications regulatory policy at both the national and the state level.

31 Issue Two is resolved in favor of Level 3's proposed definition of local traffic. The parties must adopt that definition in their interconnection agreement, and must make any other changes in their agreement that are necessary in light of this resolution of Issue Two.

### **3. What is the proper treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes?**

32 Both Level 3 and CenturyTel acknowledge that the substance of their dispute turns on the question of compensation. Level 3 contends that the FCC has preempted from state commission determination the question of intercarrier compensation for ISP-bound traffic. Level 3 argues that the *ISP Remand Order* establishes "bill and keep" as the only intercarrier compensation regime that can apply, at least on the interim basis established by the *ISP Remand Order*, for all ISP-bound traffic.

33 CenturyTel, by contrast, asserts that the *ISP Remand Order* applies by its terms only to that segment of ISP-bound traffic that originates in a given local exchange area and terminates at an ISP modem located in the same local exchange area.<sup>9</sup> CenturyTel contends that all other ISP-bound traffic is interexchange traffic that is required to pay access charges to the originating carrier.

34 The straightforward answer to this argument is that the FCC's *ISP Remand Order* is not limited in its effect as CenturyTel urges in its brief. CenturyTel reads too much into certain language it quotes from the D.C. Circuit's reviews of the FCC's first ISP order and the *ISP Remand Order*.<sup>10</sup> While it is true that one of the issues the FCC considers in its order is ISP-bound traffic that reaches a modem bank in the same local exchange area in which the ISP customer resides, the order cannot be fairly read to concern only this subset of ISP-bound traffic.

35 The FCC's *ISP Remand Order* begins with the straightforward statement that: "In this Order, we reconsider the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to Internet service providers (ISPs)." The FCC's order, thus, introduces its subject matter as encompassing all telecommunications traffic delivered to ISPs and not some subset of that universe as CenturyTel contends. The FCC's order is consistent in this regard throughout its discussion and nowhere suggests that its result is limited to the narrow class of ISP-bound traffic that CenturyTel argues is the scope of its application. It is the case, as CenturyTel argues, that both the FCC and the appeals court refer to the traffic that terminates at an ISP within the caller's local area, but they do so not to limit their scope to this subset of ISP-bound calls. Rather, both emphasize that even when the traffic remains in the local area it is not to be treated for compensation purposes as local traffic.

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<sup>9</sup> *CenturyTel Brief* at 12 ("the FCC has ruled only that bill and keep should be applied where traffic is bound for an ISP located within the local calling area").

<sup>10</sup> See *CenturyTel Brief* at 12-13 and cases cited therein: *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (D.C. Cir. 2000); *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. May 3, 2002).

**4. How should the parties define “bill-and-keep” to implement the FCC’s *ISP Order on Remand*?**

36 CenturyTel argues that bill-and-keep is not the appropriate compensation scheme for Level 3’s ISP-bound traffic. CenturyTel proposes the following definition for bill-and-keep with the intent to exclude ISP-bound traffic from such compensation under the parties’ interconnection agreement:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.

Given the resolution of the first three issues in this arbitration, discussed above, and considering the intent of CenturyTel’s proposed definition, it is rejected.

37 Level 3 proposes to define bill-and-keep as follows:

1.11 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange in which neither of the Parties charges the other for terminating traffic that originates on the other network. Instead, each Party recovers from its own end users the cost of both the originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.

Additionally, at Article V, Section 3, Level 3 proposes to include the following language:

3.2.1 Mutual Compensation.

...

Any compensation due between the Parties in connection with the exchange of Information Access Traffic minutes shall be in accordance with the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, as released on April 27, 2001, and other provisions of applicable law. Pursuant to the FCC's Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, ISP-Bound Traffic shall be subject to a Bill-and-Keep Arrangement.

3.2.2 Bill-and-Keep.

...

Nothing in this Section 3.2.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this Section 3.2.2, except as set forth in Section 3.1 above.

The *ISP Order on Remand* takes from the Arbitrator's hands any decision regarding the appropriate compensation mechanism for the exchange of ISP-bound traffic. Bill-and-keep is what the FCC's order requires, at least on an interim basis. The Arbitrator's task is to ensure that the parties' interconnection agreement includes terms that are consistent with what the FCC requires in this regard. Level 3's proposed definition of bill-and-keep and the additional

language it proposes for Article V, Section 3, are consistent with the *ISP Order on Remand*. Level 3's proposals are adopted.

#### **E. Additional Issues Raised On Brief.**

- 38 CenturyTel raises two issues on brief that were not presented for arbitration. CenturyTel contends that Level 3 should be bound to establish points of interconnection within CenturyTel's local calling areas.<sup>11</sup> CenturyTel argues that "Level 3 in this proceeding repeatedly made the commitment that it would agree" to this arrangement, and any interconnection agreement should contain point of interconnection language that is consistent with Level 3's commitment. It is neither necessary, nor appropriate that there be any arbitration award on this point. If, as CenturyTel contends, Level 3 has unequivocally committed itself to such an arrangement, an arbitration award would add nothing to that commitment. If, however, there is some dispute over this point, the parties must endeavor to work it out between themselves or queue the matter up for Commission determination with appropriate notice so that a proper record can be developed to support a reasoned decision.
- 39 CenturyTel also contends that "any local interconnection agreement imposed by the Commission should include language limiting the traffic to be exchanged to ISP-bound traffic."<sup>12</sup> Again, it is neither necessary nor appropriate that there be any arbitration award on this point. As CenturyTel observes in its brief, Level 3's Vice President of Public Policy, Mr. Hunt, testified that Level 3 would agree to have the language of the parties' interconnection agreement note that the agreement, at least initially, is limited to service for ISP-bound traffic.<sup>13</sup> However, to the extent there is any disagreement between the parties on this point, the matter was not properly put before the Arbitrator for decision and it will not be resolved here.

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<sup>11</sup> *CenturyTel Brief at 17.*

<sup>12</sup> *Id. at 18.*

<sup>13</sup> *Transcript at 134.*

## **F. Implementation Schedule**

40 Pursuant to 47 U.S.C. § 252(c)(3), the Arbitrator is to “provide a schedule for implementation of the terms and conditions by the parties to the agreement.” In preparing an agreement for submission to the Commission for approval, the parties may include an implementation schedule. In this case the parties did not submit specific alternative implementation schedules. Specific provisions to the agreement, however, may contain implementation time-lines. The parties must implement the agreement according to the schedule provided in its provisions, and in accordance with the Act, applicable FCC Rules, and this Commission’s orders.

## **G. Conclusion**

41 The Arbitrator’s resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). The parties are directed to submit an interconnection agreement to the Commission for approval pursuant to the following requirements.

### **1. Petitions for Review and Requests for Approval**

42 Any party may petition for Commission review of this Arbitrators’ Report and Decision by January 21, 2003. Any petition for review must be in the form of a brief or memorandum, and must state all legal and factual bases in support of arguments that the Arbitrators’ Report and Decision should be modified. Replies to any petition for Commission review may be filed by January 31, 2003.

43 By January 31, 2003, the parties also must file a complete copy of the signed interconnection agreement, including any attachments or appendices, incorporating all negotiated terms, all terms requested pursuant to Section 252(i), and all terms intended to fully implement arbitrated decisions. This filing will

include the parties' request for approval, subject to any pending petitions for review.<sup>14</sup> The Agreement must clearly identify arbitrated terms by bold font style and identify by footnote the arbitrated issue that relates to the text.

- 44 Parties that request approval of negotiated terms must summarize those provisions of the agreement, and state why those terms do not discriminate against other carriers, are consistent with the public interest, convenience, and necessity, and are consistent with applicable state law requirements, including relevant Commission orders.
- 45 Parties that request approval of arbitrated terms must summarize those provisions of the agreement, and state how the agreement meets each of the applicable requirements of Sections 251 and 252, including relevant FCC regulations, and applicable state requirements, including relevant Commission orders. A party that petitions for review must provide alternative language for arbitrated terms that would be affected if the Commission grants the party's petition.
- 46 Any petition for review, any response, and/or any request for approval may reference or incorporate previously filed briefs or memoranda. Copies of relevant portions of any such briefs or memoranda must be attached for the convenience of the Commission. The parties are not required to file a proposed form of order.
- 47 Any petition for review of this Arbitration Report and Decision and any response to a petition for review must be filed (original and six (6) copies) with the Commission's Secretary and served as provided in WAC 480-09-120. Post-arbitration hearing filings and any accompanying materials must be served on the opposing party by delivery on the day of filing, unless jointly filed.

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<sup>14</sup> If the parties agree that no petition for review will be filed, the parties may file their joint request for approval and complete interconnection agreement at any time after the date of this Report and Decision.

48 An electronic copy of all post-arbitration hearing filings must be provided by e-mail delivery to [records@wutc.wa.gov](mailto:records@wutc.wa.gov). Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch, IBM-formatted, high-density diskette including the filed document(s), in Adobe Acrobat file format (*i.e.*, <filename>.pdf), reflecting the pagination of the original. Please also provide the text in either MSWord file format (*i.e.*, <filename>.doc) or WordPerfect file format (*i.e.*, <filename>.wpd). Attachments or exhibits to pleadings and briefs that do not pre-exist in an electronic format do not need to be converted.

## 2. Approval Procedure

49 The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) to include the approval process. Further, the Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act.<sup>18</sup>

50 Any person who wishes to comment on a request for approval may do so by filing written comments with the Commission no later than 10 days after the date a request for approval is filed. Comments must be served on all parties to the Agreement, and parties to the Agreement may file written responses to comments within 7 days after service.

51 The Commission will consider the request(s) for approval at a public meeting. Any person may appear at the public meeting to comment on the request(s). The Commission may set the matter for consideration at a special public meeting.

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<sup>18</sup> *Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996*, Docket No. UT-960269, In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996 (June 28, 1996).

52 The Commission will enter an order approving or rejecting the Agreement within 30 days after the parties' interconnection agreement is filed. The Commission's order will include its findings and conclusions

Dated at Olympia, Washington, and effective this 2nd day of January 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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DENNIS J. MOSS

Arbitrator

APPENDIX A

EXHIBIT LIST

NUMBER		A/R	DATE	DESCRIPTION
<b>LEVEL 3</b>				
1	Timothy J. Gates	A	11/7/02	TJG-1T: Prefiled Direct Testimony
2	Timothy J. Gates	A	11/7/02	TJG-2: Witness Qualifications
3	Timothy J. Gates	A	11/7/02	TJG-3T: Rebuttal Testimony
4	Timothy J. Gates	A	11/7/02	TJG-4: Summary of the Number of NXXS Used by Washington ICOS
5	Timothy J. Gates	A	11/7/02	TJG-5: CenturyTel Service Information
6	CenturyTel Cross	A	11/7/02	Inter-exchange Transport Diagram
7	William P. Hunt	A	11/7/02	WPH-1T: Prefiled Direct Testimony
8	William P. Hunt	A	11/7/02	WPH-2: Powell: Time to 'Retool' the FCC
9	William P. Hunt	A	11/7/02	WPH-2: Remarks of Commissioner Susan Ness
10	William P. Hunt	A	11/7/02	WPH-4: Rebuttal Testimony
11	CenturyTel Cross	A	11/7/02	Tariff WN U-2 (excerpt)
<b>CENTURY TEL</b>				
12	R. Craig Cook	A	11/7/02	RCC-1T: Direct Testimony
13	R. Craig Cook	A	11/7/02	RCC-2: Level 3 Market Expansion Project Key Facts and Information
14	R. Craig Cook	A	11/7/02	RCC-3: Central Office Code Assignment Guidelines
15	R. Craig Cook	A	11/7/02	RCC-4: Level 3 Products and Services Overview

16	R. Craig Cook	A	11/7/02	RCC-5: Level 3 NPA-NXXs in Washington
17	R. Craig Cook	A	11/7/02	RCC-6: Level 3's 3-Connect Modem Product Brochure
18	R. Craig Cook	A	11/7/02	RCC-7: Rebuttal Testimony
19	Level 3 Cross	A	11/7/02	Ocosta Diagram
20	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 1
21	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 2
22	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 3
23	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 4
24	William H. Weinman	A	11/7/02	WHW-1T: Direct Testimony
25	William H. Weinman	A	11/7/02	WHW-2: Use of CenturyTel's Network
26	William H. Weinman	A	11/7/02	WHW-3T: Rebuttal Testimony
27	Level 3 Cross	A	11/7/02	Ocosta/Aberdeen Diagram
28	Level 3 Cross	A	11/7/02	Ocosta/Aberdeen/Seattle Diagram
29	Level 3 Cross	A	11/7/02	CT Exchange A Diagram
30	Level 3 Cross	A	11/7/02	Ocosta/Seattle Diagram 5