

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition for Arbitration of an)
Interconnection Agreement Between)

LEVEL 3 COMMUNICATIONS, LLC.)

and)

CENTURYTEL OF WASHINGTON, INC.,)

Pursuant to 47 U.S.C. Section 252)

DOCKET NO. UT-023043

POST-HEARING BRIEF OF CENTURYTEL

Pursuant to process and schedule adopted in the Second Supplemental Order,
CenturyTel of Washington, Inc. (“CenturyTel”) hereby submits its post-hearing brief in
this matter.

INTRODUCTION

In this matter Level 3 Communications, LLC (“Level 3”) proposes a service that
would allow CenturyTel end users to complete calls to Level 3 customers. Based upon
the record established at the hearing in this matter several aspects of Level 3’s proposed
service become evident. First, calls completed under the service, and therefore the
service itself would not be “local” in any sense of the word. Instead, traffic under the
service would be interexchange. Second, the service would use CenturyTel facilities in
exactly the same manner as do other interexchange services. Third, despite this fact,
Level 3 has absolutely no intention of paying CenturyTel access charges or any other

1 form of compensation that would recognize its use of CenturyTel's facilities in order to
2 provide the service.

3 It has become clear that Level 3 is attempting to gain access to CenturyTel
4 facilities under the guise of local interconnection for one purpose, and one purpose only.
5 That is to avoid payment of compensation to CenturyTel. In other words, Level 3 wants
6 a free ride over CenturyTel's facilities. As described in this brief, application of local
7 interconnection provisions for this purpose and for this traffic is totally inappropriate and
8 unauthorized.

9 Level 3 seeks "local interconnection" with CenturyTel, not for the purposes of
10 providing local services in CenturyTel's service area or to compete for customers in
11 CenturyTel's service area. Level 3's customers will not even be in CenturyTel's service
12 area. Instead, Level 3 seeks to compete with other interexchange carriers for the
13 provision of calls from CenturyTel's customers to other parties not located in
14 CenturyTel's service area. Level 3 knows that both it and these other interexchange
15 carriers will likely have to use CenturyTel facilities in addition to their own facilities to
16 complete these interexchange calls. Level 3 also knows that these other interexchange
17 carriers are paying CenturyTel for use of CenturyTel's facilities in the form of access
18 charges. Level 3 believes that by bootstrapping together Virtual NXX number
19 assignments and local interconnection provisions, it has concocted a scheme that would
20 allow it to gain a competitive advantage over the other interexchange carriers by avoiding
21 those very same access charges.

22 The predominant issue in this matter is whether Level 3 should have to
23 compensate CenturyTel for use of CenturyTel's facilities in the provision of its proposed

1 service. CenturyTel believes that Level 3 should pay compensation for that use in the
2 same manner, as do other interexchange carriers who use CenturyTel's facilities in the
3 same way to complete calls over the same interexchange routes. Level 3 believes that
4 that because it will assign its customers virtual NXX numbers it has somehow made the
5 traffic local and therefore is entitled to use CenturyTel facilities under local
6 interconnection provisions and more specifically seeks to have bill and keep terms apply
7 to this traffic.

8
9 1. Level 3's traffic is clearly interexchange and not local.
10

11 Based upon the record established at the hearing, it has become abundantly clear
12 that traffic under Level 3's proposed service would not be local. This Commission has
13 regularly defined local calling areas through its recognition of exchange boundaries and
14 EAS routes. It is clear that Level 3's traffic would not originate and terminate within any
15 of those local calling areas. In order to make that determination it is necessary to know
16 the location of the customer making the call and the customer receiving the call. The
17 location of the CenturyTel end users making the call is well established as being within
18 the CenturyTel exchanges whose boundaries are on file with the Commission in
19 CenturyTel's tariffs. The location of the other end of the call (i.e. the Level 3 customer)
20 was somewhat of a mystery throughout this proceeding. Level 3 never once mentioned
21 the location of its customers in its prefiled testimony in this proceeding. However, the
22 truth became known at the hearing. The truth is that the Level 3 customers would not be
23 located in the same calling area as the CenturyTel end user making the calls.

1 Level 3 witness Timothy Gates acknowledged at the hearing that in proposing the
2 same service in Wisconsin the Level 3 customer would not be in the CenturyTel end
3 user's local calling area but would instead be in Chicago, Illinois (Tr. 44). He further
4 acknowledged that in Texas, the Level 3 customer would not be in the CenturyTel end
5 user's local calling area but would more likely be in Dallas or Houston (Tr. 45). The
6 record shows that in Washington, the Level 3 customers would most likely be located in
7 Seattle since that is where Level 3's switch is (Tr. 132). However, Level 3 would not
8 rule out the possibility that its service might provide calls from CenturyTel end users in
9 the state of Washington to a Level 3 customer in Denver, Colorado (Gates, Tr. 46; Hunt
10 Tr. 144, 150).

11 Calls from a CenturyTel end user in Forks, Washington to a Level 3 customer in
12 Denver or even in Seattle are not local calls under any stretch of the imagination. These
13 calls are interexchange calls. The fact that Level 3 would assign its customer located in
14 Seattle a Forks number does not magically change the traffic into local traffic. Assigning
15 the Level 3 Seattle customer that Forks VNXX number does change geography and the
16 fact that the call would not be between parties located in the same local calling area.

17 Level 3 did offer a glimmer of hope that there might actually be something local
18 about its proposed service when it offered Exhibit No. 19 at the hearing. However, that
19 hope was quickly dashed. In the Exhibit 19 diagram Level 3 depicted the potential
20 existence of Level 3 facilities and Level 3 customers within the CenturyTel's Ocosta
21 exchange. This actually offered some hope that there might be some basis for real "local
22 interconnection" between Level 3 and CenturyTel. However, Level 3 then offered
23 Exhibits 20 through 23. These exhibits sequentially began removing the Level 3 facilities

1 and customers located in the Ocosta exchange until, at the point of Exhibit 23, Level 3
2 arrived back to the network that they really desire to operate. That is, one with no
3 facilities or customers in CenturyTel's service territory and therefore no basis for "local
4 interconnection."

5 Calls generated by Level 3's proposed service would be interexchange and this is
6 significant in determining how Level 3 should compensate CenturyTel for use of
7 CenturyTel's network in completing those calls.

8
9 2. Level 3 would use CenturyTel's facilities in the same manner, as do
10 other interexchange carriers for traffic on the same routes.
11

12
13 Using a call from a CenturyTel end user in Forks to another party in Seattle as an
14 example, CenturyTel witness William Weinman described how interexchange carriers
15 ("IXCs") currently use CenturyTel's facilities to complete such calls. He described how
16 IXCs would use CenturyTel's local loop, switch and interexchange facilities to complete
17 the call. Exhibit 24 pp 14 - 15, graphically depicted on Exhibit 25.

18 Level 3 witness Gates was similarly asked about a call from a CenturyTel end
19 user in Forks to a Level 3 customer in Seattle using Level 3's proposed service. He
20 acknowledged that such a call would travel over CenturyTel's local loops, be switched in
21 CenturyTel's central office switch and travel over CenturyTel's interexchange facilities
22 with the amount of those interexchange facilities involved being determined by the point
23 of interconnection (Tr. 48). Mr. Gates was asked to compare the use of CenturyTel's
24 facilities in completion of a call from Forks to Seattle by an existing IXC and Level 3.
25 He agreed that in both cases, the calls use CenturyTel's local loop, central office switch,
26 and might use CenturyTel's interexchange facilities Tr. 89.

1 Mr. Gates acknowledged that IXC's utilizing CenturyTel facilities in this manner
2 compensate CenturyTel in the form of access charges but stated that Level 3 should not
3 have to similarly pay access charges even though Level 3 also uses the same CenturyTel
4 facilities to complete a call over the same route (Tr. 92 – 93). Mr. Gates was unable to
5 provide a meaningful basis for this distinction. He mentioned that the IXC call might
6 involve a tandem switch (Tr. 90). However, any such tandem switch would not be a
7 CenturyTel facility and therefore provides no distinction when addressing specifically use
8 of CenturyTel facilities. Mr. Gates also mentioned that there might be SS7 or database
9 queries associated with some IXC traffic (TR. 85). However, on further questioning he
10 had to admit that the costs of any SS7 use or database query would be very minor
11 compared to the overall cost of delivering the traffic (Tr. 86 – 87).

12 Level 3 went to great pains in the hearing to conjure up hypothetical situations
13 where other non-traffic could somehow slip onto CenturyTel's network without paying
14 access charges. These generally involved some daisy chaining, bridging or other
15 combination of EAS, FX or other services in a manner that is difficult for the carriers to
16 detect. One reason they would be hard to detect and remedy is that they are or would be
17 fairly innocuous. That such instances are theoretically possible does not justify Level 3's
18 intentions. These relatively isolated and small scale instances are a far cry from the
19 wholesale abuse that Level proposes where every single call they handle would be non-
20 local and would be designed to evade access charges.

21 In the end, Mr. Gates was left with the following statement as his basis for the
22 distinction as to why access charges should apply to other IXC's and not to Level 3:

1 Q. To sum up then, when that CenturyTel customer makes calls to Seattle,
2 sometimes there will be additional compensation for the loop, and
3 sometimes there won't?
4

5 A. Depending upon the technology required and depending upon public
6 policy positions dictated by this Commission, that's correct. The
7 compensation can be completely different for a call between two points.
8 [Tr. 98 -99]
9

10
11 Technology would not be a distinction as it would be the exact same CenturyTel
12 facilities used by both the other IXC's and Level 3. However, CenturyTel would agree
13 with Mr. Gates that public policy positions would be the driving force if such a
14 distinction in the level of compensation were imposed. However, it clearly would not be
15 good public policy to impose different compensation levels on different carriers who use
16 exactly the same CenturyTel facilities to complete calls on between the same two points.
17 Level 3 should not be allowed to evade access charges that their competitor IXC's pay for
18 the exact same use of CenturyTel facilities simply because Level 3 has played games
19 with number assignment.

20
21 3. Contrary to Level 3's assertions, Level 3's service will impose costs
22 on CenturyTel's network that real local calls would not.
23

24
25 Level 3 has repeatedly asserted that its service would not impose costs on
26 CenturyTel's network any differently than other local traffic. The record in this
27 proceeding shows that Level 3 is mistaken. Because calls under Level 3's service are not
28 truly local, there would be additional costs and burdens on CenturyTel's network.
29 Mr. Gates acknowledged that depending on where the point of interconnection is between
30 Level 3's and CenturyTel's network, CenturyTel would be required to provide some
31 degree of interexchange facilities (Tr. 53 -54). By way of specific example, Exhibit 6

1 showed a CenturyTel provided interexchange facility in the form of a microwave radio
2 shot from Mt. Ellis to Port Angeles (a Qwest exchange). That interexchange facility is
3 used to transport traffic from Forks to Seattle and other locations outside of the Forks
4 local calling area. The facility is not used to transport traffic within the Forks local
5 calling area.

6 IXC's use the Mt. Ellis microwave shot to complete calls from CenturyTel end
7 users in Forks to Seattle. Those IXC's compensate CenturyTel for the costs of that facility
8 on the CenturyTel side of the point of interconnection in the form of access charges (Tr.
9 74). Level 3 would also use this facility to complete calls from CenturyTel end users in
10 Forks to Seattle. However, Level 3 has made it clear that it expects to bear only the costs
11 of interexchange facilities on its own side of the point of interconnection (Tr. 76). Unlike
12 other interexchange carriers using the Mt. Ellis microwave facility to complete calls from
13 Forks to Seattle, Level 3 expects to evade payment for costs of that facility on the
14 CenturyTel side of the point of interconnection.

15 Level 3's use of the Mt. Ellis microwave facility will increase the cost of that
16 facility. Truly local calls on the other hand do not affect the cost of that facility because
17 they do use that facility. Therefore Level 3's service will cause CenturyTel to incur costs
18 that truly local calls do not generate. This once again points out that Level 3's service is
19 interexchange and not local. It would utilize CenturyTel interexchange facilities whereas
20 truly local calls do not.

21 The only way that Level 3's service would not increase CenturyTel's
22 interexchange facility costs is if CenturyTel provided no interexchange facilities (i.e. all
23 of the interexchange facilities were on the Level 3 side of the point of interconnection).

1 This would only occur if the point of interconnection were at the CenturyTel end office.
2 This will not be the case. When asked if Level 3 would commit to establishing the point
3 of interconnection at the CenturyTel end office in each instance, Level 3 refused to do so
4 (Tr. 76).

5 Level 3 should bear the same responsibility as other IXC's who utilize CenturyTel
6 interexchange facilities for completion of calls from CenturyTel end users to customers
7 located in Seattle or somewhere else outside of the local calling area. Level 3 should not
8 be allowed to evade that responsibility by simply playing games with number
9 assignment.

10
11 4. Access charges and not local interconnection reciprocal compensation
12 should apply to Level 3's traffic.
13
14

15 Since passage of the 1996 Telecommunications Act ("the Act")
16 telecommunications traffic passing between two carriers has consistently been placed into
17 two categories with respect to its use of, and compensation for the local exchange carrier
18 networks. Interexchange traffic is subject to access charges. Local traffic is subject to
19 local interconnection reciprocal compensation set forth in Section 251 of the Act. The
20 FCC described this bifurcation as follows in its pending rulemaking docket examining
21 issues concerning the differences in the access charge and local interconnection
22 compensation mechanisms:

23
24 ... access charge rules ... govern the payments that interexchange carriers
25 ("IXCs") ... make to LECs to originate and terminate long-distance calls; and

1 reciprocal compensation rules ... govern the compensation between
2 telecommunications carriers for the transport and termination of local traffic.¹
3
4
5

6 The FCC has consistently held that Section 251 local interconnection provisions
7 do not apply to interexchange traffic. According to the FCC, “[a]ll carriers (including
8 those traditionally classified as IXC’s) may obtain interconnection pursuant to section
9 251(c)(2) for the purpose of terminating calls originating from their customers residing in
10 the *same telephone exchange* (i.e., non-interexchange calls).”² Significantly, the FCC has
11 concluded that “an IXC that requests interconnection solely for the purpose of originating
12 or terminating its interexchange traffic, not for the provision of telephone exchange
13 service and exchange access to others, on an incumbent LEC’s network is not entitled to
14 receive interconnection pursuant to section 251(c)(2).”³ Specifically with regard to
15 intercarrier compensations, the FCC determined in the *Local Competition Order* that the
16 reciprocal compensation provisions of section 251(b)(5) applied only to “local” traffic
17 rather than to transport and termination of interexchange traffic.⁴

18 The record in this proceeding clearly indicates that Level 3 is seeking access to
19 CenturyTel’s network solely for the purpose of terminating interexchange calls. All calls
20 placed by CenturyTel end users will terminate to Level 3 customers located outside of the
21 exchange and outside of the local calling area. Level 3’s assignment of a Forks

¹ Notice of Proposed Rulemaking In the Matter of Developing a Unified Intercarrier Compensation Regime, FCC 01-132, CC Docket No. 01-92, rel. April 27, 2001 (“Unified Intercarrier Compensation NPRM”), at paragraph 6.

² In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd 15499, 15598 ¶ 190 (“Local Competition Order”).

³ Id. at 15598 ¶ 191.

⁴ Implementation of the Local Competition Provisions of in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Radio Service Providers CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC rcd15499, (1996).

1 NPA/NXX telephone number to Level 3's customer in Seattle does not change that fact.
2 The call from Forks to Seattle is still an interexchange call. Under the FCC's still valid
3 bifurcated approach, these interexchange calls are subject to access charges and not the
4 reciprocal compensation reserved for local interconnection and exchange of local traffic.

5 As noted earlier, Level 3 has sought access to CenturyTel's network under the
6 guise of local interconnection for the simple purpose of evading access charges.

7 CenturyTel witness Craig Cook described this somewhat transparent intention as follows:

8
9 Level 3 is seeking to establish VNXX codes in order to provide a means of
10 receiving toll-free Interexchange calls from a wide geographic area by compelling
11 originating carriers such as CenturyTel to enter into local retail calling
12 arrangements with Level 3's end users. Such calling arrangements are void of
13 compensation provisions to CenturyTel that are standard in other Interexchange
14 service provider arrangements. The primary purpose of assigning a "local"
15 telephone number to a retail customer located outside of the NPA-NXX's
16 designated rate center is to prevent the presubscribed toll carrier (IXC) from
17 assessing standard "toll" charges for calls to the number and to prevent the ILEC
18 from assessing Exchange Access charges to its IXC customers. By assigning
19 multiple NPA-NXX codes, each from a different rate center, to an individual
20 customer in a distant location, a telecommunications provider can offer a
21 customer the ability to receive incoming toll-free Interexchange calls from the
22 entire geographic area of each NPA-NXX rate center, thereby effecting an 800-
23 type service without incurring the customary Exchange Access charges. If the
24 VNXX provider obtains enough NXX codes, it could essentially offer LATA-
25 wide or state-wide (and potentially nation-wide) inbound toll-free Interexchange
26 calling to its customers. Not only does this use of VNXXs tie up hundreds of
27 thousands or even millions of telephone numbers for a handful of customers, it
28 also creates regulatory arbitrage by avoiding the otherwise applicable Exchange
29 Access charges associated with Interexchange traffic. Through the use of
30 VNXXs, Level 3 seeks to avoid intercarrier compensation mechanisms that were
31 implemented by the FCC when it adopted the Exchange Access charge
32 mechanisms for such Interexchange traffic, and exacerbates number exhaust.

33
34 *Exhibit 12 at pages 14 – 15.*
35

36 However in attempting to do this, Level 3 runs headlong into the admonition
37 expressed by the FCC. Level 3 is requesting interconnection "solely for the purpose of

1 originating or terminating its interexchange traffic, not for the provision of telephone
2 exchange service and exchange access to others.” Based upon the record established in
3 this proceeding Level 3 is not entitled to gain access to CenturyTel’s network under the
4 guise of local interconnection. Access to CenturyTel’s network under the access charge
5 regime on the other hand is allowed, and totally appropriate.

6
7 5. Contrary to Level 3’s assertion, the FCC has not ruled that bill and
8 keep is the form of intercarrier compensation to be applied to all ISP-
9 bound traffic.

10
11
12 It has been acknowledged that all of the traffic Level 3 initially intends to
13 exchange with CenturyTel would be ISP-bound traffic arising from calls from
14 CenturyTel end users destined for Level 3 ISP customers. Level 3 asserts that the FCC in
15 the *ISP Remand Order* ruled that bill and keep should be applied to all ISP-bound traffic.
16 However, a review of the FCC orders and the two court remands of those orders reveals
17 that this is simply not true. In fact the FCC has ruled only that bill and keep should be
18 applied where traffic is bound for an ISP located within the local calling area.

19 In the D.C. Circuit Court’s review of the first FCC ISP order the Court stated that
20 the FCC “considered whether calls to internet service providers (‘ISPs’) within the
21 caller’s local calling area are themselves ‘local’”.⁵ The FCC itself in its order on
22 remand of that decision stated “the question arose whether reciprocal compensation
23 obligations apply to the delivery of calls from one LEC’s end-user customer to an ISP in

⁵ *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d. 1 at 2 (D.C. Cir. 2000)

1 the same local calling area that is served by a competing LEC.⁶ Most importantly, in the
2 D.C. Circuit Court’s recent review and remand of the *ISP Remand Order* the opinion
3 states that “In the order before us the Federal Communications Commission held that
4 under section 251(g) of the Act it was authorized to ‘carve out’ from section 251(b)(5)
5 calls made to internet service providers (‘ISPs’) located within the caller’s local calling
6 area.”⁷ It was abundantly clear to the reviewing Court that the FCC in its *ISP Remand*
7 *Order* was addressing only traffic bound for an ISP located within the caller’s local
8 calling area. This limited scope has been consistently expressed throughout both FCC
9 orders and both court reviews.

10 At the hearing in this proceeding, Level 3 witness William Hunt was asked how
11 he would reconcile Level 3’s position that the *ISP Remand Order* applies to all ISP-
12 bound traffic with the Court’s language stating it applied only to traffic bound for an ISP
13 located within the caller’s local calling area. Mr. Hunt could only state that he did not
14 know how the court came to its conclusion (Tr. 154 – 156). This does not change the fact
15 the D.C. Circuit Court’s interpretation of the *ISP Remand Order* clearly overrides Level
16 3’s interpretation. Relying on the *ISP Remand Order* for the proposition that bill and
17 keep should apply to traffic bound for ISP’s not located in the local calling area of the
18 calling party is merely wishful thinking on Level 3’s part. Level 3 will have to look
19 elsewhere for a basis to support its desire to get a free ride on CenturyTel’s network for
20 its non-local ISP-bound traffic.

21
22

⁶ *In re 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 (2001) (“*ISP Order on Remand*”).

⁷ *WorldCom v. FCC*, 288 F.3d 429, 430 (D.C. Cir. May 3, 2002)

1 6. This Commission has already ruled that Level 3 cannot get a free ride
2 on Qwest facilities for traffic delivered to Level 3's ISP customers.
3
4

5 In Docket UT-023042 Level 3 brought an arbitration proceeding against Qwest
6 taking the position that it should not have to compensate Qwest for use of Qwest's
7 facilities in the delivery of ISP-bound traffic to Level 3's ISP customers. The issue was
8 framed in the context of whether such traffic should be included or excluded from the
9 traffic factor that would determine how much of Qwest's network costs Qwest itself
10 would have to bear in exchanging traffic with Level 3. The Arbitrator's Report and
11 Decision issued November 27, 2002 ruled that traffic destined for Level 3's ISP
12 customers should not be included in the factor. In other words Qwest was not required to
13 bear the costs associated with that traffic and Level 3 did not get its free ride on Qwest's
14 facilities.

15 In this proceeding Level 3 similarly is attempting to force CenturyTel to bear all
16 costs of the CenturyTel facilities utilized to deliver traffic to Level 3's ISP customers.
17 This should not occur. It would be a very questionable outcome if CenturyTel, a rural
18 telephone company under the Act, was required to bear these costs when the Commission
19 had already determined that Qwest, a non-rural company, is not required to bear those
20 costs. It would be totally inconsistent with the Act if CenturyTel, the rural telephone
21 company, had the heavier burden with regard to what is essentially the same
22 interconnection for the same traffic.
23
24

1 7. Even if it were so inclined, the Commission does not have the
2 jurisdiction to impose bill and keep terms on the delivery of ISP-
3 bound traffic to Level 3's ISP customers.
4

5
6 First, as has already been addressed, Level 3's traffic does not qualify for
7 intercarrier compensation based upon local interconnection provisions. Second, it has
8 also been pointed out that the FCC's ruling as to application of bill and keep to ISP-
9 bound traffic applies only to such traffic that is delivered to an ISP located within the
10 local calling area, i.e. not the traffic identified in this proceeding. Even if Level 3 could
11 get past these two obstacles, and the Commission was so inclined, the Commission could
12 not order CenturyTel to exchange such traffic on a bill and keep basis. Such a ruling
13 would amount to a finding as to the intercarrier compensation applied to ISP-bound
14 traffic. As this Commission has acknowledged earlier in this proceeding, it does not have
15 jurisdiction to make findings regarding such compensation.

16
17 The Commission determines that the FCC's ISP Remand Order does not preempt
18 our jurisdiction to arbitrate issues regarding CenturyTel's obligation to
19 interconnect with Level 3 to facilitate ISP-bound traffic. The FCC preempted
20 only the Commission's authority to arbitrate the compensation for ISP-bound
21 traffic.

22
23 Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction,
24 October 25, 2002 (emphasis added).
25

26
27 CenturyTel has always been willing to interconnect with Level 3 for the exchange
28 of traffic. The dispute between the parties has to do with the appropriate form of
29 compensation to be applied to that exchange of traffic. As the Commission notes in its
30 Third Supplemental Order, given that we are dealing with ISP-bound traffic, that dispute
31 must be left to the FCC to resolve.

1 8. Arbitration Petition Issue No. 1: Is ISP-bound traffic subject to
2 different interconnection requirements than local traffic under federal
3 law such that it should be handled by separate agreement?
4
5

6 It should first be noted that it is CenturyTel's position that Level 3's traffic would
7 not be local and therefore, as discussed earlier, should not be subject to a local
8 interconnection agreement under the provisions of sections 251 and 252 of the Act.. In
9 any event Level 3's traffic would be ISP-bound which has been singled out by the FCC
10 (see previous discussion about preemption for compensation) and therefore it may make
11 sense to have it in a separate agreement from any non-ISP bound truly local traffic.
12

13 9. Arbitration Petition Issue No. 2: What is the proper definition of local
14 traffic?
15
16

17 Level 3's definition of local traffic should be rejected for the simple reason that it
18 includes non-local traffic. This is the vehicle by which Level 3 attempts to have its non-
19 local interexchange traffic evade access charges by exchanging it under the guise of a
20 local interconnection agreement. This Commission should adopt CenturyTel's definition
21 of local traffic as it properly limits the scope of the agreement as applying to only truly
22 local traffic.
23

24 10. Arbitration Petition Issue No. 3: What is the proper treatment of
25 foreign exchange or "Virtual NXX" traffic for intercarrier
26 compensation purposes?
27
28

29 As discussed above, Level 3's Virtual NXX traffic would be interexchange and
30 not local traffic. As such it should be subject to access charges. As noted by the FCC,

interconnection solely for the purposes of terminating interexchange traffic is not entitled to be treated as local interconnection (see discussion and citations above).

11. Arbitration Petition Issue No. 4: How should the parties define bill-and-keep compensation to implement the FCC's ISP order on remand?

As discussed above, Level 3's ISP-bound traffic will not be delivered to an ISP within the local calling area and therefore would not be covered by the FCC's ISP Remand Order and would not be subject to bill and keep. Therefore to the extent Level 3's proposed language implies that such traffic would be subject to bill and keep it is contrary to law and should be rejected.

12. Any local interconnection agreement imposed by the Commission should include language holding Level 3 to the commitment that it made regarding points of interconnection.

Level 3 in this proceeding repeatedly made the commitment that it would agree to establish points of interconnection within CenturyTel's local calling areas. (e.g. Tr. 53 – 54). Level 3's proposed agreement language is not consistent with this commitment as that language was designed for interconnection with a non-rural company. CenturyTel does not believe that there is a basis in this record in this proceeding to impose a local interconnection agreement. However, if this Commission does decide to do so, such agreement should contain point of interconnection language that is consistent with Level 3's commitment.

1 13. Any local interconnection agreement imposed by the Commission
2 should include language limiting the traffic to be exchanged to ISP-
3 bound traffic.
4

5
6 Again, CenturyTel does not believe that there is a basis in this record in this
7 proceeding to impose a local interconnection agreement. However, if this Commission
8 does decide to do so, such agreement should contain language restricting the traffic to be
9 exchanged to ISP-bound traffic. At the hearing it became evident that Level 3 is
10 intending to handle only ISP-bound traffic originating from CenturyTel end users, at least
11 initially. In view of this, Mr. Hunt was asked if Level 3 would agree to this restriction.
12 His response was “certainly” (TR. 134). Such a restriction would limit CenturyTel’s
13 exposure to uncompensated costs associated with VNXX interexchange traffic and would
14 appear to meet Level 3’s immediate needs.
15

16 CONCLUSION

17 Level 3 has brought this action under the guise of local interconnection in hopes
18 of providing a service that utilizes CenturyTel facilities without paying for that use. The
19 record in this proceeding reveals that traffic under the proposed service would be
20 interexchange and not local. The record further confirms that Level 3 would use
21 CenturyTel facilities in exactly the same manner as do other IXC’s who complete calls
22 over the very same routes. With this factual background now established, the law is clear
23 that intercarrier compensation in this context is governed by the access charge regime and
24 not by local interconnection provisions. Therefore the Commission should dismiss the
25 Petition for Arbitration and direct the parties to connect and exchange this traffic
26 pursuant to the access charge regime.

In any event, this Commission lacks jurisdiction to grant Level 3 the “bill and keep” intercarrier compensation terms it seeks for exchange and termination of ISP-bound traffic.

Respectfully submitted,

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