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January 30, 2003

**VIA EMAIL AND OVERNIGHT DELIVERY**

Ms. Carole J. Washburn, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7254

**Re: Docket No. UT-023043  
Request for Approval of Arbitrated Interconnection Agreement Between  
CenturyTel of Washington, INC. and Level 3 Communications, LLC**

Dear Ms. Washburn:

In accordance with the *Interpretive and Policy Statement* issued on June 28, 1996 in Docket No. UT-960269, and pursuant to paragraph 43 of the *Fifth Supplemental Order, Arbitrator's Report and Decision* in Docket No. UT-023043, please find enclosed an original and two (2) copies of the arbitrated Interconnection Agreement ("Agreement") between CenturyTel of Washington, Inc. ("CenturyTel") and Level 3 Communications, LLC ("Level 3").

The enclosed Agreement has been signed by Level 3, but has not been executed by CenturyTel. The parties are in disagreement over the inclusion of the phrase "ISP-Bound Traffic" in Article IV, Section 4.2 of the Agreement. Level 3 submits that the language in this section was clearly identified on the face of the Petition as subject to dispute under Issue 1 of the arbitration,<sup>1</sup>

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<sup>1</sup> The disputed section was initially listed as Article V, Section 4.2 in the Draft Interconnection Agreement filed with Level 3's Petition for Arbitration. However, the original Section V, which addressed resold services (General Rules Governing Resold Services and Unbundled Elements) has been removed from the attached Agreement – and thus, the disputed language is now found in

and the parties addressed this specific issue at length in briefs and testimony.<sup>2</sup> Level 3 therefore requests that the Commission direct CenturyTel to execute the Agreement in accordance with the *Fifth Supplemental Order*, subject of course to CenturyTel's pending Petition for Review.

In order to fully implement the arbitrated decision regarding Issue 1 (that ISP-Bound traffic is not subject to different interconnection requirements than local traffic), ISP-Bound traffic must be included in Section 4.2 of Article IV. CenturyTel's Information Access Traffic Agreement, which was rejected by the Arbitrator in paragraph 22, would have required Level 3 to accept full financial responsibility for the interconnection facilities used to exchange traffic. The same result will occur if ISP-Bound Traffic is excluded from Section 4.2. While we understand that CenturyTel will be submitting a letter to the Commission outlining its position on this issue,<sup>3</sup> Level 3 submits that CenturyTel's position is contrary to Commission practice. CenturyTel has already filed its Petition for Review, and it has identified therein its concerns with respect to the *Fifth Supplemental Order*. That is CenturyTel's sole remedy under Commission procedure for objecting to the scope of the decision.

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renumbered Article IV. *See* In the Matter for the Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC., and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. § 252, Docket UT 023043 (filed August 8, 2002), Exhibit B (Draft Interconnection Agreement). It should also be noted that the disputed language was included under Issue 1 of Level 3's Petition for Arbitration, which read: "Issue 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? (Art. II, Secs. 1.43; 1.49; Art. V, Secs. 1, 3.1, 4.2, 4.3; Art. VIII, Sec. 3)," *Id.* at 8.

<sup>2</sup> *See, e.g.*, Post-Hearing Brief of Level 3 Communications, LLC at 9-12 (addressing the substantive legal concerns – beyond merely putting ISP-bound traffic in a separate agreement – associated with treating ISP-bound traffic differently from local calls for interconnection purposes); Rebuttal Testimony of William P. Hunt, III on behalf of Level 3 Communications, LLC at 8 (recommending that the Commission “**exercise its authority to require that CT interconnect with Level 3 for the exchange of ISP-bound traffic on the same terms and conditions as apply to other local traffic**”).

<sup>3</sup> Level 3 reserves the right to respond to CenturyTel's position on this issue, and moreover, Level 3 will be available to answer any questions regarding this issue during oral argument, scheduled for February 6, 2003.

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The enclosed Agreement does not discriminate against non-party carriers. It is consistent with the public interest, convenience, and necessity. It is also consistent with applicable state law requirements, including Commission orders regarding interconnection issues. Finally, the Agreement is also consistent with the applicable requirements of Sections 251 and 252 of the Communications Act of 1934, as amended, and relevant FCC regulations. Level 3 respectfully requests that the Commission approve this Agreement expeditiously.

Very truly yours,

Rogelio E. Peña  
Counsel to Level 3 Communications, LLC

REP/jlmp  
Enclosures

cc: All Parties on Service List