

Date Mailed February 17, 2003
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BEFORE THE  
  
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Level 3 Communications, LLC Petition for  
Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection  
Rates, Terms and Conditions With CenturyTel of Wisconsin, LLC

05-MA-130

**ORDER APPROVING AN INTERCONNECTION AGREEMENT**

This is the final decision in the request of Level 3 Communications, LLC, (Level 3) for approval of an interconnection agreement between itself and twelve operating companies of CenturyTel in Wisconsin (collectively, CenturyTel), pursuant to 47 U.S.C. § 252(b)(1)<sup>1</sup> and the Commission's interim procedures.<sup>2</sup>

**Proceedings**

Level 3 and CenturyTel stipulated that the date on which Level 3 requested negotiation of an interconnection agreement from CenturyTel was March 1, 2002, and that Level 3's petition for arbitration was timely filed. CenturyTel filed its response to the Level 3 petition on September 3, 2002. On September 17, 2002, the Public Service Commission of Wisconsin (Commission) appointed a three member panel (Panel) to consider this petition: Edward Marion (Panel Chairman), Gary Evenson, and Dennis Klaila.

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<sup>1</sup> Hereafter, simple references to § 251, § 252 and other sections without a title reference shall mean sections of Title 47 of the United States Code. Similarly, references to a Rule shall mean the corresponding section of Title 47 of the Code of Federal Regulations. References to "the Act" shall mean the Telecommunications Act of 1996, Public Law 104-104, 110 Stats. 56 (1996).

<sup>2</sup> Interim Procedures, Investigation of the Implementation of the Telecommunications Act of 1996 in Wisconsin, docket 05-TI-140, May 23, 1996.

The parties jointly submitted a statement of the issues to be arbitrated on September 25, 2002. The Panel conducted an evidentiary hearing on October 14, 2002. In the arbitration, the Panel addressed five issues. The parties filed initial briefs on November 1, 2002, and reply briefs on November 12, 2002. The Panel issued its award on December 2, 2002.

The parties submitted the draft Agreement for Commission consideration and approval on January 15, 2003. Upon submission of the Agreement, the Commission requested comments from interested parties on the question of whether it should approve the Agreement as submitted. On January 24, 2003, seven parties filed comments: CenturyTel, Level 3, TDS Telecom, Tri-County Telephone Cooperative, Verizon North Inc. (Verizon), Wisconsin State Telecommunications Association (WSTA) and the WSTA Small Company Committee.

Level 3 has proposed to interconnect with twelve operating companies of CenturyTel in Wisconsin. The Agreement filed on January 15, 2003, consists of two model agreements, one applicable to the CenturyTel operating companies exempt under § 251(f)(1)(A) and the second applicable to the three operating companies not exempt. Exemption under § 251(f) means that an exempt local exchange carrier does not have to comply with the requirements of § 251(c), including the more extensive interconnection requirements in § 251(c)(2). Exempt carriers still must comply with the basic interconnection requirement of §§ 251(a) and (b). The parties will submit final interconnection agreements between Level 3 and each CenturyTel operating company based upon the order the Commission issues below.

The Agreement is a combination of language adopted by the parties through negotiation and language adopted to incorporate the decision of the arbitration panel assigned to hear this matter. At its open meeting of February 13, 2003, the Commission considered both the

negotiated and arbitrated portions of the Agreement, as well as the comments submitted by interested parties.

### **Findings of Fact**

1. The Commission finds that the portions of the agreement adopted by negotiation meet the requirements of 47 U.S.C. § 252(e)(2)(A), and comply with other requirements of state law as may be considered pursuant to 47 U.S.C. §§ 252(e)(3), 253(b), and 261(c).

2. The Commission finds that the portion of the agreement adopted by arbitration meets the requirements of 47 U.S.C. §§ 251 and 252(d), and the regulations prescribed by the FCC pursuant to those sections, and complies with other requirements of state law as may be considered pursuant to 47 U.S.C. §§ 252(e)(3), 253(b), and 261(c).

### **Conclusion of Law**

1. The Commission has authority under WIS. STAT. §§ 196.02(1), 196.04, 196.199(2), 196.219(2m), (3)(a) and (4)(a), and 47 U.S.C. § 252(e)(1) to approve this interconnection agreement, or reject the agreement with written findings as to any deficiencies.

### **Opinion**

The Agreement is a combination of negotiated and arbitrated language. The standard for review of the negotiated portion is different from that of the arbitrated provisions. For this reason, each portion is discussed in turn below.

## **I. Negotiated provisions within the Interconnection Agreement**

Section 252(e)(2)(A) provides:

- (2) Grounds for rejection. The State commission may only reject—
  - (A) an agreement (or any portion thereof) adopted by negotiation under subsection [252(a)] if it finds that--
    - i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
    - ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity . . .

### **A. Status of the Agreement between Level 3 and CenturyTel of Monroe County.**

CenturyTel objects to the inclusion of CenturyTel of Monroe County, LLC, in the agreements subject to approval at this time. At the time of the arbitration, Level 3's application to provide facilities-based switched local exchange service to residential and business customers in the local service exchange areas served by CenturyTel of Monroe County, LLC, was pending before the Commission. Award at 2-3; *see also* Application of Level 3 Communications, LLC, to Expand Its Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange and Interexchange Telecommunication Services and to Operate as an Alternative Telecommunications Utility – Other in the Service Territory of CenturyTel of Monroe County, LLC, docket 7373-NC-111 (application filed May 17, 2002). On January 3, 2003, Level 3 filed to withdraw its application for certification in the service territory of CenturyTel of Monroe County.

Century Tel contends that, because Level 3 has voluntarily withdrawn its application for Competitive Local Exchange Carrier (CLEC) certification in the Monroe County service territory, it is no longer making a bona fide request for interconnection under § 251(f)(1). CenturyTel points to two instances in the past the Commission stated that an entity making a request under § 251(f) must be certified for the service involved or in the process of securing

certification. CenturyTel recommends that CenturyTel of Monroe County be removed from the Agreement so that, if the Commission approves the Agreement as filed, the approval would not apply with respect to CenturyTel of Monroe County.

Level 3 comments that it will not provide local exchange service utilizing the terms of the Agreement in CenturyTel of Monroe County's service area unless and until it is authorized by the Commission to do so. The Agreement, if approved, would appear to require this as well.

The Agreement at Article III, Section 13, provides:

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

However, Level 3 points out that this proceeding was commenced with a Petition for Arbitration that addressed each of CenturyTel's operating companies in Wisconsin, including CenturyTel of Monroe County. Therefore, Level 3 argues that it is appropriate for the Agreement with the CenturyTel rural companies to include CenturyTel of Monroe County.

The Commission finds that the proposed agreement between Level 3 and CenturyTel of Monroe County meets the requirements of 47 U.S.C. § 252(e)(2)(A), and complies with other requirements of state law as may be considered pursuant to 47 U.S.C. §§ 252(e)(3), 253(b), and 261(c). It is therefore approved. However, the Commission interprets the Agreement at Article III, Section 13 to mean that Level 3 cannot receive any traffic, including ISP-bound traffic, from CenturyTel customers in the CenturyTel of Monroe County exchanges until Level 3 receives a Certificate of Public Convenience and Necessity to provide facilities-based local exchange and interexchange telecommunication services and to operate as an alternative telecommunications utility in the service territory of CenturyTel of Monroe County from this Commission.

**B. Third party assertions that the Agreement is contrary to law and not in the public interest, convenience and necessity.**

WSTA, the WSTA Small Company Committee, TDS Telecom and Tri-County Telephone Cooperative recommend that the Commission reject the proposed Agreement in its entirety as contrary to law and not in the public interest, convenience and necessity.

These parties assert that the service Level 3 proposes to offer is not authorized under its present certification as an alternative telecommunications utility. They contend that the service Level 3 provides is not a local exchange service, as that term is defined in Wis. Stat. § 196.01(1)(g); it is an interexchange service. WSTA also argues that the Level 3 service fails to comply with the requirements of Wis. Admin. Code § PSC 160.03. The WSTA Small Company Committee further argues that, because of Extended Area Service arrangements with CenturyTel exchanges, other telecommunications utilities will route ISP-bound traffic through CenturyTel to Level 3 as if it were local traffic, and receive no originating access in compensation.

The Commission finds that the ISP-bound traffic Level 3 proposes to carry is dissimilar from interexchange toll service. Generally, toll calls are dialed on a ten-digit basis, generate a billing record, route through an access tandem and are carried by the terminating end user's presubscribed long distance carrier. All of these elements of a toll-free call contribute to the cost of the call. Level 3's network proposal would use none of these routing and billing arrangements. Thus, it is not the case that the Level 3 network proposal fails to compensate CenturyTel for an interexchange access service it is providing.

Therefore, the Commission finds that the portions of the agreement adopted by negotiation meet the requirements of 47 U.S.C. § 252(e)(2)(A), and comply with other

requirements of state law as may be considered pursuant to 47 U.S.C. §§ 252(e)(3), 253(b), and 261(c).

## **II. Arbitrated provisions within the Interconnection Agreement**

Section 252(e)(1) requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission. Section 252(e)(2)(B) provides that the state commission may reject an agreement (or any portion thereof) adopted by arbitration only “if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Federal Communications Commission (FCC) pursuant to section 251, or the standards set forth in subsection (d) of this section.”

In addition, § 252(e)(3) provides that:

Notwithstanding paragraph (2), but subject to section 252, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of state law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

Furthermore, § 253(b) provides that a state commission can impose “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

Finally, under § 261(c), the state commission can enforce existing state regulations and impose additional state requirements “that are necessary to further competition,” provided those requirements are consistent with the Act and other provisions of federal law.

The arbitrated portion of the Agreement consists of language drafted to conform to the decision of the arbitration panel in its award dated December 2, 2002. After review of the decision of the arbitration panel on each issue, as well as the comments of the parties on the

issues they elected to address, the Commission adopts the findings and conclusions of the arbitration panel on each arbitrated issue.

CenturyTel generally asserts that most ISP-bound traffic is both interstate and interexchange. CenturyTel believes that when communications are jurisdictionally mixed and cannot be separated into interstate and intrastate elements, the Federal Communications Commission (FCC) has the exclusive authority to regulate such communications. As such, CenturyTel believes that the FCC has exclusive jurisdiction over the subject matter of Internet traffic. CenturyTel also asserts that, even if the Commission has jurisdiction over the Internet traffic-carrier compensation for ISP-bound traffic, it is entitled to originating access charges, rather than the bill-and-keep compensation arrangement awarded by the Panel.

Level 3 supports the Panel's decision on this matter. Level 3 agrees with the Award that current applicable federal law requires the bill-and-keep intercarrier compensation arrangement for the exchange of Internet traffic. Level 3 also emphasizes that Level 3's proposed service is functionally identical to the foreign exchange services that CenturyTel provides to its own customers. Thus, Level 3 believes it would be discriminatory to single out Level 3's service, and not CenturyTel's functionally similar service, to bear the burden of originating access charges.

The Commission first finds that it has authority under § 252, as well as authority under Wisconsin law, to approve the interconnection agreement the parties have proposed. The Commission agrees with the arbitration panel that it may regulate a subject matter that has both interstate and intrastate aspects, provided its regulation does not conflict with federal law or negate the exercise of lawful federal authority. In the award, the Panel found that the FCC



intended that its *ISP Order on Remand*<sup>3</sup> would apply to all Internet traffic originated by CenturyTel and directed to a Level 3 address, without respect to the terminating point of the call. The Commission agrees with this finding and, therefore, agrees with the Panel's ultimate conclusion that the appropriate inter-carrier compensation rate for the Internet traffic the parties will exchange is the bill-and-keep compensation proposed by Level 3.

In summary, the Commission finds that the portion of the agreement adopted by arbitration meets the requirements of 47 U.S.C. §§ 251 and 252(d), and the regulations prescribed by the FCC pursuant to those sections, and complies with other requirements of state law as may be considered pursuant to 47 U.S.C. §§ 252(e)(3), 253(b), and 261(c).

### **Order**

1. The Interconnection Agreement between Level 3 Communications, LLC, and CenturyTel of Wisconsin, on behalf of the twelve CenturyTel operating companies in Wisconsin, is approved.

2. This order is effective as of February 13, 2003.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

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Lynda L. Dorr  
Secretary to the Commission

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See attached Notice of Appeal Rights

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<sup>3</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 F.C.C.R. 9151, 9171-72 (2001) (*ISP Order on Remand*).

Notice of Appeal Rights

Section 252(e)(6) of the federal Telecommunications Act of 1996 provides that any party aggrieved by this determination may bring an action in an appropriate Federal District Court to determine whether the agreement meets the requirements of §§ 251 and 252 of that Act.

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98