

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	
)	
LEVEL 3 COMMUNICATIONS, LLC)	DOCKET NO. UT-023043
and CENTURY TEL OF)	
WASHINGTON, INC.)	
)	
Pursuant to 47 U.S.C. Section 252)	

**MOTION OF LEVEL 3 COMMUNICATIONS, LLC FOR LEAVE TO FILE
ADDITIONAL AUTHORITY**

Level 3 Communications, LLC (“Level 3”), by its attorneys, submits this Motion for Leave to File Additional Authority pursuant to WAC 480-09-420. In support of its motion, Level 3 states as follows:

1. A hearing in the above-captioned matter was held November 7, 2002. By the time of hearing, the dispute between the parties had been narrowed to four issues. Post-hearing briefs were filed on December 6, 2002.

2. An Arbitrator’s Report was issued in the proceeding on January 2, 2003. CenturyTel filed a Petition for Review on January 21, 2003. Level 3 filed an Answer and Opposition to Petition for Review on January 31, 2003. The Commission heard oral argument on February 6, 2003.

3. Subsequent to the filing of post hearing briefs, CenturyTel’s Petition for Review and Level 3’s Answer and Opposition, and oral argument, on February 13, 2003, an Order Approving An Interconnection Agreement was issued by the Public Service Commission of Wisconsin in Docket No. 05-MA-130, *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 (the “Wisconsin Arbitration” and “Wisconsin Decision”). The Wisconsin Decision is attached hereto as Attachment 1.

4. The Wisconsin Decision is significant persuasive authority, and is proper for this Commission to consider in reaching its decision in this docket. The parties in the Wisconsin Arbitration were Level 3 and twelve CenturyTel operating companies providing local exchange service in the State of Wisconsin. The Wisconsin Arbitration also involved the same four issues that have been contested by the parties in this proceeding, and were resolved by the Public Service Commission of Wisconsin (“PSCW”) pursuant to the same federal authority¹ that will guide this Commission in reaching its decision. The PSCW affirmed the Wisconsin arbitration panel decision cited in Level 3’s post-hearing brief, specifically finding that it had jurisdiction under Section 252 of the Act to resolve the issues raised in Level 3’s petition for arbitration: “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* (footnote omitted) 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

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 16 FCC Rcd. 9151 (2001), *remanded Worldcom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

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.”²

For the forgoing reasons, Level 3 respectfully requests that this Commission grant its Motion for Leave to File Additional Authority, and that the Commission take administrative notice of the Wisconsin Decision.

Dated this 26th day of February, 2003.

RESPECTFULLY SUBMITTED,

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² *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*, Docket No. 05-MA-130, Order Approving An Interconnection Agreement (Wis. P.S.C. Feb. 17, 2003), at 8-9.

Certificate of Service

I hereby certify that the original and 19 copies of the foregoing *Motion of Level 3 Communications, LLC For Leave to File Additional Authority* in Docket No. UT-023043 was sent via Federal Express on this 26th day of February, 2003, for filing with the following:

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

And that a true and correct copy of same has been served via facsimile and/or via regular U.S. Mail, postage pre-paid, on this 26th day of February, 2003, addressed to the following:

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Jennifer Powers

ATTACHMENT 1

Order Approving An Interconnection Agreement

WI PSC Docket No. 05-MA-130

**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**