

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of the Petition for	)	
Arbitration of an Interconnection	)	
Agreement Between	)	
	)	DOCKET NO. UT-023043
LEVEL 3 COMMUNICATIONS, LLC,	)	
	)	
and	)	
	)	
CENTURYTEL OF WASHINGTON,	)	<b>CENTURYTEL’S MOTION TO</b>
INC.	)	<b>AMEND ORDER APPROVING</b>
	)	<b>INTERCONNECTION</b>
	)	<b>AGREEMENT</b>
.....	)	

1. CenturyTel of Washington, Inc. (“CenturyTel”) moves for an order amending the Washington Utilities and Transportation Commission’s (the “Commission’s”) Order of February 28, 2003, approving an Interconnection Agreement between CenturyTel and Level 3 Communications, LLC (“Level 3”), to provide for a true-up with respect to compensation for Level 3’s “Virtual NXX” traffic.

2. Specifically, CenturyTel requests that the Commission amend its Order to provide the following:

The Parties shall exchange interexchange ISP-bound traffic under an interim bill-and-keep arrangement as set forth in the Interconnection Agreement. However, should a court of competent jurisdiction subsequently find that the Virtual NXX arrangement for Level 3’s ISP-bound traffic, as described herein, is interexchange and subject to access charges, the interim compensation structure shall be subject to a true-up, such that CenturyTel shall be compensated originating access charges for all ISP-bound traffic terminated to Level 3’s customers via the Virtual NXX arrangement. The Commission further orders that the parties shall maintain records of all traffic exchanged between them from the date they successfully interconnect to enable such a true-up.

**A. Procedural History**

3. In August 2002, Level 3 filed with the Commission a petition for arbitration pursuant to 47 U.S.C. § 252(b)(1). The petition concerned Level 3's desire to establish a local interconnection to provide direct inward dialing capability to its ISP customers located outside of CenturyTel's local calling areas in the state of Washington. This motion concerns the compensation mechanism for the exchange of Level 3's interexchange, ISP-bound traffic offered via a Virtual NXX arrangement.

4. The parties filed their respective briefs in September and October of 2002, and the arbitration was conducted on October 28, 2002. The Arbitrator reached his Award on January 2, 2003. In that Award, the Arbitrator concluded that Level 3's interexchange, ISP-bound traffic is subject to bill-and-keep, and thus the Arbitrator adopted the language proposed by Level 3 for Article V, Section 3 of the Interconnection Agreement. The Arbitrator denied CenturyTel's alternative proposal to treat Level 3's traffic as interexchange and therefore subject to access charges.

5. CenturyTel filed its Petition for Commission Review of Arbitrator's Report and Decision on January 21, 2003, and Level 3 filed its corresponding Answer on January 31, 2003. On January 21, 2003 the Commission received an *amicus* brief from WITA and Verizon Northwest Inc. On February 28, 2003 the Commission published its Seventh Supplemental Order: Affirming Arbitrator's Report and Decision.

6. The parties have signed the Interconnection Agreement submitted to the Commission by Level 3 in compliance filing dated January 30, 2002.

**B. The Order Should Be Amended To Provide For A True-Up.**

7. Washington law grants the Commission the explicit power “to revise and amend the terms and conditions” of Commission orders approving interconnection agreements. RCW 80.16.050. CenturyTel, now appearing before the Commission within the time period for filing a petition for reconsideration under RCW 35.05.470, moves the Commission to amend its Order approving the Interconnection Agreement by providing for a true-up.

8. The Federal Communications Commission has endorsed the adoption of true-ups at the state level to ensure that carriers are not disadvantaged by an interim rate that differs from the final rate. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 61 FR 45475, ¶ 1068 (August 8, 1996) (“We believe that the adoption of interim rates, subject to a ‘true-up,’ advances the pro-competitive goals of the statute.”). *Accord In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Sprint Communications Company L.P. and U S West Communications, Inc.*, No. UT-960347 1997 Wash. UTC LEXIS 47 (June 18, 1997) (permitting parties to use interim rates until the Commission set approved rates, at which time the amounts charged would be subject to a true-up).

9. Here, not unlike an interim rate that may later change, the Commission has reached a result for Virtual NXX traffic that faces an uncertain future in the courts.

Amending the Commission's Order to provide for a true-up will preserve the parties' rights regardless of the outcome of later court determinations.

10. The Commission's findings that Level 3's Virtual NXX is not interexchange traffic subject to access charges conflicts with the findings of several other states. *See CenturyTel's Petition For Commission Review of Arbitrator's Report and Decision at 15-16.* The Commission has concluded that the Arbitrator's award complies with the requirements of 47 U.S.C. §§ 251 and 252, but the Commission's findings are subject to review in federal district court. CenturyTel intends to initiate such review shortly. For these reasons, the Commission's decision may be subsequently overturned and found to be inconsistent with federal law.

11. As review under 47 U.S.C. § 252(e)(6) can be a lengthy process, and as the parties will have interconnected during that time, CenturyTel may forfeit access charges to which it is lawfully entitled if the Commission does not amend its Order to provide for a true-up for the exchange of interexchange, ISP-bound traffic. An amendment to the Commission's Order to provide for a true-up guarantees that CenturyTel's right to impose access charges will be preserved while it seeks review of the Commission's Order. Amending the Order to provide for a true-up does not prejudice Level 3, because Level 3 will not be required to pay access charges unless and until the district court finds the Commission's interpretation inconsistent with federal law. If the court reaches this conclusion, any time that elapses between the date of interconnection and the district court's finding will be time during which Level 3 was

statutorily obligated to pay CenturyTel the corresponding access charges. In essence, Level 3 cannot be deprived of rights which it never possessed.

WHEREFORE, CenturyTel respectfully requests that the Commission amend its Order to provide for a true-up in a manner substantially similar to that described above.

Dated this 7th day of March, 2003.

CenturyTel of Washington, Inc.

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