

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 REPLY IN</b>
INC.	)	<b>SUPPORT OF MOTION TO</b>
	)	<b>AMEND ORDER APPROVING</b>
	)	<b>INTERCONNECTION</b>
	)	<b>AGREEMENT</b>
.....	)	

1. CenturyTel of Washington, Inc. (“CenturyTel”) submits this Reply in support of its Motion To Amend Order Approving Interconnection Agreement (the “Motion”) dated March 7, 2003.

2. Level 3 Communications, LLC’s (“Level 3’s”) responsive brief is remarkable for the ferocity with which it opposes the concept that both parties to this dispute ultimately should pay and/or receive that which federal law requires. Contrary to Level 3’s argument,<sup>1</sup> the provision for such a true-up is not only patently fair, but also perfectly consistent with federal and Washington law.

---

<sup>1</sup> See Answer And Opposition Of Level 3 Communications, LLC, To Motion Of CenturyTel Of Washington To Amend Order Approving Interconnection Agreement, March 17, 2003 (the “Response”).

**Level 3 Mischaracterizes The Relief That CenturyTel Seeks.**

3. Through its Motion, CenturyTel requests that this Commission make a small modification to the Order approving the Interconnection Agreement between CenturyTel and Level 3 to allow for a true-up that will ensure that both parties' rights are preserved throughout any federal court challenge to the Commission's findings. Contrary to Level 3's argument, *see* Response at 7-8, CenturyTel is *not* thereby asking the Commission to reassess its findings or defer the effectiveness of its Order. The proposed true-up does not undermine the finality of the Commission's Order, but merely recognizes the reality that, pursuant to the terms of 47 U.S.C. § 252(e)(6), the Order is subject to review in federal district court. If CenturyTel does not file a challenge in federal district court, or does not prevail there, the true-up will have no effect. If, however, CenturyTel does seek review of the Order *and* the district court agrees with CenturyTel that Virtual NXX traffic is interexchange and subject to access charges, the true-up will ensure that Level 3 pays CenturyTel those access charges. Either way, so long as there is a true-up requirement, each party will pay and receive their due under the law.

**A True-Up Is Entirely Consistent With Federal Law And FCC Precedent.**

4. Level 3's central point of emphasis—that Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"), give state commissions the authority to interpret contested provisions of the Act—is entirely consistent with CenturyTel's position. Simply because the Commission's Order was a "final

adjudication,”<sup>2</sup> does not change the fact that it is still subject to review in federal court.

Pending that review, a true-up will ensure the undeniably fair result of requiring each party to pay or receive what it owes or is owed under federal law.

5. Level 3 argues that the particular Federal Communications Commission decision supporting true-ups cited by CenturyTel is factually distinguishable,<sup>3</sup> but concedes that it was adopted as part of a general “policy rationale.”<sup>4</sup> As other FCC decisions confirm, true-ups advance the policy goals of ensuring that, once uncertainties are resolved, carriers pay the charges that they owe. The fact that the uncertainty here is a legal one is not unique. In a recent case, the FCC confronted a similar situation:

The practice that AT&T now challenges is a policy under which SWBT withholds collection of the relevant charges, effectively imposing an interim charge of zero on the nonrecurring items that form the basis of AT&T’s complaints, if the competing carrier agrees to be bound by any true-up the Texas Commission might order on remand from the Fifth Circuit. That interim solution, which AT&T chose to reject, is reasonable given the legal uncertainty that has surrounded these charges since the Supreme Court’s 1999 decision in *Iowa Utilities Board*. SWBT has agreed to an interim solution that gives its competitors the current benefit of the doubt on these rates, subject only to the possibility that the Texas Commission, and ultimately the federal courts, might someday find that a charge greater than zero is required by the Act or our rules.

*See Application By SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-*

---

<sup>2</sup> See Response at 2.

<sup>3</sup> 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 (August 8, 1996).

<sup>4</sup> See Response at 8.

*Region, InterLATA Services In Texas*, 21 CR 309, 15 FCC Rcd 18354, 2000 FCC LEXIS 3472 (June 30, 2000) at ¶ 237 (citations omitted). There, the FCC observed that “[n]o carrier is immune from the effect of future resolutions of disputed issues,” and therefore denied AT&T’s objections to SWBT’s proposed true-up plan. The rationale applies equally here, and this Commission should similarly reject Level 3’s opposition to a true-up in this case.

**CenturyTel’s Motion Is Consistent With Washington Law.**

6. Level 3’s protest that this Commission has previously rejected true-ups ignores the special posture of this case. The cases cited by Level 3<sup>5</sup> concern disputes over the level of a rate that is presently in effect. In those circumstances, the rate set by the Commission is the lawful rate, though subject to a prospective challenge. Here, the dispute is not over the *level* of a Century Tel charge, but instead over whether CenturyTel can collect *any* access charge at all from Level 3 for Virtual NXX traffic. If a district court agrees with Century Tel that Level 3 is required by federal law to pay it access charges for Virtual NXX traffic, a true-up provision would respect and effectuate both parties’ legal rights. Properly viewed, therefore, the true-up proposed by CenturyTel would not “deprive Level 3 of the certainty and benefits of the Commission’s order” to which it had lawful right, *see* Response at 14, but instead ensure that Level 3 pays, and pays only, the access charges it owes under federal law.

7. Finally, contrary to Level 3’s suggestion that “there is no generic proceeding in the instant case that would necessitate any interim action,” the Commission is currently considering the question of whether the use of Virtual NXX numbers should

be permitted and, if so, how that traffic should be rated. *See In the matter of Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns*, WUTC Docket No. UT-021569. It is thus disingenuous for Level 3 to suggest that the “state of the law is...in no respect ‘uncertain.’” *See* Response at 7. Until this uncertainty is resolved, a true-up will protect the rights of all parties.

### **Conclusion**

For these reasons, CenturyTel respectfully requests that the Commission amend its Order to provide for a true-up in a manner substantially similar to that described in CenturyTel’s Motion of March 7, 2003.

Dated this 21<sup>st</sup> day of March, 2003.

---

Calvin K. Simshaw  
Associate General Counsel  
CenturyTel, Inc.  
805 Broadway  
Vancouver, Washington 98660  
(360) 905-5958  
(360) 905-5953 (facsimile)

### Of Counsel

Karen Brinkmann  
Tonya Rutherford  
Justin Rhoades  
Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004  
(202) 637-2200  
(202) 637-2201 (facsimile)

---

<sup>5</sup> *See* Response at 15-16.