

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,)	EIGHTH SUPPLEMENTAL
INC.,)	ORDER: DENYING MOTION TO
)	AMEND SEVENTH
Pursuant to 47 U.S.C. Section 252)	SUPPLEMENTAL ORDER
.....)	

MEMORANDUM

- 1 **PROCEEDINGS:** Docket No. UT-023043 is a petition filed by Level 3 Communications, LLC, (Level 3) for arbitration pursuant to 47 U.S.C. §252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (Telecom Act), of a proposed interconnection agreement between Level 3 and CenturyTel of Washington, Inc., (CenturyTel). Arbitrator Dennis J. Moss entered his Arbitrator’s Report and Decision on January 2, 2003. The Commission entered its Seventh Supplemental Order: Affirming Arbitrator’s Report and Decision, on February 28, 2003.

- 2 **APPEARANCES:** Michael R. Romano, Level 3 Communications’ Director, State Regulatory Affairs, McLean, Virginia, and Rogelio E. Peña, Peña & Associates, LLC, Boulder, Colorado, appeared for Level 3 Communications. Calvin K. Simshaw, corporate counsel for CenturyTel, Vancouver, Washington, appeared for CenturyTel. Richard A. Finnigan, attorney, Olympia, Washington, appeared for the Washington Independent Telephone Association (WITA) and Verizon Northwest, Inc. (Verizon), who participated as amicus curiae on review.

- 3 **MOTION TO AMEND:** CenturyTel filed its Motion To Amend Order Approving Interconnection Agreement on March 10, 2003. CenturyTel requests that the Commission amend its Seventh Supplemental Order by adding a paragraph that would require Level 3 to pay CenturyTel originating access

charges for ISP-bound traffic exchanged between Level 3 and CenturyTel if CenturyTel appeals the Commission's Seventh Supplemental Order to the federal district court and prevails on its theory of the case. In effect, CenturyTel would have us amend its interconnection agreement with Level 3 by adding a so-called true-up provision.

4 Level 3 filed its Answer on March 13, 2003. Level 3 unequivocally opposes CenturyTel's Motion. CenturyTel filed a Reply to Level 3's Answer on March 21, 2003.

5 **DISCUSSION AND DECISION:** CenturyTel cites two statutes as the legal bases for its Motion: RCW 80.16.050, and RCW 34.05.470. CenturyTel argues that RCW 80.16.050 confers upon the Commission "the explicit power" to revise and amend the terms and conditions' of Commission orders approving interconnection agreements,". This is incorrect. Chapter 80.16 RCW is entitled "Affiliated Interests." RCW 80.16.050 gives the Commission continuing supervisory control over contractual arrangements between affiliated interests. The statutory provisions included in this chapter concern only transactions between "affiliated interests," as defined in RCW 80.16.010. CenturyTel and Level 3 are not affiliated. The statute thus does not apply to the interconnection agreement between these parties.

6 Moreover, neither RCW 80.16.050 specifically, nor chapter 80.16 RCW generally, have anything to do with the Commission's authority to amend its orders approving interconnection agreements, or any other orders it may enter. The statute CenturyTel cites as the primary support for its Motion is inapposite; it provides no legal basis upon which the requested relief could be granted.

7 With reference to RCW 34.05.470, CenturyTel observes that its Motion was filed "within the time period for filing a petition for reconsideration." Yet, CenturyTel does not expressly seek reconsideration of our Seventh Supplemental Order and does not attempt to meet the minimal requirements for such a petition under the Commission's procedural rules. The Commission's rules require that a party seeking reconsideration must "clearly identify each portion of the challenged order that the petitioner contends is erroneous or incomplete, must cite those portions of the record and each law or rule of the commission that the petitioner relies upon to support the petition, and must present brief argument in support of the petition." CenturyTel's Motion does not allege that our Seventh Supplemental Order is in error—though the company suggests it may take that argument up with the federal district court—or is incomplete with respect to any

issue that was before the Commission for decision. In sum, CenturyTel establishes no basis upon which reconsideration might be granted.

8 In addition to lacking legal foundation under the Washington statutes, CenturyTel's Motion seeks relief that we cannot give under federal law. Section 252(b)(1)(4)(A) of the Telecommunications Act states, in relevant part, that a state commission arbitrating an interconnection dispute "shall limit its consideration of any petition under [Section 252(b)(1)] (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under [Section 252(b)(3)]." CenturyTel's Motion raises an issue that was not queued up for decision during the arbitration. Our consideration of this issue, first raised by CenturyTel's Motion that was filed after our final order in this proceeding, would be improper given the express limitation stated in Section 252(b)(1)(4)(A).

9 We conclude, for the reasons stated above, that CenturyTel's Motion should be denied.

ORDER

10 THE COMMISSION ORDERS That CenturyTel's Motion To Amend Order Approving Interconnection Agreement is DENIED.

DATED at Olympia, Washington and effective this ____ day of March 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner