BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Petition for Arbitration of an Interconnection Agreement Between	)	DOCKET NO. UT-_____
LEVEL 3 COMMUNICATIONS, LLC and CenturyTel of Washington, Inc.	)	PETITION OF LEVEL 3 COMMUNICATIONS, LLC
Pursuant to 47 U.S.C. Section 252	)	

PETITION FOR ARBITRATION

Rogelio E. Peña
Peña & Associates, LLC
1919 14th Street, Suite 330
Boulder, CO 80302
(303) 415-0409 (Tel)
(303) 415-0433 (Fax)

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, VA 22102
(703) 762-0147 (Tel)
(703) 762-0150 (Fax)

Counsel for
Level 3 Communications, LLC

Dated: August 7, 2002

TABLE OF CONTENTS

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Petition for Arbitration of an Interconnection Agreement Between	)))	DOCKET NO. UT-_____
LEVEL 3 COMMUNICATIONS, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252	)))	PETITION OF LEVEL 3 COMMUNICATIONS, LLC

PETITION OF LEVEL 3 COMMUNICATIONS, LLC FOR ARBITRATION

Pursuant to Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996[1] (the "Act"), and the rules and procedures set forth in the Interpretive and Policy Statement issued in Docket No. UT-960269[2], Level 3 Communications, LLC ("Level 3"), hereby petitions the Washington Utilities and Transportation Commission ("Commission") for arbitration of several unresolved issues arising out of efforts to negotiate an interconnection agreement between Level 3 and CenturyTel of Washington, Inc. ("CT") (collectively, the "Parties"). Level 3 requests that the Commission resolve the issues identified in Section III(C) by ordering the incorporation of Level 3's position into an interconnection agreement for execution by the Parties. In support of this Petition, Level 3 states:

I. THE PARTIES

1. Level 3 is a facilities-based competitive local exchange carrier ("CLEC") that provides telecommunications services in a number of states. Level 3 is a Delaware limited liability company with its principal place of business at 1025 Eldorado Boulevard, Broomfield,

[1] 47 U.S.C. § 252.

[2] *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996, June 1996.

Colorado, 80021. Level 3's sole member is (i)Structure, Inc., a Delaware corporation, which is a wholly-owned subsidiary of Level 3 Communications, Inc., a publicly traded Delaware corporation. The State of Washington has certified Level 3 to provide local, interexchange, and switched intraexchange telecommunications services in Docket No. UT-980578.[3]

2. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals:

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, VA 22102
(703) 762-0147 (Tel)
(703) 762-0150 (Fax)
mike.romano@level3.com

and

Rogelio E. Peña
Peña & Associates, LLC
1919 14th Street, Suite 330
Boulder, CO 80302
(303) 415-0409 (Tel)
(303) 415-0433 (Fax)
repena@boulderattys.com

3. CT is an incumbent provider of local exchange services within the State of Washington. CT is, on information and belief, a Washington corporation with its places of business at 100 CenturyTel Drive, Monroe, Louisiana 71203 and at 8102 Skansie Avenue, Gig Harbour, Washington 98322. CT is, and has been at all relevant times, an Incumbent Local

[3] *In the Matter of the Petition of Level 3 Communications, L.L.C., for Classification as a Competitive Telecommunications Company,* Docket UT-980578, *Final Order,* October 14, 1998.

Exchange Carrier ("ILEC") within its serving area in the State of Washington as defined by Section 251(h) of the Act.[4]

4. CT's primary representatives for purposes of these negotiations are:

Fran Runkel
CenturyTel
333 North Front Street
La Crosse, WI 54601-3220
(608)-796-7894 (Tel)
(608)-796-7890 (Fax)

and

Calvin Simshaw
Associate General Counsel
805 Broadway
Vancouver, WA 98660
(360) 905-5958 (Tel)
(360) 905-5953 (Fax)

II. RULES AND STATUTES BROUGHT INTO ISSUE BY THIS PETITION

5. The Commission has jurisdiction over this Petition pursuant to Section 252 of the Act[5] and its authority over Washington telecommunications carriers under Washington law.[6]

6. This arbitration must be resolved under the standards established in 47 U.S.C. §§ 251 and 252, applicable rules and orders issued by the Federal Communications Commission ("FCC"), and applicable Washington statutes, and the rules and orders of this Commission. Accordingly, this Commission should make an affirmative finding that the rates, terms, and

[4] *See* 47 U.S.C. § 251(h).

[5] *See id*. at §§ 252 (b)-(c).

[6] WASH. REV. CODE § 80.01.040 (3).

conditions that it prescribes in this arbitration proceeding are consistent with the requirements of applicable federal and state law.

III. STATEMENT OF FACTS

A. NEGOTIATIONS

7. Despite Level 3's repeated efforts to initiate contact with CT early in the process, for the reasons explained further below, Level 3 and CT have had few substantive negotiation sessions during the negotiating window provided for under federal law. As shown by the letter attached hereto as Exhibit A, Level 3 initiated negotiations toward an interconnection agreement by sending correspondence to the General Counsel of CT's parent company on March 1, 2002 via next business day delivery, such that CT received the request on March 4, 2002. Accordingly, the arbitration window opened on July 17, 2002 and closes on August 11, 2002. This Petition is timely filed within the arbitration window. While Level 3 has agreed to the vast majority of the provisions of the CT standard template interconnection agreement, Level 3 and CT have not resolved the issues presented in this Petition. Thus, Level 3 has been compelled to seek arbitration. Level 3 would like to negotiate with CT in good faith even after this Petition is filed in the hope that this matter can be resolved prior to hearing. Level 3 is also agreeable to participating in Commission-led mediation sessions.

8. A "redline" draft of the interconnection agreement reflecting what Level 3 understands to be the Parties' respective positions is attached as Exhibit B (the "Agreement").[7]

[7] There has also been some confusion as to whether CT would even allow Level 3 to negotiate based upon the standard interconnection agreement initially provided in response to Level 3's request, or whether CT wants Level 3 to negotiate based upon a special agreement to handle only the exchange of traffic destined for Internet Service Providers ("ISPs"). Whether or not Level 3 agrees with CT's substantive concerns, all of these concerns can be addressed in the single interconnection agreement provided as Exhibit B – just as the same issues have been addressed through negotiation and arbitration with every other large incumbent local exchange carrier in the United States – rather than through the

Agreed upon language (or language where Level 3 did not object to the CT standard template offer) is shown in normal type. Disputed or unresolved language is shown in either redlined or stricken text. Level 3 requests that the Commission address the disputed language in this Agreement and the underlying issues surrounding such language, and adopt Level 3's proposed resolution to each issue and the language proposed by Level 3 in the redlined draft Agreement.

9. Level 3 requests that the Commission resolve this dispute by (i) adopting the interconnection agreement between Level 3 and CT reflecting the undisputed contract language shown in Exhibit B; and (ii) resolving the disputed issues as a policy and legal matter, and affirmatively ordering the Parties to implement contract language embodying this policy decision, including Level 3's proposed language contained in Exhibit B.

B. RESOLVED ISSUES

10. Level 3 understands that the draft Agreement provided as Exhibit B reflects the resolved issues. A review of that document will show that, but for the several outstanding items discussed below, the Parties appear to have reached agreement on all aspects of the Agreement.[8]

C. UNRESOLVED ISSUES

11. Level 3 understands there to be fifteen issues in dispute with respect to Exhibit B. The first issue is a threshold question that represents the primary reason that the Parties have not engaged in more substantive negotiations – is Level 3 required to seek a separate agreement,

---

kind of separate agreement that CT has advocated at times during this negotiation process. To the extent that CT continues to advocate such a position, Level 3 reserves the right to address such arguments – and any issues arising in any separate CT-proposed document – as a part of this arbitration proceeding.

without reference to the provisions of Sections 251 and 252 of the Act and related rules and orders, for the handling of traffic destined for ISPs? Nothing under the Act, state statutes, FCC rules and orders, or this Commission's rules and orders requires that ISP-bound traffic be treated any differently from local traffic for *interconnection purposes*. Indeed, to the contrary, even as it moved to adopt new rules governing *intercarrier compensation* for ISP-bound traffic, the FCC made clear that it did not intend to modify in any respect the rules governing *interconnection* between carriers. Moreover, Level 3 is unaware of any other ILEC in the United States that has taken the extreme position advocated by CT – that the exchange of ISP-bound traffic must be handled in an agreement that departs from the interconnection rules established under Section 251 and 252 of the Act.[9] Rather, to the extent that those ILECs have had concerns about the exchange of ISP-bound traffic, they have raised and disputed such concerns *within* the context of interconnection negotiations in lieu of denying that they are obligated under Section 251 and 252 to negotiate at all for interconnection.

12. The remaining fourteen issues all relate to specific provisions of the Agreement, and address the terms and conditions under which the Parties would interconnect their networks and exchange traffic. Specifically, while each issue will be discussed in more detail below, the entire list of disputed issues follows:

1. Is ISP-bound Traffic subject to different interconnection requirements than Local Traffic under federal law such that it should be handled by separate

---

[8] As noted above, to the extent that CT asserts in any response that any of the matters that Level 3 understands to be and has identified as resolved are in fact open issues, Level 3 reserves the right to present its position with respect to such matters as part of this arbitration.

[9] Level 3 has expressed a willingness to CT to limit the scope of this Agreement to the exchange of ISP-bound traffic, as long as it remains clear that in doing so, the exchange of ISP-bound traffic must be subject to terms and conditions consistent with Sections 251 and 252 of the Act and the FCC's rules implementing those sections. (In other words, even if the Agreement is limited to ISP-bound traffic exchange, it should be under terms and conditions that are applicable to interconnection between local exchange carriers.)

agreement? (Art. I; Art. II, Secs. 1.43, 1.49, 1.49(a); Art. V, Secs. 1, 3.1, 3.2, 4.2, 4.3; Art. VIII, Sec. 3)

2. What is the proper definition of Local Traffic? (Art. II, Sec. 1.58)
3. What is the proper treatment of Foreign Exchange or "Virtual NXX" Traffic for intercarrier compensation purposes? (Art. II, Secs. 1.58 and 3.2)
4. How should the Parties define Bill-and-Keep to implement the FCC's *ISP Order on Remand*? (Art. II, Secs. 1.11; Art. V, Secs. 3.2)
5. When should CT be required to return a deposit it has previously demanded? (Art. III, Sec. 6)
6. Should alternate dispute resolution be required when either Party believes injunctive or emergency relief is warranted? (Art. III, Sec. 18.7)
7. Should Level 3 be responsible for training for the handling of hazardous materials at a CT facility if CT does not identify what hazardous materials may exist at that facility? (Art. III, Sec. 46.1)
8. Should each Party be liable only to the extent specified in the Agreement? (Art. IV, Sec. 2.1)
9. When should a Party be required to pay undisputed, unpaid amounts? (Art. IV, Sec. 4)
10. What procedures should govern where a Party proposes to terminate the Agreement? (Art. IV, Sec. 4)
11. To the extent CT is not a "rural telephone company,"[10] where should the Parties be required to interconnect? (Art. V, Sec. 4.1.2)
12. To the extent CT is not a "rural telephone company," how should interconnection facilities be rated? (Art. V, Sec. 4.2)
13. Should the Agreement contain transit traffic provisions to ensure uninterrupted flow of calls between customers of third-party carriers? (Art. V, Secs. 3.1 and 3.3)
14. What should the term of the Agreement be? (Art. III, Sec. 2.1)
15. What should happen when the term expires? (Art. III, Sec. 2.2)

[10] Level 3 understands that certain CenturyTel-owned operating companies may possess a "rural exemption" under Section 251(f) of the Act – but it is not clear which of the CenturyTel-owned operating companies those might be. As noted on the Recitals page of the draft Agreement, Level 3 does not wish to challenge any CT-held rural exemption at this time, and is willing to delete from the standard CT template Agreement all sections relating to unbundling and other Section 251(c) obligations that might be subject to an exemption held by CT. Moreover, because Level 3 recognizes that Section 251(c) imposes a more stringent interconnection duty than Section 251(a), to the extent that CT is a "rural telephone company," Level 3 acknowledges that arbitration issues 11 and 12 – the question of whether a single point of interconnection is appropriate and the rates for interconnection facilities – relate to the Section 251(c) duties that would be inapplicable to a "rural telephone company." Accordingly, if CT can demonstrate that any one of its operating entities is a rural telephone company with a rural exemption under Section 251(f), Level 3 is willing to withdraw these issues from arbitration at this time and to delete all other sections of the contract relating to Section 251(c) duties. All other arbitration issues, however, remain valid regardless of CT's rural status.

Issue 1: IS ISP-BOUND TRAFFIC SUBJECT TO DIFFERENT INTERCONNECTION REQUIREMENTS THAN LOCAL TRAFFIC UNDER FEDERAL LAW SUCH THAT IT SHOULD BE HANDLED BY SEPARATE AGREEMENT? (Art. II, Secs. 1.43; 1.49; Art. V, Secs. 1, 3.1, 4.2, 4.3; Art. VIII, Sec. 3)

Level 3's Position: Level 3 does not contest that pursuant to federal law, ISP-bound traffic is subject to different intercarrier compensation rules than local traffic. However, in promulgating its new intercarrier compensation rules with respect to ISP-bound traffic, the FCC made clear that it did not intend to change in any respect the interconnection rules that apply. Therefore, even if the contract's intercarrier compensation terms need to be different, ISP-bound traffic remains subject to the same interconnection rules as local traffic, and should be handled under an agreement applying the same interconnection terms as for local traffic.

CT's Position: ISP-bound traffic is not local traffic. Therefore, it should be subject to different interconnection and intercarrier compensation rules and must be handled under a separate agreement without reference to Sections 251 and 252 of the Act.

13. For years, intercarrier compensation for ISP-bound traffic has represented one of the most contentious issues in the telecommunications industry. Although Level 3 does not agree in all respects with the FCC's *ISP Order on Remand*,[11] that decision has brought some certainty to the question of how carriers should pay one another for the exchange of traffic destined for ISPs. However, it should be noted that in releasing the *ISP Order on Remand*, the FCC intended to address *only* the question of intercarrier compensation for ISP-bound traffic. The FCC never intended for a carrier to use that decision as an excuse to evade its interconnection rights under the Act and related rules and orders. Indeed, anticipating that there may be some confusion over the treatment of ISP-bound traffic following the order, the FCC clarified at the same time that its decision "affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic."[12] To further clarify this statement, the

[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Order on Remand, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Report and Order (rel. Apr. 27, 2001) ("*ISP Order on Remand*"), remanded sub nom. WorldCom, Inc. v. FCC, __ F.3d __ , No. 01-1218, slip op. (D.C. Cir. May 3, 2002).

[12] *ISP Order on Remand* at n.149 (emphasis in original).

FCC added that its order "does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection." Thus, even as the *ISP Order on Remand* established the rules for ISP-bound intercarrier compensation, nothing in the *ISP Order on Remand* changes how ISP-bound traffic is to be treated for interconnection purposes.

14. Yet progress in these negotiations has been negligible because CT has insisted that ISP-bound traffic must be governed by different interconnection rules than those set forth in Sections 251 and 252 and the various FCC and Commission orders implementing and interpreting those sections. There is no support for such a position. Level 3 acknowledges that for *intercarrier compensation* purposes, ISP-bound traffic is a separate and distinct category of traffic, subject to bill-and-keep compensation under the *ISP Order on Remand*. In this regard, Level 3 is willing to include the exact language from the FCC's order describing bill-and-keep, so that there can be no mistake about either Party somehow receiving compensation for the exchange of ISP-bound traffic. But to state that ISP-bound traffic must be entirely segregated for all purposes from other kinds of traffic and treated differently in all other respects from other kinds of traffic is a suggestion without grounds in law, policy, or practice – and is in fact contrary to the admonition given by the FCC in the *ISP Order on Remand* itself. The Commission should approve a single agreement that allows for the interconnection of networks to exchange ISP-bound traffic subject to the FCC's rules and orders governing interconnection between local exchange carriers.

Issue 2: WHAT IS THE PROPER DEFINITION OF LOCAL TRAFFIC? (Art. II, Sec. 1.58)

Level 3's Position: CT and Level 3 appear to agree that Local Traffic should be defined as traffic that originates from an end user of one Party and terminates to the end user

of another Party, with reference to CT's established local calling areas. However, CT's proposed definition improperly excludes foreign exchange-type or so-called "Virtual NXX" traffic (which is dealt with separately in Issue 3), as well as adding limitations with respect to undefined terms such as "Internet", "900-976," and "Internet Protocol based long distance telephony." None of the limitations noted in the second sentence above are justified under applicable law, and all are too ambiguous to deserve adoption in this instance.

CT's Position: CT believes that Enhanced Service Provider traffic, Internet Service Provider traffic, foreign exchange traffic, so-called "Virtual NXX" traffic, Internet, 900-976, and Internet Protocol based long distance telephony all fall outside of the definition of Local Traffic.

15. The Parties appear to agree on the basic definition of Local Traffic. The disputes come in determining what falls outside of that definition. Level 3 agrees that Internet Service Provider traffic now falls within a separate category of traffic from Local Traffic (for intercarrier compensation purposes) based upon the still-effective FCC *ISP Order on Remand*. Beyond that, however, CT's proposed exclusions have no basis in law or policy – and are far too ambiguous as undefined terms to justify inclusion in the Agreement. For example, it is impossible to tell what CT means by reference to the "Internet." How does this differ from ISP-bound traffic? How does this differ from "Internet Protocol based long distance telephony"? And what is "Internet Protocol based long distance telephony"? What if an Internet Protocol call is placed from a computer rather than a telephone? If CT is going to exclude categories from the definition of Local Traffic, it should define and provide support for those exclusions. Otherwise, it would be unilaterally imposing definitions and rules for the treatment of Local Traffic without reference to law.

16. Indeed, depending upon what CT means by its vague wording, the exclusion of "Internet Protocol based long distance telephony" from the definition of Local Traffic may be contradictory to applicable law. Under federal law, services that are enhanced services under the FCC's rules or information services under the Act qualify for what is known as the "ESP

exemption."[13] Pursuant to that exemption, providers of enhanced services or information services are exempt from the requirement to pay carrier access charges. Excluding some category of traffic from Local Traffic so that access charges apply without considering at all how that category fits within the federal framework should not be countenanced.[14] Rather, as numerous state commissions have done, this Commission should look to the federal framework for guidance, and decline the invitation to apply a "one-size-fits-all" approach to this complicated question.[15] Classifying all "Internet Protocol based long distance telephony" without a consideration of the actual nature of the service or how it may or may not be an enhanced in nature would be contrary to law and sound policy.

ISSUE 3: WHAT IS THE PROPER TREATMENT OF FOREIGN EXCHANGE OR "VIRTUAL NXX" TRAFFIC FOR INTERCARRIER COMPENSATION PURPOSES? (Art. II, Secs. 1.58 and 3.2)

Level 3's Position: As the majority of state commissions to consider this question have concluded, so-called "Virtual NXX" traffic should be considered a functional equivalent to Foreign Exchange Traffic, and should not be considered interexchange

---

[13] *See MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC2d 682, 711 (1983); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631, 2633 (1988); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982,16133 (1997).

[14] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress (rel. Apr. 10, 1998), at ¶ 90 (declining to declare all "phone-to-phone IP telephony" because of the need "to consider whether our tentative definition . . . accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology").

[15] See, e.g., *Petition of BellSouth Telecommunications, Inc. for Arbitration of Interconnection Agreement with Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1178, Recommended Arbitration Order, 23-25 (N.C.U.C. June 13, 2000); *Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement with Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 11644, Order, (Ga. P.S.C. Sept. 28, 2000); *Investigation into U S West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, Docket Nos. UT-003022 and UT-003040, Initial Order Finding Noncompliance in the Areas of Interconnection, Number Portability, and Resale*, at ¶ 175 (W.U.T.C. Feb. 2001); *In the Matter of Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 00B-601T, Decision No. C01-312, Initial Commission Decision*, (CO P.U.C. March 30, 2001).

in nature for intercarrier compensation purposes. Moreover, for Virtual NXX traffic or Foreign Exchange Traffic that is also ISP-bound in nature, the Commission should conclude that intercarrier compensation for ISP-bound traffic has been settled by the FCC such that different rules cannot be adopted for such traffic here.

CT's Position: CT believes that so-called "Virtual NXX" traffic is interexchange in nature and should be subject to access charges.

17. CT's proposal to treat Virtual NXX calls (and presumably all Foreign Exchange-type calls) as interexchange in nature and subject to the collection of originating access has no basis in law or fact. CT cannot show that its costs of originating a call to a Level 3 customer differ based upon Level 3's customer location such that its proposed treatment and compensation scheme is warranted or appropriate. In fact, CT's costs of exchanging traffic will not differ based upon the physical location of Level 3's customer. Regardless of the customer's location, CT's responsibility for originating locally-dialed traffic on its own network will always end at the point of interconnection ("POI") where its network ends and Level 3's network begins. (Furthermore, it should be noted that to the extent the Agreement is limited to the exchange of ISP-bound traffic, pursuant to current law, no reciprocal compensation or other intercarrier compensation is due to Level 3 for terminating the call – thereby allowing CT to also avoid any cost of termination to the customer.) Thus, CT's costs of originating a locally-dialed call from a particular CT customer cannot differ because of where CT's customer is located. From the POI, it is Level 3's *sole* responsibility to take the call to its customer, thus making any additional burden in taking a call to a physically distant customer something that *Level 3 alone will bear at no additional expense whatsoever to CT*. CT cannot legitimately claim that it is entitled to additional compensation just because Level 3's customer may be physically located outside of the rate center associated with the customer's NXX code. (Indeed, to the extent that CT does not collect originating access today from other ILECs for calls to foreign exchange customers – or if

CT does not pay originating access today to other ILECs for calls coming to CT's own foreign exchange customers – applying originating access to calls going to Level 3 customers would be a patently discriminatory result.)

18. In the end, CT's proposal is nothing than an effort to foist additional costs on the competitive LEC, particularly in the context of serving ISPs. The Commission should instead adopt Level 3's proposal because it facilitates one of the fundamental goals of the Act – the rapid deployment of competitive advanced services.[16] A flexible approach to the use of NXX codes in the form of foreign exchange-type services has enabled *all* LECs (including ILECs) to provide ISPs and other end users with attractive local services throughout the state. Now faced with competitive pressure, CT seeks to roll back this opportunity – which would result in increased toll charges to consumers and/or increased charges or equipment costs imposed upon the ISPs who wish to give customers options for accessing the Internet in CT's serving area.

19. Indeed, Level 3 notes that CT's motivations in trying to treat ISP-bound traffic differently for interconnection purposes and impose additional costs on other ISPs and carriers who serve them may go well beyond protecting its regulated service monopoly. According to the CenturyTel parent's most recent Annual Report, the company's "dial-up Internet access" is available to "more than 85 percent" of its customers.[17] This Annual Report further indicates that the company served more than 121,500 dial-up Internet subscribers (presumably nationwide) at the end of 2001.[18] The corporate parent further reported in a July 25, 2002 News Release that its Internet revenues for the second quarter of 2002 had grown by 68.7% (to $14.7 million) as

---

[16] Among the fundamental goals of the Act is the promotion of innovation, investment, and competition among all participants for all services in the telecommunications marketplace, including advanced services. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Third Report and Order, at 1 (rel. Dec. 9, 1999).

[17] 2001 Annual Report of CenturyTel at 3 (attached hereto as Exhibit C).

compared to the second quarter of 2001.[19] The more widespread availability of competitive ISP services offered by customers of Level 3 therefore may be of concern to CT. But CT should not be permitted to use its regulated status as an ILEC to ward off competition and foist additional costs on competitors in *both* the regulated telecommunications market *and* the unregulated Internet access market. Particularly noteworthy (and troubling) in this regard is the following excerpt from the most recent CenturyTel Annual Report:

> *Our investment in the local exchange telephone business provides CenturyTel with a unique competitive advantage*. Owning the 'local loop' and having a direct relationship with the customer allows us to offer value-added services such as long distance, Internet, and other data services . . . . *The effectiveness of this competitive advantage is demonstrated by results – Internet revenues increased 66 percent to $39.1 million . . . . Since we face fewer competitors in our non-urban markets, we can continue to increase our focus on the customer relationship and drive lifetime value by further penetration of our products and services*. We also find a more favorable public policy environment for rural infrastructure investment due to the strong support for bringing new communications services and technologies to underserved areas.[20]

20. The Commission should further note that, with respect to ISPs who happen to be served by a foreign exchange or Virtual NXX-type arrangement, the FCC has preempted the area of intercarrier compensation for ISP-bound traffic.[21] As the Michigan Public Service Commission and the other states to consider this specific question have found in the wake of the *ISP Order on Remand*, that federal order "takes care of" the issue of intercarrier compensation for ISP-bound traffic such that a state could not order one carrier to pay either originating access

---

18 *Id*.

19 July 25, 2002 News Release of CenturyTel (attached hereto as Exhibit D).

20 2001 Annual Report of CenturyTel at 4 (emphasis added).

21 *ISP Order on Remand*, at ¶ 82 ("Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue.")

or reciprocal compensation to another carrier in exchanging an ISP-bound call.[22] Therefore, even if the Commission were to find that originating access is due and payable in the context of foreign exchange-type calls – a finding that would be contrary to the facts underlying basic interconnection, federal law, sound policy on promoting competitive services in underserved areas, and the industry practice today[23] – it should rule that with respect to the exchange of ISP-bound traffic, the FCC's *ISP Order on Remand* (for better or for worse) resolves all questions with respect to intercarrier compensation for ISP-bound traffic.

---

[22] See, e.g., *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. P.S.C. Sep. 7, 2001); *Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award (PUC Ohio Oct. 4, 2001) at 9; *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (PUC Ohio May 9, 2002); *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Dkt. No. 01-01-29 (Conn. DPUC Jan. 30, 2002) at 41-2. In Texas, California, and Illinois, decisions by administrative law judges have reached the same conclusion. *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, PUC Docket No. 24015, Arbitration Award (Tex. P.U.C. Nov. 28, 2001); *Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.01-11-045, A.01-12-026, Final Arbitrator's Report (Cal. PUC May 15, 2002); *Essex Telcom, Inc. v. Gallatin River Communications, L.L.C. Complaint and Request for Dispute Resolution of Essex Telcom, Inc. against Gallatin River Communications, L.L.C. pursuant to Section 13-514 and Section 13-515 of the Public Utilities Act*, Docket No. 01-0427, Proposed Order (Ill. C. C. May 17, 2002). In Florida, Commission Staff has reached a similar conclusion. *Memorandum to Director, Division of the Commission Clerk & Administrative Services, from Division of Competitive Services and Division of Legal Services, Docket No. 000075-TP, Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Issue 15(b), Staff Analysis ("Staff notes that due to the FCC's recent ISP Remand Order, which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers").

[23] The FCC recently rejected a Verizon proposal to treat so-called virtual NXX traffic differently than other local calls on the grounds that industry practice today remains one under which "carriers rate calls by comparing the originating and terminating NPA-NXX codes." The FCC observed that all parties agreed that "rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time." *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order (Wireline Comp. Bureau, rel. July 17, 2002) ("*Federal Arbitration Order*"), at ¶ 301.

ISSUE 4: HOW SHOULD THE PARTIES DEFINE BILL-AND-KEEP COMPENSATION TO IMPLEMENT THE FCC'S ISP ORDER ON REMAND? (Art. II, Secs. 1.11; Art. V, Sec. 3.2)

Level 3's Position: The Parties should define "Bill-and-Keep" as that term is specifically defined in the ISP Order on Remand, and should include definitions of ISP-Bound Traffic and Information Service Provider.

CT's Position: CT believes that ISP-bound traffic should be handled in a separate agreement, and that its proposed definition of Bill-and-Keep should be adopted.

21. As part of its effort to implement the still-effective *ISP Order on Remand* in this Agreement, Level 3 has proposed using the definition of "Bill-and-Keep" that comes directly from that order. This definition makes clear that under a bill-and-keep arrangement, each Party is responsible for looking to its own end users in recovering the cost of handling the calls on its own network. Level 3 has further proposed in Section 3.2 of Article V that ISP-bound Traffic be treated in accordance with the terms and conditions of the *ISP Order on Remand*. As noted, CT believes that ISP-bound traffic should be handled by separate agreement, such that any reference to the FCC's *ISP Order on Remand* for the definition of Bill-and-Keep appears unnecessary.

ISSUE 5: WHEN SHOULD CT BE REQURIED TO RETURN A DEPOSIT IT HAS PREVIOUSLY DEMANDED? (Art. III, Sec. 6)

Level 3's Position: While Level 3 does not object to CT's desire for some assurance of payment in the first instance, CT should not be permitted to hold onto a deposit indefinitely. Rather, after some period of time passes in which a competitor makes timely payment of sums due and owing, CT should be required to return the deposit and should not be allowed to demand another as long as the competitor continues to have a "good payment history." Level 3 specifically proposes that CT return any deposit within six months of timely payment.

CT's Position: Level 3 is uncertain as to why CT would object to having some provision requiring return of the deposit upon a showing of continuing timely payments.

22. While Level 3 thinks it could be anticompetitive in many cases for a monopoly supplier to demand a deposit from its competitor-customer, in the interest of trying to reach an

agreement and minimizing the disputes for arbitration, Level 3 has agreed to CT's proposal to require an estimated two months worth of charges for resold lines and loops and ports as a deposit. That being said, Level 3 does not agree that CT should be allowed to hold that deposit in perpetuity. If the deposit is truly intended to protect CT against a delinquent payor, CT should be required to return the deposit upon proof by the competitor that it will make payments when due and owing in a timely manner. Level 3 has proposed six months as a reasonable trigger for return of a deposit – by that time, if a competitor is paying steadily, CT should have comfort that the deposit is no longer necessary. Moreover, under Level 3's proposed language, nothing prevents CT from demanding another deposit should the competitor stop displaying a "good payment history" after the initial deposit is returned. CT has provided no reason to deny the return of a deposit as suggested by Level 3, and Level 3's reasonable proposal should be adopted.

ISSUE 6: SHOULD ALTERNATE DISPUTE RESOLUTION BE REQUIRED WHEN EITHER PARTY BELIEVES INJUNCTIVE OR EMERGENCY RELIEF IS WARRANTED? (Art. III, Sec. 18.7)

Level 3's Position: If a Party is threatening action or taking action that could affect the quality of services delivered to end users or cause physical harm to the network or to persons, the other Party should be able to seek injunctive or equitable relief to halt the threats or stop the offending action.

CT's Position: CT apparently prefers that the Parties still pursue at least five business days of negotiation (under Section 18.4) prior to seeking binding commercial arbitration.

23. In cases where network security or customer service could be adversely affected, or damage to persons or property could occur, the affected Party should be entitled to avail itself of rights available under law to seek emergency relief. Forcing the Parties to spend five days negotiating (and a longer time perhaps arbitrating) in the face of such concerns could likely result in the specific problem coming to fruition well before the Parties have a chance to resolve

it. Accordingly, the Commission should reject CT's proposal to have the Parties pursue alternative dispute resolution even when faced with emergency situations, and instead should approve the Level 3 language that would permit either Party to seek injunctive or equitable relief where an emergency situation has arisen or is threatened to arise.

ISSUE 7: SHOULD LEVEL 3 BE REPSONSIBLE FOR TRAINING FOR THE HANDLING OF HAZARDOUS MATERIALS AT A CT FACILITY IF CT DOES NOT IDENTIFY WHAT HAZARDOUS MATERIALS MAY EXIST AT THAT FACILITY? (Art. III, Sec. 46.1)

Level 3's Position: It is unreasonable for CT to expect Level 3 to demonstrate adequate training and emergency response capabilities relating to materials existing at a CT facility when CT does not inform Level 3 what hazardous materials exist there.

CT's Position: CT apparently believes that Level 3 should be responsible for such training and management of hazardous materials even when CT has not told Level 3 what hazardous materials might be located at a given site.

24. No company can reasonably be held responsible by another company for training and responsiveness with respect to hazardous materials at the other company's site if the other company has not identified what hazardous materials exist at the site. CT's proposal should be rejected. Level 3's proposal to require CT to identify such materials should be adopted.

ISSUE 8: SHOULD EACH PARTY BE LIABLE ONLY TO THE EXTENT SPECIFIED IN THE AGREEMENT? (Art. IV, Sec. 2.1)

Level 3's Position: The limitation of liability provisions should be mutual and bilateral.

CT's Position: CT proposes that only its own liability be limited to the express terms of the Agreement.

25. Since each Party may provide services (e.g., interconnection trunking) to the other Party under the Agreement, it is reasonable for the limitation of liability provisions to be bilateral. CT's language assumes that only it will be providing services under the Agreement, such that only its liability needs to be limited. Given that this conclusion proceeds from such an

inaccurate assumption, CT's language should be rejected, and Section 2.1 of Article IV should be modified to be mutual and bilateral in all respects.

ISSUE 9: WHEN SHOULD A PARTY BE REQUIRED TO PAY UNDISPUTED, UNPAID AMOUNTS? (Art. IV, Sec. 4)

Level 3's Position: A Party should be required to pay undisputed, unpaid charges seven business days after receipt of notice from the other Party.

CT's Position: CT initially proposed language consistent with the Level 3 position, but it has now struck "after receipt of the notice," apparently intending that a Party should be required to pay undisputed, unpaid charges within seven business days of the date of the notice.

26. On its face, CT's proposal could result in a Party being considered in default for failure to pay undisputed, unpaid charges even before it receives notice from the other Party about the perceived failure to pay. Specifically, under the Notices section of the Agreement, nothing requires that any notice be sent by facsimile or overnight delivery; rather, notices may be sent by U.S. mail, such that they may not arrive until five days or more after sent. Because of this lag in time, Level 3 believes that CT's initial proposal to include "after receipt of the notice" is a reasonable solution, and should be adopted by the Commission.

ISSUE 10: WHAT PROCEDURES SHOULD GOVERN WHEN A PARTY PROPOSES TO TERMINATE THE AGREEMENT? (Art. IV, Sec. 4)

Level 3's Position: A Party should not be permitted to threaten termination of the Agreement and disconnection of service without first giving notice of intent to terminate and having followed the proper procedures for dispute resolution and default.

CT's Position: CT proposes that where a Party has failed to pay undisputed unpaid charges, that Party must – without notice from the other Party – assume that service will be terminated and provide notice to its own end users of the impending threat of disconnection.

27. Level 3 proposes that, prior to taking any action that would terminate the Agreement and affect end users' services, a Party should be required to provide notice of intent to terminate and otherwise comply in all respects with the dispute resolution and default

provisions of the Agreement. By contrast, CT proposes that if a Party fails to pay undisputed charges, the other Party can immediately terminate the Agreement – and that therefore, the non-paying Party should immediately provide notice of the possibility of service termination to its own end users. (It should also be noted that CT's proposed language is again unilateral in nature – mandating that Level 3 provide such notice and allowing CT to terminate the Agreement, but not vice versa.)

28. The dispute resolution and default provisions of the Agreement become meaningless if CT's proposal to strike Level 3's proposed language is adopted. In its proposed language, Level 3 recognizes the serious nature of terminating the Agreement and affecting customer service, and a cross-reference to the dispute resolution and default provisions of the Agreement (excluding an express requirement to provide notice of intent to terminate the Agreement) appropriately accounts for the serious nature of such action. CT's language, on the other hand, would put the onus on the non-paying Party to suspect that termination might be coming, and to provide notice to its customers that service could be suspended. It is far more reasonable – and would prevent confusion between both carriers and their customers – to expressly require the Party who wishes to terminate the Agreement to provide notice of such intent and to comply with all relevant provisions of the dispute resolution and default provisions of the contract. Level 3's proposed language should be adopted.

ISSUE 11: TO THE EXTENT CT IS NOT A "RURAL TELEPHONE COMPANY," WHERE SHOULD THE PARTIES BE REQUIRED TO INTERCONNECT? (Art. V, Sec. 4.1.2)

Level 3's Position: Section 251(c) of the Act and the FCC's rules implementing that statute require that an ILEC allow a CLEC to establish a single point of interconnection ("POI") in each LATA. In accordance with this regime, where CT is subject to Section 251(c) obligations, Level 3 proposes to establish a single POI in the CT serving area in a LATA. (Level 3 does not intend to require CT to transport traffic outside of its own serving area into a neighboring ILEC's serving area.)

CT's Position: CT would require Level 3 to establish a POI in each local calling area.

29. Permitting CT to require a POI in each local calling area for the purposes of handing off to Level 3 traffic originated by CT's end users would place an undue and unlawful burden on new entrants such as Level 3.

30. Under 47 U.S.C. § 251(c)(2)(B), every ILEC must provide interconnection at any technically feasible point within its network. As the FCC noted in implementing this Section of the Act:

> Section 251(c)(2) gives *competing carriers* the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.[24]

Furthermore, the Act bars consideration of costs in determining "technically feasible" points of interconnection.[25]

31. Level 3 proposes that the contract specify that Level 3 may designate a single POI for the exchange of local and intraLATA traffic in each local access and transport area ("LATA") in which Level 3 provides local exchange service. (Level 3 is further willing to limit this to a POI in each CT serving area within a LATA, so that CT is not required to take calls to a POI in a neighboring ILEC's serving area in the same LATA.)

32. Level 3's position is consistent with the Act and the Federal Communications Commission's ("FCC's") binding interpretation of the Act. The FCC has explained that CLECs

---

[24] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶209 (1996) ("Local Competition Order") (emphasis added).

[25] *Id.* at ¶199. *See also* Memorandum of the Federal Communications Commission as Amicus Curiae, *AT&T Communications of the Mountain States, Inc. v Robert J. Hix*, Civ. A. No. 97-D-152 (and consolidated cases), filed Mar. 3, 1998, 15 (D. Colo.) ("*FCC Memorandum*") ("Consequently, a PUC cannot consider the cost to the incumbent LEC in determining the technical feasibility of points of interconnection.").

are in fact entitled to a single POI in a LATA. Specifically, the FCC stated, "in the absence of proof by [the ILEC] that it is not technically feasible for [the competitive LEC] to establish a single point of interconnection in each LATA, the [state commission's] determination that [the competitive LEC] must make multiple interconnections is inconsistent with the 1996 Act and binding FCC rules."[26] This is consistent with the FCC's prior determination in its *Local Competition Order* that "requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)."[27] Moreover, this is consistent with the findings of the FCC's Wireline Competition Bureau, which recently rejected another ILEC's proposal to have multiple interconnection points and clarified that "competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA."[28]

33. If CT exercised a unilateral right to designate multiple POIs, it could use this right to require Level 3 to mirror its legacy network architecture, which may not be the most efficient, forward-looking architecture for an entrant deploying a new network. Requiring competitive LECs to mirror the ILEC architecture, without any reference to the network architectures each party has in place and the actual traffic patterns originating from portions of the CT network, represents a barrier to entry.

34. Level 3 agrees that as traffic volumes increase, sound engineering principles may dictate that the parties designate additional POIs at other CT locations. (Level 3 has in fact utilized this more flexible approach to negotiate additional POIs with other ILECs throughout the country as traffic patterns and network architectures dictated.) However, those traffic volumes

---

[26] *FCC Memorandum*, at 15.

[27] *Local Competition Order*, at ¶220 n.464.

[28] *Federal Arbitration Order*, at ¶ 52.

do not yet exist, and there is no reason, or legal basis, for the Commission to compel Level 3 to build out (either by construction or lease) to all points where CT may dictate. Level 3 should be permitted to select the initial POI, with the Parties' network planners then negotiating going forward the interconnection architecture necessary to optimize investment by both parties.

ISSUE 12: TO THE EXTENT CT IS NOT A "RURAL TELEPHONE COMPANY," HOW SHOULD INTERCONNECTION FACILITIES BE RATED? (Art. V, Sec. 4.2)

Level 3's Position: Sections 251(c) and 252 of the Act require that incumbent local exchange carriers interconnect at forward-looking cost-based rates. Accordingly, CT should not be permitted to charge Level 3 special access rates for interconnection facilities; instead, the unbundled dedicated transport rates in the Agreement (which are presumably priced pursuant to the standards of Section 252) should also be used as the rates for interconnection facilities.

CT's Position: Special access rates should apply for interconnection facilities, except to the extent that Level 3 is collocated and orders unbundled dedicated transport.

35. CT's standard interconnection agreement requires any interconnecting CLEC to pay special access rates for interconnection facilities. This is contrary to the express requirements of the Act and corresponding FCC rules and orders, which make clear that forward-looking, cost-based pricing is the proper standard for developing rates that will apply to interconnecting carriers. Section 251(c)(2)(d) of the Act specifies that an ILEC must provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252." Section 252(d) establishes a single standard for both "interconnection and unbundled network elements." That standard requires, among other things, that all prices be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element." Under this language, rates based upon historical access costs are prohibited, and competitors are only required to pay the forward-looking cost associated with the interconnection or unbundled network element in

question. CT's proposal to apply its special access rates to the use of interconnection facilities is therefore contrary to the pricing principles of the Act.

36. A better measure of the proper prices under the Act is CT's own unbundled network element prices for transport. As CT itself seems to recognize in Section 4.2 of Article V, interconnection facilities are functionally speaking nothing more than dedicated transport facilities. Yet CT would only allow a CLEC to pay the forward-looking price for such interconnection facilities where the CLEC has collocated with CT. Nothing in the Act requires that interconnection facilities be based on forward-looking cost only where the CLEC is collocated with the ILEC. To the contrary, as the FCC's Wireline Competition Bureau has recently clarified, a CLEC should be permitted to lease interconnection facilities at forward-looking rates regardless of whether it is collocated: "Verizon has no basis for requiring AT&T to order dedicated transport from its access tariffs . . . . There is no requirement that a competitive LEC collocate at the incumbent LEC's wire center or other facility in order to purchase UNE dedicated transport . . . ."[29] The Commission should therefore find that CT's proposal to charge special access rates for interconnection transport (except in cases where the CLEC is collocated) is contrary to law, and that Level 3 should be entitled to forward-looking cost-based transport at CT's dedicated transport UNE rates regardless of whether collocation is established.

ISSUE 13: SHOULD THE AGREEMENT CONTAIN TRANSIT TRAFFIC PROVISIONS TO ENSURE UNINTERRUPTED FLOW OF CALLS WITH CUSTOMERS OF THIRD-PARTY CARRIERS? (Art. V, Secs. 3.1 and 3.3)

Level 3's Position: To ensure that calls flow between customers of third-party carriers who may share a local calling scope with CT and Level 3 customers, the Agreement should contain reasonable transit traffic provisions – just as every other CLEC-ILEC interconnection agreement does. Level 3 would be willing to accept CT's original proposal with respect to the transiting of traffic, with the caveat that it would only indemnify CT for the "reasonable and

[29] *Id.* at ¶ 217.

demonstrable" termination charges imposed by any third-party carrier to whom CT delivered traffic for Level 3.

CT's Position: CT has proposed to strike all references to transit traffic originally found in its template agreement.

37. Provisions allowing for transit traffic are relatively standard in every interconnection agreement. In fact, CT itself included such a provision in the first draft of an interconnection agreement sent to Level 3. Such provisions recognize that upon initial entry, a CLEC will not have direct interconnections with every neighboring ILEC or every CLEC operating in the area, and that the public interest is served by allowing calls to and from these third-party carriers to flow through the ILEC network with whom they are all commonly interconnected. At the same time, these agreements recognize that it is reasonable for the carrier sending such traffic to the ILEC for transiting to another carrier to compensate the ILEC for the service it provides in transiting the call – and to compensate the ILEC to the extent it is charged by the terminating carrier. Accordingly, Level 3 had no objection to CT's proposed transiting provisions as they appeared initially, other than to clarify that Level 3 would only indemnify CT for termination costs imposed by another carrier to the extent such costs were "reasonable and demonstrable." (In other words, as an originating carrier, a CLEC should be willing to pay the standard nondiscriminatory termination charges of the third-party terminating carrier, but it should not be required to pay something beyond those standard nondiscriminatory charges.)

38. Despite the fact that Level 3 made only this single minor change to the CT-proposed transiting language, CT returned the draft Agreement with all references to transiting deleted. Level 3 is uncertain why CT would now be opposed to providing transit services – particularly when the language is fairly standard in ILEC agreements (including CT agreements, apparently, until now). However, it should be noted that the absence of such provisions would

constitute a significant barrier to entry, as it would effectively require Level 3 to identify, negotiate, and establish direct interconnection with every LEC (CLEC or ILEC) who could possibly place a local call to Level 3's customers before Level 3 begins operating in the market.[30] Transit traffic provisions are included in such agreements to minimize such barriers to entry, and the Commission should reject CT's anticompetitive effort to delete these kinds of standard provisions from the Agreement.

ISSUE 14: WHAT SHOULD THE TERM OF THE AGREEMENT BE? (Art. III, Sec. 2.1)

Level 3's Position: The term of the Agreement should last until at least December 31, 2004.

CT's Position: The term of the Agreement should last until January 1, 2004.

39. A one (1) year term – which is what CT's proposal would amount to after this arbitration process completes – would lead to unnecessary repetitive negotiation (and possibly litigation), and would generate uncertainty and inefficiency in the Parties' interconnection operations. No CLEC could hope to implement a business plan and initiate operations throughout the CT serving area if the contract provisions upon which it relies will expire in such a short time. Moreover, the costs (both in terms of time and financial resources) associated with negotiating and arbitrating a new agreement are significant. If there are changes in law or in technology such that changes to the agreement are needed, the Parties are entirely free to negotiate amendments to the agreement, and the General Terms would actually compel renegotiation where material changes in law occur. By contrast, forcing CLECs to negotiate anew for all relevant terms of interconnection with CT so often would effectively constitute a barrier to entry into the local exchange market. The Commission should approve a December

[30] In its recent *Federal Arbitration Order*, the FCC's Wireline Competition Bureau noted the importance of transit traffic provisions, finding that a Verizon proposal to cease providing such services at a certain point "creates too great a risk of service disruption to [CLEC] end users." *Id*. at ¶ 115.

31, 2004 expiration date so that Level 3 may reasonably rely upon the agreement as it deploys its operations in the CT serving area.

ISSUE 15: WHAT SHOULD HAPPEN WHEN THE TERM EXPIRES? (Art. III, Sec. 2.2)

Level 3's Position: Level 3 agrees that if the Agreement is not replaced by a new agreement within 180 days of the termination date, the Parties should continue operations under subsection (b) of Section 2.2 of Article III. However, Level 3 is concerned that none of the four options for continuation cited in Section 2.2 may be present in the CT market upon expiration. It is therefore reasonable to state that, in order to ensure that service is not disrupted to end users, where none of the four options listed in subsection (b) is available, the Parties would continue under this Agreement until such time as a new agreement is in place.

CT's Position: It is unclear. CT must assume that one of the four options will always be available.

40. Level 3 and CT appear to be in general agreement as to what would happen if the Parties could not reach a new agreement to replace this Agreement within the time frames allotted in subsection (a) of Section 2.2 of Article III. In short, if the Agreement ends pursuant to subsection (a), the Parties appear to agree that one of the following options may be used to ensure that operations continue without interruption: (1) a new agreement is voluntarily executed; (2) standard terms and conditions are available as approved by the Commission; (3) tariffed terms and conditions applicable to all Local Providers are available; or (4) another carrier's interconnection agreement is available for adoption.

41. Where the Parties do not appear to agree is on what happens if none of these four options is available at the time the Agreement is set to expire. Level 3 has proposed that, if none of these is available, the Agreement would continue so that there is no interruption in service. CT has objected to this provision, but has not made clear what would happen if none of these four options is available. Given the public interest in ensuring that end user customer service is not disrupted by renegotiation of a new interconnection agreement, the Commission should put into place a contingency in case none of the four options set forth in subsection (b) is available.

Level 3 has proposed the only contingency for consideration in this docket, and its proposal should be adopted.

III. REQUEST FOR RELIEF

42. Level 3 requests that the Commission arbitrate the issues described above and resolve these issues in Level 3's favor.

43. Level 3 requests that the Commission find that Level 3's proposals in Exhibit B are reasonable and consistent with applicable law. Accordingly, Level 3 requests that the Commission approve its revisions to the Agreement, as described above, and grant such other and further relief as the Commission deems appropriate.

44. That the Commission's decision regarding unresolved issues be implemented by the Parties within 30 days of the Commission's final arbitration decision.

Dated this 7th day of August, 2002.

Respectfully submitted,

Level 3 Communications, LLC

By: _____

Rogelio E. Peña
Peña & Associates, LLC
1919 14th Street, Suite 330
Boulder, CO 80302
(303) 415-0409 (Tel)
(303) 414-0433 (Fax)

Michael R. Romano
Director – State Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, VA 22102
(703) 762-0147 (Tel)
(703) 762-0150 (Fax)

Counsel for
Level 3 Communications, LLC