

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

IN THE MATTER OF THE PETITION FOR
ARBITRATION OF AN INTERCONNECTION
AGREEMENT BETWEEN

LEVEL 3 COMMUNICATIONS, LLC,

and

CENTURYTEL OF WASHINGTON, INC.,

PURSUANT TO 47 U.S.C. § 252

DOCKET NO. UT-023043

**CONSOLIDATED REPLY BRIEF AND MEMORANDUM OF LAW OF
LEVEL 3 COMMUNICATIONS, LLC**

Michael R. Romano
Director, State Regulatory Affairs
LEVEL 3 COMMUNICATIONS, LLC
8270 Greensboro Drive, Suite 900
McLean, Virginia 22102
+1 571 382 7447 tel
+1 571 382 7450 fax

Rogelio E. Peña
PEÑA & ASSOCIATES, LLC
1919 14th Street, Suite 330
Boulder, Colorado 80302
+1 303 415 0409 tel
+1 303 415 0433 fax

John T. Nakahata
Kent D. Bressie
Harris, Wiltshire & Grannis llp
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2560
+1 202 730 1320 tel
+1 202 730 1301 fax

15 October 2002

COUNSEL FOR LEVEL 3 COMMUNICATIONS, LLC

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CenturyTel of Washington, Inc. (“CenturyTel”), and its trade association, the Washington Independent Telephone Association (“WITA”), have each failed to demonstrate that this Commission lacks jurisdiction over the interconnection dispute between CenturyTel and Level 3 Communications, LLC (“Level 3”), pursuant to §§ 251 and 252 of the Telecommunications Act of 1996 (“Act”).¹ Their arguments mostly address the merits in this proceeding, and their principal jurisdictional argument—about the FCC’s discrete preemption on the issue of setting

¹ See Brief of CenturyTel on Jurisdictional Issues, WUTC Docket No. UT-023043 (filed Oct. 7, 2002) (“CenturyTel Brief”); Response of CenturyTel of Washington, Inc., to Level 3’s Petition for Arbitration, WUTC Docket No. UT-023043 (filed Sept. 3, 2002) (“CenturyTel Response”); *Amicus* Brief of the Washington Independent Telephone Association Concerning Rural Exemptions Under Section 251 of the Telecommunications Act of 1996, WUTC Docket No. UT-23043 (filed Oct. 7, 2002) (“WITA *Amicus* Brief”); Petition of Level 3 Communications, LLC, for Arbitration Pursuant to 47 U.S.C. § 252 of Interconnection Rates, Terms and Conditions with CenturyTel of Washington, Inc., WUTC Docket No. 023043 (filed Aug. 7, 2002) (“Level 3 Petition”). Level 3 continues to oppose WITA’s

intercarrier compensation rates for ISP-bound traffic—misinterprets the relevant court opinions and FCC orders. For these reasons and those articulated in Level 3’s initial brief and original petition, this Commission should instead assert jurisdiction, pursuant to §§ 251 and 252 of the Act, and rule in Level 3’s favor with respect to Issue 1 in Level 3’s Petition to find that ISP-bound traffic need not be handled by separate agreement.²

The principal arguments of CenturyTel and WITA—regarding the supposed interstate, interexchange nature of Level 3’s ISP-bound traffic and the implications of CenturyTel’s claimed rural exemption pursuant to § 251(f)(1)(A)—have nothing to do with this Commission’s jurisdiction under §§ 251 and 252 of the Act to address interconnection disputes through arbitration. Instead, they address the merits of the dispute and the meaning of CenturyTel’s interconnection obligations under various subsections of § 251 vis-à-vis Level 3. These CenturyTel and WITA arguments are not only premature in this phase of the proceeding—as the Commission sought memoranda of law only on the jurisdictional issues³ and has yet to receive factual testimony necessary to determine these mixed questions of law and fact—but they are also mistaken. Sections 251 and 252 of the Act clearly grant this Commission jurisdiction to arbitrate all interconnection matters—including disputed issues such as whether particular traffic

intervention. *See* Level 3’s Response to Washington Independent Telephone Association’s Petition to Intervene, WUTC Docket No. UT-023043 (filed Oct. 3, 2002).

² *See* Brief and Memorandum of Law of Level 3 Communications, LLC, WUTC Docket No. UT-023043 (filed Oct. 7, 2002) (“Level 3 Brief”); Level 3 Petition at 8-9.

³ *See* Second Supplemental Order and Pre-Arbitration Conference Order, WUTC Docket No. UT-023043, at 2 ¶ 7 (Sept. 27, 2002) (“Second Supplemental Order”) (setting for early briefing “the question whether the Commission has jurisdiction to conduct this arbitration proceeding”). At the pre-arbitration conference, the WUTC arbitrator requested that the parties address specifically in their briefs whether a “rural exemption” would deprive the Commission of jurisdiction over the interconnection dispute.

is subject to §§ 251(a), 251(b), and 251(c), and the scope of a valid rural exemption under § 251(f)(1)(A).

The principal jurisdictional argument of CenturyTel and WITA—about the scope of the preemption by the Federal Communications Commission (“FCC”) in the *ISP Order on Remand*—is mistaken, as the FCC has repeatedly stated that its preemption extends only to the discrete issue of setting intercarrier compensation rates under § 251(b)(5). The FCC’s preemption of the state commissions on the discrete issue of setting intercarrier compensation rates remains irrelevant to this proceeding, as Level 3 has not sought reciprocal compensation for its termination of traffic originating on CenturyTel’s local networks. And the attempt of CenturyTel and WITA to read the FCC’s narrow preemption on setting intercarrier compensation rates for ISP-bound traffic as also preempting state jurisdiction over interconnection grossly misinterprets the relevant court opinions and FCC orders.

REPLY MEMORANDUM OF LAW

I. CENTURYTEL’S ASSERTION ABOUT THE SUPPOSED INTERSTATE, INTEREXCHANGE NATURE OF LEVEL 3’S ISP- BOUND TRAFFIC IS IRRELEVANT TO ISSUE OF COMMISSION JURISDICTION, AND OTHERWISE MISTAKEN AND UNSUBSTANTIATED

CenturyTel’s assertion about the supposed interstate, interexchange nature of Level 3’s ISP-bound traffic is not determinative of the issue of Commission jurisdiction. Whether Level 3’s service can be considered “interstate” or “interexchange” in nature are questions of both law and fact—and ones that requires a consideration of evidence and arguments on the merits in this proceeding. CenturyTel therefore cannot rely upon a bald assertion that Level 3’s service is “interstate” or “interexchange” in nature as grounds for claiming that the Commission lacks jurisdiction to arbitrate this dispute.

Sections 251 and 252 of the Act clearly grant this Commission jurisdiction over all interconnection disputes between all telecommunications carriers, not just between local exchange carriers (“LECs”). Contrary to CenturyTel’s assumption, §§ 251 and 252 are not limited to matters that are exclusively intrastate or local. Indeed, many of the regulatory obligations addressed by §§ 251 and 252, including but not limited to the obligations to interconnect, to provide collocation, to provide dialing parity, to lease unbundled network elements, are jurisdictionally mixed in nature (*i.e.*, containing both interstate and intrastate traffic), and state commissions have jurisdiction over the full scope of these issues under §§ 251 and 252, not just their intrastate components. Similarly, the courts and the FCC have recognized that ISP-bound traffic is jurisdictionally mixed, and nothing in the Act or FCC decisions carves ISP-bound traffic out of state jurisdiction under §§ 251 and 252, with the sole exception of jurisdiction over setting intercarrier compensation rates for ISP-bound traffic. Finally, CenturyTel’s argument about § 251(c)(2) interconnection obligations is both premature and mistaken.

A. CENTURYTEL IGNORES THE ACT’S PLAIN LANGUAGE GRANTING STATE COMMISSIONS JURISDICTION OVER ALL INTERCONNECTION DISPUTES BETWEEN ALL TELECOMMUNICATIONS CARRIERS

CenturyTel ignores the plain language of §§ 251 and 252 of the Act granting state commissions jurisdiction over all interconnection disputes between all telecommunications carriers.⁴ Sections 251 and 252 of the Act explicitly grant to the state commissions broad authority to arbitrate interconnection disputes, including those implicating jurisdictionally “mixed” traffic such as calls bound for Internet service providers (“ISPs”) and those involving carriers holding valid “rural exemptions” pursuant to § 251(f)(1)(A) of the Act. Thus the

Commission’s jurisdiction is not limited to local traffic, non-interstate traffic, non-interexchange traffic, non-ISP-bound traffic, or even non-jurisdictionally mixed traffic.

Section 251(a) of the Act imposes interconnection obligations on “[e]ach telecommunications carrier,” and the Act imposed additional obligations on local exchange carriers (“LECs”) and incumbent LECs.⁵ Section 251(a)’s plain language imposes no limitations on the nature of the carriers subject to those rights and obligations or the nature of their services (*e.g.*, intrastate, interstate, interexchange, or jurisdictionally mixed traffic).⁶

The Act grants to the state commissions broad authority to arbitrate *all* interconnection disputes between telecommunications carriers regarding interconnection mandated by the Act, a category which—as noted above—includes all telecommunications carriers.⁷ The FCC did not alter this requirement in its *ISP Order on Remand*.⁸ To remedy what it saw as an economically

⁴ See CenturyTel Brief at 3-6. WITA, by contrast, concedes that Level 3 is a competitive LEC. See WITA *Amicus* Brief at 4 (referring to “a CLEC, such as Level 3”).

⁵ See 47 U.S.C. § 251(a) (imposing on all telecommunications carriers the duty to interconnect), § 251(b) (imposing additional interconnection obligations on LECs), § 251(c) (imposing additional interconnection obligations on incumbent LECs); Level 3 Brief at 5-6.

⁶ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15,499, 15,589 ¶¶ 992-93 (1996) (“*Local Competition Order*”) (concluding with respect to the scope of §251(a) that “to the extent a carrier is engaged in providing for a fee domestic or international telecommunications, directly to the public or to such classes of users as to be effectively available directly to the public, the carrier falls within the definition of ‘telecommunications carrier.’ . . . We believe, as a general policy matter, that all telecommunications carriers that compete with each other should be treated alike regardless of the technology used unless there is a compelling reason to do otherwise.”), *aff’d in part and vacated in part sub nom Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997), *aff’d in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part and rev’d in part sub nom. AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

⁷ 47 U.S.C. § 252(b).

⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, 16 FCC Rcd. 9151 (2001) (“*ISP Order on Remand*”) (emphasis in original), *remanded WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (“*WorldCom*”).

distorted result with respect to intercarrier compensation for the transport and termination of ISP-bound traffic, the FCC in the *ISP Order on Remand* chose to treat ISP-bound calls differently than other traffic exchanged between a LEC and an interconnected telecommunications carrier under its reciprocal compensation rules. Thus, the FCC preempted the state commissions on this discrete issue—setting intercarrier compensation rates for ISP-bound traffic—but not with respect to other issues related to ISP-bound traffic.⁹ The FCC specifically and expressly left undisturbed the jurisdiction of the state commissions over all other interconnection matters—including those involving ISP-bound traffic, but for setting intercarrier compensation rates. As the FCC noted in footnote 149 of the *ISP Order on Remand*, the FCC’s decision:

affects only the intercarrier *compensation* (i.e., the rates) applicable to the delivery of ISP-bound traffic. It 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.¹⁰

Accordingly, this Commission retains jurisdiction to hear this dispute, even after the FCC’s *ISP Order on Remand*.

B. CENTURYTEL IGNORES JUDICIAL AND FCC CONCLUSIONS THAT SECTIONS 251 AND 252 GOVERN INTERCONNECTION FOR JURISDICTIONALLY MIXED TRAFFIC, INCLUDING ISP-BOUND TRAFFIC

CenturyTel ignores the judicial and FCC conclusions that ISP-bound traffic is jurisdictionally mixed, and subject to the interconnection requirements of §§ 251 and 252. Instead, CenturyTel wrongly asserts that ISP-bound traffic and interexchange traffic are one and the same, and further seems to confuse interexchange traffic with foreign-exchange (“FX”) and

⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd. 3689, 3707 ¶ 28 (1999) (citations omitted) (“*ISP Order*”), *vacated and remanded Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) (“*Bell Atlantic*”).

FX-type traffic.¹¹ And with that bald and unsubstantiated assertion, CenturyTel then devotes most of its argument to recounting the FCC’s regulatory treatment of interexchange traffic.¹² But without a demonstration that ISP-bound traffic is purely interexchange in nature, the regulatory treatment of purely interexchange traffic remains irrelevant. In fact, CenturyTel cannot make such as showing, as the courts and the FCC have concluded otherwise.

First, CenturyTel’s assumption that ISP-bound traffic is purely interexchange traffic ignores judicial and FCC conclusions to the contrary.¹³ In its vacatur and remand of the FCC’s original *ISP Order*, the D.C. Circuit stated regarding the issue of whether ISP-bound traffic is local or long-distance, “Neither category fits clearly.”¹⁴ “Calls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a continuation, in the conventional sense, of the initial call to the ISP.”¹⁵ The FCC subsequently repudiated the local/non-local dichotomy in the *ISP Remand Order*, substituting an approach that excluded only traffic that was subject to § 251(g).¹⁶ As discussed further below, CenturyTel

¹⁰ *ISP Order on Remand*, 16 FCC Rcd. at 9187 ¶ 78 n.149.

¹¹ See CenturyTel Brief at 3, 5.

¹² See *id.* at 3-5.

¹³ See *id.* at 3-4.

¹⁴ *Bell Atlantic*, 206 F.3d at 5.

¹⁵ *Id.*

¹⁶ *ISP Order on Remand*, 16 FCC Rcd. at 9164 ¶ 26 (finding that “[u]pon further review, we find that the Commission erred in focusing on the nature of the service (*i.e.*, local or long distance) and in stating that there were only two forms of telecommunications services—telephone exchange service and exchange access—for purposes of interpreting the relevant scope of section 251(b)(5).”). The FCC’s § 251(g) justification was itself rejected and remanded by the D.C. Circuit. See *WorldCom*, 288 F.3d at 434. But the D.C. Circuit rejected only the justification, not the underlying rule, and even suggested an alternative justification that could survive judicial review. See *id.*

does not demonstrate that this traffic is exchange access, and its assertion that this traffic is “information access” has been rejected by the D.C. Circuit.

Second, CenturyTel confuses interexchange traffic with FX and FX-type traffic, raising yet another mixed question of law and fact by asserting that a carrier’s traffic is interexchange because “[its] customers simply are not located in the same exchange or local calling area.”¹⁷ CenturyTel’s argument proves too much, as it would render CenturyTel’s own FX services as interexchange—which they are clearly not. More important for this step in the arbitration process, CenturyTel’s argument addresses only the merits of Level 3’s petition, in this case the functional equivalence of Level 3’s proposed services to those long offered by CenturyTel—a factual issue to be explored in testimony before this Commission.¹⁸ It says nothing, as a jurisdictional matter, about the authority of this Commission to investigate that issue.

Third, CenturyTel’s claim that the interstate nature of ISP-bound traffic precludes state commissions from asserting jurisdiction over interconnection disputes involving such traffic ignores the FCC’s own statement to the contrary.¹⁹

As we observed in the *Local Competition Order*, state commission authority over interconnection agreements pursuant to section 252 ‘extends to both interstate and intrastate matters.’ Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process.²⁰

The FCC has noted that the “largely interstate nature” of ISP-bound traffic does not, in any event, remove interconnection for ISP-bound traffic from the state-commission supervised negotiation and arbitration process.

¹⁷ See CenturyTel Brief at 5.

¹⁸ See Level 3 Petition at 11-15 (identifying the proper treatment of FX traffic as Issue 3).

¹⁹ See, e.g., CenturyTel Brief at 10.

Moreover, even if the courts and the FCC has concluded that ISP-bound traffic was purely interstate and interexchange—and clearly they did not—the state commissions would still retain jurisdiction to interpret, mediate, and arbitrate interconnection disputes involving ISP-bound traffic, namely those arising under §§ 251(a) and 251(b). In spite of CenturyTel’s efforts to confuse the two,²¹ the duty to interconnect remains separate and distinct from intercarrier compensation obligations. And the fact that particular services may, for intercarrier compensation purposes, fall within the § 251(b)(5) reciprocal compensation regime, the § 201 access charge regime, or neither speaks nothing of the other statutory interconnection duties of telecommunications carriers, as noted in part I.A above and in Level 3’s initial brief.²²

C. CENTURYTEL’S § 251(C)(2) ARGUMENT IS PREMATURE AND MISTAKEN

CenturyTel’s argument about interconnection duties under § 251(c)(2) is both premature and mistaken. The Commission should therefore address it—along with the rest of the merits—in subsequent proceedings, and then reject it as inconsistent the courts’ and the FCC’s characterizations of ISP-bound traffic and as an overgeneralization of one particular interconnection obligation of incumbent LECs.

CenturyTel’s § 251(c)(2) argument is premature because it addresses the merits of, and not the jurisdiction of this Commission to interpret, whether Level 3 may demand interconnection under § 251(c)(2).²³ As discussed in part I.A above and in Level 3’s initial brief,²⁴ § 252(b) empowers this Commission to interpret and arbitrate with respect to § 251(c)(2).

²⁰ *ISP Order*, 14 FCC Rcd. at 3705, ¶ 25.

²¹ *See, e.g.*, CenturyTel Brief at 2-3.

²² *See* Level 3 Brief at 5-6.

²³ *See* CenturyTel Brief at 3-4.

²⁴ *See* Level 3 Brief at 7-8.

At most, CenturyTel has raised a factual issue as to whether Level 3's ISP-bound traffic is purely interexchange in nature. And even that characterization is generous, given the clear pronouncements of the courts and the FCC regarding the jurisdictionally mixed nature of ISP-bound traffic, as discussed in part II.B above.

CenturyTel's § 251(c)(2) argument is mistaken because it overgeneralizes the requirements of § 251(c)(2) interconnection to apply to *all* interconnection arrangements under *all* subsections of § 251 of the Act.²⁵ Neither the FCC rule nor the portions of the FCC's *Local Competition Order* cited by CenturyTel supports such a misinterpretation. Section 51.305(b) of the Commission's rules and the *Local Competition Order* use the exact same language to define only when a carrier is "entitled to receive interconnection pursuant to section 251(c)(2)" of the Act, and no more.²⁶ Thus, these provisions make no reference to the duties of an incumbent LEC under other subparts of § 251(c), much less the duties of all telecommunications carriers under § 251(a) or of LECs under § 251(b) of the Act. And Level 3 has not sought to interconnect with CenturyTel under § 251(c)(2).²⁷

II. CENTURYTEL AND WITA MISCHARACTERIZE THE FCC'S PREEMPTION OF THE STATE COMMISSIONS ON THE DISCRETE ISSUE OF SETTING INTERCARRIER COMPENSATION RATES FOR ISP-BOUND TRAFFIC

The jurisdictional argument of CenturyTel and WITA about the scope of the FCC's preemption in the *ISP Order on Remand* is mistaken, as it extends only to the issue of setting intercarrier compensation rates under § 251(b)(5). The FCC's narrow preemption in the *ISP*

²⁵ See *id.*

²⁶ 47 C.F.R. § 51.305(b); *Local Competition Order*, 11 FCC Rcd. at 15,598-99 ¶¶ 190-91.

²⁷ See Letter from Rogelio E. Peña, Counsel for Level 3 Communications, LLC, to Harvey Perry, CenturyTel, Inc., General Counsel (Mar. 1, 2002) ("Level 3 Arbitration Request"), attached to Level 3 Petition as Exhibit A.

Order on Remand also remains irrelevant to this proceeding, as Level 3 has not sought reciprocal compensation for its termination of traffic originating on CenturyTel's local networks.

To subvert this Commission's review of this dispute, CenturyTel and WITA have ignored the Act's plain language, and attempted to read the FCC's orders with respect to intercarrier compensation—and which interpret one subsection of the LEC interconnection obligations, § 251(b)(5)—as a broad, preemptive assertion of exclusive federal jurisdiction over all aspects of interconnection relating to ISP-bound traffic under all subsections of § 251. CenturyTel and WITA repeatedly mischaracterize or quote selectively from the relevant FCC orders and court opinions to suggest that the FCC's carve-out extends far beyond the setting of intercarrier compensation rates for ISP-bound traffic.²⁸

- CenturyTel and WITA omit any reference to footnote 149 of the *ISP Order on Remand*, as discussed in part I.A. above. In footnote 149, the FCC explicitly limited the scope of the its decision to the setting of intercarrier compensation rates.²⁹
- The argument of CenturyTel and WITA about preemption based on the FCC's exercise of rate-setting authority under § 201 glosses over the fact that the FCC was explicitly addressing a narrow carve-out from § 251(b)(5) with respect only to

²⁸ See, e.g., CenturyTel Brief at 12 n.10 (claiming that this Commission retains arbitration jurisdiction over interconnection agreements), 13 (claiming ISP traffic is properly classified as interstate for all purposes and falls under the FCC's section 201 jurisdiction).

²⁹ *ISP Order on Remand*, 16 FCC Rcd. at 9187 ¶ 78 n.149 (2001) (stating that the *ISP Order on Remand* “affects only the intercarrier *compensation* (i.e., the rates) applicable to the delivery of ISP-bound traffic. It 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.” (emphasis in original)).

intercarrier compensation.³⁰ The FCC stated clearly, “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* [*i.e.*, to set intercarrier compensation rates].”³¹ The FCC did not state that it was preempting the state commissions with respect to all matters relating to ISP-bound traffic. And contrary to CenturyTel’s partial quotation, carriers of ISP-bound traffic may still—except for intercarrier compensation purposes—demand of interconnection with a LEC on the same terms and conditions that the LEC has offered to another carrier in an existing interconnection agreement, pursuant to § 252(i).³² Likewise, and contrary to CenturyTel’s assertion, carriers of ISP-bound traffic may enter into new interconnection agreements, and invoke state commission arbitration thereof.³³

- CenturyTel’s argument that the FCC found that ISP-bound traffic is not local under the FCC’s “end-to-end” analysis ignores the fact that the D.C. Circuit vacated and remanded the FCC’s original *ISP Order* on the grounds that the FCC’s application of its “end-to-end” analysis to ISP-bound traffic did not support its carve-out of ISP-

³⁰ See CenturyTel Brief at 11 (claiming that the FCC “also removed ISP-bound traffic from the duties and obligations under Sections 251 and 252 of the Act, and placed his traffic under the FCC’s Section 201 jurisdiction.”); WITA *Amicus* Brief at 14.

³¹ *ISP Order on Remand*, 16 FCC Rcd. at 9189 ¶ 82 (emphasis added).

³² See CenturyTel Brief at 6-7; *ISP Order on Remand*, 16 FCC Rcd. at 9189 ¶ 82 (stating that “as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201.” (footnotes omitted)).

³³ See CenturyTel Brief at 12; Level 3 Brief at 5-6.

bound traffic from its intercarrier compensation rules.³⁴ The FCC subsequently abandoned the distinction between the “local” or “non-local” nature of the traffic as the basis for delineating the scope of §251(b)(5) and state commission jurisdiction to implement § 251(b)(5).³⁵ Under the *ISP Order on Remand*, the FCC carved traffic out of § 251(b)(5) only to the extent it falls within the categories enumerated in § 251(g), and not based on a general conclusion that traffic is “interstate.”³⁶ Section 251, including § 251(b)(5), is in no way limited only to intrastate services or facilities.

- CenturyTel’s claim that the D.C. Circuit found that the state commissions would no longer have § 251(e)(1) authority over interconnection for ISP-bound traffic confuses the FCC’s position with the court’s holding.³⁷ The full quotation, which CenturyTel had shorn of its context, reads:

Finally, the Commission specified that, having carved ISP-bound calls out of § 251(b)(5) under § 251(g), it was establishing the interim compensation regime under its general authority to regulate the rates and terms of interstate telecommunications services and interconnections between carriers under § 201 of the Act; as a result, the state regulatory commissions would no longer have

³⁴ See CenturyTel Brief at 12 (devoting half a page to the FCC’s application of an “end-to-end” analysis to determine intercarrier compensation obligations for ISP-bound traffic); *ISP Order*, 14 FCC Rcd. at 3700 ¶15; *Bell Atlantic*, 206 F.3d at 8 (holding that “[b]ecause the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, we must vacate the ruling and remand the case”).

³⁵ See *ISP Order on Remand*, 16 FCC Rcd. at 9164 ¶ 26 (finding that “[u]pon further review, we find that the Commission erred in focusing on the nature of the service (*i.e.*, local or long distance) and in stating that there were only two forms of telecommunications services—telephone exchange service and exchange access—for purposes of interpreting the relevant scope of section 251(b)(5).”).

³⁶ See *id.* at 9163 ¶ 23.

³⁷ See CenturyTel Brief at 13.

jurisdiction over ISP-bound traffic as part of their power to resolve LEC interconnection issues under § 252(e)(1) of the Act. *Id.*³⁸

Thus, the quotation refers to the D.C. Circuit's summary of the FCC's own position—one which the D.C. Circuit proceeded to reject by remanding the *ISP Order on Remand*.³⁹

Moreover, the D.C. Circuit was describing the FCC's ruling regarding jurisdiction over rate-setting for ISP-bound traffic, *not* jurisdiction over interconnection, for which the FCC stated that its order did not affect.⁴⁰

Try as they might, CenturyTel and WITA cannot avoid the simple fact that the entire line of FCC and court decisions examines only the narrow issue of whether, and on what grounds, the FCC may set interim intercarrier compensation rates for ISP-bound traffic pursuant to § 251(b)(5).⁴¹ The complicated, confusing, and ultimately mistaken arguments by CenturyTel and WITA about the FCC's preemption of the state commissions on the discrete issue of setting intercarrier compensation rates for ISP-bound traffic obscures the straightforward nature of the jurisdictional analysis for interconnection for ISP-bound traffic, as set forward in part I.A above and Level 3's initial brief.⁴²

³⁸ *WorldCom*, 288 F.3d at 431-32.

³⁹ *Id.* at 434 (reversing and remanding the FCC's finding that ISP-bound traffic was information access subject to § 251(g)).

⁴⁰ *See ISP Order on Remand*, 16 FCC Rcd. at 9187 ¶ 78 n.149.

⁴¹ Their arguments about state-commission interpretations of the *ISP Order on Remand* are equally unavailing. *See* CenturyTel Brief at 13-14; WITA *Amicus* Brief at 14-15. Level 3 addresses these state-commission decisions in detail in its initial brief. *See* Level 3 Brief at 14-18.

⁴² *See* Level 3 Brief at 4-12.

III. THE “INFORMATION ACCESS” ARGUMENTS OF CENTURYTEL AND WITA MISREAD BOTH THE D.C. CIRCUIT’S DECISION AND THE ACT

The arguments of CenturyTel and WITA that this Commission lacks jurisdiction because ISP-bound traffic constitutes “information access” misread both the D.C. Circuit’s decision in *WorldCom* and the Act.⁴³ As Level 3 will discuss in more detail in its post-hearing brief, when it will address the merits of this dispute, rather than jurisdictional issues, the D.C. Circuit expressly reversed the FCC’s finding that the exchange of ISP-bound traffic between LECs was information access traffic subject to § 251(g), and remanded the *ISP Order on Remand* for justification on grounds other than § 251(g).⁴⁴

In *WorldCom*, the D.C. Circuit had considered whether any *pre-Act* obligations—coupled with the authority to set interim rules under § 251(g)—could justify the FCC’s setting of intercarrier compensation rates for ISP-bound calls.⁴⁵ Although § 251(g) refers to “information access,” the court rejected the FCC’s argument that the exchange of ISP-bound traffic between LECs was the provision of “information access” by the originating LEC within the scope of § 251(g). It found that there were no obligations governing the exchange of ISP-bound traffic between LECs that pre-dated the Act. Indeed, the FCC itself failed to point to any, and was unable to save the obligation, as justified under § 251(g), from the court’s remand.⁴⁶ Thus, the FCC’s rules precluding CenturyTel from charging Level 3 for *origination* of traffic govern the proposed interconnection.⁴⁷

⁴³ See CenturyTel Brief at 10 (arguing that CenturyTel has no § 251(c)(2) interconnection obligations with respect to “information access”); WITA *Amicus* Brief at 13-14.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *WorldCom*, 288 F.3d at 434.

⁴⁷ See 47 C.F.R. § 51.703(b).

The Act imposes on incumbent LECs such as CenturyTel obligations to interconnect with Level 3 and to carry originating traffic to its point of interconnection with Level 3, pursuant to §§ 251(a), 251(b), and 251(c) and the FCC's rules implementing those statutory requirements. And it is obligations under §§ 251(a) and 251(b) (and § 251(c), to the extent that CenturyTel is not a rural telephone company with an exemption pursuant to §251(f)(1)), along with the FCC's prohibition on charging for the origination of traffic not subject to § 251(g) that Level 3 now seeks to enforce.⁴⁸

IV. UNDER A BRAND-NEW THEORY, AND ONE IRRELEVANT TO THE ISSUE OF JURISDICTION, CENTURYTEL SEEKS TO CHARGE LEVEL 3 FOR ORIGINATION OF TRAFFIC ON CENTURYTEL'S LOCAL NETWORKS

CenturyTel continues to seek to charge Level 3 for traffic originating on CenturyTel's local networks, although its argument for doing so seems to have shifted from one focused on transport and termination to one focused on access charges. Each of those arguments is unavailing, and reflects CenturyTel's continuing attempt to charge Level 3 for originating traffic on CenturyTel's local networks—a practice clearly and correctly prohibited by the FCC.⁴⁹ And in any event, CenturyTel's attempt to charge Level 3 for origination has nothing to do with this Commission's arbitration jurisdiction under § 252.

In its original response, CenturyTel asserted that it would transport and terminate traffic under the proposed interconnection arrangements with Level 3 and that it has no independent duty to interconnect with Level 3.⁵⁰ Yet the duties to interconnect and to transport and terminate traffic are entirely separate. The FCC long ago ruled that “interconnection” refers “only to the

⁴⁸ See Level 3 Petition at 9; Level 3 Arbitration Request.

⁴⁹ See 47 C.F.R. § 51.703(b) (stating that “[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network”); CenturyTel Response at 6.

⁵⁰ See, e.g., *id.* at 6-8.

physical linking of two networks for the mutual exchange of traffic,” and that interconnection is separate from the duty to enter into agreements to route and terminate traffic originating on another carrier’s network.⁵¹

CenturyTel would in no case be transporting or terminating ISP-bound calls, and would instead be originating calls on its own local networks. “Transport” is:

the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act *from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party*, or equivalent facility provided by a carrier other than an incumbent LEC.⁵²

“Termination” is “the switching of telecommunications traffic at the terminating carrier’s end office switch, or equivalent facility, and delivery of such traffic to the called party’s premises.”⁵³

CenturyTel would in no case be “transporting” traffic to Level 3, as defined in the FCC’s rules, as its end office switch would not directly serve the called party, *i.e.*, Level 3’s ISP customer.⁵⁴ Neither would CenturyTel be terminating traffic to Level 3, as it would not be switching traffic at its end office switch and delivering it to the called party’s premises, *i.e.*, Level 3’s ISP-customer premises. Instead, it is Level 3 that would provide transport and termination of that traffic to its ISP customers.⁵⁵

In its brief, however, CenturyTel appears to have changed course, dropping any reference to transport and termination, and instead arguing that Level 3’s ISP-bound traffic should be

⁵¹ See *Local Competition Order*, 11 FCC Rcd. at 15,514, 15,589.

⁵² 47 C.F.R. § 51.701(c) (emphasis added).

⁵³ 47 C.F.R. § 51.701(d).

⁵⁴ See Level 3 Brief at 2-3.

⁵⁵ See *id.*; *Bell Atlantic*, 206 F.3d at 6 (noting that “[c]alls to ISPs appear to fit [the definition of ‘telecommunications traffic’]: the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the ‘called party.’”).

subject to the access charge regime.⁵⁶ But to collect access charges, CenturyTel must demonstrate that it would collect such charges for interexchange traffic. Far from concluding that ISP-bound traffic is purely interexchange in nature, as noted in part I.B above, the courts and the FCC have concluded that ISP is jurisdictionally mixed. In any event, the nature of Level 3's traffic is a factual issue, which this Commission retains the power to decide, as there is no jurisdictional bar to this Commission's arbitration of this interconnection dispute.

V. CENTURYTEL AND WITA WRONGLY ASSERT THAT § 251(F)(1)(A) EXEMPTS A RURAL TELEPHONE COMPANY FROM ALL § 251 INTERCONNECTION REQUIREMENTS AND FROM ALL STATE COMMISSION ARBITRATION UNDER § 252

CenturyTel and WITA wrongly attempt to convert the § 251(f)(1)(A) "rural exemption" into a wholesale exemption from all of the interconnection requirements of § 251 and from all state commission arbitration under §252 with respect to those obligations. As with CenturyTel's argument about the supposed interstate, interexchange nature of Level 3's ISP-bound traffic, the arguments of CenturyTel and WITA about implications of a validly held § 251(f)(1)(A) "rural exemption" are not determinative of Commission jurisdiction over this interconnection dispute. Instead, their "rural exemption" arguments go to the merits, namely CenturyTel's interconnection obligations vis-à-vis Level 3 under §§ 251(a), 251(b), and 251(c) of the Act. They have no bearing on this Commission's authority to determine and enforce those obligations pursuant to § 252.

Even assuming that CenturyTel holds a valid § 251(f)(1)(A) "rural exemption" for all of the markets in which Level 3 has sought interconnection, CenturyTel is still subject to arbitration by this Commission pursuant to § 252. Level 3 sought to interconnect with CenturyTel pursuant

⁵⁶ See, e.g., CenturyTel Brief at 3.

to §§ 251(a) and 251(b)—a fact CenturyTel glosses over and WITA wrongly dismisses.⁵⁷ Initially, Level 3 had also sought interconnection under § 251(c), but subsequently acknowledged in its arbitration petition that it would drop all unbundled network element and resale-related provisions from the proposed agreement, to the extent that CenturyTel is not a rural telephone company with a valid §251(f)(1)(A) “rural exemption.”⁵⁸ So the fact that a valid “rural exemption” would exempt CenturyTel from the duty to negotiate under § 251(c)(1) in no way exempts disputes over §§ 251(a) and 251(b) from state commission mediation or arbitration or invalidates Level 3’s entire petition for arbitration, as CenturyTel claims.⁵⁹ By its terms, the § 251(f)(1)(A) “rural exemption” does not exempt CenturyTel from the duty to interconnect pursuant to §§ 251(a) and 251(b). “Section 251(f)(1) applies only to rural LECs, and offers an exemption only from the requirements of Section 251(c).”⁶⁰

A. A VALID § 251(F)(1)(A) “RURAL EXEMPTION” DOES NOT ELIMINATE AN INCUMBENT LEC’S OTHER INTERCONNECTION OBLIGATIONS UNDER §§ 251(A) AND 251(B)

Contrary to the claims of CenturyTel and WITA, the holding of a valid § 251(f)(1)(A) “rural exemption” does not eliminate an incumbent LEC’s other interconnection obligations under §§ 251(a) and 251(b).⁶¹ As noted in part I.A above and in Level 3’s initial brief, incumbent LECs are a subset of LECs (which are subject to the interconnection requirements of § 251(b)).⁶² LECs are in turn a subset of telecommunications carriers (which are subject to the

⁵⁷ See Level 3 Arbitration Request.

⁵⁸ See *id.*; Level 3 Petition at 7 n.10.

⁵⁹ See CenturyTel Brief at 7-8; WITA *Amicus* Brief at 5-6.

⁶⁰ *In re Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 7236, 7303 (1997).

⁶¹ See CenturyTel Brief at 6-7; WITA *Amicus* Brief at 5, 8.

⁶² 47 U.S.C. § 251(b). See also Level 3 Brief at 6.

interconnection requirements of § 251(a)).⁶³ As such, the interconnection duties of §§ 251(a) and 251(b) also apply to incumbent LECs. And § 251(c) does not contain the totality of interconnection obligations which apply to incumbent LECs, but only those that apply specifically to incumbent LECs.⁶⁴

A rural telephone company holding a valid § 251(f)(1)(A) exemption is exempt only from the obligations of § 251(c), including the § 251(c)(1) “duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in [§ 251(b)(1)-(5)].”⁶⁵ Thus, an incumbent LEC is not altogether exempt from the duties of § 251(b)(1)-(5), but instead only exempt from the duty to negotiate in good faith the duties of § 251(b)(1)-(5). “Section 251(f)(2) provides for relief from the requirements of both Section 251(b) and (c), whereas section 251(f)(1)(A) provides for relief only from the requirements of section 251(c).”⁶⁶ And an incumbent LEC is not exempt from the interconnection obligations of § 251(a). Level 3 may therefore properly seek arbitration by this Commission under § 252 with respect to its requests for §§ 251(a) and 251(b) interconnection (and with respect to § 251(c) to the extent that CenturyTel is not a rural telephone company with a valid § 251(f)(1)(A) “rural exemption”). Indeed, under the reasoning of CenturyTel and WITA that only a request for interconnection pursuant to § 251(c) qualifies for arbitration under § 252, a competitor seeking interconnection pursuant to §§ 251(a) and 251(b) would have no remedy

⁶³ 47 U.S.C. § 251(a).

⁶⁴ *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 11 FCC Rcd. 14,171, 14,186 ¶ 45 (1996) (“*Local Competition NPRM*”) (noting “the Act’s distinction between the obligations of all telecommunications carriers, all LECs and the additional obligations of all incumbent LECs”).

⁶⁵ 47 U.S.C. § 251(c)(1).

⁶⁶ *Local Competition NPRM*, 11 FCC Rcd. at 14,260 ¶ 260.

whatsoever. Clearly, in granting this limited exemption from §251(c) obligations, Congress did not intend the rural exemption to foreclose a competitor from seeking enforcement of an incumbent LEC's obligations under §§ 251(a) and 251(b) through the interconnection arbitration process. The rural exemption expressly protects incumbent LECs only from § 251(c) obligations under the Act, and the Commission should not adopt CenturyTel's and WITA's contrary suggestion that the rural exemption also shields incumbents from any consideration of their obligations to comply with §§ 251(a) and 251(b).

B. AS A MATTER OF STATUTORY CONSTRUCTION, § 252(B) APPLIES TO ALL INTERCONNECTION DISPUTES ARISING UNDER § 251

The plain language and statutory construction of §§ 251 and 252 do not restrict the arbitration authority of state commissions to matters arising under § 251(c). Requesting telecommunications carriers such as Level 3 may therefore trigger arbitrations under § 252 to enforce §§ 251(a) and 251(b) obligations. As noted above in part V.A, §§ 251(a) and 251(b) interconnection obligations apply to a rural telephone company holding a § 251(f)(1)(A) exemption, and § 252 provides a mechanism for enforcing those obligations.

CenturyTel and WITA have attempted to read the cross references to §§ 251(c)(1) and 251(c)(2) as limitations on § 252.⁶⁷ But the plain language of § 252's jurisdictional and procedural provisions refers generally to *all* interconnection disputes arising under § 251:

- Section 252(b)—the jurisdictional grant to the state commissions—refers to the date on which “an incumbent local exchange carrier receives a request for negotiation under this section [*i.e.*, § 252].”⁶⁸
- Section 252(c)—which establishes general standards for state-commission arbitration—refers to “arbitration under subsection b [of § 252]” and “the requirements of § 251.”⁶⁹

⁶⁷ See CenturyTel Brief at 6-8; WITA *Amicus* Brief at 4-6, 8.

⁶⁸ 47 U.S.C. § 252(b)(1).

- Section 252(e)—which grants the state commissions authority to approve or reject any interconnection agreement—allows a state commission to reject an agreement adopted by arbitration under §252(b) “if it finds that the agreement does not meet the requirements of section 251.”⁷⁰

By contrast, the § 252 subsections that impose specific substantive standards for discrete subsections of § 251 refer specifically to those subsections of § 251:

- Section 252(d)(1) refers to interconnection and network element charges “for purposes of subsection (c)(2) of section 251.”⁷¹
- Section 252(d)(2)(A) refers to charges for transport and termination of traffic “for purposes of compliance by an incumbent local exchange carrier with section 251(b)(5).”⁷²
- Section 252(d)(3) refers to wholesale prices for telecommunications services “for purposes of section 251(c)(4).”⁷³

Had Congress intended to limit jurisdictional and procedural provisions of § 252 to matters of § 251(c) interconnection, then it would have employed a parallel construction limiting §§ 252(b), 252(c), and 252(e).⁷⁴ But it did not, meaning that those provisions of §252 should be read as broadly as they are written.

WITA’s own statutory construction argument is therefore backwards, as it would not give meaning to every provision of the statute.⁷⁵ By contrast, Level 3’s reading would give meaning

⁶⁹ 47 U.S.C. § 252(c).

⁷⁰ 47 U.S.C. § 252(e)(2)(B).

⁷¹ 47 U.S.C. § 252(d)(1).

⁷² 47 U.S.C. § 252(d)(2)(A).

⁷³ 47 U.S.C. § 252(d)(3)

⁷⁴ *See, e.g., United States v. Nunez*, 573 F.2d 769, 771 (2d Cir. 1978) (stating that “[i]t is a settled principle of statutory construction that ‘[when] the same word or phrase is used in the same section of an act more than once, and the meaning is clear as used in one place, it will be construed to have the same meaning in the next place.’” (citations omitted)).

⁷⁵ *See* WITA *Amicus* Brief at 6.

to, and distinguish between, the jurisdictional and procedural provisions of § 252, which are written broadly, and the substantive provisions of § 252, which pertain only to discrete subsections of § 251.

C. CONTRARY TO THE CHARACTERIZATIONS OF CENTURYTEL AND WITA, THE STATE COMMISSIONS RETAIN JURISDICTION TO DETERMINE INCUMBENT LECs’ PARTICULAR § 251 INTERCONNECTION DUTIES AND TO ARBITRATE DISPUTES INVOLVING CARRIERS HOLDING § 251(F)(1)(A) “RURAL EXEMPTIONS”

The state-commission decisions cited by CenturyTel and WITA stand only for the discrete proposition that carriers holding valid § 251(f)(1)(A) “rural exemptions” are exempt from the requirements of § 251(c).⁷⁶ Given the plain language of § 251(f)(1)(A), this proposition is unremarkable. But the decisions cited by CenturyTel and WITA do not support the proposition that such rural telephone companies are exempt from *all* interconnection requirements imposed by any and all subsections of § 251. Nor do they stand for the proposition that a valid § 251(f)(1)(A) “rural exemption” deprives state commissions of jurisdiction under § 252.

As described in part I.A above and in Level 3’s initial brief, § 251 of the Act subjects incumbent LECs—including those with valid § 251(f)(1)(A) “rural exemptions”—to a range of interconnection duties.⁷⁷ “Section 252 of the Act sets out the procedures that incumbent LECs and new entrants must follow to turn the requirements of Section 251 into binding contractual obligations.”⁷⁸ Section 251(f)(1)(A) addresses only a subset of an incumbent

⁷⁶ See CenturyTel Brief at 8-9; WITA *Amicus* Brief at 6-13.

⁷⁷ See Level 3 Brief at 5-8.

⁷⁸ *In the Matter of the Investigation into the Cost of Providing Telecommunications Services*, OPUC Order No. 96-188, UM 351 (July 19, 1996), 1996 Ore. PUC LEXIS 77, at *26, *30 (deciding the narrow issue of whether an incumbent LEC with a § 251(f)(1)(A) “rural exemption” was “subject to the negotiation, interconnection, unbundling, resale at wholesale rates, public notice of changes, or collocation requirements of Section 251(c)”).

LEC's interconnection obligations under §251. As the Idaho PUC noted with respect to the § 251(f)(1)(A) "rural exemption," "a rural telephone company does not have *the same* duty as other local exchange carriers (LECs) to negotiate and interconnect with potential competitors."⁷⁹ Thus, the Idaho PUC did not—as CenturyTel and WITA suggest—find that an incumbent LEC with a valid § 251(f)(1)(A) "rural exemption" was exempt from *all* § 251 interconnection duties, or that a valid "rural exemption" would deprive the PUC of § 252 arbitration jurisdiction, but only that the rural telephone company had a different duty to interconnect with potential competitors.⁸⁰ And the incumbent LEC remains subject to other § 251 interconnection duties.

In fact, the state commission decisions cited by CenturyTel and WITA demonstrate that state commissions do have jurisdiction to determine incumbent LECs' particular § 251 interconnection duties in relation to a § 251(f)(1)(A) "rural exemption," and to arbitrate—pursuant to § 252—disputes involving carriers holding § 251(f)(1)(A) "rural exemptions." In those decisions, the state commission affirmatively asserted jurisdiction to determine issues such as:

- whether the incumbent LEC held a valid § 251(f)(1)(A) "rural exemption";⁸¹

⁷⁹ *In the Matter of a Rural Telephone Company Exemption for GTE Northwest Inc.'s Idaho Operations*, Case No. GTE-T-97-4, Order No. 27030 (June 1997), 1997 Ida. PUC LEXIS 133 ("*GTE Northwest*") (emphasis added).

⁸⁰ See CenturyTel Brief at 9; WITA *Amicus* Brief at 9.

⁸¹ See *In the Matter of Investigating GTE South Inc.'s Status as a Rural Telephone Company Pursuant to the Telecommunications Act of 1996*, Va. Corp. Comm'n Case no. PUC960109 (Jan. 18, 2000), 2000 Va. PUC LEXIS 129, at *2 (terminating GTE South's §251(f)(1)(A) rural exemption, noting that "GTE South has not, to our knowledge, exercised its exemption for its Southwest territory from the requirements of § 251(c) of the Act"); *GTE Northwest*, 1997 Ida. PUC LEXIS 133 (denying GTE Northwest's petition for reconsideration of a prior PUC decision finding that GTE Northwest did not hold a valid § 251(f)(1)(A) "rural exemption"); CenturyTel Brief at 9; WITA *Amicus* Brief at 9, 11.

- whether the incumbent LEC had waived, or was otherwise estopped from asserting, the § 251(f)(1)(A) “rural exemption”;⁸² and
- whether, as a procedural matter, the notice and intervention period for a § 252 should be shortened.⁸³

In none of these cases did the state commission decline to address the dispute on the merits for lack of jurisdiction under § 252 of the Act. To the contrary, in each case the state commission issued an order addressing on the merits the particular § 251 interconnection duties of carriers claiming § 251(f)(1)(A) “rural exemptions.”

The other cases and state statutory provision cited by CenturyTel and WITA offer no support for WITA’s argument. The Kentucky PUC decision cited by WITA permitted the petitioning competitive LEC to withdraw its arbitration petitions, as voluntary negotiations had proceeded with the incumbent LECs with whom it had sought to interconnect.⁸⁴ The Maine PUC decision cited by CenturyTel and WITA granted a service authorization to a competitive LEC

⁸² See *In the Matter of the Claim of GTE Northwest Inc. for Rural Telephone Exemption Pursuant to 47 U.S.C. Section 251*, Second Supplemental Order, WUTC Docket No. UT-960324 (Dec. 11, 1996), 1996 Wash. UTC LEXIS 44, at *3 (examining the applicability of “Section 251(f)(1) of the 1996 Act [which] exempts ‘rural telephone companies’ from the interconnection requirements in § 251(c)”); CenturyTel Brief at 8; WITA *Amicus* Brief at 7-8.

⁸³ See *Notice of Bona Fide Request by Reanet Corp. for Interconnection, Services, and Network Elements Necessary to Provide Basic Local Exchange Services in the Service Areas of CenturyTel of Eagle, Inc., Columbine Telephone Co.; Delta County Telecom, Inc.; Farmers Telephone Co.; Nucla-Naturita Telephone Co.; and Rye Telephone Co.*, Colo. PUC Decision No. C00-1155; Docket No. 00A-561T (Oct. 5, 2000), 2000 Colo. PUC LEXIS 872; WITA *Amicus* Brief at 12.

⁸⁴ See *In the Matter of the Inquiry of Bona Fide Request of JTC Communications, Inc., Pursuant to the Telecommunications Act of 1996, for Negotiation of an Interconnection Agreement with AllTel Kentucky, Inc. et al.*, Order, Case No. 2000-354 (Nov. 2, 2000), 2000 Ky. PUC LEXIS 1624 (allowing petitioner to withdraw its arbitration request as it had agreed with the incumbent LECs to negotiate in good faith for wholesale pricing of re-sale services); WITA *Amicus* Brief at 12-13.

that was not a rural telephone company.⁸⁵ The California PUC has never adopted or issued the decision cited by WITA, as Level 3 withdrew the underlying application.⁸⁶ And the Illinois provision cited by WITA—apparently misidentified and misquoted draft rules of the Illinois Commerce Commission (“ICC”)—merely codifies into the Illinois Commerce Commission’s rules the provisions of § 251(f).⁸⁷

⁸⁵ See *NOW Communications, Inc., Petition for Finding of Public Convenience and Necessity to Provide Service as a Reseller Local Exchange Carrier, Order Granting Authority to Provide Local Exchange Service as a Reseller and Approving Schedule of Rates, Terms and Conditions*, Maine PUC Docket No. 2000-82 (Nov. 27, 2000), available at <<http://www.state.me.us/mpuc/orders/2000/2000-82oga.pdf>>; CenturyTel Brief at 9; WITA Amicus Brief at 9-10.

⁸⁶ See *Application of Level 3 Communications, LLC, to Expand Its Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services in the Service Territories of Citizens Telecommunications Company of the Golden State, Inc.; Evans Telephone Company; and Sierra Telephone Company, Inc., Order of Dismissal*, Cal. PUC Decision 02-09-027; Application 02-03-012 (Sept. 9, 2002), 2002 Cal. PUC LEXIS 551; WITA Amicus Brief at 11.

⁸⁷ See Illinois Commerce Commission, Staff’s Fourth Draft of Title 83, Part 731, of the Illinois Administrative Code, § 731.105 (Apr. 5, 2002) (stating that “‘Rural Exemption’ means the exemption granted to rural telephone companies under Section 251(f) of the Telecommunications Act”), available at <<http://www.icc.state.il.us/tc/docs/020408731rule.pdf>>; WITA Amicus Brief at 11-12. The ICC has not yet issued a final rule in this proceeding.

CONCLUSION

For the reasons stated above, in Level 3's Brief and Memorandum of Law, and in the Level 3 Petition, this Commission reject CenturyTel's jurisdictional challenge, and assert jurisdiction, pursuant to §§ 251 and 252 of the Act, over the interconnection dispute between Level 3 and CenturyTel.

RESPECTFULLY SUBMITTED,

LEVEL 3 COMMUNICATIONS, LLC

By: _____

Michael R. Romano
Director, State Regulatory Affairs
LEVEL 3 COMMUNICATIONS, LLC
8270 Greensboro Drive, Suite 900
McLean, Virginia 22102
+1 571 382 7447 tel
+1 571 382 7450 fax

Rogelio E. Peña
PEÑA & ASSOCIATES, LLC
1919 14th Street, Suite 330
Boulder, Colorado 80302
+1 303 415 0409 tel
+1 303 415 0433 fax

John T. Nakahata
Kent D. Bressie
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2560
+1 202 730 1320 tel
+1 202 730 1301 fax

Counsel for Level 3 Communications, LLC

15 October 2002

CERTIFICATE OF SERVICE

I hereby certify that the original and seven (7) copies of the foregoing CONSOLIDATED REPLY BRIEF AND MEMORANDUM OF LAW OF LEVEL 3 COMMUNICATIONS, LLC in WUTC Docket No. UT-023043, including diskette of same in Word and Adobe format, was sent via electronic, facsimile and ABC LEGAL MESSENGER on this 15th day of October, 2002, addressed to the following:

Carole Washburn
Executive Secretary
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Dennis J. Moss
Arbitrator
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 electronic and FedEx Priority Overnight on this 15th day of October, 2002, addressed to the following:

Calvin K. Simshaw
Assoc. General Counsel - Regulatory
CENTURYTEL OF WASHINGTON, INC.
805 Broadway
P.O. Box 9901
Vancouver, WA 98668-8701

Karen Brinkman
Tonya Rutherford
LATHAM & WATKINS
555 Eleventh Street, N.W.
Washington, D.C. 20004-1304

RICHARD A. FINNIGAN
2405 Evergreen Park Dr. SW
Suite B-1
Olympia, WA 98502
Counsel for WITA

GRETCHEN ELIZABETH EOFF
INDUSTRY SPECIALIST, ATER WYNNE LLP