

[Service Date August 16, 2002]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of the Petition for Arbitration of an	)	DOCKET NO. UT-023043
Interconnection Agreement Between	)	
	)	
LEVEL 3 COMMUNICATIONS, LLC.,	)	ORDER ON ARBITRATION
	)	PROCEDURE; APPOINTMENT
and	)	OF ARBITRATORS; NOTICE
	)	OF PREHEARING CONFERENCE
CENTURY TEL OF WASHINGTON, INC.,	)	(Wednesday, September 24, 2002,
	)	10:30 a.m.)
Pursuant to 47 U.S.C. Section 252.	)	
. . . . .	)	

*1*        **NATURE OF PROCEEDING:** On August 8, 2002, Level 3 Communications, LLC., filed with the Washington Utilities and Transportation Commission (Commission) a request for arbitration pursuant to 47 U.S.C. ' ' 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (Telecom Act). The petition was served on CenturyTel of Washington, Inc., and included the following materials:

- A. Petition for Arbitration
  
- B. Letter from Level 3 Communications, LLC to CenturyTel, Inc., dated March 1, 2002, requesting commencement of good faith negotiations under Section 251 of the Communications Act of 1934, as amended (Exhibit A)
  
- C. Draft Interconnection Agreement (Exhibit B)
  
- D. 2001 Annual Report of CenturyTel (Exhibit C)

E. July 25, 2002 News Release of CenturyTel (Exhibit D)

2 This arbitration will be governed by the terms of this Order and the Interpretive and Policy  
Statement issued by the Commission on June 28, 1996.

3 **STATUTORY DATES:** The petition reports the following statutory dates:

Request for Negotiation	March 4, 2002 <sup>1</sup>
Plus 135 Days	July 17, 2002
Plus 160 Days	August 11, 2002

4 The nine-month time line for resolution is December 4, 2002. The Commission interprets its  
Section 252(b)(4)(C) duty to resolve disputes not later than nine months after negotiations  
are requested to be met by service of an Arbitrator's Report and Decision.

5 According to the reported dates, the petition is timely filed. Any party asserting that the dates  
are incorrect should do so within three business days of service of this order. If no objection  
is received these dates shall be adopted as the statutory deadlines for this arbitration.

6 **MODIFIED PROCEDURES:** Pursuant to WAC 480-09-010, the Commission adopts  
the following modified procedures for purposes of this proceeding. These procedures shall  
govern the course of the arbitration unless modified for cause by the arbitrator or the  
Commission.

7 **ARBITRATOR:** The Commission notifies the parties that it appoints **Dennis J. Moss as  
arbitrator in this proceeding. Arbitrator Moss's telephone number is (360) 664-  
1164, and e-mail address is [dmoos@wutc.wa.gov](mailto:dmoos@wutc.wa.gov).** The arbitrator may select staff  
members to provide technical or other assistance. The arbitrator shall have all the reasonable  
and necessary authority to conduct the arbitration according to the terms of this order and to  
issue an Arbitration Report as set forth below.

8 **PARTIES:** The parties to the arbitration are Level 3 Communications, LLC., and  
CenturyTel, Inc. Although non-parties may ask to participate, intervention by persons not a  
party to the negotiation will generally not be permitted, except on a showing that such  
participation will serve a compelling public interest. The Public Counsel Section of the Office  
of Attorney General may request participation in an arbitration pursuant to RCW 80.04.510.

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<sup>1</sup> Level 3's Petition states at paragraph 7 that it initiated negotiations concerning an interconnection agreement by its letter dated March 1, 2002, which was sent on that date via next business day delivery such that CenturyTel received the request on March 4, 2002.

If the arbitrator permits any participation, limits may be imposed on the participant's rights in the arbitration.

- 9 **RESPONSE BY NON-PETITIONING PARTY:** CenturyTel, Inc. may respond to the petition and may file with the Commission such additional information as it wishes 25 days after the petition filing date (September 2, 2002). At a minimum, the response shall include:
- a. A brief or other written statement addressing the disputed issues. The brief should address, in addition to any other matters, how the parties' positions, and any conditions requested, meet or fail to meet the requirements of Sections 251 and 252 of the Telecom Act, any applicable FCC regulations, and any applicable regulation, order, or policy of this Commission;
  - b. If prices are in dispute, the responding party shall submit its proposed rates or charges, and all relevant cost studies and related supporting materials. If the responding party is not an incumbent carrier, the petitioner shall submit the foregoing material to the extent available;
  - c. Any conditions that the responding party requests be imposed;
  - d. The response may include a recommendation as to any information which should be requested from the parties by the arbitrator pursuant to Section 252(b)(4)(B) of the Telecom Act. The recommendation should state why the information is necessary for the arbitrator to reach a decision on the unresolved issues;
  - e. A draft interconnection agreement, if one is proposed; and
  - f. Any other documents relevant to the dispute, including copies of all documents in a party's possession or control on which it relies to support its positions or which it intends to introduce as an exhibit at the hearing.

10 All responses and accompanying documentation shall be verified as provided by WAC 480-09-425, or submitted by affidavit.

- 11 **PROTECTIVE ORDER:** The Commission will enter a protective order in this matter upon the request of either party, pursuant to WAC 480-09-425, as permitted by the Interpretive Statement.
- 12 **DISCOVERY:** Parties shall cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. Parties shall exchange copies of all documents relevant to the dispute, including those on which they rely in support of their position or which they intend to introduce as exhibits. Failure to exchange information may be deemed a failure to negotiate in good faith under the Telecom Act. The arbitrator may decline to consider documents or information improperly withheld during discovery.
- 13 Any party that receives a data request to which it objects on any grounds, in whole or in part, must immediately notify the arbitrator and opposing counsel by telephone or facsimile transmission. The parties must make a good faith effort to stipulate to relevant facts before the Commission will resolve any discovery dispute.
- 14 **PREHEARING CONFERENCE:** A **prehearing conference** will be held in this matter on **Tuesday, September 24, 2002, beginning at 10:30 a.m. in Room 206**, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The parties may appear at the conference via telephone by calling the Commission's conference bridge, **(360) 664-3846**, at the scheduled time.
- 15 The purpose of the conference will be to review disputed issues, discuss the hearing schedule and format, and review the need for any remaining discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. ' 252(b)(4)(B). Any disputed discovery requests may be submitted to the arbitrator at the conference. The submission must include an explanation of why the information is necessary to reach a decision on the unresolved issues. This provision shall not limit the right of the arbitrator or Commission to request information from the parties at any time pursuant to 47 U.S.C. ' 252(b)(4)(B).
- 16 **COMMISSION REQUEST FOR INFORMATION:** Pursuant to 47 U.S.C. ' 252(b)(4)(B), the arbitrator may require both parties to provide information necessary to reach a decision on unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request, then the arbitrators may proceed on the basis of the best information available to it from whatever source derived. The parties must respond to such requests within seven days, unless another time is set by the arbitrators.

- 17 An arbitrator's request for information is attached to this Order as Appendix A. Parties are required to respond by September 17, 2002. In connection with this request for information, the parties are required to file prehearing briefs as discussed in paragraph 19, *infra*.
- 18 **HEARING AND BRIEFING SCHEDULE:** An arbitration hearing will be scheduled at the prehearing conference on September 24, 2002. The hearing and all post-hearing briefs must be completed no later than November 4, 2002. Parties may waive hearing and submit the issues to arbitration on the written record.
- 19 Parties are required to file prehearing briefs no later than September 17, 2002, discussing the significance, if any, that they assert the Commission should attach to CenturyTel's status as a "rural telephone company" and the applicability and significance of any "rural exemption" under Section 251(f) that may be possessed by CenturyTel or any of its operating companies, as referenced in footnote 10 to Level 3's Petition.
- 20 **HEARING PROCEDURE:** Hearing time shall not exceed two days, unless extended by the arbitrator. Parties may call up to eight witnesses each. The direct and rebuttal testimony of a witness shall be offered in written form if the witness will address matters not covered in the written filings. Documentary evidence may be introduced. Evidence is admissible if, in the judgment of the arbitrators, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Evidence may be excluded on the ground that it was improperly withheld during discovery.
- 21 **ARBITRATORS= REPORT:** The arbitrator will issue an Arbitrator's Report and Decision which will constitute the resolution by the Commission of the issues submitted for arbitration, subject to final Commission review during the approval process. The Arbitrators= Report will comply with the requirements of 47 U.S.C. ' 252(c).

DATED at Olympia, Washington, and effective this \_\_\_\_ day of August, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

**APPENDIX A**

## Arbitrator's Request for Information

Footnote 10 to Level 3's Petition states as follows:

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.

1. Which, if any, of CenturyTel's operating entities are asserted to possess a "rural exemption" under Section 251(f)?
2. Which, if any, of CenturyTel's operating entities are asserted to not possess a "rural exemption" under Section 251(f)?
3. What significance, if any, does each party attach to the status of CenturyTel as a "rural telephone company" vis-à-vis Level 3's Petition for Arbitration?