

Steven J. Pitterle
Director - Negotiations
Network Services



600 Hidden Ridge HQE03B67
P.O. Box 152092
Irving, Texas 75038

Phone 972/718-1333
Fax 972/718-1279
steve.pitterle@verizon.com

March 29, 2002

Mr. Kevin Paul
VP Global Softswitch Deployment
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Paul:

Verizon South Inc., f/k/a GTE South Incorporated ("Verizon"), has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Level 3 Communications, LLC ("Level 3") wishes to adopt the terms of the arbitrated Interconnection Agreement between Brandenburg Telecom ("BTLLC") and Verizon that was approved by the Kentucky Public Service Commission (the "Commission") as an effective agreement in the Commonwealth of Kentucky in Docket No. 2001-224, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand Level 3 has a copy of the Terms. Please note the following with respect to Level 3's adoption of the Terms.

1. By Level 3's countersignature on this letter, Level 3 hereby represents and agrees to the following three points:
 - (A) Level 3 adopts (and agrees to be bound by) the Terms of the BTLLC/Verizon arbitrated agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that Level 3 shall be substituted in place of Brandenburg Telecom and BTLLC in the Terms wherever appropriate.

- (B) Notice to Level 3 and Verizon as may be required under the Terms shall be provided as follows:

To: Level 3 Communications, LLC
Attention: Mr. Michael Romano
Director – State Regulatory Affairs
1025 Eldorado Blvd.
Broomfield, CO 80021
Telephone number: 720-888-7015
FAX number: 720-888-5134

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

- (C) Level 3 represents and warrants that it is a certified provider of local telecommunications service in the Commonwealth of Kentucky, and that its adoption of the Terms will cover services in the Commonwealth of Kentucky only.
2. Level 3's adoption of the BTLLC arbitrated Terms shall become effective as of April 12, 2002. The Parties understand and agree that Verizon will file this adoption letter with the Commission promptly upon my receipt of a copy of this letter, countersigned by Level 3 as to points (A), (B), and (C) of paragraph 1 above. The term and termination provisions of the BTLLC/Verizon agreement shall govern Level 3's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on January 15, 2004.
 3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does

not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. 2001-224, or to seek review in any way of any provisions included in these Terms as a result of Level 3's 252(i) election.

4. On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999, the United States Eighth Circuit Court of Appeals' decision in Docket No. 96-3321 regarding the FCC's pricing rules, and the current appeal before the U.S. Supreme Court regarding the FCC's new UNE rules. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any contractual provision required by the Commission in Docket No. 2001-224 (the BTLLC arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny Level 3's adoption and/or application of the Terms, in whole or in part, at any time:
 - (a) when the costs of providing the Terms to Level 3 are greater than the costs of providing them to BTLLC;
 - (b) if the provision of the Terms to Level 3 is not technically feasible; and/or
 - (c) to the extent that Verizon otherwise is not required to make the Terms available to Level 3 under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.¹ Accordingly, any compensation to be paid for Internet

¹ Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ¶44.

traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.² Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.³ In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.⁴

7. Should Level 3 attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.
8. In the event that a voluntary or involuntary petition has been or is in the future filed against Level 3 under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and Level 3's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of Level 3 resulting from Level 3's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

² For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Resources, Industry Letters, CLEC).

³ See, e.g., 47 C.F.R. Section 51.809(c).

⁴ *FCC Internet Order* ¶ 82.

Please arrange for a duly authorized representative of Level 3 to sign this letter in the space provided below and return it to the undersigned.

Sincerely,

VERIZON SOUTH INC.

Steven J. Pitterle
Director – Negotiations
Network Services

Reviewed and countersigned as to points A, B, and C of paragraph 1:

LEVEL 3 COMMUNICATIONS, LLC

(SIGNATURE)

(PRINT NAME)

c: R. Ragsdale – Verizon