

Collocation Agreement

By and Between

BellSouth Telecommunications, Inc.

and

Level 3 Communications, L.L.C.

**BELLSOUTH PHYSICAL COLLOCATION
MASTER AGREEMENT**

THIS AGREEMENT, made this _____ day of _____, 1998, by and between BellSouth Telecommunications, Inc., ("BellSouth") a corporation organized and existing under the laws of the State of Georgia, and Level 3 Communications L.L.C., ("Level 3") a corporation organized and existing under the laws of Delaware;

WITNESSETH

WHEREAS, Level 3 wishes the right to occupy the BellSouth Central Office(s) delineated herein for the purpose of interconnection to BellSouth's facilities;

WHEREAS, BellSouth has space available in its Central Office(s) which Level 3 desires to utilize; and

WHEREAS, BellSouth is willing to make such space available to Level 3 within its Central Office(s) subject to all terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. SCOPE OF AGREEMENT

A. BellSouth hereby grants to Level 3 a right to occupy that certain enclosed area designated by BellSouth within a BellSouth Central Office, of a size and dimension which is specified by Level 3 and agreed to by BellSouth (hereinafter "Collocation Space"). BellSouth will design and construct at Level 3's expense, a wall or other delineation to establish a clear division between the Collocation Space and other areas of the Central Office dedicated to BellSouth's use.

B. Level 3 shall use the Collocation Space for the purposes of installing, maintaining and operating Level 3's equipment (to include testing and monitoring equipment) which is used to interconnect with telecommunications services and facilities provided by BellSouth. Pursuant to Article III, following, Level 3 may place Level 3-owned fiber entrance facilities to the Collocation Space, in which case the arrangement is designated "Expanded Interconnection." Placement of equipment in the Collocation Space without the use of Level 3-owned entrance facilities is designated "Service Interconnection." In addition to, and not in lieu of, interconnection to BellSouth services and facilities, Level 3 may connect to other interconnectors within the designated Central Office. The Collocation Space may be used for no other purposes except as specifically described herein or authorized in writing by BellSouth.

C. Level 3 may not provide or make available space within the Collocation Space to any third party. Any violation of this provision shall be deemed a material breach of this Agreement.

D. Level 3 agrees to pay the rates and charges identified at Exhibit A attached hereto.

E. A Collocation Space will be provided to Level 3 at each Central Office identified at Exhibit B attached hereto, which Exhibit shall be updated from time to time as additional Central Offices are made subject to the terms of this Agreement.

II. TERM OF AGREEMENT

A. Term. The term of this Agreement shall be for an initial period of two (2) years, beginning on the Agreement date stated above and ending two (2) years later on the month and day corresponding to such date. This Agreement shall be automatically renewed for one additional one year period unless either party indicates its intent not to renew the Agreement. Notice of such intent must be provided in writing, to the other party no later than one hundred and eighty (180) calendar days prior to the end of the contract period.

B. Upon delivery of written notice referred to in Paragraph A. above, the Parties shall commence negotiations with regard to the terms, conditions and prices of collocation to be effective beginning on the expiration date of this Agreement (“Subsequent Agreement”). The Parties further agree that any such Subsequent Agreement shall be for a term of no less than two (2) years unless the Parties agree otherwise.

C. If, within one hundred and thirty-five (135) calendar days of commencing the negotiation referred to in Paragraph B. above, the Parties are unable to satisfactorily negotiate new collocation terms, conditions and prices, either Party may petition the Commission to establish appropriate collocation arrangements pursuant to 47 U.S.C. 252. The Parties agree that, in such event, they shall encourage the Commission to issue its order regarding the appropriate collocation arrangements no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its order prior to the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate the collocation arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective retroactive to the day following the expiration date of this Agreement. Until the Subsequent Agreement becomes effective, the Parties shall continue to maintain collocation arrangements pursuant to the terms and conditions of this Agreement.

D. Commencement Date. The “Commencement Date” shall be the first day after Level 3's equipment becomes operational as described in Article II.E, following.

E. Occupancy. BellSouth will notify Level 3 that the Collocation Space is ready for occupancy. Level 3 must place operational telecommunications equipment in the Collocation Space and connect with BellSouth's network within one hundred eighty (180) calendar days after receipt of such notice. BellSouth may consent to an extension beyond 180 calendar days upon a demonstration by Level 3 that circumstances beyond its reasonable control prevented Level 3 from completing installation by the prescribed date. If Level 3 fails to place operational telecommunications equipment in the Collocation Space within 180 calendar days and such failure continues for a period of thirty (30) calendar days after receipt of written notice from BellSouth, then and in that event Level 3's right to occupy the Collocation

Space terminates and BellSouth shall have no further obligations to Level 3 with respect to said Collocation Space. Termination of Level 3's rights to the Collocation Space pursuant to this paragraph shall not operate to release Level 3 from its obligation to reimburse BellSouth for all costs reasonably incurred by BellSouth in preparing the Collocation Space, but rather such obligation shall survive this Agreement. For purposes of this paragraph, Level 3's telecommunications equipment will be deemed operational when cross-connected to BellSouth's network for the purpose of service provision.

F. Termination. Level 3 may terminate occupancy in a particular Collocation Space upon thirty (30) calendar days prior written notice to BellSouth. Upon termination of such occupancy, Level 3 at its expense shall remove its equipment and other property from the Collocation Space. Level 3 shall have thirty (30) calendar days from the termination date to complete such removal; provided, however, that Level 3 shall continue payment of monthly fees to BellSouth until such date as Level 3 has fully vacated the Collocation Space. Should Level 3 fail to vacate the Collocation Space within thirty (30) calendar days from the termination date, BellSouth shall have the right to remove the equipment and other property of Level 3 at Level 3's expense and with no liability for damage or injury to Level 3's property unless caused by the negligence or intentional misconduct of BellSouth.

III. USE OF COLLOCATION SPACE

A. Nature of Use. BellSouth shall permit Level 3 to place, maintain and operate in the Collocation Space any equipment that Level 3 is authorized by BellSouth and by Federal or State regulators to place, maintain and operate in collocation space and that is used by Level 3 to provide services which Level 3 has the legal authority to provide. The equipment must at a minimum comply with the BellCore Network Equipment Building System (NEBS) General Equipment Requirements (TR-NWT-000063) and National Electric Code standards. Level 3 may elect to enclose the Collocation Space. Level 3 shall not use the Collocation Space for marketing purposes. Level 3 shall place no signs or marking of any kind (except for a plaque or other identification affixed to Level 3's equipment and reasonably necessary to identify Level 3's equipment, and which shall include a list of emergency contacts with telephone numbers), in the area surrounding the Collocation Space or on the grounds of the Central Office housing the Collocation Space.

B. Entrance Facilities. Level 3 may elect to place Level 3-owned entrance facilities into the Collocation Space. BellSouth will designate the point of interconnection in proximity to the central office building housing the Collocation Space, such as an entrance manhole or a cable vault. Level 3 will provide and place cable at the point of interconnection of sufficient length to be pulled through conduit and into the splice location. No splicing will be permitted in the entrance manhole. Level 3 will provide a sufficient length of fire retardant riser cable, to which the entrance cable will be spliced, which will extend from the splice location to the Level 3's equipment in the Collocation Space. Level 3 must contact BellSouth for instructions prior to placing the entrance facility cable in the manhole. Level 3 is responsible for maintenance of the entrance facilities. Dual entrance will be permitted where capacity exists. The interconnection point for entrance facilities extending from a rooftop antenna will be designated by BellSouth on the Application/Inquiry response.

C. Demarcation Point. A point-of-termination bay(s) will designate the point(s) of interconnection between Level 3's equipment and/or network and BellSouth's network. Each party will be responsible for maintenance and operation of all equipment/facilities on its side of the demarcation point. Level 3 may, at its option, provide its own point-of-termination bay(s) in accordance with BellSouth's guidelines and specifications, which BellSouth will provide upon request.

D. Level 3's Equipment and Facilities. Level 3 is solely responsible for the design, engineering, testing, performance, monitoring, maintenance, and repair of the equipment and facilities used by Level 3 in the Collocation Space. Without limitation of the foregoing provisions, Level 3 will be responsible for servicing, supplying, repairing, installing and maintaining the following: (1) cable(s); (2) equipment; (3) point-of-termination cross-connects; (4) point of termination maintenance, including replacement fuses and circuit breaker restoration, if not performed by BellSouth; and (5) connection cable(s) and associated equipment which may be required within the Collocation Space to the points of interconnection.

E. Easement Space. From time to time BellSouth may require access to the Collocation Space. BellSouth retains the right to access such space for the purpose of making equipment and building modifications (e.g., running, altering or removing racking, ducts, electrical wiring, HVAC, and cables). BellSouth will give reasonable notice to Level 3 when access to the Collocation Space is required. Level 3 may elect to be present whenever BellSouth performs work in the Collocation Space. The Parties agree that Level 3 will not bear any of the expense associated with this work.

F. Access and Administration. Level 3 shall have access to the Collocation Space twenty-four (24) hours a day, seven (7) days a week. A security escort will be required at Central Offices where separate, secured ingress and egress are not available and access would require Level 3 to traverse restricted areas. All employees, agents and contractors of Level 3 having access to the Collocation Space shall comply with BellSouth's policies and practices pertaining to fire, safety and security, and each such employee, agent or contractor shall display an identification badge issued by Level 3 or certified vendor which contains a current photo, the individual's name and company name/logo. Level 3 agrees to comply with all laws, ordinances and regulations affecting the use of the Collocation Space. Upon expiration of this Agreement, Level 3 shall surrender the Collocation Space to BellSouth in the same condition as when first occupied by the Interconnector except for ordinary wear and tear.

G. Interference or Impairment. Notwithstanding any other provisions of this Agreement, equipment and facilities placed in the Collocation Space shall not interfere with or impair service provided by BellSouth or by any other interconnector located in the Central Office; shall not endanger or damage the facilities of BellSouth or of any other interconnector, the Collocation Space, or the Central Office; shall not compromise the privacy of any communications carried in, from, or through the Central Office; and shall not create an unreasonable risk of injury or death to any individual or to the public. If BellSouth reasonably determines that any equipment or facilities of Level 3 violate the provisions of this paragraph, BellSouth shall give written notice to Level 3, which notice shall direct Level 3 to cure the violation within twenty-four (24) hours or, at a minimum, to commence curative measures within 24 hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. If Level 3 fails to take curative action within 24 hours or if the violation is of a character which poses an immediate and substantial threat of damage to property, injury or death to any person, or interference/impairment of the services provided by BellSouth, then and only in that event BellSouth may take such action as it deems appropriate to correct the violation, including without limitation the interruption of electrical power to Level 3's equipment. BellSouth will endeavor, but is not required, to provide notice to Level 3 prior to taking such action and shall have no liability to Level 3 for any damages arising from such action, except to the extent that such action by BellSouth constitutes willful misconduct.

H. Personalty and its Removal. Subject to requirements of this Agreement, Level 3 may place or install in or on the Collocation Space such facilities and equipment as it deems desirable for the conduct of business. Personal property, facilities and equipment placed by Level 3 in the Collocation Space shall not become a part of the Collocation Space, even if nailed, screwed or otherwise fastened to

the Collocation Space, but shall retain their status as personalty and may be removed by Level 3 at any time. Any damage caused to the Collocation Space by Level 3's employees, agents or representatives during the removal of such property shall be promptly repaired by Level 3 at its expense.

I. Alterations. In no case shall Level 3 or any person acting on behalf of Level 3 make any rearrangement, modification, improvement, addition, repair, or other alteration to the Collocation Space or the BellSouth Central Office without the written consent of BellSouth, which consent shall not be unreasonably withheld. The cost of any such specialized alterations shall be paid by Level 3.

IV. ORDERING AND PREPARATION OF COLLOCATION SPACE

A. Application for Space. Level 3 shall submit to BellSouth a complete and accurate Application and Inquiry document, together with payment of the Application Fee as stated in Exhibit A. The Application shall contain a detailed description and schematic drawing of the equipment to be placed in Level 3's Collocation Space(s) and an estimate of the amount of square footage required. For a single complete and accurate Application BellSouth will respond to Level 3's Application in writing within 30 business days following the completion of review, planning and design activities. Such response will include estimates on space availability, space preparation costs and space availability dates. In the event BellSouth cannot provide the requested Collocation Space, BellSouth shall refund the Application Fee to Level 3.

B. Bona Fide Firm Order. Level 3 shall indicate its intent to proceed with equipment installation in a BellSouth Central Office by submitting a Bona Fide Firm Order to BellSouth. A Bona Fide Firm Order requires Level 3 to complete the Application/Inquiry process described in Article IV.A preceding, submit an updated Application document based on the outcome of the Application/Inquiry process, and pay all applicable fees referenced in Article V, following. The Bona Fide Firm Order must be received by BellSouth no later than thirty (30) calendar days after BellSouth's response to Level 3's Application/Inquiry. Space preparation for the Collocation Space will not begin until BellSouth receives the Bona Fide Firm Order and all applicable fees.

C. Use of Certified Vendor. Level 3 shall select an equipment installation vendor which has been approved as a BellSouth Certified Vendor to perform all engineering and installation work required in the Collocation Space. BellSouth shall provide Level 3 with a list of Certified Vendors upon request. The Certified Vendor shall be responsible for installing Level 3's equipment and components, extending power cabling to the BellSouth power distribution frame, performing operational tests after installation is complete, and notifying BellSouth's equipment engineers and Level 3 upon successful completion of installation. The Certified Vendor shall bill Level 3 directly for all work performed for Level 3 pursuant to this Agreement and BellSouth shall have no liability for nor responsibility to pay such charges imposed by the Certified Vendor.

D. Alarm and monitoring. BellSouth shall place environmental alarms in the Central Office for the protection of BellSouth equipment and facilities. Level 3 shall be responsible for placement, monitoring and removal of environmental and equipment alarms used to service the Collocation Space. Upon request, BellSouth will provide Level 3 with applicable tariffed service(s) to facilitate remote monitoring of collocated equipment by Level 3.

E. Basic Telephone Service. Upon request of Level 3, BellSouth will provide basic telephone service to the Collocation Space under the rates, terms and conditions of the current tariff offering for the service requested.

F. Space Preparation. BellSouth shall pro rate the costs of any renovation or upgrade to Central Office space or support mechanisms which is required to accommodate physical collocation. Level 3's pro rated share will be calculated by multiplying such cost by a percentage equal to the amount of square footage occupied by Level 3 divided by the total Central Office square footage receiving renovation or upgrade. For this section, support mechanisms provided by BellSouth may include, but not be limited to heating/ventilation/air conditioning (HVAC) equipment, HVAC duct work, cable support structure, fire wall(s), mechanical upgrade, asbestos abatement, ground plane addition, or separate ingress/egress construction. Such renovation or upgrade will be evaluated and the charges assessed on a per Central Office basis. A written detailed estimate outlining the costs will be provided to Level 3. BellSouth will make reasonable efforts to provide for occupancy of the Collocation Space on the negotiated date and will advise in writing Level 3 of delays. Level 3 agrees BellSouth shall not be liable to Level 3 for reasonable delays in providing possession of the Collocation Space.

G. Space Enclosure. Upon request of Level 3, BellSouth shall construct an equipment arrangement enclosure of a size and dimension jointly agreed upon by the Parties. Level 3 may request enclosed floor space in increments of one hundred (100) square feet, with a minimum of one hundred (100) square feet. Level 3 may, at its option, arrange with a BellSouth certified contractor to construct the space enclosure in accordance with BellSouth's guidelines and specifications. Such contractor shall directly bill Level 3 for activities associated with the space enclosure construction.

H. Cancellation. If Level 3 cancels its order for the Collocation Space(s), Level 3 will reimburse BellSouth for any expenses incurred up to the date that written notice of the cancellation is received. In no event will the level of reimbursement under this paragraph exceed the maximum amount Level 3 would have otherwise paid for work undertaken by BellSouth if no cancellation of the order had occurred.

V. RATES AND CHARGES

Level 3 shall pay for Collocation Space(s) according to the rates contained in Exhibit A attached hereto and pursuant to the following:

A. Non-recurring Fees. In addition to the Application Fee referenced in Article IV preceding, Level 3 shall remit payment of a Cable Installation Fee, Space Enclosure Construction Fee, as applicable, and one-half (1/2) of the estimated Space Preparation Fee coincident with submission of a Bona Fide Firm Order. The outstanding balance of the actual Space Preparation Fee shall be due thirty (30) calendar days following Level 3's receipt of a bill or invoice from BellSouth. BellSouth shall provide documentation to establish the actual Space Preparation Fee. Cable Installation Fee(s) are assessed per entrance fiber placed. No Cable Installation Fee is required for Service Interconnection. The Space Preparation Fee will be pro rated as prescribed in Article IV.F preceding. The Space Enclosure Construction Fee will be assessed for the materials and installation cost of the equipment enclosure. BellSouth's engineering and other labor time associated with establishing the Physical Collocation Arrangement will be assessed as Additional Engineering charges, under provisions in BellSouth's FCC Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges will be provided by BellSouth to Level 3 in the Application Response.

B. Floor Space. The floor space charge includes charges for lighting, heat, air conditioning, ventilation and other allocated expenses associated with maintenance of the Central Office but does not include amperage necessary to power Level 3's equipment. When the Collocation Space is enclosed by walls or other divider, Level 3 shall pay floor space charges based upon the number of square feet so enclosed. When the Collocation Space is not enclosed, Level 3 shall pay floor space charges based upon the number of square feet contained in a shadow print of Level 3's equipment racks and POT bay, plus a factor of 2.50 multiplied by the shadow print, which represents Level 3's share of wiring and provisioning aisle space for provisioning and maintenance activities. Floor space charges are due beginning with the date on which BellSouth releases the Collocation Space for occupancy or on the date Level 3 first occupies the Collocation Space, whichever is sooner.

C. Power. Charges for -48V DC power will be assessed per ampere per month based upon the certified vendor engineered and installed power feed fused ampere capacity. Rates include redundant feeder fuse positions (A&B) and cable rack to Level 3's equipment or space enclosure. Fuses and power feed cables (A&B) must be engineered (sized), furnished and installed by Level 3's certified vendor. The Level 3's certified vendor must also provide a copy of the engineering power specification prior to the Commencement Date. In the event BellSouth shall be required to construct additional DC power plant or upgrade the existing DC power plant in a central office as a result of Level 3's request to collocate in that central office ("Power Plant Construction"), Level 3 shall pay its prorata share of costs associated with the Power Plant Construction. The determination of whether Power Plant Construction is necessary shall be within BellSouth's sole, but reasonable, discretion. BellSouth will notify Level 3 of the need for the Power Plant Construction and will estimate the costs associated with the Power Plant Construction if BellSouth were to perform the Power Plant Construction. The costs of power plant construction shall be pro-rated and shared among all who benefit from that construction. Level 3 shall pay BellSouth one-half of its prorata share of the estimated Power Plant Construction costs prior to commencement of the work. Level 3 shall pay BellSouth the balance due (actual cost less one-half of the estimated cost) within thirty (30) calendar days of completion of the Power Plant Construction. Level 3 has the option to perform the Power Plant Construction itself; provided, however, that such work shall be performed by a BellSouth certified contractor and such contractor shall comply with BellSouth's guidelines and specifications. Where the Power Plant Construction results in construction of a new power plant room, upon termination of this Agreement Level 3 shall have the right to remove its equipment from the power plant room, but shall otherwise leave the room intact. Where the Power Plant Construction results in an upgrade to BellSouth's existing power plant, upon termination of this Agreement, such upgrades shall become the property of BellSouth.

D. Security Escort. A security escort will be required whenever Level 3 or its approved agent desires access to the entrance manhole or must traverse a restricted area within BellSouth's central office. Rates for a BellSouth security escort are assessed in one-half (1/2) hour increments according to the schedule appended hereto as Exhibit A.

E. Other. Payment of all other charges under this Agreement shall be due thirty (30) calendar days after receipt of the bill (payment due date). Level 3 will pay a late payment charge of one and one-half percent (1-1/2%) assessed monthly on any balance which remains unpaid after the payment due date.

VI. *INSURANCE*

A. Level 3 shall, at its sole cost and expense, procure, maintain, and keep in force insurance as specified in this Article VI and underwritten by insurance companies licensed to do business in the states contained in Exhibit B attached hereto and having a BEST Insurance Rating of B ++ X (B ++ ten).

B. Level 3 shall maintain the following specific coverages:

1. Commercial General Liability coverage in the amount of ten million dollars (\$10,000,000.00) or a combination of Commercial General Liability and Excess/Umbrella coverage totaling not less than ten million dollars (\$10,000,000.00). BellSouth shall be named as an ADDITIONAL INSURED on ALL applicable policies as specified herein.

2. Statutory Workers Compensation coverage and Employers Liability coverage in the amount of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee by disease, and five hundred thousand dollars (\$500,000.00) policy limit by disease.

3. Level 3 may elect to purchase business interruption and contingent business interruption insurance, having been advised that BellSouth assumes no liability for loss of profit or revenues should an interruption of service occur.

C. The limits set forth in Article VI.B above may be increased by BellSouth from time to time during the term of this Agreement upon thirty (30) calendar days notice to Level 3 to at least such minimum limits as shall then be customary with respect to comparable occupancy of BellSouth structures.

D. All policies purchased by Level 3 shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by BellSouth. All insurance must be in effect on or before the date equipment is delivered to BellSouth's Central Office and shall remain in effect for the term of this Agreement or until all Level 3's property has been removed from BellSouth's Central Office, whichever period is longer. If Level 3 fails to maintain required coverages, BellSouth may pay the premiums thereon and seek reimbursement of same from Level 3.

E. Level 3 shall submit certificates of insurance reflecting the coverages required pursuant to this Section a minimum of ten (10) business days prior to the commencement of any work in the Collocation Space. Failure to meet this interval may result in construction and equipment installation delays. Level 3 shall arrange for BellSouth to receive thirty (30) calendar days advance notice of cancellation from Level 3's insurance company. Level 3 shall forward a certificate of insurance and notice of cancellation to BellSouth at the following address:

BellSouth Telecommunications, Inc.
Attn.: Risk Management Coordinator
3535 Colonnade Parkway, S9A1
Birmingham, Alabama 35243

F. Level 3 must conform to recommendations made by BellSouth's fire insurance company to the extent BellSouth has agreed to, or shall hereafter agree to, such recommendations.

G. Failure to comply with the provisions of this Section will be deemed a material breach of this Agreement.

VII. MECHANICS LIENS

If any mechanics lien or other liens shall be filed against property of BellSouth, or any improvement thereon by reason of or arising out of any labor or materials furnished or alleged to have been furnished or to be furnished to or for Level 3 or by reason of any changes, or additions to BellSouth property made at the request or under the direction of the Level 3, Level 3 shall, within thirty (30) calendar days after receipt of written notice from BellSouth either pay such lien or cause the same to be bonded off BellSouth's property in the manner provided by law. Level 3 shall also defend on behalf of BellSouth, at Level 3's sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such liens and Level 3 shall pay any damage and discharge any judgment entered thereon.

VIII. INSPECTIONS

BellSouth shall conduct an inspection of Level 3's equipment and facilities in the Collocation Space(s) prior to the activation of facilities between Level 3's equipment and equipment of BellSouth. BellSouth may conduct an inspection if Level 3 adds equipment and may otherwise conduct routine inspections at reasonable intervals mutually agreed upon by the Parties. BellSouth shall provide Level 3 with a minimum of forty-eight (48) hours or two (2) business days, whichever is greater, advance notice of all such inspections.

IX. SECURITY

Only BellSouth employees, BellSouth certified vendors and authorized employees or agents of Level 3 will be permitted in the BellSouth Central Office. Level 3 shall provide its employees and agents with picture identification which must be worn and visible at all times while in the Collocation Space or other areas in or around the Central Office. BellSouth may refuse entry to any person who fails to display the identification required by this section.

X. INDEMNITY / LIMITATION OF LIABILITY

A. Level 3 shall be liable for any damage to property, equipment or facilities or injury to person caused by the activities of Level 3, its agents or employees pursuant to, or in furtherance of, rights granted under this Agreement. Level 3 shall indemnify and hold BellSouth harmless from and against any judgments, fees, costs or other expenses resulting or claimed to result from such activities by Level 3, its agents or employees.

B. No Consequential Damages - Except as otherwise provided in this Article X, neither party shall be liable to the other party for any indirect, incidental, consequential, reliance, or special damages suffered by such other party (including without limitation damages for harm to business, lost revenues, lost savings, or lost profits suffered by such other party), regardless of the form of action,

whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind whether active or passive, and regardless of whether the parties knew of the possibility that such damages could result. Each party hereby agrees to hold harmless the other party and such party's affiliates, and their respective officers, directors, employees and agents from all such damages. Provided, however, nothing contained in this Article X shall limit a party's liability to the other for (i) willful or intentional misconduct, gross negligence, or failure to honor one or more of the material provisions of this agreement in one or more material respects; (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by a party's employees, nor shall anything contained in this Article X limit the Parties' indemnification obligations as specified herein.

XI. PUBLICITY

Level 3 agrees to submit to BellSouth all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement or mentioning or implying the tradenames, logos, trademarks or service marks (hereinafter "Marks") of BellSouth Corporation and/or any of its affiliated companies or language from which the connection of said Marks therewith may be inferred or implied, or mentioning or implying the names of any personnel of BellSouth Corporation and/or any of its affiliated companies, and Level 3 further agrees not to publish or use such advertising, sales promotions, press releases, or publicity matters without BellSouth's prior written consent.

XII. DESTRUCTION OF COLLOCATION SPACE

In the event a Collocation Space is wholly or partially damaged by fire, windstorm, tornado, flood or by similar causes to such an extent as to be rendered wholly unsuitable for Level 3's permitted use hereunder, then either party may elect within ten (10) business days after such damage, to terminate this Agreement, and if either party shall so elect, by giving the other written notice of termination, both parties shall stand released of and from further liability under the terms hereof. If the Collocation Space shall suffer only minor damage and shall not be rendered wholly unsuitable for Level 3's permitted use, or is damaged and the option to terminate is not exercised by either party, BellSouth covenants and agrees to proceed promptly without expense to Level 3, except for improvements not the property of BellSouth, to repair the damage. BellSouth shall have a reasonable time within which to rebuild or make any repairs, and such rebuilding and repairing shall be subject to delays caused by storms, shortages of labor and materials, government regulations, strikes, walkouts, and causes beyond the control of BellSouth, which causes shall not be construed as limiting factors, but as exemplary only. Where allowed and where practical in the sole judgment of BellSouth, Level 3 may erect a temporary facility while BellSouth rebuilds or makes repairs. In all cases where the Collocation Space shall be rebuilt or repaired, Level 3 shall be entitled to an equitable abatement of rent and other charges, depending upon the unsuitability of the Collocation Space for Level 3's permitted use, until such Collocation Space is fully repaired and restored and Level 3's equipment installed therein (but in no event later than thirty (30) calendar days after the Collocation Space is fully repaired and restored).

XIII. EMINENT DOMAIN

If the whole of a Collocation Space shall be taken by any public authority under the power of eminent domain, then this Agreement shall terminate as of the day possession shall be taken by such public authority and rent and other charges for the Collocation Space shall be paid up to that day with proportionate refund by BellSouth of such rent and charges as may have been paid in advance for a period subsequent to the date of the taking. If any part of the Collocation Space shall be taken under eminent domain, BellSouth and Level 3 shall each have the right to terminate this Agreement and declare the same null and void, by written notice of such intention to the other party within ten (10) business days after such taking.

XIV. FORCE MAJEURE

Neither party shall be in default by reason of any failure in performance of this Agreement, in accordance with its terms and conditions, if such failure arises out of causes beyond the control of the nonperforming party including, but not restricted to, acts of God, acts of government, insurrections, fires, floods, accidents, epidemics, quarantines, restrictions, strikes, freight embargoes, inability to secure raw materials or transportation facilities, acts or omissions of carriers or any and all other causes beyond the party's control.

XV. ASSIGNMENT

Level 3 acknowledges that this Agreement does not convey any right, title or interest in the Central Office to Level 3. Level 3 may not sublet its rights under this Agreement, nor shall it allow a third party to use or occupy the Collocation Space at any time or from time to time without the prior written consent, and at the sole discretion, of BellSouth. This Agreement is not assignable by either party without the prior written consent of the other party, and any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void. Notwithstanding the foregoing, either party may assign any rights, duties or obligations of this Agreement to a parent, subsidiary or affiliate without the consent of the other party.

XVI. NONEXCLUSIVITY

Level 3 understands that this Agreement is not exclusive and that BellSouth may enter into similar agreements with other parties. Assignment of space pursuant to all such agreements shall be determined by space availability and made on a first come, first served basis.

XVII. NO IMPLIED WAIVER

No consent or waiver by either party to or of any breach of any covenant, term, condition, provision or duty of the other party under this Agreement shall be construed as a consent to or waiver of any other breach of the same or any other covenant, term, condition, provision or duty. No such consent or waiver shall be valid unless in writing and signed by the party granting such consent or waiver.

XVIII. NOTICES

Except as otherwise provided herein, any notices or demands that are required by law or under the terms of this Agreement shall be given or made by Level 3 or BellSouth in writing and shall be given by hand delivery, or by certified or registered mail, and addressed to the parties as follows:

<u>To BellSouth:</u>	<u>To Level 3:</u>
<u>Room E4E1</u>	<u>_____</u>
<u>3535 Colonnade Parkway</u>	<u>3555 Farnam St.</u>
<u>Birmingham, AL 35243</u>	<u>Omaha NE 68131</u>
<u>ATTN: CLEC Account Team</u>	<u>ATTN: General Counsel</u>

Such notices shall be deemed to have been given in the case of certified or registered mail when deposited in the United States mail with postage prepaid.

XIX. RESOLUTION OF DISPUTES

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the Commission in the state where the services are provided pursuant to this Agreement for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Public Service Commission concerning this Agreement.

XX. SECTION HEADINGS

The section headings used herein are for convenience only, and shall not be deemed to constitute integral provisions of this Agreement.

XXI. AUTHORITY

Each of the parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf and that no consent from any other person or entity is required as a condition precedent to the legal effect of this Agreement.

XXII. REVIEW OF AGREEMENT

The parties acknowledge that each has had an opportunity to review and negotiate this Agreement and has executed this Agreement only after such review and negotiation. The Parties further agree that this Agreement shall be deemed to have been drafted by both BellSouth and Level 3 and the terms and conditions contained herein shall not be construed any more strictly against one party or the other.

XXIII. ENTIRE AGREEMENT

This Agreement contains the full understanding of the Parties (superseding all prior or contemporaneous correspondence between the Parties) and shall constitute the entire agreement between BellSouth and Level 3 and may not be modified or amended other than by a written instrument signed by both parties. If any conflict arises between the terms and conditions contained in this Agreement and those contained in a filed tariff, the terms and conditions of this Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the day and year first above written.

BELLSOUTH TELECOMMUNICATIONS,
INC.

LEVEL 3 COMMUNICATIONS L.L.C.

Authorized Signature

Authorized Signature

Print or Type Name

Print or Type Name

Title

Title

Date

Date

Schedule of Rates and Charges

<u>Rate Element Description</u>	<u>Type of Charge</u>	<u>Charge</u>
Application Fee	NRC (per Arrangement, per C.O.)	\$3,850.00
Subsequent Application Fee (Note 1)	NRC (per Arrangement, per C.O.)	\$1,600.00
Space Preparation Fee (Note 2)	NRC (per Arrangement, per C.O.)	ICB
Space Enclosure Construction Fee (Note 2)	NRC (per 100 square feet)	\$4,500.00
Additional Engineering Fee (Note 3)	NRC	ICB
Cable Installation	NRC (per entrance cable)	\$2,750.00
Floor Space	Zone A	RC (per square foot)
	Zone B	RC (per square foot)
		\$7.50
		\$6.75
Power	RC (per amp)	\$5.00
Cable Support structure	RC (per entrance cable)	\$13.35
Cross-Connects	2-wire	RC (per cross-connect)
	4-wire	RC (per cross-connect)
	DS1	RC (per cross-connect)
	DS3	RC (per cross-connect)
		\$0.30
		\$0.50
		\$8.00
		\$72.00
	2-wire	NRC (first cross-connect)
	4-wire	NRC (first cross-connect)
	DS1	NRC (first cross-connect)
	DS3	NRC (first cross-connect)
		\$19.20
		\$19.20
		\$155.00
		\$155.00
	2-wire	NRC (each additional cross-connect)
	4-wire	NRC (each additional cross-connect)
	DS1	NRC (each additional cross-connect)
	DS3	NRC (each additional cross-connect)
		\$19.20
		\$19.20
		\$27.00
		\$27.00
POT Bay	2-wire	RC (per cross-connect)
	4-wire	RC (per cross-connect)
	DS1	RC (per cross-connect)
	DS3	RC (per cross-connect)
		\$0.40
		\$1.20
		\$1.20
		\$8.00
Additional Security Access Cards	NRC-ICB (each)	\$10.00

Schedule of Rates and Charges (cont.)

<u>Rate Element Description</u>	<u>Type of Charge</u>	<u>Charge</u>
Direct Connection (Note 4)		
(1) Fiber Arrangement	RC (per cable, per linear foot)	\$0.06
-with Initial Application	NRC (per Arrangement)	N/A
-Subsequent to Application	NRC (per Arrangement)	\$246.00
(2) Copper or Coaxial Arrangement	RC (per cable, per linear foot)	\$0.03
-with Initial Application	NRC (per Arrangement)	N/A
-Subsequent to Application	NRC (per Arrangement)	\$246.00
Security Escort		
Basic - first half hour	NRC-ICB	\$41.00
Overtime - first half hour	NRC-ICB	\$48.00
Premium - first half hour	NRC-ICB	\$55.00
Basic - additional half hour	NRC-ICB	\$25.00
Overtime - additional half hour	NRC-ICB	\$30.00
Premium - additional half hour	NRC-ICB	\$35.00

Notes

NRC: Non-recurring Charge - one-time charge

RC: Recurring Charge - charged monthly

ICB: Individual Case Basis - one-time charge

- (1) **Subsequent Application Fee.** BellSouth requires the submission of an Application Fee for modifications to an existing arrangement. However, when the modifications do not require BellSouth to expend capital (e.g., additional space or power requirements, BST termination/cross-connect equipment, etc.), BellSouth will assess the Subsequent Application Fee in lieu of the Application Fee.
- (2) **Space Preparation Fee.** The Space Preparation Fee is a one-time fee, assessed per arrangement, per location. It recovers costs associated with the shared physical collocation area within a central office, which include survey, engineering, design and building modification costs. BellSouth will pro rate the total shared space preparation costs among the collocators at each location based on the amount of square footage occupied by each collocator. This charge may vary depending on the location and the type of arrangement requested.

Schedule of Rates and Charges (cont.)

Notes (cont.)

- (2) (cont.)
Space Enclosure Construction Fee. The Space Enclosure Construction Fee is a one-time fee, assessed per enclosure, per location. It recovers costs associated with providing an optional equipment arrangement enclosure, which include architectural and engineering fees, materials, and installation costs. This fee is assessed in 100 square-foot increments, with a minimum space enclosure size of 100 square feet. Level 3 may, at its option, arrange with a BellSouth certified contractor to construct the space enclosure in accordance with BellSouth's guidelines and specifications. In this event, the contractor shall directly bill Level 3 for the space enclosure, and this fee shall not be applicable.
- (3) Additional Engineering Fee. BellSouth's engineering and other labor costs associated with establishing the Physical Collocation Arrangement shall be recovered as Additional Engineering charges, under provisions in BellSouth's FCC Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges shall be provided by BellSouth in the Application Response.
- (4) Direct Connection. As stated in Article I.B of the Collocation Agreement, Level 3 may connect to other interconnectors within the designated Central Office in addition to, and not in lieu of, interconnection to BellSouth services and facilities. Level 3 must use its Certified Vendor to place the direct connection. The Direct Connection NRC is assessed when direct connection is the only work requested by Level 3. If any other work in addition to the direct connection is being requested, whether for an initial installation of a Collocation Space or for an augmentation to an existing Collocation Space, an Application Fee or a Subsequent Application Fee will be assessed in lieu of the Direct Connection NRC. Construction charges may also apply; BellSouth shall provide an estimate of these charges in the Application Response.

Bona Fide Physical Collocation Arrangements

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

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