

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

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| Petition of |) | |
| |) | |
| LEVEL 3 COMMUNICATIONS, LLC |) | Docket No. _____ |
| |) | |
| For Arbitration with BellSouth |) | |
| Telecommunications, Inc. |) | |
| Pursuant to Section 252(b) |) | |
| of the Communications Act of 1934, as |) | |
| amended by the Telecommunications Act |) | |
| of 1996 |) | |

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
FOR ARBITRATION**

Level 3 Communications, LLC (“Level 3”) through its undersigned counsel, petitions the Kentucky Public Service Commission (“Commission”) pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”), to arbitrate certain terms and conditions of a proposed interconnection agreement between Level 3 and BellSouth Telecommunications, Inc. (“BellSouth”).

PARTIES

1. Petitioner Level 3’s full name and its official business address are as follows:

Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Level 3 is a Delaware limited liability company, and it is authorized by the Commission to provide local exchange service in Kentucky.¹ Level 3 is, and at all relevant times has been, a “local exchange carrier” (“LEC”) under the Act.

¹ Level 3’s Regulations and Schedule of Intrastate Charges Applying to Local Exchange Communications Services Within the Commonwealth of Kentucky, effective October 3, 1998, was accepted and acknowledged by the Commission on September 15, 1998.

2. The names, addresses, and contact numbers of Level 3's representatives in this proceeding are as follows:

John E. Selent
Dinsmore & Shohl, LLP
2000 Meidinger Tower
462 South Fourth Avenue
Louisville, KY 40202
(502) 540-2315 (Tel)
(502) 585-2207 (Fax)

Russell M. Blau
Tamar E. Finn
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Michael R. Romano
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-7015 (Tel)
(720) 888-5134 (Fax)

3. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth provides local exchange and other services within its franchised areas in Kentucky. BellSouth is, and at all relevant times has been, a "Bell Operating Company" and an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.

4. The name, address, and contact number for BellSouth's legal representative during the negotiations with Level 3 are as follows:

Parkey Jordan
BellSouth Telecommunications, Inc.
675 W. Peachtree Street
Atlanta, GA 30375
(404) 335-0794 (Tel)
(404) 614-4054 (Fax)

JURISDICTION

5. The Commission has jurisdiction over Level 3's Petition pursuant to the provisions of the Act. A copy of Level 3's letter requesting negotiation of an interconnection agreement in Kentucky with BellSouth is attached as Exhibit A.² This Petition is timely filed within 160 days of the date BellSouth received Level 3's request for interconnection.

NEGOTIATIONS

6. Negotiation of the Level 3-BellSouth Kentucky Interconnection Agreement commenced on February 28, 2000. Working through changes suggested by Level 3 to BellSouth's template interconnection agreement, the parties have been able to resolve the vast majority of issues raised during the negotiations, but a number of issues remain unresolved. Notwithstanding these good faith negotiations, Level 3 and BellSouth have been unable to come to agreement on all terms, particularly certain terms that relate to how the parties will interconnect their networks and exchange traffic. The issues that Level 3 understands to be unresolved between the parties are addressed in the Statement of Unresolved Issues below.

7. A draft of the interconnection agreement reflecting the parties' negotiations to date is attached hereto as Exhibit B. Agreed upon language is shown in normal type, disputed

² All exhibits hereto are contained in a separate exhibit binder.

language proposed by BellSouth is shown in strike-through text, and disputed language proposed by Level 3 is shown in underlined text. During this arbitration, Level 3 will continue to negotiate in good faith with BellSouth to attempt to resolve these disputed issues and will advise the Commission if and when arbitration of certain issues is no longer necessary.

8. Level 3 requests the Commission to approve the Interconnection Agreement between Level 3 and BellSouth reflecting (i) the agreed upon language in Exhibit B and (ii) the resolution in this arbitration proceeding of the unresolved issues in accordance with the recommendations made by Level 3 below and in Exhibit B.

STATEMENT OF RESOLVED ISSUES

9. The parties have resolved all issues and negotiated contract language to govern the parties' relationship with respect to General Terms and Conditions, resale, unbundled network elements, physical collocation, number portability, billing, ordering and provisioning, rights-of-way, and performance measurements. These negotiated portions of the Agreement are included in Exhibit B. Except for the dispute concerning rates for interconnection trunks (Issue 3), the Parties have also agreed to the rates BellSouth generally offers all competitive local exchange carriers.³

STATEMENT OF UNRESOLVED ISSUES

ISSUE 1 (Attachment 3, Sections 1.1.1.1 and 1.1.1.2)

Issue: *How should the parties define the Interconnection Points ("IPs") for their networks?*

³ Level 3 has accepted the BellSouth-proposed rates on the basis of BellSouth's representation that these rates are the rates generally offered to all competitive LECs and consistent with the Commission's orders approving BellSouth's rates. To the extent Level 3 determines that the rates are not those generally offered to other competitive LECs, or are inconsistent with the rates ordered by this Commission, Level 3 reserves its right to contest such rates.

Level 3 position: *Upon initial market entry, the parties should establish a single IP for both parties' originating traffic. As traffic volumes warrant, the parties should work cooperatively to establish additional IPs where the flows of traffic, network architectures, and demands on existing IPs indicate such additional IPs are needed.*

BST position: *Each party should unilaterally designate its own IPs for its originating traffic.*

10. Permitting BellSouth to designate its own IPs for the purposes of handing off to Level 3 traffic originated by BellSouth's end users would place an undue and unlawful burden on new entrants such as Level 3.

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

Section 251(c)(2) gives *competing carriers* the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.⁴

Furthermore, the 1996 Act bars consideration of costs in determining "technically feasible" points of interconnection.⁵

12. Level 3 would like the contract to specify that Level 3 may designate a single IP for the exchange of local and intraLATA traffic in each local access and transport area ("LATA") in which Level 3 provides local exchange service. The IP is defined as the physical location at which the parties' facilities are connected; however, this issue does not affect what

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶209 (1996) ("*Local Competition Order*") (emphasis added).

⁵ *Id.* at ¶199. See also Memorandum of the Federal Communications Commission as Amicus Curiae, *AT&T Communications of the Mountain States, Inc. v Robert J. Hix*, Civ. A. No. 97-D-152 (and consolidated cases), filed

types of facilities are to be connected at the IP, nor how traffic is routed within the terminating party's network. Under the undisputed portions of the agreement, each carrier is responsible for providing facilities and trunking to the IP for the hand-off of local and intraLATA toll traffic, and for completing calls to all end users on its own network after receiving that hand-off of traffic.⁶

13. Level 3's position requiring a single IP per LATA is consistent with the Act and the Federal Communications Commission's ("FCC's") binding interpretation of the Act. More than two years ago, the FCC explained that competitive LECs are in fact entitled to have a single IP established in a LATA. Specifically, the FCC stated, "in the absence of proof by [the ILEC] that it is not technically feasible for [the competitive LEC] to establish a single point of interconnection in each LATA, the [state commission's] determination that [the competitive LEC] must make multiple interconnections is inconsistent with the 1996 Act and binding FCC rules."⁷ This is consistent with the FCC's prior determination in its *Local Competition Order* that "requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)."⁸

14. If BellSouth exercised a unilateral right to designate multiple IPs, it could use this right to require Level 3 to mirror its legacy network architecture, which may not be the most efficient, forward-looking architecture for an entrant deploying a new network. Indeed, one must

Mar. 3, 1998, 15 (D. Colo.) ("*FCC Memorandum*") ("Consequently, a PUC cannot consider the cost to the incumbent LEC in determining the technical feasibility of points of interconnection."). (Attached as Exhibit C.)

⁶ For clarification, Level 3 does not object to the obligation to establish a trunk group to each tandem where its NXX codes are "homed," nor does it object to establishing direct end office trunk groups once a certain threshold level of traffic is reached.

⁷ *FCC Memorandum* at 15.

⁸ *Local Competition Order* at ¶220 n.464.

wonder what is to stop BellSouth under its proposal from designating each of its end offices as an IP for traffic originated by customers served out of that office, thereby requiring Level 3 to lease or construct facilities to and possibly obtain collocation space in every BellSouth end office. Requiring competitive LECs to mirror the ILEC architecture in this manner, without any reference to the network architectures each party has in place and the actual traffic patterns originating from portions of the BellSouth network, represents a barrier to entry. Level 3 should be free to deploy least cost, forward-looking technology, such as the combination of a single switch with a SONET ring to serve an area that BellSouth may serve through a hub-and-spoke, switch-intensive architecture. Initial interconnection at a single IP per LATA is crucial to providing Level 3 this flexibility. For a new entrant to begin service, it requires a single connection capable of handling all of its calls, including local and toll traffic.⁹

15. Level 3 agrees that as traffic volumes increase, sound engineering principles may dictate that the parties designate additional IPs at other BellSouth switches. (Level 3 has in fact utilized this more flexible approach to negotiate additional IPs with other ILECs throughout the country as traffic patterns and network architectures dictated.) However, those traffic volumes do not yet exist, and there is no reason, or legal basis, for the Commission to compel Level 3 to build out (either by construction or lease) to all points where BellSouth may dictate. Level 3 should be permitted to select the initial IP and, as required by the terms of the contract (proposed Section 1.1.1.2 of Attachment 3), negotiate going forward the interconnection architecture necessary to optimize investment by both parties.

16. Level 3 has recommended two alternatives to BellSouth to resolve the

⁹ Although the parties may agree to segregate different types of traffic, *e.g.*, local and intraLATA toll, on separate trunk groups, this does not impact the location of the IP.

dispute with respect to this issue.¹⁰ First, Level 3 has suggested that in order to give some certainty to the parties as to when a single IP is no longer sufficient, the contract could define the traffic volumes at which additional IPs would be required. Specifically, Level 3 proposes that it and BellSouth establish an additional IP at a BellSouth access tandem whenever the traffic exchanged between the parties originating from and/or terminating to customers in that given tandem serving area (the access tandem and all subtending end offices) meets or exceeds an OC12 level. This would allow the parties to ascertain when the traffic volumes justify Level 3 building out, or leasing, facilities to reach the new IP.

17. Second, in the alternative, Level 3 has proposed that BellSouth be permitted to establish IPs for its originating traffic wherever Level 3 has a point of presence. By narrowing BellSouth's ability to define IPs in this manner, Level 3 would not be required to build out (or lease facilities) to reach the very ends of the BellSouth network upon demand by BellSouth. Rather, BellSouth could choose to deliver its originating traffic to wherever Level 3 has an operational collocation arrangement in place with BellSouth, or even to the Level 3 switching entity in the LATA. This would effectively reciprocate the options available to Level 3, by allowing BellSouth to interconnect at multiple points with the Level 3 network as that network is deployed in each LATA.

ISSUE 2 (Attachment 3, Section 1.2.6)

Issue: *Should the definition of Serving Wire Center preclude Level 3 from receiving symmetrical compensation from BellSouth for leased facility interconnection?*

Level 3 position: *The compensation for leased facilities used for interconnection should be symmetrical regardless of the definitions used to establish the rate structure for leased facility interconnection.*

¹⁰ BellSouth is still reviewing these alternatives and has not yet responded to Level 3's alternative proposals.

BST position: *Serving Wire Center should be defined by reference to the wire center from which one party would normally obtain dial tone for its IP.*

18. Equity and the FCC's symmetrical compensation principles mandate that the rates for dedicated transport be defined consistently for both parties. BellSouth has proposed to allow the parties the option to interconnect through the lease of facilities from one another. Although not required to do so under the Act and FCC rules, Level 3 has agreed that the parties may charge each other the same rates for facilities provided in a situation where one party is leasing facilities from the other. However, BellSouth's proposal would impose a different rate structure on Level 3 than on BellSouth for providing identical facilities. BellSouth's proposal would result in Level 3 incurring substantially greater costs than BellSouth for transporting and terminating traffic between the same two points.

19. By way of background, as a new entrant into the local exchange telecommunications market, Level 3 utilizes state-of-the-art digital technology, typically installing only a single switch in a single building ("wire center") that serves an entire LATA. BellSouth, however, has multiple wire centers per LATA. Under the terms of the Agreement, the party originating local traffic may purchase dedicated transport from the terminating party between the IP and the first point of switching on the terminating party's network. BellSouth has divided the unbundled dedicated transport facility into two components. Under this structure Level 3 can never charge BellSouth as much as BellSouth can charge Level 3 for interconnection through leased facilities, even if the exact same facility is at issue. Specifically, pursuant to Section 1.2 of Attachment 3, BellSouth has defined the Local Channel facility (which is flat-rated) as the facility between the IP and the serving wire center, while the Dedicated Interoffice Transport facility (which is rated on a per-mile basis) is defined as the component between the

serving wire center and the first point of switching on the terminating party's network. Thus, the definition of the serving wire center is crucial to application of these rate elements. Because Level 3's single switch will always be defined as the serving wire center and the "first point of switching" on its network, Level 3 will never be able to charge BellSouth more than the flat-rated Local Channel charge for providing leased facility interconnection. By contrast, because BellSouth's historical hub-and-spoke network architecture has multiple switches, BellSouth will be able to charge both the fixed Local Channel rate and the variable Dedicated Interoffice Transport rate for providing such interconnection. Level 3 has redrafted Section 1.2 to allow the parties to charge one another the same amounts in providing leased facility interconnection.

20. BellSouth's definitions of Serving Wire Center, Local Channel, and Dedicated Interoffice Transport are especially egregious in light of its proposed unilateral right to designate IPs for BellSouth-originated traffic. For instance, if BellSouth designated an IP at an end office some distance from Level 3's point of presence ("POP"), under BellSouth's proposal, Level 3 would only be permitted to charge the flat-rated Local Channel charge if Level 3 provided the facility to the IP. BellSouth, on the other hand, would be able to charge both the flat-rated Local Channel charge from Level 3's POP to the BellSouth office closest to the POP and additional mileage-sensitive charges for the portion of the facility between the distant end office and the first BellSouth office. In short, BellSouth's proposal that the parties charge "symmetrical rates" for the leased facility interconnection is disingenuous because Level 3 will not be permitted to charge BellSouth symmetrically for the same facility. To remedy this, Level 3 has proposed not to change the definitions, but to ensure instead in Section 1.2.6 that Level 3 will have the ability to charge BellSouth as much as BellSouth would be able to charge Level 3 for traffic on the same route, notwithstanding the definitions in the contract.

ISSUE 3 (Attachment 3, Section 2.5 and 2.6)

- Issues:** *Should each carrier be required to pay for the use of interconnection trunks on the other carrier's network? Even if so, should Level 3 be required to pay recurring and nonrecurring rates based upon BellSouth's access tariff for the use of interconnection trunks?*
- Level 3 position:** *It is inappropriate to impose any charges for local interconnection trunks, as these are co-carrier trunks provided for the mutual benefit of the parties in exchanging customer traffic, and both parties must deploy matching capacity on each side of the IP. Even if the Commission finds that charges are applicable, it is inappropriate to impose nonrecurring and recurring charges from BellSouth's access tariff for local interconnection trunks -- such charges should instead be determined in accordance with the provisions of Section 252 of the Act and the Commission's own rules and orders with respect to interconnection pricing.*
- BST position:** *Level 3 is required to pay nonrecurring and monthly recurring charges as set forth in BellSouth's access tariff or where specified in the Agreement where it uses interconnection trunks provided by BellSouth.*

21. FCC rules and orders require that each carrier pay for the cost of facilities used to deliver its originating traffic to other carriers.¹¹ As the FCC has stated:

the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the [FCC]'s regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.¹²

¹¹ See, 47 C.F.R. §51.703(b); *TSR Wireless, LLC v. U S West Communications, Inc.*, File Nos. E-98-13 et al, Memorandum Opinion and Order, FCC 00-194 (rel. June 21, 2000) ("TSR Order").

¹² *Id.* at ¶34.

BellSouth's proposals in Sections 2.5 and 2.6 with respect to charges for co-carrier trunks violate these FCC requirements. Level 3 opposes any requirement that each carrier pay the other for any co-carrier trunks (*e.g.*, trunks to the IP or behind the IP on BellSouth's network for the delivery of Level 3-originated traffic). There are at least two reasons why charges for co-carrier trunks are inappropriate. First, these trunks are as of much value to BellSouth as they are to Level 3. They are used by BellSouth to ensure that calls between its customers and Level 3 customers (and vice versa) are completed; without such trunks, BellSouth would not be able to provide the level of services demanded by its own customers.¹³ Second, it is not as if Level 3 bears no cost in interconnecting with BellSouth. To the contrary, for every trunk that BellSouth sets up to handle Level 3 traffic, Level 3 must ensure that the appropriate level of capacity is available on its own side of the IP so that calls coming over the BellSouth trunks can then flow over the Level 3 network to their intended destination (and vice versa). Thus, it is in both carriers' interest (or at least in both carriers' customers' interest) to have an adequate amount of co-carrier trunks in place. Requiring each carrier to pay the other for co-carrier trunks is therefore inappropriate and contrary to the principles underlying cooperative interconnection.

22. Second, Level 3 objects to paying what it understands to be tariffed recurring and nonrecurring charges for co-carrier trunks (although it has been unable to confirm with BellSouth precisely where the charges come from). Such trunks are used for local interconnection under the agreement, and as such, charges for these trunks should be determined through reference to a forward-looking pricing methodology rather than by reference to access

¹³ By contrast, Level 3 has agreed to pay both recurring and nonrecurring charges to establish transit trunks, recognizing that BellSouth and its customers derive little direct benefit from Level 3 and third-party LEC customers calling one another.

tariff rates that include historical network costs and require a local competitor to subsidize local service to BellSouth subscribers. Specifically, the FCC has found that Section 252(d) of the Act, which addresses local interconnection pricing, requires that “prices for interconnection and unbundled elements . . . should be set at forward-looking long-run economic cost.”¹⁴ This Commission has also concluded interconnection should be priced based on Section 252(d)(1) of the Act,¹⁵ and that “[i]f competitors are not able to use BellSouth’s network elements at cost to provide service, viable competition is unlikely to grow.”¹⁶ If BellSouth is going to require Level 3 to pay charges for co-carrier trunks (a concept to which Level 3 objects), BellSouth must at least be required to set forward-looking, cost-based rates for those trunks in accordance with the Act, rather than relying upon access rates that contain additional subsidies to support BellSouth’s local service.

ISSUE 4 (Attachment 3, Section 2.9)

- Issue:** *Should each party be required to provide notice of errors within two (2) business days of receiving an Access Service Request (“ASR”)?*
- Level 3 position:** *Requiring BellSouth to provide Level 3 with notice of errors in any trunk orders within two (2) business days of receiving an ASR would ensure that ordering errors are remedied quickly and that customers’ requested service is provisioned more quickly.*
- BST position:** *BellSouth’s position is unknown.*

¹⁴ *Local Competition Order* at ¶672.

¹⁵ *The Interconnection Agreement Negotiations Between AT&T Communications of the South central States, inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. at 25, Case No. 96-482, Order, (Feb. 6, 1997).*

¹⁶ *The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. at 25, Case No. 96-482, Order, (Mar. 20, 1997).*

23. When Level 3 orders trunks from BellSouth, it is because those trunks are needed as soon as possible to respond to customer demand. Level 3 recognizes, however, that BellSouth cannot begin to provision the trunks requested if Level 3's trunk orders contain clerical or typographical errors. To ensure that the ordering process is quick and efficient, Level 3 has proposed that each party provide notice of errors on ASRs within two (2) business days of receipt of the ASR. This will allow both parties to make any necessary corrections as promptly as possible so that the parties minimize delay in the trunk ordering process. Indeed, one would think that since BellSouth needs to provide a Firm Order Confirmation of a trunk order within four business days pursuant to this section of Attachment 3, asking BellSouth to provide notice of errors in each ASR within two (2) business days of receiving the ASR should not be burdensome.

ISSUE 5 (Attachment 3, Section 2.10)

- Issue:** *Within what time frame should BellSouth be required to provide interconnection trunks in response to orders for new trunk groups or augmentation orders of 96 trunks or greater? Within what time frame should BellSouth be required to provide interconnection trunks in order to relieve blocking?*
- Level 3 position:** *BellSouth should turn up orders for new trunk groups or augmentation orders of 96 trunks or greater within twenty-two (22) business days of receipt of the order. BellSouth should turn up trunks within five (5) days of receipt of the order where the order is intended to relieve a blocking situation.*
- BST position:** *BellSouth should turn up orders for new trunk groups or augmentation orders of 96 trunks or greater within forty-five (45) business days of receipt of the order. BellSouth has not identified any separate time frame for responding to orders where blocking is occurring.*

24. Level 3 and BellSouth have agreed that the contract should contain intervals for the provision of new trunks and larger orders (involving ninety-six trunks or greater) to augment existing trunk groups. However, the parties dispute what those intervals should be, and whether there should be a separate interval governing the provision of trunks in cases where blocking is occurring. Level 3 seeks a shorter interval for the provision of new trunks and augmentation orders, such that BellSouth would provision trunks within twenty-two business days – approximately one calendar month. BellSouth proposes it be allowed approximately twice as long – forty-five business days – to provision trunks in such cases. Level 3 believes that BellSouth should be able to provision trunks in less than two calendar months’ time, particularly since Level 3 will be providing BellSouth with quarterly updated forecasts that will help BellSouth in its interconnection planning process. BellSouth has provided no reason to believe it cannot provide trunks in response to such orders over the course of a calendar month.

25. Level 3’s request for additional intervals governing when BellSouth will provide trunks in response to a blocking situation is reasonable as well. When blocking occurs, this means that the connections desired by the parties’ customers cannot be completed – instead they receive busy signals. Section 2.9 identifies the general process the parties will follow when blocking occurs. First, a party (most likely Level 3) will generate an Access Service Request (“ASR”) so that the other party (most likely BellSouth) will recognize the need to provision more trunks. BellSouth will then have four (4) business days to respond to the ASR. Level 3 proposes in Section 2.10 that BellSouth then provision the trunks necessary to alleviate blocking – those trunks necessary to allow customer calls to be completed – by the next business day, approximately one calendar week after blocking is first identified. It should be noted that under Level 3’s proposal, BellSouth would only be required to provision sufficient trunks to relieve the

blocking situation; BellSouth would not be required to undertake any major projects unless the blocking is so severe that major corrective action were warranted.

ISSUE 6 (Attachment 3, Section 5.1.1.1)

Issue: *Should the parties be required to pay reciprocal compensation on traffic originating from or terminating to an enhanced service provider, including an Internet Service Provider (“ISP”)?*

Level 3 position: *The parties should compensate one another at the reciprocal compensation rates for traffic originating from or terminating to an enhanced service provider, including an ISP, just as they would for any other local call.*

BST position: *Traffic originating from or terminating to an enhanced service provider, including an ISP, is not local traffic and should not be subject to reciprocal compensation.*

26. BellSouth proposes language that would exclude traffic “that originates from or is directed to or through an enhanced service provider or information service provider” from the definition of “Local Traffic” for the purpose of reciprocal compensation (also called “interconnection compensation” under the Agreement). BellSouth’s position does not conform with the current requirements of Kentucky and federal law. Under this Commission’s prior rulings, carriers have been directed to pay reciprocal compensation for calls delivered to ISPs.¹⁷

27. There is no reason for the Commission or the parties to spend a significant amount of time in this proceeding revisiting yet again the questions of how to define local calls or how to compensate carriers for ISP-bound traffic. The Commission has already spoken to these issues previously, and determined that carriers should pay one another reciprocal compensation

¹⁷ See e.g. *Petition By ICG Telecom Group, Inc., for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of the Telecommunications Act of 1996*, Case No. 99-218, Order (Mar. 2, 2000); *American Communications Services of Louisville, Inc., D/B/A e.spire Communications, Inc., American Communications Services of Lexington, Inc. D/B/A e.spire Communications, Inc., Alec, Inc., and Hyperion Communications of Louisville, Inc. F/K/A Louisville Lightwave v. BellSouth Telecommunications, Inc.*, Case No. 98-212, Order (May 16, 2000).

for such traffic.¹⁸ BellSouth does not deserve yet another "bite at the apple" here, and its proposals stubbornly fly in the face of Commission precedent. All that Level 3 seeks is contract language that reflects the results of this precedent. Level 3's proposals for defining local traffic as reflected in Section 5.1.1.1 should be adopted, and BellSouth's proposal to exclude from reciprocal compensation calls to or from certain kinds of customers should be rejected.

ISSUE 7 (Attachment 3, Section 5.1.8 and 5.1.9)

- Issue:** *Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Level 3 based upon the physical location of Level 3's customers? Should BellSouth be able to charge originating access to Level 3 on all calls going to a particular NXX code based upon the location of any one customer?*
- Level 3 position:** *BellSouth does not incur any additional costs in terms of transport or switching based upon Level 3's customers' locations. BellSouth should not be allowed to charge Level 3 originating access for all calls to a whole NXX code based upon the location of a single customer with a telephone number in that NXX code.*
- BST position:** *BellSouth should not be required to pay reciprocal compensation for any call terminating to a customer who is physically located outside of the local calling area where the call originates. BellSouth should further be allowed to impose originating access charges on all calls going to a NXX code where BellSouth cannot identify the traffic that Level 3 is delivering to customers located outside the local calling area.*

28. BellSouth's proposal to limit its reciprocal compensation obligations and to collect originating access from Level 3 based upon customers' physical location have no basis in law or fact. To the contrary, BellSouth's proposal to charge Level 3 for BellSouth-originated traffic violates FCC rules and orders that require each carrier to bear the cost of facilities to

¹⁸ *Id.*

deliver its originated traffic to other carriers.¹⁹ BellSouth cannot show that its costs differ based upon Level 3's customer location such that its proposed compensation scheme in Sections 5.1.8 and 5.1.9 is warranted or appropriate. In fact, BellSouth's costs will not differ based upon the physical location of Level 3's customer. Regardless of the customer's location, BellSouth's operational responsibility for originating locally-dialed traffic on its own network will always end at the IP, where its network ends and Level 3's network begins. Furthermore, BellSouth's financial responsibility for paying reciprocal compensation on locally-dialed traffic will always end at the Level 3 switch under BellSouth's reciprocal compensation structure. BellSouth's costs of originating a locally-dialed call from a particular BellSouth customer cannot differ because of where Level 3's customer is located and FCC rules require BellSouth to bear those costs. From the Level 3 switch, it is Level 3's *sole* responsibility to take the call to wherever the customer is located, thus making any additional burden in taking a call to a physically distant customer something that Level 3 alone will bear. BellSouth therefore cannot legitimately claim that it is entitled to additional compensation – or that it should avoid paying Level 3 reciprocal compensation – just because Level 3's customer may be physically located outside of the rate center associated with the customer's NXX code.

29. In the end, BellSouth's proposal seems little more than an effort to foist additional costs on the competitive LEC, particularly in the context of serving ISPs. BellSouth's proposal should be denied because it would not only enable BellSouth to evade its reciprocal compensation obligations under the Act, but would also undermine the competitive deployment of affordable advanced services throughout the state. The Commission should instead adopt

¹⁹ See 47 C.F.R. §51.703(b); *TSR Order*.

Level 3's proposal because it facilitates one of the fundamental goals of the Act – the rapid deployment of competitive advanced services.²⁰ A flexible approach to the use of NXX codes has enabled all LECs to provide ISPs – and other end users – with attractive local services throughout the state, including lightly populated areas. BellSouth seeks to rollback this opportunity, which would result in increased toll charges to consumers and/or increased charges or equipment costs imposed upon ISPs. BellSouth's proposal would make it more difficult for competitors to provide advanced services, especially in sparsely populated areas. The Commission should reject BellSouth's proposed language.

ISSUE 8 (Attachment 3, Sections 5.8.1)

- Issues:** *Should Internet Protocol Telephony be defined as Switched Access traffic?*
- Level 3 position:** *No. BellSouth's definition would, for the first time, subject calls delivered through Internet Protocol methods to switched access charges.*
- BST position:** *Yes. Such calls are interexchange calls that should be subject to switched access.*

30. BellSouth's proposal to define calls delivered through an Internet Protocol method as switched access is contrary to federal law. As recently as 1998, the FCC, in its Report to Congress on Universal Service,²¹ declined to allow LECs to assess access charges on "Internet Protocol calls." The FCC has instead announced that it will continue to monitor the question of how to handle such calls and to determine at a later time how it might regulate this traffic, if at

²⁰ Among the fundamental goals of the Act is the promotion of innovation, investment, and competition among all participants for all services in the telecommunications marketplace, including advanced services. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Third Report and Order, at 1 (rel. Dec. 9, 1999).

²¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11,501 (1998) ("Report to Congress").

all.²² U S West has in fact had a complaint pending at the FCC with respect to whether it should be allowed to assess access charges on this traffic, but the FCC has yet to act on the complaint.²³

31. Notwithstanding the FCC's "hands off" approach to Internet Protocol traffic to date, BellSouth asks this Commission to make an unprecedented ruling and approve an arbitrated interconnection agreement that would define such traffic as switched access under state law. In initially filing its complaint about Internet Protocol traffic with the FCC, U S West implicitly recognized that the question of how to handle this traffic was appropriately before the FCC. Similarly, BellSouth argues that ISP-bound traffic – traffic that carriers hand off to local ISP customers for those customers to take onto the Internet using Internet Protocol – is interstate in nature and subject to the jurisdiction of the FCC. Yet BellSouth now asks the Commission to treat as subject to state regulation Internet Protocol traffic that a carrier takes onto the Internet itself. With the U S West complaint apparently stalled, BellSouth is scrambling to alternative forums – such as this arbitrated interconnection agreement – to force other carriers to accept its view of this traffic. This Commission should deny BellSouth's effort to forum shop and make an "end run" around the FCC with respect to the proper regulation of Internet Protocol traffic. The question of whether LECs may impose switched access charges on Internet Protocol telephony is pending before the FCC. The Commission should approve Level 3's suggestion to delete any reference to treating Internet Protocol as switched access traffic, and leave this question to be resolved through a consistent nationwide solution by the FCC.

²² *Id.* at 11,544-11,545.

²³ Petition of U S West, Inc. for Declaratory Ruling Affirming Carrier's Carrier Charges on IP Telephony (Filed April 5, 1999).

REQUEST FOR RELIEF

WHEREFORE, Level 3 respectfully requests that the Commission grant the following relief:

A. That the Commission arbitrate the unresolved issues between Level 3 and BellSouth within nine months of February 28, 2000, the date on which negotiations began.

B. That the Commission issue an order directing the parties to submit an agreement reflecting: (i) the agreed upon language in Exhibit B and (ii) the resolution in this arbitration proceeding of the unresolved issues in accordance with the recommendations made by Level 3 below and in Exhibit B.

C. That the Commission retain jurisdiction of this arbitration until the parties have submitted an agreement for approval by the Commission in accordance with section 252(e) of the Act.

D. That the Commission further retain jurisdiction of this arbitration and the parties hereto until BellSouth has complied with all implementation time frames specified in the arbitrated agreement and fully implemented the agreement.

E. E. That the Commission take such other and further actions as it deems appropriate.

RESPECTFULLY SUBMITTED, this 4th day of August, 2000.

Russell M. Blau
Tamar E. Finn
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W, Suite 300
Washington, DC 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

John E. Selent
Dinsmore & Shohl
2000 Meidinger Tower
462 South Fourth Avenue
Louisville, KY 40202
(502) 540-2315 (Tel)
(502) 540-2300 (Fax)

Michael R. Romano
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-7015 (Tel)
(720) 888-5134 (Fax)

Attorneys for
Level 3 Communications, LLC

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Petition of Level 3 Communications, LLC was served by hand-delivering a copy of the same to Fred Gerwin, Regulatory Vice President, Dorothy Chambers, General Attorney, and Creighton E. Mershon, Sr., General Counsel, BellSouth Telecommunications, Inc. at their address identified on the attached Service List and by Federal Express-Saturday Delivery, postage prepaid, to the remaining individual identified on the attached Service List, this 4th day of August, 2000.

Attorneys for
Level 3 Communications, LLC

SERVICE LIST

Parkey Jordan
BellSouth Telecommunications, Inc.
675 W. Peachtree Street
Atlanta, GA 30375
(404) 335-0794 (Tel)
(404) 614-4054 (Fax)

Fred Gerwing
Regulatory Vice President
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 408
P.O. Box 32410
Louisville, KY 40232
(502) 582-8415 (Tel)
(502) 582-3247 (Fax)

Dorothy J. Chambers
General Attorney
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
P.O. Box 32410
Louisville, KY 40232
(502) 582-1475 (Tel)
(502) 582-1573 (Fax)

Creighton E. Mershon, Sr.
General Counsel
BellSouth Telecommunications, Inc.
601 W. Chestnut Street, Room 407
P.O. Box 32410
Louisville, KY 40232
582-8219 (Tel)
582-1573 (Fax)

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

| | | |
|---------------------------------------|---|------------------|
| Petition of |) | |
| |) | |
| LEVEL 3 COMMUNICATIONS, LLC |) | Docket No. _____ |
| |) | |
| For Arbitration with BellSouth |) | |
| Telecommunications, Inc. |) | |
| Pursuant to Section 252(b) |) | |
| of the Communications Act of 1934, as |) | |
| amended by the Telecommunications Act |) | |
| of 1996 |) | |

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
FOR ARBITRATION**

EXHIBIT A

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

| | | |
|---------------------------------------|---|------------------|
| Petition of |) | |
| |) | |
| LEVEL 3 COMMUNICATIONS, LLC |) | Docket No. _____ |
| |) | |
| For Arbitration with BellSouth |) | |
| Telecommunications, Inc. |) | |
| Pursuant to Section 252(b) |) | |
| of the Communications Act of 1934, as |) | |
| amended by the Telecommunications Act |) | |
| of 1996 |) | |

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
FOR ARBITRATION**

EXHIBIT B

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

| | | |
|---------------------------------------|---|------------------|
| Petition of |) | |
| |) | |
| LEVEL 3 COMMUNICATIONS, LLC |) | Docket No. _____ |
| |) | |
| For Arbitration with BellSouth |) | |
| Telecommunications, Inc. |) | |
| Pursuant to Section 252(b) |) | |
| of the Communications Act of 1934, as |) | |
| amended by the Telecommunications Act |) | |
| of 1996 |) | |

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
FOR ARBITRATION**

EXHIBIT C

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

| | | |
|---------------------------------------|---|------------------|
| Petition of |) | |
| |) | |
| LEVEL 3 COMMUNICATIONS, LLC |) | Docket No. _____ |
| |) | |
| For Arbitration with BellSouth |) | |
| Telecommunications, Inc. |) | |
| Pursuant to Section 252(b) |) | |
| of the Communications Act of 1934, as |) | |
| amended by the Telecommunications Act |) | |
| of 1996 |) | |

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC
FOR ARBITRATION**

EXHIBIT D