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August 14, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000907-TP (Level 3 Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to the Petition for Arbitration Under the Telecommunications Act of 1996 filed by Level 3 Communications, LLC, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

T. Michael Twomey

T. Michael Twomey

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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Level 3 Communications, LLC For Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996	)	Docket No. 000907-TP
	)	Filed: August 14, 2000

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO THE PETITION FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996 FILED BY LEVEL 3 COMMUNICATIONS, LLC

In accordance with 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth") submits this Response to the Petition for Arbitration filed by Level 3 Communications, LLC ("Level 3") pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 251, et seq., 110 Stat. 56 ("the 1996 Act").

INTRODUCTION

Sections 251 and 252 of the 1996 Act encourage negotiations between parties to reach voluntary local interconnection agreements. Section 251(c)(1) requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in §§ 251(b) and 251(c)(2-6).

Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with numerous alternative local exchange carriers ("ALECs") in Florida. To date, the Florida Public Service Commission ("the Commission") has approved numerous agreements between BellSouth and certified ALECs. The nature and extent of those agreements vary depending on the individual needs of the companies, but the conclusion is inescapable: BellSouth has a strong record of embracing competition and displaying a willingness to compromise to interconnect on

fair and reasonable terms. BellSouth has been negotiating the terms of new interconnection agreements with Level 3 since February 14, 2000. Although the parties reached agreement on a number of issues, many issues remain unresolved. As a result, Level 3 filed the Petition for Arbitration ("Petition") on July 20, 2000.

Pursuant to the 1996 Act, when parties cannot successfully negotiate an interconnection agreement, either may petition a state commission for arbitration of unresolved issues between the 135th and 160th day from the date a request for negotiation was received.[1] The petition must identify which issues have been resolved through negotiation, as well as those that remain unresolved.[2] Along with its petition, the petitioning party must submit "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties."[3] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within twenty-five days after the state commission receives the petition.[4] The 1996 Act limits the state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.[5]

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[1] 47 U.S.C. § 252(b)(2).

[2] See generally, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

[3] 47 U.S.C. § 252(b)(2).

[4] 47 U.S.C. § 252(b)(3).

[5] 47 U.S.C. § 252(b)(4).

Through the arbitration process, the Commission must decide the unresolved issues that are properly set forth in the Petition and this Response to ensure that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation and, if negotiations are unsuccessful, also form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once the Commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the Commission for approval.[6]

BellSouth submits the following responses to the individual paragraphs of the Petition:

PARTIES

1. BellSouth admits that Level 3 is certified to provide local exchange service in Florida and is a "telecommunications carrier" and "local exchange carrier" as defined under the 1996 Act. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1.

2. The allegations in Paragraph 2 do not require a response from BellSouth.

3. BellSouth admits the allegations in Paragraph 3.

4. BellSouth admits the allegations in Paragraph 4.

[6] 47 U.S.C. § 252(a).

JURISDICTION

5. BellSouth admits that the Commission has jurisdiction over the unresolved issues that have properly been raised in the Petition. BellSouth also admits the remaining allegations in Paragraph 5.

NEGOTIATIONS

6. BellSouth admits the allegations in Paragraph 6.

7. BellSouth admits the allegations in Paragraph 7.

8. Although BellSouth admits that Level 3 is requesting that the Commission approve Level 3's proposed language as well as the language in the "draft" interconnection agreement (Exhibit B to the Petition) to which the parties have already agreed, BellSouth affirmatively asserts that the Commission should not do so. Instead, BellSouth requests that the Commission approve BellSouth's proposed language as well as the language in the "draft" interconnection agreement to which the parties have already agreed.

STATEMENT OF RESOLVED ISSUES

9. BellSouth admits the allegations in Paragraph 9 of the Petition.

STATEMENT OF UNRESOLVED ISSUES

ISSUE 1

Issue: *How should the parties define the Interconnection Points ("IPs") for their networks? (Attachment 3, Sections 1.1.1.1 and 1.1.1.2)*

10. BellSouth denies the allegations in Paragraph 10. The approval of BellSouth's proposed language would not, as Level 3 suggests, "place an undue and unlawful burden" on Level 3 or any other ALEC. BellSouth is entitled to determine the IP for traffic it originates. Similarly, Level 3 is entitled to determine the IP for traffic it

originates. Moreover, BellSouth agrees that Level 3 is not required to (1) duplicate the design of BellSouth's network or (2) have a switch in every local calling area to serve its local customers. There is no dispute that the ALEC can unilaterally (within technical feasibility) decide where on BellSouth's local network it chooses to hand off traffic to BellSouth.

11. The 1996 Act and the Federal Communications Commission's ("FCC") First Report and Order in the matter entitled Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) ("First Report and Order") speak for themselves. Therefore, any allegations in Paragraph 11 regarding the 1996 Act or the First Report and Order require neither an admission nor a denial by BellSouth.

12. BellSouth admits that Level 3 is entitled to designate a single IP within a LATA for its originating traffic. BellSouth denies the implication that its proposed language would prevent Level 3 from doing so. BellSouth also denies the remaining allegations in Paragraph 12.

13. The FCC's First Report and Order speaks for itself. Therefore, any allegations in Paragraph 13 regarding the First Report and Order require neither an admission nor a denial by BellSouth. BellSouth admits that Level 3's request for a single IP within a LATA for its originating traffic is consistent with the FCC's interpretation of the 1996 Act.

14. BellSouth admits that it could designate its end offices as the point of interconnection for its originating traffic to which Level 3 would have to build or purchase facilities and affirmatively asserts that nothing in the 1996 Act nor the FCC's orders or rules precludes BellSouth from so doing. However, BellSouth is willing to commit to no more than a single point of interconnection in each local calling area, which would

alleviate Level 3's unfounded concerns about BellSouth requiring Level 3 to "mirror its legacy network architecture." BellSouth denies the remaining allegations in Paragraph 14.

15. BellSouth denies that it is attempting to dictate the manner in which Level 3 may configure its network. BellSouth also denies the remaining allegations in Paragraph 15.

16. BellSouth admits that Level 3 made the proposal set forth in Paragraph 16. BellSouth denies the allegations in Paragraph 16.

17. BellSouth admits that Level 3 made the proposal set forth in Paragraph 17. BellSouth denies the remaining allegations in Paragraph 17.

ISSUE 2

Issue: *Should the definition of Serving Wire Center preclude Level 3 from receiving symmetrical compensation from BellSouth for leased facility interconnection? (Attachment 3, Section 1.2.6)*

18. BellSouth denies the allegations in Paragraph 18. The definition of Serving Wire Center is not at issue. The issue concerns the appropriate rate for the transport of traffic from the interconnection point to the POP. Contrary to Level 3's allegation, BellSouth agrees that symmetrical compensation should be provided when the services provided are equal. Level 3 is not seeking symmetrical compensation. Effectively, Level 3 is asking BellSouth to subsidize Level 3 for the economic choices made by Level 3. In its First Report and Order in Docket 96-325, the FCC states that the ALEC must bear the additional costs caused by an ALEC's chosen form of interconnection: "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that

interconnection, including a reasonable profit." First Report and Order, ¶ 199. Further, at paragraph 209, the FCC states:

> Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

In this case, Level 3 has chosen to install a single switch to serve an entire LATA. Level 3 is correct that, with this arrangement, it will not receive Dedicated Interoffice Transport. Level 3, however, is not entitled to receive compensation for interoffice transport facilities because it does not perform the function for which the compensation is intended.

19. BellSouth admits that the manner in which Level 3 has elected to configure its network may impact the amount and type of compensation it receives for the exchange of traffic. BellSouth denies the remaining allegations in Paragraph 19, and denies any implication that anything in the 1996 Act compels BellSouth to give Level 3 compensation to which it is not entitled.

20. BellSouth admits that the manner in which Level 3 has elected to configure its network may impact the amount and type of compensation it receives for the exchange of traffic. BellSouth denies the remaining allegations in Paragraph 20, and denies any implication that anything in the 1996 Act compels BellSouth to give Level 3 compensation to which it is not entitled.

ISSUE 3

Issue: *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? (Attachment 3, Sections 2.5 and 2.6)*

21. BellSouth denies the allegations in Paragraph 21. Moreover, Level 3's statement of BellSouth's position on this issue is incorrect. Although BellSouth agrees that compensation is appropriate for the use of interconnection trunks on another carrier's network (co-carrier trunks), BellSouth is not suggesting that the rates be recurring and nonrecurring as set forth in BellSouth's access tariff. On July 19, 2000 BellSouth proposed to Level 3 compensation rates for co-carrier trunks based on TELRIC pricing. Level 3 has not yet responded to BellSouth's proposal.

22. BellSouth denies the allegations in Paragraph 22 and incorporates its response to Paragraph 21, above.

ISSUE 4

Issue: *Should each party be required to provide notice of errors within two (2) business days of receiving an Access Service Request? (Attachment 3, Section 2.9)*

23. BellSouth admits that it cannot begin to provision interconnection trunks to Level 3 until BellSouth receives an ASR with complete and correct information. The issue here is whether BellSouth can, in all cases, return an incorrect and/or incomplete ASR to Level 3 within two (2) days of receipt. Although BellSouth exercises its "best efforts" to return an incorrect or incomplete ASR to Level 3 within two (2) days, it is not always possible to do so. BellSouth will agree to make its best efforts to return an incomplete or incorrect ASR to Level 3 within two (2) business days.

ISSUE 5

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? (Attachment 3, Section 2.10)*

24. BellSouth denies the allegations in Paragraph 24. Moreover, Level 3's statement of BellSouth's position on this issue is incorrect. BellSouth will agree to turn up orders for new trunk groups or augmentation orders of ninety-six trunks or less within forty-five (45) days of receipt of the order. The turn up dates for all other orders must be negotiated with BellSouth's Local Interconnection Switching Center (LISC) Project Management Group. While all trunk orders require project management, those requesting greater than ninety-six trunks especially need such management due to the very nature of the size of the orders, the possible need for new construction, potential delays in delivery from manufacturers of the appropriate equipment, and in some instances the need to secure building or construction permits from local or state building and highway authorities. Orders of this magnitude often are further dependent on the completion of other major projects such as Collocation POPs, SMARTRings, etc., which may themselves have intervals of 90 to 180 days or longer. The project management process assures that all of these factors have been considered so that a reliable projected completion date can be established for use by BellSouth, Level 3, other CLECs, and end-user customers.

25. BellSouth denies the allegations in Paragraph 25. A blocking indication does not mean that no calls are being completed; rather it means that some calls may be blocked - thus necessitating a second or third call attempt. If Level 3 identifies a

blocking problem, that fact should be reported to the LISC project manager assigned to work with Level 3. Once Level 3 submits an order intended to alleviate an identified blocking problem, BellSouth agrees to exert best efforts to expedite the handling of the order. However, such an order will be subject to the standard intervals for the level of service being requested. BellSouth has an established process of working such orders as soon as possible, often within two or three days. But, there is no guarantee that facilities will be available or that other equally urgent work might not also be a matter of consideration. The time frames proposed by Level 3 are unreasonable and should be rejected.

ISSUE 6

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")? (Attachment 3, Section 5.1.1.1)*

26. BellSouth admits that it has proposed language which excludes from the definition of "local traffic" calls originating from or bound for enhanced service providers, including Internet Service Providers ("ISPs"). BellSouth denies the remaining allegations in Paragraph 26. Reciprocal compensation should not apply to ISP-bound traffic. Based on the 1996 Act and the FCC's First Report and Order, reciprocal compensation obligations under 47 U.S.C. § 251(b)(5) apply only to local traffic. ISP-bound traffic constitutes access service, which is clearly not local traffic and, therefore, reciprocal compensation is not applicable. Level 3's statement that the Commission has ordered the payment of reciprocal compensation for ISP-bound traffic is incorrect. In its prior rulings, the Commission held that BellSouth and ALECs should continue to operate under the terms of their current contracts until the FCC issues its final ruling on

whether ISP-bound traffic should be defined as local and whether reciprocal compensation is due for this traffic. See, e.g., Order, Re: Petition of ICG Telecom Group, Inc. for Arbitration of Unresolved Issues in Interconnection Negotiations with BellSouth Telecommunications, Inc., Docket No. 990691-TP (January 14, 2000). BellSouth made its position on reciprocal compensation for ISP traffic quite clear before Level 3 adopted the MCI contract. Therefore, irrespective of whether BellSouth is required to pay certain other ALECs reciprocal compensation for ISP-bound traffic, BellSouth is not required to pay Level 3 reciprocal compensation for such traffic.

27. BellSouth agrees that the parties need not arbitrate the issue of reciprocal compensation for ISP-bound traffic in this proceeding. BellSouth proposes that the parties continue operating as they have been under their existing contract (that is, with no reciprocal compensation due for ISP-bound traffic) until the FCC takes final action on this issue.

ISSUE 7

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? (Attachment 3, Sections 5.1.8 and 5.1.9)*

28. BellSouth denies the allegations in Paragraph 28. BellSouth does not seek to restrict Level 3's ability to assign NPA/NXXs or to limit improperly the amount of reciprocal compensation to which Level 3 is entitled. BellSouth is indifferent to Level 3's assignment of a telephone number to a customer who is physically located in a different local calling area than the local calling area where that NPA/NXX is assigned. Through its proposed language, BellSouth merely seeks to have the contract reflect the

unremarkable principle that reciprocal compensation is due for the exchange of local traffic. See 47 U.S.C. § 251(b)(5). Plainly, Level 3 is seeking to impose reciprocal compensation obligations on the exchange of long distance traffic. But, Level 3's number assignment practices cannot be used to prevent the application of switched access charges to the exchange of long distance traffic. Moreover, Level 3 is not entitled to reciprocal compensation for the exchange of long distance traffic. Level 3's focus on the costs associated with the exchange of traffic is misplaced. The application of switched access charges or reciprocal compensation does not depend on the costs associated with the exchange of traffic. That determination is made based on the originating and terminating points of the calls.

29. BellSouth denies the allegations in Paragraph 29. Level 3 is raising the specter of diminished competition for rural communities in an attempt to obscure its obvious goal of a higher profit margin at BellSouth's expense. BellSouth incorporates its response to Paragraph 28, above.

ISSUE 8

Issue: *Should Internet Protocol Telephony be defined as Switched Access Traffic? (Attachment 3, Section 5.8.1)*

30. The Report to Congress by the Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (April 10, 1998) speaks for itself. Therefore any allegations in Paragraph 30 regarding the content of that Report require neither an admission nor a denial by BellSouth. Moreover, BellSouth denies that the FCC has exempted long distance calls using Internet Protocol from the payment of access charges. BellSouth admits that the FCC has not acted on US West's filing. BellSouth denies the remaining allegations in Paragraph 30.

31. BellSouth denies the allegations in Paragraph 31. BellSouth's position is simple: switched access charges should apply to any long distance telephone call regardless of whether Internet Protocol or some other transport technology is used for a portion of the call. In its discussion of this issue, BellSouth is only addressing traffic that is long distance based on the originating and terminating points of the call. Internet Protocol Telephony is a telecommunications service that is provided using Internet Protocol for one or more segments of the call. Internet Protocol Telephony is, in very simple and basic terms, a mode or method of completing a telephone call. Contrary to Level 3's implication, BellSouth's position that switched access charges apply to Phone-to-Phone Internet Protocol Telephony is not "unprecedented." The FCC's April 10, 1998 Report to Congress states: "The record... suggests... 'phone-to-phone IP telephony' services lack the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunication services.'" Given this statement by the FCC, it is logical to expect that the FCC believes that long distance phone-to-phone calls using IP Telephony are subject to applicable switched access charges. BellSouth merely seeks to prevent Level 3 and other ALECs from attempting to avoid paying switched access charges by using non-traditional technologies to originate, terminate, or transport long distance calls.

BellSouth requests that the Commission arbitrate the issues set forth in Level 3's Petition and adopt BellSouth's position on each of these issues.

Respectfully submitted this 14th day of August, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE
Docket No. 000907-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 14th day of August, 2000 to the following:

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