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**ORIGINAL**

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November 22, 2000

**HAND DELIVERY**

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RECORDS AND REPORTING

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

Re: Docket No. 000907-TP

Dear Ms. Bayo:

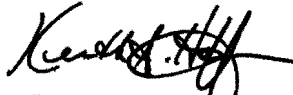
Enclosed herewith for filing in the above-referenced docket on behalf of Level 3 Communications, LLC ("Level 3") are the following documents:

1. Original and fifteen copies of Level 3's Motion to Compel; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

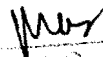
Sincerely,

  
Kenneth A. Hoffman

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3. KAH/rl  
 Enclosures  
 2. cc: Parties of Record  
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FLORIDA PUBLIC SERVICE COMMISSION DEPT. OF RECORDS

DOCUMENT NUMBER-DATE

15115 NOV 22 8

FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Level 3 Communications, )  
LLC for arbitration of certain terms and )  
conditions of proposed agreement with )  
BellSouth Telecommunications, Inc. )  
pursuant to the Telecommunications Act )  
of 1934, as amended by the Telecommuni- )  
cations Act of 1996. )  
\_\_\_\_\_ )

Docket No. 000907-TP  
Filed: November 22, 2000

LEVEL 3 COMMUNICATIONS, LCC'S  
MOTION TO COMPEL

Level 3 Communications, LLC ("Level 3"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.380(a), Florida Rules of Civil Procedure, hereby requests the Prehearing Officer to issue an Order compelling BellSouth Telecommunications, Inc. ("BellSouth") to respond to the following interrogatories and document requests propounded by Level 3:

**I. Argument**

This Motion to Compel challenges BellSouth's unsupported contention that it may refuse to produce documents or respond to interrogatories that seek to explore the factual and legal grounds purporting to support a number of the positions that BellSouth has taken in this proceeding. With respect to each discovery request identified below, BellSouth has repeated the same objection, to-wit:

BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery.<sup>1</sup>

<sup>1</sup>With respect to Document Request Nos. 9, 10, 24 and 25, BellSouth adds: "Moreover, any court or commission decisions relating to this issue are equally available to Level 3."

DOCUMENT NUMBER-DATE  
15115 NOV 22 8  
FPSC-RECORDS/REPORTING

With respect to each discovery request outlined below, Level 3 notes that BellSouth has not objected on the ground that the discovery request seeks information outside the permissible scope of discovery as set forth in Rule 1.280(b)(1), Florida Rules of Civil Procedure. Nor has BellSouth asserted that any information or documents requested by Level 3 is protected by any form of privilege.

BellSouth has only asserted, without citation to any supporting rule, order or case law, that it is not required to provide information and documents concerning specific factual and legal matters that are admittedly within the scope of discovery because Level 3's requests "seek a legal analysis." BellSouth's position should be summarily rejected. Throughout Ms. Cox's direct and rebuttal testimony, there is repeated discussion, references to and analyses and interpretations of: (1) orders and rules of the Federal Communications Commission;<sup>2</sup> (2) specific provisions of the Federal Communications Act of 1996;<sup>3</sup> (3) United States appellate court decisions;<sup>4</sup> (4) decisions of this Commission;<sup>5</sup> and, (5) decisions of other state commissions.<sup>6</sup> BellSouth's position that a question posed in discovery is objectionable because it seeks the same type of information that has been presented by BellSouth in its prefiled testimony (i.e., the legal basis for a position, citations to legal authorities, etc.) should be swiftly rejected.

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<sup>2</sup>See Cox Prefiled Direct Testimony, at 11, 13-16, 36; Cox Prefiled Rebuttal Testimony, at 9-11.

<sup>3</sup>See Prefiled Cox Direct Testimony, at 17.

<sup>4</sup>See Cox Prefiled Direct Testimony, at 17-18.

<sup>5</sup>See Cox Prefiled Direct Testimony, at 30-31, 37-38; Cox Prefiled Rebuttal Testimony, at 18.

<sup>6</sup>See Cox Prefiled Direct Testimony, at 28-30.

Secondly, the Prehearing Officer will note that in many of the Level 3 discovery requests identified below, Level 3 has asked BellSouth to provide both the factual and legal grounds supporting BellSouth's position or contention on a specific issue. BellSouth's objection refers only to its contention that it is not required to provide the legal grounds for its positions. BellSouth has failed to provide any objection to the factual information sought by Level 3 in a number of the interrogatories and document requests identified below. BellSouth's objection to providing factual information on the basis that it seeks a "legal analysis" is nonsensical and wholly without merit.

## II. Interrogatories

Interrogatory No. 15: If the answer to Interrogatory No. 14 is in the affirmative, please explain the factual and legal basis for your contention and provide citations to any authority upon which BellSouth relies to support the legal basis for this position.<sup>7</sup>

BellSouth's Objection: BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

Interrogatory No. 17: If the answer to Interrogatory No. 16 is in the affirmative, please explain the factual and legal basis for your contention and provide citations to any authority upon which BellSouth relies to support the legal basis for this position.<sup>8</sup>

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<sup>7</sup>Interrogatory No. 14: Does BellSouth contend that ALECs may not assign NXX prefixes to customers physically located outside of the rate center that corresponds to such prefix?

<sup>8</sup>Interrogatory No. 16: Does BellSouth contend that ALECs must mimic the legacy architecture of BellSouth's network in designing their own networks?

BellSouth's Objection: BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

Interrogatory No. 30: Please state whether BellSouth believes the charges identified in response to Interrogatory Nos. 24 and 27 comply with a Total Element Long Run Incremental Cost methodology adopted by the Federal Communications Commission and/or the Commission. If the answer is yes, please provide a detailed explanation of your reasoning.<sup>9</sup>

BellSouth Objection: BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

Interrogatory No. 31: Please state whether BellSouth believes the charges identified in response to Interrogatory Nos. 24 and 27 comply with the pricing standards of section 252(d) of the Act. If the answer is yes, please provide a detailed explanation of your reasoning.<sup>10</sup>

BellSouth Objection: BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

Interrogatory No. 55: If the answer to Interrogatory No. 54 is in the affirmative, please provide citations to any authority upon which BellSouth relies to support the legal

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<sup>9</sup>Interrogatory No. 24: Please state the name and amount of each interconnecting trunk group charge (recurring and nonrecurring) BellSouth would assess on Level 3 under Sections 2.5 and 2.6 (as proposed by BellSouth).

Interrogatory No. 27: If the answer to Interrogatory No. 26 is yes, please list the name and amount of each charge imposed on each ALEC.

<sup>10</sup>Id.

basis for this position.<sup>11</sup>

BellSouth Objection: BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

Interrogatory No. 57: If the answer to Interrogatory No. 56 is in the negative, please provide citations to any authority upon which BellSouth relies to support the legal basis for this position.<sup>12</sup>

BellSouth Objection: BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

### **III. Level 3's Document Requests**

Request No. 9: If your answer to Interrogatory No. 14 is in the affirmative, please provide (a) copies of any unreported decisions upon which BellSouth relies to support the legal basis and (b) any documents upon which BellSouth relies to support the factual basis for this position.<sup>13</sup>

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<sup>11</sup>Interrogatory No. 54: Does BellSouth contend that ISP-bound traffic is not eligible for reciprocal compensation? Please state the factual and legal basis for your opinion. If BellSouth has changed its belief in this regard in the past four years, please state when it was changed and describe in detail the manner in which it was changed and the reasons for the change.

<sup>12</sup>Interrogatory No. 56: Does BellSouth contend that the current agreement between Level 3 and BellSouth obligates BellSouth to pay Level 3 reciprocal compensation for locally-dialed ISP-bound calls?

<sup>13</sup>Interrogatory No. 14: Does BellSouth contend that ALECs may not assign NXX prefixes to customers physically located outside of the rate center that corresponds to such prefix?

**BellSouth Objection:** BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery. Moreover, any court or commission decisions relating to this issue are equally available to Level 3.

**Level 3's Response:** Level 3 incorporates by reference its Argument set forth above.

**Request No. 10:** If your answer to Interrogatory No. 16 is in the affirmative, please provide (a) copies of any unreported decisions upon which BellSouth relies to support the legal basis for this position and, (b) any documents upon which BellSouth relies to support the factual basis for this position.<sup>14</sup>

**BellSouth Objection:** BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery. Moreover, any court or commission decisions relating to this issue are equally available to Level 3.

**Level 3's Response:** Level 3 incorporates by reference its Argument set forth above.

**Request No. 24:** If the answer to Interrogatory No. 54 is in the affirmative, please provide (a) copies of any unreported decisions upon which BellSouth relies to support the legal basis for this position and (b) any documents upon which BellSouth relies to support the factual basis for this position.<sup>15</sup>

**BellSouth Objection:** BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery. Moreover, any court or commission decisions relating to this issue are equally available to Level 3.

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<sup>14</sup>**Interrogatory No. 16:** Does BellSouth contend that ALECs must mimic the legacy architecture of BellSouth's network in designing their own networks?

<sup>15</sup>**Interrogatory No. 54:** Does BellSouth contend that ISP-bound traffic is not eligible for reciprocal compensation? Please state the factual and legal basis for your opinion. If BellSouth has changed its belief in this regard in the past four years, please state when it was changed and describe in detail the manner in which it was changed and the reasons for the change.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

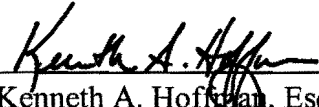
Request No. 25: If the answer to Interrogatory No. 56 is in the negative, please provide (a) copies of any unreported decisions upon which BellSouth relies to support the legal basis for this position and (b) any documents upon which BellSouth relies to support the factual basis for this position.<sup>16</sup>

BellSouth Objection: BellSouth objects to this request to the extent it seeks a legal analysis of the issue in dispute. Such legal analysis is not a proper subject for discovery. Moreover, any court or commission decisions relating to this issue are equally available to Level 3.

Level 3's Response: Level 3 incorporates by reference its Argument set forth above.

WHEREFORE, Level 3 respectfully requests that the Prehearing Officer issue an Order compelling BellSouth to respond in full to Level 3 Interrogatory Nos. 15, 17, 30, 31, 55 and 57, and produce documents in response to Level 3's Document Request Nos. 9, 10, 24 and 25, on an expedited basis.

Respectfully submitted this 22nd day of November, 2000.

  
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<sup>16</sup>Interrogatory No. 56: Does BellSouth contend that the current agreement between Level 3 and BellSouth obligates BellSouth to pay Level 3 reciprocal compensation for locally-dialed ISP-bound calls?



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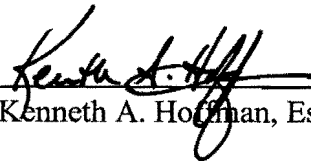
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery ( \*) or telecopier (\*\*) and United States Mail to the following this 22nd day of November, 2000:

T. Michael Twomey, Esq.(\*)  
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