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November 22, 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 Level 3 Communications, LLC's Motion to Strike, 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,

*Patrick W. Turner*  
Patrick W. Turner (PW)

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

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In re:	)	
	)	Docket No. 000907-TP
Petition by Level 3 Communications, LLC for	)	
Arbitration of Certain Terms and Conditions of a Proposed	)	
Agreement with BellSouth Telecommunications, Inc.	)	Filed: November 22, 2000
	)	

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**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC. TO  
LEVEL 3 COMMUNICATIONS, LLC'S MOTION TO STRIKE**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Response to the Motion to Strike filed by Level 3 Communications, LLC ("Level 3") on November 8, 2000. Level 3's motion is completely without merit and should be denied.

**DISCUSSION**

In its Motion to Strike, Level 3 makes two arguments: (1) the issue of the reciprocal compensation rate is not an issue in this proceeding; and (2) even if the issue is properly in this proceeding, it was improper for BellSouth to address it in rebuttal testimony. Level 3 is wrong on both counts.

In its first argument, Level 3 contends that the issue of a different rate for ISP-bound traffic is not part of this proceeding: "[B]ecause the issue of a lower rate for ISP-bound traffic was not raised in Level 3's Petition or in BellSouth's Response, it is not properly before the Commission." Motion to Strike at ¶ 9. To support its position, Level 3 refers to Issue 6 of BellSouth's Proposed Issues List filed on August 29, 2000. Remarkably, Level 3 fails to mention that the parties and the staff did not adopt BellSouth's proposed language for Issue 6 in the Order Establishing Procedure. Instead, the parties and the staff agreed that Issue 6 should be

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worded as: “For the purposes of the interconnection agreement between Level 3 and BellSouth, should ISP-bound traffic be treated as local traffic for the purposes of reciprocal compensation, or should it be otherwise compensated?” Order Establishing Procedure, Order No. PSC-00-1646-PCO-TP (Sept. 15, 2000) (emphasis added). Therefore, there is no legitimate dispute that the issue of alternative compensation for ISP-bound traffic is an issue in this docket.<sup>1</sup>

In its second argument, Level 3 contends that the issue of the rate for ISP-bound traffic was not raised by Level 3, but instead was raised in the first instance in BellSouth’s rebuttal testimony. That position is ridiculous. First, as noted above, the scope of Issue 6 (including alternative compensation for ISP-bound traffic) was fixed by the parties and the staff in the Order Establishing Procedure issued September 15, 2000, nearly three weeks before the filing of direct testimony. Second, Level 3’s own direct testimony squarely addressed the issue. Even a cursory review of the thirty three pages of direct testimony filed by Mr. Gates on this issue (nearly half of his total direct testimony) demonstrates the fallacy of Level 3’s argument.

Throughout his testimony, Mr. Gates argues that there is no legitimate reason for treating ISP-bound traffic differently than local voice traffic:

My primary concern in this area is that this approach [a separate class of service for ISP-bound traffic] doesn’t encourage efficient decision-making on the part of local callers. This results from the fact that even though both voice-grade local calling and calls to the Internet use the same network in almost exactly the same way (thereby generating largely identical costs), local callers would be faced with two different pricing structures for these two identical or similar types of calling. If the Commission were to introduce such a pricing structure, it would arbitrarily distinguish between two types of traffic that are largely identical. For example, one hour of local calling from your computer to the Internet generates exactly the

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<sup>1</sup> To the extent that Level 3 argues that the scope of the docket is determined solely by its Petition and BellSouth’s Response, Level 3 is apparently suggesting that the Issue Identification and Order Establishing Procedure are irrelevant. Level 3 waived any such claim when it concurred with the issues list included in the Order Establishing Procedure.

same level of cost on the network as does one hour of calling from your home to your best friend who may live across town.

(Gates Direct Testimony, at 28-29).

[T]here is no technical or economic distinction between ISP-bound traffic and other types of local traffic, other than the fact that ISP-bound calls generally tend to have longer holding times than do average local calls. ... Hence, distinguishing between these two types of calls is an artificial distinction that can lead to poor rate design and consumption decisions.

(Gates Direct Testimony, at 31-32).

As I have shown above, BellSouth should be indifferent as to whether it terminates the traffic or it avoids the costs of termination any pays someone else, namely an ALEC, to do so. Yet we know that BellSouth is not indifferent because it has refused to agree to such a compensation framework as part of the new interconnection agreement. The question is: Why? The answer lies in one of two reasons. Either (1) BellSouth's current rate for call termination is not representative of its actual underlying costs and it realizes that paying an ALEC for terminating traffic actually makes it economically "worse off" than terminating the traffic itself, or (2) ....

(Gates Direct Testimony, at 52-53).

Plainly, Level 3 took the position in its direct testimony that the Commission should not differentiate the compensation to be paid for ISP-bound traffic from the rate paid for local voice traffic.<sup>2</sup> BellSouth was entitled to file rebuttal testimony to challenge that position and properly did so. Level 3's suggestion to the contrary reveals a profound misunderstanding of basic procedural rules. The scope of BellSouth's rebuttal testimony is determined by the matters addressed in Level 3's direct testimony, not the matters addressed in BellSouth's own direct testimony. While Level 3 is correct that BellSouth did not address the issue of alternative

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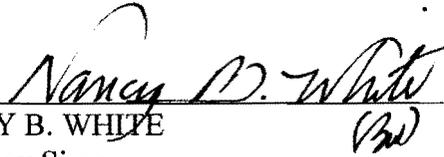
<sup>2</sup> Moreover, Mr. Gates testified that "I would suggest that the Commission look to its own prior decisions in this area as well as to public policy and economic considerations in determining how to address the present dispute." (Gates Direct Testimony, at 38). As Level 3 concedes, the Commission addressed an alternative method of compensation for ISP-bound traffic in its decision in the BellSouth/Global NAPs Arbitration (Docket No. 991220-TP). See Order No. PSC-00-1680-FOF-TP (Aug. 29, 2000). Level 3 does not suggest that it was unaware of the Commission's decision in the BellSouth/Global NAPs Arbitration.

compensation for ISP-bound traffic in its direct testimony, BellSouth had no obligation to do so. Level 3 is the petitioning party in this case. Level 3 filed direct testimony which discussed this issue and BellSouth filed appropriate rebuttal to that testimony.

For the reasons set forth above, BellSouth respectfully submits that the Commission should deny Level 3's Motion to Strike. The Commission should also reject Level 3's alternative request to file sur-rebuttal testimony. Level 3 had the opportunity to address the issue of alternative compensation for ISP-bound traffic in its direct testimony and did so.

Respectfully submitted this 22nd day of November 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 22<sup>nd</sup> day of November, 2000 to the following:

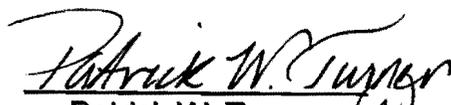
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