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November 29, 2000

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RECORDS AND  
REPORTING

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:

On November 22, 2000, BellSouth filed what was intended to be its response to Level 3's Objections to Staff Interrogatory No. 1 and Motion for Protective Order. We recently discovered, however, that the document filed on November 22 is a duplicate of BellSouth's Response to Level 3's Motion to Strike. BellSouth regrets this error and confusion that may have resulted from it.

To remedy this situation, BellSouth has attached copies the "Response of BellSouth Telecommunications, Inc. to the Objections to Staff Interrogatory No. 1 and Motion for Protective Order by Level 3 Communications, LLC." 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  
(2)

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

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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 and Hand Delivery\* this 29th day of November, 2000 to the following:


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Patrick W. Turner (2)

ORIGINAL

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

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 29, 2000
	)	

**RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC. TO  
THE OBJECTIONS TO STAFF INTERROGATORY NO. 1 AND MOTION FOR  
PROTECTIVE ORDER BY LEVEL 3 COMMUNICATIONS, LLC**

BellSouth Telecommunications, Inc. (“BellSouth”) submits this Response to the Objections to Staff Interrogatory No. 1 and Motion for Protective Order (“Objections”) filed by Level 3 Communications, LLC (“Level 3”) on November 17, 2000. As explained below, both Level 3’s objections and its alternative motion are without merit and should be denied.

**I. BACKGROUND**

On September 15, 2000, the Prehearing Officer entered an “Order Establishing Procedure” in this docket. *See* Order Establishing Procedure, Order No. PSC-00-1646-PCO-TP (Sept. 15, 2000). This Order establishes a list of issues and states that “[p]refiled testimony and prehearing statements shall address the issues set forth in Appendix ‘A.’” *Id.* at 6. Issue No. 6, as set forth in Appendix “A” to the Order, reads

For 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 be compensated?

*Id.* at 10 (emphasis added). Level 3 did not challenge this Order or the wording of Issue No. 6.

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On November 1, 2000, Level 3 filed its “Prehearing Statement,” which quotes Issue No. 6 exactly as it was formulated in the Order Establishing Procedure. In setting forth its position on Issue No. 6, Level 3 states that “BellSouth should pay Level 3 reciprocal compensation for calls to those customers who happen to be ISPs – at the same rates utilized for all other local traffic.” Level 3’s Prehearing Statement at 6 (emphasis added). Six days after Level 3 filed this statement of its position, the Commission staff served Interrogatory No. 1 on both Level 3 and BellSouth. The Staff’s Interrogatory asks:

If the Commission determines that reciprocal compensation should be paid for ISP-bound traffic, what rates should apply, and why?

*See* Staff Interrogatory No. 1 (emphasis added). On November 17, 2000, Level 3 filed its objections to the Staff’s Interrogatory and its alternative motion for a protective order.

## **II. LEVEL 3’S OBJECTIONS SHOULD BE OVERRULED**

Level 3 claims that the Staff’s Interrogatory asks for information “which is outside the scope of this proceeding and is not reasonably calculated to lead to admissible evidence in this proceeding” Objections at 3-4. This unfounded accusation simply ignores the plain language of the Order Establishing Procedure. As explained above, the parties and the Staff agreed that Issue No. 6 should be 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 at 6 (emphasis added). The Staff’s Interrogatory, which asks “[i]f the Commission determines that reciprocal compensation should be paid for ISP-bound traffic, what rates should apply, and why,” falls squarely within the parameters of that issue.

Moreover, Level 3 did not challenge the manner in which Issue No. 6 is worded in the Order. To the contrary, Level 3 embraced the wording of Issue No. 6 and expressly stated its position that “BellSouth should pay Level 3 reciprocal compensation for calls to those customers who happen to be ISPs – at the same rates utilized for all other local traffic.” Level 3’s Prehearing Statement at 6 (emphasis added). In light of this position, it is simply disingenuous for Level 3 to now cry foul when the Staff asks “what rates should apply” if the Commission decides that reciprocal compensation should be paid for ISP-bound traffic. Clearly, an alternative compensation for ISP-bound traffic is an issue that is before the Commission in this docket, and the Staff’s Interrogatory seeks information addressing that issue. Level 3’s objections to the Staff’s Interrogatory, therefore, should be overruled. Similarly, Level 3’s alternative request for an order amending the issues in this docket to include the issue addressed by the Staff’s Interrogatory should be denied because it is unnecessary. That issue already is included in this docket.

## **II. LEVEL 3’S REQUEST FOR A CONTINUANCE SHOULD BE DENIED**

In an alternative request, Level 3 seeks an order “granting a continuance of the final hearing for a period of at least sixty days to allow Level 3 to conduct discovery and develop sur-rebuttal testimony concerning this [purportedly] new issue.” Objections at 4. This request should be summarily denied. As explained above, the subject of the Staff’s Interrogatory comes as no surprise to Level 3 – it addressed this very subject in its Prehearing Statement. Additionally, Level 3’s witness Mr. Gates addresses the subject of the Staff’s Interrogatory

throughout his pre-filed testimony by arguing that there is no legitimate reason for treating ISP-bound traffic differently than local voice traffic:<sup>1</sup>

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 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).

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<sup>1</sup> BellSouth, of course, disagrees with Mr. Gates' testimony. The point is, Level 3's direct testimony is full of arguments in support of its invalid position that "BellSouth should pay Level 3 reciprocal compensation for calls to those customers who happen to be ISPs – at the same rates utilized for all other local traffic," *see* Level 3's Prehearing Statement at 6 (emphasis added), and that ISP-bound traffic should not "be otherwise compensated." *See* Order Establishing Procedure at 10, Issue No. 6.

Level 3's prefiled testimony, therefore, clearly states 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> Level 3 cannot legitimately claim that "due process requires that the final hearing be continued" when the Staff's Interrogatory simply asks both parties to address an issue that Level 3 so forcefully addressed in its direct testimony. *See* Objections at 4. Additionally, Level 3 is not prejudiced by this Interrogatory because it has been aware of BellSouth's position on the subject of the Staff's Interrogatory since at least November 1, 2000 – the date BellSouth filed the rebuttal testimony of Ms. Cynthia Cox. Level 3's request for a continuance, therefore, should be denied.

### **III. CONCLUSION**

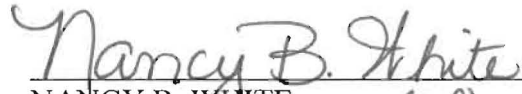
For the reasons set forth above, BellSouth respectfully submits that the Commission should overrule Level 3's Objections to Staff Interrogatory No. 1; deny Level 3's Motion for Protective Order; and deny any other relief requested by Level 3.

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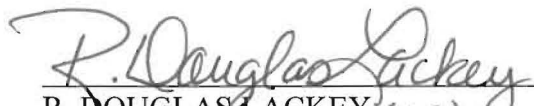
<sup>2</sup> Moreover, Mr. Gates testified that "I would suggest that the Commission look to its own prior decisions in this area as well as to public policy and economic considerations in determining how to address the present dispute." (Gates Direct Testimony, at 38). As Level 3 concedes, the Commission 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.

Respectfully submitted this 29th day of November 2000.

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