

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Level 3
Communications, LLC for
arbitration of certain terms and
conditions of a proposed
agreement with BellSouth
Telecommunications, Inc.

DOCKET NO. 000907-TP
ORDER NO. PSC-00-2276-PH0-TP
ISSUED: November 30, 2000

Pursuant to Notice and in accordance with Rule 28-106.209,
Florida Administrative Code, a Prehearing Conference was held on
November 8, 2000, in Tallahassee, Florida, before Commissioner Lila
A. Jaber, as Prehearing Officer.

APPEARANCES:

KENNETH A. HOFFMAN and JOHN ELLIS, ESQUIRES, Rutledge,
Ecenia, Purnell, & Hoffman, P.A., P.O. Box 551,
Tallahassee, Florida 32302-0551

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On behalf of Level 3 Communications, LLC

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Georgia 30375
On behalf of BellSouth Telecommunications, Inc.

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Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

15280 NOV 30 8

FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Pursuant to Section 252 of the Telecommunications Act, Level 3 Communications, LLC (Level 3) petitioned for arbitration with BellSouth Telecommunications, Inc. (BellSouth) on July 21, 2000. On August 14, 2000, BellSouth filed its Response to Level 3's petition for arbitration. This matter is currently set for an administrative hearing on December 6, 2000. **Opening statements, if any, shall not exceed ten minutes per party.**

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be

presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. **Summaries of testimony shall be limited to five minutes.** Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the

exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct*</u>		
Gregory L. Rogers	Level 3	1,8
Kevin Paul**	Level 3	1,4,5
Timothy J. Gates	Level 3	2,3,6,7
Cynthia K. Cox	BellSouth	1,2,3,6,7
<u>Rebuttal*</u>		
Gregory L. Rogers	Level 3	1,8
Anthony Sachetti	Level 3	1,4,5
Timothy J. Gates	Level 3	2,3,6,7
Cynthia K. Cox	BellSouth	1,2,3,6,7

* Direct and Rebuttal testimony will be taken up together.

** Anthony Sachetti is adopting the Direct testimony of Kevin Paul.

VII. BASIC POSITIONS

LEVEL 3: On or about February 14, 2000, BellSouth Telecommunications, Inc. ("BellSouth") and Level 3, initiated negotiations for an interconnection agreement to replace the contract between BellSouth and MCI that Level 3 adopted pursuant to Section 252(I) of the Act. Since the filing of Level 3's Petition for Arbitration on July 21, 2000, BellSouth and Level 3 have continued to negotiate the rates, terms and conditions for a new interconnection agreement. The parties remain in negotiations. Absent resolution of the open issues remaining between BellSouth and Level 3, Level 3 requests that the Commission approve its positions and proposed language for the issues which remain in dispute between the two parties.

BELLSOUTH: The Commission's goal in this proceeding is to resolve each issue in this arbitration consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"), and to establish rates for interconnection services and network elements in accordance with Section 252(d) of the 1996 Act. The Commission should adopt BellSouth's positions on the issues in dispute. BellSouth's positions on these issues are reasonable and consistent with the 1996 Act, which cannot be said about the positions advocated by Level 3 Communications, LLC ("Level 3").

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

LEGAL ISSUE: What is the Commission's jurisdiction in this matter?

POSITIONS

LEVEL 3: The Commission has jurisdiction to arbitrate the issues identified in Level 3's Petition for Arbitration, as clarified by the Order Establishing Procedure, pursuant to Section 252 of the Act and Section 364.01, Florida Statutes.

BELLSOUTH: The Commission has jurisdiction, under 47 U.S.C. § 252, to resolve the disputed issues with which it has been presented in this case.

STAFF: Section 252 of the Federal Telecommunications Act of 1996 (Act) sets forth the procedures for negotiation, arbitration, and approval of agreements. Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section. In this case, however, the parties have explicitly waived the 9-month requirement set forth in the Act. Furthermore, pursuant to Section 252(e)(5) of the Act, if a state commission refuses to act, then the FCC shall issue an order preempting the Commission's jurisdiction in the matter, and shall assume jurisdiction of the proceeding.

ISSUE 1: For purposes of the interconnection agreement between Level 3 and BellSouth, how should the parties designate the Interconnection Points (IPs) for their networks?

POSITIONS

LEVEL 3: Upon initial market entry, the parties should establish a single IP for both parties' originating traffic. The

Act and FCC orders implementing the Act give Level 3 the right to select a single, technically feasible IP per LATA for the exchange of traffic with BellSouth. BellSouth bears the burden of showing that a single IP is not technically feasible and the Commission may not consider economic issues in determining whether a single IP is technically feasible. Under the FCC's "rules of the road," each party is responsible for delivering its originating traffic to the IP. If BellSouth claims that a single IP per LATA is "expensive," BellSouth bears the burden of proving its costs are not recovered by the rates it charges its end users.

Level 3 is willing to establish additional IPs when traffic volumes, network architecture, and demands on an existing IP indicate additional IPs are needed. However, the contract must specify standards for additional IPs to prevent BellSouth from imposing inefficient and uneconomic IPs on Level 3. BellSouth should only be able to designate an additional IP in a LATA at a BellSouth access tandem if traffic originating from and/or terminating to customers in the tandem serving area (the access tandem and all subtending end offices) meets or exceeds an OC-12 level. Alternatively, BellSouth may designate additional IPs for its originating traffic wherever Level 3 has a point of presence.

BELLSOUTH: This issue concerns the financial implications of designated interconnection points, not the technical issues surrounding interconnection. BellSouth is entitled to designate the point of interconnection for traffic which originates on its network. Yet, in the language it has proposed for inclusion in the parties' agreement, Level 3 seeks to require BellSouth to collect BellSouth's local traffic in each of BellSouth's numerous local calling areas in the LATA, and for BellSouth also to be financially responsible for delivering local calls, destined for Level 3 local customers in each of those local calling areas to a single point in each LATA. BellSouth agrees that Level

3 can choose to build its own facilities to connect with BellSouth at a single technically feasible point in the LATA selected by Level 3. Level 3, however, cannot impose a financial burden on BellSouth to deliver BellSouth's originating local traffic to that single point. That is, BellSouth does not object to completing calls between BellSouth's customers and Level 3's customers using this single POI, provided that Level 3 is financially responsible for the additional costs that Level 3 causes. Level 3 can build facilities to a single point in each LATA and purchase whatever facilities it needs from BellSouth, or from another carrier, in order to reach individual local calling areas that Level 3 wants to serve. Level 3 does not have to build or purchase interconnection facilities to areas where Level 3 does not plan to serve customers.

STAFF: Staff has no position at this time.

ISSUE 2: For purposes of the interconnection agreement between Level 3 and BellSouth, under what circumstances is Level 3 entitled to symmetrical compensation for leased facility interconnection?

POSITIONS

LEVEL 3: Level 3 is entitled to symmetrical compensation for leased facility interconnection ("LFI") for traffic carried over the same route. BellSouth's use of the definition of serving wire center for determining LFI compensation is discriminatory and would require Level 3 to pay more than BellSouth would pay for traffic carried over the same route. BellSouth's definitions and rate structure discriminate against Level 3's single switch architecture and require Level 3 to deploy multiple switches in a LATA in order to receive symmetrical compensation. Consistent with the federal policy of permitting new entrants the flexibility to design efficient networks, the compensation for leased facilities used for interconnection should be

symmetrical regardless of the differences in the parties' network architectures.

BELLSOUTH: The issue concerns the appropriate rate for the transport of traffic from the interconnection point between the parties' networks to Level 3's point of presence ("POP"). 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 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. But, Level 3 is not entitled to receive compensation for interoffice transport facilities because it does not perform the function for which the compensation is intended.

STAFF: Staff has no position at this time.

ISSUE 3: For purposes of the interconnection agreement between Level 3 and BellSouth, should each party be required to pay for the use of interconnection trunks on the other party's network? If so, what rates should apply?

POSITIONS

LEVEL 3: No. BellSouth should be required to pay for trunks and facilities to carry BellSouth's originated traffic to the Level 3 network. The FCC has confirmed that each local exchange company bears the responsibility of operating and maintaining the facilities used to transport and deliver traffic on its side of the IP. It is inappropriate to impose any charges for local interconnection on Level 3 for BellSouth interconnection trunks and facilities terminating at Level 3's network which provide mutual benefits for both parties through the exchange of traffic. Level 3 should be similarly responsible for local interconnection trunks and facilities for its

originating traffic up to its IP with BellSouth's network. If, contrary to Level 3's recommendation and the FCC's "rules of the road," the Commission determines that charges for trunks and facilities are appropriate, BellSouth should be required to prove, in a proceeding open to all ALECs, that its rates comply with the forward-looking pricing requirements of Section 252(d) and the rates in the contract should be interim and subject to true-up upon conclusion of the rate proceeding.

BELLSOUTH: The parties should be required to pay for interconnection trunks on the other party's network in the circumstances described in Issue 1, above. The applicable rates should be the rates established by this Commission for interconnection in the generic cost docket, Docket No. 990649-TP.

STAFF: Staff has no position at this time.

ISSUE 4: For purposes of the interconnection agreement between Level 3 and BellSouth, when should each party be required to provide notice errors on an Access Service Request (ASR)?

POSITIONS

LEVEL 3: The parties have resolved this issue.

BELLSOUTH: The parties have resolved this issue.

STAFF: The parties have resolved this issue.

ISSUE 5: For purposes of the interconnection agreement between Level 3 and BellSouth, what provisioning intervals, if any, should apply to the following:

- a) New Trunk groups?
- b) Augmentation orders of greater than 96 trunks?
- c) Augmentation orders of 96 trunks or less?

d) Trunks to relieve blocking situations?

POSITIONS

LEVEL 3: The parties have resolved this issue.

BELLSOUTH: The parties have resolved this issue.

STAFF: The parties have resolved this issue.

ISSUE 6: 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 compensated?

POSITIONS

LEVEL 3: This Commission repeatedly has found ISP-bound calls are to be treated as local calls and there is no reasonable method or reason to distinguish those calls from other local calls. Consistent with public policy, economic objectives, this Commission's decisions in prior cases, and the decision of the D.C. Circuit Court of Appeals reversing and remanding portions of the FCC's Declaratory Ruling on this subject, 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.

BELLSOUTH: BellSouth's position on this issue is that ISP-bound traffic is not local traffic eligible for reciprocal compensation. BellSouth has presented its position to this Commission at length in three recent arbitration proceedings between BellSouth and ITC^DeltaCom, Intermedia and Global NAPS. BellSouth agrees to apply the Commission's Order in the Intermedia Arbitration proceeding (Order No. PSC-00-1519-FOF-TP, dated August 22, 2000) to this case, as an interim mechanism. BellSouth, however, contends that the interim mechanism must be subject to true-up, pending an order from the FCC on inter-carrier compensation for ISP-bound

traffic. BellSouth agrees to this as a conciliatory offer that avoids requiring the Commission to rehear this issue. BellSouth reserves the right, however, to appeal or seek judicial review on this issue.

If the Commission decides that compensation should be paid for ISP-bound traffic in this proceeding, BellSouth submits that the reciprocal compensation rate for ISP-bound traffic should be lower than the reciprocal compensation rate for other local traffic because costs per minute for ISP calls are lower than such costs for local calls. The cost for local calls is a combination of call set-up cost and a per minute rate. In the cost support for reciprocal compensation, the cost of call set-up is spread over the duration of the local call, based on the average duration of approximately 3 minutes. Assuming that the average duration of ISP calls is 20-25 minutes (versus approximately 3 minutes for an average local call), using the same reciprocal compensation rate for local and ISP calls means that call set up cost would be over recovered. Therefore, any per minute reciprocal compensation rate, if applied to ISP-bound traffic, should be a lower per minute rate to account for the longer call duration. The Commission adopted this approach in its recent order in the Global NAPs arbitration with BellSouth (Order No. PSC-00-1680-FPF-TP, dated September 19, 2000).

STAFF: Staff has no position at this time.

ISSUE 7A: For purposes of the interconnection agreement between Level 3 and BellSouth, 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?

POSITIONS

LEVEL 3: No. Consistent with BellSouth's long-standing and Commission approved foreign exchange service, calls

originated by a BellSouth customer to a Level 3 NPA/NXX within BellSouth's local calling area are rated by comparing the originating and terminating NXX's and should be subject to reciprocal compensation. The calls are routed the same way regardless of where Level 3's customers are located and BellSouth has proposed no means to track and distinguish such calls from calls where the customer is physically located within the local calling area.

BELLSOUTH: BellSouth believes that reciprocal compensation should not be billed for calls that originate in one local calling area and terminate in another, regardless of the NPA/NXX assigned to the customers on either end of the call. BellSouth is not attempting to restrict Level 3's ability to allocate numbers, to its end users, out of its assigned NPA/NXX codes. It does not matter to BellSouth how Level 3 chooses to allocate its numbers to its end users. Level 3 can elect to give 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. If Level 3, however, chooses to give out its telephone numbers in this manner, calls originated by BellSouth end users to those distant Level 3 customers are not local calls. Consequently, such calls are not local traffic under the agreement and no reciprocal compensation applies.

STAFF: Staff has no position at this time.

ISSUE 7B: For purposes of the interconnection agreement between Level 3 and BellSouth, is BellSouth entitled to charge originating access on all calls to a particular Level 3 NPA/NXX when one or more numbers out of that NPA/NXX are assigned outside the boundaries of the BellSouth rate center or local calling area to which they are traditionally assigned?

POSITIONS

LEVEL 3: No. Consistent with BellSouth's long-standing and Commission approved foreign exchange service, calls originated by a BellSouth customer to a Level 3 NPA/NXX within BellSouth's local calling area are rated by comparing the originating and terminating NXX's and should be subject to reciprocal compensation. The calls are routed the same way regardless of where Level 3's customers are located and BellSouth has proposed no means to track and distinguish such calls from calls where the customer is physically located within the local calling area. Given that the routing is the same as any other local call and the costs to BellSouth will therefore not differ, BellSouth should not be allowed to charge Level 3 originating access for any call to an NXX code based upon the location of the customer with a telephone number in that NXX code.

BELLSOUTH: BellSouth should be permitted to bill originating access charges on all calls to a particular NPA/NXX when one or more of the telephone numbers out of that NPA/NXX is assigned to a customer outside the local calling area if there is no reliable method of determining the destination of calls placed to individual numbers within such NPA/NXX. Such originating access charges are due for the reasons set forth in Issue 7A, above.

STAFF: Staff has no position at this time.

ISSUE 8: Should Internet Protocol (IP) Telephony be addressed in the new Level 3/BellSouth Interconnection Agreement? If so, how?

POSITIONS

LEVEL 3: The parties have resolved this issue.

BELLSOUTH: The parties have resolved this issue.

STAFF: The parties have resolved this issue.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Timothy J. Gates	Level 3	_____	Diagram 1
		(TJG-1)	
		_____	Work
		(TJG-1A)	Experience
		_____	Diagram 2
		(TJG-2)	
		_____	Diagram 3
		(TJG-3)	
		_____	Diagram 4
(TJG-4)			
_____	Diagram 5		
(TJG-5)			
_____	Diagram 6		
(TJG-6)			
_____	Diagram 7		
(TJG-7)			
_____	Diagram 5.1		
(TJG-8)			
Timothy J. Gates	Level 3	_____	Diagram 5.2
		(TJG-9)	
Cynthia K. Cox (direct)	BellSouth	_____	M a i n e
		(CKC-1)	Commission
			O r d e r ,
			Dockets 98-
			758 and 99-
			593 (6/30/00)
Cynthia K. Cox (rebuttal)	BellSouth	_____	ISP Traffic
		(CKC-1)	Study Reports

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Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.


XII. RULINGS

Noting no objection from the parties, BellSouth's motion to have Mike Twomey, Douglas Lackey and Patrick Turner participate as qualified representatives on behalf of BellSouth is granted.

It is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lila A. Jaber as Prehearing Officer, this 30th day of November, 2000.



LILA A. JABER
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.