Exhibit No:
Issues: GTC-1 through GTC-9
Witness: Suzette Quate
Type of Exhibit: Direct Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P., d/b/a/ SBC Missouri
Case No: TO-2005-0166

SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a SBC MISSOURI

CASE NO. TO-2005-0166

DIRECT TESTIMONY

OF

SUZETTE QUATE

Dallas, Texas
January 24, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) Of the Communications Act of 1934, as Amended By the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms and Conditions of the Interconnection with Southwestern Bell Telephone Company, L.P., d/b/a SBC Missouri	))))	Case No. TO-2005-0166

AFFIDAVIT OF SUZETTE QUATE

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, Suzette Quate, of lawful age, being duly sworn, depose and state:

1. My name is Suzette Quate. I am presently Associate Director-Regulatory Support for Southwestern Bell Telephone, L.P.

2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Suzette Quate
Suzette Quate

Subscribed and sworn to before me this 18th day of January, 2005.

Brenda Hannah Grant
Notary Public

My Commission Expires: 10-26-08

TABLE OF CONTENTS

Page(s)

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Suzette Quate. I am Associate Director – Regulatory Support for Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (“”SBC Missouri”). I work in SBC Communication Inc.’s (“SBC”) Wholesale Marketing group. My business address is Four SBC Plaza, Floor 20, Dallas, Texas 75202.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND, WORK EXPERIENCE, AND CURRENT JOB RESPONSIBILITIES.

A. I earned a Bachelor of Communications from the University of Texas at Arlington. I have worked for more than twenty years in the telecommunications industry, gaining experience in network, outside plant engineering, mechanized loop testing, account management and negotiations. I currently hold the position of Associate Director-Regulatory Support in Wholesale Marketing. As Associate Director-Regulatory Support, I am responsible for researching, formulating and communicating wholesale policy positions to state commissions in regulatory proceedings. The primary responsibilities of SBC’s Wholesale Marketing group are to develop and manage wholesale products and services; to support negotiations of local interconnection agreements; to participate in state arbitration proceedings under Section 252 of the 1996 Federal Telecommunications Act (“Act”); and to guide SBC’s compliance with the Act and state laws.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS?

A. Yes. I have provided testimony in commission proceedings in California, Illinois, Indiana, Kansas, Michigan, Nevada, Ohio, Texas and Wisconsin.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain and support SBC Missouri’s positions on General Terms and Conditions (“GT&C”) Issues 1 through 9, which relate to the sections

of the Interconnection Agreement ("ICA") that will govern Assurance of Payment and Billing and Payment of Charges.

The provisions that are the subject of my testimony are critical to SBC Missouri's ability to protect itself from financially vulnerable or irresponsible CLECs. SBC Missouri must be allowed to limit its financial exposure to credit-impaired CLECs and CLECs that improperly refuse to pay pursuant to their ICA. The tools that allow SBC Missouri to limit its financial exposure are a set of meaningful deposit requirements (GT&C Issues 1-5) and an ability, if the need arises, to stem its losses by terminating services to non-paying CLECs in a reasonable time period (GT&C Issues 6-9).

SBC Missouri must be able to use these tools to maintain its financial integrity and limit its exposure. It is essential that a CLEC that has not established good credit or that has shown that it is a credit risk be required to post a deposit sufficient to cover SBC Missouri's exposure to that CLEC. It is also essential that SBC Missouri be allowed to terminate the services of CLECs that fail to pay undisputed charges in a reasonable time frame.

II. GENERAL TERMS AND CONDITIONS ("GT&C")

GT&C ISSUE 1: SHOULD THE ASSURANCE OF PAYMENT REQUIREMENTS BE STATE-SPECIFIC OR STATE-INTERDEPENDENT?

AGREEMENT REFERENCE: GT&C SECTION 7.2

Q. BEFORE YOU TURN TO THE FIRST ISSUE CONCERNING THE ASSURANCE OF PAYMENT PROVISIONS, PLEASE GIVE AN OVERVIEW OF THIS PORTION OF THE GENERAL TERMS AND CONDITIONS.

A. Generally, CLECs receive products and services from SBC Missouri pursuant to their ICA, are subsequently billed for those products and services, and – if all goes well – pay for them. Because there is a significant gap between the time when the CLECs receive

the services and the time when they are required to pay for them, the CLECs are, in effect, buying from SBC Missouri on credit.

Like practically any other class of purchasers, some CLECs are sound credit risks and some are not. And SBC Missouri cannot afford to extend credit to unsound credit risks. Since 2001, SBC has lost approximately $250 million to CLECs that have failed to pay their undisputed bills under ICAs.

To minimize the losses it incurs when CLECs do not pay their bills, SBC Missouri seeks to require each CLEC that has not demonstrated that it is a sound credit risk to make assurance of payment – *i.e.*, a deposit – so that SBC Missouri will know there is money on hand to cover outstanding billed amounts in the event the CLEC becomes unable to pay or otherwise improperly fails to pay its undisputed bills.

Section 7 of the GT&C portion of the interconnection agreement covers these assurances of payment. It begins by setting forth, in Section 7.2, four circumstances in which SBC Missouri may request a deposit from a CLEC. Most of the disagreements between Level 3 and SBC Missouri relating to Section 7 concern the details of those circumstances. Section 7 then goes on to address – in language that contains no disputes – such matters as the form of the deposit (Section 7.3); the accrual of interest on the deposit (Section 7.5); and the circumstances under which SBC Missouri can draw on the deposit (Section 7.6). Then, Section 7.8 provides that if SBC Missouri makes a request for an assurance of payment that is in accordance with the terms of Section 7, SBC Missouri is not obliged to provide services to the CLEC until the assurance of deposit is forthcoming. The parties have one disagreement about 7.8, which I will get to later.

Q. WITH THAT BACKGROUND, ISSUE GT&C 1 ASKS, "SHOULD THE ASSURANCE OF PAYMENT REQUIREMENTS BE STATE-SPECIFIC OR STATE INTERDEPENDENT?" WHAT IS THE DISAGREEMENT HERE?

A. Level 3 and SBC are arbitrating interconnection agreements throughout SBC's 13-State service area, and each interconnection agreement will include assurance of payment provisions. Throughout Section 7.2, which sets forth the circumstances under which SBC can request a deposit from Level 3, Level 3 proposes to add phrases like "in that State" and "for that individual State," so that SBC would be permitted to request a deposit from Level 3 only in the individual state or states where the circumstances pertained. For example, Subsection 7.2.3 allows SBC to request a deposit if Level 3 fails to pay its bills, but Level 3 proposes to allow SBC to request a deposit only in the state (or states) where Level 3 fails to pay.

Q. WHAT IS SBC'S OBJECTION TO LEVEL 3'S PROPOSAL?

A. Level 3's proposal to immunize itself in most of SBC's service territory from the consequences of its conduct in one or two states is unreasonable. If a customer bounces a check at a Sears in Oklahoma, would the customer expect Sears to be wary of that customer only in Oklahoma? Of course not. And our experience shows that, as one would expect, CLEC defaults are not state-specific. Since 2000, approximately 200 CLEC customers have ceased operations in SBC's 13-state territory. As a result, SBC has had significant experience with this issue and the reality is that credit-impairment is not a state-specific issue. CLECs that file for bankruptcy protection or cease operations typically do so in all the states they do business in, not just certain states. Not surprisingly, since most CLECs, similar to Level 3, do not limit their operations to a single state, SBC has observed that customers that experience payment defaults in one state also experience payment defaults in other states in which they have a business

relationship with SBC. Therefore, it is appropriate for SBC to request assurance of payment of the CLEC as a customer, and not on a state-specific basis, when the CLEC's credit worthiness is deficient.

Furthermore, Level 3 is overlooking a benefit that SBC's language gives Level 3, and is ignoring a corresponding burden that Level 3's own language would impose on Level 3. Just as credit-impairment is not state-specific, neither is being a good-paying, non-credit-impaired customer. And, under Section 7.2.1, which provides that the CLEC need not make a deposit if it has established a good credit history with SBC, a customer that establishes good credit with SBC in one state is – under SBC's approach – excused from making a deposit in all states. Under Level 3's state-specific approach, however, a CLEC would have to establish good credit separately in each state it enters before it could be excused from the assurance of payment requirement. SBC's approach is superior in this regard, because it appropriately protects SBC from poor paying, credit-impaired CLECs, but at the same time allows good-paying CLECs to avoid paying an initial deposit. Thus, SBC's proposed language strikes a fair balance between protecting SBC's financial interests and protecting the interests of good-paying CLECs, while Level 3's language would advance the interests of poor-paying, credit-impaired CLECs at the expense of good-paying CLECs.

Q. WHAT IS YOUR CONCLUSION ON GT&C ISSUE 1?

A. SBC Missouri's proposed language in Section 7.2 appropriately balances SBC's need to protect itself against the risk of non-payment – the risk that has cost SBC approximately $250 million in the last four years – and CLECs' understandable desire to not pay a deposit if no deposit is needed. A good-paying CLEC, who is not otherwise credit-challenged, has no valid reason to oppose SBC's language, because it would not be

required to pay an initial deposit to SBC. Under Level 3's proposed language, however, the same good-paying CLEC would have a substantial reason for opposing Level 3's proposed language, namely, that Level 3's language would require the CLEC to pay an initial deposit in this state, regardless of its payment history in other states, if it had not yet established a payment history here. In this manner, Level 3's proposed language discriminates against good-paying, non-credit challenged CLECs – unintentionally, SBC believes – by forcing them to pay a deposit if they are new to the state. SBC Missouri's proposed language does not do this and should be accepted.

GT&C ISSUE 2: WHAT ARE THE APPROPRIATE CRITERIA FOR DETERMINING SATISFACTORY CREDIT AS OF THE EFFECTIVE DATE OF THE AGREEMENT?

AGREEMENT REFERENCE: GT&C SECTION 7.2.1

Q. WHAT IS THE DISPUTE REGARDING THIS ISSUE?

A. The issue is much narrower than the issue statement set forth above suggests. Agreed language in GT&C Section 7.2.1 allows SBC Missouri to request an assurance of payment if Level 3 "has not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to" SBC Missouri. Level 3 proposes to add to the end of Section 7.2.1 the words, "(with no more than two (2) valid past due notices for undisputed amounts within that twelve (month) period)." In other words, Level 3's proposed language modification would require three or more non-payment notices before SBC Missouri could request assurance of payment based on Level 3's payment history.

Q. WHAT IS THE THEORY BEHIND SECTION 7.2.1 AS PROPOSED BY SBC MISSOURI?

A. As I explained above, it makes good business sense for CLECs who have not established satisfactory credit to be required to pay a deposit before they are allowed to receive

services on credit. This is so as a matter of general good business practice, but it is especially so in our industry in light of the high occurrence of payment defaults SBC has experienced with its CLEC customers. The basic criterion for establishing satisfactory credit in Section 7.2.1 is that Level 3 must have made at least 12 consecutive months of timely payments to SBC. The 12-month period was chosen because if a customer pays its bills on time for a 12-month period, it has demonstrated an ability and a willingness to pay throughout an entire business cycle.

Q. WHAT IS WRONG WITH LEVEL 3'S PROPOSAL THAT IT BE DEEMED TO HAVE ESTABLISHED GOOD CREDIT HISTORY EVEN IF SBC HAS TO SEND LEVEL 3 TWO LATE PAYMENT NOTICES?

A. The proposal makes no sense, and is not in harmony with sound business practice. A customer that can be counted on to pay its bills to the point that it should be permitted to buy substantial amounts of products and services on credit without making a deposit simply does not get two late payment notices a year.

Q. ISN'T IT POSSIBLE, THOUGH, THAT LEVEL 3 MIGHT RECEIVE LATE PAYMENT NOTICES FROM SBC MISSOURI IN ERROR, OR WHEN LEVEL 3 HAS NOT PAID A BILL BECAUSE THE BILL IS INACCURATE?

A. SBC Missouri's language already takes care of that possibility, because all it calls for is 12 months of timely payments "for undisputed charges." In other words, SBC Missouri's language doesn't count late payment notices – it is only Level 3's proposed language that introduces the counting of late payment notices – so if it should happen that SBC Missouri does send Level 3 a late payment notice in error, or under circumstances where Level 3 was disputing the bill, that would not have any effect on Level 3's establishment of good credit history under Section 7.2.1, because Level 3, notwithstanding SBC Missouri's (hypothetically erroneous) late payment notices would still have made 12 months of timely payments of undisputed bills.

Q. WHAT IS YOUR CONCLUSION ON GT&C ISSUE 2?

A. The Commission should reject the additional language that Level 3 has proposed for GT&C Section 7.2.1.

GT&C ISSUE 3: HOW SHOULD THE ICA DESCRIBE THE IMPAIRMENT THAT WILL TRIGGER A REQUEST FOR ASSURANCE OF PAYMENT?

AGREEMENT REFERENCE: GT&C 7.2.2

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE CONCERNING SECTION 7.2.2.

A. The parties have two disagreements concerning Section 7.2.2. To explain them, I will begin by describing the agreed language in that provision. Section 7.2.2 allows SBC Missouri to request a deposit from Level 3 if there is an "impairment of the established credit, financial health or credit worthiness of Level 3." The provision goes on to say that, "Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's and the Wall Street Journal," and it then describes the particular types of financial information that can be considered. Again, all of that is agreed language. Thus, the parties have agreed that SBC Missouri may request a deposit from Level 3 if Level 3's credit, financial health, or credit worthiness is impaired, as indicated by specified types of financial information reported in reliable financial sources.

Q. YOU SAID THE PARTIES HAD TWO DISAGREEMENTS ABOUT SECTION 7.2.2. WHAT IS THE FIRST ONE?

A. Level 3 proposes to add language that would require the impairment to Level 3's credit, financial health, or credit-worthiness to be "**significant and material**" in order for SBC Missouri to be entitled to request a deposit.

Q. WHAT'S WRONG WITH THAT? SBC MISSOURI SHOULDN'T BE ALLOWED TO REQUEST A DEPOSIT BASED ON AN IMPAIRMENT OF LEVEL 3'S CREDITWORTHINESS THAT IS INSIGNIFICANT OR IMMATERIAL, SHOULD IT?

A. That's not the point, and no, SBC Missouri's position is not that it wants to be able to request a deposit when the impairment is insignificant or immaterial. Rather, the point is that Level 3's language is an obvious invitation to disputes, because it is absolutely unclear what "significant and material" means. If Level 3's language were adopted, it is practically guaranteed that in any instance where SBC Missouri requested a deposit pursuant to Section 7.2.2, Level 3 would dispute the request – or at least could dispute the request – by claiming that the impairment reported in the financial sources was not significant and material. (And in any such dispute, Level 3 would probably argue that SBC Missouri, as the party seeking the deposit, had to bear the burden of providing significance and materiality.) The whole purpose of the deposit requirement is to get funds on deposit before a financially shaky CLEC runs up large bills that may never get paid, and Level 3's proposed right to contest any request for a deposit under Section 7.2.2 on grounds of materiality or significance – and thus to delay the posting of any deposit – would defeat that purpose.

Q. DOES SBC HAVE ANY OTHER OBJECTIONS TO LEVEL 3'S PROPOSED ADDITION OF THE WORDS "SIGNIFICANT AND MATERIAL" TO SECTION 7.7.2?

A. Yes. One of Level 3's themes in connection with the assurance of payment provisions is – or at least I thought it was – that the criteria for requesting an assurance of payment should be concrete, clearly-defined and objective. Section 7.2.2, in the form SBC Missouri proposes, meets that test, because it assesses creditworthiness based on the corporate credit ratings issued by independent credit rating agencies such as Moody's or Standard & Poor's. Credit ratings are a key and objective measure of a company's ability to pay its bills. Furthermore, companies with credit ratings below investment grade have historically high default rates. (MCI is a perfect example of this as its downgrade to below investment grade in April 2002 foreshadowed its eventual bankruptcy filing in July 2002.) Level 3's proposal to introduce vague and ambiguous notions of "significance" and "materiality," on the other hand, would undermine the concreteness and objectivity of the criteria in Section 7.2.2.

Q. WHAT IS THE PARTIES' SECOND DISAGREEMENT CONCERNING SECTION 7.2.2?

A. Section 7.2.2 begins by saying that SBC Missouri may request a deposit if "at any time on or after the Effective Date" there has been impairment in Level 3's credit, financial health, or credit-worthiness. This gives rise to the obvious question: impairment as compared to when? Level 3 proposes that the baseline date be the Effective Date of the interconnection agreement, so that a deposit could be requested only if Level 3 suffered an impairment of credit after the Effective Date. SBC Missouri, on the other hand, proposes that the baseline date be August 1, 2004 – which is a date that SBC Missouri chose because it was in the midst of the parties' negotiations over this ICA.

Q. WHY SHOULD THE COMMISSION CHOOSE SBC MISSOURI'S DATE OVER LEVEL 3'S DATE?

A. Level 3's proposed date is inconsistent with language to which Level 3 has already agreed. If Level 3's proposed date were adopted, Section 7.2.2 would say that SBC Missouri could request an assurance of payment if "at any time ***on or after*** the Effective Date," Level 3's credit was impaired "as compared to its status on ***the Effective Date***." Obviously, it is impossible for Level 3's status on the Effective Date to be impaired as compared to Level 3's status on the Effective Date. Thus, Level 3's proposal leads to an absurdity, and should be rejected.

Differently put, the first few words of Section 7.2.2 clearly reveal an understanding that there can be an impairment not only *after* the Effective Date, but *on* the Effective Date as well. And the only way one can discern an impairment *on* the Effective Date is by looking back to a point in time *before* the Effective Date. That, in turn, makes sense, because we cannot know today what Level 3's financial condition will be on the Effective Date; the most we can know is that Level 3's financial condition is sound today. If Level 3's financial condition suffers an impairment between today and the Effective Date, SBC Missouri should be allowed to request a deposit. That is what SBC Missouri's language seeks to accomplish, but as the best available proxy for "today," it uses August 1, 2004, when the parties negotiated the language at issue.

Q. WHAT IS YOUR CONCLUSION ON GT&C ISSUE 3?

A. The Commission should accept SBC Missouri's proposed language for Section 7.2.2 ("August 1, 2004") and should reject Level 3's proposed language ("the Effective Date" and "significant and material").

GT&C ISSUE 4: IN ORDER FOR FAILURE TO TIMELY PAY A BILL TO TRIGGER A REQUEST FOR ASSURANCE OF PAYMENT, WHICH PART(IES) MUST COMPLY WITH THE

PRESENTATION AND DISPUTE RESOLUTION REQUIREMENTS OF THE AGREEMENT AND TO WHAT EXTENT?

AGREEMENT REFERENCE: GT&C SECTION 7.2.3

Q. PLEASE DESCRIBE THE PARTIES' DISPUTE CONCERNING GT&C SECTION 7.2.3.

A. There are actually two disagreements concerning Section 7.2.3, and they both arise out of Level 3 proposals to add to the language on which the parties have agreed. Agreed language in Section 7.2.3 permits SBC Missouri to request a deposit if Level 3 fails to pay a bill, except to the extent the bill is "subject to a good faith, bona fide dispute" as to which Level 3 has "complied with all requirements set forth in Section 9.3," which prescribes the procedure for disputing a bill. Level 3 proposes two additions to the agreed language. First, Level 3 proposes to add the word "substantially" before "complied," so that Level 3 would only have to "substantially comply" with the requirements of Section 9.3. Second, Level 3 proposes to add the following at the end of Section 7.2.3: "provided that [SBC Missouri] has likewise substantially complied with all requirements of this Agreement with respect to presentation of invoices and dispute resolution" – so that SBC Missouri could not request a deposit from Level 3 after a Level 3 failure to pay a bill unless SBC Missouri has substantially complied with those requirements. SBC Missouri opposes both additions proposed by Level 3.

Q. WHAT IS WRONG WITH LEVEL 3'S PROPOSAL THAT IT BE REQUIRED TO "SUBSTANTIALLY COMPLY," RATHER THAN "COMPLY" WITH THE REQUIREMENTS OF SECTION 9.3?

A. Just as the parties are required to comply with all the other provisions of the ICA, so Level 3 should be required to comply with Section 9.3, not just "substantially" comply with it. Like Level 3's proposal to insert the words "significant and material" into Section 7.2.2, Level 3's proposal to insert "substantially" here would introduce an

element of vagueness and uncertainty into the parties' dealings that would promote disputes later. Sections 9.3.1, 9.3.2, and 9.3.3 provide reasonable language, as evidenced by Level 3's agreement to those provisions, for the non-paying party that wishes to dispute a bill to (1) pay all undisputed charges; (2) notify the billing party in writing which portion(s) of the unpaid charges it disputes, including necessary details to investigate the dispute; (3) pay all disputed amounts into an interest bearing escrow account; and (4) furnish written evidence to the Billing Party that the Non Paying Party has established an interest bearing escrow account and deposited a sum equal to the disputed amounts into that account. Having agreed to these requirements, Level 3 should be required to comply with them, not to "substantially comply" with them, exactly as both parties are required to comply with the other provisions of the ICA.

Q. WHAT IS SBC MISSOURI'S OBJECTION TO LEVEL 3'S SECOND PROPOSED ADDITION TO SECTION 7.2.3, CONCERNING SBC MISSOURI'S COMPLIANCE WITH THE REQUIREMENTS OF THE AGREEMENT WITH RESPECT TO PRESENTATION OF INVOICES AND DISPUTE RESOLUTION?

A. Level 3's proposed language has a legitimate purpose, but it is broader than it needs to be – so broad, in fact, that it must be rejected because it would undermine Section 7.2.3. To set the context, recall that this Section 7.2.3 permits SBC Missouri to request a deposit from Level 3 if Level 3 fails to pay a bill, except to the extent that Level 3 has raised a bona fide dispute concerning the bill pursuant to the procedures set forth in Section 9.3. Level 3's concern, as I understand it, is that it must receive sufficient notice and have had the opportunity to correct a potential problem. In other words, Level 3 does not want to be required to make a deposit in a situation where it has failed to pay a bill and has also failed to dispute the bill pursuant to the procedures in section 9.3 because of a failure on

SBC's part to present the bill properly or to adhere to its own counterpart obligations under section 9.3.

That is a legitimate concern, and SBC Missouri would have accepted a Level 3 language proposal that dealt with the concern appropriately. For example, SBC Missouri could have accepted a proposal to the effect that SBC Missouri could not request a deposit from Level 3 if Level 3's failure to pay a bill or dispute the bill was *caused by* or *resulted from* a failure by SBC Missouri to comply with its obligations with respect to invoicing or dispute resolution. The language Level 3 has proposed goes far beyond that, however. It would prohibit SBC Missouri from requesting a deposit from Level 3 if SBC Missouri did not comply – apparently at any time, and not necessarily in connection with the episode at issue – "with *all* requirements of this Agreement with respect to presentation of invoices and dispute resolution." Under Level 3's language, in other words, if SBC Missouri ever, at any time, failed to substantially comply with one of those requirements, SBC Missouri could never request a deposit from Level 3 based on a Level 3 failure to pay a bill, even if there were no connection between SBC Missouri's failure and Level 3's failure. That makes no sense, and would, if SBC Missouri ever slipped up with respect to the presentment of an invoice, eliminate SBC Missouri's rights under Section 7.2.3. Accordingly, Level 3's proposal must be rejected.

Q. WHAT IS YOUR CONCLUSION ON GT&C ISSUE 4?

A. The agreed language in Section 7.2.3 sets forth reasonable provisions for payment and dispute of bills, and should be accepted without either of the unreasonable additions proposed by Level 3.

GT&C ISSUE 5: SHOULD LEVEL 3 BE PERMITTED TO DISPUTE THE REASONABLENESS OF AN SBC REQUEST FOR ASSURANCE OF PAYMENT?

AGREEMENT REFERENCE: GT&C SECTIONS 7.8 AND 7.8.1

Q. WHAT IS THIS ISSUE ABOUT?

A. Level 3's proposed language in GT&C Section 7.8 would allow it to dispute an assurance of payment request based on a contention that the request was not "reasonable." On the surface, that might appear to be a reasonable proposal. Upon consideration, however, it is not. SBC Missouri can request an assurance of payment only if certain precise criteria – spelled out in detail in Sections 7.2.1, 7.2.2, 7.2.3 and 7.2.4 – are met. If those criteria are met, SBC Missouri is permitted to request an assurance of payment. And if they are met, Level 3 cannot properly be permitted to dispute the request on the grounds that it is not "reasonable." By definition, if the criteria are met, the request is appropriate. To add on top of that a vague additional requirement that the request, in addition to meeting the specified criteria, must also pass an undefined "reasonableness" test would accomplish nothing except to allow Level 3 to dispute any request it chose. Level 3's proposal here makes no more sense than would a proposal that SBC Missouri's bills, in addition to being accurate and reflecting the prices called for by the contract, must also be "reasonable."

If SBC requests a deposit and Level 3 believes the request is improper, Level 3 can dispute the request, but the basis of the dispute must be that the criteria set forth in sections 7.2.1, 7.2.2, 7.2.3 and 7.4 have not been met – not that the request is "unreasonable." For example, if SBC requests a deposit pursuant to section 7.2.3 on the ground that Level 3 failed to timely pay a bill, Level 3 can dispute the request by asserting (if it has a basis for doing so) that it was not untimely in its payment, or that it was disputing the bill, and so forth. But if the conditions of section 7.2.3 are met, Level 3

should not be allowed to dispute the request for deposit on the ground that even so, the request is unreasonable. The way for Level 3 to satisfy itself that the ICA allows SBC to request a deposit only when the circumstances warrant such a request is to make sure that the criteria set forth in sections 7.2.1 through 7.2.4 are themselves reasonable – and Level 3 is doing exactly that by arbitrating some of the language in those provisions.

Q. IS THERE ANY DISPUTED LANGUAGE IN SECTION 7.8 IN ADDITION TO WHAT YOU HAVE DISCUSSED?

A. Yes. What I have discussed so far in connection with Section 7.8 is Level 3's proposed language that would permit Level 3 to raise a dispute with regard to the reasonableness of a request for a deposit. As I have explained, that language should be rejected. Also in Section 7.8, however, SBC Missouri proposes to include the following:

> Provided, however, that [SBC] will permit **LEVEL 3** a minimum of 10 Business Days to respond to a request for assurance before invoking this section.

The rationale for that sentence is this: Under Section 7.8, SBC Missouri has no duty to continue to provide services to Level 3 after SBC Missouri has requested a deposit until Level 3 provides the deposit (unless, of course, Level 3 disputes whether the conditions for requesting a deposit have been met). In the sentence quoted above, SBC Missouri is saying that it will not invoke its right to cease providing service to Level 3 immediately upon requesting a deposit, but instead will wait *at least* 10 business days ("a minimum of 10 Business Days"), so that Level 3 can respond to the request. Level 3 apparently opposes the inclusion of this sentence.

Q. DO YOU KNOW WHY?

A. No, I cannot imagine why Level 3 would oppose SBC's language. Without SBC Missouri's language, the contract would allow SBC Missouri to withhold services from Level 3 immediately after requesting a deposit, until the deposit is received. With SBC

Missouri's language, Level 3 has an ample opportunity to respond to the request for deposit, or to dispute the request if appropriate. Since the language that Level 3 is proposing works in Level 3's favor, it makes no sense to me that Level 3 has not accepted it.

Q. WHAT IS YOUR CONCLUSION ON GT&C ISSUE 5?

A. Since SBC Missouri can only request assurance of payment if specific criteria are met, Level 3 should not be permitted to dispute the assurance of payment request on the basis that the request is "unreasonable." If Level 3 believes the request is improper because the criteria set forth in the ICA are not met, then of course Level 3 is entitled to dispute SBC Missouri's request on that basis. But it would be nonsensical to permit Level 3 to also dispute SBC Missouri's request based on a reasonableness standard. Either the criteria are met, in which case a deposit is required, or they have not been met and a deposit is not required. Apart from that, SBC Missouri's proposal to allow Level 3 a minimum of 10 business days before invoking its rights under Section 7.8 is plainly reasonable. Therefore, the Commission should adopt SBC Missouri's proposed language on this issue and reject Level 3's.

GT&C ISSUE 6: UNDER WHAT CIRCUMSTANCES MAY SBC DISCONNECT SERVICES FOR NONPAYMENT?

AGREEMENT REFERENCE: GT&C SECTION 8.8.1

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING SECTION 8.8.1?

A. Section 8.8.1 provides, in agreed language, that if a billing dispute is resolved in favor of the Billing Party, the billed party's failure to pay the amounts determined to be owing within a specified time "shall be grounds for termination of the . . . products and services provided under this Agreement." There then follows agreed language that states: "provided, however, that the Billing Party shall comply then with all procedures set forth

under this Section 8 regarding discontinuance of service and/or termination of this Agreement." (NOTE: The GT&C and Appendix that the parties filed shows that language as disputed. It is not disputed; Level 3 proposed it, and SBC accepts it.) GT&C Issue 6 concerns Level 3's proposal to add to that proviso the words "and otherwise set forth in applicable law." Thus, the language in question is as follows, with Level 3's proposed bolded and underlined:

> provided, however, that the Billing Party shall comply then with all the procedures set forth under this Section 8 **and otherwise set forth in applicable law** regarding discontinuance of service and/or termination of this Agreement.

Q. WHAT IS SBC MISSOURI'S OBJECTION TO INCLUDING THE REFERENCE TO APPLICABLE LAW?

A. Level 3's proposed invocation of "applicable law" in this provision is unacceptable for the same reason as its proposed invocation of the same vague term elsewhere in the ICA. The purpose of the Agreement is to set forth in detail the parties' rights and obligations in light of current law, and to the extent that there is any pertinent "applicable law," Level 3 should bring that law to the Commission's attention now and advocate its express inclusion in the Agreement. Approval of Level 3's proposed language in its current form would be an invitation to disputes later about what is and what is not "applicable law."

Q. IS SBC MISSOURI SAYING THAT IT WILL NOT NECESSARILY COMPLY WITH THE LAW?

A. Absolutely not. SBC Missouri has every intention of complying with all applicable law, and if SBC Missouri fails to do so, it would – by definition – face whatever consequences the law affords for violations. But SBC Missouri does oppose vague and confusing contract terms, and adding a vague reference to "applicable law" in this instance certainly qualifies. SBC Missouri believes that Agreements should be as clear as possible in their terms so that both parties fully understand their obligations, and if Level 3 wants to turn

into a contract obligation a requirement of law with which SBC Missouri is already required to comply, Level 3 should say what that requirement is. If Level 3 has any specific applicable law requirement, it should present that now for the Commission's consideration. In the absence of any clarity from Level 3 on this issue, the Commission should reject Level 3's request to add "applicable law" to Section 8.8.1.

GT&C ISSUE 7: SHOULD LEVEL 3'S FAILURE TO PAY UNDISPUTED CHARGES ENTITLE SBC TO DISCONTINUE PROVIDING ALL PRODUCTS AND SERVICES UNDER THE AGREEMENT, OR ONLY THE PRODUCT(S) OR SERVICE(S) FOR WHICH LEVEL 3 HAS FAILED TO PAY UNDISPUTED CHARGES?

AGREEMENT REFERENCE: GT&C SECTION 9.2

Q. WHAT ARE THE PARTIES' DISAGREEMENTS CONCERNING GT&C SECTION 9.2?

A. There are three disagreements shown on the DPL, only one of which is referenced in the statement of the issue set forth above. The other two are (i) whether the provision should say that a failure to pay undisputed charges "shall" be grounds for disconnection or "may" be grounds for disconnection; and (ii) whether Unpaid Charges (as defined) must be paid within 30 Calendar Days or 10 Business Days following receipt of a notice of unpaid charges.

Q. TURNING FIRST TO "SHALL" VS. "MAY," WHY SHOULD SECTION 9.2 SAY THAT A FAILURE TO PAY UNDISPUTED BILLS "SHALL BE" GROUNDS FOR DISCONNECTION, RATHER THAN "MAY BE"?

A. The use of "may" makes no sense, because it raises the unanswered question, "Depending on what?" Assume that Level 3 fails to pay undisputed charges, and that SBC Missouri then undertakes to terminate its provision of services to Level 3 exactly as prescribed in the remainder of Section 9.2. Is Level 3 permitted to say, "No, SBC, you cannot do that, because our failure to pay only "may" be grounds for disconnection? Of

course not – in part because if Level 3 were permitted to dispute SBC Missouri's right to disconnect on that ground, there is no way (either in the proposed contract language or otherwise) to determine when the failure to pay ***is*** grounds for disconnection.

The only intent of Section 9.2 that makes sense is that a failure to pay ***is*** – *i.e.*, "shall be" grounds for disconnection. The use of that term does not, of course, mean that disconnection would be automatic if Level 3 failed to pay undisputed charges, but only that under this agreement nonpayment is in fact grounds for disconnection under the circumstances described. (The way one would say that disconnection is automatic is not that a failure to pay shall be *grounds for* disconnection, but that service "shall be disconnected" if there is a failure to pay.)

Q. TURNING NEXT TO THE ISSUE SET FORTH IN THE ISSUE STATEMENT ABOVE, WHY SHOULD LEVEL 3'S FAILURE TO PAY UNDISPUTED CHARGES RESULT IN DISCONTINUANCE OF ALL SERVICES PROVIDED UNDER THIS AGREEMENT?

A. SBC Missouri and Level 3 have agreed to language in Section 8.1 that provides for remittance in full of all bills rendered by 30 calendar days from the bill date or in accordance with the terms set forth in the applicable tariff. Thirty days allows sufficient time for Level 3 to review and pay any undisputed charges and deposit the disputed charges in an escrow account. If funds have not been received by the bill due date, a written notice of unpaid charges (first late notice) is sent requiring remittance of unpaid charges within 10 business days (Section 9.2), and, finally, a written demand letter (second late notice) is sent to the non-paying party for payment within 10 business (Section 9.5.1) days before SBC Missouri begins (1) suspending acceptance of service/product order, (2) suspending completion of any pending service/product order and/or (3) discontinuing providing Interconnection, Resale Services, Network Elements,

Collocation, functions, facilities products or services under the ICA. In sum, under SBC Missouri's proposed language, Level 3 would have approximately 60 days from the invoice date to analyze and determine if there is a dispute with an invoice and pay the undisputed portion of the bill. Sixty days is ample time to review and pay or dispute the bill.

Against that background, there are two reasons for allowing SBC Missouri to terminate all services to Level 3 if Level 3 fails to pay its undisputed bills: First, the simple fact of the matter is that if Level 3 is failing to pay its undisputed bills, it is failing to pay its undisputed bills. The reason for the termination of service is that if a customer is failing to pay without any valid excuse, the risk that that customer will continue to fail to pay is very high, so it would be commercially irrational for the seller, SBC Missouri in this case, to continue to provide services. It makes no difference what services the customer fails to pay for. (If a customer of Sears failed to pay for couches, one would not expect Sears to discontinue selling furniture to that customer but to continue to sell him automotive products.)

Second, Level 3's proposal is unworkable, because it would limit treatment options to individual services (presumably individual Billing Account Numbers). This scheme is administratively burdensome and would also invite potential mischief on the part of Level 3 since it could choose to transfer services between different services in order to avoid disconnection. For example, resale end users could be converted to UNE lines, which would cause the same services to be billed under different accounts. The Commission should keep in mind that SBC Missouri can only terminate services for the non-payment of undisputed charges.

Q. WHAT ABOUT THE THIRD DISAGREEMENT CONCERNING SECTION 9.2, CONCERNING 30 CALENDAR DAYS VS. 10 BUSINESS DAYS?

A. The period of time in question is the period within which a Non-Paying Party must remit all Unpaid Charges to the Billing Party following receipt of the Billing Party's notice of Unpaid Charges. "Unpaid Charges" are defined in Section 9.2 as "*undisputed* charges billed . . . under this Agreement, including . . . any Late Payment charges or miscellaneous charges." The Billing Party's notice of Unpaid Charges is described in Section 9.2 as a written notice that is sent to the Non-Paying Party, in the event that payment for undisputed charges is not made, notifying the Non-Paying Party "that in order to avoid disruption or disconnection of . . . products and services," the Non-Paying Party must remit all Unpaid Charges to the Billing Party within the specified time – either 30 Calendar Days (Level 3's proposal) or 10 Business Days (SBC Missouri's proposal).

Q. WHY SHOULD THE COMMISSION SELECT SBC MISSOURI'S PROPOSAL OVER LEVEL 3'S?

A. Bear in mind that in the situation at issue here, Level 3 initially had 30 days to pay its bill; failed to pay or dispute the bill; and SBC Missouri at some point thereafter is sending Level 3 a notice that it must pay the undisputed charges within a stated period of be at risk of a termination of service. In that scenario, 10 business days – two full weeks – is ample time for Level 3 to make its already late payment. This is not to say, of course, that SBC Missouri will actually terminate service 10 business days after sending the notice if Level 3 fails to pay, but SBC Missouri should have the contractual right to do so.

GT&C ISSUE 8: WHAT IS A REASONABLE INTERVAL TO RESPOND TO NOTICE OF NON-PAYMENT IN THE MANNER REQUIRED UNDER THE AGREEMENT?

AGREEMENT REFERENCE: GT&C SECTION 9.3

Q. HOW LONG SHOULD A PARTY HAVE TO DISPUTE AND PROVIDE NOTICE OF A DISPUTE?

A. Ideally, a party should have to provide notice of a billing dispute on or before the payment due date of the disputed charge. SBC Missouri, in the spirit of compromise, has offered Level 3 language whereby the billed party would not have to formally dispute charges until 10 business days following the receipt of a collection notice, which would give the billed party a minimum of 45 days from the invoice date to formally dispute a charge. Pursuant to Section 8.1 of the GT&Cs, remittance is due within 30 calendar days of each bill date. Therefore, adding in 10 business days to the 30 calendar days would give Level 3 approximately 45 days to audit its bills and properly dispute charges. Level 3 seeks, with its inclusion of 30 days in Section 9.3, 60 days from the invoice date within which to pay or dispute a bill. This is unacceptable, because it would create an incentive for Level 3, or any other CLEC, to delay the filing of billing disputes and this would increase the risk of default to SBC Missouri.

SBC Missouri proposes that Level 3 provide written notification of a potential billing dispute on or before the due date, which is 30 days following the bill date, and provide specific details of the dispute, pay any undisputed charges and pay any disputed amount into an interest bearing escrow account within 10 business days after the due date. SBC Missouri has standard escrow and deposit agreements that many CLECs and escrow agents have signed and which allow for quick execution of an escrow agreement and establishment of an escrow account. Consequently, Level 3 has approximately 45 days to meet the provisions of SBC Missouri's proposed GT&C Section 9.3 if there are any disputed amounts. This is ample time for a CLEC to receive and review the bill for any discrepancies, and it reflects SBC Missouri's practice with commercial customers for

years. If growing customer volumes are preventing Level 3 from working through call details and records in a timely manner, then Level 3 should bear the burden of increasing its work forces or employing other means to accommodate the needs of its businesses; the burden should not be placed on SBC Missouri. The timely raising of its billing disputes is critical to properly resolving such disputes and keeping billings current. The time frames used by SBC Missouri are commercially reasonable and necessary.

GT&C ISSUE 9: **(A) SHOULD ACCEPTANCE OF NEW ORDER AND PENDING ORDERS BE SUSPENDED IF UNDISPUTED CHARGES ARE OUTSTANDING ON THE DAY THE BILLING PARTY HAS SENT A SECOND LATE PAYMENT NOTICE?**

(B) SHOULD THE BILLING PARTY BE PERMITTED TO DISCONNECT AND DISCONTINUE PROVIDING ALL PRODUCTS AND SERVICES UNDER THE AGREEMENT, OR ONLY THOSE SPECIFIC NETWORK ELEMENTS AND SERVICES FOR WHICH UNDISPUTED PAYMENT HAS NOT BEEN RENDERED?

AGREEMENT REFERENCE: GT&C SECTIONS 9.5.1, 9.5.1.1, 9.5.1.2, 9.6.1.1, 9.6.1.2, 9.7.2.2.

Q. WHAT IS THE DISPUTE REGARDING (A) ABOVE?

A. SBC Missouri's proposed language in Section 9.5.1 provides that if the non-paying party breaches the ICA as specified in these sections, or in other words, fails to: (a) pay any undisputed amounts, (b) file a bona fide dispute for amounts in dispute by the deadline provided in the first late payment notification, (c) pay the disputed portion of a past due bill into an interest-bearing escrow account, or (d) pay any revised deposit amount or make a payment in accordance with the terms of any mutually agreed upon payment arrangement, the billing party will, in addition to exercising any other rights or remedies, provide a second late payment notice/written demand to the non-paying party for failing to comply. At the time of the sending of the second late payment notice, the billing party

may suspend acceptance of any new orders and suspend completion of any pending orders. Level 3 opposes SBC Missouri's proposed language.

Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S LANGUAGE?

A. SBC Missouri's proposed language applies only in extreme cases of non-payment and comes into play only when a party fails to pay or dispute charges even after receiving a first late payment notice. It would be neither just nor reasonable to require SBC Missouri to continue providing ordering capability to a carrier that fails, after a written demand and without justification, to pay undisputed charges for those services. The remedies SBC Missouri is proposing do not come into play when a party merely fails to pay its bill when due, but when, for example, a party fails to pay even after receiving a first late payment notice and even though the party does not dispute the amount billed; or when a party falls behind in its payment, enters into a payment plan, fails to make the payments it agreed to make, receives a second written demand, and still fails to pay. A CLEC has 30 days from invoice date to pay its bill or dispute the charges and then is given a first collection notice that gives the CLEC a total of 10 business days to pay the undisputed charges that are due. Thus, the CLEC has approximately 45 calendar days from the invoice date to pay undisputed charges or face the suspension of their ordering capability. This is sufficient time for the CLEC to make payments, and SBC Missouri should be allowed to hold orders if the CLEC is unable to do so.

Q. WHAT IS LEVEL 3'S OBJECTION TO SBC MISSOURI'S LANGUAGE IN SECTION 9.5.1?

A. Similar to GT&C Issue 8, Level 3 is claiming that 45 days is not sufficient time to audit a bill, pay the undisputed charges, and properly dispute the disputed charges. SBC Missouri believes that 45 days is sufficient time in order to complete these tasks and therefore requests that SBC Missouri's proposed language be adopted.

Q. WHAT IS SBC MISSOURI'S POSITION REGARDING (B) ABOVE?

A. As I have explained, SBC Missouri's language applies only in extreme cases of non-payment and comes into play only when a party fails to pay or dispute charges even after receiving a second late payment notice. It would be neither just nor reasonable to require SBC Missouri to continue providing services to a carrier that fails, after repeated demands and without justification, to pay undisputed charges for those services. If that extreme situation ever arises, SBC Missouri should be permitted to suspend acceptance of orders from Level 3, in accordance with SBC Missouri's proposed Sections 9.5.1.1 and 9.5.1.2.

Q. WHAT IS LEVEL 3'S OBJECTION TO SBC MISSOURI'S LANGUAGE?

A. Level 3 proposes that SBC Missouri only be allowed to disconnect the specific service(s) or product(s) for which Level 3 has failed to pay the undisputed amount.

Q. WHAT IS SBC MISSOURI'S POSITION REGARDING LEVEL 3'S LANGUAGE?

A. Level 3's proposal is unworkable because it would limit treatment options to individual services (presumably individual Billing Account Numbers). This scheme would be administratively burdensome for SBC Missouri and would also invite potential mischief on the part of Level 3, which could choose to transfer services between different services in order to avoid disconnection. For example, resale end users could be converted to UNE lines, which would cause the same services to be billed under different accounts. If Level 3 fails to pay any undisputed balances owed after receiving two late payment notices, SBC Missouri should be entitled to disconnect all the services provided to Level 3 under this Agreement. It is simply unreasonable to force SBC Missouri to sustain the increased financial losses that would come if Level 3's proposal were implemented.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.