

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**  
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**LEVEL 3 COMMUNICATIONS, LLC (U-5941-C)**

**Complainant,**

v.

**PACIFIC BELL TELEPHONE  
COMPANY, d/b/a AT&T CALIFORNIA  
(U-1001-C),**

**Defendant.**

**C1012018**

**Case No. \_\_\_\_\_**

**COMPLAINT OF LEVEL 3 COMMUNICATIONS, LLC (U-5941-C)**

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Attorneys for Level 3 Communications, LLC

December 29, 2010

**COMPLAINT OF LEVEL 3 COMMUNICATIONS, LLC (U-5941-C)**

Pursuant to Section 1702 of the California Public Utilities Code and Rule 4 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, Level 3 Communications, LLC (U-5941-C) (“Level 3”), by and through the undersigned counsel, respectfully submits this Complaint against Pacific Bell Telephone Company, d/b/a AT&T California (U-1001-C) (“AT&T”) (together, Level 3 and AT&T are the “Parties”).

Level 3 alleges as follows:

**PARTIES AND JURISDICTION**

1. Complainant Level 3 is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Broomfield, Colorado. Level 3 is qualified to do business in California and is a telecommunications carrier which is authorized to provide telecommunications services in California.

2. Correspondence and communications, including all notices and pleadings, concerning this Complaint should be addressed to:

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and

3. Defendant AT&T is a company qualified to do business in California and is authorized to provide telecommunications services in this state. AT&T is an incumbent local exchange carrier (“ILEC”) as that term is defined in the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”), specifically in 47 U.S.C. § 251(h).

4. The Commission has jurisdiction over this Complaint pursuant to California Public Utilities Code Sections 453, 532, 701, 1702 and Sections 201, 251, and 252 of the Act. Sections 701 and 1702, *inter alia*, of the California Public Utilities Code provide the Commission with the authority to supervise and regulate public utilities, including the authority to supervise and regulate public utilities, including the authority to enforce interconnection agreements approved by the Commission pursuant to the Act. In addition, the Federal Communications Commission (“FCC”) has specifically held that the type of cross-connection dispute at issue here, like other interconnection disputes, will be addressed in the first instance at the state level.<sup>1</sup>

### **BACKGROUND**

5. Level 3 entered into an interconnection agreement with AT&T, which the Commission approved on April 21, 2005, and which has subsequently been amended and modified (the “ICA”). A true and correct copy of the relevant portions of the ICA is attached to this Complaint as Exhibit A.

6. Level 3 has obtained and continues to maintain physical collocation in several AT&T wire centers in California pursuant to Level 3’s approved ICA with

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<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 10-204, *Fourth Report and Order*, 16 FCC Rcd 15435 at ¶ 84 (“Collocation Cross-Connect Order”).

AT&T. Level 3 used this collocation to place equipment enabling Level 3 to interconnect with AT&T and to access unbundled network elements (“UNEs”).

7. Level 3 obtains cabling from AT&T that originates on Level 3’s collocated equipment and terminates on an AT&T Main Distribution Frame (“MDF”) and/or Intermediate Distribution Frame (“IDF”). AT&T also terminates UNEs and interconnection facilities on those frames, and Level 3 accesses these facilities via a jumper cable or cross-connect between the Level 3 and AT&T termination points on the frames.

8. Other competitive local exchange carriers (“CLECs”) also collocate in AT&T wire centers and have established cabling between their collocated equipment and the AT&T MDF. Level 3 often seeks to interconnect with these other CLECs within an AT&T wire center, to exchange traffic or to obtain and/or provide access to competitive transport facilities. Where the exchanged traffic volumes or the amount of facilities accessed are sufficiently large, Level 3 and another CLEC may establish direct cabling between their collocation spaces. In most instances, however, the CLECs need only interconnection at the individual circuit level. In these cases, Level 3 requests that AT&T provide a jumper cable or cross-connect between one of Level 3’s terminations on the MDF and the other CLEC’s termination *on the same frame*.

9. Initially, Level 3 ordered CLEC Cross-Connects on the MDF via special access tariffs. AT&T provisioned these facilities out of its access tariff at non-cost based rates. For example, the tariffed rate that AT&T is charging Level 3 for a DS3 CLEC Cross-Connect is as high as \$723.96 per month.<sup>2</sup> Level 3 realized that AT&T’s

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<sup>2</sup> The tariffed CLEC Cross-Connect rate consists of two (2) termination elements and a “0 mile” transport element. By far the largest portion of the rate (approximately \$600) is for the “0 mile” transport element.

provisioning of these CLEC Cross-Connects as tariffed services was improper, and on November 30, 2009, inquired of AT&T why Level 3 was not billed from the rates in the approved ICA. AT&T did not respond to this inquiry.

10. AT&T has not been willing to provide the requested CLEC Cross-Connects as EISCCs under the ICA in wire centers that the Commission has determined are not impaired for interoffice transport under the criteria established by the FCC in its Triennial Review Remand Order (“TRRO”).<sup>3</sup> AT&T instead bills Level 3 for these facilities at the rates in AT&T’s interstate access tariff, which rates are substantially higher than the total element long-run incremental cost (“TELRIC”) based rates for EISCCs established by the Commission and incorporated into the ICA. AT&T claims that the fixed mileage charge included in the tariffed rate should be charged notwithstanding the fact that no mileage was involved.

11. On or about September 7, 2010, Level 3 began paying AT&T only the amounts it believed at that time were properly due for the CLEC Cross-Connects and withholding payments of the additional amounts charged by AT&T. As of that date, the amount Level 3 has withheld from payment totals approximately \$513,014.43. In addition, during this period, Level 3 inadvertently overpaid AT&T by approximately \$36,656.36 for the CLEC Cross-Connects which Level 3 also disputes, bringing the total amount in dispute to approximately \$549,670.79.

12. Level 3’s attempts to negotiate with AT&T to resolve the dispute informally for more than 14 months were unsuccessful. The Parties’ informal discussions

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<sup>3</sup> *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 04-290, *Order on Remand*, 20 FCC Rcd 2533 (2005) (“Triennial Review Remand Order”), *aff’d*, *Covad Comm. Co. v. FCC*, 450 F.3d 528 (DC Cir. 2006).

culminated in August, 2009. Level 3 then invoked the dispute resolution provisions of the ICA and sought negotiations between appropriate personnel at both companies. However, AT&T refused to meet and instead issued summary denials via email exchanges. AT&T continued to adhere to its position, despite the July 12, 2010 decision of the Commission in D.10-07-005, in which the Commission ruled against AT&T on substantially identical issues involving XO Communications Services, Inc. See Exhibit B to this Complaint.

13. AT&T has refused to further discuss the matter and accordingly, this Complaint follows. Level 3 therefore requests that the Commission resolve this dispute.

**FIRST CLAIM: INTERCONNECTION AGREEMENT VIOLATION**

14. Level 3 incorporates by this reference the allegations of paragraphs 1-13 above.

15. The FCC has concluded that ILECs, including AT&T, have an obligation under Sections 201 and 251(c)(6) of the Act to provide cross-connects between collocating carriers in an ILEC's wire center.<sup>4</sup> The FCC further requires AT&T, as an ILEC, to "provide the appropriate cross-connect as requested by the collocated competitive LECs."<sup>5</sup> Specifically, "in provisioning cross-connects, incumbent LECs should use the most efficient interconnection arrangements available that, at the same time, impose the least intrusion on their property interest. This requirement merely allows the collocator to use the existing network in as efficient a manner as the incumbent uses it for its own purposes."<sup>6</sup>

16. The ICA between Level 3 and AT&T incorporates and is subject to the FCC's collocation cross-connect requirements and obligates AT&T to provision, or to

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<sup>4</sup> See Collocation Cross-Connect Order.

<sup>5</sup> *Id.* at ¶ 74.

<sup>6</sup> *Id.* at ¶ 76.

allow Level 3 to provision, cross-connects with other collocated CLECs using the EISCCs that Level 3 and the other CLEC obtain from AT&T. Provisioning CLEC Cross-Connects via EISCCs is far more efficient and inexpensive than establishing cabling directly between the CLECs' collocation spaces when traffic volumes do not warrant.

17. Section 2 of the Appendix UNE to the ICA requires AT&T to provide UNEs to Level 3 as required by the FCC, and Section 18 of the same appendix obligates AT&T to provide Cross-Connects to permit Level 3 to obtain access to such UNEs.

18. Section 4.8 of the Appendix Physical Collocation to the ICA specifically provides:

Cross-connects between LEVEL 3 and other telecommunication carriers collocated at SBC-13STATE premises will be allowed in accordance with applicable state and federal law, rules and regulations.

19. Section 6.1.1 of the Appendix Physical Collocation additionally permits Level 3 to provide its own cross-connects in AT&T central offices where Level 3 is physically collocated.

20. The Collocation Rate Summary attached to the ICA provides the non-recurring and recurring charges applicable to such Cross-Connects between CLECs under the ICA. Those rates are currently applicable to all Cross-Connects obtained by Level 3 from AT&T for Level 3 to cross-connect with other CLECs.

21. AT&T has refused to acknowledge the CLEC Cross-Connect and collocation requirements in the ICA, including incorporation of the FCC's Collocation Cross-Connect Order and agreed pricing of Cross-Connects.

22. AT&T instead claims that the TRRO requires Level 3 to pay special access tariff rates for EISCCs provisioned on the MDF in wire centers that the

Commission has determined satisfy the FCC's non-impairment criteria for interoffice transport in the TRRO. Neither the TRRO nor the ICA however even mentions CLEC Cross-Connects, much less include them among the list of UNEs that ILECs are no longer required to provide when the FCC's non-impairment criteria are met. Nor does the TRRO modify or otherwise affect the requirements of the FCC Collocation Cross-Connect Order or the ICA provisions governing CLEC Cross-Connects and AT&T's related collocation obligations pursuant to Section 251(c)(6) of the Act.

23. AT&T therefore is in continuing violation of the ICA by refusing to provide collocations CLEC Cross-Connects to Level 3 at TELRIC-based rates in all AT&T wire centers in California in which Level 3 has requested such CLEC Cross-Connects.

#### **SECOND CLAIM: FEDERAL LAW VIOLATION**

24. Level 3 incorporates by reference the allegations of paragraphs 1-23 above.

25. AT&T has "[t]he duty to provide, on rates, terms, and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."<sup>7</sup> This duty requires AT&T, as an ILEC, to provide cross-connects between collocating carriers in AT&T's wire centers using the most efficient interconnection arrangements available.<sup>8</sup> AT&T must provide collocation at rates that are

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<sup>7</sup> 47 U.S.C. § 251(c)(6).

<sup>8</sup> Collocation Cross-Connect Order at ¶¶ 62-84.

based on TELRIC.<sup>9</sup> Therefore, under applicable federal law, AT&T is required to provide CLEC Cross-Connects to Level 3 at TELRIC-based rates established by the Commission.

26. AT&T instead claims that the TRRO requires Level 3 to pay special access tariff rates for EISCCs provisioned on the MDF in wire centers that the Commission has determined satisfy the FCC's non-impairment criteria for interoffice transport in the TRRO, and that AT&T is no longer obligated to provide these Cross-Connects at TELRIC-based prices. Neither the TRRO nor the ICA however even mentions CLEC Cross-Connects, much less include them among the list of UNEs that ILECs are no longer required to provide when the FCC's non-impairment criteria are met. Nor does the TRRO modify or otherwise affect the requirements of the FCC Collocation Cross-Connect Order or the ICA provisions governing CLEC Cross-Connects and AT&T's related collocation obligations pursuant to Section 251(c)(6) of the Act.

27. AT&T therefore is in continuing violation of federal law by refusing to provide collocations CLEC Cross-Connects to Level 3 at TELRIC-based rates in all AT&T wire centers in California in which Level 3 has requested such CLEC Cross-Connects.

#### **SCOPING MEMORANDUM INFORMATION**

28. Level 3 believes that this matter should be designated as an adjudicatory proceeding.

29. The issues to be considered in this matter include the following:

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<sup>9</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, FCC 96-325, *First Report and Order*, 11 FCC Rcd 15499 at ¶ 629 (1996).

- a. Whether AT&T has violated and is continuing to violate the ICA by refusing to provide collocation CLEC Cross-Connects to Level 3 at TELRIC-based rates;
- b. Whether AT&T has violated and is continuing to violate federal law by refusing to provide CLEC Cross-Connects to Level 3 at TELRIC-based rates;
- c. Whether AT&T should be required to convert, to the extent required and without charge to Level 3, Cross-Connects that AT&T has provisioned at tariffed rates to EISCCs or CLEC Cross-Connects under the ICA and federal law;
- d. Whether AT&T should be required to credit Level 3 the difference between the TELRIC-based rates established by the Commission for EISCCs and the tariffed rates AT&T has been charging and continues to charge Level 3 since July 15, 2007 for CLEC Cross-Connects in certain wire centers; and,
- e. Whether AT&T can refuse to accept order for new services or suspend provisioning activities on pending orders for service until this matter is resolved by the Commission.

30. Level 3 believes that an evidentiary hearing should not be necessary in this case, as the issues in this case are primarily legal in nature, and Level 3 anticipates that there are not likely to be material facts in dispute. Accordingly, Level 3 proposes the following procedural schedule for this proceeding:

<b>Procedural Deadline</b>	<b>Day</b>
Complaint	0
Answer to Complaint	20
Prehearing Conference	40

Scoping Memo	60
Stipulation of Material Facts	75
Opening Briefs (simultaneous)	110
Reply Briefs	135
Oral Argument	150
Presiding Officer Decision	200

### **REQUEST FOR RELIEF**

THEREFORE, Level 3 respectfully requests that the Commission grant to it the following relief:

1. Enforcement of the terms of the ICA and applicable federal law requiring AT&T to provide collocation CLEC Cross-Connects to Level 3 at TELRIC-based rates in all of AT&T's wire centers in California in which Level 3 requests such CLEC Cross-Connects;
2. An order directing AT&T to convert, to the extent required and without charge to Level 3, all CLEC Cross-Connects that AT&T has provisioned to Level 3 and charged Level 3 tariffed rates, to EISCCs or CLEC Cross-Connects under the ICA;
3. An order directing AT&T to credit Level 3 the difference between the tariffed rates AT&T has been charging Level 3 since July 15, 2007, and continues to charge Level 3, for CLEC Cross-Connects in certain wire centers and the TELRIC-based rates established by the Commission for EISCCs;

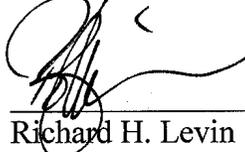
4. An order directing AT&T to continue providing services to Level 3, to continue processing and fulfilling requests for additional service and to continue provisioning activity on all pending orders until a final order is issued in this case;

5. Such additional relief as the Commission finds is fair, just and reasonable under all the circumstances of this matter.

Dated: December 29, 2010.

Respectfully submitted,

**Level 3 Communications, LLC**



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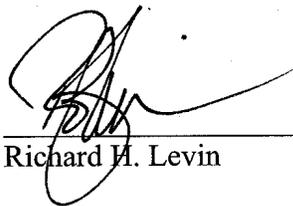
**VERIFICATION**

I, Richard H. Levin, do hereby verify this Complaint on behalf of Level 3 Communications, LLC and state:

I am the California attorney for Level 3 Communications, LLC (“Level 3”), the Complainant in this matter, and I am authorized to make this verification on Level 3’s behalf. Level 3 does not maintain an office and has no officer present in the county where my office is located. In addition, due to the holiday period, Level 3 does not have an officer available to verify this Complaint at this time. I have read the foregoing Complaint and I am informed and believe, and on that ground allege, that the matters stated in the Complaint are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 29<sup>th</sup> day of December, 2010, at Sebastopol, California.



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Richard H. Levin