Exhibit A

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

ORDER

May 30, 2003

Appearances

Frank G. Lamancusa, Telecom Dispute Solutions, Inc., Ashton, Maryland, **appearing as Arbitrator.**

Michael W. Fleming, Attorney at Law, Swidler Berlin Shereff Friedman, LLP, 3000 K Street N.W., Suite 300, Washington, D.C. 20007-5116, **appearing for Level 3 Communications, LLC.**

David J. Hogue, Attorney at Law, Pringle & Herigstad, 20 First Street S.W., Suite 201, P.O. Box 1000, Minot, North Dakota 58702-1000, **appearing for SRT Communications, Inc.**

William W. Binek, Special Assistant Attorney General, Public Service Commission, State Capitol, Bismarck, ND 58505-0480, **appearing for the Public Service Commission.**

Patrick Fahn and Jerry Lein, Public Service Commission, State Capitol, Bismarck, ND 58505-0480, **appearing as Technical Assistant to the Arbitrator.**

Preliminary Statement

On August 30, 2002, Level 3 Communications, LLC (Level 3) filed a Petition for Arbitration with the Public Service Commission (Commission), under 47 U.S.C. § 252(b) and N.D. Admin. Code Chapter 69-02-10, to establish an interconnection agreement between Level 3 and SRT Communications Cooperative a/k/a SRT Communications, Inc. (SRT) pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (Act). Level 3 requested, under 47 U.S.C. § 251(a), interconnection with SRT to provide

a telecommunications service that, in turn, supports the services of Internet Service Providers (ISPs).

On September 4, 2002, a Notice of Appearance was filed by David J. Hogue, Attorney for SRT Communications, Inc.

On September 16, 2002, Level 3 submitted names of proposed arbitrators, and on September 28, 2003, Level 3 filed an via e-mail a joint recommendation by the parties on Frank G. Lamancusa as the neutral arbitrator in this case. On September 19, 2002, the Commission appointed Frank G. Lamancusa as the arbitrator, and on October 10, 2002, the Commission appointed Patrick Fahn and Jerry Lein as staff advisors to the arbitrator.

On September 26, 2003, SRT filed its response to the petition for arbitration and a motion to dismiss.

On October 7, 2002, Level 3 filed its response to SRT's motion to dismiss, and on October 29, 2002 Level 3 filed a supplement to that response.

On October 18, 2002, the parties filed a stipulation for an extension of time beyond the statutory nine-month timeframe for the Commission to render its final decision in the case. On October 23, 2003, the Commission granted the joint request of the parties for an extension of the deadline under Section 252(b)(4)(C) extending the deadline for the arbitrator's decision to January 31, 2003.

On October 29, 2002, the arbitrator filed his recommended order concerning SRT's motion for dismissal recommending that the motion be denied. On November 4, 2002, SRT filed comments on the recommendation. On November 20, 2002, the Commission issued its order denying SRT's motion for dismissal.

On October 31, 2002, the arbitrator filed his Prehearing Conference Order setting forth the arbitration procedural schedule and listing the disputed issues to be determined in the arbitration proceeding. On November 11, 2002, the Commission issued its notice of the arbitration hearing scheduling the arbitration hearing and setting forth the issues to be determined in the arbitration proceeding as follows:

1. Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?

2. Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?

3. Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?

4. For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area.

5. Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?

6. Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?

7. Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

A hearing in this proceeding was held beginning December 9, 2002, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Notice thereof was published in the weekly newspapers throughout the state as required by law.

On March 3, 2003, the arbitrator filed his decision and recommendations in this proceeding.

On April 2, 2003, the parties filed an interconnection agreement incorporating the arbitrator's decisions and recommendations in compliance with N.D. Admin. Code § 69-02-10-30.

On April 16, 2003, Polar Communications (Polar) and Reservation Telephone Cooperative (RTC) filed comments on the interconnection agreement, and on April 17, 2003, Level 3, SRT, and the North Dakota Association of Telecommunications Cooperatives (NDATC) filed comments on the interconnection agreement.

On May 15, 2003, Level 3 filed a letter with four state commission decisions as supplemental authority pertaining to state commission jurisdiction to establish interconnection arrangements under a section 251(a) interconnection request.

Discussion

In this order, the Commission dismisses, without prejudice, Level 3's interconnection arbitration application. The Commission's decision is based on interpretation of state and federal law and FCC rules and decisions.

Under N.D.C.C. § 49-21-09 the Commission may direct the use by one telecommunications company of facilities or services of another telecommunications company.

Under N.D.C.C. § 49-21-01.7(8) the Commission has the authority to mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the Act, and under N.D.C.C. § 49-21-01.7(9) the Commission has the authority to approve or reject such agreements.

Under 47 U.S.C. § 252(b)(4)(A) the Commission must limit its consideration of any petition for arbitration to the issues set forth in the petition and issues set forth in responses to the petition from other parties. Under 47 U.S.C. § 252(b)(4)(C) and 252 (c) the Commission must resolve each issue set forth in the petition and the response by imposing appropriate conditions to (1) ensure that such resolution and conditions meet the requirements of 47 U.S.C. § 251, including regulations prescribed by the Federal Communications Commission (FCC) pursuant to section 251; (2) establish any rates for interconnection, services, or network elements according to subsection 47 U.S.C. § 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Under 47 U.S.C. § 252(e)(1) the Commission may approve or reject an interconnection agreement adopted by arbitration, with written findings as to any deficiencies. Under 47 U.S.C. § 252(e)(2)(B) the Commission may only reject such interconnection agreement adopted by arbitration, or portion thereof, if it does not meet the requirements of 47 U.S.C. § 251, including regulations prescribed by the FCC pursuant to section 251, or the standards set forth in 47 U.S.C. § 252(d).

Part 47 U.S.C. § 251(a) requires that a telecommunications carrier interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

Part 47 U.S.C. § 251(b) requires that each local exchange carrier not prohibit the resale of its telecommunications services; provide number portablilty; provide dialing parity to competing providers of telephone exchange service and telephone toll service, provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing; afford access to poles, ducts, conduits, and rights-of-way to competing providers telecommunications services; and establish reciprocal compensation.

Part 47 U.S.C. § 251(c) requires that each incumbent local exchange carrier (1) negotiate in good faith the particular terms and conditions of interconnection agreements; (2) provide interconnection with the local exchange network for the transmission and routing of telephone exchange service and exchange access, at any technically feasible point within the local exchange network; (3) provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point; (4) offer for resale any telecommunications service that it provides at

retail to subscribers who are not telecommunications carriers; (5) provide notice of changes that would affect the interoperability of facilities and networks; and (6) provide for physical collocation of equipment.

Part 47 U.S.C. § 153 defines telephone exchange service as "(A) service within a telephone exchange, or within a connected system of telephone exchanges with the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."

Part 47 U.S.C. § 153 defines exchange access as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Part 47 U.S.C. § 153 defines telephone toll service as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."

Part 47 U.S.C. § 252(d) addresses pricing standards and provides that rates for interconnection and network elements and transportation and termination of traffic must be just and reasonable, nondiscriminatory, and be based on the cost of providing the interconnection or network element or service.

If the Commission does not act to approve or reject the agreement, the FCC will assume the responsibility of the Commission and act for the Commission.

The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

Findings of Fact

1. Level 3 is requesting interconnection with SRT to provide a telecommunications service that, in turn, supports the services of Internet Service Providers (ISPs). The FCC in 47 § C.F.R. 51.5 defines interconnection as the linking of two networks for the mutual exchange of traffic and states that this term does not include the transport and termination of traffic. Level 3 requested negotiations for interconnection on March 26, 2002 by sending an information package to SRT. The information package provided an overview of Level 3's goals to offer telecommunications services to support dial-up services offered by ISPs, to maintain SRT's rural exemption, and to implement a bill-and-keep mechanism for the exchange of traffic. The package included a proposed traffic exchange agreement containing terms and conditions for interconnection, and for the routing and exchange of traffic between the Parties' networks. Level 3 also provided a network drawing depicting one possible way in which Level 3 might route traffic from SRT to Level 3's network.

2. Level 3 states that it is making its request for interconnection under section 251(a) and believes that the request for interconnection is therefore not subject to terms and conditions set forth in 251(b) or 251(c).

3. SRT moved to dismiss Level 3' petition for arbitration for the following reasons: (a) that Level 3 had not made a *bona fide* request for an interconnection under section 251(f)(1)(A) of the Act; (b) that Level 3 had not requested nor had the Commission determined that SRT's exemption from negotiation and interconnection should be terminated; and (c) that the interconnection Level 3 seeks under section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under section 251(c)(1) and the related arbitration provisions under section 252 of the Act, and as such, Level 3 is not entitled to the negotiation and arbitration provisions of section 252. SRT argued that neither the Act nor any regulations promulgated under the Act required SRT to negotiate or to submit to arbitration under section 251(a).

4. Level 3 responded that it was not requesting interconnection under section 251(c) of the Act but rather under section 251(a) and that the restrictions of section 251(c) were inapplicable. Level 3 argued that section 252 negotiation and arbitration procedures apply to section 251(a) requests.

5. The arbitrator issued a decision finding that Level 3 requested interconnection under section 251(a) of the Act, and consequently concluded that the restrictions of section 251(c) were inapplicable. The arbitrator also determined that the arbitration provisions in section 252 were available for all section 251 requests including interconnection under section 251(a). The Commission concurred with the arbitrator's finding that the arbitration provisions of 252 are available for all 251 requests, and denied SRT's motion to dismiss.

6. Following hearing of the arbitration proceeding, the arbitrator found that SRT does not have a duty to negotiate for interconnection under section 251(a) of the Telecommunications Act (Act), but then determined that while SRT may, but is not required to negotiate under section 251(a), it is not exempt from the arbitration requirements under the Act nor from its duties to interconnect. Essentially, the arbitrator found that the statutory language of section 251(a) does not require an incumbent local exchange carrier (ILEC) to negotiate, but that arbitration under the Act does not require negotiations as a condition precedent. We agree.

7. Level 3 emphatically claims it seeks to offer telephone exchange or exchange access service.[1] In fact it chides SRT for suggesting that the Level 3 service is primarily interexchange in nature. Level 3 states "SRT bases its argument, in large part, on the mistaken belief Level 3 is an interexchange carrier that requests interconnection solely for the purposes of originating interexchange traffic, rather than for the provision of 'telephone exchange' or 'exchange access' as those terms are defined in the Act."[2] And further, Level 3 states ". . . SRT's arguments are factually incorrect because Level 3's

[1] Level 3's Post Hearing Brief at pages 26-28.
[2] Id. at 26-27.

proposed service is a local telephone exchange service that is consistent with its authority granted by this Commission."[3]

8. The Commission makes no determination as to whether the Level 3 offering is truly local or interexchange. We have no need to make such a finding because Level 3 itself declares it to be offering telephone exchange access or exchange service. But if we accept that the Level 3 offering is truly local exchange service in nature, then the provisions of section 251(c) would have to apply. Level 3 is unable to claim it is offering a local exchange service, while at the same time maintaining section 251(c) inapplicability. If the Level 3 offering is truly a local exchange service, then we must note that SRT still qualifies for the rural carrier exemption as defined in 251(f). No bona fide request has been made to terminate the exemption, and as such, we conclude SRT would be unable to be made the subject of such an interconnection arbitration prior to this Commission making a determination on SRT's 251(f) rural exemption.

9. Level 3 points to the CPCN this commission granted as proof that it is enabled to offer telephone exchange access in the SRT service territory. Yet Level 3 and the arbitrator ignore that the Commission ordered such certification without prejudice of the rural exemption provided in 251(f).[4]

10. If Level 3 is truly offering a local exchange service, then it cannot simply declare that it is filing an exclusive 251(a) interconnection agreement. The clear language of the act prevents that occurrence. When interconnecting with an ILEC, such as SRT, the transmission and routing of telephone exchange service and exchange access is clearly stated under 251(c)(2)(A). While Level 3 may want to apply under solely 251(a), there is no basis upon which to allow that to happen. We do not view the act as a buffet menu from which carriers are allowed to choose which parts of it they wish to file under, to the exclusion of those sections they would rather ignore. Such an interpretation would seriously undermine the protections afforded rural carriers by Congress in section 251(f).

11. While an ILEC has the duty to negotiate in good faith under section 251(c)(1), section 252(a)(1) makes negotiation permissive. We find that this can only be interpreted to mean that SRT may, but is not required to, negotiate. However, when negotiations have begun, SRT is required to negotiate in good faith.

12. SRT chose not to voluntarily negotiate an agreement for the interconnection requested by Level 3.

13. In its request for interconnection Level 3 stated that one of its goals was to maintain SRT's rural exemption. Level 3 chose not to file a bona fide request when it requested interconnection from SRT in March 2002.

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[3] Id. at 27.
[4] Commission order dated March 13, 2002, Case No. PU-2065-02-11

14. We find that Level 3 must file a bona fide request before SRT must provide interconnection and therefore the Arbitrated Interconnection Agreement submitted in this proceeding must be rejected.

15. Because we find that a bona fide request must be made before SRT must provide interconnection, no findings or conclusions are made regarding the other issues in this proceeding.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the Parties and the subject matter of this proceeding.

3. SRT's duties to provide the interconnection Level 3's seeks are set forth under the section 251 duties for a rural ILEC and those duties include duties in addition to duties specified 251(a).

4. The provisions of section 252 apply to the interconnection requested by Level 3.

5. SRT may, but is not required, to negotiate an interconnection agreement with Level 3.

6. SRT chose not to voluntarily negotiate the interconnection agreement, and therefore Level 3 must file a bona fide request to seek interconnection with SRT.

7. The arbitration process used in this proceeding does not meet the requirements of section 251 and therefore this proceeding should be dismissed.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

Order

The Commission orders that Level 3's interconnection arbitration application is dismissed without prejudice.

PUBLIC SERVICE COMMISSION

Susan E. Wefald Commissioner	Tony Clark President	Leo M. Reinbold Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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CONCURRING OPINION
Commissioner Susan E. Wefald

May 30, 2003

I concur with the Order that Level 3's interconnection arbitration application should be dismissed, however I do not agree with many of the findings of fact and conclusions of law that support the adopted order.

This case hinges on whether or not SRT has interconnected directly or indirectly with Level 3, not on whether or not Level 3 has filed a bona fide request for an interconnection agreement. The facts of the case show that SRT has interconnected indirectly with Level 3, and has met the requirements of Section 251(a) of the Federal Telecommunications Act (Act).

This case has been very difficult, since the service that Level 3 wishes to provide is exchange internet service provider (ISP) bound traffic.[5] Federal law and rules do not give clear guidance on how to treat this type of service within Section 251 of the Act. However, the FCC has determined under 251(c)(2) that an IXC requesting interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection from an ILEC.[6] Also, the FCC has determined that the LEC-provided link between an end-user and an ISP is properly characterized as interstate access,[7] when addressing intercarrier compensation.

Level 3 requested in this case to directly interconnect with SRT because of the traffic volumes it expects to exchange with SRT and because it would give Level 3 more control over facilities used to exchange traffic, forecasting, and traffic management.

[5] Level 3's Post Hearing Brief at page 3.
[6] *First Report and Order* at para. 191; 47 C.F.R. 51.305.
[7] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order; FCC 01-131; adopted April 18, 2001, released April 27, 2001; para.57.

Although Level 3 preferred direct interconnection, it also wanted more provided through indirect interconnection than SRT presently provides.

Level 3 is currently purchasing telecommunications services from SRT. Level 3 leases seven ISDN PRI's (Integrated Services Digital Network Primary Rate Interface) and seven meet-point DS1's from SRT. This arrangement provides a means for traffic to flow between Level 3 and SRT so there is a mutual exchange of traffic, which constitutes indirect interconnection between SRT and Level 3.

Both parties have put considerable time and effort into this case. I agree with the arbitrator's finding that SRT does not have a duty to negotiate under section 251 (a) of the Act, but that arbitration under the Act does not require negotiations as a condition precedent.