

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
)  
Deployment of Wireline Services Offering ) CC Docket 98-147  
Advanced Telecommunications Capability )

Comments of Level 3 Communications, Inc.

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Level 3 Communications, Inc. ("Level 3"), through undersigned counsel, respectfully submits the following comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup>

**I. Introduction and Summary.**

Level 3 commends the Federal Communications Commission ("Commission") for issuing this NPRM and the accompanying Order and Notice of Inquiry ("NOI") concerning the deployment of advanced telecommunications capability to all Americans. As Level 3 demonstrated in its NOI comments, Level 3 is a communications and information services company that is building an advanced Internet Protocol ("IP") technology-based network across the United States. The Level 3 network will be the first national communications network to use Internet technology end-to-end. Level 3, through its subsidiaries Level 3 Communications, LLC and PKS Information Services, Inc., will provide a full range of communications services – including local, long distance and data transmission – as well as other enhanced services to its customers.

Level 3 is building its network from the ground up with new IP technology. However, Level 3's business plan contemplates in the early stages reliance on the existing circuit-switched monopoly facilities, particularly the local loop. Level 3, and other providers of high-bandwidth, packet-switched services, must be able to obtain technically efficient and economically reasonable access to the bandwidth of the embedded local loop network.

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<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 98-188 (rel. Aug. 7, 1998) ("NPRM").

Without such access, only those businesses that can afford dedicated high-capacity facilities will be able to benefit from the full potential of Internet-based information and other packet-switched telecommunications services. The Commission should not underestimate the economic significance of the issues raised in this proceeding. Billions of dollars of investment in infrastructure and multiples of that in economic growth resulting from use of the infrastructure are at stake. If the Commission wishes to promote economically efficient investment in the telecommunications technologies of the 21<sup>st</sup> Century, it must assure that those who make the investment will have reasonably-priced, technically-efficient and non-discriminatory access to the infrastructure of incumbents, whose current networks are a bottleneck to American consumers.

In order to obtain access to the bottleneck local loop, facilities-based carriers such as Level 3 must collocate at ILEC premises. Non-discriminatory collocation and access to the local loop, free of any attachments that inhibit the provision of advanced, high-speed services over such loops, is imperative if competitive providers are to deploy advanced services to all Americans. The incumbent monopolists spent over 100 years and millions of ratepayer dollars deploying their ubiquitous local exchange networks. No new entrant can afford, in terms of time or money, to overbuild that ubiquitous network. Rather, as the Act recognizes, by virtue of their incumbency, ILECs must meet certain obligations to provide competitors with non-discriminatory access to the elements necessary to provide

local telecommunications services. As Chairman Kennard stated in his July Speech to the National Association of Regulatory Utility Commissioners ("NARUC"):

Bringing competition to our voice network is also a vital step in the development of the broadband technology of tomorrow. The marketplace of tomorrow will be built on the networks of today. The federal-state partnership has provided the best telephone network in the world, and it will be the primary network for many years to come. Any new network should be complementary to the old one, not seen as a replacement.

Chairman Kennard, July 27, 1998 Speech to NARUC (as prepared for delivery).

Level 3 has previously submitted comments to this Commission arguing that ILEC divestiture of bottleneck network facilities is the *only* way to remove ILECs' incentive to discriminate against their competitors.<sup>2</sup> Level 3 firmly believes that the same principle applies to the Commission's current proposals concerning "truly separate" advanced services affiliates. ***Without divestiture of the ILEC's advanced services affiliate, ILECs will continue to favor their affiliate over competitors and will inhibit the introduction of full-fledged competition in the local exchange and advanced services markets.***

In these comments, Level 3 recommends that the Commission proceed expeditiously to deregulate all advanced services. However, deregulation should only apply to former ILEC affiliates if the ILEC completely divests itself of both the affiliate and its advanced services equipment. Level 3 also recommends that the Commission strengthen certain of its collocation and loop unbundling rules to promote competition in

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<sup>2</sup> See, Comments of Level 3 Communications, Inc., dated March 23, 1998, *In the Matter of Petition of LCI Telecom Corp. for Declaratory Rulings*, CC Docket No. 98-5.

both the local exchange and advanced services markets. Specifically, with respect to collocation, Level 3 urges the Commission to: (1) prohibit ILECs from using interconnection negotiation, execution or approval requirements to delay collocation applications; (2) require ILECs to make publically available and regularly update space exhaustion information; (3) prescribe national maximum collocation provisioning intervals; and (4) establish a rebuttable presumption that prices above a per square foot benchmark are unreasonable. Level 3 also urges the Commission to clarify its loop conditioning rules to ensure CLECs have timely access to loops capable of supporting advanced services.

**II. Divestiture of Any ILEC Advanced Service Affiliate Is the Only Option Consistent with the Purpose and Letter of the Act.**

Level 3 agrees that separation requirements must be an essential component of any plan that would allow the ILECs to provide advanced services free from the obligations of Section 251(c). The old Bell System is the best evidence of the grave necessity of structural separation safeguards. Years of regulatory and judicial intervention, and intensive efforts at great expense by both government and private parties, were not successful in turning the BOCs from their historic pattern of delaying, discouraging, and impeding long distance competition. Divestiture, however, quickly and effectively changed the BOCs' incentives and behavior. It took only a short time for the BOCs to realize that there was no benefit to them in favoring one long distance company over another. Instead, self-interest dictated that the BOCs facilitate as much usage of their network by long

distance companies in general. Today it would be laughable to suggest that any BOC is likely to act in any way to create an advantage for its former parent company.

The lesson of the Bell System is that **structural** separation is much more effective in removing conflicts of interest stemming from control of bottleneck facilities than any other approach. Non-structural efforts to solve this problem inevitably require extensive and intrusive government oversight of the operation of the regulated company's business. Government oversight and policing, as a practical matter, can never be really effective because of budgetary constraints and because it is impossible for any regulator to understand a company's business as well as the company does itself. True structural separation, which includes a separation of ownership, and not mere segregation of services into different subsidiaries within the same enterprise (as in *Computer II* and the proposal in the NPRM), is the only remedy for bottleneck conflicts that can be achieved with reasonable cost and speed.

Permitting ILECs to offer advanced services through an unregulated and unseparated affiliate would give them a substantial incentive to use their continuing control of bottleneck facilities to preclude interconnection by other competitive providers of advanced services that potentially threaten the ILECs legacy telephone business. Such arrangements would also permit the ILEC and affiliate to engage in anticompetitive tactics to advantage their Internet affiliate. Non-structural safeguards between an ILEC and its advanced services affiliate will impede, rather than promote, competition in the market for

advanced services. The Commission's proposal to permit ILECs to establish non-structurally separate advanced services affiliates must be abandoned in favor of true structural separation.

**III. Relaxed Regulation of Advanced Services Is Both Warranted and Appropriate.**

Relaxed regulation of advanced telecommunications services is appropriate for all providers, including former ILEC affiliates, if, and only if, the Commission requires ILECs to divest completely their advanced services equipment and affiliates. As technology evolves and carriers provide increasingly data-based, packet-switched services, the line between telecommunications and information services will become increasingly difficult to both rationalize and justify. The Commission's Report to Congress on Universal Service implicitly recognizes this in its discussion of Internet telephony,<sup>3</sup> as does the Office of Plans and Policy Working Paper on Cable-Based Internet Services.<sup>4</sup> Furthermore, the Commission's companion Section 706 NOI recognizes that:

it is reasonable to question a policy of regulating several competitors in a market differently – wireline common carriers under Title II, conventional television broadcasters under Title III, wireless common carriers under Titles

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<sup>3</sup> *Federal-State Joint Board on Universal Service, CC Docket 96-45, Report to Congress, FCC 98-67, ¶¶83-93 (rel. April 10, 1998).*

<sup>4</sup> *OPP Working Paper Series, Internet Over Cable: Defining the Future In Terms of the Past, 119-120 (August 1998).*

II and III, MVPDs under Title VI, public utilities under their industry models, and so on. How, if at all, can these different regimes be reconciled?<sup>5</sup>

Level 3 submits that the following statement made by Chairman Kennard should guide the Commission's approach to the regulation of advanced services:

At the FCC, our job is to fire the starting gun and let the race begin. We should not micromanage the race. We simply need to make sure that the race is fair and open to all who want to compete. Because **competition always beats regulation** as the way to bring consumers more services, better quality, and the lowest prices.

Chairman Kennard Speech, June 24, 1998, Federal Communications Bar Association (as prepared for delivery) (emphasis added). Imposing historical regulation on advanced telecommunications services, or extending historical regulation to services that exist in gray areas along the Commission's historical line between basic and enhanced services, will only inhibit the deployment of such services to all Americans. Consistent with the Congressional goals set forth in Section 706, Level 3 urges the Commission to finish its companion Section 706 NOI expeditiously and deregulate advanced telecommunications services.

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<sup>5</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Notice of Inquiry, FCC 98-187, ¶80 (rel. Aug. 7, 1998) ("Section 706 NOI").

**IV. Additional National Collocation Rules Are Needed to Promote Cost-Efficient and Timely Deployment of Competitive Local and Advanced Services to All Americans.**

**A. Need for National Rules**

As explained in the introduction section of these comments, collocation is an important part of Level 3's business plan. The ability to efficiently and cost-effectively purchase and implement collocation would permit Level 3 to deploy more rapidly its advanced services to more consumers and in more areas of the country. Level 3 is aggressively pursuing collocation across the country in all RBOC regions and in Cincinnati Bell, GTE, SNET, and Sprint territories. By the end of 1998, ILECs will have turned over to Level 3 approximately 56 collocation cages (five of which are virtual). By year-end 1999, Level 3 expects to have a total of 95 collocation cages turned over.

As a nationwide provider of advanced services with a business plan that depends in part on collocation to reach end users, Level 3 has ample first-hand experience with ILECs' collocation practices. Attached as Exhibit A to these comments is the affidavit of Marybeth Schuh, Manager of Collocation, Level 3 Communications, LLC, which details some of the problems Level 3 has experienced in obtaining collocation from ILECs.

Collocation requirements vary widely from ILEC to ILEC and even on a state-by-state basis within a single ILEC's region. While some aspects of provisioning collocation may indeed be dependent upon state-specific or region-specific criteria, the vast majority of elements that make up the collocation process are uniform nationwide, and existing

variations are both unnecessary and unproductive. Because it can take a substantial amount of time to investigate and learn about each ILEC's and/or each state's varying collocation requirements, new entrants such as Level 3 face unnecessary delays in implementing collocation arrangements. To the extent that collocation is an integral building block of the new entrant's services, as in Level 3's case, collocation delays unavoidably slow the deployment of advanced services to many consumers.

Although existing Commission rules have set some national standards for collocation, experience with those rules to date shows that more national standards are needed. For example, in its *Local Competition Order*, the Commission made no finding on whether equipment with switching functionalities is "used or useful" for interconnection or access to UNEs.<sup>6</sup> Instead, the Commission left to the State Commissions the authority to determine whether equipment with switching functionalities meets the "used or useful" standard and can be collocated by CLECs. As a result, CLECs have been forced to arbitrate this issue on a state-by-state basis with various success. In addition, Level 3 is concerned that the *Local Competition Order*, which addressed only circuit-switching equipment, will be used by ILECs to deny CLECs the right to collocate packet switches. Since Level 3's services, indeed many advanced services, rely on packet switching, the lack of a national rule requiring ILECs to permit collocation of packet switching equipment will impede the deployment of advanced services.

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<sup>6</sup> *Local Competition Order* at ¶581.

## B. Proposed Rules

Based on Level 3's experience in ordering collocation from ILECs, Level 3 proposes that the Commission adopt the following federal rules:

(1) No interconnection prerequisites. Most ILECs offer collocation on a tariffed basis and/or have standard collocation contracts. These tariffs and contracts typically specify all of the terms and conditions ("Ts and Cs") relevant to the ordering and provisioning of collocation. Notwithstanding these standard Ts and Cs, some ILECs require CLECs to request interconnection negotiations, execute an interconnection agreement, or even receive state commission approval of an interconnection agreement before the CLEC may even **submit** an application for collocation. Since the interconnection negotiation process can last for over 9 months (in the case of arbitrations) and usually takes 2 months at a minimum (for a Section 252(i) opt-in), these interconnection prerequisites unnecessarily delay CLECs' initial application for collocation space.

(2) ILECs' must publicize and regularly update space exhaustion information. Under current federal rules, when an ILEC denies a CLEC request for physical collocation due to lack of space, the ILEC must prove to the state commission that space in a particular central office is unavailable. In practice, CLECs have been forced to initiate costly and time consuming state commission proceedings to force the ILEC to meet its burden of proof. Such proceedings not only divert CLEC resources from actually acquiring

physical collocation, they also delay the turn-up of collocated equipment and may cause hostilities between the ILEC and CLEC that further delay and complicate provisioning.

In addition, the fact that the ILEC controls access to the information on space exhaustion makes it difficult, if not impossible, for the CLEC to refute the ILEC's assertions. To remedy this problem, the Commission has proposed requiring ILECs to (1) provide reports on space exhaustion to CLECs upon request and (2) permit CLEC tours of central offices where space exhaustion is claimed. While these requirements would be helpful, they fail to remedy the fundamental problem. As a general rule, CLECs must submit collocation applications blindly, with virtually no information on the availability or lack of space.<sup>7</sup> Often, Level 3 has submitted an application for physical collocation only to learn, usually weeks later, that space is exhausted and it must reapply for virtual collocation and start the process anew. Speed to market via collocation can only be achieved by requiring ILECs to make available, and regularly update, information on space availability and space exhaustion. Level 3 recommends that ILECs be required to post such information on their websites and update the information on a weekly basis. Only with access to this information will CLECs be able to plan and apply for physical or virtual collocation to meet their business needs.

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<sup>7</sup> Some ILECs do provide lists of central offices that are exempt from physical collocation.

Level 3 would also like to bring to the Commission's attention a further detail concerning space exhaustion. Electrical cross connects, which can be used in the provision of advanced services, typically require the CLEC to install collocated equipment with a large footprint, consuming valuable space in a CLEC's cage. Optical cross connects, on the other hand, have a much smaller footprint because optical cross connects permit optical connections at much higher levels, resulting in less equipment required to connect the same capacity (electrical cross connects are limited to a DS-3 (44.736 Mbps) whereas optical cross connects can exceed OC-48 (2.4Gbps)). In Level 3's experience, however, ILECs do not offer optical cross-connects in the majority of their central offices and routinely resist providing optical cross-connects even when they are available. Because optical cross connects would help conserve valuable space in ILEC premises, Level 3 urges the Commission to clarify that ILECs must offer optical cross-connects upon request where technically feasible.

(3) National Maximum Application and Provisioning Intervals Must Be Prescribed. Each ILEC, sometimes on a state-by-state basis, sets different deadlines for various steps in the collocation ordering and provisioning process. Some ILECs commit to deadlines for notifying CLECs when their application has been received; when space availability will be confirmed; when the quote will be prepared; when build out of the cage will be completed; and/or when the CLEC will be permitted to enter and install equipment in its cage. Obviously, the longer the ILEC takes to complete each of the steps, the longer

the delay from collocation application to CLEC deployment of services. Level 3 recommends that the Commission set maximum time frames for each of these intervals. Ideally, ILEC compliance with the deadlines should be enforced through liquidated damages provisions. However, Level 3 understands that state law may vary with respect to such damage requirements. Therefore, the Commission should urge state PUCs to address the liquidated damages or bill credits a CLEC should receive upon a showing that the ILEC's failed to meet the maximum time frame.

Level 3 proposes the following time frames for steps in the collocation process:

Notice of receipt of application	2 business days
Notice of space availability	7 calendar days
Quote preparation	30 calendar days
Construction of physical in pre-conditioned space	30 calendar days
Construction of physical where space is not pre-conditioned	60 calendar days
Construction of virtual	30 calendar days

(4) Establish a rebuttal presumption of unreasonable prices for square foot of space. Recognizing that real estate costs vary from urban to rural areas and across the country, Level 3 recommends that the Commission establish a rebuttable presumption that any price above a benchmark per square foot of space is unreasonable. This price could be indexed based on some objective measurement of regional differences in the cost of living and/or cost of real estate.

Level 3 would also like to address the Commission's proposal regarding collocation of NEBS-compliant equipment. Level 3 agrees that under the nondiscrimination provisions

of the Act, e.g., Section 251(c)(2)(C), CLECs must be permitted to collocate the same equipment that ILECs locate at their premises. In Level 3's experience, most ILECs already condition approval of collocated equipment on NEBS compliance. Level 3 agrees that the NEBS safety standards are reasonably required to protect all carriers, ILECs and CLECs, that install equipment in an ILEC premise. However, since Level 3 is deploying the first end-to-end IP-based network in the country, Level 3 is very likely to request collocation of equipment that has been developed especially for Level 3. Because the entire NEBS certification process can take up to one full year, Level 3 is concerned that requiring full NEBS compliance prior to collocation of equipment would unduly delay its installation of new equipment. Level 3 therefore proposes that CLECs be permitted to collocate new equipment that has met NEBS level 2 specifications, with a commitment by the CLEC to complete NEBS level 3 certification within six months. This standard would better speed the deployment of advanced services from concept to consumers. Furthermore, because advanced services are heavily dependent on packet switching, and because packet switches will occupy much less space than circuit switches, the Commission must mandate CLEC's right to collocate packet switches at ILEC central offices.

**V. The Commission Must Update Its Loop Unbundling Rules to Promote Competitive Provision of Advanced Services**

As a rule, ILECs have been extremely reluctant to provide competitors with unbundled loops that have been conditioned to provide high-speed bandwidth services (or,

for that matter, any service other than Plain Old Telephone Service), even though the Commission's *Local Competition Order* unambiguously requires them to condition loop facilities for these purposes where technically feasible.<sup>8</sup> The ILECs frequently claim that conditioned loops are unavailable or that technical constraints prevent them from meeting the customer's transmission specifications, ***even when the RBOC or its affiliate is advertising the availability of ISDN or xDSL service in the same market.***

While Level 3 realizes that the availability of advanced services-capable loops may vary even among loops connected to the same central office, it should not be difficult for the ILEC to determine which loops are capable of supporting high-bandwidth services. Indeed, since most major ILECs are deploying or planning to deploy their own xDSL services, they will need to collect this information for themselves.

Level 3 strongly supports the Commission's proposal to provide CLECs with real-time access, through operations support systems or some other form of read-only electronic access, to all relevant information necessary for the CLEC to make an independent determination about whether the loop is capable of supporting the xDSL equipment they intend to install. Furthermore, where the ILEC has not yet collected such information for a particular loop, it should be required to collect and provide such information to the CLEC within 14 calendar days. As with collocation, unnecessary delays in the CLEC's provisioning of service to a new customer will necessarily reflect poorly on

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<sup>8</sup> *Local Competition Order* at ¶¶380, 382.

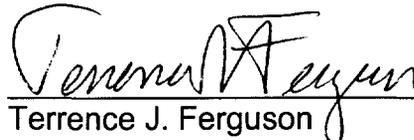
the CLEC, even when such delays are the result of the ILEC's conduct. To remedy this problem, ILECs must be held to strict timeframes for the provision of conditioned loop information.

Level 3 also supports the Commission's proposal to permit two different providers to "split" a customer's loop so that one provides voice services and the other provides data services. Just as a local exchange carrier has a duty to provide equal access to long distance carriers over the same loop that is used for local voice services, so too should a local exchange carrier have a duty to provide access to data-only carriers where the same loop is capable of being conditioned to support both voice and data services.

**Conclusion**

Level 3 urges the Commission to require complete divestiture of any ILEC affiliate that is created to provide advanced telecommunications services and adopt other pro-competitive collocation and loop unbundling rules as recommended herein.

Respectfully submitted,



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Terrence J. Ferguson  
Senior Vice President and Special  
Counsel

Dated: September 25, 1998

Level 3 Communications, Inc.

**Exhibit A**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Deployment of Wireline Services Offering ) CC Docket 98-147  
Advanced Telecommunications Capability )

**AFFIDAVIT OF MARYBETH SCHUH ON BEHALF OF  
LEVEL 3 COMMUNICATIONS, INC.**

1. My name is Marybeth Schuh. I am Manager of Collocation for Level 3 Communications, LLC. I am responsible for obtaining all of Level 3's collocation applications and arrangements.

2. The purpose of this affidavit is to provide the Commission with information regarding the collocation practices of incumbent local exchange carriers ("ILECs") that are delaying Level 3's entry into competitive markets and Level 3's deployment of advanced services. Because Level 3 continues to apply and negotiate for collocation with numerous ILECs, Level 3 does not specify which ILEC has engaged in the delaying tactics described herein.

ILEC A

3. Initially, ILEC A would not accept our collocation applications without an interconnection agreement. They accepted our applications only after Level 3, applying as a competitive access provider ("CAP"), rather than a competitive local exchange carrier ("CLEC"), agreed to pay 100% of the non-recurring charges up front. This resulted in a one week delay.

4. ILEC A returned our initial payment because the checks were issued by Kiewit Diversified Group and not Level 3 (the name which appeared on our applications).

This resulted in a 2 week delay.

5. Quotes for 2 applications for Virtual Collocation (where Level 3 was denied physical space) were months late and reflected a cost which far exceeded the cost to buildout a physical cage. This resulted in a 3 month delay.

6. ILEC A has inventoried its central offices for additional collocation space and has released this information (# of cages available and when) to all of their CLEC customers. This led to a flood of collocation applications to which ILEC A is not providing timely responses. ILEC A is permitting some companies to exercise the first right of refusal (where the company was previously denied physical collocation for that premise) before responding to other CLECs. Of 10 Physical Collocation applications Level 3 submitted on August 28, 1998, as of September 24, 1998, only 3 have been confirmed by ILEC A as having available space.

#### ILEC B

7. ILEC B would not accept our collocation applications in one state without an interconnection agreement approved by the Commission. Our applications were finally accepted after our interconnection agreement was approved, resulting in a 22 week delay.

8. Initially, ILEC B would not accept our collocation applications in a second state without an interconnection agreement approved by the Commission. After escalating to the General Manager of Wholesale Local Markets, ILEC B agreed to accept our applications for that state under an interim tariff. This resulted in an 8 week delay.

9. ILEC C took 10 weeks to respond to our physical collocation applications with quotes. This response was 5 weeks beyond the specified deadline.

### ILEC C

10. ILEC C would not give us a copy of their new State Collocation Tariff, which became effective in April 1998, even though they were quoting us rates from it. Our on-line Tariff service did not have a copy of the new Tariff until the end of May as they were waiting for the official release. This resulted in a 1 week delay.

### ILEC D

11. ILEC D delayed approval of MOP documents (Method of Procedure) in order for our vendors to perform work on our physical collocations, resulting in a 4 week delay.

### ILEC E

12. ILEC E had denied several of Level 3's physical collocation applications in central offices ("COs") which were not proven to the State Commission to be exhausted. After calls to the State Commission and a mildly threatening letter to ILEC E, physical space was "uncovered" in some of those COs. To date, Level 3 has only virtual collocation build-outs in progress and ILEC E has provided firm due dates for completion of a physical cage within only one CO.

13. When ILEC E confirms receipt of physical collocation applications via letter, they state that more information (*i.e.* cage turnover dates) will be provided within a 10-day period. This timeframe is seldom met.

### ILEC F

14. ILEC F uses a host of different vendors to construct physical collocation arrangements which has led to delays in cage turnover averaging 4 weeks.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



\_\_\_\_\_  
Marybeth Schuh  
Manager of Collocation

Level 3 Communications, LLC

Dated: 9/24/98

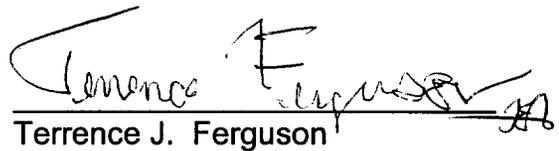
**CERTIFICATE OF SERVICE**

I, Terrence J. Ferguson, hereby certify that I have on this 25th day of September, 1998, served copies of the foregoing Comments of Level 3 Communications, Inc. on the following via hand delivery:

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