

ANSWER

The narrative form of AT&T's Complaint renders difficult an Answer in the traditional format of denials and admissions to specific averments. Except as admitted below, Level 3 denies each allegation, averment and statement in the Complaint.

1. Level 3 admits it is is a Missouri-certificated competitive local exchange company, with which AT&T Missouri does business under the terms of a Commission-approved interconnection agreement ("ICA"). (*Complaint*, p. 1., A. "Introduction/Summary".)

2. Level 3 admits the Commission approved the Interconnection Agreement between Level 3 and the Complainant in Case No. TK-2005-0285. (*Complaint*, p. 2., B. "The Parties".)

3. Level 3 admits that AT&T presented a proposed amendment to the interconnection agreement ("Amendment"), as shown in Exhibit E to Complaint (*Complaint*, pp 1-2, A. "Introduction/Summary" and Exhibit E).

4. Level 3 admits it has declined to execute the Amendment.

5. Level 3 is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the Complaint as to any Respondent other than Level 3 and, therefore, denies same.

Complaint, pp. 3-4, C. "The Post-M2A Arbitration Order and Subsequent Legal Developments"

1. Level 3 is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the Complaint as to any Respondent other than Level 3 and, therefore, denies same.

2. As evidenced by Exhibit E to the complaint, this portion of the Complaint does not apply to Level 3. Therefore, Level 3 denies the allegations set forth therein.

Complaint, pp. 5-6, “HB 1779”

1. In the last paragraph, AT&T requests that the Commission direct Respondents “to either execute the intervening law ICA amendment originally tendered to them or, alternatively, to show cause why their having not executed such amendment may be justified or otherwise excused.” In its Motion to Dismiss, Level 3 shows why it is justified or otherwise excused from executing the Amendment. Because HB 1779 is preempted by federal law, the Commission lacks authority to enforce the legislation and hence cannot compel Level 3 to execute the Amendment.

2. Furthermore, the Amendment does not correctly state the “intervening law”. The Amendment AT&T presented to Level 3 was purported to be required due to the enactment of Missouri House Bill 1779 in 2008. However, the Amendment exceeds the scope of HB 1779.

HB 1779 provides in part:

Interconnected voice over Internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges. (Sec. 392.550(2) RSMo.)

The Amendment tendered to Level 3 provides in section 2 as follows:

House Bill 1779, Section 392.550. The Parties shall exchange enhanced/information services traffic, including without limitation Voice Over Internet Protocol (“VOIP”) subject to the appropriate exchange access charges to the same extent that telecommunications services are subject to such charges;

Nowhere does the Amendment restrict its applicability to “interconnected” VoIP, and nowhere does HB 1779 refer to any “enhanced/information services traffic”; it refers only to interconnected VoIP service. Thus, the Amendment does not comply with the “intervening law” provision of the ICA and cannot be imposed on Level 3.

AFFIRMATIVE DEFENSES

As its Affirmative Defenses to the Complaint, and without prejudice to its Motion to Dismiss, Level 3 states:

1. The Complaint fails to state any claim on which relief may be granted against Level 3 by the Commission.
2. AT&T’s claims are preempted and barred by federal law.

WHEREFORE, Level 3 Communications, LLC requests that the Commission dismiss the Complaint and grant Level 3 such other and further relief as may be just and appropriate.

Respectfully submitted,

/s/ William D. Steinmeier

/s/ Mary Ann (Garr) Young

William D. Steinmeier, MoBar #25689
Mary Ann (Garr) Young, MoBar #27951
WILLIAM D. STEINMEIER, P.C.
2031 Tower Drive
P.O. Box 104595
Jefferson City MO 65110-4595
Telephone: 573-659-8672
Facsimile: 573-636-2305
Email: wds@wdspc.com
myoung0654@aol.com

/s/ Gregory Diamond

Gregory Diamond, IL Bar #6195100
WA Bar #28025
CO Bar #700161
Regulatory Counsel
Level 3 Communications
1025 Eldorado Blvd.
Broomfield CO 80021
Telephone: 720-888-3148
Facsimile: 720-888-5143
Email: greg.diamond@level3.com

ATTORNEYS FOR LEVEL 3
COMMUNICATIONS LLC

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on Staff Counsel at gencounsel@psc.mo.gov, the Office of Public Counsel at opcservice@ded.mo.gov, and counsel for AT&T Missouri at rg1572@att.com, and on all other parties of record either electronically or by mail, on this 13th day of November 2009.

/s/ William D. Steinmeier