

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Level 3 Communications, LLC's
Tariff Filing to Introduce Revised Tariff Pages
For Its Access Services Tariff, Mo. P.S.C. Tariff
No. 4.

Case No. TT-2011-0324
Tariff No. JX-2011-0488

**LEVEL 3 COMMUNICATIONS, LLC'S REPLY TO AT&T'S RESPONSE TO STAFF
RECOMMENDATION**

Level 3 Communications, LLC ("Level 3") respectfully files this reply to "AT&T's Response to Staff Recommendation," filed on August 11, 2011.

Completely absent from AT&T's filing is any discussion of what Level 3's new tariff is actually about. For many years Level 3 has maintained an advanced communications network that has provided end office functionality to its retail, non-carrier customers. In order to send traffic to those customers, however – that is, in order reach Level 3's end offices – an interexchange carrier ("IXC") in Missouri would normally connect to the tandem switch of an incumbent local exchange carrier ("ILEC").¹ Level 3 has now enhanced the capabilities of its network to provide its own tandem functionality. In order to effectuate that capability, Level 3 needs to re-home its existing end office devices from the ILEC tandem switch to its own tandem switch, and to include provisions in its tariff that reflect the fact that Level 3, not the ILEC, will be providing tandem functions. That is what the tariff revisions do.

It bears emphasis that under its new tariff, Level 3 will be providing ***exactly the same*** end office functionalities that it has provided for years, using essentially the same

¹ Level 3 has always offered the option to IXCs of directly connecting to Level 3 end office locations, but only rarely do IXCs find such a configuration to be economical.

physical network arrangements as it has always used. Nothing about the end office functionalities that Level 3 provides to IXCs is changing in any way under the new tariff. So, AT&T's incessant focus on concerns about end office functions is entirely misplaced.

With that context, AT&T asserts that the Commission must develop an elaborate record in order to determine whether Level 3's new tariff should be allowed to take effect. AT&T Response at pages 1, 7. This is wrong. Level 3's new tariff is consistent with both Missouri and federal law, is reasonable on its face, and should be approved. As suggested above, AT&T's arguments do not relate to the language or reasonableness of Level 3's tariff. They relate to AT&T's concerns about how and whether **any** LEC switched access tariff may properly be applied to calls switched between an interexchange carrier ("IXC") like AT&T and a provider of interconnected Voice over Internet Protocol ("I-VoIP") service. That is an interesting question, but it applies to all LEC access tariffs. The fact that AT&T is concerned about this issue is no reason to impose any further delays on allowing Level 3's tariff to take effect.

AT&T frames its first stated concern as "whether traditional end office charges may be imposed when those end office functions are not being provided." AT&T Response at page 1. But this question is not even in dispute between the parties. (The answer is "no.") As we have previously explained, for a decade now, FCC rules have required that in order to collect (interstate) switched access charges, a competitive LEC ("CLEC") must provide an IXC "the functional equivalent of" the services provided by the corresponding ILEC rate elements. 47 C.F.R. § 61.26(a)(3). So, end office charges may only be imposed by a CLEC when the CLEC's network is providing "the functional

equivalent of” traditional “end office functions.”² The changes to Level 3’s definition of “end office” simply implement that longstanding industry principle into the language of the tariff.

Moreover, as Staff observed, “Level 3’s revised definition [of “end office”] fits within” the definition of that term contained in Missouri law.³ Level 3’s effort harmonize its tariff with both federal and state law – as reflected in its revised definition of “end office” – strongly supports permitting the tariff to take effect, and rejecting AT&T’s objections to it.

AT&T’s actual, specific concern is that Level 3 might try to impose end office switching and related charges in connection with calls that AT&T sends to I-VoIP providers by means of Level 3’s network. AT&T Response at pages 2-3. But that is not a concern about whether Level 3’s tariff is reasonable. That is a concern about whether Level 3’s new tariff – which properly embodies the industry-standard “functional equivalency” test, which AT&T appears to embrace – ***applies*** to calls to I-VoIP providers.⁴ For reasons outlined in Level 3’s earlier filings, Level 3 is confident that

² AT&T’s wording is vague enough that it may be trying to claim that the only time a CLEC may impose end office charges is if it provides literally identical service to that provided by an ILEC. If that is indeed AT&T’s position, it is a decade behind the times with respect to the application of CLEC access charges. Any suggestion that CLECs have to use the same identical technology as old-fashioned ILECs in order to receive access charges should be rejected out of hand.

³ See Memorandum from William Voight in support of *Staff’s Recommendation to Approve Tariff*, at page 4.

⁴ At page 3 of its Response, AT&T argues that in serving I-VoIP providers, Level 3 only provides the functional equivalent of tandem service, not – as Level 3 believes – the functional equivalent of end office service. While Level 3 obviously believes it is correct on this point, AT&T’s argument demonstrates that even AT&T itself does not really have any objection to relying on the “functional equivalency” standard. But the only thing that Level 3’s tariff does with respect to the definition of “end office” is to expressly add that standard to the tariff language. AT&T’s own pleading, therefore, shows that its objections to Level 3’s revised definition of “end office” are without merit.

delivering inbound long distance calls to an I-VolP provider is, indeed, the “functional equivalent” of traditional end office switching.⁵ But this entire debate only makes sense **within the context of** Level 3’s new access tariff. The debate about whether Level 3’s activities in getting calls to I-VolP providers really **are** the “functional equivalent” of traditional ILEC end office switching is a debate to have – if need be – once Level 3’s tariff is in place, not as a prelude to allowing it to take effect at all.⁶

AT&T’s second stated concern has to do with the interplay between two subsections of Section 392.550 RSMo, on the hand, and Level 3’s new tariff, on the other – again, entirely in the context of **applying** the new tariff to calls to I-VolP providers. AT&T Response at 4-6. Section 392.550.1 RSMo states that access charges are due in connection with calls that start or end with an I-VolP provider to the same extent as they would for other calls. Section 392.550.2 RSMo requires I-VolP providers to register with the Commission. It may well be that there will be disputes about what these statutory provisions specifically permit or require with respect to the payment of access charges on long distance calls to or from I-VolP providers, but, again, those disputes have nothing to do with the approval of Level 3’s new tariff.

⁵ Traditional ILEC end office switching charges have applied in cases where the calls were switched from an IXC, via an ILEC switch, and on to devices such as large PBXs, large PBX-based interstate private networks, PBXs or equivalent devices used to provide shared tenant services, and even mobile carrier wireless switches. While I-VolP technology is new, versatile, and interesting, it is far from the first situation in which the LEC customer to which an IXC is sending traffic has maintained a network with very sophisticated switching and routing capabilities.

⁶ As one aspect of that debate, AT&T appears to be arguing that an I-VolP provider is for all intents and purposes a “carrier,” so that Level 3 – in routing traffic to I-VolP providers – is really providing tandem switching services, not end office switching services. That would be an odd result to reach in light of the FCC’s repeated refusal even to classify I-VolP providers as offering **telecommunications** services, as opposed to information services. Be that as it may, this, too, is an issue to be resolved in a proceeding regarding how to **apply** Level 3’s new tariff to particular factual circumstances, not an issue that suggests that the tariff itself should not be approved.

Level 3 recognizes that there is a certain degree of controversy in the industry regarding the application of access charges to calls between IXCs and I-VolP providers. That controversy, however, is no reason to delay or further investigate⁷ the Level 3 tariff revisions at issue here. Those revisions provide for Level 3 to re-home its own, existing end offices from the ILEC's tandem switch to Level 3's own tandem switches. Those revisions also embody the industry-standard test for applying CLEC access charges (which AT&T does not appear to contest) – that the CLEC provide the “functional equivalent” of ILEC access rate elements. The controversy on which AT&T has focused relates entirely to how Level 3's new tariff should properly be **applied**, once it has taken effect. Again, however, that controversy provides no reason to delay allowing the tariff to take effect in the first place.

Finally, AT&T vaguely suggests that allowing Level 3's tariff to take effect might somehow increase costs – either its own, or Missouri consumers'. AT&T Response at page 1 (tariff “could result in substantial increases to the cost of providing long distance service in the State”); *id.* at page 7 (tariff “could greatly impact the cost of providing long distance service to residential and business consumers”). These claims are entirely baseless. All that will happen once the tariff is in effect is that AT&T (and other IXCs) will use Level 3's tandem, rather than AT&T's tandem (that is, the tandem of AT&T acting as an ILEC), to connect to Level 3 end offices. The IXCs will no longer pay tandem charges to AT&T, but will instead pay equivalent charges to Level 3.⁸

⁷ Missouri Public Service Commission Staff has very thoroughly investigated and analyzed this tariff filing over the past several months, and recommends that it be approved or allowed to take effect by operation of law. *Staff's Recommendation to Approve Tariff*, filed August 4, 2011.

⁸ See Memorandum from William Voight in support of *Staff's Recommendation to Approve Tariff*, at page 5 (noting that Staff has assured itself that Level 3's tariff complies with the obligation that its access rates not exceed those of the ILEC, AT&T).

Obviously, paying the same access rates for the same traffic as apply today – just to a different LEC – will have no impact at all on the cost of long distance service. AT&T's vague allegations of cost increases have no merit, and should be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov), and counsel for AT&T, on this 12th day of August 2011.

/s/ William D. Steinmeier
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