

**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

**SUR-REPLY OF LEVEL 3 COMMUNICATIONS, LLC TO THE AT&T COMPANIES'
REPLY**

Level 3 Communications, LLC ("Level 3") respectfully files this brief sur-reply to the AT&T Companies' Reply ("AT&T Reply") in this matter, filed on April 25, 2011.

1. AT&T states that it does not object to network modernization efforts. AT&T Reply at 1 ¶ 1. That may be, but AT&T cannot have it both ways. If AT&T, in its objections, had expressly and on the record stated that old-style tariff language properly and unambiguously covers the use of new technology – specifically (for now) soft-switches in place of old-style circuit switches – to perform "end office" switching, there would be no issue. But AT&T has, notably, failed to say that. So, in objecting to Level 3's tariff revisions, even while acknowledging that Level 3 is using nontraditional technology in its network, AT&T appears to be trying to set up a situation in which it gets the benefit of **using** Level 3's new technology to originate and terminate calls on Level 3's network, while retaining the ability to avoid **paying** for those services on the grounds that the old tariff language somehow fails to cover the new technology.¹

¹ On that issue, Level 3 would contend that the FCC's explicit recognition that rural ILECs have for several years been using soft switches in their performance of traditional exchange access/local switching functions fully confirms that this particular technology, as well as new technologies in general that perform the same functions, "count" as end office switching, for purposes of access tariffs, even under the old-style language. See *Connect America Fund, etc.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No.

2. In this regard, AT&T objects to Level 3's new tariff definition of "end office" as supposedly "vague" or otherwise unclear. AT&T Reply at 1-2, ¶¶ 2-4, 6. This is disingenuous, at best, and non-sensical. As Level 3 explained in its response to AT&T's original filing against this tariff, the FCC's rules regarding CLEC access charges use language that is virtually identical to the language Level 3 proposes for its tariff. The FCC's rules governing access services provided by CLECs literally define "switched access services" for CLECs as services that "include the **functional equivalent** of the ILEC interstate access services" associated with various ILEC access rate elements.² This specific language, in this specific FCC rule, defining these specific functions, has been in place for **ten years**.³ AT&T, in its role as IXC, has been operating – in terms of its access payments to CLECs – under this "functional equivalence" language in a binding federal regulation for **a decade**. To claim now that it finds this language vague or unclear when virtually identical language appears in Level 3's tariff is entirely disingenuous. But – to avoid any doubt – what Level 3 means by its modified language in its definition of "end office" is precisely and entirely to reflect in Level 3's tariff language the decade-old "functional equivalence" test from the FCC's rules – specifically, as applied to the functions of end office switching, carrier common line, and the termination of common lines at end office switches.

10-90 *et al.*, 2011 FCC LEXIS 315 (released February 9, 2011) ("*Universal Service/Intercarrier Compensation NPRM*") at ¶ 187 & n.298.

² 47 C.F.R. § 61.26(a)(3) (emphasis added).

³ See *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) at ¶¶ 54-55 & Appendix B (laying out text of 47 C.F.R. § 61.26(a)(3), including "functional equivalent" language).

3. AT&T also claims to be concerned about Level 3 imposing end office switching charges when no real loop functionality is provided. Specifically, AT&T states:

The AT&T Companies are concerned that Level 3 may be intending this definitional change to allow it to impose end office local switching charges when it switches an IXC's long distance call to another carrier, such as a VoIP provider. In that situation, Level 3 would be imposing end office switching (for connecting a station loop to an IXC's trunk) even when it does not provide a loop (i.e., it would not be switching or connecting a station loop to an IXC's trunk).

AT&T Reply at 2 ¶ 5. This concern is severely misguided. First and foremost, VoIP providers are not “carriers” within the public switched telephone network.⁴ Notably, VoIP providers have no right to obtain numbering resources from the North American Numbering Plan Administrator, as AT&T well knows, having sought and obtained a **waiver** of the normal restriction of numbering resources to carriers in order to obtain such resources for one of its own VoIP ventures.⁵ In the normal case, as the FCC specifically found, a VoIP provider must “partner with a local exchange carrier (LEC) to obtain North American Numbering Plan (NANP) telephone numbers.”⁶ While the FCC might, someday, determine that VOIP providers are carriers, until that day comes, these entities are simply customers of local exchange carriers (like Level 3). Sending them calls is a local switching function, for which local switching charges properly apply.

4. There is nothing new or even particularly controversial about the situation of a local exchange carrier switching calls to an entity that operates its own “switch,”

⁴ Indeed, the FCC has expressly preempted state authority to impose common carrier regulatory obligations on VoIP providers. *Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (“*Vonage*”), *affirmed*, *Minnesota Public Utilities Commission v. FCC*, 483 F.3d 570 (8th Cir. 2007).

⁵ In the Matter of Administration of the North American Numbering Plan, Order, 20 FCC Rcd 2957 (2005) (“*SBCIS Numbering Waiver Order*”).

⁶ *SBCIS Numbering Waiver Order* at ¶ 4 (footnote omitted).

and receiving access charges for doing so. AT&T itself, in its role as an ILEC, has for decades provided local exchange service to large and medium-sized businesses with their own on-premises switches – what the industry has long known as “PBXs.”⁷ AT&T, in its role as an ILEC, has never hesitated to impose local switching and carrier common line charges on IXCs calling large business customers who had their own on-premises switches and assigned their own telephone numbers, internally, to their own personnel. Similarly, AT&T never hesitated to impose local switching and carrier common line charges on calls to hotels (which have on-premises switches to direct calls to individual rooms), to apartment buildings with a central number and a receptionist, or to “shared tenant services” providers, who for a time flourished by offering on-site telephone services, by means of a PBX, to multiple tenants in an office or apartment building. VoIP providers are simply the latest iteration of local exchange customers who perform their own internal switching functions to provide services to their own customers or personnel.⁸

5. In any event, while AT&T is wrong in its implicit claim that local switching charges should not apply to calls that Level 3 routes to VoIP providers, that is an entirely separate question from the issue of whether Level 3’s tariff revisions should be allowed to take effect. As noted in our initial filing, the key purpose of Level 3’s tariff

⁷ “PBX” stands for “private branch exchange,” which is simply a form of switch. In the words of NEWTON’S TELECOM DICTIONARY, the term “PBX” means:

Private Branch eXchange. A private (i.e. you, as against the phone company owns it), branch (**meaning it is a small phone company central office**), exchange (a central office was originally called a public exchange, or simply an exchange). In other words, **a PBX is a small version of the phone company’s larger central switching office.**

H. Newton, NEWTON’S TELECOM DICTIONARY, 19th Edition (2003) at 598 (emphasis added).

⁸ When Level 3 or any other local exchange carrier establishes a physical connection between one of its own end office switches and the facilities of a VoIP provider, that physical connection **is** a “loop,” or at least its “functional equivalent” as required by the FCC’s rules.

revisions is to establish the tariff framework for Level 3's forthcoming provision not only of end office switching (which it provides today), but also tandem switching and related functions as well. AT&T's disingenuous concerns about the perfectly appropriate modernization of Level 3's tariff language simply do not justify suspending the effectiveness of the new tariff language.

Level 3 was in the process of voluntarily extending the effective date of its tariff revisions by two weeks, from April 29, 2011 (the original effective date) to May 13, 2011. However, before it could accomplish that filing, an *Order Suspending Tariff and Extending Time* was issued in this matter. Level 3 respectfully hopes that the full suspension period ordered will not be required for the Commission to conclude, for the reasons explained in Level 3's initial filing and hereinabove, that AT&T's objections to Level 3's tariff revisions are entirely baseless.

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 28th day of April 2011.

/s/ William D. Steinmeier
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