

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

In the Matter of Level 3 Communications,	)	
LLC’s Petition for Arbitration Pursuant to	)	
Section 252(b) of the communications Act of	)	
1934, as amended by the Telecommunications	)	
Act of 1996, and the Applicable State Laws for	)	Case No. TO-2005-0166
Rates, Terms, and Conditions of	)	
Interconnection with Southwestern Bell	)	
Telephone Company, L.P., d/b/a SBC Missouri	)	

**SBC MISSOURI’S RESPONSE TO LEVEL 3’S MOTION TO EXPEDITE RESPONSES  
TO DATA REQUESTS**

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (“SBC Missouri”) hereby files its Response to the Motion to Expedite Responses to Data Requests (“Motion”) filed by Level 3 Communications, LLC (“Level 3”) on January 28, 2005.<sup>1</sup> For the reasons stated below, Level 3’s Motion – which is but another example of Level 3’s attempting to force unreasonable deadlines on SBC Missouri – should be denied in its entirety. Instead, the Commission should allow SBC Missouri the normal timelines applicable to objections and responses to data requests.

1. Level 3’s Motion and this Response are directed to the First Set of Data Requests (“DRs”) that Level 3 submitted to SBC Missouri on January 28, 2005. Under the Rules of Practice and Procedure governing this case, SBC Missouri’s objections to Level 3’s DRs are due by not later than February 7 and SBC Missouri’s responses to the DRs are due not later than

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<sup>1</sup> On January 28, 2005, the Commission entered its Order Directing Response to Motion to Expedite Responses to Data Requests, in which the Commission ordered that SBC Missouri file this Response no later than 1:00 p.m. on Monday, January 31, 2005.

February 17.<sup>2</sup> Level 3 cites no circumstances or special considerations warranting shortening either period.

2. Level 3 first asserts that it “is necessary to propound certain data requests upon SBC Missouri in order to gather relevant and probative information.” Motion, p. 2. But that assertion does not explain why Level 3 is only *now* propounding DRs to SBC Missouri. Indeed, the very rule cited by Level 3 as standing for the proposition that discovery “is specifically contemplated by the Commission’s new rules on arbitration” also specifically states that “[d]iscovery may begin after the filing of a petition for arbitration.” *See* 4 CSR 240-236.040(6).

3. The plain fact is that Level 3 could have submitted its DRs to SBC Missouri immediately after it filed its petition on December 13, approximately seven weeks ago, and nothing in its Motion explains why Level 3 did not do so. A review of the questions demonstrates that these questions are not based specifically on SBC Missouri’s testimony. Instead, these questions (other than questions 2-5) relate to matters that Level 3 could have inquired into when its petition was filed on December 13, 2004. To the extent the DRs are relevant at all, Level 3 knew about them based on the matters it claimed were at issue in its Petition and Decision Point List filed with the Commission on December 13, 2004. Level 3 thus has absolutely no grounds to complain about the “unusually-accelerated pace of this case.” *Id.* Level 3 has only itself to blame for having failed to timely submit its DRs at the outset of this

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<sup>2</sup> Level’s Motion incorrectly calculates these due dates as February 4 (for SBC Missouri’s objections) and February 16 (for SBC Missouri’s responses). Motion, pp. 1-2. Under the governing rules, the clock starts on the day after receipt of the DRs. *See* 4 CSR 240-2.090(2) (“The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission.”) (emphasis added); *see also* 4 CSR 240-2.050(1) (“In computing any period of time prescribed or allowed by the commission, the day of the act, event or default shall not be included.”) (emphasis added). Thus, SBC Missouri’s objections to Level 3’s DRs are due by not later than February 7 (January 29-31 and February 1-7 comprise the ten days allowed); SBC Missouri’s objections are due by not later than February 17 (January 29-31 and February 1-17 comprise the twenty days allowed).

case. The Commission need not and should not require SBC Missouri to essentially cease preparing for the arbitration hearing in order to respond to Level 3 DRs on an expedited basis.

4. This, of course, is not the first time that Level 3 has sought to force its own self-inflicted deadlines on SBC Missouri, and in fact, on the Commission as well. The Commission will recall that, when Level 3 filed its December 13, 2004 petition, Level 3 requested that the Commission take the extraordinary step of ordering SBC Missouri to file its testimony simultaneously with the filing of its response to the petition. The Commission ordered no such thing, and for good reason. The Commission will also recall that Level 3 could have filed its petition as early as November 18, 2004, the first day that the “135 to 160 day” arbitration filing window was presented to Level 3 under Section 252(b)(1). Had Level 3 done so, additional time would have been afforded the Commission and the parties to move the case forward in a more orderly fashion. Level 3 has never explained why it waited until the very last day, i.e., the 160<sup>th</sup> day, to file its Missouri petition. These considerations place Level 3’s present Motion in the proper perspective.

5. Level 3 next attempts to justify its belated conduct by suggesting, albeit halfheartedly, that its DRs are tied to SBC Missouri’s January 24 Direct Testimony. (“Level 3 has only been in possession of SBC-Missouri’s direct testimony in this case since Monday of this week, January 24, 2005.” *Id.*). This, too, is a red herring. Notably, not one of the 41 DRs submitted by Level 3 even refers to – much less seeks to flesh out – any of SBC Missouri’s Direct Testimony. Moreover, even a cursory review of the DRs reflect no late-breaking events that would justify causing the DRs to be submitted to SBC Missouri only last Friday. For example, DR 37 refers on its face to a March 9, 2004, offer allegedly made by SBC to Level 3. DR 38 refers on its face to the FCC’s *Vonage* decision issued on November 9, 2004 and SBC’s

press release in response to it. While DRs 2 through 5 purport to be addressed to SBC Missouri's witnesses' qualifications and sundry other questions presumably meant to glean "bias" on the part of the witness, SBC Missouri's Direct Testimonies already indicate each witness's job title, professional background, and his or her responsibilities with the company and in connection with this case (and thus, whether they also have any "marketing" connection, even putting aside the relevance of that inquiry in DR 3).<sup>3</sup>

6. Finally, SBC Missouri submits that many of these requests appear objectionable, and are clearly designed to prevent SBC Missouri from preparing for the upcoming filing of Rebuttal Testimony, as well as the hearing at which it is anticipated that many witnesses may appear. SBC Missouri should thus be permitted the full period permitted by the Commission's discovery rules due to these additional factors.

7. Level 3 correctly points out that it unsuccessfully sought the agreement of SBC Missouri's counsel for a shortened discovery period. *Id.*, pp. 2-3. The fact is that Level 3's request came as a complete surprise. SBC Missouri's counsel assumed that if Level 3 had truly wanted to generate discovery it would have done so when it filed its petition – after all, Level 3 had at the outset of this case indicated its complete understanding of the timelines governing this case. SBC Missouri's counsel also was not agreeable to the request due to the urgency of other tasks needing to be completed in this case, for example, the preparation and filing on Monday, February 7 of SBC Missouri's Rebuttal Testimony. SBC Missouri could not be expected to - and cannot agree to - sacrifice much needed time to prepare this testimony so as to work on objections to the DRs (which Level 3 requests be made due tomorrow, February 1) and responses to the DRs (which Level 3 requests be made due this Friday, February 4).

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<sup>3</sup> DRs 2 through 5 not only appear to be of little substantive value, they also are extremely overbroad inasmuch as they seek irrelevant information pertaining to witnesses and their supervisors.

8. In sum, SBC Missouri respectfully requests that the Commission deny Level 3's Motion to Expedite Responses to Data Requests. Level 3 has offered no grounds justifying its much-belated request. SBC Missouri's ongoing efforts to provide full and complete Rebuttal Testimony and to conduct an orderly, expeditious hearing on the merits should not be hijacked by yet another Level 3 attempt to have the Commission bail it out of a self-inflicted problem.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties on the Service List by electronic mail and/or U.S. mail on the 31<sup>st</sup> day of January, 2005.

  
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