

# MEMORANDUM

**To:** Missouri Public Service Commission Official Case File  
Tariff File No. JX-2011-0488  
Case No. TT-2011-0324

**From:** William Voight  
Supervisor, Rates and Tariffs  
Telecommunications Department

**Subject:** Staff's Recommendation to Approve Level 3's P.S.C. Mo. No. 4 Switched Access Tariff Sheet Revisions

**Date:** August 04, 2011

**Synopsis:** This recommendation sets forth the Telecommunications Department Staff's (Staff's) support and recommendation to approve Level 3's tariff proposal.

On March 29, 2011 Level 3 Communications, LLC (Level 3) submitted tariff sheets which propose to revise its P.S.C. Mo. Number 4, Exchange Access Services tariff. On April 20<sup>th</sup>, Southwestern Bell Telephone Company d/b/a AT&T Missouri (AT&T) filed a Motion requesting the Commission suspend Level 3's proposal for investigation. On July 6<sup>th</sup>, the Staff was ordered to file a recommendation no later than August 5<sup>th</sup>. The Commission has scheduled a pre-hearing conference for August 15<sup>th</sup>.

Level 3 states that the purpose of its revised tariff sheets is to establish rates and terms for Level 3's offering of its own tandem switching functionality in connection with the provision of originating and terminating access services provided to interexchange carriers. Level 3 further states that access to its current network necessitates use of the applicable incumbent local exchange carrier (I-LEC) tandem switch(s), and that its tariff filing is necessary because Level 3 intends to "rehome" its end-office switches onto its own tandems, so that transmission, switching, and end-office functions will be provided directly by Level 3.<sup>1</sup>

AT&T states that the proposal would permit Level 3 to charge rates for situations in which Level 3 serves only as an intermediate carrier, providing no loops to end-users and providing no local exchange switching. AT&T states its understanding that Level 3's filing is related to its (Level 3's) plans to route traffic through several regionalized

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<sup>1</sup> Response of Level 3 to AT&T's Motion, April 22, 2011, page 1.

“super-tandems”, and characterizes Level 3’s proposal as unduly expansive and vague.<sup>2</sup> AT&T objects to the definitional change Level 3 proposes for the term “end-office” and suggests the revised definition is vague, undefined, open-ended, unduly-expansive, and inconsistent with accepted industry practices. AT&T suggests that Level 3 may be intending to charge a local switching charge when it (Level 3) terminates long distance calls to users of Interconnected Voice over Internet Protocol (I-VoIP) telephone service. AT&T opines that if Level 3 wants to consider IP gateways as end-office switches, it should first be required to provide more information about such devices. Lastly, because Level 3’s tandem switching does not occur in Missouri, AT&T notes that Level 3’s proposal “may call into question” the Missouri Public Service Commission’s jurisdiction in the matter.<sup>3</sup>

Staff has had productive discussions with both parties during the course of its inquiries into this matter. Staff recognizes the nature and challenges associated with interconnecting legacy circuit switched networks with newer Internet Protocol networks. In the Staff’s view, both Level 3 and AT&T are committed to developing advanced and highly reticulated national networks that are more efficient and cost effective. Staff views the current disagreement between AT&T and Level 3 as an inevitable outcome pertaining to factors of cost recovery for building and maintaining those networks. The Staff wishes to address the following discussion points which were considered in developing Staff’s support of Level 3’s filing.

**Missouri Statutes Address I-VoIP compensation:**

Section 392.550.2 RSMo unambiguously requires AT&T and all long distance telephone companies to remit payment of switched access charges to Level 3 and all local telephone companies for calls originated from and terminated to I-VoIP telephone lines. The statute requires remittance *to the same extent* as legacy telecommunications services. In the Staff’s view, the statute is controlling, and the Commission need make no further conclusions to approve Level 3’s tariff proposal.

**Missouri Statutes Address I-VoIP registration:**

Section 392.550.1 RSMo unambiguously requires all I-VoIP telephone companies to obtain a registration from the Commission prior to offering I-VoIP telephone service.<sup>4</sup> Because Missouri law makes no distinction among the types of I-VoIP telephone service, this requirement applies to companies which primarily provide “nomadic” I-VoIP as well as stationary I-VoIP type service.<sup>5</sup> In the Staff’s opinion, subsection 2 of 392.550 should not be permitted to apply unless subsection 1 is also applied. Stated differently, if an I-VoIP company is not registered pursuant to 392.550.1, the switched access charge

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<sup>2</sup> AT&T’s Motion to Suspend, April 20, 2011; paragraph 6.

<sup>3</sup> *Id.* Footnote 5.

<sup>4</sup> I-VoIP companies merely “register” with the MoPSC. The streamlined registration process takes no more than 30 days and is set forth in §392.500 RSMo. As of this writing, approximately 27 entities have registered as I-VoIP providers in Missouri. The I-VoIP registration process contrasts with the “certification” process set forth in §392.430, which is necessary to obtain local exchange and interexchange service authority.

<sup>5</sup> Vonage and Magic Jack provide nomadic type I-VoIP service, which permits the user to have telephone service at any broadband location.

provisions of the Level 3 tariff cannot apply since the traffic has not been recognized as terminating to I-VoIP telephone lines.

**I-VoIP Compensation has not been addressed by the FCC:**

The matters being considered in Level 3's Missouri tariff have not been addressed by the Federal Communications Commission (FCC) and in particular, were not addressed in its Eighth Report and Order in CC Docket No. 96-262 ("Order").<sup>6</sup> Paragraph 16 of the FCC's Order has been cited by AT&T as support of an FCC objection to the practice of billing switched access charges on behalf of other carriers who are not authorized to bill for the service.<sup>7</sup> The Staff has examined the FCC's Order and finds that the matters addressed therein are subject to widely divergent intercarrier compensation regulatory regimes involving I-LECs, C-LECs and Commercial Mobile Radio Service (CMRS) providers – none of which involves the uniqueness of the I-VoIP traffic at issue in the instant Missouri case. Paragraph 16 of the Order addressed the narrow practice of *carriers* attempting to collect switched access charges on behalf of other *carriers* who have no independent right to collect such charges. In particular, the FCC reaffirmed previous rulings that a CMRS carrier is entitled to collect access charges from an IXC only pursuant to contract with the IXC. The FCC concluded that it follows that a competitive LEC has no right to collect access charges for the portion of the service provided by the CMRS provider. *"We will not interpret our rules or prior orders in a manner that allows CMRS carriers to do indirectly that which we have held they may not do directly."*<sup>8</sup>

**Level 3's Filing will not result in Double Billing of Access charges:**

Other matters addressed by the FCC in its Order also fail to support AT&T's opposition to Level 3's Missouri tariff filing.<sup>9</sup> For example, the FCC denied a petition by US LEC, a competitive local exchange carrier, which argued that it should be permitted to charge a maximum rate even where the competitive LEC provides only some portion of the access service, leaving the bulk of the service to be provided by other *carriers*. The FCC found that such practices are an invitation to abuse because it would enable multiple LECs to bill the full rate on a single call.<sup>10</sup> The Staff has examined Level 3's proposed tariff filing and finds sufficient safeguards to prevent Level 3 from engaging in any sort of double billing scenario. In particular, Sections 4.2.9.2 and 4.2.9.2.1 of Level 3's proposal describe Meet Point Billing arrangements based upon industry standards as contained in the Multiple Exchange Carrier Access Billing ("MECAB") Guidelines.

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<sup>6</sup> *Eighth Report and Order and Fifth Order on Reconsideration*. FCC 04-110; CC Docket No. 96-262; CCB/CPD File No. 01-19.

<sup>7</sup> Response to Staff Data Request No. 10.

<sup>8</sup> *Eighth Report and Order and Fifth Order on Reconsideration*. FCC 04-110; CC Docket No. 96-262; CCB/CPD File No. 01-19. Footnote 57.

<sup>9</sup> *Id.* Paragraph 15 describes two FCC petitions. One was filed by US LEC and another was filed by T-Mobile. The US LEC petition sought FCC permission to impose a federal "benchmark" access rate on CMRS traffic. The FCC ruled that such benchmark rate was not applicable to CMRS traffic. The T-Mobile case was brought about largely by events that had occurred in Missouri, where rural I-LECs had obtained MoPSC approval to tariff a two cent (\$0.02 per MOU) "adder" to recover a portion of non-traffic-sensitive loop costs. The case concluded with the FCC ruling against the validity of wireless termination tariffs used in lieu of negotiated agreements.

<sup>10</sup> *Id.* Paragraph 14.

**The definition of “end-office” – Staff’s response to AT&T’s concerns:**

AT&T expresses concern that Level 3 may be intending to use a definitional change of the term “end-office” to allow it (Level 3) to impose end-office switching charges when it switches long distance calls to another “carrier”, such as a VoIP provider.<sup>11</sup> Although AT&T is incorrect to characterize VoIP providers as “carriers”, AT&T correctly points out that such situations would permit Level 3 to charge for switching, even though Level 3 does not provide a “loop.” AT&T’s argument against Level 3’s revised definition of “end-office” is overcome for the following reasons:

It is not unusual to modify definitions as new technology becomes more versatile and existing technology becomes increasingly outmoded; that is why Newton’s Telecom Dictionary is updated daily and is currently in its 25<sup>th</sup> printed addition. By way of example, Graham Langley’s 1982 Telephony Dictionary defines “end-office” as:

A Class 5 office in the North American hierarchic routing plan; a switching center where subscribers’ loops are terminated and where toll calls are switched through to called lines.

This above definition - originally limited solely to “loops” - has gradually been expanded upon such that AT&T also includes trunks, Remote Switching Modules, and Remote Switching Systems served by host offices *in different wire centers*, as evidenced in AT&T’s own definition described in its April 20<sup>th</sup> Motion to Suspend.<sup>12</sup>

Moreover, MoPSC Rule 4 CSR 240-29.010 defines an end-office as:

....a building or space within a building that serves as an aggregation point for the provision of local exchange services and exchange access services. An end-office may also serve as an aggregation point for placing traffic on the LEC-to-LEC network on behalf of other carriers.<sup>13</sup>

Clearly, Level 3’s revised definition fits within the above definition because Level 3’s end-offices’ provision exchange access service. Staff sees nothing unusual with Level 3’s new definition, which is especially relevant with the advent of “soft switches”, IP Gateways, and Internet Telephone service.

**The FCC’s “YMax” Ruling may cause other carriers to make tariff revisions consistent with Level 3’s definition of “end-office”.**

The Staff respectfully wishes to inform the Commission that there is at least one other matter pending before the Commission that contains similarities to Level 3’s filing. On July 25<sup>th</sup>, Sage Telecom, Inc. (Sage) filed to replace its P.S.C. Mo. No. 4 Tariff with a replacement Tariff No. 5. The filing was logged by the Data Center as JC-2012-0034, and

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<sup>11</sup> AT&T’s Reply; April 25, 2011, paragraph 5.

<sup>12</sup> AT&T Missouri’s Intrastate Switched Access Tariff. P.S.C. Mo. No. 36, Section 2.6, 3<sup>rd</sup> Revised Sheet 6.

<sup>13</sup> This definition is from the Enhanced Record Exchange Rules.

is not contested. Sage's proposal appears to the Staff to have been filed as a result of events which have occurred in FCC Memorandum and Order 11-59.<sup>14</sup> Reduced to the nub, the FCC ruled in favor of AT&T by holding that YMax Communications Corporation's ("YMax") FCC tariff did not permit YMax to apply switched access charges for calls terminating to its close affiliate, MagicJack. In its ruling, the FCC emphasized that it was only addressing the particular language in YMax's tariff and the specific configuration of YMax's network architecture.<sup>15</sup> The FCC also made clear that it has never addressed whether interconnected VoIP is subject to intercarrier compensation rules, and was not doing so with YMax.<sup>16</sup> The Staff has examined Sage's proposal and finds that it includes substantial changes to the definitions section, including changes to terms such as "access line", "end-user", "loop", "trunk", and "switched access."<sup>17</sup> In the Staff's opinion, these definitional changes are very similar to those proposed by Level 3.

### **Level 3's April and August substitute tariff sheets:**

On April 27<sup>th</sup> and August 3<sup>rd</sup>, Level 3 submitted substitute tariff sheets to address Staff concerns of rate application and clarity. The Staff required assurances from Level 3 of its continued compliance with the Stipulation and Agreement between AT&T, Level 3 and Staff in Case No. TA-99-171.<sup>18</sup> In particular, the Commission has placed a condition on Level 3's certificate of service authority which limits Level 3's access charges to a cap no greater than that of the incumbent AT&T Missouri. Staff also requested that tariff reference the Missouri Enhanced Records Exchange Rule. The Staff has examined Level 3's substitute sheets and finds them in continued compliance with the Commission's previous conditions.

### **Matters Concerning Level 3's Annual Report:**

On July 8<sup>th</sup>, Level 3 amended its 2010 Missouri Annual Report to satisfy Staff concerns pertaining to the Line Quantities section of the annual report. The Staff has examined Level 3's amended Report and finds it acceptable. The Staff wishes to note that Level 3 is current in all other Commission reports and filings. Other than the matters previously referenced, the Staff is unaware of any other matter that affects, or that may be affected by, this filing.

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<sup>14</sup> Memorandum Opinion and Order. File No. EB-10-MD-005; FCC 11-59. Released April 8, 2011.

<sup>15</sup> *Id.*: paragraph 7. Evidence indicated that 110 of YMax's 141 points of interconnection were "empty POI's" - that is, YMax had no equipment of its own and leased no space in the POI's..... "presumably for the purpose of permitting YMax to obtain telephone numbers [for Magic Jack]....".

<sup>16</sup> *Id.* Footnote 7.

<sup>17</sup> MoPSC Tariff File No. JC-2012-0034; Tariff No. 5. Original Tariff Page No.'s 5 -12.

<sup>18</sup> *In the Matter of the Application of Level 3 Communications, LLC for a Certificate of Service Authority to Provide Basic Local Exchange Telecommunications Services and Local Exchange Telecommunications Services in the State of Missouri and for Competitive Classification*. Stipulation and Agreement, January 14, 1999.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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Case No. TT-2011-0324

AFFIDAVIT OF William Voight

STATE OF MISSOURI )  
 ) ss:  
COUNTY OF COLE )

William Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying Staff recommendation, and that the facts therein are true and correct to the best of his knowledge and belief.

WILLIAM VOIGHT



Subscribed and affirmed before me this 3<sup>rd</sup> day of August 2011.



NOTARY PUBLIC

