

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 Prehearing Conference

6 August 15, 2011

7 Jefferson City, Missouri

8 Volume 1
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10
11 In The Matter Of:

12 Level 3 Communications, LLC's,)

 Tariff Filing to Introduce)

13 Revised Tariff Pages for Its)

 Access Services Tariff,)File No. TT-2011-0324

14 PSC Tariff No. 4)

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17 _____
18 DANIEL JORDAN, Presiding

19 SENIOR REGULATORY LAW JUDGE
20

21 _____
22 REPORTED BY:

23 NANCY L. SILVA, RPR, CCR

24 TIGER COURT REPORTING, LLC
25

A P P E A R A N C E S

LEO BUB

AT&T Missouri

One AT&T Center

909 Chestnut Street, Room 3518

St. Louis, Missouri 63101

314.235.2508

FOR: AT&T

FREDRIK CEDERQVIST (via telephone)

AT&T

32 Avenue of the Americas, Room E561

New York, New York 10013

FOR: AT&T

WILLIAM D. STEINMEIER

William D. Steinmeier, P.C.

2031 Tower Drive

P.O. Box 104595

Jefferson City, Missouri 65110

573.659.8672

FOR: Level 3 Communications

GREGORY T. DIAMOND (via telephone)

Regulatory Counsel

1505 Fifth Avenue, Suite 501

Seattle, Washington 98110

206.652.5608

FOR: Level 3 Communications

CHRISTOPHER W. SAVAGE (via telephone)

Davis Wright Tremaine, LLP

1919 Pennsylvania Avenue NW, Suite 800

Washington, DC 20006

202.973.4211

FOR: Level 3 Communications

WILLIAM VOGT

CULLY DALE

Missouri Public Service Commission

200 Madison Street

P.O. Box 360

Jefferson City, Missouri 65102

573.751.6726

FOR: Missouri Public Service Commission

ALSO PRESENT: Alan Kern, AT&T

Ardell Burgess, AT&T

1 JUDGE JORDAN: The Commission will
2 call File No. TT-2011-0324. The caption is: In
3 the Matter of Level 3 Communications, LLC's,
4 Tarrif Filing to Introduce Revised Tarrif Pages
5 for Its Access Services Tarrif, MO PSC Tarrif
6 No. 4.

7 My name is Daniel Jordan. I'm the
8 regulatory law judge assigned to this action.
9 I'm going to proceed as follows: We'll start
10 with opening statements. I'll also want
11 introductions of client representatives.

12 We'll start with entries of
13 appearance. I'll want opening statements, and
14 we'll see how far we can get today in explaining
15 the issues to me, and perhaps we can make some
16 progress towards a resolution of this case
17 without an evidentiary hearing.

18 I will ask Staff to file a report
19 first thing in the morning, if that's possible,
20 letting me know its impression as to whether
21 settlement is probable or not. What I will do
22 if settlement does not look promising, is I will
23 set an evidentiary hearing as quickly as I can.
24 The reason being, the parties have had lots of
25 time to prepare their cases, should know their

1 positions by now, the evidence and arguments
2 supporting them, and so I will want as much time as I
3 can to prepare the best possible decision for the
4 Commission to review.

5 Counselor, did you have something?

6 MS. DALE: I will be unavailable in the
7 morning, but I can do it by this afternoon.

8 JUDGE JORDAN: That would be even better.
9 I appreciate that. Thank you.

10 All right. Any questions about the
11 procedure I have in mind before we continue?

12 MR. STEINMEIER: I don't believe so.

13 JUDGE JORDAN: Well then, we'll go ahead
14 and take entries of appearance. Let's start with
15 Level 3 Communications.

16 MR. STEINMEIER: Thank you, your Honor.
17 Please let the record reflect the appearance of
18 William D. Steinmeier of William D. Steinmeier, PC,
19 P.O. Box 104595 in Jefferson City, Missouri 65110-
20 4595, on behalf of Level 3 Communications, LLC.

21 For the record, we also have on the phone
22 with us this morning Gregory T. Diamond, regulatory
23 counsel for Level 3 Communications in Seattle,
24 Washington, and Christopher W. Savage of Davis,
25 Wright, Tremaine, LLP, in Washington, DC.

1 JUDGE JORDAN: Thank you, counselor. For
2 Staff?

3 Cully M. Dale, senior counsel,
4 representing the Staff of the Missouri Public Service
5 Commission, P.O. Box 360, Jefferson City, Missouri
6 65102.

7 JUDGE JORDAN: Thank you.

8 And for AT&T.

9 MR. BUB: Thank you, your Honor. Let the
10 record reflect that Leo Bub is representing AT&T
11 Communications of the Southwest, Inc., and
12 Southwestern Bell Telephone Company, doing business
13 as AT&T Missouri.

14 I'll refer to both throughout this as
15 AT&T, and I might need to make a distinction between
16 the long-distance company, AT&T Communications of
17 Southwest, Inc., and the ILEC, Southwestern Bell
18 Telephone Company that I'll call the ILEC
19 Southwestern Bell or the Old Southwestern Bell.

20 JUDGE JORDAN: I'll try to remember that.

21 MR. BUB: Okay. My address is
22 909 Chestnut Street, Room 3518, St. Louis, Missouri
23 63101, and on the phone by conference bridge are
24 three representatives from AT&T, one attorney and two
25 clients. The attorney is Fredrik Cederqvist, and you

1 spell his name F-r-e-d-r-i-k, last name
2 C-e-d-e-r-q-v-i-s-t. He's a lawyer with our company.

3 And Fredrik, you're in Washington, DC, or
4 New Jersey?

5 MR. CEDERQVIST: I'm in New York City.

6 MR. BUB: New York City. Thank you.

7 And then Alan Kern, A-l-a-n, K-e-r-n, in
8 St. Louis, Missouri, and Ardell, A-r-d-e-l-l,
9 Burgess, B-u-r-g-e-s-s -- Ardell, are you in New
10 Jersey?

11 MR. BURGESS: Yes, Bedminster, New Jersey.

12 MR. BUB: Okay.

13 And that's the AT&T representatives, your
14 Honor.

15 JUDGE JORDAN: Thank you, counselor. Here
16 is how I'd like to proceed: I want to give a brief
17 understanding of what I understand the issue to be,
18 and it'll be very brief based on my very limited
19 understanding of it, and then I'd like AT&T to tell
20 me why -- what I've got right, what I've left out,
21 what I've got wrong, and then I'd also like to hear
22 from Nexus and from Staff in whichever order you
23 think would be most helpful.

24 MS. DALE: Level 3?

25 MR. STEINMEIER: Level 3. Did you say

1 Nexus?

2 JUDGE JORDAN: Did I say Nexus? I'm
3 sorry. I meant Level 3. I'm sorry about that.

4 MS. DALE: I'm confused all the time. I
5 was thinking of the wrong case.

6 JUDGE JORDAN: The error is mine. I'm
7 sorry. Sorry about that.

8 We'll be on the record for part of this
9 time, and then once we've made as much progress -- as
10 much as I can help the parties with, I'd like the
11 parties to stay together and discuss the issues via
12 the phone bridge and make as much progress as they
13 can.

14 Here's my experience with administrative
15 matters: My experience is that the parties can
16 generally come up with something more constructive,
17 more helpful that meets the interests of all parties
18 better than a tribunal can.

19 When the parties work together on ironing
20 out their differences, they have a measure of control
21 over the resolution of the case that they lose if we
22 go to evidentiary hearing, so it is largely for that
23 reason that the law encourages settlement, and
24 certainly so do I.

25 Well, here's my very limited

1 understanding of this action: There is a filing of
2 tariffs to alter service of Level 3. There's some
3 problems with the language, I understand, such that
4 AT&T is concerned that it will expand the service
5 more than is intended.

6 Counsel, have I got that right? Is that
7 the nutshell?

8 MR. BUB: Well, I think that the intent is
9 to expand the service, so I think what we're seeing
10 is language that's being intentionally put into the
11 tariff that's vague and that will allow Level 3 to
12 charge long-distance companies for traditional end
13 office charges when an end office function is not
14 being performed, and it might -- if this is a time I
15 could give our --

16 JUDGE JORDAN: Please do.

17 MR. BUB: -- explanation, it might be
18 helpful.

19 JUDGE JORDAN: Please do.

20 MR. BUB: Let me start off by saying:
21 This is not a complaint about Level 3's tandem
22 service. In their recent filing that they made
23 Friday afternoon a few minutes before five o'clock,
24 they went on about our intent to complain about their
25 tandem service, our intent -- or at least our

1 complaint that we're complaining about increased
2 charges because they're going to be providing tandem
3 service.

4 Our complaint didn't challenge their
5 tandem service. Our complaint doesn't challenge
6 their tandem definition. Doesn't challenge the
7 tandem rates.

8 What we only challenged is the definition
9 of an end office. If they withdrew that definition,
10 then our complaint goes away. Our challenge to the
11 tariff goes away. The tariff goes into effect, and
12 they can provide their tandem service.

13 Throughout a lot of their pleadings they
14 also say that we are complaining about the equipment
15 or the technology that they're using. They say
16 they're using the most recent technology and our
17 complaint is an attempt to prevent them from doing
18 that. That's not our aim.

19 We don't have any concern or any
20 complaint about the equipment that they might want to
21 use or the technology that they might want to use.
22 What we challenge is the vague language that Level 3
23 wants to add, because it will -- it may let them
24 charge for end office functions when those functions
25 aren't performed.

1 An end office function is connecting a
2 loop to either another loop or to a trunk, and this
3 is why I brought the white board. Might be helpful
4 to see this.

5 JUDGE JORDAN: Please.

6 MS. DALE: While he's drawing, I'm going
7 to go get Bill.

8 JUDGE JORDAN: Okay.

9 MR. BUB: Should we take a recess for --

10 MS. DALE: Go ahead. Go ahead and start
11 drawing. It won't take a sec.

12 MR. BUB: Okay.

13 (Ms. Dale left the room.)

14 MR. BUB: A lot of times we're guilty in
15 the telephone industry of using our own jargon, and
16 unless you're in this small little club, these words
17 don't mean anything, so what I'll try and do is give
18 examples so you can see when we use these terms what
19 they mean, and it always helps me as a layperson to
20 start out with a telephone (indicated). End user
21 makes a telephone call.

22 JUDGE JORDAN: (Nodded.)

23 MR. BUB: When we're talking about an end
24 office, that's a telephone company building where
25 there's a switching machine in the end office. I

1 believe they call it "end office" because it's
2 closest to the end of the line that the subscriber --

3 JUDGE JORDAN: Okay.

4 MR. BUB: And we have a loop, a line, that
5 goes from the end user's premises. Could be a
6 residential house. The telephone goes to the line
7 inside of the house up to the telephone poles to the
8 end office.

9 Certainly there are many telephones
10 connected to that end office, so if one neighbor
11 wants to make another [sic], you have one telephone
12 loop end office down to the other loop to the
13 telephone, and there the end office function is what
14 I said, connecting a line to another line so a local
15 telephone call can be made.

16 Now, when you have a long-distance
17 call -- and we'll start with the most simple
18 example. Often where traffic volumes permit a long-
19 distance company like AT&T or MCI, Verizon, or Qwest,
20 will connect their lines directly to the end office,
21 so you may have -- we'll just call it the long-
22 distance company, LD Company.

23 On this example, I've drawn to the right
24 of the end office a line to a box where I have "LD
25 Company."

1 JUDGE JORDAN: Uh-huh.

2 MR. BUB: And let's just step back a
3 little bit. What long-distance companies -- they're
4 the carriers with the long lines. These long lines
5 carry long-distance calls. Could be between states.
6 Could be between cities within a state. The long-
7 distance companies don't have a line into --

8 JUDGE JORDAN: Right.

9 MR. BUB: -- a line into the end user's
10 house. That's the local company.

11 JUDGE JORDAN: Okay.

12 MR. BUB: And that could be a local
13 company like the old Southwestern Bell Telephone
14 Company, the ILEC, or it could be CenturyLink, or it
15 could be a CLEC like Sage or Level 3.

16 Long-distance companies have to rely on
17 local companies to enable the local company's
18 customers to be able to place and receive telephone
19 calls. So an end user wants to make a long-distance
20 call. They dial one plus the area code plus the
21 number, and then the end office, it recognizes the
22 one --

23 JUDGE JORDAN: Uh-huh.

24 MR. BUB: -- as a long-distance call, does
25 a database look-up to see which long-distance company

1 the end user has chosen, and then it sends it from
2 the appropriate trunk to the long-distance company,
3 and in this case the end office function is switching
4 the line to the trunk, okay?

5 JUDGE JORDAN: Okay.

6 MR. BUB: So we have two functions: End
7 office switches line to line, like the local call
8 from neighbor to neighbor --

9 JUDGE JORDAN: Right.

10 MR. BUB: -- or line to trunk to the long-
11 distance company, okay?

12 And what's happening is that these local
13 companies are giving access to the long-distance
14 companies so their customers can make and receive
15 telephone calls, access to the local exchange, and
16 the long-distance companies have to pay for that
17 access, and those are the access charges, and there
18 are many elements among the -- in the access tariffs
19 to recover different pieces that the local companies
20 are providing to the long-distance companies. This
21 loop that we talked about, that's the carrier common
22 line, abbreviated CCL.

23 JUDGE JORDAN: That's the carrier what
24 line?

25 MR. BUB: Carrier common line.

1 JUDGE JORDAN: Common line. Okay.

2 MR. BUB: And then here's the end office,
3 okay? Now, often a long-distance company won't have
4 sufficient volumes to go directly to the end office,
5 so what it can do is instead of going to the end
6 office, it will go to a more centrally-located
7 switch, another telephone company building, a
8 switching machine it has, and this will be a tandem
9 switch.

10 So for those on the line, we have a
11 telephone on the left-hand side, the loop, the end
12 office, a trunk to the tandem switch and to the long-
13 distance company.

14 JUDGE JORDAN: So the tandem switch pools
15 calls from --

16 MR. BUB: Yes. If you think -- tandem is
17 like a hub and spoke, so off the tandem switch could
18 be another --

19 JUDGE JORDAN: Okay.

20 MR. BUB: -- end office.

21 JUDGE JORDAN: Okay.

22 MR. BUB: So in this case with the tandem,
23 the long-distance company only has to connect to the
24 tandem switch, and then he gets access to all the end
25 offices that hone off the tandem switch.

1 JUDGE JORDAN: So the tandem switch can
2 pool calls both directions from --

3 MR. BUB: Yes.

4 JUDGE JORDAN: -- from the local, from
5 the long-distance to both provider.

6 MR. BUB: I have been talking about
7 originating access where one of these end users
8 places a long-distance call. The -- and that's
9 originating access. Terminating just goes the other
10 way. You know, this call can be coming, say, from
11 Cape Girardeau to St. Louis. It would come into the
12 long-distance company's point of presence to the end
13 office --

14 JUDGE JORDAN: Uh-huh.

15 MR. BUB: -- to the end user, or long-
16 distance company's point of presence to the tandem
17 switch within that LATA, or Local Access Transport
18 Area, that this tandem switch serves to the end
19 office to the end user, and that will be terminating
20 access. Elements, again, would carry a common line
21 end office switching, but then we also have a new
22 element, the tandem switching element.

23 In this situation we were just talking
24 about one local exchange company. It could be
25 Southwestern Bell, it could be CenturyLink that would

1 provide the end office function and tandem switching.

2 In this situation, if it was all an old
3 Southwestern Bell-handled call, the long-distance
4 company would turn it over to Southwestern Bell, the
5 ILEC or Century, the ILEC at the tandem, and they
6 would send it to the appropriate end office, to the
7 appropriate loop, to the appropriate customer, and
8 for that the local company would get tandem
9 switching, end office switching, and CCL. Those are
10 the elements --

11 JUDGE JORDAN: Of the access charge?

12 MR. BUB: -- of the access charges, yes.

13 JUDGE JORDAN: Gotcha. So the tandem
14 switch always belongs to the local company.

15 MR. BUB: Yes, as opposed to a long-
16 distance company. End office, these are all local
17 exchange functions.

18 JUDGE JORDAN: Okay.

19 MR. BUB: And it could be a traditional
20 incumbent local exchange company, like Century or
21 CenturyLink or Southwestern Bell. It can also be a
22 CLEC like Sage or Level 3.

23 JUDGE JORDAN: Uh-huh.

24 MR. STEINMEIER: And part of this case is
25 that -- Leo's already spoken to -- is that Level 3 is

1 proposing to be able to provide tandem services, and
2 so Level 3 could be in that circle as well as with --

3 JUDGE JORDAN: Gotcha.

4 MR. BUB: Level 3 would be another local
5 company, a competitive local company. Competitive
6 because it competes against the incumbent.

7 JUDGE JORDAN: Right. Right.

8 MR. BUB: Behind these tandem switches can
9 also be other companies. You might have a rural
10 company like Steelville Telephone Company. I'll put
11 them up here too, so that would be the end office, or
12 Steelville (indicated). They would also have end
13 users. Could also have a CLEC. We'll just use Sage
14 for that.

15 JUDGE JORDAN: Gotcha.

16 MR. BUB: In these situations where you
17 have more than one local company involved in
18 completing the call, because with access, that's
19 one -- that's the last monopoly service that
20 telephone companies provide, because if this end user
21 has selected Sage for its local company, the only way
22 a long-distance company can get its call to that end
23 user's line is through Sage because Sage provided it.

24 Or if it's a Steelville Telephone
25 customer, it has to go through Steelville, or if it

1 goes to an old Southwestern Bell customer, the line,
2 the long-distance company has to get it through to
3 the end user, Southwestern Bell.

4 JUDGE JORDAN: Okay. Quick question.
5 Would somebody, like Sage, own part of the --

6 MR. BUB: Yes.

7 JUDGE JORDAN: -- tandem switch?

8 MR. BUB: Not the tandem. The tandem
9 would be, in this example, the incumbent, so this
10 would be CenturyLink or Southwestern Bell. In that
11 case, the terminating long-distance, the long-
12 distance company would pay the tandem switch charges
13 to the ILEC --

14 JUDGE JORDAN: Okay.

15 MR. BUB: -- Southwestern Bell or Century
16 Link, but then they would pay -- if it went to a Sage
17 customer, they would pay the end office switching
18 charges to Sage and the CCL to Sage because Sage is
19 the one providing the function of connecting this
20 trunk to this loop, and that's the end office
21 switching function.

22 They own the end office switch. They get
23 the money, the charges to provide that function.
24 Sage also would be the owner of the loop, so they
25 would also get the CCL charges.

1 Same with Steelville. If the call went
2 through the tandem, Steelville's behind Southwestern
3 Bell, so Southwestern Bell would get the tandem
4 switching charges, but Steelville would get the end
5 office charges and Steelville would get the CCL.

6 JUDGE JORDAN: Gotcha.

7 MR. BUB: AT&T's challenge focuses on
8 Level 3's interconnections to VOIP providers, Voice
9 Over Internet Protocol providers, okay --

10 JUDGE JORDAN: (Nodded.)

11 MR. BUB: -- so we're going to draw
12 another line, and that would be -- I'm gonna put
13 "VOIP." And the VOIP provider provides voice-over-
14 Internet protocol (indicated).

15 MR. DIAMOND: Judge, do you mind if I just
16 give a comment here?

17 MR. BUB: You can do that after I'm
18 finished, counselor.

19 MR. DIAMOND: Sure.

20 THE COURT REPORTER: Was that
21 Mr. Cederqvist that spoke?

22 MR. STEINMEIER: Was that Greg?

23 MR. DIAMOND: Yeah, this is Greg Diamond,
24 Judge. If you wouldn't mind, I'd like to get time to
25 interrupt in terms of --

1 MS. DALE: Why don't you wait until it --
2 yeah, let's let him finish.

3 MR. DIAMOND: If you could, I just wanted
4 to be as accurate as you can verbally so I can
5 understand what he's drawing. That was my only
6 point.

7 JUDGE JORDAN: Okay.

8 MR. BUB: Greg, what I have drawn is a
9 telephone, a line, and I kind of put a cloud around
10 the line and then a circle with "VOIP" and then a
11 line to the tandem switch.

12 MR. DIAMOND: Thank you.

13 Chris, can you visualize that?

14 MR. SAVAGE: Yeah. I'm sitting here
15 halfway waiting to try to respond to a diagram that's
16 only in my mind, but I'm happy to do it when I get my
17 chance.

18 MR. BUB: Okay. Great. Thanks a lot. I
19 just wanted to be clear so we understood exactly what
20 was being drawn.

21 Thank you very much, Judge.

22 JUDGE JORDAN: Yeah, you're welcome.

23 Please go ahead.

24 MR. BUB: What our challenge focuses on is
25 Level 3's connection with the VOIP provider and

1 what's happening here.

2 Got it, Bill?

3 MR. STEINMEIER: I don't know. The
4 Smartphone is smarter than I am. I'm trying to take
5 a picture for you, but I may or may not have
6 succeeded.

7 JUDGE JORDAN: I have a Smartphone. It's
8 not apply named.

9 MR. BUB: So if this tandem switch is
10 being provided by Level 3, they're now providing --
11 they want to provide service to a VOIP provider.
12 The VOIP provider provides service, Voice-Over-
13 Internet Protocol service, to end users that they
14 interconnect to the Internet, and that's what this
15 cloud is, the Internet.

16 JUDGE JORDAN: Oh.

17 MR. BUB: And this VOIP provider could be
18 a company like Vonage, or it could be a company --
19 well, we'll just call it Vonage.

20 In this situation, our view is that what
21 Level 3 is doing is connecting the long-distance
22 trunk to another provider. It's not connecting a
23 long-distance trunk to an end-use loop, because in
24 this situation, the VOIP provider is the one with the
25 end users.

1 Level 3, in providing this tandem
2 service, doesn't have end users. They belong to the
3 VOIP provider. These end users don't pay anything
4 for telephone service to Level 3. They subscribe to
5 service provided by Vonage, the VOIP providers.

6 JUDGE JORDAN: How is that different from
7 the local exchanges?

8 MR. BUB: The local exchange, this end
9 user, pays Steelville for local telephone service,
10 Basic local telephone service.

11 JUDGE JORDAN: Okay. For Vonage, the end
12 user pays Vonage for access.

13 MR. BUB: For -- it's getting the voice-
14 over-Internet protocol service from Vonage.

15 JUDGE JORDAN: All right.

16 MR. BUB: Okay.

17 JUDGE JORDAN: But it sounds analogous to
18 the local exchange. Am I missing something?

19 MR. BUB: What's happening is Level 3 is
20 providing a tandem service, and we agree that when
21 Level 3 switches a long-distance call from the long-
22 distance trunk to the VOIP provider, they're entitled
23 to tandem switching charges because they're switching
24 the trunk from the long-distance company to a trunk
25 to another provider.

1 JUDGE JORDAN: Okay.

2 MR. BUB: Our problem is that since
3 Level 3 doesn't have any end users, it is not
4 entitled to end office switching like Sage or
5 Steelville would because it's not -- Level 3 is not
6 switching long-distance trunk to an end user's line.
7 The VOIP provider's doing that. It's providing the
8 end office function of switching the trunk to the
9 line. That's our dispute here.

10 We think it's improper for Level 3 to
11 charge end office switching or CCL because they're
12 not providing those functions. Another provider
13 is in this case. It would be the Vonage company.

14 Level 3 says it should be allowed to
15 charge these elements because when it serves a VOIP
16 provider, it says that Level 3 is providing the
17 functional equivalent of this end office service, and
18 you can see that on page 4 of their -- of last Friday
19 night's reply on page 3.

20 Level 3 cites an FCC rule for a
21 functional equivalency test to support its position
22 and claims its simply incorporating the FCC's
23 functional equivalency test into its new end office
24 definition.

25 Now, it's interesting that Level 3 cites

1 you to this FCC rule but neither quotes it nor
2 provides a copy to you, and we brought copies because
3 we thought it might be good for everyone to see.

4 For those on the phone, what I'm doing is
5 I'm handing out a copy of 47 CFR 61.26 entitled,
6 Traffic [sic] of Competitive Interstate Switched
7 Access Services.

8 MR. SAVAGE: Wait. Isn't it, Tarriffing
9 of Competitive Interstate Switched Exchange Access
10 Service?

11 MR. BUB: You're right.

12 JUDGE JORDAN: And it's 61.26.

13 MR. BUB: 61.26. I should put my glasses
14 on. Section 61.26.

15 MR. SAVAGE: A guy in another state can
16 read it better than you can.

17 MR. BUB: From a high level, what this FCC
18 rule does is it tries to bring parity and limits to
19 what a competitive local exchange company can charge
20 when it provides access to a long-distance company.

21 And remember, we talked about access
22 being the last monopoly service. When you have --
23 when your company, whether it's Southwestern Bell,
24 CenturyLink, Steelville, Sage -- when you provide
25 local service to the end user, you're the only way

1 that a long-distance company can get through, so
2 long-distance companies have only one method
3 originating and terminating long-distance
4 companies -- or calls, and that's through the local
5 exchange access --

6 JUDGE JORDAN: Uh-huh.

7 MR. BUB: -- service, okay?

8 And when CLECs, Competitive Local
9 Exchange Companies, began providing service, there
10 was a concern that they'd be allowed to charge
11 comparable access charges, but there's also concern
12 that they may be -- that they could charge excessive
13 because that was the only way to get there, so this
14 rule of the FCC sets out definitions and also sets
15 out methodology for the CLECS to set their access
16 charges.

17 And if you look at the beginning, the
18 first definition is a CLEC, and it says, A CLEC shall
19 mean a local exchange carrier that provides some or
20 all of the interstate exchange access services used
21 to send traffic to or from an end user and does not
22 fall in the definition of "incumbent local exchange
23 carrier." Incumbants are the Southwestern Bells and
24 CenturyLinks.

25 This definition is instructive because

1 what it talks about is connecting end users to long-
2 distance companies, giving long-distance companies
3 access to end users. And here, Level 3, we're
4 concerned doesn't have end users and should not be
5 allowed to charge the functions of access carrier
6 common line or end office switching, because those
7 are functions provided by the VOIP providers.

8 Now, the part that Level 3 cites is
9 Subsection A(3), and it says that that is a
10 functional equivalency test, and if you look at A(3),
11 Interstate switched exchange access services shall
12 include the functional equivalent of the ILEC
13 interstate exchange access services typically
14 associated with the following rate elements -- and
15 the elements are the piece parts that we've just been
16 talking about, and we'll go through those just so we
17 can follow through with the rule -- carrier common
18 line, originating; carrier common line,
19 terminating -- that's the CCL we're talking about,
20 the loop -- local end office switching -- that's the
21 end office definition that we're fighting about now;
22 interconnection charge; information surcharge; tandem
23 switched transport termination -- that's the piece
24 between the end office and the tandem switch. You
25 know, that's not at issue here, so I'm not focusing

1 on this, but are additional elements that you see
2 listed on this rule.

3 JUDGE JORDAN: Uh-huh.

4 MR. BUB: Tandem switch transport facility
5 per mile and tandem switching that we've talked about
6 here, those are all various elements that the FCC
7 says can be charged, but it doesn't say that the
8 service -- doesn't say that when a service is being
9 provided to a VOIP provider it's a functional
10 equivalency of end office switching.

11 It doesn't say that the CLEC gets to
12 charge for all elements just because they're on the
13 list. They only get to charge those that they
14 provide, and that's reinforced by Subsection F, which
15 is on the second page, top right-hand column, F, and
16 I'll read that: If a CLEC provides some portion of
17 the interstates switched exchange access services
18 used to send traffic to or from an end user not
19 served by that CLEC, the rate for the access services
20 provided may not exceed the rate charged by the
21 competing ILEC for the same access service.

22 So what does the FCC tell us in this
23 phrase? The FCC recognizes that sometimes a CLEC
24 will not be providing all access functions by itself,
25 and when it doesn't provide the function, it can't

1 charge for it.

2 The FCC also says to look to what the
3 incumbent left charges. Here the ILEC only charges
4 the tandem switch when connecting a long-distance
5 call to another provider. The example would be
6 Southwestern Bell switching a call to Steelville
7 Telephone Company, and Steelville switches the call
8 on to the end user. In that situation, recall that
9 Southwestern Bell only charged the tandem switching.

10 Steelville charges the end office because
11 Steelville connects the trunk to the loop, and
12 Steelville also charges for the loop, the CCL. Same
13 thing when it's a Sage customer. AT&T would charge a
14 tandem switching, but Sage would charge the end
15 office because it's providing the function of
16 connecting the trunk to the loop. Sage would also
17 charge for the end -- for the CCL for the loop.

18 JUDGE JORDAN: Uh-huh.

19 MR. BUB: Now, that Sage customer could be
20 a Level 3 customer. Level 3 does have end users.
21 Now, I don't want to take that away from them. When
22 they serve, say, a residential customer or they serve
23 an attorney's office, they're providing a loop to
24 that end user. They're doing end office switching
25 because they would be -- right now they're behind a

1 Southwestern tandem, so they would be switching the
2 trunk to their end user's loop, and when Level 3
3 actually switches the trunk to its loop, it can
4 charge the end office switching and the CCL.

5 Our problem here is when Level 3 provides
6 the tandem switching function to a VOIP provider, it
7 doesn't have the end users, so Level 3 is not
8 providing the end office function, switching trunk to
9 loop --

10 JUDGE JORDAN: Uh-huh.

11 MR. BUB: -- so it can't charge the end
12 office charge, nor can it charge the CCL because it's
13 not providing the loop.

14 What this rule says was that the CLECs
15 have to do the same as the ILECs, and when the ILECs
16 don't provide end office function, they don't charge
17 it. When they don't provide the loop, they don't
18 charge it.

19 Now, this kind of brings it all back to
20 the tariff. Now, the concern we have is that Level 3
21 is adding vague language to its tariff simply in
22 attempt to evade those FCC rules to allow it to
23 provide functions -- to charge for functions that
24 it's not providing --

25 JUDGE JORDAN: Uh-huh.

1 MR. BUB: -- and because of that we ask
2 the Commission to reject the tariff.

3 JUDGE JORDAN: Thank you. Let me ask a
4 couple of questions just to summarize your argument
5 and see where we're at. Then I'd like to take a
6 break, come back and introduce Staff's representative
7 and get some quick comments from Staff.

8 So my question for you --

9 MR. STEINMEIER: Could I make a statement
10 first?

11 JUDGE JORDAN: Like, before me?

12 MR. STEINMEIER: No, just before Staff.

13 JUDGE JORDAN: Well, I'll tell you what:
14 While we're on break, why don't you guys work that
15 out.

16 My question is this: As I understand
17 your diagram -- those on the phone, it's a helpful
18 diagram. It's not in evidence or anything, but it's
19 helpful for explaining counsel's arguments.

20 On the very left side we have telephone
21 end users. To the right we have end offices, and
22 then we have -- we have end offices and then we have
23 in that same column VOIP.

24 Then we have -- to the right of those we
25 have a tandem switch, and then to the right of that

1 we have a long-distance company, and they're feeding
2 into each other in that sequence.

3 MS. DALE: May I, your Honor, just briefly
4 say that in Staff's opinion, this diagram is not
5 technically correct.

6 JUDGE JORDAN: Yeah. I haven't made any
7 decision on that.

8 MS. DALE: I was just wondering, as
9 you're -- as you're explaining it, I just want to
10 make sure that we all understand that.

11 JUDGE JORDAN: Fine. I understand that
12 that's an argument, and I want to hear everybody's
13 side of it and see more diagrams if --

14 MS. DALE: I just will add to his.

15 JUDGE JORDAN: That's fine. That's fine.

16 Your problem, AT&T's problem, is that it
17 considers VOIP to be in the same column as the end
18 office users.

19 MR. BUB: As the end office company --

20 JUDGE JORDAN: End office --

21 MR. BUB: -- companies.

22 JUDGE JORDAN: -- companies, which are
23 typically a -- well, they're local exchange
24 companies, aren't they?

25 MR. BUB: Yes.

1 JUDGE JORDAN: And Nexus is --

2 MR. BUB: Level 3.

3 JUDGE JORDAN: So sorry. I don't know why
4 I keep saying that. Actually, I do know why. It's
5 because I'm very tired, but that's nobody's problem
6 but mine. Sorry about that confusion. I'm not
7 trying to inflict it on you.

8 Level 3 does have a function as a local
9 exchange company, so it could be, like any of those
10 that you've listed there, like Steelville and Sage,
11 but in this case you're saying we're not talking
12 about those customers; we're talking about customers
13 of a completely different company like Vonage, and
14 there you're worried that this language is big enough
15 to collect charges based on services essentially
16 that's someone else's customers. Is that a --

17 MR. BUB: Yes, the language is vague and
18 ambiguous to potentially allow them, because one of
19 the things from their pleading from Friday night,
20 they said that the functions aren't changing, and if
21 that's so, why need the definition at all?

22 JUDGE JORDAN: That leads me to my next
23 question, which I have for you, which is: Has AT&T
24 offered some language that it feels will protect it
25 from this language and overbreadth?

1 MR. BUB: The language that all other
2 companies use that's currently in Level 3's tariff
3 would allow them to charge the end office function,
4 the MCCL, when they provide those functions. We
5 don't see any need for the tariff to be amended to
6 allow them 'cause they've been doing that for years.

7 JUDGE JORDAN: Uh-huh.

8 MR. BUB: We're paying them -- you know,
9 all long-distance companies are paying them. There
10 has to be a reason for them to want to expand this
11 definition, because these FCC rules have been in
12 effect for a long time, so they apply. Their
13 existing definition has been in the tariff for years.

14 JUDGE JORDAN: Okay.

15 MR. BUB: It all works. You know, I think
16 that has to raise a red flag for all of us. You
17 know, What's going on? What are they trying to do?
18 What are they -- and I think you can see that, you
19 know.

20 In their last Friday's pleading they talk
21 about there's really no definition, because we agree
22 that they can only charge for functions that they
23 provide. I think when you look at their footnote --
24 I think it's Footnote 4 -- they focused -- you see
25 this Footnote 4 on page 3: Level 3's view is that

1 they provide the functional equivalent of an end
2 office when they serve this VOIP provider. That's
3 the dispute.

4 JUDGE JORDAN: Okay. With that, I'll note
5 that it's a few minutes before 10:00. I'd like to
6 take a break, say five minutes, and then we'll
7 resume. Thank you.

8 (A recess was taken.)

9 JUDGE JORDAN: We're back on the record.

10 MR. BUB: What I've done is -- Ardell
11 told me that Level 3 has an end office -- and this is
12 what we talked about before. Level 3 currently has
13 an end office, and they do have end user subscribers,
14 so putting in some telephones and loops for Level 3
15 so when a call goes from a long-distance company
16 through, it could be now AT&T's tandem to a Level 3's
17 end office to Level 3's end user. Level 3 would be
18 providing the loop, the end office switching. They
19 can charge for that. We don't dispute that. In this
20 situation, since they're behind AT&T's tandem --
21 Southwestern Bell's tandem, Southwestern would
22 provide the tandem switching.

23 Now, if that becomes -- if Level 3
24 rehomes its end office, so instead of being an AT&T
25 tandem it's now Level 3, when Level 3, using its own

1 tandem, connects a call through its end office to its
2 end-user subscriber, Level 3 would be providing the
3 loop, the end office switching and the tandem
4 switching, so it would get tandem switching charges,
5 end office switching charges and CCL charges because
6 it has the end user, has the relationship with the
7 end user. This is where I need to make a correction.

8 JUDGE JORDAN: Uh-huh.

9 MR. BUB: From that end office, then Level
10 3 has a line to a VOIP provider, and the VOIP
11 provider has the end users.

12 Our dispute still is that Level 3 doesn't
13 have a relationship with these end users. The end
14 users are the VOIP provider. The VOIP provider is
15 connecting the end user's lines to a trunk, and this
16 trunk goes to Level 3, so its providing the end
17 office switching.

18 We still think it's analogous to the
19 local end office situation where Steelville or Sage
20 provides the loop; Sage, Steelville, gets the CCL,
21 gets the end office switching. Level 3 would get
22 tandem switching charges 'cause it's providing a
23 tandem switch connecting a provider to interexchange
24 carrier. That's the correction I needed to make.

25 JUDGE JORDAN: Okay. And for --

1 MR. BUB: And I apologize for the mistake,
2 and that's what happens when you let lawyers talk.

3 JUDGE JORDAN: And also for those on the
4 phone, if I can summarize this, what you've done is:
5 On the hierarchy we've discussed before, in the
6 column of End Offices, you've given -- shown Level 3
7 as having its own end office and it's own end users,
8 but also -- as we discussed earlier --

9 MR. BUB: Yes.

10 JUDGE JORDAN: -- but also having a
11 relationship with some kind with a VOIP provider,
12 which goes further to the left than we used to on the
13 end users, through the Internet, represented by the
14 cloud symbol, to those end users, as you're
15 characterizing it.

16 MR. BUB: Yes.

17 JUDGE JORDAN: Okay. That helps me
18 understand.

19 Staff.

20 MS. DALE: Okay. I would -- I'm just
21 going to alter his pictures a little bit. Here's our
22 cloud (indicated).

23 JUDGE JORDAN: Uh-huh.

24 MS. DALE: It's our end user.

25 JUDGE JORDAN: Uh-huh.

1 MS. DALE: This is a loop to that end
2 user.

3 JUDGE JORDAN: Uh-huh.

4 MS. DALE: Missouri law -- not federal
5 law, but Missouri law, 392.550, requires that for
6 interconnecting VOIP calls --

7 JUDGE JORDAN: Uh-huh.

8 MS. DALE: -- access charges apply. Now,
9 were Vonage to charge some kind of loop charge to
10 these people, we would be opposed to Level 3
11 charging, because essentially they would be saying
12 this was their end office and they were charging to
13 them.

14 JUDGE JORDAN: Uh-huh.

15 MS. DALE: But in this case we believe
16 that the -- the Staff's position is: As long as
17 they're not double-counting under 392.550, they can
18 charge this carrier common line access charge, Level
19 3 end -- the end office functions as an end office,
20 it delivers it to Vonage, which has its IP Gateway
21 there, and we construe this to be a loop.

22 JUDGE JORDAN: Okay.

23 MS. DALE: Technically, that's how we
24 perceive the network setup. We believe our position
25 is that in light of 392.550, which allows the

1 collection of access charges, and the fact -- access
2 charges to apply to interconnected VOIP calls,
3 moreover, the Chapter 29 rules, definitions, have a
4 definition of "end office" that is remarkably close
5 to the functional equivalent language that Level 3
6 wants to put in; that in light of Missouri law, there
7 is no good cause to further suspend this tariff.

8 Anything else you want to say? I said
9 I'd be brief. That's it.

10 JUDGE JORDAN: I appreciate that.

11 And for those on the phone, Staff has
12 altered the diagram with a red marker to illustrate
13 its argument that the VOIP provider, such as Vonage,
14 constitutes an end user connection from Level 3's end
15 office to Vonage, is just another loop.

16 Does that clearly summarize your
17 argument?

18 MS. DALE: Yes, at least as its presently
19 configured.

20 JUDGE JORDAN: Right. And you mentioned
21 the Missouri statute requiring --

22 MS. DALE: Yes.

23 JUDGE JORDAN: -- the collection of access
24 charges. That issue sounds familiar to me. I think
25 I've come across that. Anything else?

1 MS. DALE: There's a pleading in a
2 DO-2011 -- I can't remember the last three digits --
3 case in which the issue of nomadic versus fixed
4 location VOIP is discussed at length.

5 JUDGE JORDAN: Oh.

6 MS. DALE: If it were a fixed location
7 VOIP, it would probably have different configuration,
8 which is why when Mr. Bub was talking about Vonage or
9 something else -- it's hard to think of who the
10 other -- you can't just say Mediacom, because
11 Mediacom is a completely different animal being a
12 fixed location VOIP provider; however, the statute
13 does not make a distinction between nomadic and fixed
14 location.

15 So if this were fixed location, it would
16 have a different configuration plus what Mr. Bub
17 drew, but that's not this thing.

18 JUDGE JORDAN: Okay. Anything else from
19 Staff?

20 MS. DALE: No.

21 JUDGE JORDAN: Then let's hear from
22 Level 3.

23 MR. STEINMEIER: Your Honor, I'd like to
24 call upon Chris Savage to offer the first part of our
25 response, and then I'll sum up with what's somewhat

1 more general than what we've heard so far.

2 JUDGE JORDAN: Okay. Thank you.

3 Mr. Savage.

4 MR. SAVAGE: Thank you, your Honor. Thank
5 you, Mr. Steinmeier.

6 If I speak at this volume, can you hear
7 all right in the room?

8 JUDGE JORDAN: Yes.

9 MS. DALE: Yes.

10 MR. SAVAGE: Okay. The first thing that
11 Level 3, I think, would like to focus on is that
12 putting aside all the complicated diagrams and all
13 that, from our perspective, that doesn't have
14 anything to do at all with the hearing that's taking
15 place right here today; right?

16 The hearing that's taking place today, as
17 we understand it, is whether our tariff should be
18 further suspended. Our tariff doesn't say anything
19 about whether or not when we provide connections --
20 let's be general about it -- to a VOIP provider that
21 is or is not the functional equivalent of a
22 traditional incumbent carrier end office function.

23 All this stuff about -- and we need to
24 talk about it a little bit, but all that complicated
25 factual stuff has nothing at all to do with where we

1 are procedurally.

2 Where we are procedurally about the part
3 of our tariff that AT&T has trouble with is simply
4 adding language that expressly says the governing
5 standard is this functional equivalent standard that
6 nobody seems to object to, and so we would emphasize
7 that we don't think that it is legally appropriate,
8 and certainly not legally necessary, to either
9 further suspend the tariff or have any hearing about
10 it.

11 Allowing our tariff to go into effect
12 because the Staff points out that the revised
13 definition is consonant with the Missouri law and, at
14 the same time consonant with the federal law, would
15 give AT&T every right in the future to possibly want
16 to object to paying any access charges it thinks it
17 doesn't have to pay. That's a proceeding for another
18 day.

19 So our -- the first key point I want to
20 make sure you see is: Before we get into some of
21 this technical stuff, it really doesn't have anything
22 to do with where we are today.

23 We have a tariff that contains a proposal
24 to add language to incorporate expressly this
25 functional equivalent standard, and that's all the

1 tarriif does. We may disagree about how that applies
2 in some case, but that's not a reason to suspend the
3 tarriif. That's point one.

4 Point number two: I think, you know,
5 Staff kind of hit the nail on the head. We believe
6 it is appropriate, for a number of reasons, to view
7 the connection that we provide to Level 3, to treat
8 Level 3 as an end user to the extent that we're
9 looking at federal law -- and I know that Mr. Bub
10 passed out 61.26 -- there's actually a definition in
11 federal law, if that's what we're referring to, an
12 end user --

13 MS. DALE: Hang on.

14 JUDGE JORDAN: Hang on, Mr. Savage.

15 MR. STEINMEIER: Chris, just a moment.

16 MR. SAVAGE: For reference, it's 47 CFR,
17 Section 69 --

18 MR. STEINMEIER: Chris?

19 MR. SAVAGE: -- to Subsection M, like
20 Mary.

21 JUDGE JORDAN: Hang on just a second,
22 counselor. Can you hang on just a second?

23 MR. SAVAGE: Certainly.

24 MS. DALE: You just said "treating Level 3
25 as an end user." Did you mean treating Vonage as an

1 end user?

2 MR. SAVAGE: I did mean treating Vonage as
3 an end user. I apologize.

4 JUDGE JORDAN: Thank you for that
5 clarification.

6 MR. SAVAGE: The definition reads, quote,
7 "End user" means any customer of -- and this is maybe
8 stated foreign because it's FCC -- telecommunication
9 service that is not a carrier. And then it says,
10 Except as a carrier can also be a customer if they're
11 using it for their own purposes, and there's some
12 other stuff that I'll represent is not -- not
13 relevant here, as far as I can tell.

14 So the question in terms of being an end
15 user for purposes of applying that functional
16 equivalent rule is whether your customer is a
17 carrier. And without going into a lot of the
18 details, I think it is absolutely uncontested that as
19 a matter of both federal and state law, entities like
20 Vonage are not carriers. It's not clear what they
21 are, but they're not carriers, and so treating
22 Vonage, even though it has a direct relationship with
23 the end user is not -- the end user is essentially the
24 person who picks up the phone -- doesn't mean they're
25 not a, quote, end user, closed quote, for purposes of

1 access charge law.

2 We filed a bunch of stuff about other
3 instances in the, you know, roughly 25-year history
4 of access charges where people, entities, businesses
5 have been treated as end users for access charge
6 purposes, and long-distance carriers have been
7 charged end office, end carrier common line rates in
8 serving them even though the real person who picks up
9 the telephone is one or two or even several steps
10 removed from where the local exchange carriers end
11 office hands the call off, and so whereas in
12 Mr. Bub's diagram you have the end office, and then
13 hanging off the end office is a telephone? That's
14 true, but it's also true, really, for the last
15 30 years that sometimes what hangs off that end
16 office is a very complicated set of networks and
17 devices with somewhat of a telephone way, way down
18 the line.

19 That's all very interesting, technically,
20 but it doesn't have anything to do with whether the
21 function the local carrier's providing counts as an
22 end office function, and that's -- if there's a
23 technical distinction between us, that's what I would
24 say.

25 The implication of his diagram is that

1 the end office function is provided by whoever that
2 little telephone connects to, and while it's
3 certainly true that when a telephone connects to a
4 local carrier's end office -- that's an end office
5 switching function -- it is, by no means, limited to
6 that and hasn't been limited to that for the entire
7 25-, 30-year history of access charges.

8 So putting all that aside, putting the
9 analysis -- he's trying to make the case that when we
10 connect Vonage or we connect a similar ILEC provider
11 to the public network that what we're doing is more
12 like a tandem function as compared to more like an
13 end office function. We very much disagree with
14 that.

15 But again, going back to what I said at
16 the beginning, it doesn't matter. Our tariff simply
17 says we will be able to charge end office rates when
18 we do, in fact, perform the functional equivalent of
19 end office switching.

20 If they want to make the case in some
21 particular case that we don't, okay, then, you know,
22 we'll have that dispute down the line. That's a
23 fight to have under our tariff. It's not a possible
24 basis for saying our tariff shouldn't be allowed to
25 go into effect.

1 Now, with that, I mean, I could -- I
2 could go on at great length about the precedents and
3 the technology and all that but, fundamentally,
4 again, all we're worried about is having our tariff
5 take effect, not how it could be able to be applied
6 in every particular instance that AT&T may be
7 concerned about.

8 JUDGE JORDAN: Okay, Mr. Savage. Thank
9 you. Thank you for that. I'll defer to
10 Mr. Steinmeier, and then I may have a question or two
11 that either of -- or any of Level 3's representatives
12 or counsel can address.

13 Mr. Steinmeier.

14 MR. STEINMEIER: Well, thank you, your
15 Honor.

16 Let me just say that the proposed tariff
17 revisions of Level 3 in this matter are simply not as
18 complicated or controversial as AT&T has strenuously
19 tried to characterize.

20 They essentially accomplish two things,
21 as have been touched on this morning: Updating the
22 existing tariff to reflect technological enhancements
23 in the telecom network and adding a new switch tandem
24 service available to Missouri customers.

25 It's been the policy of the FCC for the

1 last ten years to promote diversity and redundancy
2 and switched access services from its CLEC accessory
3 form order in 2001 to its post-Katrina report in
4 2006.

5 The federal government's promotion of
6 telecommunications competition has been echoed in
7 Missouri law, including statutory statements that
8 Chapter 392 shall be construed to advance the
9 efficiency and availability of telecommunications
10 services, promote diversity in the supply of
11 telecommunication services and products and permit
12 flexible regulation of competitive telecommunication
13 companies and services.

14 This competitive spirit has enhanced the
15 network through the development and deployment of new
16 technologies, and yet AT&T is arguing here that Level
17 3 should not be permitted to undate its definition of
18 "end office" in a manner consistent with the federal
19 use of -- or definition of that term for the last ten
20 years.

21 If AT&T, in its objections, had expressly
22 stated that old-style tariff language properly and
23 unambiguously covers the use of new technology,
24 including soft switches in place of old-style circuit
25 switches to perform end office switching, there would

1 be no issue here, but AT&T has notably failed to say
2 that, so in objecting to Level 3's tariff revisions,
3 even while acknowledging that Level 3 is using
4 nontraditional technology in its network, AT&T
5 appears to be trying to set up a situation in which
6 it gets the benefit of using Level 3's new technology
7 to originate and terminate calls on Level 3's network
8 while retaining the ability to avoid paying for those
9 services on the grounds that the old tariff language
10 to which it objects somehow fails to cover the new
11 technology.

12 Now, the Staff has rejected AT&T's
13 position, and it's Staff recommendation to approve
14 tariff filed on August 4. As the Staff observed in
15 its supporting memorandum, it is not unusual to
16 modify definitions as new technology becomes more
17 versatile and existing technology becomes
18 increasingly outmoded.

19 As Mr. Savage has suggested, AT&T's
20 objections to these tariff revisions are all about
21 future issues, it is concern -- may arise in regard
22 to the application of the tariff, not about the
23 reasonableness of the tariff revisions themselves.
24 Those objections provide no reason to delay allowing
25 the tariff to take effect in the first place.

1 And AT&T's expressed concerns about
2 cost. They're entirely misplaced and without merit.
3 These tariff revisions do not increase access costs,
4 and AT&T, the IXC, will not pay any more in access
5 charges under these tariff revisions than they do
6 now. AT&T cites *Ag Progressing v MO PSC*, 120
7 Southwest Third 732, as authoritative for the
8 Commission being required to hold full hearings in
9 this matter.

10 This case is -- it was an appeal of the
11 Commission's order approving the merger in UtiliCorp
12 United and St. Joseph Light and Power: Electric
13 utility mergers must be approved by the Commission
14 under Section 393.190.1 RSMo.

15 The instant docket is neither a merger
16 case nor a general rate case. It is a tariff
17 revision. If the Commission had to hold hearings and
18 render findings and conclusions on every tariff
19 filing that a competitor wanted to stop or slow down,
20 the regulatory burden on the Commission would be
21 unbearable.

22 The final and suspend method gives the
23 Commission discretion to allow a tariff filing to go
24 into effect by operation of law. That is exactly
25 what the Commission has done with other access

1 services tariffs in the last two years, including
2 IT-2010-0127 regarding Bandwidth.com, and TT-2010-
3 0099, regarding Neutral Tandem Missouri, both of
4 which were access services tariffs protested by AT&T
5 and both of which became effective without hearings,
6 and both of those tariffs were entirely new access
7 tariffs, not merely revisions to long-existing access
8 services tariffs as in the instant case.

9 Level 3's tariff revisions are reasonable
10 in the public interest and should be approved. For
11 these reasons and those elaborated in our pleadings
12 in this case, Level 3 requests that the Commission
13 either allow its tariff revisions to take effect on
14 the current proposed effective date or issue its
15 order approving the tariff to take effect on that
16 date.

17 Further delay constitutes prejudice and
18 an unreasonable interference with Level 3's
19 operations in Missouri and a hindrance to competitive
20 options for Missouri consumers. A competitor's
21 preference is not justification for delaying approval
22 of those tariff revisions.

23 Thank you, your Honor.

24 JUDGE JORDAN: Thank you.

25 I've got a couple questions for Level 3,

1 and it might be better if the answer comes from
2 counsel since counsel's doing a good job as
3 translator from the technical experts to this
4 regulatory law judge.

5 Can you tell me, just in a nutshell, as
6 to this tariff: Is the absence of the proposed new
7 language preventing Level 3 from doing something that
8 it wants to do and, if so, what?

9 MR. SAVAGE: Your Honor, this is
10 Mr. Savage. Our concern is that the language in our
11 current tariff, I think, was put into place in 2001,
12 or sometime quite long ago, and doesn't actually
13 literally conform either to the definition of "end
14 office" in the Missouri rules or to the definition of
15 "functional equivalent test" that the FCC has had in
16 place.

17 And the concern, essentially, is that as
18 our network has evolved, and as a purely technical
19 matter, looks a lot less like the, you know, roughly
20 1985 vintage network that Mr. Bub drew in his
21 diagram, that that actually will create potential
22 problems -- more potential problems down the line,
23 and so as a purely technical matter, no, I don't -- I
24 think that the -- the network will continue to
25 function as it should, even if the tariff language is

1 not amended in this way.

2 Our concern is that over time as the
3 divergence between the literal language of the
4 tariff, on the one hand, and both the technology and
5 the modern regulatory requirements, on the other
6 hand, is a prescription for disputes and troubles,
7 and I wouldn't want this -- to necessarily suggest
8 that AT&T, you know -- well, Mr. Steinmeier -- I'll
9 go ahead and suggest it, since he did.

10 If they simply said, Oh, we would not
11 ever argue that anything other than the functional
12 equivalent test governs under your existing tariff
13 language, we just need to have a dispute about
14 whether that applies to this IVOIP interconnection,
15 then we probably wouldn't have an issue at all, but
16 our concern, I mean, very frankly, is that they are
17 trying to prevent us from properly reflecting the
18 current regulatory arrangement in our tariff in order
19 to gain an advantage in what is their real concern,
20 which is whether or not IVOIP interconnection is
21 subject to access.

22 JUDGE JORDAN: Thank you for that
23 explanation. Let me get Staff's take on that as far
24 as whether current tariff language -- counsel for
25 AT&T referred to standard language that's been

1 affecting tariffs commonly is antiquated such that it
2 will cause persons in Level 3's position problems in
3 the future.

4 MS. DALE: I may be wrong, and if I
5 misspeak, somebody needs to correct me, but I believe
6 that the present tariff language does refer to a
7 Class 5 end office.

8 MR. CEDERQVIST: And this is Fredrik
9 Cederqvist with AT&T. If this is appropriate, I'd
10 like to respond, but otherwise I'll wait.

11 JUDGE JORDAN: Hang on just a second.
12 Counsel for Staff is examining some language.

13 MR. SAVAGE: The current language -- this
14 is Chris Savage -- reads as follows: The current
15 definition says, The term "end office" denotes the
16 switching system office or serving wire center where
17 customer station loops are terminated for purposes of
18 interconnection to each other and to trunks.

19 And our proposal -- this is actually laid
20 out on page 2 of AT&T's response to the Staff
21 recommendation from last week. Our proposal is to
22 add language intended to implement the functional
23 equivalent standard in order to reflect new
24 technology in three different parts of that
25 definition, so it doesn't literally say Class 5,

1 which is a truly antiquated term that goes back to
2 the '70s, but it describes a very traditional end
3 office.

4 Now again, in practical terms, everyone's
5 technology has been evolving, I think even
6 Southwestern Bell's, but certainly all the CLECs and
7 many of the smaller RLECs that have less of an
8 imbedded base to upgrade, have upgraded to soft
9 switches in using more modern technology but, again,
10 that's why we're simply trying to make the language
11 match.

12 JUDGE JORDAN: Bill Vogt.

13 MR. VOGT: My name is Bill Vogt, and I
14 would like to just ask the Level 3 -- Chris, the
15 current tariff -- and I don't have the tariff in
16 front of me, but as I understand, the judge's
17 question is, you know, To what extent, if any, would
18 Level 3 be harmed if, you know, the new tariff did
19 not go into effect?

20 As I recall, Level 3 does not have the
21 tandem switching charge in its current tariff.

22 MR. SAVAGE: That is correct. The
23 tariff -- I apologize for that, Bill. You're right.

24 The tariff language that we have
25 proposed, the vast majority of that tariff language

1 relates to something that AT&T has said they do not
2 object to, and that is implementing your own tandem
3 switch, having our end offices hang off of our tandem
4 switch instead of the existing, you know, incumbent
5 series tandem switching and to charge for their
6 tandem switching that we will provide.

7 As I understand it, the only objection
8 that AT&T has is to the modification of the term "end
9 office" where we, again, are modifying that to
10 reflect the functional equivalent test.

11 But Bill Vogt, you're quite right. There
12 are a -- the vast majority of our tariff changes are
13 designed to permit us to offer -- reflect the terms
14 and conditions under which we will offer the tandem
15 function using our own network technology rather than
16 relying on the existing incumbent technology.

17 JUDGE JORDAN: Thank you for that
18 clarification.

19 You know, I think I neglected to get Bill
20 Vogt's introduction on the record. Mr. Vogt, will
21 you identify yourself?

22 MR. VOGT: My name is William Vogt. I'm
23 the tariff supervisor in the telecommunications
24 department for the Missouri Public Service
25 Commission.

1 JUDGE JORDAN: Thank you.

2 Counsel for Staff.

3 MS. DALE: I would like to go back to your
4 actual question --

5 JUDGE JORDAN: Yes.

6 MS. DALE: -- which is: From Staff's
7 perspective, if the definition of "end office" were
8 not changed, we would -- our position would assume
9 functional equivalency because that's what our --
10 because that flexibility is inherent in our rules and
11 law; however, putting the "explicitly" in the tariff
12 is not something that we object to in any way because
13 it, in fact, just states explicitly what we think is
14 already explicitly there.

15 JUDGE JORDAN: Okay. I think I understand
16 the position of Level 3 and Staff on this.

17 Mr. Bub, has anything you've heard
18 changed what AT&T --

19 MR. BUB: It hasn't changed, but we do
20 have a couple things we want to point out.

21 JUDGE JORDAN: Okay.

22 MR. BUB: When you look at their
23 definition of itself, the proposed definition,
24 they're adding more than just functional equivalent.
25 You know, for example, when they talk about the term

1 "end office denotes the switching system office or
2 serving wire center," then they put in parentheses
3 "or functionally equivalent or analogous facilities,"
4 what are those? That's not in the FCC rules and not
5 in this Missouri rule that Ms. Dale referred to.

6 JUDGE JORDAN: Okay.

7 MR. BUB: Going on, if we -- the
8 definition for "customer station loops," in
9 parentheses, or "functional equivalent" or "analogous
10 facilities" are terminated, and they also add "or
11 otherwise connected to the company's facilities or
12 services."

13 Now, those are just very vague terms. I
14 think when you have a rule, whether it's FCC rule or
15 Missouri rules, you know, they overlay the tariffs,
16 and so those apply when you're talking about
17 functional equivalents. I think when you look at the
18 FCC's rules, you know, that's inherent.

19 I don't think we're objecting to the --
20 you know, my client's on the phone. Please speak up
21 if I do misspeak. I don't think we're complaining
22 about the technology that Level 3 chooses to use. I
23 think our concern is that this definition is being
24 changed to be so broad that it could be allowed --
25 they could be allowed to charge for functions that

1 aren't being provided, you know, going back to our
2 diagram.

3 I think this -- we do have a
4 disagreement. You know, whether serving a company
5 like Vonage -- is that a loop? Can they charge CCL
6 or not? Are they switching a call from an end user's
7 trunk to a line or to another trunk?

8 Our view, they're switching it from the
9 trunk to another provider, and that's tandem
10 switching, so we do have a very clear disagreement --

11 JUDGE JORDAN: Uh-huh.

12 MR. BUB: -- about what's going on, what
13 this language enables.

14 JUDGE JORDAN: Let me offer this
15 suggestion and this view of where we are right now.
16 First, in terms of time, we have about five minutes
17 more for the use of OA'S phone bridge, so I will stay
18 with the parties after that, if the parties can
19 re-establish a bridge of their own, so we can do
20 that, and I will stay as long as you think it is
21 helpful for me to do so, but what I am hearing
22 mostly --

23 MR. STEINMEIER: Your Honor, if I may, can
24 somebody on the phone volunteer to work on finding us
25 a call-in bridge?

1 MR. DIAMOND: Yeah, I can provide a
2 bridge.

3 JUDGE JORDAN: And who is that, please?

4 MR. DIAMOND: Judge, this is Greg Diamond
5 with Level 3.

6 JUDGE JORDAN: Thank you. Thank you.

7 So what I'm hearing mostly here is not
8 really a lot of dispute as to facts that would
9 require evidence. It sounds like everyone agrees
10 with the physical facts of these arrangements. What
11 I'm hearing disagreement more is to law, that is the
12 characterization of these physical facts.

13 MR. BUB: I think it is a factual
14 dispute. Is it a loop or is it not a loop? That's a
15 factual question. Is what they're performing an end
16 office function or not? I think those are factual
17 things that do require evidence. And if I may add
18 one point --

19 JUDGE JORDAN: Uh-huh.

20 MR. BUB: -- this is something that can't
21 be deferred to another day, because once the
22 Commission approves the tariff --

23 JUDGE JORDAN: Uh-huh.

24 MR. BUB: -- if another provider, whether
25 it's AT&T, the long-distance company, or another

1 long-distance company wants to challenge the
2 application of these charges, they can't just file a
3 complaint. They need to get 20 other complaining
4 parties, under Missouri rules, in order to file,
5 so --

6 JUDGE JORDAN: Right.

7 MR. BUB: -- this has to be done -- it
8 has to be determined now, whether this --

9 JUDGE JORDAN: I understand that position.

10 MR. BUB: It's not, in our view, something
11 that can be deferred to another day. This has to be
12 decided, and the Commission has to decide whether
13 it's right or whether it's not. We think there are
14 factual determinations that need to be made, and
15 those factual determinations need to be supported by
16 substantial and competent evidence.

17 JUDGE JORDAN: Let's take a ten-minute
18 break while this phone bridge comes to an end and set
19 up another one.

20 MR. STEINMEIER: We agree with your
21 initial characterization, your Honor, that it is not
22 a factual issue; it's a question of whether that call
23 to Vonage is like a call to a PBX or to a hotel
24 switchboard or to some other shared-tenant service
25 provider some place else that has a complex switching

1 system of its own is considered an end user and has
2 been for years.

3 JUDGE JORDAN: Okay. I'll leave this line
4 open so that people who are in this room and on the
5 line can make arrangements for the next call, and
6 we'll take a break for about ten minutes, and I'll
7 come back, and if I can serve the parties more, I'll
8 be happy to do that.

9 Let's see how it looks after about ten
10 minutes, okay? I'm going to leave this open. I
11 don't know what happens when a bridge ends.

12 We can go off record.

13 (A recess was taken.)

14 JUDGE JORDAN: Counsel for Staff has
15 something to report.

16 MS. DALE: I believe that we have found a
17 solution and modified definition of the term "end
18 office" that Level 3 will be submitting in a revised
19 tariff sheet, at which time AT&T, which also agrees
20 to this new definition, will withdraw its opposition
21 to the tariff, and the Staff will file a brief
22 acquiescence to that, and in that case the case will
23 simply go away and we will have no further
24 proceedings.

25 MR. STEINMEIER: The tariff will become

1 effective by operation of law on August 28.

2 MR. BUB: That's our understanding as
3 well, your Honor

4 JUDGE JORDAN: All right. Well, thank you
5 very much for your hard work in reaching this
6 agreement.

7 Is there anything else from anyone?

8 MR. DIAMOND: I'd like to thank AT&T for
9 their willingness to cooperate and work with us on
10 that.

11 JUDGE JORDAN: Very helpful.

12 MR. BUB: I think the two companies have a
13 good relationship because, you know, we're in a
14 situation where we're both customers and providers,
15 so I think we do have a history of working together,
16 and we appreciate your guys' flexibility as well.

17 JUDGE JORDAN: Knowledable counsel and
18 representatives are very helpful in this regard too.

19 MR. SAVAGE: I absolutely concur in the
20 comment that your Honor was very helpful in helping
21 frame the issues, and obviously AT&T has been very
22 helpful as well.

23 JUDGE JORDAN: Thank you. Thank you.

24 And who was it that spoke immediately
25 before you?

1 MR. DIAMOND: I'm sorry, Judge. That
2 was Greg Diamond form Level 3.

3 JUDGE JORDAN: Okay. All right.
4 And do the parties need anything
5 more of me? Anything more I can do for you?

6 MS. DALE: No, thank you.

7 MR. STEINMEIER: No, but we thank you
8 for your interest and --

9 MR. BUB: Yeah.

10 MR. STEINMEIER: -- and I think the
11 process this morning was very beneficial.

12 JUDGE JORDAN: Good. I'm glad that
13 was helpful to you. I appreciate the clear
14 communication of your arguments to me, because
15 it's not -- it's not easy, and with that, we'll
16 go off the record.

17 (The hearing concluded.)
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1 CERTIFICATE

2 I, Nancy L. Silva, a Certified Court
3 Reporter, RPR, CCR No. 890, the officer before
4 whom the foregoing hearing was taken, do hereby
5 certify that the witness whose testimony appears
6 in the foregoing hearing was duly sworn by me;
7 that the testimony of said witness was taken by
8 me to the best of my ability and thereafter
9 reduced to typewriting under my direction; that
10 I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this hearing was taken, and further, that
13 I am not a relative or employee of any attorney
14 or counsel employed by the parties thereto, nor
15 financially or otherwise interested in the
16 outcome of the action.

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19 _____
20 Nancy L. Silva, RPR, CCR
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