

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

In the Matter of Level 3 Communications,)	
LLC's Tariff Filing to Introduce Revised)	Case No. TT-2011-0324
Tariff Pages For Its Access Services Tariff,)	Tariff No. JX-2011-0488
Mo. P.S.C. Tariff No. 4.)	

AT&T'S RESPONSE TO STAFF RECOMMENDATION

AT&T¹ appreciates Staff's² diligent effort in investigating Level 3's³ proposed tariff revision, and Staff's patient efforts to gain understanding of the parties' positions. AT&T, however, respectfully disagrees with Staff that the Commission should approve the tariff revision or allow it to go into effect.

To the contrary, Staff's recommendation makes clear that Level 3's proposed tariff revision raises several significant issues of first impression that could result in substantial increases to the cost of providing long distance service in the State. Resolution of such issues of state-wide importance will require the Commission to make many policy and factual determinations, which can only be made based on substantial and competent evidence on the record. Accordingly, the Commission must schedule this case for hearing.

Issues that will need to be addressed include:

1. Whether Traditional End Office Charges May Be Imposed when those End Office Functions are not being Provided?

AT&T objected to Level 3's proposed tariff revision because it expanded and added vagueness to the standard definition of "end office," which currently makes clear that the function of the end office element is to connect customer loops to each other or to trunks:

¹ AT&T Communications of the Southwest, Inc. will be referred to in this pleading as "AT&T Communications" and Southwestern Bell Telephone Company, d/b/a AT&T Missouri, will be referred to in this pleading as "AT&T Missouri," collectively "AT&T."

² The Missouri Public Service Commission Staff shall be referred to in this pleading as "Staff."

³ Level 3 Communications, LLC shall be referred to in this pleading as "Level 3."

Level 3 Current Definition

End Office: The term "end office" denotes the switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.⁴

Level 3 Proposed Definition

End Office: The term "end office" denotes the switching system office or serving wire center (or functionally equivalent or analogous facilities) where Customer station loops (or functionally equivalent or analogous facilities) are terminated or otherwise connected to the Company's facilities or services for purposes of interconnection to each other and/or to trunks.⁵

AT&T expressed concern that this definitional change might allow Level 3 to impose end office switching charges when it switches an IXC's long distance call to a CLEC or a VoIP provider, situations in which Level 3 would not have the end user or the loop (i.e., it would not be switching or connecting an end user loop to an IXC's trunk). Rather, it would be the terminating CLEC or VoIP provider -- the one with the relationship with the end user subscriber -- that provides the end office function (connecting the call to the end user's loop). In its Sur-reply, Level 3 confirmed this intention stating that the VoIP providers:

. . . are simply customers of local exchange carriers (like Level 3). Sending them calls is a local switching function, for which local switching charges properly apply.⁶

Level 3 claims that "VoIP providers are simply the latest iteration of local exchange customers who perform their own internal switching functions to provide services to their own customers or personnel."⁷

⁴ Level 3 Communications, LLC Missouri P.S.C. Tariff No. 4, Section 1, Second Revised Page 6, issued effective December 14, 2007. As this definition and Level 3's diagram on original page 60 of its current tariff⁴ illustrates, it is only the carrier with the end user relationship (i.e., that charges the end user for Customer station loops) that bills the end office local switching charge.

⁵ Level 3 Communications, LLC Missouri P.S.C. Tariff No. 4, Section 1, Third Revised Page 6, issued March 30, 2011. (emphasis added)

⁶ Sur-reply of Level 3 Communications, LLC to the AT&T Companies' Reply, filed April 28, 2011 in case No. TT-2011-0324, at page 3.

⁷ Id. at p. 4.

AT&T strongly disagrees with this claim, as the function Level 3 is providing is a tandem switching function (switching a call from one service provider to another, i.e., from an IXC to a CLEC or VoIP provider), not an end office switching function (switching a call from a service provider's trunk and terminating it to an end user customer's line).

But more fundamentally, this dispute demonstrates the need for the Commission to further suspend the tariff and conduct a full hearing. The Commission will first need to rule on whether Level 3's proposed tariff language sufficiently describes the functions it intends to perform. Level 3 and Staff appear to cast this as simply a dispute over old technology versus new technology.⁸ But they miss the point. The Commission must focus on the functions that will be performed by Level 3 regardless of the technology it uses. But to identify and understand those functions, the Commission will need evidence of Level 3's network architecture, how it connects with other providers (e.g., IXCs, CLECs, VoIP providers), what functions it intends to provide, how it will provide them, and, critically, what functions the connecting companies provide today. As AT&T indicated in its prior pleadings in this case, Level 3's tariff provides no guidance on what constitutes:

- a "functionally equivalent or analogous" switching system office or serving wire center;
- a "functionally equivalent or analogous" customer station loop; or
- being "otherwise connected to the company's facilities or trunks."

The Commission will also need to determine whether the traditional end office switching and CCL charges (taken from incumbent LEC tariffs) are just and reasonable charges for the functions Level 3 intends to perform. Level 3 claims it should be permitted to impose these charges, claiming its interconnection with VoIP providers is the same as the local exchange

⁸ Level 3 Sur-reply at p. 1; Staff Recommendation, Memorandum at p. 4.

service a LEC provides to a large business with a PBX, to an apartment building or to a shared tenant service provider.⁹ But there is no evidence in the record from which the Commission can make such a determination (i.e., no factual evidence showing what types of service LECs provide to such customers, how those services function and how they are, or are not, like Level 3's switching a call from an IXC to a VoIP service provider).

In order to make a reasonable determination on all of these issues, the Commission should set this case for an evidentiary hearing, as its decision must be "supported by substantial and competent evidence on the whole record." State ex rel. A.G. Processing, Inc. v. Pub. Serv. Comm'n, 120 S.W.3d 732, 735 (Mo. banc 2003).

2. Under what Circumstances can End Office Switching and CCL Charges be Imposed by Level 3 to transport a call to an Interconnected VoIP Provider Under Section 392.550 RSMo?

In its recommendation, Staff sets out its view that Section 392.550.2 RSMo is controlling and requires the Commission to approve Level 3's proposed tariff:

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 IVolP 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.¹⁰

AT&T disagrees with Staff's view. Section 392.550.2 only requires the payment of "appropriate" access charges: "Interconnected Voice over Internet Protocol Service shall be subject to appropriate exchange access charges to the same extent the telecommunications services are subject to such charges." (emphasis added) In AT&T's view, the appropriate switched access charge for a LEC or CLEC to switch a call from an IXC to a VoIP provider is

⁹ Id. at p. 4.

¹⁰ Recommendation to Approve Tariff, Case No. TT-2011-0324, attached Memorandum at p. 2 filed August 4, 2011.

the tandem switching charge, which is the “same extent” that telecommunications services are subject to charges for the same functionality. Because Level 3 will not be switching a call to an end user customer's line, the imposition of local switching and CCL charges by Level 3 would not be appropriate.

But once again, this dispute highlights the need for a full Commission hearing. In order for the Commission to resolve this case by relying on Section 392.550 RSMo, which was recently enacted by the Missouri Legislature in 2008, the Commission will need to make several significant policy determinations in interpreting this new statute.

The Commission will need to determine whether the statute encompasses the access charges a company like Level 3 may wish to impose for switching a long distance call to an interconnected VoIP provider. If so, the Commission will have to determine whether this statute applies to a stationary VoIP services provider (e.g., a cable TV company), a "nomadic" VoIP provider (e.g., which permits the user to have telephone service at any broadband location around the world, like Vonage or Magic Jack), or both.¹¹

To the extent the Commission determines the statute applies, it will need to make a determination on whether registration by a VoIP provider under Section 392.550.1 is required before **any** charges can be applied by Level 3. On this issue, Staff has opined:

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 provision of the Level 3 tariff cannot apply since the traffic has not been recognized as terminating to I-VoIP telephone lines.¹²

While AT&T concurs that it would be inappropriate for Level 3 to attempt to collect switched access charges on behalf of another company that has no independent right to collect such

¹¹ Staff argues that "because Missouri law makes no distinction among the type of I-VoIP telephone service, this requirement applies to companies which primarily provide "nomadic" I-VoIP as well as stationary I-VoIP type services."¹¹

¹² Staff Recommendation, Memorandum at pp. 2-3. Emphasis added.

charges,¹³ Staff's recommendation apparently disallows Level 3 from charging *any* switched access charges even for functions both parties agree that Level 3 provides (e.g., tandem switching) when calls are terminated to an unregistered VoIP provider while, paradoxically, allowing Level 3 to charge *all* switched access elements (whether or not Level 3 provides them) for precisely the same transit scenario when the call is terminated to a registered IVoIP provider.¹⁴ Put another way, Staff's recommendation appears to suggest that Level 3's ability to charge switched access charges at all is entirely reliant on whether an VoIP carrier is registered under Section 392.550.1. This statutory construction issue would in the first instance need to be addressed by the Commission.

The Commission should also clarify whether a registered interconnected VoIP provider must have an approved tariff in order to impose intrastate switched access charges (or whether such charges can be billed by another company under a meet point billing arrangement). While Staff states that it "has examined Level 3's proposed tariff filing and finds sufficient safeguards to prevent Level 3 from engaging in any sort of double billing," AT&T finds that its recommendation may well produce double billing by overruling the historic functioning of MECAB guidelines by authorizing multiple entities to charge for end office functionality provided by the interconnected VoIP provider. After all, Level 3's tariff revisions – by its own admission – is intended, in part, to allow Level 3 to charge end office switching for calls it transports to a VoIP provider for termination by that VoIP provider to its own end user customer. At the same time, the Staff's recommendation makes clear that the registered I-VoIP providers may charge switched access charges for functions that they provide.

¹³ Eighth Report and Order and Fifth Order on Reconsideration, CC04-110, CC Docket No. 99-262 at para. 16.

¹⁴ To put this in perspective, major VoIP providers in MO (e.g., Vonage) are not registered IVoIP providers.

CONCLUSION

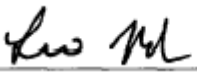
As the Commission is aware, traditional circuit-switched voice traffic is steadily being replaced with VoIP technology. More and more providers are employing VoIP and additional VoIP providers are making their services available. With the growth in VoIP traffic, Level 3's proposed imposition of traditional end office switching charges when it does not serve the end user or provide the loop (but simply switches a call to a VoIP provider) could greatly impact the cost of providing long distance service to residential and business consumers.

A factual evidentiary records needs to be developed to enable the Commission to determine whether Level 3's proposed tariff revisions sufficiently describes the service it intends to provide and whether the traditional switched access charges (taken from an incumbent LEC tariffs) are just and reasonable for the functions being provided. Such a record, along with post-hearing briefing, will also be critical to the Commission in applying Section 392.550 RSMo.

WHEREFORE, AT&T respectfully requests the Commission to further suspend Level 3's proposed tariff filing and set it for a full evidentiary hearing.

Respectfully submitted,

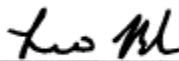
AT&T COMMUNICATIONS SOUTHWEST, INC.; AND
SOUTHWESTERN BELL TELEPHONE COMPANY,
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on August 11, 2011.



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