

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

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

**SBC MISSOURI'S RESPONSE TO LEVEL 3 COMMUNICATIONS, LLC's PETITION
FOR ARBITRATION**

Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri"), hereby submits its Response to the Petition for Arbitration ("Petition") filed by Level 3 Communications, LLC ("Level 3") on December 13, 2004, pursuant to Section 252(b)(3) of the Telecommunications Act of 1996 ("1996 Act") and the Commission's Rule 36.040(7) (4 CSR 240-36.040(7)). More specifically, SBC Missouri states as follows:

Scope and Purpose of Response

1. In keeping with the 1996 Act and the Commission's Rule 36.040(7), the attachments to this Response set forth SBC Missouri's understanding of the parties' competing contract language as of the date of this Response; identify arbitration issues presented by the competing contract language; set forth SBC Missouri's position on all the arbitration issues; and set forth SBC Missouri's understanding of Level 3's positions on the arbitration issues.
2. Submitted herewith, and described in more detail below, are: (1) the Decision Point List ("DPL") identifying the issues to be arbitrated (attached as Exhibit A and incorporated herein by reference), and (2) the proposed redlined interconnection agreement, showing both parties' proposed language on the disputed issues (attached as Exhibit B and incorporated herein by reference). To the extent that the parties are unable to narrow the issues through their

continuing negotiations, SBC Missouri will fully demonstrate in its testimony and briefs why the issues to be arbitrated in this proceeding should be resolved in its favor.

3. For several reasons, this Response does not give any particular attention to the “Tier I Issues” about which Level 3 wrote at some length in its Petition – issues that Level 3 alleges are “the most substantive, critical business issues.” Petition ¶ 25. While some arbitration issues may be more important to a party than other issues, no useful purpose would be served by attempting to assign arbitration issues to tiers. First, such an assignment is not required by law. Second, all disputed issues must be decided regardless of their relative importance. In this regard, SBC Missouri notes that the DPL submitted with Level 3’s Petition does not group the issues to be decided by tiers (rather, Level 3’s DPL groups the issues within particular titles, with each title corresponding to the title of the particular appendix within which the language in dispute appears). Finally, SBC Missouri does not agree with the particular groupings that Level 3 has chosen. Accordingly, the attachments to this Response present the arbitration issues without regard to such tier assignments.

The Parties’ Negotiations

4. Little would be achieved by recounting in detail the parties’ attempts to negotiate an interconnection agreement. The history of the negotiations between SBC Missouri and Level 3 will not play a role in determining which party’s proposed contract language should *now* be included in their interconnection agreement. SBC Missouri therefore does not address at length the account set forth in paragraphs 8 through 14 of the Petition. However, SBC Missouri notes that the account conveyed by the Petition is inaccurate in at least the following respects:

(a) This arbitration is not the product of negotiations that began on November 29, 2002, as Level 3 suggests. *See* Petition ¶ 9. The fact is that the parties have been negotiating a complete interconnection agreement since only earlier this year. In this regard, SBC Missouri

agrees that Appendix A of the Petition contains a letter dated July 6, 2004 memorializing the starting date of the parties' current negotiations.

(b) It is not correct, as Level 3 states (Petition ¶ 14), that the parties agreed to use their existing interconnection agreement as the baseline for a new contract.

5. The most distinctive characteristic of SBC Missouri's negotiations with Level 3 is manifest from the sheer volume of disputed contract language. Nonetheless, the parties have made some progress of late, and will endeavor to continue to narrow the disputed issues.

The Attached "Redlines" and Decision Point Lists

6. The parties' interconnection agreement will consist of a General Terms and Conditions section ("GTC") and a set of appendices, each of which governs a particular subject matter – *e.g.*, Directory Assistance Listings ("DAL"), Inter-carrier Compensation ("IC"), and Network Interconnection Methods ("NIM"). The GTC and most of the appendices include disputed contract language on which the parties did not agree – *i.e.*, language proposed by one side or the other – or both – that the non-proposing party did not accept. The "redlined" versions of the GTC and each Appendix submitted herewith include such disputed contract language. Each redlined version displays in ***bold italics*** contract language proposed by SBC Missouri and opposed by Level 3; each displays in **bold underscore** contract language proposed by Level 3 and opposed by SBC Missouri; and, each displays in normal font contract language on which the parties have agreed. The few appendices on which the parties have agreed in their

entirety are also submitted herewith. Since these appendices include no disputed contract language, they are shown in normal font.¹

7. The disputed contract language is also displayed on the DPL submitted herewith. A portion of the DPL is devoted to the disputed language regarding the contract's General Terms and Conditions; other portions of the DPL are devoted to the disputed contract language associated with the contract's appendices. For each language dispute, there is a column with the heading "Disputed Contract Language." Within this column appears language proposed by Level 3 in **bold underscore** as well as language proposed by SBC Missouri in *bold italics*. The contract section(s) in which the disputed language resides (*e.g.*, section 3.1.4) are identified in the column with the heading "Section(s)."

8. Each language dispute is associated with an issue, which is shown, in the form of a question, under the heading "Issue Description." These issues are numbered sequentially within each DPL. Thus, for example, the first issue in the portion of the DPL devoted to the Inter-carrier Compensation appendix is SBC IC-1. The SBC Missouri issue number is shown on the left, under the heading "Issue No." Presented in the next column, marked "Petition Issue," is the issue number that Level 3 assigned to the same disputed contract language in its Petition. Thus, the Commission can cross-reference to – and SBC Missouri is not suggesting that the Commission disregard – Level 3's issue designations. SBC Missouri assigned its own numbers, however, because there are instances in which Level 3 assigned a single issue number (and a single issue description) to disputed contract language that actually call on the Commission to

¹ The Pricing Appendix, and the schedules thereto, are treated differently, because the parties did not engage in extensive negotiation about pricing. The attached Pricing Appendix and its schedules are "generic" to Missouri, and include no redlining because SBC Missouri is not aware of any disagreements concerning pricing. SBC Missouri requests that the Commission approve the attached Pricing Appendix and the schedules thereto as part of the parties' interconnection agreement. Additionally, the OSS appendix attached hereto, while different in certain respects than that presented by Level 3, is the appendix to which the parties agreed and which the Commission should thus approve. Neither the DPL submitted with Level 3's Petition nor the DPL attached hereto identifies any OSS-related issue.

resolve more than one question. SBC Missouri, in the exercise of its rights under section 252(b)(3) of the 1996 Act, respectfully requests the Commission to resolve all the issues set forth in the DPLs submitted herewith. In so doing, the Commission will resolve all the issues set forth by Level 3 in its Petition.

9. In addition to the Issue No., Issue Description, Section(s), Level 3 Language and SBC Missouri Language, the DPLs also set forth, for each portion of disputed contract language, the “Level 3 Position/Support” and the “SBC Position/Support.”

10. In its preparation and presentation of the attached Exhibits A and B, SBC Missouri believes it has left intact everything set forth in the Petition and its attachments that Level 3 has the right to insist remain intact – specifically, Level 3’s proposed contract language; Level 3’s identification of the issues it wants the Commission to resolve; and Level 3’s statements of its positions on the issues. SBC Missouri has corrected Level 3’s misstatements of SBC Missouri’s proposed contract language; identified all the issues that the Commission must resolve in order to address all disputed contract language; and supplied SBC Missouri’s initial positions on the issues. To the extent that SBC Missouri has not accurately captured in its attachments all of the issues and/or contract language disputed between the parties, SBC Missouri will work with Level 3 in good faith to isolate these instances and correct them in the parties’ revised statement of unresolved issues to be jointly filed on January 14, pursuant to Commission Rule 36.040(8) (4 CSR 240-36. 040(8)).²

² For example, Level 3’s DPL and associated appendix appears to present at least one internal inconsistency. The DPL submitted with Level 3’s Petition reports the IC 16 issue as follows: “This matter is not being litigated in Missouri. The Parties were unable to timely remove it from the DPL.” Yet, the Intercarrier Compensation appendix submitted with Level 3’s Petition reflects that the pertinent sections (sections 9 - 9.1.2) remain in dispute. Additionally, as this Commission is aware, the Federal Communications Commission has adopted but has not yet released an order directed to unbundling. While SBC Missouri’s current UNE appendix language is attached hereto and complies with current unbundling law, SBC Missouri reserves the right to modify its language and position after the release of the order.

The Parties' Continuing Negotiations


11. To the extent that the parties are able to resolve additional disputed issues after the filing of this Response, SBC Missouri will work with Level 3 so that the parties' jointly filed revised statement of unresolved issues reflects the elimination of these resolved issues.

CONCLUSION

12. SBC Missouri will set forth in full in its testimony and briefs the facts, policy considerations and legal arguments that support the positions reflected in its proposed language for the parties' interconnection agreement. SBC Missouri respectfully urges the Commission to rule in its favor on the disputed issues in this proceeding and to approve SBC Missouri's proposed language.

Respectfully submitted,

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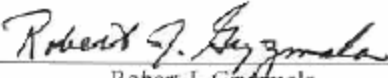
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the below service list by electronic mail on the 7th day of January, 2005.


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