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May 14, 2002

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Re: TA-2002-376**

Dear Mr. Roberts:

Enclosed for filing on behalf of the Small Telephone Company Group, please find an original and eight (8) copies of a Reply of the Small Telephone Company Group to Level 3 Communications, L.L.C.'s and Staff's Responses to STCG's Motion for Clarification and/or Application for Rehearing.

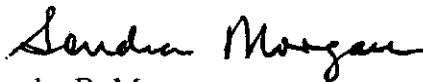
Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Sondra B. Morgan

SBM/lar

Enclosure

cc: Mike Dandino  
Eric Anderson  
Bill Steinmeier

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

Application of Level 3 Communications,	)	
L.L.C. to Expand its Certificate of Service	)	
Authority to Provide Local Exchange	)	Case No. TA-2002-376
Telecommunications Statewide.	)	

**REPLY OF THE SMALL TELEPHONE COMPANY GROUP  
TO LEVEL 3 COMMUNICATIONS, L.L.C.'S AND STAFF'S RESPONSES  
TO STCG'S MOTION FOR CLARIFICATION AND/OR  
APPLICATION FOR REHEARING**

Comes now the Small Telephone Company Group ("STCG") and for its Reply to the Responses of Level 3 Communications, L.L.C. ("Level 3") and the Staff of the Missouri Public Service Commission ("Staff") states to the Missouri Public Service Commission ("Commission") as follows:

**THE "TYPE" OF CERTIFICATE OF LOCAL EXCHANGE SERVICE AUTHORITY**

1. To date, to be best of STCG's knowledge, the Commission has only granted two types of certificates for the provision of local exchange service. There is a certificate for "nonswitched local exchange service" and a certificate for "basic local telecommunications service." This is consistent with the Commission's published "Notice of Applications for Intrastate Certificates of Service Authority" and consistent with the specific Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene issued on February 26, 2002, wherein the instant application of Level 3 was published. Furthermore, in its Order Approving Expansion of Local Exchange Certificate of Service Authority issued in this case, the Commission reiterated its longstanding policy regarding certificates for "nonswitched" local exchange telecommunications certificates of service authority

The Commission finds that competition in the intrastate interexchange and nonswitched local exchange telecommunications markets is in the public interest and Level 3 should be granted certificates of service authority. (Order p. 2; emphasis added.)

In addition, while Level 3 is correct in noting that the definition of "local exchange telecommunications service" does not include the word "nonswitched,"<sup>1</sup> it is significant to note that the definition does not include the word "switched."<sup>2</sup> The definition of "basic local telecommunications service," however, does include the word "switched." Therefore, not unreasonably, the Commission has traditionally distinguished a grant of "local exchange service authority" from one of "basic local telecommunications service" based on whether the applicant proposes to engage in the "switching" of local exchange service.<sup>3</sup>

2. With this traditional distinction in mind, the STCG has no objection to a grant of a certificate of nonswitched local exchange service authority to Level 3. And, it appears from Level 3's response that it is not seeking a certificate of basic local telecommunication service authority. (Response, p. 7) However, it does appear that Level 3 seeks a certificate of local exchange service authority that involves some element of switching. Accordingly, Level 3 seeks a "hybrid" certificate of local exchange authority that is somewhere between nonswitched local exchange service and basic local telecommunications service. With the exception of the AT&T tariff filing referenced in Staff's Response, STCG is unaware of the Commission previously

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<sup>1</sup>See, 386.020(31), RSMo 2000.

<sup>2</sup>See, 386.020(4), RSMo 2000.

<sup>3</sup>The AT&T tariff filing case cited by Staff in its response appears to be the only exception to this rule and is discussed later in this reply.

addressing such a hybrid local exchange certificate. Significantly, in the AT&T case, the issue was not presented in the context of the issuance of a certificate, but in a tariff filing. It is also unclear from a review of that case whether AT&T possesses a certificate of basic local exchange telecommunications service in addition to a certificate of nonswitched local exchange service authority. Therefore, the precedential value of that case is highly questionable. In fact, the Commission was directed by Section 392.455 to "begin a proceeding to establish a basic local telecommunications certification process period." To STCG's knowledge, no such proceeding has ever been established, and, more importantly, no rule has been enacted which clearly delineates the difference between local exchange telecommunications authority and basic local telecommunications authority other than the unwritten traditional distinction between nonswitched local exchange service and basic local telecommunications service.

3. The concern of the STCG regarding the extent of Level 3's (or any other applicant's) local exchange authority is not just academic, it is substantive. It is clear that when an applicant seeks to provide basic local telecommunications service in the State of Missouri, the legislature has determined that such applicant must meet certain standards, whether the applicant proposes to provide basic local service within the exchanges of a large local exchange company or a small local exchange company (§§392.450 and 392.451 RSMo 2000). If applicants are able to avoid these additional statutory requirements by simply characterizing switched local exchange service as "local exchange service," that circumvents both the letter and the spirit of the statute. Thus, it is clear that the Commission should clarify its grant of authority to Level 3 in this case so that not only Level 3 understands what authority has been granted, but so the small telephone companies in whose areas Level 3 seeks to operate understand the type and extent of

Level 3's authority.

### **THE TIMING OF THE APPLICATION**

4. Level 3 takes great exception to the last minute filing of the STCG in this case. It was not STCG's intent in this case to wait until the last minute to raise its concerns. However, in this case, the STCG was not fully aware of any controversy regarding the extent and scope of Level 3's certificate until a meeting with representatives of Level 3 on April 25, 2002. Until that time, the STCG was under the assumption, based primarily upon the Commission's Notice of Applications and past procedure, that Level 3 was only seeking to obtain a certificate of nonswitched local exchange service authority throughout the State of Missouri.<sup>4</sup> As noted previously, if Level 3 is only seeking authority to provide nonswitched local exchange service in small company exchanges, the STCG has no objection to a grant of such authority. And the Commission's Order Granting Certificate in this case led the STCG to believe that the grant of authority was limited to nonswitched local exchange telecommunications service. See Commission Order, p. 2 wherein the Commission stated as follows:

The Commission finds that competition in the intrastate interexchange and nonswitched local exchange telecommunications markets is in the public interest and Level 3 should be granted certificates of service authority. (Emphasis added.)

Nowhere in the Commission's order is there a reference to the fact that Level 3's local exchange telecommunications service extends beyond the traditional "nonswitched" local exchange authority. As previously stated, it was not until a meeting with representatives of Level 3 on April 25, 2002, that representatives of the STCG learned that Level 3 believed its local exchange


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<sup>4</sup>And, quite frankly, Level 3's application is not completely clear regarding the type of service it seeks to provide in the small company exchanges.

certificate to extend beyond the provision of nonswitched services to "switched" local exchange services. As a direct result of that meeting, when the STCG realized there was a real controversy involving the scope of Level 3's certificate, the STCG prepared and filed its Motion for Clarification and/or Application for Rehearing in order to bring this matter to the Commission at the earliest opportunity.

WHEREFORE, in light of the foregoing, STCG renews its request the Commission clarify its order or, in the alternative, grant rehearing.

Respectfully submitted,

  
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Attorneys for  
The Small Telephone Company Group


**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered this 14th day of May, 2002 to:

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