

**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'S SECOND MOTION TO EXPEDITE  
RESPONSES TO DATA REQUESTS**

Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri") respectfully urges that Level 3 Communications, LLC's ("Level 3's") Second Motion to Expedite Responses to Data Requests ("Second Motion") be denied in its entirety. As further explained below, Level 3's Second Motion merely underscores the sound reasons for which the Arbitrator denied Level 3's first Motion to Expedite Responses to Data Requests ("First Motion"). Level 3 provides no new or different consideration that warrants a reversal of what should be regarded as the Arbitrator's final word. The Second Motion should thus be denied. More specifically, SBC states as follows:

1. On Tuesday, February 1, 2005, the Arbitrator issued an Order Denying Motion to Expedite Responses to Data Requests ("Order"). The Arbitrator rested his decision principally on the fact that "the procedural schedule for this case was established on January 12, and Level 3 was aware of the short time frames for this case well before that time" and that "[t]he mere fact that Level 3 waited until 19 days before the hearing to propound data requests does not require SBC Missouri to expedite its responses to those data requests." Order, at p. 3. Level 3's Second Motion does not refute these facts, yet either - and certainly both - are sufficient in and of themselves to warrant denial of Level 3's Second Motion. Thus, the Order should remain the

law of this case.

2. Level 3 now claims that “[v]arious documents requested by Level 3 in its Data Requests are needed as exhibits at hearing. If not produced until February 17, Level 3 will be unable to use such exhibits at hearing in a manner that will produce a full record that flows properly.” Second Motion, at p. 2. But the Order already took that consideration into account by recognizing expressly that “[o]bviously, Level 3 is concerned that if SBC Missouri is allowed the full amount of response time set out in the rule, Level 3 will not be able to effectively use the responses to its data requests in preparation for the hearing.” Order, at p. 2.<sup>1</sup>

3. Level 3 further asserts that “some of the Data Requests require only a ‘yes’ or ‘no’ answer. Answering such Data Requests a day or two earlier should not overly tax the resources of SBC.” Second Motion, at p. 3. This assertion is without merit. No doubt, Level 3 means to refer to Data Requests 29 through 38, which although couched in terms of eliciting a “yes” or “no” answer, are unquestionably requests for admissions of fact. Such requests must be thoroughly investigated before any determination can be made as to whether the request can be conclusively admitted in all respects, or whether any qualifications are necessary to an affirmative (or negative) response to the request. Despite Level 3’s attempt to trivialize the work needed to respond to these Data Requests, it is noteworthy that under both the Federal Rules of Civil Procedure and the Missouri Rules of Civil Procedure, responses to Requests for Admission are due within the same interval as is allowed for answers to interrogatories and responses to requests to produce documents (all within 30 days after service of the request). Fed. R. Civ. Pro. 33, 34, 36; Mo. R. Civ. Pro. 33, 34, 36. In any event, the point advanced by Level 3 (wrong

---

<sup>1</sup> The Order also fully addressed the virtually identical suggestion made in Level 3’s Second Motion – that “the efficient use of the information sought from SBC Missouri through Level 3’s First Set of Data Requests at the very least requires that Level 3 receive responses to those Data Requests before the beginning of hearings” (Second Motion, at p. 3).

though it is) could have been made in its First Motion, but was not. Thus, Level 3 should not be permitted to raise it now.

4. Level 3's Second Motion also asserts that "some of the discovery at issue is Missouri-specific." Second Motion, at p. 2. However, Level 3 could have made this point in its First Motion. The mere fact that Level 3 did not do so suggests that its assertion is without merit. Moreover, Level 3's use of the loose qualifier "some" is extremely telling. In point of fact, virtually none of Level 3's Data Requests are truly unique to Missouri. Indeed, Level 3's support for "uniqueness" amounts to naming but a single SBC witness among the approximately 10 to 12 witnesses that have testified on behalf of SBC in the other 12 SBC states in which Level 3 arbitrations are pending.

5. It is of no significance that, according to Level 3, "[a]t least one witness for SBC Missouri – Jeannie Harris – has not previously filed direct testimony in the Level 3–SBC 13-state arbitrations." Id. First, Level 3 mentions nothing specifically about any of the nine other SBC witnesses who submitted Direct Testimony in this proceeding. Thus, Level 3 apparently has no need for accelerated responses to its data requests as to 90% of SBC Missouri's witnesses (by head count).

6. Second, Level 3 omits to mention that although Ms. Harris is a new witness who, thus far, is only testifying in Missouri, her testimony is substantially similar to that offered by Messrs. Kirksey and Novack, who testified for SBC in other states (in similar fashion, the testimony of Level 3's witness Cabe is substantially similar as witness Gates, who testified elsewhere). In any case, not a single one of Level 3's 41 Data Requests is specifically directed to any of the ten SBC Missouri Direct Testimonies submitted (much less Ms. Harris' Direct Testimony).

7. Third, the only Data Requests that could even remotely apply directly to Ms. Harris are limited to just four of the 41 Data Requests (Data Requests 2 – 5). The information requested in these four requests (to the extent such information is relevant at all) has already been reported by Ms. Harris in her Direct Testimony, in which she identified both her current and past job titles, responsibilities and duties. Further inquiry about, for example, who her supervisor is and what his or her position, functions and responsibilities are, is of no relevance to the issues to be decided here. Similarly, the 16 footnotes referenced in Ms. Harris' Direct Testimony already point Level 3 to documents she relied on, which is the subject of Data Request 5(a). The schedules are attached to her testimony, and the footnotes reference various filings submitted to and orders issued by state commissions and the FCC, all of which are no less accessible to Level 3 than to SBC Missouri.

8. In sum, there is no justification whatsoever for Level 3's having failed to generate its Data Requests much earlier, and the Second Motion should be denied on this ground alone. Equally significant, nothing that Level 3 points out as ostensibly "Missouri-specific" provides any substantive reason for departing from the Order denying Level 3's First Motion. Thus, the Second Motion should be denied for this independent reason.

9. For all of the foregoing reasons, SBC Missouri submits that Level 3's Second Motion be denied in its entirety. No good cause has been provided that would justify granting Level 3's "second bite at the apple." Rather, each argument advanced by it is met by the key fact – recognized by the Arbitrator – that "the procedural schedule for this case was established on January 12, and Level 3 was aware of the short time frames for this case well before that time" and that "[t]he mere fact that Level 3 waited until 19 days before the hearing to propound data requests does not require SBC Missouri to expedite its responses to those data requests." Order,

at p. 3. For its own reasons, Level 3 declined to attach the Data Requests to its First Motion, and as demonstrated above, its decision to do so underscores why the Arbitrator made the right call in his Order even without the benefit of those requests.

Respectfully submitted,


SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

PAUL G. LANE #27011  
LEO J. BUB #34326  
ROBERT J. GRYZMALA #32454  
MIMI B. MACDONALD #37606  
Attorneys for Southwestern Bell Telephone, L.P.  
One SBC Center, Room 3516  
St. Louis, Missouri 63101  
314-235-6060 (Telephone)  
314-247-0014 (Facsimile)  
[robert.gryzmala@sbc.com](mailto:robert.gryzmala@sbc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties on the Service List by electronic mail and/or U.S. mail on the 4th day of February, 2005.

  
Robert J. Gryzmala

Dana K. Joyce  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P. O. Box 360  
Jefferson City, MO 65102  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

John B. Coffman  
Office of the Public Counsel  
200 Madison Street, Suite 650  
P. O. Box 2230  
Jefferson City, MO 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

William D. Steinmeier  
Mary Ann (Garr) Young  
WILLIAM D. STEINMEIER, P.C.  
Level 3 Communications, LLC  
2031 Tower Drive  
P. O. Box 104595  
Jefferson City, MO 65110-4595

Henry T. Kelly  
Joseph E. Donovan  
Clark M. Stalker  
Kelley Drye & Warren LLP  
333 West Wacker Drive  
Chicago, IL 60606  
[HKelly@KelleyDrye.com](mailto:HKelly@KelleyDrye.com)

[wds@wdspc.com](mailto:wds@wdspc.com)  
[myoung0654@aol.com](mailto:myoung0654@aol.com)

[JDonovan@kelleyDrye.com](mailto:JDonovan@kelleyDrye.com)  
[CStalker@KelleyDrye.com](mailto:CStalker@KelleyDrye.com)

Richard E. Thayer, Esq.  
Erik Cecil  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Brookfield, CO 80021  
[Rick.thayer@level3.com](mailto:Rick.thayer@level3.com)  
[Erik.cecil@level3.com](mailto:Erik.cecil@level3.com)