

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Application of Level 3 Communications, L.L.C.)
For Approval of Merger) Case No. TM-2008-0203

NOTICE REGARDING EXTERNAL COMMUNICATION

Issue Date: December 27, 2007

On December 21, 2007, the Commissioners filed a “Notice of Communication” in this matter acknowledging that on December 10, 2007, each member of the Commission had received a packet of information from Mr. Gregg Strumberger on behalf of Level 3 Communications, L.L.C. (“Level 3”). This packet of information was received prior to Level 3 submitting its application for a merger on December 19, 2007.

It should be noted that on the date Level 3 provided their materials to the Commission, Level 3 had not yet filed its merger application and no case was pending before the Commission. Not only was this communication not an *ex parte* communication, as described in the Commission’s December 21, 2007 Notice, but Missouri’s General Assembly fully authorized and sanctioned this communication pursuant to Section 386.210.1 and .2, RSMo Cum. Supp. 2006, which provide:

1. The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of the public, any public utility or similar commission of this and other states and the United States of America, or any official, agency or instrumentality thereof, on any matter relating to the performance of its duties.
2. Such communications may address any issue that at the time of such communication is not the subject of a case that has been filed with the commission.

No proper entity has yet requested intervention or opposed Level 3's December 19, 2007 application, and there is still no contested case pending before the Commission and no adversarial parties to this docket. Now that a matter is pending before the Commission the more restrictive prohibitions on communications embodied in Section 386.210.3 apply, **if those communications address matters related to the pending case**, thus:

3. Such communications may also address substantive or procedural matters that are the subject of a pending filing or case in which no evidentiary hearing has been scheduled, provided that the communication:

(1) Is made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision;

(2) Is made at a forum where representatives of the public utility affected thereby, the office of public counsel, and any other party to the case are present; or

(3) If made outside such agenda meeting or forum, is subsequently disclosed to the public utility, the office of the public counsel, and any other party to the case in accordance with the following procedure:

(a) If the communication is written, the person or party making the communication shall no later than the next business day following the communication file a copy of the written communication in the official case file of the pending filing or case and serve it upon all parties of record;

(b) If the communication is oral, the party making the oral communication shall no later than the next business day following the communication file a memorandum in the official case file of the pending case disclosing the communication and serve such memorandum on all parties of record. The memorandum must contain a summary of the substance of the communication and not merely a listing of the subjects covered.

However, it should also be noted that Section 386.210.4 and .5 further provide:

4. Nothing in this section or any other provision of law shall be construed as imposing any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address the merits of the specific facts, evidence, claims, or positions presented or taken in a pending case unless such communications comply with the provisions of subsection 3 of this section.

5. The commission and any commissioner may also advise any member of the general assembly or other governmental official of the issues or factual allegations that are the subject of a pending case, provided that the commission or commissioner does not express an opinion as to the merits of such issues or allegations, and may discuss in a public agenda meeting with parties to a case in which an evidentiary hearing has been scheduled, any procedural matter in such case or any matter relating to a unanimous stipulation or agreement resolving all of the issues in such case.

Subsections 4 and 5 apply at all times, regardless if there is a matter pending before the Commission and regardless if any type of on-the-record proceeding has been set. Further, should any proper entity timely intervene and contest Level 3's application, and should an on-the-record proceeding be set, as is defined in Commission Rule 4 CSR 240-4-020(7), then the additional prohibitions in Commission Rule 4 CSR 240-4.020 shall apply.

At the time Level 3 initiated its December 10, 2007 communication with the Commissioners, there was no restriction of any type on this communication. In fact, it was the intent of the General Assembly that such communication be allowed.

BY THE COMMISSION



Colleen M. Dale
Secretary

Dated at Jefferson City, Missouri,
on this 27th day of December, 2007.
Stearley, Regulatory Law Judge