

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 3rd day of  
May, 2005.

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| In the Matter of the Application of Level 3      | ) |                                     |
| Communications, LLC, and Southwestern Bell       | ) |                                     |
| Telephone Company, L.P. d/b/a SBC Missouri       | ) | <b><u>Case No. TK-2005-0285</u></b> |
| for Approval of Their Negotiated Interconnection | ) |                                     |
| Agreement and Superseding Amendment under        | ) |                                     |
| Section 252(e)(1) of the Telecommunications Act  | ) |                                     |

**ORDER APPROVING INTERCONNECTION AGREEMENT AND  
DIRECTING PARTIES TO FILE THEIR TRANSITING TRAFFIC  
AGREEMENT AS AN AMENDMENT TO THE INTERCONNECTION  
AGREEMENT**

This order approves the interconnection agreement and superseding amendment executed and filed by the parties. The order also directs the parties to file their transiting traffic agreement with this Commission for the Commission's approval after that agreement is finalized.

On February 23, 2005, Level 3 Communications, LLC and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri jointly filed an application with the Commission for approval of an interconnection agreement and a superseding amendment to that interconnection agreement. The agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.<sup>1</sup> Both SBC Missouri and Level 3 Communications hold

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<sup>1</sup> See 47 U.S.C. § 251, *et seq.*

certificates of service authority to provide basic local telecommunications services in Missouri.

On February 24, the Commission issued an order directing that any party wishing to request a hearing do so no later than March 16. No requests for hearing were filed. In that same order, the Commission ordered its Staff to file a recommendation regarding approval or rejection of the agreement by March 28.

After requesting and obtaining an extension of time, the Staff of the Commission filed a recommendation on April 11. Staff expressed concern about the absence of specific provisions in the interconnection agreement regarding transiting traffic.

Transiting traffic is traffic that passes between a Level 3 customer and a customer of another local exchange carrier with which Level 3 is not directly physically interconnected. Since there is not a direct physical interconnection, such transiting traffic may be passed through the switches and lines of SBC Missouri before reaching its final destination.

Staff explained that the existing interconnection agreement between Level 3 and SBC Missouri has extensive provisions concerning transiting traffic, but that such provisions do not appear in the submitted agreement. Staff's recommendation voices a suspicion that SBC Missouri and Level 3 have reached a separate agreement regarding transiting traffic that they do not intend to file as part of their interconnection agreement. Staff argues that such a transiting traffic agreement must be filed as an amendment to the interconnection agreement and recommends that the Commission reject the submitted interconnection agreement as discriminatory and against the public interest if the transiting traffic agreement is not filed.

At the direction of the Commission, SBC Missouri and Level 3 filed responses to Staff's recommendation on April 22. Level 3's response indicates that it and SBC Missouri have reached an agreement in principle regarding transiting traffic but that the terms of that agreement have not been finalized or executed. Level 3 takes no position on the question of whether the transiting traffic agreement ultimately needs to be filed with this Commission for approval. However, Level 3 argues that the question of what to do with the transiting traffic agreement should not preclude the Commission's approval of the interconnection agreement and amendment that have been submitted.

SBC Missouri's response confirms that no transiting traffic agreement has been finalized or executed. SBC Missouri, however, goes further than Level 3 and argues that when the transiting traffic agreement is finalized it need not be submitted to the Commission for approval under section 252(e) of the Telecommunications Act. Instead, SBC Missouri contends that the agreement may be filed with the Federal Communications Commission pursuant to Section 211 of the Telecommunications Act as a mere contract between carriers.

As support for its position, SBC Missouri argues that the Telecommunications Act does not require SBC Missouri, or any other carrier, to provide transiting traffic service as a form of interconnection. Therefore, according to SBC Missouri, an agreement regarding transiting traffic does not have to be a part of an interconnection agreement.

On April 26, Staff filed a response to the positions expressed by Level 3 and SBC Missouri. Staff contends that transiting traffic is a vital form of indirect interconnection. According to Staff, any transiting traffic agreement must be submitted to the Commission for approval under Section 252(e) of the act because only agreements submitted and

approved under that section may be adopted by other carriers under the provisions of Section 252(i). If SBC Missouri and Level 3 are able to avoid submitting their transiting traffic agreement under 252(e), that agreement will not be available for adoption by other carriers. As a result, Staff argues that the submitted interconnection agreement that does not include transiting traffic provisions would be discriminatory toward other carriers, and on that basis should be rejected.

### **Discussion**

Under Section 252(e) of the Act, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. That section provides that the Commission may reject a submitted negotiated agreement only if:

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity; ...

Furthermore, the Act places tight time constraints on the Commission's actions. Section 252(e)(4) requires the Commission to act within 90 days after the agreement is filed. In this case, that means that the Commission must approve or reject the agreement by May 24. If the Commission has not acted by that date, the agreement will be deemed approved.

Staff does not object to any provision of the interconnection agreement that has been submitted to the Commission for approval. Rather, its objections are to the apparent intention of the parties not to submit a separate transiting traffic agreement to this Commission for approval as an amendment to the interconnection agreement. However, it is an uncontested fact that at the moment there is no such transiting traffic agreement. As a result, the Commission cannot order SBC Missouri and Level 3 to file such an agreement before May 24, when the Commission must act on the submitted interconnection

agreement. Therefore, the question becomes whether the Commission should approve the submitted interconnection agreement without such a transiting traffic amendment.

There is no reason to believe that an interconnection agreement must include specific provisions for transiting traffic in order to be approved. Presumably a company seeking to interconnect with SBC Missouri could choose not to request the ability to transit traffic in its interconnection agreement and instead establish a direct physical interconnection with every other carrier. In that circumstance, an agreement that did not address transiting traffic clearly would not be discriminatory toward other carriers and would not be against the public interest. Similarly, this agreement, which includes only general terms regarding transiting traffic, cannot be said to be discriminatory toward other carriers. If SBC Missouri and Level 3 choose to do business under those general terms, and those terms are made available to other carriers, there is no unlawful discrimination. Therefore, the mere absence of specific transiting traffic provisions in the submitted SBC Missouri – Level 3 interconnection agreement can not justify the rejection of that agreement.

Indeed, as SBC Missouri points out, in Case No. TK-2005-0114, the Commission approved an interconnection agreement between ALLTEL and SBC Missouri that did not include terms regarding transiting traffic while nonetheless contemplating the passage of such traffic. Staff responds that at the time it recommended that the ALLTEL – SBC Missouri agreement be approved it was not aware that SBC Missouri was contending that transiting traffic arrangements could be included in separate commercial agreements and not in interconnection agreements. That argument confirms that Staff's concern is with the separate commercial agreement that may be executed in the future, and not with the terms of the interconnection agreement that is now before the Commission.

Staff may be justified in its concern that important terms regarding interconnection will disappear from interconnection agreements that are available for adoption by other carriers and reappear only in separate commercial agreements that are not available for adoption. On-the-other-hand, SBC Missouri makes a strong argument that transiting services do not need to be included in interconnection agreements. Ultimately, that question may be resolved by the FCC. However, for the purposes of this case, since there currently is no transiting traffic commercial agreement to be reviewed, the Commission does not need to address that issue before approving the submitted interconnection agreement.

The Commission will order SBC Missouri and Level 3 to file the transiting traffic commercial agreement with this Commission for approval under Section 252(e) when it is finalized. If at the time they file the completed agreement for approval, SBC Missouri or Level 3 continue to believe that the agreement does not need to be approved under that section, they may reassert that argument and the Commission will address that question at that time.

The Commission concludes that the interconnection agreement, as submitted, meets the requirements of the Act in that it does not discriminate against a nonparty carrier and implementation of the agreement is not inconsistent with the public interest, convenience and necessity. The Commission notes that before providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission. The Commission

finds that approval of the agreement should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below.

### **Modification Procedure**

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.<sup>2</sup> In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.<sup>3</sup> This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission.<sup>4</sup>

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, the modified pages will be substituted in the agreement, which should contain the number of the page being replaced in the lower right-hand corner. Staff

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<sup>2</sup> 47 U.S.C. § 252

<sup>3</sup> 47 U.S.C. § 252(h)

<sup>4</sup> 4 CSR 240-3.545

will date-stamp the pages when they are inserted into the agreement. The official record of the original agreement and all the modifications made will be maintained in the Commission's Data Center.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the Commission will take notice of the modification once Staff has verified that the provision is an approved provision and has prepared a recommendation. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

**IT IS THEREFORE ORDERED:**

1. That the interconnection agreement and superseding amendment between Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri and Level 3 Communications, LLC, filed on February 23, 2005, are approved.
2. That any changes or modifications to this agreement shall be filed with the Commission pursuant to the procedure outlined in this order.
3. That when Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri and Level 3 Communications, LLC finalize a transiting traffic commercial agreement, they



shall file it with this Commission for approval under Section 252(e) of the Telecommunications Act as an amendment to the interconnection agreement.

4. That this order shall become effective on May 13, 2005.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Davis, Chm., Gaw, Clayton and Appling, CC., concur  
Murray, C., concurs with concurrence to follow

Woodruff, Senior Regulatory Law Judge