

**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 Applicable State Laws for)	Case No. TO-2005-0166
Rates, Terms, and Conditions of)	
Interconnection with Southwestern Bell)	
Telephone Company, L.P., d/b/a SBC Missouri)	

**SBC MISSOURI'S RESPONSE OPPOSING LEVEL 3'S MOTION FOR
EXPEDITED TREATMENT**

COMES NOW Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri"), and pursuant to Commission Rule 2.080(15) (4 CSR 240-2.080 (15)), hereby submits its response to the Motion for Expedited Treatment filed by Level 3 Communications, LLC ("Level 3") on December 13, 2004 ("Motion"). Among other things, Level 3's Motion requests that the Commission "require [SBC Missouri] to file its testimony in this matter simultaneously with the filing of its Response on January 7, 2005." Motion, p. 3.

The portion of Level 3's Motion directed to the filing of SBC Missouri's testimony should be denied.¹ First, it conflicts with the Commission's rules governing arbitrations, whose carefully considered provisions became effective just a few months ago in a proceeding in which Level 3 chose not to participate. Second, the Motion fails to provide sufficient reasons for the extraordinary relief it seeks. Third, many of SBC Missouri's witnesses (and various support personnel) are unavailable, either because of previously scheduled holiday vacations or because of commitments in other jurisdictions - it would be virtually impossible as a practical matter for SBC Missouri to prepare and

¹ SBC Missouri does not oppose the Commission's moving expeditiously to appoint an arbitrator and to direct the arbitrator to schedule an initial arbitration meeting. Motion, p. 4.

file its testimony by January 7, 2005. In further support of this Response to Level 3's Motion, SBC Missouri states as follows:

1. The Commission's new arbitration rules delineate a very specific, sequential process for the orderly conducting of arbitration proceedings. This process does not contemplate requiring a party to an arbitration to file its testimony until after an arbitrator is appointed, the issues are joined, and an initial arbitration meeting is held – none of which has happened here.

2. More particularly, the rules first provide that when a petition for arbitration is filed, an arbitrator is appointed so as to facilitate the resolution of disputed issues. 4 CSR 240-36.040(4). The rules next provide that a party to the negotiation will be afforded an opportunity to respond to the petition. 4 CSR 240-36.040(7). Finally, the rules indicate that seven days after the response is filed, the parties must jointly file a revised statement of unresolved issues. 4 CSR 240-36.040(8). With these steps having been completed, the arbitrator and the parties move to the next step: a “mandatory initial meeting.” At this meeting, a procedural schedule and related matters - including “allowing the filing of testimony” and “setting times by which testimony may be filed” - are discussed and determined. 4 CSR 240-36.040(9).

3. Level 3's Motion disregards this sequential, step-by-step process, and in doing so, effectively turns on its head the goal underlying the sequential nature of the Commission's arbitration process. The process is designed to first, identify the disputed issues, and second, help facilitate resolution of those issues, before the Commission's and the parties' resources are expended in preparing testimony and otherwise litigating them. But requiring SBC Missouri to file its testimony on the same day as its response is due

would not encourage the parties to continue work to narrow the disputed issues. Indeed, were SBC Missouri required to file its testimony on January 7, the parties would have little incentive over the next seven days (i.e., the period before the filing of the “revised joint statement of unresolved issues” due on January 14) to settle any issues. After all, the testimonies that could have been avoided by resolving issues over the seven days already would have been filed.

4. Level 3’s Motion also fails for another reason. It does not satisfy the prerequisites of Rule 2.080(16)(B) (4 CSR 240-2.080 (16)(B)), which provides that one who moves for expedited treatment must state with particularity the harm or negative effect “on the party’s customers or the general public” that will be avoided if the Commission grants expedited treatment. Nowhere in its Motion does Level 3 even mention its customers or the general public, much less demonstrate how any of them will be negatively affected if Level 3’s Motion is not granted.

5. Additionally, Rule 2.080(16)(C) (4 CSR 240-2.080 (16)(C)) requires that one who moves for expedited treatment set out with particularity that “the pleading was filed as soon as it could have been or an explanation why it was not.” While Level 3’s Motion pays lip service to this rule – “This pleading was filed simultaneously with the application to which it relates, and therefore was filed as soon as it could have been filed.” (Motion, p. 4) – the fact is that Level 3 could have filed its petition on November 18, 2004, the 135th day after SBC Missouri received Level 3’s request for negotiation. It need not have waited until the 160th (i.e., the very last) day. An earlier filed petition would have avoided the “holiday crunch” that Level 3 now asks this Commission to impose on SBC Missouri’s witnesses and support resources. No explanation is provided

by Level 3 as to why it neglected to file its petition over three weeks earlier than it did.

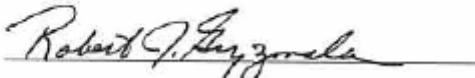
6. Finally, the reality is that it would be virtually impossible for SBC Missouri to do the extensive work that would be required of it and its witnesses to prepare and file SBC Missouri's testimony on January 7. Many of the witnesses that SBC Missouri anticipates will eventually file testimony in this proceeding are unavailable either because of previously scheduled vacation surrounding the upcoming holiday season, or because of commitments in other jurisdictions, or both. As a practical matter, it is highly unlikely that testimony could be filed by January 7.

7. Many of the witnesses which SBC Missouri plans to produce in this proceeding are under previously scheduled obligation to file testimony or are participating in hearings in other jurisdictions. Level 3 should not be able to "jump ahead" of these previously scheduled commitments. Rather, the arbitrator and the parties should be allowed to consider the pendency of these other obligations at the arbitration meeting intended to set the procedural schedule for this proceeding.

WHEREFORE, Southwestern Bell Telephone, L.P. respectfully submits (a) that Level 3's Motion should be denied to the extent that it requests the Commission to direct SBC Missouri to file its testimony in this matter simultaneously with the filing of its response, and (b) that the due date of such testimony should be considered and determined no earlier than when a mandatory initial meeting is held among the appointed arbitrator and the parties, in accordance with Commission Rule 36.040(9) (4 CSR 240-36.040(9)).

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

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 22nd day of December, 2004.


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

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

William D. Steinmeier
Level 3 Communications, LLC
2031 Tower Drive
P. O. Box 104595
Jefferson City, MO 65110-4595
wds@wdspsc.com