

**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)

**SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S
COMMENTS REGARDING THE JOINT PROPOSED PROCEDURAL SCHEDULE**

Comes now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri"), and for its Comments Regarding the Joint Proposed Procedural Schedule, states as follows:

1. As Level 3 and SBC Missouri indicate in their Joint Proposed Procedural Schedule, the parties disagree with regard to two aspects of the Joint Procedural Schedule – the date on which SBC Missouri will file its Direct Testimony and whether both parties should be allowed to file two rounds of testimony. SBC Missouri submits that it should be allowed to file its Direct Testimony on January 28th for the reasons described in paragraph 2 below and that both parties should be allowed to file Rebuttal Testimony for the reasons described in paragraph 3 below.

2. As indicated above, SBC Missouri proposes to file its Direct Testimony on January 28, 2005. However, Level 3 proposes an earlier date, January 17, 2005, just 4 working days from today. Level 3's proposal is patently unfair to SBC Missouri. SBC Missouri anticipates filing testimony on behalf of approximately ten to twelve witnesses. This week (January 10th-15th), each of those witnesses is in a hearing – some of the witnesses are in the Level 3 arbitration hearing in Nevada; others are in the Kansas 271 proceeding. Next week (January 17th-21st), one of SBC Missouri's witnesses will be in an arbitration (XO) hearing in

California. All of SBC Missouri's twelve witnesses will be preparing testimony which is due January 21st in another arbitration in Wisconsin (AT&T) and many will be preparing for testifying the following week. The following week (January 24th-28th), one of SBC Missouri's witnesses will be testifying in the Oklahoma 271 proceeding and four others will be testifying in a proceeding in Texas (Fitch). Thus, in order to make SBC's proposed Direct Testimony due date of January 28th, SBC Missouri's witnesses will be juggling filing of testimony and hearings. Given SBC Missouri's witnesses' previously made commitments to the above-mentioned proceedings in other jurisdictions, SBC Missouri proposed due date for its Direct Testimony of January 28th is eminently fair and reasonable.

3. SBC Missouri proposes that each party be able to submit two rounds of testimony, Direct Testimony and Rebuttal Testimony. Level 3 objects to that scenario and requests the Arbitrator and/or Commission to require SBC Missouri to file combined Direct and Rebuttal Testimony on January 17th and then let it file Rebuttal Testimony on February 10th. Level 3's proposal is inconsistent with 4 CSR 240-36.040(9), is patently unfair to SBC Missouri, and is inconsistent with how arbitrations have been handled in Missouri in the past.

4 CSR 240-36.040(9) provides as follows:

The arbitrator may call a mandatory initial meeting for purposes such as setting a procedural schedule, establishing a time limit for submission of final offers, allowing the filing of testimony, setting times by which testimony may be filed, simplifying issues, or resolving the scope and timing of discovery.

Thus, pursuant to rule 4 CSR 240-36.040(9), two of the purposes of the initial meeting are to discuss setting a Procedural Schedule and filing Testimony. Level 3 made its initial filing without any consultation with SBC Missouri and in violation of rule 4 CSR 240-36.040(9). Level 3 now seeks to gain an advantage from its unauthorized filing. Specifically, Level 3 seeks

to force SBC to file combined Direct and Rebuttal Testimony and give Level 3 the opportunity to have the “last word.” That is manifestly unfair to SBC Missouri.

Moreover, Level 3’s proposal is inconsistent with how arbitrations have been handled in Missouri in the past. In typical arbitrations in which SBC Missouri has participated, both parties have simultaneously filed Direct Testimony and have simultaneously filed Rebuttal Testimony. Level 3 should not be allowed to undermine rule 4 CSR 240-36.040(9) and this established practice by filing Direct Testimony on a date of its choosing, requiring SBC Missouri to file its testimony when Level 3 desires, and allowing itself to have the last word. Moreover, while Level 3’s attorneys would have almost 3 ½ weeks to review SBC Missouri’s Direct/Rebuttal Testimony, SBC Missouri’s attorneys would have only 3 business days to review Level 3’s Rebuttal Testimony and SBC Missouri’s witnesses would have no opportunity to respond with additional testimony.¹ Such a proposal is obviously unfair and should not be countenanced.

Wherefore, SBC Missouri prays the Commission consider SBC Missouri’s Comments Regarding the Joint Proposed Procedural Schedule, order SBC Missouri to file Direct Testimony on January 28th, order both Level 3 and SBC Missouri to file Rebuttal Testimony on February 10th, together with any additional relief the Commission deems just and proper.

¹ SBC Missouri notes that in almost every other jurisdiction in which it has filed for arbitration, Level 3 and SBC Missouri agreed to one round of testimony per party. In each of these jurisdictions, Level 3 filed its testimony first and SBC Missouri filed its testimony second. Although SBC Missouri would agree to similarly handle the Level 3 arbitration in Missouri, Level 3 has rejected SBC Missouri’s offer to handle this case that way.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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