

**FARRIS MATHEWS BRANAN
BOBANGO & HELLEN, PLC**

ATTORNEYS AT LAW

HISTORIC CASTNER-KNOTT BUILDING
618 CHURCH STREET, SUITE 300
NASHVILLE, TENNESSEE 37219

Charles B. Welch, Jr.
cwelch@farrismathews.com

Telephone: (615) 726-1200
Facsimile: (615) 726-1776

Writers Direct Dial:
615-687-4230

May 7, 2007

Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

filed electronically in docket office on 05/07/07

**Re: Level 3 Communications, LLC's Tariff Filing to Revise TRA Tariff No. 3—
Docket No. 07-00098.**

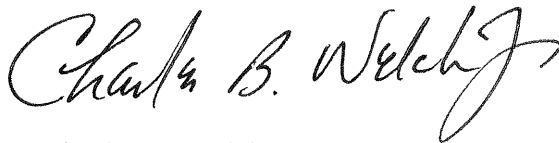
Dear Chairman Kyle:

Please find the Level 3 Communications, LLC's Answer to Complaint and Petitions to Intervene in the referenced docket enclosed herewith.

Thank you for your assistance regarding this matter. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

**FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC**



Charles B. Welch, Jr.

CBW/jrh
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)	
)	
LEVEL 3 COMMUNICATIONS, LLC'S)	
TARIFF FILING TO REVISE TRA)	Docket No. 07-00098
TARIFF NO. 3)	

**LEVEL 3 COMMUNICATIONS, LLC'S ANSWER TO COMPLAINT AND
PETITIONS TO INTERVENE FILED BY VERIZON AND AT&T**

Level 3 Communications, LLC ("Level 3"), by and through its undersigned counsel and pursuant to Tenn. Comp. R. & Regs. 1220-1-2-.02(4), hereby submits its response to the Complaint and Petition for Leave to Intervene filed on behalf of the Verizon Companies¹ and the Petition to Intervene filed on behalf AT&T of the South Central States, LLC, and the subsidiaries and affiliates of AT&T, Inc.,² all certificated in Tennessee (collectively, "AT&T").

I. Procedural History

On March 30, 2007, Level 3 filed and the Tennessee Regulatory Authority ("Authority") received the proposed revisions to Level 3's T.R.A. Tariff No. 3 ("Tariff Amendment") updating Level 3's rates for switched access services in compliance with Tenn. Comp. R. & Regs. 1220-4-1-.06. On April 20, 2007, Verizon filed a Complaint

¹ These companies include MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services ("Verizon Access"), MCI Communications Services, Inc. ("MCI"), Bell Atlantic Communications, LLC ("Bell Atlantic"), NYNEX Long Distance Company ("NYNEX"), and Verizon Select Services, Inc. ("VSSI"), (collectively, "Verizon").

² TCG Midsouth, Inc., SBC Long Distance, LLC d/b/a AT&T Long Distance, SNET America, Inc. d/b/a SBC Long Distance East; BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee; BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service.

and Petition for Leave to Intervene. On April 25, 2007, AT&T filed a Petition to Intervene. The proposed effective date of the Tariff Amendment was May 1, 2007. The Authority Conference immediately preceding the proposed effective date of the Tariff was held on April 30, 2007.

A threshold matter which must be addressed by the Authority is whether AT&T's Petition to Intervene is appropriately before the Authority. Level 3 objects to the Authority's acceptance, at this time, of AT&T's Petition to Intervene since it is premature. Tenn. Comp. R. & Regs. 1220-1-2-.02(4) provides, in pertinent part, the following:

...[a] **complaint** opposing the tariff **shall** be filed no later than seven (7) days prior to the Authority Conference immediately preceding the proposed effective date of the tariff (emphasis added).

AT&T only filed a Petition to Intervene, not a complaint as required by Tenn. Comp. R. & Regs. 1220-1-2-.02(4). AT&T's Petition to Intervene is premature prior to the Authority ruling that a contested case is appropriate.

AT&T was aware of Level 3's proposed Tariff Amendment as evidenced by their Petition to Intervene (*See* AT&T Petition, ¶ 2). Due to AT&T's untimely filing, Level 3 objects to AT&T's participation in this docket at this time and requests that the Authority allow AT&T to intervene and participate only in the event a contested case proceeding is convened.

In light of the panel's ruling at the Authority Conference on April 30, 2007, and without waiving the foregoing objection, Level 3 submits the following:

II. Answer to Verizon's Complaint

1. Admitted.

2. Admitted.

3. Denied.

4. Admitted.

5. Admitted to the extent that Level 3 filed its Tariff Amendment on or about March 30, 2007. Footnote No. 2 in ¶ 5 of the Complaint alleges that “Level 3 did not provide notice of its proposed rate changes.” Level 3 denies this allegation. If Tenn. Comp. R. & Regs. 1220-4-8-.07(2)(b) and -.07(1)(c) are read *in pari materia*, Level 3’s filing constitutes sufficient notice for the proposed Tariff Amendment. All other allegations in ¶ 5 are denied.

6. Denied.

7. Denied.

8. There appear to be no allegations asserted by Verizon against Level 3 to which no response is required except in denial to avoid being prejudiced thereby.

9. The allegation that Level 3’s proposed Tariff Amendment is distorted and unreasonable is denied. The remaining allegations in ¶ 9 are admitted.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. This allegation is a mere prayer for relief to which no response is required except in denial to avoid being prejudiced thereby.

24. Denied.

25. This allegation is a mere prayer for relief to which no response is required except in denial to avoid being prejudiced thereby.

III. Argument

Verizon's arguments against Level 3's proposed Tariff Amendment are without merit. Level 3's proposed Tariff Amendment does not violate any of the statutes referred to by Verizon. In fact, the proposed Tariff Amendment rate of \$0.061182 for combined terminating access (which includes the Local Switching component amount of \$0.060447 that is the subject of Verizon's Complaint)³ is identical to the rate previously approved by the Authority for Verizon Access—the CLEC subsidiary of Verizon. Verizon Access has been approved—since January 1, 2004—to charge \$0.061182 for providing these services.

Hence, the logical extension of Verizon's argument to suspend Level 3's Tariff Amendment since it is "exorbitant...anticompetitive, anti-consumer, unreasonable and unjustified" must be that Verizon is the only CLEC in the marketplace allowed to charge such rates. Moreover, if the Authority rejects Level 3's Tariff Amendment, this action

³ Verizon Complaint, ¶5.

would be discriminatory and anticompetitive. Level 3 is clearly entitled to charge competitive rates for the same types of services.

According to the Authority's ruling at the regularly scheduled Authority Conference on April 30, 2007, suspending the tariff of a competing carrier is an issue of first impression.⁴ However, the panel concluded that "the suspension standards set forth in Tenn. Code Ann. § 65-5-101(c) should apply to the factual circumstances of this docket as well as those circumstances specifically set forth in the statute."⁵ While Level 3 is a CLEC, not an incumbent, as addressed in the statute, the panel's ruling implicitly advised the parties that Tenn. Code Ann. § 65-5-101(c) provided guidance in this case.

Tenn. Code Ann. § 65-5-101(c) provides, in pertinent part, the following:

...(3) Tariffs may be suspended pending such hearing on a showing by a complaining party that:

(A) The complaining party has filed a complaint before the authority alleging with particularity that the tariff violates a specific law;

(B) The complaining party would be injured as a result of the tariff and has specifically alleged how it would be so injured; and

(C)(i) The complaining party has a substantial likelihood of prevailing on the merits of its complaint;

(ii) The authority may suspend a tariff pending a hearing, on its own motion, upon finding such suspension to be in the public interest. The standard established herein for suspension of tariffs shall apply at all times including the twenty-one (21) or one (1) day period between filing and effectiveness; [and]

⁴ See Transcript of April 30, 2007 Authority Conference, comments of Director Ron Jones (P. 6, L. 14-16).

⁵ See Transcript of April 30, 2007 Authority Conference (P. 6, L. 1-5).

(iii) The standard established herein for suspension of tariffs shall not be applicable in any way to the determination by the authority of whether to convene a contested case to consider revocation of a tariff. The authority may choose to convene a contested case, or decline to convene a contested case, in its own discretion, to promote the public interest. The standard established in this subsection (c) for suspension of tariffs shall not be applicable in any way to any decision by the authority regarding revocation of a tariff[...]

Based upon the Authority's finding that the first 2 requirements of Tenn. Code Ann. § 65-5-101(c) have been satisfied, and neither Verizon nor AT&T established they have a substantial likelihood of success on the merits, the Authority suspended the proposed Tariff Amendment on its own motion. Level 3 respectfully requests the Authority reject Verizon's and AT&T's request to suspend the proposed Tariff Amendment based upon their collective failure to show a substantial likelihood of success on the merits. Similarly, Level 3 respectfully requests the Authority to revoke its suspension of the Tariff Amendment as imposed *sua sponte* since the public interest will not be harmed by the proposed Tariff Amendment, and particularly since other competing carriers are charging the same rates for similar services.

Authority approval of the proposed Tariff Amendment will enable Level 3 to competitively set its rates for a competitive service. Absent a ruling by the Authority requiring all carriers' rates to be reduced and based on the foregoing, it is axiomatic that the Authority must approve Level 3's proposed Tariff Amendment as filed on March 30, 2007 and revoke the Authority imposed suspension therefrom.

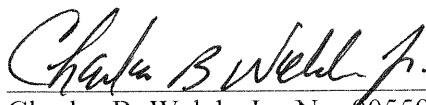
IV. Conclusion

Level 3 respectfully requests that the Authority dismiss the Complaint filed by Verizon; deny the Petitions to Intervene filed by Verizon and AT&T; revoke the suspension of the proposed Tariff Amendment; and decline to convene a contested case.

DATED: May 7, 2007.

Respectfully submitted,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

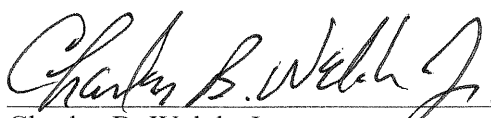
By: 
Charles B. Welch, Jr., No. 005593
Jamie R. Hollin, No. 025460
618 Church Street, Suite 300
Nashville, Tennessee 37219
Telephone: 615-726-1200
Facsimile: 615-726-1776
Email: cwelch@farrismathews.com
jhollin@farrismathews.com
Attorneys for Level 3 Communications, LLC

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served on this 7th day of May, 2007 via electronic transmission to the following:

Melvin J. Malone, Esq.
Miller & Martin, PLLC
150 Fourth Avenue, North
1200 One Nashville Place
Nashville, Tennessee 37219
(615) 244-9270
Email: mmalone@millermartin.com

Guy M. Hicks, Esq.
Joelle J. Phillips, Esq.
AT&T Communications of the South
Central States, LLC
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201
Email: guy.hicks@bellsouth.com
joelle.phillips@bellsouth.com


Charles B. Welch, Jr.