

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 17, 2007

IN RE:)
)
COMPLAINT AND PETITION FOR LEAVE) **DOCKET NO.**
TO INTERVENE OF VERIZON IN TARIFF) **07-00098**
2007-0122, LEVEL 3 COMMUNICATIONS,)
LLC'S TARIFF TO INCREASE THE RATE)
FOR LOCAL SWITCHING SERVICE)

ORDER SUSPENDING TARIFF

This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on April 30, 2007.

BACKGROUND

On March 30, 2007, the Authority received a tariff filing from Level 3 Communications, LLC ("Level 3"), a competing local exchange carrier (CLEC), to increase its rate for local switching access service from \$0.002128 per minute of use to \$0.060447. The local switching rate is an element of overall access service charges – charges that interexchange carriers (IXCs) pay to local exchange carriers (LECs) in order to originate and terminate long distance calls over LEC facilities. Level 3's tariff was filed with an effective date of May 1, 2007.

On April 23, 2007, the Verizon Companies ("Verizon")¹ filed a *Complaint and Petition for Leave to Intervene of Verizon* ("Complaint") in which Verizon alleges that the rate increase

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

proposed in Level 3's tariff, if allowed, would constitute anti-competitive behavior and discourage competition in local and long distance markets. Verizon contends it can not avoid the proposed rate increases because it can not refuse to handle the calls of Level 3's customers to and from Verizon's interexchange customers. Verizon specifically claims that the proposed rate increase violates TRA Rule 1220-4-8-.04(3)(c)(2) and is unjust and unlawful pursuant to Tenn. Code Ann. §§ 65-4-124(a), 65-4-123, 65-4-122(b), 65-4-122(c), 65-4-115, 65-5-101(a), and 65-5-104(a)(1). Verizon requests that the Authority summarily deny and reject the proposed revisions to Level 3's tariff. In the alternative, Verizon requests that the Authority suspend the tariff and either (1) convene a contested case, appoint a hearing officer to prepare the matter for a hearing on the merits, grant the request for full intervention, and issue a final ruling rejecting the proposed tariff, or (2) proceed with an investigation in which all interested parties, including Verizon, are permitted to fully participate.

On April 25, 2007, AT&T Communications of the South Central States, LLC, on behalf of itself and subsidiaries and affiliates of AT&T, Inc. (collectively, "AT&T")² filed a petition to intervene and request for suspension of the tariff in this docket. AT&T contends in its petition that permitting the proposed Level 3 tariff to become effective would adversely affect AT&T operations in Tennessee and that AT&T should be permitted to intervene in the matter as its rights, privileges and duties can not be adequately protected by any other party. Finally, AT&T argues that the proposed Level 3 tariff should be suspended while the Authority exercises its jurisdiction over Level 3 to review the substantial and unexplained increase in the switched access rate. On April 25, 2007, Verizon filed a supplement to its Complaint for the purpose of notifying the Authority of the issuance of orders by the West Virginia Public Service

² These entities include 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.

Commission and the Mississippi Public Service Commission in which those state commissions suspended similar tariffs filed by Level 3 in those jurisdictions.

APRIL 30, 2007 AUTHORITY CONFERENCE

This docket came before the Authority at the April 30, 2007 Authority Conference as a result of the filing of the aforementioned pleadings and the impending effective date of the Level 3 tariff. The voting panel considered the allegations in the pleadings and the requests for relief set forth therein. The panel identified the following three issues as requiring consideration by the Authority: (1) whether to deny or reject the Level 3 tariff in advance of further proceedings; (2) whether to suspend the tariff; and (3) whether to convene a contested case. The panel determined that it would be premature and prejudicial to Level 3 to deny or reject the tariff without further proceedings and providing Level 3 an opportunity to respond to the Verizon and AT&T filings.

In considering a suspension of the tariff, the panel acknowledged that no definitive standard exists in Tennessee statutes or Authority rules for suspending the tariff of a CLEC. TRA Rule 1220-4-1-.06(5) empowers the Authority to suspend a tariff on its own motion or upon the filing of a sufficient protest, and Tenn. Code Ann. § 65-5-103(a) permits the Authority to suspend a tariff proposing increased rates. Nevertheless, neither provides specific guidelines or criteria for suspension of a CLEC tariff. Tenn. Code Ann. § 65-5-101(c) provides the criteria for suspension of an incumbent LEC tariff and, therefore, the panel looked to this statute as a source of guidance.

The Authority found that Tenn. Code Ann. § 65-5-101(c) affords incumbent LECs a great deal of protection against a suspension requested by complainants because the standard is very stringent. Specifically, the standard provides that in order to receive a favorable ruling on a suspension request, a complaining party must show: (1) that the complaining party has filed a

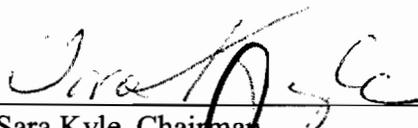
complaint particularly alleging that the tariff violates state law; (2) that the complaining party would be injured and allege how it would be injured; and (3) that the complaining party has a substantial likelihood of prevailing on the merits of the complaint. Tenn. Code Ann. § 65-5-101(c) provides for the suspension of an incumbent LEC tariff on the Authority's own motion based upon a finding that a suspension is in the public interest. After reviewing the standard in Tenn. Code Ann. § 65-5-101(c), the panel unanimously determined that incumbent LECs should be afforded no greater protection than CLECs. Therefore, the panel voted unanimously to apply the suspension standards set forth in Section 65-5-101(c) to this docket.

Applying Section 65-5-101(c), the panel found that while Verizon satisfied the first two criteria of Tenn. Code Ann. § 65-5-101(c) for suspending a tariff, to wit: the filing of a complaint alleging that the tariff violates state law and the allegation of a specific injury to the party seeking the suspension, Verizon did not demonstrate a substantial likelihood of prevailing on the merits of the Complaint. The panel made the same finding as to AT&T's request to suspend the tariff. Nevertheless, the panel found that because the filings in this matter have raised several issues of first impression, it would be in the public interest for the Authority to suspend the Level 3 tariff on its own motion. Therefore, the panel suspended the Level 3 tariff until the Complaint is dismissed or a final ruling is made on the merits of the allegations or for a period of three months, whichever is earlier.

As to the third issue before the panel for its consideration, the panel determined that before considering whether to convene a contested case, Level 3 should be given the opportunity to respond to the Complaint. The panel directed Level 3 to respond to the Complaint no later than May 20, 2007, or, if Level 3 wanted the Authority to consider whether to convene a contested case at the May 15, 2007 Authority Conference, to file its response by May 7, 2007.

IT IS THEREFORE ORDERED THAT:

1. The request to deny or reject the tariff is denied.
2. The tariff is suspended until the Complaint is dismissed or a final ruling on the merits of the allegations is rendered, or for a period of three months, whichever is earlier.
3. Level 3 shall file a response to the Complaint no later than May 20, 2007 or May 7, 2007, if Level 3 wants the Authority to consider the issue of whether to convene a contested case during the May 15, 2007 Authority Conference.³



Sara Kyle, Chairman



Pat Miller, Director



Ron Jones, Director

³ Level 3 responded to Verizon's complaint and AT&T's petition on May 7, 2007. During the May 15, 2007 Authority Conference, the parties announced an agreement. Level 3 withdrew the Tariff in question on May 15, 2007 and filed a revised tariff. Consistent with the agreement of the parties, AT&T withdrew its petition on May 23, 2007 and Verizon withdrew its complaint on May 25, 2007.