

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Level 3
Communications, LLC for
arbitration of certain terms and
conditions of a proposed
agreement with BellSouth
Telecommunications, Inc.

DOCKET NO. 000907-TP
ORDER NO. PSC-00-2282-PCO-TP
ISSUED: November 30, 2000

ORDER DENYING MOTION TO STRIKE AND
REQUEST TO FILE SURREBUTTAL TESTIMONY

Pursuant to Section 252 of the Telecommunications Act, Level 3 Communications, LLC (Level 3) petitioned for arbitration with BellSouth Telecommunications, Inc. (BellSouth) on July 21, 2000. On August 14, 2000, BellSouth filed its Response to Level 3's petition for arbitration. By Order No. PSC-00-1646-PCO-TP, Order Establishing Procedure, issued September 15, 2000, the procedures were established and the controlling dates set. The prehearing conference was held on November 8, 2000. The hearing is scheduled for December 6, 2000.

On November 8, 2000, Level 3 filed a Motion to Strike, alleging that portions of the pre-filed rebuttal testimony of BellSouth's witness, Cynthia K. Cox, and the exhibit supporting that portion of Ms. Cox's rebuttal testimony were improper. On November 15, 2000, BellSouth filed its Response to Level 3's Motion to Strike.

LEVEL 3'S ARGUMENTS

In its Motion to Strike, Level 3 requests that portions of the pre-filed rebuttal testimony of BellSouth's witness, Cynthia K. Cox, be stricken that relate to the rate for ISP-bound traffic. Specifically, Level 3 asserts that BellSouth did not include the rate for the ISP-bound traffic in its Proposed Issues List, submitted August 29, 2000. Further, Level 3 states that the ISP-bound reciprocal compensation rate issue was not addressed in the pre-filed direct and rebuttal testimony of any Level 3 witness, or in the pre-filed direct testimony of BellSouth's witnesses, including Ms. Cox. Level 3's objection to portions of Ms. Cox's testimony is based on the premise that Ms. Cox's testimony is not

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an appropriate response to testimony filed by Level 3. Level 3 notes that Ms. Cox had an opportunity to raise the ISP-bound traffic issue in direct testimony and thus would have afforded Level 3 an opportunity to respond in rebuttal testimony. Level 3 asserts that Section 252(b)(4)(C) of the Communications Act of 1934, as amended (the "Act") limits the Commission's jurisdiction in this matter to resolving issues raised in the arbitration petition and response. Therefore, Level 3 believes that since the issue of a lower rate for ISP-bound traffic was not raised in Level 3's Petition for Arbitration or in BellSouth's Response, it is not properly before the Commission.

For these reasons, Level 3 requests that page 18, line 3, through page 20, line 13, including Exhibit CKC-1 of Ms. Cox's rebuttal testimony be stricken. Further, Level 3 requests that the second paragraph of BellSouth's position under Preliminary Issue 6 in BellSouth's prehearing statement be stricken. In its Motion to Strike, Level 3 requests that it be given an opportunity to file surrebuttal testimony in the alternative.

BELLSOUTH'S ARGUMENTS

In its Response, BellSouth requests that Level 3's Motion to Strike be denied. BellSouth asserts that the rate for ISP-bound traffic is an issue in this case. BellSouth states that the scope of Issue 6, which includes alternative compensation for ISP-bound traffic, was fixed by parties and staff in the Order Establishing Procedure issued September 15, 2000, nearly three weeks before the filing of direct testimony. Further, BellSouth states that Level 3's witness, Mr. Gates squarely addresses the issue of the rate for ISP-bound traffic in his direct testimony. Specifically, in his direct testimony, Mr. Gates takes the position that the Commission should not differentiate the compensation to be paid for ISP-bound traffic from the rate paid for local voice traffic.

To the extent that Level 3 argues that the scope of this docket is determined solely by Level 3's Petition and BellSouth's Response, BellSouth asserts that Level 3 is apparently suggesting that the Issue Identification meeting and Order Establishing Procedure are irrelevant. For these reasons, BellSouth requests that Level 3's Motion to Strike and the alternative request to file surrebuttal testimony be denied.

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DECISION

Order No. PSC-00-1646-PCO-TP, Order Establishing Procedure, issued September 15, 2000, sets forth the issues to be addressed by the witnesses in this proceeding. Issue 6 reads:

For purposes of the interconnection agreement between Level 3 and BellSouth, should ISP-bound traffic be treated as local traffic for purposes of reciprocal compensation, or should it be otherwise compensated?

In his direct testimony, Mr. Gates, addresses Level 3's position on Issue 6 and argues that the Commission should not differentiate the compensation to be paid for ISP-bound traffic from the rate paid for local voice traffic. In rebuttal testimony, Ms. Cox, challenges Mr. Gates' position and addresses what BellSouth believes should be the compensation rate for ISP-bound traffic. Clearly, Ms. Cox's rebuttal testimony is in response to Mr. Gates' direct testimony concerning Issue 6. As such the rebuttal testimony of Ms. Cox is relevant to this arbitration proceeding in that it properly rebuts the direct testimony of Mr. Gates and addresses Issue 6 in the order establishing procedure. Accordingly, Level 3's Motion to Strike portions of Ms. Cox's rebuttal testimony and BellSouth's position under Issue 6 of its Prehearing Statement is denied.

Level 3 requested that it be allowed to file surrebuttal testimony in the event the Motion to Strike portions of Ms. Cox's testimony is not granted. In considering this request, I note that the parties and staff agreed to the issues identified in the order establishing procedure at an issue identification meeting prior to the issuance of the order establishing procedure. No Motion for Reconsideration was filed regarding the contents of that order. Further, as noted above, the direct testimony of Mr. Gates addresses the issue of reciprocal compensation for ISP-bound traffic, which is the subject of Issue 6. Therefore, Level 3 was afforded sufficient opportunity to present testimony on Issue 6 and the request to file surrebuttal testimony is denied.

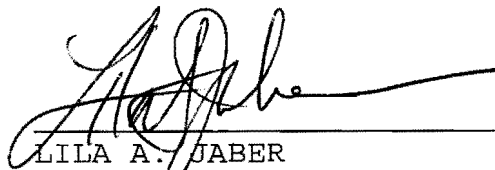
Based on the foregoing reasons, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that the Motion to Strike filed by Level 3 Communications, LLC is denied. It is further

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ORDERED that Level 3 Communications, LLC's request to file surrebuttal testimony is hereby denied.

By ORDER of Commissioner Lila A. Jaber as Prehearing Officer, this 30th day of November, 2000.



LILA A. JABER

Commissioner and Prehearing Officer

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060,

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Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.