

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

JUL 13 2004

In the Matter of arbitration Between )  
LEVEL 3 COMMUNICATIONS, LLC )  
and SBC COMMUNICATIONS, INC., )  
Pursuant to Section 252(b) of the )  
Communications Act of 1934, as )  
Amended by the Telecommunications Act )  
of 1996, for Rates, Terms, and Conditions )  
of Interconnection. )

Docket No. 04-L3CT-1046-ARB

 Docket  
Room

**ORDER 3: ARBITRATOR'S ORDER**  
**CONCERNING MATTERS RAISED AT PRE-HEARING CONFERENCE**

The above-captioned matter comes before Arbitrator Cynthia Claus, appointed by the State Corporation Commission (Commission) for consideration and decision with respect to matters raised at the prehearing conference at the Commission's offices in the third floor hearing room on Monday, June 28, 2004 at 1:30 p.m. After considering the files and being duly advised in the premises, the Arbitrator finds and concludes:

1. Level 3 Communications, LLC ("Level 3") appeared by its attorneys Mark Johnson and Brian Fields of Sonnenschein, Nath & Rosenthal, L.L.P., and Thomas Bailey of Briggs and Morgan of Minneapolis, Minnesota, with Mr. Bailey participating by phone. Southwestern Bell Telephone, L.P. appeared by its attorney Bruce Ney. Dennis Friedman and Theodore Livingston with Mayer, Brown, Rowe & Maw of Chicago, Illinois appeared by phone on behalf of SBC.
2. Notice of the prehearing conference was contained in Order No. 2. There were no objections to notice of the prehearing conference. Notice was proper.
3. Since this matter was initiated by the filing of Level 3's Petition for Arbitration on May 25, 2004, Southwestern Bell Telephone, L.P. d/b/a SBC Kansas (SBC) filed its response to Level 3's Petition on June 21, 2004. In Paragraph 8 of its Order 1, the Commission

directed SBC to complete the Disputed Points List (DPL) “using the electronic format furnished by Level 3 so that the arbitrator can ascertain the position of the parties by reviewing one document.” Further, the Commission required SBC “to add a column to the DPL to state what decision, if any, this Commission has previously made on any issue,” with a reference to “the particular arbitration or other docket in which the decision was made.” On June 25, 2004, Level 3 filed a Motion to Strike SBC’s Disputed Point List and Compel SBC to Use Level 3’s DPL on the grounds, among others, that SBC’s response fails to comply with this Commission’s order and with applicable regulations.

4. At the outset of the prehearing conference, the parties informed the arbitrator that they had entered into a “standstill agreement,” and desired to put the arbitration on hold until about the first of August. According to Level 3’s attorney, this standstill would include holding Level 3’s motion to strike in abeyance until after the standstill is over, when it may or may not be relevant. During this standstill period the parties would endeavor to simplify, and possibly settle, issues. The parties indicated they intended to develop during the week of July 25, 2004 a single document of disputed points and a proposed hearing schedule to be provided to the arbitrator, and that they desired to reconvene the prehearing conference during the first week of August, 2004 to determine a procedural schedule. The parties further indicated that although they intend to negotiate in good faith to narrow and eliminate outstanding issues, each party nonetheless reserves the right to break off negotiations and to seek to get the arbitration back on track, including proceeding with discovery. The parties also agreed to a 30-day extension of the statutory time period for the Commission to issue its order regarding this arbitration. The parties indicated that the new deadline for the Commission’s order is October 13, 2004, with this

arbitrator's decision due 30 days prior to the final order, or September 13, 2004. The parties indicated that these dates were subject to subsequent agreement between the parties for further extension.

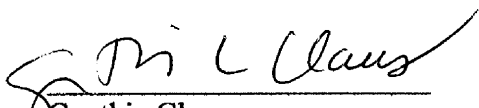
5. The parties agreed to file a written motion to confirm the standstill arrangement. On July 6, 2004, the parties filed a Joint Motion to Accept Stipulation to Extend Time for Arbitration Decision. Attached to the motion as Exhibit A is a copy of the executed Standstill Agreement executed by the parties. Although the parties in Paragraph 5 of the Joint Motion stipulate "to waive any and all rights to challenge a Commission order in this arbitration proceeding on the grounds that the order is issued later than September 12, 2004, the nine-month deadline for completing this arbitration under Section 252," the Joint Motion fails to specifically reflect the 30-day agreed extension. The arbitrator accepts the agreement of the parties at the prehearing conference for a 30-day extension of the nine-month deadline. This 30-day extension results in a new deadline of October 12, 2004 (rather than the date of October 13 mentioned at the prehearing conference). The parties are reminded that any further agreed extensions of the deadline should be for a fixed period. The Arbitrator also prefers that such agreed extensions be filed in writing in the future.
6. The prehearing conference will reconvene on Monday, August 2, 2004 at 1:30 p.m. at the offices of the Commission in the third floor hearing room. Level 3's Motion to Strike is held in abeyance and the need for any further proceedings on the Motion will be taken up at the prehearing conference. Any new joint disputed points list and any proposed schedule shall be filed by July 29, 2004. In the event disputes regarding discovery arise

prior to that date, either party may contact Bret Lawson, or his designee, to schedule a discovery hearing before the Arbitrator to resolve the dispute.

7. Several other matters were discussed at the prehearing conference. If the parties desire to file briefs concerning any legal issues affecting the disputed contract points, such brief should be filed early in the schedule, well before the filing of testimony or the hearing. The legal arguments should be specifically tied to particular disputed contract points. The date for such filing will be part of the schedule to be determined when the prehearing conference reconvenes. If a party relies on state or federal commission or other administrative decisions, copies of such decisions (organized in three-ring binders) should be furnished.
8. Exhibits are to be marked and exchanged in advance of the hearing. To the extent both parties are utilizing any of the same exhibits, they should be marked as joint exhibits. Each party's exhibits are to be organized in three-ring binders, with the joint exhibits in a separate binder.
9. Until further notice, the parties should file an original plus two copies, plus a copy that goes directly to the Arbitrator, of any filings in this case, rather than an original plus seven copies.
10. The starting point for conducting an effective arbitration of disputed terms in an interconnection agreement is having a single comprehensive list of all disputed points, reflecting both parties' proposals and rationales for those proposals, particularly where the arbitration is conducted on a modified "final offer" issue by issue basis, as it is here in Kansas. A single draft agreement and appendices, marked to show both parties' proposals, is also critical to an effective resolution of any disputed points. The Arbitrator

is pleased that the parties are working to narrow and resolve issues, and to the extent issues remain unresolved, to prepare a comprehensive single Disputed Points List and annotated agreement, reflecting both parties' positions.

IT IS SO ORDERED:

  
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Cynthia Claus  
Arbitrator

Dated: July 12, 2004

CERTIFICATE OF SERVICE

04-L3CT-1046-ARB

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order 3: Arbitrator's Order was placed in the United States mail, postage prepaid, or hand-delivered this 13th day of July, 2004, to the following:

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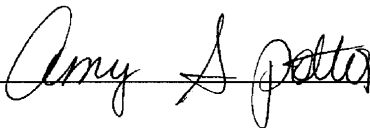
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