

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: AT&T COMMUNICATIONS OF :  
NEW ENGLAND PETITION TO :  
INVESTIGATE, CLARIFY AND MODIFY : DOCKET NO. 3890  
ACCORDINGLY LEVEL 3'S RECENT :  
ACCESS TARIFF REVISIONS :

ORDER

On August 30, 2007, Level 3 Communications, LLC ("Level 3") filed revisions to its access tariff with the Rhode Island Public Utilities Commission ("Commission") and on September 30, 2007, the revisions went into effect without suspension in accordance with R.I. Gen. Laws § 39-3-11. On October 18, 2007, AT&T Communications of New England, Inc. ("AT&T") filed a petition to investigate, clarify and modify those tariff provisions. AT&T alleged that the tariff was not sufficiently clear "regarding how and in what circumstances Level 3 will apply charges for its proposed new services."<sup>1</sup>

AT&T expressed five areas of concern: (1) that there was uncertainty regarding which traffic would be subject to the originating switched access rate; (2) that there was uncertainty how Level 3 would determine "what parts of its 8YY traffic that is delivered to interexchange carriers ("IXCs") for termination in Rhode Island was actually originated in Rhode Island;" (3) that there was uncertainty arising out of the use of the term "Transit" in the Toll Free Transit Traffic Service Rates because the term usually refers to local traffic rather than toll traffic, and therefore, clarification would be needed; (4) that Level 3 is not a payphone provider and should not be receiving payphone

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<sup>1</sup> AT&T Petition, p. 1.

compensation; and (5) that there may be problems associated with call aggregation which would be better addressed by federal rules.<sup>2</sup>

On November 13, 2007, Level 3 filed its Response to AT&T's Petition, noting that the filings implemented originating access service to IXCs to allow users on Level 3's network to reach the 8YY numbers supported by those IXCs. The revisions also allow Level 3 to offer Toll Free Interexchange Delivery service, which is service to an IXC that allows users on other Local Exchange Companies ("LECs") networks to reach the 8YY numbers supported by the IXC via the Level 3 network. Level 3 argued that the tariff revisions impose typical industry charges for handling the referenced traffic and that AT&T's allegations of uncertainty were unwarranted.<sup>3</sup> Noting that there had been questions in other states, Level 3 also provided a white paper, including responses "frequently asked questions" regarding its tariff changes. Level 3 also responded to each of AT&T's concerns.<sup>4</sup>

On November 21, 2007, Verizon New England, Inc., d.b.a Verizon Rhode Island, MCImetro Access Transmission Services LLC and MCI Communications Services, Inc. (collectively, "VZ-RI") filed a Motion to Intervene which was not objected to and therefore, granted in accordance with the Commission Rules of Practice and Procedure, Section 1.13(e). VZ-RI, Rhode Island's ILEC, claimed that it had a direct interest in the outcome of the case which could not be adequately represented by the other parties in the docket.<sup>5</sup>

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<sup>2</sup> *Id.* at 3-6.

<sup>3</sup> Level 3 Response, pp. 1-2.

<sup>4</sup> *Id.* at 3-6.

<sup>5</sup> VZ-RI Motion to Intervene.

Commission counsel conducted a pre-hearing conference with the parties and several subsequent status conferences during which the parties expressed optimism regarding progress toward a settlement. On January 4, 2008, Level 3, AT&T and VZ-RI filed an Offer of Settlement and associated Settlement Agreement for review by the Division of Public Utilities and Carriers (“Division”) and for approval by the Commission. The parties stated that they had:

disagreed regarding the meaning and adequacy of tariff provisions...including application of the switched access rate, methods for determination of traffic subject to the state tariff, application of Toll Free Transit Traffic service rates to local traffic, application of the Pay Telephone Compensation rate, and the potential for the tariff to apply to termination arrangements known as Multiple Exchange Carrier Access Billing....<sup>6</sup>

Further, the parties stated that they had resolved their differences through agreed tariff revisions as described in the Settlement Agreement and attached revised tariffs.<sup>7</sup> Finally, the parties claimed that “approval of the Settlement Offer is in the public interest because it produces a clear and workable tariff for the industry participants operating pursuant to it” and obviates the need for further litigation.<sup>8</sup> The Settlement Agreement stated that it would be effective “as of the date that the [Commission] approves it and all appeal rights have run.”<sup>9</sup>

On January 10, 2007, in response to a request by the Division that Level 3 further revise the proposed tariff to re-include the \$0.53 Pay Telephone Compensation Charge, the parties filed the revision and represented that they agreed to it.<sup>10</sup> On January 11, 2008, the Division filed a letter with the Commission indicating that it had reviewed the

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<sup>6</sup> Offer of Settlement, p. 2, ¶ 4.

<sup>7</sup> *Id.* at 2, ¶ 6.

<sup>8</sup> *Id.* at 2, ¶ 7.

<sup>9</sup> Settlement Agreement, p. 1.

<sup>10</sup> Letter from Deming E. Sherman, Esq. to Luly Massaro, Clerk, 1/10/08.

tariff with the additional change and in the “Division’s opinion, the revised settlement is in the public interest, is just and reasonable, and is in accordance with law and regulatory policy. Accordingly, the Division recommends that the Commission approve the revised settlement as filed.”<sup>11</sup>

On January 17, 2008, at its Open Meeting, the Commission considered the Offer of Settlement and associated Settlement Agreement and revised tariffs and the Division’s recommendation and found that based on the facts presented, the Settlement Agreement is in the public interest, is just and reasonable, and is in accordance with law and regulatory policy. The proposed tariff revisions will create certainty for the industry participants and will avoid the need for protracted litigation. From the start, it appeared from the record that the parties were not in disagreement over the substance of Level 3’s subject tariffs, but in the language chosen. These are wholesale tariffs which govern the conduct of competitive carriers and as such, competition is served by clarity and certainty for those industry participants.

The Tariff Revisions currently marked as Exhibit A to the Settlement Agreement shall be filed with the Commission immediately. Such Tariff Revisions will be treated as a compliance filing and will be ruled on within 30 days of such filing in order to provide non-parties with the opportunity for review.

Accordingly, it is hereby,

(19183) ORDERED:

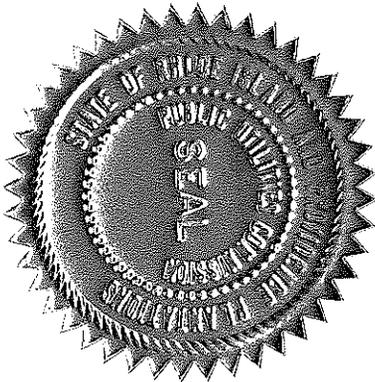
1. The Offer of Settlement and Settlement Agreement filed on January 4, 2008, with the agreed revision filed on January 10, 2008 is hereby approved.

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<sup>11</sup> Letter from Leo J. Wold, Special Assistant Attorney General to Luly Massaro, Clerk, 1/11/08, p. 2.

2. AT&T Communications of New England, Inc. or AT&T Corp's Petition filed on October 19, 2007, is hereby denied and dismissed.
3. The parties shall file a signed Settlement Agreement with the Commission immediately.
4. Level 3 shall file its Tariff Revisions, currently marked as Exhibit A to the Settlement Agreement no later than January 30, 2008, in accordance with the terms of the Settlement Agreement.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING ON JANUARY 17, 2008. WRITTEN ORDER ISSUED JANUARY 23, 2008.



*Elia Germani*

Elia Germani, Chairman

*Robert B. Holbrook*

Robert B. Holbrook, Commissioner

*Mary E. Bray*

Mary E. Bray, Commissioner