

**THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND PUBLIC UTILITIES COMMISSION**

Level 3 Communications, L.L.C. – Revisions to
Access Tariff R.I. PUC Rate Schedule No. 2

Docket No. _____

**PETITION OF AT&T TO INVESTIGATE, CLARIFY AND MODIFY
ACCORDINGLY LEVEL 3'S RECENT ACCESS TARIFF REVISIONS**

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TABLE OF CONTENTS

Introduction.....	1
Discussion.....	3
I. LEVEL 3'S TARIFF MUST BE MODIFIED TO ENSURE THAT ITS RATE LEVELS AND APPLICATIONS ARE JUST AND REASONABLE.	3
A. UNCERTAINTY REGARDING APPLICATION OF ORIGINATING SWITCHED ACCESS RATE.	3
B. JURISDICTIONALIZATION: DETERMINATION OF TRAFFIC SUBJECT TO STATE TARIFF.....	3
C. UNCERTAINTY REGARDING APPLICATION OF TOLL FREE TRANSIT TRAFFIC SERVICE RATES TO LOCAL TRAFFIC.....	4
D. UNCERTAINTY REGARDING APPLICATION OF THE PAY TELEPHONE COMPENSATION RATE.	4
E. PROBLEMS FOR INCUMBENT LOCAL EXCHANGE CARRIERS.....	5
II. THE COMMISSION SHOULD CONDUCT AN INVESTIGATION TO OBTAIN INFORMATION NECESSARY TO MODIFY LEVEL 3'S TARIFF TO ENSURE THAT IT IS APPLIED IN A JUST AND REASONABLE FASHION.....	7
Conclusion	8

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Introduction

Pursuant to R.I.G.L. §§ 39-1-3, 39-1-7, and 39-1-38, AT&T Communications of New England, Inc. and its affiliates operating in Rhode Island (“AT&T”) respectfully request that the Rhode Island Public Utilities Commission (“Commission”) investigate the August, 2007, revisions that Level 3 made to its access tariff which became effective on or about September 30, 2007 and order revisions thereto if and to the extent that such tariff provisions are unjust and unreasonable. Based on the vague, ambiguous, or nonexistent descriptions in Level 3’s new tariff provisions regarding how and in what circumstances Level 3 will apply charges for its proposed new services, it is not possible to determine whether the new tariff provisions are just, reasonable and in the public interest. By this petition, AT&T requests that the Commission open an investigation to determine the details of the application of Level 3’s tariff and order any changes necessary to make the tariff just and reasonable.

On the Second Revised Page 59 in Level 3’s access tariff, R.I. PUC Tariff No. 2, Level 3 lists four new rates for services described on the Second Revised Page 52:

Section	Description	Rate Level
15.1.3.5	Originating Switched Access Per Minute of Use	\$0.016750
15.1.3.6	Toll Free Data Base Access Service Per Query	\$0.003981
15.1.3.7	Toll Free Transit Traffic Service Per Minute	\$0.001930
15.1.3.8	Pay Telephone Compensation Per Call	\$0.53

As a starting point, the proposed tariff changes all are inserted into a tariff for switched access services provided by Level 3 to other telecommunications carriers. Based on nearly identical filings in other states, AT&T understands that the first three of the proposed new rates/services are related to a single new “Toll Free Data Base Access” service. Nevertheless, the proposed tariff revision lists three new rate elements (Originating Switched Access, Toll Free Data Base Access Service, Toll Free Transit Traffic Service) as if they relate to free-standing services that are not under the category of “Toll Free Data Base Access Service.” Accordingly it is unclear whether (or how) traffic unrelated to the Toll Free Data Base product may be subject to charges under these three services. Application of such charges to such unrelated traffic is sufficient grounds for the Commission to find the tariffs to be unjust and unreasonable and to order appropriate modifications. In addition, the fourth rate/service relating to payphone compensation, by its introduction into Level 3’s switched access tariff, appears to impose charges on interexchange carriers for a payphone service Level 3 does not provide. Accordingly, it too appears to be unjust and unreasonable.

Discussion

I. LEVEL 3'S TARIFF MUST BE MODIFIED TO ENSURE THAT ITS RATE LEVELS AND APPLICATIONS ARE JUST AND REASONABLE.

A. UNCERTAINTY REGARDING APPLICATION OF ORIGINATING SWITCHED ACCESS RATE.

It is not clear whether the new Originating Switched Access service (listed on Second Revised Page 59) is part of the Toll Free Data Base Access Service or the Toll Free Transit Traffic Service, or if it is a general service applicable to traffic other than 8YY traffic requiring a “database dip” and/or a transit service. If Level 3 intends this charge to apply to traffic that is subject to the Toll Free Transit Traffic Service, it would be improper and unjust. As an originating access charge, the Originating Switched Access charge purports to recover the cost of the originating loop and originating end office switching. However, much of Level 3's 8YY traffic, and all of its 8YY traffic that is subject to the Toll Free Transit Traffic Service, does not originate from a Level 3 retail end-user and does not, therefore, involve a Level 3 loop or end office switch.¹ As a result, application of the Originating Switched Access Charge in such situations would improperly be charging for functions that Level 3 does not provide.

B. JURISDICTIONALIZATION: DETERMINATION OF TRAFFIC SUBJECT TO STATE TARIFF.

By definition, Level 3's Rhode Island tariff applies only to traffic that is originated and terminated within Rhode Island. As a general matter, very little toll free traffic tends to be intrastate. Level 3 has provided no indication for how it will determine what parts of its 8YY traffic that is delivered to IXCs for termination in Rhode Island was actually originated in Rhode Island. Before Level 3 can apply its Rhode Island rates for

¹ Level 3 aggregates originating traffic from other local carriers, such as wireless carriers and VoIP providers.

Toll Free Data Base Access Service and Toll Free Transit Traffic Service, it must have a way of determining that the traffic is intrastate traffic subject to such charges.

C. UNCERTAINTY REGARDING APPLICATION OF TOLL FREE TRANSIT TRAFFIC SERVICE RATES TO LOCAL TRAFFIC.

Use of the term “Transit” creates the possibility that Level 3 is seeking to apply the rates in this section to local traffic. This is because the term “transit” is generally used to describe a service offered by a carrier to transport a *local* call from the originating local carrier to a terminating local carrier, where the originating and terminating local carriers are not directly interconnected. Indeed, in a recent case in New Hampshire, the association between the terms “transit” and “local” was used by Verizon as support for its case there. In the *BayRing* case, Docket No. 06-067, Verizon’s witness stated in oral testimony:

Tandem *transit* service is provided pursuant to Tariff 84 as a vehicle for two non-Verizon carriers to use Verizon's tandem and transport facilities to connect *local* traffic, not *toll* traffic, but local traffic.

Day 2 (July 11, 2007) Transcript, at 107-108 (emphasis added).

Because of the common association of the word “transit” with local calls, the Commission should require Level 3 to clarify that the Toll Free Transit Traffic Service rate will apply to toll traffic only.

D. UNCERTAINTY REGARDING APPLICATION OF THE PAY TELEPHONE COMPENSATION RATE.

As noted above, Level 3 has inserted as Section 15.1.3.8 a \$0.53 per minute rate for something called “Pay Telephone Compensation.” No other description is provided. It is entirely unclear what this service is and who will have to pay for it. “Payphone Compensation” (as the FCC uses that term) is compensation paid by completing carriers

(or by intermediary carriers on behalf of completing carriers) to payphone owners.

Level 3 is not a payphone provider, and is thus not entitled to receive payphone compensation. Moreover, it is not clear whether Level 3 intends to assess this charge on its own retail end users or on other carriers, or to what types of traffic it would apply.

Given the absence of any description of the service offered and given a name that suggests that it is not a service Level 3 offers to carriers taking services under its access tariff, it is unjust and unreasonable for Level 3 to seek to apply such charges in this tariff.

E. PROBLEMS FOR INCUMBENT LOCAL EXCHANGE CARRIERS.

In addition to the problems for IXCs discussed above, Level 3's new tariff provisions also create potential problems for ILECs, such as Verizon.² As noted above, it is likely that Level 3 will aggregate calls from other carriers, such as VoIP providers, where the calls may originate outside of Rhode Island. It is also possible that such calls will be sent to a Verizon tandem for ultimate delivery to the IXC responsible for carrying the call. This creates problems.

A call flow such as the one just described, which involves two intermediate carriers (Level 3 and Verizon in the above example), is a call termination arrangement known as the Multiple Exchange Carrier Access Billing ("MECAB"), and it is governed by federal rules. To ensure proper billing, all carriers involved in this type of arrangement must abide by certain guiding principles set by the FCC. Among these principles are:

² AT&T has faced these problems where Level 3 has filed similar tariff provisions in states in which AT&T is the ILEC.

1. All providers on the route agree to comply with the MECAB document, which requires each carrier to, among other things, render a bill only for that portion of the service it provides.³
2. The end user that originates the 8YY call must be in the same LATA as the ILEC's Access Tandem and the IXC's point of presence ("POP") serving wire center.
3. All providers on the route agree to the MECAB record exchange process.

Where Level 3 aggregates calls that originate in other states and deliver them to the Verizon tandem in Rhode Island, these principles are violated. In such situations, Verizon would be asked to transit a call that originates outside the LATA of the tandem transiting the call, a clear violation of Principle #2. Moreover, it is not at all clear how Level 3 will deliver the usage detail necessary for Verizon to bill its portion of the call, thus violating Principles ##1 and 3.

These ILEC concerns are relevant only if Level 3 chooses to use an ILEC tandem to reach an IXC with which Level 3 does not have direct connections. To the extent that Level 3 will restrict its traffic termination to IXCs with which it has direct connections, and is willing to explicitly indicate such restriction in its tariff prior to becoming effective, the ILEC concerns regarding MECAB are moot. If Level 3 is unwilling to agree to such restrictions, AT&T urges the Commission to reject the tariff altogether, or consider solutions that AT&T will propose.

³ This is particularly important to ensure that the arrangement is not too loose to encourage incorrect billing.

II. THE COMMISSION SHOULD CONDUCT AN INVESTIGATION TO OBTAIN INFORMATION NECESSARY TO MODIFY LEVEL 3'S TARIFF TO ENSURE THAT IT IS APPLIED IN A JUST AND REASONABLE FASHION.

AT&T respectfully requests that the Commission open an investigation to obtain information necessary to ensure Level 3 is offering service under just and reasonable rates, terms and conditions --

- With respect to 8YY traffic, does Level 3 intend to charge the rates in its proposed tariff only for 8YY traffic that originates in Rhode Island, or does it intend to aggregate traffic that may originate in other jurisdictions, hand such traffic to interexchange carriers in Rhode Island with whom Level 3 is directly interconnected, and charge such interexchange carriers the rates set forth in Level 3's proposed Rhode Island tariff?
- How does Level 3 intend to determine the originating jurisdiction of 8YY calls for purposes of identifying the jurisdiction of such calls in order to establish intercarrier compensation generally and application of its proposed tariff specifically?
- Will the proposed tariff apply to calls that are placed by end users using wireless service or is the tariff limited to calls that originate on traditional wireline telephone service?
- Will this proposed tariff apply to calls that are placed by end users using VoIP service or is the tariff limited to calls that originate on traditional wireline telephone service?
- Does Level 3 have an interstate tariff on file (or to be filed) that corresponds to this tariff regarding Toll Free Data Base Service?
- Which rate elements will apply to which call types (e.g. VoIP, wireless, and wireline)?
- Has Level 3 entered into Meet Point Billing agreements with all the carriers with whom it will exchange traffic to ensure the IXCs are accurately billed? Is Level 3 prepared to comply with the MECAB document and provide Access Usage Records to all carriers involved in meet point billing?

Conclusion

For the foregoing reasons, AT&T urges the Commission to open an investigation pursuant to Rhode Island and, in accordance with its findings, modify Level 3's tariff to ensure just and reasonable rates, terms and conditions.

Respectfully Submitted,

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ENGLAND, INC. AND ITS AFFILIATES

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