

Kay Flynn

ORIGINAL

From: Jeff Bates
Sent: Friday, January 28, 2005 10:27 AM
To: Kay Flynn
Cc: Sally Simmons
Subject: FW: Level 3/Verizon/AT&T Adoption Letter

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Level3FL_Ado
ionLtr 3-17-99.p

Kay,

The attached file is the Level 3 Communications, LLC adoption of the GTE (Verizon) and AT&T agreement (960847-TP). According to Verizon and the three subsequent amendments, the adoption was filed with the Commission on April 1, 1999.

If the adoption was filed with the Commission, I cannot locate it in either CMS or the Tariff Filing Information System (TFIS). (In 1999, our policy was to both docket an agreement/adoption, then log it into TFIS.)

The amendments which have been filed to date are:

- First Amendment - Docket No. 010419-TP
Second Amendment - Docket No. 020988-TP
Third Amendment - Docket No. 041265-TP

Can you place a copy of the attached file in each of the docket files for the above dockets? Sally and I believe this would be the best approach to ensure a complete record of the agreement between Verizon and Level 3 Communications, LLC.

Jeff Bates
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Competitive Markets & Enforcement
Florida Public Service Commission
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Tallahassee, FL 32399-0850
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OTH org to
041265

-----Original Message-----

From: terry.scobie@verizon.com [mailto:terry.scobie@verizon.com]
Sent: Friday, January 28, 2005 8:24 AM
To: Jeff Bates
Subject: Level 3/Verizon/AT&T Adoption Letter

Good morning - attached is the letter we discussed yesterday.

(See attached file: Level3FL_AdoptionLtr 3-17-99.pdf)

DOCUMENT NO.
01117-05
1/31/05

Terry Scobie
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Verizon Legal Department
813-483-2610 (tel)
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Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



GTE Network
Services

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March 17, 1999

Mr. Daniel P. Caruso
Senior Vice President
Level 3 Communications, LLC
1450 Infinite Drive
Louisville, CO 80027

Dear Mr. Caruso:

We have received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, you wish to adopt the terms of the arbitrated Interconnection Agreement between AT&T Communications of the Southern States, Inc. (AT&T) and GTE that was approved by the Commission as an effective agreement in the State of Florida in Docket No. 96-0847-TP (Terms)¹. I understand you have a copy of the Terms.

Please be advised that our position regarding the adoption of the Terms is as follows.

On January 25, 1999, the Supreme Court of the United States issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

Three aspects of the Court's decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

¹ *These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with the Act. As a result, any provisions in the Agreement requiring GTE to provide UNEs are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Agreement that Level 3 Communications, LLC (Level 3) seeks to adopt does not reflect the Court's decision, and any provision in the Agreement that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Agreement and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Agreement until the FCC issues the New Rules even though it is not legally obligated to do so.
2. Likewise, Level 3 agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.
3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Agreement, GTE will agree to extend to any new interconnection arrangement between the parties to the terms of this proposal until the FCC issues its New Rules.

Mr. Daniel P. Caruso
March 17, 1999
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To: Elsa Svensson
Director, Interconnection Services
7581 West 103rd Avenue
Westminster, CO 80021
Telephone Number: 303-635-6642
Facsimile Number: 303-635-9525


And

Tom Stortz
Senior Vice President and General Counsel
1450 Infinite Drive
Louisville, CO 80027
Telephone Number: 303-926-3037
Facsimile Number: 303-926-3467

- (C) Level 3 represents and warrants that it is a certified provider of local dialtone service in the State of Florida, and that its adoption of the Terms will cover services in the State of Florida only.

Sincerely,

GTE FLORIDA INCORPORATED




Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection

APPROVED AS TO FORM BY
LEGAL DEPARTMENT



Reviewed and countersigned as to points A, B, and C only:

LEVEL 3 COMMUNICATIONS, LLC



Daniel P. Caruso
Senior Vice President