

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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The Champaign Telephone Company, :
:
Complainant, : Case No. 07-369-TP-CSS
:
v. :
:
The Ohio Bell Telephone Company, :
d/b/a AT&T Ohio, et al. :
:
Respondents. :

LEVEL 3 COMMUNICATIONS, LLC'S
RESPONSE TO ATL COMMUNICATIONS, INC.'S
MOTION TO STAY DISCOVERY

Comes now Level 3 Communications, LLC ("Level 3"), a Respondent in the above-captioned action, by its counsel, and respectfully submits its Response to the Motion to Stay Discovery filed by ATL Communications, Inc. ("ATL"), another named Respondent, on July 13, 2007.

By its Motion, ATL asks the Commission to stay discovery pending resolution of its previously filed Motions to Dismiss. ATL notes that Complainant, The Champaign Telephone Company ("Champaign Telephone"), served upon ATL its First Set of Interrogatories and Requests for Production (the "Complainant's Discovery Requests") on July 2, 2007. ATL observes further that it has previously filed a Motion to Dismiss the Complaint, as well as a Motion to Dismiss the Cross-Claim of Level 3. ATL maintains that both Motions to Dismiss, which are based on its claim that the Commission lacks jurisdiction over both ATL and the services provided by ATL, can be determined solely on the pleadings currently before the Commission and that Complainant's Discovery Requests are not relevant to that ruling. ATL urges a stay of discovery so that ATL does not incur the "unnecessary and unreasonable burden

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and expense” of responding to Complainant’s Discovery Requests at this point in the litigation (Motion to Stay, p.2).

Level 3 initially observes that, on July 2, 2007, Champaign Telephone also served Complainant’s Discovery Requests upon Level 3, as well as the remaining Respondent, Ohio Bell Telephone Company, d/b/a AT&T Ohio (“AT&T Ohio”). For its part, Level 3 takes no position as to ATL’s Motion to Stay, but only observes that, pursuant to Rule 4901-1-17, O.A.C., discovery may begin immediately after a proceeding is commenced. Level 3 is in the process of completing and expects to serve its Responses to Complainant’s Discovery Requests within the time limit provided by the applicable rules.

The focus of this Response is directed to ATL’s request that discovery be stayed pending resolution of its Motions to Dismiss the Complaint, as well as Level 3’s Cross-Claim. The Commission can only grant or deny both Motions to Dismiss. Should the Commission decide that its jurisdictional reach extends to ATL as to the Complaint, that reach would necessarily encompass jurisdiction as to Level 3’s Cross-Claim. Conversely, should the Commission decide that it lacks jurisdiction over ATL and the services provided by ATL for purposes of the Complaint, that ruling would apply equally to Level 3’s Cross-Claim. In the latter scenario, the Commission should also enter a favorable ruling on the pending Motions to Dismiss of Level 3 and AT&T by finding that it lacks jurisdiction over the entirety of the Complaint. By its own admission, Champaign Telephone has identified the “at-fault” party in this dispute:

But for ATL’s improper and unauthorized call routing instruction, Champaign would not have the disputed, uncollected charges in the amount of \$287,910.73.

(Memorandum of Champaign Telephone in Opposition to Motion of ATL to Dismiss the Complaint, p. 3).

Surely, should the Commission grant ATL's Motions to Dismiss, the acknowledged "at-fault" party would no longer be a participant, with the result that the Commission would effectively be precluded from rendering a fair, equitable, and legally sustainable decision on the Complaint.

Respectfully submitted,

LEVEL 3 COMMUNICATIONS, LLC

A handwritten signature in black ink, appearing to read "David A. Turano", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel, electronically and by first-class U.S. mail, postage prepaid, this 18th day of July, 2007:

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A handwritten signature in black ink, reading "David A. Turano", with a long horizontal flourish extending to the right.

David A. Turano (0025819)