

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
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Via Email and U.S. Mail

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Re: *Level 3 Communications, LLC v. AT&T Inc., Proceeding No. 17-227,*
Bureau ID No. EB-17-MD-003

Counsel,

On September 7, 2017, Level 3 Communications, LLC (Level 3) and AT&T Inc. (AT&T) jointly requested a limited waiver of two Commission rules governing Level 3's anticipated filing of a formal complaint in the above-referenced proceeding.¹ This letter ruling grants the requested waivers subject to the conditions and/or clarifications set forth below.

First, the September 7th Joint Letter requests a limited waiver of Commission rule 1.720(f), which requires submission "of all non-Commission authorities relied upon which are not routinely available in

¹ Letter from Thomas Jones, Counsel for Level 3 Communications, LLC, and Michael J. Hunseder, Counsel for AT&T Inc., to Marlene H. Dortch, Office of the Secretary (dated Sept. 7, 2017) (September 7th Joint Letter). On August 31, 2017, we adopted, with minor modifications and/or clarifications, proposals contained in an earlier Joint Letter filed by the parties regarding the waiver of certain procedural rules, a schedule for the submission of pleadings, and the entry of a Protective Order. *See* Letter from Lisa Saks, Assistant Division Chief, Market Disputes Resolution Division, to Thomas Jones, Counsel for Level 3 Communications, LLC, and Christopher T. Shenk, Counsel for AT&T Inc. (Aug. 31, 2017) (addressing procedural matters raised in the parties' August 25, 2017 Joint Letter).

national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.”² The parties seek a waiver of rule 1.720(f) to the extent that it requires a party to submit, in its entirety, a voluminous supporting document where the party intends to rely upon only a small excerpt of that document.³ Instead, the parties propose to submit only the portions of the document they deem relevant, subject to the condition that the opposing party shall “retain (and not waive) the right to seek the entire document at a later time.”⁴ We agree that the proposed waiver will produce a more efficient complaint process without compromising fairness. Accordingly, we grant the parties’ joint request for a limited waiver of rule 1.720(f) provided that, with respect to any excerpted document relied upon by either party, (a) staff retain discretion to require submission of the entire document or an expanded excerpt of such document at a later time; and (b) the grant of this limited waiver shall not be deemed a ruling on the probative value of any excerpted material.

Second, the September 7th Joint Letter requests a limited waiver of Commission rule 1.735(c) to the extent that it requires service of a complaint on a named defendant “by hand delivery.”⁵ The parties argue that permitting email service, rather than hand delivery, of Level 3’s complaint “aligns with” rule 1.735(f), which includes email among the approved methods of service for all “subsequent pleadings” in a formal complaint proceeding.⁶ We grant the requested waiver of rule 1.735(c), which will permit Level 3 to serve its complaint on AT&T via email, as agreed to by the parties. Given *staff’s* affirmative request for hard copies of all submissions, as provided in rule 1.735(e), however, we note that this waiver does not eliminate the parties’ obligation to submit hard copies of all submissions, including the complaint, to staff in the Market Disputes Resolution Division of the Enforcement Bureau.⁷

This letter ruling is issued pursuant to Sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, Sections 1.720-1.736 of the Commission’s rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111 and 0.311.

FEDERAL COMMUNICATIONS COMMISSION



Lisa Saks, Assistant Division Chief
Market Disputes Resolution Division
Enforcement Bureau

² September 7th Joint Letter at 1 (citing 47 CFR § 1.720(f)).

³ For example, the September 7th Joint Letter states that Level 3 intends to rely upon only a single page of a “voluminous Level 3-commissioned analyst report” and notes that the “remainder of the report is both extraneous and competitively sensitive.” September 7th Joint Letter at 1.

⁴ *Id.*

⁵ *Id.* at 1 (citing 47 CFR § 1.735(c)).

⁶ *Id.* at 2 (citing 47 CFR § 1.735(f)).

⁷ *See* 47 CFR § 1.735(e).