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AZ CORP COMMISSION  
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MEMORANDUM

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TO: THE COMMISSION

FROM: Utilities Division

DATE: November 23, 2005

RE: IN THE MATTER OF THE JOINT APPLICATION OF WITEL COMMUNICATIONS, LLC WITEL LOCAL NETWORK, LLC AND LEVEL 3 COMMUNICATIONS, LLC FOR A LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTEREST RULES (DOCKET NOS. T-03708A-05-0797, T-03779A-05-0797 AND T-03654A-05-0797)

Introduction

On October 31, 2005, WilTel Communications, LLC ("WilTel-Comm") WilTel Local Network, LLC ("WilTel-LN") And Level 3 Communications LLC, ("Level 3") filed a joint application for a limited waiver of the Arizona Corporation Commission's ("ACC") Public Utility Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 to R14-2-806 in connection with a proposed transaction whereby Level 3 will acquire indirect control of WilTel-Com and WilTel-LN.

WilTel-Comm is a Delaware limited liability company that is a wholly-owned subsidiary of WilTel Communications Group, LLC ("WilTel"). WilTel-Comm is a non-dominant carrier that is authorized to provide intrastate interexchange telecommunications services in all 50 states and competitive local exchange telecommunications services in less than five states. In Arizona, WilTel-Comm was authorized to provide resold and facilities-based competitive local exchange and interexchange services pursuant to a certificate granted by the Commission in Decision No. 62025, dated November 2, 1999.

WilTel-LN is a wholly-owned subsidiary of WilTel-Comm. WilTel-LN is a non-dominant carrier that is authorized to provide competitive local exchange services in approximately 24 states, including Arizona. In Arizona, WilTel-LN is authorized to provide competitive resold and facilities-based local exchange, exchange access, and intrastate dedicated access telecommunications services pursuant to a certificate granted by the Commission in Decision No. 62727, dated June 30, 2000.

WilTel-Comm provides wholesale services to VoIP providers, Internet Service Providers and other carriers in Arizona. WilTel-LN provides services only to WilTel-Comm. Neither company serves residential customers in Arizona.

WilTel is a limited liability company organized under the laws of the State of Nevada. WilTel is an indirect subsidiary of Leucadia National Corporation ("Leucadia"). Leucadia is a publicly traded New York corporation (NYSE: LUK) that is a diversified financial services holding company engaged through its consolidated subsidiaries in a variety of businesses, including telecommunications. Through its subsidiaries, WilTel operates and manages a fiber-optic broadband network that spans approximately 30,000 route-miles connecting 118 cities in the United States and extends to Europe, Mexico and the Pacific Rim.

Level 3 Communications, LLC is a Delaware limited liability company. Level 3 provides voice and data services to carriers, ISPs, and other business customers over its IP-based network. Level 3 is a wholly-owned subsidiary of Level 3 Financing, Inc., which in turn is a wholly-owned subsidiary of Level 3 Communications, Inc., a publicly traded company (NASDAQ: LVLT). Level 3 is a non-dominant carrier that is authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis. Level 3 is also authorized by the Federal Communications Commission to provide international and domestic interstate services as a non-dominant carrier.

In Arizona, Level 3 is authorized to provide facilities-based and resold local exchange, toll and access services pursuant to a certificate granted in Decision No. 61737, dated June 4, 1999. Level 3 does not have residential customers in Arizona.

Pursuant to the proposed transaction, Level 3 will acquire, indirectly, 100 percent of the equity in WilTel-Comm and WilTel-LN. Specifically, Level 3 will acquire a 100 percent equity interest in WilTel and thus, a 100 percent indirect ownership interest in WilTel-Comm and WilTel-LN. Immediately following the transaction, WilTel, along with WilTel-Comm and WilTel-LN, will continue to operate as separate subsidiaries of Level 3<sup>1</sup>.

The transaction for which WilTel-Comm, WilTel-LN and Level 3 seek a limited waiver involves Level 3's purchase of the stock of a holding company that owns, directly or indirectly, WilTel-Comm and WilTel-LN. WilTel-Comm, WilTel-LN and Level 3 state that both the purchaser and seller are companies with international operations and affiliates. Only very small portions of either company's operations are in Arizona. All companies will continue to provide the same certified services in Arizona under the same terms and conditions after the stock sale. No Arizona customers, assets, or certificates will be transferred.

#### The Company's Request

Based on their operational revenues, WilTel-Comm and Level 3 are Class A utilities and, therefore, subject to Public Utility Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 to R14-2-806 rules ("rules") for which WilTel-Comm, WilTel-LN and Level 3 seek this waiver. These rules apply to the formation of public utility holding companies and certain

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<sup>1</sup> Pre- and post-transaction organizational charts were provided as Exhibit A in the joint application

transactions and activities between public service corporations and their affiliated interests. The rules are intended to: (i) prevent the commingling of utility and non-utility funds; (ii) prohibit cross-subsidization of non-utility activities by utility ratepayers; (iii) prevent negative impact of non-utility activities on a utility's financial credit; and (iv) ensure that the utility and its affiliate's provide the Commission with the information necessary to "carry out its regulatory responsibilities."<sup>2</sup>

WilTel-Comm, WilTel-LN and Level 3 believe that their participation in a highly competitive environment effectively protects customers from activities that will detrimentally affect service and, therefore, believe a limited waiver of these Rules is in the public interest. WilTel-Comm, WilTel-LN and Level 3 respectfully submit that, in light of the Rules' stated purposes, exemption from the requirements of the Rules for the limited purposes of this transaction is appropriate.

#### Staff's Analysis and Conclusions

Leucadia National Corporation, the current 100% owner of WilTel, WilTel-Comm and WilTel-LN, is highly diversified, with investment interests in telecommunications, healthcare services, manufacturing, banking and lending, real estate, and winery businesses.

The corporate interests of Level 3 Communications, Inc. are almost exclusively focused on communications and information services.

The market capitalization of Leucadia National Corporation is nearly twice that of Level 3 Communications, Inc. (\$4.95 billion versus \$2.53 billion).

Level 3 has indicated that the WilTel-Comm and WilTel-LN executive team will not change as a result of the change in ownership.

WilTel-Comm, WilTel-LN and Level 3 indicate that the number of Arizona employees will not be reduced as a result of the change in ownership. WilTel-Comm and Level 3 currently have 5 and 12 employees in Arizona, respectively.

No evidence has been provided by WilTel-Comm, WilTel-LN and Level 3 to indicate that investments in Arizona operations will be increased or reduced as a result of this change in ownership. Nonetheless, the relatively low Arizona assets of WilTel-Comm, WilTel-LN and Level 3 should not be impacted by this transaction in the near-term.

WilTel-Comm, WilTel-LN and Level 3 state in their joint application that they will continue to offer their services with no change in the rates or terms and conditions of service.

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<sup>2</sup> See Commission Decision No. 56618

In response to Staff's data request the applicants stated that the contracts of current wholesale customers will not be impacted in any way by this acquisition.

In response to Staff's data request, WilTel clarified that 3.36% of the "technologically advanced, fully operational, next-generation fiber-optic broadband network that spans approximately 30,000 route-miles connecting 118 cities in the United States and extends to Europe, Mexico and the Pacific Rim"<sup>3</sup> resides in Arizona. Attachment A illustrates the WilTel-Comm network in Arizona.

Level 3 has number assignments within nearly 30 NPA NXX number groups in Arizona's 480, 520, 602, 623, and 928 area codes. Number utilization is believed by Staff to be well below that of other CLECs in Arizona.

Staff confirmed that none of the applicants reported any business or residential local exchange lines in their 2004 Annual Reports.

None of the actions or steps involved in this transaction should result in increased costs or service impacts to Arizona customers.

WilTel-Comm, WilTel-LN and Level 3 have been found to be in compliance and in good standing by the Commission's Compliance and Consumer Services sections.

#### Staff's Recommendations

Staff recommends that WilTel-Comm, WilTel-LN and Level 3's joint application for a limited waiver of the ACC Public Utility Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 to R14-2-806 in connection with a proposed transaction whereby Level 3 will acquire indirect control of WilTel-Com and WilTel-LN be approved with the following conditions:

1. That for one year following acquisition close or until WilTel-Comm, WilTel-LN and Level 3 inform the Commission, by filing an affidavit with Docket Control that acquisition-related activities are completed, whichever occurs last. WilTel-Comm, WilTel-LN and Level 3 provide written notification to the Director of the Utilities Division and to the individual members of the Commission, at least 60 days in advance, of any planned acquisition-related Arizona workforce layoffs; any planned acquisition-related Arizona plant closings; and any planned acquisition-related Arizona facility closings.
2. That within 30 days of a Commission decision in this matter Level 3 be required to review its numbering resources in the 480, 520, 602, 623, and 928 NPAs. The results of this review should be docketed, as a compliance item in this case, within 75 days

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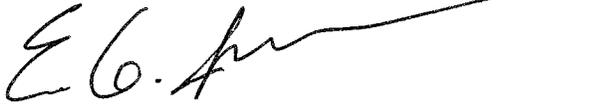
<sup>3</sup> Page 5, lines 1-5 of the applicants joint application

THE COMMISSION

November 23, 2005

Page 5

of a decision in this case. To the extent that the Company's numbering resources in these NPAs exceed a six month inventory, Level 3 be required to, within sixty days of a Commission Decision in this matter, return to the Pooling Administrator all surplus thousands-blocks with less than ten percent contamination.

A handwritten signature in black ink, appearing to read "EGJ", with a long horizontal line extending to the right.

Ernest G. Johnson  
Director  
Utilities Division

EGJ:AFF:lhM/MAS

ORIGINATOR: Armando F. Fimbres



1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JEFF HATCH-MILLER  
Chairman

3 WILLIAM A. MUNDELL  
Commissioner

4 MARC SPITZER  
Commissioner

5 MIKE GLEASON  
Commissioner

6 KRISTIN K. MAYES  
Commissioner

7

8 IN THE MATTER OF THE JOINT ) DOCKET NOS. T-03708A-05-0797  
APPLICATION OF WITEL ) T-03779A-05-0797  
9 COMMUNICATIONS, LLC, WITEL ) T-03654A-05-0797  
10 LOCAL NETWORK, LLC AND LEVEL 3 )  
COMMUNICATIONS, LLC FOR A ) DECISION NO. \_\_\_\_\_  
11 LIMITED WAIVER OF THE PUBLIC )  
UTILITY HOLDING COMPANIES AND ) ORDER  
12 AFFILIATED INTEREST RULES )  
13 )  
14 )

15 Open Meeting  
December 6 and 7, 2005  
16 Phoenix, Arizona

17 BY THE COMMISSION:

18 On October 31, 2005, WilTel Communications, LLC ("WilTel-Comm") WilTel Local  
19 Network, LLC ("WilTel-LN") And Level 3 Communications LLC, ("Level 3") filed a joint  
20 application for a limited waiver of the Arizona Corporation Commission's ("ACC") Public Utility  
21 Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 to R14-2-806 in connection  
22 with a proposed transaction whereby Level 3 will acquire indirect control of WilTel-Comm and  
23 WilTel-LN.

24 FINDINGS OF FACT

25 The Companies in their Application represent the following:

- 26 1. WilTel-Comm is a Delaware limited liability company that is a wholly-owned  
27 subsidiary of WilTel Communications Group, LLC ("WilTel"). WilTel-Comm is a non-dominant  
28 carrier that is authorized to provide intrastate interexchange telecommunications services in all 50

1 states and competitive local exchange telecommunications services in less than five states. In  
2 Arizona, WilTel-Comm was authorized to provide resold and facilities-based competitive local  
3 exchange and interexchange services pursuant to a certificate granted by the Commission in  
4 Decision No. 62025, dated November 2, 1999.

5       2.       WilTel-LN is a wholly-owned subsidiary of WilTel-Comm. WilTel-LN is a non-  
6 dominant carrier that is authorized to provide competitive local exchange services in  
7 approximately 24 states, including Arizona. In Arizona, WilTel-LN is authorized to provide  
8 competitive resold and facilities-based local exchange, exchange access, and intrastate dedicated  
9 access telecommunications services pursuant to a certificate granted by the Commission in  
10 Decision No. 62727, dated June 30, 2000.

11       3.       WilTel-Comm provides wholesale services to VoIP providers, Internet Service  
12 Providers and other carriers in Arizona. WilTel-LN provides services only to WilTel-Comm.  
13 Neither company serves residential customers in Arizona.

14       4.       WilTel is a limited liability company organized under the laws of the State of  
15 Nevada. WilTel is an indirect subsidiary of Leucadia National Corporation ("Leucadia").  
16 Leucadia is a publicly traded New York corporation (NYSE: LUK) that is a diversified financial  
17 services holding company engaged through its consolidated subsidiaries in a variety of businesses,  
18 including telecommunications. Through its subsidiaries, WilTel operates and manages a fiber-  
19 optic broadband network that spans approximately 30,000 route-miles connecting 118 cities in the  
20 United States and extends to Europe, Mexico and the Pacific Rim.

21       5.       Level 3 Communications, LLC is a Delaware limited liability company. Level 3  
22 provides voice and data services to carriers, ISPs, and other business customers over its IP-based  
23 network. Level 3 is a wholly-owned subsidiary of Level 3 Financing, Inc., which in turn is a  
24 wholly-owned subsidiary of Level 3 Communications, Inc., a publicly traded company  
25 (NASDAQ: LVLT). Level 3 is a non-dominant carrier that is authorized to provide resold and/or  
26 facilities-based telecommunications services nationwide pursuant to certification, registration or  
27 tariff requirements, or on a deregulated basis. Level 3 is also authorized by the Federal

28 ...

1 Communications Commission to provide international and domestic interstate services as a non-  
2 dominant carrier.

3 6. In Arizona, Level 3 is authorized to provide facilities-based and resold local  
4 exchange, toll and access services pursuant to a certificate granted in Decision No. 61737, dated  
5 June 4, 1999. Level 3 does not have residential customers in Arizona.

6 7. Pursuant to the proposed transaction, Level 3 will acquire, indirectly, 100 percent of  
7 the equity in WilTel-Comm and WilTel-LN. Specifically, Level 3 will acquire a 100 percent  
8 equity interest in WilTel and thus, a 100 percent indirect ownership interest in WilTel-Comm and  
9 WilTel-LN. Immediately following the transaction, WilTel, along with WilTel-Comm and  
10 WilTel-LN, will continue to operate as separate subsidiaries of Level 3<sup>1</sup>.

11 8. The transaction for which WilTel-Comm, WilTel-LN and Level 3 seek a limited  
12 waiver involves Level 3's purchase of the stock of a holding company that owns, directly or  
13 indirectly, WilTel-Comm and WilTel-LN. WilTel-Comm, WilTel-LN and Level 3 state that both  
14 the purchaser and seller are companies with international operations and affiliates. Only very  
15 small portions of either company's operations are in Arizona. All companies will continue to  
16 provide the same certified services in Arizona under the same terms and conditions after the stock  
17 sale. No Arizona customers, assets, or certificates will be transferred.

18 The Company's Request

19 9. On October 31, 2005, WilTel Communications, LLC ("WilTel-Comm") WilTel  
20 Local Network, LLC ("WilTel-LN") And Level 3 Communications LLC, ("Level 3") filed a joint  
21 application for a limited waiver of the Arizona Corporation Commission's ("ACC") Public Utility  
22 Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 to R14-2-806 in connection  
23 with a proposed transaction whereby Level 3 will acquire indirect control of WilTel-Com and  
24 WilTel-LN.

25 10. Based on their operational revenues, WilTel-Comm and Level 3 are Class A  
26 utilities and, therefore, subject to Public Utility Holding Companies and Affiliated Interest Rules,  
27 \_\_\_\_\_

28 <sup>1</sup> Pre- and post-transaction organizational charts were provided as Exhibit A in the joint application  
Decision No. \_\_\_\_\_

1 A.A.C. R14-2-801 to R14-2-806 rules (“rules”) for which WilTel-Comm, WilTel-LN and Level 3  
2 seek this waiver. These rules apply to the formation of public utility holding companies and  
3 certain transactions and activities between public service corporations and their affiliated interests.  
4 The rules are intended to: (i) prevent the commingling of utility and non-utility funds; (ii) prohibit  
5 cross-subsidization of non-utility activities by utility ratepayers; (iii) prevent negative impact of  
6 non-utility activities on a utility’s financial credit; and (iv) ensure that the utility and its affiliate’s  
7 provide the Commission with the information necessary to “carry out its regulatory  
8 responsibilities.”<sup>2</sup>

9 11. WilTel-Comm, WilTel-LN and Level 3 believe that their participation in a highly  
10 competitive environment effectively protects customers from activities that will detrimentally  
11 affect service and, therefore, believe a limited waiver of these Rules is in the public interest.  
12 WilTel-Comm, WilTel-LN and Level 3 respectfully submit that, in light of the Rules’ stated  
13 purposes, exemption from the requirements of the Rules for the limited purposes of this transaction  
14 is appropriate.

15 Staff’s Analysis and Conclusions

16 12. Leucadia National Corporation, the current 100% owner of WilTel, WilTel-Comm  
17 and WilTel-LN, is highly diversified, with investment interests in telecommunications, healthcare  
18 services, manufacturing, banking and lending, real estate, and winery businesses.

19 13. The corporate interests of Level 3 Communications, Inc. are almost exclusively  
20 focused on communications and information services.

21 14. The market capitalization of Leucadia National Corporation is nearly twice that of  
22 Level 3 Communications, Inc. (\$4.95 billion versus \$2.53 billion).

23 15. Level 3 has indicated that the WilTel-Comm and WilTel-LN executive team will  
24 not change as a result of the change in ownership.

25 ...

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28 <sup>2</sup> See Commission Decision No. 56618

1           16.     WilTel-Comm, WilTel-LN and Level 3 indicate that the number of Arizona  
2 employees will not be reduced as a result of the change in ownership. WilTel-Comm and Level 3  
3 currently have 5 and 12 employees in Arizona, respectively.

4           17.     No evidence has been provided by WilTel-Comm, WilTel-LN and Level 3 to  
5 indicate that investments in Arizona operations will be increased or reduced as a result of this  
6 change in ownership. Nonetheless, the relatively low Arizona assets of WilTel-Comm, WilTel-LN  
7 and Level 3 should not be impacted by this transaction in the near-term.

8           18.     WilTel-Comm, WilTel-LN and Level 3 state in their joint application that they will  
9 continue to offer their services with no change in the rates or terms and conditions of service.

10          19.     In response to Staff's data request the applicants stated that the contracts of current  
11 wholesale customers will not be impacted in any way by this acquisition.

12          20.     In response to Staff's data request, WilTel clarified that 3.36% of the  
13 "technologically advanced, fully operational, next-generation fiber-optic broadband network that  
14 spans approximately 30,000 route-miles connecting 118 cities in the United States and extends to  
15 Europe, Mexico and the Pacific Rim"<sup>3</sup> resides in Arizona. Attachment A illustrates the WilTel-  
16 Comm network in Arizona.

17          21.     Level 3 has number assignments within nearly 30 NPA NXX number groups in  
18 Arizona's 480, 520, 602, 623, and 928 area codes. Number utilization is believed by Staff to be  
19 well below that of other CLECs in Arizona.

20          22.     Staff confirmed that none of the applicants reported any business or residential local  
21 exchange lines in their 2004 Annual Reports.

22          23.     None of the actions or steps involved in this transaction should result in increased  
23 costs or service impacts to Arizona customers.

24          24.     WilTel-Comm, WilTel-LN and Level 3 have been found to be in compliance and in  
25 good standing by the Commission's Compliance and Consumer Services sections.

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28     <sup>3</sup> Page 5, lines 1-5 of the applicants joint application



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ORDER

IT IS THEREFORE ORDERED that WilTel-Comm, WilTel-LN and Level 3's application for a limited waiver of the ACC's Public Utility Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 to R14-2-806 in connection with a proposed transaction whereby Level 3 will acquire indirect control of WilTel-Com and WilTel-LN is granted.

IT IS FURTHER ORDERED that for one year following acquisition close or until WilTel-Comm, WilTel-LN and Level 3 inform the Commission by filing an affidavit with Docket Control, as a compliance item, that acquisition-related activities are completed, whichever comes last. WilTel-Comm and WilTel-LN shall provide written notification to the Director of the Utilities Division and to the individual members of the Commission 60 days prior to any planned acquisition-related Arizona workforce layoffs; any planned acquisition-related Arizona plant closings; and any planned acquisition-related Arizona facility closings.

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IT IS FURTHER ORDERED that Level 3 be required to review its numbering resources in the 480, 520, 602, 623, and 928 NPAs. To the extent that the Company's numbering resources in these NPAs exceed a six month inventory, Level 3 be required to, within sixty days of a Commission Decision in this matter, return to the Pooling Administrator all surplus thousands-blocks with less than ten percent contamination.

IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
BRIAN C. McNEIL  
Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EGJ:AFF:lhm/MAS

1 SERVICE LIST FOR WilTel-Comm, WilTel-LN & Level 3  
2 DOCKET NOS. T-03708A-05-0797, T-03779A-05-0797 & T-03654A-05-0797

3 Mr. Thomas Campbell, Esq.  
4 Mr. Michael Hallam, Esq.  
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