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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE JOINT) DOCKET NOS. T-03708A-05-0797
APPLICATION OF WILTEL) T-03779A-05-0797
COMMUNICATIONS, LLC, WILTEL) T-03654A-05-0797
LOCAL NETWORK, LLC AND LEVEL 3)
COMMUNICATIONS, LLC FOR A) DECISION NO. 68346
LIMITED WAIVER OF THE PUBLIC)
UTILITY HOLDING COMPANIES AND) ORDER
AFFILIATED INTEREST RULES)
)
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)

Open Meeting
December 6 and 7, 2005
Phoenix, Arizona

BY THE COMMISSION:

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-Comm and WilTel-LN.

FINDINGS OF FACT

The Companies in their Application represent the following:

1. 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

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

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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 3¹.

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,
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28 ¹ Pre- and post-transaction organizational charts were provided as Exhibit A in the joint application

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.”²

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.

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28 ² 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"³ 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 good standing by
25 the Commission's Consumer Services Section. WilTel-Comm, WilTel-LN and Level 3 have been
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28 ³ Page 5, lines 1-5 of the applicants joint application

1 found to be in compliance by the Commission's Compliance Section with the exception of the
2 filing requirements of Rule 805 by WilTel-Comm and Level 3.

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

- 7 1. That for one year following acquisition close or until WilTel-Comm, WilTel-LN
8 and Level 3 inform the Commission, by filing an affidavit with Docket Control,
9 as a compliance item, that acquisition-related activities are completed,
10 whichever occurs last. WilTel-Comm, WilTel-LN and Level 3 provide written
11 notification to the Director of the Utilities Division and to the individual
12 members of the Commission, at least 60 days in advance, of any planned
13 acquisition-related Arizona workforce layoffs; any planned acquisition-related
14 Arizona plant closings; and any planned acquisition-related Arizona facility
15 closings.
- 16 2. That within 30 days of a Commission decision in this matter Level 3 be required
17 to review its numbering resources in the 480, 520, 602, 623, and 928 NPAs.
18 The results of this review should be docketed, as a compliance item in this case,
19 within 75 days of a decision in this case. To the extent that the Company's
20 numbering resources in these NPAs exceed a six month inventory, Level 3 be
21 required to, within sixty days of a Commission Decision in this matter, return to
22 the Pooling Administrator all surplus thousands-blocks with less than ten
23 percent contamination.
- 24 3. That Commission approval be contingent on WilTel-Comm and Level 3
25 complying with the filing requirements of A.A.C. R14-2-805 no later than
26 December 15, 2005.
- 27 4. That WilTel-Comm and Level 3 should provide a detailed plan within sixty days
28 of Commission approval of this application to Staff's Compliance Section
detailing process changes within WilTel-Comm and Level 3 intended to ensure
future compliance with Rule 805.

CONCLUSIONS OF LAW

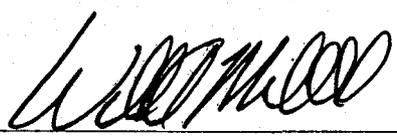
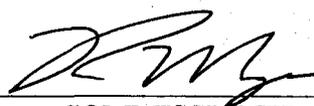
1. WilTel-Comm, WilTel-LN and Level 3 are public service corporations within the
meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over WilTel-Comm, WilTel-LN and Level 3 and
of the subject matter in this filing.

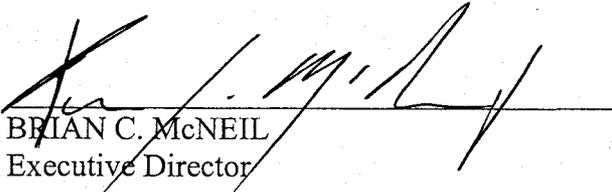
1 IT IS FURTHER ORDERED that Level 3 be required to review its numbering resources in
 2 the 480, 520, 602, 623, and 928 NPAs. To the extent that the Company's numbering resources in
 3 these NPAs exceed a six month inventory, Level 3 be required to, within sixty days of a
 4 Commission Decision in this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

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

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

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 CHAIRMAN COMMISSIONER
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 COMMISSIONER COMMISSIONER COMMISSIONER

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 16 IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive
 17 Director of the Arizona Corporation Commission, have
 18 hereunto, set my hand and caused the official seal of this
 Commission to be affixed at the Capitol, in the City of
 Phoenix, this 9th day of December, 2005.

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 BRIAN C. McNEIL
 Executive Director

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 24 DISSENT: _____

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 26 DISSENT: _____

27 EGJ:AFF:lhm/MAS

1 SERVICE LIST FOR WilTel-Comm, WilTel-LN & Level 3
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