

OPEN MEETING ITEM

ORIGINAL



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

ARIZONA CORPORATION COMMISSION

22

DATE: FEBRUARY 23, 2007

Arizona Corporation Commission

DOCKETED

DOCKET NO: T-03654A-06-0689

FEB 23 2007

TO ALL PARTIES:

DOCKETED BY *NR*

Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Order on:

LEVEL 3 COMMUNICATIONS LLC
(WAIVER OF INTEREST RULES/ENCUMBER ASSETS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MARCH 5, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 13, 2007 AND MARCH 14, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF
LEVEL 3 COMMUNICATIONS LLC FOR A
LIMITED WAIVER OF THE PUBLIC UTILITY
HOLDING COMPANIES AND AFFILIATED
INTEREST RULES (A.A.C. R14-2-801 et. seq.)
AND ENCUMBRANCE OF ASSETS.

DOCKET NO. T-03654A-06-0689

DECISION NO. _____

ORDER

Open Meeting
March 13 and 14, 2007
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. Level 3 Communications, LLC ("Level 3" or "Company"), a Delaware Limited Liability Company, is a wholly owned subsidiary of Level 3 Financing, Inc. ("Level 3 Financing"), which in turn is wholly owned by Level 3 Communications, Inc. All of the entities are headquartered in Broomfield, Colorado.

2. Level 3 provides voice and data services to approximately 200 customers in Arizona. Its customers are primarily other carriers, VoIP providers and Internet Service Providers ("ISPs"). The Commission authorized Level 3 to provide facilities-based and resold local exchange, toll and access services in Decision No. 61737 (June 4, 1999).

3. On October 25, 2006, Level 3 filed an application with the Commission requesting a limited waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules ("Rules"), or in the alternative, authorization to act as guarantor to financings not to exceed \$1.5 billion entered into by its parent company, and to encumber any of its assets that may be necessary to

1 secure the financing pursuant to A.R.S. § 40-285.

2 4. Level 3 published notice of its application in the *Arizona Republic* on November 30,
3 2006.

4 5. On December 19, 2006, Level 3 filed a Supplement to Application.

5 6. On January 30, 2007, the Commission's Utilities Division Staff ("Staff") filed a Staff
6 Report recommending conditional approval of the application.

7 7. Based upon its operational revenues, Level 3 is a Class A Utility, and is subject to the
8 Commission's Rules that regulate certain transactions and activities between public service
9 corporations and their affiliated interests.

10 8. Level 3 Financing will issue approximately \$1.5 billion in notes with similar terms
11 and conditions to qualified institutional buyers in a series of offerings that are exempt from
12 registration under U.S. Federal securities laws. The first proposed offering consists of \$600 million
13 9.25 percent fixed rate senior notes due in 2014. In its December 19, 2006 Supplement, Level 3
14 indicated that the second offering will consist of \$650 million fixed rate senior notes. The funds will
15 be used for general corporate purposes, including debt reduction and potential acquisition activity.

16 9. Level 3 requests authorization to guarantee up to \$1.5 billion in notes issued by Level
17 3 Financing.

18 10. Level 3 states in its application that participating in the financing arrangements as a
19 guarantor will not result in a change in its management or in its day-to-day operations in Arizona; nor
20 would it adversely affect Applicant's current or proposed operations in Arizona. Level 3 further
21 states that the financing arrangements will enable it to bring services to new markets and allow more
22 consumers to benefit from its competitive services more quickly and efficiently.

23 11. Level 3 states that the proposed transaction will not directly or indirectly result in or
24 cause an increase in its maximum rates on file with the Commission for any competitive service.
25 Level 3 asserts that because it provides competitive wholesale services it has no incentive or ability to
26 charge above-market prices that could be used to fund or subsidize unregulated affiliates or to
27 commingle utility and non-utility funds in a manner that is harmful to Arizona consumers.

28 12. Level 3 also states that approval of the application is in the public interest because it

1 will promote competition by providing Level 3 the opportunity to strengthen its competitive position
2 through access to greater financial resources.

3 13. In its financial analysis, Staff states that the request for a limited waiver of the Rules
4 does not sufficiently mitigate the potential harm to ratepayers in Arizona, and recommends that the
5 public interest is better served by conditionally authorizing Level 3 to guarantee, and to the extent
6 necessary, to encumber its Arizona assets as security for the proposed debt financing.

7 14. The Staff Report states that Staff concludes that the proposed pledge of Arizona assets
8 would not impair the financial status of the Company, would not impair its ability to attract capital at
9 fair and reasonable terms, nor would it impair the ability of the Company to provide safe, reliable,
10 and adequate service. Staff believes that customers may have exposure to losses to the extent that
11 they have prepaid for service or made deposits.

12 15. Staff states that A.R.S. § 40-285 serves to protect captive customers from a utility's
13 act to dispose of any of its assets that are necessary for the provision of service, and prevent any
14 service impairment due to disposal of assets essential for providing service.

15 16. Staff stated that Applicants provide competitive services and that their customers have
16 alternative service providers, but that customers may still have exposure to losses to the extent they
17 have prepaid for service or made deposits. Therefore, Staff recommended that any authorization for
18 encumbrances should provide customer protection for prepayments and deposits.

19 17. According to the Staff Report, the Corporations Division reports that Level 3 is in
20 good standing, and Staff's search of Consumer Services database indicates that Level 3 had no
21 complaints, inquiries, or opinions from January 1, 2003 to December 16, 2006.

22 18. Staff recommends:

23 (a) approval of Level 3's alternative request for authority to guarantee loans and
24 pledge its assets as security for the notes in an amount up to approximately \$1.5 billion, subject to the
25 condition that all customer deposits and prepayments be excluded from encumbrance, or in the
26 alternative, be secured by a bond or irrevocable sight draft letter of credit which is not included in the
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1 pledged collateral¹;

2 (b) that if Level 3 exercises the option of procuring a performance bond to protect
3 Arizona customer deposits and prepayments, that it files proof of the performance bond in Docket
4 Control, within 60 days of the effective date of the decision in this proceeding; and

5 (c) that Level 3 should be authorized to engage in any transactions and to execute any
6 documents necessary to effectuate the authorizations granted.

7 19. The Applicants should file copies of the executed transaction and security documents
8 pertaining to the authorization granted herein, with Docket Control, as a compliance item in this
9 docket, within 60 days of each transaction.

10 20. Level 3 did not file any objections to the Staff Report.

11 21. Staff's recommendations are reasonable and we will adopt them.

12 **CONCLUSIONS OF LAW**

13 1. Level 3 is a public service corporation within the meaning of Article XV of the
14 Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-804.

15 2. The Commission has jurisdiction over Level 3 and the subject matter of the
16 application.

17 3. The requested limited waiver of the Public Utility Holding Companies and Affiliated
18 Interests Rules is not in the public interest.

19 4. Authorization of Level 3's guarantee in support of its parent's debt issuance is
20 compatible with the public interest.

21 5. Staff's recommendations in Findings of Fact No. 18 are reasonable and should be
22 adopted.

23 **ORDER**

24 IT IS THEREFORE ORDERED that pursuant to A.R.S. § 40-285, and A.A.C. R14-2-804,
25 Level 3 Communications, LLC's application for approval to guarantee the debt of Level 3 Financing,
26 Inc. as set forth in the October 25, 2006 Application and the December 19, 2006 Supplement to the
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28 ¹ The Staff Report does not indicate whether Level 3 currently has a performance bond in place.

1 Application, is hereby approved, subject to the condition that all Arizona customer deposits and
2 prepayments be excluded from encumbrance, or in the alternative, be secured by a bond or
3 irrevocable sight draft letter of credit which is not included in the pledged collateral.

4 IT IS FURTHER ORDERED that Level 3 Communications, LLC shall file with Docket
5 Control, as a compliance item in this docket, a statement of whether all Arizona customer deposits
6 and prepayments are excluded from encumbrance or whether they are secured by a performance bond
7 or irrevocable sight draft letter of credit which is not included in the pledged collateral, within 60
8 days of this Decision.

9 IT IS FURTHER ORDERED that in the event that Level 3 Communications, LLC obtains a
10 performance bond or irrevocable sight draft letter of credit in compliance with this Decision, Level 3
11 Communications, LLC shall provide the original bond or letter to the Commission's Business Office
12 and copies to Docket Control, as a compliance item in this docket, within 60 days of this Decision.

13 IT IS FURTHER ORDERED that Level 3 Communications, LLC is hereby authorized to
14 grant liens and engage in any transactions and/or execute any documents necessary to effectuate the
15 authorization as granted herein.

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IT IS FURTHER ORDERED that Level 3 Communications, LLC shall file the executed transaction and security documents with Docket Control, as a compliance item in this docket, within 60 days of each transaction.

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

BY 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 the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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