

ORIGINAL

OPEN MEETING



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MEMORANDUM

Arizona Corporation Commission

DOCKETED

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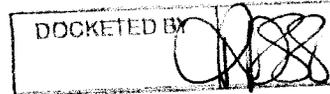
2011 APR 12 P 3:08

AZ CORP COMMISSION  
DOCKET CONTROL

TO: THE COMMISSION

FROM: Utilities Division

DATE: April 12, 2011



RE: IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC FOR APPROVAL OF A LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTEREST RULES (A.A.C. R-14-2-801 ET SEQ.) (DOCKET NO. T-03654A-11-0106)

Introduction

Level 3 Communications, LLC ("Level 3 LLC") filed an application, with the Arizona Corporation Commission ("Commission") on March 9, 2011, requesting a limited waiver of the Public Utility Holding Companies and Affiliated Interests Rules, Arizona Administrative Code ("A.A.C.") R14-2-801 to R14-2-806, to participate in a refinancing arrangement pursuant to A.A.C. R14-2-806. In the alternative, Level 3 requested approval under A.A.C. R14-2-804(B)-1 to provide the guarantee required to participate in the refinancing. The financing arrangement replaces an existing financing arrangement, pursuant to substantially similar terms and conditions coupled with a favorable interest rate and extended maturity date to 2019.

Level 3 Financing, Inc. ("Level 3 Financing" or "Issuer"), a subsidiary of Level 3 Communications, Inc. and the direct parent of Level 3 LLC, proposes to issue \$500 million in 9.375 percent Senior Notes<sup>1</sup> due to qualified institutional buyers in a private offering that is exempt from registration under U.S. Federal securities laws. The Issuer will lend the net proceeds it receives in the offering of the notes to its subsidiary, Level 3 LLC.

Background

Level 3 Financing is a Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield, Colorado 80021 and is a wholly owned subsidiary of Level 3 Communications, Inc., a Delaware corporation. Level 3 Financing is the direct parent of Level 3 LLC, and other subsidiaries, and is not a certificated telecommunications service provider in Arizona or elsewhere.

Level 3 LLC, a wholly owned subsidiary of Level 3 Financing is a Delaware Limited Liability Company headquartered in Broomfield, Colorado. Level 3 LLC's customers are primarily other carriers, voice over the internet ("VoIP") providers and internet service providers

<sup>1</sup> Senior debt, frequently issued in the form of Senior Notes, is debt that takes priority over other unsecured debt owed by the issuer. Senior debt has greater seniority in the issuer's capital structure than subordinated debt. In the event the issuer goes bankrupt, senior debt theoretically must be repaid before other creditors receive any payment. Senior debt is often secured by collateral on which the lender has put in place a first lien.

("ISPs"). Level 3 LLC is authorized by the Commission to provide facilities-based and resold local exchange, toll and access services pursuant to Decision No. 61737 issued by the Commission in Docket No. T-03654A-98-0641 on June 4, 1999.

### The Transaction

Level 3 Financing proposes to issue \$500 million in Senior Notes and lend the net proceeds it receives along with additional cash on hand to Level 3 LLC in return for an intercompany demand note issued by Level 3 LLC in the amount of \$500 million. The funds will be used to purchase previously issued notes that were issued at the rate of 10 percent and are due in 2018. Level 3 LLC will also provide a guarantee of the Issuer's 9.375 percent Senior Notes due 2019. Level 3 LLC seeks approval from the Commission for this indebtedness and the guarantee of the notes issued by Level 3 Financing.

Level 3 LLC states in its application that participation in the financing arrangement as a guarantor will not result in a change in Level 3 LLC's management or in its day-to-day operations in Arizona nor will it adversely affect Level 3 LLC's operations in Arizona. In addition, Level 3 LLC states that the proposed transaction will not directly or indirectly result in an increase of maximum rates in Level 3 LLC's tariffs.

### Staff's Analysis

In its application, Level 3 LLC states that "The financing arrangement (the proposed transaction) will enable Level 3 LLC to bring services to new markets and allow more consumers to benefit from its competitive services." Level 3 LLC application states that the financing arrangement for which it seeks approval from the Commission is intended to bolster its ability to compete and succeed across all of its markets and with all of its product offerings.

Level 3 LLC states in its application that it will not be encumbering any assets as part of the financing transaction. Therefore, to the extent that Level 3 LLC holds any customer deposits or prepayments, those funds should not be pledged as part of the transaction.

On March 18, 2011, Level 3 LLC provided Staff with an affidavit of publication verifying public notice of its financing application. Level 3 LLC published notice of its financing application in The Arizona Republic on March 14, 2011. The affidavit of publication was filed with the Commission's Docket Control on March 18, 2011. On March 21, 2011, the Consumer Services Section of the Commission reported that Level 3 LLC is in Good Standing.

A.A.C. R14-2-804(B)-1 requires that a utility will not consummate a financial interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such affiliate without prior approval by the Commission. Staff concludes that a pledge of Level 3 LLC's assets would not impair the availability of service to customers since Level 3 LLC provides competitive services that are available from alternative service providers.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of Level 3 LLC, would not impair its ability to attract capital, nor would it impair the ability of the Level 3 LLC to provide safe, reasonable, and adequate service. Staff, therefore, concludes that approval for Level 3 LLC to act as a guarantor of its parent's debt will assist in providing security for the financing and is unlikely to have any effect on Arizona customers of Level 3 LLC.

Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by Level 3 LLC. Staff further recommends that one copy of executed security documents be filed with Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.



for

Steven M. Olea  
Director  
Utilities Division

SMO:AFF:sms/MS

ORIGINATOR: Armando F. Fimbres

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

- GARY PIERCE  
Chairman
- BOB STUMP  
Commissioner
- SANDRA D. KENNEDY  
Commissioner
- PAUL NEWMAN  
Commissioner
- BRENDA BURNS  
Commissioner

IN THE MATTER OF THE APPLICATION )  
 OF LEVEL 3 COMMUNICATIONS, LLC )  
 FOR APPROVAL OF A LIMITED WAIVER )  
 OF THE PUBLIC UTILITY HOLDING )  
 COMPANIES AND AFFILIATED )  
 INTEREST RULES (A.A.C. R.-14-2-801 ET )  
 SEQ.)

DOCKET NO. T-03654A-11-0106  
 DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
 April 27 and 28, 2011  
 Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Level 3 Communications, LLC ("Level 3 LLC") filed an application, with the Arizona Corporation Commission ("Commission") on March 9, 2011, requesting a limited waiver of the Public Utility Holding Companies and Affiliated Interests Rules, Arizona Administrative Code ("A.A.C.") R14-2-801 to R14-2-806, to participate in a refinancing arrangement pursuant to A.A.C. R14-2-806.
2. In the alternative, Level 3 requested approval under A.A.C. R14-2-804(B)(1) to provide the guarantee required to participate in the refinancing.
3. The financing arrangement replaces an existing financing arrangement, pursuant to substantially similar terms and conditions coupled with a favorable interest rate and extended maturity date to 2019.
- ...

1           4.       Level 3 Financing, Inc. (“Level 3 Financing” or “Issuer”), a subsidiary of Level 3  
2 Communications, Inc. and the direct parent of Level 3 LLC, proposes to issue \$500 million in  
3 9.375 percent Senior Notes<sup>1</sup> due to qualified institutional buyers in a private offering that is  
4 exempt from registration under U.S. Federal securities laws.

5           5.       The Issuer will lend the net proceeds it receives in the offering of the notes to its  
6 subsidiary, Level 3 LLC.

7 Background

8           6.       Level 3 Financing is a Delaware corporation with principal offices located at 1025  
9 Eldorado Boulevard, Broomfield, Colorado 80021 and is a wholly owned subsidiary of Level 3  
10 Communications, Inc., a Delaware corporation. Level 3 Financing is the direct parent of Level 3  
11 LLC, and other subsidiaries, and is not a certificated telecommunications service provider in  
12 Arizona or elsewhere.

13           7.       Level 3 LLC, a wholly owned subsidiary of Level 3 Financing is a Delaware  
14 Limited Liability Company headquartered in Broomfield, Colorado. Level 3 LLC’s customers are  
15 primarily other carriers, voice over the internet (“VoIP”) providers and internet service providers  
16 (“ISPs”). Level 3 LLC is authorized by the Commission to provide facilities-based and resold  
17 local exchange, toll and access services pursuant to Decision No. 61737 issued by the Commission  
18 in Docket No. T-03654A-98-0641 on June 4, 1999.

19 The Transaction

20           8.       Level 3 Financing proposes to issue \$500 million in Senior Notes and lend the net  
21 proceeds it receives along with additional cash on hand to Level 3 LLC in return for an  
22 intercompany demand note issued by Level 3 LLC in the amount of \$500 million. The funds will  
23 be used to purchase previously issued notes that were issued at the rate of 10 percent and are due  
24 in 2018. Level 3 LLC will also provide a guarantee of the Issuer’s 9.375 percent Senior Notes due  
25 ...

26 \_\_\_\_\_  
27 <sup>1</sup> Senior debt, frequently issued in the form of Senior Notes, is debt that takes priority over other unsecured debt owed  
28 by the issuer. Senior debt has greater seniority in the issuer's capital structure than subordinated debt. In the event the  
issuer goes bankrupt, senior debt theoretically must be repaid before other creditors receive any payment. Senior debt  
is often secured by collateral on which the lender has put in place a first lien.

1 2019. Level 3 LLC seeks approval from the Commission for this indebtedness and the guarantee  
2 of the notes issued by Level 3 Financing.

3 9. Level 3 LLC states in its application that participation in the financing arrangement  
4 as a guarantor will not result in a change in Level 3 LLC's management or in its day-to-day  
5 operations in Arizona nor will it adversely affect Level 3 LLC's operations in Arizona. In  
6 addition, Level 3 LLC states that the proposed transaction will not directly or indirectly result in an  
7 increase of maximum rates in Level 3 LLC's tariffs.

8 Staff's Analysis

9 10. In its application, Level 3 LLC states that "The financing arrangement (the  
10 proposed transaction) will enable Level 3 LLC to bring services to new markets and allow more  
11 consumers to benefit from its competitive services." Level 3 LLC application states that the  
12 financing arrangement for which it seeks approval from the Commission is intended to bolster its  
13 ability to compete and succeed across all of its markets and with all of its product offerings.

14 11. Level 3 LLC states in its application that it will not be encumbering any assets as  
15 part of the financing transaction. Therefore, to the extent that Level 3 LLC holds any customer  
16 deposits or prepayments, those funds should not be pledged as part of the transaction.

17 12. On March 18, 2011, Level 3 LLC provided Staff with an affidavit of publication  
18 verifying public notice of its financing application. Level 3 LLC published notice of its financing  
19 application in The Arizona Republic on March 14, 2011. The affidavit of publication was filed  
20 with the Commission's Docket Control on March 18, 2011.

21 13. On March 21, 2011, the Consumer Services Section of the Commission reported  
22 that Level 3 LLC is in Good Standing.

23 14. A.A.C. R14-2-804(B)-1 requires that a utility will not consummate a financial  
24 interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of  
25 such affiliate without prior approval by the Commission. Staff concludes that a pledge of Level 3  
26 LLC's assets would not impair the availability of service to customers since Level 3 LLC provides  
27 competitive services that are available from alternative service providers.

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ORDER

IT IS FURTHER ORDERED that Level 3 Communications, LLC is authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted as discussed herein.

IT IS FURTHER ORDERED that the application of Level 3 Communications, LLC is subject to the condition that all customer deposits and prepayments be excluded from this transaction.

IT IS FURTHER ORDERED that copies of executed security documents shall be filed with the Compliance Section within 90 days of the decision in this matter.

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, ERNEST G. JOHNSON, 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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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

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

SMO:AFF:sms/MS

Decision No. \_\_\_\_\_

1 SERVICE LIST FOR: Level 3 Communications, LLC  
2 DOCKET NO. T-03654A-11-0106

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