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In the Matter of the Petition of Level 3
Communications, LLC to Amend the
Commission's Rules to Streamline Transfer of
Control and Financing Requirements

) Docket No.

Level 3 Communications, LLC ("Level 3") petitions the Commission to institute a rulemaking proceeding to streamline the administrative process by which carriers holding certificates of convenience and necessity pursuant to AAC R14-2-1101 *et seq.* may complete transfer of control and financing transactions. For the reasons set forth, Level 3 proposes that the Commission adopt streamlined procedures that would eliminate prior approval periods and permit competitive telecommunications providers to complete transfer and financing transactions based on modified notice procedures.¹

I. Background

Level 3 seeks this rulemaking to eliminate procedures that impose unnecessary and burdensome requirements on competitive telecommunications providers. Most of these requirements were established at a time when the telecommunications markets were not

¹ In Docket No. T-03654A-06-0356, Level 3 sought a company-specific waiver. The Commission denied that request in Decision 68997.

1 subject to competition. In that market structure, extensive government and economic
2 regulation of the utility was necessary to protect captive ratepayers and consumers of
3 monopoly services. Where utilities do not face competition, wield control over bottleneck
4 facilities or enjoy a dominant market share, it is important for the Commission to
5 scrutinize the utilities' financial status and its business actions in order to safeguard
6 consumers from a monopoly provider's risky financial transactions and to ensure that rates
7 and quality of service are not impaired. Although the telecommunications market has
8 changed dramatically so that consumers may choose freely among telecommunications
9 providers offering competitive services, the same burdensome administrative procedures
10 aimed at regulating transfer and financing transactions of dominant, monopoly utilities
11 remain in place for competitive providers.

12 **II. In Today's Competitive Market, Burdensome Prior Approval Procedures for**
13 **Transfers and Financings Do Not Serve the Public Interest**

14 The public interest in a competitive environment does not require strict scrutiny of
15 the business and financial operations of competitive telecommunications providers.
16 Burdensome pre-approval requirements have become anachronisms in today's fast-paced
17 competitive environment where new entrants raise risk capital to build and finance their
18 operations with no guaranteed return.² Competitive telecommunications providers, such
19 as Level 3, bear the risks of their own financial decisions while competitive market forces
20 determine whether a carrier is financially stable. From the consumer's perspective,

21 ² The FCC and the Commissions in California and Kentucky are just a few examples of regulatory agencies that
22 have recognized the need to reform and reduce regulatory requirements to reflect competitive changes in the market.
23 See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorization*, CC Docket No. 01-
24 150, FCC 02-78, Report and Order (Released March 21, 2002) (streamlining domestic interstate approval
25 requirements); CPUC Decisions 94-05-051, 96-02-004, 98-07-094, 04-10-038 (California Commission applying
26 streamlined advice letter procedures to routine transaction of competitive carriers); Administrative Case No. 370,
Exemptions for Providers of Local Exchange Carriers (Kentucky Public Service Commission January 8, 1998);
Administrative Case No. 359, Exemptions for Interexchange Carriers, Long Distance Resellers, Operator Service
Providers and Customer-Owned, Coin Operated Telephones (Kentucky Public Service Commission June 21, 1996)
(Exempting competitive carriers from transfer and financing requirements).

1 adequate service at reasonable rates remains available by virtue of the freedom to choose
2 among multiple providers.

3 **A. Arizona's Transfer and Financing Approval Process**

4 In Arizona, a competitive provider that seeks to complete a transfer transaction is
5 typically subject to the Affiliated Interests Rules (AAC R14-2-801 *et seq.*) and/or A.R.S.
6 § 40-285 and must obtain Commission approval prior to consummating the transaction.³
7 Similarly, certificated carriers are required to obtain prior Commission approval in order
8 to guarantee debt or encumbrance assets.⁴ Although the Arizona statutes and the
9 Affiliated Interests Rules outline the general authorization for Commission oversight of
10 these types of transactions, A.R.S. § 40-202(M) allows the Commission, by *rule*, to
11 exempt public service corporations from the application of A.R.S. § 40-285. Additionally,
12 the Affiliated Interest Rules contemplate a waiver of the Rules (AAC R14-2-806). As
13 such, through these provisions, the Commission retains the discretion to determine the
14 administrative process by which it exercises oversight.

15 The approval process for these types of transactions requires parties to prepare and
16 file an application describing the transaction, including detailed financial information, a
17 description of new management and owners (in the case of a transfer) and a description of
18 the financing arrangement. Each application must describe the public interest reasons why
19 the application should be granted. Commission staff then reviews the filing for
20 completeness and prepares written data requests seeking additional information on a case-
21 by-case basis regarding the extent of in-state operations, financial information, or other
22 information determined relevant by staff. In response to these inquiries, the parties must

23
24 ³ Transfers of control include mergers, *pro forma* changes, reorganizations and sales of substantially all assets.

25 ⁴ Those transactions may require approval under the Affiliated Interest Rules and/or A.R.S. § 40-285. Other
26 financing transactions may be covered by A.R.S. §§ 40-301 to 303; however, foreign public service corporations such
as Level 3 are exempt from those requirements under A.R.S. § 40-301.D. The Commission should consider whether
the provisions of A.R.S. §§ 40-301 to 303 should be added to the exemptions proposed by Level 3 to make clear that
competitive providers are not covered by these statutes.

1 gather the requested information and respond in writing. Although parties may intervene,
2 it is the rare exception that comments are submitted with respect to any application by a
3 competitive telecommunications provider. After these steps are completed, and in some
4 instances following a hearing, Commission staff or the Hearing Division, will prepare its
5 recommendations to the Commission for ultimate disposition. Once this process is
6 complete, the case is then placed on an agenda for the next scheduled Commission Open
7 Meeting. Following the Commission's ruling at the Open Meeting and execution of the
8 order by all Commissioners, the Commission's decision becomes effective.

9 In an era of real-time transactions, this process can represent an untenable delay. In
10 Arizona, carriers that are pressed by important commercial needs have limited procedural
11 means to provide needed certainty to parties in the transaction. This process is particularly
12 burdensome on multi-state transactions. Even when the Federal Communications
13 Commission and, in some cases, the United States Department of Justice, and other states
14 that have implemented streamlined measures have already approved the transaction,
15 competitive telecommunications providers must await the completion of the Arizona
16 administrative process to complete their transaction.

17 **B. The Approval Process Harms Competitive Telecommunications**
18 **Providers, Their Customers, Vendors and Employees**

19 Competitive telecommunications providers today are motivated by robust
20 competition for customers and financing to complete corporate acquisition and financing
21 transactions quickly – often in just a few weeks time. However, competitive
22 telecommunications providers remain constrained by legacy pre-approval requirements
23 and thus cannot react quickly to rapidly changing market demands to meet their business
24 needs. During the period during which a carrier's application is pending, the non-
25 dominant provider is forced to put on hold the completion of consolidations, corporate
26 changes, or financing arrangements.

1 The simple reality is that these delays expose businesses to substantial and
2 unnecessary risks in the marketplace. Delays of a few months put at risk the successful
3 closing of transfer and financing transactions. Rapid changes in market conditions during
4 the regulatory-enforced delay can increase the cost of the transaction or even result in
5 market changes that foreclose successful completion. While parties await approval, they
6 are exposed to economic risks of delay including lost revenue and synergies, customer
7 defections, impaired service, or even the collapse of the transaction. Failure to close a
8 transaction has real-world adverse consequences for the employees, vendors, customers
9 and shareholders of competitive carriers. The uncertainties of the regulatory process are
10 amplified by the fact that Arizona’s statutes and regulations provide that failure to obtain
11 the required approvals may result in the entire transaction being deemed void. *See AAC*
12 *R14-2-804; A.R.S. § 40-285.*

13 **III. The Commission Rules Should be Amended to Streamline the Administrative**
14 **Approval Process for Competitive Telecommunications Providers Engaging in**
15 **Transfer and Financing Transactions**

16 Level 3 recognizes that it is important to preserve the Commission’s ability to
17 regulate carriers certified to provide intrastate services, including the ability to monitor
18 transfers and financing transactions. However, in light of the dramatic changes to the
19 telecommunications market that have occurred, all parties – the Commission, regulated
20 carriers, their vendors, employees and consumers of telecommunications services in
21 Arizona – would benefit by streamlining the approval procedures that apply to competitive
22 telecommunications providers in transfer and financing transactions to make them aligned
23 with the streamlined administrative approval procedures of the FCC.

24 Level 3 hereby proposes that the Commission streamline its administrative process
25 for transfer and financing approval by amending its competitive telecommunications rules
26 to implement a notice procedure applicable to competitive telecommunications providers.
In Attachment A, Level 3 sets forth the specific rule language that it proposes to be

1 adopted by the Commission as an amendment to AAC R14-2-1102 and AAC R14-2-1115.
2 These amendments implement a streamlined notice procedure so that the timing of the
3 revised administrative process is aligned with the streamlined administrative approval
4 procedures of the FCC.

5 Most carriers operating in multiple jurisdictions also hold authority from the FCC
6 under Section 214 of the Communications Act of 1934, as amended, to operate as
7 interstate common carriers. Under federal rules, such interstate carriers are required to
8 obtain prior approval to transfer control. However, the FCC has reformed its processes
9 and rules to eliminate unnecessary delays and burdens on competitive carriers and applies
10 streamlined approval processing procedures to the transfer transactions of a vast majority
11 of providers.⁵ Specifically, FCC rules provide that applications for approval subject to
12 streamlined treatment are deemed granted within 31 days of publication of the filing
13 (unless otherwise notified by the Commission).⁶ In the event a transaction does not
14 qualify for streamlining (based on, for instance, the dominant position of the carriers in the
15 transaction), the FCC attempts to complete its review of those transactions within six
16 months. The FCC does not impose any regulatory requirements or process on interstate
17 carrier financing transactions.

18 For these reasons, Level 3 requests that the Commission amend AAC R14-2-1102
19 and AAC R14-2-1115 so that competitive telecommunications providers would be exempt
20 from the provisions of A.R.S. § 40-285 and the Affiliated Interests Rules, except that for a
21 business transaction that would otherwise fall within the requirements of the Affiliated
22 Interests Rules (AAC R14-2-801 *et seq.*) and/or A.R.S. § 40-285, it would be required to
23 do the following:
24

25 _____
26 ⁵ Implementation for Further Streamlining Measures for Domestic Section 214 Authorizations, CC Docket No.
01-150. Report and Order FCC 02-78 (Released March 21, 2002).

⁶ *Id.* at para. 26; 47 C.F.R. § 63.03 (a).

1 1. For a transfer of control transaction subject to the FCC’s streamlined
2 procedures or pro forma transaction requirements, the provider would file a notice
3 of the transaction with the Commission within ten days of the filing made at the
4 FCC. Level 3 proposes a ten-day delay in order to provide the Commission with
5 the FCC’s order either granting or denying streamlined approval. For a financing-
6 related transaction (i.e., a transaction that does not involve a merger with or
7 acquisition of or by another provider) subject to the Affiliated Interests Rules (AAC
8 R14-2-801 *et seq.*) and/or A.R.S. § 40-285, Level 3 would file a notice within ten
9 (10) days of the consummation of the transaction.

10 2. The notice must contain certain basic information about the carrier, its
11 operations and the transaction at issue.

12 3. The Commission would retain jurisdiction over the provider and the
13 transaction post-closing to make inquiries, and, if necessary, to take action to
14 protect consumer interests, commence proceedings, and/or impose conditions on
15 the provider, including necessary reporting requirements.

16 **IV. The Commission has Statutory Authority to Exempt Providers as**
17 **Proposed in this Filing**

18 The Commission has ample statutory authority to amend AAC R14-2-1102 and
19 AAC R14-2-1115 to exempt providers from A.R.S. § 40-285 and the Affiliated Interests
20 Rules. A.R.S § 40-202(M) states that “the commission by *rule* or order may exempt or
21 partially exempt any competitive service of any public service corporation from the
22 application” of A.R.S. § 40-285. (emphasis added). Furthermore, the Affiliated Interests
23 Rules include a provision contemplating that a waiver may be appropriate in certain
24 circumstances. *See* AAC R14-2-806. Therefore, the Commission has the authority to
25 streamline its administrative process for transfer and financing approval by amending
26

1 AAC R14-2-1102 and AAC R14-2-1115 to implement a notice procedure applicable to
2 competitive telecommunications providers.

3 **V. Conclusion**

4 Level 3 hereby respectfully petitions the Commission to institute a rulemaking
5 proceeding to amend AAC R14-2-1102 and AAC R14-2-1115 to implement a streamlined
6 administrative approval process, in the manner set forth above and in Attachment A, for
7 competitive telecommunications providers engaged in transfer and/or financing
8 transactions. Level 3 also requests that the Commission confirm that such providers are
9 exempt from the provisions of A.R.S. §§ 40-301 to -303 pursuant to the terms of A.R.S.
10 § 40-301.D. Level 3 respectfully requests that the Commission establish a procedural
11 schedule for the rulemaking procedure and that the Commission request public comments
12 from interested parties regarding the amendments to AAC R14-2-1102 and AAC R14-2-
13 1115 proposed by Level 3 in this pleading.

14 RESPECTFULLY SUBMITTED this 17th day of January, 2007.

15 LEWIS AND ROCA

16 

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21 ORIGINAL AND thirteen (13) copies
22 of the foregoing hand-delivered
23 this 17th day of January, 2007, to:

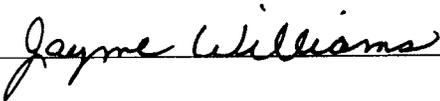
24 Arizona Corporation Commission
25 Utilities Division – Docket Control
26 1200 W. Washington Street
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1 COPY of the foregoing hand-delivered
this 17th day of January, 2007,
2 to:

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ATTACHMENT A

R14-2-1102. Application of Rule

Article, unless the context otherwise requires, the following definitions shall apply:

1. "Arizona Corporation Commission" or "Commission." The regulatory agency of the state of Arizona having jurisdiction over public service corporations operating in Arizona.
2. "Bona Fide Request." A written request submitted by a telecommunications company to a local exchange carrier for intraLATA equal access service or for interconnection arrangements.
3. "Central Office." A facility within a telecommunications system where calls are switched and which contains all the necessary equipment, operating arrangements, and interface points for terminating and interconnecting facilities such as subscribers' line and interoffice trunks.
4. "Competitive Telecommunications Service." Any telecommunications service where customers of the service within the relevant market have or are likely to have reasonably available alternatives.
5. "Docket Control Center." The Commission section responsible for the acceptance and processing of all applications and other filings, and for official record maintenance.
6. "Equal Access." An arrangement where a local exchange company provides all telecommunications companies operating in an equal access central office with dialing arrangements and other service characteristics that are equivalent in type and quality to what the local exchange carrier utilizes in the provision of its service.
7. "FCC." The Federal Communications Commission.
8. "Local Exchange Carrier." A telecommunications company that provides local exchange service as one of the telecommunications services it offers to the public.
9. "Local Exchange Service." The telecommunications service that provides a local dial tone, access line, and local usage within an exchange or local calling area.
10. "Monopoly Service." A monopoly service is any telecommunications service provided by a telecommunications company that is not subject to competition in the relevant market.
11. "Notice." A document filed with the Commission under this Article which includes the following: (1) The name, address of the principal headquarters, and telephone and facsimile numbers for each of the parties to a Section 214 License Transfer, Pro Forma Transaction, or other transaction governed by Article 8 or A.R.S. § 40-285; (2) a description of the relevant transaction; (3) if applicable, a copy of the Section 214 License Transfer Application or Pro Forma Transaction notification letter filed with the FCC; and (4) if applicable, a copy of the FCC's public notice of the Section 214 License Transfer Application or Pro Forma Transaction.
12. "Primary Interexchange Company" or "PIC." The telecommunications company with whom a customer may presubscribe to provide 1+/0+ toll service, without the use of access codes, following equal access implementation.
13. "Pro Forma Transaction." Any corporate restructuring, reorganization, or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate.
14. "Rate." Within the context of this Article, this term refers to the maximum tariffed rate approved by the Commission, from which the competitive telecommunications service

provided may be discounted down to the total service long-run incremental cost of providing the service.

15. "Relevant Market." Where buyers and sellers of a specific service or product, or a group of services or products, come together to engage in transactions. For telecommunications services, the relevant market may be identified on a service-by-service basis, a group basis, and/or by geographic location.
16. "Section 214 License Transfer." A transfer of control of lines or authorization to operate pursuant to section 214 of the Communications Act subject to the streamlining procedures for domestic transfer of control application in 47 C.F.R. § 63.03.
17. "Staff." The staff of the Arizona Corporation Commission or its designated representative or representatives.
18. "Tariffs." The documents filed with the Commission which list the services and products offered by a telecommunications company and which set forth the terms and conditions and a schedule of the rates and charges for those services and products.
19. "Telecommunications Company." A public service corporation, as defined in the Arizona Constitution, Article 15, § 2, that provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.
20. "Telecommunications Service." Any transmission of interactive switched and non-switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwave, or any other electromagnetic means (including access services), which originate and terminate in this state and are offered to or for the public, or some portion thereof, for compensation.
21. "Total Service Long Run Incremental Cost." The total additional cost incurred by a telecommunications company to produce the entire quantity of a service, given that the telecommunications company already provides all of its other services. Total Service Long-run Incremental Cost is based on the least cost, most efficient technology that is capable of being implemented at the time the decision to provide the service is made.
22. "2-PIC Toll Equal Access." The equal access option that affords customers the opportunity to select one telecommunications company for all interLATA 1+/0+ toll calls and, at the customer's option, to select another telecommunications company for all intraLATA 1+/0+ toll calls.
23. "Unbundled." Disaggregation of the local exchange carrier network services.

R14-2-1115. Administrative Requirements

- A. Customer Service Complaints. All customer service complaints concerning competitive telecommunications services shall be governed by the provisions of subsection R14-2-510(A).
- B. Customer Bill Disputes. All customer bill disputes concerning competitive telecommunications services shall be governed by the provisions of R14-2-510(B) and (C).
- C. Filing of Tariffs, Price Levels, and Contracts. Each telecommunications company governed by this Article shall file with the Commission current tariffs, price levels, and contracts that comply with the provisions of this Article and with all Commission rules, orders, and all other requirements imposed by the laws of the state of Arizona.

1. Current tariffs for competitive services shall be maintained on file with the Commission pursuant to the requirements of A.R.S. § 40-365.
2. Current price levels for competitive services shall be filed with the Commission pursuant to the requirements of R14-2-1109(B).
3. Contracts of telecommunications companies governed by this Article shall be filed with the Commission not later than five business days after execution. If the contract includes both competitive and noncompetitive services, it must be filed at least five business days prior to the effective date of the contract and must separately state the tariffed rate for the noncompetitive services and the price for the competitive services.
4. Contracts filed pursuant to this Article shall not be open to public inspection or made public except on order of the Commission, or by the Commission or a Commissioner in the course of a hearing or proceeding.

D. Accounts and Records.

1. Each telecommunications company shall keep general and subsidiary accounting books and records reflecting the cost of its intrastate properties, assets and liabilities, operating income and expenses, and all other accounting and statistical data which reflect complete, authentic, and accurate information regarding to its properties and operations. These accounting records shall be organized and maintained in such a way as to provide an audit trail through all segments of the telecommunications company's accounting system.
2. With the exception of local exchange companies, each telecommunications company providing competitive telecommunications services shall maintain its books and records in accordance with Generally Accepted Accounting Principles as promulgated by the Financial Accounting Standards Board and its successors, as amended by any subsequent modification or official pronouncement thereto, which directly relates to regulated industries.

E. Production of Accounts, Records, and Documents.

1. All telecommunications companies governed by this Article shall immediately make available, at the time and place the Commission may designate, any accounting records that the Commission may request. Accounting records shall include all or any portion of a telecommunications company's formal and informal accounting books and records along with any underlying and/or supporting documents regardless of the physical location of such books, records, and documents. Accounting records shall also include all books, records or documents which specifically identify, support, analyze, or otherwise explain the reasonableness and accuracy of affiliated interest transactions.
2. The Commission, at its sole discretion, may inspect any telecommunications company's formal and/or informal accounting books, records, and documents at the company's business premises or at its authorized representative's business premises which may be outside the state of Arizona. If inspection of the telecommunications company's accounting records does take place outside the state of Arizona, the telecommunications company will, to the extent legally permissible, assume all reasonable costs of travel, lodging, per diem, and all other miscellaneous costs incurred by participating personnel employed by the Commission or personnel contracted to represent the Commission in any manner.

F. Annual Reports to the Commission. All telecommunications companies providing competitive telecommunications services pursuant to this Article shall submit an annual report to the

Commission which shall be filed on or before the 15th day of April for the preceding calendar year.

1. The annual report shall be in a form prescribed by the Commission and, at a minimum, shall contain the following information:
 - a. A statement of income for the reporting year similar in format to R14-2-103, Schedule (C)(1) or (E)(2). The income statement shall be Arizona-specific and reflect operating results in Arizona.
 - b. A balance sheet as of the end of the reporting year similar in format to R14-2-103, Schedule (E)(1). The balance sheet shall be Arizona-specific.
 2. Annual reports filed pursuant to this Article shall not be open to public inspection or made public except on order of the Commission, or by the Commission or a Commissioner in the course of a hearing or proceeding.
- G. Reports to the Securities and Exchange Commission. All telecommunications companies shall file with the Commission a copy of all reports required by the Securities and Exchange Commission.
- H. Other Reports. All telecommunications companies shall file with the Commission a copy of all annual reports required by the Federal Communications Commission and, where applicable, annual reports required by the Rural Electrification Administration or any other agency of the United States.
- I. Variations, Exemptions of Commission Rules. The Commission may consider variations or exemptions from the terms or requirements of any of the rules included herein (14 A.A.C. 2, Article 11) upon the verified application of an affected party. The application must set forth the reasons why the public interest will be served by the variation or exemption from the Commission rules and regulations. Any variation or exemption granted shall require an order of the Commission. Where a conflict exists between these rules and an approved tariff or order of the Commission, the provisions of the approved tariff or order of the Commission shall apply.
- J. A Telecommunications Company that holds a certificate of convenience and necessity pursuant to this Article shall be exempt from the provisions of Article 8 and A.R.S. § 40-285, except as set forth in subsections K and L below.
- K. A Telecommunications Company holding a certificate of convenience and necessity pursuant to this Article shall file a Notice with the Commission within ten days after filing an application for a domestic Section 214 License Transfer with the FCC pursuant to 47 C.F.R. § 63.03 or filing a letter with the FCC for a Pro Forma Transaction.
- L. A Telecommunications Company holding a certificate of convenience and necessity pursuant to this Article shall file a Notice with the Commission within five days after the consummation of any transaction governed by A.R.S. § 40-285 or Article 8 which does not require the filing of a Section 214 License Transfer application or a Pro forma Transaction notification letter with the FCC.
- M. Notwithstanding the provisions of subsections K and L above, the Commission shall retain authority to make inquiries, initiate proceedings and impose conditions on a

Telecommunications Company, including reporting requirements following the consummation of any transaction that may be exempt as set forth in subsection J above.