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September 12, 2006

Dr. Burl W. Haar  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 Seventh Place East  
St. Paul, MN 55101-2147

Re: **Petition Of Level 3 Communications, LLC, To Streamline Transfer Of Control And Financing Requirements In Accordance With Minn. Stat. § 216A.03, Subd. 7**

Dear Dr. Haar:

Enclosed for filing with the Minnesota Public Utilities Commission please find the *Petition of Level 3 Communications, LLC, to Streamline Transfer of Control and Financing Requirements in Accordance with Minn. Stat. § 216A.03, Subd. 7*, along with the Affidavit of Service.

Please don't hesitate to contact me if you have any questions or if I can be of further assistance.

Sincerely,

Lesley Lehr

/jlp

Enclosures

cc: Linda Chavez (w/encls.)  
Bruce Linscheid (w/encls.)  
Greg Doyle (w/encls.)  
Bill Hunt (w/encls.)

GP:1999127 v1

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

|                   |              |
|-------------------|--------------|
| LeRoy Koppendraye | Chair        |
| Marshall Johnson  | Commissioner |
| Thomas Pugh       | Commissioner |
| Phyllis Reha      | Commissioner |
| Ken Nickolai      | Commissioner |

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**PETITION OF LEVEL 3 COMMUNICATIONS, LLC, TO STREAMLINE  
TRANSFER OF CONTROL AND FINANCING REQUIREMENTS  
IN ACCORDANCE WITH MINN. STAT. § 216A.03, SUBD. 7**

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Level 3 Communications, LLC (“Level 3”) petitions the Commission to institute a proceeding, on its own motion, to streamline the administrative process by which carriers holding certificates of public convenience and necessity may complete transfer of control. For the reasons set forth herein, Level 3 proposes that the Commission adopt streamlined procedures that would eliminate prior approval periods and permit carriers that qualify for streamlined treatment at the FCC to complete transfer transactions based on modified notice procedures.

**I. The Commission Procedure Should Be Amended To Streamline The Administrative Approval Process For Non-Dominant Competitive Carriers Engaging In Transfer And Financing Transactions**

Level 3 recognizes that it is important to preserve the Commission’s ability to regulate carriers certified to provide intrastate services including monitoring transfer of control transactions. However, in light of the dramatic changes to the telecommunications market, the Commission, regulated carriers, their vendors, employees and consumers of telecommunications services in Minnesota would benefit by streamlining the approval procedures that apply to non-dominant carriers in transfer and financing transactions.

Level 3 proposes that the Commission streamline its administrative process for transfer and financing approval by establishing a standing order outlining an optional procedure by which companies meeting certain criteria can request expedited approval of transfer applications. Attached as Exhibit A, Level 3 sets forth a specific proposal and requests Commission review and approval of such proposal.

In general, Level 3's proposal seeks to align the timing of the state review with the FCC's review. Most carriers operating in multiple jurisdictions also hold authority from the FCC under Section 214 of the Communications Act of 1934, as amended, to operate as interstate common carriers. Under federal rules, such interstate carriers are required to obtain prior approval to transfer control. However the FCC has reformed its processes and rules to eliminate unnecessary delays and burdens on qualifying carriers and applies streamlined approval procedures to the transfer transactions of a vast majority of non-dominant competitive interstate carriers.<sup>1</sup> Specifically, FCC rules provide that applications for approval subject to streamlined treatment may be granted within 31 days of publication of the filing.<sup>2</sup> In the event a transaction does not qualify for streamlining (based on, for instance, the dominant position of the carriers in the transaction or other issues raised in the comment and reply cycle), the FCC attempts to complete its review of those transactions within six months.

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<sup>1</sup> 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).

<sup>2</sup> *Id.* at para. 26; 47 C.F.R. § 63.03 (a).

As indicated in Exhibit A, this procedure shall be available only to non-dominant competitive telecommunications carriers other than local incumbent exchange carriers as defined in the Telecommunications Act of 1996. Pursuant to 47 U.S.C. § 251(h)(1996), an incumbent local exchange carrier means “with respect to an area, the local exchange provider that (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such areas; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to Section 69.601(b) of the [FCC’s] regulations (47 C.F.R § 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).”

Further, in order to qualify for this expedited approval process, the parties must submit an affidavit containing substantially more information about the transaction than is typically required when filing an application for approval of transfer and control.

By providing significant initial information, Level 3 suggests that the Department of Commerce will have in its possession enough information to provide the parties with a recommendation for conditional approval within twenty days of filing. Unless the Commission finds valid an objection from the Department or another party and removes the application from streamlined treatment, the parties would be free to close their transaction upon approval by the FCC.

## **II. Background: Strict Regulation Of Transfers Of Control And Financing Was Designed To Address The Regulatory Needs Of A Different Era**

Level 3 proposes an approval process that would eliminate outmoded prior approval procedures that impose unnecessary and burdensome requirements on non-dominant, competitive carriers. These requirements were established prior to the advent of local competition when a single local exchange carrier was the exclusive provider of service in its

designated territory with little or no threat of competitive entry. In that market structure, extensive government and economic regulation of the dominant carrier was necessary to protect captive ratepayers and consumers of monopoly services. Where carriers do not face competition or wield control over bottleneck facilities or enjoy a dominant market share, it is important for the Commission to scrutinize each carrier's financial status and its business actions to safeguard consumers from the monopoly carrier's potentially risky financial transactions and to ensure that rates and quality of service are not impaired. Although the telecommunications market has changed dramatically so that consumers are free to choose among competing intermodal service providers and competitive networks are built with risk capital, the same burdensome administrative procedures aimed at regulating transfer and financing transactions of dominant, monopoly carriers remain in place for non-dominant competitive carriers.

**III. In Today's Competitive Market, Burdensome Prior Approval Procedures For Non-Dominant Carrier Transfers And Financing Does Not Serve The Public Interest**

The public interest in a competitive environment does not require strict scrutiny of non-dominant carriers' business operations. While appropriate for the pre-competition telecommunications market, burdensome pre-approval requirements for business transactions have become anachronisms in today's fast-paced competitive environment where new entrants use risk capital to build and finance their operations with no guaranteed return.<sup>3</sup> The competitive

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<sup>3</sup> The FCC and the Commissions in California and Kentucky are examples of regulatory agencies that have recognized the need to reform and reduce regulatory requirements to reflect competitive changes in the market. See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorization*, CC Docket No. 01-150, FCC 02-78, Report and Order (Released March 21, 2002) (streamlining domestic interstate approval requirements); CPUC Decisions 94-05-051, 96-01-2004, 98-07-094, 04-10-038 (California Commission applying 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). Level 3 has also filed Petitions in North Carolina, Colorado, Arizona, Louisiana, Pennsylvania, Texas, Utah and Washington requesting that those Commission initiate similar proceedings.

long distance and local carriers in Minnesota are not subject to rate regulation because they do not possess market power or control over local exchange bottleneck facilities. As such, non-dominant carriers bear the risks of their own financial decisions and competitive market forces, rather than government regulations, to determine whether a carrier is financially stable. From the consumer's perspective adequate service at reasonable rates remains available by virtue of the freedom to choose among multiple intermodal providers.

**A. Minnesota's Transfer Approval Process Imposes Burdensome Delays**

In Minnesota, a certificated carrier that seeks to complete a transfer transaction is subject to Minn. Stat. § 237.74, subd. 12, and must obtain Commission approval prior to consummating the transaction.<sup>4</sup> Although the Minnesota statute provides general authorization for Commission oversight of a transfer of control of a certificated carrier and the financing of a certificated carrier, the statutes do not mandate that the Commission follow a particular public notice period or otherwise specify how the Commission is to implement its oversight authority. As such the Commission retains the discretion to determine the administrative process by which it exercises oversight authority. It is within the Commission's authority to modify its procedures.

Minnesota's approval process requires parties to prepare and file an application describing the transaction, including detailed financial information and a description of new management and owners in the case of a transfer. The petitioning parties must also show that the purchasing corporation has the technical, managerial and financial qualifications to acquire control of the purchased company and that the transaction is in the public interest. Each application must describe the public interest reasons why the application should be granted. The Department of Commerce (DOC) staff reviews the filing for completeness and may seek further

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<sup>4</sup> Transfers of control include sales of majority stock interests or other cognizable controlling interests, mergers, *pro forma* changes, and sales of substantially all assets.

data from the parties on a case-by-case basis regarding the extent of in-state operations, financial information, or seeking other information determined to be relevant by staff. In response to these inquiries, the parties must gather the requested information and respond in writing to the staff requests. Once the DOC staff deems the filing complete and makes a recommendation to approve or modify, the matter must then be reviewed by Commission staff. The Commission also issues a notice to the general telecommunications service list soliciting comments from interested parties. Once the comment period has passed and assuming there are no protests to the companies' request for Commission approval, the matter must be placed on the Commission's agenda and voted upon. It is the rare exception that comments are submitted with respect to any transaction involving non-dominant carriers. Following the Commission's ruling at the agenda meeting, the grant of approval will become effective as determined by the Commission.

The time period between filing and effective Commission approval varies from transaction to transaction. Uncertainty with respect to the timing of approvals unnecessarily complicates the transaction and closing schedule. Typically, the time period for approval is more than 30 days. In an era of real-time transactions, approval processes that go beyond the FCC's 30-day approval process represent an untenable delay. In Minnesota, carriers that are pressed by important commercial needs have no procedural means to avoid this administrative processing or provide needed certainty to parties in the transaction. This process is burdensome on multi-state transactions. Even when the Federal Communications Commission and, in some cases, the United States Department of Justice, and other states that have implemented streamlined measures have already approved the transaction, carriers certified in Minnesota must await the completion of the administrative process to complete their transaction. This is the case even where the carrier has only limited or *de minimis* operations or customers in the state.

**B. The Minnesota Administrative Approval Process Harms Non-dominant Competitive Carriers, Their Customers, Vendors and Employees**

Non-dominant carriers today are motivated by robust competition for customers to complete corporate acquisition quickly — often in just a few weeks time. However, non-dominant carriers remain constrained by legacy pre-approval requirements and thus cannot react to rapidly changing market demands to meet their business needs. The period during which a carrier’s application winds its way through the administrative approval process, the non-dominant provider is forced to put on hold the completion of consolidations, corporate changes, or financing arrangements.

The reality is that these delays expose businesses to substantial and unnecessary risks in the marketplace. Delays of a few months put at risk the successful closing of transfer and financing transactions. Rapid changes in market conditions during the regulatory-enforced delay can increase the cost of the transaction or even result in market changes that foreclose successful completion. While parties await approval, they are exposed to economic risks of delay including lost revenue and synergies, customer defections, impaired service, or even the collapse of the transaction. Failure to close a transaction has real-world adverse consequences for the employees, vendors, customers and shareholders of competitive carriers. Often this protracted state regulatory process is at odds with management’s best business judgment and a carrier’s fiduciary duty to employees, shareholders and customers.

**C. The Prior Approval Process Wastes Valuable Department and Commission Resources**

The Commission and the Department of Commerce continue to be required to devote scarce agency resources to this approval process even though most approvals are routine, non-controversial and uncontested. Agency resources are further strained by Department and Commission staff attempts to quickly respond to carriers’ requests for expedited treatment in

order to meet compelling commercial circumstances. This becomes additionally burdensome towards the end of the year when year-end tax implications can drive the need for expedited approvals.

**D. Competing Enhanced Service Providers Do Not Face the Same Burdensome Regulation as Non-dominant Carriers**

Not only are non-dominant carriers pressed to complete commercial transactions on an accelerated timeframe in today rapidly moving telecommunications market, they face increasing competition for customers from Enhanced Service Providers. Due to the growth of IP technologies, the U.S. long distance and local telecommunications market is undergoing a revolution in how services are provided. It is increasingly the case that customers no longer receive a complete services package from a regulated monopoly, but instead from Voice over Internet Protocol (“VoIP”) carriers that rely upon components provided by a number of different companies.

In today’s environment, the Enhanced Service Provider is free to raise capital or merge with another Enhanced Service Provider without suffering the delays and costs of obtaining government approvals. Yet, when a non-dominant provider wants to raise funds or complete a strategic acquisition so that it can expand its network to compete with or provide services to an Enhanced Service Provider, the non-dominant carrier is subject to the cumbersome government approval process.

**IV. Conclusion**

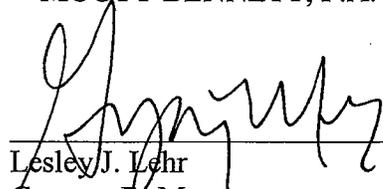
Level 3 petitions the Commission to institute a proceeding to adopt its proposal to implement a streamlined administrative approval process for non-dominant carriers engaged in transfer and/or financing transactions. These streamlined procedures are warranted by the dramatic changes that have taken place in the telecommunications market since the approval

procedures were first instituted. Strict regulation of transfers and financing transactions of non-dominant carriers is not required to protect consumers in Minnesota or the public interest. Eliminating the burdensome and unnecessary regulatory procedures will permit carriers, consumers and the Commission to take full advantage of the efficiencies of today's competitive market.

September 12, 2006.

GRAY, PLANT, MOOTY, MOOTY &  
MOOTY BENNETT, P.A.

By



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Attorneys for Level 3 Communications, LLC

GP:1996445 v1

***PROPOSED STREAMLINING PROCEDURES FOR TRANSFERS OF CONTROL***

## A. PROPOSED STREAMLINED PROCEDURES FOR TRANSFERS

This proposal applies to parties filing applications with the FCC for domestic Section 214 license transfers pursuant to 47 C.F.R. § 63.03 and if necessary, any Hart Scott-Rodino applications with DOJ. Parties *may* elect to request approval under these streamlined procedures but are not required to do so.

- (a) On the date of filing at the FCC and/or DOJ, the parties shall file a Notice with the Minnesota Public Utilities Commission (Commission) that includes:
  - (I) Information identifying the parties;
  - (II) A summary description of the transaction;
  - (III) A statement of the compliance status of the carrier(s) with respect to the Commission's compliance filings;
  - (IV) A copy of the application filed at the FCC;
  - (V) During the pendency of the FCC and DOJ proceedings, the applicants will file copies of all procedural motions, responses to discovery, and orders with the Commission. The parties will also supplement the Notice filing with the FCC Public Notice once it becomes available.
  - (VI) An affidavit signed by an officer of each of the requesting parties. Such affidavit shall include a statement:
    - 1. that the current transaction has not been completed prior to the parties' request for Commission approval;
    - 2. attesting to the fact that the acquiring party has the financial capabilities to continue to provide service to customers, including a copy of one or both of the parties' 10K. A citation to the website containing the parties' 10k filing may be provided in lieu of a hard copy.
    - 3. If the surviving entity will be providing local service, a statement that no new 911 approvals are needed or, if such approvals are needed, a statement that the parties will obtain such approvals prior to offering local voice service.
    - 4. setting forth the intent of the parties with respect to assumption or transfer of the parties' interconnection agreements;
    - 5. setting forth the intent of the parties with respect to the release or return of NXX codes to NANPA;

6. setting forth the anticipated status of the acquired company following close of the transaction (i.e. will the entity continue to offer services in Minnesota or will the entity be extinguished);
  7. describing who shall be responsible for filing annual reports or making other regulatory filings following the close of the transaction. The statement should include contact information for such person or internal department;
  8. describing the parties' customer notification plans;
  9. describing anticipated tariff changes or a statement that no tariff changes are necessary;
  10. that the parties agree to file with the Commission, within 20 days of completion of the transaction, a notice of closing; and
  11. that the parties agree to pay any outstanding regulatory fees of either or both parties.
- (b) On the 20<sup>th</sup> day after filing of the Notice described in subsection (a), the Notice shall be deemed *conditionally* approved, unless the Department of Commerce (Department) files an objection prior to the 20<sup>th</sup> day. Final approval of the transaction shall not be granted until the requirements of subsection (d), herein, have been met.
- (c) At any time following filing of the Notice, the Commission or Department may make inquiries of the parties, and if necessary, take action to protect consumer interests, initiate proceedings and/or impose conditions on the carrier's certificate(s) including reporting requirements that address consumer interests. The parties shall not sell, lease, encumber or transfer a certificate of public convenience and necessity without authorization by the Commission during the pendency of the FCC and DOJ proceedings.
- (d) Unless the Department or another party objects and the Department believes further review is warranted upon receipt of FCC and, if necessary, DOJ approval, and upon filing of the Notice with the Commission, the parties will be free to close their transfer transaction.
- (e) Issuance of the FCC and DOJ orders and closing of the transaction pursuant to subsection (d) above shall neither end or terminate any state commission proceeding or investigation nor shall it preclude imposing conditions on a carrier's certificates(s) as described in subsection (e) on a post-closing basis.
- (f) Existing Commission customer notification requirements shall remain in effect.

### **Pro Forma Transfers of Control**

In the event of a *pro forma* change, including but not limited to a corporate restructuring, internal transfer, or other change in form which does not result in a change of the ultimate ownership or control of the carrier or its assets, and there is no impact on Minnesota authorized operating companies, only a post-transaction notice will be required by the Commission: within 30 days following the transaction, consistent with the FCC post-transaction notice requirement under 47 C.F.R. § 63.03(d), the carrier shall file such notice with the Commission.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF HENNEPIN    )

Joyce Pedersen, being first duly sworn, deposes and says on oath that on the 12th day of September, 2006, she served the attached:

**Petition Of Level 3 Communications, LLC, To Streamline Transfer Of Control And Financing Requirements In Accordance With Minn. Stat. § 216a.03, Subd. 7**

upon the following:

Linda Chavez  
Telephone Docketing Coordinator  
Department of Commerce  
85 7<sup>th</sup> Place E., Suite 500  
St. Paul, MN 55101

by arranging for the deposit of a true and correct copy thereof in a sealed envelope duly addressed to the above, postage prepaid, in the United States mails at Minneapolis, Minnesota.

  
Joyce Pedersen

Subscribed and sworn to before me this  
12th day of September, 2006.

  
Notary Public

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