

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners:                      John Wine, Chair  
   Cynthia L. Claus  
   Brian J. Moline

In the Matter of the Application of Level 3 )  
Communications, LLC for Authority to Provide )  
Resold and Facilities-Based, Switched and Dedicated )  
Local Exchange Telecommunications Services )  
Throughout the State of Kansas.                      )

Docket No. 99-L3CT-318-COC

ORDER AND CERTIFICATE

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission"). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. Background

1.        On November 2, 1998, Level 3 Communications, LLC ("Level 3") filed an application for a Certificate of Convenience and Authority to provide resold and facilities-based, switched local exchange telecommunications services throughout the service territories served by Southwestern Bell Telephone Company ("SWBT") and United Telephone Company of Kansas, d/b/a Sprint ("Sprint").

2.        On April 29, 1999, the Commission received a memorandum from Commission staff ("Staff") stating that Staff reviewed Level 3's application. Staff stated that Level 3 has demonstrated sufficient managerial, technical and financial capabilities to provide switched local exchange and exchange access service. Level 3 is currently seeking authority to provide

interexchange service in Kansas in a separate docket. Staff stated that Level 3 is registered with the Secretary of State's office to conduct business in Kansas. Level 3 filed a completed tariff with the application, and Staff finds it to be in compliance with applicable Commission orders, including the Billing Practice Standards, Docket No. 120,408-U. Level 3 intends to direct bill its customers, charge a check charge fee, and also impose a late payment fee assessed by the company of 1.5% on amounts not previously assessed a late fee.

## II. Findings of Fact and Conclusions of Law

3. The Commission has jurisdiction to supervise and control telecommunications public utilities doing business in Kansas. (K.S.A. 66-1,188). Level 3 is a telecommunications public utility pursuant to K.S.A. 66-1,187 and is subject to the jurisdiction of the Commission.

### A. Technical, Managerial and Financial Capabilities

4. Level 3 has demonstrated sufficient managerial, technical, and financial capabilities to operate as a telecommunications public utility. Level 3 is requesting authorization from the Commission to construct, control, manage, operate and maintain facilities necessary for the provision of switched local exchange services. A review of the application and other information demonstrates that Level 3 has management and employees with switched service experience. It is clear Level 3 possesses the expertise and ability to provide efficient and sufficient switched local exchange and exchange access services.

### B. Public Convenience and Necessity

5. The Public Utilities Act, K.S.A. 66-101 *et seq.*, does not define the term public convenience. However, the term has been discussed by the Kansas Supreme Court. In Central

Kansas Power Co. v. State Corporation Commission, 206 Kan. 670, 676, 482 P. 2d 1 (1971), the

Court stated:

Public convenience means the convenience of the public, not the convenience of particular individuals. [citations omitted] Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word ‘necessity’ means a public need without which the public is inconvenienced to the extent of being handicapped.

See also, General Communications Systems, Inc. v. State Corporation Commission, 216 Kan 410, 418, 532 P.2d 1341 (1975); Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission, 130 Kan. 777, 288 P. 755 (1930). Public convenience is a relative term, established by proof of the conditions existing in the territory to be served. Atchison at 781.

6. In Central Kansas Power Co. at 677, citing Kansas Gas & Electric Co. v. Public Service Corp., 122 Kan. 462, 251 Pac. 1097, the Court stated as follows:

[i]n determining whether such certificate of convenience should be granted [1] the public convenience ought to be the commission’s primary concern, [2] the interest of public utility companies already serving the territory secondary; and [3] the desires and solicitations of the applicant a relatively minor consideration.

The Commission has considered the public convenience to be the primary factor in granting this certificate, as well as a consideration of the additional criteria cited above in Central Kansas Power Co., *supra*, and in the May 5, 1995 Order in Docket No. 190,492-U.

7. Anytime a competitor enters a previously non-competitive market, customers stand to benefit from increased options, lower prices, better services, etc. These benefits may come from the incumbent as well as the competitive local exchange carrier. The telecommunications infrastructure will grow and the benefits of competition should assist the economic development. The Commission has taken all these competitive matters into consideration in reviewing this

application. The Commission finds that approving this application will benefit the public in the area to be served by Level 3.

C. The Effect on: Universal Service, Economic Development and Infrastructure, and Incumbents' Revenues

8. Level 3 has acknowledged its obligation to aid in attaining the goal of universal local service. No evidence has been presented in this docket indicating that granting Level 3's application will be detrimental to Universal Service, Economic Development and Infrastructure, or the Incumbents' Revenues.

D. Local Franchises

9. The Kansas Supreme Court determined that "the power of a city to grant franchises does not confer upon that city any power to decide whether a telephone company should be granted a certificate of convenience and necessity (K.S.A. 12-2002)." United Tel. Co. of Kansas v. City of Hill City, 258 Kan. 208, 221, (1995). Conversely, the Commission may not determine which company shall be granted a franchise to operate within a city. (December 8, 1995 Order in Docket No. 192,521-U at 13).

10. The Supreme Court also stated:

[T]he KCC is granted the authority to issue certificates of convenience and necessity allowing telephone companies to do business in certain areas of the state so that the statewide telecommunications system will not be impeded. K.S.A. 66-131. While a telephone company with a certificate of convenience and necessity to serve an area may construct lines through a city, it may not serve that city without a franchise. While a city may grant a franchise to a telephone company, that company must obtain a certificate of convenience and necessity from the KCC. Finally, while the KCC may grant or deny certificates of convenience and necessity based on its powers to regulate the statewide telecommunications system, it may not force a city to grant a franchise to a telephone company. Id at 223.

By granting this certificate to Level 3, the Commission is in no way compelling the cities to grant a franchise to Level 3. The lack of a franchise agreement may prevent Level 3 from serving a specified area if the pertinent governing body refuses to grant a franchise. However, this does not prevent Level 3 from being certificated.

E. Service in Rural Areas

11. Level 3 may be subject to the requirements of Section 251(f) of the Telecommunications Act of 1996 should it desire to provide local exchange service in a rural area. Section 251(f) exempts rural local exchange companies from certain competitive entry requirements and establishes an explicit procedure for lifting the exemption. Certification in a rural telephone company's service area is also governed by K.S.A. 1997 Supp. 66-2004.

F. Issuance of Certificate

12. Level 3 should be issued a Certificate of Convenience and Authority in accordance with the provisions of K.S.A. 66-131 to transact the business of a telephone public utility to provide switched local exchange and exchange access services throughout SWBT and United territories. Level 3 may be subject to the requirements of Section 251(f) of the Telecommunications Act of 1996 should it desire to provide local exchange service in a rural area.

13. Level 3 is required to have approved interconnection/resale agreements on file with this Commission prior to offering services in the service areas served by non-rural companies in the State of Kansas.

THE COMMISSION THEREFORE ORDERS AND CERTIFIES THAT:

The application filed by Level 3 Communications, LLC is hereby granted and a Certificate of Convenience and Authority is hereby issued in accordance with the provisions of K.S.A. 66-131

for Level 3 Communications, LLC to transact the business of a telephone public utility to provide switched local exchange and exchange access services, in Southwestern Bell Telephone Company's and Sprint/United's territories, as set forth above. However, Level 3 Communications, LLC is not permitted to market nor offer any telecommunications services until such time as the company has approved interconnection/resale agreements on file with this Commission. Any future Commission decisions regarding competitive local exchange companies may be applicable to Level 3 Communications, LLC's local exchange operation.

A party may file a petition for reconsideration of this Order within fifteen (15) days of the service of this Order. If this Order is mailed, service is complete upon mailing, and three (3) days may be added to the above time limit.

The Commission retains jurisdiction of the subject matter and the parties hereto for the purpose of entering such further order or orders as it may deem necessary and proper.

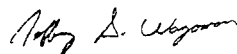
BY THE COMMISSION IT IS SO ORDERED AND CERTIFIED.

Wine, Chr.; Claus, Corn.; Moline, Corn.

Dated: MAY 14 1999

ORDER MAILED

WAY 14 1999

 Executive  
Director

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Jeffrey S. Wagaman  
Executive Director

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