

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**January 30, 2007**

<b>IN RE:</b>	)	
	)	
<b>JOINT APPLICATION OF LEVEL 3</b>	)	<b>DOCKET NO.</b>
<b>COMMUNICATIONS, INC. AND TELCOVE INC. FOR</b>	)	<b>06-00146</b>
<b>APPROVAL OF A TRANSFER OF CONTROL OF</b>	)	
<b>TELCOVE OPERATIONS INC. AND TELCOVE OF</b>	)	
<b>NASHVILLE, L.P. AND RELATED TRANSACTIONS</b>	)	

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**ORDER APPROVING TRANSFER OF AUTHORITY  
AND FINANCING TRANSACTION**

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This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 26, 2006 for consideration of the *Joint Application* of Level 3 Communications, Inc. and TelCove, Inc. for approval of a transfer of authority of TelCove Operations Inc. and TelCove of Nashville, L.P. and related transactions pursuant to Tenn. Code Ann. § 65-4-109 (2004).

**The Joint Application**

On May 17, 2006, Level 3 Communications, Inc. (“Level 3”) and TelCove, Inc. (Level 3 and TelCove, Inc., together “Applicants”) filed the *Joint Application* for approval of a transfer of authority of TelCove Operations Inc. and TelCove of Nashville, L.P. and related transactions. The Applicants seek the Authority’s approval to consummate a series of transactions whereby Level 3 will acquire indirect control of TelCove Operations, Inc. and TelCove of Nashville, L.P. (together, “TelCove-Ops”) (TelCove, Inc. and TelCove-Ops, together, “TelCove”), each a non-

dominant carrier. TelCove-Ops are TelCove, Inc.'s Tennessee operating subsidiaries, each holding authority from the TRA to provide intrastate telecommunications services in Tennessee. The Applicants also request approval for certain related financing transactions.

Telcove, Inc., a privately held Delaware corporation, is the parent company of TelCove Operations, Inc. and TelCove of Nashville, L.P., which are respectively, a Delaware corporation and a California limited partnership both with the same principal place of business as TelCove, Inc. TelCove, Inc. is authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate services as a non-dominant carrier.

TelCove, Inc., through its operating subsidiaries, including TelCove-Ops, is a leading facilities-based provider of integrated communications services that serve medium and large businesses, state and local governmental agencies, educational institutions, and other communications service providers. TelCove, Inc. offers local and long-distance voice, dedicated data, ATM, frame relay, and Internet services and is focused on serving communications-intensive end users. In Tennessee, TelCove Operations, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Authority Order in Docket No. 98-00732, as amended by Docket Nos. 00-00271 and 03-00458. TelCove of Nashville, L.P. is authorized to provide resold local exchange and interexchange telecommunications services pursuant to approval by the Tennessee Public Service Commission in Docket No. 94-00661, and by the TRA as amended in Docket Nos. 00-00958 and 03-00458. TelCove-Ops are also both authorized by the FCC to provide domestic interstate services as non-dominant carriers.

Level 3 is a publicly traded Delaware corporation headquartered in Broomfield, Colorado. Through its wholly-owned indirect subsidiaries, Level 3 Communications, LLC ("Level 3 LLC"), WilTel Communications, LLC, WilTel Local Network, LLC, and Progress

Telecom, LLC (collectively, the “Level 3-Ops”), Level 3 provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network. The Level 3-Ops are non-dominant carriers that are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis. The Level 3-Ops are also authorized by the FCC to provide international and domestic interstate services as non-dominant carriers.

In Tennessee, Level 3 LLC is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to certificates granted by Authority Order in Docket No. 98-00610 on November 24, 1998, as amended in Docket No. 02-00230 on June 28, 2002. WilTel Communications, LLC is authorized to provide resold and facilities-based local exchange, interexchange and exchange access telecommunications services pursuant a certificate granted by Authority Order in Docket No. 99-00398 on October 13, 1999. WilTel Communications, LLC is also authorized to provide service as a reseller and operator service provider pursuant to a certificate granted by Authority Order in Docket No. 99-00034 on April 6, 1999.

In the *Joint Application* filed on May 17, 2006, the Applicants request Authority approval to consummate a proposed transfer of authority transaction whereby Level 3 will acquire control of TelCove-Ops through a multi-step transaction, beginning with a merger between TelCove, Inc. and Eldorado Acquisition Three, LLC (“Eldorado”), a subsidiary of Level 3 created specifically for the purposes of the transaction. Also, the Applicants seek approval for TelCove-Ops to participate in certain related financing arrangements. The *Joint Application* states the Applicants are in the process of filing applications for approval of the proposed transaction with the FCC.

According to the *Joint Application*, TelCove, Inc. will merge into Eldorado, with Eldorado surviving. Level 3 will then immediately contribute the membership interests in Eldorado to Level 3

Financing, Inc., which will then contribute the membership interests to Level 3 LLC, positioning Eldorado as a subsidiary of Level 3 LLC. Following this step, Eldorado will change its name (“New TelCove”). As a result of these steps, which will occur virtually simultaneously, Level 3 will control TelCove-Ops through its wholly-owned indirect subsidiary Level 3 LLC, which will wholly own New TelCove, TelCove-Ops’ new parent.

According to the *Joint Application*, Level 3 currently expects to finance the acquisition of TelCove through a combination of cash, shares of stock in Level 3, and the assumption of certain TelCove debt to acquire all of TelCove. Of the contemplated purchase price of \$1.2375 billion, approximately \$445 million will be paid in cash, approximately \$637 million will be paid through the issuance of stock by Level 3, and approximately \$155.5 million will be paid through the assumption of TelCove debt.

As security for the financing transactions, the Applicants state that TelCove will be required to provide a first priority pledge of all the capital stock of each TelCove subsidiary, including the Tennessee operating companies. Level 3, as the parent company of TelCove, will be required to pledge the capital stock of TelCove and a perfected, first-priority security interest in tangible and intangible assets of TelCove and its subsidiaries including, without limitation, accounts receivable, inventory, equipment, intellectual property, investment property and other intangible assets and proceeds of the foregoing, subject to certain exclusions set forth in the security documents (together, the “Collateral”). The Collateral will also include a security interest in cash of TelCove, but TelCove will only be required to enter into and maintain deposit and/or investment account control agreements with depository banks and other entities having custody of certain proceeds from any sale of TelCove and the security interest in cash will otherwise be unperfected.

The *Joint Application* states that upon closing, Level 3 will pay all of TelCove’s debt, and New TelCove and TelCove-Ops will pledge their assets as security and enter into a guaranty for

existing indebtedness of Level 3 Financing, Inc. The first financing was an offering of 10.75% Senior Notes due in 2011 in the aggregate principal amount of \$500 million. In the second financing, Level 3 Financing, Inc. entered into a \$730 million senior secured term loan that would mature in 2011 and have an interest rate of LIBOR plus an applicable margin of 700 basis points. In the third transaction, Level 3 Financing, Inc. issued \$150 million of floating rate Senior Notes due 2011 and \$550 million of 12.25% Senior Notes due in 2013.

The *Joint Application* asserts that immediately following the consummation of the proposed transaction, all customers will remain with their respective TelCove-Ops service provider, and TelCove-Ops will continue to offer the services they currently offer with no change in the rates or terms and conditions of service. The transfer of authority of TelCove-Ops will be seamless and transparent to consumers in the State of Tennessee.

#### **June 26, 2006 Authority Conference**

The transfer at issue in this docket is governed by Tenn. Code Ann. § 65-4-112 (2004). Tenn. Code Ann. § 65-4-112 (2004) requires that public utilities obtain TRA approval before merging or consolidating property, rights or franchises with utilities of like character holding a certificate of public convenience and necessity (“CCN”) in the State of Tennessee. Tenn. Code Ann. § 65-4-112(a) (2004) provides:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Regarding the financing transaction, Tenn. Code Ann. § 65-4-109 (2004) states:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any

such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At a regularly scheduled Authority Conference held on June 26, 2006, the panel voted unanimously to approve the *Joint Application* and made the following findings:

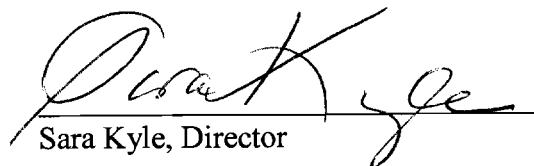
1. The proposed transfer of authority and financing transaction are subject to approval pursuant to Tenn. Code Ann. §§ 65-4-112 (2004) and 65-4-109 (2004);
2. The proposed transfer will be transparent to customers;
3. The proposed transfer will not reduce the number of providers in the State;
4. No person or entity has intervened to contest approval of the transaction;
5. The proposed financing is expected to affect the assets of entities certificated to offer telecommunications services in Tennessee;
6. The Petitioners have filed similar petitions in other states and with the FCC as necessary;
7. Tennessee has a legitimate interest in monitoring the integrity of the competitive marketplace which includes obtaining information on the financial transactions and fitness of certificated telecommunications carriers;
8. The burden of complying with Tenn. Code Ann. § 65-4-109 (2004) is minimal and such compliance should be perfunctory given the telecommunications industry's movement to a competitive environment;
9. The proposed transaction is being made in accordance with the laws enforceable by the Authority; and
10. The purpose of the transaction is in the public interest because, based on the assertions of the Applicants, it will enhance the operations of both parties allowing them to compete more effectively.

**IT IS THEREFORE ORDERED THAT:**

1. The indirect transfer of authority of Level 3 Communications, Inc. and TelCove, Inc. as described in the *Joint Application* and discussed herein is approved contingent on approval by the Federal Communications Commission.
2. Level 3 Communications, Inc. and TelCove, Inc. are authorized to enter into the financing transaction as described in the *Joint Application* and discussed herein.
3. The authorization and approval given hereby shall not be used by any party, including, but not limited to, any lending party, for the purpose of inferring an analysis or assessment of the risk involved to a purchaser has been performed. Nothing contained herein creates or is intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof for the transactions approved herein.

  
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Ron Jones, Chairman

  
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Pat Miller, Director

  
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Sara Kyle, Director