

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

November 24, 1998

**APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO PROVIDE FACILITIES-BASED)
AND RESOLD LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES THROUGHOUT THE STATE OF)
TENNESSEE)**

DOCKET NO. 98-00610

**ORDER GRANTING CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

On November 3, 1998, this matter came before the Tennessee Regulatory Authority ("Authority") upon the Application of Level 3 Communications, LLC ("Level 3") for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services throughout the State of Tennessee. The Application was made pursuant to Tenn. Code Ann. § 65-4-201, et. seq.

LEGAL STANDARDS FOR GRANTING CCN

Level 3's Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the

construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on the June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the providers' plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public Notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to hearing.

LEVEL 3'S HEARING

Level 3's Application was uncontested. At the hearing held on November 3, 1998, Level 3 was represented by Mr. Charles B. Welch, Jr., of Farris, Mathews, Gilman, Branan & Hellen, P.L.C., 2400 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219. In addition, Ms. Sue E. Weiske, Level 3's Counsel and Director of Regulatory Affairs, presented testimony and was subject to examination by the Authority's Directors. Ms. Abby Jensen, Interconnection Specialist, also attended for Level 3. Upon Level 3's conclusion of the proof in its case, the Authority granted Level 3's Application based upon the following findings of fact and conclusions of law.

I. APPLICANT'S QUALIFICATIONS

1. Level 3 is a limited liability company organized on December 1, 1997, under the laws of the state of Delaware. As a limited liability company, Level 3 is owned by its sole member company PKS Information Services, Inc. ("PKS") which in turn is wholly owned by Level 3 Communications, Inc.

2. The complete street address of Level 3's registered office in Tennessee is c/o CT Corporation System, 530 Gay Street, Knoxville, Tennessee 37902. Level 3 is qualified to do business in the State of Tennessee, however, its principal place of business is 1450 Infinite Drive, Louisville, CO 80027. Level 3's local counsel is Mr. Charles B. Welch, Jr.,

of Farris, Mathews, Gilman, Branan & Hellen, P.L.C., 2400 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219.

3. The Application and supporting documentary information existing in the record indicate that Level 3 has the requisite technical and managerial qualifications necessary to provide facilities-based and resold local exchange and interexchange telecommunications services throughout the State of Tennessee as permitted by and consistent with Tenn. Code Ann. 65-4-201(d). Among the company officers providing the requisite managerial and technical expertise are: James Q. Crowe, President and Chief Executive Officer, formerly the President and Chief Executive Officer of MFS Telecom, Inc.; R. Douglas Bradbury, Executive Vice President, Chief Financial Officer and Treasurer, the former Chief Financial Officer of MFS Telecom, Inc.; and Terrence J. Ferguson, Senior Vice President, General Counsel and Secretary, the former General Counsel and Secretary of MFS Telecom, Inc.

4. The record demonstrates that Level 3 has the necessary capital and financial qualifications to provide the services it proposes to offer.

5. Level 3 has represented that it will adhere to all applicable policies, rules and orders of the Authority.

6. The record in this matter further demonstrates that Level 3 is currently authorized to provide telecommunications services in California, Colorado, the District of Columbia, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Texas, Virginia, and Washington, and is in the process of obtaining authority in New Hampshire, Kentucky, Florida, and Rhode Island. No applications for authority have been denied and no applications for authority have been revoked.

II. PROPOSED SERVICES

1. Level 3 intends to provide all forms of telecommunications services throughout the State of Tennessee, including both intrastate local exchange and interexchange telecommunications services.

2. Level 3 intends to offer its services to business and residential customers as both a facilities-based carrier and a reseller of telecommunications services. Level 3 proposes to offer services which will allow its customers to originate and terminate local calls to other customers served by Level 3 as well as customers served by all other authorized local exchange carriers. Level 3 states it will also provide switched access services to interexchange carriers, which will allow Level 3's customers to originate and terminate intrastate and interstate calls to and from customers of interexchange carriers. Level 3's services will be available on a full-time basis, 24-hours a day, seven days a week. Level 3 intends to begin service as soon as possible, depending upon regulatory approval and the execution of applicable interconnection agreements.

3. Level 3 plans to install state-of-the-art telecommunications equipment and construct local fiber optic network infrastructure to provide trunking facilities to the incumbent local exchange carrier (ILEC) and/or one or more competitive local exchange carriers (CLECs). The fiber optic network infrastructure will connect Level 3's network to major ILEC central offices and customers in the central business district and outlying areas of business concentrations (sometimes referred to as Edge Cities) in each market. Level 3 states that its network will also be connected to an ILEC tandem switch and certain IXC points-of-presence (POPs). Level 3 plans to deploy state of the art transmission and multiplexer

equipment in each of the ILEC central offices in which it is collocated. As each customer is obtained, service will be provisioned either on Level 3's own internal fiber optic network or by leasing unbundled loops or other facilities from the ILEC to connect the end user customer to Level 3's network. Level 3 plans to provide around the clock network monitoring and customer service centers.

4. Level 3 sought authority to offer local exchange services to customers in areas throughout Tennessee. Exchange services will include, but not be limited to: (i) local exchange access services to single-line and multi-line customers (including basic access lines, direct inward/outward PBX trunk service, Centrex services, and ISDN); (ii) local exchange usage services to customers of Level 3 Communications' end user access line services; and (iii) switched and special carrier access services to other common carriers. In addition, through interconnection with other carriers or the resale of other carriers' services, Level 3 will offer: 911 and enhanced 911 emergency services, white page directory listings and directory assistance, consumer access to and support for the Tennessee Relay Center, Lifeline and Link-up services, free blocking of 900 and 976 type services, educational discounts, operator assisted calling, dual party relay services, and other miscellaneous services currently provided by existing local exchange carriers and required by the Authority.

5. Level 3 also sought authority to offer interexchange services in the State of Tennessee subject to the provisions of Tenn. Code Ann. § 65-4-201(d), including both inbound and outbound intraLATA services. This is to be accomplished through a

combination of its own facilities and through the resale of the facilities of other certificated carriers.

6. Level 3 intends to provide service to subscribers from all points within the State of Tennessee and therefore seeks authorization to provide local exchange, exchange access and interexchange service statewide. Initially, Level 3 plans to provide local exchange and interexchange service in Tennessee in the existing service areas of BellSouth Telecommunications, Inc., United Telephone-Southeast, Inc., and Citizens Communications Company of Tennessee, but seeks statewide authority so that it may expand into other service areas permitted by State law, and as market conditions warrant.

7. Attached to Level 3's Application as Exhibit D is Level 3's illustrative local exchange tariff, and Exhibit E is Level 3's illustrative interexchange tariff. Level 3 will file its final local exchange and interexchange tariffs after it completes interconnection negotiations with BellSouth and any underlying IXC carriers, and prior to commencing services in the State of Tennessee.

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Authority finds that approval of Level 3's application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

1. Level 3 has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. Level 3 has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. Level 3's Application is approved; and
2. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY