



August 31, 1998

**VIA OVERNIGHT DELIVERY**

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37219

Re: Application of Level 3 Communications, LLC for a Certificate of Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services Throughout the State of Tennessee

Dear Mr. Waddell:

Level 3 Communications, LLC ("Level 3") hereby files an original and thirteen (13) copies of its Application 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. Also enclosed is a check in the amount of \$50.00 in payment of the requisite filing fee.

Please date stamp the enclosed extra copy of this filing and return it in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,

By: Terrence J. Ferguson  
Terrence J. Ferguson  
Senior Vice President and General Counsel  
Level 3 Communications, LLC

Enclosures

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

In the Matter of the Application of )  
 )  
**Level 3 Communications, LLC** )  
 )  
for a Certificate of Convenience and )  
Necessity to Provide Local Exchange )  
and Interexchange Telecommunications )  
Services Throughout the State of Tennessee )

Docket No. 98-00610

**APPLICATION**

**I. INTRODUCTION**

Pursuant to the provisions of T.C.A. §§ 65-4-201, Administrative Rules Chapter 1220-4-2, and the Federal Telecommunications Act of 1996 ("Federal Act" or "Act"), 47 U.S.C. § 251 *et seq.*, Level 3 Communications, LLC ("Level 3" or "Applicant") hereby files this application for a Certificate of Convenience and Necessity to provide all forms of facilities-based and resold local exchange and interexchange telecommunications services throughout the State of Tennessee.

Consistent with the objectives of the Federal Act, the Tennessee Regulatory Authority ("Authority") has adopted a policy favoring competition in all telecommunications markets, recognizing that it is in the public interest to develop effective competition to ensure that all consumers, residential and business, will have access to high quality, low-cost, and innovative telecommunications services, regardless of the chosen service provider. In support of its application, Level 3 provides the following information:

## II. DESCRIPTION OF THE APPLICANT

1. Applicant's legal name is Level 3 Communications, LLC. Applicant maintains its principal place of business at:

Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027  
Telephone: (303) 926-3000  
Facsimile: (303) 926-3400

2. All correspondence, notices, inquiries or other communications pertaining to this application, and questions concerning the ongoing operations of Level 3 following certification, should be addressed to:

Terrence J. Ferguson  
Senior Vice President and General Counsel  
Level 3 Communications, LLC  
3555 Farnam Street  
Omaha, NE 58131  
Telephone: (402) 536-3624  
Facsimile: (402) 536-3645

3. Level 3 is a limited liability company organized on December 1, 1997 under the laws 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. Level 3 is qualified to do business in the State of Tennessee. A copy of Level 3's Certificate of Formation and its operating agreement (by-laws) and a copy of Level 3's Certificate of Authority to Transact Business in the State of Tennessee are attached hereto as Exhibit A.

4. The names, addresses and telephone numbers of Level 3's officers are as follows:

James Q. Crowe	President, Chief Executive Officer
R. Douglas Bradbury	Executive Vice President, Chief Financial Officer and Treasurer
Kevin J. O'Hara	Executive Vice President
Terrence J. Ferguson	Senior Vice President, General Counsel and Secretary
Daniel Caruso	Senior Vice President
Michael Frank	Senior Vice President
Mike Jones	Senior Vice President and Chief Information Officer
Neil J. Eckstein	Vice President, Assistant General Counsel and Assistant Secretary
Matthew J. Johnson	Vice President and Assistant Secretary

The managers of Level 3 are:

James Q. Crowe  
R. Douglas Bradbury  
Terrence J. Ferguson

Mr. Crowe, Mr. Ferguson, Mr. Frank and Mr. Johnson may be reached at the following address:

Level 3 Communications, LLC  
3555 Farnam Street  
Omaha, NE 68131  
Telephone: (402) 536-3624

Mr. Bradbury, Mr. O'Hara, Mr. Caruso, Mr. Eckstein, and Mr. Jones may be reached at the following address:

Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027  
Telephone: (303) 926-3000

5. Level 3 does not currently have any corporate offices or officers located in Tennessee. Level 3 may open offices in Tennessee in the future. The name, address and telephone number of the Level 3 employee responsible for Tennessee operations is as follows: Andrea Gavalas, 1450 Infinite Drive, Louisville, CO 80027, (tel.) 303-926-3000.

6. Level 3 is managerially and technically qualified to provide resold and facilities-based local and interexchange telecommunications services in Tennessee. Level 3's officers are well qualified to execute its business plan, to provide its proposed telecommunications services and to operate and maintain Level 3's facilities over which such services will be deployed. Level 3's management team has over forty years of experience in the telecommunications industry. Descriptions of the extensive telecommunications and managerial experience of Level 3's key personnel are attached hereto at Exhibit B.

7. Level 3 is financially qualified to provide telecommunications services in the State of Tennessee. In particular, Level 3 has access to the financing and capital necessary to conduct its telecommunications operations as specified in this Application. Level 3 is a start-up company, and as such, will rely on the financial resources of its ultimate parent company, Level 3 Communications, Inc., to provide initial capital investment and to fund operating losses during the start-up phase of operations. Level 3 Communications, Inc., is financing Level 3's initial operations and will continue to provide financial support to Level 3 so long as Level 3 requires additional capital and resources to complete its networks and construct facilities. In support of Level 3's application, attached hereto as Exhibit C is a copy of Level 3 Communications, Inc.'s most recent annual report on SEC Form 10-K/A<sup>1</sup>, which clearly demonstrates Level 3's financial ability to provide the proposed services.

Put on memo

8. Level 3 is in the start-up phase of operations and is not currently providing service in any jurisdiction. Level 3 is 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 certification in additional jurisdictions. Level 3 has not been denied any requested authority in any state.

9. Customers either will be billed directly by Level 3 or charges will be billed on the subscriber's telephone bill pursuant to billing and collection agreements established by Level 3 with

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<sup>1/</sup> Level 3 Communications, Inc. (formerly known as Kiewit Diversified Group Inc.), previously was a subsidiary of Peter Kiewit Sons', Inc. Level 3 Communications, Inc. subsequently merged into Peter Kiewit Sons', Inc., and the surviving entity changed its name to Level 3 Communications, Inc. Please note that the attached SEC forms reflect this name change and have been filed with the SEC as amendments to the original forms filed under the name of Peter Kiewit Sons', Inc.

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the applicable underlying telephone company. A copy of Level 3's sample bill is attached hereto at Exhibit F.

10. Level 3's customer complaint procedures, termination policy and late charge policy are outlined in its illustrative tariffs attached hereto at Exhibit D and Exhibit E. Level 3 will maintain the following toll free number for customer service calls: 1-877-4LEVEL3 (1-877-453-8353). The name, address and phone number of Level 3's customer service contact responsible for servicing customers and supplying refunds is:

(1)(f) { Ken Williams  
7581 West 103<sup>rd</sup> Avenue  
Westminister, CO 80021  
Telephone: (303) 635-9000

Level 3 will handle repair and maintenance in Tennessee as follows. Customers with repair and maintenance inquiries can call 1-877-4LEVEL3. If Level 3's Customer Care department receives such a call, it will open a trouble ticket and will then refer the ticket to the Network Operations Center ("NOC"). If the NOC trouble ticket needs to be referred to a LEC or CLEC, the NOC will execute the dispatch. If the trouble needs to be dispatched to one of Level 3's Gateway sites, the NOC will also execute this function. The NOC will be responsible for obtaining status and escalating to the LEC/CLEC and Gateway (Field Operations).

11. To the extent Level 3 offers presubscription services, Level 3 will establish internal sales and management procedures to verify that customers have affirmatively selected Level 3 as their service provider. Level 3's internal policies regarding changes of local and long distance carries will comply with any Tennessee policies, rules and orders governing such carrier changes and will be consistent with the Federal Communication Commission's ("FCC's") telemarketing and primary (1)(c) interexchange carrier change rules applicable to the long distance industry. Level 3 will also comply

with the FCC's forthcoming regulations regarding how carriers may change a customers primary local exchange provider.

12. Level 3 will market local and long distance services to residential and business customers through direct sales force, agents, and resellers.

13. Level 3's carrier identification code ("CIC") is 6330. Level 3 currently does not have an 800 access code.

14. Level 3 will keep its books in accordance with generally accepted accounting principles ("GAAP").

(b)(6) 15. Level 3 will adhere to all applicable Authority rules, policies and orders governing the provision of local exchange and interexchange telecommunications services in the State of Tennessee.

### **III. PROPOSED SERVICES**

(b)(6) 1. Level 3 seeks authority to provide all forms of telecommunications services throughout the State of Tennessee, including both intrastate local exchange and interexchange telecommunications services. Level 3 seeks authority to offer its services to business and residential customers as both a facilities-based carrier and a reseller of telecommunications services. Level 3 will offer services which 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 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.

2. Level 3 will 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's network will also be connected to an ILEC tandem switch and certain IXC points-of-presence (POPs). Level 3 will 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 (e.g., T1s) from the ILEC to connect the end user customer to Level 3's network. Level 3 will also provide around the clock network monitoring and customer service centers.

3. Level 3 seeks authority to offer local exchange services to customers in areas throughout Tennessee. Exchange services will include, but not be limited to, the following: (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, Level 3 will, through interconnection with other carriers or the resale of other carriers' services, 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.

(3)(C)(2)

4. Level 3 also seeks authority to offer interexchange services throughout the state of Tennessee, including both inbound and outbound intraLATA services. This will be accomplished through a combination of its own facilities and through the resale of the facilities of other certificated carriers.

5. 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., but seeks statewide authority so that it may expand into other service areas as market conditions warrant.

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

#### IV. CONCLUSION

The telecommunications industry is growing and changing at an impressive pace. The entry of Level 3 into the local exchange market will enhance competition in the provision of telecommunications services within the State of Tennessee as prescribed by the Tennessee legislature in Chapter 408 of the Public Acts of 1995 and by the Federal Telecommunications Act of 1996. Level 3 will bring significant benefits to telecommunications users in the State of Tennessee. Level 3's expertise in the telecommunications sector will permit it to select the most economic and efficient services, thereby providing subscribers with a better combination of price, quality, and subscriber service than other carriers. Accordingly, Level 3 anticipates its proposed service will provide subscribers with better quality services and will increase consumer choice of innovative, diversified, and reliable service offerings.

Wherefore, Level 3 Communications, LLC requests that the Tennessee Regulatory Authority approve its application for a Certificate of Public Convenience and Necessity to provide all forms of facilities-based and resold local exchange and interexchange telecommunications services throughout the State of Tennessee.

Respectfully submitted



Terrence J. Ferguson

Level 3 Communications, LLC

Dated: August 31, 1998

## **EXHIBITS**

Exhibit A	Certificate of Formation and Operating Agreement (By-laws) and Certificate of Authority to Transact Business in Tennessee
Exhibit B	Managerial Qualifications
Exhibit C	Financial Qualifications
Exhibit D	Illustrative Local Exchange Tariff
Exhibit E	Illustrative Interexchange Tariff
Exhibit F	Sample Customer Bill
Verification	

**Exhibit A**

Certificate of Formation and Operating Agreement (By-laws)  
and  
Certificate of Authority to Transact Business in Tennessee

*State of Delaware*  
*Office of the Secretary of State* PAGE 1

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF LIMITED LIABILITY COMPANY OF "LEVEL 3 COMMUNICATIONS, LLC", FILED IN THIS OFFICE ON THE FIRST DAY OF DECEMBER, A.D. 1997, AT 11 O'CLOCK A.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

2827172 8100

971407141

AUTHENTICATION: 8784499

DATE: 12-02-97

**CERTIFICATE OF FORMATION  
OF  
LEVEL 3 COMMUNICATIONS, LLC**

**I  
NAME**

The name of the company shall be Level 3 Communications, LLC ("Company").

**II  
REGISTERED AGENT AND OFFICE**

The name and address of the Company's registered agent in Delaware is:

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801 (New Castle County)

IN WITNESS WHEREOF, the undersigned authorized person has caused this Certificate of Formation to be executed this 26th day of November, 1997.

PKS INFORMATION SERVICES, INC.

By:   
Title: Director

138230.02

*State of Delaware*  
*Office of the Secretary of State* PAGE 1

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LEVEL 3 COMMUNICATIONS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SECOND DAY OF DECEMBER, A.D. 1997.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

2827172 8300 ,

971407141

AUTHENTICATION: 8784509

DATE: 12-02-97



# Secretary of State

## Corporations Section

James K. Polk Building, Suite 1800

Nashville, Tennessee 37243-0306

DATE: 03/06/98

REQUEST NUMBER: 3461-3263

TELEPHONE CONTACT: (615) 741-0537

FILE DATE/TIME: 03/06/98 1113

EFFECTIVE DATE/TIME: 03/06/98 1113

CONTROL NUMBER: 0346959

TO:  
CFS INC  
7051 HWY 70 S  
NO. 333  
NASHVILLE, TN 37221

RE:  
LEVEL 3 COMMUNICATIONS, LLC  
APPLICATION FOR CERTIFICATE OF AUTHORITY -  
LIMITED LIABILITY COMPANY

WELCOME TO THE STATE OF TENNESSEE. THE ATTACHED LIMITED LIABILITY COMPANY CERTIFICATE OF AUTHORITY HAS BEEN FILED WITH AN EFFECTIVE DATE AS INDICATED ABOVE.

A LIMITED LIABILITY COMPANY ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE ON OR BEFORE THE FIRST DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE LIMITED LIABILITY COMPANY'S FISCAL YEAR. ONCE THE FISCAL YEAR HAS BEEN ESTABLISHED, PLEASE PROVIDE THIS OFFICE WITH WRITTEN NOTIFICATION. THIS OFFICE WILL MAIL THE REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE LIMITED LIABILITY COMPANY AT THE ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED AGENT AND OFFICE WILL SUBJECT THE LIMITED LIABILITY COMPANY TO ADMINISTRATIVE REVOCATION OF ITS CERTIFICATE OF AUTHORITY.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE LIMITED LIABILITY COMPANY CONTROL NUMBER GIVEN ABOVE.

FOR: APPLICATION FOR CERTIFICATE OF AUTHORITY -  
LIMITED LIABILITY COMPANY

ON DATE: 03/06/98

FROM:  
C T CORPORATION SYSTEM (CHICAGO, IL.)  
208 S LASALLE ST

RECEIVED: FEES \$300.00 \$0.00  
TOTAL PAYMENT RECEIVED: \$300.00

CHICAGO, IL 60604-0000

RECEIPT NUMBER: 00002262870  
ACCOUNT NUMBER: 00000592



*Riley C. Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE

RECEIVED  
SECRETARY OF STATE

*Office of the Secretary of State*

98 MAR -6 AM 11:13

RILEY DARNELL  
SECRETARY OF STATE

EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LEVEL 3 COMMUNICATIONS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRD DAY OF MARCH, A.D. 1998.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

2827172 8300

981082066

AUTHENTICATION:

DATE:

8950703

03-03-98

OPERATING AGREEMENT OF  
LEVEL 3 COMMUNICATIONS, LLC  
a Delaware Limited Liability Company

The undersigned (the "Member"), being the sole member of Level 3 Communications, LLC (the "Company"), hereby agrees as follows:

ARTICLE I.  
MANAGEMENT OF THE COMPANY

Section 1. Management Vested in Managers. The Member of the Company hereby vests the management of the Company with one or more Managers, who shall have sole power and authority to conduct the affairs of the Company except to the extent management powers are expressly reserved to the Member by this Operating Agreement or the Delaware Limited Liability Company Act (the "Act"). Any act of the Managers shall only be taken upon the affirmative vote of a majority of the then serving Managers. The Managers may be elected at any meeting of the Member by the affirmative vote of a majority in interest of the Members. The Managers shall serve until their successors are duly elected or, if earlier, until any such Manager's death, resignation or removal. Any Manager may be removed at any time, with or without cause, by the affirmative vote of a majority in interest of the Members.

Section 2. Compensation. The Members shall have authority to approve reasonable compensation for any Member or Manager for services actually rendered to the Company.

Section 3. Transfers; Indebtedness. Real or personal property owned or purchased by the Company shall be held and owned, and conveyance or transfer thereof shall be made, in the name of the Company. Indebtedness of the Company shall be incurred in the name of the Company and not in the name of any Member or Manager. Instruments and documents providing for the acquisition, encumbrance, or disposition of property of the Company, including but not limited to leases, and instruments and agreements evidencing indebtedness of the Company, shall be valid and binding upon the Company when they are executed by the President, Vice President or any Member of the Company.

Section 4. Officers. The Company shall have such officers, including a president, vice president, secretary and treasurer as may be elected by the Managers from time to time.

ARTICLE II.  
MEETINGS OF MEMBERS

Section 1. Meetings. Meetings of Members may be called by any Member.

Section 2. Place of Meeting. The person or persons calling any meeting of Members may designate the place for such meeting. If no such designation is made, then the place for such meeting shall be the principal place of business of the Company.

Section 3. Notice of Meeting. Written notice stating the place, day, and hour of a meeting of Members and the purpose or purposes for which the meeting is called shall be delivered not less than three nor more than sixty days before the date of the meeting, either personally, by mail, or by next-business-day delivery service, at the direction of the person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his or her address as it appears in the records of the Company, with postage prepaid. If sent by next-business-day delivery service, such notice shall be deemed to be delivered when deposited with the next-business-day delivery service in time for next-business-day delivery addressed to the Member at his or her street address as it appears in the records of the Company. Except when required by law, notice of any adjourned meeting of Members need not be given. Any Member, by a signed writing, may waive notice of any meeting of Members, either before or after such meeting. The attendance of a Member at such meeting shall constitute a waiver of notice of such meeting, except when a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 4. Quorum. The owners of a majority in amount of the then existing Capital Account Balances of all Members entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members.

Section 5. Manner of Acting. If a quorum is present at a meeting of Members, then the affirmative vote of the owners of a majority in amount of the then existing Capital Account Balances represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless otherwise provided by applicable statute, this Agreement, or the Certificate of Formation of the Company. If a quorum is not present at a meeting of Members, then Members holding a majority in amount of the then existing Capital Account Balances represented at such meeting and entitled to vote may adjourn the meeting from time to time without further notice. At any adjourned meeting of Members at which a quorum is present, any business may be transacted which might have been transacted at the meeting if it had been held at the original time for which it was called.

Section 6. Proxies. At all meetings of Members, a Member may vote either in person or by a proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 7. Informal Action by Members. Any action required to be taken by the Members pursuant to this Agreement or pursuant to the Certificate of Formation of the Company or which may be taken at a meeting of Members may be taken without a meeting if a consent in writing, setting

forth the action so taken, is signed by the owners of a majority in amount of the then existing Capital Account Balances of all Members entitled to vote with respect to the subject matter of such consent, unless otherwise provided by applicable statute, this Agreement, or the Certificate of Formation of the Company.

### ARTICLE III. MEETINGS OF MANAGERS

Section 1. Meetings. Meetings of the Managers may be called by any Manager or Member.

Section 2. Place of Meeting. The person or persons calling any meeting of Managers may designate the place for such meeting. If no such designation is made, then the place for such meeting shall be the principal place of business of the Company.

Section 3. Notice of Meeting. Written notice stating the place, day, and hour of a meeting of Managers and the purpose or purposes for which the meeting is called shall be delivered not less than three nor more than sixty days before the date of the meeting, either personally, by mail, or by next-business-day delivery service, at the direction of the person calling the meeting, to each Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Manager at his or her address as it appears in the records of the Company, with postage prepaid. If sent by next-business-day delivery service, such notice shall be deemed to be delivered when deposited with the next-business-day delivery service in time for next-business-day delivery addressed to the Manager at his or her street address as it appears in the records of the Company. Except when required by law, notice of any adjourned meeting of Managers need not be given. Any Manager, by a signed writing, may waive notice of any meeting of Managers, either before or after such meeting. The attendance of a Manager at such meeting shall constitute a waiver of notice of such meeting, except when a Manager attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 4. Quorum. A majority in number of the then serving Managers shall constitute a quorum at a meeting of Managers.

Section 5. Manner of Acting. If a quorum is present at a meeting of Managers, then the affirmative vote of a majority of the Managers present at the meeting and entitled to vote on the subject matter shall be the act of the Managers, unless otherwise provided by applicable statute, this Agreement, or the Certificate of Formation of the Company. If a quorum is not present at a meeting of Managers, then Managers constituting a majority of those present at such meeting and entitled to vote may adjourn the meeting from time to time without further notice. At any adjourned meeting of Managers at which a quorum is present, any business may be transacted which might have been transacted at the meeting if it had been held at the original time for which it was called.

Section 6. Informal Action by Managers. Any action required to be taken by the Managers pursuant to this Agreement or pursuant to the Certificate of Formation of the Company or which may be taken at a meeting of Managers may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by a majority of the then serving Managers entitled to vote with respect to such consent, unless otherwise provided by applicable statute, this Agreement, or the Certificate of Formation of the Company.

#### ARTICLE IV. BOOKS OF ACCOUNT, FINANCIAL STATEMENTS, AND FISCAL MATTERS

Section 1. Books of Account. The Members shall keep complete and adequate books of account of the Company in which shall be recorded and reflected all of the capital contributions and withdrawals of the Members and all income, expenses, and other transactions of the Company. The books of account of the Company shall be maintained on a calendar year basis. The books of account of the Company shall be kept at the principal place of business of the Company; and each Member and his or her authorized representative shall have, at reasonable times during normal business hours, free access to and the right to inspect and, at his or her expense, copy such books of account and all records of the Company. The ownership percentage of each current Member is listed on Exhibit A attached hereto.

Section 2. Bank Accounts, Funds, and Assets. The funds of the Company shall be deposited in the Company's name in such checking or other accounts as the Managers shall deem appropriate. Such funds shall be withdrawn only by such authorized persons as may be designated by the Managers.

Section 3. Tax Returns and Reports. The Company, at the Company's expense, shall cause income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Company also, at the Company's expense, shall cause to be prepared and timely filed with the appropriate authorities all reports required to be filed with such authorities under then applicable laws, rules and regulations. Any Member shall be provided with a copy of any such tax return or report upon request without expense to him or her.

Section 4. Reports and Financial Statements. The Company shall, at the Company's expense, provide to the Members as soon as practicable after the end of each calendar year a complete accounting of the affairs of the Company for such calendar year together with all information necessary for the preparation of a Member's federal and state income tax returns.

Section 5. Capital Accounts. An individual capital account shall be maintained on the books of the Company for each Member. Each Member's capital account shall consist of such Member's original capital contribution to the Company (a) increased by such Member's additional capital contributions to the Company and by such Member's share of Company profits and (b) decreased by such Member's share of Company losses and by distributions to such Member by the Company

(the "Capital Account Balance"). No member shall have the right to receive out of the property of the Company any part of his or her contributions to the capital of the Company except as provided in the Articles of Organization of the Company or by applicable law. No Member shall be entitled or required to make any capital contributions to the Company other than as provided in this Agreement or in the Articles of Organization of the Company or as agreed to in writing by such Member with the approval or consent of Members holding a majority in amount of the then existing Capital Account Balances. No interest shall be paid on any Member's capital contributions to the Company. In the absence of consent of all of the Members, a Member, irrespective of the nature of his or her contributions to the capital of the Company, shall have only the right to demand and receive cash in return for his or her contributions to the capital of the Company.

Section 6. Profits and Losses. The net profits or net losses of the Company shall be allocated to the Members in proportion to their respective Capital Account Balances for, and pro rated to reflect any changes in their respective Capital Account Balances during, the accounting period to which such profits or losses are attributable.

Section 7. Loans. Any Member may, but shall not be required to, make loans to the Company in such amount, at such times, and on such terms as may be approved by the Members. No such loan by a Member shall be considered a contribution to the capital of the Company. Except in the ordinary course of the Company's business, the Company shall not loan or advance funds to any Member, nor permit its assets to be encumbered to secure the obligations of a Member, without the prior consent of all of the other Members.

Section 8. Distributions. If the Members or Managers determine that the Company has cash available in excess of the reasonable needs of the Company for the conduct of its business (including but not limited to debt service and appropriate reserves), then such excess cash shall be distributed to the Members in proportion to their then respective Capital Account Balances, regardless of whether the Company has had a profit or loss for income tax or accounting purposes. Other distributions by the Company may be made in such manner and at such times as the Members or Managers may determine. Notwithstanding the foregoing, no distributions may be made by the Company to the Members unless, after the distributions are made, the assets of the Company will be in excess of all liabilities of the Company other than liabilities to Members on account of the Members' contributions to capital.

## ARTICLE V. ADDITIONAL MEMBERS AND TRANSFER OF INTERESTS

Section 1. Additional Members. Additional Members of the Company may be admitted to the Company by unanimous written consent of the Members. No new Member shall be entitled to any retroactive allocation of any item of income, gain, loss, deduction, or credit for income tax purposes. The Members, at their option at the time a Member is admitted, may close the Company books (as though the Company tax year had ended) or may make proportionate allocations of

income, gains, losses, deductions, and credits for the Company's tax year in which the Member is admitted in accordance with the provisions of Section 706(d) of the Internal Revenue Code of 1986 and the Treasury Regulations promulgated thereunder.

Section 2. Transfer of Interests. Except as provided in Section 3 of this Article V, no Member shall transfer his or her interest in the Company, including but not limited to the Member's right to receive the share of profits or other compensation by way of income and return of contributions to capital to which the Member is entitled without the unanimous written consent of the Members. Any attempt by a Member to transfer his or her interest in the Company other than in compliance with the terms of this Agreement shall be null and void and of no force or effect, and the Company shall not recognize and shall give no effect to any such attempt by a Member to transfer his or her interest in the Company. For purposes of this Article V, "transfer" means to directly or indirectly sell, transfer, assign, pledge, mortgage, create a security interest in, or in any other way encumber or dispose of the Member's interest in the Company.

Section 3. Transfer to Affiliates. Any Member which is a corporation or other entity may transfer all or any portion of its interest in the Company to an affiliate upon written notice to the Company of such transfer.

Section 4. Specific Enforcement; Indemnification. Any transfer or attempted transfer by any Member in violation of this Agreement shall be null and void and of no effect whatsoever. Each Member hereby acknowledges the reasonableness of the restrictions on transfer imposed by this Agreement in view of the Company purposes and the relationship of the Members. Accordingly, the restrictions on transfer contained herein shall be specifically enforceable. Each Member hereby further agrees to defend and hold the Company and each other Member wholly and completely harmless from any cost, liability or damage (including, without limitation, liabilities for income taxes and costs of enforcing this indemnity) incurred by any of such indemnified parties as a result of a transfer or an attempted transfer by such indemnifying Member in violation of this Agreement.

Section 5. Expenses. Except as otherwise expressly provided herein, all expenses of the Company incident to the admission of the transferee to the Company as a Member shall be charged to and paid by the transferring Member.

## ARTICLE VI. DISSOLUTION AND LIQUIDATION

The Company shall be dissolved only upon the unanimous written agreement of all Members. As soon as possible following an affirmative vote to dissolve the Company, the Members shall execute duplicate originals of a statement of intent to dissolve in the form prescribed by the Delaware Secretary of State, and such statement shall be delivered to the Delaware Secretary of State for filing. Upon the dissolution of the Company, the Members shall appoint a liquidated agent who, at the direction of the Members, shall proceed to make a full and general accounting of the assets and



liabilities of the Company, liquidate the assets of the Company, discharge the liabilities of the Company, and otherwise wind up the affairs of the Company. When all debts, liabilities, and obligations of the Company have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the Company have been distributed to the Members in proportion to their then respective Capital Account Balances, a Certificate of Dissolution in the form required by the Delaware Limited Liability Company Act shall be executed in duplicate by the Members, verified by the Members, and delivered to the Delaware Secretary of State for filing.

## ARTICLE VII. MISCELLANEOUS

Section 1. Liability of Members and Managers. No Member or Manager or former Member or Manager shall be liable, responsible, or accountable in damages or otherwise to any other Member or to the Company for any actions taken in good faith and reasonably believed by the Member or Manager to be in the best interest of the Company or in reliance on the provisions of this Operating Agreement or the Articles, or for good faith errors of judgment, but shall only be liable for willful misconduct or gross negligence in the performance of his or her duties as a Member or Manager.

Section 2. Indemnification. The Company shall indemnify any Member, Manager or officer or former Member, Manager or officer against expenses actually and reasonably incurred by him or her in connection with the defense of a civil or criminal action, suit, or proceeding in which he or she is made a party by reason of being or having been a Member, Manager or officer of the Company, except in respect of matters as to which he or she is adjudged in the action, suit, or proceeding to be liable for willful misconduct or gross negligence.

Section 3. Waiver of Partition. Each of the Members of the Company irrevocably waives any right to maintain any action for partition with respect to the assets of the Company.

Section 4. Company Property. The legal title to any real or personal property or interest in real or personal property now or hereafter acquired by the Company shall be owned, held or operated in the name of the Company, and no Member, individually, shall have any ownership interest in such property.

Section 5. Contracts with Related Parties; Competition. Nothing in this Agreement or in law shall prevent or be construed to prevent any of the Members, or any person related to any Member, from dealing with the Company as to any matter whatever, provided the terms of this dealing are fair and reasonable to the Company as determined by the Members of the Company.

Section 6. No Partnership Intended for Nontax Purposes. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under Delaware law. The Members do not intend to be partners as to one another, or partners as to any third party.

To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

Section 7. Rights of Creditors and Third Parties under Agreement. This Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other person. Except and only to the extent provided by applicable law, no such creditor or third party shall have any rights under this Agreement, or any agreement between the Company and any Member with respect to any capital contribution or otherwise.

Section 8. Non-Waiver. The failure of any Member to insist in any one or more instances upon performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or a relinquishment of any right granted hereunder, or of the future performance of any such term, covenant or condition, but the obligations with respect thereto shall continue in full force and effect.

Section 9. Notices. All notices required or permitted under the terms of this Agreement shall be in writing and shall be delivered either personally, by certified mail, return receipt requested, or by prepaid nationally-recognized commercial overnight delivery service which maintains evidence of receipt (such as Federal Express), in care of the respective Members at their last known addresses. Any such notice shall be deemed to have been given when delivered or upon evidence of refusal of delivery.

Section 10. Acceptance of Prior Acts by New Members. Each person becoming a Member, by becoming a Member, ratifies all action duly taken by the Company, under the terms of this Agreement, prior to the date such person becomes a Member.

Section 11. Further Action. Each Member agrees to perform all further acts and execute, acknowledge, and deliver any additional documents which may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

Section 12. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the parties to this Agreement, any new Members, and their respective heirs, personal representatives, successors, and permitted assigns.

Section 13. Separability of Provisions. Each provision of this Agreement shall be considered separable from the other provisions of this Agreement; and if for any reason any provision of this Agreement is determined to be invalid, such invalidity shall not impair the operation of or affect this portions of this Agreement that are valid.

Section 14. Entire Agreement; Amendment. This Agreement constitutes the entire understanding and agreement among the Members with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written, with respect to such subject matter. This Agreement may not be amended or modified except by written agreement of all Members.

Section 15. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Section 16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together constitute one and the same instrument. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

Section 17. Titles. The titles of the various Articles and Sections of this Agreement are for convenient reference only and shall not be considered in the construction or interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the sole Member has executed this Agreement as of the 2nd day of December, 1997.

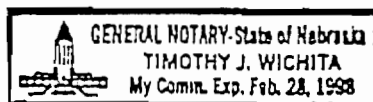
PKS INFORMATION SERVICES, INC.

By: [Signature]  
Name: Raul Pupo  
Title: President

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 2nd day of December, 1997, by Raul Pupo, the PRESIDENT of PKS Information Services, Inc., a Delaware corporation, on behalf of the corporation.

147162



[Signature]  
Notary Public

EXHIBIT A  
MEMBER OWNERSHIP

PKS Information Services, Inc.	100%
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147142

AMENDMENT  
TO THE  
OPERATING AGREEMENT  
OF  
LEVEL 3 COMMUNICATIONS, LLC

The undersigned (the "Member") being the sole member of Level 3 Communications, LLC (the "Company"), hereby agrees as follows:

1. **Operating Agreement.** The Member has previously adopted an operating agreement of the Company, dated December 2, 1997 (the "Operating Agreement"); terms used herein and not otherwise defined shall have the meaning ascribed to them in the Operating Agreement.


2. **Amendment.** Article I of the Operating Agreement is hereby amended by adding the following after the end of the existing Section 4:

Section 5. **Agents: Administrative Functions.** The Managers may also delegate to one or more Managers the right to implement the decisions of the Managers and administration of the day-to-day operational matters of the Company. The Managers may also authorize, in writing, one or more agents or officers (each, an "Administrator") to implement the management decisions of the Managers and to handle the day-to-day operational matters of the Company. Such authority may be general or limited to specific instances. The Managers shall determine the duties, compensation, term of service and other matters relating to any Administrator. The Managers may remove an Administrator at any time. The Administrator's expenses incurred on behalf of the Company shall be paid by, or reimbursed by, the Company.

3. **Binding Effect.** Except to the extent amended herein, the Operating Agreement shall remain in full force and effect and, to the extent not inconsistent therewith, this Amendment shall be governed and construed in accordance therewith.

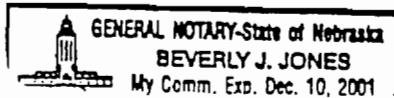
IN WITNESS WHEREOF, the sole Member has executed this Amendment this 27<sup>th</sup> day of February, 1998.

PKS INFORMATION SERVICES, INC.

By:   
Name: Raul Puro  
Title: President

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 1998. by Raul Pupo, the President of PKS Information Services, Inc., a Delaware corporation, on behalf of the corporation.



Beverly J. Jones  
Notary Public

**Exhibit B**

Managerial Qualifications

## MANAGEMENT BIOGRAPHIES

### James Q. Crowe

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James Q. Crowe is President and CEO of Level 3 Communications, Inc., formerly known as Kiewit Diversified Group Inc., a wholly owned subsidiary of Peter Kiewit Sons', Inc. (PKS). Level 3 is a diversified corporation with interests in construction, mining, telecommunications, energy and infrastructure privatization and development.

Mr. Crowe previously held the position of Chairman and CEO of MFS Communications Company, Inc. (MFS) from July 1986 until December 1996. When the company merged with WorldCom, Inc. in 1996, he was then elected Chairman of the Board of WorldCom.

MFS was the parent corporation of a family of companies serving the communications needs of business and government, and was a unit of PKS until September 1995 when it was spun off and became an independent, publicly owned corporation. Prior to founding MFS, Mr. Crowe was Group Vice President of Morrison Knudsen Corporation.

Mr. Crowe presently serves on the board of directors of Level 3 Communications, Inc., Peter Kiewit Sons' Inc., RCN Corporation, Commonwealth Telephone Enterprises, Inc., and Inacom Communications, Inc.

Mr. Crowe graduated from Rennselaer Polytechnic Institute with a Bachelor of Science degree in mechanical engineering. He also holds a Master of Business Administration degree from Pepperdine University.



## **Kevin J. O'Hara**

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Kevin J. O'Hara is the Executive Vice President and COO of Level 3 Communications, Inc., responsible for expanding Level 3's presence in the telecommunications industry. Prior to joining Level 3, Mr. O'Hara was President and CEO of MFS Global Network Services ("GNS"). GNS was the service arm of MFS responsible for the planning, development, engineering and operations of all MFS networks and services worldwide.

Previously, Mr. O'Hara held the position of President, MFS Development, and Vice President Network Services for MFS Telecom. Prior to joining MFS at the end of 1989, Mr. O'Hara held management positions with Peter Kiewit Sons', Inc. in Omaha, Nebraska for nine years. In his last position before joining MFS, Mr. O'Hara served as the area manager for Kiewit Network Technologies, Inc. with responsibility for the physical construction of the MFS networks. Mr. O'Hara earned a Bachelor of Science degree in Electrical Engineering from Drexel University, Philadelphia and a Masters Degree in Business Administration from the University of Chicago.

## **R. Douglas Bradbury**

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R. Douglas Bradbury has been Executive Vice President and Chief Financial Officer of Level 3 Communications, Inc. since August 1, 1997. Prior to joining Level 3, Mr. Bradbury was the Chief Financial Officer (1992-1996), Executive Vice President (1995-1996), and/or Senior Vice President (1992-1995) of MFS Communications Company, Inc. He was Senior Vice President - Corporate Affairs for MFS Telecom from 1988-1992.

Before joining MFS in 1988, Mr. Bradbury served as Executive Vice President and Chief Operating Officer at American Pioneer Telephone, Inc., a regional long distance carrier based in Orlando, Florida, and a Vice President of Manufacturers Hanover Trust Company in New York City and Milan, Italy.

## **Terrence J. Ferguson**

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Since September 1997, Terrence J. Ferguson has acted as Senior Vice President, General Counsel and Secretary of Level 3 Communications, Inc. (Mr. Ferguson also holds the position of Senior Vice President, General Counsel and Secretary of Level 3 Communications, LLC.) Mr. Ferguson previously was Senior Vice President from September 1992 to February 1997, General Counsel from January 1992 to February 1997 and Secretary from November 1991 to February 1997 of MFS Communications Company, Inc. ("MFS"), an integrated communications provider of both local and long distance services to business and government customers.

Prior to his work with MFS, Mr. Ferguson was Senior Corporate Attorney for Peter Kiewit Sons', Inc., a leading construction, mining, energy and telecommunications company, from December 1981 to September 1992. Mr. Ferguson was also a member of the Kutak Rock law firm from September 1976 to January 1981.

Mr. Ferguson received his law degree from Georgetown University Law Center in 1967, and received a Bachelor of Science Degree from Creighton University in 1964.

## **Neil J. Eckstein**

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Since January 1998, Neil J. Eckstein has been Vice President, Assistant General Counsel of Level 3 Communications, Inc. Mr. Eckstein is also Vice President of Level 3 Communications, LLC. From September 1989 until January 1998, Mr. Eckstein was an associate in the corporate department of Willkie Farr & Gallagher, an international law firm headquartered in New York, New York. While an associate at Willkie Farr & Gallagher, Mr. Eckstein concentrated in the areas of corporate finance, mergers and acquisitions and general corporate representations, with an emphasis on representing clients in the competitive telecommunications industry.

Mr. Eckstein received his law degree from Fordham University School of Law in 1989, and received a Bachelor of Arts degree, Cum Laude, with High Honors in Politics from Brandeis University in 1986.

## **Daniel P. Caruso**

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Mr. Caruso is Senior Vice President responsible for Level 3's Network Services organization. This organization designs, engineers, constructs and operates Level 3's communications network.

Prior to joining Level 3, Mr. Caruso was responsible for WorldCom's Local Service network planning and service delivery organization. This organization was charged with developing new local markets, implementing CLEC networks in WorldCom's local markets, planning for the local switch and fiber networks, developing business support systems to enable scaling of local switched services, and provisioning local switched service.

Prior to this assignment, Mr. Caruso managed network development groups. These groups were responsible for driving MFS' network expansions into new geographical markets in the northeast and central regions of the U.S. Mr. Caruso's responsibilities included overseeing the business plan and "build versus buy" analysis; securing franchise and right-of-way agreements; acquiring start-up competitive access providers; negotiating joint venture agreements; and overseeing network construction.

Before joining MFS in January 1993, Mr. Caruso spent several years at Ameritech. His most recent position at Ameritech was with their corporate development group analyzing Ameritech's entry in cable TV, security alarm services, and other ventures. Mr. Caruso also held several engineering, operations, and financial positions within Ameritech's operating units.

Mr. Caruso holds an MBA degree from University of Chicago and a B.S. in Engineering from the University of Illinois at Champaign/Urbana.

## **Michael R. Frank**

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Mr. Frank is currently Senior Vice President of Human Resources for Level 3 Communications. Prior to this assignment he was Senior Vice President of Human Resources for MFS Communications from 1994 – 1997. Additionally he has held senior level Human Resources positions at the Walt Disney Company, Pepsico and General Mills over the past 20 years.

Mike has been active in numerous industry, functional and civic organizations and is an occasional speaker for those organizations. Mike received his Bachelor's Degree from Creighton University in Omaha.

## **Matthew J. Johnson**

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Since January 1998, Matthew J. Johnson has been Vice President, Corporate Legal of Level 3 Communications, Inc. From 1995, Mr. Johnson was Vice President, Legal of Peter Kiewit Sons', Inc., one of North America's largest and most respected construction organizations. From 1991-1994 Mr. Johnson served as Corporate Counsel for Peter Kiewit Sons', Inc.

Mr. Johnson received his law degree from the University of Texas in 1980, and received a Bachelor of Arts degree from the University of Nebraska in 1978.

## **Mike Jones**

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Mr. Jones is Senior Vice President and CIO for Level 3 Communications. Mike's organization is responsible for the development, support and operations of all of Level 3's information and network management systems.

Prior to joining Level 3, Mr. Jones was Vice President and Chief Information Officer for Corporate Express, Inc. in Broomfield Colorado. Corporate Express is a \$4 billion international corporation providing essential business products and services to large organizations.

Prior to joining Corporate Express Mike was the Director of Billing Systems for Sprint International, and an Associate Partner with Andersen Consulting.

Mike has a degree in Accounting and Computer Science from Southwestern Oklahoma State University.



**Exhibit C**

**Financial Qualifications**

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 10-K/A**

Annual Report Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934

For the fiscal year ended  
**December 27, 1997**

Commission File  
Number 0-15658

**PETER KIEWIT SONS', INC.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State of Incorporation)

47-0210602  
(I.R.S. Employer)  
Identification No.)

1000 Kiewit Plaza, Omaha, Nebraska  
(Address of principal executive offices)

68131  
(Zip Code)

(402) 342-2052  
(Registrant's telephone number,  
including area code)

Securities registered pursuant to Section 12(b) of the Act:

None.

Securities registered pursuant to Section 12(g) of the Act:

Class C Common Stock, par value \$.0625  
Class D Common Stock, par value \$.0625

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

The registrant's Class C stock is not publicly traded, and therefore there is no ascertainable aggregate market value of voting stock held by nonaffiliates. The registrant's Class D stock has been trading on the Nasdaq OTC Bulletin Board. The aggregate market value of the Class D stock held by nonaffiliates as of March 14, 1998 was \$7.3 billion.

As of March 15, 1998, the number of outstanding shares of each class of the Company's common stock was:

Class C 7,681,020  
Class D 146,943,752

Portions of the Company's definitive Proxy Statement for the 1998 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

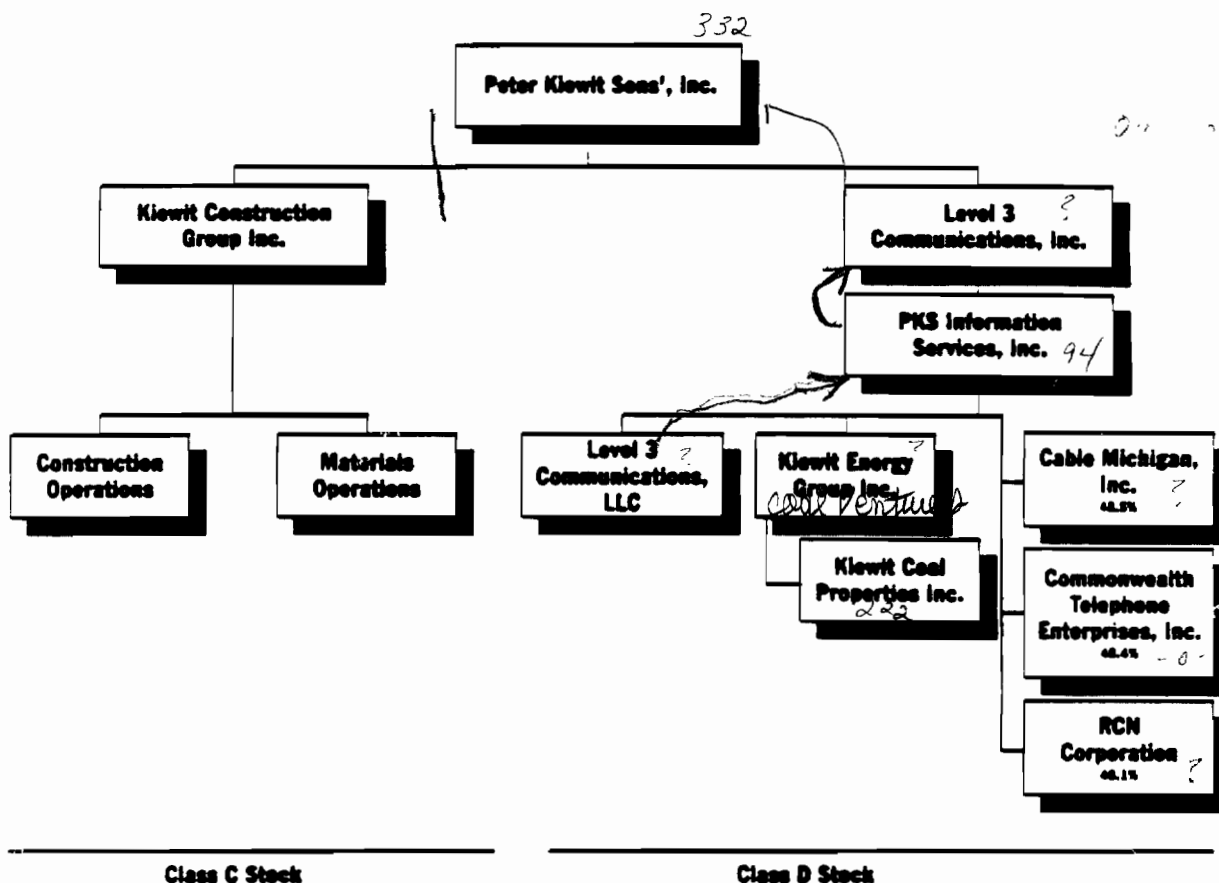
## TABLE OF CONTENTS

Page	
Item 1.	Business.....1
Item 2.	Properties .....13
Item 3.	Legal Proceedings .....13
Item 4.	Submission of Matters to a Vote of Security Holders and Executive Officers of the Registrant .....13
Item 5.	Market for Registrant's Common Equity and Related Stockholder Matters .....18
Item 6.	Selected Financial Data .....21
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations.....25
Item 8.	Financial Statements and Supplementary Data .....33
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.....33
Item 10.	Directors and Executive Officers of the Registrant.....33
Item 11.	Executive Compensation.....33
Item 12.	Security Ownership of Certain Beneficial Owners and Management.....33
Item 13.	Certain Relationships and Related Transactions.....33
Item 14.	Exhibits, Financial Statement Schedules, and Reports on Form 8-K .....33
	Index to Financial Statements and Financial Statement Schedules of Registrant.....P-1

## PART I

## ITEM 1. BUSINESS

Peter Kiewit Sons', Inc. ("PKS" or the "Company") is one of the largest construction contractors in North America and also owns information services, telecommunications and coal mining businesses. The Company pursues these activities through two subsidiaries, Kiewit Construction Group Inc. ("KCG") and Level 3 Communications, Inc., formerly known as Kiewit Diversified Group Inc. ("Level 3"). The organizational structure is shown by the following chart.



The Company has two principal classes of common stock, Class C Construction & Mining Group Restricted Redeemable Convertible Exchangeable Common Stock, par value \$.0625 per share (the "Class C stock") and Class D Diversified Group Convertible Exchangeable Common Stock par value \$.0625 per share (the "Class D stock"). The value of Class C stock is linked to the Company's construction and materials operations (the "Construction Group"). The value of Class D stock is linked to the operations of Level 3 (the "Diversified Group"), under the terms of the Company's charter (see Item 5

below). All Class C shares and historically most Class D shares have been owned by current and former employees of the Company and their family members. The Company was incorporated in Delaware in 1941 to continue a construction business founded in Omaha, Nebraska in 1884. The Company entered the coal mining business in 1943 and the telecommunications business in 1988. In 1995, the Company distributed to its Class D stockholders all of its shares of MFS Communications Company, Inc. ("MFS") (which was later acquired by WorldCom, Inc.). Through subsidiaries, the Company owns 48.5% of the common stock of Cable Michigan, Inc., 48.4% of Commonwealth Telephone Enterprises, Inc., formerly known as C-TEC Corporation ("C-TEC") and 46.1% of RCN Corporation (collectively, the "C-TEC Companies"), the three companies that resulted from the restructuring of C-TEC, which was completed in September 1997. RCN Corporation, Cable Michigan, Inc. and Commonwealth Telephone Enterprises, Inc. are publicly traded companies and more detailed information about each of them is contained in their separate Annual Reports on Form 10K. Prior to January 2, 1998, the Company was also engaged in the alternative energy business through its ownership of 24% of the voting stock of CalEnergy Company, Inc. ("CalEnergy") and certain international development projects in conjunction with CalEnergy.

On December 8, 1997, the Company's stockholders ratified the decision of the Company's Board of Directors (the "PKS Board") to separate the business conducted by the Construction Group and the business conducted by the Diversified Group (collectively, the "Business Groups") into two independent companies. In connection with the consummation of this transaction, the PKS Board declared a dividend of eight-tenths of one share of the Company's newly created Class R Convertible Common Stock, par value \$.01 per share ("Class R stock") with respect to each outstanding share of Class C stock. The Class R stock is convertible in shares of Class D stock pursuant to a defined formula. In addition, the Company has announced that effective March 31, 1998, the Company, through a resolution of the PKS Board, shall cause each outstanding share of Class C stock to be mandatorily exchanged (the "Share Exchange") pursuant to provisions of the PKS Restated Certificate of Incorporation (the "PKS Certificate") for one outstanding share of Common Stock, par value \$.01 per share, of PKS Holdings, Inc. ("PKS Holdings"), a recently formed, direct, wholly owned subsidiary of PKS, to which the eight-tenths of one share of Class R Stock would attach (collectively, the "Transaction"). In connection with the consummation of the Transaction, the Company will change its name to Level 3 Communications, Inc. and PKS Holdings, Inc. will change its name to Peter Kiewit Sons', Inc. The Company has announced that the PKS Board has approved in principle a plan to force conversion of all 6,538,231 shares of Class C Stock outstanding. Due to certain provisions of the Class R stock, conversion will not be forced prior to May 1998, and the final decision to force conversion would be made at that time. The decision may be made not to force conversion if it were decided that conversion is not in the best interest of the then stockholders of the Company.

The Transaction is intended to separate the Business Groups into two independent companies. The PKS Board believes that separation of the Business Groups will (i) permit Level 3 to attract and retain the senior management and employees needed to implement and develop Level 3's expansion plan (which is discussed below), (ii) enable Level 3 to access the capital markets in order to fund its expansion plan on more advantageous terms than would be available to Level 3 as part of the Company, (iii) enable Level 3 to pursue strategic investments and acquisitions, as part of the expansion plan, which could be foreclosed to Level 3 as part of the Company and (iv) allow the directors and management of each Business Group to focus their attention and financial resources on that Business Group's business. Except for the anticipated effect of the Transaction on the management of the construction business, the PKS Board does not believe that the Transaction will have any other significant effect on the construction business.

For purposes of this filing, the Company has filed as exhibits to this Form 10-K, Financial Statements and Other Information for each of the Construction Group (Exhibit 99.A) and the Diversified Group or Level 3 (Exhibit 99.B). These exhibits generally follow the format of Form 10-K and consist of separate financial statements for each Group and excerpts of other information from this Form 10-K pertaining to each Business Group.

For 1997 results, the Company reports financial information for four business segments: construction, information services, telecommunications, and coal mining. Additional financial information about these segments, including revenue, operating earnings, equity earnings, identifiable assets, capital expenditures, and depreciation, depletion and amortization, as well as foreign operations information, is contained in Note 13 to the Company's consolidated financial statements.

## **KIEWIT CONSTRUCTION GROUP**

### **CONSTRUCTION OPERATIONS**

The construction business is conducted by operating subsidiaries of Kiewit Construction Group Inc. (collectively, "KCG"). KCG and its joint ventures perform construction services for a broad range of public and private customers primarily in the United States and Canada. New contract awards during 1997 were distributed among the following construction markets: transportation (including highways, bridges, airports, railroads, and mass transit) — 62%, power, heat, cooling — 18%, commercial buildings — 8%, water supply — 2%, mining — 2%, sewage and waste disposal — 1% and other markets — 7%.

KCG primarily performs its services as a general contractor. As a general contractor, KCG is responsible for the overall direction and management of construction projects and for completion of each contract in accordance with terms, plans, and specifications. KCG plans and schedules the projects, procures materials, hires workers as needed, and awards subcontracts. KCG generally requires performance and payment bonds or other assurances of operational capability and financial capacity from its subcontractors.

**Contract Types.** KCG performs its construction work under various types of contracts, including fixed unit or lump-sum price, guaranteed maximum price, and cost-reimbursable contracts. Contracts are either competitively bid and awarded or negotiated. KCG's public contracts generally provide for the payment of a fixed price for the work performed. Profit on a fixed-price contract is realized on the difference between the contract price and the actual cost of construction, and the contractor bears the risk that it may not be able to perform all the work for the specified amount. Construction contracts generally provide for progress payments as work is completed, with a retainage to be paid when performance is substantially complete. Construction contracts frequently contain penalties or liquidated damages for late completion and infrequently provide bonuses for early completion.

**Government Contracts.** Public contracts accounted for 74% of the combined prices of contracts awarded to KCG during 1997. Most of these contracts were awarded by government and quasigovernment units under fixed price contracts after competitive bidding. Most public contracts are subject to termination at the election of the government. In the event of termination, the contractor is entitled to receive the contract price on completed work and payment of termination related costs.

**Backlog.** At the end of 1997, KCG had backlog (anticipated revenue from uncompleted contracts) of \$3.9 billion, an increase from \$2.3 billion at the end of 1996. Of current backlog, approximately \$1.0 billion is not expected to be completed during 1998. In 1997 KCG was low bidder on 226 jobs with total contract prices of \$3.5 billion, an average price of \$15.3 million per job. There were 19 new projects with contract prices over \$25 million, accounting for 76% of the successful bid volume.

**Competition.** A contractor's competitive position is based primarily on its prices for construction services and its reputation for quality, timeliness, experience, and financial strength. The construction industry is highly competitive and lacks firms with dominant market power. In 1997 Engineering News Record, a construction trade publication, ranked KCG as the 9th largest U.S. contractor in terms of 1996 revenue and 12th largest in terms of 1996 new contract awards. It ranked KCG 1st in the transportation market in terms of 1996 revenue.

**Joint Ventures.** KCG frequently enters into joint ventures to efficiently allocate expertise and resources among the venturers and to spread risks associated with particular projects. In most joint

ventures, if one venturer is financially unable to bear its share of expenses, the other venturers may be required to pay those costs. KCG prefers to act as the sponsor of its joint ventures. The sponsor generally provides the project manager, the majority of venturer-provided personnel, and accounting and other administrative support services. The joint venture generally reimburses the sponsor for such personnel and services on a negotiated basis. The sponsor is generally allocated a majority of the venture's profits and losses and usually has a controlling vote in joint venture decision making. In 1997 KCG derived 70% of its joint venture revenue from sponsored joint ventures and 30% from nonsponsored joint ventures. KCG's share of joint venture revenue accounted for 28% of its 1997 total revenue.

**Demand.** The volume and profitability of KCG's construction work depends to a significant extent upon the general state of the economies of the United States and Canada, and the volume of work available to contractors. Fluctuating demand cycles are typical of the industry, and such cycles determine to a large extent the degree of competition for available projects. KCG's construction operations could be adversely affected by labor stoppages or shortages, adverse weather conditions, shortages of supplies, or governmental action. The volume of available government work is affected by budgetary and political considerations. A significant decrease in the amount of new government contracts, for whatever reasons, would have a material adverse effect on KCG.

**Locations.** KCG structures its construction operations around 20 principal operating offices located throughout the U.S. and Canada, with headquarters in Omaha, Nebraska. Through its decentralized system of management, KCG has been able to quickly respond to changes in the local markets. At the end of 1997, KCG had current projects in 33 states and 6 Canadian provinces. KCG also participates in the construction of geothermal power plants in the Philippines and Indonesia.

**Properties.** KCG has 20 district offices, of which 16 are in owned facilities and 4 are leased. KCG owns or leases numerous shops, equipment yards, storage facilities, warehouses, and construction material quarries. Since construction projects are inherently temporary and location-specific, KCG owns approximately 950 portable offices, shops, and transport trailers. KCG has a large equipment fleet, including approximately 4,500 trucks, pickups, and automobiles, and 2,000 heavy construction vehicles, such as graders, scrapers, backhoes, and cranes.

## **MATERIALS OPERATIONS**

Several KCG subsidiaries, primarily in Arizona and Oregon, produce construction materials, including readymix concrete, asphalt, sand and gravel. KCG also has quarrying operations in New Mexico and Wyoming, which produce landscaping materials and railroad ballast. Kiewit Mining Group Inc. ("KMG"), a subsidiary of KCG, provides mine management services to Kiewit Coal Properties Inc., a subsidiary of PKS. KMG also owns a 48% interest in an underground coal mine near Pelham, Alabama.

## **LEVEL 3 COMMUNICATIONS, INC.**

Level 3 engages in the information services, telecommunications, coal mining and energy businesses, through ownership of operating subsidiaries, joint venture investments and ownership of substantial positions in public companies. Level 3 also holds smaller positions in a number of development stage or startup ventures.

## **INFORMATION SERVICES**

PKS Information Services, Inc. ("PKSIS") is a full service information technology company that provides computer operations outsourcing and systems integration services to customers located throughout the United States as well as abroad. Utilizing all computing environments from mainframes to client/server platforms, PKSIS offers custom-tailored computer outsourcing services. PKSIS also provides network and systems integration and network management services for various computer platforms. In addition, PKSIS develops, implements and supports applications software. Through its

subsidiary NET Twenty-One, Inc., PKSIS' strategy is to focus on assisting its customers in "Web-enabling" legacy software applications, that is, migrating computer applications from closed computing and networking environments to network platforms using Transmission Control Protocol/Internet Protocol ("TCP/IP") technology that are then accessed using Web browsers.

The computer outsourcing services offered by PKSIS through its subsidiary PKS Computer Services, Inc. include networking and computing services necessary both for older mainframe-based systems and newer client/server-based systems. PKSIS provides its outsourcing services to clients that desire to focus their resources on core businesses, rather than expending capital and incurring overhead costs to operate their own computing environment. PKSIS believes that it is able to utilize its expertise and experience, as well as operating efficiencies, to provide its outsourcing customers with levels of service equal to or better than those achievable by the customer itself, while at the same time reducing the customer's cost for such services. This service is particularly useful for those customers moving from older computing platforms to more modern client/server networks.

PKSIS' systems integration services help customers define, develop and implement cost-effective information services. In addition, through PKS Systems Integration, Inc., PKSIS offers reengineering services that allow companies to convert older legacy software systems to modern networked computing systems, with a focus on reengineering software to enable older software application and data repositories to be accessed by Hypertext Markup Language (HTML)-based browsers ("Web browsers") over the Internet or over private or limited access TCP/IP networks.

PKSIS, through its Suite 2000-SM line of services, provides customers with a multi-phased service for converting programs and application so that date-related information is accurately processed and stored before and after the year 2000. Through the process of converting a customer's legacy software for year 2000 compliance, PKSIS is able to provide additional insight and advice to further stream-line and improve the customer's information systems.

PKSIS has established a software engineering facility at the National Technology Park in Limerick, Ireland, to undertake: large scale development projects; system conversions; and code restructuring and software re-engineering. PKSIS has also established relationships with domestic and international partners to provide such activities as well as establishing recently a joint venture in India.

PKSIS' subsidiary, LexiBridge Corporation of Shelton, Connecticut, provides customers with a combination of workbench tools and methodology that provide a complete strategy for converting mainframe-based application systems to client/server architecture, while at the same time ensuring year 2000 compliance.

In 1997, 93% of PKSIS' revenue was from external customers and the remainder was from affiliates.

**Level 3 recently has determined to increase substantially the emphasis it places on and the resources devoted to its information services business, with a view to becoming a facilities-based provider (that is, a provider of information services that owns or leases a substantial portion of the plant, property and equipment necessary to provide those services) of a broad range of integrated information services to business (the "Expansion Plan"). Pursuant to the Expansion Plan, Level 3 intends to expand substantially its current information services business through both the expansion of the business of PKSIS and the creation, through a combination of construction, purchase and leasing of facilities and other assets, of a substantial, facilities-based communications network that utilizes Internet Protocol or IP technology.**

In order to grow and expand substantially the information services it provides, Level 3 has developed a comprehensive plan to construct, purchase and lease local and backbone facilities necessary to provide a wide range of communications services over a network that uses Internet Protocol based technology. These services include:



- A number of business-oriented communications services using a combination of network facilities Level 3 would construct, purchase and lease from third parties, which services may include fax services that are transmitted in part over an Internet Protocol network and are offered at a lower price than public circuit-switched telephone network-based fax service and voice message storing and forwarding that are transmitted in part over the same Internet Protocol technology based network; and
- After construction, purchase and lease of local and backbone facilities, a range of Internet access services at varying capacity levels and, as technology development allows, at specified levels of quality of service and security.

Level 3 believes that, over time, a substantial number of businesses will convert existing computer application systems (which run on standalone or networked computing platforms utilizing a wide variety of operating systems, applications and data repositories) to computer systems that communicate using Internet Protocol and are accessed by users employing Web browsers. Level 3 believes that such a conversion will occur for the following reasons:

- Internet Protocol has become a *de facto* networking standard supported by numerous hardware and software vendors and, as such, provides a common protocol for connecting computers utilizing a wide variety of operating systems;
- Web browsers can provide a standardized interface to data and applications and thus help to minimize costs of training personnel to access and use these resources; and
- As a packet-switched technology, in many instances, Internet Protocol utilizes network capacity more efficiently than the circuit-switched public telephone network. Consequently, certain services provided over an Internet Protocol network may be less costly than the same services provided over public switched telephone network.

Level 3 further believes that businesses will prefer to contract for assistance in making this conversion with those vendors able to provide a full range of services from initial consulting to Internet access with requisite quality and security levels.

Pursuant to the Expansion Plan, Level 3's strategy will be to attempt to meet this customer need by: (i) growing and expanding its existing capabilities in computer network systems, consulting, outsourcing, and software reengineering, with particular emphasis on conversion of legacy software systems to systems that are compatible with Internet Protocol networks and Web browsers access; and (ii) creating a national end-to-end Internet Protocol based network through a combination of construction, purchase and leasing of assets. Level 3 intends to optimize its international network to provide Internet based communications services to businesses at low cost and high quality, and to design its network, to the extent possible, to more readily include future technological upgrades than older, less flexible networks owned by competitors.

To implement its strategy, Level 3 has formulated a long term business plan that provides for the development of an end-to-end network optimized for the Internet Protocol. Initially, Level 3 will offer its services over facilities, both local and national, that are in part leased from third parties to allow for the offering of services during the construction of its own facilities. Over time, it is anticipated that the portion of Level 3's network that includes leased facilities will decrease and the portion of facilities that have been constructed, and are owned, by Level 3 will increase. Over the next 4 to 6 years, it is anticipated that the Level 3 network will encompass local facilities in approximately 40 North American markets, leased backbone facilities in approximately 10 additional North American markets, a national or inter-city network covering approximately 15,000 miles, the establishment of local facilities in approximately 10 European and 4 Asian markets and an inter-city network covering approximately 2,000 miles across Europe. Level 3 intends to design and construct its inter-city network using multiple conduits. Level 3 believes that the spare conduits will allow it to deploy future technological innovations and expand capacity without incurring significant overbuild costs. The foregoing description of the Level 3 network and the Expansion

Plan constitutes a forward-looking statement. The actual configuration of the network, including the number of markets served and the expanse of the inter-city networks will depend on a variety of factors including Level 3's ability to: access markets; design fiber optic network backbone routes; attract and retain qualified personnel; design, develop and deploy enterprise support systems that will allow Level 3 to build and operate a packet switched network that interconnects with the public switched network; install fiber optic cable and facilities; obtain rights-of-way, building access rights, unbundled loops and required government authorizations, franchises and permits; and to negotiate interconnection and peering agreements.

The operations to be conducted as a result of the Expansion Plan will be subject to extensive federal and state regulation. Federal laws and Federal Communications Commission regulations apply to interstate telecommunications while state regulatory authorities exercise jurisdiction over telecommunications both originating and terminating within a state. Generally, implementation of the Expansion Plan will require obtaining and maintaining certificates of authority from regulatory bodies in most states where services are to be offered.

With respect to the Expansion Plan, Level 3 is devoting substantially more management time and capital resources to its information services business with a view to making the information services business, over time, the principal business of Level 3. In that respect, the management of Level 3 has been conducting a comprehensive review of the existing Level 3 businesses to determine how those businesses will complement Level 3's focus on information services businesses as a result of the Expansion Plan. For example, the management of Level 3 negotiated the sale of its energy interests (see "CalEnergy" below) because it believed that the ongoing ownership by Level 3 of an interest in an energy business was not compatible with its focus on the information services business, and because sale of those assets provided a substantial portion of the money necessary to fund the early stages of the Expansion Plan.

In addition, the Construction Group and Level 3 are currently discussing a restructuring of the current mine management arrangement between the two Business Groups. Level 3 also is reviewing its involvement in a number of start-up and development stage businesses and recently completed the sale of its interest in United Infrastructure Company ("UIC"). Level 3 is also currently discussing with the Construction Group the sale of Kiewit Investment Management Corp. to the Construction Group. Level 3 has no current intention, however, to sell, dispose or otherwise alter its ownership interest in the C-TEC Companies.

### **C-TEC COMPANIES**

On September 30, 1997, C-TEC completed a tax-free restructuring, which divided C-TEC into three public companies: C-TEC, which changed its name to Commonwealth Telephone Enterprises, Inc. ("Commonwealth Telephone"), RCN Corporation ("RCN") and Cable Michigan, Inc. ("Cable Michigan").

**Businesses of the C-TEC Companies.** Commonwealth Telephone owns the following businesses: Commonwealth Telephone Company (the rural local exchange carrier business); Commonwealth Communications (the communications engineering business); the Pennsylvania competitive local exchange carrier business; and long distance operations in certain areas of Pennsylvania. RCN owns the following businesses: its competitive telecommunications services operations in New York City and Boston; its cable television operations in New York, New Jersey and Pennsylvania; its 40% interest in Megacable S.A. de C.V., Mexico's second largest cable operator; and its long distance operations (other than the operations in certain areas of Pennsylvania). Cable Michigan owns and operates cable television systems in the State of Michigan and owns a 62% interest in Mercom, Inc., a publicly held Michigan cable television operator.

**Ownership of the C-TEC Companies.** In connection with the restructuring and as a result of the conversion of certain shares of C-TEC held by Level 3, Level 3 now holds 13,320,485 shares of RCN common stock, 3,330,119 shares of Cable Michigan common stock, and 8,880,322 shares of Commonwealth Telephone common stock. Such ownership represents 48.5% of the outstanding

common stock of Cable Michigan, 48.4% of the outstanding common stock of Commonwealth Telephone and 46.1% of the outstanding common stock of RCN.

Each of the shares of RCN common stock, Cable Michigan common stock and Commonwealth Telephone Common Stock is traded on the National Association of Securities Dealers, Inc.'s National Market (the "Nasdaq National Market").

In its filings with the Securities and Exchange Commission, the board of directors of C-TEC concluded that the distributions were in the best interests of the shareholders because the distributions will, among other things, (i) permit C-TEC to raise financing to fund the development of the RCN business on more advantageous economic terms than the other alternatives available, (ii) facilitate possible future acquisitions and joint venture investments by RCN and Cable Michigan and possible future offerings by RCN, (iii) allow the management of each company to focus attention and financial resources on its respective business and permit each company to offer employees incentives that are more directly linked to the performance of its respective business, (iv) facilitate the ability of each company to grow in both size and profitability, and (v) permit investors and the financial markets to better understand and evaluate C-TEC's various businesses.

**Accounting Method.** Since the ownership by Level 3 of the equity and voting rights of each of RCN, Cable Michigan and Commonwealth Telephone at the end of 1997 was less than 50%, under generally accepted accounting principles, Level 3 uses the equity method to account for its investments in each of these companies. Under the equity method, Level 3 reports its proportionate share of each of Commonwealth Telephone's, RCN's and Cable Michigan's earnings, even though it has received no dividends from those companies. Level 3 keeps track of the carrying value of its investment in each of the C-TEC Companies. "Carrying value" is the purchase price of the investment, plus the investor's proportionate share of the investee's earnings, less the amortized portion of goodwill, less any dividends paid. Level 3 purchased its C-TEC Companies shares at a premium over the book value of the underlying net assets. This premium is being amortized over a period of between 30 to 40 years. At December 27, 1997 the carrying value of Level 3's Commonwealth Telephone shares was \$75 million, RCN shares was \$214 million and Cable Michigan shares was \$46 million.

**Description of the C-TEC Companies.** RCN is developing advanced fiber optic networks to provide a wide range of telecommunications services including local and long distance telephone, video programming and data services (including high speed Internet access), primarily to residential customers in selected markets in the Boston to Washington, D.C. corridor. Cable Michigan is a cable television operator in the State of Michigan which, as of December 31, 1997, served approximately 204,000 subscribers. These figures include the approximately 42,000 subscribers served by Mercom, a 62% owned subsidiary of Cable Michigan. Clustered primarily around the Michigan communities of Grand Rapids, Traverse City, Lapeer and Monroe (Mercom), Cable Michigan's systems serve a total of approximately 400 municipalities in suburban markets and small towns. Commonwealth Telephone Company is a Pennsylvania public utility providing local telephone service to a 19 county, 5,067 square mile service territory in Pennsylvania. The telephone company services approximately 259,000 main access lines. The company also provides network access, long distance, and billing and collection services to interexchange carriers. The telephone company's business customer base is diverse in size as well as industry, with very little concentration. Commonwealth Long Distance operates principally in Pennsylvania, providing switched services and resale of several types of services, using the networks of several long distance providers on a wholesale basis. Commonwealth Communications Inc. provides telecommunications engineering and facilities management services to large corporate clients, hospitals and universities throughout the Northeastern United States and sells, installs and maintains PBX systems in Pennsylvania and New Jersey. In January 1995, C-TEC purchased a 40% equity position in Megacable, Mexico's second largest cable television operator, serving approximately 174,000 subscribers in 12 cities.

For more information on the business of each of RCN, Cable Michigan and Commonwealth Telephone, please see the individual filings of Annual Reports on Form 10-K for each of such companies as filed with the Securities and Exchange Commission.

## COAL MINING

Level 3 is engaged in coal mining through its subsidiary, Kiewit Coal Properties Inc. ("KCP"). KCP has a 50% interest in three mines, which are operated by KCP. Decker Coal Company ("Decker") is a joint venture with Western Minerals, Inc., a subsidiary of The RTZ Corporation PLC. Black Butte Coal Company ("Black Butte") is a joint venture with Bitter Creek Coal Company, a subsidiary of Union Pacific Resources Group Inc. Walnut Creek Mining Company ("Walnut Creek") is a general partnership with Phillips Coal Company, a subsidiary of Phillips Petroleum Company. The Decker mine is located in southeastern Montana, the Black Butte mine is in southwestern Wyoming, and the Walnut Creek mine is in east-central Texas.

**Production and Distribution.** The coal mines use the surface mining method. During surface mining operations, topsoil is removed and stored for later use in land reclamation. After removal of topsoil, overburden in varying thicknesses is stripped from above coal seams. Stripping operations are usually conducted by means of large, earth-moving machines called draglines, or by fleets of trucks, scrapers and power shovels. The exposed coal is fractured by blasting and is loaded into haul trucks or onto overland conveyors for transportation to processing and loading facilities. Coal delivered by rail from Decker originates on the Burlington Northern Railroad. Coal delivered by rail from Black Butte originates on the Union Pacific Railroad. Coal is also hauled by trucks from Black Butte to the nearby Jim Bridger Power Plant. Coal is delivered by trucks from Walnut Creek to the adjacent facilities of the Texas-New Mexico Power Company.

**Customers.** The coal produced from the KCP mines is sold primarily to electric utilities, which burn coal in order to produce steam to generate electricity. Approximately 89% of sales are made under longterm contracts, and the remainder are made on the spot market. Approximately 79%, 80% and 80% of KCP's revenues in 1997, 1996 and 1995, respectively, were derived from longterm contracts with Commonwealth Edison Company (with Decker and Black Butte) and The Detroit Edison Company (with Decker). The primary customer of Walnut Creek is the Texas-New Mexico Power Company.

**Contracts.** Customers enter into longterm contracts for coal primarily to secure a reliable source of supply at a predictable price. KCP's major longterm contracts have remaining terms ranging from 1 to 30 years. A majority of KCP's longterm contracts provide for periodic price adjustments. The price is typically adjusted through the use of various indices for items such as materials, supplies, and labor. Other portions of the price are adjusted for changes in production taxes, royalties, and changes in cost due to new legislation or regulation. In most cases, these cost items are directly passed through to the customer as incurred. In most cases the price is also adjusted based on the heating content of the coal.

Decker has a sales contract with Detroit Edison Company that provides for the delivery of a minimum of 36 million tons of low sulphur coal during the period 1998 through 2005, with annual shipments ranging from 5.2 million tons in 1998 to 1.7 million tons in 2005.

KCP and its mining ventures have entered into various agreements with Commonwealth Edison Company ("Commonwealth"), which stipulate delivery and payment terms for the sale of coal. The agreements as amended provide for delivery of 88 million tons during the period 1998 through 2014, with annual shipments ranging from 1.8 million tons to 13.1 million tons. These deliveries include 15 million tons of coal reserves previously sold to Commonwealth. Since 1993, the amended contract between Commonwealth and Black Butte provides that Commonwealth's delivery commitments will be satisfied, not with coal produced from the Black Butte mine, but with coal purchased from three unaffiliated mines in the Powder River Basin of Wyoming. The contract amendment allows Black Butte to purchase alternate source coal at a price below its production costs, and to pass the cost savings through to Commonwealth while maintaining the profit margins available under the original contract.

The contract between Walnut Creek and Texas-New Mexico Power Company provides for delivery of between 42 and 90 million tons of coal during the period 1989 through 2027. The actual tons

provided will depend on the number of power units constructed and operated by TNP. The maximum amount KCP is expecting to ship in any one year is between 1.6 and 3.2 million tons.

KCP also has other sales commitments, including those with Sierra Pacific, Idaho Power, Solvay Minerals, Pacific Power & Light, Minnesota Power, and Mississippi Power, that provide for the delivery of approximately 13 million tons through 2005.

**Coal Production.** Coal production began at the Decker, Black Butte, and Walnut Creek mines in 1972, 1979, and 1989, respectively. KCP's share of coal mined in 1997 at the Decker, Black Butte, and Walnut Creek mines was 5.9, 1.0, and .9 million tons, respectively.

**Revenue.** KCP's total revenue in 1997 was \$222 million. Revenue attributable to the Decker, Black Butte, and Walnut Creek entities was \$114 million, \$89 million, and \$17 million, respectively.

Under a 1992 mine management agreement, KCP pays a KCG subsidiary an annual fee equal to 30% of KCP's adjusted operating income. The fee in 1997 was \$32 million.

**Backlog.** At the end of 1997, the backlog of coal to be sold under KCP's longterm contracts was approximately \$1.4 billion, based on December 1997 market prices. Of this amount, \$213 million is expected to be sold in 1998.

**Reserves.** At the end of 1997, KCP's share of assigned coal reserves at Decker, Black Butte, and Walnut Creek was 111, 39, and 31 million tons, respectively. Of these amounts, KCP's share of the committed reserves of Decker, Black Butte, and Walnut Creek was 46, 2, and 23 million tons, respectively. Assigned reserves represent coal that can be mined using KCP's current mining practices. Committed reserves (excluding alternate source coal) represent KCP's maximum contractual amounts. These coal reserve estimates represent total proved and probable reserves.

**Leases.** The coal reserves and deposits of the mines are held pursuant to leases with the federal government through the Bureau of Land Management, with two state governments (Montana and Wyoming), and with numerous private parties.

**Competition.** The coal industry is highly competitive. KCP competes not only with other domestic and foreign coal suppliers, some of whom are larger and have greater capital resources than KCP, but also with alternative methods of generating electricity and alternative energy sources. In 1996, KCP's production represented 1.5% of total U.S. coal production. Demand for KCP's coal is affected by economic, political and regulatory factors. For example, recent "clean air" laws may stimulate demand for low sulphur coal. KCP's western coal reserves generally have a low sulphur content (less than one percent) and are currently useful principally as fuel for coalfired steamelectric generating units.

KCP's sales of its western coal, like sales by other western coal producers, typically provide for delivery to customers at the mine. A significant portion of the customer's delivered cost of coal is attributable to transportation costs. Most of the coal sold from KCP's western mines is currently shipped by rail to utilities outside Montana and Wyoming. The Decker and Black Butte mines are each served by a single railroad. Many of their western coal competitors are served by two railroads and such competitors' customers often benefit from lower transportation costs because of competition between railroads for coal hauling business. Other western coal producers, particularly those in the Powder River Basin of Wyoming, have lower stripping ratios (that is, the amount of overburden that must be removed in proportion to the amount of minable coal) than the Black Butte and Decker mines, often resulting in lower comparative costs of production. As a result, KCP's production costs per ton of coal at the Black Butte and Decker mines can be as much as four and five times greater than production costs of certain competitors. KCP's production cost disadvantage has contributed to its agreement to amend its longterm contract with Commonwealth Edison Company to provide for delivery of coal from alternate source mines rather than from Black Butte. Because of these cost disadvantages, KCP does not expect that it will be able to enter into longterm coal purchase contracts for Black Butte and Decker production

as the current longterm contracts expire. In addition, these cost disadvantages may adversely affect KCP's ability to compete for spot sales in the future.

**Environmental Regulation.** The Company is required to comply with various federal, state and local laws and regulations concerning protection of the environment. KCP's share of land reclamation expenses in 1997 was \$3.6 million. KCP's share of accrued estimated reclamation costs was \$100 million at the end of 1997. The Company does not expect to make significant capital expenditures for environmental compliance in 1998. The Company believes its compliance with environmental protection and land restoration laws will not affect its competitive position since its competitors in the mining industry are similarly affected by such laws.

### **CALENERGY COMPANY, INC.**

CalEnergy develops, owns, and operates electric power production facilities, particularly those using geothermal resources, in the United States, the Philippines, and Indonesia. In December 1996, CalEnergy and Level 3 acquired Northern Electric plc, an English electric utility company. CalEnergy is a Delaware corporation formed in 1971 and has its headquarters in Omaha, Nebraska. CalEnergy common stock is traded on the New York, Pacific, and London Stock Exchanges. In 1997, CalEnergy had revenue of \$2.3 billion and a net loss of \$84 million. At the end of 1997, CalEnergy had total assets of \$7.5 billion, debt of \$3.5 billion, and stockholders' equity of \$1.4 billion.

At the end of 1997, Level 3 owned approximately 24% of the common stock of CalEnergy. Under generally accepted accounting principles, an investor owning between 20% and 50% of a company's equity, generally uses the equity method. Under the equity method, Level 3 reports its proportionate share of CalEnergy's earnings, even though it has received no dividends from CalEnergy. Level 3 keeps track of the carrying value of its CalEnergy investment. "Carrying value" is the purchase price of the investment, plus the investor's proportionate share of the investee's earnings, less the amortized portion of goodwill, less any dividends paid. At December 27, 1997 the carrying value of Level 3's CalEnergy shares was \$337 million. On January 2, 1998, Level 3 sold its entire interest in CalEnergy along with its interests in several development projects and Northern Electric plc. to CalEnergy for approximately \$1.16 billion.

### **OTHER BUSINESSES**

**SR91 Tollroad.** Level 3 has invested \$12 million for a 65% equity interest and \$4.3 million loan to California Private Transportation Company, L.P. which developed, financed, and currently operates the 91 Express Lanes, a ten mile, four lane tollroad in Orange County, California. The fully automated highway uses an electronic toll collection system and variable pricing to adjust tolls to demand. Capital costs at completion were \$130 million, \$110 million of which was funded with limited recourse debt. Revenue collected over the 35year franchise period is used for operating expenses, debt repayment, and profit distributions. The tollroad opened in December 1995 and achieved operating break-even in 1996. Approximately 100,000 customers have registered to use the tollroad and weekday volumes typically exceed 29,000 vehicles per day.

**United Infrastructure Company.** UIC was an equal partnership between Kiewit Infrastructure Corp., a wholly owned subsidiary of Level 3, and Bechtel Infrastructure Enterprises, Inc. ("Bechtel"). UIC was formed in 1993 to develop North American infrastructure projects. During 1996, UIC began to focus primarily on water infrastructure projects, principally through U.S. Water, a partnership formed with United Utilities PLC, a U.K. company. As part of the strategic decision to concentrate on its information services business and the Expansion Plan, on December 31, 1997 Level 3 sold its entire interest in UIC to Bechtel for \$10 million.

**Kiewit Mutual Fund.** Kiewit Mutual Fund, a Delaware business trust and a registered investment company, was formed in 1994. Initially formed to manage the Company's internal investments, shares in Kiewit Mutual Fund are now available for purchase by the general public. The Fund's investors currently include individuals and unrelated companies, as well as Company affiliated joint ventures, pension plans,



and subsidiaries. Kiewit Mutual Fund has six series: Money Market Portfolio, Government Money Market Portfolio, Short-Term Government Portfolio, Intermediate-Term Bond Portfolio, Tax-Exempt Portfolio, and the Equity Portfolio. In February 1997, the Fund adopted a master feeder structure. Each of the Portfolios invests in a corresponding series of the Kiewit Investment Trust, which now manages the underlying securities holdings. The structure will allow smaller mutual funds and institutional investors to pool their assets with Kiewit Investment Trust, providing lower expense ratios for all participants. The registered investment adviser of Kiewit Investment Trust is Kiewit Investment Management Corp., a subsidiary of Level 3 (60%) and KCG (40%). At the end of 1997, Kiewit Mutual Fund had net assets of \$1.3 billion. As part of the strategic decision to concentrate on its information services business and the Expansion Plan, it is anticipated that Level 3 will sell its interest in Kiewit Investment Management Corp. to the Construction Group.

**Other.** In February 1997, Level 3 purchased an office building in Aurora, Colorado for \$22 million. By investing in real estate, Level 3 defers taxes on \$40 million of taxable gain otherwise recognizable with respect to the Whitney Benefits litigation settlement in 1995. Level 3 may make additional real estate investments in 1998 with a view toward deferring the balance of that taxable gain. Level 3 has also made investments in several development-stage companies, but does not expect earnings from these companies in 1998.

### GENERAL INFORMATION

**Year 2000. The Company.** The Company has conducted a review of its computer systems to identify those systems that could be affected by the "Year 2000" computer issue, and has developed and is implementing a plan to resolve the issue. The Year 2000 issue results from computer programs written with date fields of two digits, rather than four digits, thus resulting in the inability of the computer programs to distinguish between the year 1900 and 2000.

The Company expects that its Year 2000 compliance project will be completed before the Year 2000 date change. During the execution of this project, the Company has and will continue to incur internal staff costs as well as consulting and other expenses. These costs will be expensed, as incurred, in compliance with GAAP. The expenses associated with this project, as well as the related potential effect on the Company's earnings is not expected to have a material effect on its future operating results or financial condition. There can be no assurance, however, that the Year 2000 problem will not adversely affect the Company and its business.

**PKSIS.** PKS Computer Services, Inc., the computer outsourcing subsidiary of PKSIS, has developed a comprehensive approach to address the potential operational risks associated with the Year 2000, and began to implement remediation plans in 1997. As part of its plans PKS Computer Services is: working with its key suppliers to verify their operational viability through the Year 2000; reviewing building infrastructure components that may be affected by the Year 2000 issue, which components include fire alarms systems, security systems, and automated building controls; identifying hardware inventories that are affected by date logic that is not Year 2000 compliant, which hardware includes mainframe computers, mid-range computers, micro-computers, and network hardware. To the extent that vendors identify items that are not Year 2000 compliant, PKS Computer Services will work with the hardware vendor to develop a plan that will enable continuous operations through the Year 2000.

PKS Computer Services is responsible for providing an operating environment in which its customers applications are run. As a result, PKS Computer Services will confirm the system software inventories that it is responsible for managing. PKS Computer Services will then develop a plan with each of its customers that indicate that they intend to be customers in the year 2000 to provide for Year 2000 compliance.

PKS Computer Services believes that many of the required changes for hardware and operating environments will be included in the costs that are incurred for annual maintenance.

PKS Systems Integration LLC provides a wide variety of information technology services to its customers. In fiscal year 1997 approximately 80% of the revenue generated by PKSIS related to projects involving Year 2000 assessment and renovation services performed by PKS Systems Integration for its customers. These contracts generally require PKS Systems Integration to identify date affected fields in certain application software of its customers and, in many cases, PKS Systems Integration undertakes efforts to remediate those date-affected fields so that the applicable applications are able to process date-related information occurring on or before the Year 2000. Thus, Year 2000 issues affect many of the services PKS Systems Integration provides to its customers. This exposes PKS Systems Integration to potential risks that may include problems with services provided by PKS Systems Integration to its customers and the potential for claims arising under PKS Systems Integration customer contracts. PKS Systems Integration attempts to contractually limit its exposure to liability for Year 2000 compliance issues. However, there can be no assurance as to the effectiveness of such contractual limitations.

The expenses associated with this project by PKSIS, as well as the related potential effect on PKSIS's earnings is not expected to have a material effect on its future operating results or financial condition. There can be no assurance, however, that the Year 2000 problem, and any loss incurred by any customers of PKSIS as a result of the Year 2000 problem will not materially and adversely affect PKSIS and its business.

**Environmental Protection.** Compliance with federal, state, and local provisions regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, has not and is not expected to have a material effect upon the capital expenditures, earnings, or competitive position of the Company and its subsidiaries.

**Employees.** At the end of 1997, the Company and its majority-owned subsidiaries employed approximately 17,700 people - 16,200 in construction and materials operations, 500 by coal mining companies, 800 at PKSIS, and 200 in corporate and Level 3 positions. This does not include the employees of the C-TEC Companies.

## **ITEM 2. PROPERTIES.**

The properties used in the construction segment are described under a separate heading in Item 1 above. Properties relating to the Company's coal mining segment are described as part of the general business description of the coal mining business. Level 3 has announced that it has acquired 46 acres in the Northwest corner of the Interlocken office park and will build a campus facility that is expected to eventually encompass over 500,000 square feet of office space. Interlocken is located within the City of Broomfield, Colorado, and within Boulder County, Colorado. It is anticipated that the first phase of this facility will be constructed by the end of June 1999. In addition, Level 3 has leased approximately 50,000 square feet of temporary office space in Louisville, Colorado to allow for the relocation of the majority of its employees (other than those of PKSIS) while its permanent facilities are under construction. The Company considers its properties to be adequate for its present and foreseeable requirements.

## **ITEM 3. LEGAL PROCEEDINGS.**

**General.** The Company and its subsidiaries are parties to many pending legal proceedings. Management believes that any resulting liabilities for legal proceedings, beyond amounts reserved, will not materially affect the Company's financial condition, future results of operations, or future cash flows.

## **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.**

At a special meeting of stockholders held on December 8, 1997, the following matters were submitted to a vote.

1. Ratification of the decision of the PKS Board to separate the construction business of PKS and the diversified business of PKS into two independent companies through the declaration



of a dividend of eight-tenths of one share of newly created Class R Convertible Common Stock, par value \$.01 per share ("Class R stock"), of PKS with respect to each outstanding share of Class C Construction & Mining Group Restricted Redeemable Convertible Exchangeable Common Stock, par value \$.0625 per share ("Class C stock"), of PKS, and mandatory exchange of each outstanding share of Class C stock for one outstanding share of Common Stock, par value \$.01 per share, of PKS Holdings, Inc. (collectively, the "Transaction").

	<b>Class C stock</b>	<b>Class D stock</b>
<b>Affirmative votes:</b> .....	9,031,714	21,673,495
<b>Negative votes:</b> .....	30,926	185,412
<b>Abstentions:</b> .....	11,020	64,227

2. Approval of amendments to the PKS Certificate (the "Initial Certificate Amendments"), to: (i) create the Class R Stock to be distributed in the Transaction; (ii) increase from 50,000,000 to 500,000,000 the number of shares of Class D Diversified Group Convertible Exchangeable Common Stock, par value \$.0625 per share ("Class D stock"), which PKS is authorized to issue; (iii) designate 10 shares of Class D stock as "Class D Stock, Non-Redeemable Series"; and (iv) eliminate the requirement that the Certificate of Incorporation of PKS Holdings as in effect at the time of the Share Exchange be substantially similar to the PKS Certificate.

	<b>Class C stock</b>	<b>Class D stock</b>
<b>Affirmative votes:</b> .....	9,030,927	21,735,628
<b>Negative votes:</b> .....	28,676	147,676
<b>Abstentions:</b> .....	14,057	39,830

3. Approval of amendments to the PKS Certificate to be effected only if the Transaction is consummated, to: (i) redesignate Class D stock as "Common Stock, par value \$.01 per share", and Class D Stock, Non-Redeemable Series as "Common Stock, Non-Redeemable Series"; (ii) authorize the issuance of series of preferred stock, the terms of which are to be determined by the board of directors; (iii) modify the repurchase rights to which the holders of Class D stock are entitled; (iv) delete the provisions regarding Class C stock; (v) classify the board of directors; (vi) prohibit stockholder action by written consent; (vii) empower the board of directors, exclusively, to call special meetings of the stockholders; (viii) require a supermajority vote of stockholders to amend the by-laws; and (ix) make certain other non-substantive changes consistent with the implementation of the foregoing.

	<b>Class C stock</b>	<b>Class D stock</b>
<b>Affirmative votes:</b> .....	9,011,554	21,472,115
<b>Negative votes:</b> .....	30,696	381,726
<b>Abstentions:</b> .....	31,410	69,293

4. Approval of the amendment and restatement of the Peter Kiewit Sons', Inc. 1995 Class D stock Plan.

	<b>Class C stock</b>	<b>Class D stock</b>
<b>Affirmative votes:</b> .....	8,958,084	21,268,757
<b>Negative votes:</b> .....	70,566	536,914
<b>Abstentions:</b> .....	45,010	117,463

### DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The table below shows information as of March 15, 1998 about each director and executive officer of the Company, including his business experience during the past five years. The Company's directors and officers are elected annually and each was elected on June 7, 1997 to serve until his successor is elected and qualified or until his death, resignation or removal.

<b>Name</b>	<b>Business Experience</b>	<b>Age</b>	<b>PKS Director Since</b>
Walter Scott, Jr.*	Chairman of the Board and President, PKS (for more than the past five years); also a director of Berkshire Hathaway, Inc., Burlington Resources, Inc., CalEnergy, ConAgra, Inc., Commonwealth Telephone Enterprises, Inc., RCN Corporation, U.S. Bancorp and Valmont Industries, Inc.	66	09/27/79 - Chairman 04/22/64 - Director
Peter Kiewit, Jr.	Attorney, of counsel to the law firm of Gallagher & Kennedy of Phoenix, Arizona (for more than the past five years)	71	01/13/66
William L. Grewcock*	Vice Chairman, PKS (for more than the past five years)	72	01/11/68
Robert B. Daugherty	Director (and formerly Chairman of the Board and Chief Executive Officer) Valmont Industries, Inc. (for more than the past five years)	75	01/08/86
Charles M. Harper	Former Chairman of the Board and Chief Executive Officer of RJR Nabisco Holdings Corp. Currently a director (and formerly Chairman of the Board and Chief Executive Officer) of ConAgra, Inc. and also a director of E.I. DuPont de Nemours and Company, Norwest Corp. and Valmont Industries, Inc.	69	01/08/86
Kenneth E. Stinson*	Executive Vice President, PKS (for more than the past five years); Chairman (since 1993) and CEO (since 1992), KCG; also a director of ConAgra, Inc. and Valmont Industries, Inc.	55	01/07/87
Richard Geary*	Executive Vice President, KCG; President of Kiewit Pacific Co., a KCG construction subsidiary (for more than the past five years)	62	04/29/88
George B. Toll, Jr.*	Executive Vice President, KCG (since 1994); Vice President, Kiewit Pacific Co., a KCG construction subsidiary (1992-1994)	61	06/05/93

<b>Name</b>	<b>Business Experience</b>	<b>Age</b>	<b>PKS Director Since</b>
James Q. Crowe*	President and Chief Executive Officer, Level 3 (since August 1, 1997); Chairman of the Board, WorldCom, Inc., an international telecommunications company (January 1997-July 1997); Chairman of the Board, MFS Communications Company, Inc., an international telecommunications company (1992-1996) (MFS was a Diversified Group subsidiary until 1995); also a director of Commonwealth Telephone Enterprises, Inc., RCN Corporation, and InaCom Communications, Inc.	48	06/05/93
Richard R. Jaros	Executive Vice President (1993-1997) and Chief Financial Officer (1995-1997), PKS; President of Level 3 (1996-1997); President and COO of CalEnergy (1992-1993); also a director of CalEnergy, Commonwealth Telephone Enterprises, Inc., RCN Corporation and WorldCom, Inc.	46	06/05/93
Richard W. Colf*	Vice President, Kiewit Pacific Co., a KCG construction subsidiary (for more than the past five years)	54	06/03/95
Bruce E. Grewcock*	Executive Vice President, KCG (since 1996); Chairman (since 1996), President (1992-1996) and Sr. Vice President (1992) of Kiewit Mining Group Inc.; also a director of Kinross Gold Corporation	44	06/04/94
Tait P. Johnson*	President, Gilbert Industrial Corporation, a KCG construction subsidiary (for more than the past five years); President (1992-1996), Gilbert Southern Corp., a KCG construction subsidiary	48	06/03/95
Allan K. Kirkwood*	Senior Vice President, Kiewit Pacific Co., a KCG construction subsidiary (for more than the past five years)	54	06/07/97

Identified by asterisks are the ten persons currently serving as executive officers of PKS. Executive officers are those directors who are employed by PKS or its subsidiaries. Bruce E. Grewcock is the son of William L. Grewcock.

The PKS Board has an Audit Committee, a Compensation Committee and an Executive Committee.

The Audit Committee members are Messrs. Johnson, Kirkwood and Kiewit. The functions of the Audit Committee are to recommend the selection of the independent auditors; review the results of the annual audit; inquire into important internal control, accounting and financial matters; and report and make recommendations to the full PKS Board. The Audit Committee had four meetings in 1997.

The Compensation Committee members are Messrs. Daugherty, Harper, and Kiewit, none of whom are employees of PKS. This committee reviews the compensation of the executive officers of PKS. This committee has also assumed the functions of the former Management Compensation Committee, the purpose of which was to review the compensation, securities ownership, and benefits of the employees of PKS other than its executive officers. The Compensation Committee had one formal meeting in 1997.

The Executive Committee members are Messrs. Scott (Chairman), William Grewcock, Stinson, and Crowe. This committee exercises the powers of the PKS Board between meetings of the PKS Board, except powers assigned to other committees. During 1997, the Executive Committee had no formal meetings, acted by written consent action in lieu of a meeting on two occasions, and had several informal meetings.

PKS does not have a nominating committee. The PKS Certificate provides that the incumbent directors elected by holders of Class C Stock may nominate a slate of Class C directors to be elected by holders of Class C Stock and the incumbent directors elected by holders of Class D Stock may nominate a slate of directors to be elected by holders of Class D Stock, for election at the annual meeting of stockholders.

The PKS Board had six formal meetings in 1997 and acted by written consent action on six occasions. In 1997, no director attended less than 75% of the meetings of the PKS Board and the committees of which he was a member.

Directors who are employees of PKS or its subsidiaries do not receive directors' fees. Non-employee directors are paid annual directors' fees of \$30,000, plus \$1,200 for attending each meeting of the PKS Board, and \$1,200 for attending each meeting of a committee of the PKS Board.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

**Market Information.** As of December 27, 1997, the Company's common stock is not listed on any national securities exchange or the Nasdaq National Market. However, the Class D stock is currently quoted on the National Association of Securities Dealers, Inc.'s OTC Bulletin Board. During the fourth quarter of 1997, the only quarter during which this trading occurred, the range of the high and low bid information for the Class D stock was \$20.41 to \$29.00. The Company has announced that the common stock of Level 3 Communications, Inc. (renamed from Peter Kiewit Sons', Inc. in connection with the Transaction) will begin trading on the Nasdaq National Market on April 1, 1998.

**Company Repurchase Duty.** Pursuant to the current terms of the PKS Certificate, the Company is generally required to repurchase shares at a formula price upon demand. Under the PKS Certificate effective January 1992, the Company has three classes of common stock: Class B Construction & Mining Group Nonvoting Restricted Redeemable Convertible Exchangeable Common Stock ("Class B"), Class C stock, and Class D stock. There are no outstanding Class B stock; the last Class B stock were converted into Class D stock on January 1, 1997. Class C stock can be issued only to Company employees and can be resold only to the Company at a formula price based on the yearend book value of the Construction Group. The Company is generally required to repurchase Class C stock for cash upon stockholder demand. Class D stock has a formula price based on the yearend book value of the Diversified Group. The Company must generally repurchase Class D stock for cash upon stockholder demand at the formula price, unless the Class D stock become publicly traded.

**Formula values.** The formula price of the Class D stock is based on the book value of Level 3 and its subsidiaries, plus one-half of the book value, on a standalone basis, of the parent company, PKS. The formula price of the Class C stock is based on the book value of the Construction Group and its subsidiaries, plus one-half of the book value of the unconsolidated parent company. A significant element

of the Class C formula price is the subtraction of the book value of property, plant, and equipment used in construction activities (\$122 million in 1997).

**Conversion.** Under the PKS Certificate, Class C stock is convertible into Class D stock at the end of each year. Between October 15 and December 15 of each year a Class C stockholder may elect to convert some or all of his or her shares. Conversion occurs on the following January 1. The conversion ratio is the relative formula prices of Class C and Class D stock determined as of the last Saturday in December, that is, the last day in the Company's fiscal year. Class D stock may be converted into Class C stock only as part of an annual offering of Class C stock to employees. Instead of purchasing the offered shares for cash, an employee owning Class D stock may convert such shares into Class C stock at the applicable conversion ratio.

**Restrictions.** Ownership of Class C stock is generally restricted to active Company employees. Upon retirement, termination of employment, or death, Class C stock must be resold to the Company at the applicable formula price, but may be converted into Class D stock if the terminating event occurs during the annual conversion period. Class D stock is not subject to ownership or transfer restrictions.

**Dividends and Prices.** During 1996 and 1997 the Company declared or paid the following dividends on its common stock. The table also shows the stock price after each dividend payment or other valuation event.

Dividend Declared	Dividend Paid	Dividend Per Share	Class	Price Adjusted	Stock Price
Oct. 27, 1995	Jan. 5, 1996	\$0.60	C	Dec. 30, 1995	\$32.40
Apr. 26, 1996	May 1, 1996	0.60	C	May 1, 1996	31.80
Oct. 25, 1996	Jan. 4, 1997	0.70	C	Dec. 28, 1996	40.70
Apr. 23, 1997	May 1, 1997	0.70	C	May 1, 1997	40.00
Oct. 22, 1997	Jan. 5, 1998	0.80	C	Dec. 27, 1997	51.20
Oct. 27, 1995	Jan. 5, 1996	0.50	D	Dec. 30, 1995	9.90*
Oct. 25, 1996	Jan. 4, 1997	0.50	D	Dec. 28, 1996	10.85*
			D	Dec. 27, 1997	11.65*

\* All stock prices for the Class D stock reflect a dividend of four shares of Class D stock for each outstanding share of Class D stock that was effective on December 26, 1997.

The Company's current dividend policy is to pay a regular dividend on Class C stock of about 15% to 20% of the prior year's ordinary earnings of the Construction Group, with any special dividends to be based on extraordinary earnings. Although the PKS Board announced in August 1993 that the Company did not intend to pay regular dividends on Class D stock for the foreseeable future, the PKS Board declared a special dividend of \$0.50 per share of Class D stock in both October 1995 and 1996.

A dividend of 4 shares of Class D Stock for each share of Class D Stock was effected on December 26, 1997.

**Stockholders.** On March 15, 1998, and after giving effect to a dividend of 4 shares of Class D Stock for each outstanding share of Class D stock effected on December 26, 1997, the Company had the following numbers of stockholders and outstanding shares for each class of its common stock:

Class of Stock	Stockholders	Shares Outstanding
B	—	—
C	996	7,681,020
D	2,121	146,943,752

**Recent Sales of Unregistered Securities.** On April 1, 1997, the Company sold 10,000 shares of Class D stock to Charles Harper and Robert Daugherty and 8,000 shares of Class D stock to Peter Kiewit Jr. at a sale price of \$49.50 per share. Each of Messrs Harper, Daugherty and Kiewit are members of the PKS Board of Directors. The sale was effected pursuant to an exemption from registration under the Securities Act of 1933 contained in Section 4(2) of such Act.

**ITEM 6. SELECTED FINANCIAL DATA.**

**PETER KIEWIT SONS', INC.**  
**SELECTED CONSOLIDATED FINANCIAL DATA**

The Selected Financial Data of Peter Kiewit Sons', Inc., the Kiewit Construction & Mining Group ("C Stock") and the Diversified Group ("D Stock") appear below and on the next two pages. The consolidated data of PKS are presented below with the exception of per common share data which is presented in the Selected Financial Data of the respective Groups.

(dollars in millions, except per share amounts)	Fiscal Year Ended				
	1997	1996	1995	1994	1993
<b>Results of Operations:</b>					
Revenue (1)	\$ 332	\$ 652	\$ 580	\$ 537	\$ 267
Earnings from continuing operations	83	104	126	28	174
Net earnings (2)	248	221	244	110	261
<b>Financial Position:</b>					
Total assets (1)	2,779	3,066	2,945	4,048	3,236
Current portion of long-term debt (1)	3	57	40	30	11
Long term debt, less current portion (1)	137	320	361	899	452
Stockholders' equity (3)	2,230	1,819	1,607	1,736	1,671

- (1) In October 1993, the Company acquired 35% of the outstanding shares of C-TEC Corporation that had 57% of the available voting rights. On December 28, 1996 the Company owned 48% of the outstanding shares and 62% of the voting rights.

As a result of the C-TEC restructuring, the Company owns less than 50% of the outstanding shares and voting rights of the three entities, and therefore accounted for each entity using the equity method in 1997. The Company consolidated C-TEC from 1993 through 1996.

The financial position and results of operations of Kiewit Construction & Mining Group have been classified as discontinued operations due to the pending spin-off from Peter Kiewit Sons', Inc.

In September 1995, the Company dividded its investment in MFS to Class D shareholders. MFS' results of operations have been classified as a single line item on the statements of earnings. MFS is consolidated in the 1993 and 1994 balance sheets.

In January 1994, MFS, issued \$500 million of 9.375% Senior Discount Notes.

In September 1997, Level 3 agreed to sell its energy segment to CalEnergy Company, Inc. The transaction closed on January 2, 1998.

- (2) In 1993, through two public offerings, the Company sold 29% of its subsidiary, MFS, resulting in a \$137 million aftertax gain. In 1995 and 1994, additional MFS stock transactions resulted in \$2 million and \$35 million after tax gains to the Company and reduced its ownership in MFS to 66% and 67%.
- (3) The aggregate redemption value of common stock at December 27, 1997 was \$2.1 billion.



**KIEWIT CONSTRUCTION & MINING GROUP  
SELECTED FINANCIAL DATA**

The following selected financial data for each of the years in the period 1993 to 1997 have been derived from audited financial statements. The historical financial information for the Kiewit Construction & Mining and Diversified Groups supplements the consolidated financial information of PKS and, taken together, includes all accounts which comprise the corresponding consolidated financial information of PKS.

(dollars in millions, except per share amounts)	Fiscal Year Ended				
	1997	1996	1995	1994	1993
<b>Results of Operations:</b>					
Revenue	\$ 2,764	\$ 2,303	\$ 2,330	\$ 2,175	\$ 1,783
Net earnings	155	108	104	77	80
<b>Per Common Share:</b>					
Net earnings					
Basic	15.99	10.13	7.78	4.92	4.63
Diluted	15.35	9.76	7.62	4.86	4.59
Dividends (1)	1.50	1.30	1.05	0.90	0.70
Stock price (2)	51.20	40.70	32.40	25.55	22.35
Book value	64.38	51.02	42.90	31.39	27.43
<b>Financial Position:</b>					
Total assets	1,341	1,038	976	967	889
Current portion of longterm debt	5	-	2	3	4
Longterm debt, less current portion	22	12	9	9	10
Stockholders' equity (3)	652	562	467	505	480

- (1) The 1997, 1996, 1995, 1994 and 1993 dividends include \$.80, \$.70, \$.60, \$.45 and \$.40 for dividends declared in 1997, 1996, 1995, 1994 and 1993, respectively, but paid in January of the subsequent year.
- (2) Pursuant to the Certificate of Incorporation, the stock price calculation is computed annually at the end of the fiscal year.
- (3) Ownership of the Class C Stock is restricted to certain employees conditioned upon the execution of repurchase agreements which restrict the employees from transferring the stock. PKS is generally committed to purchase all Class C Stock at the amount computed, when put to PKS by a stockholder, pursuant to the Certificate of Incorporation. The aggregate redemption value of the Class C Stock at December 27, 1997 was \$527 million.

**DIVERSIFIED GROUP  
SELECTED FINANCIAL DATA**

The following selected financial data for each of the years in the period 1993 to 1997 have been derived from audited financial statements. The historical financial information for the Diversified Group and Kiewit Construction & Mining Group supplements the consolidated financial information of PKS and, taken together, includes all accounts which comprise the corresponding consolidated financial information of PKS.

(dollars in millions, except per share amounts)	Fiscal Year Ended				
	1997	1996	1995	1994	1993
<b>Results of Operations:</b>					
Revenue (1)	\$ 332	\$ 652	\$ 580	\$ 537	\$ 267
Earnings from continuing operations	83	104	126	28	174
Net earnings (2)	93	113	140	33	181
<b>Per Common Share:</b>					
<b>Earnings from continuing operations</b>					
Basic	.66	.90	1.17	.27	1.74
Diluted	.66	.90	1.17	.27	1.74
<b>Net earnings</b>					
Basic	.74	.97	1.29	.32	1.82
Diluted	.74	.97	1.29	.32	1.81
Dividends (3)	-	.10	.10	-	.10
Stock price (4)	11.65	10.85	9.90	12.05	11.88
Book value	11.65	10.85	9.90	12.07	11.90
<b>Financial Position:</b>					
Total assets (1)	2,127	2,504	2,478	3,543	2,756
Current portion of longterm debt (1)	3	57	40	30	11
Longterm debt, less current portion (1)	137	320	361	899	452
Stockholders' equity (5)	1,578	1,257	1,140	1,231	1,191

- (1) In October 1993, the Group acquired 35% of the outstanding shares of CTEC Corporation that had 57% of the available voting rights. At December 28, 1996, the Group owned 48% of the outstanding shares and 62% of the voting rights.

As a result of the C-TEC restructuring, the Group owns less than 50% of the outstanding shares and voting rights of each of the three entities, and therefore accounted for each entity using the equity method in 1997. The Company consolidated C-TEC from 1993 to 1996.

In September 1995, the Group dividdened its investment in MFS to Class D shareholders. MFS' results of operations have been classified as a single line item on the statements of earnings. MFS is consolidated in the 1993 and 1994 balance sheets.

In January 1994, MFS issued \$500 million of 9.375% Senior Discount Notes.

In September 1997, the Group agreed to sell its energy segment to CalEnergy Company, Inc. The transaction closed on January 2, 1998.

- (2) In 1993, through two public offerings, the Group sold 29% of MFS, resulting in a \$137 million after-tax gain. In 1995 and 1994, additional MFS stock transactions resulted in \$2 million and \$35 million after-tax gains to the Group and reduced its ownership in MFS to 66% and 67%.

- (3) The 1996, 1995 and 1993 dividends include \$.10 for dividends declared in 1996, 1995 and 1993 but paid in January of the subsequent year.
- (4) Pursuant to the Certificate of Incorporation, the stock price calculation is computed annually at the end of the fiscal year.
- (5) Unless Class D Stock becomes publicly traded, PKS is generally committed to purchase all Class D Stock at the amount computed, in accordance with the Certificate of Incorporation, when put to PKS by a stockholder. The aggregate redemption value of the Class D Stock at December 27, 1997 was \$1.578 million.

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

This item contains information about Peter Kiewit Sons', Inc. (the "Company") as a whole. Separate reports containing management's discussion and analysis of financial condition and results of operations for the Kiewit Construction & Mining Group and the Diversified Group have been filed as Exhibits 99.A and 99.B to this Form 10-K. A copy of Exhibit 99.A will be furnished without charge upon the written request of a stockholder addressed to: Stock Registrar, Peter Kiewit Sons', Inc., 1000 Kiewit Plaza, Omaha, Nebraska 68131. Exhibit 99.B can be obtained by contacting: Investor Relations, Level 3 Communications, Inc., 3555 Farnam Street, Omaha, Nebraska 68131.

The following discussion of Results of Operations should be read in conjunction with the segment information contained in Note 13 of the Consolidated Financial Statements.

This document contains forward looking statements and information that are based on the beliefs of management as well as assumptions made by and information currently available to the Company. When used in this document, the words "anticipate", "believe", "estimate" and "expect" and similar expressions, as they relate to the Company or its management, are intended to identify forward-looking statements. Such statements reflect the current views of the Company with respect to future events and are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those described in this document.

### **Results of Operations 1997 vs. 1996**

**Coal Mining.** Revenue from the Group's coal mines declined 5% in 1997 compared to 1996. Alternate source coal revenue declined by \$16 million in 1997. The mine's primary customer, Commonwealth Edison, accelerated its contractual commitments in 1996 for alternate source, thus reducing its obligations in 1997. In addition to the decline in tonnage shipped, the price of coal sold to Commonwealth declined 1%. Revenue attributable to other contracts increased by approximately \$4 million. The actual amount of coal shipped to these customers increased 5% in 1997, but the price at which it was sold was 4% lower than 1996.

Margin, as a percentage of revenue, declined 11% from 1996 to 1997. Margins in 1996 were higher than normal due to the additional high margin alternate source coal sold to Commonwealth in 1996 and the refund of premiums from a captive insurance company that insured against black lung disease. The decline in Commonwealth shipments and an overall decline in average selling price, adversely affected the results for 1997. If current market conditions continue, the Group expects a decline in coal revenue and earnings after 1998 as certain long-term contracts begin to expire.

**Information Services.** Revenue increased by 124% to \$94 million in 1997 from \$42 million in 1996. Revenue from computer outsourcing services increased 20% to \$49 million in 1997 from \$41 million in 1996. The increase was due to new computer outsourcing contracts signed in 1997. Revenue for systems integration grew to \$45 million in 1997 from less than \$1 million in 1996. Strong demand for Year 2000 renovation services fueled the growth for systems integration's revenues.

Margin, as a percent of revenue, decreased to 28% in 1997 from 41% in 1996 for the computer outsourcing business. The reduction of the gross margin was due to up-front migration costs associated with new contracts and significant increases in personnel costs due to the tightening supply of computer professionals. Gross margin for the systems integration business was approximately 40% in 1997. A comparison to 1996 gross margin is not meaningful due to the start-up nature of the business.

**General and Administrative Expenses.** Excluding C-TEC, general and administrative expenses increased 20% to \$114 million in 1997. The increase was primarily attributable to a \$41 million increase in the information services business' general and administrative expenses. The majority of the increase is attributable to additional compensation expense that was incurred due to the conversion of a subsidiary's option and SAR plans to the Class D Stock option plan. The remainder of the increase relates to the increased expenses for new sales offices established in 1997 for the systems integration business and the additional personnel hired in 1997 to implement the expansion plan.

Exclusive of the information services business, general and administrative expenses decreased 26% to \$62 million in 1997. A decrease in professional services and the mine management fees were partially offset by increased compensation expense. Due to the favorable resolution of certain environmental and legal matters, costs that were previously accrued for these issues were reversed in 1997. Partially offsetting this reduction were legal, tax and consulting expenses associated with the CalEnergy transaction and the separation of the Construction and Mining Group and Diversified Group.

**Equity Losses.** The losses for the Group's equity investments increased from \$9 million in 1996 to \$43 million in 1997. Had the C-TEC entities been accounted for using the equity method in 1996, the losses would have increased to \$13 million. The expenses associated with the deployment and marketing of the advanced fiber networks in New York, Boston and Washington D.C., and the costs incurred in connection with the buyout of a marketing contract with minority shareholders are primarily responsible for the increase in equity losses attributable to RCN from \$6 million in 1996 to \$26 million in 1997. The Group's share of Cable Michigan's losses decreased to \$6 million in 1997 from \$8 million in 1996. This improvement is attributable to the gains recognized on the sale of Cable Michigan's Florida cable systems. Commonwealth Telephone's earnings were consistent with that of 1996. The Group recorded equity earnings of \$9 million in each year attributable to Commonwealth Telephone. The Group also recorded equity losses attributable to several developing businesses.

**Investment Income.** Investment income increased 7% in 1997 after excluding C-TEC's \$14 million of investment income in 1996. Gains recognized on the sale of marketable securities, primarily within the Kiewit Mutual Fund ("KMF"), increased from \$3 million in 1996 to \$9 million in 1997. In 1997, KMF repositioned the securities within its portfolios to more closely track the overall market. Partially offsetting these additional gains was a decline in interest income due to an overall reduction of yield earned by the KMF portfolios.

**Interest Expense.** Interest expense increased significantly in 1997 after excluding \$28 million of interest attributable to C-TEC in 1996. CPTC, the owner-operator of a privatized tollroad in California, incurred interest costs of approximately \$9 million and \$11 million in 1996 and 1997. In 1996, interest of \$5 million was capitalized due to the construction of the tollroad. Construction was completed in August 1996, and all interest incurred subsequent to that date was charged against earnings. Interest associated with the financing of the Aurora, Colorado property of \$1 million, also contributed to the increase in interest expense.

**Other Income.** Other income in 1996 includes \$2 million of other expenses attributable to C-TEC. Excluding these losses, other income declined from \$8 million in 1996 to \$1 million in 1997. The absence of gains on the sale of timberland properties and other assets, which accounted for \$6 million of income in 1996, is responsible for the decline.

**Income Tax (Provision) Benefit.** The effective income tax rate for 1997 is less than the expected statutory rate of 35% due primarily to prior year tax adjustments, partially offset by the effect of nondeductible compensation expense associated with the conversion of the information services option and SAR plans to the Class D Stock plan. In 1996, the effective rate was also lower than the statutory rate due to prior year tax adjustments. These adjustments were partially offset by nondeductible costs associated with goodwill amortization and taxes on foreign operations. In 1997 and 1996, the Group settled a number of disputed tax issues related to prior years that have been included in prior year tax adjustments.

**Discontinued Operations - Construction.** The Construction and Mining Group's operations can be separated into two components: construction and materials. Construction revenues increased \$414 million during 1997 compared to 1996. The consolidation of ME Holding Inc. (due to the increase in ownership from 49% to 80%) ("ME Holding") contributed \$261 million, almost two-thirds of the increase. In addition to ME Holding several large projects and joint ventures became fully mobilized during the latter part of the year and were well into the "peak" construction phase.

Material revenues increased 19% to \$290 million in 1997 from \$243 million in 1996. The acquisition of additional plant sites accounts for 22% of the increase in sales. The remaining increase was a result of the strong market for material products in Arizona. This raised sales volume from existing plant sites and allowed for slightly higher selling prices. The inclusion of \$10 million of revenues from the Oak Mountain facility in Alabama also contributed to the increase.

Construction margins increased to 13% of revenue in 1997 as compared to 10% in 1996. The favorable resolution of project uncertainties, several change order settlements, and cost savings or early completion bonuses received during the year contributed to this increase.

Material margins decreased from 10% of revenue in 1996 to 4% in 1997. Losses at the Oak Mountain facility in Alabama were the source of the decrease. The materials margins from sources other than Oak Mountain remained stable as higher unit sales and selling prices were offset by increases in raw materials costs.

General and administrative expenses of the Construction Group increased 11% in 1997 after deducting \$17 million of expenses attributable to ME Holding. Compensation and profit sharing expenses increased \$9 million and \$2 million, respectively, from 1996. The increase in these costs is a direct result of higher construction earnings.

The effective income tax rates in 1997 and 1996 for the Construction Group differ from the expected statutory rate of 35% primarily due to state income taxes and prior year tax adjustments.

**Discontinued Operations - Energy.** Income from discontinued operations increased to \$29 million in 1997 from \$9 million in 1996. The acquisition of Northern Electric in late 1996 and the commencement of operations at the Mahanagdong geothermal facility in July, 1997 were the primary factors that resulted in the increase.

In October 1997, CalEnergy sold approximately 19.1 million shares of its common stock. This sale reduced the Group's ownership in CalEnergy to approximately 24% but increased its proportionate share of CalEnergy's equity. It is the Group's policy to recognize gains or losses on the sale of stock by its investees. The Group recognized an after-tax gain of approximately \$44 million from transactions in CalEnergy stock in the fourth quarter of 1997.

On July 2, 1997, the Labour Party in the United Kingdom announced the details of its proposed "Windfall Tax" to be levied against privatized British utilities. This one-time tax is 23% of the difference between the value of Northern Electric, plc. at the time of privatization and the utility's current value based on profits over a period of up to four years. CE Electric recorded an extraordinary charge of approximately \$194 million when the tax was enacted in July, 1997. The total after-tax impact to Level 3, directly through its investment in CE Electric and indirectly through its interest in CalEnergy, was \$63 million.

### Results of Operations 1996 vs. 1995

**Coal Mining.** Revenue and net earnings improved primarily due to increased alternate source tons sold to Commonwealth Edison Company in 1996 and the liquidation of a captive insurance company which insured against black lung disease. Upon liquidation, the Group received a refund of premiums paid plus interest in excess of reserves established by the Group for this liability. Since 1993, the amended contract with Commonwealth provided that delivery commitments would be satisfied with coal produced by unaffiliated mines in the Powder River Basin in Wyoming. Coal produced at the Group's mines did not change significantly from 1995 levels.

**Information Services.** Revenue increased 17% to \$42 million in 1996 from \$36 million in 1995. The increase was primarily due to new computer outsourcing contracts signed in 1996. Less than \$1 million of revenue was generated by the operations of the new systems integration business, started in February, 1996.

Margin, as a percent of revenue, for the outsourcing business decreased to 41% in 1996 from 45% in 1995. The reduction of the margin was primarily due to up-front migration costs for new customers which were recognized as an expense when incurred.

**Telecommunications.** Revenue for the telecommunications segment increased 13% to \$367 million for fiscal 1996. C-TEC's telephone group's \$10 million, or 8%, increase in sales and C-TEC's cable group's \$33 million or 26% increase in revenue were the primary contributors to the improved results. The increase in telephone group revenue is due to higher intrastate access revenue from the growth in access minutes, an increase of 13,000 access lines, and higher internet access and video conferencing sales. Cable group revenue increased primarily due to higher average subscribers and the effects of rate increases in April 1995 and February 1996. Subscriber counts increased primarily due to the acquisition of Pennsylvania Cable Systems, formerly Twin County Trans Video, Inc., in September 1995, and the consolidation of Mercom, Inc. since August 1995. Pennsylvania Cable Systems and Mercom account for \$23 million of the increase in cable revenue in 1996.

The 1996 operating expenses for the telecommunications business increased \$38 million or 18% compared to 1995. The telephone group experienced a 9% increase in expenses and the cable group's costs increased 31%. The increase for the telephone group was primarily attributable to higher payroll expenses resulting from additional personnel, wage increases and higher overtime. Also contributing to the increase, were fees associated with the internet access services and consulting services for a variety of regulatory and operational matters. The cable group's increase was due to increased depreciation, amortization and compensation expenses associated with the acquisition of Pennsylvania Cable Systems and the consolidation of Mercom's operations. Also contributing to the higher costs were rate increases for existing programming and the costs for additional programming.

**General and Administrative Expenses.** General and administrative expenses declined 5% to \$181 million in 1996. Decreases in expenses associated with legal and environmental matters were partially offset by higher mine management fees paid to the Construction & Mining Group, the costs attributable to C-TEC and the opening of the SR91 toll road. C-TEC's corporate overhead and other costs increased approximately 13% in 1996. This increase is attributable to costs associated with the development of the RCN business in New York and Boston, the acquisition of Pennsylvania Cable Systems, the consolidation of Mercom and the investigation of the feasibility of various restructuring alternatives.

**Equity Earnings, net.** Losses attributable to the Group's equity investments increased to \$9 million in 1996 from \$5 million in 1995. The additional losses were attributable to an enterprise engaged in the renewable fuels business and to C-TEC's investment in MegaCable S.A. de C.F., Mexico's second largest cable television operator.

**Investment Income, net.** Investment income increased 24% in 1996 compared to 1995. Increased gains on the sale of marketable and equity securities and interest income were partially offset by a slight decline in dividend income.

**Interest Expense, net.** Interest expense in 1996 increased 43% compared to 1995. The increase was primarily due to interest on the CPTC debt that was capitalized through July 1996, and C-TEC's redeemable preferred stock, issued in the Pennsylvania Cable Systems acquisition, that began accruing interest in 1996.

**Gain on Subsidiary's Stock Transactions, net.** The issuance of MFS stock for acquisitions by MFS and the exercise of MFS employee stock options resulted in a \$3 million net gain to the Group in 1995.

**Other, net.** The decline of other income in 1996 was primarily attributable to the 1995 settlement of the Whitney Benefits litigation.

**Income Tax Benefit (Provision).** The effective income tax rate for 1996 differs from the statutory rate of 35% primarily because of adjustments to prior year tax provisions, partially offset by state taxes and nondeductible amounts associated with goodwill amortization. In 1995, the rate was lower than 35% due primarily to \$93 million of income tax benefits from the reversal of certain deferred tax liabilities originally recognized on gains from MFS stock transactions that were no longer required due to the tax-free spin-off of MFS, and adjustments to prior year tax provisions.

**Discontinued Operations - Construction.** Revenue from construction decreased 1% to \$2.303 million in 1996. This resulted from the completion of several major projects during the year, while many new contracts were still in the start-up phase. KCG's share of joint venture revenue remained at 30% of total revenues in 1996. Revenue from materials increased by less than 1% in 1996. Increased demand for aggregates in the Arizona market was offset by a decline in precious metal sales. KCG sold its gold and silver operations in Nevada to Kinross Gold Corporation ("Kinross") and essentially liquidated its metals inventory in 1995.

Opportunities in the construction and materials industry continued to expand along with the economy. Because of the increased opportunities, KCG was able to be selective in the construction projects it pursued. Gross margins for construction increased from 8% in 1995 to 10% in 1996. This resulted from the completion of several large projects and increased efficiencies in all aspects of the construction process. Gross margins for materials declined from 13% in 1995 to 10% in 1996. The lack of higher margin precious metals sales in 1996 combined with slightly lower construction materials margins produced the reduction in operating margin.

In 1995, the exchange of KCG's gold and silver operations in Nevada for 4,000,000 shares of common stock of Kinross led to a \$21 million gain for KCG. The gain was the difference between KCG's book value in the gold and silver operations and the market value of the Kinross shares at the time of the exchange. Other income was also primarily comprised of mining management fees from the Diversified Group, of \$37 million and \$30 million in 1996 and 1995, and gains on the disposition of property, plant and equipment and other assets of \$17 million and \$12 million in 1996 and 1995.

The effective income tax rate for 1996 differs from the statutory rate of 35% primarily because of adjustments to prior year tax provisions and state taxes. In 1995, the rate was higher than 35% due primarily to state income taxes.

**Discontinued Operations - Energy.** Income from discontinued operations declined in 1996 by 36% to \$9 million. Losses attributable to the Group's interest in the Cascanan project, additional development expenses for international activities, and the costs associated with the Northern Electric transaction were partially offset by increased equity earnings from CalEnergy.



### Financial Condition - December 27, 1997

The Group's working capital, excluding C-TEC and discontinued operations, increased \$392 million or 106% during 1997. This is due to the \$182 million of cash generated by operations, primarily coal operations, and the significant financing activities described below.

Investing activities include \$452 million to purchase marketable securities, \$42 million of investments and \$26 million of capital expenditures, including \$14 million for the existing information services business and \$6 million for a corporate jet. The investments primarily include the Group's \$22 million investment in the Pavilion Towers office complex, located in Aurora, Colorado, and \$15 million of investments in developing businesses. Funding a portion of these activities was the sale of marketable securities of \$167 million.

Sources of financing include \$138 million for the issuance of Class D Stock, \$72 million for the exchange of Class C stock for Class D stock and \$16 million for the financing for Pavilion Towers. Uses consist primarily of \$12 million for the payment of dividends, and \$2 million of payments on long-term debt.

Prior to the execution of an agreement with CalEnergy in September, 1997, the Group invested \$31 million in the Dieng, Patuha and Bali power projects in Indonesia.

In October 1996, the PKS Board of Directors directed PKS management to pursue a listing of Class D Stock as a way to address certain issues created by PKS' two-class capital stock structure and the need to attract and retain the best management for PKS' businesses. During the course of its examination of the consequences of a listing of Class D Stock, management concluded that a listing of Class D Stock would not adequately address these issues, and instead began to study a separation of the Construction and Mining Group and the Diversified Group. At the regular meeting of the Board on July 23, 1997, management submitted to the Board for consideration a proposal for separation of the Construction and Mining Group and Diversified Group through a spin-off of the Construction and Mining Group ("the Transaction"). At a special meeting on August 14, 1997, the Board approved the Transaction.

The separation of the Construction and Mining Group and the Diversified Group was contingent upon a number of conditions, including the favorable ratification by a majority of both Class C and Class D shareholders and the receipt by the Company of an Internal Revenue Service ruling or other assurance acceptable to the Board that the separation would be tax-free to U.S. shareholders. On December 8, 1997, PKS' Class C and Class D shareholders approved the transaction and on March 5, 1998 PKS received a favorable ruling from the Internal Revenue Service. The Transaction is anticipated to be effective on March 31, 1998.

In connection with the sale of approximately 10 million Class D shares to employees in 1997, the Company has retained the right to purchase the relevant Class D shares at the then current Class D Stock price if the Transaction is definitively abandoned by formal action of the PKS Board or the employees voluntarily terminate their employment on various dates prior to January 1, 1999.

Level 3 has recently decided to substantially increase its emphasis on and resources to its information services to business. Pursuant to the plan, Level 3 intends to expand substantially its current information services business, through the expansion of its existing business and the creation, through a combination of construction, leasing and purchase of facilities and other assets, of a substantial facilities-based internet communications network.

Using this network Level 3 intends to provide (a) a range of internet access services at varying capacity levels and, as technology development allows, at specified levels of quality of service and security and (b) a number of business oriented communications services which may include fax service, which are transmitted in part over private or limited access Transmission Control Protocol/Internet Protocol ("TCP/IP") networks and are offered at lower prices than public telephone network-based fax service, and voice message storing and forwarding over the same TCP/IP-based networks.

Level 3 believes that over time, a substantial number of businesses will convert existing computer application systems to computer systems which communicate using TCP/IP and are accessed by users employing Web browsers. Level 3 further believes that businesses will prefer to contract for assistance in making this conversion with those vendors able to provide a full range of services from initial consulting to internet access with requisite quality and security levels.

Level 3 anticipates that the capital expenditures required to implement this expansion plan will be substantial. Level 3 estimates that these costs may be in excess of \$500 million in 1998 and could exceed \$1.5 billion in 1999. Level 3's current financial condition, borrowing capacity and proceeds from the CalEnergy transaction described below should be sufficient for immediate operating, implementation and investing activities. However, Level 3 expects to raise capital from both the equity and debt markets due to the significant capital requirements of the information services expansion plan.

In connection with the Expansion Plan, Level 3 expects to devote substantially more management time and capital resources to its information services business with a view to making the information services business, over time, the principal business of Level 3. In that respect, management is conducting a comprehensive review of the existing Level 3 businesses to determine how those businesses will complement Level 3's focus on information services. If it is decided that an existing business is not compatible with the information services business and if a suitable buyer can be found, Level 3 may dispose of that business.

In January 1998, Level 3 and CalEnergy closed the sale of Level 3's energy assets to CalEnergy. Level 3 received proceeds of \$1,159 million and expects to recognize an after-tax gain of approximately \$324 million in 1998. The after-tax proceeds from this transaction of approximately \$967 million will be used to fund the expansion plan of the information services business.

In January 1998, Class C shareholders converted 2.3 million shares, with a redemption value of \$122 million, into 10.5 million shares of Class D Stock.

In February 1998, Level 3 announced that it was moving its corporate headquarters to Broomfield, Colorado, a northwest suburb of Denver. The campus facility is expected to encompass over 500,000 square feet of office space at a construction cost of over \$70 million. Level 3 is leasing space in the Denver area while the campus is under construction. The first phase of the complex is scheduled for completion in the summer of 1999.

In March 1998, Level 3 announced that its Class D Stock will begin trading on the National Market under the symbol "LVL3". The Nasdaq listing will follow the separation of Level 3 and the Construction Group of PKS, which is expected to be completed on March 31, 1998. In connection with the separation, PKS will be renamed Level 3 Communications, Inc. and its Class D Stock will become the common stock of Level 3 Communications, Inc.

PKS' certificate of incorporation gives stockholders the right to exchange their Class C Stock for Class D Stock under a set conversion formula. That right will be eliminated as a result of the separation of Level 3 and the Construction Group. To replace that conversion right, Class C stockholders received 6.5 million shares of a new Class R stock in January, 1998, which is convertible into Class D Stock in accordance with terms ratified by stockholders in December 1997.

The PKS Board of Directors has approved in principle a plan to force conversion of all shares of Class R stock outstanding. Due to certain provisions of the Class R stock, conversion will not be forced prior to May 1998, and the final decision to force conversion would be made by Level 3's Board of Directors at that time. Level 3's Board may choose not to force conversion if it were to decide that conversion is not in the best interests of the stockholders of Level 3. If, as currently anticipated, Level 3's Board determines to force conversion of the Class R stock on or before June 30, 1998, certain adjustments will be made to the cost sharing and risk allocation provisions of the separation agreement between Level 3 and the Construction business.

If Level 3's Board of Directors determines to force conversion of the Class R stock, each share of Class R stock will be convertible into \$25 worth of Level 3 (Class D) common stock, based upon the average trading price of the Level 3 common stock on the Nasdaq National Market for the last fifteen trading days of the month prior to the determination by the Board of Directors to force conversion. When the spin-off occurs, Level 3 will increase paid in capital and reduce retained earnings by the fair value of the Class R shares.

Immediately prior to the spin-off of the Kiewit Construction and Mining Group, the Company will recognize a gain equal to the difference between the carrying value of the Construction and Mining Group and its fair value. The Company will then reflect the fair value of Kiewit Construction and Mining Group as a dividend to shareholders.

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

Financial statements and supplementary financial information for Peter Kiewit Sons', Inc. and Subsidiaries begin on page P1. Separate financial statements and other information pertaining to the Kiewit Construction & Mining Group and the Diversified Group have been filed as Exhibits 99.A and 99.B to this report. The Company will furnish a copy of such exhibits without charge upon the written request of a stockholder addressed to Stock Registrar, Peter Kiewit Sons', Inc., 1000 Kiewit Plaza, Omaha, Nebraska 68131.

The financial statements of an equity method investee (RCN) are required by Rule 3.09 and are incorporated by reference from RCN's Form 10-K for the year ended December 31, 1997, filed under Commission No. 000-22825.

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.**

None.

## **PART III**

### **ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.**

### **ITEM 11. EXECUTIVE COMPENSATION.**

### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.**

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.**

The information required by Part III is incorporated by reference to the Company's definitive proxy statement for the 1998 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission. However, certain information is set forth under the caption "Directors and Executive Officers of the Registrant" following Item 4 above.

## **PART IV**

## **ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K.**

(a) Financial statements and financial statement schedules required to be filed for the registrant under Items 8 or 14 are set forth following the index page at page P1.

Exhibits filed as a part of this report are listed below. Exhibits incorporated by reference are indicated in parentheses.

Exhibit Number	Description
3.1	Restated Certificate of Incorporation, effective January 8, 1992 (Exhibit 3.1 to Company's Form 10K for 1991).
3.2	Certificate of Amendment of Restated Certificate of Incorporation of Peter Kiewit Sons', Inc., effective December 8, 1997.
3.4	Bylaws, composite copy, including all amendments, as of March 19, 1993 (Exhibit 3.4 to Company's Form 10-K for 1992).

- 10.1 Separation Agreement, dated December 8, 1997, by and among PKS, Kiewit Diversified Group Inc., PKS Holdings, Inc. and Kiewit Construction Group Inc.
- 10.2 Amendment No. 1 to Separation Agreement, dated March 18, 1997, by and among PKS, Kiewit Diversified Group Inc., PKS Holdings, Inc. and Kiewit Construction Group Inc.
- 21 List of subsidiaries of the Company.
- 23 Consents of Coopers & Lybrand LLP
- 27 Financial data schedules.
- 99.A Kiewit Construction & Mining Group Financial Statements and Other Information.
- 99.B Diversified Group Financial Statements and Other Information.
- (b) No reports on Form 8K were filed by the Company during the fourth quarter of 1997.

### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 30th day of March, 1998.

PETER KIEWIT SONS', INC.

By: /s/ Walter Scott, Jr.

Name: Walter Scott, Jr.

Title: Chairman of the Board

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on the 30th day of March, 1998.

/s/ WALTER SCOTT, JR.  
Walter Scott, Jr.

Chairman of the Board and President  
(principal executive officer)

/s/ R. Douglas Bradbury  
R. Douglas Bradbury

Executive Vice President of Level 3  
Communications, Inc.  
(principal financial officer)

/s/ ERIC J. MORTENSEN  
Eric J. Mortensen

Controller  
(principal accounting officer)

/s/ RICHARD W. COLF  
Richard W. Colf, Director

/s/ RICHARD R. JAROS  
Richard R. Jaros, Director

/s/ JAMES Q. CROWE  
James Q. Crowe, Director

/s/ TAIT P. JOHNSON  
Tait P. Johnson, Director

/s/ ROBERT B. DAUGHERTY  
Robert B. Daugherty, Director

/s/ ALLAN K. KIRKWOOD  
Allan K. Kirkwood, Director

/s/ RICHARD GEARY  
Richard Geary, Director

/s/ PETER KIEWIT, JR.  
Peter Kiewit, Jr., Director

/s/ BRUCE E. GREWCOCK  
Bruce E. Grewcock, Director

/s/ KENNETH E. STINSON  
Kenneth E. Stinson, Director

/s/ WILLIAM L. GREWCOCK  
William L. Grewcock, Director

/s/ GEORGE B. TOLL, JR.  
George B. Toll, Jr., Director

/s/ CHARLES M. HARPER  
Charles M. Harper, Director

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

Index to Financial Statements

	Page
Report of Independent Accountants	P- 2
Financial Statements as of December 27, 1997 and December 28, 1996 and for the three years ended December 27, 1997:	
Consolidated Statements of Earnings	P- 3
Consolidated Balance Sheets	P- 4
Consolidated Statements of Cash Flows	P- 6
Consolidated Statements of Changes in Stockholders' Equity	P- 8
Notes to Consolidated Financial Statements	P- 9

Schedules not indicated above have been omitted because of the absence of the conditions under which they are required or because the information called for is shown in the consolidated financial statements or in the notes thereto.

## REPORT OF INDEPENDENT ACCOUNTANTS

The Board of Directors and Stockholders  
Peter Kiewit Sons', Inc.

We have audited the consolidated financial statements of Peter Kiewit Sons', Inc. and Subsidiaries as listed in the index on the preceding page of this Form 10-K. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Peter Kiewit Sons', Inc. and Subsidiaries as of December 27, 1997 and December 28, 1996, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 27, 1997 in conformity with generally accepted accounting principles.

*Coopers & Lybrand LLP*

Omaha, Nebraska  
March 30, 1998



**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Consolidated Statements of Earnings**

For the three years ended December 27, 1997

(dollars in millions, except per share data)	1997	1996	1995
Revenue	\$ 332	\$ 652	\$ 580
Cost of Revenue	<u>(175)</u>	<u>(384)</u>	<u>(345)</u>
	157	268	235
General and Administrative Expenses	<u>(114)</u>	<u>(181)</u>	<u>(190)</u>
Operating Earnings	43	87	45
Other (Expense) Income:			
Equity losses, net	(43)	(9)	(5)
Investment income, net	45	56	45
Interest expense, net	(15)	(33)	(23)
Gain on subsidiary's stock transactions, net	-	-	3
Other, net	<u>1</u>	<u>6</u>	<u>125</u>
	(12)	20	145
Equity Loss in MFS	<u>-</u>	<u>-</u>	<u>(131)</u>
Earnings Before Income Taxes, Minority Interest and Discontinued Operations	31	107	59
Income Tax Benefit (Provision)	48	(3)	79
Minority Interest in Net Loss (Income) of Subsidiaries	<u>4</u>	<u>-</u>	<u>(12)</u>
Income from Continuing Operations	83	104	126
Discontinued Operations:			
Construction, net of income tax (expense) of (\$107), (\$72) and (\$60)	155	108	104
Energy, net of income tax benefit (expense) of \$1, (\$9) and (\$8)	<u>10</u>	<u>9</u>	<u>14</u>
Income from Discontinued Operations	<u>165</u>	<u>117</u>	<u>118</u>
Net Earnings	<u>\$ 248</u>	<u>\$ 221</u>	<u>\$ 244</u>
Earnings Per Share:			
Continuing Operations:			
Class D Stock			
Basic	<u>\$ .66</u>	<u>\$ .90</u>	<u>\$ 1.17</u>
Diluted	<u>\$ .66</u>	<u>\$ .90</u>	<u>\$ 1.17</u>
Net Income:			
Class C Stock			
Basic	<u>\$ 15.99</u>	<u>\$ 10.13</u>	<u>\$ 7.78</u>
Diluted	<u>\$ 15.35</u>	<u>\$ 9.76</u>	<u>\$ 7.62</u>
Class D Stock			
Basic	<u>\$ .74</u>	<u>\$ .97</u>	<u>\$ 1.29</u>
Diluted	<u>\$ .74</u>	<u>\$ .97</u>	<u>\$ 1.29</u>

See accompanying notes to consolidated financial statements.

**PETER KIEWIT SONS', INC AND SUBSIDIARIES**

**Consolidated Balance Sheets**

December 27, 1997 and December 28, 1996

(dollars in millions)	1997	1996
<b>Assets</b>		
Current Assets:		
Cash and cash equivalents	\$ 87	\$ 147
Marketable securities	678	372
Restricted securities	22	17
Receivables, less allowance of \$-, and \$3	42	76
Investment in discontinued operations — energy	643	608
Other	<u>22</u>	<u>26</u>
Total Current Assets	1,494	1,246
Property, Plant and Equipment, at cost:		
Land	15	18
Buildings and leasehold improvements	122	159
Equipment	<u>275</u>	<u>810</u>
	412	987
Less accumulated depreciation and amortization	<u>(228)</u>	<u>(345)</u>
Net Property, Plant and Equipment	184	642
Investments	383	189
Investments in Discontinued Operations — Construction	652	562
Intangible Assets, net	21	353
Other Assets	<u>45</u>	<u>74</u>
	<u>\$ 2,779</u>	<u>\$ 3,066</u>

See Note 17 for 1997 pro forma balance sheet information.

See accompanying notes to consolidated financial statements.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Consolidated Balance Sheets**

December 27, 1997 and December 28, 1996

(continued)

(dollars in millions)	1997	1996
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable	\$ 31	\$ 79
Current portion of long-term debt:		
Telecommunications	-	55
Other	3	2
Accrued reclamation and other mining costs	19	19
Deferred income taxes	15	5
Other	<u>21</u>	<u>8</u>
Total Current Liabilities	89	247
Long-Term Debt, less current portion:		
Telecommunications	-	207
Other	137	113
Deferred Income Taxes	83	148
Accrued Reclamation Costs	100	98
Other Liabilities	139	216
Minority Interest	1	218
Stockholders' Equity:		
Preferred stock, no par value, authorized 250,000 shares: no shares outstanding in 1997 and 1996	-	-
Common stock, \$.0625 par value, \$2.1 billion aggregate redemption value:		
Class B, authorized 8,000,000 shares: — outstanding in 1997 and 263,468 outstanding in 1996	-	-
Class C, authorized 125,000,000 shares: 10,132,343 outstanding in 1997 and 10,743,173 outstanding in 1996	1	1
Class D, authorized 500,000,000 shares: 135,517,140 outstanding in 1997 and 115,901,215 — outstanding in 1996	8	1
Class R, authorized 8,500,000 shares: outstanding in 1997 and 1996	-	-
Additional paid in capital	427	235
Foreign currency adjustment	(7)	(7)
Net unrealized holding gain	2	23
Retained earnings	<u>1,799</u>	<u>1,566</u>
Total Stockholders' Equity	<u>2,230</u>	<u>1,819</u>
	<u>\$ 2,779</u>	<u>\$ 3,066</u>

See Note 17 for 1997 pro forma balance sheet information.  
See accompanying notes to consolidated financial statements.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Consolidated Statements of Cash Flows**  
For the three years ended December 27, 1997

(dollars in millions)	1997	1996	1995
Cash flows from continuing operations:			
Income from continuing operations	\$ 83	\$ 104	\$ 126
Adjustments to reconcile income from continuing operations to net cash provided by continuing operations:			
Depreciation, depletion and amortization	24	132	96
Gain on sale of property, plant and equipment, and other investments	(9)	(3)	(7)
Gain on subsidiary's stock transactions, net	-	-	(3)
Compensation expense attributable to stock options	21	-	-
Equity losses, net	43	10	130
Minority interest in subsidiaries	(4)	-	12
Retirement benefits paid	(7)	(6)	(2)
Federal income tax refunds	146	-	35
Deferred income taxes	(103)	(68)	(152)
Change in working capital items:			
Receivables	(9)	(1)	11
Other current assets	(1)	6	-
Payables	(3)	9	(3)
Other liabilities	(5)	13	34
Other	<u>6</u>	<u>-</u>	<u>(4)</u>
Net cash provided by continuing operations	182	196	273
Cash flows from investing activities:			
Proceeds from sales and maturities of marketable securities	167	378	383
Purchases of marketable securities	(452)	(311)	(440)
Increase in restricted securities	(2)	(2)	(2)
Investments and acquisitions, net of cash acquired	(42)	(59)	(136)
Proceeds from sale of property, plant and equipment, and other investments	1	7	14
Capital expenditures	(26)	(117)	(118)
Other	<u>3</u>	<u>(8)</u>	<u>(2)</u>
Net cash used in investing activities	\$ (351)	\$ (112)	\$ (301)

See accompanying notes to consolidated financial statements.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Consolidated Statements of Cash Flows**  
For the three years ended December 27, 1997  
(continued)

(dollars in millions)	1997	1996	1995
Cash flows from financing activities:			
Long-term debt borrowings	\$ 17	\$ 38	\$ 49
Payments on long-term debt, including current portion	(2)	(60)	(49)
Issuances of common stock	138	-	2
Issuances of subsidiaries' stock	-	1	-
Repurchases of common stock	-	(11)	(3)
Dividends paid	(12)	(11)	-
Exchange of Class C Stock for Class D Stock, net	<u>72</u>	<u>20</u>	<u>155</u>
Net cash provided by (used in) financing activities	213	(23)	154
Cash flows from discontinued operations:			
Discontinued energy operations	3	5	8
Investments in discontinued energy operations	(31)	(282)	(101)
Proceeds from sales of discontinued packaging operations	<u>-</u>	<u>-</u>	<u>29</u>
Net cash used in discontinued operations	(28)	(277)	(64)
Cash and cash equivalents of C-TEC in 1997 and MFS in 1995 at beginning of year	(76)	-	(22)
Effect of exchange rates on cash	<u>-</u>	<u>-</u>	<u>2</u>
Net change in cash and cash equivalents	(60)	(216)	42
Cash and cash equivalents at beginning of year	<u>147</u>	<u>363</u>	<u>321</u>
Cash and cash equivalents at end of year	<u><u>\$ 87</u></u>	<u><u>\$ 147</u></u>	<u><u>\$ 363</u></u>
Supplemental disclosure of cash flow information:			
Taxes paid	\$ 62	\$ 55	\$ 132
Interest paid	13	38	33
Noncash investing and financing activities:			
Conversion of CalEnergy convertible debentures to common stock	\$ -	\$ 66	\$ -
Dividend of investment in MFS	-	-	399
Issuance of C-TEC redeemable preferred stock for acquisition	-	-	39

See accompanying notes to consolidated financial statements.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**  
**Consolidated Statements of Changes in Stockholders' Equity**  
For the three years ended December 27, 1997

(dollars in millions)	Class B&C Common Stock	Class D Common Stock	Additional Paid-in Capital	Foreign Currency Adjustment	Net Unrealized Holding Gain (Loss)	Retained Earnings	Total
Balance at December 31, 1994	\$ 1	\$ 1	\$ 182	\$ (7)	\$ (8)	\$1,567	\$1,736
Issuances of stock	-	-	\$ 29	-	-	-	29
Repurchases of stock	-	-	\$ (1)	-	-	\$ (5)	\$ (6)
Foreign currency adjustment	-	-	-	\$ 1	-	-	1
Net unrealized holding gain	-	-	-	-	\$ 25	-	25
Net earnings	-	-	-	-	-	\$ 244	244
Dividends: (a)							
Class C (\$1.05 per common share)	-	-	-	-	-	(12)	(12)
Class D (\$.10 per common share)	-	-	-	-	-	(11)	(11)
MFS Dividend	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(399)</u>	<u>(399)</u>
Balance at December 30, 1995	1	1	210	(6)	17	1,384	1,607
Issuances of stock	-	-	\$ 27	-	-	-	27
Repurchases of stock	-	-	(2)	-	-	(14)	(16)
Foreign currency adjustment	-	-	-	(1)	-	-	(1)
Net unrealized holding gain	-	-	-	-	6	-	6
Net earnings	-	-	-	-	-	221	221
Dividends: (b)							
Class C (\$1.30 per common share)	-	-	-	-	-	(13)	(13)
Class D (\$.10 per common share)	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(12)</u>	<u>(12)</u>
Balance at December 28, 1996	\$ 1	\$ 1	\$ 235	\$ (7)	\$ 23	\$1,566	\$1,819

See accompanying notes to consolidated financial statements.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Consolidated Statements of Changes in Stockholders' Equity**

For the three years ended December 27, 1997

(continued)

(dollars in millions)	Class B & C Common Stock	Class D Common Stock	Additional Paid-in Capital	Foreign Currency Adjustment	Net Unrealized Holding Gain (Loss)	Retained Earnings	Total
Balance at December 28, 1996	\$ 1	\$ 1	\$ 235	\$ (7)	\$ 23	\$ 1,566	\$ 1,819
Issuances of stock	-	-	172	-	-	-	172
Repurchases of stock	-	-	-	-	-	(2)	(2)
Option Activity	-	-	27	-	-	-	27
Class D Stock Split	-	7	(7)	-	-	-	-
Foreign currency adjustment	-	-	-	-	-	-	-
Net unrealized holding loss	-	-	-	-	(21)	-	(21)
Net earnings	-	-	-	-	-	248	248
Dividends: (c) Class C (\$1.50 per common share)	-	-	-	-	-	(13)	(13)
Balance at December 27, 1997	<u>\$ 1</u>	<u>\$ 8</u>	<u>\$ 427</u>	<u>\$ (7)</u>	<u>\$ 2</u>	<u>\$ 1,799</u>	<u>\$ 2,230</u>

(a) Includes \$.60 and \$.10 per share for dividends on Class C and Class D Stock, respectively, declared in 1995 but paid in January 1996.

(b) Includes \$.70 and \$.10 per share for dividends on Class C and Class D Stock, respectively, declared in 1996 but paid in January 1997.

(c) Includes \$.80 per share for dividends on Class C declared in 1997 but paid in January 1998.

See accompanying notes to consolidated financial statements.

## **PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

### **Notes to Consolidated Financial Statements**

#### **(1) Summary of Significant Accounting Policies**

##### **Principles of Consolidation**

The consolidated financial statements include the accounts of Peter Kiewit Sons', Inc. and subsidiaries in which it has control ("PKS" or "the Company"), which are engaged in enterprises primarily related to construction, coal mining, energy generation, information services, and telecommunications. Fifty-percent-owned mining joint ventures are consolidated on a pro rata basis. Investments in other companies in which the Company exercises significant influence over operating and financial policies, including construction joint ventures and energy projects, are accounted for by the equity method. The Company accounts for its share of the operations of the construction joint ventures on a pro rata basis in the consolidated statements of earnings. All significant intercompany accounts and transactions have been eliminated.

In 1997, the Company agreed to sell its energy assets to CalEnergy Company, Inc. ("CalEnergy") and to spin-off the construction business. Therefore, the assets and liabilities, and results of operations, of both businesses have been classified as discontinued operations on the consolidated balance sheet, statements of earnings and cash flows. (See notes 2 and 3)

On September 5, 1997, C-TEC Corporation ("C-TEC") announced that its board of directors had approved the planned restructuring of C-TEC into three publicly traded companies. The transaction was effective September 30, 1997. As a result of the restructuring plan, the Company owns less than 50% of the outstanding shares and voting rights of each entity, and therefore has accounted for each entity using the equity method as of the beginning of 1997. In accordance with Generally Accepted Accounting Principles, C-TEC's financial position, results of operations and cash flows are consolidated in the 1996 and 1995 financial statements.

The results of operations of MFS Communications Company, Inc. ("MFS"), (which later merged into WorldCom Inc.) prior to its spin-off on September 30, 1995, have been classified as a single line item on the statements of earnings.

The Company invests in the portfolios of the Kiewit Mutual Fund, ("KMF"), a registered investment company. KMF is not consolidated in the Company's financial statements.

##### **Description of Business Groups**

Holders of Class C Stock ("Construction & Mining Group") and Class D Stock ("Diversified Group") are stockholders of PKS. The Construction & Mining Group ("KCG") contains the Company's traditional construction and materials operations performed by Kiewit Construction Group Inc. The Diversified Group through Level 3 Communications, Inc. (formerly Kiewit Diversified Group Inc.) ("Level 3") contains coal mining properties owned by Kiewit Coal Properties Inc., energy investments, including a 24% interest in CalEnergy and a 30% interest in CE Electric UK plc ("CE Electric"), investments in international energy projects, information services businesses, telecommunications companies owned by C-TEC, as well as other assets. Corporate assets and liabilities which are not separately identified with the ongoing operations of the Construction & Mining Group or the Diversified Group are allocated equally between the groups.



**PETER KIEWIT SONS', INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements****(1) Summary of Significant Accounting Policies (cont.)****Construction Contracts**

KCG operates generally within the United States and Canada as a general contractor and engages in various types of construction projects for both public and private owners. Credit risk is minimal with public (government) owners since KCG ascertains that funds have been appropriated by the governmental project owner prior to commencing work on public projects. Most public contracts are subject to termination at the election of the government. In the event of termination, KCG is entitled to receive the contract price on completed work and reimbursement of termination related costs. Credit risk with private owners is minimized because of statutory mechanics liens, which give KCG high priority in the event of lien foreclosures following financial difficulties of private owners.

The construction industry is highly competitive and lacks firms with dominant market power. A substantial portion of KCG's business involves construction contracts obtained through competitive bidding. The volume and profitability of KCG's construction work depends to a significant extent upon the general state of the economies in which it operates and the volume of work available to contractors. KCG's construction operations could be adversely affected by labor stoppages or shortages, adverse weather conditions, shortages of supplies, or other governmental action.

KCG recognizes revenue on longterm construction contracts and joint ventures on the percentage-of-completion method based upon engineering estimates of the work performed on individual contracts. Provisions for losses are recognized on uncompleted contracts when they become known. Claims for additional revenue are recognized in the period when allowed. It is at least reasonably possible that engineering estimates of the work performed on individual contracts will be revised in the near term.

**Coal Sales Contracts**

Level 3's coal is sold primarily under long-term contracts with electric utilities, which burn coal in order to generate steam to produce electricity. A substantial portion of Level 3's coal sales were made under long-term contracts during 1997, 1996 and 1995. The remainder of Level 3's sales are made on the spot market where prices are substantially lower than those in the long-term contracts. As the long-term contracts expire, a higher proportion of Level 3's sales will occur on the spot market.

The coal industry is highly competitive. Level 3 competes not only with other domestic and foreign coal suppliers, some of whom are larger and have greater capital resources than Level 3, but also with alternative methods of generating electricity and alternative energy sources. Many of Level 3's competitors are served by two railroads and, due to the competition, often benefit from lower transportation costs than Level 3 which is served by a single railroad. Additionally, many competitors have lower stripping ratios than Level 3, often resulting in lower comparative costs of production.

Level 3 is also required to comply with various federal, state and local laws concerning protection of the environment. Level 3 believes its compliance with environmental protection and land restoration laws will not affect its competitive position since its competitors are similarly affected by such laws.

## **PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

### **Notes to Consolidated Financial Statements**

#### **(1) Summary of Significant Accounting Policies (cont.)**

Level 3 and its mining ventures have entered into various agreements with its customers which stipulate delivery and payment terms for the sale of coal. Prior to 1993, one of the primary customers deferred receipt of certain commitments by purchasing undivided fractional interests in coal reserves of Level 3 and the mining ventures. Under the agreements, revenue was recognized when cash was received. The agreements with this customer were renegotiated in 1992. In accordance with the renegotiated agreements, there were no sales of interests in coal reserves subsequent to January 1, 1993. Level 3 has the obligation to deliver the coal reserves to the customer in the future if the customer exercises its option. If the option is exercised, Level 3 presently intends to deliver coal from unaffiliated mines. In the opinion of the management, Level 3 has sufficient coal reserves to cover the above sales commitments.

Level 3's coal sales contracts are with several electric utility and industrial companies. In the event that these customers do not fulfill contractual responsibilities, Level 3 would pursue the available legal remedies.

#### **Information Services Revenue**

Information services revenue is primarily derived from the computer outsourcing business and the systems integration business. Level 3 provides outsourcing service, typically through contracts ranging from 3-5 years, to firms that desire to focus their resources on their core businesses. Under these contracts, Level 3 recognizes revenue in the month the service is provided. The systems integration business helps customers define, develop and implement cost-effective information systems. Revenue from these services is billed on a time and materials basis or percentage of completion basis depending on the extent of the services provided.

#### **Telecommunications Revenue**

In 1996 and 1995 C-TEC's most significant operating groups are its local telephone service and cable system operations. C-TEC's telephone network access revenues are derived from net access charges, toll rates and settlement arrangements for traffic that originates or terminates within C-TEC's local telephone company. Revenues from telephone services and basic and premium cable programming services are recorded in the month the service is provided.

The telecommunications industry is subject to local, state and federal regulation. Consequently, the ability of the telephone and cable groups to generate increased volume and profits is largely dependent upon regulatory approval to expand customer bases and increase prices.

Competition for the cable group's services traditionally has come from broadcast television, video rentals and direct broadcast satellite received on home dishes. Future competition is expected from telephone companies.

Concentration of credit risk with respect to accounts receivable are limited due to the dispersion of customer base among geographic areas and remedies provided by terms of contracts and statutes.

As noted previously, the investment in C-TEC has been accounted for using the equity method in 1997.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements****(1) Summary of Significant Accounting Policies (cont.)****Depreciation and Amortization.**

Property, plant and equipment are recorded at cost. Depreciation and amortization for the majority of the Company's property, plant and equipment are computed on accelerated and straight-line methods. Depletion of mineral properties is provided primarily on an units-of-extraction basis determined in relation to estimated reserves.

**Intangible Assets**

Intangible assets primarily include amounts allocated upon purchase of existing operations, franchises and subscriber lists. These assets are amortized on a straightline basis over the expected period of benefit, which does not exceed 40 years.

**Long Lived Assets**

The Company reviews the carrying amount of long lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Measurement of any impairment would include a comparison of estimated future operating cash flows anticipated to be generated during the remaining life of the asset to the net carrying value of the asset.

**Reserves for Reclamation**

Level 3 follows the policy of providing an accrual for reclamation of mined properties, based on the estimated cost of restoration of such properties, in compliance with laws governing strip mining. It is at least reasonably possible that the estimated cost of restoration will be revised in the near-term.

**Foreign Currencies**

Generally, local currencies of foreign subsidiaries are the functional currencies for financial reporting purposes. Assets and liabilities are translated into U.S. dollars at year-end exchange rates. Revenue and expenses are translated using average exchange rates prevailing during the year. Gains or losses resulting from currency translation are recorded as adjustments to stockholders' equity.

**Subsidiary and Investee Stock Activity**

The Company recognizes gains and losses from the sale, issuance and repurchase of stock by its subsidiaries.

**Earnings Per Share**

In 1997, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings Per Share". The Statement establishes standards for computing and presenting earnings per share and requires the restatement of prior per share data presented. Basic earnings per share have been computed using the weighted average number of shares during each period. Diluted earnings per share is computed by including stock options and convertible debentures considered to be dilutive common stock equivalents.

# **PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

## **Notes to Consolidated Financial Statements**

### **(1) Summary of Significant Accounting Policies (cont.)**

Potentially dilutive stock options are calculated in accordance with the treasury stock method which assumes that proceeds from the exercise of all options are used to repurchase common stock at the average market value. The number of shares remaining after the proceeds are exhausted represent the potentially dilutive effect of the options. The potentially dilutive convertible debentures are calculated in accordance with the "if converted" method. This method assumes that the after-tax interest expense associated with the debentures is an addition to income and the debentures are converted into equity with the resulting common shares being aggregated with the weighted average shares outstanding.

The following details the earnings per share calculations for Class C Stock and Class D Stock:

<u>Class C Stock</u>	<u>1997</u>	<u>1996</u>	<u>1995</u>
Net income available to common shareholders (in million) \$	155	\$ 108	\$ 104
Add: Interest expense, net of tax effect associated with convertible debentures	<u>1</u>	<u>—</u>	<u>—</u>
Net income for diluted shares	<u>\$ 156</u>	<u>\$ 108</u>	<u>\$ 104</u>
Total number of weighted average shares outstanding used to compute basic earnings per share (in thousands)	9,728	10,656	13,384
Additional dilutive shares assuming conversion of convertible debentures	<u>441</u>	<u>437</u>	<u>312</u>
Total number of shares used to compute diluted earnings per share	<u>10,169</u>	<u>11,093</u>	<u>13,696</u>
Net Income			
Basic earnings per share	<u>\$ 15.99</u>	<u>\$ 10.13</u>	<u>\$ 7.78</u>
Diluted earnings per share	<u>\$ 15.35</u>	<u>\$ 9.76</u>	<u>\$ 7.62</u>

\*Interest expense attributable to convertible debentures was less than \$1 million in 1996 and 1995.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(1) Summary of Significant Accounting Policies (cont.)**

<u>Class D Stock</u>	<u>1997</u>	<u>1996</u>	<u>1995</u>
Income from continuing operations available to common shareholders (in millions)	\$ 83	\$ 104	\$ 126
Add: Interest expense, net of tax effect associated with convertible debentures	<u>-</u>	<u>-</u>	<u>-</u>
Income from continuing operations for fully diluted shares	83	104	126
Income from discontinued operations	<u>10</u>	<u>9</u>	<u>14</u>
Net Income	<u>\$ 93</u>	<u>\$ 113</u>	<u>\$ 140</u>
Total number of weighted average shares outstanding used to compute basic earnings per share (in thousands)	124,647	116,006	108,594
Additional dilutive stock options	539	311	-
Additional dilutive shares assuming conversion of convertible debentures	<u>-</u>	<u>-</u>	<u>257</u>
Total number of shares used to compute diluted earnings per share.	<u>125,186</u>	<u>116,317</u>	<u>108,851</u>
Continuing Operations:			
Basic earnings per share	<u>\$ .66</u>	<u>\$ .90</u>	<u>\$ 1.17</u>
Diluted earnings per share	<u>\$ .66</u>	<u>\$ .90</u>	<u>\$ 1.17</u>
Discontinued Operations:			
Basic earnings per share	<u>\$ .08</u>	<u>\$ .07</u>	<u>\$ .12</u>
Diluted earnings per share	<u>\$ .08</u>	<u>\$ .07</u>	<u>\$ .12</u>
Net Income:			
Basic earnings per share	<u>\$ .74</u>	<u>\$ .97</u>	<u>\$ 1.29</u>
Diluted earnings per share	<u>\$ .74</u>	<u>\$ .97</u>	<u>\$ 1.29</u>

\*Interest expense attributable to convertible debentures was less than \$1 million in 1995.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(1) Summary of Significant Accounting Policies (cont.)**

**Stock Dividend**

Effective December 26, 1997, the PKS Board of Directors approved a dividend of four shares of Class D Stock for every one share of Class D Stock held. All share information and per share data have been restated to reflect this dividend.

**Income Taxes**

Deferred income taxes are provided for the temporary differences between the financial reporting basis and tax basis of the Company's assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse.

**Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Recently issued Accounting Pronouncements**

In June 1997, the Financial Accounting Standards Board ("FASB") issued SFAS No. 130, "Reporting Comprehensive Income", which requires that changes in comprehensive income be shown in a financial statement that is displayed with the same prominence as other financial statements.

Also in 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information", which changes the way public companies report information about segments. SFAS No. 131, which is based on the management approach to segment reporting includes requirements to report selected segment information quarterly, and entity wide disclosures about products and services, major customers, and geographic data.

These statements are effective for financial statements for periods beginning after December 15, 1997. Management does not expect adoption of these statements to materially affect the Company's financial statements.

**Reclassifications**

Where appropriate, items within the consolidated financial statements and notes thereto have been reclassified from previous years to conform to current year presentation.

**Fiscal Year**

The Company's fiscal year ends on the last Saturday in December. There were 52 weeks in fiscal years 1997, 1996 and 1995.

# PETER KIEWIT SONS', INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

### (2) Reorganization

In October 1996, the PKS Board of Directors directed PKS management to pursue a listing of Class D Stock as a way to address certain issues created by PKS' two-class capital stock structure and the need to attract and retain the best management for PKS' businesses. During the course of its examination of the consequences of a listing of Class D Stock, management concluded that a listing of Class D Stock would not adequately address these issues, and instead began to study a separation of the Construction and Mining Group and the Diversified Group. At the regular meeting of the Board on July 23, 1997, management submitted to the Board for consideration a proposal for separation of the Construction and Mining Group and Diversified Group through a spin-off of the Construction and Mining Group ("the Transaction"). At a special meeting on August 14, 1997, the Board approved the Transaction.

The separation of the Construction and Mining Group and the Diversified Group was contingent upon a number of conditions, including the favorable ratification by a majority of both Class C and Class D shareholders and the receipt by the Company of an Internal Revenue Service ruling or other assurance acceptable to the Board that the separation would be tax-free to U.S. shareholders. On December 8, 1997, PKS' Class C and Class D shareholders approved the transaction and on March 5, 1998 PKS received a favorable ruling from the Internal Revenue Service. The Transaction is anticipated to be effective on March 31, 1998. As a result of these events the Company has reflected the financial position and results of operations of the Kiewit Construction and Mining Group as discontinued operations on the consolidated balance sheets and consolidated statements of earnings for all periods presented. The activities of the Construction and Mining Group have been removed from the statements of cash flows. The financial statements of Kiewit Construction and Mining Group can be found in Exhibit 99.A of this document.

The following is summarized financial information of the Kiewit Construction and Mining Group:

Operations (dollars in millions)	1997	1996	1995
Revenue	\$ 2,764	\$ 2,303	\$ 2,330
Net income	155	108	104

Financial Position (dollars in millions)	1997	1996
Current assets	\$ 1,057	\$ 764
Other assets	284	274
Total assets	<u>\$ 1,341</u>	<u>\$ 1,038</u>
Current liabilities	579	397
Other liabilities	99	79
Minority interest	11	-
Total liabilities	<u>689</u>	<u>476</u>
Net assets	<u>\$ 652</u>	<u>\$ 562</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(2) Reorganization (cont.)**

Immediately prior to the spin-off of the Kiewit Construction and Mining Group, the Company will recognize a gain equal to the difference between the carrying value of the Construction and Mining Group and its fair value. The Company will then reflect the fair value of Kiewit Construction and Mining Group as a dividend to shareholders.

Level 3 has recently decided to substantially increase its emphasis on and resources to its information services business. Pursuant to the plan, Level 3 intends to expand substantially its current information services business, through the expansion of its existing business and the creation, through a combination of construction, leasing and purchase of facilities and other assets, of a substantial facilities-based internet communications network (the "Expansion Plan").

Using the network Level 3 intends to provide (a) a range of internet access services at varying capacity levels and, as technology development allows, at specified levels of quality of service and security and (b) a number of business oriented communications services which may include fax service, which are transmitted in part over private or limited access Transmission Control Protocol/Internet Protocol ("TCP/IP") networks and are offered at lower prices than public telephone network-based fax service, and voice message storing and forwarding over the same TCP/IP-based networks.

**(3) Discontinued Energy Operations**

In connection with the Expansion Plan, Level 3 expects to devote substantially more management time and capital resources to its information services business with a view to making the information services business, over time, the principal business of Level 3. In that respect, the management is conducting a comprehensive review of the existing Level 3 businesses to determine how those businesses will complement Level 3's focus on information services. If it is decided that an existing business is not compatible with the information services business and if a suitable buyer can be found, Level 3 may dispose of that business.

On September 10, 1997, Level 3 and CalEnergy entered into an agreement whereby CalEnergy contracted to purchase Level 3's energy investments for \$1.155 million, subject to adjustments. These energy investments include approximately 20.2 million shares of CalEnergy common stock (assuming the exercise of 1 million options held by Level 3), Level 3's 30% ownership interest in CE Electric and Level 3's investments, made jointly with CalEnergy, in international power projects in Indonesia and the Philippines. The transaction was subject to the satisfactory completion of certain provisions of the agreement and closed on January 2, 1998. These assets comprised the energy segment of Level 3. Therefore, the Company has reflected these assets, the earnings and losses attributable to these assets, and the related cash flow items as discontinued operations on the balance sheets, statements of earnings and cash flows for all periods presented.

In order to fund the purchase of these assets, CalEnergy sold, in October 1997, approximately 19.1 million shares of its common stock at a price of \$37.875 per share. This sale reduced Level 3's ownership in CalEnergy to approximately 24% but increased its proportionate share of CalEnergy's equity. It is the Company's policy to recognize gains or losses on the sale of stock by its investees. Level 3 recognized an after-tax gain of approximately \$44 million from transactions in CalEnergy stock in the fourth quarter of 1997.



# PETER KIEWIT SONS', INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements

### (3) Discontinued Energy Operations (cont.)

The Agreement with CalEnergy included a provision whereby CalEnergy and Level 3 shared equally any proceeds from the offering above or below a specified amount. The offering was conducted at a price above that provided in the agreement and therefore, Level 3 received additional proceeds of \$16 million at the time of closing.

Level 3 expects to recognize an after-tax gain on the disposition of its energy assets in 1998 of approximately \$324 million. The after-tax proceeds from the transaction of approximately \$96 million will be used to fund the expansion plan of the information services business.

The following is summarized financial information for discontinued energy operations:

<u>Income from Discontinued Operations</u>	<u>1997</u>	<u>1996</u>	<u>1995</u>
<u>Operations</u>			
Equity in:			
CalEnergy earnings, net	\$ 16	\$ 20	\$ 10
CE Electric earnings, net	17	(2)	-
International energy projects earnings, net	5	(5)	6
Investment income from CalEnergy	-	5	6
Income tax expense	(9)	(9)	(8)
Income from operations	<u>\$ 29</u>	<u>\$ 9</u>	<u>\$ 14</u>
<u>CalEnergy Stock Transactions</u>			
Gain on investee stock activity	\$ 68	\$ -	\$ -
Income tax expense	(24)	-	-
	<u>\$ 44</u>	<u>\$ -</u>	<u>\$ -</u>
<u>Extraordinary Loss — Windfall Tax</u>			
Level 3's share from CalEnergy	\$ (39)	\$ -	\$ -
Level 3's share from CE Electric	(58)	-	-
Income tax benefit	34	-	-
Extraordinary loss	<u>\$ (63)</u>	<u>\$ -</u>	<u>\$ -</u>
<u>Investments in Discontinued Operations</u>	<u>1997</u>	<u>1996</u>	
Investment in CalEnergy	\$ 337	\$ 292	
Investment in CE Electric	135	176	
Investment in international energy projects	186	149	
Restricted securities	2	8	
Deferred income tax liability	(17)	(17)	
Total	<u>\$ 643</u>	<u>\$ 608</u>	

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(3) Discontinued Energy Operations (cont.)**

At December 27, 1997, Level 3 owned 19.2 million shares or 24% of CalEnergy's outstanding common stock and had a cumulative investment in CalEnergy common stock of \$337 million. CalEnergy common stock is traded on the New York Stock Exchange. On December 27, 1997, the market value of Level 3's investment in CalEnergy common stock was \$548 million.

The following is summarized financial information of CalEnergy Company, Inc.:

Operations (dollars in millions)	1997	1996	1995
Revenue	\$ 2,271	\$ 576	\$ 399
Income before extraordinary item	52	92	62
Extraordinary item — Windfall tax	(136)	-	-
Level 3's share:			
Income before extraordinary item	18	22	13
Goodwill amortization	(2)	(2)	(3)
Equity in income of CalEnergy before extraordinary item	<u>\$ 16</u>	<u>\$ 20</u>	<u>\$ 10</u>
Extraordinary item — Windfall tax	<u>\$ (39)</u>	<u>\$ -</u>	<u>\$ -</u>

Financial Position (dollars in millions)	1997	1996
Current assets	\$ 2,053	\$ 945
Other assets	<u>5,435</u>	<u>4,768</u>
Total assets	7,488	5,713
Current liabilities	1,440	1,232
Other liabilities	4,494	3,301
Minority interest	<u>134</u>	<u>299</u>
Total liabilities	<u>6,068</u>	<u>4,832</u>
Net assets -	<u>\$ 1,420</u>	<u>\$ 881</u>
Level 3's share:		
Equity in net assets	\$ 337	\$ 267
Goodwill	-	25
Investment in CalEnergy	<u>\$ 337</u>	<u>\$ 292</u>

In December 1996, CE Electric, which is 70% owned by CalEnergy and 30% owned by Level 3, acquired majority ownership of the outstanding ordinary share capital of Northern Electric, plc. pursuant to a tender offer (the "Tender Offer") commenced in the United Kingdom by CE Electric in November 1996. As of March 1997, CE Electric effectively owned 100% of Northern's ordinary shares.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(3) Discontinued Energy Operations (cont.)**

As of December 27, 1997, CalEnergy and Level 3 had contributed to CE Electric approximately \$410 million and \$176 million, respectively, of the approximately \$1.3 billion required to acquire all of Northern's ordinary and preference shares in connection with the Tender Offer. The remaining funds necessary to consummate the Tender Offer were provided by a term loan and a revolving facility agreement obtained by CE Electric. Level 3 has not guaranteed, and is not otherwise subject to recourse for, amounts borrowed under these facilities.

On July 2, 1997, the Labour Party in the United Kingdom announced the details of its proposed "Windfall Tax" to be levied against privatized British utilities. This one-time tax is 23% of the difference between the value of Northern Electric, plc. at the time of privatization and the utility's current value based on profits over a period of up to four years. CE Electric recorded an extraordinary charge of approximately \$194 million when the tax was enacted in July 1997. The total after-tax impact to Level 3 directly through its investment in CE Electric and indirectly through its interest in CalEnergy, was \$63 million.

The following is summarized financial information of CE Electric as of December 31, 1997 and December 31, 1996:

Operations (dollars in millions)	1997	1996
Revenue	\$ 1,564	\$ 37
Income before extraordinary item	58	-
Extraordinary item — Windfall tax	(194)	-
Level 3's share:		
Income before extraordinary item	\$ 17	\$ -
Management fee paid to CalEnergy	-	(2)
	<u>17</u>	<u>(2)</u>
Extraordinary item — Windfall tax	<u>\$ (58)</u>	<u>\$ -</u>
Financial Position (dollars in millions)	1997	1996
Current assets	\$ 419	\$ 583
Other assets	<u>2,519</u>	<u>1,772</u>
Total assets	<u>2,938</u>	<u>2,355</u>
Current liabilities	1,166	785
Other liabilities	1,265	718
Preferred stock	56	153
Minority interest	-	112
Total liabilities	<u>2,487</u>	<u>1,768</u>
Net assets	<u>\$ 451</u>	<u>\$ 587</u>
Level 3's share:		
Equity in net assets	<u>\$ 135</u>	<u>\$ 176</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(3) Discontinued Energy Operations (cont.)**

CE Electric's 1995 and 1996 operating results prior to the acquisition were not significant relative to Level 3's results after giving effect to certain pro forma adjustments related to the acquisitions, primarily increased amortization and interest expense.

In 1993, Level 3 and CalEnergy formed a venture to develop power projects outside of the United States. Since 1993, construction has begun on the Mahanagdong, Casecnan and Dieng power projects. The Mahanagdong project is a 165 MW geothermal power facility located on the Philippine island of Leyte. The Casecnan project is a combined irrigation and 150 MW hydroelectric power generation facility located on the island of Luzon in the Philippines. Dieng Unit I is a 55 MW geothermal facility on the Indonesian island of Java. An additional five units are expected to be constructed on a modular basis at the Dieng site, as geothermal resources are developed. In June 1997, Level 3 and CalEnergy closed a \$400 million revolving credit facility to finance the development and construction of the remaining Indonesian projects. The credit facility is collateralized by the Indonesian assets and is nonrecourse to Level 3.

Generally, costs associated with the development, financing and construction of the international energy projects have been capitalized by each of the projects and will be amortized over the life of each project.

The following is summarized financial information for the international energy projects:

Financial Position (dollars in millions)	Mahanagdong	Casecnan	Dieng	Other	Total
<b>1997</b>					
Current assets	\$ 42	\$ 334	\$ 87	\$ 67	\$ 530
Other assets	<u>252</u>	<u>148</u>	<u>240</u>	<u>171</u>	<u>811</u>
Total assets	294	482	327	238	1,341
Current liabilities	11	12	88	61	172
Other liabilities	<u>186</u>	<u>372</u>	<u>123</u>	<u>56</u>	<u>737</u>
Total liabilities (with recourse only to the projects)	<u>197</u>	<u>384</u>	<u>211</u>	<u>117</u>	<u>909</u>
Net assets	<u>\$ 97</u>	<u>\$ 98</u>	<u>\$ 116</u>	<u>\$ 121</u>	<u>\$ 432</u>
Level 3's share:					
Equity in net assets	<u>\$ 48</u>	<u>\$ 49</u>	<u>\$ 46</u>	<u>\$ 43</u>	<u>\$ 186</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(3) Discontinued Energy Operations (cont.)**

Financial Position (dollars in millions)	Mahanagdong	Casecnan	Dieng	Other	Total
<b>1996</b>					
Current assets	\$ 1	\$ 441	\$ 15	\$ 10	\$ 467
Other assets	<u>239</u>	<u>51</u>	<u>118</u>	<u>36</u>	<u>444</u>
Total assets	240	492	133	46	911
Current liabilities	15	9	24	11	59
Other liabilities	<u>153</u>	<u>372</u>	<u>35</u>	<u>-</u>	<u>560</u>
Total liabilities (with recourse only to the projects)	<u>168</u>	<u>381</u>	<u>59</u>	<u>11</u>	<u>619</u>
Net assets	<u>\$ 72</u>	<u>\$ 111</u>	<u>\$ 74</u>	<u>\$ 35</u>	<u>\$ 292</u>
Level 3's share:					
Equity in net assets	\$ 36	\$ 55	\$ 36	\$ 17	\$ 144
Loan to Project	<u>-</u>	<u>-</u>	<u>5</u>	<u>-</u>	<u>5</u>
	<u>\$ 36</u>	<u>\$ 55</u>	<u>\$ 41</u>	<u>\$ 17</u>	<u>\$ 149</u>

In late 1995, the Casecnan joint venture closed financing for the construction of the project with bonds issued by the project company. The difference between the interest expense on the debt and the interest earned on the unused funds prior to payment of construction costs resulted in a loss to the venture of \$12 million in 1997 and 1996. Level 3's share of these losses were \$6 million in each year. The Mahanagdong facility commenced operation in July, 1997. Level 3's proportionate share of the earnings attributable to Mahanagdong was \$7 million 1997. No income or losses were incurred by the international projects in 1995. In addition to the equity earnings and losses, Level 3 has project development and insurance expenses, and received management fee income related to the international projects in all years.

In late 1995, a Level 3 and CalEnergy venture, CE Casecnan Water and Energy Company, Inc. ("CE Casecnan") closed financing and commenced construction of a \$495 million irrigation and hydroelectric power project located on the Philippine island of Luzon. Level 3 and CalEnergy each made \$62 million of equity contributions to the project.

The CE Casecnan project was being constructed on a joint and several basis by Hanbo Corporation and Hanbo Engineering & Construction Co. Ltd. On May 7, 1997, CE Casecnan announced that it had terminated the Hanbo Contract. In connection with the contract termination, CE Casecnan made a \$79 million draw request under the letter of credit issued by Korea First Bank ("KFB") to pay for certain transition costs and other damages under the Hanbo Contract. KFB failed to honor the draw request; the matter is being litigated. If KFB would not be required to honor its obligations under the letter of credit, such action may have a material adverse effect on the CE Casecnan project. Level 3 does not expect the outcome of the litigation to affect its financial position due to the transaction with CalEnergy.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(4) MFS Spin-off**

In September 1995, the PKS Board of Directors approved a plan to make a tax-free distribution of its entire ownership interest in MFS to the Class D stockholders (the "Spin-off") effective on September 30, 1995. Shares were distributed on the basis of approximately .348 shares of MFS Common Stock and approximately .130 shares of MFS Preferred Stock for each share of outstanding Class D Stock.

The net investment in MFS distributed on September 30, 1995 was approximately \$399 million.

Operating results of MFS through September 30, 1995 are summarized as follows:

<u>(dollars in millions)</u>	<u>1995</u>
Revenue	\$ 412
Loss from operations	(176)
Net loss	(196)
Level 3's share of loss in MFS	(131)

Included in the income tax benefit on the statement of earnings for the year ended December 30, 1995, is \$93 million of tax benefits from the reversal of certain deferred tax liabilities recognized on gains from previous MFS stock transactions that were not taxed due to the Spin-off.

**(5) Gain on Subsidiary's Stock Transactions, net**

Stock issuances by MFS for acquisitions and employee stock options, reduced Level 3's ownership in MFS prior to the Spin-off in 1995 to 66% from 67% in 1994. As a result, Level 3 recognized a gain of \$3 million in 1995 representing the increase in Level 3's proportionate share of MFS' equity. Deferred income taxes had been established on this gain prior to the Spin-off.

**(6) Disclosures about Fair Value of Financial Instruments**

The following methods and assumptions were used to determine classification and fair values of financial instruments:

**Cash and Cash Equivalents**

Cash equivalents generally consist of funds invested in the Kiewit Mutual Fund-Money Market Portfolio and highly liquid instruments purchased with an original maturity of three months or less. The securities are stated at cost, which approximates fair value.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(6) Disclosures about Fair Value of Financial Instruments (cont.)**

**Marketable Securities, Restricted Securities and Non-current Investments**

Level 3 has classified all marketable securities, restricted securities and marketable non-current investments not accounted for under the equity method as available-for-sale. Restricted securities primarily include investments in various portfolios of the Kiewit Mutual Fund that are restricted to fund certain reclamation liabilities of its coal mining ventures. Due to the anticipated increase in capital expenditures, Level 3 has reclassified its investments in marketable equity securities from non-current to current in 1997. The amortized cost of the securities used in computing unrealized and realized gains and losses is determined by specific identification. Fair values are estimated based on quoted market prices for the securities on hand or for similar investments. Net unrealized holding gains and losses are reported as a separate component of stockholders' equity, net of tax.

At December 27, 1997 and December 28, 1996 the amortized cost, unrealized holding gains and losses, and estimated fair values of marketable securities, restricted securities and marketable non-current investments were as follows:

(dollars in millions)	Amortized Cost	Unrealized Holding Gains	Unrealized Holding Losses	Fair Value
<u>1997:</u>				
Marketable Securities:				
Kiewit Mutual Fund:				
Short-term government	\$ 234	\$ -	\$ -	\$ 234
Intermediate term bond	195	3	-	198
Tax exempt	154	3	-	157
Equity	7	4	-	11
Collateralized mortgage obligations	-	1	-	1
Equity securities	48	9	-	57
Other securities	<u>20</u>	<u>-</u>	<u>-</u>	<u>20</u>
	<u>\$ 658</u>	<u>\$ 20</u>	<u>\$ -</u>	<u>\$ 678</u>
Restricted Securities:				
Kiewit Mutual Fund:				
Intermediate term bond	\$ 10	\$ -	\$ -	\$ 10
Equity	<u>12</u>	<u>-</u>	<u>-</u>	<u>12</u>
	<u>\$ 22</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 22</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(6) Disclosures about Fair Value of Financial Instruments (cont.)**

(dollars in millions)	Amortized Cost	Unrealized Holding Gains	Unrealized Holding Losses	Fair Value
<u>1996:</u>				
Marketable Securities:				
Kiewit Mutual Fund:				
Short-term government	\$ 100	\$ -	\$ -	\$ 100
Intermediate term bond	65	2	-	67
Tax exempt	126	2	-	128
Equity	5	2	-	7
Corporate debt securities (held by C-TEC)	47	-	-	47
Collateralized mortgage obligations	-	1	-	1
Other securities	<u>20</u>	<u>2</u>	<u>-</u>	<u>22</u>
	<u>\$ 363</u>	<u>\$ 9</u>	<u>\$ -</u>	<u>\$ 372</u>
Restricted Securities:				
Kiewit Mutual Fund:				
Intermediate term bond	\$ 8	\$ -	\$ -	\$ 8
Equity	<u>7</u>	<u>2</u>	<u>-</u>	<u>9</u>
	<u>\$ 15</u>	<u>\$ 2</u>	<u>\$ -</u>	<u>\$ 17</u>
Non-current investments:				
Equity securities	<u>\$ 49</u>	<u>\$ 26</u>	<u>\$ -</u>	<u>\$ 75</u>

Other securities consist of bonds issued by the Cascanan project and purchased by Level 3.

For debt securities, amortized costs do not vary significantly from principal amounts. Realized gains and losses on sales of marketable and equity securities were \$9 million and \$- million in 1997, \$3 million and \$- million in 1996, and \$1 million and \$2 million in 1995.

At December 27, 1997, the contractual maturities of the debt securities are as follows:

(dollars in millions)	Amortized Cost	Fair Value
Other securities:		
10+ years	<u>\$ 20</u>	<u>\$ 20</u>

Maturities for the mutual fund, equity securities and collateralized mortgage obligations have not been presented as they do not have a single maturity date.

**Long-term Debt**

The fair value of debt was estimated using the incremental borrowing rates of Level 3 for debt of the same remaining maturities. The fair value of the debt approximates the carrying amount.



**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(7) Investments**

Investments consist of the following at December 27, 1997 and December 28, 1996:

(dollars in millions)	1997	1996
Commonwealth Telephone Enterprises Inc.	\$ 75	\$ -
RCN Corporation	214	-
Cable Michigan	46	-
Pavilion Towers	22	-
Equity securities (Note 6)	-	75
C-TEC investments:		
Megacable S.A. de C.V.	-	74
Other	-	12
Other	26	28
	<u>\$ 383</u>	<u>\$ 189</u>

On September 5, 1997, C-TEC announced that its board of directors had approved the planned restructuring of C-TEC into three publicly traded companies effective September 30, 1997. Under the terms of the restructuring C-TEC shareholders received stock in the following companies:

- Commonwealth Telephone Enterprises, Inc., containing the local telephone group and related engineering business;
- Cable Michigan, Inc., containing the cable television operations in Michigan; and
- RCN Corporation, Inc., which consists of RCN Telecom Services; C-TEC's existing cable systems in the Boston-Washington D.C. corridor; and the investment in Megacable S.A. de C.V., a cable operator in Mexico. RCN Telecom Services is a provider of packaged local and long distance telephone, video, and internet access services provided over fiber optic networks to residential customers in Boston, New York City and Washington D.C.

As a result of the restructuring, Level 3 owns less than 50% of the outstanding shares and voting rights of each entity, and therefore accounts for each entity using the equity method as of the beginning of 1997. C-TEC's financial position, results of operations and cash flows are consolidated in the 1996 and 1995 consolidated financial statements.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(7) Investments (cont.)**

The following is summarized financial information of the three entities created as result of the C-TEC restructuring:

<u>Operations (dollars in millions)</u>	<u>1997</u>	<u>1996</u>	<u>1995</u>
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**Commonwealth Telephone Enterprises**

Revenue	\$ 197	\$ 186	\$ 174
Net income available to common stockholders	20	20	31
Level 3's share:			
Net income	10	10	15
Goodwill amortization	<u>(1)</u>	<u>(1)</u>	<u>1</u>
Equity in net income	<u>\$ 9</u>	<u>\$ 9</u>	<u>\$ 16</u>

**Cable Michigan**

Revenue	\$ 81	\$ 76	\$ 60
Net loss available to common stockholders	(4)	(8)	(10)
Level 3's share:			
Net loss	(2)	(4)	(5)
Goodwill amortization	<u>(4)</u>	<u>(4)</u>	<u>(4)</u>
Equity in net loss	<u>\$ (6)</u>	<u>\$ (8)</u>	<u>\$ (9)</u>

**RCN Corporation**

Revenue	\$ 127	\$ 105	\$ 91
Net (loss) income available to common stockholders	(52)	(6)	2
Level 3's share:			
Net (loss) income	(26)	(3)	1
Goodwill amortization	<u>-</u>	<u>(3)</u>	<u>1</u>
Equity in net (loss) income	<u>\$ (26)</u>	<u>\$ (6)</u>	<u>\$ 2</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(7) Investments (cont.)**

Financial Position (in millions)	Commonwealth Telephone Enterprises		Cable Michigan		RCN Corporation	
	1997	1996	1997	1996	1997	1996
Current assets	\$ 71	\$ 51	\$ 23	\$ 10	\$ 698	\$ 143
Other assets	<u>303</u>	<u>266</u>	<u>120</u>	<u>139</u>	<u>453</u>	<u>485</u>
Total assets	<u>374</u>	<u>317</u>	<u>143</u>	<u>149</u>	<u>1,151</u>	<u>628</u>
Current liabilities	76	59	16	24	70	57
Other liabilities	260	189	166	190	708	175
Minority interest	-	-	<u>15</u>	<u>15</u>	<u>16</u>	<u>5</u>
Total liabilities	<u>336</u>	<u>248</u>	<u>197</u>	<u>229</u>	<u>794</u>	<u>237</u>
Net assets (liabilities)	<u>\$ 38</u>	<u>\$ 69</u>	<u>\$ (54)</u>	<u>\$ (80)</u>	<u>\$ 357</u>	<u>\$ 391</u>
Level 3's Share:						
Equity in net assets	\$ 18	\$ 33	\$ (26)	\$ (38)	\$ 173	\$ 189
Goodwill	<u>57</u>	<u>58</u>	<u>72</u>	<u>75</u>	<u>41</u>	<u>41</u>
	<u>\$ 75</u>	<u>\$ 91</u>	<u>\$ 46</u>	<u>\$ 37</u>	<u>\$ 214</u>	<u>\$ 230</u>

On December 27, 1997 the market value of Level 3's investments in Commonwealth Telephone, Cable Michigan and RCN was \$215 million, \$76 million and \$485 million, respectively.

In February 1997, Level 3 purchased the Pavilion Towers office buildings in Aurora, Colorado for \$22 million.

Investments in 1996 also include C-TEC's 40% ownership of Megacable S.A. de C.V., Mexico's second largest cable operator, accounted for using the equity method.

**(8) Intangible Assets**

Intangible assets consist of the following at December 27, 1997 and December 28, 1996:

(dollars in millions)	1997	1996
CPTC intangibles and other	\$ 23	\$ 23
C-TEC:		
Goodwill	-	198
Franchise and subscriber lists	-	229
Other	<u>-</u>	<u>34</u>
	<u>23</u>	<u>484</u>
Less accumulated amortization	<u>(2)</u>	<u>(131)</u>
	<u>\$ 21</u>	<u>\$ 353</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(9) Long-Term Debt**

At December 27, 1997 and December 28, 1996, long-term debt was as follows:

(dollars in millions)	1997	1996
CPTC Long-term Debt (with recourse only to CPTC):		
Bank Note		
(7.7% due 2008)	\$ 65	\$ 65
Institutional Note		
(9.45% due 2017)	35	35
OCTA Debt		
(9.0% due 2006)	8	6
Subordinated Debt		
(9.5% No Maturity)	<u>6</u>	<u>2</u>
	114	108
Other:		
Pavilion Towers Debt (8.4% due 2007)	15	-
Capitalized Leases	6	1
Other	<u>5</u>	<u>6</u>
	26	7
C-TEC Longterm Debt (with recourse only to C-TEC):		
Credit Agreement — National Bank for Cooperatives		
(7.51% due 2009)	-	110
Senior Secured Notes		
(9.65% due 1999)	-	134
Term Credit Agreement — Morgan Guaranty Trust Company		
(7% due 2002)	<u>-</u>	<u>18</u>
	<u>-</u>	<u>262</u>
	140	377
Less current portion	<u>(3)</u>	<u>(57)</u>
	<u>\$ 137</u>	<u>\$ 320</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements****(9) Long-Term Debt (cont.)****CPTC:**

In August 1996, CPTC converted its construction financing note into a term note with a consortium of banks ("Bank Debt"). The interest rate on the Bank Debt is based on LIBOR plus a varying rate with interest payable quarterly. Upon completion of the SR91 toll road, CPTC entered into an interest rate swap arrangement with the same parties. The swap expires in January 2004 and fixes the interest rate on the Bank Debt from 9.21% to 9.71% during the term of the swap agreement.

The institutional note is with Connecticut General Life Insurance Company, a subsidiary of CIGNA Corporation. The note converted into a term loan upon completion of the SR91 toll road.

Substantially all the assets of CPTC and the partners' equity interest in CPTC secure the term debt.

Orange County Transportation Authority holds \$8 million of subordinated debt which is due in varying amounts over 10 years. Interest accrues at 9% and is payable quarterly beginning in 2000.

In July 1996, CPTC borrowed from the partners \$2 million to facilitate the completion of the project. In 1997, CPTC borrowed an additional \$4 million from the partners in order to comply with equity maintenance provisions of the contracts with the State of California and its lenders. The debt is generally subordinated to all other debt of CPTC. Interest on the subordinated debt compounds annually at 9.5% and is payable only as CPTC generates excess cash flows.

CPTC capitalized interest of \$- million, \$5 million and \$7 million in 1997, 1996 and 1995.

**Other:**

In June 1997, a mortgage with Metropolitan Life was established. The Pavilion Towers building in Aurora, CO collateralizes this debt.

Scheduled maturities of long-term debt through 2002 are as follows (in millions): 1998 — \$3; 1999 — \$6; 2000 — \$5; 2001 — \$6 and \$8 in 2002.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(10) Income Taxes**

An analysis of the income tax benefit (provision) attributable to earnings from continuing operations before income taxes and minority interest for the three years ended December 27, 1997 follows:

(dollars in millions)	1997	1996	1995
Current:			
U.S. federal	\$ (54)	\$ (61)	\$ (66)
Foreign	-	(4)	(4)
State	<u>(1)</u>	<u>(6)</u>	<u>(3)</u>
	(55)	(71)	(73)
Deferred:			
U.S. federal	103	67	145
Foreign	-	-	3
State	<u>-</u>	<u>1</u>	<u>4</u>
	<u>103</u>	<u>68</u>	<u>152</u>
	<u>\$ 48</u>	<u>\$ (3)</u>	<u>\$ 79</u>

The United States and foreign components of earnings from continuing operations for tax reporting purposes, before equity loss in MFS (recorded net of tax), minority interest and income taxes follows:

(dollars in millions)	1997	1996	1995
United States	\$ 31	\$ 106	\$ 187
Foreign	<u>-</u>	<u>1</u>	<u>3</u>
	<u>\$ 31</u>	<u>\$ 107</u>	<u>\$ 190</u>

A reconciliation of the actual income tax benefit (provision) and the tax computed by applying the U.S. federal rate (35%) to the earnings from continuing operations before equity loss in MFS (recorded net of tax), minority interest and income taxes for the three years ended December 27, 1997 follows:

(dollars in millions)	1997	1996	1995
Computed tax at statutory rate	\$ (11)	\$ (37)	\$ (67)
State income taxes	(1)	(3)	-
Depletion	3	3	2
Goodwill amortization	-	(3)	(2)
Tax exempt interest	2	2	2
Prior year tax adjustments	62	44	51
Compensation expense attributable to options	(7)	-	-
MFS deferred tax	-	-	93
Taxes on foreign operations	-	(2)	1
Other	<u>-</u>	<u>(7)</u>	<u>(1)</u>
	<u>\$ 48</u>	<u>\$ (3)</u>	<u>\$ 79</u>

During the three years ended December 27, 1997, the Company settled a number of disputed tax issues related to prior years that have been included in prior year tax adjustments.

# **PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

## **Notes to Consolidated Financial Statements**

### **(10) Income Taxes (cont.)**

Possible taxes, beyond those provided on remittances of undistributed earnings of foreign subsidiaries, are not expected to be material.

The components of the net deferred tax liabilities for the years ended December 27, 1997 and December 28, 1996 were as follows:

(dollars in millions)	1997	1996
Deferred tax liabilities:		
Investments in securities	\$ 7	\$ 11
Investments in joint ventures	33	45
Asset bases - accumulated depreciation	53	225
Coal sales	41	15
Other	<u>16</u>	<u>16</u>
Total deferred tax liabilities	150	312
Deferred tax assets:		
Compensation — retirement benefits	25	29
Investment in subsidiaries	8	2
Provision for estimated expenses	7	26
Net operating losses of subsidiaries	-	6
Foreign and general business tax credits	3	67
Alternative minimum tax credits	-	16
Other	9	19
Valuation allowances	<u>-</u>	<u>(6)</u>
Total deferred tax assets	<u>52</u>	<u>159</u>
Net deferred tax liabilities	<u>\$ 98</u>	<u>\$ 153</u>

### **(11) Stockholders' Equity**

PKS is generally committed to purchase all common stock in accordance with the Certificate of Incorporation. Issuances and repurchases of common shares, including conversions, for the three years ended December 27, 1997 were as follows:

	Class B&C Stock	Class D Stock
Shares issued in 1995	1,021,875	530,610
Shares repurchased in 1995	136,057	210,735
Class B&C shares converted to Class D shares	6,092,877	12,847,155
Shares issued in 1996	896,640	-
Shares repurchased in 1996	146,893	1,276,080
Class B&C shares converted to Class D shares	623,475	2,052,425
Shares issued in 1997	893,924	13,113,015
Shares repurchased in 1997	44,256	14,805
Class B&C shares converted to Class D shares	1,723,966	6,517,715

The 1996 activity includes 150,995 Class D shares converting to 47,007 Class C shares. The 1997 activity includes 1,880 Class D shares converting to 510 Class C shares.

# **PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

## **Notes to Consolidated Financial Statements**

### **(12) Class D Stock Plan**

In December 1997, stockholders approved amendments to the 1995 Class D Stock Plan ("the Plan"). The amended plan, among other things, increases the number of shares reserved for issuance upon the exercise of stock based awards to 35,000,000, increases the maximum number of options granted to any one participant to 5,000,000, provides for the acceleration of vesting in the event of a change in control, allows for the grant of stock based awards to directors of Level 3 and other persons providing services to Level 3, and allows for the grant of nonqualified stock options with an exercise price less than the fair market value of Class D Stock.

In December 1997, Level 3 converted both option and stock appreciation rights plans of a subsidiary, to the Class D Stock plan. This conversion resulted in the issuance of 3.7 million options to purchase Class D Stock at \$9 per share. Level 3 recognized an expense, and a corresponding increase in equity, as a result of the transaction. This increase in equity and the conversion of the stock appreciation rights liability to equity are reflected as option activity in the Statement of Changes in Stockholders' Equity. The options vest over three years and expire in December 2002.

Level 3 has elected to adopt only the required disclosure provisions and not the optional expense recognition provisions under SFAS No. 123 "Accounting for Stock Based Compensation", which established a fair value based method of accounting for stock options and other equity instruments. The fair value of the options outstanding was calculated using the Black-Scholes method using risk-free interest rates ranging from 5.5% to 6.77% and expected lives of 75% of the total life of the option. Level 3 used an expected volatility rate of 0%, which is allowed for private entities under SFAS No. 123. Once Level 3's stock is listed, volatility factors will be incorporated in determining fair value. Level 3's net income and earnings per share for 1997 and 1996 would have been reduced to the pro forma amounts shown below had SFAS No. 123 been applied.

	1997	1996
Net Income of Level 3		
As Reported	\$ 93	\$ 113
Pro Forma	93	112
Basic Earnings per Share		
As Reported	\$ .74	\$ .97
Pro Forma	.74	.97
Diluted Earning per Share		
As Reported	\$ .74	\$ .97
Pro Forma	.74	.96

The 1995 historical and pro forma amounts did not vary as the options granted in 1995 had not vested.



**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(12) Class D Stock Plan (cont.)**

Transactions involving stock options granted under the Plan are summarized as follows:

	Shares	Option Price Per Share	Weighted Avg. Option Price
Balance December 31, 1994	-	\$ -	\$ -
Options granted	1,340,000	\$8.08	\$8.08
Options cancelled	-	-	-
Options exercised	-	-	-
Balance December 30, 1995	<u>1,340,000</u>	<u>\$8.08</u>	<u>\$8.08</u>
Options granted	895,000	\$9.90	\$9.90
Options cancelled	(15,000)	8.08	8.08
Options exercised	-	-	-
Balance December 28, 1996	<u>2,220,000</u>	<u>\$8.08 - \$9.90</u>	<u>\$8.81</u>
Options granted	7,495,465	\$9.00 - \$10.85	\$9.93
Options cancelled	(53,000)	9.90	9.90
Options exercised	<u>(2,318,465)</u>	8.08 - 9.90	8.93
Balance December 27, 1997	<u>7,344,000</u>	<u>\$8.08 - \$10.85</u>	<u>\$9.91</u>
Options exercisable			
December 30, 1995	-	\$ -	\$ -
December 28, 1996	265,000	8.08	8.08
December 27, 1997	1,295,269	8.08 - 9.90	8.70

The weighted average remaining life for the 7,344,000 options outstanding on December 27, 1997 is 8.3 years.

**(13) Industry and Geographic Data**

The Company conducts its continuing operations primarily in three reportable segments: information services, telecommunications and coal mining. Other primarily includes CPTC and corporate overhead not attributable to a specific segment and marketable securities.

Equity earnings is included due to the significant equity investments in the telecommunications business.

In 1997, 1996 and 1995 Commonwealth Edison Company accounted for 43%, 23% and 23% of Level 3's revenues.

Industry and geographic data for the construction and energy businesses have been recorded under discontinued operations.

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(13) Industry and Geographic Data (cont.)**

A summary of the Company's operations by industry and geographic region is as follows:

(dollars in millions)	Information Services	Telecom- munications (C-TEC Entities)	Coal Mining	Discontinued Other Operations	Consolidated
<b>1997</b>					
Revenue	\$ 94	\$ -	\$ 222	\$ 16	\$ 332
Operating Earnings	(16)	-	82	(23)	43
Equity Losses, net	-	(23)	-	(20)	(43)
Identifiable Assets	61	336	499	588	1,295
Capital Expenditures	14	-	3	9	26
Depreciation, Depletion & Amortization	8	-	8	8	24
<b>1996</b>					
Revenue	\$ 42	\$ 367	\$ 234	\$ 9	\$ 652
Operating Earnings	(3)	31	94	(35)	87
Equity Losses, net	(1)	(1)	-	(7)	(9)
Identifiable Assets	29	1,100	387	380	1,170
Capital Expenditures	11	87	2	17	117
Depreciation, Depletion & Amortization	10	106	12	4	132
<b>1995</b>					
Revenue	\$ 36	\$ 325	\$ 216	\$ 3	\$ 580
Operating Earnings	4	37	77	(73)	45
Equity Losses, net	-	(3)	-	(2)	(5)
Identifiable Assets	34	1,143	368	614	786
Capital Expenditures	6	72	4	36	118
Depreciation, Depletion & Amortization	5	81	7	3	96

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(13) Industry and Geographic Data (cont.)**

Geographic Data (dollars in millions)	Information Services	Telecom- munications (C-TEC Entities)	Coal Mining	Discontinued Other Operations	Consolidated	
<b>1997</b>						
Revenue:						
United States	\$ 94	\$ -	\$ 222	\$ 16	\$ -	\$ 332
Other	-	-	-	-	-	-
	<u>\$ 94</u>	<u>\$ -</u>	<u>\$ 222</u>	<u>\$ 16</u>	<u>\$ -</u>	<u>\$ 332</u>
Operating Earnings:						
United States	\$ (16)	\$ -	\$ 82	\$ (23)	\$ -	\$ 43
Other	-	-	-	-	-	-
	<u>\$ (16)</u>	<u>\$ -</u>	<u>\$ 82</u>	<u>\$ (23)</u>	<u>\$ -</u>	<u>\$ 43</u>
Identifiable Assets:						
United States	\$ 59	\$ 336	\$ 499	\$ 588	\$ 870	\$ 2,352
Other	2	-	-	-	425	427
	<u>\$ 61</u>	<u>\$ 336</u>	<u>\$ 499</u>	<u>\$ 588</u>	<u>\$ 1,295</u>	<u>\$ 2,779</u>
<b>1996</b>						
Revenue:						
United States	\$ 42	\$ 367	\$ 234	\$ 9	\$ -	\$ 652
Other	-	-	-	-	-	-
	<u>\$ 42</u>	<u>\$ 367</u>	<u>\$ 234</u>	<u>\$ 9</u>	<u>\$ -</u>	<u>\$ 652</u>
Operating Earnings:						
United States	\$ (3)	\$ 31	\$ 94	\$ (35)	\$ -	\$ 87
Other	-	-	-	-	-	-
	<u>\$ (3)</u>	<u>\$ 31</u>	<u>\$ 94</u>	<u>\$ (35)</u>	<u>\$ -</u>	<u>\$ 87</u>
Identifiable Assets:						
United States	\$ 29	\$ 1,100	\$ 387	\$ 380	\$ 761	\$ 2,657
Other	-	-	-	-	409	409
	<u>\$ 29</u>	<u>\$ 1,100</u>	<u>\$ 387</u>	<u>\$ 380</u>	<u>\$ 1,170</u>	<u>\$ 3,066</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(13) Industry and Geographic Data (cont.)**

Geographic Data (dollars in millions)	Information Services	Telecom- munications (C-TEC Entities)	Coal Mining	Other	Discontinued Operations	Consolidated
<b>1995</b>						
Revenue:						
United States	\$ 36	\$ 325	\$ 216	\$ 3	\$ -	\$ 580
Other	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
	<u>\$ 36</u>	<u>\$ 325</u>	<u>\$ 216</u>	<u>\$ 3</u>	<u>\$ -</u>	<u>\$ 580</u>
Operating Earnings:						
United States	\$ 4	\$ 37	\$ 77	\$ (73)	\$ -	\$ 45
Other	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
	<u>\$ 4</u>	<u>\$ 37</u>	<u>\$ 77</u>	<u>\$ (73)</u>	<u>\$ -</u>	<u>\$ 45</u>
Identifiable Assets:						
United States	\$ 34	\$ 1,143	\$ 368	\$ 614	\$ 614	\$ 2,773
Other	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>172</u>	<u>172</u>
	<u>\$ 34</u>	<u>\$ 1,143</u>	<u>\$ 368</u>	<u>\$ 614</u>	<u>\$ 786</u>	<u>\$ 2,945</u>

**(14) Related Party Transactions**

Level 3 receives certain mine management services from the Construction & Mining Group. The expense for these services was \$32 million for 1997, \$37 million for 1996 and \$30 million for 1995, and is recorded in general and administrative expenses. The revenue earned by the Construction and Mining Group is included in discontinued operations.

**(15) Fair Value of Financial Instruments**

The carrying and estimated fair values of Level 3's financial instruments are as follows:

(dollars in millions)	1997		1996	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Cash and cash equivalents (Note 6)	\$ 87	\$ 87	\$ 147	\$ 147
Marketable securities (Note 6)	678	678	372	372
Restricted securities (Note 6)	22	22	17	17
Investment in equity securities (Notes 6 & 7)	-	-	75	75
Investment in C-TEC entities (Note 7)	335	776	355	315
Investments in discontinued operations (Note 3)	643	854	608	960
Long-term debt (Notes 6 & 9)	140	140	377	384

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(16) C-TEC Restructuring**

The following is financial information of the Company had C-TEC been accounted for utilizing the equity method as of December 27, 1997 and December 28, 1996 and for each of the three years ended December 27, 1997. The 1997 financial statements include C-TEC accounted for utilizing the equity method and are presented here for comparative purposes only.

Operations (dollars in millions)	1997	1996	1995
Revenue	\$ 332	\$ 285	\$ 255
Cost of Revenue	<u>(175)</u>	<u>(134)</u>	<u>(133)</u>
	157	151	122
General and Administrative Expenses	<u>(114)</u>	<u>(95)</u>	<u>(114)</u>
Operating Earnings	43	56	8
Other (Expense) Income:			
Equity earnings (losses), net	(43)	(13)	7
Investment income, net	45	42	30
Interest expense, net	(15)	(5)	(1)
Gain on subsidiary's stock transactions, net	-	-	3
Other, net	<u>1</u>	<u>11</u>	<u>120</u>
	(12)	35	159
Equity Loss in MFS	<u>-</u>	<u>-</u>	<u>(131)</u>
Earnings from Continuing Operations before Income Taxes and Minority Interest	31	91	36
Income Tax Benefit	48	11	90
Minority Interest in Net Loss of Subsidiaries	<u>4</u>	<u>2</u>	<u>-</u>
Income from Continuing Operations	83	104	126
Income from Discontinued Operations	<u>165</u>	<u>117</u>	<u>118</u>
Net Earnings	<u>\$ 248</u>	<u>\$ 221</u>	<u>\$ 244</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(16) C-TEC Restructuring (cont.)**

<u>Financial Position (dollars in millions)</u>	<u>1997</u>	<u>1996</u>
<b>Assets</b>		
Current Assets:		
Cash and cash equivalents	\$ 87	\$ 71
Marketable securities	678	325
Restricted securities	22	17
Receivables	42	34
Investment in Discontinued Operations — Energy	643	608
Other	<u>22</u>	<u>12</u>
Total Current Assets	1,494	1,067
Net Property, Plant and Equipment	184	174
Investments	383	458
Investments in Discontinued Operations — Construction	652	562
Intangible Assets, net	21	23
Other Assets	<u>45</u>	<u>49</u>
	<u>\$ 2,779</u>	<u>\$ 2,333</u>
<b>Liabilities and Stockholders' Equity</b>		
Current Liabilities:		
Accounts payable	\$ 31	\$ 41
Current portion of long-term debt	3	2
Accrued reclamation and other mining costs	19	19
Other	<u>36</u>	<u>27</u>
Total Current Liabilities	89	89
Long-term Debt, less current portion	137	113
Deferred Income Taxes	83	47
Accrued Reclamation Costs	100	98
Other Liabilities	139	163
Minority Interest	1	4
Stockholders' Equity	<u>2,230</u>	<u>1,819</u>
	<u>\$ 2,779</u>	<u>\$ 2,333</u>

**PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(17) Pro Forma Information (unaudited).**

The following information represents the pro forma financial position of Level 3, after reflecting the impact of the transactions with CalEnergy (Note 3), the conversion of Class C shares to Class D shares (Note 19) and transactions related to the spin-off of the Construction and Mining Group (Note 2), all of which took place or are expected to happen in the first quarter of 1998.

(dollars in millions)	1997 Historical	Adjustments	1997 Pro Forma
<b>Current Assets</b>			
Cash & marketable securities	\$ 765	\$ 122 (a) 1,159 (b)	\$ 2,046
Investment in discontinued operations — energy	643	(643) (b)	-
Other current assets	<u>86</u>		<u>86</u>
Total Current Assets	1,494	<u>638</u>	2,132
 Property, Plant & Equipment, net	 184		 184
Investment in Discontinued Operations — Construction	652	(122) (a) 350 (c) (880) (d)	-
Other Non-current assets	<u>449</u>		<u>449</u>
	<u>\$ 2,779</u>	<u>\$ (14)</u>	<u>\$ 2,765</u>
 <b>Current Liabilities</b>	 \$ 89	 \$ 192 (b)	 \$ 281
Non-current Liabilities	459		459
Minority Interest	1		1
Stockholders' Equity	2,230	324 (b) 350 (c) (880) (d)	2,024
	<u>\$ 2,779</u>	<u>\$ (14)</u>	<u>\$ 2,765</u>

(a) Reflect conversion of 2.3 million Class C shares to 10.5 million Class D shares.

(b) Reflect sale of energy assets to CalEnergy and related income tax liability.

(c) Reflect fair value gain on the distribution of the Construction and Mining Group.

(d) Reflect spin-off of the Construction and Mining Group.

## **PETER KIEWIT SONS', INC. AND SUBSIDIARIES**

### **Notes to Consolidated Financial Statements**

#### **(18) Other Matters**

In connection with the sale of approximately 10 million Class D shares to employees in 1997, the Company has retained the right to purchase the relevant Class D shares at the then current Class D Stock price if the Transaction is definitively abandoned by formal action of the PKS Board or the employees voluntarily terminate their employment on various dates prior to January 1, 1999.

In May 1995, the lawsuit titled Whitney Benefits, Inc. and Peter Kiewit Sons' Co. v. The United States was settled. In 1983, plaintiffs alleged that the enactment of the Surface Mining Control and Reclamation Act of 1977 had prevented the mining of their Wyoming coal deposit and constituted a government taking without just compensation. In settlement of all claims, plaintiffs agreed to deed the coal deposits to the government and the government agreed to pay plaintiffs \$200 million, of which Peter Kiewit Sons' Co., a Level 3 subsidiary, received approximately \$135 million in June 1995 and recorded it in other income on the statements of earnings.

The Company is involved in various other lawsuits, claims and regulatory proceedings incidental to its business. Management believes that any resulting liability, beyond that provided, should not materially affect the Company's financial position, future results of operations or future cash flows.

Level 3 leases various buildings and equipment under both operating and capital leases. Minimum rental payments on buildings and equipment subject to noncancelable operating leases during the next 7 years aggregate \$29 million.

It is customary in Level 3's industries to use various financial instruments in the normal course of business. These instruments include items such as letters of credit. Letters of credit are conditional commitments issued on behalf of Level 3 in accordance with specified terms and conditions. As of December 27, 1997, Level 3 had outstanding letters of credit of approximately \$22 million.

#### **(19) Subsequent Events**

In January 1998, approximately 2.3 million shares of Class C Stock, with a redemption value of \$122 million, were converted into 10.5 million shares of Class D Stock.

In March 1998, PKS announced that its Class D Stock will begin trading on April 1 on the Nasdaq National Market under the symbol "LVLT". The Nasdaq listing will follow the separation of the Level 3 and the Construction Group of PKS, which is expected to be completed on March 31, 1998. In connection with the separation, PKS' construction subsidiary will be renamed "Peter Kiewit Sons', Inc." and PKS Class D stock will become the common stock of Level 3 Communications, Inc.

PKS' certificate of incorporation gives stockholders the right to exchange their Class C Stock for Class D Stock under a set conversion formula. That right will be eliminated as a result of the separation of Level 3 and the Construction Group. To replace that conversion right, Class C stockholders received 6.5 million shares of a new Class R stock in January, 1998, which is convertible into Class D Stock in accordance with terms ratified by stockholders in December 1997.



**PETER KIEWIT SONS', INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements****(19) Subsequent Events (cont.)**

The PKS Board of Directors has approved in principle a plan to force conversion of all shares of Class R stock outstanding. Due to certain provisions of the Class R stock, conversion will not be forced prior to May 1998, and the final decision to force conversion would be made by Level 3's Board of Directors at that time. Level 3's Board may choose not to force conversion if it were to decide that conversion is not in the best interests of Level 3 stockholders. If, as currently anticipated, Level 3's Board determines to force conversion of the Class R stock on or before June 30, 1998, certain adjustments will be made to the cost sharing and risk allocation provisions of the separation agreement between Level 3 and the Construction business.

If Level 3's Board of Directors determines to force conversion of the Class R stock, each share of Class R stock will be convertible into \$25 worth of Level 3 (Class D) common stock, based upon the average trading price of the Level 3 common stock on the Nasdaq National Market for the last fifteen trading days of the month prior to the determination by the Board of Directors to force conversion. When the spin-off occurs, Level 3 will increase paid in capital and reduce retained earnings by the fair value of the Class R shares.

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 10 - K/A**  
**Amendment No. 2 to**  
Annual Report Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934

For the fiscal year ended  
December 27, 1997

Commission File  
Number 0-15658

**LEVEL 3 COMMUNICATIONS, INC.**  
(formerly known as Peter Kiewit Sons', Inc.)  
(Exact name of registrant as specified in its charter)

Delaware  
(State of Incorporation)

47-0210602  
(I.R.S. Employer)  
Identification No.)

1000 Kiewit Plaza, Omaha, Nebraska  
(Address of principal executive offices)

68131  
(Zip Code)

(402) 536-3677  
(Registrant's telephone number,  
including area code)

Securities registered pursuant to Section 12(b) of the Act:  
None.

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value \$.01

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

The aggregate market value of the registrant's stock ("Common Stock") held by nonaffiliates as of March 15, 1998 was \$7.3 billion, based on the closing price of the registrant's common stock on the NASDAQ OTC Bulletin Board on that date.

As of March 15, 1998, 146,943,752 shares of the Common Stock were outstanding.

## INTRODUCTION

This Form 10-K/A amends the Form 10-K filed by Peter Kiewit Sons', Inc. (the "Company") on March 31, 1998, as amended by a Form 10-K/A Amendment No. 1 to Form 10-K filed by the Company on April 23, 1998. This Form 10-K/A is being filed solely to set forth the information required by Part III (Items 10, 11, 12 and 13) of Form 10-K, because a definitive proxy statement containing such information will not be filed within 120 days after the end of the fiscal year covered by the Company's original Form 10-K filing. This Form 10-K/A amends Part III of the Company's original Form 10-K filing only, and all other portions of the Company's original 10-K filing remain in effect.

On March 31, 1998, the Company exchanged for all of its then outstanding Class C Stock for all of the capital stock of a subsidiary (the "Construction Subsidiary") holding the stock of Kiewit Construction Group Inc. ("KCG"), the construction subsidiary of the Company (the "Split-Off"). In connection with the Split-Off, the Company was renamed "Level 3 Communications, Inc." and the Construction Subsidiary was renamed "Peter Kiewit Sons', Inc." (In this Form 10-K/A, the Construction Subsidiary is referred to as "New PKS").

## ITEM 10. MANAGEMENT

### Directors and Executive Officers

Set forth below is information as of April 27, 1998 about each director and executive officer of the Company, including his business experience during the past five years.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Walter Scott, Jr.	66	Chairman of the Board
James Q. Crowe	48	President, Chief Executive Officer and Director
R. Douglas Bradbury	47	Executive Vice President, Chief Financial Officer and Director
Kevin J. O'Hara	37	Executive Vice President and Chief Operating Officer
Terrence J. Ferguson	55	Senior Vice President, General Counsel and Secretary
Robert B. Daugherty	75	Director
William L. Grewcock	72	Director
Charles M. Harper	70	Director
Richard R. Jaros	46	Director
Robert E. Julian	58	Director
David C. McCourt	40	Director
Kenneth E. Stinson	55	Director
Michael B. Yanney	63	Director

Walter Scott, Jr. has been the Chairman of the Board of the Company since September 1979, and a director of the Company since April 1964. Mr. Scott has been Chairman Emeritus of New PKS since the Split-Off. Mr. Scott is also a director of Berkshire Hathaway Inc., Burlington Resources Inc., CalEnergy Company, Inc. ("CalEnergy"), ConAgra, Inc., Commonwealth Telephone Enterprises Inc. ("Commonwealth Telephone"), RCN Corporation ("RCN"), U.S. Bancorp and Valmont Industries, Inc.

James Q. Crowe has been the President and Chief Executive Officer of the Company since August 1997, and a director of the Company since June 1993. Mr. Crowe was President and Chief Executive Officer of MFS Communications Company, Inc. ("MFS") from June 1993 to June 1997. Mr. Crowe also served as Chairman of the Board of WorldCom, Inc. ("WorldCom") from January 1997 until July 1997, and as Chairman of the Board of MFS from 1992 through 1996. Mr. Crowe is presently a director of Commonwealth Telephone, RCN and InaCom Communications, Inc.

**R. Douglas Bradbury** has been Executive Vice President and Chief Financial Officer of the Company since August 1997 and a director of the Company since March 1998. Mr. Bradbury served as Chief Financial Officer of MFS from 1992 to 1996, Senior Vice President of MFS from 1992 to 1995, and Executive Vice President of MFS from 1995 to 1996.

**Kevin J. O'Hara** has been Executive Vice President of the Company since August 1997, and Chief Operating Officer of the Company since March 1998. Prior to that, Mr. O'Hara served as President and Chief Executive Officer of MFS Global Network Services, Inc. from 1995 to 1997, and as Senior Vice President of MFS and President of MFS Development, Inc. from October 1992 to August 1995. From 1990 to 1992, he was a Vice President of MFS Telecom, Inc. ("MFS Telecom").

**Terrence J. Ferguson** has been Senior Vice President, General Counsel and Secretary of the Company since August 1997. Prior to that he was a Senior Vice President of MFS from September 1992 to February 1997, General Counsel from January 1992 to February 1997 and Secretary from November 1991 to February 1997.

**Robert B. Daugherty** has been a director of the Company since January 1986. Mr. Daugherty has been a Director of Valmont Industries, Inc. for more than the past five years, and formerly was Chairman of the Board and Chief Executive Officer of Valmont Industries, Inc.

**William L. Grewcock** has been a director of the Company since January 1968. Prior to the Split-Off, Mr. Grewcock was Vice Chairman of the Company for more than five years.

**Charles M. Harper** has been a director of the Company since January 1986. Mr. Harper was Chairman of the Board of RJR Nabisco Holdings Corp. ("RJR Nabisco") from May 1993 to May 1996 and Chief Executive Officer of RJR Nabisco from May 1993 to December 1995. Prior to that, Mr. Harper was Chairman of the Board and Chief Executive Officer of ConAgra, Inc. Mr. Harper is currently a director of ConAgra, Inc., E.I. DuPont de Nemours and Company, Norwest Corporation and Valmont Industries, Inc.

**Richard R. Jaros** has been a director of the Company since June 1993 and served as President of the Company from 1996 to 1997. Mr. Jaros served as Executive Vice President of the Company from 1993 to 1997 and Chief Financial Officer of the Company from 1995 to 1997. He also served as President and Chief Operating Officer of CalEnergy from 1992 to 1993, and is presently a director of CalEnergy, Commonwealth Telephone and RCN.

**Robert E. Julian** has been a director of the Company since March 31, 1998. Mr. Julian has also been Chairman of the Board of PKSIS since 1995. From 1992 to 1995 Mr. Julian served as Executive Vice President and Chief Financial Officer of the Company.

**David C. McCourt** has been a director of the Company since March 31, 1998. Mr. McCourt has also served as Chairman and Chief Executive Officer of Commonwealth Telephone, Cable Michigan, Inc. and RCN since October 1997. From 1993 to 1997 Mr. McCourt served as Chairman of the Board and Chief Executive Officer of C-TEC Corporation. Mr. McCourt is also a director of Mercom, Inc.

**Kenneth E. Stinson** has been a director of the Company since January 1987. Mr. Stinson has been Chairman of the Board and Chief Executive Officer of New PKS since the Split-Off. Prior to the Split-Off, Mr. Stinson was Executive Vice President of the Company for more than the last five years. Mr. Stinson is also a director of ConAgra, Inc. and Valmont Industries, Inc.

**Michael B. Yanney** has been a director of the Company since March 31, 1998. He has served as Chairman of the Board, President and Chief Executive Officer of America First Companies L.L.C. for more than the last five years. Mr. Yanney is also a director of Burlington Northern Santa Fe Corporation, RCN, Forest Oil Corporation and Mid-America Apartment Communities, Inc.

**ITEM 11. Compensation****1997 Executive Officer and Director Compensation**

The table below shows the annual compensation of the chief executive officer and the next four most highly compensated executive officers of the Company for the 1997 fiscal year (the "Named Executive Officers").

Name and Principal Position	Year	Annual Compensation		Other Annual Compensation (\$)
		Salary (\$)	Bonus (\$)	
Walter Scott, Jr. Chief Executive Officer	1997	872,551	2,000,000	191,109
	1996	715,000	2,000,000	276,400
	1995	630,000	1,250,000	157,800
Kenneth E. Stinson Executive Vice President President	1997	476,669	1,500,000	
	1996	402,500	900,000	
	1995	351,300	600,000	
Richard Geary Executive Vice President of KCG	1997	285,919	770,000	
	1996	270,750	600,000	
	1995	252,800	525,000	
George B. Toll, Jr. Executive Vice President of KCG	1997	257,705	650,000	
	1996	231,250	500,000	
	1995	201,250	400,000	
Allan K. Kirkwood Senior Vice President of Kiewit Pacific, a KCG subsidiary	1997	221,250	360,000	
	1996	192,350	310,000	
	1995	166,150	240,000	

- (1) Other Annual Compensation means perquisites and other personal benefits received by each of the Named Executive Officers, if over \$50,000. The only reportable amounts are the non-business use of Company aircraft attributable to Mr. Scott. Aircraft usage values are calculated under federal income tax regulations and are reported as taxable income by Mr. Scott.

Each of the Named Executive Officers other than Mr. Scott set forth above is now employed by New PKS and is no longer an officer of the Company. Mr. Scott continues as Chairman of the Board of the Company, but is no longer the Chief Executive Officer of the Company. Richard R. Jaros, who resigned as an Executive Vice President of the Company effective July 31, 1997, received a salary of \$458,574 and a bonus of \$262,350 for fiscal year 1997. Messrs. Crowe, Bradbury, O'Hara and Ferguson, the four current executive officers of the Company who were employed by the Company during 1997, were paid salaries for 1997 of \$144,129, \$102,564, \$82,051 and \$52,019 respectively, and no other reportable compensation, during 1997. Each such executive officer was employed by the Company for only part of fiscal year 1997.

During 1997, each of the directors of the Company who were not employed by the Company during 1997 received directors fees consisting of an annual retainer of \$30,000 (pro-rated in the case of Mr. Crowe, who was employed by the Company for part of 1997) and fees of \$1,200 per board meeting and \$1,500 for the annual shareholder's meeting.

### Compensation Committee Interlocks and Insider Participation

Prior to the Split-Off, the Compensation Committee of the Company consisted of Messrs. Daugherty and Harper and Mr. Peter Kiewit, Jr., none of whom is an officer or employee of PKS. Each of Messrs. Daugherty, Harper and Kiewit purchased Common Stock from PKS in 1997. See "Certain Relationships and Related Transactions."

After the Split-Off, the Compensation Committee of the Company consists of Messrs. Yanney, McCourt and Jaros, none of whom is an officer or employee of the Company. Each of Messrs. Yanney and McCourt purchased Common Stock from the Company in 1997. Mr. Jaros has entered into a separation agreement with the Company, pursuant to which, among other things, he has received certain severance payments. See "Certain Relationships and Related Transactions."

### Change in Control Arrangements

The Company's 1995 Stock Plan (the "Plan") provides that upon a change in control of the Company (as defined in the Plan), (i) all awards under the Plan shall become immediately vested and (ii) the Committee may cancel any outstanding awards under the Plan upon ten days' advance written notice, and pay the value of such awards to the holders thereof in cash or stock. Messrs. Crowe, Bradbury, O'Hara and Ferguson are all participants in the Plan.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information with respect to the beneficial ownership of Common Stock as of March 31, 1998 by the Company's directors, certain executive officers and directors and executive officers as a group, and each person known by the Company to beneficially own more than 5% of the outstanding Common Stock.

<u>Name</u>	<u>Number of Shares of Common Stock</u>	<u>Percent of Common Stock</u>
Walter Scott, Jr. <sup>1</sup>	17,686,247	12.1%
James Q. Crowe	5,666,360	3.9%
R. Douglas Bradbury	1,277,595	"
Kevin J. O'Hara <sup>1</sup>	878,080	"
Robert B. Daugherty	-	"
William L. Grewcock <sup>1</sup>	5,762,070	3.9%
Charles M. Harper	95,000	"
Richard R. Jaros <sup>1</sup>	1,748,749	1.2%
Robert E. Julian	1,996,790	1.4%
David C. McCourt	57,500	"
Kenneth E. Stinson	150,280	"
Michael B. Yanney	50,000	"
Directors and Executive Officers as a Group	35,886,556	24.2%
Donald L. Sturm <sup>1</sup>	9,111,875	6.2%

<sup>1</sup>Less than 1%

- (1) The address of each person set forth above other than Mr. Sturm is c/o the Company, 3555 Farnam Street, Omaha, Nebraska 68131.

- (2) Includes 49,850 shares of Common Stock held by the Suzanne Scott Irrevocable Trust as to which Mr. Scott shares voting and investment powers, and 30,769 shares of Common Stock to be owned by Mr. Scott as a result of the conversion of the 80,000 shares of Class R Stock owned currently by Mr. Scott, assuming a Conversion Value (as defined in the Level 3 Certificate of Incorporation) of \$25 and a stock price of \$65 per share.
- (3) Includes 23,000 shares of Common Stock held by Kevin J. O'Hara Family LTD Partnership.
- (4) Includes 577,320 shares of Common Stock held by Grewcock Family Limited Partnership. Includes 175,615 shares of Common Stock held by the Bill & Berniece Grewcock Foundation as to which Mr. Grewcock shares voting and investment powers, and 630 shares of Common Stock to be owned by Mr. Grewcock as a result of the conversion of the 1,638 shares of Class R Stock owned currently by Mr. Grewcock, assuming a Conversion Value of \$25 and a stock price of \$65 per share.
- (5) Includes 185,000 shares of Common Stock held by the Jaros Family Limited Partnership. Includes 1,000,000 shares of Common Stock subject to options granted to Mr. Jaros. See "Certain Relationships and Related Transactions."
- (6) Mr. Sturm's business address is 3033 East First Avenue, Denver, Colorado 80206. Based on the Company's records as of February 28, 1998, Mr. Sturm owns 7,805,155 shares of Common Stock, and has voting and investment power with respect to 1,306,720 shares held by trusts and partnerships established for family members.

#### ITEM 13. CERTAIN TRANSACTIONS AND RELATIONSHIPS

In connection with his retention as Chief Executive Officer of the Company, Mr. Crowe entered into an engagement agreement (the "Engagement Agreement") with the Company. Under the Engagement Agreement, the Company acquired from Mr. Crowe, Mr. Bradbury and Mr. Ferguson, Broadband Capital Group, L.L.C., a company formed to develop investment opportunities, for a purchase price of \$68,523, the owners' cash investment in that company. Pursuant to the Engagement Agreement, the Company sold 5,000,000 shares of Common Stock to Mr. Crowe and 1,250,000 shares of Common Stock to Mr. Bradbury, in each case at \$10.85 per share. The Engagement Agreement also provided that the Company would make available for sale, from time to time prior to the consummation of the Split-Off, to certain employees of the Company designated by Mr. Crowe, including Mr. O'Hara and Mr. Ferguson, in connection with the implementation of the current business plan of the Company ("Employees"), up to an aggregate of 5,250,000 shares of Common Stock at \$10.85 per share.

The Company entered into agreements with each Business Plan Employee that provided that the Company may repurchase any Common Stock sold to the Business Plan Employee if the Business Plan Employee resigns at any time before January 1, 1999.

On August 5, 1997, the Company purchased a jet aircraft from a company controlled by Mr. Crowe for \$5.7 million, the price paid by the company for the aircraft in June 1997. The Company and Mr. Crowe have entered into an aircraft operating lease, under which Mr. Crowe may lease the aircraft for personal use at rates specified by certain Federal Aviation Administration regulations. The Company anticipates that Mr. Crowe will lease approximately 15% of the aircraft's annual flight time, and will pay the Company approximately \$70,000 per year at the current lease rate.

The Company entered into a separation agreement with Mr. Jaros, a director of the Company, in connection with the resignation of Mr. Jaros as President of Kiewit Diversified Group Inc., a subsidiary of the Company, effective July 31, 1997. Under the separation agreement, the Company paid Mr. Jaros \$1.8 million on July 31, and agreed to pay Mr. Jaros the balance of his 1997 salary (\$187,500) between August 1 and December 31, 1997 and a bonus payment of \$262,350 when the Company made its customary executive bonus payments in 1998. The Company also agreed to amend the option agreements with Mr. Jaros with respect to the options to purchase 750,000 shares of Common Stock at \$8.08 per share granted

to Mr. Jaros in 1995, and the options to purchase 250,000 shares of Common Stock at \$9.90 per share granted to Mr. Jaros in 1996, to provide that those options would be fully vested on July 31, 1997, and would be exercisable at any time during the ten-year term of the original option agreements.

In December 1996, the Company agreed to sell 50,000 shares of Common Stock to Mr. Harper, 50,000 shares of Common Stock to Mr. Daugherty and 40,000 shares of Common Stock to Mr. Kiewit, in each case at \$9.90 per share. Those stock purchase transactions were consummated in March 1997.

In October 1997, the Company sold 50,000 shares of Common Stock to Mr. Yanney and 50,000 shares of Common Stock to Mr. McCourt, in each case at \$10.85 per share.

The Company loaned George B. Toll, Jr. \$800,000 during 1994 in connection with the purchase of a residence and relocation expenses. The full principal amount of his demand note payable to the Company is currently outstanding. Mr. Toll was a director and executive officer of the Company prior to the Split-Off, but is no longer either a director or executive officer of the Company.



## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 27<sup>th</sup> day of April, 1998.

## LEVEL 3 COMMUNICATIONS, INC.

By: /s/ James Q. Crowe  
James Q. Crowe  
President

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on the 27<sup>th</sup> day of April, 1998.

/s/ JAMES Q. CROWE  
James Q. Crowe

Chairman of the Board and President  
(Director and Principal Executive Officer)

/s/ R. DOUGLAS BRADBURY  
R. Douglas Bradbury

Chief Financial Officer  
(Director and Principal Financial Officer)

/s/ ERIC J. MORTENSEN  
Eric J. Mortensen

Controller  
(Principal Accounting Officer)

/s/ WALTER SCOTT, JR.  
Walter Scott, Jr., Director

/s/ ROBERT B. DAUGHERTY  
Robert B. Daugherty, Director

/s/ WILLIAM L. GREWCOCK  
William L. Grewcock, Director

/s/ CHARLES M. HARPER  
Charles M. Harper, Director

/s/ RICHARD R. JAROS  
Richard R. Jaros, Director

/s/ ROBERT E. JULIAN  
Robert E. Julian, Director

/s/ DAVID C. MCCOURT  
David C. McCourt, Director

/s/ KENNETH E. STINSON  
Kenneth E. Stinson, Director

/s/ MICHAEL B. YANNEY  
Michael B. Yanney, Director

**Exhibit D**

Illustrative Local Exchange Tariff

LEVEL 3 COMMUNICATIONS, LLC

TRA TARIFF NO. 1  
Original Title Sheet

TARIFF SCHEDULE APPLICABLE TO  
NETWORK ACCESS TRANSMISSION SERVICES  
WITHIN THE STATE OF TENNESSEE  
BY  
LEVEL 3 COMMUNICATIONS, LLC

Issued by:

Terrence J. Ferguson  
Senior Vice President and General Counsel  
Level 3 Communications, LLC  
3555 Farnam Street  
Omaha, Nebraska 68131  
(402) 536-3677

ISSUED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

Issued By: Terrence J. Ferguson, Senior Vice President and General Counsel  
Level 3 Communications, LLC  
3555 Farnam Street  
Omaha, NE 68131

## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

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CHECK SHEET

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Current pages in this tariff are as follows:

<u>Page</u>	<u>Revision</u>	<u>Page</u>	<u>Revision</u>	<u>Page</u>	<u>Revision</u>
1	Original	27	Original	53	Original
2	Original	28	Original	54	Original
3	Original	29	Original	55	Original
4	Original	30	Original	56	Original
5	Original	31	Original	57	Original
6	Original	32	Original	58	Original
7	Original	33	Original		
8	Original	34	Original		
9	Original	35	Original		
10	Original	36	Original		
11	Original	37	Original		
12	Original	38	Original		
13	Original	39	Original		
14	Original	40	Original		
15	Original	41	Original		
16	Original	42	Original		
17	Original	43	Original		
18	Original	44	Original		
19	Original	45	Original		
20	Original	46	Original		
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25	Original	51	Original		
26	Original	52	Original		

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE NUMBER</u>
Title Page.....	Title Page
Check Sheet.....	1
Table of Contents.....	2
Explanation of Symbols.....	5
Application of Tariff.....	6
 <u>SECTION</u>	
SECTION 1 - DEFINITION OF TERMS.....	7
SECTION 2 - UNDERTAKING OF THE COMPANY .....	9
2.1 General .....	10
2.2 Description of Service.....	10
2.3 Application for Service.....	10
2.4 Shortage of Equipment or Facilities.....	10
2.5 Terms and Conditions.....	10
2.6 Liability of the Company.....	11
2.7 Notification of Service-Affecting Activities.....	13
2.8 Provision of Equipment and Facilities.....	13
2.9 Nonroutine Installation.....	15
2.10 Ownership of Facilities.....	15
2.11 Optional Rates and Information Provided to the Public.....	15
2.12 Continuity of Service.....	15
2.13 Governmental Authorizations.....	15
SECTION 3 - OBLIGATIONS OF THE CUSTOMER .....	17
3.1 General .....	17
3.2 Prohibited Uses.....	18
3.3 Claims.....	19
SECTION 4 - PAYMENT ARRANGEMENTS.....	20
4.1 Payment for Service .....	20
4.2 Billing and Collection of Charges.....	20
4.3 Advance Payments .....	21
4.4 Deposits.....	21
4.5 Discontinuance of Service.....	23
4.6 Cancellation of Application for Service.....	24
4.7 Changes in Service Requested.....	25
4.8 Taxes .....	25
4.9 Disputed Bills.....	25

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

## TABLE OF CONTENTS (CONT'D)

SECTION 5 - USE OF CUSTOMER'S SERVICE BY OTHERS .....	26
5.1 Resale and Sharing .....	26
5.2 Joint Use Arrangements .....	26
5.3 Transfers and Assignments.....	27
SECTION 6 - CANCELLATION OF SERVICE .....	28
SECTION 7 - NOTICES AND COMMUNICATIONS .....	29
SECTION 8 - CUSTOMER EQUIPMENT AND CHANNELS .....	31
8.1 General .....	31
8.2 Station Equipment .....	31
8.3 Interconnection of Facilities.....	32
8.4 Tests and Adjustments.....	32
8.5 Inspections.....	32
SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE.....	34
9.1 General .....	34
9.2 Interruptions of 16 Hours or Less.....	34
9.3 interruptions Over 24 Hours .....	34
9.4 No credit allowance will be made for.....	35
SECTION 10 - APPLICATION OF RATES .....	36
10.1 Distance-Based Charges .....	36
SECTION 11 - SPECIAL CONSTRUCTION AND SPECIAL ARRANGEMENTS .....	37
11.1 Special Construction.....	38
11.2 Basis for Charges.....	39
11.3 Basis for Cost Computation.....	39
11.4 Termination Liability.....	39
11.5 Term .....	39
SECTION 12 - TEMPORARY PROMOTIONAL PROGRAMS .....	40
SECTION 13 - PRODUCT DESCRIPTION AND RATES .....	41
13.1 DID Trunk Services.....	41
13.2 Direct Inward Dial (DID) Service .....	41
SECTION 14 - DEDICATED ACCESS SERVICES .....	42
14.1 Services Offered .....	42
14.2 Type I and Type II Services .....	42
14.3 DS3 SERVICE (44.736 Mbps).....	43
14.4 DS1 Service (1.544 Mbps) .....	44
14.5 DS1 Hub Service .....	45

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INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

TABLE OF CONTENTS (CONT'D)

14.6 DS0 Service..... 45  
14.7 Rates for Dedicated Access Services..... 46

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INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

EXPLANATION OF SYMBOLS

The following symbols shall be used in this tariff for the purposes indicated below.

- (C) To signify changed listing, rule, or condition which may affect rates or charges.
- (D) To signify discontinued material, including listing, rate, rule or condition.
- (I) To signify an increase.
- (M) To signify material moved from one location of the tariff to another.
- (N) To signify new materials including listing, rate, rule or condition.
- (R) To signify reduction.
- (T) To signify change in wording of text but not change in rate, rule or condition.

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INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

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APPLICATION OF TARIFF

This Tariff contains the regulations and rates applicable to intrastate services provided by Company to business customers for telecommunications between points within the State of Tennessee. The Company's services are furnished subject to the availability of facilities and subject to the terms and conditions of this Tariff.

The rates and regulations contained in this Tariff apply only to the services furnished by Company and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carrier for use in accessing the services of Company.

The Customer is entitled to limit the use of Company's services by end users at the Customer's facilities, and may use other common carriers in addition to or in lieu of Company.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 1 - DEFINITION OF TERMS**

Certain terms used generally throughout this tariff for Communications Service of this Company are defined below.

Advance Payment: Part or all of a payment required before the start of service.

Authority: The Tennessee Regulatory Authority

Authorized User: A person, firm or corporation which is authorized by the Customer or Joint User to be connected to the service of the Customer or Joint User, respectively.

Bit: The smallest unit of information in the binary system of notation.

Company: Level 3 Communications, LLC, the issuer of this tariff.

Customer: The person, firm or corporation which purchases service and is responsible for the payment of charges and compliance with the Company's regulations.

Dedicated: A facility or equipment system or subsystem set aside for the sole use of a specific Customer.

End Office: The term "end office" denotes the switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.

Joint User: A person, firm or corporation which is designated by the Customer as a user of services furnished to the Customer by the Company and to whom a portion of the charges for the service will be billed under a Joint User arrangement as specified in the Company's tariff.

LATA: A Local Access and Transport Area established pursuant to the Modification of Final Judgement entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4.

Major Service Interruption: An interruption of Customer service due to the Company's negligence or due to its noncompliance with the provisions of this tariff.

Premises: The space occupied by a Customer, Authorized User or Joint User in a building or buildings or contiguous property (except railroad rights-of-way, etc.) not separated by a highway.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 1 - DEFINITION OF TERMS. (CONT'D)

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Commencement Date: The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or the tariffs of the Company, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date.

Service Order: The written request for Company Services submitted by the Customer in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth herein and pursuant to the tariffs of the Company, but the duration of the service is calculated from the Service Commencement Date.

Shared: A facility or equipment system or subsystem that can be used simultaneously by several Customers.

Transmission: The sending of electrical or optical signals over a line to a destination.

User: A Customer, Joint User, or any other person authorized by a Customer to use service provided to the Customer under a Level 3 Communications, L.L.C. tariff.

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Level 3 Communications, LLC  
3555 Farnam Street  
Omaha, NE 68131

INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 2 - UNDERTAKING OF THE COMPANY**

**2.1    General**

- 2.1.1    The Company does not undertake to transmit messages but offers the use of its facilities for the transmission of communications.
- 2.1.2    Customers and Users may use services and facilities provided under the tariffs of the Company to obtain access to services offered by other companies. The Company is responsible for the services and facilities provided under its tariffs, and for its unregulated services provided pursuant to contract, and it assumes no responsibility for any service (whether regulated or not) provided by any other entity that purchases access to the Company network in order to originate or terminate such entity's own services, or to communicate with such entity's own customers.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)

- 2.1.3 The Company shall have no responsibility with respect to billings, charges or disputes related to services used by the Customer which are not included in the services herein including, without limitation, any local, regional or long distance services not offered by the Company. The Customer shall be fully responsible for the payment of any bills for such services and for the resolution of any disputes or discrepancies with the service provider.

2.2 Description of Service

Level 3 Communications, LLC Service consists of any of the business services offered pursuant to this tariff, either individually or in combination. Each business service is offered independent of the others, unless otherwise noted. Service is offered via the Company's facilities or in combination with transmission facilities provided by other certificated carriers.

2.3 Application for Service

Customers desiring to obtain Level 3 Communications, LLC Service must complete the Company's standard service order form(s).

2.4 Shortage of Equipment or Facilities

- 2.4.1 The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control, on a nondiscriminatory basis.
- 2.4.2 The furnishing of service under the tariffs of the Company is subject to the availability on a continuing basis of all the necessary facilities and is limited to the reasonable capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

2.5 Terms and Conditions

- 2.5.1 Service shall be provided on the basis of a minimum period of at least one (1) year.
- 2.5.2 Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in the tariffs of the Company. Customer will also be required to execute any other documents as may be reasonably requested by the Company.

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EFFECTIVE: \_\_\_\_\_

Issued By:

Terrence J. Ferguson, Senior Vice President and General Counsel  
Level 3 Communications, LLC  
3555 Farnam Street  
Omaha, NE 68131

## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)

- 2.5.3 At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party. Any termination shall not relieve Customer of its obligation to pay any charges incurred under the service order and the tariffs of the Company prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.
- 2.5.4 In any action between the parties to enforce any provision of the tariffs of the Company, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.
- 2.5.5 The tariffs of the Company shall be interpreted and governed by the laws of the State of Tennessee without regard for its choice of laws provision.

2.6 Liability of the Company

- 2.6.1 The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omissions, shall be limited to the extension of allowances for interruption as set forth in Section 9.0, following. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer or User as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company, Company's employees or agents.
- 2.6.2 The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority, national emergencies, insurrections, riots, wars, unavailability of rights-of-way or materials, or strikes, lockouts, work stoppages, or other labor difficulties.
- 2.6.3 The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers or Users facilities or equipment used for or with the services the Company offers.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)**

- 2.6.4 The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or User or due to the failure or malfunction of Customer or User-provided equipment or facilities.
- 2.6.5 The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided.
- 2.6.6 The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this paragraph as a condition precedent to such installations.
- 2.6.7 The Company is not liable for any defacement of or damage to Customer or User premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- 2.6.8 The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered, or as required by Tennessee Law.
- 2.6.9 The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer provided equipment or facilities.
- 2.6.10 The Company shall not be liable for any damages resulting from delays in meeting any service dates due to delays resulting from normal construction procedures. Such delays shall include, but not be limited to, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right-of-way approvals and delays in actual construction work.
- 2.6.11 The Company shall not be liable for any damages whatsoever to property resulting from the installation, maintenance, repair or removal of equipment and associated wiring unless the damage is caused by the Company's willful misconduct or negligence.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)**

**2.6.12 THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN ITS TARIFFS.**

2.6.13 The Company shall not be liable for any damages whatsoever associated with service, facilities, or equipment which the Company does not furnish or for any act or omission of Customer or any other entity furnishing services, facilities or equipment used for or in conjunction with Level 3 Communications, LLC.

**2.7 Notification of Service-Affecting Activities**

To the extent possible, the Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

**2.8 Provision of Equipment and Facilities**

2.8.1 All services along the facilities between the point identified as the Company's origination point and the point identified as the Company's termination point will be furnished by the Company, its agents or contractors.

2.8.2 The Company may undertake to use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff.

2.8.3 The Company undertakes to use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer, Joint User, or Authorized User may not, nor may they permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.

2.8.4 Equipment the Company provides or installs at the Customer's premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided the equipment.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)**

- 2.8.5 The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer, Joint User, or Authorized User when the service difficulty or trouble report results from the use of equipment or facilities the Customer, Joint User, or Authorized User provided.
- 2.8.6 The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities; subject to this responsibility the Company shall not be responsible for:
- 2.8.6.1 The transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or
- 2.8.6.2 The reception of signals by Customer provided equipment. The Customer, Authorized User, or Joint User is responsible for ensuring that Customer provided equipment connected to Company equipment and facilities is compatible with such Company equipment and facilities. The magnitude and character of the voltages and currents impressed on Company provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company provided equipment and wiring or injury to the Company's employees or to other persons. Customer will submit to Company a complete manufacturer's specification sheet for each item of equipment that is not provided by the Company and which shall be attached to the Company's facilities. The Company shall approve the use of such item(s) of equipment unless such item is technically incompatible with Company's facilities. Any additional protective, equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.
- 2.8.7 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Level 3 Communications, LLC services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- 2.8.8 Level 3 Communications, LLC may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carrier which are applicable to such connections.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)2.9 Nonroutine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours and/or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply.

If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.10 Ownership of Facilities

Title to all facilities provided in accordance with the tariffs of the Company remains with the Company, its agents or contractors. The Customer shall not have, nor shall it assert, any right, title or interest in all the fiber optic or other facilities and associated equipment provided by the Company hereunder.

2.11 Optional Rates and Information Provided to the Public

The Company will promptly advise Customers who may be affected of new, revised or optional rates applicable to their service. Pertinent information regarding the Company's services, rates and charges shall be provided directly to Customers, or shall be available for inspection at the Company's local business address. If required by the Tennessee Regulatory Authority, the Company will cause to have published a notice of its intention to charge its rates, tolls, charges, rules and regulations in one or more newspapers in circulation in the affected area.

2.12 Continuity of Service

In the event of prior knowledge of an interruption of service for a period exceeding one day, the Customers will, if feasible, be notified in writing, by mail, at least one week in advance.

2.13 Governmental Authorizations

The provision of services is subject to and contingent upon the Company obtaining and retaining such approvals, consents, governmental authorizations, licenses and permits, as may be required or be deemed necessary by the Company. The Company shall use reasonable efforts to obtain and keep in effect all such approvals, consents, authorizations, licenses and permits that may be

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)**

required to be obtained by it. The Company shall be entitled to take, and shall have no liability whatsoever for, any action necessary to bring the Services into conformance with any rules, regulations, orders, decisions, or directives imposed by the Federal Communications Commission or other applicable agency, and the Customer shall fully cooperate in and take such action as may be requested by the Company to comply with any such rules, regulations, orders, decisions, or directives.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 3 - OBLIGATIONS OF THE CUSTOMER****3.1    General**

The Customer shall be responsible for:

- 3.1.1    the payment of all applicable charges pursuant to the tariffs of the Company;
- 3.1.2    damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer or of any User; or by the noncompliance by the Customer or any User with these regulations; or by fire or theft or other casualty on the Customer's or any User's Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- 3.1.3    providing at no charge, as specified from time to time by the Company, any needed personnel, equipment space and power to operate the Company facilities and equipment installed on the premises of the Customer or any User; and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- 3.1.4    any and all costs associated with obtaining and maintaining of the rights-of-way from the point of entry at the Customer's location to the termination point where service is finally delivered to the Customer, including, but not limited to, the costs of installing conduit or of altering the structure to permit installation of Company provided facilities. The Customer's use of such rights-of-way shall in all respects be subject to the terms, conditions and restrictions of such rights-of-way and of agreements between the Company and such third parties relating thereto, including without limitation, the duration applicable to and the condemnation of such rights-of-way, and shall not be in violation of any applicable governmental ordinance, law, rule, regulation or restriction. Where applicable, the Customer agrees that it shall assist the Company in the procurement and maintenance of such right-of-way. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service;
- 3.1.5    providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which the Company's employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain the Company's facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company;
- 3.1.6    the Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 3 - OBLIGATIONS OF THE CUSTOMER (CONT'D)

- 3.1.7 complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of the Company's facilities and equipment in any Customer or User premises or the rights-of-way for which Customer is responsible under section 3.1.4; and granting or obtaining permission for the Company's agents or employees to enter the premises of the Customer or any User at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- 3.1.8 not creating or allowing to be placed any liens or other encumbrances on the Company's equipment or facilities; and
- 3.1.9 making the Company's facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.
- 3.2 Prohibited Uses
- 3.2.1 The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all governmental approvals, authorizations, licenses, consents and permits required to be obtained by the Customer with respect thereto.
- 3.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and Authority regulations, policies, orders, and decisions.
- 3.2.3 The Company may, without obtaining any further consent from the Customer, assign any rights, privileges, or obligations under this tariff. The Customer shall not, without prior written consent of the Company, assign, transfer, or in any other manner dispose of, any of its rights, privileges, or obligations under this tariff, and any attempt to make such an assignment, transfer, disposition without such consent shall be null and void.
- 3.2.4 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.
- 3.2.5 A Customer may not use the services so as to interfere with or impair service over any facilities and associated equipment, or so as to impair the privacy of any communications over such facilities and associated equipment.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 3 - OBLIGATIONS OF THE CUSTOMER (CONT'D)

- 3.2.6 Customer use of any resold service obtained from other service providers shall also be subject to any applicable restrictions imposed by the underlying providers.
- 3.2.7 A Customer, Joint User, or Authorized User shall not represent that its services are provided by the Company, or otherwise indicate to its customers that its provision of services is jointly with the Company, without the written consent of the Company. The relationship between the Company and Customer shall not be that of partners or agents for one or the other, and shall not be deemed to constitute a partnership or agency agreement.

**3.3 Claims**

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- 3.3.1 any loss, destruction or damage to property of the Company or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer or User or their employees, agents, representatives or invitees;
- 3.3.2 any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer or User, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between Customer and the Company; or
- 3.3.3 any claim of any nature whatsoever brought by a User with respect to any matter for which the Company would not be directly liable to the Customer under the terms of the applicable Company tariff.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 4 - PAYMENT ARRANGEMENTS****4.1 Payment for Service**

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold or shared with other persons.

**4.2 Billing and Collection of Charges**

- 4.2.1 Nonrecurring charges are due and payable within 30 days after the date an invoice is mailed to the Customer by the Company.
- 4.2.2 The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice is mailed.
- 4.2.3 Charges based on measured usage will be included on the next invoice rendered following the end of the month in which the usage occurs, and will be due and payable within 30 days after the invoice is mailed.
- 4.2.4 When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- 4.2.5 Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in the tariffs of the Company or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- 4.2.6 With respect to Business Customers only, if any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, net of taxes, not compounded, multiplied by a monthly late factor of 1.5%.
- 4.2.7 For any check returned to the Company due to insufficient funds, uncollected funds, or closed account, a \$25.00 fee will be assessed per check returned.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)4.3 Advance Payments

4.3.1 To safeguard its interests, the Company may require a Business Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the nonrecurring charge(s) and the first month's estimated recurring charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated nonrecurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill and may be required in addition to a deposit.

4.3.2 A customer whose service has been discontinued for nonpayment of bills will be required to pay the unpaid balance due carrier and may be required to pay reconnect charges.

4.4 Deposits

4.4.1 The Company may, in order to safeguard its interests, require an applicant to make a suitable deposit to be held by the Company as a guarantee of the payment of charges.

4.4.2 A deposit will be required under the following conditions:

4.4.2.1 Applicant does not have verifiable credit with any Level 3 Communications, LLC affiliate anywhere within the region in the same or similar business; or

4.4.2.2 Applicant has had previous verifiable Service with any Level 3 Communications, LLC affiliate anywhere within the region but has an outstanding and unpaid bill for Service; or has not established satisfactory credit. Satisfactory credit for an Service customer is defined as twelve consecutive months of service without a suspension of service for nonpayment or with no more than one notification of intent to suspend service for nonpayment.

4.4.2.3 Applicant for nonresidential service will be given credit for previous nonresidential service only if the applicant is same business entity to which such service was previously provided.

4.4.3 An initial deposit or an additional deposit will be required of an existing customer when high risk is indicated and existing security is insufficient. Such requirement will be imposed when a payment history includes a suspension of service for nonpayment during the previous twelve month period.

4.4.4 The Company reserves the right to provide for installment payment of the deposit if the circumstances warrant.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)

- 4.4.5 Any deposit required of an existing Customer is due and payable within ten days after the requirement is imposed. This requirement shall be in writing and the payment date shall be on or after the due and payable date for the current bill. If said deposit or installment thereof, as appropriate, is not paid within the aforementioned time frame, the Company may suspend service of the Customer without further notice. The following are exceptions to this provision:
- 4.4.5.1 In the event service is suspended for a Customer for nonpayment, an initial or additional deposit shall be required prior to the restoration of service if existing security is insufficient.
- 4.4.5.2 In the event prior indebtedness or prior unsatisfactory credit has been determined subsequent to the initial establishment of service due to misrepresentation of the facts by the Customer, a deposit shall be due and payable within five days upon verbal notification and written confirmation or within ten days when notification can only be provided in writing. The ten day period shall be measured from the mailed date of the written notice. If said deposit is not paid within the aforementioned time frame, the Company may suspend service to the Customer without further notice.
- 4.4.6 The amount of the deposit shall be the estimated charges for the Service which will accrue for a 2-month period. All applicants and existing Customers shall be treated uniformly for the determination and application of deposits.
- 4.4.7 When it is determined that a deposit is required under the conditions specified above, the applicant or Customer may, in lieu of or in addition to making the deposit, arrange for an acceptable third party to guarantee payment of his charges by executing on his behalf a Guarantee of Payment Agreement with the Company. An acceptable third party guarantor for Service is a current non residential customer with at least two years continuous service, whose payment history for the most recent twelve month period is satisfactory.
- 4.4.8 The fact that a deposit has been made in no way relieves the Customer from complying with the Company's regulations as to advance payments, or the prompt payment of bills on presentation.
- 4.4.9 The deposit will bear simple interest computed from the date of its receipt by the Company to the date the deposit is refunded, or service is terminated, or annually upon request of the Customer. In the event that a deposit is retained during time periods having different rates of interest, the interest accrued on the deposit will be calculated using the interest rate applicable to each time period.
- 4.4.10 When the Customer is a candidate for political office or is a person or organization acting on behalf of a candidate for political office the deposit requirement will be adjusted

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)

monthly to reflect twice the current month's actual billing. Under these circumstances, a security, i.e., surety bond or bank letter of credit equal to the Company's deposit requirement will be the only acceptable substitutes for a cash deposit.

- 4.4.11 The applicable interest rate for January 1, 1997 through December 31, 1998 is equivalent to the rate paid on 2-year U.S. treasury notes for the preceding 12 months ending December 31 of any year.
- 4.4.12 When service is terminated, the amount of the initial or additional deposit, with any interest due, will be credited to the Customer's account and any credit balance which may remain will be refunded. After an existing customer has established satisfactory credit, the amount of the deposit, with any interest due, will be either credited to the account or at the option of the Customer, refunded. Satisfactory credit for a Customer is defined as twelve consecutive months of Service without suspension for nonpayment and with no more than one notification of intent to suspend service for nonpayment.

4.5 Discontinuance of Service

- 4.5.1 Upon nonpayment of any amounts owing to the Company, the Company may, by giving ten days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- 4.5.2 Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- 4.5.3 Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer, or if a condition immediately dangerous or hazardous to life, physical safety or property exists, or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- 4.5.4 Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately require a deposit without incurring any liability.
- 4.5.5 Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)**

- 4.5.6 Upon the Company's discontinuance of service to the Customer under paragraphs 4.5.1 or 4.5.2 above, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of the tariffs of the Company, may declare all future monthly and other charges which would have been payable by the Customer during, the remainder of the minimum term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent (6%)).
- 4.5.7 Any Customer or Applicant for Service requesting the opportunity to dispute any action or determination of company under the Authority's Customer Service Rules shall be given an opportunity for a supervisory review by the Company immediately following Customer's request for such review. Service will not be disconnected pending completion of the review.

**4.6 Cancellation of Application for Service**

- 4.6.1 Applications for service are noncancellable unless the Company otherwise agrees. Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- 4.6.2 Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun (all discounted to present value at six percent (6%)).
- 4.6.3 Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- 4.6.4 The special charges described in paragraphs 4.6.1 through 4.6.3, above, will be calculated and applied on a case-by-case basis.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)4.7 Changes in Service Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

4.8 Taxes

The Customer is responsible for the payment of Federal excise taxes, gross receipts, access, state and local sales and use taxes and all taxes, fees, surcharges (however designated) and other exactions imposed on the Company or its services by governmental jurisdictions, other than taxes imposed generally on corporations. Any taxes imposed by a local jurisdiction (e.g. county and municipal taxes) will only be recovered from those customers residing in the affected jurisdictions. All such taxes, fees, and charges shall be separately designated on the Company's invoices, and are not included in the tariffed rates. It should be the responsibility of the Customer to pay any such taxes that subsequently become applicable retroactively.

4.9 Disputed Bills

The Customer may dispute a bill only by written notice to the Company. Unless such notice is received in a timely fashion, the bill statement shall be deemed to be correct and payable in full by Customer. Questions regarding the Company's services or charges assessed to a Customer's bill may be directed to the Company's Customer Service Department toll-free at 1-877-4LEVEL3 (1-877-453-8353). Any Customer who has a dispute shall be advised by the Company that the Customer may file a formal or informal complaint with the Authority. The Customer will be advised that they may contact the Authority at:

Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37219  
(615) 741-2904

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 5 - USE OF CUSTOMER'S SERVICE BY OTHERS****5.1     Resale and Sharing**

Any service provided under the Company tariffs may be resold to or shared with other persons at the option of Customer, except as provided in 5.3, following. Customer remains solely responsible for all use of services ordered by it or billed to its telephone number(s) pursuant to the tariffs of the Company, for determining who is authorized to use its services, and for notifying the Company of any unauthorized use. Business rates apply to all service that is resold or shared.

**5.2     Joint Use Arrangements**

Joint use arrangements will be permitted for all services available for resale and sharing pursuant to the Company tariffs. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. Level 3 Communications, LLC will accept orders to start, rearrange, relocate, or discontinue service only from the Customer. Without affecting the Customer's ultimate responsibility for payment of

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 5 - USE OF CUSTOMER'S SERVICE BY OTHERS (CONT'D)

all charges for the service, each Joint User shall be responsible for the payment of the charges billed to it.

**5.3    Transfers and Assignments**

5.3.1    Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party and any appropriate authorizations, if necessary, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company, (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

5.3.2    If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a Major Service Interruption, Customer agrees to pay to the Company the following sums, within 21 days of the effective date of the cancellation or termination and be payable under the terms set forth in Section 4.0, preceding: all costs, fees and expenses reasonably incurred in connection with:

5.3.2.1    All Nonrecurring charges as specified in the Company's tariffs, plus

5.3.2.2    Any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of Customer, plus

5.3.2.3    All Recurring Charges specified in the applicable Company tariff for the balance of the then current term.

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**SECTION 6 - CANCELLATION OF SERVICE**

Reserved for future use.

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INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 7 - NOTICES AND COMMUNICATIONS**

- 7.1 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 7.2 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.

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INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 7 - NOTICES AND COMMUNICATIONS (CONT'D)

- 7.3 All notices or other communications required to be given pursuant to the tariffs of the Company will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 7.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 8 - CUSTOMER EQUIPMENT AND CHANNELS****8.1    General**

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in the tariffs of the Company. A User may transmit any form of signal that is compatible with the Company's equipment, but except as otherwise specifically stated in its tariffs, the Company does not guarantee that its services will be suitable for purposes other than voice-grade telephonic communication.

**8.2    Station Equipment**

- 8.2.1    Terminal equipment on the User's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the User. The User is responsible for the provision of wiring or cable to connect its terminal equipment to the Company's Point of Connection.
- 8.2.2    The Customer is responsible for ensuring that Customer-provided equipment connected to the Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.
- 8.2.3    Customer provided station equipment may be attached to services provided under the tariffs of the Company subject to Part 68 of the FCC Rules and to any applicable provisions of the tariffs of the Company and is the sole responsibility of the Customer.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 8 – CUSTOMER EQUIPMENT AND CHANNELS (CONT'D)

- 8.2.4 The Company is not responsible for malfunctions of Customer-owned telephone sets or other Customer-provided equipment, or for misdirected calls, disconnects or other service problems caused by the use of Customer-owned equipment.

8.3 Interconnection of Facilities

- 8.3.1 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communications Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- 8.3.2 Communications Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.
- 8.3.3 Facilities furnished under the tariffs of the Company may be connected to customer provided terminal equipment in accordance with the provisions of the tariffs of the Company. All such terminal equipment shall be registered by the Federal Communications Commission pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User provided wiring shall be installed and maintained in compliance with those regulations.

8.4 Tests and Adjustments

Upon suitable notice, the Company may make such tests, adjustments, and inspections as may be necessary to maintain the Company's facilities in satisfactory operating condition. No interruption allowance will be credited to the Customer for the period during which the Company makes such tests, adjustments, or inspections.

8.5. Inspections

- 8.5.1 Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the User is complying with the requirements set forth in Section 2.8 for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- 8.5.2 If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the

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INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 8 - CUSTOMER EQUIPMENT AND CHANNELS (CONT'D)

Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE****9.1 General**

- 9.1.1 Interruptions in service, which are not due to the negligence of, or noncompliance with the provisions of the tariffs of the Company by, the Customer or of an authorized or Joint User, or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth below for the part of the service that the interruption affects.
- 9.1.2 A credit allowance will be made when an interruption occurs because of a failure of any component furnished by the Company under its tariffs. An interruption period begins when the Customer reports a service, facility or circuit is interrupted and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.
- 9.1.3 For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- 9.1.4 A credit allowance will be given for interruptions of 30 minutes or more. Credit allowances shall be calculated as follows:

**9.2 Interruptions of 16 Hours or Less**

<u>9.2.1 Length of Service Interruption</u>	<u>Credit</u>
-Less than 1 hour	None
-1 hour up to but not including 8 hours	1/4 of day
-8 hours up to but not including 12 hours	1/2 of day
-12 hours up to but not including 16 hours	3/4 of day
-16 hours up to but not including 24 hours	one day

- 9.2 Two or more service interruptions of the same type to the same line/equipment of two (2) hours or more during any one twenty-four (24) hour period shall be considered as one interruption. In no event shall such interruption credits for any one line/equipment exceed one (1) day's fixed recurring charges for such line/equipment in any twenty-four (24) hour period.
- 9.3 Interruptions Over 24 Hours. Interruptions over 24 hours will be credited 1/24 day for each 1-hour period or fraction thereof up to a maximum of 8 hours. Interruptions in excess of 8 hours will be credited as one day. No more than one full day's credit will be allowed for any period of 24 hours.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE (CONT'D)9.4 No credit allowance will be made for:

- 9.4.1 interruptions due to the negligence of, or noncompliance with the provisions of the tariffs of the Company by, the Customer, User, or other common carrier providing service connected to the service of the Company;
- 9.4.2 interruptions due to the negligence of any person other than the Company, including but not limited to the Customer or other common carriers connected to the Company's facilities;
- 9.4.3 interruptions of service due to the failure or malfunction of facilities, power or equipment provided by the Customer, Authorized User, Joint User, or other common carrier providing service connected to the services or facilities of the Company;
- 9.4.4 interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- 9.4.5 interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- 9.4.6 interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- 9.4.7 interruption of service due to circumstances or causes beyond the control of the Company; and
- 9.4.8 interruptions of service that occur or continue due to the Customer's failure to authorize replacement of any element of special construction.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 10 - APPLICATION OF RATES10.1 Distance-Based Charges

10.1.1 Distance between two points is measured as airline distance between two Points of Service.

10.1.2 The airline distance between any two Points of Service is determined as follows:

- A. Obtain the vertical and horizontal coordinates for each Point of Service location.
- B. Compute the difference between the vertical coordinates of the two Points of Service; and compute the difference between the two horizontal coordinates.
- C. Square each difference between the vertical coordinates and the horizontal coordinates.
- D. Add the square of the vertical coordinates difference and the square of the horizontal coordinates difference.
- E. Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained. For example:  $\frac{(V2 - V1)^2 + (H2 - H1)^2}{10}$
- F. Take the square root of the result.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 11 - SPECIAL CONSTRUCTION AND SPECIAL ARRANGEMENTS****11.1 Special Construction**

Subject to the agreement of the Company and to all of the regulations contained in the tariffs of the Company, special construction and special arrangements may be undertaken on a reasonable efforts basis at the request of the Customer. Special arrangements include any service or facility relating to a regulated telecommunications not otherwise specified under tariff, or for the provision of service on an expedited basis or in some other manner different from the normal tariff conditions. Special construction is that construction undertaken:

- 11.1.1 where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- 11.1.2 of a type other than that which the Company would normally utilize in the furnishing of its services;

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 11 - SPECIAL CONSTRUCTION AND SPECIAL ARRANGEMENTS (CONT'D)**

- 11.1.3 over a route other than that which the Company would normally utilize in the furnishing of its services;
- 11.1.4 in a quantity greater than that which the Company would normally construct;
- 11.1.5 on an expedited basis;
- 11.1.6 on a temporary basis until permanent facilities are available;
- 11.1.7 involving abnormal costs; or
- 11.1.8 in advance of its normal construction.

**11.2 Basis for Charges**

Where the Company furnishes a facility or service on a special construction basis, or any service for which a rate or charge is not specified in the Company's tariffs, charges will be based on the costs incurred by the Company and may include, (1) nonrecurring type charges; (2) recurring type charges, (3) termination liabilities; or (4) combinations thereof. The agreement for special construction will ordinarily include a minimum service commitment based upon the estimated service life of the facilities provided.

**11.3 Basis for Cost Computation**

The costs referred to in Section 11.2 preceding may include one or more of the following items to the extent they are applicable:

- 11.3.1 installed costs of the facilities to be provided including estimated costs for the rearrangements of existing facilities. Installed costs include the cost of:
  - 11.3.1.1 equipment and materials provided or used,
  - 11.3.1.2 engineering, labor and supervision,
  - 11.3.1.3 transportation,
  - 11.3.1.4 rights of way, and
  - 11.3.1.5 any other item chargeable to the capital account;
- 11.3.2 annual charges including the following:
  - 11.3.2.1 cost of maintenance;

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 11 - SPECIAL CONSTRUCTION AND SPECIAL ARRANGEMENTS (CONT'D)

- 11.3.2.2 depreciation on the estimated installed cost of any facilities provided, based on the anticipated useful service life of the facilities with an appropriate allowance for the estimated net salvage;
- 11.3.2.3 administration, taxes and uncollectible revenue on the basis of reasonable average costs for these items;
- 11.3.2.4 any other identifiable costs related to the facilities provided; and
- 11.3.2.5 an amount for return and contingencies.

**11.4 Termination Liability**

To the extent that there is no other requirement for use by the Company, the Customer may have a termination liability for facilities specially constructed at the request of the customer, if and only if such liability is clearly stated in a written agreement between the Company and the Customer.

- 11.4.1 The maximum termination liability is equal to the total cost of the special facility as determined under 11.3, preceding, adjusted to reflect the redetermined estimate net salvage, including any reuse of the facilities provided.
- 11.4.2 The maximum termination liability as determined in paragraph (1) shall be divided by the original term of service contracted for by the Customer (rounded up to the next whole number of months) to determine the monthly liability. The Customer's termination liability shall be equal to this monthly amount multiplied by the remaining unexpired term of service (rounded up to the next whole number of months), discounted to present value at six percent (6%), plus applicable taxes.

**11.5 Term**

The minimum term for any Level 3 Communications, LLC service shall not be less than one (1) year, unless otherwise agreed to by the Company. The Customer and Company may agree to longer minimum terms for particular services.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 12 - TEMPORARY PROMOTIONAL PROGRAMS**

The Company may establish temporary promotional programs to introduce present or potential customers to a service not previously received by Customers. During specific promotional periods, an offer may be made to reduce nonrecurring charges on a nondiscriminatory basis, up to the full amount, for optional products and services. Unless, specifically approved elsewhere, this offer will not apply to single basic exchange access lines. Written notice of such findings will be provided to the staff of the Authority prior to the date upon which the offer is to commence.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 13 – PRODUCT DESCRIPTION AND RATES****13.1 DID Trunk Services**

- 13.1.1 DID Trunk Service provides a customer with a single, voice-grade telephonic communications channel which can be used to receive incoming calls one call at a time.
- 13.1.2 DID Trunk Service transmits the dialed digits for all incoming calls allowing the customer's incoming calls to be routed corresponding to each individual DID number. Charges for DID number blocks are listed below.
- 13.1.3 Non-recurring and Recurring charges per DID's apply as follows:

<u>Rate Group</u>	<u>Non-Recurring Charge</u>	<u>Recurring Charge</u>
All Zones	\$10.00	\$10.00 for blocks of 100

**13.2 Direct Inward Dial (DID) Service**

- 13.2.1 DID service can be purchased in conjunction with Company-provided private lines. DID service transmits the dialed digits for all incoming calls allowing the Customer's PBX to route incoming calls directly to individual stations corresponding to each individual DID number. Charges for DID capability and DID number blocks apply in addition to charges specified for private lines contained herein.
- 13.2.2 So the Company may efficiently manage its number resource, the Company, at its sole discretion reserves the right to limit the quantity of DID number blocks a Customer may obtain. Requests for 30 or more DID number blocks must be provided to the Company in writing no less than five (5) months prior to activation. In addition, the Company reserves the right to review vacant DID stations or stations not in use to determine their utilization. Should the Company determine, based on its own discretion, that there is inefficient number utilization, the Company may reassign the DID numbers.
- 13.2.3 The Customer has no property right to the telephone number or any other call number destination associated with DID service furnished by the Company, and no right to the continuance of service through any particular end office. The Company reserves the right to change such numbers, or the end office designation associated with such number, or both, assigned to the Customer, where the Company deems it necessary to do so in the conduct of its business.

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Individual DID Numbers	\$10.00	\$1.00 per DID Number

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES**

Dedicated Access Services consist of the services offered pursuant to this section, either individually or in combination. Each service is offered independently of the others. Service is offered via the Company's facilities for the transmission of one-way and two-way communications, unless otherwise noted.

**14.1 Services Offered**

14.1.1 The following dedicated access services are offered in this tariff:

DS3 Service (44.7 Mbps)  
DS1 Service (1.5 Mbps)  
DS0 Service (up to 64 kbps)

14.1.2 Other services may be provided by the Company on an Individual Case Basis (ICB).

**14.2 Type I and Type II Services**

14.2.1 DS3 Service and DS1 Service may be provided as either Type I or Type II Services, depending upon the availability of facilities. Type I Service rates apply when both endpoints of the channel are served by the Company's network. Type II Service rates apply when one endpoint of the transmission channel is served by another local exchange carrier's network (Type II Services are provided via a combination of the Company's facilities and another local exchange carrier's facilities).

14.2.2 DS3 and DS1 channels where both endpoints are served by another local exchange carrier's network will be provided at the sole discretion of the Company, on an Individual Case Basis (ICB), applied in a nondiscriminatory manner.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)14.3 DS3 SERVICE (44.736 Mbps)

- 14.3.1 DS3 Service is composed of digital channels provided at 44.736 Mbps for the transmission of one-way and two-way communications. Interconnections to such channels and equipment interfacing to such channels shall meet the following technical characteristics:

Line Rate: 44.736 Mbps +/- 20 ppm

Line Code: Bipolar with three-zero substitution

Test Load: 75 ohms resistive +/- 5 percent

Power Levels: For an all-ones transmitted pattern, the power in a 2 KHz band about 22.368 KHz shall be -1.8 to +5.7 dBm and the power in a 2 KHz band about 44.736 MHz shall be at least 20 dB below that in a 2 KHz band about 22.368 KHz. 1

## NOTES:

1. The power levels specified by CCITT Recommendation G.703 are identical except that the power is to be measured in 3 KHz bands.
- 14.3.2 Digital channels at 44.736 Mbps will be provided in one of the following configurations, as specified by the customer:
- 14.3.3 Clear Channel DS3: A DS3 signal that is transmitted intact and transparently as provided at the customer interface. No performance monitoring is performed since all 44.736 Mbps are considered customer data or voice.
- 14.3.4 M13 Framed DS3: A DS3 that is channelized into 28 DS1 (1.544 Mbps) signals and include a predefined standard multiplexing scheme as defined in ANSI T1.107a. The M13 DS3 contains parity bits which can be monitored to offer an approximate measure of performance. 43.232 Mbps is customer data (or voice), the remainder being used for framing, synchronization, parity, etc.
- 14.3.5 C-bit Parity Framed DS3: A DS3 that can be used for subrated or nonsubrated DS3 signals. This allows DS3 signal monitoring for end-to-end performance measurement on an in-service basis, transmitted on the maintenance data communications channel. The C-

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

bit parity format is defined in ANSI T1.107a. 43.232 Mbps is customer data (or voice), the remainder being used for framing, synchronization, parity, etc.

**14.4 DS1 Service (1.544 Mbps)**

14.4.1 DS1 Service is composed of digital channels provided at 1.544 Mbps for the transmission of one-way and two-way communications. Interconnections to such channels and equipment interfacing to such channels shall meet the following technical characteristics:

Line Rate: 1.544 Mbps  $\pm$  130 ppm

Line Code: AMI: bipolar with at least 12.5% average ones density and no more than 15 consecutive zeros;

- or -

B8ZS: no minimum density of ones and no consecutive zeros limit.

Test Load: 100 ohms resistance.

Pulse Shape: The pulse amplitude shall be between 2.4 and 3.6 volts.

Power Levels: For an all-ones transmitted pattern, the power in a 2 KHz band about 772 KHz shall be 12.4-18.0 dBm and the power in a 2 KHz band about 1544 KHz shall be at least 29 dB below that in a 2 KHz band about 771 KHz.

Pulse

Imbalance: There shall be less than 0.5 dB difference between the total power of the positive pulses and the negative pulses.

**NOTES:**

1. The CCITT specification is  $\pm$  50 ppm.
2. Recommended for new equipment: The power in a 2 KHz band about 772 KHz shall be 12.6-17.9 dBm. CCITT requirements: The power in a 3 KHz band about 772 KHz is 12.0-19.0 dBm.
3. CCITT requirements: The power in a 3 KHz band about 1544 KHz shall be at least 25 dB below that in a 3 KHz band about 772 KHz.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

14.4.2 Digital channels at 1.544 Mbps will be provided in one of the following configurations, as specified by the customer:

14.4.3 Unframed DS1: A DS1 signal that does not follow standard framing formats of 192 bits for data and a 193 Rd bit for framing. An unframed DS1 cannot be synchronized to the network and is not performance monitored.

14.4.4 D4/SF DS1: A framed DS1 consisting of 12 frames (2316 bits) of 192 bits preceded by one framing bit (F bit). This service can be coded as AMI or B8ZS.

14.4.5 ESF DS1: Extends superframe structure from 12 to 24 frames (4632 bits) and redefines the 8 kbps pattern into 2 kbps for mainframe and robbed-bit signaling synchronization, 2 kbps for CRC-6 and 4 kbps for terminal-to-terminal data link. This service can be coded as AMI or B8ZS.

14.5 DS1 Hub Service

DS1 Hub Service allows a customer to aggregate up to 28 DS1 channels that terminate in the same location into a single DS3.

14.6 DS0 Service

14.6.1 DS0 Services are Digital Channels furnished by the Company at transmission speeds of 2.4 kbps, 4.8 kbps, 9.6 kbps, 19.2 kbps, 64 kbps, or in multiples of 64 kbps up to 1.544 Mbps. Such channels will be configured by the Company to transmit digital data at specified data rates or analog signals converted to digital signals, as described below. Interconnections to such channels and equipment interfacing to such channels shall meet the technical characteristics described below in connection with each service configuration. The NCI Codes referenced below are defined in Bell Communications Research (Bellcore) publication TR-NPL-000335.

14.6.2 Each DS0 channel will be provided in one of the following configurations, as specified by the Customer.

14.6.2.1 Effective 2-Wire Service

Provides a digital transmission channel capable of normally carrying, among other information, the digitized representation of human speech. At the Company's point of interconnection with the User, the service will

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

have the technical characteristics of a standard 2-wire analog telephone circuit. Specific configurations are as follows:

14.6.2.2 2-Wire Transmission Only

2 wire, 600 ohm, open loop (continuously connected) with industry standard demarcation (NCI Code: 02NO2). C4 conditioned circuit connecting two locations, typically used for voice-grade data services.

14.6.2.3 Digital Services

Provides a digital transmission channel capable of normally carrying synchronous digital data signals. The following service configurations are available:

14.6.2.4 64 Kbps Data Service

A 4-wire 135 ohm handoff. Other possible handoffs are RS232/DB25, RS422/DB25, or V.35. Provides point-to-point, 64 Kbps clear channel for a full-duplex synchronous data circuit. No error correction or in-band control codes are supported. (Possible NCI Code: 04DU5-64).

14.6.2.5 DS1 Hub Service

DS1 Hub Service allows a customer to aggregate up to 24 DS0 channels that terminate in the same location into a single DS1 and the distribution of End Link circuits.

14.7 Rates for Dedicated Access Services14.7.1 General

Nonrecurring and monthly recurring rates apply for each Digital Transmission Service furnished by the Company. Monthly recurring rates vary according to the time period for

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

which the Customer commits to take the service. Unless otherwise noted, these standard rate elements are used in calculating the monthly recurring rate for each service:

- 14.7.1.1      Interoffice Channel Mileage-Fixed: This rate element applies per digital channel whenever there is mileage associated with the channel; a digital channel has mileage associated with it when the endpoints of the channel are located in geographic areas normally served out of separate Customer premises or the Customer premise and the Level 3 Gateway. This rate element applies per circuit.
- 14.7.1.2      Interoffice Channel Mileage-Per Mile: This rate element applies whenever there is mileage associated with the digital channel. The unit rate is multiplied by the number of miles (Interoffice Mileage) between the two Customer premises or the Customer premise and the Level 3 Gateway. Fractions of a mile are rounded up to the next whole mile before rates are applied.

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)****14.7.2 DS3 Service (44.736 Mbps)****14.7.2.1 Type I DS3 Service**

This service consists of a DS3 (44.736 Mbps) capacity digital channel available on a 24 hour per day, 7 day per week basis between two points. There is a 1-year minimum service period for each Basic DS3.

<b>Monthly Rates</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$1,200
Interoffice Channel Mileage (Per Mile)	\$30
NRC Installation Rate	\$1,000

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)14.7.2.2      Type II DS3 Service

<b>Monthly Rates</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$2,025
Interoffice Channel Mileage (Per Mile)	\$41
NRC Installation Rate	\$1,000

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

14.7.2.3

Volume Discounts

Volume Discounts for DS3s Volume	Rate Per DS3 Channel		
	1 Year	2 Year	3 Year
\$2,500.00	0%	5%	10%
\$5,000.00	2%	7%	12%
\$10,000.00	3%	8%	13%
\$15,000.00	4%	9%	14%
\$20,000.00	4%	9%	14%
\$35,000.00	5%	10%	15%
\$50,000.00	6%	11%	16%
\$75,000.00	8%	13%	18%
\$100,000.00	9%	14%	19%
\$150,000.00	10%	15%	20%
\$200,000.00	11%	16%	21%
\$250,000.00	12%	17%	22%

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**14.7.3 DS1 Service (1.544 Mbps)14.7.3.1 Type I DS1 Service

<b>Monthly Rates</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$200
Interoffice Channel Mileage (Per Mile)	\$13.55
NRC Installation Rate	\$525

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**14.7.3.2 Type II DS1 Service

<b>Monthly Rates</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$200
Interoffice Channel Mileage (Per Mile)	\$13.55
NRC Installation Rate	\$525

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)****14.7.4 DS3 Hub Service**

This service consists of up to 28 DS1(1.544 Mbps) digital channels, which are aggregated at a Level 3 Hub onto a standard DS3 circuit with Interoffice Mileage and End Link Access Charges at the terminating end. There is a minimum 1-year service period for each DS3 Hub Service.

Service Configuration	Non-Recurring	Recurring
DS3 Channel between a Client Location and a Level 3 Gateway	Standard DS3 Rate Schedule	
DS3 Hub Port @ Level 3 Gateway	N/A	\$500
End Link Access Charge	Standard DS1/DS0 Rate Schedule	

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)****14.7.5 Channelized DS3 Service**

This service consists of 28 DS1 (1.544 Mb ps) digital channels which connect two client locations each utilizing Channelized DS3 Service. The connection will be rated as a standard DS3 circuit and at both ends. There is a minimum 1-year service period for each High Capacity DS1 Service.

Service Configuration	Non-Recurring	Monthly Recurring
		1 Yr.
Twenty Eight (28) DS1s between two Client Locations	Standard DS3 Rate Schedule	
Digital Channels @ Both Client Locations	No incremental charge	No incremental charge

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**14.7.6 DS0 Service14.7.6.1 Basic Type I DS0 Service

DS0 Service	Non- Recurring	Monthly Recurring	
		Fixed Charges	DS0 Mileage
64 kbps	\$300	\$150	.65/mile

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)****14.7.7 DS1 Hub Service**

This service consists of up to 24 DS0 digital channels, which are aggregated at a Level 3 Gateway onto a standard DS1 circuit with Interoffice Mileage at the terminating end. There is a minimum 1 year service period for each Hubbed DS1 Service.

<b>Standard Rate Elements</b>	<b>Non- Recurring</b>	<b>Monthly Recurring</b>
DS1 Channel between client location and a Level 3 Gateway	Applying appropriate DS1 Nonrecurring Charge	Standard DS1 Rate Schedule
DS1 Hub @ Level 3 Gateway	N/A	\$500
DS0 End Link	Apply appropriate DS0 Nonrecurring Charge	Standard DS0 Rate Schedule

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## INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

14.7.7.1

Channelized DS1 Service

Service Component	Non-Recurring	Monthly Recurring		
		1 YR.	2 YR.	3 YR.
Mileage Charge	Standard DS1 Rate Schedule	Standard DS1 Schedule	Standard DS1 Schedule	Standard DS1 Schedule
64 Kbps x N (N > 1)	Standard DS0 Rate Schedule	No Incremental Charges	No Incremental Charges	No Incremental Charges
Design Changes and Reinstallation				

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INTRASTATE NETWORK ACCESS TRANSMISSION SERVICES

SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)

14.7.8 Non-Standard Offerings

14.7.8.1 Individual Case Basis (ICB) Arrangements

For special situations, rates for Dedicated Access Services will be determined on an Individual Case Basis (ICB) and specified by contract between the Company and the Customer. Notices of such contracts, if required, will be submitted to the Tennessee Regulatory Authority pursuant to Authority Rules.

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**Exhibit E**

Illustrative Interexchange Tariff

**TITLE SHEET**

**INTEREXCHANGE TELECOMMUNICATIONS SERVICES**

This tariff applies to the interexchange telecommunications services furnished by Level 3 Communications, LLC ("Company") between one or more points in the State of Tennessee. This tariff is on file with the Tennessee Regulatory Authority, and copies may be inspected, during normal business hours, at the Company's principal place of business, 1450 Infinite Drive, Louisville, CO 80027.

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CHECK SHEET

The sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revision</u>
1	Original	34	Original
2	Original	35	Original
3	Original	36	Original
4	Original	37	Original
5	Original	38	Original
6	Original	39	Original
7	Original	40	Original
8	Original	41	Original
9	Original		
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33	Original		

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TABLE OF CONTENTS

	<u>Page</u>
Title Sheet .....	1
Check Sheet .....	2
Table of Contents .....	3
Symbols .....	4
Tariff Format .....	4
SECTION 1 - TERMS AND ABBREVIATIONS .....	6
SECTION 2 - RULES AND REGULATIONS .....	8
SECTION 3 - APPLICATION OF RATES .....	37
SECTION 4 - DESCRIPTION OF SERVICES AND RATES .....	40

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SYMBOLS

The following are the only symbols used for the purposes indicated below:

- C - Change in regulation
- D - Delete or discontinue
- I - Change resulting in an increase to a customer's bill
- M - Moved from another tariff location
- N - New
- R - Change resulting in a reduction to a customer's bill
- T - Change in text or regulation but no change in rate or charge

TARIFF FORMAT

- A. Sheet Numbering - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.
- B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file with the Authority. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the Authority follows in their tariff approval process, the most current sheet number on file with the Authority is not always the tariff page in effect.

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TARIFF FORMAT (Cont'd)

- C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2.  
2.1.  
2.1.1.  
2.1.1.A.  
2.1.1.A.1.  
2.1.1.A.1.(a).  
2.1.1.A.1.(a).I.  
2.1.1.A.1.(a).I.(i).  
2.1.1.A.1.(a).I.(i).(1).

- D. Check Sheets - When a tariff filing is made with the Authority, an updated check sheet accompanies the tariff filing. The check sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on the check sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check sheet to find out if a particular sheet is the most current on file with the Authority.

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**SECTION 1 - TERMS AND ABBREVIATIONS**

**Access** - As used in this tariff mean an arrangement which connects the Customer's or Subscriber's telecommunications service to the Underlying Company's designated point of presence or network switching center.

**Authority** - Refers to Tennessee Regulatory Authority.

**Company, Carrier or Level 3** - Refers to Level 3 Communications, LLC, the issuer of this tariff.

**Customer** - Refers to any person, partnership, cooperative corporation, corporation, or lawful entity provided service from an entity reselling intrastate telecommunications services.

**Customer trouble report** - Refers to any oral or written report given to the Company's repair service or contact person by a Customer relating to a defect or difficulty or dissatisfaction with the provision of the telecommunications service provided by the Company.

**Delinquent** - Refers to a payment for a billing for services provided, which is not in dispute, where payment is not received on or before the due date as posted on the bill.

**Exchange** - Refers to a geographic area established and approved by the Authority for the administration of local telephone service in a specified area which usually embraces a city, town, or village and its environs. It may consist of one or more central offices together with associated plant used in furnishing communication service in that area.

**Holidays** - Refers to the holidays designated either by the Authority or by the Company as a legally recognized holiday, which will be rated at the lower night/weekend rates.

**IXC** - Refers to interexchange Company or interexchange company which is a Company or company authorized by the Authority to provide long distance communications services, but not local exchange services, within the State of Tennessee.

**InterLATA call** - Refers to any call which is originated in one LATA and terminated in another LATA.

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**SECTION 1 - TERMS AND ABBREVIATIONS (Cont'd)**

**Interstate call** - Refers to any call which is originated in one state and terminated within the boundaries of another state.

**IntraLATA call** - Refers to any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

**Intrastate call** - Refers to any call which is originated and terminated within the boundaries of the State of Tennessee, regardless of whether such call crosses state boundaries prior to reaching its termination point.

**LATA** - Refers to Local Access and Transport Area.

**LEC** - Refers to a local exchange company which is a company authorized by the Authority to provide local exchange service within the State of Tennessee.

**Point of presence ("POP")** - Refers to the location where an IXC has transmission equipment in a service area that serves as, or relays calls to, the interexchange network.

**Reseller** - Refers to a Company offering telecommunications services to the public through the use of the facilities of an underlying Company or a combination of its own facilities and the facilities of an underlying Company for resale to the public for profit. A Customer who offers the service(s) it obtains from a Reseller to the public for profit shall also be deemed a Reseller.

**Service** - Refers to service in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied by a Reseller in the provision of regulated offerings to their Customers.

**Telecommunications service** - Refers to service provided by the Company including voice, data, and all other types of telecommunications services, under the Company's tariffs on file with the Authority.

**Underlying Carrier** - Refers to the provider of telecommunications services whose network is being utilized to transmit and receive the Customer's telecommunications traffic.

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SECTION 2- RULES AND REGULATIONS

**2.1 UNDERTAKING OF COMPANY**

- 2.1.1 The Company's services are furnished for telecommunications originating and terminating within the State of Tennessee under terms of this tariff.
- 2.1.2 The Company installs, operates, and maintains the telecommunications services provided herein in accordance with the terms and conditions set forth under this tariff. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities, when authorized by the Customer, to allow connection of a Customer's location to the Company's network. The Customer shall be responsible for all charges due for such service arrangement.
- 2.1.3 The Company's services are provided on a monthly basis, and are available twenty-four (24) hours per day, seven (7) days per week.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.2 USE OF FACILITIES AND SERVICE****2.2.1 Obligation of the Company**

In furnishing facilities and service, the Company does not undertake to transmit messages, but furnishes the use of its facilities to its customers for communications. The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the State of Tennessee.

- A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B. The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

The Company's obligation to furnish facilities and service is dependent upon its ability (a) to secure and retain, without unreasonable expense, suitable facilities and rights for the construction and maintenance of the necessary circuits and equipment; (b) to secure and retain, without unreasonable expense, suitable space for its plant and facilities in the building where service is or will be provided to the customer; or (c) to secure reimbursement of all costs where the owner or operator of a building demands relocation or rearrangement of plant and facilities used in providing service therein.

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**SECTION 2- RULES AND REGULATIONS** (Cont'd)

**2.2 USE OF FACILITIES AND SERVICE** (Cont'd)

**2.2.1 Obligation of the Company** (Cont'd)

The Company shall not be required to furnish, or continue to furnish, facilities or service where the circumstances are such that the proposed use of the facilities or service would tend to adversely affect the Company's plant, property or service.

The Company reserves the right to refuse an application for service made by a present or former customer who is indebted to the Company for service previously rendered pursuant to this Tariff until the indebtedness is satisfied.

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**SECTION 2- RULES AND REGULATIONS** (Cont'd)**2.2 USE OF FACILITIES AND SERVICE** (Cont'd)**2.2.2 Limitations on Liability**

- A. The liability of the Company for damages arising out of the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in this tariff. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B. The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.2 USE OF FACILITIES AND SERVICE (Cont'd)**

**2.2.2 Limitations on Liability (Cont'd)**

- C. The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D. The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E. The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section as a condition precedent to such installations.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.2 USE OF FACILITIES AND SERVICE (Cont'd)**

**2.2.2 Limitations on Liability (Cont'd)**

- F. The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G. The Company is not liable for any claims for loss or damages involving:
  - 1. Breach in the privacy or security of communications transmitted over the Company's facilities;
  - 2. Injury to property or injury or death to persons, including claims for payments made under Worker's Compensation law or under any plan for employee disability or death benefits arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected or to be connected to the Company's facilities;
  - 3. Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of this tariff;
  - 4. Any act or omission in connection with the provision of 911, E911 or similar services;
  - 5. Any noncompletion of calls due to network busy conditions.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.2 USE OF FACILITIES AND SERVICE (Cont'd)**

**2.2.2 Limitations on Liability (Cont'd)**

H. The Company shall be indemnified, defended held harmless by the Customer against any claim, loss, or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.

1. The Company shall be indemnified, defended and held harmless by the Customer or end user from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Company or Customer equipment or facilities or service provided by the Company.

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**SECTION 2- RULES AND REGULATIONS** (Cont'd)

**2.2 USE OF FACILITIES AND SERVICE** (Cont'd)

**2.2.2 Limitations on Liability** (Cont'd)

**H.** (Cont'd)

2. The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. The Company shall be indemnified, defended and held harmless by the Customer from and against any and all claims, loss, demands, suits, or other action, or any liability whatsoever, including attorney fees, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service.
3. The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, or for other facilities provided by other entities used for service to the Customer, even if the Company has acted as the Customer's agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or nonpreemptibility as may be provided by the other entities.
4. Any claim of whatever nature against the Company shall be deemed conclusively to have been waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.2 USE OF FACILITIES AND SERVICE (Cont'd)**

**2.2.2 Limitations on Liability (Cont'd)**

- I. The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
- J. The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid Company by Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- K. THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.2 USE OF FACILITIES AND SERVICE (Cont'd)****2.2.3 Use of Service**

Any service provided under this Tariff may be resold to or shared (jointly used) with other persons at the customer's option. The customer remains solely responsible for all use of service ordered by it or billed to its telephone number(s) pursuant to this Tariff, for determining who is authorized to use its service, and for promptly notifying the Company of any unauthorized use. The customer may advise its customers that a portion of its service is provided by the Company, but the customer shall not represent that the Company jointly participates with the customer in the provision of the service.

**2.2.4 Use and Ownership of Equipment**

The Company's equipment, apparatus, channels and lines shall be carefully used. Equipment furnished by the Company shall remain its property and shall be returned to the Company whenever requested, within a reasonable period following the request, in good condition, reasonable wear and tear accepted. The customer is required to reimburse the Company for any loss of, or damage to, the facilities or equipment on the customer's premises, including loss or damage caused by agents, employees or independent contractors of the customer through any negligence.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.3 MINIMUM PERIOD OF SERVICE**

The minimum period of service is one month except as otherwise provided in this Tariff. The customer must pay the regular tariffed rate for the service they subscribe to for the minimum period of service. If a customer disconnects service before the end of the minimum service period, that customer is responsible for paying the regular rates for the remainder of the minimum service period. When the service is moved within the same building, to another building on the same premises, or to a different premises entirely, the period of service at each location is accumulated to calculate if the customer has met the minimum period of service obligation.

If service is terminated before the end of the minimum period of service as a result of condemnation of property, damage to property requiring the premises to be abandoned, or by the death of the customer, the customer is not obligated to pay for service for the remainder of the minimum period.

If service is switched over to a new customer at the same premises after the first month's service, the minimum period of service requirements are assigned to the new customer if the new customer agrees in writing to accept them. For facilities not taken over by the new customer, the original customer is responsible for the remaining payment for the minimum service period in accordance with the terms under which the service was originally furnished.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.4 PAYMENT FOR SERVICE RENDERED**

**2.4.1 Responsibility for All Charges**

Any applicant for facilities or service may be required to sign an application form requesting the Company to furnish the facilities or service in accordance with the rates, charges, rules and regulations from time to time in force and effect. The customer is responsible for all local and toll calls originating from the customer's premises and for all calls charged to the customer's line where any person answering the customer's line agrees to accept such charge.

**2.4.2 Deposits**

Any applicant or customer whose financial responsibility is not established to the satisfaction of the Company may be required to make a deposit. If the minimum period of service for the requested facilities and service is more than one month, as specified in this Tariff, the customer may also be required to deposit a sum up to an amount equal to the total charges for service for the minimum service period less any connection charge paid by the customer.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.4 PAYMENT FOR SERVICE RENDERED (Cont'd)****2.4.3 Payment of Charges**

Charges for facilities and service, other than usage charges, are due monthly in advance. All other charges are payable upon request of the Company. Bills are due on the due date shown on the bill. If objection is not received by the Company within three months after the bill is rendered, the items and charges appearing thereon shall be determined to be correct and binding upon the customer. A bill will not be deemed correct and binding upon the customer if the Company has records on the basis of which an objection may be considered, or if the customer has in his or her possession such Company records. If objection results in a refund to the customer, such refund will be with interest at the greater of the unadjusted customer deposit rate or the applicable late payment rate, if any, for the service classification under which the customer was billed. Interest will be paid from the date when the customer overpayment was made, adjusted for any changes in the deposit rate or late payment rate, compounded monthly, until the overpayment is refunded. Notwithstanding the foregoing, no interest will be paid by the Company on customer overpayments that are refunded within 30 days after the overpayment is received by the Company.

Where an objection to the bill involves a superseded service order, the items and charges appearing on the bill shall be deemed to be correct and binding upon the customer if objection is not received by the Company within two months after the bill is rendered.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.4 PAYMENT FOR SERVICE RENDERED (Cont'd)****2.4.3 Payment of Charges (Cont'd)**

Any objection to billed charges should be reported to the Company as soon as possible. Questions regarding the Company's services or charges assessed to a Customer's bill may be directed to the Company's Customer Service Department toll-free at 1-877-4LEVEL3 (1-887-453-8353). The Company shall investigate the case and report the results to the Customer. During the period that the disputed amount is under investigation, the Company shall not pursue any collection procedures or assess late fees to the disputed amount. The Customer shall be required to pay the undisputed part of the bill, and if not paid, the Company may discontinue service. If the disputed charges are not resolved, the Company shall inform the Customer that the Customer may utilize the complaint procedures of the Authority, and provide the following information:

Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37219  
(615) 741-2904

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.4 PAYMENT FOR SERVICE RENDERED (Cont'd)****2.4.4 Return Check Charge**

When a check which has been presented to the Company by a customer in payment for charges is returned by the bank, the customer shall be responsible for the payment of a Returned Check Charge of \$10.00.

**2.4.5 Late Payment Charges**

- A. Customer bills for telephone service are due on the due date specified on the bill. A customer is in default unless payment is made on or before the due date specified on the bill. If payment is not received by the customer's next billing date, a late payment charge of 1.5% will be applied to all amounts previously billed under this Tariff, excluding one month's local service charge, but including arrears and unpaid late payment charges.
- B. Late payment charges do not apply to those portions (and only those portions) of unpaid balances that are associated with disputed amounts. Undisputed amounts on the same bill are subject to late payment charges if unpaid and carried forward to the next bill.
- C. Late payment charges do not apply to final accounts.
- D. Late payment charges do not apply to government agencies of the State of Tennessee. These agencies are required to make payment in accordance with applicable state law.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.5 INSTALLATION SERVICE**

The Company provides a Half-Day Installation Plan, which offers customers half-day appointments (i.e., morning/afternoon or a rolling interval) for connection of Authority regulated service involving a customer premise visit.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.6 ACCESS TO CUSTOMER'S PREMISES**

The customer shall be responsible for making arrangements or obtaining permission for safe and reasonable access for Company employees or agents of the Company to enter the premises of the customer or any joint user or customer of the customer at any reasonable hour for the purpose of inspecting, repairing, testing or removing any part of the Company's facilities.

**2.7 TELEPHONE SURCHARGES/TAXES****2.7.1 General**

In addition to the rates and charges applicable according to the rules and regulations of this Tariff, various surcharges and taxes may apply to the customer's monthly billing statement. The Customer is responsible for payment of any fees (including franchise and right-of-way fees), charges, surcharges and taxes (however designated) (including without limitation sales, use, gross receipts, excise, access or other taxes but excluding taxes on the Company's net income) imposed by any local, state, or federal government on or based upon the provision, sale or use of Company Services. Fees, charges, and taxes imposed by a city, county, or other political subdivision will be collected only from those Customers receiving service within the boundaries of that subdivision.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.8 SUSPENSION OR TERMINATION OF SERVICE****2.8.1 Suspension or Termination for Nonpayment**

In the event that any bill rendered or any deposit required is not paid, the Company may suspend service or terminate service until the bill or the required deposit has been paid. If service is suspended or terminated for nonpayment, the customer will be billed a Connection Charge as well as any payment due and any applicable deposits upon reconnection.

- A. Termination shall not be made until at least 20 days after written notification has been mailed to the billing address of the customer.
- B. Suspension will not be made until at least 8 days after written notification has been mailed to the customer.

Telephone service shall only be suspended during the hours between 8:00 AM and 4:00 PM, Monday through Thursday. It shall not be suspended or terminated for nonpayment on weekends, public holidays and other federal and state holidays.

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SECTION 2- RULES AND REGULATIONS (Cont'd)

2.8 SUSPENSION OR TERMINATION OF SERVICE (Cont'd)

2.8.2 Exceptions to Suspension and Termination

Telephone service shall not be suspended or terminated for:

- A. Nonpayment of bills rendered for charges other than telephone service or deposits requested in connection with telephone service;
- B. Nonpayment for service for which a bill has not been rendered;
- C. Nonpayment for service which have not been rendered;
- D. Nonpayment of any billed charge which is in dispute or for the nonpayment of a deposit which is in dispute during the period before a determination of the dispute is made by the Company in accordance with Company's complaint handling procedures. These procedures shall be in accordance with the Authority's Rules and Regulations.

Telephone service may be suspended or terminated for nonpayment of the undisputed portion of a disputed bill or deposit if the customer does not pay the undisputed portion after being asked to do so.

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SECTION 2- RULES AND REGULATIONS (Cont'd)

2.8 SUSPENSION OR TERMINATION OF SERVICE (Cont'd)

2.8.3 Verification of Nonpayment

Telephone service shall not be suspended or terminated for nonpayment of a bill rendered or a required deposit unless:

- A. The Company has verified, in a manner approved by the Authority, that payment has not been received at the designated office of the Company or at any office of an authorized collection agent through the end of the period indicated in the notice, and
- B. The Company has checked the customer's account on the day that suspension or termination is to occur to determine whether payment has been posted to the customer's account as of the opening of business on that day.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)****2.8 SUSPENSION OR TERMINATION OF SERVICE (Cont'd)****2.8.4 Termination For Cause Other Than Nonpayment****A. General**

The Company, after notice in writing to the customer and after having given the customer an appropriate opportunity to respond to such notice, may terminate service and sever the connection(s) from the customer's premises under the following conditions:

1. in the event of prohibited, unlawful or improper use of the facilities or service, or any other violation by the customer of the rules and regulations governing the facilities and service furnished, or
2. if, in the judgment of the Company, any use of the facilities or service by the customer may adversely affect the Company's personnel, plant, property or service. The Company shall have the right to take immediate action, including termination of the service and severing of the connection, without notice to the customer when injury or damage to telephone personnel, plant, property or service is occurring, or is likely to occur, or
3. in the event of unauthorized use, where the customer fails to take reasonable steps to prevent the unauthorized use of the facilities or service received from the Company, or
4. in the event that service is connected for a customer who is indebted to the Company for service or facilities previously furnished, that service may be terminated by the Company unless the customer satisfies the indebtedness within 20 days after written notification.

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**SECTION 2- RULES AND REGULATIONS** (Cont'd)

**2.8 SUSPENSION OR TERMINATION OF SERVICE** (Cont'd)

**2.8.4 Termination For Cause Other Than Nonpayment** (Cont'd)

**B. Prohibited, Unlawful or Improper Use of the Facilities or Service**

Prohibited, unlawful or improper use of the facilities or service includes, but is not limited to:

1. The use of facilities or service of the Company without payment of tariff charges;
2. Calling or permitting others to call another person or persons so frequently or at such times of the day or in such manner as to harass, frighten, abuse or torment such other person or persons;
3. The use of profane or obscene language;
4. The use of the service in such a manner such that it interferes with the service of other customers or prevents them from making or receiving calls;
5. The use of a mechanical dialing device or recorded announcement equipment to seize a customer's line, thereby interfering with the customer's use of the service;
6. Permitting fraudulent use.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.8 SUSPENSION OR TERMINATION OF SERVICE (Cont'd)**

**2.8.4 Termination For Cause Other Than Nonpayment (Cont'd)**

**C. Abandonment or Unauthorized Use of Facilities**

1. If it is determined that facilities have been abandoned, or are being used by unauthorized persons, or that the customer has failed to take reasonable steps to prevent unauthorized use, the Company may terminate telephone service.
2. In the event that telephone service is terminated for abandonment of facilities or unauthorized use and service is subsequently restored to the same customer at the same location:
  - a. No charge shall apply for the period during which service had been terminated, and
  - b. Reconnection charges will apply when service is restored. However, no charge shall be made for reconnection if the service was terminated due to an error on the part of the Company.

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**SECTION 2- RULES AND REGULATIONS (Cont'd)**

**2.8 SUSPENSION OR TERMINATION OF SERVICE (Cont'd)**

**2.8.4 Termination For Cause Other Than Nonpayment (Cont'd)**

**D. Change in the Company's Ability to Secure Access**

Any change in the Company's ability (a) to secure and retain suitable facilities and rights for the construction and maintenance of the necessary circuits and equipment or (b) to secure and retain suitable space for its plant and facilities in the building where service is provided to the customer may require termination of a customer's service until such time as new arrangements can be made. No charges will be assessed the customer while service is terminated, and no connection charges will apply when the service is restored.

**2.8.5 Emergency Termination of Service**

The Company will immediately terminate the service of any customer, on request, when the customer has reasonable belief that the service is being used by an unauthorized person or persons. The Company may require that the request be submitted in writing as a follow-up to a request made by telephone.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd)****2.9 ALLOWANCES FOR INTERRUPTIONS IN SERVICE****2.9.1 Credit for Interruptions**

- A. An interruption period begins when the Customer reports a service, facility, or circuit to be interrupted and releases it for testing and repair. An interruption period ends when the service, facility, or circuit is operative. If the Customer reports a service, facility, or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.
- B. For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- C. If the Customer's service is interrupted and remains interrupted in excess of twenty-four (24) hours after being reported by the Customer, then the Customer may request a credit on the subsequent bill for telephone service. The Company will calculate such credit as the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative.

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**SECTION 2 - RULES AND REGULATIONS** (Cont'd)

**2.9 ALLOWANCES FOR INTERRUPTIONS IN SERVICE** (Cont'd)

**2.9.1 Credit for Interruptions** (Cont'd)

**C.** (Cont'd)

**1.** If interruption continues for more than 24 hours:

- a.** if caused by storm, fire, flood or other condition out of Company's control, 1/30th of the monthly rate for each 24 hours of interruption.
- b.** for other interruption, 1/30 of the monthly rate for the first 24 hours and 2/30ths of such rate for each additional 24 hours (or fraction thereof); however, if service is interrupted for over 24 hours, more than once in the same billing period, the 2/30ths allowance applies to the first 24 hours of the second and subsequent interruptions

**D.** Credit to Customer

Credits attributable to any billing period for interruptions of service shall not exceed the total charges for that period for the service and facilities furnished by the Company rendered useless or substantially impaired.

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**SECTION 2 - RULES AND REGULATIONS** (Cont'd)**2.9 ALLOWANCES FOR INTERRUPTIONS IN SERVICE** (Cont'd)**2.9.1 Credit for Interruptions** (Cont'd)**E. "Interruption" Defined**

For the purpose of applying this provision, the word "interruption" shall mean the inability to complete calls either incoming or outgoing or both due to equipment malfunction or human errors. "Interruption" does not include, and no allowance shall be given, for service difficulties such as slow dial tone, circuits busy or other network and/or switching capacity shortages. Nor shall the interruption allowance apply where service is interrupted by the negligence or willful act of the subscriber or where the Company, pursuant to the terms of the Tariff, suspends or terminates service because of nonpayment of bills due to the company, unlawful or improper use of the facilities or service, or any other reason covered by the Tariff. No allowance shall be made for interruptions due to electric power failure where, by the provisions of this Tariff, the subscriber is responsible for providing electric power. Allowance for interruptions of measured rate service will not affect the subscriber's local call allowance during a given billing period.

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**SECTION 2 - RULES AND REGULATIONS** (Cont'd)

**2.9 ALLOWANCES FOR INTERRUPTIONS IN SERVICE** (Cont'd)

**2.9.2 Limitations on Credit Allowances**

No credit allowance will be made for:

- A. interruptions due to the negligence of, or non-compliance with the provisions of this Tariff, by any party other than the Company, including but not limited to the customer, authorized user, or other common carriers connected to, or providing service connected to, the service of the Company or to the Company's facilities;
- B. interruptions due to the failure or malfunction of non-Company equipment, including service connected to customer provided electric power;
- C. interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- D. interruptions of service during any period when the customer has released service to the Company for maintenance purposes or for implementation of a customer order for a change in service arrangements;
- E. interruptions of service due to circumstances or causes beyond the control of the Company.

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**SECTION 2 - RULES AND REGULATIONS** (Cont'd)

**2.10 INSPECTION, TESTING AND ADJUSTMENT**

- 2.10.1 Upon reasonable notice, the facilities/equipment provided by the Underlying Carrier or the Reseller shall be made available to the Underlying Carrier or the Reseller for tests and adjustments as may be deemed necessary by the Underlying Carrier or the Reseller for maintenance. No interruption allowance will be granted for the time during which such tests and adjustments are made.

**2.11 CUSTOMER SERVICE**

- 2.11.1 The Company shall maintain a toll-free number to enable Customers to contact the Company regarding, but not limited to, inquiries related to billing, making customer trouble reports, etc.

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**SECTION 3 - APPLICATION OF RATES****3.1 GENERAL**

Intrastate services are offered in conjunction with interstate services.

**3.2 COMPUTATION OF CHARGES**

3.2.1. The rates for Company's interexchange Service will depend upon the duration of the call and the Service plan selected by the Customer. Rates apply seven (7) days a week and are not affected by the time period in which the call is placed. Rates are quoted per minute. Rates applicable on holidays are the same as those applicable for all other days of the year. Billing is based on an initial thirty (30) second period and thereafter in six (6) second increments or fractions thereof rounded up to the next increment. Third party non-usage recurring charges billed to Company relevant to Customer's use of local serving arrangement with local exchange company are passed directly on to Customer and may be subject to upward adjustment from time to time pursuant to tariff. In addition, any non-recurring third party charges which may be billed to Company relative to interconnection shall be passed directly on to Customer.

3.2.2 Where answer supervision is available, the time of a call begins when the called station is answered, as determined by the standard industry methods selected by the applicable underlying Common Carrier. The Company will not knowingly bill any Customer for unanswered calls. Upon the Customer's request, the Company shall promptly refund or credit, as the case may be, payments or charges for any unanswered call inadvertently billed due to the unavailability of Feature Group D or to the LEC's failure to provide answer supervision. Where answer supervision is not available, any call for which the billed duration exceeds one minute shall be presumed to have been answered..

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**SECTION 3 - APPLICATION OF RATES (Cont'd)****3.3 CALCULATION OF DISTANCE ("V&H")**

- 3.3.1 Usage charges for all mileage-sensitive products are based on the airline distance between serving wire centers associated with the originating and terminating points of the call.
- 3.3.2 The service wire centers of a call are determined by the area codes and exchanges of the origination and destination points.
- 3.3.3 The distance between the wire center of the Customer's equipment and that of the destination point is calculated by using the vertical ("V") and horizontal ("H") coordinates found in Bellcore's V&H Tape and NECA FCC Tariff No. 4.
- A. Step 1 - Obtain the "V" and "H" coordinates for the wire centers serving the Customer and the destination point.
  - B. Step 2 - Obtain the difference between the "V" coordinate of each of the wire centers. Obtain the difference between the "H" coordinates.
  - C. Step 3 - Square the differences obtained in Step 2.
  - D. Step 4 - Add the squares of the "V" difference and "H" difference obtained in Step 3.
  - E. Step 5 - Divide the sum of the square obtained in Step 4 by ten (10). Round to the next higher whole number if any fraction results from the division.
  - F. Step 6 - Obtain the square root of the whole number obtained in Step 5. Round to the next higher whole number if any fraction is obtained. This is the distance between the wire centers.

Formula:

$$\sqrt{\frac{(V1 - V2)^2 + (H1 - H2)^2}{10}}$$

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SECTION 3 - APPLICATION OF RATES (Cont'd)

3.4 MINIMUM CALL COMPLETION RATE

A customer can expect a call completion rate (number of calls completed/number of calls attempted) of not less than 99.5% during peak use periods for the Company services.

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**SECTION 4 - DESCRIPTION OF SERVICES AND RATES**

**4.1 DESCRIPTION**

Carrier provides interexchange telecommunications services. Calls are rated based on the duration of the call. In addition, a monthly recurring charge may apply. Unless otherwise indicated, rates are identified in this tariff as per minute rates.

**4.2 MESSAGE TELECOMMUNICATIONS SERVICES**

Message Telecommunications Services ("MTS") consist of the furnishing of outbound message telephone service between telephone stations located within the state. MTS is available on both a switched and dedicated basis.

1+Long Distance Telecommunications Services

Rate per minute: \$0.11

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Issued:

Effective:

Issued By:

Terrence J. Ferguson, Senior Vice President  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

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**SECTION 4 - DESCRIPTION OF SERVICES AND RATES** (Cont'd)**4.3 800 Service**

800 Service is an inbound-only service in which callers located within the State may place toll-free calls to a telephone in the 800 area code assigned to the Customer. 800 Service is available on both a switched and dedicated basis.

Rate per minute: \$0.11

**4.4 Special Service Arrangements**

Customer-specific service arrangements, which may include engineering, installation, construction, facilities, assembly and/or other special services, may be furnished in addition to existing tariff offerings. Rates, terms, and conditions plus any additional regulations, if applicable for the special service arrangements will be developed upon the customer's request. Unless otherwise specified, the regulations for the special service arrangements are in addition to the applicable regulations specified in other sections of this tariff.

246697.1

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**Issued:****Effective:****Issued By:**

Terrence J. Ferguson, Senior Vice President  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

**Exhibit F**

Sample Customer Bill





Level 3  
Communications

Account Name: Nuvo  
Statement Date: May 1, 1998  
Customer Ref./P.O. No.: 12345-0  
Invoice Number: 000001  
Due Date: June 1, 1998

Page  
Account Number:  
Name: Nuvo  
Address: 1341 Wall St.  
21th Floor  
Nashville, TN

#### Account Summary

Previous Balance	\$	-
Payments	\$	-
Adjustments to Prior Charges	\$	-
Balance Forward	\$	-
New Charges for Period: April 1, 1998 - April 30, 1998		
Co-Location	\$	
Total New Account and Services Charges for Period	\$	
Late Payments Charges	\$	-
Taxes for Period	\$	-
Total New Charges for Period	\$	
Total Amount Due on June 1, 1998	\$	

Your additional savings with Level 3 are \$ |

#### Billing Inquiries or Customer Service?

Phone: 1-877-4LEVEL3  
Fax: 1-877-5LEVEL3

#### New From Level 3

Level 3 offers a full range of products and services for businesses — Co-location, Internet Access (dedicated & dial), advanced data, web hosting and technology solutions—all delivered with unsurpassed quality at highly competitive rates. Along with our integrated, well packaged services, you can count on truly responsive customer service.

For more INFO check out our website at

**WWW.L3.COM**

**OR CALL**

**1-877-4LEVEL3**



Level 3  
Communications

1450 Infinite Dr.  
Louisville, Co 80027

Account Number:  
Invoice Number:

Nuvo  
1341 Wall St.  
21th Floor  
Nashville, TN

Submit this remittance portion with payment.

Total Amount Due: \$

Due Date: June 1, 1998

Amount Enclosed: \_\_\_\_\_

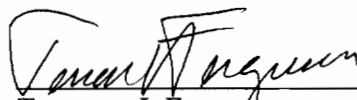
Payable To:

Level 3 Communications  
Department #182  
Denver, CO 80291-0182

Bar Coding

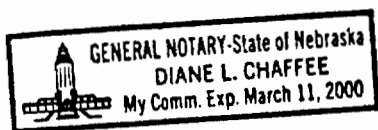
### VERIFICATION

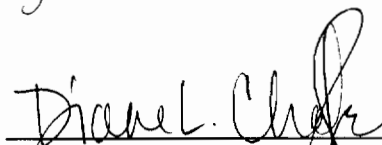
I, Terrence J. Ferguson, being first duly sworn, declare that I am the Senior Vice President and General Counsel of Level 3 Communications, LLC, the Applicant in this subject proceeding, and that I am authorized to make this Verification on behalf of Applicant; that I have read the foregoing Application and know the contents thereof; that the same are true and correct to the best of my knowledge, information, and belief; and that the Applicant will operate in compliance with all applicable federal and state laws and all Federal Communication Commission and Tennessee Regulatory Authority rules.

  
Terrence J. Ferguson

Senior Vice President and General Counsel

Subscribed and sworn to me, this 2<sup>nd</sup> day of August 1998.



  
Notary Public

My Commission expires: March 11, 2000