

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1876
of Level 3 Communications, LLC of)
Louisville, Colorado, seeking)
to obtain a Certificate of Public) GRANTED
Convenience and Necessity to pro-)
vide resold and facilities-based,)
switched and dedicated, local)
exchange telecommunications.) Entered: December 22, 1998

APPEARANCES:

For the Applicant:
Terrence J. Ferguson
Level 3 Communications
3555 Farnam Street
Omaha, Nebraska 68131

For the Commission:
Michael T. Loeffler
300 The Atrium
1200 "N" Street
Lincoln, Nebraska 68508

For Nebraska Independent
Telephone Association;
Clarks Telecommunications Co.;
Consolidated Telco, Consoli-
dated Telephone, Inc.; Great
Plains Communications; HunTel
Systems, Inc.; and Southeast
Nebraska Telephone Co.:
Kelly R. Dahl
Baird, Holm et. al.
1500 Woodman Tower
Omaha, Nebraska 68102-2068

For Nebraska Telephone
Association:
Jack Shultz
Harding, Shultz & Downs
800 Lincoln Square
121 S. 13th Street
Lincoln, Nebraska 68508

For Arapahoe Telephone Com-
pany; Benkelman Telephone
Company, Inc.; Cozad Tele-
phone Company; Diller Tele-
phone Company; Hemingford
Cooperative Telephone Com-
pany; Cambridge Telephone
Co., Henderson Coopera-
tive Telephone Co.; and
Wauneta Telephone
Company:
Timothy F. Clare
Rembolt, Ludtke & Berger
1201 Lincoln Mall, Suite 102
Lincoln, Nebraska 68508

BY THE COMMISSION:

By application filed August 5, 1998, Level 3 Communications of Louisville, Colorado, seeks to obtain a Certificate of Public Convenience and Necessity to provide resold and facilities-based, switched and dedicated, local exchange telecommunications in the state of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on August 6, 1998, pursuant to the rules of the Commission. The following parties filed petitions for formal intervention: Arapahoe Telephone Company; Benkelman Telephone Company; Cozad Telephone Company; Diller Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; Wauneta Telephone Company; Cambridge Telephone Company; Clarks Telecommunications Co.; Consolidated Telco; Consolidated Telephone Company, Inc.; Great Plains Communications; HunTel Systems, Inc.; Southeast Nebraska

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Telephone Co.; The Nebraska Independent Telephone Association; and the Nebraska Telephone Association represented by Jack Shultz.

An evidentiary hearing was scheduled for December 2, 1998, at 2:00 p.m. in the Commission Hearing Room. After notice to all parties, the hearing was rescheduled for 10:00 a.m. on December 2, 1998.

E V I D E N C E

In support of its application, Level 3 introduced five exhibits and produced one witness.

Abbie Jensen, an interconnection specialist for Level 3, testified:

Level 3 Communications (Level 3) is a limited liability company organized under the laws of the state of Delaware. Level 3 has a Certificate of Authority to transact business in Nebraska as a foreign limited liability company.

Level 3 intends to provide telecommunications on both a resale and facilities-based manner. Ms. Jensen indicated that the exhibits which were pre-filed contained correct information but added that there was a correction to the list of officers in that Thomas C. Storz is now the general counsel.

Level 3 is financially able to provide local exchange services. Level 3 was formed in December 1997 and is wholly-owned by PKS Information Services, Inc. The applicant currently has authority to offer resold services in twenty-three states.

According to the SEC Form 10-K filed for the third quarter 1998, Level 3 had over \$800 million in liquid assets and plans to raise another \$500 million through a private debt offering. Ms. Jensen offered as an exhibit the press release detailing the private debt offering.

In her testimony, Ms. Jensen stated Level 3 has the managerial expertise and competence to provide interexchange services. Level 3's management team has more than forty years of experience in telecommunications. Level 3 will install state-of-the-art telecommunications equipment and construct a local fiber-optic network infrastructure to provide trunking facilities to the incumbent local exchange carrier and/or one or more competitive local carriers.

Level 3's network will also be connected to an ILEC tandem switch and certain IXC points of presence. As each customer comes on-line, they will be serviced either on Level 3's own internal fiber-optic network or by leasing unbundled loops or other facilities.

Ms. Jensen testified that providing a Certificate of Public Convenience and Necessity would serve the public interest by providing greater competition in the local exchange marketplace

thereby benefiting consumers. In addition, the proposed services to be offered will provide consumers with better quality services and user features and will increase consumer choice.

No advance deposit will be required for potential customers except in the case where the consumer had bad or no credit. Level 3 plans no service in rural areas and is not making a request for a lift of the rural exemption. Level 3 proposes service to both business and residential customers.

A stipulation was offered and entered into the record in which Level 3 agrees to restrict its service into those areas presently served by US West Communications, Inc., Aliant Communications, GTE Telephone Operations and United Telephone Company of the West dba Sprint. Mr. Jack Shultz joined orally and on the record in the stipulation on behalf of the Nebraska Telephone Association.

O P I N I O N A N D F I N D I N G S

Applicant is organized under the laws of the state of Delaware and has received authorization from the Nebraska Secretary of State to conduct business in Nebraska. Applicant plans to offer all forms of resold and facilities-based, switched and dedicated, intrastate interexchange telecommunications services to subscribers to and from all points in the state of Nebraska.

Applicant's exchange services will include, but not be limited to: (1) 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; (2) local exchange usage services to customers of Level 3's end-user access line services; and, (3) switched and special carrier access services to other common carriers. These services will be offered through a combination of Level 3's own facilities and through resale of the facilities of other certificated carriers. Applicant will offer 911 and enhanced 911 emergency services, dual-party relay services, and other necessary services through interconnection with other carriers or through resale.

Applicant currently does not propose to provide alternative operator services nor require advance payments or deposits. Applicant has yet to identify its underlying carrier(s) for resale service, but will do so prior to offering services within the state of Nebraska. Applicant filed evidence demonstrating its financial, technical and managerial competency. No formal complaints have been filed against Applicant or any of its officers or managers with any federal or other states' regulatory agency.

Interexchange reseller applications are subject to Commission jurisdiction under Neb. Rev. Stat. Sections 75-604 and 86-805 and Title 291 of the Commission's Rules and Regulations, Chapter 5, Rule 003.12. From examination of the application filed herein, the Commission finds applicant has provided all the

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information required by the Commission, possesses adequate financial resources to provide the proposed service, and possesses adequate technical and managerial competency to provide the proposed service. The application should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1876 be, and it is hereby, granted and Level 3 Communications of Louisville, Colorado, is authorized to provide resold and facilities-based, switched and dedicated, local exchange communication service in those areas presently served by US West Communications, Inc., Aliant Communications, GTE Telephone Operations and United Telephone Company of the West dba Sprint.

IT IS FURTHER ORDERED that Applicant is obligated to abide by the same laws, rules, and regulations, both federal and state (including any laws, rules or regulations regarding universal service, interconnection agreements, restrictions on joint marketing and quality of service), applicable to other local exchange carriers except obligations imposed on ILECs pursuant to 251(c) of the Act.

IT IS FURTHER ORDERED that the applicant shall file, in accordance with the applicable statutes on or before April 30th of each year, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) a copy of any annual report to stockholders and (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission. If these are not available, applicant shall submit a balance sheet and income statement for the previous year of operation, as well as the investment made in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues and expenses, and taxes.

IT IS FURTHER ORDERED that applicant identify its underlying carrier(s) for resale service prior to offering service pursuant to the certificate granted in this order.

IT IS FURTHER ORDERED that applicant file its current tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FURTHER ORDERED that Applicant shall collect from its subscribers a surcharge (Relay Surcharge) pursuant to the Telecommunications Relay System Act, Neb. Rev. Stat. Sections 86-1302 through 86-1306, (Relay Act) and the Commission's annual orders establishing the amount of the Relay Surcharge and shall remit to the Commission the proceeds from the Relay Surcharge as provided by the Relay Act.

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IT IS FINALLY ORDERED that this order be, and it is hereby made, the Commission's official certificate of authority to furnish the service authorized herein subject to the terms of the stipulation entered into which was made a part of the record in this application.

MADE AND ENTERED at Lincoln, Nebraska this 22nd day of December, 1998.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION

Lowell C. Johnson

Lowell C. Johnson
Chairman

ATTEST:

Anne C. Byrke

John B. Buehler

Deputy Director

//s//Lowell C. Johnson

//s//Frank E. Landis

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
