

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Joint Application of)
)
Level 3 Communications, Inc.)
)
And)
)
TelCove, Inc.)
)
For Approval of a Transfer of Control of)
TelCove Operations, Inc. and Related)
Transactions)

Case No. TM-2006-0433

MOTION TO DISMISS FOR LACK OF JURISDICTION

COMES NOW the Staff of the Missouri Public Service Commission and for its motion states:

1. Level 3 Communications, Inc., is the ultimate parent company of three commission certificated telecommunications companies: Level 3 Communications, LLC, WilTel Communications, LLC, and WilTel Local Network, LLC. The applicants propose a simultaneous multi-step transaction which will result in Level 3 Communications becoming the ultimate parent company of a fourth commission certificated telecommunications company: TelCove Operations, Inc.

2. In the first step (which the applicants have labeled Step 1), TelCove, Inc., the unregulated parent company of TelCove Operations, Inc., will merge with Eldorado Acquisition Three, LLC, an unregulated subsidiary of Level 3 Communications, Inc. Eldorado Acquisition Three, LLC, will survive the merger.

3. In the second step (which the applicants have labeled Step 2 (a)), Level 3 Communications, Inc., contributes its membership interest in Eldorado Acquisition Three, LLC, to Level 3 Financing, Inc., another unregulated subsidiary of Level 3 Communications, Inc. In

other words, Level 3 Financing, Inc., replaces Level 3 Communications, Inc., as the direct parent of Eldorado Acquisition Three, LLC.

4. In the third step (which the companies have labeled Step 2 (b)), Level 3 Financing, Inc., contributes its membership interest in Eldorado Acquisition Three, LLC, to Level 3 Communications, LLC. In other words, Level 3 Communications, LLC, replaces Level 3 Financing, Inc., as the direct parent of Eldorado Acquisition Three, LLC.

5. The applicants filed their application pursuant to Section 392.300 RSMo, even though they believe that the proposed transaction may not be within the Commission's jurisdiction.

6. Section 392.300.1 forbids a telecommunications company to sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, or by any means, direct or indirect, to merge or consolidate such line or system, or franchises, or any part thereof, without having first secured from the Commission an order authorizing it so to do.

7. Section 392.300.1 is not applicable to this case because TelCove Operations, Inc., is not disposing, encumbering or merging its assets. See *In the Matter of the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, for Approval of a Transfer of Control of Electric Lightwave, LLC*, Case No. TM-2006-0312, Order Dismissing Joint Application (May 12, 2006).

8. Section 392.300.2 forbids a stock corporation, other than a telecommunications company, to purchase, without Commission consent, more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state.

9. Section 392.300.2 is not applicable to this case because TelCove Operations, Inc., as a Delaware corporation, is not organized or existing under or by virtue of the laws of this state. See *Integra Telecom Holdings, supra*. Also, the Commission granted TelCove Operations, Inc., f/k/a Adelphia Business Solutions Operations, Inc., a waiver from Section 392.300.2 in Case No. TA-2000-215 (Order Granting Certificate to Provide Basic Local Telecommunications Services) but not in Case No. TA-2000-315 (Order Approving Interexchange and Nonswitched Local Exchange Certificates of Service Authority and Order Approving Tariff).

WHEREFORE, the Staff requests the Commission to dismiss the application for lack of jurisdiction.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23rd day of May 2006.

/s/ William K. Haas

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