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WILLIAM D. STEINMEIER, PC

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April 12, 2002

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FILED³

APR 12 2002

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AUG 15 2002

Missouri Public
 Service Commission

Missouri Public
 Service Commission

RE: Case No. TA-2002-376

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Eric W. Anderson
 Assistant General Counsel
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EWA/lb
 Enclosure
 cc: Counsel of Record

Informed Consumers, Quality Utility Services, and a Dedicated Organization for Missourians in the 21st Century

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MO PSC

APR-12-2002 16:15

SCHEDULE 3 TO THE
 DIRECT TESTIMONY OF
 LACHALRES P. KEESEE, II

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

FILED³

APR 12 2002

In the Matter of the Application of Level 3)
Communications, LLC to expand its)
Certificate of Service Authority to Provide)
Local Exchange Telecommunications)
Services Statewide)

**Missouri Public
Service Commission**

Case No. TA-2002-376

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Missouri Public Service Commission (Commission) expand Level 3 Communications, LLC's (Applicant) certificate to provide local exchange telecommunications services throughout the state of Missouri. Level 3 Communications, LLC's certificate, granted in Case No. TA-99-171, gives it authority to provide basic local service in the exchanges of the large LEC's and provide non-switched local exchange telecommunications services. In Case No. TA-99-170 Level 3 was granted authority to provide interexchange services throughout Missouri. The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. (See Sections 392.430 and 392.440 RSMo 2000).

2. While Level 3 and its current services have been granted competitive classification, Section 392.361.3 RSMo 2000 requires that for competitive classification all the services offered by the company must be competitive. In this application, Level 3 is requesting to offer switched, one-way data lines to internet service providers. The recommendation lists

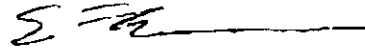
companies that are currently certificated to provide local exchange communications in Missouri. Also, many carriers are certificated to offer non-switched local exchange service throughout the state, providing private data lines, and the incumbent LEC likely offers data lines in a variety of forms. The Commission should consider this service competitive as it is subject to sufficient competition to justify a lesser degree of regulation and allow Level 3 to retain its competitive classification. (392.361.2 RSMo 2000).

3. Staff recommends a waiver of 4 CSR 240-2.060(6)(C), which requires that a proposed tariff with a forty-five day effective date be included with the application. Level 3 has also requested waivers on page 4 and 5 of its February 15, 2002 application. As the waivers requested are waivers normally granted to competitive companies, the Staff recommends that these waivers be granted.

WHEREFORE, the Staff recommends that the Commission, at its earliest convenience, grant Level 3 Communications, LLC certification to provide local exchange telecommunications services effective when its tariffs for this service become effective, grant competitive classification to the service, and approve the waiver of 4 CSR 240-2.060(6)(C) and the waivers requested in its application.

Respectfully submitted,

DANA K. JOYCE
General Counsel




Eric William Anderson
Assistant General Counsel
Missouri Bar No. 47253

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 12th day of April, 2002.



MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No.: TA-2002-376 File No.: N/A
Applicant: Level 3 Communications, LLC (Level 3) Docket ID U4476

From: Arthur P. Kuss *APK*
Telecommunications Department
Ben Vajt 04/10/02
Utility Operations Division/Date

W. K. Hines 04/10/02 *EW 4/10/02*
General Counsel's Office/Date

Subject: Staff Recommendation for Approval/Clarification of Certificate

Date: April 09, 2002

Filing Deadline: N/A (By 4:00 pm 7 working days prior to proposed effective date)

On February 08, 2002, Level 3 Communications, LLC (Level 3), a competitive telecommunications company, filed an Application with the Public Service Commission (Commission), in which it proposes to clarify its authorized service area to provide switched local services, offered as distinct and separate from basic local services. Level 3 filed a Supplement to Application on February 15, 2002, in which it submitted its officer's Verification.

I. Background

On February 02, 1999, the Commission issued the Order Granting Certificate to Provide Basic Local Telecommunications Services (Order) in Case No. TA-99-171, granting a Certificate of Service Authority to Level 3 to provide basic local and local telecommunications services in Missouri. Level 3 was found to possess sufficient managerial, technical and financial resources to provide the proposed service at that time. Level 3 is a facilities-based provider and a reseller of an underlying carrier's local service, currently providing basic local service only in the St. Louis metro area where the underlying Incumbent Local Exchange Carrier (ILEC) is Southwestern Bell Telephone Company (SWBT).

- Level 3 is currently providing non-switched local private line service under its Missouri P.S.C. Tariff No. 2, approved under Case No. TA-99-171, effective May 31, 1999.
- Level 3 is currently providing basic local exchange service to businesses only, under its Local Telecommunications Services Missouri P.S.C. Tariff No. 3, approved under File No. 9900873, effective July 12, 1999.
- Level 3 is currently providing switched access service under its Missouri P.S.C. Tariff No. 4, approved under File No. 9900809, effective May 11, 1999.

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Page 2 of 2

Approval of certification to provide interexchange service and an associated tariff under File No. 9900314 was approved under Case No. TA-99-170 on December 17, 1998.

- Level 3 is currently providing interexchange service under its Missouri P.S.C. Tariff No. 1, effective December 21, 1998.

II. Proposed Service Offering

Level 3 proposes to offer a local exchange service featuring inward-dialed switched service to dedicated line, for sale to Internet Service Providers (ISP). The ISP, as a customer of Level 3, would purchase a private line facility, to which Level 3 would allow local switching to connect local calls from the ISP's customers. Outward dialing from the ISP would not be available with this "one-way" dialing arrangement. Level 3's proposed local exchange service would be distinct from basic local service in that there will be no access through the private line to such characteristic basic local features as access to dial tone, other local endusers, Emergency (911), Operator or Directory Assistance services, or interexchange providers. The presence of a local switching function to connect calls from outside endusers to the private line facility establishes the proposed service as different from the usual non-switched private line offering. Level 3 has requested a waiver of 4 CSR 240-2.060(6)(C) regarding the filing of a tariff which is to offer this service.

III. Previous Certifications

Private line services are typically certificated as a statewide local and interexchange service, restricted to non-switched operation. As Level 3's original local exchange certification was received in combination with a basic local certification, which included a restriction to specific ILEC service areas, Level 3 submitted the instant filing to clarify and assure that its local exchange authorization for providing services other than basic local, was not so restricted.

Commission approval of local exchange service as distinct from basic local exchange service or interexchange service has been previously granted in the following Cases:

- Case No. TA-96-322 for AT&T Communications of the Southwest, Inc., approved February 21, 1997.
- Case No. TA-96-424 for Sprint Communications Company L.P., approved February 28, 1997.
- Case No. TA-98-318 for Frontier Local Services, Inc., approved July 15, 1998.
- Case No. TT-99-237 for the Digital Link local exchange tariff featuring a switching function combined with a dedicated line of AT&T Communications of the Southwest, Inc., approved December 10, 1998.

IV. Summary Recommendation.

The Telecommunications Department Staff (Staff) recommends that the Application to grant statewide authorization to provide local exchange telecommunications service be approved.

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April 26, 2002

Dale Hardy Roberts
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Re: TA-2002-376

Dear Mr. Roberts:

Enclosed for filing on behalf of the Small Telephone Company Group ("STCG"), please find an original and eight (8) copies of a Motion for Clarification and/or Application for Rehearing.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Sondra B. Morgan

SBM/lar

Enclosure

cc: Eric Anderson
Michael Dandino
Mary Ann Young

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

Application of Level 3 Communications,)	
L.L.C. to Expand its Certificate of Service)	
Authority to Provide Local Exchange)	Case No. TA-2002-376
Telecommunications Statewide.)	

**MOTION FOR CLARIFICATION
AND/OR APPLICATION FOR REHEARING**

Comes now the Small Telephone Company Group ("STCG") members of which are set out in Appendix A to this pleading, and pursuant to § 386.500.1, RSMo 2000, files its Motion for Clarification and/or Application for Rehearing. In support of its Motion the STCG states to the Missouri Public Service Commission ("Commission") as follows:

1. On February 8, 2002, Level 3 Communications, L.L.C. ("Level 3") filed an application with the Commission "to expand its certificate of service authority to provide local exchange telecommunications services throughout the State of Missouri." Level 3 stated in its application that it had already obtained authority from the Commission in Case No. TA-99-171 to provide local exchange service in the service territories of Southwestern Bell Telephone Company ("SWBT"), Sprint Missouri, Inc. d/b/a Sprint ("Sprint"), GTE Midwest Incorporated d/b/a Verizon Midwest ("Verizon") and Spectra Communications Group, LLC ("Spectra"). Level 3 stated that it did not seek to expand that authority through the current application.¹

2. On February 26, 2002, the Commission issued its Notice of Application in which it

¹See, footnote 1 to application. In this same footnote, Level 3 stated that it had been granted authority to provide interexchange services throughout the state of Missouri in *Level 3 Communications, LLC for a Certificate of Service Authority to Provide Interexchange Telecommunications Services in the State of Missouri and for Competitive Classification*, Case No. TA-99-170 (effective December 21, 1998).

listed the application of Level 3 under the heading "Schedule of Applicants for Interexchange and Nonswitched Local Exchange Service Authority." An intervention deadline of March 13, 2002, was established. Since the Notice of Application indicated that the application only sought an expansion of the applicant's nonswitched local exchange authority, and the application stated that Level 3 did not seek to expand its basic local authority granted earlier in Case No. TA-99-171, the STCG did not seek to intervene in the proceeding. The members of the STCG only became aware of this proceeding when some of the members were contacted by representatives of Level 3 who represented that they believed that Level 3 was being granted competitive local exchange ("CLEC") authority in the small company exchanges.

3. On April 18, 2002, the Commission issued its Order Approving Expansion of Local Exchange Service Authority for Level 3 ("Order"). This Order becomes effective April 28, 2002. In this Order, the Commission stated in Ordered Paragraph 1 that Level 3 was granted a certificate of service authority "to provide local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above." In the discussion above, the Order stated that the Staff of the Commission recommended the "grant of statewide authorization to provide local exchange telecommunications services," and that "the Commission finds that competition in the intrastate interexchange and nonswitched local exchange telecommunications markets is in the public interest" (Emphasis supplied.) Further, in Ordered Paragraph 3, Level 3 is granted a waiver of Commission Rule 4 CSR 240-2.060(6)(C) which requires the filing of a 45-day tariff. This waiver is usually granted by the Commission in application cases where the applicant seeks authority to provide basic local telecommunications service in order to allow the new applicant an opportunity to negotiate and seek approval of an

interconnection agreement. The authority granted by the Commission is conditional upon the approval of the interconnection agreement and the tariff. However, in applications for interexchange and nonswitched local exchange authority, the waiver is not usually sought or granted by the Commission. Moreover, it is not clear from the Order in this case that the authority granted is conditional upon the filing and subsequent approval of the tariff.

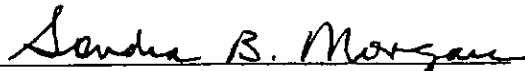
4. Because of the inconsistencies pointed out above, the STCG seeks clarification from the Commission as to the type of authority granted to Level 3 in this case. Was Level 3 granted authority to provide nonswitched local exchange service throughout the state of Missouri as an adjunct to its prior certificate of interexchange authority? Or was Level 3 granted an expansion of its certificate of authority to provide basic local telecommunications service (which it stated in its application that it did not seek) throughout the state of Missouri? Is the grant of authority conditional upon the filing and subsequent approval of its tariff?

5. If Level 3 was granted an extension of its certificate of authority to provide basic local telecommunications or if Level 3 was granted a certificate of authority to provide nonswitched local exchange service in the small company exchanges, then the STCG respectfully requests that the Commission grant rehearing of this decision based on misleading statements in the application for service authority and on defective notice of the application¹ by the Commission. These defects caused the STCG to not apprehend the true nature of the application and to fail to move to protect its interests in the application proceeding. The interests of the member companies of the STCG will be adversely affected by this grant of service authority in their service areas without any opportunity being afforded to those companies to have those interests considered by the Commission. Additionally, Section 392.451, RSMo 2000, imposes additional

requirements on any company seeking authority to provide basic local telecommunications service in an area served by a small incumbent local exchange company. There has been no showing in this proceeding that those requirements were met by Level 3 or considered by the Commission.

Wherefore, the STCG respectfully requests that the Commission clarify its Order as to the type of service authority that has been granted to Level 3 in this proceeding, and in addition or in the alternative, grant rehearing of this application so that the STCG may have an opportunity to determine what type of service Level 3 plans to provide, to insure that Level 3 has complied with all statutory requirements for providing competitive service within small company exchanges, and to present and protect its members companies' interests.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered this 26th day of April, 2002 to:

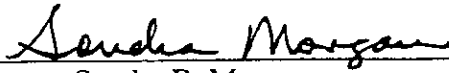
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Sondra B. Morgan

SMALL TELEPHONE COMPANY GROUP

BPS Telephone Company,
Cass County Telephone Company,
Citizens Telephone Company of Higginsville, Missouri, Inc.,
Craw-Kan Telephone Cooperative, Inc.,
Ellington Telephone Company,
Farber Telephone Company,
Goodman Telephone Company, Inc.,
Granby Telephone Company,
Grand River Mutual Telephone Corporation,
Green Hills Telephone Corporation,
Holway Telephone Company,
Iamo Telephone Company,
KLM Telephone Company,
Kingdom Telephone Company,
Lathrop Telephone Company,
Le-Ru Telephone Company,
Mark Twain Rural Telephone Company,
McDonald County Telephone Company,
Miller Telephone Company,
New Florence Telephone Company,
New London Telephone Company,
Orchard Farm Telephone Company,
Oregon Farmers Mutual Telephone Company,
Ozark Telephone Company,
Peace Valley Telephone Company,
Rock Port Telephone Company,
Seneca Telephone Company,
Steelville Telephone Exchange, Inc.
Stoutland Telephone Company

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

In the Matter of the Application of Level 3)	
Communications, LLC to expand its)	
Certificate of Service Authority to Provide)	Case No. TA-2002-376
Local Exchange Telecommunications)	
Services Statewide)	

**STAFF'S RESPONSE TO STCG'S MOTION FOR CLARIFICATION AND/OR APPLICATION FOR
REHEARING**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its response states:

The Staff concurs in Level 3's response on May 6, 2002 to STCG's motion and makes this response to address the prior Missouri Public Service Commission (Commission) cases pertaining to local exchange certification. Case No. TA-96-322 involved AT&T of the Southwest, Inc.'s (AT&T) Digital Link Service. ¹Digital Link is a facilities-based local exchange service for business customers, which permits outward local calling capabilities from a customer's premises over dedicated digital facilities, or over a LEC-provided Centrex service. In discussing Digital Link the Commission agreed with AT&T that this service was not two-way and did not meet the definition of basic local service as defined in Section 386.020(4). As Digital Link was not a basic local service, AT&T did not have to provide access to 9-1-1 as had been argued by Southwestern Bell Telephone Company. Additionally, in Case No. TT-99-237, AT&T added a Direct Inward Dial service that would allow inbound traffic. Staff argued that this would allow some business customers two-way traffic and Staff stated its concerns and

¹ The Small Telephone Group was an intervenor in Case No. TA-96-322.

requested suspension of the proposed tariff. AT&T responded that Digital Link is targeted to business customers and is not intended to replace basic local service. In its Order Denying Motion to Suspend Tariff, the Commission approved the tariffs for the local exchange service.

In the instant case, Level 3 is requesting to expand its local exchange service area. The local exchange telecommunications service provided is a switched, one-way dialing arrangement for sale to Internet Service Providers. As this service differs from basic local service, Staff did not request that Level 3 provide a statement that it would provide the essential telecommunications services as required when offering basic local service in a small LEC area, Section 392.451, and recommended approval of the service as local exchange telecommunications service under Section 386.020(31) RSMo 2000.

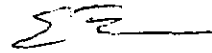
The Commission also granted local exchange certificates in two other cases TA-96-424 involving Sprint Communications Company L.P. and TA-98-318 involving Frontier Local Services, Inc.² Both Frontier and Sprint were granted certificates to provide basic local service as a separate and distinct service from its local exchange service. In both cases the Commission Orders approving the local exchange certificate stated that the companies entry into the local exchange market is in the public interest and the service is competitive. The Commission also pointed to Section 392.185 in promoting the diversity of telecommunications products.

WHEREFORE, the Staff responds to STCG's motion and makes this response to address the prior Commission cases pertaining to local exchange certification while concurring in Level 3 Communications response to deny STCG's motion for rehearing and/or clarification.

² The Small Telephone Group was an intervenor in Case No. TA-96-424.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 6th day of May, 2002.



Service List for
Case No. TA-2002-376
Verified: May 6, 2002 (ctl)

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