

In the Matter of IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC FOR APPROVAL TO EXPAND ITS CERTIFICATE OF AUTHORITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE SERVICES IN THE SERVICE TERRITORY OF BERESFORD MUNICIPAL TELEPHONE CO.

**Public Utilities Commission of the State of South Dakota**

DATE	MEMORANDA
2/19 02	Filed and Docketed;
2/21 02	Weekly Filing;
3/4 02	Petition to Intervene (Beresford Municipal Telephone Co.);
3/26 02	Level 3's Response to Staff Requests;
3/26 02	Level 3's Request for Trailer;
3/26 02	Level 3's Request for Confidential Treatment of Information;
3/26 02	Certificate of Service;
4/4 02	Order Granting Intervention;
5/6 02	Level 3's supplemental and revised request <sup>for findings of fact;</sup> for trailer and request
5/7 02	Notice of Appearance (Darla Pallman Polgers);
5/9 02	SOTA Petition for Late Intervention;
5/14 02	Motion to Dismiss;
5/15 02	Staff's Data Requests;
5/30 02	Motion by Staff for Determination <sup>in the Alternative, was complete on May 5, 2002;</sup> that application is incomplete or
5/28 02	Response to Motion to Dismiss;
5/29 02	Order to Admit Nonresident Attorney Pro Hac Vice (Michael R. Romano);
6/7 02	Order Granting Late Filed Intervention;
6/7 02	Order Denying Motion to Dismiss and Specifying Procedure <sup>completeness;</sup> for Determining
6/7 02	Determination Concerning Adequacy of Notice;
6/12 02	Transcript of Meeting held 5/30/02;
6/18 02	Staff's Third Data Request;
7/29 02	Motion to Dismiss (Beresford)
8/12 02	Level 3's Memorandum in Opposition to Beresford's Motion to Dismiss;

LOCAL EXCHANGE SERVICE

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**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.
- 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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ISSUED:

EFFECTIVE:

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## LOCAL EXCHANGE SERVICE

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SECTION 8 - CUSTOMER EQUIPMENT AND CHANNELS

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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.
- 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.

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## LOCAL EXCHANGE SERVICE

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**SECTION 8 – CUSTOMER EQUIPMENT AND CHANNELS (CONT'D)**

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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 all requirements referenced herein 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 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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LOCAL EXCHANGE SERVICE

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**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

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## LOCAL EXCHANGE SERVICE

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**SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE (CONT'D)**

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**9.3 Two or More Service Interruptions**

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.

**9.4 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.

**9.5 No credit allowance will be made for:**

- 9.5.1 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;
- 9.5.2 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;
- 9.5.3 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;
- 9.5.4 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;
- 9.5.5 interruptions of service during a period in which the Customer continues to use the service on an impaired basis;

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SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE (CONT'D)

- 9.5.6 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;
- 9.5.7 interruption of service due to circumstances or causes beyond the control of the Company; and
- 9.5.8 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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LOCAL EXCHANGE SERVICE

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**SECTION 10 - APPLICATION OF RATES**

This Section is used to measure airline distance between two points of service. The application of these charges is to dedicated service.

10.1 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:

10.1.2.1 Obtain the vertical and horizontal coordinates for each Point of Service location.

10.1.2.2 Compute the difference between the vertical coordinates of the two Points of Service; and compute the difference between the two horizontal coordinates.

10.1.2.3 Square each difference between the vertical coordinates and the horizontal coordinates.

10.1.2.4 Add the square of the vertical coordinates difference and the square of the horizontal coordinates difference.

10.1.2.5 Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained.  
For example:  $\frac{(V2 - V1)^2 + (H2 - H1)^2}{10}$

10.1.2.6 Take the square root of the result.

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LOCAL EXCHANGE SERVICE

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**SECTION 11 - EXCHANGE ACCESS SERVICE**

11.1 General

Exchange Access Service provides a business Customer with a telephonic connection and a unique telephone number address on the public switched telecommunications network. Each Exchange Access Service enables users to:

11.1.1 receive calls from other stations on the public switched telecommunications network;

11.1.2 access other services offered by the Company as set forth in this tariff;

11.1.3 access services provided by other common carriers which purchase the Company's Switched Access services as provided under the Company's Federal and State tariffs, or which maintain other types of traffic exchange arrangements with the Company.

11.1.4 The following Exchange Access Services are offered:

DID Trunk Service  
Digital Trunk Service

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LOCAL EXCHANGE SERVICE

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SECTION 11 - EXCHANGE ACCESS SERVICE (CONT'D)

11.2 Exchange Access Service Areas

Exchange Access Services are provided in limited geographic areas. Exchange Access Services bearing the following NPA-NXX designations are provided at the following locations and in the following areas:

<u>NPA-NXX</u>	<u>Exchanges in Which Full Service is Available</u>
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Exchange Service areas will be supplied after interconnection agreement.

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LOCAL EXCHANGE SERVICE

SECTION 11 - EXCHANGE ACCESS SERVICE (CONT'D)

11.3 Digital Trunk Service (DID Trunks)

Digital Trunk Service provides a Customer with a digital connection operating at a full DS1 speed of 1.544 Mbps which is time division multiplexed into 24 individual voice-grade telephonic communications channels. Digital Trunks are provided for connection of compatible Customer-provided private branch exchanges (PBX) to the public switched telecommunications network. Each Digital Trunk is provided with dual tone multi-frequency (DTMF) or multi-frequency (MF) signaling, as specified by the Customer, Digital Trunks may be configured into hunt groups with other Company-provided Digital Trunks for the same Customer within the same local calling area. The terminal interface for each Digital Trunk Service is a smart jack.

Non-recurring and monthly recurring rates per Digital Trunk per point, apply as follows:

Link and Port:	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Per T-1	\$772.00	\$500.00
Port Element: DID, DID/DOD	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Per Channel	\$50.00	\$30.00

11.3.1 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.

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SECTION 11 - EXCHANGE ACCESS SERVICE (CONT'D)

11.3.2 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

11.4 Direct Inward Dial (DID) Service

11.4.1 DID service can be purchased in conjunction with Company provided trunk services. 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 trunk services contained herein.

11.4.2 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.

11.4.3 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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LOCAL EXCHANGE SERVICE

SECTION 12 - MISCELLANEOUS SERVICES AND SURCHARGES

12.1 Service Implementation

12.1.1 Description

Absent a promotional offering, service implementation charges will apply to new service orders or to orders to change existing service.

12.1.2 Rates

Non-Recurring

Per Service Order                      \$30.00

12.2 Restoration of Service

12.2.1 Description

A restoration charge applies to the restoration of suspended service and facilities because of nonpayment of bills and is payable at the time that the restoration of the suspended service and facilities suspended is arranged. The restoration charge does not apply when, after disconnection of service, service is later re-installed.

12.2.2 Rates

Non-Recurring

Per Occasion                              \$8.50

12.3 Maintenance of Service

12.3.1 When a Customer reports a trouble to the Company for clearance, and no trouble is found in the Company's facilities, the Customer shall be responsible for payment of a visit charge for the period of time from when Company personnel are dispatched to the Customer's premises to when the work is completed. Failure of Company personnel to find trouble Company facilities will result in no charge if the trouble is actually in those facilities, but not discovered at the time.

12.3.2 Where a NID exists, if the Company is unable to test for dial tone and the problem proves to be beyond the NID (within Customer premises), a maintenance charge is applicable. In the event there is no NID and/or the Company is unable to test for dial tone, then no maintenance charge will be assessed. In those cases where the Customer has bought an inside wire maintenance warranty/plan (a non-regulated service) from the Company, no maintenance charge will be applicable regardless of the dial tone test results or whether a NID exists or not.

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LOCAL EXCHANGE SERVICE

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SECTION 12 - MISCELLANEOUS SERVICES AND SURCHARGES (CONT'D)

12.3.3 The Customer shall be responsible for payment of a visit charge when the Company dispatches personnel to the Customer's premises, and the trouble is in the equipment of communications system provided by other than the Company.

12.3.4 No credit allowance will be applicable for the interruption involved if the visit charge applies.

12.4 Rate

The applicable rate is \$65.00 per visit in addition to materials and/or labor charges.

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## LOCAL EXCHANGE SERVICE

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**SECTION 13 - 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.

**13.1 Services Offered**

13.1.1 The following dedicated access services are offered in this tariff:

DS3 Service (44.7 Mbps)

13.1.2 Other services may be provided by the Company on an Individual Case Basis (ICB).

**13.2 Type I and Type II Services**

13.2.1 DS3 Service may be provided as either Type I or Type II Service, 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).

13.2.2 DS3 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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## LOCAL EXCHANGE SERVICE

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**SECTION 13 - DEDICATED ACCESS SERVICES (CONT'D)****13.3 DS3 SERVICE (44.736 Mbps)**

13.3.1 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.

13.3.2 Digital channels at 44.736 Mbps will be provided in one of the following configurations, as specified by the Customer:

13.3.3 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.

13.3.4 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.

13.3.5 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-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.

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## LOCAL EXCHANGE SERVICE

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**SECTION 13 - DEDICATED ACCESS SERVICES (CONT'D)**13.4 Rates for Dedicated Access Services13.4.1 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 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:

- 13.4.1.1 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 endpoint.
- 13.4.1.2 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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## LOCAL EXCHANGE SERVICE

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**SECTION 13 - DEDICATED ACCESS SERVICES (CONT'D)**13.4.2 DS3 Service (44.736 Mbps)13.4.2.1 Type 1 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 Recurring Rate</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$1,200
Interoffice Channel Mileage (Per Mile)	\$30
Nonrecurring Installation Rate	\$1,000

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## LOCAL EXCHANGE SERVICE

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**SECTION 13 - DEDICATED ACCESS SERVICES (CONT'D)**13.4.2.2 Type II DS3 Service

<b>Monthly Recurring Rate</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$2,025
Interoffice Channel Mileage (Per Mile)	\$41
<b>Nonrecurring Installation Rate</b>	<b>\$1,000</b>

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LOCAL EXCHANGE SERVICE

SECTION 13 - DEDICATED ACCESS SERVICES (CONT'D)

13.4.2.3 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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## LOCAL EXCHANGE SERVICE

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**SECTION 13 - DEDICATED ACCESS SERVICES (CONT'D)**13.4.3 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 Customer 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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## LOCAL EXCHANGE SERVICE

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**SECTION 14 - SPECIAL ARRANGEMENTS (CONT'D)**

- 14.4.1 where facilities are not presently available, and there is no other requirement for the facilities so constructed;
  - 14.4.2 of a type other than that which the Company would normally utilize in the furnishing of its services;
  - 14.4.3 over a route other than that which the Company would normally utilize in the furnishing of its services;
  - 14.4.4 in a quantity greater than that which the Company would normally construct;
  - 14.4.5 on an expedited basis;
  - 14.4.6 on a temporary basis until permanent facilities are available;
  - 14.4.7 involving abnormal costs; or
  - 14.4.8 in advance of its normal construction.
- 14.5 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.
- 14.6 Basis for Cost Computation

The costs referred to in Section 14.4 preceding may include one or more of the following items to the extent they are applicable:

- 14.6.1 Installed costs of the facilities to be provided including estimated costs for the rearrangements of existing facilities. Installed costs include the cost of:
  - 14.6.1.1 equipment and materials provided or used,
  - 14.6.1.2 engineering, labor and supervision,
  - 14.6.1.3 transportation,

---

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

## LOCAL EXCHANGE SERVICE

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**SECTION 14 - SPECIAL ARRANGEMENTS (CONT'D)**

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14.6.1.4 rights of way, and

14.6.1.5 any other item chargeable to the capital account;

14.6.2 Annual charges including the following:

14.6.2.1 cost of maintenance;

14.6.2.2 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;

14.6.2.3 administration, taxes and uncollectible revenue on the basis of reasonable average costs for these items;

14.6.2.4 any other identifiable costs related to the facilities provided; and

14.6.2.5 an amount for return and contingencies.

14.7 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.

14.7.1 The maximum termination liability is equal to the total cost of the special facility as determined herein, adjusted to reflect the redetermined estimate net salvage, including any reuse of the facilities provided.

14.7.2 The maximum termination liability 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.

14.8 Term

The minimum term for any Level 3 Communications, LLC dedicated access 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.

---

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

# **Attachment 3**

## **Sample Customer Complaint Intake Form**



**COMPLAINT REPORT FORM**

**Company Name** \_\_\_\_\_

Date Complaint Received \_\_\_\_\_ Time of Call \_\_\_\_\_

Customer (or Account) Name \_\_\_\_\_

Telephone No. \_\_\_\_\_ Contact No. (if different) \_\_\_\_\_

Customer Address \_\_\_\_\_ City \_\_\_\_\_

Exchange \_\_\_\_\_

Name of Caller (if not customer) \_\_\_\_\_ Contact No. for Caller \_\_\_\_\_

Complaint Code \_\_\_\_\_

Nature of the Complaint:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company findings and resolution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Refund made, if applicable, Yes \_\_\_ No \_\_\_ Amount \$ \_\_\_\_\_

Date closed \_\_\_\_\_ Closed by \_\_\_\_\_

## LIST OF CUSTOMER COMPLAINT CODES

<u>Code</u>	<u>Description</u>	<u>Code</u>	<u>Description</u>
B	Billing, general	SOD	Service order delay
BCRM	Cramming	SOUT	Outage
BDA	Delinquent Account	SREF	Service refusal
BEBM	Miscellaneous	SRG	Better grade of service
BED	Early demand of toll	SRS	Repair service
BIA	Billing in advance	SUDO	Unable to dial out
BIB	Incorrect billing, other	SURC	Unable to receive calls
BLMG	Slamming	TOS	Disconnection of service
BRDB	Reseller-disputed bill		
BRNB	Did not receive a bill		
BSUR	Universal Service Fund Contribution Recovery Fee		
BTNC	Third number calls		
DEPF	Deposit refund		
DEPR	Deposit requested by company		
GP	General business practices		
ORR	Rules & regulations		
PX	Payment extension		
RISC	Installation charges		
RDAC	Directory assistance		
RLP	Late payment charges		
ROUB	Overbilling		
RT	Rates and tariffs		
SEAS	Extended area service		
SLMR	Service Line maintenance		
SNF	No facilities		
SNOL	Noise on the line		

1

**CONFIDENTIAL**

# **Attachment 5**

**Level 3 Request to Negotiate  
Traffic Exchange Agreement with Beresford Municipal Telephone Co.**

## Dede F. Ambach

---

**From:** David A. Gerdes  
**Sent:** Tuesday, March 26, 2002 8:28 AM  
**To:** Dede F. Ambach  
**Subject:** FW: Level (3) information



Level 3 -  
Interconnection Pack.

Please print the attachment on the color printer.

Dave Gerdes; dag@magt.com  
May, Adam, Gerdes & Thompson  
PO Box 160; 503 South Pierre Street  
Pierre, SD 57501-0160  
605/224-8803; fax 605/224-6289

-----Original Message-----

**From:** Mike.Romano@Level3.com [mailto:Mike.Romano@Level3.com]  
**Sent:** Thursday, March 21, 2002 11:10 AM  
**To:** tefinn@swidlaw.com; David A. Gerdes  
**Subject:** FW: Level (3) information

from mark stacy to Beresford with the header

-----Original Message-----

**From:** Mark Stacy [mailto:mstacy@wyoming.com]  
**Sent:** Thursday, March 21, 2002 9:13 AM  
**To:** Romano, Mike  
**Subject:** Fwd: Level (3) information

>Date: Mon, 18 Mar 2002 12:50:55 -0600  
>To: wayne@bmtc.net  
>From: Mark Stacy <mstacy@wyoming.com>  
>Subject: Level (3) information

>  
>Wayne

>  
>Sorry this took so long to get to you. Let me know if you have any  
>questions or concerns. I'm sure we'll be talking soon.

# **Level (3)**<sup>™</sup> **Market Expansion Project**

COMMUNICATIONS

## **Key Facts and Information**

### **Information about Level 3 and QSI:**

- Level (3) Communications, LLC is a global facilities-based provider of telecommunications services with headquarters in Broomfield, Colorado.
- QSI is a consulting firm that has been retained by Level (3) to help negotiate mutual traffic exchange agreements across the nation.

### **The Market Expansion Project:**

- Level (3) is expanding its network footprint by leasing facilities to increase the markets where it can offer dial-up data services to ISPs.
- Pursuant to existing law Level (3) is NOT seeking to compete for local customers or to collect reciprocal compensation for ISP traffic.
- The goal of QSI and Level (3) is to develop a mutually acceptable traffic exchange agreement with each incumbent local exchange company, in a quick and efficient manner.
- Level (3) is NOT seeking to lift or modify any rural or small carrier exemptions that have been granted consistent with the Act. Level (3) is seeking Interconnection consistent with Section 251(a) and Section 201 of the Act (portions of the Act not impacted by the rural exemption).

### **Implementation:**

- Level (3)'s proposed agreement asks that both companies identify an "Implementation Team" consisting of representatives from Level (3) and the incumbent local exchange carrier. The team will plan the interconnection architecture and other logistics (billing, etc.).
- The companies will exchange local, EAS and Information Access traffic pursuant to the agreement. Level (3) wishes to use a strict "bill and keep" compensation structure for this traffic consistent with the FCC's guidelines.
- Traffic will be routed over common, shared transport trunks through the tandem switch of an interconnected third party, or, when/if traffic volumes warrant, over dedicated trunks leased from the ILEC. At this time, Level (3) does not intend to "build-out" its own facilities to these geographical areas.
- If and when direct connection becomes feasible, a mutually agreeable point of interconnection (POI) will be identified for the exchange of traffic at a location within the ILEC's serving territory or at the serving area boundary.



# Market Expansion

## Information on Interconnection Request

Key Facts -- The Agreement -- Implementation

# About

**Level (3)**<sup>SM</sup>  
COMMUNICATIONS

A global communications company offering IP services, broadband transport, and collocation services

Expanding service throughout the USA primarily to manage dial-up ISP traffic

Seeking traffic exchange agreements with more than 200 incumbent LECs

QSI Consulting is aiding Level (3) in negotiating agreements nationwide



# The Traffic Exchange Agreement

Level (3) is NOT seeking to compete for the ILEC's existing local customer base

Since the majority of traffic will be local data traffic, neither reciprocal compensation nor access charges are expected to apply

Level (3) will lease facilities from the ILEC when possible— Level (3) does not intend to build

Level (3) is NOT challenging any rural exemption or seeking to impose 251( c ) obligations from the Act

# The Traffic Exchange Agreement

Level (3) has a proposed agreement that includes all of the principles identified above.

The carriers are welcome to begin with the Level (3) agreement or draft/propose their own.

Any questions, comments or discussion is best undertaken with your QSI representative.

The next few slides walk you through the most important aspects of the Level (3) proposed agreement

# The Traffic Exchange Agreement

## MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective as of the date this Agreement was entered into by and between ILEC ("ILEC") and Level 3 Communications, LLC ("Level 3"). ILEC and Level 3 may collectively be referred to as "Parties" and each individually may be referred to as "Party".

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

### Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

### Section 2. Routing, Exchange, and Completion of Traffic

2.1 Pursuant to Sections 251(b) and 251(c) of the Act, the Parties shall cooperate in good faith and in a prompt manner to implement the most efficient and least disruptive means of traffic exchange. The Parties shall cooperate and work together to ensure the most efficient and least disruptive means of traffic exchange, including but not limited to the exchange of traffic through the Traffic Switch of either carrier, or such other Traffic Switch as determined by the Parties' respective networks, subject to the requirements hereof.

2.2 Regardless of the means of traffic exchange being used by either Party to this Agreement, each Party will ensure that calls to the other Party's EAS are routed as defined in Exhibit A to this Agreement and that the present of both incumbent being and non-incumbent carriers within a local or mandatory EAS are routed over the same network. The Parties shall cooperate and work together to ensure the most efficient and least disruptive means of traffic exchange, including but not limited to the exchange of traffic through the Traffic Switch of either carrier, or such other Traffic Switch as determined by the Parties' respective networks, subject to the requirements hereof.

2.3 To the extent that both Parties are interconnected with a third party carrier, and the local network of traffic being exchanged between the Parties extends beyond the direct connection to such third party carrier, the Parties may negotiate with such third party carrier to ensure the most efficient and least disruptive means of traffic exchange, including but not limited to the exchange of traffic through the Traffic Switch of either carrier, or such other Traffic Switch as determined by the Parties' respective networks, subject to the requirements hereof.

## Section 1. Scope of the Agreement

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC's customers, located within ILEC's incumbent serving area, and Level 3's customers, located both within and outside of ILEC's incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), Information Access Traffic, and mandatory Extended Area Service Traffic ("EAS") (together, "Traffic"), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

Defines scope of the agreement as traffic exchange  
Identifies "Information Access Traffic" and "Local Traffic"

Highlights the fact that this Agreement is NOT meant to impact a rural carrier's "exemption" from portions of Section 251 of the TA96

# Identities requirement to negotiate in good faith and implement effective interconnection using either tandem routing or direct, dedicated connections.

## When traffic warrants, parties agree to negotiate a POI within the LLEC's serving area for interconnection and routing of traffic.

2.1 ...Parties shall negotiate in good faith ... to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize ... the Tandem Switch ... or direct interconnection of the Parties' networks if justified by traffic.

2.2 ... calls to the other Party's NXX codes ... are rated based upon the rate center to which each NXX code has been assigned

2.3 ... Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement), unless and until traffic warrants direct interconnection.

2.4 ... When traffic warrants, parties will establish a mutually agreeable POI where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within LLEC's incumbent serving area or at LLEC's incumbent serving area boundary.

### Section 2. Routing, Exchanges, and Completion of Traffic

# The Traffic Exchange Agreement

**LEVEL (3) CONSULTING**

This document is a confidential document and its contents are not to be disclosed to any third party without the prior written consent of Level (3) Consulting. This document is the property of Level (3) Consulting and shall remain the property of Level (3) Consulting. If you are not an intended recipient of this document, you should not disseminate, distribute or copy this document. If you have received this document by mistake, please notify us immediately by telephone or email. This document is intended for the use of the individual named in the header. It is not to be distributed to any other person. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify us immediately by telephone if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify us immediately by telephone if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify us immediately by telephone if you have received this e-mail by mistake and delete this e-mail from your system.

**Section 1. Scope of Agreement**

The purpose of this Agreement is to establish the terms and conditions of the interconnection of the Parties' networks. The Parties agree to negotiate in good faith to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize ... the Tandem Switch ... or direct interconnection of the Parties' networks if justified by traffic.

**Section 2. Routing, Exchanges, and Completion of Traffic**

2.1 ...Parties shall negotiate in good faith ... to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize ... the Tandem Switch ... or direct interconnection of the Parties' networks if justified by traffic.

2.2 ... calls to the other Party's NXX codes ... are rated based upon the rate center to which each NXX code has been assigned

2.3 ... Parties may complete calls between their customers through the Tandem Switch of that other carrier (i.e., through a transit arrangement), unless and until traffic warrants direct interconnection.

2.4 ... When traffic warrants, parties will establish a mutually agreeable POI where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within LLEC's incumbent serving area or at LLEC's incumbent serving area boundary.



# The Traffic Exchange Agreement

## MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been executed by and between Level 3 Communications, Inc. ("Level 3"), ILEC and Level 3 jointly, collectively, for purposes of this Agreement, and which shall be referred to as a "Party".

In consideration of the mutual obligations set forth herein, the Parties agree to the following terms and conditions:

### Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the seamless exchange of calls between ILEC's networks and Level 3's network, including long distance, and Level 3's network, including long distance and mobile, of ILEC's and Level 3's. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic ("Local Traffic"), including All-Access Traffic, and including Emergency Services Traffic ("EST"), through the "Team", and not in violation of any applicable laws or regulations. Nothing in this Agreement shall be interpreted or construed to be a waiver, nor shall it constitute an admission, by either Party with respect to any claim that may arise out of or in connection with this Agreement, or any claim that may be asserted against either Party as permitted under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, or any other law.

### Section 2. Handling, Exchange, and Completion of Traffic

2.1 The Parties agree to install and maintain a reliable interconnection architecture and to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

2.2 Regardless of the amount of traffic exchange being exchanged pursuant to this Agreement, each Party will ensure that sufficient Level 3's NXX codes as listed in Table A in this Agreement are used for the purpose of routing calls to the appropriate destination as a local or mandatory LATA call based upon the rate plan in which such NXX code has been assigned, in accordance with the Local Exchange Routing Guide ("LERG"). Each Party may update Table A as set forth by phone number in the manner listed in this Agreement. Should either Party update Table A, each Party will immediately advise the other Party in writing and to include by email and in accordance with any applicable law. Nothing in this Agreement shall be construed to limit or otherwise restrict either Party's right to modify, to increase and to utilize by any means in accordance with NXX code or telephone number purchase in the Central Office Code Assignment and applicable law. Nothing in this Agreement shall be construed to limit or otherwise restrict either Party's obligations set forth in this Agreement.

2.3 To the extent that both Parties are interconnected with a third party carrier, and the third party carrier's traffic is exchanged between the Parties, each Party will ensure that the traffic is routed to the "Team", the Parties may complete calls between their carriers through the Team to avoid the need for a third party carrier.

## Section 4. Implementation of Interconnection Arrangements

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture ... the Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 ...the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement.

The parties agree to work cooperatively to install and maintain a reliable interconnection architecture. The goal will be to minimize blocking and other network disruptions. Carriers agree to use an "implementation team" made up of representatives from Level (3) and the ILEC to plan the interconnection and business processes.

# The Traffic Exchange Agreement

## MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made effective on the date this Agreement has been entered by and between \_\_\_\_\_ ("ILEC"), and Level 3 Communications, LLC ("Level 3"). ILEC and Level 3 are collectively referred to as "Parties" and each individually may be referred to as a "Party".

The provisions of this Agreement shall be subject to the Parties' agreement to the following terms and conditions:

### Section 1. Scope of Agreement

The purpose of this Agreement is to ensure the reciprocal exchange of calls between ILEC's customers to and from ILEC's customers and Level 3's customers located both within and outside of ILEC's service territory and Level 3 and ILEC agree to exchange all local Telecommunications Traffic ("Local Traffic"), International Access Traffic, and roaming Extended Area Service Traffic ("EAS") for other "Traffic", as defined herein. Nothing in this Agreement shall be construed to be intended as a warranty, nor as an acknowledgment or admission, by either Party with respect to any claim that may have or may be asserted in the future by either Party or its affiliates in litigation involving this Agreement.

### Section 3. Routing, Exchange, and Completion of Traffic

3.1 Pursuant to Section 2310(a) and (b) of the Act, the Parties will agree to guarantee and to provide support to facilitate the most efficient and cost-effective routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that meets the requirements set forth herein and is consistent with the Traffic Exchange and other terms with which each Party is interconnected, or that meets the requirements of the Parties' respective regulatory obligations.

3.2 In the event that either Party's network is being maintained pursuant to this Agreement, each Party will ensure that calls to the other Party's NXX codes as listed in Exhibit A in this Agreement are routed to the network of both parties for billing and settlement purposes as a local or long distance EAS call to be billed to the other Party or to the other Party's NXX codes as listed in Exhibit A in this Agreement. Billing shall be based on the Agreement. Notwithstanding any provision in Exhibit A, each Party shall be responsible to the ILEC and ensure that it has entered the other Party's NXXs in its network and billing system. Nothing in this Agreement shall be construed to limit or increase or otherwise affect in any manner the Party's routing, or network and be assigned, and to satisfy by assignment to customers, any NXX code or telephone number pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party will assume any form of liability whatsoever on the other Party in connection with the obligations set forth in this Agreement.

3.3 In the event that both Parties are interconnected with a third party carrier, and the local exchange of Traffic being exchanged between the Parties exceeds \_\_\_\_\_ of traffic for each carrier, the amount plus "Threshold", the Parties may complete calls between their customers through the Traffic Exchange and other terms set forth in this Agreement.

## Section 5. Billing

5.1 Each Party shall keep adequate records relating to Traffic usage and all other facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice....

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

Agree to keep records for 12 months. Audits are allowed.  
Normal rules and regulations apply to the provisioning and recording of billing records.  
Back-billing is limited to 90 days.

# The Traffic Exchange Agreement

## MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement ("Agreement") is made this 1st day of January, 2001, by and between Level (3) Consulting, Inc. ("Level 3") and CSI Consulting, Inc. ("CSI"). The parties hereby agree to the following terms and conditions:

**Article 1. Scope of Agreement**

This Agreement shall apply to all mutual traffic exchange activities between Level 3 and CSI, including but not limited to the exchange of leads, sales, and other business opportunities. The parties agree to maintain the confidentiality of all information exchanged under this Agreement.

**Article 2. Identification, Exchange, and Completion of Traffic**

Level 3 shall provide to CSI all leads and sales opportunities that are generated by Level 3 and that are not otherwise being marketed by Level 3. Similarly, CSI shall provide to Level 3 all leads and sales opportunities that are generated by CSI and that are not otherwise being marketed by CSI. The parties agree to complete the exchange of traffic within a reasonable time frame.

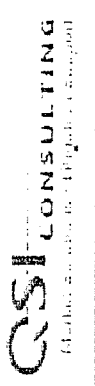
**Article 3. Term and Termination**

This Agreement shall commence upon execution and shall remain in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

### Section 6. Term of Agreement

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

**The agreement will have an agreed upon initial term of two years.**  
**The agreement will automatically renew for successive one year periods absent a written notice 135 days prior to expiration.**  
**The agreement remains in effect while negotiations proceed.**





# Summary

**Level (3)** seeks the following:

- Expand into new markets quickly and efficiently with minimal impact on interconnected carriers
- Execute a simple traffic exchange agreement
- No attempt to collect reciprocal compensation or to impact rural exemptions
- Lease facilities required for interconnection
- Develop a good working relationship that results in a win-win situation for carriers and customers

## MUTUAL TRAFFIC EXCHANGE AGREEMENT

This Mutual Traffic Exchange Agreement (“Agreement”) is made effective on the date this Agreement has been executed by and between \_\_\_\_\_ (“ILEC”), and Level 3 Communications, LLC (“Level 3”). ILEC and Level 3 may collectively be referred to as “Parties,” and each individually may be referred to as a “Party.”

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

### **Section 1. Scope of Agreement**

The purpose of this Agreement is to ensure the seamless completion of calls between ILEC’s customers, located within ILEC’s incumbent serving area, and Level 3’s customers, located both within and outside of ILEC’s incumbent serving area. Level 3 and ILEC agree to exchange all Local Telecommunications Traffic (“Local Traffic”), Information Access Traffic, and mandatory Extended Area Service Traffic (“EAS”) (together, “Traffic”), without disruption or delay. Nothing in this Agreement shall be interpreted or construed as a waiver, nor as an acknowledgement or admission, by either Party with respect to any claim that ILEC may have with respect to its status as a rural telephone company or its entitlement to certain statutory exemptions as may be provided under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”).

### **Section 2. Routing, Exchange, and Completion of Traffic**

2.1 Pursuant to Sections 251(a) and (b) of the Act, the Parties shall negotiate in good faith and in a prompt manner to implement the most effective and cost-efficient routing of calls between their respective customers and networks. The Parties may utilize any mutually agreeable method of traffic exchange that serves this purpose, including but not limited to: (i) completion of calls through the Tandem Switch of another carrier with whom both Parties are interconnected; or (ii) direct interconnection of the Parties’ networks, subject to the requirements herein.

2.2 Regardless of the means of traffic exchange being employed pursuant to this Agreement, each Party will ensure that calls to the other Party’s NXX codes as listed in Exhibit A to this Agreement are rated for purposes of both customer billing and intercarrier compensation as a local or mandatory EAS call based upon the rate center to which each NXX code has been assigned, in accordance with the Local Exchange Routing Guide (“LERG”). Either Party may update Exhibit A at any time by giving notice to the contacts listed in this Agreement. Notwithstanding any updates to Exhibit A, each Party shall periodically review the LERG and ensure that it has entered the other Party’s NXXs in its switches and billing systems. Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party’s right to employ, to request and be assigned, and to utilize by assignment to customers, any NXX code or telephone numbers pursuant to the Central Office Code Assignment Guidelines and applicable law. Neither Party shall impose any fees or charges whatsoever on the other Party in connection with the obligations set forth in this Subsection.

2.3 To the extent that both Parties are interconnected with a third party carrier, until the total amount of Traffic being exchanged between the Parties exceeds \_\_\_\_\_ of traffic for three consecutive months (the “Threshold”), the Parties may complete calls between their customers through the Tandem Switch of that other carrier (*i.e.*, through a transit arrangement).

2.4 At such time as the total amount of Traffic between the Parties exceeds the Threshold, or as may otherwise be mutually agreed to by the Parties, the Parties will begin to implement arrangements for direct interconnection of their respective networks. Such interconnection may be achieved by any technically feasible means, including but not limited to the use of either Party's own facilities or the leasing of facilities from a third party carrier. The Parties shall negotiate in good faith and in a prompt manner to establish a mutually agreeable Point of Interconnection ("POI") where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within ILEC's incumbent serving area or at ILEC's incumbent serving area boundary.

2.5 Should any dispute arise with respect to the establishment of the POI under Subsection 2.4, the Parties desire to avoid any interruption in the completion of calls, will pursue dispute resolution as set forth in Section 12 of this Agreement, and will continue to exchange Traffic without disruption pursuant to the existing means of traffic exchange pending resolution of the dispute.

2.6 Nothing in this Section 2 nor in this Agreement as a whole shall be interpreted or construed to require that Level 3 deploy switching functionality or a physical point of presence other than a POI within the ILEC's incumbent serving area.

### **Section 3. Compensation for Local Traffic and Information Access Traffic**

Because of anticipated *de minimis* nature of the Local Traffic to be exchanged between the Parties, Level 3 and ILEC agree to exchange Local Traffic on a bill-and-keep basis, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Local Traffic. Level 3 and ILEC further agree to compensate one another on a bill-and-keep basis for the exchange of Information Access Traffic in accordance with the Order on Remand released by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001, such that neither Party shall be required to compensate the other Party for the origination, transport, or termination of Information Access Traffic.

### **Section 4. Implementation of Interconnection Arrangements**

4.1 Level 3 and ILEC shall work cooperatively to install and maintain a reliable interconnection architecture. Level 3 and ILEC shall exchange appropriate information (*e.g.*, maintenance contact numbers, escalation contact information) to achieve reliability. Should direct interconnection be employed pursuant to Section 2, the Parties agree to ensure the deployment of sufficient trunking capacity at all times at the POI to accommodate the exchange of Traffic and to minimize the likelihood of call blocking.

4.2 To optimize the exchange of traffic under this Agreement, the Parties agree to meet and to form a team (the "Implementation Team") within ten (10) business days of execution that shall develop and identify the standards and specifications for implementation of this Agreement. Among other things, the Implementation Team shall address the following matters as promptly as possible:

- a. planning of the interconnection architecture, including trunk management and overflow contingencies;
- b. the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the interconnections (including signaling);

- c. disaster recovery and escalation provisions;
- d. points of contact and escalation procedures for ordering, provisioning, billing, and maintenance;
- e. service ordering and provisioning procedures, including provision of the trunks and facilities; and
- f. other network planning components including testing and provisioning intervals.

## **Section 5. Billing**

5.1 Each Party shall keep adequate records relating to Traffic usage and all other facilities or services provided to the other Party for twelve (12) months. Either Party may request an audit of usage data on no less than thirty (30) days written notice. Any such audit shall be accomplished during normal business hours. All information gathered in an audit shall be subject to the Proprietary Information provisions of this Agreement.

5.2 The Parties shall be governed by applicable state and federal rules, practices, and procedures regarding the provision and recording of billing records. Neither Party shall bill the other Party relating to any usage, services, or facilities more than ninety (90) days from the end of the billing quarter in which the relevant usage, services, or facilities were rendered.

## **Section 6. Term of Agreement**

This Agreement shall commence when executed by both Parties and have an initial term of two (2) years from the date of full execution. If neither Party provides written notice to the other Party at least one-hundred thirty-five (135) days prior to expiration, this Agreement shall automatically renew for successive one (1) year periods. If a Party provides written notice to the other Party of its intent to negotiate a new agreement at least one-hundred thirty-five (135) days prior to expiration, and the Parties have not reached a new agreement by the date of expiration, this Agreement shall continue in effect until the Parties are able to reach a new agreement through good faith negotiation or other means.

## **Section 7. Limitation of Liability and Indemnification**

7.1 Neither Party shall be liable to the other for any lost profits or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited with respect to its indemnification obligations under this Agreement.

7.2 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In the event said loss, cost, claim, liability, damage or expense to third parties is the result of the fault, in whole or in part, of both Parties, the Parties shall be entitled to indemnification or contribution to the extent permitted by applicable state law governing the apportionment, if any, of said loss, cost, claim, liability, damage or expense. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

7.3 The Indemnified Party shall (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense.

7.4 The Indemnifying Party shall not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

## **Section 8. Force Majeure**

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay; provided, however, that the affected Party shall make commercially reasonable efforts to restore service as soon as practicable. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations during the delay.

## **Section 9. Agency**

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

## **Section 10. Nondisclosure of Proprietary Information**

10.1 The Parties desire to protect certain Proprietary Information, as defined herein, should it become necessary to exchange Proprietary Information during the term of this Agreement. Proprietary Information shall include, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information ("CPNI") as that term is defined by the Act, and similar information. Furthermore, Proprietary Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; and (ii) information derived by the receiving Party from a disclosing Party's usage of the receiving Party's network. Proprietary Information is deemed proprietary to the disclosing Party and it shall be protected by the receiving Party in the same manner as the receiving Party would protect its own proprietary information. Proprietary Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement.

10.2 The receiving Party shall have no obligation to safeguard Proprietary Information (i) which was in the receiving Party's possession free of restriction prior to its receipt from disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by receiving Party,

or (iii) after it is independently developed by personnel of receiving Party to whom the disclosing Party's Proprietary Information had not been previously disclosed. The receiving Party may disclose Proprietary Information if required by law, a court, or governmental agency; provided, however, that the receiving Party shall provide as much written and other notice as possible (as considered in the context of time frames identified in the legal requirement) to the disclosing Party prior to disclosing any information to the governmental entity so that the disclosing Party an opportunity to consider the legal requirement.

**Section 11. Notices**

Bills shall be effective when received or five (5) business days after being sent via first class mail, whichever is sooner, to:

FOR LEVEL 3:  
Business Name: Level 3 Communications, LLC  
Mailing Address: 1025 Eldorado Boulevard  
City/State/Zip Code: Broomfield, CO 80021  
Attention: Manager – Finance/Network Cost  
Contact Phone Number: (720) 888-2876

FOR ILEC:  
Business Name:  
Mailing Address:  
City/State/Zip Code:  
Attention:  
Contact Phone Number:

Notices shall be effective five (5) business days after being sent via registered mail with return receipt requested, to:

FOR LEVEL 3:  
Business Name: Level 3 Communications, LLC  
Mailing Address: 1025 Eldorado Boulevard  
City/State/Zip Code: Broomfield, CO 80021  
Attention: Michelle Krezek, Director-Interconnection Services  
Contact Phone Number: (720) 888-6330  
Facsimile: (720) 888-5271

FOR ILEC:  
Business Name:  
Mailing Address:  
City/State/Zip Code:  
Attention:  
Contact Phone Number:  
Facsimile:

or to such other location as the receiving party may direct in writing.

**Section 12. Dispute Resolution**

Should a dispute arise between the Parties with respect to implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement,

either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 12. Upon receipt of this notice, representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute. If these initial negotiations should fail to resolve the dispute within thirty (30) calendar days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President level (or other position with authority to negotiate and settle on behalf of each Party). If these second-tier negotiations should fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its customers, the affected Party may seek immediate relief from the State Commission, the FCC, or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its obligations under this Agreement and shall not take any other action with respect to the disputed issue except as set forth in this Section 12. Furthermore, in the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner, and will not be withheld pending resolution of the disputed portion of any bill.

### **Section 13. Severability**

If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which is invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

### **Section 14. Assignment**

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any entity that the assigning Party controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party whether by consolidation, merger, sale or otherwise, or in connection with a financing transaction.

### **Section 15. Entire Agreement**

This Agreement, including all Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof. No modification or waiver of any provisions of this Agreement shall be effective unless in writing and signed by both parties.

### **Section 16. Multiple Counterparts**

This Agreement may be executed in counterparts and such counterparts shall together constitute one and the same instrument.

### **Section 17. Default**

If either Party defaults in the payment of any undisputed amount, or if either Party materially breaches any other material provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may move to terminate this Agreement or suspend the provision of any or all services hereunder by providing a second written notice to the defaulting Party and to the State Commission thirty (30) days prior to the intended date of suspension or termination. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period noted above, or the alleged default or violation is the subject of a good faith dispute, the other Party shall not terminate the Agreement or suspend service provided hereunder.

#### **Section 18. Representations and Warranties**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, **NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FACILITIES OR ARRANGEMENTS PROVIDED HEREUNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.**

#### **Section 19. No Third Party Beneficiaries**

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

#### **Section 20. Joint Work Product**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

#### **Section 21. Headings**

The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

#### **Section 22. Change of Law**

In the event of a change in applicable law (including, but not limited to, rulings by the FCC or the State Commission) that materially affects any material term of this Agreement or the rights or obligations of either Party hereunder, the Parties shall promptly renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required as a result of such legislative, regulatory, judicial or other legal action.

#### **Section 23. Governing Law**

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the state of \_\_\_\_\_, without regard to its conflicts of laws principles.



IN WITNESS WHEREOF, each Party having been advised by counsel, the Parties hereto have caused this Agreement to be executed as of the date(s) set forth below.

LEVEL 3 COMMUNICATIONS, LLC

[ILEC]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**NXX CODES TO BE RECOGNIZED BY EACH PARTY  
AS LOCAL OR EAS FOR CALLING PURPOSES BASED UPON  
ORIGINATING AND TERMINATING RATE CENTER**

2

**CONFIDENTIAL**

# **Attachment 7**

**Sample LOA**



## LONG DISTANCE LETTER OF AGENCY

### CUSTOMER INFORMATION

Customer Name: \_\_\_\_\_

Customer Billing Address: Street: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Billing Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-Mail address: \_\_\_\_\_

Service Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of individual authorized to act on customer behalf: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

By signing below, I am authorizing Level 3 Communications, LLC to become my primary long distance provider in place of \_\_\_\_\_ . I authorize Level 3 Communications, LLC to act as my agent and notify my local service provider of my decision to switch to Level 3 Communications, LLC for my long distance service.

It is understood that my local exchange carrier is to bill Level 3 Communications for any applicable PIC change charges. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company, and that by signing below I indicate that I understand those differences (if any) and am willing to be billed accordingly.

California residential customers and all customers in the states of New York and Texas will receive a telephone call from an independent THIRD PARTY verifier to confirm your order.

Telephone number(s) to be changed:

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,

Initial here \_\_\_\_\_ if you are attaching the list of telephone numbers to be changed.

I certify that I have read and understand this Letter of Agency. I further certify that I am at least eighteen years of age, and that I am authorized to change telephone companies for services to the telephone numbers listed.

### CUSTOMER ACCEPTANCE

\_\_\_\_\_  
Authorized Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

*BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA*

Application of ) TC02-018  
)  
Level 3 Communications, LLC )  
)  
To Expand its Certificate of Public )  
Convenience and Necessity to Provide )  
Facilities-Based Local Exchange )  
Services in the Service Territory )  
of Beresford Municipal Telephone Co. )

**RECEIVED**

**MAR 26 2002**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**NOTICE**

The information in this file is designated confidential under Ch. 20:10:01 of the rules of the South Dakota Public Utilities Commission. Disclosure of any such confidential information to a person other than Commission members, employees, or agents is prohibited unless otherwise permitted by the Commission.

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Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

**RECEIVED**

**MAR 26 2002**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY  
APPLICATION FOR BERESFORD TERRITORY**  
Docket TC02-018  
Our file: 3848

Dear Debra:

Enclosed are original and ten copies of Level 3 Communications request for waiver, which please file. Also enclosed is a face page of the filing, which please date stamp and return to me in the enclosed self-addressed stamped envelope.

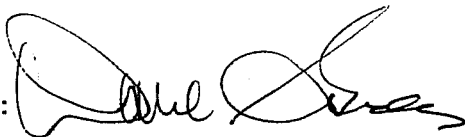
Secondly, enclosed is a certificate of service for service of Level 3 Communications response to the staff requests and for service of Level 3 Communications request for waiver. Please file the same.

Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:



DAG:mw

Enclosures

**BEFORE THE**  
**SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

**RECEIVED**

**MAR 26 2002**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

\_\_\_\_\_) )  
Application of ) )  
 ) )  
**Level 3 Communications, LLC** ) )  
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Convenience and Necessity to Provide ) )  
Facilities-Based Local Exchange ) )  
Services in the Service Territory ) )  
of Beresford Municipal Telephone Co. ) )  
\_\_\_\_\_ ) )

Docket No. TC02-018

**LEVEL 3 COMMUNICATIONS, LLC's REQUEST FOR WAIVER**

Level 3 Communications, LLC ("Level 3" or "Applicant") pursuant to Administrative Rules of South Dakota ("ARSD") 20:10:32:03(22) and 20:10:32:18, requests a waiver of certain provisions of ARSD. Level 3 requests a waiver of ARSD 20:10:32:10(1)-(6) & (8) and 20:10:32:03(10), concerning the provision of access to certain services; a waiver of ARSD 20:10:32:03(11), concerning the provision of financial statements of the Applicant instead of its parent company; a waiver of ARSD 20:10:32:04, concerning notice requirements; and a waiver of ARSD 20:10:32:15, concerning additional service obligations in rural service areas. In support of its request, Level 3 states:

1. Pursuant to ARSD 20:10:32:03(22), Level 3 requests a waiver of the requirements of ARSD 20:10:32:10(1)-(6) & (8) and 20:10:32:03(10), concerning the provision of access to certain services, because such access requirements are inapplicable to the services Level 3 intends to provide. As clarified in its Response to Staff Requests ("Response"), Level 3 is limiting its request for authority and proposed services to direct inward dial ("DID") and dedicated access or private line services. ARSD 20:10:32:10(1)-(6) & (8) require



telecommunications carriers that provide local exchange services to provide access to 911, enhanced 911, operator services, interexchange service, directory assistance, and telecommunications relay services. These access requirements assume that the carrier is providing dial tone access to the public switched telephone network (“PSTN”) that permits customers to originate telephone calls. However, in the instant Application, Level 3 does not intend to provide customers with dial tone access to the PSTN; rather customers will be provided inbound-only connectivity to the PSTN (in the case of DID services) or nonswitched dedicated private line services. Therefore, because these requirements are inapplicable to Level 3’s specialized services, Level 3 requests a waiver of such requirements pursuant to ARSD 20:10:32:03(22). However, Level 3 will comply with all applicable laws and regulations regarding such functionalities/services prior to offering any outbound, dial tone, basic local exchange calling capability.

2. Pursuant to ARSD 20:10:32:03(22), Level 3 requests a waiver of ARSD 20:10:32:03(11), concerning the provision of financial statements of the Applicant instead of its parent company. The Applicant’s financial information is included in the consolidated statements of its parent company, Level 3 Communications, Inc., and the Applicant does not maintain audited financial statements for its own operations. In its initial Application in Docket No. TC99-015, Level 3 provided the financial statements of its parent company. The Commission waived the requirement that the Applicant submit its own financial statement on the condition that Level 3 post a \$25,000 bond. Level 3 did post such a bond. Therefore, pursuant to ARSD 20:10:32:03(22), Level 3 requests a waiver of the requirement to submit financial statements of the Applicant. Level 3 requests that the Commission find Level 3’s existing bond satisfies any need for financial assurance for all of Level 3’s service territory in the State of South Dakota.

3. Level 3 requests a waiver of ARSD 20:10:32:04, concerning the notice to be provided to local exchange carriers operating in Level 3's proposed service territory. As noted in its Response to Staff Request No. 7, Level 3 has contacted Beresford Municipal Telephone Co. ("Beresford") to discuss Level 3's Application and interconnection arrangements. Beresford intervened in this Docket on February 28, 2002. To Level 3's knowledge, Beresford is the only company providing local telephone service in the service territory in which Level 3 seeks this additional certification. Therefore, because Beresford has actual knowledge of Level 3's Application, Level 3 requests that the notice requirement of ARSD 20:10-32:04 be waived.

4. Pursuant to ARSD 20:10:32:18, Level 3 requests a waiver of ARSD 20:10:32:15, concerning additional service obligations in rural service areas, and the federal eligible telecommunications carrier ("ETC") services requirements (47 C.F.R. 54.101(a), 47 C.F.R. 54.405 and 47 C.F.R. 54.411) incorporated by reference therein. As explained in Paragraph 9 of Level 3's Application, to the extent that Beresford possesses an exemption or suspension under Section 251(f) of the federal Communications Act, Level 3 does not seek interconnection under Section 251(c) at this time, nor does Level 3 seek at this time to challenge Beresford's exemption from any of the other obligations specified in Section 251(c). Level 3 does not seek to resell Beresford's services, nor does Level 3 seek to force Beresford to provide unbundled access to its network elements. As a new entrant, Level 3 cannot duplicate the extensive network that Beresford has established as an incumbent local exchange carrier. Therefore, Level 3 believes that it is impossible to meet the requirements of ARSD 20:10:32:15 without gaining Section 251(c) access to the incumbent's network. In fact, Section 253(f)(1) acknowledges that a rural LEC's exemption from Section 251(c)(4) prevents a new entrant from meeting the federal ETC requirements. Furthermore, as noted above, Level 3's request for authority in Beresford's

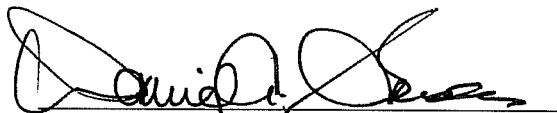
territory is limited to only DID and private line service authority. Because Level 3 is not seeking to enforce Beresford's Section 251(c) obligations and is not seeking to compete for Beresford's basic local exchange customers, Level 3 submits that granting the requested waiver of ARSD 20:10:32:15 would not adversely impact universal service or the quality of services provided in Beresford's service territory and would promote the public interest.

### CONCLUSION

WHEREFORE, Level 3 Communications, LLC respectfully requests that the Commission grant it the requested waivers of ARSD 20:10:32:03(10) & (11), 20:10:32:04, 20:10:32:10(1)-(6) & (8), and 20:10:32:15.

Respectfully Submitted,

By:



3/26/2002

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HAND DELIVERED

Debra Elofson, Executive Secretary  
Public Utilities Commission  
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Pierre, South Dakota 57501

**RECEIVED**

**MAR 26 2002**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY  
APPLICATION FOR BERESFORD TERRITORY**  
Docket TC02-018  
Our file: 3848

Dear Debra:

Accompanying this letter is a request for confidential treatment of information and an envelope containing the information that is responsive to certain data requests proposed by staff in this docket. Responses to other data requests have been filed under separate cover. The envelope is marked as required by ARSD 20:10:01:41. We ask that you file this as confidential information under applicable Commission rules.

With a copy of this letter, I am sending a copy of the request for confidential treatment of information only, for the information of the parties to this docket. This information will be shared with the parties upon their signing an appropriate confidentiality agreement. It is my understanding under Commission rules that staff are bound by the rules of confidentiality and are entitled to view this material.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
DAG:mw

Enclosures

cc/enc: Tom Frieberg

Brian McDermott/Tamar Finn (Federal Express)

Mike Romano (Federal Express)

*BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA*

Application of ) TC02-018  
)  
Level 3 Communications, LLC )  
)  
To Expand its Certificate of Public )  
Convenience and Necessity to Provide )  
Facilities-Based Local Exchange )  
Services in the Service Territory )  
of Beresford Municipal Telephone Co. )

**RECEIVED**

**MAR 26 2002**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**LEVEL 3 COMMUNICATIONS' REQUEST FOR CONFIDENTIAL  
TREATMENT OF INFORMATION**

Pursuant to ARSD 20:10:01:41 Level 3 files the following information with the Commission requesting confidential treatment:

1. Attachment 4 to Level 3 Communications response to staff requests dated March 26, 2002, entitled "Overview of Level 3 Network Operations Center and Technical Customer Account Managers," consisting of a cover sheet and two pages.

2. Attachment 6 to Level 3 Communications response to staff requests dated March 26, 2002, entitled "Map of Level 3's Proposed Expansion Areas," consisting of a cover sheet and one page.

This request for confidential treatment of information is based upon the following information:

a. The foregoing constitutes an identification of the documents and the general subject matter of the materials for which confidentiality is being requested.

b. The length of time for which confidentiality is being requested is until this docket and all appeals therefrom have been exhausted. Thereafter all documents shall be destroyed or returned to the undersigned.

c. The name, address and telephone number of a person to be contacted regarding the confidentiality requests is: David A.

Gerdes, May, Adam, Gerdes & Thompson, P.O. Box 160, Pierre, South Dakota, 57501-0160, (605)224-8803, attorneys for Level 3 Communications.


d. The grounds upon which confidentiality is requested are that the material constitutes proprietary information owned by Level 3 Communications, LLC, the release of which would be detrimental to Level 3 and cause irreparable injury. The release of any such information would create a competitive disadvantage of Level 3 with its competitors. Further, the information is susceptible to no beneficial or legitimate business purpose to anyone other than the applicant.

e. The factual basis that qualifies the information for confidentiality is that the information was requested as a part of discovery in the above-entitled docket. The information serves no useful purpose except as it may relate to the issues between the parties in this docket. Any outside use of this information will be a violation of Level 3's confidential rights.

WHEREFORE Level 3 prays that the Commission keep the accompanying information confidential under its rules, and that any person or party viewing such information may do so only under a confidentiality agreement approved by Level 3 or its authorized representative.

Dated this 26<sup>th</sup> day of March, 2002.

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
DAVID A. GERDES  
Attorneys for Level 3  
503 South Pierre Street  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
Telephone: (605)224-8803  
Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 26<sup>th</sup> day of March, 2002, he mailed by United

States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Thomas H. Frieberg  
Attorney at Law  
P.O. Box 511  
Beresford, SD 57004-0511

Kelly Frazier  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Keith Senger  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501



David A. Gerdes

RECEIVED

MAR 26 2002

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Application of ) TC02-018  
 )  
**Level 3 Communications, LLC** )  
 )  
 To Expand its Certificate of Public ) **CERTIFICATE OF SERVICE**  
 Convenience and Necessity to Provide )  
 Facilities-Based Local Exchange )  
 Services in the Service Territory )  
 of Beresford Municipal Telephone Co. )

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 26<sup>th</sup> day of March, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of **Level 3 Communications, LLC's Response to Staff Requests** and **Level 3 Communications, LLC's Request for Waiver** in the above-captioned action to the following at their last known addresses, to-wit:

Thomas H. Frieberg  
 Attorney at Law  
 P.O. Box 511  
 Beresford, SD 57004-0511

Kelly Frazier  
 Public Utilities Commission  
 500 East Capitol Avenue  
 Pierre, South Dakota 57501

Keith Senger  
 Public Utilities Commission  
 500 East Capitol Avenue  
 Pierre, South Dakota 57501

MAY, ADAM, GERDES & THOMPSON LLP

BY   
 DAVID A. GERDES

Attorneys for Level 3  
 503 South Pierre Street  
 P.O. Box 160  
 Pierre, South Dakota 57501-0160  
 Telephone: (605)224-8803  
 Telefax: (605)224-6289



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF )	ORDER GRANTING
LEVEL 3 COMMUNICATIONS, LLC FOR )	INTERVENTION
APPROVAL TO EXPAND ITS CERTIFICATE OF )	
AUTHORITY TO PROVIDE FACILITIES-BASED )	TC02-018
LOCAL EXCHANGE SERVICES IN THE )	
SERVICE TERRITORY OF BERESFORD )	
MUNICIPAL TELEPHONE CO. )	

On February 19, 2002, the Public Utilities Commission (Commission) received an Application from Level 3 Communications, LLC for approval to expand its certificate of authority to provide facilities-based local exchange services in the service territory of Beresford Municipal Telephone Co.

On February 21, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 8, 2002, to interested individuals and entities. Beresford Municipal Telephone Co. (Beresford) filed a Petition to Intervene on March 4, 2002.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:01:15.05.

At a regularly scheduled meeting of March 28, 2002, the Commission found that the Petition to Intervene was timely filed and demonstrated good cause to grant intervention. It is therefore

ORDERED, that the Petition to Intervene of Beresford is hereby granted.

Dated at Pierre, South Dakota, this 4<sup>th</sup> day of April, 2002.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>Melaine Kalbo</i></u>
Date: <u>4/5/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*James A. Burg*  
JAMES A. BURG, Chairman

*Pam Nelson*  
PAM NELSON, Commissioner

*Robert K. Sahr*  
ROBERT K. SAHR, Commissioner

LAW OFFICES  
MAY, ADAM, GERDES & THOMPSON LLP  
503 SOUTH PIERRE STREET  
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MICHAEL F. SHAW  
NEIL FULTON  
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BRETT KOENECKE

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May 6, 2002

OF COUNSEL  
WARREN W. MAY

GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966

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605 224-8803

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605 224-6289

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MAY 06 2002

Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY  
APPLICATION FOR BERESFORD TERRITORY**  
Docket TC02-018  
Our file: 3848

Dear Debra:

Enclosed are original and three copies of Level 3 Communications, LLC's Supplemental and Revised Request for Waiver and Request for Finding of Fact, which please file. I am also enclosing an extra face page from the request. Please date stamp it, enter the docket number and return it to me in the enclosed self-addressed stamped envelope.

By its filing dated March 26, 2002, Level 3 Communications, LLC ("Level 3" or "Applicant") requested a waiver of certain provisions of the Administrative Rules of South Dakota ("ARSD"). Pursuant to ARSD 20:10:32:03(22) and 20:10:32:18, Level 3 submits the accompanying Supplemental and Revised Request for Waiver and Request for Finding of Fact.

By this letter, and pursuant to Staff Request 2-2, Level 3 also clarifies its March 26, 2002, response to Staff Request 1-5. Because Level 3 does not intend to provide customers with dial tone access to the public switched telephone network, Level 3 clarifies that it believes ARSD 20:10:32:10(1)-(7) and 20:10:32:03(10), concerning the provision of access to certain services, do not apply to the services it proposes to offer.

Debra Elofson  
May 6, 2002  
Page 2

This clarification is also included in the attached Supplemental and Revised Request for Waiver.

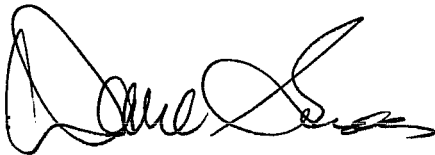
Finally, Level 3 notes that it continues to negotiate interconnection arrangements with Beresford Municipal Telephone Company ("Beresford"). Although Level 3 hopes to resolve such negotiations without Commission intervention, any difference between the parties concerning interconnection issues will be resolved under the mediation or arbitration provisions of Sections 251(a) and 252 of the Communications Act of 1934, as amended. Because a separate procedure will be used to resolve any interconnection differences, Level 3 therefore requests that the Commission expeditiously process its pending certification application.

Thank you very much. If there are any questions, I look forward to talking with either Keith Senger or Kelly Frazier.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:



DAG:mw

Enclosures

cc/enc: Keith Senger, Hand Delivered  
Kelly Frazier, Hand Delivered  
Brian McDermott/Tamar Finn, Federal Express  
Mike Romano, Federal Express  
Tom Frieberg, Beresford Telephone (two copies)  
First Class Mail

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

Application of )  
 )  
**Level 3 Communications, LLC** )  
 )  
To Expand its Certificate of Public )  
Convenience and Necessity to Provide )  
Facilities-Based Local Exchange )  
Services in the Service Territory )  
of Beresford Municipal Telephone Co. )

TC02-018

**RECEIVED**

**MAY 06 2002**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**LEVEL 3 COMMUNICATIONS, LLC'S  
SUPPLEMENTAL AND REVISED REQUEST FOR WAIVER  
AND REQUEST FOR FINDING OF FACT**

By filing dated March 26, 2002, Level 3 Communications, LLC ("Level 3" or "Applicant") requested a waiver of certain provisions of the Administrative Rules of South Dakota ("ARSD"). Pursuant to ARSD 20:10:32:03(22) and 20:10:32:18, Level 3 submits this Supplemental and Revised Request for Waiver and Request for Finding of Fact. By this Supplemental Filing, Level 3 modifies paragraph one of its March 26, 2002 filing to correct a clerical error. Level 3 also withdraws its request for waiver of ARSD 20:10:32:04 and instead requests that the Commission find that Beresford has actual notice of Level 3's application and this actual notice satisfied ARSD 20:10:32:04. Finally, Level 3 modifies paragraph four of its March 26, 2002 filing to add a request for waiver of ARSD 20:10:32:03(16). For the convenience of the Commission, Level 3 repeats the revised requests in their entirety below.

1. REVISED PARAGRAPH ONE OF MARCH 26, 2002 FILING: Pursuant to ARSD 20:10:32:03(22), Level 3 requests a waiver of the requirements of ARSD 20:10:32:10(1)-(7) and 20:10:32:03(10), concerning the provision of access to certain services, because such access requirements are inapplicable to the services Level 3 intends to provide. As clarified in its Response to Staff Requests ("Response"), Level 3 is limiting its request for authority and proposed services to direct inward dial ("DID") and dedicated access or private line services. ARSD 20:10:32:10(1)-(7) require telecommunications carriers that provide local exchange services to provide access to 911, enhanced 911, operator services, interexchange service, directory assistance, and telecommunications relay services. These access requirements assume that the carrier is providing dial tone access to the public switched telephone network ("PSTN") that permits customers to originate telephone calls. However, in the instant Application, Level 3 does not intend to provide customers with dial tone access to the PSTN; rather customers will be provided inbound-only connectivity to the PSTN (in the case of DID services) or nonswitched dedicated private line services. Therefore, because these requirements are inapplicable to Level 3's specialized services, Level 3 requests a waiver of such requirements pursuant to ARSD 20:10:32:03(22). However, Level 3 will comply with all applicable laws and regulations regarding such functionalities/services prior to

offering any outbound, dial tone, basic local exchange calling capability.

2. REVISED PARAGRAPH THREE OF MARCH 26, 2002 FILING AND REQUEST FOR FINDING OF FACT: Level 3 withdraws its request for a waiver of ARSD 20:10:32:04, concerning the notice to be provided to local exchange carriers operating in Level 3's proposed service territory. As noted in its Response to Staff Request No. 7, Level 3 has contacted Beresford Municipal Telephone Co. ("Beresford") to discuss Level 3's Application and interconnection arrangements. Beresford intervened in this Docket on February 28, 2002. To Level 3's knowledge, Beresford is the only company providing local telephone service in the service territory in which Level 3 seeks this additional certification. Therefore, Level 3 requests that the Commission find that Beresford has actual knowledge of Level 3's Application. Level 3 further requests that the Commission find that this actual notice satisfies the requirements of ARSD 20:10:32:04.

3. REVISED PARAGRAPH FOUR OF MARCH 26, 2002 FILING: Pursuant to ARSD 20:10:32:18, Level 3 requests a waiver of ARSD 20:10:32:15, concerning additional service obligations in rural service areas, and the federal eligible telecommunications carrier ("ETC") services requirements (47 C.F.R. 54.101(a), 47 C.F.R. 54.405 and 47 C.F.R. 54.411) incorporated by reference therein. Pursuant to

ARSD 20:10:32:03(22), Level 3 also requests a waiver of ARSD 20:10:32:03(16), concerning the requirement that Level 3 provide the date on which it will meet the requirements of ARSD 20:10:32:15 as part of its Application. As explained in Paragraph 9 of Level 3's Application, to the extent that Beresford possesses an exemption or suspension under Section 251(f) of the federal Communications Act, Level 3 does not seek interconnection under Section 251(c) at this time, nor does Level 3 seek at this time to challenge Beresford's exemption from any of the other obligations specified in Section 251(c). Level 3 does not seek to resell Beresford's services, nor does Level 3 seek to force Beresford to provide unbundled access to its network elements. As a new entrant, Level 3 cannot duplicate the extensive network that Beresford has established as an incumbent local exchange carrier. Therefore, Level 3 believes that it is impossible to meet the requirements of ARSD 20:10:32:15 without gaining Section 251(c) access to the incumbent's network. In fact, Section 253(f)(1) acknowledges that a rural LEC's exemption from Section 251(c)(4) prevents a new entrant from meeting the federal ETC requirements. Furthermore, as noted above, Level 3's request for authority in Beresford's territory is limited to only DID and private line service authority. Because Level 3 is not seeking to enforce Beresford's Section 251(c) obligations and is not seeking to compete for Beresford's basic local exchange customers, Level 3

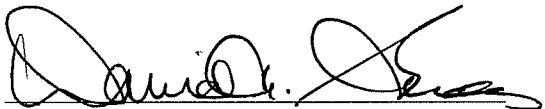
submits that granting the requested waiver of ARSD 20:10:32:15 would not adversely impact universal service or the quality of services provided in Beresford's service territory and would promote the public interest.

**CONCLUSION**

WHEREFORE, Level 3 Communications, LLC respectfully requests that the Commission grant it the waivers requested on March 26, 2002, as modified herein, and find that Beresford has actual notice of Level 3's application and that such notice satisfies the requirements of ARSD 20:10:32:04.

Respectfully submitted this 6<sup>th</sup> day of May, 2002.

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
DAVID A. GERDES  
Attorneys for Applicant  
503 South Pierre Street  
P.O. Box 160  
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Russell M. Blau  
Tamar E. Finn  
Brian McDermott  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007-5116  
(202) 295-8346 (Tel)  
(202) 295-8478 (Fax)



**CERTIFICATE OF SERVICE**

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 6<sup>th</sup> day of May, 2002, he delivered a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Thomas H. Frieberg  
Attorney at Law  
P.O. Box 511  
Beresford, SD 57004-0511  
VIA FIRST CLASS MAIL

Kelly Frazier  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501  
HAND DELIVERED

Keith Senger  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501  
HAND DELIVERED

  
David A. Gerdes

# Meyer & Rogers

ATTORNEYS AT LAW

P.O. BOX 1117 • 320 EAST CAPITOL • PIERRE, SOUTH DAKOTA 57501-1117 • TELEPHONE 605-224-7889 • FACSIMILE 605-224-9060

BRIAN B. MEYER  
DARLA POLLMAN ROGERS

**RECEIVED**

**MAY 08 2002**

May 7, 2002

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Kelly Frazier  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Re: Docket Number TC02-018

Dear Kelly:

Please find enclosed herein a copy of the NOTICE OF APPEARANCE I filed today with the Commission by personal service.

This is intended as service upon you by mail.

Sincerely yours,



Darla Pollman Rogers  
Attorney at Law

DPR/ph

Enclosure

RECEIVED

MAY 07 2002

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC, TO EXPAND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE SERVICES IN THE SERVICE TERRITORY OF BERESFORD MUNICIPAL TELEPHONE COMPANY

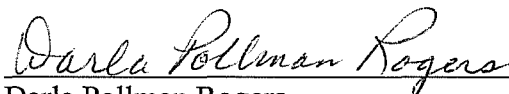
Docket No. TC02-018

NOTICE OF APPEARANCE

Darla Pollman Rogers, of Meyer & Rogers, P. O. Box 1117, Pierre, South Dakota 57501, hereby files her notice of appearance on behalf of the City of Beresford, South Dakota, and BERESFORD MUNICIPAL TELEPHONE COMPANY, a South Dakota municipal telephone company.

The undersigned enters her appearance on behalf of BERESFORD MUNICIPAL TELEPHONE COMPANY for all purposes allowed by the rules.

Dated this seventh day of May, 2002.



Darla Pollman Rogers  
Meyer & Rogers  
P. O. Box 1117  
Pierre, South Dakota 57501

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she served a copy of the attached NOTICE OF APPEARANCE upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to said addressee, to-wit:

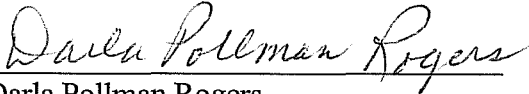
Thomas H. Frieberg  
Attorney at Law  
P. O. Box 511  
Beresford, South Dakota 57004-0511

Keith Senger  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Kelly Frazier  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

David A. Gerdes  
May, Adam, Gerdes & Thompson  
P. O. Box 160  
Pierre, South Dakota 57501

Dated this seventh day of May, 2002.

  
\_\_\_\_\_  
Darla Pollman Rogers  
MEYER & ROGERS  
P. O. Box 1117  
Pierre, South Dakota 57501

LAW OFFICES  
MAY, ADAM, GERDES & THOMPSON LLP  
503 SOUTH PIERRE STREET  
P.O. BOX 160  
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CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
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May 7, 2002

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MAY 08 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

OF COUNSEL  
WARREN W. MAY

GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966

TELEPHONE  
605 224-8803

TELECOPIER  
605 224-6289

E-MAIL  
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**VIA TELECOPIER -- 773-3809**  
**AND FIRST CLASS MAIL**

Keith Senger  
Utility Analyst  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY**  
**APPLICATION FOR BERESFORD TERRITORY**

Docket TC02-018  
Our file: 3848

Dear Keith:

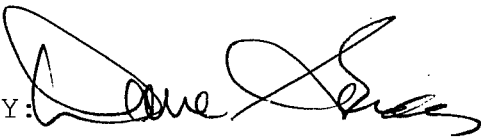
Accompanying this letter is the correct version of the letter which I intended to send to you justifying Level 3's application to do business as a telecommunications carrier in the Beresford area. Unfortunately, I had sent the letter to the client and the client had made some corrections, asking the corrected version of the letter to be sent. In the electronic merger of the two documents, my word processing software apparently rejected the changes which were made, which I did not notice. What was originally sent was my original draft, rather than the corrected draft. Accompanying this letter is the correct version of the letter.

I would greatly appreciate it if you and the other recipients of the letter would destroy the earlier version of the letter and accept this version, which accompanies this letter, as Level 3's position.

Keith Senger  
May 7, 2002  
Page 2

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

cc: Kelly Frazier  
Brian McDermott/Tamar Finn  
Mike Romano  
Tom Frieberg  
(all sent via telecopier and first class mail)

LAW OFFICES  
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503 SOUTH PIERRE STREET  
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THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
NEIL FULTON  
BOBBI J. BENSON  
BRETT KOENECKE

May 7, 2002

RECEIVED

MAY 08 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

OF COUNSEL  
WARREN W. MAY

GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966

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VIA TELECOPIER -- 773-3809  
AND FIRST CLASS MAIL

Keith Senger  
Utility Analyst  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY**  
**APPLICATION FOR BERESFORD TERRITORY**  
Docket TC02-018  
Our file: 3848

Dear Keith:

We have on a couple of occasions discussed your question as to why Level 3 needs a certificate of authority to do business as a telecommunications carrier in the Beresford area as requested in its application. This is my response on behalf of the Company.

To begin with, Level 3 is in fact proposing to offer local exchange service. It is true that Level 3 is not offering basic local exchange service in the sense that a customer would purchase two-way connectivity to the public switched telephone network ("PSTN") in a manner that would allow for the placement and receipt of local voice telephone calls. However, by virtue of the products offered by Level 3, customers obtain the ability (as they would with any direct inward dial ("DID") product offered by a certificated local exchange carrier ("LEC")) to receive local calls placed by other customers on the PSTN. Simply because Level 3 customers may happen to be Internet Service Providers does not change the fact that what

Keith Senger  
May 7, 2002  
Page 2

Level 3 offers to them is local telephone connectivity in the same manner as any other LEC. As further justification, it is clear that the Commission has exercised jurisdiction over DID by categorizing it as a competitive service, and in offering it Level 3 is submitting to the Commission's jurisdiction.

In addition to this legal analysis, there are practical reasons that a certificate of authority is needed. First, it is very difficult, if not impossible, to have another LEC (particularly an ILEC) interconnect with a company if it is not a certificated LEC itself. The view of most ILECs is that, under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, they are only compelled to interconnect with other LECs. Absent certification to that effect, it is our experience that they will argue that they are under no duty to negotiate or interconnect with a company. Second, it is very difficult, if not impossible, to secure local telephone numbers to serve customers if a company is not a LEC. The numbering administrator generally requires a company's operating carrier number, proof of interconnection and certification document prior to assigning a block of telephone numbers.

In summary, certification is necessary and desirable from both a legal and practical perspective. Legally (and logically), the service Level 3 proposes to offer is a service comparable to those local telephone services offered by other LECs who are regulated by the Commission. In practice, Level 3 will give customers a local telephone number and provide them with local connectivity to the PSTN. Indeed, Level 3 has applied for certification under the premise that the Commission would want to certify an entity providing such local access to customers. From a practical perspective, in order to obtain the local telephone numbers and interconnection rights that are a prerequisite to the provision of this local service, certification as a LEC is necessary.



Keith Senger  
May 7, 2002  
Page 3

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:

A handwritten signature in black ink, appearing to read "Keith Senger". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

DAG:mw

cc: Kelly Frazier  
Brian McDermott/Tamar Finn  
Mike Romano  
Tom Frieberg  
(all sent via telecopier and first class mail)



South Dakota Telecommunications Association  
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501  
605/224-7629 ■ Fax 605/224-1637 ■ sdtainline.com

*Rural roots, global connections*

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MAY 09 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

May 9, 2002

Deb Elofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: SD-PUC Docket TC02-018 In the Matter of the Application of Level 3 Communications, LLC, for approval to expand its Certificate of Authority to provide facilities based local exchange serves in the service territory of Beresford Municipal Telephone Company

Dear Ms. Elofson:

Enclosed for filing in the above referenced matter are the original and ten (10) copies of an SDTA Petition for Late Intervention.

Please distribute these as needed to Commissioners and Staff.

Thank you for your assistance.

Sincerely,

Richard D. Coit,  
Executive Director  
and General Counsel

**CLEAR**  
connections

KELO-TV Sunday nights following the 10 p.m. news

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**RECEIVED**

**MAY 09 2002**

**IN THE MATTER OF THE APPLICATION )  
OF LEVEL 3 COMMUNICATIONS, LLC FOR )  
APPROVAL TO EXPAND ITS CERTIFICATE )  
OF AUTHORITY TO PROVIDE FACILITIES- )  
BASED LOCAL EXCHANGE SERVICES IN )  
THE SERVICE TERRITORY OF BERESFORD )  
MUNICIPAL TELEPHONE COMPANY )**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**DOCKET TC02-018**

**SDTA Petition for Late Intervention**

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota, including the interests of Beresford Municipal Telephone Company (hereinafter referenced as "Beresford"), which is currently a SDTA member.

2. All of the SDTA member companies operate as "rural telephone companies" for purposes of the Federal Telecommunications Act of 1996 and also the state laws enacted in 1998 addressing local exchange competition (SDCL §§ 39-31-69, et. seq.).

3. On February 19, 2002, Level 3 Communications, LLC, a subsidiary of Level 3 Communications, Inc. ("Level 3") filed an application with the Commission seeking to expand its existing certificate of authority to provide local exchange services in South Dakota to include authorization to provide "facilities-based local exchange telecommunications services within the service territory of the Beresford Municipal Telephone Company." In response to Level 3's application for expanded local service authority, this Commission established an initial period for intervention ending on March 8, 2002.

4. Since the date that Level 3 filed its application and subsequent to the initial intervention date of March 8, 2002, Level 3 has supplied significant additional information to the Commission regarding its application for an expanded certificate of authority. The documents

submitted, to our knowledge, include: “Level 3 Communications, LLC’s Response to Staff Requests” filed on March 26<sup>th</sup>, a letter dated May 7<sup>th</sup> from Level 3 to Commission Staff explaining the basis for its application, and the “Level 3 Communications, LLC’s Supplemental and Revised Request for Waiver and Request for Finding of Fact” dated May 6<sup>th</sup>. These documents substantially change the nature of Level 3’s application for certification and further indicate that the application is not a “run of the mill” request for local service authority. With its responses to Staff data requests, Level 3 has limited the scope of its application to include only “direct inward dial trunks and service” and “dedicated access service.” Consistent with this decision to change its initial application, Level 3 has also provided a “Revised Illustrative Tariff” which substantially amends the tariff provided with its initial application, modifying it to remove any reference to “local calling, 911, operator services, directory assistance, presubscription, and telecommunications relay services.” In addition, along with substantially altering the scope of its application, Level 3 is now seeking a waiver from having to provide any of the essential local exchange services that are established as minimum service obligations on all local service providers by the provisions of ARSD 20:10:32:10, this includes: (1) “access to the public switched network; (2) access to emergency services such as 911 or enhanced 911; (3) access to local directory and directory assistance; (4) access to operator services; (5) telecommunications relay service capability; (6) non-published service upon customer request; and (7) access to interexchange service.

5. Level 3 has also recently clarified in its “Supplemental and Revised Request for Waiver and Request for Finding of Fact” filed with the Commission that it is seeking a waiver pursuant to ARSD § 20:10:32:18 of the additional local service obligations imposed on competitive LECs in rural service areas. This request for waiver was not part of Level 3’s initial application, but has now come to light and been presented by Level 3 as a result of Commission Staff efforts to obtain more information through numerous data requests.

6. Level 3 has filed an application for local service authority in the Beresford service area, but states in its responses to Staff data requests that it does not “intend to provide in the near future, dial tone access to the PSTN (public switched telephone network) to its customers.” Based on this service plan, Level 3 is now requesting a waiver from having to provide any telecommunications services normally associated with the provision of local exchange services. Thus, it appears that Level 3 wants to obtain a certificate of authority to provide local exchange

services, but questions are presented as to whether the company, in fact, plans to provide services that can properly be considered “local exchange services.”

7. Level 3 offers some explanation of its application in a letter to Commission Staff dated May 7<sup>th</sup>. This letter states that Level 3 intends to obtain local telephone numbers to serve its customers and indicates that this may not be possible if Level 3 does not obtain certification as a LEC for the Beresford service area. The letter also alleges that Level 3 will be unable to obtain necessary interconnection services with Beresford Municipal Telephone if it is not granted LEC status.

8. SDTA is concerned with the May 7<sup>th</sup> letter to Staff and has reason to believe based on the information thus far provided by Level 3 in this Docket and based on recent discussions between Level 3 and Beresford that Level 3 does not in fact intend to provide local exchange services within the established Beresford exchange area. Instead, Level 3 may be attempting to obtain a local central office NXX for use with non-local traffic. Level 3 has given some indication in discussions with Beresford that the company does not presently intend to have a point of presence in the Beresford exchange area. The company further has indicated that it does not intend to purchase or lease any line-side services from Beresford and has indicated that it only desires from Beresford dedicated trunking or special access facilities from the Beresford central office switch into Sioux Falls. This suggests that Level 3’s point of presence to receive traffic originated from Beresford area end users or to send traffic to Beresford area end users will not be located within the borders of the Beresford exchange, but instead will be established in Sioux Falls. This information causes SDTA to be concerned that Level 3 is at this time seeking a certificate of authority for the Beresford exchange for the sole purpose of applying for a local Beresford NXX code and, further, that the company plans to use such code for non-local traffic (for traffic that does not originate and terminate in the Beresford local calling area). This use of an assigned NXX code would be improper and in violation of FCC rules.

9. With respect to the May 7<sup>th</sup> letter from Level 3 to Staff, SDTA also has concerns with statements made in the letter asserting that LEC status is needed by Level 3 in order for it to “interconnect” with Beresford. Based on information thus far presented by Level 3, the company is only seeking dedicated trunking services from Beresford. These services are already available to Level 3 as tariffed services and may be purchased without any interconnection agreement. In addition, pursuant to 47 U.S.C. § Section 251(a)(1) all LECs have a duty to “interconnect

directly or indirectly with the facilities and equipment of other telecommunications carriers.” The obligation to interconnect under federal and state law does not as Level 3 claims extend only to other LECs.

10. Based on all of the foregoing, SDTA is compelled to seek intervention in this proceeding. Information obtained by Commission Staff and Beresford from Level 3 since the filing of Level 3’s application and since March 8<sup>th</sup> has raised a number of new issues that were neither presented nor apparent from Level 3’s initial application filing. These issues are of interest to and stand to impact the entire SDTA membership and also involve matters that have not been addressed by this Commission in prior proceedings. This, at minimum, includes the following issues:

- Whether Level 3, in fact, intends to offer “local exchange services” as such services are defined under state law?
- Whether Level 3 should received a certificate of authority for local exchange services under circumstances where it will not for its customers provide services that originate and terminate local calls (traffic that both originates and terminates within the established Beresford exchange area)?
- Whether, under Level 3’s service plans, it would be appropriate for the company to receive a local Beresford NXX code for use by its customers?
- Whether Level 3 should receive a waiver from having to provide any of the local exchange services established as minimum service obligations for all local exchange carriers under ARSD 20:10:32:10?
- Whether the Commission may appropriately grant a waiver of the service obligations imposed under ARSD 20:10:032:10?
- Whether Level 3 should receive a waiver from the additional rural service area obligations imposed under ARSD 20:10:32:15?

11. Decisions of the Commission on the above issues will not only affect Beresford Municipal Telephone Company, but also very clearly may affect future applications for local service authority presented for other rural telephone company areas. Accordingly, SDTA has an interest in this proceeding and seeks intervention herein. The public interest will be best served if the rural LEC industry through SDTA is given an opportunity to participate and able to provide input as to how the Commission’s decisions on the various issues presented may impact


other rural telephone companies and consumers in all rural service areas. Furthermore, SDTA will be deprived of due process if it is not granted intervention at this stage. SDTA could not reasonably determine or foresee from the initial application filed by Level 3 that all of the above issues would be presented. These issues have only just recently come to light through additional information disclosed by Level 3

12. Based on all of the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status.

Dated this 24 day of May, 2002.

Respectfully submitted:

THE SOUTH DAKOTA  
TELECOMMUNICATIONS ASSOCIATION

By:   
Richard D. Coit  
Executive Director and General Counsel

## CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the foregoing document were hand-delivered on the 9th day of May, 2002 to:

Deb Elofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

A copy was hand-delivered to:

Keith Senger Utility Analyst  
S.D. Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Kelly Frazier, Staff Attorney  
S.D. Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Darla Rogers, Attorney  
Meyer & Rogers Law Firm  
320 East Capitol Avenue  
Pierre, SD 57501

A copy was sent by First Class Mail via U.S. Postal Service to:

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Director State Regulatory Affairs  
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Richard D. Coit, Executive Director  
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Post Office Box 57  
320 East Capitol Avenue  
Pierre, South Dakota 57501-0057



RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION

MAY 14 2002

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC, TO EXPAND ITS CERTIFICATE OF AUTHORITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE SERVICES IN THE SERVICE TERRITORY OF BERESFORD MUNICIPAL TELEPHONE COMPANY

Docket No. TC02-018

MOTION TO DISMISS

On or about February 19, 2002, Level 3 Communications, LLC (Level 3) filed an Application with the South Dakota Public Utilities Commission (Commission) to expand its Certificate of Authority to provide facilities-based local exchange services in the service territory of Beresford Municipal Telephone Company (Beresford)<sup>1</sup>.

Beresford, by its undersigned counsel, hereby files this Motion to Dismiss in response to Level 3's Application, and said Motion is based upon the following grounds:

I. LEVEL 3'S APPLICATION SHOULD BE DISMISSED BECAUSE LEVEL 3 CLEARLY DOES NOT INTEND TO PROVIDE LOCAL EXCHANGE SERVICES AS DEFINED BY SOUTH DAKOTA LAW.

A. Representations in Application and Supporting Documents

SDCL 49-31-1(13) defines "local exchange service" as "the access to and transmission of two-way switched telecommunications service within a local exchange area." In order for Level 3 to demonstrate a need for a Certificate of Authority to provide

<sup>1</sup> On May 5, 1999, Level 3 was granted a Certificate of Authority to offer local exchange services in those areas in South Dakota where US WEST Communications, Inc. (now QWEST) is the incumbent local exchange carrier in Docket No. TC99-015.

local exchange services in the Beresford exchange, Level 3 would need to specifically identify the types of local exchange services it intends to offer.

Such a showing is clearly lacking in Level 3's Application. In fact, in its initial Application, it is extremely difficult to ascertain exactly what services Level 3 intends to offer in Beresford. For example, Level 3 indicates it "intends to offer service in Beresford." (App., ¶ 6). Level 3 also pledges to "comply with all applicable laws and regulations relevant to the provision of these services," including 911, operator service, interexchange services, directory assistance and telecommunications relay services (App., ¶ 7). With regard to interconnection, in ¶ 9 of its Application, Level 3 states it will "deploy an independent network by either building its own facilities or leasing the facilities of other carriers." Level 3 recognizes, however, that Beresford is not required to unbundle its network elements, so it will either lease facilities from third party carriers or purchase tariffed services from Beresford "to support market entry and the exchange of all kinds of traffic between Beresford Municipal Telephone Company's customers and Level 3's customers." (App. ¶ 9). Level 3's tariff filed with the original Application included all types of services.

Level 3's lack of specificity as to services to be offered was apparently troublesome to Commission Staff as well. On March 12, Data Request 3 asked Level 3 to provide "a list and specific description of the types of services the applicant seeks to offer and the means by which the services will be provided." In response thereto, Level 3 indicates first of all that its customers will be other Internet service providers, who would have no point of presence in the Beresford exchange. Other potential customers are business customers who need only inbound data services or nonswitched services. (Response

#3(a)). None of the services for these customers would necessitate the provision by Level 3 of local exchange services as defined by statute.

As further evidence that Level 3's Application is unnecessary, the Commission can look to the Annual Report to SEC filed with Level 3's initial Application. Therein, Level 3 classifies itself as a "tier 1 internet service provider." (Form 10-K Annual Report to SEC, Paragraph 11.) As such, Level 3 has no need for the expanded Certificate of Authority requested in its Application.

Beresford would further point out in support of its argument to dismiss that Level 3 has indicated in discussions with Beresford that Level 3 (a) does not intend to have a point of presence in Beresford, and (b) is requesting only trunking facilities from Beresford. In support of this, Level 3 provided Beresford with a diagram setting forth the configuration of the services it will provide (copy attached). These representations by Level 3, supported by its diagram, establish that Level 3 does not intend to provide any local exchange services as defined by statute, and its Application should accordingly be dismissed.

#### B. Services Level 3 will *not* Offer

In addition to general allegations found in the documents Level 3 has filed in this docket, there are also specific references Level 3 makes to services it will not provide. In Data Request Response #5, Level 3 states that it "does not provide, nor does it intend to provide in the near future, dial tone access to the PSTN to its customers." In a follow-up letter from Level 3's attorney to Staff, this is confirmed:

Level 3 is not offering basic local exchange service in the sense that a customer would purchase two-way connectivity to the public switched telephone network ("PSTN") in a manner that would allow for the placement and receipt of local voice telephone calls. (May 7, 2002, letter).

Accordingly, by its own filings, Level 3 does not intend to offer local exchange services as defined by statute: “the access to and transmission of two-way switched telecommunications service.” (SDCL 49-31-1[13]).

Level 3 has also made specific representations to Beresford of services it does not intend to offer. In particular, Level 3 informed Beresford it is not requesting any “line side” services, or any local network services or facilities from Beresford. (See diagram). Level 3 has also removed from its revised tariff filed with its responses any references to local calling, 911 services, operator services, directory assistance, presubscription, and telecommunications relay services. In fact, in its Supplemental and Revised Request for Waiver and Request for Finding of Fact, Level 3 goes so far as to request a waiver from all of the administrative rule provisions establishing the minimum local exchange services that must be offered by all local service providers.

It is blatantly inconsistent to apply for a certificate to provide local exchange services and then request a waiver from all rules relating to the provisioning of local exchange services, including rules that require the provisioning of basic local exchange services. Level 3 has clearly indicated it will not provide local exchange services, and its Application should be dismissed.

### C. Services Level 3 Will Provide

In its Responses to Staff Data Requests, Level 3 indicates it will offer “direct inward dial trunks and service and dedicated access service.” (Response 3d.) While it is not entirely clear from the Response what Level 3’s DID service entails, it is clear that Level 3 does not intend to purchase local DID services from Beresford. Level 3 has specifically indicated to Beresford that it is not requesting any local network services

from Beresford (see diagram). Rather, Level 3 appears to be talking about a DID service offered by Level 3 that would utilize interexchange trunking facilities leased between Beresford's end office and Level 3's planned point of presence, which Beresford understands will be in Sioux Falls. Since the service is not true, local DID service, a local exchange service certificate of authority in Beresford is not needed.

The other service Level 3 indicates it will offer to its customers is "dedicated access." This, however, is not a switched voice service, so it falls outside of the statutory definition of local exchange services. (See Supplemental Request for Waiver, ¶ 1: "Level 3 will provide nonswitched dedicated private line services.") The authority Level 3 seeks from this Commission is not necessary to provide dedicated access services.

#### D. "Practical" Reasons.

In its "explanatory" letter to Commission Staff dated May 7, 2002, Level 3's attorney notes that there are "practical reasons that a certificate of authority is needed." (emphasis added). Setting aside the obvious lack of justification to grant a certificate of authority on the basis of "practicality," the reasons submitted by Level 3 are without merit.

1. Level 3 first claims it is difficult or impossible for a LEC to interconnect with a company if it is not a certified LEC itself. This is not, however, an interconnection docket; it is a certification request. Furthermore, Level 3 *is* a certified LEC, even though it is not certified to provide local exchange services in the Beresford exchange. More importantly, however, all LEC's have a duty under the federal Act to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." (47 U.S.C. §251(a)(1)). The view of Level 3 that "LEC's are compelled by the fed-

eral Act to interconnect only with other LEC's" clearly has no basis in the law. In addition, in light of the services Level 3 is seeking from Beresford (only dedicated trunking services), an interconnection agreement is unnecessary. These are tariffed services that Level 3 can purchase from Beresford without an interconnection agreement.

2. The second "practical" reason Level 3 gives in support of its Application is the difficulty in securing local telephone numbers (NXX numbers) to serve customers if a company is not a LEC. As pointed out above, Level 3 is a LEC. The real crux of the matter, however, is whether Level 3's purported use of local Beresford numbers is appropriate. From its ambiguous description of services in its filings, and based upon discussions between Beresford and Level 3, it appears that Level 3 will be using local Beresford NXX numbers without establishing a point of presence in Beresford. This means that Level 3 could provide local calling to its customers in Beresford (both originating and terminating) without having a point of presence within the boundaries of the Beresford exchange. Beresford believes this is an improper use of NXX numbers under the FCC rules. Therefore, the Commission should not grant an expanded certificate of authority to Level 3 to "practically" assist Level 3 in acquiring a block of local Beresford telephone numbers that would be utilized improperly by Level 3.

## II. LEVEL 3'S APPLICATION FOR AN EXPANDED CERTIFICATE OF AUTHORITY SHOULD BE DISMISSED BECAUSE IT IS INCOMPLETE.

In Staff's first Data Request dated March 12, 2002, Staff states that Level 3's "Application is considered incomplete because it does not provide the information required by the Administrative Rules of South Dakota." Despite Level 3's Responses to the Commission's Data Requests, the Application remains incomplete in several areas.

#### A. ARSD 20:10:32:03(7)

Level 3's Application is incomplete because, as pointed out above, it does not contain a concise and complete description of the services Level 3 intends to offer. ARSD 20:10:32:03(7) requires the Applicant to provide "a list and specific description of the types of services the Applicant seeks to offer and the means by which the services will be provided." In Level 3's Application, the actual services Level 3 intends to offer remain inconsistent and vague. Level 3 represents that it is seeking only interexchange trunking services from Beresford, yet further insists that a Certificate of Authority for local exchange services is necessary. In response to Staff data requests, Level 3 indicates that it does not "intend to provide . . . dial tone access to the PSTN to its customers." Level 3 has requested waivers from having to provide any of the essential local exchange services established in the rules governing a certificate of authority for local services. These inconsistencies and incomplete answers raise questions as to what services Level 3 really does intend to offer, thus rendering its Application incomplete.

#### B. ARSD 20:10:32(10) and (15)

This rule requires an applicant to furnish "information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services." Applicant's responses to this application requirement are also inconsistent. In its initial filing, Level 3 pledged to "comply with all applicable laws and regulations relevant to the provision of . . . services," including 911, operator services, interexchange services, directory assistance, and telecommunications relay services (App. ¶ 7). Level 3's tariff covered all of these services.

In its response to Staff Data Requests, Level 3 altered its Application and Tariff and removed its pledge to “comply with applicable requirements concerning local calling, 911, operator services, directory assistance, presubscription, and telecommunications relay services.” Finally, in its Supplemental and Revised Request for Waiver and Request for Finding of Fact, Level 3 seeks a waiver from having to provide any of the essential local exchange services that are established as minimum service obligations on all local service providers as contained in ARSD 20:10:32:10.

In its latest Supplemental filing, Level 3 also requested a waiver of ARSD 20:10:32:15, which contains the additional local service obligations imposed on competitive LEC’s in rural service areas.

These inconsistencies in Level 3’s treatment of the requirements of ARSD 20:10:32:10 and 15 make its Application incomplete. It is questionable whether the Commission has the authority to waive all of the minimum service obligations imposed by 20:10:32:10 and 15, and it is even more questionable whether such a waiver is appropriate in an Application for a Certificate of Authority to provide facilities-based local exchange services in the Beresford Exchange. Level 3’s failure to adequately address the requirements of these rules on the one hand, while applying for a Certificate of Authority to provide local exchange services on the other, renders the Application incomplete.

ARSD § 20:102:03(11)

ARSD § 20:102:03(11) requires complete and recent financial information of a company requesting a certificate of authority. The financial data originally provided is financial data for Level 3 Communications, Inc. for the year 2000. In response to Staff’s request for financial information for the applicant Level 3 Communications, LLC, Level 3 declined to supply the requested information and requested a waiver of ARSD



§20:10:32:03(11). To comply with Staff's data request, Level 3 should file financial information specific to Level 3 Communications, LLC. Level 3 should also be required to file financial data for the year 2001. (ARSD §20:10:32:03(11)(a) requires financial information from applicant for the most recent twelve-month period.) Level 3's application is incomplete because of its failure to provide sufficient and current financial information.

Based upon all of the foregoing, Beresford requests that Level 3's Application to expand its Certificate Of Public Convenience and Necessity to provide facilities-based local exchange services in the services of Beresford Municipal Telephone Company be dismissed on the following grounds:

1. That from its filings and responses, Level 3 has failed to demonstrate that it will provide local exchange services as defined by statute;
2. That Level 3 has not requested services that require a Certificate of Authority;
3. That alleged practical reasons are not a sufficient basis upon which the Commission can grant the application, when Level 3 has failed to establish legal justification and necessity for its application; and
4. Level 3's Application is incomplete, as it does not provide all of the information required by the rules governing an application for a Certificate of Authority to provide local exchange services.

Respectfully submitted this 14<sup>th</sup> day of May, 2002.

BERESFORD MUNICIPAL TELEPHONE COMPANY:

By Darla Pollman Rogers and Thomas H. Frieberg by ap  
Darla Pollman Rogers  
MEYER & ROGERS  
P. O. Box 1117  
Pierre, South Dakota 57501  
Attorney for Beresford

Thomas H. Frieberg  
Frieberg, Zimmer, Duncan & Nelson  
P. O. Box 511  
Beresford, South Dakota 57004  
Attorney for Beresford

CERTIFICATE OF SERVICE

The undersigned hereby certifies that:

1. The original and ten copies of the foregoing MOTION TO DISMISS were hand delivered on the fourteenth day of May, 2002, to:

Deb Olofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

2. A copy of the foregoing MOTION TO DISMISS was hand-delivered on the fourteenth day of May, 2002, to:

Richard D. Coit  
Director of Industry Affairs  
South Dakota Telecommunications Association  
P. O. Box 57  
Pierre, South Dakota 57501

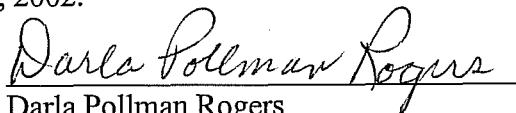
3. A copy of the foregoing MOTION TO DISMISS was served upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to said addressee, to-wit:

Thomas H. Frieberg  
Attorney at Law  
P. O. Box 511  
Beresford, South Dakota 57004-0511

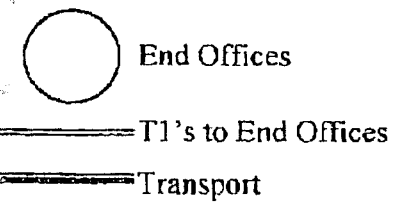
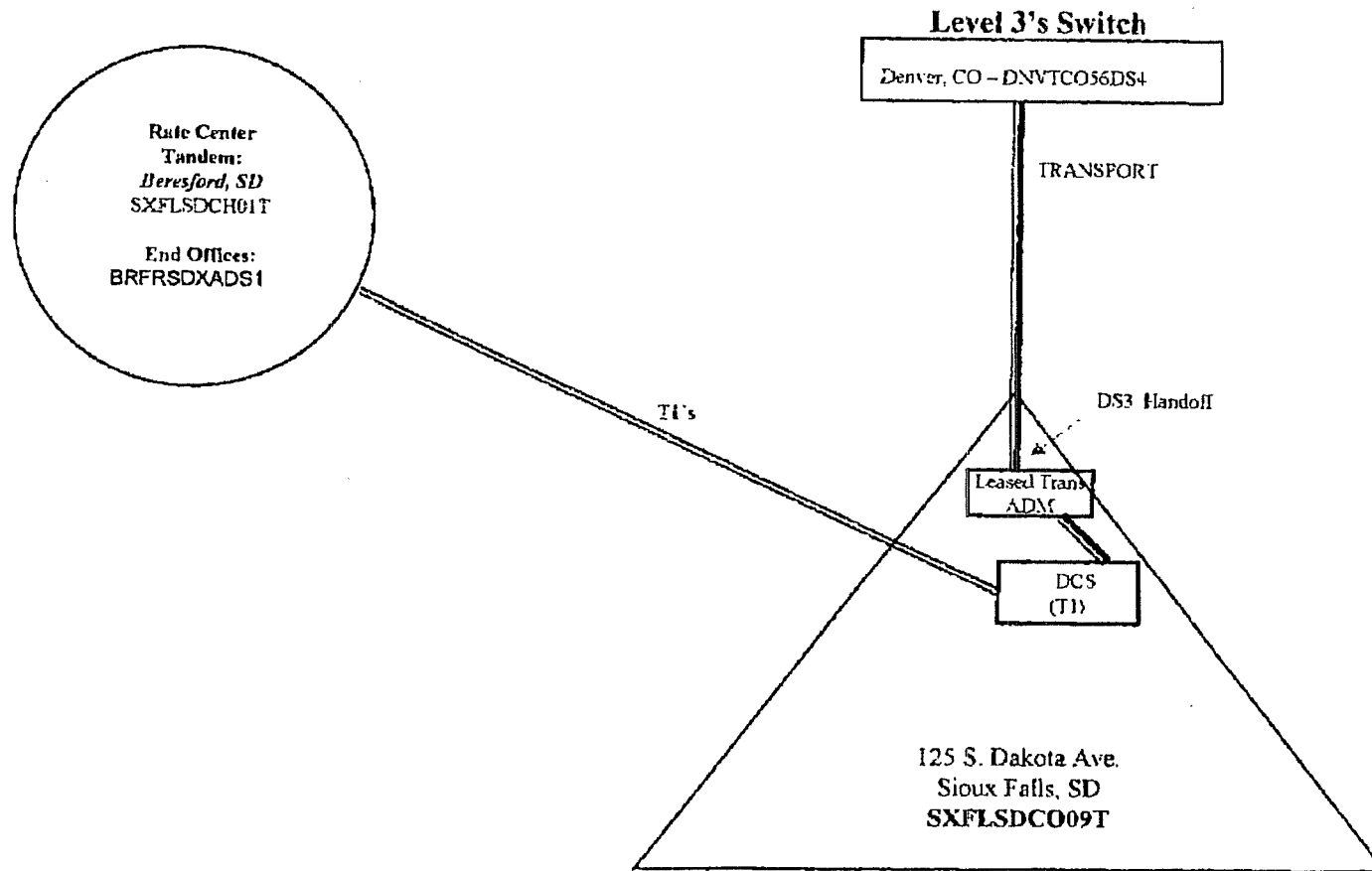
David A. Gerdes  
May, Adam, Gerdes & Thompson  
P. O. Box 160  
Pierre, South Dakota 57501

Michael R. Romano  
Director State Regulatory Affairs  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Dated this fourteenth day of May, 2002.

  
Darla Pollman Rogers  
MEYER & ROGERS  
P. O. Box 1117  
Pierre, South Dakota 57501

LATA 640  
 Trunking Architecture  
 Beresford, SD  
 Beresford Municipal Telephone



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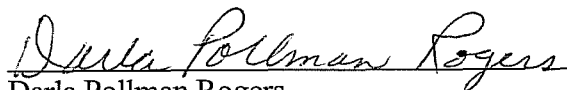
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Thomas H. Frieberg  
Attorney at Law  
P. O. Box 511  
Beresford, South Dakota 57004-0511

David A. Gerdes  
May, Adam, Gerdes & Thompson  
P. O. Box 160  
Pierre, South Dakota 57501

Michael R. Romano  
Director State Regulatory Affairs  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Dated this fourteenth day of May, 2002.

  
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500 East Capitol Avenue  
Pierre, South Dakota 57501

**RECEIVED**

MAY 15 2002

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY  
APPLICATION FOR BERESFORD TERRITORY**

Docket TC02-018

Our file: 3848

Dear Debra:

I am enclosing ten copies of this letter, asking that the letter be filed in the Commission's docket file in this matter.

With Level 3's filing of May 6, 2002, Level 3 considers its application to be complete within the meaning of SDCL § 49-31-72. Thus, it is Level 3's position that the time frames set forth in the statute commenced running on May 6.

If the Commission believes otherwise, we would appreciate its early notification of the manner in which the Commission believes the application to be deficient. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

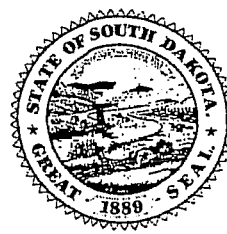
DAG:mw

Enclosures

cc: Keith Senger, Darla Pollman Rogers, Richard Coit, Mike Romano, Tom Frieberg, Brian McDermott/Tamar Finn

# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



Via FAX and U.S. Mail

March 12, 2002

Michael Romano  
Director – State Regulatory Affairs  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

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MAY 15 2002

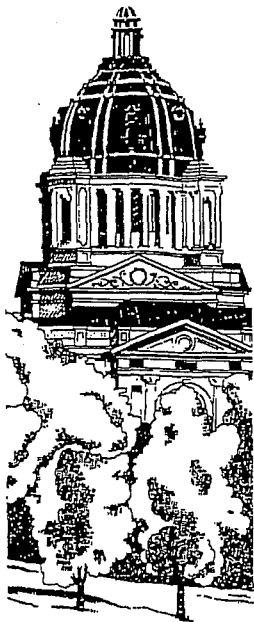
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: SDPUC Docket TC02-018 - In the Matter of the Application of Level 3 Communications, LLC for Approval to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Co.

Dear Mr. Romano:

On February 18, 2002, Level 3 Communications, LLC filed an application to expand its Certificate of Authority to provide facilities-based local exchange service in the service territory of Beresford Municipal Telephone Co. The application is considered incomplete because it does not provide the information required by the Administrative Rules of South Dakota (ARSD). Please provide the following required and requested information:

1. Please provide an "E-mail address" for the applicant. [pursuant to ARSD 20:10:32:03(1)]
2. Please provide "a description of the applicant's experience providing any telecommunications services in South Dakota or in other jurisdictions, including the types of services provided, and the dates and nature of state or federal authorization to provide the services." [ARSD 20:10:32:03(5)]
3. Provide "a list and specific description of the types of services the applicant seeks to offer and the means by which the services will be provided including:
  - (a) Information indicating the classes of customers the applicant intends to serve;
  - (b) Information indicating the extent to and time-frame by which applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale;
  - (c) A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers; and



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Amy Kayser  
Bob Knadle  
Delaine Kolbo  
Gregory A. Rislov  
Keith Senger  
John Smith  
Rolayne Ailts Wiest  
♦

- (d) Information identifying the types of services it seeks authority to provide by reference to the general nature of the service." [ARSD 20:10:32:03(7)]
4. Provide "information regarding policies, personnel, or arrangements made by the applicant which demonstrates the applicant's ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements." [ARSD 20:10:32:03(9)(b)]
  5. Provide "information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services." [ARSD 20:10:32:03(10)]
  6. The financial statements submitted with the application were for Level 3 Communications, Inc. Please submit the financial statements in accordance with ARSD 20:10:32:03(11) for the applicant, Level 3 Communications, LLC.
  7. It appears that item 9 of the application gives an explanation why Level 3 should receive a Commission waiver from ARSD 20:10:32:03(12). However, no request for waiver was provided. Please provide the specific information required by ARSD 20:10:32:03(12)(a), (b) and (c) or request a waiver in accordance with ARSD 20:10:32:03(22).
  8. South Dakota Law at 49-31-1.1, 1.2 and 1.3 list what services are defined as noncompetitive, emerging competitive, and fully competitive. Item 11 of the application indicated that Level 3 is not providing cost supports because the services it provides in South Dakota are competitive services. Please provide a complete and comprehensive list of services the application intends to provide.
  9. Please indicate Level 3's target market for this application. [ARSD 20:10:32:03(15)]
  10. Please provide "the date by which the applicant expects to meet the service obligations imposed pursuant to § 20:10:32:15 and applicant's plans for meeting the service obligations." [ARSD 20:10:32:03(16)]
  11. Please provide e-mail addresses for the contact individuals supplied in item 15 of the application. [ARSD 20:10:32:03(18)]
  12. Please provide "information concerning how the applicant plans to bill and collect charges from customers who subscribe to its proposed local exchange services." [ARSD 20:10:32:03(19)]
  13. Please provide "information concerning the applicant's policies relating to solicitation of new customers and a description of the efforts the applicant shall use to prevent the unauthorized switching of local service customers by the applicant, its employees, or agent." [ARSD 20:10:32:03(20)]

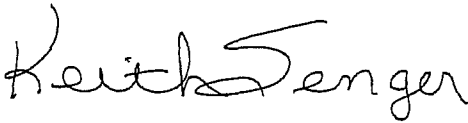


14. Why is the federal tax identification number for Level 3 Communications, LLC provided in this filing different than the federal tax identification number provided in a previous filing (docket TC99-015)?
15. Has Level 3 provided notice pursuant to ARSD 20:10:32:04?
16. Is Level 3 requesting a waiver for ARSD 20:10:32:18 and ETC status? If so, can Level 3 provide evidence that they can provide the service or functionality's of 47 C.F.R. 54.101(a), 47 C.F.R. 54.405 and 47 C.F.R. 54.411?
17. Section 2.6 of the proposed tariff attempts to limit the liability of the company. Under South Dakota law found at 49-13-1 and 49-13-1.1, a person has the right to claim damages from a telecommunications company by coming before the Commission or a court of competent jurisdiction. Please delete sections 2.6.2 and 2.6.14. Please delete section 2.6.4 or explain how Level 3 would expect this provision to apply. In section 2.6.9, please change "49-13-1 and 49-13-1.1" to "49-13-1, 49-13-1.1 and any other applicable law." If you have any questions or concerns regarding this issue, please contact Staff attorney, Kelly Frazier.

Please provide the above requested information by March 25, 2002.

If you have any questions, contact me at the Commission (605) 773-3201 or by e-mail; [keith.senger@state.sd.us](mailto:keith.senger@state.sd.us) .

Sincerely,

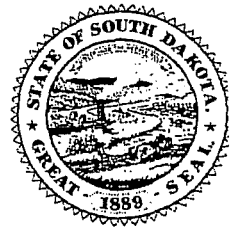


Keith Senger, Utility Analyst

cc: David Gerdes  
Kelly Frazier, Staff attorney

# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



RECEIVED

MAY 15 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Via FAX and U.S. Mail

April 15, 2002

Dave Gerdes  
May Adam, Gerdes & Thompson LLP  
503 South Pierre Street  
P.O. Box 160  
Pierre, SD 57501-0160

RE: SDPUC Docket TC02-018 - In the Matter of the Application of Level 3 Communications, LLC for Approval to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Co.

Dear Mr. Gerdes:

The following is Staff's second data request relating to the above referenced docket. Please provide the following information:

2-1. Item 10 of Staff's first data request states:

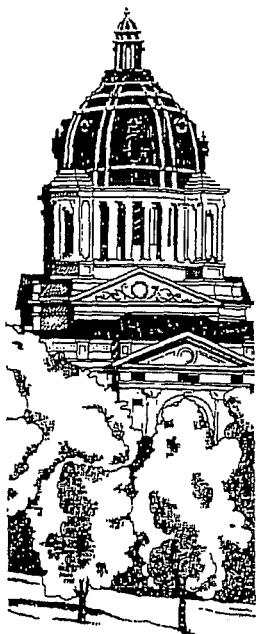
...Level 3 cannot provide the date by which it expects to meet the service obligations or a plan for meeting the service obligations. Therefore...Level 3 requests a waiver of ARSD 20:10:32:15...

Because Level 3 cannot provide the information required in ADSD 20:10:32:03(16) I believe that Level 3 must also request that rule be waived. Please provide. If you disagree, please explain why.

2-2. ARSD 20:10:32:10 states:

A telecommunications company providing local exchange services shall, at minimum, make the following available to each customer:

- (1) Access to the public switched network;
- (2) Access to emergency services such as 911 or enhanced 911;
- (3) Access to a local directory and directory assistance;
- (4) Access to operator services;
- (5) Telecommunications relay service capability or access necessary to comply with state and federal regulations;
- (6) Nonpublished service upon written or verbal request of the customer; and



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Amy Kayser  
Bob Knadle  
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Gregory A. Rislov  
Keith Senger  
John Smith  
Rolaney Ailts Wiest

(7) Access to interexchange services.

In your response to Staff's first data request you requested a waiver of ARSD 20:10:32:10(1)-(6) & (8). Please clarify.

Based on discussions with the parties to this docket, it is my understanding that Level 3 Communications, LLC (Level 3) and Beresford Municipal Telephone Co. (Beresford) are in discussions regarding the technical aspects of what Level 3 wants to provide. Since Beresford's stance on this application will play a big role in how the docket is processed, Staff will wait before we proceed. However, according to SDCL 49-31-72, the Commission must act on this application within 120 days of receiving the completed application. The Commission's Deputy Executive Director has suggested a hearing date of May 22, 2002. This does not mean that we need a hearing if all parties come to an agreement but we need to get a hearing date reserved. I will keep you posted.

Please provide the above requested information by May 3, 2002.

If you have any questions, contact me at the Commission (605) 773-3201 or by e-mail; [keith.senger@state.sd.us](mailto:keith.senger@state.sd.us).

Sincerely,

A handwritten signature in cursive script that reads "Keith Senger". The signature is written in black ink and is positioned above the typed name.

Keith Senger, Utility Analyst

cc: Michael Romano  
Kelly Frazier, Staff attorney

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF	)	
LEVEL 3 COMMUNICATIONS, LLC FOR	)	MOTION BY STAFF FOR
APPROVAL TO EXPAND ITS CERTIFICATE	)	DETERMINATION THAT
OF AUTHORITY TO PROVIDE FACILITIES-	)	APPLICATION IS INCOMPLETE
BASED LOCAL EXCHANGE SERVICES	)	OR IN THE ALTERNATIVE WAS
IN THE SERVICE TERRITORY OF BERESFORD	)	COMPLETE AS OF MAY 5, 2002
MUNICIPAL TELEPHONE CO.	)	

Comes now, Kelly D. Frazier, staff attorney, on behalf of Commission staff, and hereby Motions this Commission for an Order declaring that the filing in the above docket is not yet complete under ARSD 20:10:32:03 and as such, the automatic timeline of § 49-31-72 has not begun. In support of this motion staff hereby asserts as follows:

1. On February 19, 2001 the Commission received for approval a filing from Level 3 Communications, LLC (Level 3), to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Co.;
2. Pursuant to ARSD 20:10:32:03, a telecommunications company required to apply for a certificate of authority for local exchange services from the commission *shall* submit a written application and provide the required information enumerated in that rule to the Commission unless any item is specifically waived by the Commission (emphasis added);
3. SDCL 49-31-72 states that except when an evidentiary hearing is required by the commission, the Commission shall act on an application for a certificate of authority to provide local exchange service within sixty days of receiving a *complete* application. If an evidentiary hearing is required, the Commission shall act on the application within one hundred twenty days of receipt of a complete application (emphasis added);
4. It is staff's position that all information required under ARSD 20:10:32:03 must be provided before an application can be considered complete and for the timeline provisions of SDCL 49-31-72 to begin to toll;
5. Staff considers the application in this matter incomplete in that the original application and subsequent responses to date requests regarding ARSD 20:10:32:03(7) have not provided staff with

the information necessary for staff to understand the specific types of services the applicant seeks to offer and the means by which the services will be provided, as required by rule.

6. Since the provisions of ARSD 20:10:32:03 have not been met, it is staff's position that the application is not complete and therefore the timeline of SDCL 49-31-72 have not begun to toll.

WHEREFORE, Staff hereby requests an ORDER declaring the application of Level 3 is incomplete and that the timeline provisions of SDCL 49-31-72 have not begun to toll.

### IN THE ALTERNATIVE

In the alternative, if the Commission finds that the provisions of ARSD 20:10:32:03 have been met, and the application is complete, staff hereby Motions this Commission for an Order declaring that the filing in the above docket was not complete under ARSD 20:10:32:03 until May 6, 2002, and accordingly, the automatic timeline of § 49-31-72 did not begin until that date. In support of this motion staff hereby asserts as follows:

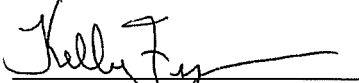
1. On February 19, 2001 the Commission received for approval a filing from Level 3 Communications, LLC (Level 3), to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Co.;
2. Pursuant to ARSD 20:10:32:03, a telecommunications company required to apply for a certificate of authority for local exchange services from the commission *shall* submit a written application and provide the required information enumerated in that rule to the Commission unless any item is specifically waived by the Commission (emphasis added);
3. SDCL 49-31-72 states that except when an evidentiary hearing is required by the commission, the Commission shall act on an application for a certificate of authority to provide local exchange service within sixty days of receiving a *complete* application. If an evidentiary hearing is required, the Commission shall act on the application within one hundred twenty days of receipt of a complete application (emphasis added);
4. On March 12, 2002 staff sent a first data request to Level 3 indicating that it was staff's opinion that the application was incomplete because it did not provide the information required by the Administrative Rules of South Dakota (ARSD). In response to that letter Level 3 supplemented its

original filing to provide further clarification on subsections (1), (5), (7), (9), (10), (11), (12), (15), (18), (19), (20), (23) of ARSD 20:10:32:03. This supplemental information was provided on March 26, 2002.

5. On March 26, 2002, Level 3 further changed its filing by requesting a waiver of sections 20:10:32:04, 20:10:32:10 & 20:10:32:15,
6. On April 15, 2002 second data request was sent to Level 3 seeking further clarification of ARSD 20:10:32:03(16) and ARSD 20:10:32:10. On May 6, 2002 Level 3 provided the material requested in staff's second data request.
7. On May 6, 2002, Level 3 further changed its filing by withdrawing its request for a waiver of ARSD 20:10:32:04 and requested a finding of fact that they were in compliance with that section. The company also amended their request for a waiver of ARSD 20:10:32:10.
8. On May 14, 2002 staff received a letter from the company's attorney, David Gerdes, stating that it was Level 3's opinion that as of May 6, 2002, the application was complete for the purposes of tolling the clock of SDCL §49-31-72.

WHEREFORE, staff hereby requests an ORDER in the alternative declaring the application of Level 3 was completed on May 6, 2002 and that the timeline provisions of SDCL 49-31-72 began to toll on that date.

Respectfully submitted this 20<sup>th</sup> day of May, 2002

  
Kelly D. Frazier  
Staff Attorney

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF )  
LEVEL 3 COMMUNICATIONS, LLC FOR )  
APPROVAL TO EXPAND ITS CERTIFICATE )  
OF AUTHORITY TO PROVIDE FACILITIES- )                      CERTIFICATE OF SERVICE  
BASED LOCAL EXCHANGE SERVICES )  
IN THE SERVICE TERRITORY OF BERESFORD )  
MUNICIPAL TELEPHONE CO. )

Kelly D. Frazier of the South Dakota Public Utilities Commission hereby certifies that on the 20<sup>th</sup> day of May, 2002, he mailed by United States mail, first class postage thereon paid, a true and correct copy of the **MOTION BY STAFF FOR DETERMINATION THAT APPLICATION IS INCOMPLETE OR IN THE ALTERNATIVE WAS COMPLETE AS OF MAY 5, 2002**

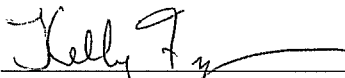
David A. Gerdes, Esq.  
Attorney for Level 3  
503 South Pierre Street  
PO Box 160  
Pierre, SD 57501-0160

Michael R. Ramano  
Director State Regulatory Affairs  
Level 3 Communications  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Thomas H. Frieberg, Esq.  
PO Box 511  
Beresford, SD 57004-0511

Darla Rogers, Esq.  
Meyer & Rogers Law Firm  
320 East Capitol Ave.  
Pierre, SD 57501

Richard Coit  
Director SDITC  
PO Box 57  
320 East Capitol Ave.  
Pierre, SD 57501-0057

  
\_\_\_\_\_  
Kelly D. Frazier  
Staff Attorney, SD PUC  
500 East Capitol Ave.  
Pierre, SD 57501-5070  
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OF COUNSEL  
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KARL GOLDSMITH 1885-1966

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Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

**RECEIVED**

MAY 28 2002

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY  
APPLICATION FOR BERESFORD TERRITORY**  
Docket TC02-018  
Our file: 3848

Dear Debra:

Enclosed are original and ten copies of Level 3's response to Beresford's motion to dismiss in the above-entitled matter. Please file the enclosure.

With a copy of this letter, I am sending copies of the response to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc: Keith Senger, Darla Pollman Rogers, Richard Coit, Mike Romano, Tom Frieberg, Brian McDermott/Tamar Finn



**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA**

**RECEIVED**

MAY 28 2002

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Docket No. TC02-018

\_\_\_\_\_)  
Application of )  
 )  
**Level 3 Communications, LLC** )  
 )  
To Expand its Certificate of Public )  
Convenience and Necessity to Provide )  
Facilities-Based Local Exchange )  
Services in the Service Territory )  
of Beresford Municipal Telephone Co. )  
\_\_\_\_\_)

**RESPONSE TO MOTION TO DISMISS**

On or about May 14, 2002, Beresford Municipal Telephone Company (“Beresford”) filed a Motion to Dismiss the above-captioned application of Level 3 Communications, LLC (“Level 3”). Level 3, by its undersigned counsel, hereby files this Response to Beresford’s Motion to Dismiss:

**I. BERESFORD HAS SHOWN NO ADEQUATE GROUNDS FOR DISMISSAL OF LEVEL 3’S APPLICATION**

Beresford argues that the Commission should dismiss Level 3’s application on four grounds. However, the first two alleged grounds are actually one. The first reason Beresford cites as a ground for dismissal is that Level 3 has failed to demonstrate that it will provide local exchange services as defined by statute.<sup>1</sup> The second claim is that Level 3 has not proposed to offer services that require a Certificate of Authority.<sup>2</sup> Clearly these are two statements of the same argument, although Beresford presents them to the Commission as two separate grounds for dismissal of Level 3’s application. As Beresford itself admits: “[i]n order for Level 3 to

<sup>1</sup> See Beresford Motion to Dismiss, at 9 (filed May 14, 2002).

demonstrate a need for a Certificate of Authority to provide local exchange services in the Beresford exchange, Level 3 would need to specifically identify the types of local exchange services it intends to offer.”<sup>3</sup> As discussed further below: (i) Level 3 believes that the Commission would want to ensure – and is charged with ensuring – that a provider of telecommunications has some Certificate of Authority; (ii) Level 3 has specifically identified the types of telecommunications service it intends to offer; and (iii) those telecommunications services fit in the local exchange category. Indeed, Level 3 expressly limited the scope of its proposed services to avoid any perceived challenge to Beresford’s rural exemption status; in essence, pursuant to Beresford’s argument, Level 3’s application could be dismissed because it attempted to assuage Beresford’s concern about its rural status. Level 3 has demonstrated a need for a Certificate of Authority to provide local exchange services in the Beresford exchange.

Beresford also urges the Commission to dismiss the application because Level 3’s practical reasons for the authority do not justify granting the authority and because it alleges that Level 3’s application is incomplete. Neither of these arguments supports dismissal of the application. The first argument is inapposite because the so-called “practical reasons” are not part of Level 3’s application at all, and their sufficiency is irrelevant. Level 3 provided the practical reasons why certification is needed at the request of staff and has never argued that these practical reasons in and of themselves justify grant of the requested authority. The second argument is erroneous. Level 3 has responded to all staff data requests and has requested a waiver of Commission rules in cases where the information required by the rules were inapplicable to Level 3’s proposed service offering. Therefore, Level 3’s application is complete and the Commission

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<sup>2</sup> See Beresford Motion to Dismiss, at 9.

<sup>3</sup> Beresford Motion to Dismiss, at 1-2.

should promptly move to consider the application on its merits rather than entertain Beresford's efforts to delay Level 3's limited scope of entry.

## **II. LEVEL 3'S PROPOSED SERVICE OFFERING REQUIRES A CERTIFICATE OF AUTHORITY FROM THE COMMISSION**

Beresford's argument that Level 3's proposed service offering does not require a Certificate of Authority from the Commission ignores key provisions of the South Dakota statutes that confer jurisdiction on the Commission to regulate the provision of telecommunications. In particular, the statute provides, in relevant part that "[t]he commission has general supervision and control of all *telecommunications companies* offering *common carrier* services within the state to the extent such business is not otherwise regulated by federal law or regulation."<sup>4</sup> The extent of the supervisory authority of the Public Utilities Commission of South Dakota over Level 3's proposed service offering will depend on whether (i) the company is a "telecommunications company;" (ii) whether the telecommunications company offers intrastate "common carrier" services; and (iii) that the "business is not otherwise regulated by federal law or regulation." As described below, Level 3 meets all three criteria and is therefore required to obtain certification from the Commission prior to offering telecommunications services in the service territory of Beresford.

The definition section of the Public Utilities Title of the South Dakota Codified Laws defines "telecommunications company" as:

any ... corporation owning, operating, reselling, managing, or controlling in whole or in part, any telecommunications line, system or exchange in this state, directly or indirectly for public use ... for public use means for the use of the pub-

---

<sup>4</sup> S.D. Codified Laws § 49-31-3 (emphasis added).

lic in general or for a specific segment of the public, or which connects to the public switched network for access to any telecommunications service.<sup>5</sup>

By the terms of this definition, Level 3 is a telecommunications company. As explained in its Application, in its March 26, 2002 Response to Staff Request, and in its May 7, 2002 Letter to Staff,<sup>6</sup> Level 3 will be offering its telecommunications services to end users that require either inbound data or non-switched services; *i.e.*, to Internet service providers.<sup>7</sup> As such, Level 3 will be offering services to a “specific segment of the public.”<sup>8</sup> Level 3’s offering will consist of direct inward dial service that connects end users to the public switched network in the Beresford local serving area. Since Level 3’s service offering “connects to the public switched network for access to [a] telecommunications service,”<sup>9</sup> Level 3 is a telecommunications company as defined by statute.

Level 3’s primary customers for its proposed service are Internet service providers. Pursuant to the Enhanced Service Provider exemption, Internet service providers are able to purchase telecommunications services from telecommunications carriers such as Level 3 out of an intrastate services tariff.<sup>10</sup> In providing this inbound-only connectivity to the public switched

---

<sup>5</sup> S.D. CODIFIED LAWS § 49-31-1(26). “Telecommunications service” is defined by statute as the “transmission of ... data or other information of any nature by wire ... .” S.D. CODIFIED LAWS § 49-31-1(27). Level 3’s service offering of direct inward dial trunks meets this definition.

<sup>6</sup> See Application of Level 3 Communications, LLC to Expand its Certificate of Convenience and Necessity to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Co., at 10 (filed Feb. 19, 2002); Level 3 Communications, LLC’s Response to Staff, at 2 (filed Mar. 26, 2002) (hereinafter, “Response”); Letter from David A. Gerdes, Attorney, May, Adam, Gerdes & Thompson LLP, to Keith Senger, Utility Analyst, Public Utilities Commission of South Dakota 1 (May 7, 2002).

<sup>7</sup> See *supra* n.8, Response, at 2.

<sup>8</sup> S.D. Codified Laws § 49-31-1(26).

<sup>9</sup> S.D. Codified Laws § 49-31-1(26).

<sup>10</sup> See e.g., *MTS/WATS Market Structure Order*, 97 FCC 2d at 715; *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53.

network to these customers, Level 3 is the local exchange carrier providing a regulated, tariffed telecommunications service. Thus, Level 3's proposed service offering will not be regulated at the federal level.

Since Level 3 is a telecommunications company proposing to offer telecommunications services as a common carrier that is not subject to federal regulation, Level 3 requires a Certificate of Authority pursuant to South Dakota Codified Laws, 49-31-3. In fact, Level 3 would be ill-advised to offer such service without seeking approval from the Commission as the same statute makes it a criminal act to offer telecommunications services without a Certificate of Authority.<sup>11</sup>

### **III. LEVEL 3'S PROPOSED SERVICE OFFERING CONSTITUTES LOCAL EXCHANGE SERVICE**

#### *A. The Record in This Docket Clearly Sets Forth Level 3's Proposed Service Offerings*

Beresford argues that the Commission should dismiss Level 3's application because Level 3 does not intend to offer local exchange service.<sup>12</sup> Yet Beresford also claims that "it is extremely difficult to ascertain exactly what services Level 3 intends to offer..."<sup>13</sup> Level 3's application, along with its March 26, 2002 Response to Staff Data Requests and the May 7, 2002 Letter, have described in detail and narrowed the services the Company intends to offer. These multiple clarifications – more than most competitors ever provide in seeking certification in South Dakota – provide more than enough specificity to define its proposed direct inward dial and private line services, and they provide the basis for an examination of the merits of the application. Beresford's professed confusion about Level 3's proposed services can be cleared up

---

<sup>11</sup> See S.D. Codified Laws § 49-31-3 ("The offering of such telecommunications services by a telecommunications company without a certificate of authority or inconsistent with this section is a Class 1 misdemeanor.").

<sup>12</sup> See Beresford's Motion, at 2-3.

by examining the record. Furthermore, since March 18, 2002 (when an information package regarding Level 3's proposals was sent to Beresford), representatives of Level 3 have been in contact with Beresford to explain what Level 3 wants to do. Level 3 has also participated in several conference calls since that time to explain further its proposed entry.<sup>14</sup>

Moreover, part of the reason Level 3 has narrowed its intended service offering to an in-bound-only local functionality is to minimize the impact of its market entry on Beresford. If Level 3 sought broader market entry (*i.e.*, to offer a full menu of local exchange services), Level 3 would have to rely heavily on nondiscriminatory, cost-based access to Beresford's network to provision service. Specifically, Level 3 might require collocation in Beresford's central offices, access to unbundled network elements and resale of Beresford's service offerings. As Beresford is aware, any broader request for authority by Level 3 would threaten Beresford's rural exemption under the Telecommunications Act of 1996.<sup>15</sup> While Level 3 is not interested in pursuing this course of action, and suspects that Beresford would also prefer not to venture down this path, Level 3 may be left with little choice if it is compelled to re-file its application in order to provide the desired services in the Beresford serving area.

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<sup>13</sup> Beresford's Motion, at 2.

<sup>14</sup> Beresford's Motion acknowledges these conversations as well. See Beresford's Motion, at 3 ("Beresford would further point out in support of its argument to dismiss that *Level 3 has indicated in discussions with Beresford ...*") (emphasis added).

<sup>15</sup> Level 3 further notes that by limiting the scope of its authority to provide only direct-inward dial and private line-type services, it has in fact defined its services much more narrowly and concretely than any other application typically would. Indeed, had Level 3 not narrowly defined its request for authority in this manner, it could conceivably provide *all manner* of intrastate services upon the grant of a Certificate of Authority, including but not limited to the two specific kinds of services mentioned here. However, for the reasons discussed above, Level 3 has attempted to narrow the scope of its application so as to minimize any impact on Beresford through its entry into the market.

Beresford's Motion also states that Level 3's customers will be "*other* Internet service providers ... ." <sup>16</sup> This statement illustrates Beresford's continued confusion concerning Level 3's proposed service offering in South Dakota. *Level 3 will not be an Internet service provider for purposes of the services it proposes to provide in South Dakota pursuant to this application.* Level 3 will be a local exchange carrier providing inbound local connectivity to the public switched telephone network. Internet service providers will be *the customers* that take advantage of this Level 3 telecommunications service offering. This is no different than the kinds of direct inward dial or Primary Rate Interface service offered by other local exchange carriers. As demonstrated above, the Commission has jurisdiction over the provision of this service due, in part, to the fact that it provides telecommunications access to the public switched telephone network. <sup>17</sup>

Beresford's lack of understanding concerning Level 3's proposed service offering is further illuminated by Beresford's puzzling assertion that Level 3's application is unnecessary due to the fact that Level 3's SEC Form 10-K contains a single statement that Level 3 is a tier 1 Internet service provider. <sup>18</sup> Level 3 questions the relevance and usefulness of providing the Commission with one out-of-context statement from a document that is 96 single-spaced pages long and filed in accordance with the regulations of the Securities and Exchange Commission. Further, Level 3 questions the reasonableness of using this single, out-of-context statement to demonstrate the Company's lack of need for an expanded Certificate of Authority in South

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<sup>16</sup> Beresford's Motion, at 2 (emphasis added).

<sup>17</sup> See *supra*, pp.2-4; S.D. Codified Laws §§ 49-31-1(26), 49-31-3.

<sup>18</sup> See Beresford's Motion, at 3.

Dakota. For a multitude of reasons – Level 3 will supply only a few – the Commission should simply reject this “evidence that Level 3’s application is unnecessary.”<sup>19</sup>

First, Beresford failed to note that the sentence on which it relies appears in a section titled “Interconnection and Peering.”<sup>20</sup> As described in the opening pages of the same document, Level 3 is involved in multiple businesses, including both telecommunications services and information services.<sup>21</sup> The one sentence that Beresford quotes refers to Level 3’s information services line of business and is completely irrelevant to the subject matter of this proceeding. (Beresford’s objection would be tantamount to denying a Certificate of Authority to provide telecommunications services to a firm that provides cable television services just because that company also happens to provide cable television services). Second, Beresford fails to point out that the Level 3’s SEC Form 10-K also contains a subsection titled “State Regulation.”<sup>22</sup> This section clearly states that Level 3 is subject to the jurisdiction of the state regulatory agencies – for example the South Dakota Public Utilities Commission – when “facilities and services are used to provide intrastate services,”<sup>23</sup> which is what Level 3 proposes to do here. Finally, the purpose of the SEC Form 10-K is to provide a comprehensive annual accounting and explanation of the company’s business and financial condition as required by the Securities and Exchange Commission. It does not attempt to explain the legal reasons as to why the company is regulated at the state level. Thus, this so-called “evidence that Level 3’s application is unnecessary” is a red herring.<sup>24</sup> Because the record shows that Level 3 intends to offer a telecommunications

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<sup>19</sup> Beresford Motion, at 3.

<sup>20</sup> See SEC Form 10-K (for the fiscal year ending Dec. 31, 2000), at 12.

<sup>21</sup> See SEC Form 10-K, at 3.

<sup>22</sup> See SEC Form 10-K, at 19.

<sup>23</sup> See SEC Form 10-K, at 19.

<sup>24</sup> See Beresford Motion, at 3.



service that is subject to state regulation, the Commission should not dismiss Level 3's application.

*B. The Definition of Local Exchange Service Does Not Require Level 3 to Have a Point of Presence in the Beresford Exchange*

Beresford then complains that, pursuant to discussion with Level 3, it has determined that Level 3 "does not intend to have a point of presence in Beresford" and that Level 3 is "requesting only trunking facilities from Beresford."<sup>25</sup> These two facts lead Beresford to assert that Level 3 does not intend to offer any local exchange services as defined by statute.<sup>26</sup> The relevant statute defines local exchange service as "the access to and transmission of two-way switched telecommunications service within a local exchange area."<sup>27</sup> Level 3 submits that neither its lack of a point of presence in Beresford, nor the fact that it requires only trunking facilities from Beresford is inconsistent with the definition of "local exchange service" as defined by the South Dakota Codified Laws. On the contrary, Level 3's proposed service offerings would provide access to telecommunications services within a local exchange area.<sup>28</sup> For example, Level 3's direct inward dial service will allow Internet service providers to offer their customers located in the Beresford exchange a local telephone number to access the Internet. Level 3 intends to do this by deploying NXX codes associated with the Beresford local calling areas and bringing facilities to a point of interconnection with Beresford within the local calling area. Therefore, Level 3 will

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<sup>25</sup> Beresford Motion, at 3.

<sup>26</sup> See Beresford Motion, at 3.

<sup>27</sup> S.D. Codified Laws §§ 49-31-1(13).

<sup>28</sup> While Level 3 would not be offering "two-way" services within the exchange by virtue of its inbound-only offering to ISPs, this is in part driven again by the fact that Level 3 is not seeking to challenge Beresford's rural exemption here. The only way that a competitor could offer truly competitive two-way services in the Beresford exchange would be to have Beresford's rural exemption lifted – a result that neither Beresford or Level 3 wants here. Moreover, as discussed further below, the DID-type service proposed by Level 3 here has in the past been classified by the Commission as a local exchange service, notwithstanding its one-way nature.

have a point of presence within the Beresford exchange. Level 3 will then transport the traffic to its own switching facilities and terminate the call to its end user customers. Other than originating the calls from Beresford users and delivering them to its point of interconnection with Level 3, Beresford has no further obligation to handle this traffic.<sup>29</sup> By the terms of the statute, Level 3 will be providing access to a telecommunications service within a local exchange area. Therefore, these facts do not support Beresford's assertion that the service provided by Level 3 is not a local exchange service.

Beresford then argues that since Level 3 will not provide "switched voice service," Level 3's proposed service offering falls outside the statutory definition of local exchange service.<sup>30</sup> Beresford's characterization of what the statute requires is incorrect. Earlier in its Motion, Beresford quotes from the South Dakota Codified Laws the definition of local exchange service as "the access to and transmission of two-way switched telecommunications service within a local exchange area."<sup>31</sup> There is no mention of dial tone, voice, or any other qualifier. Therefore, the fact that Level 3's service will be data only does not provide any basis for dismissing Level 3's application.

As detailed in its Application and other filings, Level 3's direct inward dial service is, admittedly, not two-way in the sense that Level 3's customers can only receive, not originate, calls. The service does, however, provide "access to ... switched telecommunications services

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<sup>29</sup> Under the terms of the Federal Communications Commission's ISP Order on Remand, Level 3 would not be entitled to terminating compensation for this traffic and, as Level 3 has discussed with Beresford, Level 3 would incur all transport and termination costs from the point of interconnection with Beresford. See generally, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Dkt Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ("ISP Order on Remand"), remanded, *WorldCom v. FCC*, 01-1218 (D.C. Cir. May 3, 2002).

<sup>30</sup> Beresford Motion, at 5; see also *id.* at 3-5.

<sup>31</sup> Beresford Motion, at 1 (quoting S.D. Codified Laws §§ 49-31-1(13)).

within a local exchange area.” Further, Commission Staff has previously testified that direct inward dial service can only be provided by a local exchange company.<sup>32</sup> In this same proceeding, the Commission found that direct inward dial service is a local exchange service, and that it should receive competitive classification. These facts reveal that the Commission has exerted jurisdiction over the provision of such service, and that it is properly provided by local exchange carriers. Thus, Level 3’s proposed service offering should be considered a local exchange service, and therefore the Company should receive certificate as local exchange carrier so that it can offer such service.

*C. Level 3’s Proposed Local Exchange Service Offering Furthers Important Policy Goals*

Aside from the legal arguments supporting a finding that Level 3’s proposed service offering is a local exchange service, such a finding would further important policy goals. Specifically, if competitive local exchange carriers are not permitted to provide this connectivity to Internet service providers’ customers, this could have a dramatic impact on the availability of Internet services in the State of South Dakota. If the Application here is dismissed or denied, this means that Internet service providers will have to install equipment in every small town in South Dakota to obtain local calling capability for their customers. It is safe to assume that no Internet service provider will do this any time soon due to the inefficiency of such a network and the costs associated with such an undertaking – costs that would likely have to be passed on to the consumer. The Commission should therefore reject Beresford’s Motion to Dismiss as it would result in denying South Dakota customers affordable access to the Internet.

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<sup>32</sup> See Inquiry into the Competitive Status of Optional Services in South Dakota, Decision and Order, F-3744 (rel. Feb 21, 1989).

#### IV. LEVEL 3 REQUIRES A CERTIFICATE OF AUTHORITY TO PROVIDE LOCAL EXCHANGE SERVICE

The next basis for Beresford's Motion to Dismiss is that Level 3's practical reasons for requiring a certificate of authority to provide local exchange service "are not a sufficient basis upon which the Commission can grant the application when Level 3 has failed to establish legal justification and necessity for its application."<sup>33</sup> Level 3 has established the legal justification and necessity for its application. Further, Level 3 never submitted the practical reasons as legal justification for its grant of a certificate of authority. Level 3 was responding to Staff inquiries concerning the practical reasons that certification might serve. Nevertheless, because Beresford has mischaracterized even these reasons, Level 3 responds to its allegations.

Beresford's rejects Level 3's concern about the difficulty of interconnecting with incumbent local exchange carriers as a reason to justify certification because this is "not ... an interconnection docket."<sup>34</sup> Relying on the 1996 Act, Beresford claims that the Act requires interconnection between all telecommunications carriers and not just local exchange carriers.<sup>35</sup> As an initial matter, Level 3 notes that Beresford has again either misunderstood or misconstrued Level 3's position. In the May 7, 2002 Letter, Level 3 stated:

*The view of most ILECs is that, under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, they are only compelled to interconnect with other LECs. Absent certification to that effect, it is our experience that they will argue that they are under no duty to negotiate or interconnect with a company.*<sup>36</sup>

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<sup>33</sup> Beresford's Motion, at 9.

<sup>34</sup> Beresford's Motion, at 5.

<sup>35</sup> Beresford's Motion, at 5-6.

<sup>36</sup> Letter from David A. Gerdes, Attorney, *May, Adam, Gerdes & Thompson LLP*, to Keith Senger, Utility Analyst, *Public Utilities Commission of South Dakota 2* (May 7, 2002) (emphasis added).

Thus, contrary to Beresford's assertion, this interpretation of the Act was never presented as the view of Level 3, or attributed to Beresford, but as the position taken by some ILECs. Level 3 agrees that there is no valid legal argument to justify this claim under the 1996 Act. However, because some ILECs have raised this argument as an obstacle to market entry, Level 3 logically identified it as a potential concern in response to the Staff's specific inquiry.

Further, Level 3 did not submit this ILEC position as a legal reason for granting certification, but responded to Staff inquiries concerning the practical reasons why the Company would require certification. By highlighting this practical reason for requiring certification, Level 3 hopes to avoid in South Dakota the circular reasoning it has faced from ILECs in other states—namely, Level 3 cannot interconnect because it is not certified and the Company cannot obtain certification because it has no need to interconnect. In fact, while Beresford's Motion claims that this ILEC position has no merit and that it must still interconnect with Level 3 in its capacity as a telecommunications carrier, at the same time it has yet to date to provide even a single written comment on the draft interconnection agreement that Level 3 provided over two months ago. While Level 3 agrees that Beresford's refusal to finalize interconnection arrangements with Level 3 should be addressed in an interconnection docket, the Commission should not dismiss Level 3's application simply because Beresford alleges certification is not necessary for interconnection.

Beresford also argues that Level 3's reason for requiring certification based on its need to obtain numbering resources is not valid because "this is an improper use of NXX numbers under FCC rules."<sup>37</sup> As an initial matter, Level 3 would like to note that whether its proposed use of number codes is proper under FCC rules is a decision that comes under the potential jurisdiction

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<sup>37</sup> Beresford Motion, at 6.

of three regulatory entities,<sup>38</sup> and is a separate matter that is addressed during the number assignment process. Second, Beresford cites no rule or legal authority to support its claim, but only its “belief” that what it understands to be Level 3’s proposed practice is improper. Since Beresford is simply making a baseless, speculative claim as to what it “believes,” Level 3 is under no obligation to respond substantively to this claim and the Commission should ignore this empty assertion on this basis alone. Additionally, as explained above, Level 3 did not advance this reason as a legal justification for granting its Application but was simply responding to Staff inquiries concerning the practical reasons that would require Level 3 to obtain a certificate.

#### **V. LEVEL 3’s APPLICATION IS COMPLETE**

Beresford’s final ground for its Motion to Dismiss is that “Level 3’s Application is incomplete, as it does not provide all of the information required by the rules governing an application for a Certificate of Authority to provide local exchange services.”<sup>39</sup> Level 3 submits that between its Application, its March 26, 2002 Response to Staff Data Request, its March 26, 2002 Request for Waiver and its May 7, 2002 Letter to Staff, its Application is complete. The level of detail in the Staff data requests demonstrates that staff has closely reviewed the application and requested additional information where staff believed it was necessary. Where Level 3 has not provided the requested information, for example 911, operator services, etc., the Company has sought waiver pursuant to the Commission’s rules. Therefore, the Commission should determine that Level 3’s application is complete, and address the merits of the application rather than Beresford’s procedural objections.

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<sup>38</sup> Level 3’s use of NXX codes is potentially subject to evaluation by the North American Numbering Plan Administrator, or the South Dakota Public Utilities Commission, or the FCC.

<sup>39</sup> Beresford’s Motion, at 9.

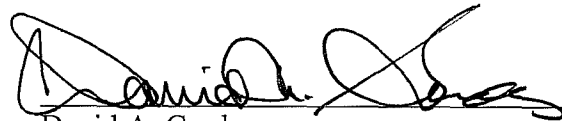
Even assuming, *arguendo*, that Level 3's application is incomplete, Level 3 submits that it would be extremely prejudicial to the Company to grant Beresford's Motion to Dismiss on this basis. If the Commission determines that more information is needed, the proper approach is to request additional data. Level 3 remains committed to obtaining certification for its proposed services in the Beresford exchange and will work with the Commission to assist in this process. The Commission should not dismiss Level 3's application on this basis, but, instead, simply ask for any information that the Commission deems necessary to evaluate Level 3's application.

**VI. CONCLUSION**

WHEREFORE, Level 3 Communications, LLC respectfully requests that the Commission reject Beresford's Motion to Dismiss and grant Level 3 the requested authority to provide facilities-based local exchange telecommunications services within the present local exchange service territories of Beresford Municipal Telephone Co.

Respectfully Submitted,

By:



David A. Gerdes  
May, Adam, Gerdes & Thompson LLP  
503 S. Pierre St.  
Pierre, South Dakota 57501  
(605)224-8803 (Tel)  
(605)224-6289 (Fax)

COUNSEL FOR APPLICANT



CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 28<sup>th</sup> day of May, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of **Level 3 Communications, LLC's Response to Motion to Dismiss** in the above-captioned action to the following at their last known addresses, to-wit:

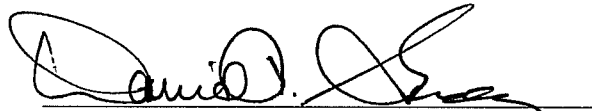
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Attorney at Law  
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Kelly Frazier  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Darla Pollman Rogers  
Meyer & Rogers  
P.O. Box 1117  
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SDs Ind. Tel Coalition  
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**HAND DELIVERED**

Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **LEVEL 3 COMMUNICATIONS; APPLICATION TO EXPAND ITS  
CERTIFICATE OF AUTHORITY**

Docket TC02-018  
Our file: 3848

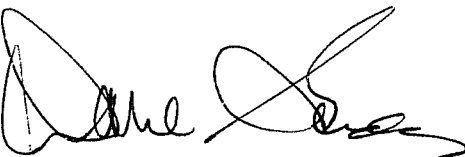
Dear Debra:

Enclosed is a certified copy of Judge Anderson's order admitting Michael R. Romano as a nonresident attorney to appear in this proceeding *pro hac vice*. Please file the enclosure.

With a copy of this letter, I am sending copies of the order to counsel of record.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosure

cc/enc: Keith Senger, Darla Pollman Rogers, Richard Coit, Mike Romano, Tom Frieberg

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

Application of )  
 )  
Level 3 Communications, LLC )  
 )  
To Expand its Certificate of Public )  
Convenience and Necessity to Provide )  
Facilities-Based Local Exchange )  
Services in the Service Territory )  
of Beresford Municipal Telephone Co. )

TC02-018

RECEIVED

MAY 29 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

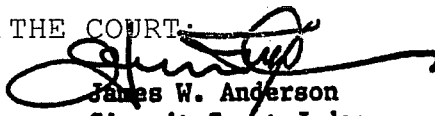
ORDER TO ADMIT NONRESIDENT  
ATTORNEY PRO HAC VICE

Upon the application of Michael R. Romano to appear as a nonresident attorney in the above-entitled action pursuant to SDCL § 16-18-2, and it appearing that said nonresident attorney is a reputable attorney who will observe the ethical standards required of attorneys in this state, and it further appearing that said nonresident attorney is appearing with a resident attorney who recommends his admission, and it further appearing that the requisite filing fee has accompanied the motion, it is

ORDERED that the motion of Michael R. Romano to appear as a nonresident attorney in the above-entitled matter is hereby granted and he is hereby admitted *pro hac vice*.

Dated this \_\_\_\_\_ day of May, 2002.

BY THE COURT:

  
James W. Anderson  
Circuit Court Judge  
\_\_\_\_\_  
Circuit Court Judge

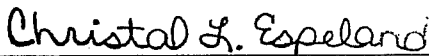
State of South Dakota } ss  
County of Hughes }

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 29<sup>th</sup> day of May, 2002.  
CHRISTAL L. ESPELAND, Clerk of Courts

By   
Clerk of Courts/Deputy

ATTEST:



Clerk of Courts

By   
(SEAL)

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.

FILED

MAY 29 2002

Christal L. Espeland CLERK

By \_\_\_\_\_ Deputy

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF )  
LEVEL 3 COMMUNICATIONS, LLC FOR )  
APPROVAL TO EXPAND ITS CERTIFICATE OF )  
AUTHORITY TO PROVIDE FACILITIES-BASED )  
LOCAL EXCHANGE SERVICES IN THE )  
SERVICE TERRITORY OF BERESFORD )  
MUNICIPAL TELEPHONE CO. )

ORDER GRANTING LATE  
FILED INTERVENTION

TC02-018

On February 19, 2002, the Public Utilities Commission (Commission) received an Application from Level 3 Communications, LLC (Level 3) for approval to expand its certificate of authority to provide local exchange services in the service territory of Beresford Municipal Telephone Co.

On February 21, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 8, 2002, to interested individuals and entities. Beresford Municipal Telephone Co. (Beresford) filed a Petition to Intervene on March 4, 2002. At a regularly scheduled meeting of March 28, 2002, the Commission granted intervention to Beresford. On May 9, 2002, the Commission received a Petition for Late Intervention from the South Dakota Telecommunications Association (SDTA).

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:01:15.05.

At a regularly scheduled meeting of May 30, 2002, the Commission found that the Petition for Late Intervention shall be granted. It is therefore

ORDERED, that the Petition for Late Intervention of SDTA is hereby granted.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of June, 2002.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melaine Kolbe</u>
Date: <u>6/10/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Robert K. Sahr  
ROBERT K. SAHR, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>ORDER DENYING MOTION</b>
<b>LEVEL 3 COMMUNICATIONS, LLC FOR )</b>	<b>TO DISMISS AND</b>
<b>APPROVAL TO EXPAND ITS CERTIFICATE OF )</b>	<b>SPECIFYING PROCEDURE</b>
<b>AUTHORITY TO PROVIDE FACILITIES-BASED )</b>	<b>FOR DETERMINING</b>
<b>LOCAL EXCHANGE SERVICES IN THE )</b>	<b>COMPLETENESS</b>
<b>SERVICE TERRITORY OF BERESFORD )</b>	
<b>MUNICIPAL TELEPHONE CO. )</b>	<b>TC02-018</b>

On February 19, 2002, the Public Utilities Commission (Commission) received an Application from Level 3 Communications, LLC (Level 3) for approval to expand its certificate of authority to provide local exchange services in the service territory of Beresford Municipal Telephone Co.

On February 21, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 8, 2002, to interested individuals and entities. Beresford Municipal Telephone Co. (Beresford) filed a Petition to Intervene on March 4, 2002. At a regularly scheduled meeting of March 28, 2002, the Commission granted intervention to Beresford. On May 9, 2002, the Commission received a Petition for Late Intervention from the South Dakota Telecommunications Association (SDTA). At a regularly scheduled meeting on May 30, 2002, the Commission granted late intervention to SDTA.

On May 14, 2002, Beresford filed a Motion to Dismiss on the grounds (i) that Level 3 does not intend to provide "local exchange services" as that term is defined in SDCL 49-31-1(13) and (ii) that Level 3's Application is incomplete. On May 20, 2002, the Commission Staff filed a Motion for Determination that Application is Incomplete or in the Alternative was Complete as of May 6, [sic] 2002 (Staff's Motion). The purpose of Staff's Motion was to have the Commission determine whether and when the time limits for decision set forth in SDCL 49-31-72 had begun, or will begin, to run.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, particularly 49-31-69 through 75, inclusive, and ARSD 20:10:01:32.06.

On May 30, 2002, at its regularly scheduled meeting, the Commission considered both Beresford's and Staff's motions. All parties appeared through counsel and presented oral argument on the issues presented by the motions. A transcript was taken of the proceedings. After hearing and considering the arguments and authorities of the parties, a majority of the Commission voted (i) to deny Beresford's Motion to Dismiss at this stage of the proceedings without prejudice to Beresford's right to renew the motion at a later date, (ii) to grant the portion of Staff's Motion requesting a determination that Level 3's application is incomplete at this time, (iii) to deny that portion of Staff's Motion requesting a determination that Level 3's application was complete as of May 6, 2002, and (iv) to

direct that Staff make the determination of when Level 3's application is "complete" within the meaning of SDCL 49-31-72 after affording Level 3 a reasonable period of time to provide additional information in response to the Staff's identification of the specific items which it alleges are incomplete, subject to Level 3's right to come back to the Commission for a determination of completeness in the event that Level 3 disagrees with Staff's determination or the decision is unreasonably delayed. Commissioner Nelson dissented from the portion of the motion denying Beresford's Motion to Dismiss but noted her approval of the portion affording Beresford the right to renew its Motion to Dismiss at a later date. It is therefore

ORDERED, that the Motion to Dismiss filed by Beresford is hereby denied without prejudice to Beresford's right to renew the motion at a later stage in the proceedings; and it is further

ORDERED, that Level 3's application was incomplete as of May 6, 2002, and remained incomplete as of May 30, 2002, and that Staff shall make a determination of when the application is "complete" within the meaning of SDCL 49-31-72 after affording Level 3 a reasonable period of time to provide additional information in response to Staff's identification of the specific items which it alleges are incomplete and subject to Level 3's right to come back before the Commission for a determination of completeness if Level 3 disagrees with Staff's determination or decision is unreasonably delayed.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of June, 2002.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Meldine Kalbo</u>
Date: <u>6/10/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Robert K. Sahr  
ROBERT K. SAHR, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>DETERMINATION</b>
<b>LEVEL 3 COMMUNICATIONS, LLC FOR )</b>	<b>CONCERNING ADEQUACY</b>
<b>APPROVAL TO EXPAND ITS CERTIFICATE OF )</b>	<b>OF NOTICE</b>
<b>AUTHORITY TO PROVIDE FACILITIES-BASED )</b>	
<b>LOCAL EXCHANGE SERVICES IN THE )</b>	<b>TC02-018</b>
<b>SERVICE TERRITORY OF BERESFORD )</b>	
<b>MUNICIPAL TELEPHONE CO. )</b>	

On February 19, 2002, the Public Utilities Commission (Commission) received an Application from Level 3 Communications, LLC (Level 3) for approval to expand its certificate of authority to provide local exchange services in the service territory of Beresford Municipal Telephone Co.

On February 21, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 8, 2002, to interested individuals and entities. Beresford Municipal Telephone Co. (Beresford) filed a Petition to Intervene on March 4, 2002. At a regularly scheduled meeting on March 28, 2002, the Commission granted intervention to Beresford.

On March 26, 2002, Level 3 filed a Request for Waiver of certain Commission rules applicable to applications for certificates of authority to provide local exchange service. Paragraph 3 of the Request for Waiver requested a waiver of ARSD 20:10:32:04, requiring the giving of notice to each local exchange carrier then holding a certificate of authority to provide local exchange service in the area covered by the application. On May 6, 2002, Level 3 filed a Supplemental Request for Waiver and Request for Finding of Fact. In Paragraph 2 of its Supplemental Request, Level 3 withdrew its request for a waiver of ARSD 20:10:32:04 and in lieu requested the Commission to find that Beresford has actual knowledge of Level 3's application and that this actual notice satisfies ARSD 20:10:32:04.

On May 9, 2002, the Commission received a Petition for Late Intervention from the South Dakota Telecommunications Association (SDTA). At a regularly scheduled meeting on May 30, 2002, the Commission granted late intervention to SDTA.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, particularly 49-31-69 through 75, inclusive, and ARSD 20:10:01:32.06.

On May 30, 2002, at its regularly scheduled meeting, the Commission considered Level 3's Supplemental Request for Finding of Fact. All parties were present through counsel when the issue was considered. Beresford agreed on the record that its intervention demonstrated that it had actual notice of Level 3's application and that by intervening and participating in the proceeding, it waived its right to object to the insufficiency of Level 3's notice at the time of the filing of its application. Staff supported Level 3's request and SDTA voiced no objection.

Based on Beresford's statements on the record and the filings contained in the docket record, the Commission finds that:

1. Beresford moved to intervene in this proceeding on March 4, 2002, and was granted intervention on March 28, 2002.

2. Beresford agreed on the record at the May 30, 2002, hearing that it had received notice of Level 3's application and that its intervention and participation in the proceeding demonstrated it had actual knowledge of the proceeding.

The Commission accordingly determines that the notice requirement of SDCL 49-31-70 has been satisfied, that Level 3's failure to give notice to Beresford required by ARSD 20:10:32:04 did not prejudice Beresford's rights in this proceeding, that the purposes of ARSD 20:10:32:04 have been fulfilled in fact and that the requirement of giving notice to Beresford under ARSD 20:10:32:04 shall be deemed satisfied.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of June, 2002.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melaine Kalbo</u>
Date: <u>6/10/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Robert K. Sahr  
ROBERT K. SAHR, Commissioner



THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

**RECEIVED**

= = = = = JUN 12 2002 =

IN THE MATTER OF THE APPLICATION OF  
LEVEL 3 COMMUNICATIONS, LLC FOR AN  
APPROVAL TO EXPAND ITS CERTIFICATE OF  
AUTHORITY TO PROVIDE FACILITIES-BASED  
LOCAL EXCHANGE SERVICES IN THE SERVICE  
TERRITORY OF BERESFORD MUNICIPAL  
TELEPHONE CO.

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

TC02-018

**ORIGINAL**

= = = = =

Transcript of Proceedings  
May 30, 2002

= = = = =

BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, VICE CHAIRMAN  
ROBERT SAHR, COMMISSIONER

COMMISSION STAFF

- John Smith
- Karen Cremer
- Kelly Frazier
- Greg Rislov
- Mary Healy
- Harlan Best
- Keith Senger
- Dave Jacobson
- Michele Farris
- Heather Forney
- Mary Giddings
- Sue Cichos
- Debra Elofson

APPEARANCES

- David A. Gerdes, Midcontinent Communications
- Darla Pollman Rogers, Beresford Municipal
- Richard D. Coit, SDTA
- Mike Romano, Level 3

Reported By Cheri McComsey Wittler, RPR

**PRECISION REPORTING**  
**L I M I T E D**

1 THE PUBLIC UTILITIES COMMISSION  
2 OF THE STATE OF SOUTH DAKOTA  
3 =====  
4 IN THE MATTER OF THE APPLICATION OF  
5 LEVEL 3 COMMUNICATIONS, LLC FOR AN  
6 APPROVAL TO EXPAND ITS CERTIFICATE OF  
7 AUTHORITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE SERVICES IN THE SERVICE TERRITORY OF BERESFORD MUNICIPAL TELEPHONE CO. TC02-018  
8 =====  
9 Transcript of Proceedings  
10 May 30, 2002  
11 =====  
12 BEFORE THE PUBLIC UTILITIES COMMISSION,  
13 JIM BURG, CHAIRMAN  
14 PAM NELSON, VICE CHAIRMAN  
15 ROBERT SAHR, COMMISSIONER  
16  
17 COMMISSION STAFF  
18 John Smith  
19 Karen Cremer  
20 Kelly Frazier  
21 Greg Rislov  
22 Mary Healy  
23 Harlan Best  
24 Keith Senger  
25 Dave Jacobson  
26 Michele Farris  
27 Heather Forney  
28 Mary Giddings  
29 Sue Cichos  
30 Debra Elofson  
31  
32 APPEARANCES  
33 David A. Gerdes, Midcontinent Communications  
34 Darla Pollman Rogers, Beresford Municipal  
35 Richard D. Coit, SDTA  
36 Mike Romano, Level 3  
37  
38 Reported By Cheri McComsey Wittler, RPR  
39  
40  
41  
42

1 CHAIRMAN BURG: TC02-018, In The  
2 Matter of the Application of Level 3  
3 Communications, LLC For Approval to Expand Its  
4 Certificate of Authority to Provide  
5 Facilities-Based Local Exchange Services in the  
6 Service Territory of Beresford Municipal Telephone  
7 Company.  
8 Today shall the Commission grant an  
9 intervention to SDTA? Secondly, shall the  
10 Commission grant Beresford's Motion to Dismiss?  
11 And, shall the Commission grant staff's Motion for  
12 a determination that the application of Level 3 is  
13 incomplete or, in the alternative, that the  
14 application was complete as of May 6, 2002? Also  
15 how shall the Commission rule on Level 3's request  
16 for Finding of Fact?  
17 I think we'll take these one at a time. Today  
18 shall the Commission grant intervention to SDTA?  
19 Is anybody representing SDTA?  
20 Rich?  
21 MR. COIT: Mr. Chairman,  
22 Commissioners, my name is Richard Coit. I'm here  
23 today representing the South Dakota  
24 Telecommunications Association.  
25 We didn't file the intervention initially in

1 APPEARANCES BY TELEPHONE 2  
2 Colleen Sevold, Qwest Corporation  
3 John Munn, Qwest Corporation  
4 Philip Roselli, Qwest Corporation  
5 Tom Welk, Qwest Corporation  
6 Janet Browne, AT&T  
7 Steven Weigler, AT&T  
8 Brad Vanleur, VP Telecom  
9 Mike Powers, VP Telecom  
10 Mary Lohnes, Midcontinent Communications  
11 David Prazak, Otter Tail Power Co.  
12 Cindy Grosvenor, TELECOM Consulting  
13 Tom Frieberg, City of Beresford  
14 Wayne Akland, City of Beresford  
15 Jerry Zeimet, City of Beresford  
16  
17 =====  
18 TRANSCRIPT OF PROCEEDINGS, held in the  
19 above-entitled matter, at the South Dakota State  
20 Capitol, Room 412, 500 East Capitol Avenue, Pierre,  
21 South Dakota, on the 30th day of May 2002, commencing  
22 at 1:30 p.m.  
23  
24  
25

1 this Docket. The intervention date as set  
2 initially by the Commission was March 8. Since  
3 that time there have been a number of filings -- I  
4 guess about three filings that I'm aware of -- that  
5 Level 3 has made with the Commission providing more  
6 information regarding its application. And I think  
7 what we've been able to determine at this point is  
8 clearly that this is really not a run of the mill  
9 local exchange certification proceeding.  
10 There are some residential questions raised,  
11 new questions that have been raised with some of  
12 this additional information that's been filed, and  
13 it's because of that that we took the -- we felt  
14 compelled to seek intervention in this proceeding.  
15 On the intervention petition with regard to  
16 some of the new issues I've indicated on page 4 of  
17 that petition what those new issues are or at least  
18 some of those new issues. You know, one question  
19 is now looking at what they've provided whether  
20 they, in fact, intend to offer any local exchange  
21 services that require a certification. There are  
22 other issues as well relating to waivers of service  
23 obligations. All of these issues are important  
24 issues to the industry as a whole, and it's on that  
25 basis that we really feel that the public interest

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1 requires in this case that we be granted  
 2 intervention.  
 3 We also had really no ability when this thing  
 4 was first filed to reasonably foresee some of these  
 5 issues would be presented in this case. So from a  
 6 due process standpoint we feel we should also be  
 7 given a chance for this late intervention.  
 8 The Level 3 itself has given an indication  
 9 that, you know, they really -- they, I guess, don't  
 10 feel that their application or -- or have agreed, I  
 11 guess, that their application was incomplete at  
 12 least through May 6, and given all of that, we just  
 13 would ask the Commission to grant us intervention  
 14 in this process.  
 15 It's an important Docket. There are some very  
 16 substantial issues, and up until this point in time  
 17 up to the time that we submitted our petition we  
 18 really didn't know what those issues were. So with  
 19 that I would entertain any questions.  
 20 CHAIRMAN BURG: Is there any  
 21 objection to the late intervention of SDTA?  
 22 MR. ROMANO: Good afternoon,  
 23 Mr. Chairman, Commissioners. My name is  
 24 Mike Romano. I'm the Director of State Regulatory  
 25 Affairs for Level 3.

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1 We do not have any opposition to the petition  
 2 for late intervention. We think too the  
 3 substantial questions presented here, that all the  
 4 parties should have a chance to examine in a more  
 5 thorough manner and we do not oppose SDTA's  
 6 intervention at this time to participate in that  
 7 examination.  
 8 CHAIRMAN BURG: Are there any other  
 9 comments?  
 10 If not, I will move we grant intervention to  
 11 SDTA in Docket TCO2-018.  
 12 COMMISSIONER NELSON: Second.  
 13 COMMISSIONER SAHR: Concur.  
 14 CHAIRMAN BURG: The second question,  
 15 shall the Commission grant Beresford's Motion to  
 16 Dismiss.  
 17 I'm going to ask Beresford to give us an  
 18 argument in favor of their Motion to Dismiss.  
 19 MS. POLLMAN ROGERS: Good afternoon,  
 20 Commissioners and staff members. In light of the  
 21 track record with motions to dismiss today I'm not  
 22 sure that I want to address my own Motion here, but  
 23 I will do so.  
 24 I would tell you my name is Darla Pollman  
 25 Rogers, and I represent Beresford Municipal

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1 Telephone Company. We also have on the phone  
 2 Tom Frieberg who represents Beresford as well and  
 3 Wayne Ackland, who is the general manager of the  
 4 telephone company. I will make a few brief  
 5 comments with regard to our Motion and then perhaps  
 6 Tom would want to follow up with some other  
 7 comments if he perceives that I've missed some.  
 8 We did file a Motion to Dismiss the  
 9 application of Level 3 for a Certificate of  
 10 Authority to provide local exchange services.  
 11 Basically our Motion was founded on two grounds.  
 12 The first one was that Level 3 does not need a  
 13 Certificate of Authority to provide local exchange  
 14 services in Beresford because according to the  
 15 application and information that has been filed to  
 16 date, they do not really intend to offer or provide  
 17 local exchange services.  
 18 The second grounds upon which we've filed this  
 19 Motion is because the application is incomplete.  
 20 And under the rules that requires that the  
 21 application be rejected, which I perceive to be the  
 22 same thing as dismissed. I believe that even with  
 23 the additional filings that Level 3 has provided,  
 24 the application is still not complete as we sit  
 25 here today. I think my Motion basically speaks for

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1 itself, and I will not address that further.  
 2 Within the past two days, however, I have  
 3 received from Level 3 a response to our Motion and  
 4 I would just like to respond to some of the points  
 5 made in Level 3's response.  
 6 First of all, I think it is very important to  
 7 focus on the nature of Level 3's application. What  
 8 they are asking for as I noted before is the  
 9 authority to provide local exchange services in  
 10 Beresford. It's Beresford's position that that is  
 11 not what Level 3 actually intends to offer, at  
 12 least not according to what they have filed to  
 13 date.  
 14 Level 3 has defined the services to be  
 15 provided in Beresford as DID and private line or  
 16 nonswitched services, and these would be inbound  
 17 only. So those services as described do not fit  
 18 the definition of local exchange services found in  
 19 SDCL 49-31-1.  
 20 In response to that, Level 3 has cited the  
 21 general supervisory authority of the PUC over  
 22 telecommunications authority and companies and  
 23 common carriers, and that's found in SDCL 49-31-3.  
 24 Beresford doesn't argue with that statutory  
 25 authority. Obviously, you do have general

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1 authority to regulate telecommunications companies.  
 2 But that's really not the point of the  
 3 application. The point of the application is for a  
 4 Certificate of Authority to provide local exchange  
 5 services. So regardless of whether Level 3 meets  
 6 the definitions in 49-31-3, that does not relieve  
 7 them of the obligation to show that they actually  
 8 are going to provide local exchange services as  
 9 those terms are defined in our statute. So I would  
 10 submit that 49-31-3 is a general authority statute,  
 11 and it's not applicable in this case.  
 12 Level 3 next points out that its primary  
 13 customers for its proposed services are ISPs,  
 14 Internet service providers, and that ISPs can  
 15 purchase out of a local tariff local services from  
 16 telecommunications carriers and use them for  
 17 interstate services. That is true. But just  
 18 because ISPs are able to do so, does not convert  
 19 the -- automatically convert the provider of those  
 20 services into a local service provider.  
 21 And, again, you go back to what they say  
 22 they're going to provide. They're going to provide  
 23 inbound only connectivity to the public switched  
 24 network, to the ISPs. That's what they're going to  
 25 provide. That is not a local service and does not

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1 magically convert Level 3 into a provider of local  
 2 exchange services. Inbound only connectivity to  
 3 the public switched network is not a local exchange  
 4 service as defined by the statute.  
 5 So Level 3's argument with regard to ISPs as  
 6 its customers does not support its need for a  
 7 Certificate of Authority to provide local exchange  
 8 services in Beresford.  
 9 I think it's really important to focus on  
 10 Level 3's own description of its intended services.  
 11 The direct inward dialing as they describe will be  
 12 utilized by Level 3 and private line services for  
 13 inbound only functionality defies the statutory  
 14 definition of local exchange services. Our statute  
 15 says it has to be two-way switched services. So to  
 16 say that DID and private line services are local  
 17 and then to turn around and say but they're inbound  
 18 only takes it right out of our definition of local  
 19 exchange services.  
 20 I would also note in passing that Level 3's  
 21 implication that narrowing the scope of the  
 22 application just to these services is sort of a  
 23 favor or something that benefits Beresford, I don't  
 24 agree with that. If, in fact, Level 3 really did  
 25 intend to offer local exchange services, they could

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1 do so now under current laws, and it's no -- it's  
 2 not any benefit to us to limit the scope of  
 3 services the way they have.  
 4 I think we need to back up and look at what  
 5 constitutes local services. Black letter law  
 6 dictates that the jurisdictional nature of a call  
 7 is determined by where the call originates and then  
 8 where it terminates. In this case, according to  
 9 the plans submitted, the calls will originate in  
 10 Beresford, via the NXX codes, assuming they  
 11 ultimately get those, so they are originating in  
 12 Beresford's local service area, and then those  
 13 calls are being terminated in Sioux Falls or  
 14 wherever -- whatever point of presence Level 3 has  
 15 out there. Their diagram indicates it's in  
 16 Sioux Falls.  
 17 Now when calls originate in a local service  
 18 area and terminate somewhere else most people would  
 19 say that that's long distance service. Level 3  
 20 doesn't call it that. You can call it whatever you  
 21 want, but where it originates in one service area  
 22 and terminates somewhere else it is not local  
 23 service. And that's what -- from the plans and the  
 24 diagrams submitted, that's what it appears Level 3  
 25 intends to do.

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1 I would submit that this is a very -- it is a  
 2 unique case. It's unique in the sense of the way  
 3 the plan appears to operate. There is no evidence  
 4 that there's going to be local exchange services  
 5 here. They have not come into Beresford and  
 6 purchased any local services from Beresford.  
 7 They're not providing any local services.  
 8 What they're doing is they're just asking for  
 9 connection at the Beresford switch, thereby  
 10 obligating Beresford to deliver their traffic  
 11 somewhere else outside of the service area without  
 12 compensation so the DID part is actually the  
 13 marketing that gets the calls -- or the NXX numbers  
 14 to the ISP providers.  
 15 And yet by doing that somehow they're saying,  
 16 well, this becomes a local service and, therefore,  
 17 we need a Certificate of Authority. We disagree  
 18 with that premise, and we think that the  
 19 application should be denied on that ground.  
 20 With regard to our second ground, we feel that  
 21 the application is incomplete. We think it's still  
 22 incomplete even after the responses. And my  
 23 construction of our rules is that an incomplete  
 24 application should be rejected and, therefore,  
 25 that's our second ground for dismissal.

1 CHAIRMAN BURG: Could you identify a  
 2 little bit more why you feel it's incomplete?  
 3 MS. POLLMAN ROGERS: I identified in  
 4 my Motion specific portions of the rules that I  
 5 felt were not complied with, and in Level 3's  
 6 response they did not respond specifically to any  
 7 of those allegations.  
 8 CHAIRMAN BURG: Thank you. Any  
 9 questions for Ms. Rogers?  
 10 COMMISSIONER SAHR: Ms. Rogers, do  
 11 you think there could be any debate over whether or  
 12 not this would be considered to be a local exchange  
 13 service area or not?  
 14 MS. POLLMAN ROGERS: I'm sorry.  
 15 Repeat your question, please.  
 16 COMMISSIONER SAHR: You're talking  
 17 about the -- this was long distance service because  
 18 it wasn't within the local exchange.  
 19 MS. POLLMAN ROGERS: It does not  
 20 originate and terminate within the local exchange,  
 21 the calls don't.  
 22 COMMISSIONER SAHR: Okay. And  
 23 that's because they originate in Beresford and  
 24 terminate in Sioux Falls; correct?  
 25 MS. POLLMAN ROGERS: Sioux Falls if

1 that is their point of presence, yes. Denver,  
 2 wherever it happens to be.  
 3 COMMISSIONER SAHR: All right.  
 4 Thank you.  
 5 CHAIRMAN BURG: Level 1 -- Level 3.  
 6 I wanted to call it 1. I don't know if that's an  
 7 upgrade or downgrade.  
 8 MR. ROMANO: I'm always afraid  
 9 someone will do us better and start a Level 4 or  
 10 something.  
 11 Good afternoon again. My name is Mike Romano,  
 12 still the Director of State Regulatory Affairs for  
 13 Level 3.  
 14 It might be good to start off just explaining  
 15 who Level 3 is what we're doing right now. Level 3  
 16 is already certificated in South Dakota to serve in  
 17 Qwest's serving area. We hope to be in service  
 18 there the third quarter of 2002.  
 19 As part of our expansion effort, though,  
 20 around the country we're going to less urban areas  
 21 and trying to bring benefits of competition and  
 22 newer technology into those serving areas as well.  
 23 In that regard we've already filed applications in  
 24 many other states and been granted certification in  
 25 small telephone company serving areas in states

1 such as Tennessee, Ohio, Missouri, Idaho,  
 2 Minnesota, and North Dakota among others. We have  
 3 some applications pending still, South Dakota being  
 4 one of those.  
 5 In all of those cases we've represented and in  
 6 our negotiations with the small telephone companies  
 7 we've also represented that we understand that  
 8 those companies are subject to special rural  
 9 safeguards under federal law and we will abide by  
 10 those in the fullest. We do not intend to make any  
 11 of the small companies unbundle their networks to  
 12 collocate with them. This application is not  
 13 intended to reach any so-called 251(f) exemptions  
 14 under federal law.  
 15 To respond a little bit more to what's become  
 16 the first ground now, which is that we don't need  
 17 local certification under South Dakota Law, we do  
 18 believe that the services we intend to offer fit  
 19 within the definition of local exchange service and  
 20 that the South Dakota statutes would require that  
 21 we be certified.  
 22 What Level 3 proposes here is a local exchange  
 23 service. We understand there's been some confusion  
 24 around that. I think part of that is because we're  
 25 trying not to raise a fight over the rural

1 exemptions so we didn't want to go in and make it  
 2 seem as if we were applying any vague broad manner  
 3 for the entire menu of basic local exchange  
 4 services because in so doing oftentimes rural  
 5 telephone companies will respond, well, if you're  
 6 going to do that, you need to unbundle my network  
 7 as well or you need to collocate with me.  
 8 We tried to do this in a matter sort of path  
 9 of least resistance in terms of raising a fight  
 10 with a company such as Beresford by narrowing the  
 11 scope of our services very specifically and by  
 12 stating we would at least transport from them their  
 13 tariff rates.  
 14 (Discussion off the record)  
 15 MR. ROMANO: We weren't trying to, I  
 16 think, make them impose any additional obligations  
 17 with respect to under the act of respect to cost  
 18 rates pricing or collocation or anything like that.  
 19 What we're trying to do here is really just a  
 20 subset of what we're already authorized to provide  
 21 in Qwest territory today.  
 22 So with that being said, I think our DID  
 23 services do fit within the local scope. Although  
 24 there has been some confusion over them we'd like  
 25 to continue to work with staff and Beresford and

1 the Commission to clarify.  
 2 We are proposing to offer local connectivity  
 3 to the public switch telephone network for Internet  
 4 service providers who would like to establish a  
 5 presence in the Beresford serving area. We do this  
 6 today in many other locations, as I said, hope to  
 7 do it in South Dakota beginning the third quarter.  
 8 I would note with respect to DID services in  
 9 particular that we cited to a case in our response  
 10 where the Commission found that DID constituted a  
 11 competitive local exchange service. And that's a  
 12 1989 case. I think the Commission's already found  
 13 that the DID fits within the definition of what can  
 14 be considered a local exchange service. I also  
 15 believe it's tariffed in Qwest's general services  
 16 exchange tariff today.  
 17 So I'm not sure that -- I suppose there may be  
 18 a question about if whether what we're specifically  
 19 proposing to do fits within that definition. That  
 20 seems to be a question that is not right for  
 21 examination through a summary Motion to Dismiss but  
 22 rather something that can be discussed throughout  
 23 the courses examined in this proceeding and in  
 24 further negotiations with Beresford.  
 25 I guess to get in a little further to the

1 services we're providing to ISPs and where the ISP  
 2 is located and the origination and termination of a  
 3 local call, for years incumbent telephone companies  
 4 had argued that calls don't terminate to ISPs, they  
 5 go on to the distant Internet and even if the ISP  
 6 is sitting right across the street, that's not a  
 7 local call because the call is destined for the  
 8 Internet.  
 9 So I guess as a matter of law there's a  
 10 question of whether a call to an ISP ever  
 11 terminates in the local calling area, and that's  
 12 something that needs to be considered in this  
 13 proceeding as well.  
 14 ISPs, pursuant to longstanding federal law, do  
 15 have the opportunity to purchase local services on  
 16 an intrastate tariff, and what we're proposing to  
 17 do here is offer them that kind of local  
 18 connectivity on a tariff just like Beresford would  
 19 offer to an ISP or Qwest or anybody else that's  
 20 certified in the State of South Dakota.  
 21 One important point I think we want to address  
 22 briefly too -- I'm not sure it's germane to the  
 23 Motion to Dismiss. But the implication was Level 3  
 24 would require Beresford to carry its calls all over  
 25 the place. We are not proposing that.

1 We are proposing to either build or lease  
 2 facilities to come into Beresford's serving area.  
 3 We would interconnect with Beresford in the local  
 4 serving area. Any responsibility for transport of  
 5 calls to a foreign exchange type customer or  
 6 something of that sort, an ISP, would be on  
 7 Level 3. It would be Level 3's financial  
 8 responsibility to do so.  
 9 To the extent we lease transport from  
 10 Beresford, to do that we would pay Beresford  
 11 transport at its special access or whatever tariff  
 12 generally available rates it has. We're not again  
 13 seeking to impose any special pricing obligations.  
 14 We are also, just to be clear, not looking for  
 15 reciprocal compensation, which has been a hot  
 16 button issue in the area of carriers who serve  
 17 ISPs. We are not asking Beresford to pay anything  
 18 for termination of these calls.  
 19 I guess, turning to the second point, whether  
 20 the application should be deemed complete, again,  
 21 there's been confusion, I think, because we  
 22 narrowed the scope of the application in a way that  
 23 hadn't been done before in the state. We responded  
 24 to numerous staff inquiries on this, and we're  
 25 willing to do more. We want to make sure everybody

1 is clear about what we're offering to provide here.  
 2 That's, in fact, why we think a Motion to  
 3 Dismiss isn't appropriate because we need more  
 4 time, and everyone needs more time, we believe, to  
 5 review this.  
 6 I think Mr. Coit may have said it best, there  
 7 are substantial questions here, and the substantial  
 8 questions we think deserve a more thorough  
 9 examination than a summary Motion to Dismiss.  
 10 I guess one final comment in that regard, it's  
 11 interesting on one hand the claim is we're not  
 12 offering local services so our application should  
 13 be dismissed, and then on the other hand our  
 14 application is incomplete such that can't they tell  
 15 what we're offering, but yet it should be  
 16 dismissed. So I guess I see some contradiction in  
 17 the claims as well.  
 18 In the end we think there are good policy  
 19 reasons to go forward as well. I would just note  
 20 we think the consumers of South Dakota will benefit  
 21 from having the ability to choose from more  
 22 Internet service providers who could purchase our  
 23 service as well as Beresford in the Beresford  
 24 serving area and other serving areas ultimately  
 25 where we go to in South Dakota.

1 With that, I thank you.  
 2 CHAIRMAN BURG: Does staff have any  
 3 comments?  
 4 MR. FRAZIER: Yes. Staff does not  
 5 support the Motion to Dismiss as to the issue of  
 6 whether or not Level 3 would qualify as an LAS. In  
 7 reading the statute, I think that argument has  
 8 merit, but we have filed a Motion for the  
 9 application to be found incomplete and at this  
 10 point we're just looking for more information so we  
 11 can get a feel and then Keith will be the one  
 12 discussing this Motion. I've filed it on his  
 13 behalf. But we feel we need more information to  
 14 make a determination on that. So we do not support  
 15 the Motion to Dismiss at this point.  
 16 CHAIRMAN BURG: Any other questions?  
 17 MR. GERDES: Mr. Chairman, would you  
 18 permit one other comment?  
 19 CHAIRMAN BURG: Sure. We're trying  
 20 to get as much information as we can.  
 21 MR. GERDES: Mr. Chairman, members  
 22 of the Commission, I'm lucky Dave Gerdes. I  
 23 represent Level 3.  
 24 CHAIRMAN BURG: We just treat you  
 25 too well ordinarily. You're not used to this.

1 MR. GERDES: I just would like to  
 2 make one observation and ask you to consider this  
 3 and deliberate on this, if you wish. About the  
 4 point that is made by Beresford that Level 3 does  
 5 not meet the definition of local exchange area as  
 6 set forth in 49-31-1, subparagraph 13, and that is  
 7 that at the very least there's a conflict between  
 8 that definition and that which appears in the  
 9 chapter as to what local services are or should be  
 10 available to an applicant for a Certificate of  
 11 Authority.  
 12 If you look at the definition which Beresford  
 13 relies on, it says local exchange service is the  
 14 access to and transmission of two-way switched  
 15 telecommunications service. Service, singular.  
 16 Now if you go over to the more recent statute,  
 17 which is -- or a more -- I think it's more recent,  
 18 in any event, but if you go over to the statute  
 19 that deals with the full application for a  
 20 Certificate of Authority for local exchange  
 21 service, it says -- this is 49-31-70, "An  
 22 application for a Certificate of Authority to  
 23 provide local exchange service shall set forth with  
 24 particularity the proposed geographic territory to  
 25 be serving and provide information regarding the

1 types of local exchange services," plural, more  
 2 than one.  
 3 Whereas the definition talks simply about the  
 4 local exchange service being two-way switched  
 5 access. So you've got an internal inconsistency  
 6 between the two statutes.  
 7 Now this Commission has ruled DID services  
 8 are, in fact, a local service. So does this second  
 9 Section 49-31-70 contemplate that? I would submit  
 10 it does. And so the application for DID services  
 11 we would say is consistent with local exchange  
 12 service.  
 13 CHAIRMAN BURG: Rich.  
 14 MR. COIT: Thank you, Mr. Chairman,  
 15 Commissioners. I'd just like to offer some brief  
 16 comment.  
 17 SDTA supports the Motion to Dismiss, and as  
 18 Ms. Rogers indicated, you really need to look at  
 19 the services, I guess, or the -- that they're  
 20 requesting from Beresford and the information that  
 21 they've given along those lines in terms of what  
 22 their plans are. And I don't think you'll find  
 23 anything anywhere that says that they will have a  
 24 point of presence in Beresford.  
 25 There's nothing anywhere that says that they

1 are actually going to provide or purchase, I guess,  
 2 from Beresford any local line type services.  
 3 They're not seeking to resell local exchange  
 4 service.  
 5 Really all they're asking for are  
 6 interexchange trunking facilities. To me it's  
 7 pretty clear that really all they want to do is  
 8 provide some interexchange connectivity to Internet  
 9 service providers. So they're really not offering  
 10 a local exchange service. They're offering more an  
 11 interexchange service.  
 12 I think a lot of the confusion here arises  
 13 because of the fact that they are claiming that  
 14 their service is a DID service. And generally DID  
 15 services have been viewed as local services.  
 16 But I think their version of what DID service  
 17 is as compared to some of the local exchange  
 18 tariffed versions of DID appears to be a lot  
 19 different because they're not going to have any  
 20 sort of a local presence in Beresford to which they  
 21 would connect to through some local lines.  
 22 They're also not going to buy any local lines  
 23 and resell those local lines. They're not going to  
 24 buy any local lines in order to get access that's  
 25 local. All they're going to buy is interexchange

1 trunking facilities into the Beresford switch. And  
2 they're going to allow ISPs to access those  
3 trunking facilities as a local facility.

4 And the fact of the matter is that's going to  
5 be an interexchange facility, and they're going to  
6 call it local. That's why they're saying they're  
7 offering DID service. And I don't think that's  
8 what DID service is, as we've seen it today in the  
9 tariffs that are out there today.

10 So I think that's where a lot of the confusion  
11 arises here. And I think if you really look at  
12 what they've asked for to this point in time and  
13 it's shown in their diagram and so forth, it's  
14 pretty clear to me they're offering interexchange  
15 connectivity. That's what they're offering, and  
16 they're going to throw it out there as local  
17 access.

18 I guess if you want to call it local access,  
19 you can call it local access. And there will be  
20 issues there that arise with their ability to  
21 obtain local numbers with the use of local exchange  
22 facilities when they don't buy any local facilities  
23 or purchase any local exchange services whatsoever.

24 So that to me is pretty clear if you look at  
25 what they're asking for, what their plans are,

1 a further examination of the services that are at  
2 issue.

3 One other thing I note, I guess, too is this  
4 question about interexchange connectivity, local  
5 connectivity. Many carriers today offer through  
6 DID services also a foreign exchange type  
7 functionality. No one has ever claimed that a call  
8 placed to a foreign exchange customer is an  
9 interexchange call for which access charges are due  
10 or that the customer should have placed a toll call  
11 because the called party wasn't located in the  
12 local calling area.

13 If our service is in question, then all  
14 foreign exchange services are in question as well,  
15 frankly. So I guess those are two points I would  
16 make, that there are novel questions here,  
17 substantial questions as others have noted, that  
18 warrant a further examination.

19 COMMISSIONER NELSON: The bottom  
20 line here -- so I couldn't sign up to have you as  
21 my local provider for my every day service, could  
22 I?

23 MR. ROMANO: Correct.

24 COMMISSIONER NELSON: That's what I  
25 thought.

1 they're not talking about local exchange service.  
2 They're talking about interexchange service. Thank  
3 you.

4 CHAIRMAN BURG: Questions for Rich?  
5 You know, I think that -- any other comments on  
6 this particular issue?

7 MR. ROMANO: Mr. Chairman, if I may  
8 respond to Mr. Coit's point, very quickly.

9 CHAIRMAN BURG: I really am  
10 reluctant to argue the whole case.

11 MR. ROMANO: I'll be very brief. I  
12 guess one misperception that still exists here and  
13 this is, again, why we think a full hearing or some  
14 more full examination is required is Mr. Coit kept  
15 referring to buying local lines from Beresford.

16 Carriers don't buy local lines from one  
17 another. We don't go out today when we compete  
18 with Qwest and buy local lines from Qwest. We are  
19 a CLEC who interconnects with Qwest through trunks.

20 So to say we haven't offered to buy local  
21 lines from Beresford, it's a nonissue here in  
22 reality. I mean, no CLEC buys local lines from an  
23 ILEC. No ILEC buys local lines from a CLEC. So I  
24 think that's a misperception here that demands even  
25 more that this proceeding go forward and allow for

1 MR. ROMANO: I suppose we could have  
2 filed the application to seek for the full menu of  
3 local exchange services, including basic local dial  
4 tone. We're not seeking basic local dial tone  
5 here. We're only seeking subset of local service.

6 COMMISSIONER NELSON: Even if we  
7 supported Beresford's Motion to Dismiss, you could  
8 still refile to provide what is more typically  
9 described as local exchange services; right?

10 MR. ROMANO: We could. If we did  
11 that, though, Commissioner, it's very difficult --  
12 as we noted in response to the Motion to Dismiss,  
13 it's difficult in the rural areas or any area to  
14 provide the full menu of basic local exchange  
15 services, including dial tone, without questions  
16 being raised under the rural exemption.

17 Because in order to do that you need to either  
18 resell it and avoid cost discount or collocate with  
19 the carrier. And we're not looking to do that in  
20 Beresford's territory, nor I think would Beresford  
21 necessarily want to offer that or go through that  
22 kind of proceeding then either.

23 COMMISSIONER NELSON: Can you  
24 explain to me then if I would be voting in your  
25 favor today, why I wouldn't be giving you away to



1 circumvent the intent of public interest and the  
2 rural safeguards and all the protections they  
3 offered?

4 MR. ROMANO: I think if you voted  
5 our way, you would not be circumventing those at  
6 all. We are, in fact, willing to sign up for  
7 exactly -- put on every page of our contract with  
8 Beresford for an interconnect exchange with  
9 Beresford something that says this is not meant to  
10 undermine or otherwise lift any rural safeguards,  
11 including but not limited to the fact they don't  
12 have lapse collocation, they don't have to give us  
13 the Telric pricing, they don't have to give us the  
14 OSS, which as such is an issue in the Qwest 271  
15 proceeding, they don't have to give us resale at an  
16 avoided cost discount.

17 We are looking to make it as minimal impact as  
18 possible on Beresford by entering their market  
19 through a means that doesn't challenge any of the  
20 rural safeguards. That's exactly what we're trying  
21 to do.

22 CHAIRMAN BURG: Okay.

23 MR. SMITH: I have a question,  
24 Mr. Romano.

25 Despite what we might want to do or not want

1 to do and whether you're a nice person or not or  
2 whether your company is and a lot of objectives, we  
3 have to follow the statute no matter what. I mean,  
4 you know that.

5 MR. ROMANO: Yes.

6 MR. SMITH: How do we get around the  
7 fact that the statute defines local exchange  
8 service as the access to and transmission of  
9 two-way switched telecommunications service?

10 Mr. Gerdes has offered -- the only way out has  
11 been the fact that a later statute has the plural  
12 at the end of the word "services." And whether we  
13 think what you're doing is a good idea or not  
14 cannot confer jurisdiction upon us to do something  
15 that the law doesn't let us do.

16 MR. ROMANO: Well, I guess the other  
17 justification that we found in the law and it's  
18 precedent of this Commission is your 1989 order  
19 declaring that direct inward dial services are  
20 competitive local services.

21 I mean, if this Commission's already found in  
22 1989 that that direct inward dial constitutes a  
23 local service, that is an inbound only service that  
24 this Commission found to fit within the statutory  
25 meaning.

1 MR. SMITH: If we were to grant the  
2 Motion to Dismiss because for that reason, that we  
3 found it's not a local exchange service, okay, what  
4 happens to your company then?

5 Does this thing go away, or do you -- are you  
6 going to attempt to do the same thing under an  
7 interexchange certificate?

8 MR. ROMANO: I don't believe we  
9 could offer this service under an interexchange  
10 certificate. In order to provide service to the  
11 these Internet service providers they will need  
12 local dial up connectivity. No customer is going  
13 to place a toll call to reach the Internet.

14 So if we can't be considered a local exchange  
15 carrier and provide the local connectivity we're  
16 looking for here, the customers will have no  
17 opportunity to dial into ISPs other than those who  
18 either, A, are served by Beresford or, B, are a  
19 Beresford ISP.

20 CHAIRMAN BURG: I'm going to set the  
21 decision aside because I think the next issue kind  
22 of -- they float together to some degree.

23 And the third issue was shall the Commission  
24 grant staff's Motion for a determination that the  
25 application of Level 3 is incomplete or, in the

1 alternative, the application was complete as of  
2 May 6, 2002.

3 And I'll let staff argue the position since it  
4 was their request on that first.

5 MR. SENGER: SDCL 49-31-72 states  
6 that, "The Commission shall act on local exchange  
7 application within 60 days of the completed  
8 application, or within 120 days if a hearing is  
9 required." This application was filed on  
10 February 19 of 2002.

11 With the intervention of Beresford and the  
12 complexity of the Docket, staff believed that a  
13 hearing would be needed, giving the Commission the  
14 120 days as allowed by the law. If the clock were  
15 to start upon filing the application, the 120 days  
16 would be up June 19 of 2002. That's 20 days from  
17 today.

18 Level 3 has agreed that the application was  
19 incomplete upon filing. They believe that the  
20 application is complete as of May 6, 2002, per a  
21 letter from their attorney dated 5-14 of 2002.  
22 Under this scenario the Commission would have to  
23 act upon this Docket by July 5 of 2002 or  
24 September 3 of 2002, if the hearing were required.

25 It is staff's belief that the application is

1 still, as of today's date, incomplete. Thus, we  
 2 are asking that the Commission rule that the  
 3 application is not incomplete (sic) because it has  
 4 not provided the required information pursuant to  
 5 ARSD 20:10:32:03, particularly Section 7(C) and  
 6 Section 24.

7 Specifically the application does not provide  
 8 adequate information as to describe the services  
 9 that Level 3 will be providing or the facilities  
 10 used to provide these services. Staff and  
 11 Commission need this required information to  
 12 understand the nature of the services that Level 3  
 13 will be providing.

14 The Motion to intervene by SDTA and the Motion  
 15 to Dismiss by Beresford, which we have heard  
 16 arguments on today, clearly indicate that the  
 17 parties to this Docket also do not feel that the  
 18 application is complete.

19 Without this information staff is not able to  
 20 determine if the services that Level 3 intends to  
 21 provide, called their direct inward dial trunk  
 22 services and their direct access services, are  
 23 actually local exchange services or not. We don't  
 24 know whether they're local exchange service,  
 25 interexchange services, or intraexchange services.

1 Each one of these three different types of  
 2 services require a different type of authority  
 3 either from this state Commission or from the FCC.

4 We've heard lots of arguments today about  
 5 meetings and diagrams and discussions between the  
 6 various parties. I need to note that that is not  
 7 part of the application. Staff is not -- has not  
 8 been invited to sit on those discussions. We have  
 9 not been informed of those discussions. Nothing  
 10 has been provided from those discussions to  
 11 supplement the record.

12 We talk about a diagram. Staff received a  
 13 copy of that diagram from a Motion -- from a  
 14 Beresford Motion to Dismiss. It is in there. That  
 15 is the only time staff has seen that diagram.

16 Therefore, I guess I'll summarize by saying  
 17 that staff would ask that the Commission find that  
 18 this application is incomplete and that we move  
 19 forward through data requests and further  
 20 conversations to determine exactly what is going  
 21 on, what kind of services, what type of facilities  
 22 so staff can make their preliminary decision and  
 23 make some recommendations when it comes to hearing  
 24 or if it doesn't come to hearing, at a Commission  
 25 meeting.

1 CHAIRMAN BURG: Mr. Romano, do you  
 2 have any arguments of why it is complete?

3 MR. ROMANO: Thank you. We had  
 4 thought it to be complete because I suppose we had  
 5 thought we provided perhaps more than may have been  
 6 provided in the context of most applications filed  
 7 in the state.

8 That being said, we've recognized this has  
 9 obviously presented some confusion among all  
 10 interested parties, including staff and Beresford.  
 11 So I guess what we had come to the point of -- when  
 12 we came to the point of sending the letter the  
 13 thought was that would either allow us to move  
 14 forward to get a hearing so we can get our business  
 15 started, or, in the alternative, if other  
 16 information is required, we can receive a specific  
 17 request for that information and provide it as soon  
 18 as possible so that we can move forward.

19 So the intent of the letter was to hopefully  
 20 move things along and either receive specific  
 21 questions or receive a determination that it was  
 22 complete.

23 COMMISSIONER NELSON: Mr. Romano,  
 24 are you saying that you didn't -- that the staff  
 25 didn't ask for information that you did not

1 provide?

2 MR. ROMANO: We provided responses  
 3 to staff's questions. What I guess we're finding  
 4 again is because of the rather unique nature of  
 5 this application while we may have thought that  
 6 those responses were complete, we are getting the  
 7 sense from staff that those did not provide a full  
 8 picture as to what staff wanted.

9 And so with that and if we need to do more  
 10 follow-up with staff, we're certainly willing to do  
 11 so.

12 COMMISSIONER NELSON: I guess my  
 13 question is at what point did you decide staff  
 14 didn't have the information they needed? Because I  
 15 got the impression you've known before we got here  
 16 today that they weren't satisfied with the  
 17 completeness of your application.

18 So you've appeared not to have made any  
 19 attempt to make it a little more clearer for them.

20 MR. ROMANO: What had happened was  
 21 our letter was filed on or about May 14. We have  
 22 previously responded to staff's data request on  
 23 May 6. We had not heard anything further in that  
 24 intervening week. When we had not heard anything  
 25 further we filed a letter for the determination

1 that it was complete.  
 2 After that we then -- I don't think we've  
 3 necessarily seen anything further from staff, but  
 4 we've obviously seen Beresford's Motion which they  
 5 deem it to be still incomplete and as a result of  
 6 that and other conversations we've learned staff,  
 7 as well, thinks further information is required.  
 8 We are willing to respond to whatever further  
 9 questions staff has to meet with them as needed.  
 10 CHAIRMAN BURG: Anything from SDTA?  
 11 MR. COIT: Just to say that we agree  
 12 with staff's Motion on the point of the application  
 13 being incomplete. There's still some things that  
 14 haven't been provided. Another thing that hasn't  
 15 been provided in my mind or in our view is recent  
 16 financial information.  
 17 The rules very clearly indicate that the most  
 18 recent 12 months of financial data should be  
 19 provided, and right now we're looking at 2000 data.  
 20 You know, we've got a whole year that's passed  
 21 since then, and in this industry with all of the  
 22 upheaval and so forth in the industry I think it's  
 23 pretty important that they provide some recent  
 24 financial data.  
 25 So there's that as well as other things that

1 need to be followed up on.  
 2 COMMISSIONER SAHR: Mr. Romano, do  
 3 you have more recent data as far as 2001?  
 4 MR. ROMANO: I believe we do. I  
 5 believe at the time we filed in it must have been  
 6 February now 2000 was the most recent annual report  
 7 that was available. 2001 hadn't been released yet.  
 8 I will check, and we will supplement with the  
 9 2001 annual report, if that's available. I will  
 10 note as well that we had requested certain waivers  
 11 with respect to financial information, which are  
 12 not atypical, as I understand it, in competitive  
 13 local exchange carrier applications.  
 14 CHAIRMAN BURG: Mrs. Rogers, do you  
 15 have anything from Beresford on this question?  
 16 MS. POLLMAN ROGERS: I have nothing  
 17 further other than to say that we concur with  
 18 staff's Motion -- staff's position that the  
 19 application is not complete.  
 20 With regard to the issue of waivers, I think  
 21 that that probably raises a whole another area of  
 22 questions with regard to this whole application  
 23 process. And, you know, as we view the financial  
 24 information that has been submitted, it's not for  
 25 the applicant, it's for the applicant's parent

1 company, I believe, or at least someone other than  
 2 the applicant. I think that's something that needs  
 3 to be looked at.  
 4 And then the request for waivers is extremely  
 5 broad, and it appears to me that the request for  
 6 waivers requests waiver of everything that local  
 7 service requires. For example, 911, how are you  
 8 going to comply with that.  
 9 If we waive all of those things, we're back to  
 10 the same thing and that is is this really an  
 11 application to provide local services as defined by  
 12 the statute?  
 13 So I think the two issues kind of go -- or the  
 14 two positions go hand-in-hand, but we do think the  
 15 application is not complete.  
 16 CHAIRMAN BURG: One other question  
 17 that occurs to me is that is it not a burden upon  
 18 the applicant to determine when it's complete and  
 19 take their risks in front of the hearing process as  
 20 to incompleteness?  
 21 I mean, you know, should they not say we'll  
 22 live with what we filed?  
 23 MS. POLLMAN ROGERS: Well, I guess I  
 24 don't -- I think that the applicant can do that.  
 25 It doesn't sound to me like they're doing that at

1 this point, or maybe they did that in their May 14  
 2 letter.  
 3 But I think that you certainly have the  
 4 authority to reject an application that is  
 5 incomplete. I think the rules give you that  
 6 authority.  
 7 CHAIRMAN BURG: Right. I'm trying  
 8 to decide who determines when it's complete. If  
 9 they want to live with what they file and take  
 10 their risk of having it rejected on the basis of  
 11 incomplete, should they not have that opportunity?  
 12 MS. POLLMAN ROGERS: I believe they  
 13 can, but I believe you would have to, to a certain  
 14 extent, rely on staff's recommendation as to  
 15 whether each of the criteria have been met.  
 16 CHAIRMAN BURG: Right. Do you have  
 17 a response to that question?  
 18 MR. SENGER: May I make a comment?  
 19 We've heard a lot of arguments today, and I think a  
 20 lot of arguments do have merit today. I just want  
 21 to make one clarification on what staff is asking  
 22 for.  
 23 We do believe that the Commission has the  
 24 authority to reject the application. However,  
 25 staff is not asking for that. Staff does not

1 believe that rejecting the application is going to  
 2 get us where we need to be.  
 3 Essentially, if you reject the application,  
 4 we're probably going to start all over again. What  
 5 we are suggesting is is that the Commission merely  
 6 find that as of this point it is incomplete. If  
 7 the Commission finds -- wants to find it is  
 8 incomplete, I think all the parties can agree that  
 9 the May 6 date would be a date that we could shoot  
 10 for.  
 11 That is an alternative thing that we threw  
 12 out. But we are not asking that the Commission  
 13 dismiss or throw this out. We just want to find it  
 14 is incomplete so everybody has the adequate time --  
 15 once we find the application is incomplete, that we  
 16 have adequate time to give the Commission the time  
 17 to do what we need to do.  
 18 The 60 days and 120 days from the completed  
 19 application is there for two reasons, the way I see  
 20 it, to give the Commission enough time to do what's  
 21 needed and to prevent the Commission from dragging  
 22 their feet and not acting upon an application. So,  
 23 therefore, the completed application I see as a  
 24 very important part in providing both protection  
 25 for the company and for giving adequate time to the

1 Commission.  
 2 So we just ask that it be found incomplete at  
 3 this point until a further date when we can all  
 4 determine -- I think we can all come to an  
 5 agreement at some point and maybe not in the very  
 6 distant future. It may be somewhat in the next  
 7 couple of weeks once we get our questions answered  
 8 that we can all probably stipulate, okay, all the  
 9 parties feel that the application is complete, now  
 10 let's start that clock. That's all we're asking  
 11 for.  
 12 CHAIRMAN BURG: So you're not  
 13 requesting a May 6, in any case?  
 14 MR. SINGER: We are not. We feel  
 15 the application is still incomplete. But if the  
 16 Commission wanted to determine that it is complete,  
 17 the May 6 date may give enough time for the  
 18 Commission to do what they need to do and for the  
 19 parties involved.  
 20 But we do not feel it's complete. Therefore,  
 21 we do not feel the Commission should say May 6 is  
 22 the completion date.  
 23 CHAIRMAN BURG: Mr. Gerdes.  
 24 MR. GERDES: Mr. Chairman, members  
 25 of the Commission, the way the statute is worded is

1 a little bit strange because it says completed  
 2 application.  
 3 Well, it's easy enough to see that we would  
 4 never get to the point where the time limits start  
 5 running if every party to the proceeding got a vote  
 6 as to whether or not the application is complete  
 7 because the people behind me aren't going to agree  
 8 to that, and I don't blame them. I wouldn't either  
 9 if I was in their position.  
 10 I think what has to happen is -- and the  
 11 purpose of the letter I filed with the Commission  
 12 was to say the applicant is entitled to have staff  
 13 tell them either the application is complete in  
 14 their view or if not complete, then tell us what is  
 15 missing. And then we have the option to provide  
 16 what is missing, and then we can either decide to  
 17 rely on that application or not.  
 18 But there has to be some finality, and it has  
 19 to be somebody that's objective and neutral that  
 20 says whether or not it's complete. It can't be a  
 21 vote by the parties to the Docket. So I think what  
 22 we're entitled to is a ruling from this Commission  
 23 that says, staff, tell them how it's not complete  
 24 and Level 3 has until June 5 or June 10 or whatever  
 25 it might be to satisfy staff's request.

1 COMMISSIONER NELSON: Mr. Chairman,  
 2 for myself I think the whole issue about whether  
 3 it's complete or incomplete is a moot issue because  
 4 I believe that and I move that we grant Beresford's  
 5 Motion to Dismiss based on the fact that I don't  
 6 believe that they met the definitions of local  
 7 exchange service.  
 8 CHAIRMAN BURG: I'm reluctant to go  
 9 there now because I agree with staff that I don't  
 10 think that finalizes anything. I think we start  
 11 over. I think they could appeal it to the court  
 12 and the court would kick it right back to us and  
 13 we'd be in the same position we are now.  
 14 Not that I don't believe they have an adequate  
 15 argument. I think they may have. But I think we  
 16 may need to decide that at a hearing process and  
 17 not outside the hearing because I don't believe  
 18 we'll see the end of it with that so I'm reluctant  
 19 to do that.  
 20 Counsel, do you have any recommendations, and  
 21 if you have any comments also, Bob.  
 22 MR. SMITH: I have one question and  
 23 maybe Bob does too or maybe the attorneys for  
 24 Level 3 or your witness or anyone else you might  
 25 have.

1 The question I think is -- and I think where  
 2 the Chairman's going with this is if we are going  
 3 to hear evidence at the hearing that will enlighten  
 4 us further as to whether or not the definition of  
 5 local service is met, then by all means we ought to  
 6 go forward and hear the evidence, I think, before  
 7 we jump to a conclusion that turns out to be wrong  
 8 and we waste a lot of time.

9 But if we're not going to hear that -- and I  
 10 think we can look down here and see what the  
 11 definition says. If we're not going to hear  
 12 evidence at some point along the line that provides  
 13 us a reason or a basis for finding that this is a  
 14 local service, then honestly we're maybe wasting  
 15 all of our time.

16 And can you just give me -- can you give me an  
 17 answer, I guess, or some enlightenment as to what  
 18 we're going to see in the way of evidence that's  
 19 going to give us a basis for decision?

20 MR. ROMANO: Well, I suppose we  
 21 wouldn't be here unless we thought that, you know,  
 22 our case had merit here.

23 Among other things that come to mind, there's  
 24 both evidence perhaps and legal argument as to what  
 25 constitutes a local exchange service. This is a

1 very complicated legal question in many respects  
 2 because we are not only dealing with the pure  
 3 definition of local exchange service, we're also  
 4 dealing with the area of Internet service  
 5 providers, which complicates the question of what  
 6 is local in many respects.

7 Calls go locally to ISPs, but, again, for  
 8 years incumbent telephone companies said even if  
 9 the ISP is located across the street, that's not a  
 10 local call because the call keeps going. So even  
 11 though the call to the ISP is local, it's not  
 12 treated as local for intercarrier compensation  
 13 purposes.

14 Those are the kind of issues we need to flesh  
 15 out in a hearing, the question of how does the fact  
 16 the FCC has weighed in how ISP traffic should be  
 17 treated fit into the question of local exchange  
 18 service under South Dakota Law.

19 Other issues to be considered would be network  
 20 design, financial responsibility for  
 21 interconnection purposes, the fact that we provide  
 22 service like this and many other carriers provide  
 23 service like this today, the fact that foreign  
 24 exchange service really functionally is no  
 25 different than this.

1 So these are the kinds of things we would want  
 2 to present and discuss at a hearing and allow for  
 3 everybody to weigh in on.

4 MR. SMITH: In the other states in  
 5 which you are doing this under similar  
 6 circumstances, do they have Certificate of  
 7 Authority statutes that you had to comply with?

8 MR. ROMANO: Yes. We've had to file  
 9 for -- in every state I think except for perhaps  
 10 Montana and Massachusetts we've got some kind of  
 11 certification requirement.

12 The statutes, I do not know whether they are  
 13 all in the same structure in terms of, you know,  
 14 each piece part of the definition. That, I do not  
 15 know.

16 MR. SMITH: You don't know whether  
 17 they were precisely like ours and whether we might  
 18 be constrained to a greater extent than those other  
 19 states?

20 MR. ROMANO: I do not know. I mean,  
 21 that's the kind of thing that perhaps could be  
 22 examined as well.

23 I do know, for example, Missouri had several  
 24 tiers of service provision, and one of them was  
 25 two-way, one of them was just any local exchange

1 service. So there's all sorts of permutations even  
 2 throughout, even in individual state's statutory  
 3 provisions.

4 COMMISSIONER NELSON: Well, you can  
 5 define it any way you want, but generally speaking  
 6 on the telecommunications committee at NARUC or  
 7 anywhere else, basically local exchange service is  
 8 usually described as two-way switched.

9 MR. ROMANO: Well, in some cases  
 10 that's correct, but I guess I also see there are  
 11 subsets of local exchange service. There's basic  
 12 local exchange service, which is two-way switched.

13 I mean, many carriers today offer direct  
 14 inward dial or PRI ISDN telephone lines and they're  
 15 required to get certification to offer those and  
 16 the required certification for that is local  
 17 exchange certification.

18 I don't think the State of South Dakota would  
 19 want somebody out there offering DID lines or PRI  
 20 ISDN lines without local exchange authority.

21 CHAIRMAN BURG: But they're not  
 22 two-way switched?

23 MR. ROMANO: Yes. PRI, I  
 24 understand, could be two-way switched, as I  
 25 understand it. I'm a lawyer as well so I'm not a

1 technical person. But I understand for the large  
2 part PRI ISDN telephone lines are used to support  
3 ISP services. I doubt very much the State of South  
4 Dakota would want someone out there offering those  
5 kinds of services without a certificate.

6 COMMISSIONER SAHR: Mr. Romano, if  
7 staff had some additional questions, would you have  
8 any objections to clarifying issues that they might  
9 have?

10 MR. ROMANO: Not one bit. In fact,  
11 we've offered to meet with staff at their  
12 convenience to discuss anything further. I made  
13 that offer today.

14 MR. SENGER: If I may throw one  
15 comment out, Mr. Gerdes indicated that he doesn't  
16 believe it should be a vote of the parties, I can  
17 understand that, and I think I probably -- after  
18 hearing him, I think I agree with him.

19 My suggestion is -- he also indicated that it  
20 should be somebody independent who determines  
21 whether or not it's complete. Well, we are asking  
22 the Commission at this point.

23 Another suggestion I have and if the parties  
24 agree, maybe it could be staff, the one who  
25 determines when it's complete and notify the

1 parties that staff at this point, after our  
2 discussions that we're going to have, we feel that  
3 it's complete. We can come up with a date, bring  
4 that to the Commission.

5 And I also want to state that staff does not  
6 believe that the application is the arena to argue  
7 all of these arguments. We believe that the  
8 application is just the foundation, setting --  
9 giving some basic information and enough  
10 information so we can understand how to proceed.

11 We believe that there should be a hearing on  
12 this. In fact, maybe that should be another one of  
13 the questions before us at some time is maybe we  
14 should set a hearing, maybe we should set a  
15 procedural schedule.

16 But that's just another option on when we can  
17 determine when this is complete.

18 COMMISSIONER NELSON: I guess I have  
19 another question on my mind, and that is it seems  
20 to me that the staff should decide if the  
21 application is complete or incomplete and should  
22 have indicated to Level 3 that it was or it wasn't.

23 MR. SENGER: We -- and I don't have  
24 all the dates in front of me on when this was done,  
25 but the application was filed in mid-February.

1 Staff took about a week and a half to two weeks  
2 going through this trying to figure out what was  
3 going on.

4 We knew Beresford -- through our notification  
5 process, our weekly filings, Beresford found out  
6 about this, made some minor discussions -- had some  
7 minor discussions with them. Staff issued a data  
8 request. The company responded to that data  
9 request.

10 During that time I spoke with Mr. Gerdes about  
11 some other questions I had, specifically does this  
12 application -- why do we need a local exchange  
13 Certificate of Authority for this? And I also  
14 indicated, you know, we really don't know what's  
15 going on here.

16 After that we got a response to the data  
17 request, staff filed another data request. And in  
18 that time we had the 271 hearings. In fact, during  
19 the 271 hearings Mr. Gerdes and I spoke again  
20 about, you know, what staff needs, we're not sure  
21 what's going on, do they -- tell us why Level 3  
22 feels they need a local exchange Certificate of  
23 Authority.

24 The response of staff's final data request  
25 that has been issued so far was filed May 6. The

1 answer to our question was filed May 7. Then we  
2 had all of these other motions going in.

3 So staff believes that Level 3 did know that  
4 the application was incomplete, that we felt --  
5 that staff felt the application was incomplete.

6 COMMISSIONER NELSON: Thank you.

7 CHAIRMAN BURG: The other question I  
8 have or the problem that I have with determining  
9 whether this is local exchange service or not is  
10 the opportunity for waivers that are in the law or  
11 in the rules.

12 As long as those waiver opportunities are  
13 there, if they are met, then that would somehow  
14 indicate to me that the intent was that they  
15 constitute local service.

16 I don't know if that's the answer. Those  
17 things are all so confusing, and I don't believe we  
18 clarify them by just out of sorts just dismissing  
19 at this point. And I think that's what I'm hearing  
20 from staff.

21 I guess for that reason I'm not ready to  
22 actually dismiss it because I really don't think  
23 we've gotten any place with that. Bob.

24 We do have a Motion on the table, though.

25 COMMISSIONER SAHR: And I would

1 agree with the Chairman on this issue, and I think  
2 staff has an interest in getting some additional  
3 information that will help clarify the issues here.

4 We have two of the parties that are urging the  
5 Motion to Dismiss, are agreeing that the  
6 application may be incomplete, and I think it's  
7 reasonable to get the additional information from  
8 Level 3, see where we're at after that.

9 And I certainly, though, would not preclude a  
10 refiling of the Motion to Dismiss or a renewal of  
11 the Motion to Dismiss. It may very well be a valid  
12 Motion, but at this point in time I think there's a  
13 lot of factual issues in dispute, a lot of  
14 questions about what exactly the service is.

15 And with those questions and with the need for  
16 additional information I don't think it's  
17 appropriate at this time to dismiss the case and I  
18 would be inclined to go along with staff's  
19 recommendation of getting some additional  
20 information and then looking at going forward after  
21 that.

22 COMMISSIONER NELSON: So are you  
23 substituting the Motion? Because the Motion on the  
24 table is to grant the dismissal.

25 COMMISSIONER SAHR: Well, I'm

1 dissenting from that Motion.

2 COMMISSIONER NELSON: Okay. You  
3 didn't call the question --

4 CHAIRMAN BURG: Did you have a  
5 Motion?

6 COMMISSIONER SAHR: Yes. I guess  
7 procedurally we need a substitute Motion; is that  
8 correct?

9 COMMISSIONER NELSON: Because  
10 otherwise you can vote two against it and then come  
11 back with a new Motion. So you can substitute it  
12 and come up with a Motion you want.

13 COMMISSIONER SAHR: I wasn't sure if  
14 the Chair had made the Motion or not.

15 CHAIRMAN BURG: No, I haven't. I  
16 didn't actually make a Motion, but I would or you  
17 can.

18 I'll good ahead then and say that I would at  
19 this time move not to grant Beresford's Motion to  
20 Dismiss but allow them to refile that at any time  
21 or to include that at the time of hearing, if  
22 that's what we go to.

23 In the meantime staff should determine when  
24 they feel that the petition is complete, and that's  
25 when the time frame will start.

1 COMMISSIONER SAHR: And the only  
2 question I have on it is with staff determining the  
3 issue of completeness, if at some point in time the  
4 Petitioner wanted to just move ahead on that --

5 CHAIRMAN BURG: Well, the point  
6 being to me is if they don't arrive at that, either  
7 party could ask us to make a determination.

8 COMMISSIONER SAHR: Right. And I'm  
9 comfortable with that as long as we make it clear  
10 if Level 3 wanted to petition us to move forward  
11 and we feel staff is slowing things down or  
12 whatever the case may be, I would want to leave  
13 that open.

14 But I will second that Motion.

15 CHAIRMAN BURG: Do you want to  
16 concur or --

17 COMMISSIONER NELSON: What's the  
18 Motion?

19 CHAIRMAN BURG: The Motion is to not  
20 grant dismissal at this time, allow dismissal to  
21 still be a recourse for Beresford but that staff  
22 determine when the application is complete.

23 COMMISSIONER NELSON: I guess I  
24 dissent.

25 CHAIRMAN BURG: Okay. And the final

1 question -- and then on the two-to-one vote the  
2 dismissal has been denied at this time and staff  
3 will determine when the Motion is complete -- or  
4 when the application is complete. Excuse me.

5 The last question is how shall the Commission  
6 rule on Level 3's request for finding of fact. And  
7 who requested that one? I'm not even sure.

8 MR. ROMANO: If I may clarify, if I  
9 understand that question correctly, I believe that  
10 refers to the May 14 letter, which was a finding --  
11 the finding of fact being our application was  
12 complete.

13 I think our Motion makes that a moot question.

14 MR. SENGER: I would like to comment  
15 on that. I don't have the dates, but it wasn't the  
16 May 14. In the May 6 response to staff's second  
17 data request Level 3 changed a lot of their  
18 filings -- they essentially added a few more  
19 things, that they're asking for waiver and then  
20 they --

21 In the original application they had asked to  
22 waive ARSD 20:10:32 -- help me out here Kelly. 04?

23 MR. FRAZIER: 04:10 --

24 MR. SENGER: Let's just talk about 4  
25 because that's the question in hand here. That

1 Administrative Rule states the applicant, Level 3,  
2 at this point shall file notice to other carriers  
3 in that area.

4 On the May 6 letter, I think, is when it was  
5 response -- they withdrew that application and  
6 stated that Level 3 -- I think they stated Level 3  
7 granted -- we have not provided notice to Beresford  
8 but Beresford does have notice -- has received  
9 notice.

10 And what was that called? Constructive  
11 notice?

12 MR. FRAZIER: Yes.

13 MR. SENGER: Why don't you take  
14 over.

15 MR. FRAZIER: The finding of fact  
16 Motion was a Motion that they were in compliance  
17 with the notice section is what they were  
18 requesting a finding of fact from the Commission,  
19 and we wouldn't deny that.

20 At this point Beresford does have constructive  
21 notice and requiring them to file notice at this  
22 point would be like yelling fore after you hit  
23 somebody with the golf ball. So we wouldn't resist  
24 that Motion at this point.

25 COMMISSIONER NELSON: I want the

1 record to clearly represent my position here, and  
2 my position is that I object to denying Beresford's  
3 Motion to Dismiss. But I do not dissent on the  
4 possibility of them raising it at another time.

5 And I think the Motion that we were on will  
6 indicate that I dissented on both parts, and that's  
7 not my position here today.

8 So I don't know how you plan to clear that up  
9 in the record. It would have been cleaner perhaps  
10 if we would have voted my Motion down and went  
11 ahead with your Motion to do that. I want the  
12 record to clearly reflect I dissent on the denial  
13 of the dismissal of Beresford's Motion, but I do  
14 not necessarily -- I don't definitely dissent on  
15 the possibility of them raising it at another time.

16 CHAIRMAN BURG: I think that's  
17 always a possibility. I think that's understood.

18 COMMISSIONER NELSON: I don't want  
19 the record to say that I didn't support --

20 COMMISSIONER SAHR: I think we're 3  
21 for 3 on that one.

22 CHAIRMAN BURG: Dave, did you have a  
23 comment on this?

24 MR. GERDES: I want to say I agree  
25 with Kelly. It comes back to me now. The rule

1 requires Level 3 to give notice to the incumbent  
2 carrier, yes. We didn't do it, but we've  
3 suggested -- well, they've intervened so obviously  
4 they have notice.

5 So we've asked the Commission to make a  
6 finding of fact to say that Beresford does, in  
7 fact, have actual notice, which, thus, meets the  
8 requirement of the rule.

9 CHAIRMAN BURG: Ms. Rogers, do you  
10 have a comment on that?

11 MS. POLLMAN ROGERS: We don't have  
12 any problem with that. There was a notice of  
13 intervention filed actually before I filed my  
14 notice of appearance so I don't think that we can  
15 sit here and say that we have not had adequate  
16 notice.

17 CHAIRMAN BURG: Just out of  
18 curiosity, do you know how notice was received  
19 or -- you did find out.

20 MR. ROMANO: I can probably clarify  
21 that. It was -- I believe filing the application  
22 and also representatives of Level 3 contacted  
23 Beresford, I believe, perhaps right after the  
24 application was filed to begin discussing traffic  
25 exchange arrangements.

1 MS. POLLMAN ROGERS: I think  
2 Mr. Frieberg and Wayne Ackland are still on the  
3 line. If you might want to ask them, they might be  
4 able to clarify.

5 CHAIRMAN BURG: Tom, do you know ho  
6 you got notice?

7 MR. FRIEBERG: Mr. Ackland got  
8 contacted by Mark Stacy of Level 3 shortly after  
9 the application had been filed, and we also saw it  
10 on the Docket on the filings.

11 COMMISSIONER SAHR: So that welt in  
12 the back of your head from the golf ball has gone  
13 down?

14 CHAIRMAN BURG: I think we probably  
15 need a Motion then from what I heard as the finding  
16 of fact that Beresford does actually have notice of  
17 the application. And I'll make that Motion.

18 COMMISSIONER NELSON: Second.

19 COMMISSIONER SAHR: And I'll concur.

20 Although I certainly will point out it would have  
21 been Beresford's Motion to raise if it were a  
22 defect, and since they're waiving it, I'll concur.  
23 But I do think it's not insignificant to not give  
24 someone notice.

25 CHAIRMAN BURG: Again, you know, as



1 far as I'm concerned, is there any other issues in  
2 this Docket for taking up right now?

3 I do want to emphasize I think Beresford has a  
4 very strong argument from their position. I did  
5 what I did because I didn't feel it was going to go  
6 away with that Motion.

7 I think there's a likelihood it would have  
8 either been appealed or it would come back in a  
9 different way, and I think if we can proceed  
10 forward from where we are, we're probably better  
11 off.

12 (The hearing concluded at 3:45 p.m.)

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1 STATE OF SOUTH DAKOTA )  
2 :SS CERTIFICATE  
3 COUNTY OF HUGHES )  
4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter and Notary Public in and for the  
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 30th day of  
11 May 2002, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 12th day  
14 of June 2002.

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Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter

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STATE OF SOUTH DAKOTA )

:SS

CERTIFICATE

COUNTY OF HUGHES )

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 30th day of May 2002, and that the attached is a true and correct transcription of the proceedings so taken.

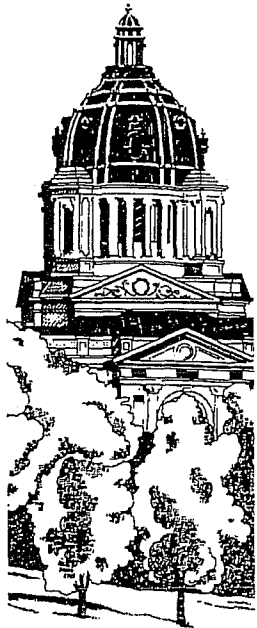
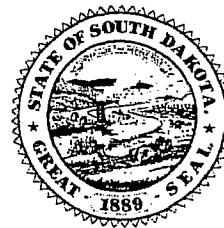
Dated at Pierre, South Dakota this 12th day of June 2002.

*Cheri McComsey Wittler*

Cheri McComsey Wittler  
Notary Public and  
Registered Professional Reporter

# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



Via FAX and U.S. Mail

June 18, 2002

Dave Gerdes  
May, Adam, Gerdes & Thompson LLP  
503 South Pierre Street  
P.O. Box 160  
Pierre, SD 57501-0160

RE: SDPUC Docket TC02-018 - Level 3 Communications, LLC

Dear Mr. Gerdes:

The following is Staff's third data request relating to the above referenced docket. Please provide the following information:

- 3-1. Level 3 previously filed a "SOUTH DAKOTA PUC TARIFF NO. 1" as its Local Exchange tariff for the Qwest territory. The tariff in this application is also labeled "SOUTH DAKOTA PUC TARIFF NO. 1." If this application is approved (for Beresford territory), does Level 3 intend the tariff in this application to replace the previously filed tariff? If not please renumber the tariff. Please note that the "SOUTH DAKOTA PUC TARIFF NO. 2" is Level 3's IXC tariff on file.
- 3-2. Please add the Commission's address, toll free telephone numbers and web address to the end of section 4.7 of the proposed tariff. They are:

South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Toll Free 1-800-332-1782  
TTY Through Relay South Dakota 1-800-877-1113

<http://www.state.sd.us/puc/puc.htm>

- 3-2. Staff considers Level 3's application incomplete because the applicant has not provided enough information in the application for Staff to understand the types of services Level 3 will provide and the facilities Level 3 will use (i.e. install, resell, lease) in providing these services. In

Capitol Office  
Telephone (605)773-3201  
FAX (605)773-3809

Transportation/  
Warehouse Division  
Telephone (605)773-5280  
FAX (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet Website  
[www.state.sd.us/puc](http://www.state.sd.us/puc)

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Mary A. Healy  
Lisa Hull  
Dave Jacobson  
Amy Kayser  
Bob Knadle  
Delaine Kolbo  
Gregory A. Rislov  
Keith Senger  
John Smith  
Rolayne Allts Wiest  
♦

response to Staff's data request 1-3, Level 3 offered to limit the services to "direct inward dial trunks and service and dedicated access services." Please provide a detailed description of these services.

- 3-3. Provide an illustrative diagram of the Level 3 facilities and other facilities that Level 3 will use in providing the "direct inward dial trunks and service and dedicated access services" service in the Beresford exchange. Please provide a description of the facilities in this diagram and identify who owns/will own these facilities.
- 3-4. Please list the IPS providers that Level 3 plans to provide connection to within the Beresford exchange.
- 3-5. Will Level 3 be providing any services to any customers actually located within the Beresford exchange?
- 3-6. Does Level 3 intend to provide any services in Beresford other than dial up Internet access connectivity to ISPs? If yes, please list the other services. Would Level 3 be willing to limit its service in the Beresford exchange to dial-up internet access connectivity?
- 3-7. Will Level 3 or Level 3's customers (ISPs) be offering Voice over Internet Protocol (VoIP)?
- 3-8. Level 3's reply to Staff's data request 1-7 states: "Beresford is the local exchange carrier with whom Level 3 intends to interconnect."
  - a) Please explain why Level 3 needs to interconnect with Beresford.
  - b) Please explain how Level 3 intends to interconnect with Beresford.
  - c) Does Level 3 consider this a Section 251(a)(1) or a Section 251(c)(2) interconnection? Please explain the difference and give some descriptive examples of each.
- 3-9. Does Level 3 consider this application a Section 251(f)(1)(B) filing?
- 3-10. Please list all the reasons why Level 3 needs a Local Exchange authority in the Beresford exchange if the services Level 3 intends to provide do not require the Commission to terminate Beresford's exemption of Section 251(c).
- 3-11. Please explain how SDCL 49-31-73 affects Level 3's application.
- 3-12. Staff believes that the Commission does not have the legal authority to wave ARSD 20:10:32:10. Please explain how this affects Level 3's application.
- 3-13. Per discussion with Staff after the Commission meeting on May 30, 2002, Mr. Romano referred to an FCC Order which (in a footnote) states that the type of service that Level 3 intends to provide should be considered local exchange service. Please provide a copy of or a citation to that FCC Order.

3-14. Does Level 3 presently provide any telecommunication services in South Dakota? Please describe those services.

3-15. During the Commission meeting on May 30, 2002, Level 3 indicated that Level 3 intends to "roll out services" in South Dakota during the third quarter of 2002. Please define and describe these services. Are these services limited to the services Level 3 is requesting in the Beresford exchange?

Please provide the above requested information by July 3, 2002.

If you have any questions, contact me at the Commission (605) 773-3201 or by e-mail; [keith.senger@state.sd.us](mailto:keith.senger@state.sd.us) .

Sincerely,

A handwritten signature in black ink that reads "Keith Senger". The signature is written in a cursive style with a large, sweeping initial "K".

Keith Senger, Utility Analyst

cc: Michael Romano, Level 3  
Kelly Frazier, Staff Attorney  
Thomas H. Frieberg, Attorney of Beresford Municipal  
Rich Coit, SDTA  
Darla Rogers, Meyer & Rogers Law Firm  
Commission file

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Keith Senger  
Utility Analyst  
and  
Kelly Frazier  
Staff Attorney  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

**RE: Docket No: TC02-018; Application of Level 3  
Communications, LLC, to Expand its Certificate of Public  
Convenience and Necessity to Provide Facilities-Based  
Local Exchange Services in the Service Territory of  
Beresford Municipal Telephone Co.  
Our file: 3848**

Dear Keith and Kelly:

On behalf of Level 3 Communications, LLC ("Level 3"), please accept this filing as a formal request to temporarily suspend without prejudice Level 3's pending Application to expand its authority to offer local exchange telecommunications services in the State of South Dakota filed on February 19, 2002, in the above-referenced docket number. As Level 3's business plans have changed, the Company no longer requires that the requested authority in Beresford Municipal Telephone Company's service territory be processed immediately. (Level 3 notes that because its application has not yet been deemed complete, the statutory time frame for the consideration of the application has not yet commenced.) Instead, Level 3 wishes to postpone any further activity on its Application until December 6, 2002. At that time, Level 3 will either respond to the Staff third data requests dated June 18, 2002, or notify the Commission of its intention to withdraw the application entirely. However,

Keith Senger  
Kelly Frazier  
July 16, 2002  
Page 2

Level 3 intends to operate under its existing authority granted in Docket No. TC99-015.

Enclosed please find an extra copy. Please have it date-stamped and return it in the postage-prepaid envelope provided. Thank you for your attention to this matter. Should you have any questions concerning this letter, please do not hesitate to contact the undersigned at (605)224-8803.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc: Mike Romano  
Tamar Finn  
Tom Frieberg  
Darla Pollman Rogers  
Richard Coit



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JUL 29 2002

Meyer & Rogers

ATTORNEYS AT LAW  
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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BRIAN B. MEYER  
DARLA POLLMAN ROGERS

July 26, 2002

Deb Olofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Re: Docket No. TC02-018

Dear Deb:

You will find enclosed herein original and ten copies of Beresford Municipal Telephone Company's MOTION TO DISMISS.

By copy of this letter, I am also serving the persons named on the Certificate of Service attached to the Motion.

Sincerely yours,



Darla Pollman Rogers  
Attorney at Law

DPR/ph

Enclosures

CC: Richard D. Coit (with enclosure)  
Thomas H. Frieberg (with enclosure)  
David A. Gerdes (with enclosure)  
Michael R. Romano (with enclosure)

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JUL 29 2002

BEFORE THE PUBLIC UTILITIES COMMISSION

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC, TO EXPAND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE SERVICES IN THE SERVICE TERRITORY OF BERESFORD MUNICIPAL TELEPHONE COMPANY

Docket No. TC02-018

MOTION TO DISMISS

COMES NOW Beresford Municipal Telephone Company (Beresford), by and through its undersigned attorney, and hereby moves the Commission to dismiss Level 3 Communications, LLC's (Level 3) Application to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Company, which Application was filed by Level 3 on or about February 19, 2002. This Motion is based upon the following grounds:

1. Level 3's Application has never been complete. In an Order Dismissing Beresford's Motion to Dismiss, this Commission specifically found that Level 3's Application was incomplete. Staff's Third Data Request remains unanswered, and Level 3, in letter of counsel dated July 16, 2002, notes that "its application has not yet been deemed complete." The appropriate disposition of an incomplete application under South Dakota rules is dismissal.

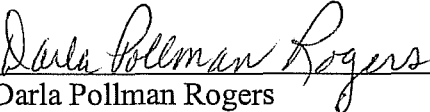
2. There is no authority in rules or in statute to "temporarily suspend without prejudice" a pending application. The appropriate legal action is for the Commission to dismiss the Application without prejudice. Alternatively, Level 3 could with-

draw its Application. In either case, Level 3 can make a decision whether or not to re-submit its Application once the company's business plans have been finalized.

3. To request a "temporary suspension" of an application is unfair to all of the parties involved in the docket.

Accordingly, Beresford respectfully requests the Commission to dismiss Level 3's Application, without prejudice.

Respectfully submitted this twenty-six day of July, 2002.

  
\_\_\_\_\_  
Darla Pollman Rogers  
Meyer & Rogers  
P. O. Box 1117  
Pierre, South Dakota 57501  
Attorney for Beresford

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she served a copy of the **MOTION TO DISMISS** upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

Deb Olofson (original and ten copies)  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

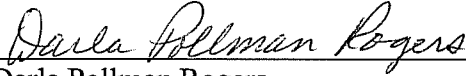
Richard D. Coit  
Director of Industry Affairs  
South Dakota Telecommunications Association  
P. O. Box 57  
Pierre, South Dakota 57501

Thomas H. Frieberg  
Attorney at Law  
P. O. Box 511  
Beresford, South Dakota 57004-0511

David A. Gerdes  
May, Adam, Gerdes & Thompson  
P. O. Box 160  
Pierre, South Dakota 57501

Michael R. Romano  
Director State Regulatory Affairs  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Dated this twenty-sixth day of July, 2002.

  
\_\_\_\_\_  
Darla Pollman Rogers  
MEYER & ROGERS  
P. O. Box 1117  
Pierre, South Dakota 57501

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TELEPHONE  
605 224-8803

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605 224-6289

E-MAIL  
dag@magt.com

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AUG 12 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

HAND DELIVERED

Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **LEVEL 3 COMMUNICATIONS; APPLICATION TO EXPAND ITS  
CERTIFICATE OF AUTHORITY**  
Docket TC02-018  
Our file: 3848

Dear Debra:

Enclosed are original and ten copies of Level 3's response to Beresford's motion to dismiss now pending before the Commission. Please file the enclosure and provide copies of the response to the members of the Commission.

With a copy of this letter, I am forwarding copies of the enclosure to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Keith Senger, Kelly Frazier, Darla Pollman Rogers,  
Richard Coit, Tom Frieberg, Mike Romano, Tamar Finn

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

Application of	)	TC02-018
	)	
<b>Level 3 Communications, LLC</b>	)	
	)	
To Expand its Certificate of Public	)	
Convenience and Necessity to Provide	)	
Facilities-Based Local Exchange	)	
Services in the Service Territory	)	
of Beresford Municipal Telephone Co.	)	

**LEVEL 3 COMMUNICATIONS, LLC'S MEMORANDUM IN  
OPPOSITION TO BERESFORD'S MOTION TO DISMISS**

Beresford Municipal Telephone Company ("Beresford") has filed a motion to dismiss dated July 26, 2002. Level 3 Communications, LLC ("Level 3") responds to that motion to dismiss as follows:

1. Beresford complains that Level 3's application is not complete, which of course is correct. Level 3 in fact acknowledges that the Commission has deemed the application incomplete in its request that the docket be temporarily held in abeyance. The fact that the application is not complete proves nothing, other than that the time limit for a Commission decision stated in SDCL § 49-31-72 has not yet begun to run.

No rule or statute mandates any particular pace for Commission action on dockets where the application is not complete. The passage of a year or more during the life of a docket before the Commission is not at all unusual. To inquire about this point, the

undersigned went to archived orders at the Commission's web site and randomly selected docket TC00-196. That docket, involving an application of Z-Tel Communications, Inc., for certificate of authority, was opened on November 29, 2000, and was concluded by an order awarding a certificate of authority to the applicant on March 6, 2002.

It is understandable that this docket would be approached more deliberately by Staff and Level 3, given the fact that to the knowledge of the undersigned it is the first application the Commission has considered to award a Certificate of Authority to a CLEC in the territory of a rural telephone company. Indeed, this is in part why Level 3 tried to structure its application as narrowly as it did, in order to minimize the concerns that a new entrant would be competing directly with the incumbent for its existing customer base.

Procedurally, the case is awaiting Level 3's decision to supplement its application, or abandon the application. The Commission just recently denied Beresford's motion to dismiss on the grounds that (a) Level 3 did not intend to provide "local exchange services" and (b) Level 3's application was incomplete. Additionally, the Commission provided for a process by which staff could determine when the application is complete. Staff has proposed further data requests which are pending. No party suffers any harm if this case is held in abeyance at this point, and

restarted at a later date by Level 3's submissions in response to the further data requests of Staff.

2. Beresford complains that no authority in the rules or in statutes address Level 3's request to hold the application in abeyance. That is correct, and Level 3 would point out that no authority is necessary. The Commission in its discretion is entitled to manage its dockets, including permitting a reasonable time to allow parties to satisfy legal or procedural issues which have developed during the course of the application. Level 3 respectfully suggests that Beresford's proposed solution of dismissing the application without prejudice would further complicate the issue. Then if Level 3 wished to go forward it would be required to refile its application along with providing an additional filing fee. As Level 3 pointed out above, there is no applicable authority in rule or statute requiring a particular time frame to process this docket by the Commission; and for a very good reason, the Commission should be entitled to exercise discretion in the processing of its dockets.

3. Beresford complains that the request for a "temporary suspension" of the application is unfair to all parties involved in the docket. To the knowledge of Level 3, staff does not object to this procedure. It has been done in other dockets. Beresford seems to be the only one complaining about the procedure.



Of course, Beresford's position in this matter may not be altogether altruistic in terms of protecting Commission processes. Level 3 does not propose in its application to be an Internet service provider. But by virtue of its application, in which Level 3 proposes to provide in-bound only telecommunications connectivity to the public switched telephone network to provide direct inward dialing services or nonswitched dedicated private line services to Internet Service Provider ("ISP") customers, other ISPs would likely begin offering services to end users in the Beresford area. It may very well be that Beresford's position, urging a quick dismissal, is largely based upon its own competitive motives with respect to Level 3's ISP customers.

Specifically, according to information available to Level 3, Beresford provides ISP services (bmtc.net) with two dial-up packages and a DSL package. A copy of Beresford's City Departments web page is attached, showing the availability of "Beresford Internet Service."

It is certainly within Beresford's right to oppose this application. However, given Beresford's competitive interest in denial of the application, the Commission should give heightened scrutiny to any position taken by Beresford which would impose additional filing burdens on Level 3.<sup>1</sup>

---

<sup>1</sup> Grant of Beresford's Motion would also impose additional burdens on Commission staff. In short, by requiring Level 3 to refile its application at a later date, staff would also have to restart the process (reviewing the

It is not Level 3 that will compete against Beresford's ISP business; it is Level 3's customers. Level 3 simply proposes to offer telecommunications services in the Beresford area. The Telecommunications Act of 1996, and particularly section 253 of that act, assures competition for telecommunications services in all local areas, including rural areas.

WHEREFORE Level 3 prays that the motion be denied and that staff be permitted to exercise its discretion in permitting the application to be held in abeyance until December 6, 2002.

Dated this 10<sup>th</sup> day of August, 2002.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES  
Attorneys for Applicant  
503 South Pierre Street  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
Telephone: (605)224-8803  
Telefax: (605)224-6289

#### CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 10<sup>th</sup> day of August, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Thomas H. Frieberg  
Attorney at Law  
P.O. Box 511

---

application, issuing data requests, etc.) and thus likely duplicate work that has already been accomplished to date in this docket.

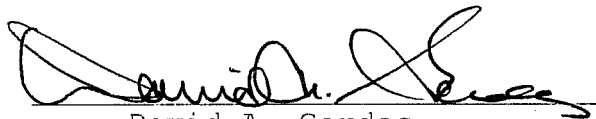
Beresford, SD 57004-0511

Richard D. Coit  
SD Ind Tel Coalition, Inc.  
P.O. Box 57  
Pierre, SD 57501

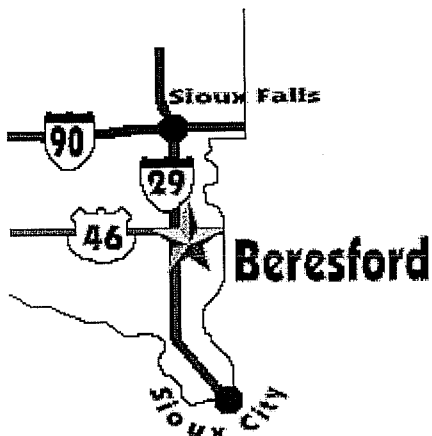
Darla Pollman Rogers  
Meyer & Rogers  
P.O. Box 1117  
Pierre, SD 57501

Kelly Frazier  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Keith Senger  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

A handwritten signature in black ink, appearing to read "David A. Gerdes", written over a horizontal line.

David A. Gerdes



# City of Beresford

## City Departments

- 
- [Beresford Telephone Department](#)
  - [Beresford Cable Department](#)
  - [Beresford Electric Department](#)
  - [Beresford City Administrator](#)
  - [Beresford City Council](#)
  - [Beresford Garbage and Rubble](#)
  - [Beresford City Hall](#)
  - [Beresford Parks Department](#)
  - [Beresford Street Department](#)
  - [Beresford Library](#)
  - [Beresford Internet Service](#)
- 

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# Meyer & Rogers

—ATTORNEYS AT LAW—  
P.O. BOX 1117 • 320 EAST CAPITOL • PIERRE, SOUTH DAKOTA 57501-1117 • TELEPHONE 605-224-7889 • FACSIMILE 605-224-9060

BRIAN B. MEYER  
DARLA POLLMAN ROGERS

August 12, 2002

Deb Olofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RECEIVED

AUG 12 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: Docket No. TC02-018

Dear Deb:

You will find enclosed herein original and ten copies of Beresford Municipal Telephone Company's SUPPLEMENTAL FILING IN SUPPORT OF MOTION TO DISMISS, with attached Exhibits 1, 2 and 3.

By copy of this letter, I am also serving the persons named on the Certificate of Service attached to the Motion.

Sincerely yours,



Darla Pollman Rogers  
Attorney at Law

DPR/ph

Enclosures

CC: Richard D. Coit (with enclosure)  
Thomas H. Frieberg (with enclosure)  
David A. Gerdes (with enclosure)  
Michael R. Romano (with enclosure)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

AUG 12 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Docket No. TC02-018

IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC, TO EXPAND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE SERVICES IN THE SERVICE TERRITORY OF BERESFORD MUNICIPAL TELEPHONE COMPANY

**SUPPLEMENTAL FILING**  
IN SUPPORT OF  
BERESFORD MUNICIPAL  
TELEPHONE COMPANY'S  
MOTION TO DISMISS

COMES NOW **Beresford Municipal Telephone Company** (“**Beresford**”), by and through its undersigned attorney, and hereby submits the following information as additional support of its **Motion to Dismiss** filed with the Commission on or about July 26, 2002:

1. On or about February 19, 2002, Level 3 filed an Application to expand its Certificate of Authority to provide local exchange services within the service territory of Beresford. In conjunction with said Application, Level 3 requested Interconnection Negotiations with Beresford, pursuant to § 251 of the Telecommunications Act.

2. On or about May 14, 2002, Beresford filed its first Motion to Dismiss the Application on several grounds, which Motion was denied by the Commission on May 30, 2002.

3. On July 16, 2002, counsel for Level 3 sent a letter to Commission Staff that was “a formal request to temporarily suspend without prejudice Level 3’s pending Application” of February 19, 2002. The stated reason was “changed business plans” of

Level 3, and the postponement request was until December 6, 2002. (A copy of Level 3's letter is attached hereto as Exhibit 1 and incorporated herein by reference.)


4. Beresford filed a second Motion to Dismiss on July 26, 2002, on the ground that there is no authority in rules or in statute to "temporarily suspend without prejudice" a pending application to a date specific months in the future. (A Copy of Beresford's Motion is attached hereto as Exhibit 2 and incorporated herein by reference.)

5. By letter to Wayne Akland ("Acklund" in the letter) dated July 17, 2002, with copy to counsel, a representative from Level 3 withdrew its request for Interconnection Negotiations with Beresford. The postmark on the envelope of the copy of said letter to counsel was August 1, 2002. (A Copy of said letter is attached hereto as Exhibit 3 and incorporated herein by reference.)

6. The letter from Level 3 further supports Beresford's Motion to Dismiss. As stated therein, the appropriate action of Level 3's Application is for the Commission to dismiss the Application without prejudice, or alternatively, for Level 3 to withdraw its Application.

7. Since Level 3 has withdrawn its Interconnection Negotiations request to Beresford, it follows that Level 3 or the Commission should take action consistent with respect to the Application.

Respectfully submitted this twelfth day of August, 2002.

  
\_\_\_\_\_  
Darla Pollman Rogers  
Meyer & Rogers  
P. O. Box 1117  
Pierre, South Dakota 57501  
Attorney for Beresford

CERTIFICATE OF SERVICE

The undersigned hereby certifies that:

1. The original and ten copies of the foregoing SUPPLEMENTAL FILING IN SUPPORT OF MOTION TO DISMISS were hand delivered on the twelfth day of August, 2002, to:

Deb Olofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

2. A copy of the foregoing SUPPLEMENTAL FILING IN SUPPORT OF MOTION TO DISMISS was hand-delivered on the twelfth day of August, 2002, to:

Richard D. Coit  
Director of Industry Affairs  
South Dakota Telecommunications Association  
P. O. Box 57  
Pierre, South Dakota 57501

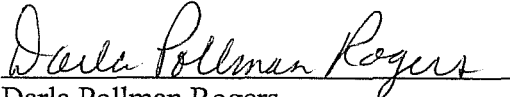
3. A copy of the foregoing SUPPLEMENTAL FILING IN SUPPORT OF MOTION TO DISMISS was served upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to said addressee, to-wit:

Thomas H. Frieberg  
Attorney at Law  
P. O. Box 511  
Beresford, South Dakota 57004-0511

David A. Gerdes  
May, Adam, Gerdes & Thompson  
P. O. Box 160  
Pierre, South Dakota 57501

Michael R. Romano  
Director State Regulatory Affairs  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Dated this twelfth day of August, 2002.

  
Darla Pollman Rogers  
MEYER & ROGERS  
P. O. Box 1117  
Pierre, South Dakota 57501



LAW OFFICES  
MAY, ADAM, GERDES & THOMPSON LLP  
503 SOUTH PIERRE STREET  
P.O. BOX 160  
PIERRE, SOUTH DAKOTA 57501-0160

THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
NEIL FULTON  
BOBBI J. BENSON  
BRETT KOENECKE

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July 16, 2002

OF COUNSEL  
WARREN W. MAY

GLENN W. HARTENS 1881-1963  
KARL GOLDSMITH 1885-1966

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605 224-6289

E-MAIL  
dag@magt.com

Keith Senger  
Utility Analyst  
and  
Kelly Frazier  
Staff Attorney  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: Docket No: TC02-018; Application of Level 3  
Communications, LLC, to Expand its Certificate of Public  
Convenience and Necessity to Provide Facilities-Based  
Local Exchange Services in the Service Territory of  
Beresford Municipal Telephone Co.  
Our file: 3848

Dear Keith and Kelly:

On behalf of Level 3 Communications, LLC ("Level 3"), please accept this filing as a formal request to temporarily suspend without prejudice Level 3's pending Application to expand its authority to offer local exchange telecommunications services in the State of South Dakota filed on February 19, 2002, in the above-referenced docket number. As Level 3's business plans have changed, the Company no longer requires that the requested authority in Beresford Municipal Telephone Company's service territory be processed immediately. (Level 3 notes that because its application has not yet been deemed complete, the statutory time frame for the consideration of the application has not yet commenced.) Instead, Level 3 wishes to postpone any further activity on its Application until December 6, 2002. At that time, Level 3 will either respond to the Staff third data requests dated June 18, 2002, or notify the Commission of its intention to withdraw the application entirely. However,

Keith Senger  
Kelly Frazier  
July 16, 2002  
Page 2

Level 3 intends to operate under its existing authority granted in Docket No. TC99-015.

Enclosed please find an extra copy. Please have it date-stamped and return it in the postage-prepaid envelope provided. Thank you for your attention to this matter. Should you have any questions concerning this letter, please do not hesitate to contact the undersigned at (605)224-3803.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc: Mike Romano  
Tamar Finn  
Tom Frieberg  
Darla Pollman Rogers  
Richard Coit

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

<p>IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC, TO EXPAND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE SERVICES IN THE SERVICE TERRITORY OF BERESFORD MUNICIPAL TELEPHONE COMPANY</p>	<p style="text-align: center;">Docket No. TC02-018</p> <p style="text-align: center;">MOTION TO DISMISS</p>
---	---

COMES NOW Beresford Municipal Telephone Company (Beresford), by and through its undersigned attorney, and hereby moves the Commission to dismiss Level 3 Communications, LLC's (Level 3) Application to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Company, which Application was filed by Level 3 on or about February 19, 2002. This Motion is based upon the following grounds:

1. Level 3's Application has never been complete. In an Order Dismissing Beresford's Motion to Dismiss, this Commission specifically found that Level 3's Application was incomplete. Staff's Third Data Request remains unanswered, and Level 3, in letter of counsel dated July 16, 2002, notes that "its application has not yet been deemed complete." The appropriate disposition of an incomplete application under South Dakota rules is dismissal.

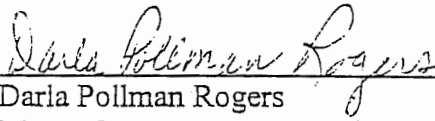
2. There is no authority in rules or in statute to "temporarily suspend without prejudice" a pending application. The appropriate legal action is for the Commission to dismiss the Application without prejudice. Alternatively, Level 3 could with-

draw its Application. In either case, Level 3 can make a decision whether or not to re-submit its Application once the company's business plans have been finalized.

3. To request a "temporary suspension" of an application is unfair to all of the parties involved in the docket.

Accordingly, Beresford respectfully requests the Commission to dismiss Level 3's Application, without prejudice.

Respectfully submitted this twenty-six day of July, 2002.

  
\_\_\_\_\_  
Darla Pollman Rogers  
Meyer & Rogers  
P. O. Box 1117  
Pierre, South Dakota 57501  
Attorney for Beresford

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the **MOTION TO DISMISS** upon the persons herein next designated, on the date below shown, by depositing a copy thereof in the United States mail at Pierre, South Dakota, postage prepaid, in an envelope addressed to each said addressee, to-wit:

Deb Olofson (original and ten copies)  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

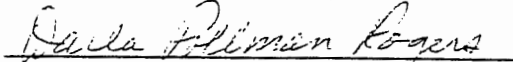
Richard D. Coit  
Director of Industry Affairs  
South Dakota Telecommunications Association  
P. O. Box 57  
Pierre, South Dakota 57501

Thomas H. Frieberg  
Attorney at Law  
P. O. Box 511  
Beresford, South Dakota 57004-0511

David A. Gerdes  
May, Adam, Gerdes & Thompson  
P. O. Box 160  
Pierre, South Dakota 57501

Michael R. Romano  
Director State Regulatory Affairs  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Dated this twenty-sixth day of July, 2002.

  
\_\_\_\_\_  
Darla Pollman Rogers  
MEYER & ROGERS  
P. O. Box 1117  
Pierre, South Dakota 57501



Michelle Krezek  
Director, Interconnection Services  
Level 3 Communications  
TEL: (720) 888-6330  
FAX: (720) 888-5134  
michelle.krezek@level3.com

July 17, 2002

Mr. Wayne Acklund  
Beresford Municipal Telephone Co.  
101 N 3<sup>rd</sup> Street  
Beresford, SD 57004-1796

Dear Mr. Acklund:

Due to changes in the marketing plan of Level 3 customers, Level 3 withdraws its request for Interconnection Negotiations with Level 3 Communications, LLC ("Level 3") Pursuant to Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), with Beresford Municipal Telephone Co.

Level 3 reserves its rights to reinstate this request at a future date

Very truly,

A handwritten signature in black ink that reads "Michelle Krezek".

Michelle Krezek  
Director, Interconnection Services

Cc Darla Rogers  
Mark Stacy, QSI Consulting

LAW OFFICES  
MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET  
P.O. BOX 160  
PIERRE, SOUTH DAKOTA 57501-0160

THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
NEIL FULTON  
BOBBI J. BENSON  
BRETT KOENECKE

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August 13, 2002

OF COUNSEL  
WARREN W. MAY  
GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966

TELEPHONE  
605 224-8803

TELECOPIER  
605 224-6289

E-MAIL  
dag@magt.com

**HAND DELIVERED**

Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **LEVEL 3 COMMUNICATIONS; APPLICATION TO EXPAND ITS  
CERTIFICATE OF AUTHORITY**

Docket TC02-018  
Our file: 3848

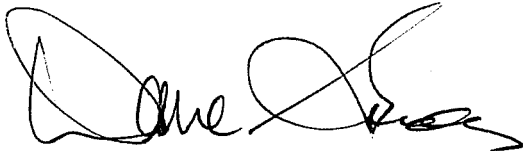
Dear Debra:

Yesterday I sent you original and ten copies of Level 3's response to Beresford's motion to dismiss now pending before the Commission. However, due to an oversight the attachment mentioned on page 4 was not included with the copies. Enclosed is an original and ten copies of that attachment to the memorandum and I would ask that you please attach the page to the copies of the Memorandum. I apologize for the inconvenience.

With a copy of this letter, I am forwarding a copy of the attachment to the service list. Thank you.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



BY:  
DAG:mw

Enclosures

cc/enc: Keith Senger, Kelly Frazier, Darla Pollman Rogers,  
Richard Coit, Tom Frieberg, Mike Romano, Tamar Finn

*Attached page  
to the Memorandum*

## Kolbo, Delaine

---

**From:** Douglas, Tina  
**Sent:** Friday, August 09, 2002 9:22 AM  
**To:** Kolbo, Delaine  
**Subject:** NEW FAX NUMBER

MICHAEL ROMANS FAX NUMBER IS 720-888-5134



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF )  
LEVEL 3 COMMUNICATIONS, LLC FOR )  
APPROVAL TO EXPAND ITS CERTIFICATE OF )  
AUTHORITY TO PROVIDE FACILITIES-BASED )  
LOCAL EXCHANGE SERVICES IN THE )  
SERVICE TERRITORY OF BERESFORD )  
MUNICIPAL TELEPHONE CO. )

**ORDER GRANTING  
MOTION TO DISMISS**

**TC02-018**

On February 19, 2002, the Public Utilities Commission (Commission) received an Application from Level 3 Communications, LLC (Level 3) for approval to expand its certificate of authority to provide local exchange services in the service territory of Beresford Municipal Telephone Co.

On February 21, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 8, 2002, to interested individuals and entities. Beresford Municipal Telephone Co. (Beresford) filed a Petition to Intervene on March 4, 2002. At a regularly scheduled meeting of March 28, 2002, the Commission granted intervention to Beresford. On May 9, 2002, the Commission received a Petition for Late Intervention from the South Dakota Telecommunications Association (SDTA). At a regularly scheduled meeting on May 30, 2002, the Commission granted late intervention to SDTA.

On July 29, 2002, the Commission received a Motion to Dismiss from Beresford. On August 12, 2002, the Commission received Level 3's Memorandum in Opposition to Beresford's Motion to Dismiss. On August 12, 2002, the Commission received a Supplemental Filing in Support of Beresford's Motion to Dismiss.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, particularly 49-31-69 through 75, inclusive, and ARSD 20:10:01:32.06.

On August 15, 2002, at its regularly scheduled meeting, the Commission considered this matter. The Commission voted to grant the Motion to Dismiss. It is therefore

ORDERED, that Beresford's Motion to Dismiss is granted.

Dated at Pierre, South Dakota, this 29<sup>th</sup> day of August, 2002.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Tina Douglas

Date: 8-29-02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Robert K. Sahr  
ROBERT K. SAHR, Commissioner

[Signature]  
[Illegible text]

On February 19, 2002, McLeodUSA Telecom Development, Inc. (MTDI) filed for approval of its Switched Access Tariff. The tariff is intended to replace the switched access tariff for Dakota Telecom, Inc. MTDI has also requested that the Commission approve a petition for exemption from the development of company specific cost-based switched access rates consistent with ARSD 20:10:27:11.

Staff Analyst: Michele M. Farris  
Staff Attorney: Karen Cremer  
Date Filed: 02/19/02  
Intervention Deadline: 03/08/02

**TC02-018 In the Matter of the Application of Level 3 Communications, LLC for Approval to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Co.**

On May 5, 1999, the Commission granted Level 3 Communications, LLC (Level 3) authority to provide local exchange services in those areas in South Dakota where U S WEST Communications, Inc. [now Qwest Corporation] is the incumbent local exchange carrier. On February 19, 2002, the Commission received an application from Level 3 to provide facilities-based local exchange services within the service territory of Beresford Municipal Telephone Company.

Staff Analyst: Keith Senger  
Staff Attorney: Kelly Frazier  
Date Docketed: 2/19/02  
Intervention Deadline: 3/08/02

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8/12/02 Supplemental Filing in support of Berglund's Motion to Dismiss;

8/29/02 Order Granting Motion to Dismiss;

8/29/02 Racket Closed

LAW OFFICES  
**MAY, ADAM, GERDES & THOMPSON LLP**  
 503 SOUTH PIERRE STREET  
 P.O. BOX 160  
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 MICHAEL F. SHAW  
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February 19, 2002

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**HAND DELIVERED**

Debra Elofson  
 Executive Secretary  
 Public Utilities Commission  
 500 East Capitol Avenue  
 Pierre, South Dakota 57501

**RECEIVED**

FEB 19 2002

**SOUTH DAKOTA PUBLIC  
 UTILITIES COMMISSION**

RE: **LEVEL 3 COMMUNICATIONS**  
 Our file: 3848

Dear Debra:

Enclosed are original and ten copies of the application of Level 3 Communications for an expanded certificate of authority, which please file.

I am also enclosing an extra face page from the Application. Please date stamp it, enter the docket number and return it to me in the enclosed self-addressed stamped envelope.

Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc: Brian McDermott/Tamar Finn

BEFORE THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

RECEIVED

FEB 19 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

\_\_\_\_\_  
Application of )  
 )  
 )  
Level 3 Communications, LLC )  
 )  
To Expand its Certificate of Public )  
Convenience and Necessity to Provide )  
Facilities-Based Local Exchange )  
Services in the Service Territory )  
of Beresford Municipal Telephone Co. )  
\_\_\_\_\_ )

Docket No. \_\_\_\_\_

APPLICATION OF  
LEVEL 3 COMMUNICATIONS, LLC

Level 3 Communications, LLC (“Level 3” or “Applicant”) by its undersigned counsel and pursuant to Section 49–31–3 of the South Dakota Codified Laws and Section 20:10:32:03 of the Administrative Rules of South Dakota, hereby applies to expand its Certificate of Authority to provide facilities-based local exchange telecommunications services within the service territory of Beresford Municipal Telephone Co.<sup>1</sup> Grant of this Application will provide significant benefits to South Dakota telecommunications consumers in terms of increased carrier choices, competitive pricing, increased reliability, responsiveness, and the introduction of new and innovative services. It will also stimulate investment in South Dakota’s telecommunications infrastructure, resulting in economic development. Level 3 requests expedited approval of this Application to permit Level 3 to offer a competitive choice for facilities-based local exchange

<sup>1</sup> The Commission has granted Level 3 authority to provide telecommunications services in the State of South Dakota including facilities-based local exchange in the service territories of Qwest Corporation (“Qwest”). *Certificate of Authority of Level 3 Communications, LLC to provide telecommunications services in South Dakota*, Docket No. TC99-015 (November 2, 1999). Level 3 now seeks to expand the authority granted in its Certificate of Authority to provide the same services in the service territory of the Beresford Municipal Telephone Co.

telecommunications services in the service territory of Beresford Municipal Telephone Co. as soon as possible.

In support of its Application and pursuant to Section 20:10:32:03 of the Administrative Rules of South Dakota, Level 3 states as follows:

1. Name, Address, and Telephone Number of Applicant (Section 20:10:32:03(1)):

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

Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Telephone: (720) 888-1000  
Facsimile: (720) 888-5134

2. Name and Business Address of Each Corporate Officer and Director (Section

20:10:32:03(2)): Level 3's officers are:

James Q. Crowe	Chief Executive Officer
Kevin J. O'Hara	President, Chief Operating Officer
R. Douglas Bradbury	Executive Vice President and Chief Financial Officer
Linda J. Adams	Vice President, Human Resources
Daniel P. Caruso	Senior Vice President, Network Business
Thomas C. Stortz	Group Vice President, Secretary and General Counsel
Donald H. Gips	Senior Vice President, Global Corporate Development
Michael D. Jones	Senior Vice President
Neil J. Eckstein	Vice President and Assistant Secretary
Kevin F. Bostick	Treasurer
Brian R. Hedlund	Assistant Secretary
Mitchell Moore	Vice President
Eric J. Mortensen	Controller

The managers of Level 3 are:

James Q. Crowe  
R. Douglas Bradbury  
Thomas C. Stortz

The officers and managers may be reached at the following address and phone number:

Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Telephone: (720) 888-1000  
Facsimile: (720) 888-5134

3. Name Under which Applicant will Provide Services (Section 20:10:32:03 (3)):

Applicant will continue to operate under its legal name, Level 3 Communications, LLC.

4. Legal Organization (Section 20:10:32:03 (4) and Section 20:10:32:03 (6)): Ap-

plicant does not currently have an office within South Dakota. Level 3's registered agent in the State of South Dakota is:

CT Corporation System  
319 S. Coteau Street  
Pierre, South Dakota 57501

Level 3 is a limited liability company organized on December 1, 1997 under Delaware law. Level 3 is wholly-owned by its sole member, (i)Structure, Inc., formerly known as PKS Information Services, Inc., which is in turn wholly-owned by Level 3 Communications, Inc., a publicly-traded (NASDAQ:LVLTL) company. Level 3 is qualified to do business in the State of South Dakota. A copy of Level 3's Certificate of Authority and Certificate of Good Standing are attached as *Exhibit A*.

5. Experience Providing Telecommunications Services and Technical Competence (Section 20:10:32:03 (5) and Section 20:10:32:03 (9)): This Commission granted Level 3 a Certificate of Authority in Docket No. TC99-015 based in part upon finding that Level 3 possessed the requisite managerial and technical qualifications to provide telecommunications services in South Dakota.<sup>2</sup> Since the grant of that Application, Level 3 has supplemented its staff

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<sup>2</sup> *Certificate of Authority of Level 3 Communications, LLC to provide telecommunications services in South Dakota*, Docket No. TC99-015 (November 2, 1999).

of experienced senior managers, as listed in paragraph 2 above. Together, Level 3's officers have over forty years' experience in the telecommunications industry which provides the technical and operational foundation necessary to execute the company's business plan, to provide its proposed telecommunications services, and to operate and maintain Level 3's facilities over which the proposed services will be deployed. Descriptions of the extensive telecommunications and managerial experience of Level 3's key management personnel are provided in the biographies of Level 3's key officers responsible for technology and operations attached as *Exhibit B*. Level 3 remains managerially and technically qualified to provide telecommunications services throughout the State of South Dakota.

6. Proposed Services and Geographic Area to be Served (Section 20:10:32:03(7) and Section 20:10:32:03(8)): Level 3 is currently authorized to provide telecommunications services in the State of South Dakota including facilities-based local exchange telecommunications services within the service territory of Qwest, and hereby seeks authorization to provide the same services in the exchanges served by Beresford Municipal Telephone Co. Specifically, Level 3 intends to offer service in Beresford.

Level 3's services are available on a full-time basis, twenty-four hours a day, seven days a week. Level 3 is committed to expanding its services to portions of the state that have experienced little or no competitive entry to date.

7. Customer Access to 911, Operator Service, Interexchange Services, Directory Assistance and Telecommunications Relay Services (Section 20:10:32:03(10)): Level 3 will continue to comply with all applicable laws and regulations relevant to the provision of these services. Level 3 is currently authorized to provide telecommunications services in the State of South Dakota including facilities-based local exchange telecommunications services within the



service territory of Qwest Corporation, and hereby seeks authorization to provide the same services in the exchanges served by Beresford Municipal Telephone Co.

8. Financial Qualifications (Section 20:10:32:03 (11)): This Commission granted Level 3 a Certificate of Authority in Docket No. TC99-015 based in part upon finding that Level 3 possessed the requisite financial qualifications to provide telecommunications services in South Dakota. Since the grant of its Certificate, Level 3 has generated substantial annual revenues and maintained access to working capital necessary to fund its in-state operations. In particular, Level 3 will continue to rely on the financial resources of Level 3 Communications, Inc., its ultimate parent, to provide initial capital investment and to fund operations during the initial phase of entry into the service territory of Beresford Municipal Telephone Co. Level 3 Communications, Inc. 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 or lease facilities.

Attached as *Exhibit C* is a copy of Level 3 Communications, Inc.'s most recent annual report on SEC Form 10-K for the fiscal year ended December 31, 2000. *Exhibit C* is offered to demonstrate Level 3's financial qualifications to provide the services for which authority is requested. The capital evidenced by *Exhibit C* will be available to meet Level 3's current and future capital needs as it completes and maintains its network and provides services to South Dakota consumers. The Commission should therefore find that Level 3 remains financially qualified to provide telecommunications services throughout the State of South Dakota.

9. Interconnection (Section 20:10:32:03 (12)): Level 3 intends to deploy an independent network by either building its own facilities or leasing the facilities of other carriers. To the extent that Beresford Municipal Telephone Co. possesses an exemption or suspension under

Section 251(f) of the Act, Level 3 does not seek interconnection under Section 251(c) at this time, nor does Level 3 seek at this time to challenge Beresford Municipal Telephone Co.'s exemption from any of the other obligations specified in Section 251(c). Rather, for the present, Level 3 intends to lease the facilities of third party carriers, or, where necessary, purchase the tariffed services of Beresford Municipal Telephone Co. to support market entry and the exchange of all kinds of traffic between Beresford Municipal Telephone Co.'s customers and Level 3's customers. However, to preserve its right to provide service using Beresford Municipal Telephone Co.'s unbundled network elements at some future date, Level 3 requests that the Commission grant Level 3 full facilities-based authority in the Beresford Municipal Telephone Co. service territory with the qualification that Level 3 may not provide service using unbundled network elements, unless and until it submits a bona fide request for interconnection and the Commission determines that the request satisfies the requirements of Section 251(f).

10. Tariffs (Section 20:10:32:03 (13)): Attached hereto as *Exhibit D* is a copy of Level 3's proposed local exchange tariff. Upon certification and prior to commencement of service in these territories, Level 3 will file its final tariff with the Commission, which will reflect Level 3's service offerings in the expanded service territory.

11. Cost Support (Section 20:10:32:03 (14)): The services that Level 3 provides in South Dakota are competitive services; therefore, Level 3 has not provided cost support for the rates shown in its tariff.

12. Marketing (Section 20:10:32:03 (15)): Level 3 will continue to market its services in the same manner as it currently markets its services in other states. Level 3's primary way to market its services is through its direct sales force. Applicant does not intend to engage

in telemarketing or multi-level marketing. A copy of marketing materials, available on Level 3's web-site, is attached hereto as *Exhibit E*.

13. Date Company will Meet Commission Obligations for Local Exchange Services in Rural Areas (Section 20:10:32:03 (16)): Level 3 acknowledges the requirements of Section 20:10:32:15 of the Administrative Rules of South Dakota, which requires Level 3 to meet the eligible telecommunications carrier service requirements within 24 months after the later of:

- A) the date of the Commission's order granting the provider a Certificate of Authority to provide local exchange services within the service area of Beresford Municipal Telephone Co., or
- B) the date of the Commission's order approving any agreements for resale, interconnection, or network elements that are necessary for the provision of local exchange services.

Level 3 reserves its right, under Section 20:10:32:18, to seek a waiver of the rule or an extension of the deadline for compliance if it determines that it is unable to meet these requirements within the 24 month timeframe.

14. List of States Where Company is Registered/Approved to Provide Telecommunications Services (Section 20:10:32:03 (17)): Level 3 holds authority to provide telecommunications services in all fifty (50) states and the District of Columbia. The Applicant has not been denied authority to provide telecommunications services in any state. Level 3's certificates authorizing it to provide telecommunications services, to the best of its knowledge, are currently in good standing throughout the United States.

15. Contact Information for Company (Section 20:10:32:03 (18)): Correspondence or communications pertaining to this Application should be directed to:

Michael Romano  
Director- State Regulatory Affairs  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Telephone: (720) 888-2512  
Facsimile: (720) 888-5134

Questions concerning the ongoing operations of Level 3 following certification should be directed to:

Gregory L. Rogers  
Attorney  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Telephone: (720) 888-2512  
Facsimile: (720) 888-5134

16. Policies Regarding Customer Billing and Collection (Section 20:10:32:03(19)):

Level 3 will comply with Commission regulations regarding customer billing and collection. Level 3's toll-free customer service telephone number for customer inquiries is:

(877) 4-LEVEL-3 (877-453-8353)

17. Slamming, Unauthorized Switching, and Cramming (Section 20:10:32:03 (20) and Section 20:10:32:03 (21)): There are no complaints against Applicant in any jurisdiction regarding the unauthorized switching of a customer's telecommunications provider or the act of charging customers for services that have not been ordered. Level 3 will continue to comply with all Commission regulations concerning slamming, unauthorized switching and cramming.

18. Waivers (Section 20:10:32:03 (22)): Without prejudice to its ability to seek waiver of Commission rules at some future date, Level 3 does not seek waiver of any Commission rule at this time.

19. Federal Tax Identification Number (Section 20:10:32:03(23)): Level 3's federal tax identification number is 47-0807040.

20. Other Information (Section 20:10:32:03 (25))

This Commission granted Level 3 a Certificate of Authority based in part upon finding that grant of Level 3's certificate was in the public interest. The grant of this Application will also further the public interest by expanding the availability of telecommunications services in Beresford Municipal Telephone Co's service territories. In particular, the public will benefit directly through the use of the competitive local services to be offered by Level 3. The public will also benefit indirectly because the competitive presence of Level 3 in the service territories of Beresford Municipal Telephone Co. will increase the incentives for both telecommunications providers to operate more efficiently, offer more innovative services, reduce prices, and improve the quality and coverage of their services. Indeed, one of the significant benefits Level 3 will bring to consumers is the ability to access advanced services over its network in areas in which those services are not competitively available or are nonexistent. In addition, intrastate offering of these services is in the public interest because the services will provide South Dakota customers with access to new technologies and service choices and can permit customers to achieve increased efficiencies and cost savings.

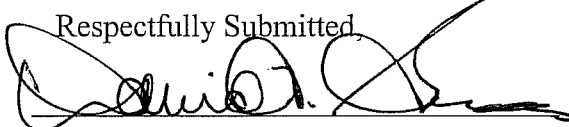
Grant of this Application will promote the availability of quality services and increased consumer choice for South Dakota telecommunications consumers. Competition for customers in Beresford Municipal Telephone Co. service territory should result in benefits to consumers in the form of lower prices, better quality, and increased investment in broadband infrastructure. Level 3's expertise in the telecommunications industry will allow it to provide economic and efficient services, thereby affording customers with an optimal combination of price, quality, and customer service. Accordingly, Level 3 anticipates that its proposed services will increase

consumer choice of innovative, diversified, and reliable service offerings in the service territories of Beresford Municipal Telephone Co. and further the public interest.

Level 3 intends to offer its services to, among other customers, Internet service providers who currently do not have points of presence in many of the exchange areas covered by this Application. Level 3 has established nationwide contractual arrangements with major Internet Service Providers for the deployment of points of presence on the Level 3 network. Consumers who currently have to dial long-distance for access to Internet service providers will benefit by the establishment of points of presence within their local calling areas. The Commission should therefore find that expanding Level 3's certification to provide telecommunications services is also in the public interest.

#### IV. CONCLUSION

WHEREFORE, Level 3 Communications, LLC respectfully requests that the Commission grant it the requested authority to provide facilities-based local exchange telecommunications services within the present local exchange service territories of Beresford Municipal Telephone Co.

Respectfully Submitted  
By: 

Russell M. Blau  
Tamar E. Finn  
Brian McDermott  
Swidler Berlin Shereff Friedman, LLP  
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Washington, DC 20007-5116  
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David A. Gerdes  
May, Adam, Gerdes & Thompson LLP  
503 S. Pierre St.  
Pierre, South Dakota 57501  
(605)224-8803 (Tel)  
(605)224-6289 (Fax)

COUNSEL FOR APPLICANT



LIST OF EXHIBITS

- Exhibit A - Certificate of Authority & Certificate of Good Standing
  - Exhibit B - Management Biographies
  - Exhibit C - Annual Report
  - Exhibit D - Illustrative Local Exchange Tariff
  - Exhibit E - Marketing Materials
-



**Exhibit A**

**Certificate of Authority & Certificate of Good Standing**

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

### CERTIFICATE OF AUTHORITY

#### LIMITED LIABILITY COMPANY

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of LEVEL 3 COMMUNICATIONS, LLC (DE) to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state under the name of LEVEL 3 COMMUNICATIONS, LLC



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this March 24, 1998.

JOYCE HAZELTINE  
Secretary of State

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

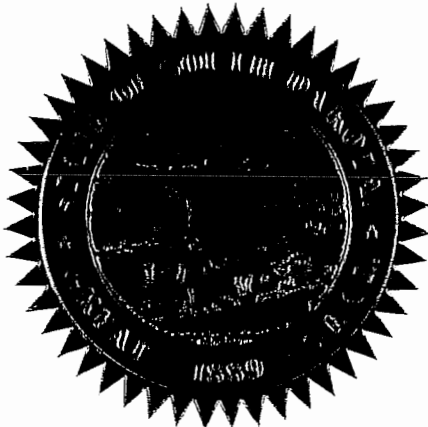
### Certificate of Authorization Foreign Limited Liability Company

ORGANIZATIONAL ID #: FL000293

I, **JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, do hereby certify that **LEVEL 3 COMMUNICATIONS, LLC (DE)** was authorized to transact business in this state on **March 24, 1998**.

I, further certify that said limited liability company has complied with the South Dakota law governing foreign limited liability companies transacting business in this state, and so far as the records of this office show, said limited liability company is in good standing in this State at the date hereof and duly authorized to transact business in the State of South Dakota. The annual report required by law has been filed with our office and a certificate of cancellation has not been filed. This certificate is not to be construed as an endorsement, recommendation or notice of approval of the limited liability companies financial condition or business activities and practices. Such information is not available from this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this January 30, 2002.



Joyce Hazeltine  
Secretary of State

**Exhibit B**

Management Biographies

## **James Q. Crowe**

James Q. Crowe is the Chief Executive Officer of Level 3 Communications, Inc. 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 Chief executive Officer 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 Peter Kiewit Sons', Inc. 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 currently serves on the board of directors of Level 3 Communications, Inc., Peter Kiewit Sons, Inc., RCN Corporation, and Commonwealth Telephone Enterprises, Inc.

Mr. Crowe graduated from Rensselaer Polytechnic Institute with a Bachelor of Science degree in mechanical engineering. He also holds a master of business administration degree from Pepperdine University.

## **R. Douglas Bradbury**

R. Douglas Bradbury is Vice Chairman of Level 3 Communications, Inc. Mr. Bradbury has been a Director since March 1998.

He also served as Executive Vice President and Chief Financial Officer for Level 3 since August 1997. Prior to joining Level 3, Mr. Bradbury was the Chief Financial Officer of MFS Communications Company, Inc. from 1992 to 1996, Senior Vice President of MFS from 1992 to 1995, and Executive Vice President of MFS from 1995 to 1996. He was Senior Vice President-Corporate Affairs for MFS Telecom from 1988 to 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 as Vice President of Manufacturers Hanover Trust Company in New York and Milan, Italy.

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

Kevin J. O'Hara is the President and Chief Operating Officer of Level 3 Communications, Inc., and he is responsible for expanding Level 3's presence in the telecommunications industry. Mr. O'Hara also serves on the Level 3 Board of Directors.

Prior to joining Level 3, Mr. O'Hara was President and Chief Executive Officer of MFS Global Network Services (GNS). GNS was the MFS Service arm responsible for the planning, development, engineering, and operations of all MFS networks and services worldwide. Previously, Mr. O'Hara held the position of President of MFS Development and Vice President of 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 master's degree in business administration from the University of Chicago.

## **Daniel P. Caruso**

Mr. Caruso is Group Vice President of Network Business for Level 3 Communications, Inc. Level 3's infrastructure, IP, Transport and European lines of business operations report to Mr. Caruso. Additionally, he has responsibility for Line of Business Operations Group and the Field Management and Optimization unit.

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 providing local switched service.

Prior to this assignment, Mr. Caruso managed network development groups. These groups were responsible for driving MFS's network expansions into new geographical markets in the northeast and central regions of the United States

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. Mr. Caruso also held several engineering, operations, and financial positions within Ameritech's operating units.

Mr. Caruso holds a master of business administration degree from the University of Chicago and a Bachelor of Science degree in engineering from the University of Illinois at Champaign-Urbana.



## **Thomas C. Stortz**

Thomas C. Stortz is Group Vice President and General Counsel for Level 3 Communications, Inc. He is responsible for Level 3's legal and regulatory activities worldwide.

Prior to joining Level 3, Mr. Stortz was General Counsel of Peter Kiewit Sons, Inc., (PKS). Mr. Stortz joined PKS as an attorney in 1981 and served as vice president and general counsel for PKS and Kiewit Construction Group, Inc., since 1991.

He currently sits on the board of directors of PKS and the Nebraska Methodist Hospital Foundation. He has served as a director of RCN Corporation, C-TEC Corporation, Kiewit Diversified Group, Inc., and CCL Industries, inc.

Mr. Stortz earned his law degree at Creighton University School of Law and holds a bachelor of business administration degree from the University of Iowa.

## **Mike Jones**

Mr. Jones is President and Chief Executive Officer for Level 3 Communications, Inc.'s subsidiary, (i)Structure<sup>SM</sup>, Inc., and international full-service computer outsourcing, systems integrations, and Internet solutions company. Previously he was Group Vice President, Information Technology and Chief Information Officer for Level 3.

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, Mr. Jones was the director of billing systems for Sprint International, and an associate partner with Anderson Consulting.

Mr. Jones has a degree in accounting and computer science from Southwestern Oklahoma State University.

**Linda J. Adams**

Linda Adams is currently Vice President of Human Resources for Level 3 Communications. Prior to this assignment she was Senior Vice President of Human Resources for Thorn Americas, Inc., from 1995 to 1998. Additionally, she has held senior level human resources positions at PepsiCo and Hardee's Food Services, Inc. over the past 20 years.

Ms. Adams received her Master of Arts Degree in Economics and Philosophy from the university of St. Andrews in 1977.

## **Jack Waters**

Jack Waters is Chief Technical Officer and Vice President of Network Engineering for Level 3 Communications. His responsibilities include setting and maintaining the company's technology direction; defining essential architecture phases and strategic vendor requirements; and oversight of key engineering initiatives in all Level 3 regions.

Prior to joining Level 3, Jack was a member of MCI's Executive Staff responsible for the architecture, design and implementation of MCI and Concert's Internet Services. Additionally, he was one of the original key contributors who designed and built MCI's initial Internet Service.

Mr. Waters has over 10 years of experience focusing on engineering and design of Internet technology and services. Mr. Waters holds a Bachelor of Science degree in Electrical Engineering from West Virginia University, as well as a Masters of Science in Electrical Engineering from Johns Hopkins University.

**Exhibit C**

Annual Report

**FORM 10-K**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

(Mark One)  
 ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934

For the fiscal year ended December 31, 2000

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

For the transition period from to

*Commission file number: 0-15658*

**Level 3 Communications, Inc.**

(Exact name of Registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	47-0210602 (I.R.S. Employer Identification No.)
---	---

1025 Eldorado Blvd., Broomfield, Colorado 80021  
(Address of principal executive offices) (Zip code)

(720) 888-1000  
(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 per share  
Rights to Purchase Series A Junior Participating Preferred Stock, par value  
\$.01 per share

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.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Title	Outstanding
Common Stock, par value \$.01 per share	367,802,921 as of February 26, 2001

## DOCUMENTS INCORPORATED BY REFERENCE

List hereunder the following documents if incorporated by reference and the Part of the Form 10-K (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; (2) Any proxy or information statement; and (3) Any prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act of 1933. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1980).

Portions of the Company's Definitive Proxy Statement for the 2001 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K

## Cautionary Factors That May Affect Future Results

(Cautionary Statements Under the Private Securities Litigation Reform Act of 1995)

This report 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 Level 3 Communications, Inc. and its subsidiaries (Level 3 or the Company). When used in this report, the words anticipate, believe, plans, 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. These forward-looking statements include, among others, statements concerning:

- . the Company's communications and information services business, its advantages and the Company's strategy for implementing the business plan;
- . anticipated growth of the communications and information services industry;
- . plans to devote significant management time and capital resources to the Company's business;
- . expectations as to the Company's future revenues, margins, expenses and capital requirements;
- . anticipated dates on which the Company will begin providing certain services or reach specific milestones in the development and implementation of its business; and
- . other statements of expectations, beliefs, future plans and strategies, anticipated developments and other matters that are not historical facts.

These forward-looking statements are subject to risks and uncertainties, including financial, regulatory, environmental, industry growth and trend projections, that could cause actual events or results to differ materially from those expressed or implied by the statements. The most important factors that could prevent Level 3 from achieving its stated goals include, but are not limited to, the Company's failure to:

- . achieve and sustain profitability based on the implementation of its advanced, international, facilities based communications network based on Internet Protocol technology;
- . overcome significant early operating losses;
- . produce sufficient capital to fund its business;
- . develop financial and management controls, as well as additional controls of operating expenses as well as other costs;
- . attract and retain qualified management and other personnel;
- . install on a timely basis the switches/routers, fiber optic cable and associated electronics required for successful implementation of the Company's business;

. successfully complete commercial testing of new technology and Company information systems to support new products and services, including voice transmission services;

. negotiate new and maintain existing peering agreements; and

. develop and implement effective business support systems for processing customer orders and provisioning.

The Company undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise. Further disclosures that the Company makes on related

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subjects in its additional filings with the Securities and Exchange Commission should be consulted. For further information regarding the risks and uncertainties that may affect the Company's future results, please review our Current Report on Form 8-K/A filed with the Securities and Exchange Commission on November 9, 1999.

## ITEM 1. BUSINESS

Level 3 Communications, Inc. and its subsidiaries (Level 3 or the Company) engage in the communications, information services and coal mining businesses through ownership of operating subsidiaries and substantial equity positions in public companies. In late 1997, the Company announced the business plan to increase substantially its information services business and to expand the range of services it offers by building an advanced, international, facilities based communications network based on Internet Protocol technology (the Business Plan).

The Company is a facilities based provider (that is, a provider that owns or leases a substantial portion of the plant, property and equipment necessary to provide its services) of a broad range of integrated communications services. The Company has created, generally by constructing its own assets, but also through a combination of purchasing and leasing of facilities, the Level 3 Network--an advanced, international, facilities based communications network. The Company has designed the Level 3 Network to provide communications services, which employ and leverage rapidly improving underlying optical and Internet Protocol technologies.

**Market and Technology Opportunity.** The Company believes that ongoing technology advances in both optical and Internet Protocol technologies are revolutionizing the communications industry and will facilitate rapid decreases in unit costs for communications service providers that are able to most effectively leverage these technology advances. Service providers that can effectively leverage technology advances and rapidly reduce unit costs will be able to offer significantly lower prices, which, the Company believes, will drive an even more dramatic increase in the demand for communications services. The Company believes that there are two primary factors driving this market dynamic which it refers to as Silicon Economics:

. **Rapidly Improving Technologies.** Over the past few years, both optical and Internet Protocol based networking technologies have undergone extremely rapid innovation, due, in large part, to market based development of underlying technologies. This rapid technology innovation has resulted in both a rapid improvement in price-performance for optical and Internet Protocol systems, as well as rapid improvement in the functionality and applications supported by these technologies. The Company believes that this rapid innovation will continue well into the future.

. **High Demand Elasticity.** The Company believes rapid decreases in communication services costs and prices causes the development of new bandwidth-intensive applications, which drive even more significant increases in bandwidth demand. As an example, industry analysts estimate that Internet traffic is growing at greater than 100% per year. In addition, communications services are direct substitutes for other, existing modes of information distribution such as traditional broadcast entertainment and distribution of software, audio and video content using physical media delivered over motor transportation systems. The Company believes that as communications services improve more rapidly than these alternative content distribution systems, significant demand will be generated from these sources. The Company believes that high elasticity of demand from both these new applications and substitution for existing distribution systems will continue for the foreseeable future.

The Company also believes that there are several significant implications that result from this Silicon Economics market dynamic:

. **Incorporating Technology Changes.** Given the rapid rate of improvement in optical and Internet Protocol technologies, those communications service providers that are most effective at rapidly deploying new technologies will have an inherent cost and service advantage over companies that are less effective at deploying these new technologies.

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. **Capital Intensity.** The rapid improvements in these technologies and the need to move to new technologies more quickly results in shortened economic lives of underlying assets. To achieve the rapid unit cost reductions and improvements in service capabilities, service providers must deploy new generations of technology sooner, resulting in a more capital-intensive business model. Those providers with the technical, operational and financial ability to take advantage of the rapid advancements in these technologies are



expected to have higher absolute capital requirements, shortened asset lives, rapidly decreasing unit costs and prices, rapidly increasing unit demand and higher cash flows and profits.

. **Industry Structure.** As a result of the rapid innovation in the underlying technology, the communications industry is visibly shifting from a utility model to a technology model. Just as in the computing industry, where market-based standards and rapid price performance improvements have existed for over 20 years, it is extremely difficult for a single communications company to be best-of-class across a wide variety of disciplines in a rapidly changing environment. Rather, an opportunity exists for companies to focus on areas in which they have significant competitive advantages and develop significant market share in a disaggregated industry structure.

**Level 3's Strategy.** The Company is seeking to capitalize on the opportunities presented by significant advancements in optical and Internet Protocol technologies by pursuing its Business Plan. Key elements of the Company's strategy include:

. **Become the Low Cost Provider of Communications Services.** Level 3's network has been designed to provide high quality communications services at a lower cost. For example, the Level 3 Network is constructed using multiple conduits to allow the Company to cost-effectively deploy future generations of optical networking components (both fiber and transmission electronics and optronics) and thereby expand capacity and reduce unit costs. In addition, the Company's strategy is to maximize the use of open, non-proprietary interfaces in the design of its network software and hardware. This approach is intended to provide Level 3 with the ability to purchase the most cost-effective network equipment from multiple vendors and allow Level 3 to deploy new technology more rapidly and effectively.

. **Combine Latest Generations of Fiber and Optical Technologies.** In order to achieve unit cost reductions for transmission capacity, Level 3 has designed its network with multiple conduits to deploy successive generations of fiber to exploit improvements in optical transmission technology. Optimizing optical transmission systems to exploit specific generations of fiber optic technology currently provides transmission capacity on the new fiber more cost effectively than deploying new optical transmission systems on previous generations of fiber.

. **Offer a Comprehensive Range of Communications Services.** The Company provides a comprehensive range of communications services over the Level 3 Network. The Company is offering broadband transport services under the brand name (3)LinkSM, colocation services under the brand name (3)CenterSM Colocation, Internet access services under the brand name (3)CrossroadsSM, and Softswitch based services under the brand names (3)ConnectSM Modem and (3)VoiceSM. The availability of these services varies by location.

. **Provide Upgradeable Metropolitan Backbone Networks.** Level 3's significant investment in metropolitan optical networks enables the Company to connect directly to points of traffic aggregation. These traffic aggregation facilities are typically locations where Level 3's customers wish to interconnect with the Level 3 Network. Level 3's metropolitan backbone networks allow Level 3 to extend its network services to these aggregation points at low costs. The Company is constructing metropolitan networks totaling 15,000 conduit miles and 440,000 fiber miles. These metropolitan networks are a significant strategic advantage versus other intercity communications companies that must connect to customers using low capacity, legacy facilities provided by former local monopoly providers. This difficult situation is sometimes referred to as the local loop bottleneck.

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. **Provide Significant Colocation Facilities.** Level 3 believes that providing colocation services on its network attracts communications intensive customers by allowing Level 3 to offer those customers reduced bandwidth costs, rapid provisioning of additional bandwidth, interconnection with other third-party networks and improved network performance. Therefore, Level 3 believes that controlling significant colocation facilities in its Gateways provides it with a competitive advantage.

As of December 31, 2000, Level 3 had secured approximately 6.0 million square feet of space for its Gateway and colocation facilities and had completed the buildout of approximately 2.8 million square feet of this space. Level 3 believes it currently has more colocation and Gateway space than any of its communications company competitors.

. **Target Communications Intensive Customers.** The Company's distribution strategy is to utilize a direct sales force focused on communications intensive businesses. These businesses include both traditional and next generation carriers, ISPs, application service providers, content providers, systems integrators, web-hosting companies, media distribution companies, web portals, eCommerce companies, streaming media companies, storage providers and wireless communications providers. Providing communications services at continually declining bandwidth costs and prices is at the core of the Company's market enabling strategy since bandwidth generally represents a substantial portion of these businesses' costs.

. **Utilize Optimization Technologies.** In order to effectively manage its business in a rapidly changing environment, Level 3 has assembled an operations research department that has developed and continues to refine a sophisticated non-linear, mixed integer optimization model. The objective for this model is to maximize the net present value of the Company's cash flows given relevant

constraints. This tool is designed to allow Level 3 to determine optimal pricing for its services, to determine demand forecasts based on price elasticity, to optimize network design based on optimal topology and optronics configuration, to optimize network implementation based on optimal timing of capacity installation, to optimize the timing of introducing new technologies and to determine long-term network requirements. The Company believes that its optimization proficiency and technology is a source of significant competitive advantage.

. Provide Seamless Interconnection to the Public Switched Telephone Network (the PSTN). The Company offers (3)VoiceSM long distance service, which service allows the seamless interconnection of the Level 3 Network with the PSTN for long distance voice transmissions. Seamless interconnection allows customers to use Level 3's Internet Protocol based services without modifying existing telephone equipment or dialing procedures (that is, without the need to dial access codes or follow other similar special procedures). The Company's (3)ConnectSM Modem turnkey modem infrastructure service uses similar Softswitch technology to seamlessly interconnect to the PSTN and to the public Internet.

. Develop Advanced Business Support Systems. The Company has developed and continues to develop a substantial, scalable and web-enabled business support system infrastructure specifically designed to enable the Company to offer services efficiently to its targeted customers. The Company believes that this system will reduce its operating costs, give its customers direct control over some of the services they buy from the Company and allow the Company to grow rapidly while minimizing redesign of its business support systems.

. Attract and Motivate High Quality Employees. The Company has developed programs designed to attract and retain employees with the technical skills necessary to implement the Business Plan. The programs include the Company's Shareworks stock purchase plan and its Outperform Stock Option program.

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Competitive Advantages. The Company believes that it has the following competitive advantages that, together with its strategy, will assist it in implementing the Business Plan:

. Experienced Management Team. Level 3 has assembled a management team that it believes is well suited to implement the Business Plan. Level 3's senior management has substantial experience in leading the development and marketing of communications products and services and in designing, constructing and managing intercity, metropolitan and international networks.

. A More Readily Upgradeable Network Infrastructure. Level 3's network design takes advantage of recent technological innovations, incorporating many of the features that are not present in older communication networks, and provides Level 3 flexibility to take advantage of future developments and innovations. Level 3 has designed the transmission network to optimize all aspects of fiber and optronics simultaneously as a system to deliver the lowest unit cost to its customers. As fiber and optical transmission technology changes, Level 3 expects to realize new unit cost improvements by deploying the latest fiber in available empty or spare conduits in the multiple conduit Level 3 Network. Each new generation of fiber enables associated optical transmission equipment to be spaced further apart and carry more traffic than the same equipment deployed on older generations of fiber. The Company believes that the spare conduit design of the Level 3 Network will enable Level 3 to lower costs and prices while enjoying higher margins than its competitors.

. Integrated End-to-End Network Platform. Level 3's strategy is to deploy network infrastructure in major metropolitan areas and to link these networks with significant intercity networks in North America and Europe. The Company believes that the integration of its metropolitan and intercity networks with its colocation facilities will expand the scope and reach of its on-net customer coverage, facilitate the uniform deployment of technological innovations as the Company manages its future upgrade paths and allow the Company to grow or scale its service offerings rapidly. Level 3 believes that it is the only global communications service provider with the unique combination of large fiber-count, multi-conduit metropolitan networks, uniformly deployed multi-conduit intercity networks and substantial colocation facilities.

. Prefunded Business Plan. Level 3 has substantially prefunded its Business Plan through free cash flow breakeven through approximately \$14 billion in cumulative debt and equity capital raised to date. As a result, Level 3 believes that it has lower financial risk relative to certain other communications service providers.

### The Level 3 Network.

The Level 3 Network is an advanced, international, facilities based communications network. Through 2000, the Company primarily offered its communications services using local and intercity facilities that had been leased from third parties. This enabled the Company to develop and offer certain of its services during the construction of its own facilities. As the Company has substantially completed the construction of the North American intercity network and as well as two Rings of the European intercity network, the portion of the Company's network that is owned by the Company will increase significantly and the portion of the facilities leased will decrease significantly. At completion, the Company's network is expected to encompass:

- . an intercity network covering nearly 16,000 miles in North America;
- . leased or owned local networks in 56 North American markets;
- . an intercity network covering approximately 4,750 miles across Europe;
- . leased or owned local networks in 21 European and Pacific Rim markets;
- . approximately 6.5 million square feet of Gateway and transmission facilities in North America, Europe and the Pacific Rim; and

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- . significant undersea capacity, including a 1.28 Tbps transatlantic cable system and a 2.56 Tbps Northern Asia cable system connecting Hong Kong, Japan, Taiwan and Korea.

Intercity Networks. The Company's nearly 16,000 mile fiber optic intercity network in North America consists of the following:

- . Multiple conduits connecting approximately 200 North American cities. In general, Level 3 has installed groups of 10 to 12 conduits in its intercity network. The Company believes that the availability of spare conduit will allow it to deploy future technological innovations in optical networking components as well as providing Level 3 with the flexibility to offer conduit to other entities.

- . Initial installation of optical fiber strands designed to accommodate dense wave division multiplexing transmission technology. In addition, the Company believes that the installation of newer optical fibers will allow a combination of greater wavelengths of light per strand, higher transmission speeds and greater spacing of network electronics. The Company also believes that each new generation of optical fiber will allow increases in the performance of these aspects of the fiber and will result in lower unit costs.

- . High speed SONET transmission equipment employing self-healing protection switching and designed for high quality and reliable transmission. The Company expects that over time, SONET equipped networks will be replaced with network designs that employ a mesh architecture made possible by advances in optical technologies. A mesh architecture allows carriers to establish alternative protection schemes that reduce the amount of capacity required to be reserved for protection purposes.

- . A design that maximizes the use of open, non-proprietary hardware and software interfaces to allow less costly upgrades as hardware and software technology improves.

During 2000, the Company substantially completed the construction of its North American intercity network. Deployment of the North American intercity network was accomplished through simultaneous construction efforts in multiple locations, with different portions being completed at different times. As of December 31, 2000, the Company had completed construction of 15,486 route miles of the North American intercity network.

In Europe, the Company is deploying an approximately 4,750 mile fiber optic intercity network with characteristics similar to those of the North American intercity network. During 2000, the Company completed the construction of both Ring 1 and Ring 2 of its European network. Ring 1, which is approximately 1,800 miles, connects the major European cities of Paris, Frankfurt, Amsterdam, Brussels and London and was operational at December 31, 2000. Ring 2, which is approximately 1,600 miles, connects the major German cities of Berlin, Cologne, Dusseldorf, Frankfurt, Hamburg, Munich and Stuttgart. Construction on Ring 2 has been completed and the Company expects Ring 2 to be operational during the first quarter of 2001.

Level 3's European network is linked to the Level 3 North American intercity network by the Level 3 transatlantic 1.28 Tbps cable system, which was also completed and placed into service during 2000. The transatlantic cable system-- referred to by the Company as Yellow--has an initial capacity of 320 Gbps and is upgradeable to 1.28 Tbps. The deployment of Yellow was complete pursuant to a co-build agreement announced in February 2000, whereby Global Crossing Ltd. participated in the construction of, and obtained a 50% ownership interest in, Yellow. Under the co-build agreement, Level 3 and Global Crossing Ltd. each now separately own and operate two of the four fiber pairs on Yellow. Level 3 also acquired additional capacity on Global Crossing Ltd.'s transatlantic cable, Atlantic Crossing 1, during 2000 to serve as redundant capacity for its fiber pairs on Yellow.

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The Company established its Asia Pacific headquarters in Hong Kong in 1999, and during 2000 the Company completed and opened its Gateway facilities in Tokyo and Hong Kong. In January 2000, Level 3 announced its intention to develop and construct a Northern Asia undersea cable system initially connecting Hong Kong and Japan. The Hong Kong-Japan cable was intended to be the first stage of the Company's construction of an undersea network in the region. At that time, the Company indicated its intention to share construction and operating expenses of the system with one or more industry partners.

In December 2000, the Company signed an agreement to collaborate with FLAG Telecom on the development of the Northern Asia undersea cable system connecting Hong Kong, Japan, Korea and Taiwan. The system will include Level 3's previously announced

eastern link connecting Hong Kong and Japan and a new western link that FLAG Telecom will build to connect Hong Kong, Korea, Taiwan and Japan. The Company expects the Hong Kong to Japan segment of the eastern link to be in service in the second quarter of 2001, with the eastern link's Taiwan segment to follow in late 2001. The Company expects the entire western link to be ready for service in early 2002. Level 3 and FLAG Telecom will each own three fiber pairs throughout the new system. The total cost of the entire Northern Asia system is estimated to be approximately \$900 million. Level 3's share of the cost is approximately \$450 million.

Local Market Infrastructure. The Company's local facilities include fiber optic networks connecting Level 3's intercity network Gateway sites to ILEC and CLEC central offices, long distance carrier points-of-presence or POPs, buildings housing communication-intensive end users and Internet peering and transit facilities. Level 3's high fiber count metropolitan networks allow Level 3 to extend its services directly to its customers' locations at very low costs, because the availability of this network infrastructure does not require extensive multiplexing equipment to reach a customer location, which is required in ordinary fiber constrained metropolitan networks.

The Company had secured approximately 6.0 million square feet of space for its Gateway and transmission facilities as of December 31, 2000 and had completed the buildout of approximately 2.8 million square feet of this space. The Company's initial Gateway facilities were designed to house local sales staff, operational staff, the Company's transmission and Internet Protocol routing and Softswitch facilities and technical space to accommodate

(3)CenterSM Colocation services--that is, the colocation of equipment by high- volume Level 3 customers, in an environmentally controlled, secure site with direct access to the Level 3 Network through dual, fault tolerant connections. The percentage of the total square feet of these facilities that is available for the provision of (3)Center Colocation services is expected to grow over time as the buildout of additional facilities and expansion of existing facilities is completed. These newer facilities are typically larger than the Company's initial facilities and are being designed to include a smaller percentage of total square feet for the Company's transmission and Internet Protocol routing/Softswitch facilities and a larger percentage of total square feet for the provision of (3)Center Colocation services. The Company is offering its (3)LinkSM Transport services, (3)CenterSM Colocation services, (3)CrossroadsSM services, (3)ConnectSM Modem services and (3)VoiceSM services at its Gateway sites. The availability of these services varies by location.

As of December 31, 2000, the Company had operational, facilities based local metropolitan networks in 26 U.S. markets and six European markets. Also as of December 31, 2000, the Company had entered into interconnection agreements with RBOCs covering 49 North American markets.

The Company has negotiated master leases with several CLECs and ILECs to obtain leased capacity from those providers so that the Company can provide its clients with local transmission capabilities before its own local networks are complete and in locations not directly accessed by the Company's owned facilities.

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At February 15, 2001, the Company had a total of 63 markets in service: 52 in the United States, nine in Europe and two in Asia. In the United States, the Company markets in service include:

Albany	Jacksonville	Portland
Atlanta	Jersey City	Providence
Austin	Kansas City	Raleigh
Baltimore	Las Vegas	Richmond
Boston	Long Island	Sacramento
Buffalo	Los Angeles	Salt Lake City
Charlotte	Louisville	San Antonio
Chicago	Manchester	San Diego
Cincinnati	Memphis	San Francisco
Cleveland	Miami	San Jose
Dallas	Nashville	Seattle
Denver	New Orleans	St. Louis
Detroit	New York	Stamford
El Paso	Newark	Tampa
Fort Worth	Omaha	Washington, D.C.
Hartford	Orlando	Wilmington
Houston	Philadelphia	
Indianapolis	Phoenix	

In Europe, the markets in service include:

Amsterdam	Hamburg
Berlin	London
Brussels	Munich
Dusseldorf	Paris
Frankfurt	

In Asia, markets in service included Hong Kong and Tokyo.

### Communications and Information Services

Communications Services. Level 3 offers a comprehensive range of communications services, including the following:

. Transport Services. The Company's transport services are branded (3)Link SM and consist of (3)Link SM Global Wavelengths, (3)Link SM Private Line services and (3)Link SM Dark Fiber.

(3)Link SM Global Wavelength. Level 3 is offering (3)Link Global Wavelengths--a point-to-point connection of a fixed amount of bandwidth on a particular wavelength or color of light. Currently, (3)Link Global Wavelength is available at 2.5GBps and 10GBps. This product is targeted to those customers that require both significant amounts of bandwidth and desire to provide their own traffic protection schemes. The approach enables customers to build and manage a network by deploying their own SONET, ATM or IP equipment at the end points where the wavelength is delivered. (3)Link Global Wavelength is offered through short term, annual and long-term pre- paid leases.

(3)Link SM Private Line services. (3)Link Private Line services consist of a fixed amount of dedicated bandwidth between fixed locations for the exclusive use of the customer. These services are offered with committed levels of quality and with network protection schemes included. (3)Link Private Line services are currently priced at a fixed rate depending upon the

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distance between end points and the amount of bandwidth required. The Company is offering the following types of private line services:

. (3)Link SM Private Line--U.S. Intercity Services. Level 3 provides this transport service over its North American intercity network. Available transmission speeds include DS-3, OC-3, OC-12 and OC-48.

. (3)Link SM Private Line--Metro Services. Level 3 provides this service within a metropolitan area. This service is provided in three categories: Metro Access Stand-alone--a metro circuit is installed from a customer site to a colocation cabinet in a Level 3 Gateway in that city; Metro Point to Point--a circuit is installed between two of a customers' sites by passing through the Level 3 Gateway in that city; and Metro Access--a circuit is installed from the customer's location to access backbone services that are located within the Level 3 Gateway. Available transmission speeds include DS-3, OC-3, OC-12 and OC-48.

. (3)Link SM Private Line--International Services. Level 3 provides this private line service between two locations on a point to point basis that cross an international boundary. This service can be installed between two customer points-of-presence where each point is located within a Level 3 Gateway facility. The service is available between mainland Europe and the United Kingdom, the United States, Japan and Hong Kong. Available transmission speeds depends upon the country locations, but range from DS-1 to OC-48.

(3)Link SM Dark Fiber. Level 3 offers long-term leases of dark fiber and conduit along its local and intercity networks on a long-term basis. Customers can lease dark fiber and conduit in any combination of three ways: (1) segment by segment, (2) full ring or (3) the entire Level 3 Network. Level 3 offers colocation space in its Gateway and intercity re-transmission facilities to these customers for their transmission electronics.

. Colocation and Gateway Services.

(3)Center SM Colocation. The Company offers high quality, data center grade space where customers can locate servers, content storage devices and communications network equipment in a safe and secure technical operating environment.

At its colocation sites, the Company offers high-speed, reliable connectivity to the Level 3 Network and to other networks, including both local and wide area networks, the PSTN and Internet. Level 3 also offers customers AC/DC power, emergency back-up generator power, HVAC, fire protection and security. These sites are monitored and maintained 24 hours a day, seven days a week.

As of December 31, 2000, Level 3 offered (3)Center Colocation in 63 facilities in 60 markets located in the United States, Europe and Asia. Level 3 believes that its ability to offer both metropolitan and intercity communications services to its (3)Center Colocation customers provides it with an advantage over its competitors, because (3)Center Colocation customers often spend between 25% and 50% of their operating expenses on communications services.

. (3)CrossRoads SM. (3)CrossRoads is a high quality, high speed Internet access product offering. The service is offered in a variety of capacities--100BaseT, GigE, DS-1, DS-3, OC-3 and OC-12--using a variety of interfaces including Ethernet and SONET. A unique feature of the service is Destination Sensitive Billing or DSB. Through DSB, (3)CrossRoads customers pay for bandwidth based on the origination and destination of their traffic. DSB customers pay for either Sent or Received bandwidth, but not both.

Level 3 believes that the combination of Destination Sensitive Billing with metropolitan and intercity networks and significant colocation space is a competitive advantage and that this accounts for the rapid market acceptance of (3)CrossRoads to date.

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. Softswitch Services. Level 3 has pioneered and developed the Softswitch--a distributed computer system that emulates the functions performed by traditional circuit switches enabling Level 3 to control and process telephone calls over an Internet Protocol network. Currently, Level 3 is offering two Softswitch based services: (3)Connect SM Modem and (3)Voice SM.

[ ](3)Connect SM Modem. The Company is offering to its (3)Connect Modem customers an outsourced, turn-key infrastructure solution for the management of dial up access to either the public Internet or a corporate data network. (3)Connect Modem was the first service offered by the Company that used Softswitch technology to seamlessly interconnect to the PSTN. ISPs comprise a majority of the customer base for (3)Connect Modem and are provided a fully managed dial up network infrastructure for access to the public Internet. Corporate customers that purchase (3)Connect Modem services receive connectivity for remote users to support data applications such as telecommuting, e-mail retrieval, and client/server applications.

As part of this service, Level 3 arranges for the provision of local network coverage, dedicated local telephone numbers (which the (3)Connect Modem customer distributes to its customers in the case of an ISP or to its employees in the case of a corporate customer), racks and modems as well as dedicated connectivity from the customer's location to the Level 3 Gateway facility. Level 3 also provides monitoring of this infrastructure 24 hours a day, seven days a week. By providing a turn-key infrastructure modem solution, Level 3 believes that this product allows its customers to save both capital and operating costs associated with maintaining the infrastructure.

[ ](3)Voice SM Services. The Company also offers (3)Voice, an Internet Protocol based long distance service, which uses Softswitch technology. This long distance service is currently available for originating long distance calls in 24 markets and is generally targeted at carriers. The end users of the Company's (3)Voice carrier customers place a long distance call by using existing telephone equipment and dialing procedures. The local service provider transfers the call to the Level 3 Softswitch where it is converted to Internet Protocol format. The call is then transmitted along the Level 3 Network to another Level 3 Gateway facility closest to the receiving city where it is sent to the called party in whatever format is desired, including a standard telephone call. Calls on the Level 3 Softswitch network can be terminated or completed anywhere in the world. The (3)Voice long distance service is offered at a quality level equal to that of the traditional telephone network.

## Distribution Strategy

Level 3's sales strategy is to utilize a direct sales force focused on communications intensive businesses. These targeted businesses include both traditional and next generation carriers, ISPs, application service providers, content providers, systems integrators, web-hosting companies, streaming media companies, storage providers and wireless communications providers. Level 3 believes that these companies are the most significant drivers of bandwidth demand. The past distinctions between retail and wholesale have been blurred as these communications intensive businesses purchase Level 3 services, add value and then market to end-users. Bandwidth constitutes a significant portion of these companies' cost structure and their needs for bandwidth in many cases are growing at an exponential rate. Providing continually declining bandwidth costs to these companies is at the core of Level 3's market enabling strategy.

For the year ended December 31, 2000, approximately 85% of the Company's sales were to communications intensive customers that package communications services into value added services and directly sell into the residential and business markets. The remaining approximately 15% of Level 3's sales were to other carriers and enterprises.

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## Business Support System

In order to pursue its sales and distribution strategies, the Company has developed and is continuing to develop and implement a set of integrated software applications designed to automate the Company's operational processes. Through the development of a robust, scalable business support system, the Company believes that it has the opportunity to develop a competitive advantage relative to traditional telecommunications companies. Whereas traditional telecommunications companies operate extensive legacy business support systems with compartmentalized architectures that limit their ability to scale rapidly and introduce enhanced services and features, Level 3 has developed a business support system architecture intended to maximize both reliability and scalability.

Key design aspects of the business support system development program are:

- . integrated modular applications to allow the Company to upgrade specific applications as new products are available;
- . a scalable architecture that allows certain functions that would otherwise have to be performed by Level 3 employees to be performed by the Company's alternative distribution channel participants;
- . phased completion of software releases designed to allow the Company to test functionality on an incremental basis;
- . web-enabled applications so that on-line access to all order entry, network operations, billing, and customer care functions is available to all authorized users, including Level 3's customers and resellers;
- . use of a tiered, client/server architecture that is designed to separate data and applications, and is expected to enable continued improvement of software functionality at minimum cost; and
- . use of pre-developed or shrink wrapped applications, where applicable, which will interface to Level 3's internally developed applications.

### **Interconnection and Peering**

As a result of the Telecom Act, properly certificated companies may, as a matter of law, interconnect with ILECs on terms designed to help ensure economic, technical and administrative equality between the interconnected parties. The Telecom Act provides, among other things, that ILECs must offer competitors the services and facilities necessary to offer local switched services. See --Regulation.

As of December 31, 2000, the Company had entered into interconnection agreements covering 49 markets. The Company may be required to negotiate new or renegotiate existing interconnection agreements as Level 3 expands its operations in current and additional markets in the future and as existing agreements expire or are terminated.

Peering agreements between the Company and ISPs are necessary in order for the Company to exchange traffic with those ISPs without having to pay transit costs. The Company is considered a Tier 1 Internet Service Provider and has peering arrangements with approximately 90 domestic ISPs and approximately 150 international ISPs and is currently purchasing transit from one major ISP. The basis on which the large national ISPs make peering available or impose settlement charges is evolving as the provision of Internet access and related services has expanded.

### **Employee Recruiting and Retention**

As of December 31, 2000, Level 3 had 5,537 employees in the communications portion of its business and (i)Structure had approximately 674 employees, for a total of 6,211 employees. The Company believes that its

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ability to implement the Business Plan will depend in large part on its ability to attract and retain substantial numbers of additional qualified employees.

In order to attract and retain highly qualified employees, the Company believes that it is important to provide (i) a work environment that encourages each individual to perform to his or her potential, (ii) a work environment that facilitates cooperation towards shared goals and (iii) a compensation program designed to attract the kinds of individuals the Company seeks and to align employees' interests with the Company's. The Company believes that its current business and the location of its headquarters facilities in the Denver metropolitan area help provide such a work environment. With respect to compensation programs, while the Company believes financial rewards alone are not sufficient to attract and retain qualified employees, the Company believes a properly designed compensation program is a necessary component of employee recruitment and retention. In this regard the Company's philosophy is to pay annual cash compensation which, if the Company's annual goals are met, is moderately greater than the cash compensation paid by competitors. The Company's non-cash benefit programs (including medical and health insurance, life insurance, disability insurance, etc.) are designed to be comparable to those offered by its competitors.

The Company believes that the qualified candidates it seeks place particular emphasis on equity-based long term incentive (LTI)

programs. The Company currently has two complementary programs: (i) the equity-based Shareworks program, which helps ensure that all employees have an ownership interest in the Company and are encouraged to invest risk capital in the Company's stock; and (ii) an innovative Outperform Stock Option (OSO) program applicable to the Company's employees. The Shareworks program currently enables employees to contribute up to 7% of their compensation toward the purchase of restricted common stock, which purchases are matched one for one by the Company. If an employee remains employed by the Company for three years from the date of purchase, the shares that are contributed by the Company will vest. The shares that are purchased by the employee are vested at the time of purchase. The Shareworks program also provides that, subject to satisfactory Company performance, the Company's employees will be eligible annually for grants by the Company of its restricted common stock of up to 3% of the employees' compensation, which shares will vest three years from the employee's initial grant date. For the year ended December 31, 2000, the Company granted to its eligible employees the full 3% grant.

The Company has adopted the OSO program, which differs from LTI programs generally adopted by the Company's competitors that make employees eligible for conventional non-qualified stock options (NQSOs). While widely adopted, the Company believes such NQSO programs reward employees when company stock price performance is inferior to investments of similar risks, dilute public stockholders in a manner not directly proportional to performance and fail to provide a preferred return on stockholders' invested capital over the return to option holders. The Company believes that the OSO program is superior to an NQSO-based program with respect to these issues while, at the same time, providing employees a success-based reward balancing the associated risk.

The Company's OSO program is the primary component of Level 3's long term incentive, stock based compensation programs. The OSO program was designed by the Company so that its stockholders receive a market related return on their investment before OSO holders receive any return on their options. The Company believes that the OSO program aligns directly employees' and stockholders' interests by basing stock option value on the Company's ability to outperform the market in general, as measured by the S&P 500 Index. The value received for options under the OSO plan is based on a formula involving a multiplier related to how much our common stock outperforms the S&P 500 Index. Participants in the OSO program do not realize any value from options unless our common stock price outperforms the S&P 500 Index. To the extent that the Level 3 common stock outperforms the S&P 500, the value of OSOs to an option holder may exceed the value of NQSOs.

In July 2000, the Company adopted a convertible outperform stock option program, (C-OSO) as an extension of the existing OSO plan. The program is a component of the Company's ongoing employee retention efforts and offers similar features to those of an OSO, but provides an employee with the greater of the value of a single share of the Company's common stock at exercise, or the calculated OSO value of a single OSO at the time of exercise.

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C-OSO awards were made to eligible employees employed on the date of the grant. The awards were made in September 2000 and December 2000. Each award vests over three years as follows: 1/6 of each grant at the end of the first year, a further 2/6 at the end of the second year and the remaining 3/6 in the third year. Each award is immediately exercisable upon vesting. Awards expire four years from the date of the grant.

Subsequent to March 31, 1998 (the effective date of the separation of the Company's former construction business), the Company adopted the recognition provisions of SFAS No. 123. Under SFAS No. 123, the fair value of an OSO (as computed in accordance with accepted option valuation models) on the date of grant is amortized over the vesting period of the OSO. The recognition provisions of SFAS No. 123 are applied prospectively upon adoption. As a result, they are applied to all stock awards granted in the year of adoption and are not applied to awards granted in previous years unless those awards are modified or settled in cash after adoption of the recognition provisions. The adoption of SFAS No. 123 resulted in non-cash charges to operations of \$241 million in 2000, \$126 million in 1999 and \$39 million in 1998 and will continue to result in non-cash charges to operations for future periods that the Company believes will also be material. The amount of the non-cash charge will be dependent upon a number of factors, including the number of options granted and the fair value estimated at the time of grant.

## Competition

The communications industry is highly competitive. Many of the Company's existing and potential competitors in the communications industry have financial, personnel, marketing and other resources significantly greater than those of the Company, as well as other competitive advantages including existing customer bases. Increased consolidation and strategic alliances in the industry resulting from the Telecom Act, the opening of the U.S. market to foreign carriers, technological advances and further deregulation could give rise to significant new competitors to the Company.

In recent years, competition has increased in all areas of Level 3's communications services market. The Company's primary competitors are IXC's, ILECs, CLECs, ISPs and other companies that provide communications products and services. The following information identifies key competitors for each of the Company's product offerings.

For transport services, Level 3's key competitors in the United States are other facilities based communications companies including Williams Communications, Global Crossing, Qwest Communications, Broadwing, and 360Networks. In Europe and Asia, the



Company's key competitors are other carriers such as KPNQwest N.V., Viatel Inc., Carrier1 International, Colt Telecom Group plc, Asia Global Crossing and Crosswave.

The Company's key competitors for its (3)Connect Modem services are other providers of dial up Internet access including UUNet, Genuity, Sprint, ICG and AT&T. In addition, the key competitors for the Company's (3)Voice service offering are other providers of wholesale long distance communications services including AT&T, Worldcom Inc., Sprint and certain RBOCs. The RBOCs are seeking authorizations to provide certain long distance services which will further increase competition in the long distance services market. See --Regulation.

Level 3's key competitors for its (3)Center Colocation services are other facilities based communications companies, and other colocation providers such as web hosting companies and third party colocation companies. These companies include Exodus, Equinix, Williams Communications, Qwest Communications and 360Networks.

For the Company's (3)Crossroads Internet access service, Level 3 competes with companies that include UUNet, Genuity, Williams Communications and Global Crossing.

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The communications industry is subject to rapid and significant changes in technology. For instance, recent technological advances permit substantial increases in transmission capacity of both new and existing fiber, and the introduction of new products or emergence of new technologies may reduce the cost or increase the supply of certain services similar to those which the Company plans on providing. Accordingly, in the future the Company's most significant competitors may be new entrants to the communications and information services industry, which are not burdened by an installed base of outmoded or legacy equipment.

## Regulation

The Company's communications and information services business will be subject to varying degrees of federal, state, local and international regulation.

### Federal Regulation

The FCC regulates interstate and international telecommunications services. The FCC imposes extensive regulations on common carriers such as ILECs that have some degree of market power. The FCC imposes less regulation on common carriers without market power, such as the Company. The FCC permits these nondominant carriers to provide domestic interstate services (including long distance and access services) without prior authorization; but it requires carriers to receive an authorization to construct and operate telecommunications facilities, and to provide or resell telecommunications services, between the United States and international points. The Company has recently obtained FCC approval to land its transatlantic cable in the U.S. The Company has obtained FCC authorization to provide international services on a facilities and resale basis. The Company has filed tariffs for its access and international long distance services with the FCC.

Under the Telecom Act, any entity, including cable television companies, and electric and gas utilities, may enter any telecommunications market, subject to reasonable state regulation of safety, quality and consumer protection. Because implementation of the Telecom Act is subject to numerous federal and state policy rulemaking proceedings and judicial review, there is still uncertainty as to what impact it will have on the Company. The Telecom Act is intended to increase competition. The Telecom Act opens the local services market by requiring ILECs to permit interconnection to their networks and establishing ILEC obligations with respect to:

. Reciprocal Compensation. Requires all ILECs and CLECs to complete calls originated by competing carriers under reciprocal arrangements at prices based on a reasonable approximation of incremental cost or through mutual exchange of traffic without explicit payment.

. Resale. Requires all ILECs and CLECs to permit resale of their telecommunications services without unreasonable restrictions or conditions. In addition, ILECs are required to offer wholesale versions of all retail services to other telecommunications carriers for resale at discounted rates, based on the costs avoided by the ILEC in the wholesale offering.

. Interconnection. Requires all ILECs and CLECs to permit their competitors to interconnect with their facilities. Requires all ILECs to permit interconnection at any technically feasible point within their networks, on nondiscriminatory terms and at prices based on cost (which may include a reasonable profit). At the option of the carrier seeking interconnection, colocation of the requesting carrier's equipment in an ILEC's premises must be offered, except where the ILEC can demonstrate space limitations or other technical impediments to colocation.

. Unbundled Access. Requires all ILECs to provide nondiscriminatory access to specified unbundled network elements (including certain network facilities, equipment, features, functions, and capabilities) at any technically feasible point within their networks, on

nondiscriminatory terms and at prices based on cost (which may include a reasonable profit).

. Number Portability. Requires all ILECs and CLECs to permit, to the extent technically feasible, users of telecommunications services to retain existing telephone numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another.

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. Dialing Parity. Requires all ILECs and CLECs to provide 1+ equal access to competing providers of telephone exchange service and toll service, and to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

. Access to Rights-of-Way. Requires all ILECs and CLECs to permit competing carriers access to poles, ducts, conduits and rights-of-way at regulated prices.

ILECs are required to negotiate in good faith with carriers requesting any or all of the above arrangements. If the negotiating carriers cannot reach agreement within a prescribed time, either carrier may request binding arbitration of the disputed issues by the state regulatory commission. Even when an agreement has not been reached, ILECs remain subject to interconnection obligations established by the FCC and state telecommunications regulatory commissions.

In August 1996, the FCC released a decision (the Interconnection Decision) establishing rules implementing the above-listed requirements and providing guidelines for review of interconnection agreements by state public utility commissions. The United States Court of Appeals for the Eighth Circuit (the Eighth Circuit) vacated certain portions of the Interconnection Decision. On January 25, 1999, the Supreme Court reversed the Eighth Circuit with respect to the FCC's jurisdiction to issue regulations governing local interconnection pricing (including regulations governing reciprocal compensation). The Supreme Court also found that the FCC had authority to promulgate a pick and choose rule and upheld most of the FCC's rules governing access to unbundled network elements. The Supreme Court, however, remanded to the FCC the standard by which the FCC identified the network elements that must be made available on an unbundled basis.

On November 5, 1999, the FCC released an order largely retaining its list of unbundled network elements but eliminating the requirement that ILECs provide unbundled access to local switching for customers with four or more lines in the densest portion of the top 50 Metropolitan Statistical Areas, and the requirement to unbundle operator services and directory assistance. In its decision, the FCC reaffirmed that network elements should be priced using a total element long run incremental pricing (TELRIC) methodology. A number of parties challenged the FCC's TELRIC finding. On Jan. 22, 2001, the U.S. Supreme Court agreed to hear those appeals. The Supreme Court's decision could effect some pricing terms in the Company's existing interconnection agreements and may require the renegotiation of existing interconnection agreements. The Supreme Court's decision could also result in new rules being promulgated by the FCC. Given the general uncertainty surrounding the effect of these decisions and appeals, the Company may not be able to continue to obtain or enforce interconnection terms that are acceptable to it or that are consistent with its business plans.

The Telecom Act also codifies the ILECs' equal access and nondiscrimination obligations and preempts inconsistent state regulation. The Telecom Act contains special provisions that modify previous court decrees that prevented RBOCs from providing long distance services and engaging in telecommunications equipment manufacturing. These provisions permit a RBOC to enter the long distance market in its traditional service area if it satisfies several procedural and substantive requirements, including obtaining FCC approval upon a showing that the RBOC has entered into interconnection agreements (or, under some circumstances, has offered to enter into such agreements) in those states in which it seeks long distance relief, the interconnection agreements satisfy a 14-point checklist of competitive requirements, and the FCC is satisfied that the RBOC's entry into long distance markets is in the public interest. To date, the FCC has approved petitions to provide long distance service by Verizon in New York and Southwestern Bell in Texas, Oklahoma and Kansas. Verizon has refiled its application to provide long distance service in Massachusetts. The Telecom Act permitted the RBOCs to enter the out-of-region long distance market immediately upon its enactment.

In October 1996, the FCC adopted an order in which it eliminated the requirement that non-dominant carriers such as the Company maintain tariffs on file with the FCC for domestic interstate services. On February 13, 1997, the U.S. Court of Appeals for the District of Columbia stayed implementation of the FCC order. On April 28, 2000, all litigation with respect to the FCC's order was resolved in favor of the FCC. As a

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result, a deadline of August 1, 2001 has been established for non-dominant carriers, such as Level 3, to eliminate tariffs for interstate services. Today, the only service that the Company offers that is characterized as interstate service is (3)Link Private Line--U.S. Intercity Service. While tariffs provided a means of providing notice of prices as well as terms and conditions for the provision of service, the Company has historically relied primarily on its sales force and marketing activities to provide information to its customers regarding these matters and expects to continue to do so after August 1, 2001.

The Company's costs of providing long distance services, as well as its revenues from providing local services, will both be affected

by changes in the access charge rates imposed by ILECs on long distance carriers for origination and termination of calls over local facilities. The FCC has made major changes in the interstate access charge structure. In a December 24, 1996 order, the FCC removed restrictions on ILECs' ability to lower access prices and relaxed the regulation of new switched access services in those markets where there are other providers of access services. On August 5, 1999 the FCC adopted an order granting price cap LECs additional pricing flexibility, implementing certain access charge reforms and seeking comments on others. The order provides certain immediate regulatory relief to price cap carriers and sets a framework of triggers to provide those companies with greater pricing flexibility to set interstate access rates as competition increases. The order also initiated a rulemaking to determine whether the FCC should regulate the access charges of CLECs. If this increased pricing flexibility is not effectively monitored by federal regulators, it could have a material adverse effect on the Company's ability to price its interstate access services competitively. A May 16, 1997 order substantially increased the amounts that ILECs subject to the FCC's price cap rules (price cap LECs) recover through monthly flat-rate charges and substantially decreased the amounts that these LECs recover through traffic sensitive (per-minute) access charges. Several parties appealed the May 16th order. On August 19, 1998, the Eighth Circuit upheld the FCC's access charge reform rules.

Recently, the large interexchange or long distance carriers have challenged the ability of competitive local exchange carriers or CLECs to levy access charges to terminate traffic on a CLEC's network. AT&T and Sprint have filed Petitions for Declaratory Ruling with the FCC asking whether any statutory or regulatory constraints prevent an interexchange carrier from declining or terminating access services ordered or constructively ordered from CLECs and what steps interexchange carriers must take either to avoid ordering or to cancel service after it has been ordered or constructively ordered. As a result, the FCC has asked for public comment on the extent to which interexchange carriers may lawfully refuse to accept and pay for CLEC interstate access services. The central issue in dispute is whether CLECs can levy access charges that are higher than the incumbent local exchange carriers or ILECs. The Company's long standing policy has been to mirror the access rates charged by the ILECs. Given the general uncertainty surrounding the effect of any FCC decision or new FCC rules that may result from the AT&T and Sprint petition, the Company may be required to change the manner in which access charges are assessed or collected in the future.

Beginning in June 1997, every RBOC advised CLECs that they did not consider calls in the same local calling area from their customers to CLEC customers, who are ISPs, to be local calls under the interconnection agreements between the RBOCs and the CLECs. The RBOCs claim that these calls are exchange access calls for which exchange access charges would be owed. The RBOCs claimed, however, that the FCC exempted these calls from access charges so that no compensation is owed to the CLECs for transporting and terminating such calls. As a result, the RBOCs threatened to withhold, and in many cases did withhold, reciprocal compensation for the transport and termination of such calls. To date, thirty-six state commissions have ruled on this issue in the context of state commission arbitration proceedings or enforcement proceedings. In thirty-three states, to date, the state commission has determined that reciprocal compensation is owed for such calls. Several of these cases are presently on appeal. Reviewing courts have upheld the state commissions in eight decisions rendered to date on appeal. Decisions in the Fourth, Fifth and Seventh U.S. Circuit Courts of Appeal have upheld state determinations that reciprocal compensation is owed for ISP bound traffic. A decision is pending before the U.S. Circuit Court of Appeals for the District of Columbia. On February 25, 1999, the FCC issued a Declaratory Ruling on the issue of inter-carrier compensation for calls bound to ISPs. The FCC ruled that the calls are largely jurisdictionally interstate calls, not local calls. The FCC, however, determined that this

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issue was not dispositive of whether inter-carrier compensation is owed. The FCC noted a number of factors which would allow the state commissions to leave their decisions requiring the payment of compensation undisturbed. The Company cannot predict the effect of the FCC's ruling on existing state decisions, or the outcome of pending appeals or of additional pending cases. The Ninth Circuit dismissed an appeal of a Washington decision on the ground that it constituted a collateral attack on the FCC's ruling. The FCC also issued proposed rules to address inter-carrier compensation in the future.

The Company has entered into agreements with Verizon, formerly Bell Atlantic, that provides for payment for ISP bound traffic in the 14-state Verizon territory and with SBC Corporation for the 13-state operating territory that includes its affiliates Pacific Bell, Southwestern Bell, Ameritech and Southern New England Telephone.

The FCC has to date treated ISPs as enhanced service providers, exempt from federal and state regulations governing common carriers, including the obligation to pay access charges and contribute to the universal service fund. Nevertheless, regulations governing disclosure of confidential communications, copyright, excise tax, and other requirements may apply to the Company's provision of Internet access services. The Company cannot predict the likelihood that state, federal or foreign governments will impose additional regulation on the Company's Internet business, nor can it predict the impact that future regulation will have on the Company's operations.

In December 1996, the FCC initiated a Notice of Inquiry regarding whether to impose regulations or surcharges upon providers of Internet access and information services (the Internet NOI). The Internet NOI sought public comment upon whether to impose or continue to forebear from regulation of Internet and other packet-switched network service providers. The Internet NOI specifically identifies Internet telephony as a subject for FCC consideration. On April 10, 1998, the FCC issued a Report to Congress on its implementation of the universal service provisions of the Telecom Act. In that Report, the FCC stated, among other things, that the provision of transmission capacity to ISPs constitutes the provision of telecommunications and is, therefore, subject to common carrier

regulations. The FCC indicated that it would reexamine its policy of not requiring an ISP to contribute to the universal service mechanisms when the ISP provides its own transmission facilities and engages in data transport over those facilities in order to provide an information service. Any such contribution by a facilities based ISP would be related to the ISP's provision of the underlying telecommunications services. In the Report, the FCC also indicated that it would examine the question of whether certain forms of phone-to-phone Internet Protocol telephony are information services or telecommunications services. It noted that the FCC did not have an adequate record on which to make any definitive pronouncements on that issue at this time, but that the record the FCC had reviewed suggests that certain forms of phone-to-phone Internet Protocol telephony appear to have similar functionality to non-Internet Protocol telecommunications services and lack the characteristics that would render them information services. If the FCC were to determine that certain Internet Protocol telephony services are subject to FCC regulations as telecommunications services, the FCC noted it may find it reasonable that the ISPs pay access charges and make universal service contributions similar to non-Internet Protocol based telecommunications service providers. The FCC also noted that other forms of Internet Protocol telephony appear to be information services. The Company cannot predict the outcome of these proceedings or other FCC proceedings that may effect the Company's operations or impose additional requirements, regulations or charges upon the Company's provision of Internet access services.

On May 8, 1997, the FCC issued an order establishing a significantly expanded federal universal service subsidy regime. For example, the FCC established new universal service funds to support telecommunications and information services provided to qualifying schools and libraries (with an annual cap of \$2.25 billion) and to rural health care providers (with an annual cap of \$400 million). The FCC also expanded the federal subsidies for local exchange telephone services provided to low-income consumers and recently doubled the size of the high cost fund for non-rural LECs. Providers of interstate telecommunications service, such as the Company, as well as certain other entities, must pay for these programs. The Company's contribution to these universal service funds will be based on its telecommunications service end-user revenues. The extent to which the Company's services are viewed as telecommunications services or as information services will impact the

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amount of the Company's contributions, if any. As indicated in the preceding paragraph, that issue has not been resolved. Currently, the FCC assesses such payments on the basis of a provider's revenue for the previous year. The Company is currently unable to quantify the amount of subsidy payments that it will be required to make and the effect that these required payments will have on its financial condition because of uncertainties concerning the size of the universal fund and uncertainties concerning the classification of its services. The Fifth Circuit Court of Appeals recently upheld the FCC in most respects, but rejected the FCC's effort to base contributions on intrastate revenues. The FCC's universal service program may also be altered as a result of the agency's reconsideration of its policies, or by future Congressional action.

The FCC recently adopted new rules designed to make it easier and less expensive for CLECs to obtain colocation at ILEC central offices by, among other things, restricting the ILEC's ability to prevent certain types of equipment from being colocated and requiring ILECs to offer alternative colocation arrangements which will be less costly.

On November 18, 1999, the FCC adopted a new order requiring ILECs to provide line sharing, which will allow CLECs to offer data services over the same line the consumer uses for voice services without the CLECs being required to offer the voice services. State commissions have been authorized to establish the prices to the CLECs for such services. The decision has been appealed.

### State Regulation

The Telecom Act is intended to increase competition in the telecommunications industry, especially in the local exchange market. With respect to local services, ILECs are required to allow interconnection to their networks and to provide unbundled access to network facilities, as well as a number of other procompetitive measures. Because the implementation of the Telecom Act is subject to numerous state rulemaking proceedings on these issues, it is currently difficult to predict how quickly full competition for local services, including local dial tone, will be introduced.

State regulatory agencies have jurisdiction when Company facilities and services are used to provide intrastate services. A portion of the Company's traffic may be classified as intrastate and therefore subject to state regulation. The Company expects that it will offer more intrastate services (including intrastate switched services) as its business and product lines expand. To provide intrastate services, the Company generally must obtain a certificate of public convenience and necessity from the state regulatory agency and comply with state requirements for telecommunications utilities, including state tariffing requirements. The Company currently is authorized to provide telecommunications services in all fifty states and the District of Columbia. The Company is seeking expanded authority in the states of Iowa, Wisconsin and New Mexico.

States also often require prior approvals or notifications for certain transfers of assets, customers or ownership of certificated carriers and for issuances by certified carriers of equity or debt.

### Local Regulation

The Company's networks will be subject to numerous local regulations such as building codes and licensing. Such regulations vary on a city-by-city, county-by-county and state-by-state basis. To install its own fiber optic transmission facilities, the Company will need to obtain rights-of-way over privately and publicly owned land. Rights-of-way that are not already secured may not be available to the Company on economically reasonable or advantageous terms.

### Canadian Regulation

The Canadian Radio-television and Telecommunications Commission (the CRTC) generally regulates long distance telecommunications services in Canada. Regulatory developments over the past several years have terminated the historic monopolies of the regional telephone companies, bringing significant competition

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to this industry for both domestic and international long distance services, but also lessening regulation of domestic long distance companies. Resellers, which, as well as facilities-based carriers, now have interconnection rights, but which are not obligated to file tariffs, may not only provide transborder services to the U.S. by reselling the services provided by the regional companies and other entities but also may resell the services of the former monopoly international carrier, Teleglobe Canada (Teleglobe), including offering international switched services provisioned over leased lines. Although the CRTC formerly restricted the practice of switched hubbing over leased lines through intermediate countries to or from a third country, the CRTC recently lifted this restriction. The Teleglobe monopoly on international services and undersea cable landing rights terminated as of October 1, 1998, although the provision of Canadian international transmission facilities-based services remains restricted to Canadian carriers with majority ownership by Canadians. Ownership of non-international transmission facilities are limited to Canadian carriers but the Company can own international undersea cables landing in Canada. The Company cannot, under current or foreseen law, enter the Canadian market as a provider of transmission facilities-based domestic services. Recent CRTC rulings address issues such as the framework for international contribution charges payable to the local exchange carriers to offset some of the capital and operating costs of the provision of switched local access services of the incumbent regional telephone companies, in their capacity as ILECs, and the new entrant CLECs.

While competition is permitted in virtually all other Canadian telecommunications market segments, the Company believes that the regional companies continue to retain a substantial majority of the local and calling card markets. Beginning in May 1997, the CRTC released a number of decisions opening to competition the Canadian local telecommunications services market, which decisions were made applicable in the territories of all of the regional telephone companies except SaskTel (although Saskatchewan has subsequently allowed local service competition in that province). As a result, networks operated by CLECs may now be interconnected with the networks of the ILECs. Transmission facilities-based CLECs are subject to the same majority Canadian ownership Canadian carrier requirements as transmission facilities-based long distance carriers. CLECs have the same status as ILECs, but they do not have universal service or customer tariff-filing obligations. CLECs are subject to certain consumer protection safeguards and other CRTC regulatory oversight requirements. CLECs must file interconnection tariffs for services to interexchange service providers and wireless service providers. Certain ILEC services must be provided to CLECs on an unbundled basis and subject to mandatory pricing, including central office codes, subscriber listings, and local loops in small urban and rural areas. For a five-year period, certain other important CLEC services must be provided on an unbundled basis at mandated prices, notably unbundled local loops in large, urban areas. ILECs, which, unlike CLECs, remained fully regulated, will be subject to price cap regulation in respect of their utility services for an initial four-year period beginning May 1, 1997, and these services must not be priced below cost. Interexchange contribution payments are now pooled and distributed among ILECs and CLECs according to a formula based on their respective proportions of residential lines, with no explicit contribution payable from local business exchange or directory revenues. CLECs must pay an annual telecommunications fee based on their proportion of total CLEC operating revenues. All bundled and unbundled local services (including residential lines and other bulk services) may now be resold, but ILECs need not provide these services to resellers at wholesale prices. Transmission facilities-based local and long distance carriers (but not resellers) are entitled to collocate equipment in ILEC central offices pursuant to terms and conditions of tariffs and intercarrier agreements. Certain local competition issues are still to be resolved. The CRTC has ruled that resellers cannot be classified as CLECs, and thus are not entitled to CLEC interconnection terms and conditions.

### The Company's Other Businesses

The Company was incorporated as Peter Kiewit Sons', Inc. in Delaware in 1941 to continue a construction business founded in Omaha, Nebraska in 1884. In subsequent years, the Company invested a portion of the cash flow generated by its construction activities in a variety of other businesses. The Company entered the coal mining business in 1943, the telecommunications business (consisting of MFS and, more recently, an

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investment in C-TEC Corporation and its successors RCN Corporation, Commonwealth Telephone Enterprises, Inc. and Cable Michigan, Inc.) in 1988, the information services business in 1990 and the alternative energy business, through an investment in MidAmerican, in 1991. Level 3 also has made investments in several development-stage ventures.

In 1995, the Company distributed to the holders of Class D Stock all of its shares of MFS. In the seven years from 1988 to 1995, the Company invested approximately \$500 million in MFS; at the time of the distribution to stockholders in 1995, the Company's holdings in MFS had a market value of approximately \$1.75 billion. In December 1996, MFS was purchased by WorldCom in a transaction valued at \$14.3 billion. In December 1997, the Company's stockholders ratified the decision of the Board to effect the split-off separating the Construction Group. As a result of the split-off, which was completed on March 31, 1998, the Company no longer owns any interest in the Construction Group. In conjunction with the split-off, the Company changed its name to Level 3 Communications, Inc., and the Construction Group changed its name to Peter Kiewit Sons', Inc.

In January 1998, the Company completed the sale to MidAmerican of its energy investments, consisting primarily of a 24% equity interest in MidAmerican. The Company received proceeds of approximately \$1.16 billion from this sale, and as a result recognized an after-tax gain of approximately \$324 million in 1998. In November 1998, Avalon Cable of Michigan, Inc. acquired all the outstanding stock of Cable Michigan. Level 3 received approximately \$129 million in cash for its interest in Cable Michigan and recognized a pre-tax gain of approximately \$90 million.

The Company's other businesses include its investment in the C-TEC Companies (as defined), coal mining, the SR91 Tollroad (as defined) and certain other assets. In 1998, the Company completed the sale of its interests in United Infrastructure Company, MidAmerican and Kiewit Investment Management Corp.

#### (i)Structure, Inc.

Level 3 currently offers, through its subsidiary (i)Structure, Inc. (formerly PKS Information Services, Inc.), computer operations outsourcing and systems integration services to customers located throughout the United States as well as abroad.

The Company's systems integration services help customers define, develop and implement cost-effective information services. The computer outsourcing services offered by the Company include networking and computing services necessary for older mainframe-based systems and newer client/server-based systems. The Company provides its outsourcing services to clients that want to focus their resources on core businesses, rather than expend capital and incur overhead costs to operate their own computing environments. (i)Structure 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 customers themselves, while at the same time reducing the customers' cost for such services. This service is particularly useful for those customers moving from older computing platforms to more modern client/server networks.

(i)Structure 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 web browsers over the Internet or over private or limited access Internet Protocol networks. (i)Structure also provides customers with a combination of workbench tools and methodologies that provide a complete strategy for converting mainframe-based application systems to client/server architecture.

### C-TEC Companies

On September 30, 1997, C-TEC completed a tax-free restructuring, which divided C-TEC Corporation into three public companies (the C-TEC Companies):

C-TEC, which changed its name to Commonwealth Telephone Enterprises, Inc. (Commonwealth Telephone), RCN Corporation (RCN) and Cable Michigan,

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Inc. (Cable Michigan). The Company's interests in the C-TEC Companies are held through a holding company (the C-TEC Holding Company). The Company owns 90% of the common stock of the C-TEC Holding Company, and preferred stock of the C-TEC Holding Company with a liquidation value of approximately \$540 million as of December 31, 2000. The remaining 10% of the common stock of the C-TEC Holding Company is held by David C. McCourt, a director of the Company who was formerly the Chairman of C-TEC. In the event of a liquidation of the C-TEC Holding Company, the Company would first receive the liquidation value of the preferred stock. Any excess of the value of the C-TEC Holding Company above the liquidation value of the preferred stock would be split according to the ownership of the common stock.

Commonwealth Telephone. Commonwealth Telephone is a Pennsylvania public utility providing local telephone service to a 19-county, 5,191 square mile service territory in Pennsylvania. Commonwealth Telephone also provides network access and long distance services to IXCs. Commonwealth Telephone's business customer base is diverse in size as well as industry, with very little concentration. A subsidiary, Commonwealth Communications Inc. provides telecommunications engineering and technical services to large corporate clients, hospitals and universities in the northeastern United States. Another subsidiary, 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. As of December 31, 2000, the C-TEC Holding Company owned approximately 46.3% of the outstanding common stock of Commonwealth Telephone.

On October 23, 1998, Commonwealth Telephone completed a rights offering of 3.7 million shares of its common stock. In the offering, Level 3 exercised all rights it received and purchased approximately 1.8 million additional shares of Commonwealth Telephone common stock for an aggregate subscription price of \$37.7 million.

RCN. RCN is a full service provider of local, long distance, Internet and cable television services primarily to residential users in densely populated areas in the Northeast. RCN operates as a competitive telecommunications service provider in New York City and Boston. RCN also owns cable television operations in New York, New Jersey and Pennsylvania; a 49% interest in Megacable, S.A. de C.V., Mexico's second largest cable television operator; and has long distance operations (other than the operations in certain areas of Pennsylvania). 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. and San Francisco to San Diego corridors and Chicago. As of December 31, 2000, the C-TEC Holding Company owned approximately 30.8% of the outstanding common stock of RCN.

Cable Michigan. Cable Michigan was a cable television operator in the State of Michigan. On June 4, 1998, Cable Michigan announced that it had agreed to be acquired by Avalon Cable. Level 3 received approximately \$129 million in cash when the transaction closed on November 6, 1998.

### Coal Mining

The Company is engaged in coal mining through its subsidiary, KCP, Inc. (KCP). KCP has a 50% interest in two mines, which are operated by a subsidiary of Peter Kiewit Sons', Inc. (New PKS). 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 Anadarko Petroleum Corporation. The Decker mine is located in southeastern Montana and the Black Butte mine is in southwestern Wyoming. The coal mines use the surface mining method.

In September 2000, the Company sold its entire 50% ownership interest in the Walnut Creek Mining Company to a subsidiary of Peter Kiewit Sons', Inc. for cash of \$37 million.

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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 95% of sales are made under long-term contracts, and the remainder are made on the spot market. Approximately 76%, 75% and 77% of KCP's revenues in 2000, 1999 and 1998 respectively, were derived from long-term contracts with Commonwealth Edison Company (with Decker and Black Butte) and The Detroit Edison Company (with Decker). KCP also has other sales commitments, including those with Sierra Pacific, Idaho Power, Solvay Minerals, Pacific Power & Light and Minnesota Power, that provide for the delivery of approximately 10 million tons through 2005. The level of cash flows generated in recent periods by the Company's coal operations will not continue after the year 2000 because the delivery requirements under the Company's current long-term contracts decline significantly. Under a mine management agreement, KCP pays a subsidiary of New PKS an annual fee equal to 30% of KCP's adjusted operating income. The fee for 2000 was \$29 million.

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 1998, KCP's production represented 1.3% 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 sulfur coal. KCP's western coal reserves generally have a low sulfur content (less than one percent) and are currently useful principally as fuel for coal-fired, steam-electric 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 long-term 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 long-term coal purchase contracts for Black Butte and Decker production as the current long-term contracts expire. In addition, these cost disadvantages may adversely affect KCP's ability to compete for spot sales in the future.

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 for the year ended December 31, 2000 was approximately \$6 million. KCP's share of accrued estimated reclamation costs was \$94 million at December 31, 2000. The Company did not make significant capital expenditures for environmental compliance with respect to the coal business in 2000. 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. However, failure to comply with environmental protection and land restoration laws, or actual reclamation costs in excess of the Company's accruals, could have an adverse effect on the Company's business, results of operations, and financial condition.

### SR91 Tollroad

The Company has invested \$13.1 million for a 65% equity interest and lent \$8.0 million to California Private Transportation Company L.P. (CPTC), which developed, financed, and currently operates the 91 Express Lanes, a ten mile, four-lane tollroad in Orange County, California (the SR91 Tollroad). The fully automated highway uses an electronic toll collection system and variable pricing to adjust tolls to demand.

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Capital costs at completion were \$130 million, \$110 million of which was funded with debt that was not guaranteed by Level 3. However, certain defaults by Level 3 on its outstanding debt and certain judgments against Level 3 can result in default under this debt of CPTC. Revenue collected over the 35-year franchise period is used for operating expenses, debt repayment, and profit distributions. The SR91 Tollroad opened in December 1995 and achieved operating break-even in 1996. Approximately 96,100 customers have registered to use the tollroad as of December 31, 2000, and weekday volumes typically exceed 25,700 vehicles per day during December 2000.

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### Glossary of Terms

access.....	Telecommunications services that permit long distance carriers to use local exchange facilities to originate and/or terminate long distance service.
access charges.....	The fees paid by long distance carriers to LECs for originating and terminating long distance calls on the LECs' local networks.
backbone.....	A centralized high-speed network that interconnects smaller, independent networks. It is the through-portion of a transmission network, as opposed to spurs which branch off the through-portions.
CAP.....	Competitive Access Provider. A company that provides its customers with an alternative to the local exchange company for local transport of private line and special access telecommunications services.
capacity.....	The information carrying ability of a telecommunications facility.
carrier.....	A provider of communications transmission services by fiber, wire or radio.
Central Office.....	Telephone company facility where subscribers' lines are joined to switching equipment for connecting other subscribers to each other, locally and long distance.
CLEC.....	Competitive Local Exchange Carrier. A company that competes with LECs in the local services market.



common carrier..... A government-defined group of private companies offering telecommunications services or facilities to the general public on a non-discriminatory basis.

conduit..... A pipe, usually made of metal, ceramic or plastic, that protects buried cables.

DS-3..... A data communications circuit capable of transmitting data at 45 Mbps.

dark fiber..... Fiber optic strands that are not connected to transmission equipment.

dedicated lines..... Telecommunications lines reserved for use by particular customers.

dialing parity..... The ability of a competing local or toll service provider to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the service provider of the customers' designation.

equal access..... The basis upon which customers of interexchange carriers are able to obtain access to their Primary Interexchange Carriers' (PIC) long distance telephone network by dialing 1, thus eliminating the need to dial additional digits and an authorization code to obtain such access.

facilities based carriers... Carriers that own and operate their own network and equipment.

fiber optics..... A technology in which light is used to transport information from one point to another. Fiber optic cables are thin filaments of glass through which light beams are transmitted over long distances carrying enormous amounts of data. Modulating light on thin strands of glass produces major benefits including high bandwidth, relatively low cost, low power consumption, small space needs and total insensitivity to electromagnetic interference.

Gbps..... Gigabits per second. A transmission rate. One gigabit equals 1.024 billion bits of information.

ILEC..... Incumbent Local Exchange Carrier. A company historically providing local telephone service. Often refers to one of the Regional Bell Operating Companies (RBOCs). Often referred to as LEC (Local Exchange Carrier).

interconnection..... Interconnection of facilities between or among local exchange carriers, including potential physical colocation of one carrier's equipment

in the other carrier's premises to facilitate such interconnection.

InterLATA..... Telecommunications services originating in a LATA and terminating outside of that LATA.

Internet..... A global collection of interconnected computer networks which use a specific communications protocol.

IntraLATA..... Telecommunications services originating and terminating in the same LATA.

ISDN..... Integrated Services Digital Network. An information transfer standard for transmitting digital voice and data over telephone lines at speeds up to 128 Kbps.

ISPs..... Internet Service Providers. Companies formed to provide access to the Internet to consumers and business customers via local networks.

IXC..... Interexchange Carrier. A telecommunications company that provides telecommunications services between local exchanges on an interstate or intrastate basis.

Kbps..... Kilobits per second. A transmission rate. One kilobit equals 1,024 bits of information.

LATA..... Local Access and Transport Area. A geographic area composed of contiguous local exchanges, usually but not always within a single state. There are approximately 200 LATAs in the United States.

leased line..... Telecommunications line dedicated to a particular customer along predetermined routes.

LEC..... Local Exchange Carrier. A telecommunications company that provides telecommunications services in a geographic area in which calls generally are transmitted without toll charges. LECs include both ILECs and CLECs.

local exchange..... A geographic area determined by the appropriate state regulatory authority in which calls generally are transmitted without toll charges to the calling or called party.

local loop..... A circuit that connects an end user to the LEC central office within a LATA.

long distance carriers  
(interexchange carriers)... Long distance carriers provide services between local exchanges on an interstate or intrastate basis. A long distance carrier may offer services over its own or another carrier's facilities.

Mbps..... Megabits per second. A transmission rate. One megabit equals 1.024 million bits of information.

MPLS.....	MultiProtocol Label Switching. A switching standard for the transmission of data at increased speeds. The concept is based on having routers at the edge of a communications network and switches at the core of the network for the faster transmission of data communications.
multiplexing.....	An electronic or optical process that combines a large number of lower speed transmission lines into one high speed line by splitting the total available bandwidth into narrower bands (frequency division), or by allotting a common channel to several different transmitting devices, one at a time in sequence (time division).
NAP.....	Network Access Point. A location at which ISPs exchange each other's traffic.
OC-3.....	A data communications circuit consisting of three DS-3s capable of transmitting data at 155 Mbps.
OC-12.....	A data communications circuit consisting of twelve DS-3s capable of transmitting data at 622 Mbps.
OC-48.....	A data communications circuit consisting of forty-eight DS-3s capable of transmitting data at approximately 2.45 Gbps.
peering.....	The commercial practice under which ISPs exchange each other's traffic without the payment of settlement charges. Peering occurs at both public and private exchange points.
POP.....	Point of Presence. Telecommunications facility where a communications provider locates network equipment used to connect customers to its network backbone.
private line.....	A dedicated telecommunications connection between end user locations.
PSTN.....	Public Switched Telephone Network. That portion of a local exchange company's network available to all users generally on a shared basis (i.e., not dedicated to a particular user). Traffic along the public switched network is generally switched at the local exchange company's central offices.
RBOCs.....	Regional Bell Operating Companies. Originally, the seven local telephone companies (formerly part of AT&T) established as a result of the AT&T Divestiture. Currently consists of four local telephone companies as a result of the mergers of Bell Atlantic with NYNEX and SBC with

- reciprocal compensation..... The compensation of a CLEC for termination of a local call by the ILEC on the CLEC's network, which is the same as the compensation that the CLEC pays the ILEC for termination of local calls on the ILEC's network.
- resale..... Resale by a provider of telecommunications services (such as a LEC) of such services to other providers or carriers on a wholesale or a retail basis.
- router..... Equipment placed between networks that relays data to those networks based upon a destination address contained in the data packets being routed.

- SONET..... Synchronous Optical Network. An electronics and network architecture for variable bandwidth products which enables transmission of voice, data and video (multimedia) at very high speeds. SONET ring architecture provides for virtually instantaneous restoration of service in the event of a fiber cut by automatically rerouting traffic in the opposite direction around the ring.
- special access services..... The lease of private, dedicated telecommunications lines or circuits along the network of a local exchange company or a CAP, which lines or circuits run to or from the long distance carrier POPs. Examples of special access services are telecommunications lines running between POPs of a single long distance carrier, from one long distance carrier POP to the POP of another long distance carrier or from an end user to a long distance carrier POP.
- switch..... A device that selects the paths or circuits to be used for transmission of information and establishes a connection. Switching is the process of interconnecting circuits to form a transmission path between users and it also captures information for billing purposes.
- Tbps..... Terabits per second. A transmission rate. One terabit equals 1.024 trillion bits of information.
- T-1..... A data communications circuit capable of transmitting data at 1.544 Mbps.
- unbundled..... Services, programs, software and training sold separately from the hardware.
- unbundled access..... Access to unbundled elements of a

telecommunications services provider's network including network facilities, equipment, features, functions and capabilities, at any technically feasible point within such network.

web site..... A server connected to the Internet from which Internet users can obtain information.

wireless..... A communications system that operates without wires. Cellular service is an example.

world wide web or web..... A collection of computer systems supporting a communications protocol that permits multimedia presentation of information over the Internet.

xDSL..... A term referring to a variety of new Digital Subscriber Line technologies. Some of these new varieties are asymmetric with different data rates in the downstream and upstream directions. Others are symmetric. Downstream speeds range from 384 Kbps (or SDSL) to 1.5 to 8 Mbps (ADSL).

**Directors and Executive Officers**

Set forth below is information as of February 15, 2001 about each director and each executive officer of the Company. The executive officers of the Company have been determined in accordance with the rules of the SEC.

Name	Age	Position
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Walter Scott, Jr.....	69	Chairman of the Board
James Q. Crowe.....	51	Chief Executive Officer and Director
Kevin J. O'Hara.....	40	President, Chief Operating Officer and Director Vice Chairman of the Board and Executive Vice
R. Douglas Bradbury.....	50	President Vice Chairman of the Board and Executive Vice
Charles C. Miller, III....	48	President
Lee Jobe.....	43	Executive Vice President
Sureel A. Choksi.....	28	Group Vice President and Chief Financial Officer Group Vice President, General Counsel and
Thomas C. Stortz.....	49	Secretary
John F. Waters, Jr.....	35	Group Vice President
Colin V.K. Williams.....	61	Director
Mogens C. Bay.....	52	Director
William L. Grewcock.....	75	Director
Richard R. Jaros.....	49	Director
Robert E. Julian.....	61	Director
David C. McCourt.....	44	Director
Kenneth E. Stinson.....	58	Director
Michael B. Yanney.....	67	Director

**Other Management**

Set forth below is information as of February 15, 2001, about the following members of senior management of the Company.

Name	Age	Position
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Linda J. Adams.....	44	Group Vice President
E. Benjamin Buttolph.....	37	Group Vice President
Daniel P. Caruso.....	37	Group Vice President
Donald H. Gips.....	41	Group Vice President
John Neil Hobbs.....	41	Group Vice President
Joseph M. Howell, III.....	54	Group Vice President
Michael D. Jones.....	43	Group Vice President and Chief Executive Officer (i)Structure, Inc.
Stephen C. Liddell.....	39	Group Vice President
Edward Van Macatee.....	46	Group Vice President
Gail P. Smith.....	41	Group Vice President
Ronald J. Vidal.....	40	Group Vice President

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 New PKS, Berkshire Hathaway Inc., Burlington Resources Inc., MidAmerican, ConAgra, Inc., Commonwealth Telephone, RCN, Kiewit Materials Company and Valmont Industries, Inc.

James Q. Crowe has been the Chief Executive Officer of the Company since August 1997, and a director of the Company since June 1993. Mr. Crowe was also President of the Company until February 2000. Mr. Crowe was President and Chief Executive Officer of MFS from June 1993 to June 1997. Mr. Crowe also served as Chairman of the Board of 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 New PKS, Commonwealth Telephone and RCN.

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Kevin J. O'Hara has been President of the Company since July 2000 and Chief Operating Officer of the Company since March 1998. Mr. O'Hara was also Executive Vice President of the Company from August 1997 until July 2000. 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).

R. Douglas Bradbury has been Vice Chairman of the Board since February 2000 and Executive Vice President since August 1997. Mr. Bradbury was also Chief Financial Officer of the Company from August 1997 until July 2000. Mr. Bradbury has been 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. Mr. Bradbury is also a director of LodgeNet Entertainment Corporation.

Charles C. Miller, III has been Vice Chairman of the Board and Executive Vice President of the Company since February 15, 2001. Prior to that, Mr. Miller was President of Bellsouth International, a subsidiary of Bellsouth Corporation from 1995 until December 2000. Prior to that, Mr. Miller held various senior level officer and management position at BellSouth from 1990.

Lee Jobe has been Executive Vice President, Global Operations of the Company since June 2000. Prior to that, Mr. Jobe was President, Network and Systems for Concert Global Network Services Limited from June 1999 until June 2000. Prior to that, Mr. Jobe was president of Citizens Communications from 1996 to 1999. Prior to that, Mr. Jobe was Vice President Business Operations for Pacific Bell from 1993 to 1995.

Sureel A. Choksi has been Group Vice President and Chief Financial Officer of the Company since July 2000. Prior to that, Mr. Choksi was Group Vice President Corporate Development and Treasurer of the Company from February 2000 until August 2000. Prior to that, Mr. Choksi served as Vice President and Treasurer of the Company from January 1999 to February 1, 2000. Prior to that, Mr. Choksi was a Director of Finance at the Company from 1997 to 1998, an Associate at TeleSoft Management, LLC in 1997 and an Analyst at Gleacher Natwest from 1995 to 1997.

Thomas C. Stortz has been Group Vice President, General Counsel and Secretary of the Company since February 2000. Prior to that, Mr. Stortz served as Senior Vice President, General Counsel and Secretary of the Company from September 1998 to February 1, 2000. Prior to that, he served as Vice President and General Counsel of Peter Kiewit Sons', Inc. and Kiewit Construction Group, Inc. from April 1991 to September 1998. He has served as a director of Peter Kiewit Sons', Inc., RCN, C-TEC, Kiewit Diversified Group Inc.

and CCL Industries, Inc.

John F. Waters, Jr. has been Group Vice President and Chief Technology Officer of the Company since February 2000. Prior to that, Mr. Waters was Vice President, Engineering of the Company from November 1997 until February 1, 2000. Prior to that, Mr. Waters was an executive staff member of MCI Communications from 1994 to November 1997.

Mogens C. Bay has been a director of the Company since November 2000. Since January 1997, Mr. Bay has been the Chairman and Chief Executive Officer of Valmont Industries, Inc., a company engaged in the infrastructure and irrigation businesses. Prior to that, Mr. Bay was President and Chief Executive Officer of Valmont Industries from August 1993 to December 1996 as well as a director of Valmont since October 1993. Mr. Bay is also a director of New PKS and ConAgra, 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. He is presently a director of New PKS.

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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 1996 and Chief Financial Officer of the Company from 1995 to 1996. He also served as President and Chief Operating Officer of CalEnergy from 1992 to 1993, and is presently a director of MidAmerican, Commonwealth Telephone, RCN and Homeservices.com, Inc.

Robert E. Julian has been a director of the Company since March 31, 1998. Mr. Julian was also Chairman of the Board of (i)Structure from 1995 until 2000. From 1992 to 1995 Mr. Julian served as Executive Vice President and Chief Financial Officer of the Company. Mr. Julian is the Chairman of the Audit Committee of the Board of Directors.

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 and RCN since October 1997. From 1993 to 1997 Mr. McCourt served as Chairman of the Board and Chief Executive Officer of C-TEC.

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.

Colin V.K. Williams has been a director of the Company since August 2000. From July 1998 until December 31, 2000, Mr. Williams was Executive Vice President of the Company and President of Level 3 International, Inc. Prior to joining the company, Mr. Williams was Chairman of WorldCom International, Inc., where he was responsible for the international communications business and the development and operation of WorldCom's fiber networks overseas. In 1993 Mr. Williams initiated and built the international operations of MFS. Prior to joining MFS, Mr. Williams was Corporate Director, Business Development at British Telecom from 1988 until 1992.

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.

Linda J. Adams has been Group Vice President Human Resources of the Company since February 2000. Prior to that, Ms. Adams was Vice President Human Resources of the Company from November 1998 to February 2000. Prior to that, Ms. Adams was initially Vice President of Human Resources Rent-A-Center, a subsidiary of Thorn Americas, Inc., and then Senior Vice President of Human Resources for Thorn Americas, Inc. from August 1995 until August 1998. Prior to that, Ms. Adams was Vice President of Worldwide Compensation & Benefits for PepsiCo, Inc. from August 1994 to August 1995.

E. Benjamin Buttolph has been Group Vice President Finance of the Company since August 2000. Prior to that, Mr. Buttolph was Vice President Network Commercial Management for Concert Global Network Services Limited from 1999 to August 2000. Prior to that, Mr. Buttolph was Vice President Finance of Citizens Communications from 1998 to 1999, Principal Consultant with Price Waterhouse, LLP from 1997 to 1998 and Manager, Business Development of Ameritech Corporation from 1995 to 1997.

Daniel P. Caruso has been Group Vice President Transport Services of the Company since January 2001. Prior to that Mr. Caruso was Group Vice President Global Customer Operations of the Company from February 2000. Prior to that, Mr. Caruso served as Senior Vice President, Network Services of the Company from October 1997 to February 2000. Prior to that, Mr. Caruso was Senior Vice President, Local Service Delivery of WorldCom from December 1992 to September 1997 and was a member of the senior management of Ameritech from June 1986 to November 1992.

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Donald H. Gips has been Group Vice President Corporate Strategy of the Company since January 2001. Prior to that, Mr. Gips was

Group Vice President Sales and Marketing of the Company from February 2000. Prior to that, Mr. Gips served as Senior Vice President, Corporate Development of the Company from November 1998 to February 2000. Prior to that, Mr. Gips served in the White House as Chief Domestic Policy Advisor to Vice President Gore from April 1997 to April 1998. Before working at the White House, Mr. Gips was at the Federal Communications Commission as the International Bureau Chief and Director of Strategic Policy from January 1994 to April 1997. Prior to his government service, Mr. Gips was a management consultant at McKinsey and Company.

John Neil Hobbs has been Group Vice President Global Sales, Distribution and Marketing Operations since September 2000. Prior to that, Mr. Hobbs was President, Global Accounts for Concert, a joint venture between AT&T and British Telecom from July 1999 until September 2000. Prior to that, Mr. Hobbs was Director Transition and Implementation for the formation of Concert representing British Telecom from June 1998 until July 1999. From April 1997 until June 1998, Mr. Hobbs was British Telecom's General Manager for Global Sales & Service and from April 1994 until April 1997, Mr. Hobbs was British Telecom's General Manager for Corporate Clients.

Joseph M. Howell, III has been Group Vice President Corporate Marketing of the Company since February 2000. Prior to that, Mr. Howell served as Senior Vice President, Corporate Marketing of the Company from October 1997 to February 1, 2000. Prior to that, Mr. Howell was Senior Vice President of MFS/WorldCom from 1993 to 1997.

Michael D. Jones has served as Group Vice President and Chief Information Officer of the Company since February 2000 and Chief Executive Officer of (i)Structure, Inc. since August 2000. Prior to that, Mr. Jones served as Senior Vice President and Chief Information Officer of the Company from December 1998 to February 1, 2000. Prior to that, Mr. Jones was Vice President and Chief Information Officer of Corporate Express, Inc. from May 1994 to May 1998.

Stephen C. Liddell has been a Group Vice President of the Company since February 1, 2000. Mr. Liddell is responsible for the Company's Asian operations. Prior to that, Mr. Liddell was Senior Vice President of the Company from May 1999 to February 1, 2000. Prior to that, Mr. Liddell was President, Asia-Pacific Region at MCI-WorldCom from January 1996 to April 1999 and was Vice President and General Manager, International Networks at MFS Communications from July 1994 to January 1996. Mr. Liddell was Commercial Director and Director of Planning and Business Development at Syncordia (British Telecom) from November 1991 to July 1994 and Business Development Executive at British Telecom from April 1989 to November 1991.

Edward Van Macatee has served as Group Vice President of Service Activation of the Company since January 2001. Prior to that, Mr. Macatee was Group Vice President of Global Customer Operations of the Company from September 1999 until January 2001. Prior to that Mr. Macatee was Vice President, Network Operations of the Company from April 1998 until September 1999 and Vice President of Managed Network Services for TCI Communications, Inc.

Gail P. Smith has been Group Vice President of the Company Cross Product Strategy since January 1, 2001. Prior to that, Ms. Smith was Group Vice President responsible for the Company's European operations from February 1, 2000 until January 1, 2001. Prior to that, Ms. Smith served as Senior Vice President, International Sales and Marketing of the Company from December 1998 to February 1, 2000. Prior to that, Ms. Smith was Vice President and General Manager of WorldCom International Networks from November 1994 to July 1997 and European Marketing Director during the start-up phase of MFS International.

Ronald J. Vidal has been Group Vice President New Ventures and Investor Relations of the Company since February 1, 2000. Prior to that, Mr. Vidal served as Senior Vice President, New Ventures of the Company from October 1997 to February 1, 2000. Prior to that, Mr. Vidal was a Vice President of MFS/WorldCom from September 1992 to October 1997. Mr. Vidal joined the Company in construction project management in July 1983.

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The Board is divided into three classes, designated Class I, Class II and Class III, each class consisting, as nearly as may be possible, of one-third of the total number of directors constituting the Board. The Class I Directors consist of Walter Scott, Jr., James Q. Crowe, Mogens C. Bay, Charles C. Miller, III and Colin V.K. Williams; the Class II Directors consist of William L. Grewcock, Richard R. Jaros, Robert E. Julian and David C. McCourt; and the Class III Directors consist of R. Douglas Bradbury, Kevin J. O'Hara, Kenneth E. Stinson and Michael B. Yanney. The term of the Class I Directors will terminate on the date of the 2001 annual meeting of stockholders; the term of the Class II Directors will terminate on the date of the 2002 annual meeting of stockholders; and the term of the Class III Directors will terminate on the date of the 2003 annual meeting of stockholders. At each annual meeting of stockholders, successors to the class of directors whose term expires at that annual meeting will be elected for three-year terms. The Company's officers are elected annually to serve until each successor is elected and qualified or until his death, resignation or removal.

## Employees

As of December 31, 2000, Level 3 had 5,537 employees in the communications portion of its business and (i)Structure had approximately 674 employees, for a total of 6,211 employees.



## ITEM 2. PROPERTIES

The Company's headquarters are located on 46 acres in the Northwest corner of the Interlocken Advanced Technology Environment within the City of Broomfield, Colorado, and within Boulder County, Colorado. The campus facility encompasses over 850,000 square feet of office space. In addition, the Company has leased temporary office space in the Broomfield, Colorado area.

Properties relating to the Company's coal mining segment are described under ITEM 1. BUSINESS--The Company's Other Businesses above. In connection with certain existing and historical operations, the Company is subject to environmental risks.

The Company's Gateway facilities are being designed to house local sales staff, operational staff, the Company's transmission and IP routing/switching facilities and technical space to accommodate colocation of equipment by high-volume Level 3 customers. The Company has approximately 6.0 million square feet of space for its Gateway and transmission facilities and has completed construction on approximately 2.8 million square feet of this space.

(i)Structure also maintains its corporate headquarters in approximately 10,000 square feet of office space in the Broomfield, Colorado area and leases approximately 16,000 square feet of office space in Omaha, Nebraska. The computer outsourcing business of (i)Structure is located at an 89,000 square foot office space in Omaha and at a 60,000 square foot computer center in Tempe, Arizona. (i)Structure maintains additional office space in Parsippany, New Jersey (approximately 11,000 square feet), Bangalore, India (approximately 18,000 square feet) and several locations in the United Kingdom (approximately 22,000 square feet) for its systems integration business.

## ITEM 3. LEGAL PROCEEDINGS

In August 1999, the Company was named as a defendant in Schweizer vs. Level 3 Communications, Inc., et al., a purported national class action, filed in the District Court, County of Boulder, State of Colorado which involves the Company's right to install its fiber optic cable network in easements and right-of-ways crossing the plaintiffs' land. In general, the Company obtained the rights to construct its network from railroads, utilities, and others, and is installing its network along the rights-of-way so granted. Plaintiffs in the purported class action assert that they are the owners of lands over which the Company's fiber optic cable network passes, and that the railroads, utilities, and others who granted the Company the right to construct and maintain its network did not have the legal ability to do so. The action purports to be on behalf of a national class of owners of land over which the Company's network passes or will pass. The complaint seeks damages on theories of trespass, unjust enrichment and slander of title and property, as well as punitive damages. The Company may in the future receive claims and demands related to rights-of-way issues similar to the issues in

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the Schweizer litigation that may be based on similar or different legal theories. Although it is too early for the Company to reach a conclusion as to the ultimate outcome of this litigation, management believes that the Company has substantial defenses to the claims asserted in the Schweizer action (and any similar claims which may be named in the future), and intends to defend them vigorously.

The Company and its subsidiaries are parties to many other legal proceedings. Management believes that any resulting liabilities for these 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

No matters were submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise.

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

Market Information. The Company's common stock is traded on the Nasdaq National Market under the symbol LVL.T. As of February 26, 2001, there were approximately 4,285 holders of record of the Company's common stock, par value \$.01 per share. The table below sets forth, for the calendar quarters indicated, the high and low per share closing sale prices of the common stock as reported by the Nasdaq National Market.

	High	Low
	-----	-----
Year Ended December 31, 2000		
First Quarter.....	\$130.19	\$73.81
Second Quarter.....	98.50	66.50
Third Quarter.....	92.44	59.50
Fourth Quarter.....	75.23	26.88

Year Ended December 31, 1999

First Quarter.....	\$ 72.81	\$39.75
Second Quarter.....	93.06	60.06
Third Quarter.....	65.50	46.88
Fourth Quarter.....	84.56	51.19

Dividend Policy. The Company's current dividend policy, in effect since April 1, 1998, is to retain future earnings for use in the Company's business. As a result, management does not anticipate paying any cash dividends on shares of Common Stock in the foreseeable future. In addition, the Company is effectively restricted under certain debt covenants from paying cash dividends on shares of its Common Stock.

**ITEM 6. SELECTED FINANCIAL DATA**

The Selected Financial Data of Level 3 Communications, Inc. and its subsidiaries appears below.

	Fiscal Year Ended (1)				
	2000	1999	1998	1997	1996
(dollars in millions, except per share amounts)					
Results of Operations:					
Revenue.....	\$ 1,185	\$ 515	\$ 392	\$ 332	\$ 652
Earnings (loss) from continuing operations (2).....	(1,455)	(487)	(128)	83	104
Net earnings (loss) (3).....	(1,455)	(487)	804	248	221
Per Common Share:					
Earnings (loss) from continuing operations (2).....	(4.01)	(1.46)	(0.43)	0.33	0.45
Dividends (4).....	--	--	--	--	0.05
Financial Position:					
Total assets.....	14,919	8,906	5,522	2,776	3,063
Current portion of long-term debt.....	7	6	5	3	57
Long-term debt, less current portion (5)...	7,318	3,989	2,641	137	320
Stockholders' equity (6).....	4,549	3,405	2,165	2,230	1,819

(1) In October 1993, Level 3 acquired 35% of the outstanding shares of C-TEC Corporation (C-TEC), which shares entitled Level 3 to 57% of the available voting rights of C-TEC. At December 28, 1996, Level 3 owned 48% of the outstanding shares and 62% of the voting rights of C-TEC.

As a result of the restructuring of C-TEC in 1997, Level 3 owned less than 50% of the outstanding shares and voting rights of three entities, RCN Corporation, Commonwealth Telephone Enterprises, Inc., and Cable Michigan, Inc., and therefore accounted for each entity using the equity method from 1997 to 2000. Level 3 consolidated C-TEC in its financial statements for 1996.

The financial position and results of operations of the former construction and mining management businesses (Construction Group) of Level 3 have been classified as discontinued operations due to the March 31, 1998 split-off of Level 3's Construction Group from its other businesses.

Level 3 sold its energy segment to MidAmerican Energy Holdings Company (MidAmerican) in 1998 and classified it as discontinued operations within the financial statements.

Certain prior year amounts have been reclassified to conform to current year presentation.

(2) Level 3 incurred significant expenses in conjunction with the expansion of its communications and information services business beginning in 1998.

In 2000, 1999 and 1998, RCN Corporation issued stock in public offerings and for certain transactions. These transactions reduced the Company's ownership in RCN to 31%, 35% and 41% at December 31, 2000, 1999 and 1998, respectively, and resulted in pre-tax gains to the Company of \$95 million, \$117 million and \$62 million in 2000, 1999 and 1998, respectively.

In 1998, Level 3 acquired XCOM Technologies, Inc. and its developing telephone-to-IP network bridge technology. Level 3 recorded a \$30 million nondeductible charge against earnings for the write-off of in-process research and development acquired in the transaction.

In 1998, Cable Michigan, Inc. was acquired by Avalon Cable of Michigan, Inc. Level 3 received approximately \$129 million for its shares of Cable Michigan, Inc. in the disposition and recognized a pre-tax gain of approximately \$90 million in 1998.

(3) In 1998, Level 3 recognized a gain of \$608 million equal to the difference between the carrying value of the Construction Group and its fair value. No taxes were provided on this gain due to the tax-free nature of the split-off.

Level 3 also recognized in 1998 an after-tax gain of \$324 million on the sale of its energy segment to MidAmerican.

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(4) The 1996 dividends include \$.05 for dividends declared in 1996 but paid in January of the subsequent year.

The Company's current dividend policy, in effect since April 1998, is to retain future earnings for use in the Company's business. As a result, management does not anticipate paying any cash dividends on shares of Common Stock in the foreseeable future. In addition, the Company is effectively restricted under certain covenants from paying cash dividends on shares of its Common Stock.

(5) In 1998, Level 3 issued \$2 billion of 9.125% Senior Notes due 2008 and received net proceeds of \$500 million from the issuance of \$834 million principal amount at maturity of 10.5% Senior Discount Notes due 2008.

In 1999, Level 3 received \$798 million of net proceeds from an offering of \$823 million aggregate principal amount of its 6% Convertible Subordinated Notes Due 2009. In addition, Level 3 and certain Level 3 subsidiaries entered into a \$1.375 billion senior secured credit facility. Level 3 borrowed \$475 million in 1999 under the senior secured credit facility.

In 2000, Level 3 received net proceeds of approximately \$3.2 billion from the offering of \$863 million in convertible subordinated notes, \$1.4 billion in three tranches of U.S. dollar denominated senior debt securities, \$780 million from two tranches of Euro denominated senior debt securities and \$233 million from mortgage financings.

(6) In 1999, the Company received approximately \$1.5 billion of net proceeds from the sale of 28.75 million shares of its Common Stock.

In 2000, the Company received approximately \$2.4 billion of net proceeds from the sale of 23 million shares of its Common Stock.

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

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 Level 3 Communications, Inc. and its subsidiaries (Level 3 or the Company). When used in this document, the words anticipate, believe, plans, 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. See Cautionary Factors That May Affect Future Results.

### **Recent Developments**

#### **Expansion of Business Plan**

On January 24, 2000, Level 3 announced the expansion of its business plan to increase the amount of its Gateway and technical space it intends to secure to approximately 6.5 million square feet. As of December 31, 2000, the Company has secured approximately 6.0 million square feet of Gateway space around the world and has pre-funded the acquisition of another .5 million square feet for data

center space. In addition, the expansion includes plans to build-out additional local markets in Europe and Asia, and the expansion of existing local facilities. At February 15, 2001, Level 3 had operational Gateways in 52 U.S. markets, 9 European markets and two Asian markets.

### **Northern Asia Undersea Cable System**

On January 24, 2000, Level 3 announced its intention to develop and construct a Northern Asia undersea cable system initially connecting Hong Kong and Japan. The Hong Kong-Japan cable was intended to be the first stage of the Company's construction of an undersea network in the region. At that time, the Company indicated its intention to share construction and operating expenses of the system with one or more industry partners.

On December 29, 2000, the Company signed an agreement to collaborate with FLAG Telecom on the development of the Northern Asia submarine cable system connecting Hong Kong, Japan, Korea and Taiwan. The system will include Level 3's previously announced eastern link connecting Hong Kong, Taiwan and Japan and a new western link that FLAG Telecom will build to connect Hong Kong, Korea and Japan. The Company expects the Hong Kong to Japan segment of the eastern link to be in service in the second quarter of 2001, with the eastern link's Taiwan segment to follow in late 2001. The Company expects the entire western link to be ready for service in early 2002. Level 3 and FLAG Telecom will each own three fiber pairs throughout the new system. The total cost of the entire Northern Asia system is estimated to be approximately \$900 million. Level 3's share of the cost is approximately \$450 million.

### **Global Crossing Co-Build Agreement**

On February 17, 2000, Level 3 announced a co-build agreement whereby Global Crossing Ltd. participated in the construction of and obtained a 50% ownership interest in the previously announced Level 3 transatlantic fiber optic cable. Under the co-build agreement, Level 3 and Global Crossing Ltd. each separately own and operate two of the four fiber pairs on Level 3's transatlantic cable. Level 3 also acquired additional capacity on Global Crossing Ltd.'s transatlantic cable, Atlantic Crossing 1, during 2000. The transatlantic cable was completed in November 2000.

### **Common Stock Offering**

On February 29, 2000, the Company closed the sale of 23 million shares of its common stock through an underwritten public offering. The net proceeds from the offering of approximately \$2.4 billion, after underwriting discounts and offering expenses, are being used for working capital, capital expenditures, acquisitions and other general corporate purposes in connection with the implementation of the business plan.

### **Debt Offerings**

On February 29, 2000, the Company issued, in private and public offerings, convertible subordinated notes, senior notes and senior discount notes which generated aggregate gross proceeds of approximately \$2.3 billion. The net proceeds from the offerings of approximately \$2.2 billion, after discounts and offering expenses, are being used for working capital, capital expenditures, acquisitions and other general corporate purposes in connection with the implementation of the business plan. The debt offerings consisted of the following:

\$863 million aggregate principal amount of its 6% Convertible Subordinated Notes due 2010  
\$800 million aggregate principal amount of its 11% Senior Notes due 2008 \$250 million aggregate principal amount of its 11.25% Senior Notes due 2010 \$675 million aggregate principal amount at maturity of its 12.875% Senior Discount Notes due 2010

### **Euro Denominated Debt Offerings**

On February 29, 2000, the Company issued in private offerings Euro denominated senior notes which generated aggregate gross proceeds of approximately (Euro) 800 million (\$780 million at issuance). The net proceeds from the offerings of approximately (Euro) 780 million (\$763 million at issuance), after underwriting

discounts and offering expenses, are being used for working capital, capital expenditures, acquisitions and other general corporate purposes of the Company's European subsidiaries. The debt offerings consisted of the following:

(Euro) 500 million aggregate principal amount of its 10.75% Senior Euro Notes due 2008  
(Euro) 300 million aggregate principal amount of its 11.25% Senior Euro Notes due 2010

The Company registered the Euro denominated securities with the Luxembourg Stock Exchange in the second quarter of 2000.

The Company valued the Euro denominated notes in total at \$780 million at February 29, 2000. Due to the decline in the Euro exchange rate ((Euro) 1 to \$0.975 at February 29, 2000 compared to (Euro) 1 to \$0.930 at December 31, 2000), the Euro denominated notes were valued by the Company at \$744 million at December 31, 2000. The difference between the carrying value at December 31, 2000 and the value at issuance was included in other comprehensive income.

### Viatal Agreement

On April 12, 2000, Level 3 signed an agreement with Viatal Inc. whereby Viatal Inc. agreed to purchase an ownership interest, in one fiber pair on Level 3's transatlantic fiber optic cable system installed by Level 3. As a result of this agreement, both companies own and operate one fiber pair on the transatlantic cable. The Company recognized revenue of \$94 million on this contract during the fourth quarter of 2000, with the remainder being recognized over the term of the contract.

### Corning Fiber Agreement

On August 24, 2000, the Company announced that it had signed a letter of intent to purchase more than two million cabled fiber kilometers of third generation LEAF fiber from Corning Incorporated. Level 3 plans to begin installing the fiber in its second conduit in the first quarter of 2001 and expects to be substantially complete by the end of 2001. Corning's LEAF fiber will significantly increase Level 3's network capacity.

### Recent Accounting Developments

In June 1998, the Financial Accounting Standards Board, (FASB), issued Statement of Financial Accounting Standard, (SFAS) No. 133, Accounting for Derivative Instruments and Hedging Activities (SFAS No. 133). SFAS No. 133, as amended by SFAS Nos. 137 and 138, is effective for fiscal years beginning January 1, 2001. SFAS No. 133 requires that all derivative instruments be recorded on the balance sheet at fair value. Changes in the fair value of derivatives are recorded each period in current earnings or other comprehensive income, depending on whether a derivative is designated as part of a hedge transaction and, if it is, the type of hedge designated by the transaction. The Company currently makes minimal use of derivative instruments as defined by SFAS No. 133. If the Company does not increase the utilization of these derivatives, the adoption of this standard is expected to have a minimal effect on the Company's results of operations or its financial position.

In December 1999 the SEC staff released Staff Accounting Bulletin No. 101, Revenue Recognition in Financial Statements (SAB 101). SAB 101 provides interpretive guidance on the recognition, presentation and disclosure of revenue in the financial statements. The Company adopted SAB 101 as of January 1, 2000. The adoption did not have a material effect on the financial results as the Company's revenue recognition policies which were already consistent with SAB 101.

Effective July 1, 1999, FASB issued Interpretation No. 43, Real Estate Sales, an interpretation of FASB Statement No. 66 (FIN 43). Certain sale and long-term right-to-use IRU agreements of dark fiber and capacity entered into after June 30, 1999 are required to be accounted for in the same manner as sales of real estate with property improvements or integral equipment. Failure to satisfy the requirements of the Interpretation will result in the deferral of revenue recognition for these contracts. The adoption of this Interpretation does not have a current effect on the Company's cash flows.

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Accounting practice and guidance with respect to the accounting treatment of these transactions is evolving. Any changes in the accounting treatment could affect the way the Company accounts for revenue and expenses associated with these agreements in the future.

### Results of Operations 2000 vs. 1999

Revenue for the years ended December 31, 2000 and December 31, 1999 is summarized as follows (in millions):

	2000	1999
	-----	-----
Communications and Information Services.....	\$ 973	\$289
Coal Mining.....	190	207
Other.....	22	19
	-----	-----
	\$1,185	\$515
	=====	=====

Communications and information services revenue in 2000 increased \$684 million or 237% from 1999 revenue of \$289 million. This increase is due to the growth and expansion of the communications business, which segment's revenue has increased 440% to \$858 million. In 2000, the Company generated services revenue, including private line, colocation, voice, managed modem, Internet access and wavelengths, of \$489 million compared to \$98 million in 1999. The completion of several metropolitan networks and Gateways in the United States and Europe are primarily responsible for the increase. At December 31, 2000, Level 3 had local networks in 32 domestic and international cities and Gateway facilities in 60 markets. This compares to 25 local networks and 31 Gateways at the end of 1999. Dark fiber sales for contracts entered into before June 30, 1999 increased from \$26 million in 1999 to \$209 million in 2000. This is a result of a significant portion of Level 3's North American intercity network being completed in 2000. Level 3 also recognized revenue of \$105 million related to submarine systems, primarily from the completion of its transatlantic submarine cable and subsequent sale to Viatel Inc. in November of 2000. Also included in 2000 communications revenue was \$55 million of reciprocal compensation revenue from executed and approved interconnection agreements compared to \$24 million in 1999. Level 3 reached an agreement with SBC Communications, Inc. in January 2001 which establishes a rate structure for transmission and switching services provided by one carrier to complete or carry traffic originating on another carrier's network. The implementation of the rate structure and reciprocal compensation billing settlement is contingent upon certain conditions including approval by relevant regulatory authorities. Level 3 did not recognize any revenue related to this agreement in 2000 and, as is its policy, will not recognize revenue in 2001 until the necessary regulatory approvals have been received. Information services revenue declined by \$15 million in 2000 to \$115 million. This decline is primarily attributable to Year 2000 computer processing and consulting work completed in 1999.

The communications business generated Cash Revenue of \$1.26 billion in 2000. In addition to revenue, the Company includes the change in the cash portion of deferred revenue in its definition of Cash Revenue. The increase in cash deferred revenue for the communications business for the year was \$404 million and is in part due to the implementation of FIN 43 which requires the Company to defer the recognition of certain dark fiber contracts and IRU sales over the term of the agreement, typically 10-20 years. For these types of agreements, the Company normally receives a deposit at the time the contract is signed and the remainder when the fiber is delivered and accepted by the customer. In 1999 Cash Revenue for the communications business was \$256 million.

Coal Mining revenue declined approximately 8% in 2000 from \$207 million in 1999 to \$190 million in 2000. Coal revenue was expected to decline in 2000 as a result of the reduced shipments under long-term coal contracts and the sale of the Company's entire interest in Walnut Creek Mining Company. The Company expects to experience a significant decline in coal revenue and earnings beginning in 2001 as long-term contracts begin to expire.

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Other revenue in 2000 approximated 1999 revenue and is primarily attributable to California Private Transportation Company, L.P. (CPTC) the owner-operator of the private SR91 tollroad in southern California.

Cost of Revenue for 2000 was \$794 million, representing a 121% increase over 1999 cost of revenue of \$360 million as a result of the expanding communications business. Overall the cost of revenue for the communications business, as a percentage of revenue, decreased significantly from 115% during 1999 to 73% for 2000. This decrease is attributed to the expanding communications business. The Company recognized \$196 million of costs associated with dark fiber and transoceanic cable sales in 2000. The cost of revenue for the information services businesses, as a percentage of its revenue, was 77% for 2000 compared to 65% for 1999. Lower margins on new contracts and the omission of Year 2000 related work resulted in the decline in margins. The cost of revenue for the coal mining business, as a percentage of revenue, was 40% for 2000 and 45% in 1999. In December 1999, Commonwealth Edison Company (Commonwealth Edison) and the Company renegotiated certain coal contracts whereby Commonwealth Edison is no longer required to take delivery of its coal commitments but still must pay Level 3 the margins Level 3 would have earned had the coal been delivered.

Depreciation and Amortization expenses for 2000 were \$584 million, a 156% increase over 1999 deprecation and amortization expenses of \$228 million. This increase is a direct result of the communications assets placed in service in the later half of 1999 and throughout 2000, including Gateways, local metropolitan networks and domestic, international and submarine networks.

Selling, General and Administrative expenses were \$1,152 million in 2000, representing a 72% increase over 1999. This increase primarily results from the Company's addition of over 2,350 employees during 2000. There was a substantial increase in compensation, travel and facilities costs due to the additional employees. The Company also recorded \$241 million in non-cash compensation expense for the year ended December 31, 2000, for expenses recognized under SFAS No. 123 related to grants of stock options and warrants; \$126 million of non-cash compensation was recorded for the same period in 1999. The increase in non-cash compensation is due predominantly to an increase in the number of employees. Communications, insurance, bad debt, data processing and marketing costs also contributed to the higher selling, general and administrative expenses. In addition to the expenses noted above, the Company capitalized \$162 million and \$116 million of selling, general and administrative expenses in 2000 and 1999, respectively, which consisted primarily of compensation expense for employees and consultants working on capital projects. As the Company continues to implement the business plan, selling, general and administrative costs are expected to continue to increase.

EBITDA, as defined by the Company, consists of earnings (losses) before interest, income taxes, depreciation, amortization, non-cash operating expenses (including stock-based compensation and in-process research and development charges) and other non-operating income or expenses. The Company excludes non-cash compensation due to its adoption of the expense recognition provisions of SFAS No. 123. EBITDA decreased to a loss of (\$520) million for the year ended December 31, 2000 from a (\$387) million loss for 1999. This decrease was predominantly due to the increase in selling, general and administrative expenses resulting from the rapid expansion of the communications business. EBITDA is commonly used in the communications industry to analyze companies on the basis of operating performance.

Adjusted EBITDA, as defined by the Company, is EBITDA as defined above plus the change in cash deferred revenue and minus the non-cash cost of goods sold associated with certain transoceanic IRU sales and dark fiber contracts. For 2000, Adjusted EBITDA was \$80 million compared to a loss of (\$307) million in 1999. An increase in cash deferred revenue of \$404 million and non-cash cost of goods sold related to transoceanic and dark fiber sales of \$196 million are primarily responsible for the improved Adjusted EBITDA figures.

EBITDA and Adjusted EBITDA are not intended to represent operating cash flow for the periods indicated and are not GAAP. See Consolidated Statements of Cash Flows.

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Interest Income was \$328 million for 2000 compared to \$212 million in 1999. This 55% increase was predominantly due to the Company's increased average cash, cash equivalents and marketable securities balances. Average cash balances increased largely due to the approximately \$5.4 billion in proceeds received from the February 29, 2000 debt and equity offerings. The Company's average cash balance also increased as a result of the September 1999 6% Convertible Subordinated Notes offering and the Senior Secured Credit Facility agreement. The increase in interest income is also due to increasing yields on the Company's investments due to increased market rates. Pending utilization of the cash equivalents and marketable securities in implementing the business plan, the Company intends to invest the funds primarily in United States government securities, money market funds, bank repurchase agreements and commercial paper. This investment strategy provides lower yields on the funds, but reduces the risk to principal in the short term prior to using the funds in implementing the business plan. Interest income is expected to decrease in 2001 as the Company continues to fund the investing and operating activities of the communications business.

Interest Expense, net for 2000 of \$282 million represents a 62% increase from 1999. The substantial increase was due to the 6% Convertible Subordinated Notes issued in September 1999, the Senior Secured Credit Facility entered into in September 1999, as well as the approximately \$3 billion in debt securities issued on February 29, 2000. The amortization of the related debt issuance costs also contributed to the increased interest expense in 2000. Partially offsetting this increase was an increase in capitalized interest to \$353 million in 2000 from \$116 million in 1999. Capitalized interest is expected to decrease substantially in 2001 as a result of the completion of both the North American and European intercity networks and other facilities being placed in service.

Equity in Losses of Unconsolidated Subsidiaries was \$284 million in 2000 compared to \$127 million in 1999. The equity losses are predominantly attributable to the Company's investment in RCN Corporation (RCN). RCN is a facilities-based provider of bundled local and long distance phone, cable television and Internet services to residential markets primarily on the East and West coasts as well as Chicago. RCN is incurring significant costs in developing its business plan. The Company's share of RCN's losses, increased to \$261 million in 2000 from \$135 million in 1999. During the fourth quarter of 2000, Level 3's proportionate share of the RCN's fourth quarter losses exceeded the remaining carrying value of Level 3's investment in RCN. Level 3 does not have additional financial commitments to RCN; therefore it can only recognize equity losses equal to its investment in RCN. As of December 31, 2000, Level 3 had not recorded approximately \$20 million of equity losses attributable to RCN's fourth quarter losses. If RCN becomes profitable, Level 3 will not record its equity in RCN's profits until unrecorded equity losses have been offset. Level 3 does not expect, based on RCN's current business plan and analysts' estimates, to recognize equity earnings or losses attributable to RCN in the foreseeable future. Equity losses for 2000 also include \$24 million of losses attributable to the Commonwealth Telephone Enterprises, Inc. (Commonwealth Telephone). In December 2000, Commonwealth Telephone announced that it was going to record a charge to earnings for the restructuring of its CTCI subsidiary. Commonwealth Telephone indicated that the charge would range from \$46-\$72 million on an after-tax basis. Level 3 recorded \$27 million of equity losses, representing its proportionate share of the midpoint, or \$59 million, of the estimated restructuring charge.

Gains on Equity Investee Stock Transactions was \$100 million for 2000 compared to \$118 million for 1999. RCN issued stock for the acquisition of 21st Century Telecom Group, Inc. and for certain transactions in early 2000, which diluted the Company's ownership of RCN from 35% at December 31, 1999 to 31% at December 31, 2000. These transactions diluted Level 3's ownership in RCN but increased its proportionate share of RCN's common equity. As a result, Level 3 recognized \$95 million of pre-tax gains related to RCN stock activity in 2000. In 1999, RCN issued stock in a public offering and for certain transactions, which resulted in a pre-tax gain of \$117 million to the Company. The Company does not expect to recognize future gains on RCN stock activity unless the gains exceed the accumulated net equity losses not recognized by the Company. Level 3 also recognized pre-tax gains of \$5 million and \$1 million in 2000 and 1999, respectively, for Commonwealth Telephone stock activity that diluted the Company's ownership to 46% at December 31, 2000.

Gain (Loss) on Sale of Assets decreased to (\$19) million in 2000. In the second half of 2000, market conditions and the valuations assigned to companies in certain Internet related sectors and the Company's view of the business prospects of such entities declined dramatically. Therefore, the Company recorded a \$37 million pre-tax charge for an other-than-temporary decline in the value of a publicly traded investment. Partially offsetting this charge was a \$21 million pre-tax gain on the sale of the Company's entire interest in the Walnut Creek Mining to Peter Kiewit Sons' Inc. Also included are gains and losses on the sale of construction and other operating equipment.

Other, net decreased to (\$2) million in 2000 from \$7 million in 1999. The decrease is predominately due to foreign exchange losses recorded in 2000.

Income Tax Benefit for 2000 differs from the prior year and the statutory rate primarily due to limited availability of taxable income in the carryback period to offset current year losses. The income tax benefit for 1999 differs from the statutory rate of 35% primarily due to losses incurred by the Company's international subsidiaries which cannot be included in the consolidated U.S. federal return, nondeductible goodwill amortization expense and state income taxes. For fiscal 2000, Level 3 recognized a benefit equal to the amount of refund available due to utilization of net operating loss carrybacks. As of December 31, 2000, Level 3 had approximately \$638 million of net operating loss carryforwards available to offset future taxable income. At this time, the Company is unable to determine when it will have taxable income to offset the loss carryforwards.

### Results of Operations 1999 vs. 1998

Revenue for the years ended December 31, 1999 and December 31, 1998 is summarized as follows (in millions):

	1999	1998
	----	----
Communications and Information Services.....	\$289	\$144
Coal Mining.....	207	228
Other.....	19	20
	----	----
	\$515	\$392
	====	====

Communications and information services revenue increased from \$144 million for the year ended December 31, 1998 to \$289 million for the year ended December 31, 1999. Revenue attributable to the communications business increased from \$24 million in 1998 to \$159 million in 1999. In May 1999, the Massachusetts Department of Public Utilities ruled that Verizon (formerly known as Bell Atlantic), was no longer required to pay the established reciprocal compensation rates for certain services. As a result, beginning in the second quarter, Level 3 elected not to recognize additional revenue from these agreements until the uncertainties were resolved. The Company reached an agreement with Verizon in October 1999. The agreement established new intercarrier or reciprocal compensation rates between the two carriers and assures that the Company will be paid for the traffic it terminates from Verizon. As part of the agreement, the Company and Verizon settled past disputes over reciprocal compensation billing issues. The implementation of the new rate structure and reciprocal compensation billing settlement was contingent upon certain conditions including approval by relevant regulatory authorities. During the fourth quarter, Massachusetts and other states approved the agreement and therefore, the Company recognized \$16 million of reciprocal compensation revenue. Also during the fourth quarter the Company completed certain sections of its intercity and metropolitan networks and recognized \$26 million of revenue from dark fiber contracts entered into before June 30, 1999. In 1999, the Company recognized a total of \$24 million and \$37 million of revenue attributable to reciprocal compensation agreements and dark fiber contracts, respectively. In addition, during 1999 the Company recognized \$33 million of revenue attributable to private line services, \$24 million of revenue attributable to managed modem services, \$23 million attributable to colocation services, and \$18 million of revenue attributable to Internet access services.

The communications business generated Cash Revenue of \$256 million in 1999. Cash deferred revenue increased \$97 million in 1999 as a result of several new dark fiber contracts. Cash Revenue in 1998 for the communications business was \$51 million.

Systems integration revenue increased 11% to \$63 million in 1999. Revenue for the computer outsourcing business increased 6% to \$67 million in 1999. Revenue attributable to new customers and additional services for existing customers led to the increase in computer outsourcing and systems integration revenue.

Mining revenue in 1999 decreased to \$207 million from \$228 million in 1998 due to reduced tonnage requirements under existing



contracts with Commonwealth Edison and the expiration of a long-term contract with Commonwealth in 1998.

Other revenue was consistent with 1998 and is primarily attributable to CPTC.

Cost of Revenue increased \$161 million or 81% to \$360 million in 1999 as a result of the expanding communications business. In 1999, communications network expenses were \$183 million as compared to \$12 million in the prior year. The increase in costs is primarily attributable to the Global Crossing North America, Inc. and Broadwing Communications Inc., leased network expenses, the costs associated with the XCOM Technologies, Inc. (XCOM) and GeoNet Communications, Inc. (GeoNet) acquisitions, and costs attributable to the products the Company began offering in late 1998 and 1999. The cost of revenue for the information services business, as a percentage of revenue, decreased for the year ended December 31, 1999 compared to the same period in 1998. This decrease is primarily due to an increase in the utilization rates of systems integration personnel in 1999. The cost of revenue for the coal business, as a percentage of revenue, increased due to the expiration of a high margin long-term contract in 1998.

Depreciation and Amortization expense increased from \$66 million in 1998 to \$228 million in 1999. The significant increase in the amount of assets placed in service during the latter part of 1998 and throughout 1999 for the communications business resulted in the increase in depreciation expense. The acquisitions of XCOM, GeoNet and BusinessNet in 1998 and 1999 also contributed to the increase in depreciation and amortization expense in 1999.

Selling, General and Administrative expenses increased significantly to \$668 million in 1999 from \$332 million in 1998 primarily due to the cost of activities associated with the expanding communications business. Compensation, travel and facilities costs increased substantially due to the additional employees that have been hired to implement the business plan. The total number of employees of the Company increased to approximately 3,850 at December 31, 1999 from approximately 2,200 at December 31, 1998. Professional fees, including legal costs associated with obtaining licenses, agreements and technical facilities and other development costs associated with the Company's plans to expand services offered in U.S., European and Asian markets, consulting fees incurred to develop and implement the Company's business support systems, and advertising, marketing and other selling costs contributed to the higher selling, general and administrative expenses. The Company also recorded \$126 million of non-cash compensation in 1999 for expenses recognized under SFAS No. 123 related to grants of stock options and warrants, up from \$39 million in 1998. In addition to the expenses noted above, the Company capitalized \$116 million and \$52 million of selling, general and administrative expenses in 1999 and 1998, respectively, which consisted primarily of compensation expense for employees and consultants working on capital projects.

Write-off of In-Process Research and Development of \$30 million in 1998 was the portion of the purchase price allocated to the telephone network-to- Internet Protocol network bridge technology acquired by the Company in the XCOM transaction and was estimated through formal valuation. In accordance with generally accepted accounting principles, the \$30 million was taken as a nondeductible charge against earnings in the second quarter of 1998.

EBITDA, as defined by the Company, decreased from (\$100) million in 1998 to (\$387) million in 1999 primarily due to the significant increase in selling, general and administrative expenses, described above, incurred in connection with the implementation of the Company's business plan.

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Adjusted EBITDA for 1999 was (\$307) million compared to (\$73) million in 1998. Increases in selling, general and administrative expenses partially offset by an increase in cash deferred revenue of \$97 million and non-cash cost of goods sold related to dark fiber sales of \$17 million, are primarily responsible for the decrease in Adjusted EBITDA.

Interest Income increased from \$173 million in 1998 to \$212 million in 1999 primarily as a function of the Company's increasing average cash, cash equivalents and marketable securities balances. The average cash balance increased from approximately \$3.7 billion during 1998 to approximately \$4.2 billion during 1999 as a result of the December 1998 Senior Discount Notes offering, the March 1999 equity offering and the September 1999 Subordinated Notes offering and Senior Secured Credit Facility agreement. Yields on the portfolio, however, have declined by approximately 50 basis points in 1999 from the yields in 1998 primarily due to the funds being invested in shorter term treasury securities. The accelerating business plan has required the Company to shorten the average term of treasury securities in which it invested in 1999.

Interest Expense, net increased \$42 million to \$174 million in 1999 due to the completion of the offering of \$2 billion aggregate principal amount of Senior Notes in April 1998, \$834 million aggregate principal amount at maturity of Senior Discount Notes offered in December 1998, the Convertible Subordinated Notes issued in September 1999, and Senior Secured Credit Facility entered into in September 1999. The amortization of the related debt issuance costs also contributed to the increased interest expense in 1999. The Company capitalized \$116 million and \$15 million of interest expense on network construction and business support systems in 1999 and 1998, respectively.

Equity in Losses of Unconsolidated Subsidiaries are \$127 million in 1999 and are primarily attributable to RCN. RCN's losses

increased from \$205 million in 1998 to \$369 million in 1999. The Company's proportionate share of these losses, including goodwill amortization, was \$135 million and \$92 million in 1999 and 1998, respectively. In 1998, the Company elected to discontinue its funding of Gateway Opportunity Fund, LP, (Gateway), which provided venture capital to developing businesses. The Company recorded losses of \$28 million in 1998, to reflect Level 3's equity in losses of the underlying businesses of Gateway. Also included are equity earnings and losses of other equity method investments not individually significant.

Gain on Equity Investee Stock Transactions increased to \$118 million in 1999. RCN issued stock in a public offering and for certain transactions in 1998 and 1999 which diluted the Company's ownership of RCN from 41% at December 31, 1998 to 35% at December 31, 1999. The increase in the Company's proportionate share of RCN's net assets as a result of these transactions resulted in a pre-tax gain of \$117 million from subsidiary stock sales for the Company in 1999. The Company recognized \$62 million of gains for similar stock transactions of RCN in 1998. The Company also recognized \$1 million of gains attributable to other equity method investees.

Gains (Losses) on Sale of Assets decreased significantly in 1999 due to the sale of Cable Michigan to Avalon Cable of Michigan, Inc. in November 1998. The Company recognized a gain of approximately \$90 million from the cash-for-stock transaction. Included in gains (losses) on the disposal of assets are (\$3) million of losses and \$8 million of gains on the disposal of property, plant and equipment in 1999 and 1998 respectively, and \$1 million and \$9 million of gains on the sale of marketable securities in 1999 and 1998 respectively.

Income Tax Benefit in 1999 and 1998 differs from the statutory rate of 35% primarily due to losses incurred by the Company's international subsidiaries which cannot be included in the consolidated U.S. federal return, nondeductible goodwill amortization expense and state income taxes. The income tax benefit in 1999 also differs from the statutory rate due to foreign tax credits expected to be released upon carryback of 1999 net operating losses that the Company will be unable to utilize. The income tax benefit in 1998 also differs from the statutory rate due to the \$30 million nondeductible write-off of the research and development costs acquired in the XCOM acquisition.

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Discontinued Operations includes the one-time gain of \$608 million recognized upon the distribution of the Construction Group to former Class C stockholders on March 31, 1998. Also included in discontinued operations is the gain, net of tax, of \$324 million from the Company's sale of its energy assets to MidAmerican on January 2, 1998.

#### **Financial Condition--December 31, 2000**

The Company's working capital increased slightly from \$2.8 billion at December 31, 1999 to \$3.1 billion at December 31, 2000 due primarily to the proceeds from the debt and equity offerings completed in February 2000 and dark fiber IRU transactions, offset by funds used in operations and in construction of the Level 3 Network. In February 2000, the Company received approximately \$2.4 billion of net proceeds from an equity offering and approximately \$3.0 billion from the issuance of debt. These financing activities, along with dark fiber IRU transactions, were partially offset by capital expenditures of \$5.9 billion and operating expenses incurred to expand the communications business.

Cash provided by operations increased from \$438 million in 1999 to \$1 billion in 2000. The increase is primarily attributable to a \$585 million increase in deferred revenue, receipt of \$246 million of federal income tax refunds and changes in other working capital items including accounts payable and accrued interest payable reduced by the change in receivables. The increase in deferred revenue is a result of the accounting guidance in FASB Interpretation No. 43 issued in June 1999, which requires the Company to defer recognition of certain dark fiber sales and capacity agreements over the term of the contract. Dark fiber agreements typically require customers to pay a deposit at the time the contract is signed with the remaining amount due when the fiber is delivered and accepted by the customer.

Investing activities include using the proceeds from the debt and equity offerings to purchase \$8.3 billion of marketable securities and approximately \$5.9 billion of capital expenditures, primarily for the expanding communications and information services business. Provisions of a commercial mortgage financing for one of the Company's Gateway facilities required the Company to place approximately \$145 million of funds in a restricted account to be used for completing the buildout of that Gateway facility. The Company also realized \$7.8 billion of proceeds from the sales and maturities of marketable securities and \$99 million of proceeds from the sale of non-telecom assets and network construction equipment.

Financing sources in 2000 consisted primarily of the net proceeds of \$2.4 billion from the issuance of 23 million shares of Level 3 common stock, \$836 million in Convertible Subordinated Notes, \$1.4 billion in three tranches of U.S. dollar denominated debt securities, \$763 million from two tranches of Euro denominated senior debt securities and \$224 million from mortgage financings. The Company also received proceeds of \$15 million in 2000 from the exercise of Company stock options and repaid long-term debt of \$21 million primarily related to the Pavilion Towers office complex.

#### **Liquidity and Capital Resources**

Since late 1997, the Company has substantially increased the emphasis it places on and the resources devoted to its communications and information services business. The Company has become a facilities-based provider (that is, a provider that owns or leases a substantial portion of the property, plant and equipment necessary to provide its services) of a broad range of integrated communications services. To reach this goal, the Company has created, through a combination of construction, purchase and leasing of facilities and other assets, an advanced, international, end-to-end, facilities-based communications network. The Company has designed its network based on Internet Protocol technology in order to leverage the efficiencies of this technology to provide lower cost communications services.

The continued development of the Company's businesses will require significant capital expenditures, a substantial portion of which will be incurred before any significant related revenues are expected to be realized. These expenditures, together with the associated early operating expenses, have, and may continue to result in

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substantial negative operating cash flow and substantial net operating losses for the Company for the foreseeable future. Although the Company believes that its cost estimates and additional build-out schedule are reasonable, the actual construction costs or the timing of the expenditures may deviate from current estimates. The Company's capital expenditures in connection with the business plan were approximately \$5.9 billion during 2000. The majority of the spending was for construction of the U.S. and European intercity networks, certain local metropolitan networks in the U.S. and Europe, and the transatlantic cable network. Total capital expenditures for 2001 are expected to be approximately \$3.4 billion. The proceeds received from the February 2000 debt and equity offerings combined with the cash and marketable securities already on hand and the undrawn commitments of \$900 million at December 31, 2000 under the Senior Secured Credit Facility, provided Level 3 with approximately \$4.9 billion of funds available at the end of the year. Additionally, on January 8, 2001, the Company borrowed an additional \$250 million under the credit facility. The Company's current liquidity and committed contracts should be sufficient to fund the currently committed portions of the business plan.

On January 24, 2000, the Company announced that it was expanding the scope of its business plan to include a significant increase in the amount of colocation space available to the Company's communications intensive customers, and additional local fiber facilities. The Company currently estimates that the implementation of the business plan will require between \$13 and \$14 billion over the 10-year period of the business plan. The Company's successful debt and equity offerings in February 2000 have given the Company the ability to implement the committed portions of the business plan. However, if additional opportunities should present themselves, the Company may be required to secure additional financing in the future. In order to pursue these possible opportunities and provide additional flexibility to fund its business plan, the Company filed a universal shelf registration for an additional \$3 billion of common stock, preferred stock, debt securities, warrants, stock purchase agreements and depository shares. The registration statement (declared effective by the Securities and Exchange Commission on January 31, 2001), in combination with the remaining availability under an existing universal shelf registration statement, allows Level 3 to offer an aggregate of up to \$3.156 billion of additional securities to fund its business plan. In addition to raising capital through the debt and equity markets, the Company may sell or dispose of existing businesses or investments to fund portions of the business plan. The Company may also sell or lease fiber optic capacity, or access to its conduits.

The Company may not be successful in producing sufficient cash flow, raising sufficient debt or equity capital on terms that it will consider acceptable, or selling or leasing fiber optic capacity or access to its conduits. In addition, proceeds from dispositions of the Company's assets may not reflect the assets' intrinsic values. Further, expenditures may exceed the Company's estimates and the financing needed may be higher than estimated. Failure to generate sufficient funds may require the Company to delay or abandon some of its future expansion or expenditures, which could have material adverse effect on the implementation of the business plan.

In connection with implementing the business plan, management will continue reviewing the existing businesses of the Company to determine how those businesses will complement the Company's focus on communications and information services. If it is decided that an existing business is not compatible with the communications and information services business and if a suitable buyer can be found, the Company may dispose of that business.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Level 3 is subject to market risks arising from changes in interest rates, equity prices and foreign exchange rates. The Company's exposure to interest rate risk increased due to the \$1.375 billion Senior Secured Credit Facility entered into by the Company in September 1999 and the commercial mortgages entered into in 2000. As of December 31, 2000, the Company had borrowed \$475 million under the Senior Secured Credit Facility and \$233 million under the commercial mortgages. Amounts drawn on these debt instruments bear interest at the alternate base rate or LIBOR rate plus applicable margins. As the alternate base rate and LIBOR rates

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fluctuate, so too will the interest expense on amounts borrowed under the credit facility and mortgages. A hypothetical 10% increase in interest rates would increase annual interest expense of the Company by approximately \$7 million based on outstanding amounts under these variable rate instruments of \$708 million at December 31, 2000. At December 31, 2000, the Company had \$6.6 billion of fixed rate debt bearing interest at annual rates ranging from 6.0% to 12.875%. A decline in interest rates in the future on this fixed rate

debt will not benefit the Company due to the terms and conditions of the loan agreements that prohibit prepayment of the debt or require the Company to repurchase the debt at specified premiums. Thus, a potential decline in interest rates exposes the Company to market risk that the cost of debt is higher than competitors. The Company continues to evaluate alternatives to limit interest rate risk.

Level 3 continues to hold positions in certain publicly traded entities, primarily Commonwealth Telephone and RCN. The Company accounts for these two investments using the equity method. The market value of these investments is approximately \$540 million as of December 31, 2000, which is significantly higher than their carrying value of \$105 million. The Company does not currently have plans to dispose of these investments, however, if any such transaction occurred, the value received for the investments would be affected by the market value of the underlying stock at the time of any such transaction. A 20% decrease in the price of Commonwealth Telephone and RCN stock would result in approximately a \$108 million decrease in fair value of these investments. The Company does not currently utilize financial instruments to minimize its exposure to price fluctuations in equity securities.

The Company's business plan includes developing and constructing networks in Europe and Asia. As of December 31, 2000, the Company had invested significant amounts of capital in both regions and will continue to expand its presence in Europe and Asia in 2001. The Company issued (Euro) 800 million in Senior Euro Notes in February 2000 as an economic hedge against its net investment in its European subsidiaries. Due to the historically low exchange rates involving the U.S. Dollar and the Euro during the fourth quarter, Level 3 elected to set aside the remaining Euros received from the February debt offerings and purchase on the spot market the Euros required to fund its current European investing and operating activities. Other than the issuance of the Euro denominated debt and the purchase of the Euros on the spot market, the Company has not made significant use of financial instruments to minimize its exposure to foreign currency fluctuations. The Company continues to analyze risk management strategies to reduce foreign currency exchange risk.

The change in interest rates and equity security prices is based on hypothetical movements and are not necessarily indicative of the actual results that may occur. Future earnings and losses will be affected by actual fluctuations in interest rates, equity prices and foreign currency rates.

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

Financial statements and supplementary financial information for Level 3 Communications, Inc. (f/k/a Peter Kiewit Sons', Inc.) and Subsidiaries begin on page F-1.

The financial statements of an equity method investee (RCN Corporation) are required by Rule 3.09 and will be filed as a part of this Report by an amendment to this Report upon the filing by RCN of their Form 10-K for the year ended December 31, 2000. RCN's filing of their Form 10-K is not yet due.

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

Not Applicable.

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

The information required by this Item 10 is incorporated by reference to the Company's definitive proxy statement for the 2001 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission, however certain information is included in Item 1. Business above under the caption Directors and Executive Officers.

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

The information required by this Item 11 is incorporated by reference to the Company's definitive proxy statement for the 2001 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission.

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

The information required by this Item 12 is incorporated by reference to the Company's definitive proxy statement for the 2001 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission.

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

The information required by this Item 13 is incorporated by reference to the Company's definitive proxy statement for the 2001 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission.

## 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 F-1. Exhibits filed as a part of this report are listed below. Exhibits incorporated by reference are indicated in parentheses.

- 3.1 Restated Certificate of Incorporation dated March 31, 1998 (Exhibit 1 to Registrant's Form 8-A filed on April 1, 1998).
- 3.2 Certificate of Amendment of Restated Certificate of Incorporation of Level 3 Communications, Inc. (Exhibit 3.1 to the Registrant's Current Report on Form 8-K dated June 3, 1999).
- 3.3 Specimen Stock Certificate of Common Stock, par value \$.01 per share (Exhibit 3 to the Registrant's Form 8-A filed on March 31, 1998).
- 3.4 Amended and Restated By-laws as of May 27, 1999 (Exhibit 3.2 to Company's Current Report on Form 8-K dated June 3, 1999).
- 3.5 Rights Agreement, dated as of May 29, 1998, between the Registrant and Norwest Bank Minnesota, N.A., as Rights Agent, which includes the Form of Certificate of Designation, Preferences, and Rights of Series A. Junior Participating Preferred Stock of the Registrant, as Exhibit A, the Form of Rights Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Stock, as Exhibit C (Exhibit 1 to the Registrant's Form 8-A Amendment No. 1 filed on June 10, 1998).
- 4.1 Indenture, dated as of April 28, 1998, between the Registrant and II3J Schroder Bank & Trust Company as Trustee relating to the Registrant's 9 1/8% Senior Notes due 2008 (Exhibit 4.1 to the Registrant's Registration Statement on Form S-4 File No. 333-56399).
- 4.2 Indenture, dated as of December 2, 1998, between the Registrant and IBJ Schroder Bank & Trust Company as Trustee relating to the Registrant's 10 1/2% Senior Discount Notes due 2008 (Exhibit 4.1 to the Registrant's Registration Statement on Form S-4 File No. 333-71687).
- 4.3.1 Form of Senior Indenture (incorporated by reference to Exhibit 4.1 to Amendment 1 to the Registrant's Registration Statement on Form S-3 (File No. 333-68887) filed with the Securities and Exchange Commission on February 3, 1999).
- 4.3.2 First Supplemental Indenture, dated as of September 20, 1999, between the Registrant and IBJ Whitehall Bank & Trust Company as Trustee relating to the Registrant's 6% Convertible Subordinated Notes due 2009 (Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated September 20, 1999).
- 4.3.3 Second Supplemental Indenture, dated as of February 29, 2000, between the Registrant and The Bank of New York as Trustee relating to the Registrant's 6% Convertible Subordinated Notes due 2010 (Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated February 29, 2000).
- 4.4 Indenture, dated as of February 29, 2000, between the Registrant and The Bank of New York as Trustee relating to the Registrant's 11% Senior Notes due 2008 (Exhibit 4.1 to the Registrant's Registration Statement on Form S-4 File No. 333-37362).

- 4.5 Indenture, dated as of February 29, 2000, between the Registrant and The Bank of New York as Trustee relating to the Registrant's 11 1/4% Senior Notes due 2010 (Exhibit 4.2 to the Registrant's Registration Statement on Form S-4 File No. 333-37362).
- 4.6 Indenture, dated as of February 29, 2000, between the Registrant and The Bank of New York as Trustee relating to the Registrant's 12 7/8% Senior Discount Notes due 2010 (Exhibit 4.3 to the Registrant's Registration Statement on Form S-4 File No. 333-37362).
- 4.7 Indenture, dated as of February 29, 2000, between the Registrant and The Bank of New York as Trustee relating to the Registrant's 10 3/4% Senior Euro Notes due 2008 (Exhibit 4.1 to the Registrant's Registration Statement on Form S-4 File No. 333-37364).
- 4.8 Indenture, dated as of February 29, 2000, between the Registrant and The Bank of New York as Trustee relating to the Registrant's 11 1/4% Senior Euro Notes due 2010 (Exhibit 4.2 to the Registrant's Registration Statement on Form S-4 File No. 333-37364).
- 10.1 Separation Agreement, dated December 8, 1997, by and among PKS, Riewit Diversified Group Inc., PKS Holdings, Inc. and Kiewit Construction Group Inc. (Exhibit 10.1 to the Registrant's Form 10-K for 1997).
- 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. (Exhibit 10.1 to the Registrant's Form 10-K for 1997).
- 10.3 Cost Sharing and IRU Agreement between Level 3 Communications, LLC and INTERNEXT, LLC dated July 18, 1998 (Exhibit 10.1 to the Registrant's Quarterly Report on Form IO-Q for the three months ended September 30, 1998).
- 10.4 Credit Agreement dated as of September 30, 1999 among Level 3 Communications, LLC, the Borrowers named therein, the Lenders Party thereto and The Chase Manhattan Bank, as Agent (Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the three months ended September 30, 1999).
- 21 List of subsidiaries of the Company
- 23.1 Consent of Arthur Andersen LLP
- 23.2 Consent of PricewaterhouseCoopers LLP

(b) Reports on Form 8-K filed by the Registrant during the fourth quarter of 2000.

On November 7, 2000, the Registrant filed with the Securities and Exchange Commission a Current Report on Form 8-K relating to the issuance of a press release containing an open letter to the Level 3 Stockholders.

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#### 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, this 7th day of March, 2001.

**LEVEL 3 COMMUNICATIONS, INC.**

/s/ James Q. Crowe  
 By: \_\_\_\_\_  
 Name: James Q. Crowe  
 Title: Chief Executive Officer

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 and on the dates indicated.

Signature -----	Title -----	Date -----
/s/ Walter Scott, Jr. ----- Walter Scott, Jr.	Chairman of the Board	March 7, 2001
/s/ James Q. Crowe ----- James Q. Crowe	Chief Executive Officer and Director	March 7, 2001
/s/ Kevin J. O'Hara ----- Kevin J. O'Hara	President, Chief Operating Officer and Director	March 7, 2001
/s/ R. Douglas Bradbury ----- R. Douglas Bradbury	Vice Chairman and Executive Vice President	March 7, 2001
/s/ Charles C. Miller, III ----- Charles C. Miller, III	Vice Chairman and Executive Vice President	March 7, 2001
/s/ Sureel A. Choksi ----- Sureel A. Choksi	Group Vice President and Chief Financial Officer (Principal Financial Officer)	March 7, 2001
/s/ Eric J. Mortensen ----- Eric J. Mortensen	Vice President and Controller (Principal Accounting Officer)	March 7, 2001
/s/ Mogens C. Bay ----- Mogens C. Bay	Director	March 7, 2001
/s/ William L. Grewcock ----- William L. Grewcock	Director	March 7, 2001

/s/ Richard R. Jaros	Director	March 7, 2001
<hr/>		
Richard R. Jaros		
/s/ Robert E. Julian	Director	March 7, 2001
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Robert E. Julian		
/s/ David C. McCourt	Director	March 7, 2001
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David C. McCourt		
/s/ Kenneth E. Stinson	Director	March 7, 2001
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Kenneth E. Stinson		
/s/ Colin V.K. Williams	Director	March 7, 2001
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Colin V.K. Williams		
/s/ Michael B. Yanney	Director	March 7, 2001
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Michael B. Yanney		

**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

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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 PUBLIC ACCOUNTANTS**

**To Level 3 Communications, Inc.:**

We have audited the consolidated balance sheets of Level 3 Communications, Inc. (a Delaware corporation) and subsidiaries as of December 31, 2000 and 1999, and the related consolidated statements of operations, cash flows, changes in stockholders' equity and comprehensive income (loss) for each of the three years in the period ended December 31, 2000. These consolidated 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 auditing standards generally accepted in the United States. 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 Level 3 Communications, Inc. and subsidiaries as of December 31, 2000 and 1999, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2000 in conformity with accounting principles generally accepted in the United States.

/s/ Arthur Andersen LLP

Denver, Colorado  
January 24, 2001.

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF OPERATIONS

For the three years ended December 31, 2000

	2000	1999	1998
	(dollars in millions, except per share data)		
Revenue.....	\$ 1,185	\$ 515	\$ 392
Costs and Expenses:			
Cost of revenue.....	(794)	(360)	(199)
Depreciation and amortization.....	(584)	(228)	(66)
Selling, general and administrative.....	(1,152)	(668)	(332)
Write-off of in-process research and development.....	--	--	(30)
Total costs and expenses.....	(2,530)	(1,256)	(627)
Loss from Operations.....	(1,345)	(741)	(235)
Other Income (Expense):			
Interest income.....	328	212	173
Interest expense, net.....	(282)	(174)	(132)
Equity in losses of unconsolidated subsidiaries, net.....	(284)	(127)	(132)
Gain on equity investee stock transactions.....	100	118	62
Gain (loss) on sale of assets.....	(19)	(2)	107
Other, net.....	(2)	7	4
Total other income (expense).....	(159)	34	82
Loss Before Income Tax Benefit and Discontinued Operations.....	(1,504)	(707)	(153)
Income Tax Benefit.....	49	220	25
Loss from Continuing Operations.....	(1,455)	(487)	(128)
Discontinued Operations:			
Gain on Split-off of Construction Group.....	--	--	608

Gain on disposition of energy business net of income tax expense of (\$175).....	--	--	324
	-----	-----	-----
Income from discontinued operations.....	--	--	932
	-----	-----	-----
Net Earnings (Loss).....	\$ (1,455)	\$ (487)	\$ 804
	=====	=====	=====
Earnings (Loss) Per Share of Level 3 Common Stock (Basic and Diluted):			
Continuing operations.....	\$ (4.01)	\$ (1.46)	\$ (.43)
	=====	=====	=====
Discontinued operations excluding construction operations.....	\$ --	\$ --	\$3.09
	=====	=====	=====
Net earnings (loss) excluding construction operations.....	\$ (4.01)	\$ (1.46)	\$2.66
	=====	=====	=====
Net earnings (loss) excluding gain on Split-off of Construction Group.....	\$ (4.01)	\$ (1.46)	\$ .64
	=====	=====	=====

See accompanying notes to consolidated financial statements.

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

December 31, 2000 and 1999

	2000	1999
	-----	-----
	(dollars in millions, except per share data)	
Assets		
Current Assets:		
Cash and cash equivalents.....	\$ 1,269	\$1,214
Marketable securities.....	2,742	2,227
Restricted securities.....	202	51
Receivables, less allowances for doubtful accounts of \$33 and \$9, respectively.....	617	150
Recoverable income taxes.....	67	241
Other.....	148	55
	-----	-----
Total Current Assets.....	5,045	3,938
Net Property, Plant and Equipment.....	9,383	4,287
Investments.....	146	300
Other Assets, net.....	345	381
	-----	-----
	\$14,919	\$8,906
	=====	=====
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable.....	\$ 1,552	\$ 832
Current portion of long-term debt.....	7	6

Accrued payroll and employee benefits.....	90	43
Accrued interest.....	124	47
Deferred revenue.....	68	72
Other.....	106	90
	-----	-----
Total Current Liabilities.....	1,947	1,090
Long-Term Debt, less current portion.....	7,318	3,989
Deferred Revenue.....	652	63
Accrued Reclamation Costs.....	94	99
Other Liabilities.....	359	260
Commitments and Contingencies		
Stockholders' Equity:		
Preferred stock, \$.01 par value, authorized 10,000,000 shares: no shares outstanding.....	--	--
Common stock:		
Common stock, \$.01 par value, authorized 1,500,000,000 shares: 367,599,870 outstanding in 2000 and 341,396,727 outstanding in 1999.....	4	3
Class R, \$.01 par value, authorized 8,500,000 shares: no shares outstanding.....	--	--
Additional paid-in capital.....	5,167	2,501
Accumulated other comprehensive loss.....	(73)	(5)
Retained earnings (accumulated deficit).....	(549)	906
	-----	-----
Total Stockholders' Equity.....	4,549	3,405
	-----	-----
	\$14,919	\$8,906
	=====	=====

See accompanying notes to consolidated financial statements.

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

For the three years ended December 31, 2000

	2000	1999	1998
	-----	-----	-----
	(dollars in millions)		
Cash Flows from Operating Activities:			
Net Earnings (Loss).....	\$(1,455)	\$(487)	\$ 804
Less: Income from Discontinued Operations.....	--	--	(932)
	-----	-----	-----
Loss from continuing operations.....	(1,455)	(487)	(128)
Adjustments to reconcile loss from continuing operations to net cash provided by operating activities:			
Write-off in process research and development.....	--	--	30
Equity losses, net.....	284	127	132
Depreciation and amortization.....	584	228	66
Dark fiber and submarine cable cost of revenue.....	196	17	--
Amortization of premiums (discounts) on marketable securities.....	(41)	10	(24)
Amortization of debt issuance costs.....	21	9	3
(Gain) loss on sale of property, plant and			

equipment and other assets.....	(19)	2	(17)
Gain on equity investee stock transactions....	(100)	(118)	(62)
Gain on sale of Cable Michigan.....	--	--	(90)
Non-cash compensation expense attributable to stock awards.....	241	126	39
Federal income tax refunds.....	246	81	46
Deferred income taxes.....	--	(56)	(50)
Deferred revenue.....	585	121	27
Deposits.....	24	(64)	--
Accrued interest on marketable securities.....	(5)	(7)	(43)
Accrued interest on long-term debt.....	176	69	35
Change in working capital items:			
Receivables.....	(475)	(84)	(1)
Other current assets.....	(178)	(170)	(10)
Payables.....	737	544	239
Other liabilities.....	158	86	(19)
Other.....	21	3	(3)
	-----	-----	-----
Net Cash Provided by Continuing Operations.....	1,000	437	170
Cash Flows from Investing Activities:			
Proceeds from sales and maturities of marketable securities.....	7,823	5,169	3,214
Purchases of marketable securities.....	(8,284)	(4,555)	(5,334)
Increase in restricted securities.....	(150)	(16)	(8)
Capital expenditures.....	(5,944)	(3,436)	(910)
Investments and acquisitions, net of cash acquired.....	(34)	(3)	(67)
Proceeds from sale of property, plant and equipment, and other investments.....	99	12	27
Proceeds from sale of Cable Michigan.....	--	--	129
	-----	-----	-----
Net Cash Used in Investing Activities.....	\$(6,490)	\$(2,829)	\$(2,949)

See accompanying notes to consolidated financial statements.

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS--(Continued)**

For the three years ended December 31, 2000

	2000	1999	1998
	-----		
	(dollars in millions)		
Cash Flows from Financing Activities:			
Long-term debt borrowings, net of issuance costs.....	\$3,195	\$1,249	\$2,426
Payments on long-term debt, including current portion.....	(21)	(6)	(12)
Issuances of common stock, net of issuance costs.....	2,407	1,498	21
Stock options exercised.....	15	22	11
Exchange of Class C Stock for Class D Stock, net.....	--	--	122
Repurchases of common stock.....	--	--	(1)
	-----	-----	-----
Net Cash Provided by Financing Activities.....	5,596	2,763	2,567
Cash Flows from Discontinued Operations:			
Proceeds from sale of discontinued energy operations, net of income tax payments of \$192 million.....	--	--	967

Net Cash Provided by Discontinued Operations.....	--	--	967
Effect of Exchange Rates on Cash and Cash Equivalents..	(51)	1	--
Net Change in Cash and Cash Equivalents.....	55	372	755
Cash and Cash Equivalents at Beginning of Year.....	1,214	842	87
Cash and Cash Equivalents at End of Year.....	\$1,269	\$1,214	\$ 842
Supplemental Disclosure of Cash Flow Information:			
Income taxes paid.....	\$ 2	\$ 2	\$ 246
Interest paid.....	461	193	104
Noncash Investing and Financing Activities:			
Equity securities received in exchange for services..	\$ 43	\$ 5	\$ --
Issuances of stock for acquisitions:			
Businessnet Ltd.....	3	8	--
XCOM Technologies, Inc.....	--	--	154
GeoNet Communications, Inc.....	--	--	19
Others.....	--	--	10

The activities of the Construction Group have been removed from the consolidated statements of cash flows. The Construction Group had cash flows of (\$62) million for the three months ended March 31, 1998, (the date of the Split-off).

See accompanying notes to consolidated financial statements.

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

For the three years ended December 31, 2000

	Class B&C Common Stock	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings (Accumulated Deficit)	Total
(dollars in millions)						
Balance at December 27, 1997.....	\$ 1	\$ 8	\$ 427	\$ (5)	\$ 1,799	\$ 2,230
Common Stock:						
Issuances.....	--	1	203	--	--	204
Stock options exercised.....	--	1	10	--	(1)	10
Designation of par value to \$.01.....	--	(8)	8	--	--	--
Stock dividend.....	--	1	(1)	--	--	--
Stock plan grants.....	--	--	44	--	--	44
Income tax benefit from exercise of options...	--	--	19	--	--	19
Class R Stock:						
Issuance and forced conversion.....	--	--	164	--	(164)	--
Class C Stock:						
Repurchases.....	--	--	(25)	--	--	(25)
Conversion of debentures.....	--	--	10	--	--	10
Net Earnings.....	--	--	--	--	804	804
Other Comprehensive						

Loss.....	--	--	--	(6)	--	(6)
Split-off of the Construction & Mining Group.....	(1)	--	(94)	15	(1,045)	(1,125)
Balance at December 31, 1998.....	--	3	765	4	1,393	2,165
Common Stock:						
Issuances, net of offering costs.....	--	--	1,506	--	--	1,506
Stock options exercised.....	--	--	22	--	--	22
Stock plan grants.....	--	--	130	--	--	130
Income tax benefit from exercise of options...	--	--	78	--	--	78
Net Loss.....	--	--	--	--	(487)	(487)
Other Comprehensive Loss.....	--	--	--	(9)	--	(9)
Balance at December 31, 1999.....	--	3	2,501	(5)	906	3,405
Common Stock:						
Issuances, net of offering costs.....	--	1	2,409	--	--	2,410
Stock options exercised.....	--	--	15	--	--	15
Stock plan grants.....	--	--	237	--	--	237
Shareworks plan.....	--	--	5	--	--	5
Net Loss.....	--	--	--	--	(1,455)	(1,455)
Other Comprehensive Loss.....	--	--	--	(68)	--	(68)
Balance at December 31, 2000.....	\$--	\$ 4	\$5,167	\$ (73)	\$ (549)	\$ 4,549
	====	===	=====	====	=====	=====

See accompanying notes to consolidated financial statements.

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

For the three years ended December 31, 2000

	2000	1999	1998
	(dollars in millions)		
Net Earnings (Loss).....	\$ (1,455)	\$ (487)	\$ 804
Other Comprehensive Income (Loss) Before Tax:			
Foreign currency translation adjustments.....	(73)	(10)	1
Unrealized holding gains (losses) arising during period.....	5	(3)	(2)
Reclassification adjustment for gains included in net earnings (loss).....	--	(1)	(9)
Other Comprehensive Loss, Before Tax.....	(68)	(14)	(10)
Income Tax Benefit Related to Items of Other			

Comprehensive Loss.....	--	5	4
Other Comprehensive Loss Net of Taxes.....	(68)	(9)	(6)
Comprehensive Income (Loss).....	\$ (1,523)	\$ (496)	\$ 798
	=====	=====	=====

See accompanying notes to consolidated financial statements.

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**LEVEL 3 COMMUNICATIONS, 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 Level 3 Communications, Inc. and subsidiaries (the Company or Level 3) in which it has control, which are engaged in enterprises primarily related to communications and information services, and coal mining. 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 are accounted for by the equity method. All significant intercompany accounts and transactions have been eliminated.

In 1997, the Company agreed to sell its energy assets to MidAmerican Energy Holding Company, Inc. (MidAmerican) and to separate the construction operations (Construction Group) from the Company. Therefore, the results of operations of these businesses have been classified as discontinued operations on the consolidated statements of operations and cash flows (See notes 2 and 3).

**Communications and Information Services Revenue**

Revenue for communications services, including private line, colocation, Internet access, managed modem and voice, is recognized monthly as the services are provided. Reciprocal compensation revenue is recognized only when an interconnection agreement is in place with another carrier, and the relevant regulatory authorities have approved the terms of the agreement. Revenue attributable to leases of dark fiber pursuant to indefeasible rights-of-use agreements (IRUs) that qualify for sales-type lease accounting, and were entered into prior to June 30, 1999, are recognized at the time of delivery and acceptance of the fiber by the customer.

Effective July 1, 1999, the Financial Accounting Standards Board (FASB) issued Interpretation No. 43, Real Estate Sales, an interpretation of FASB Statement No. 66 (FIN 43). Under FIN 43, certain sale and long-term right-of-use agreements of dark fiber and capacity entered into after June 30, 1999, are required to be accounted for in the same manner as sales of real estate with property improvements or integral equipment. Dark fiber is considered integral equipment and accordingly, a lease must include a provision allowing title to transfer to the lessee in order for that lease to be accounted for as a sales-type lease. Failure to satisfy the requirements of the FASB Interpretation result in the deferral of revenue recognition for these agreements over the term of the agreement (currently up to 20 years).

The adoption of FIN 43 did not have an effect on the Company's cash flows. Dark fiber IRUs generally require the customer to make a down payment due upon execution of the agreement with the balance due upon delivery and acceptance of the fiber. These long-term dark fiber contracts and the issuance of FIN 43 have resulted in a substantial amount of deferred revenue being recorded on the balance sheet.

The Company is obligated under dark fiber IRUs to maintain its network in efficient working order and in accordance with industry standards. Customers are obligated for the term of the agreement to pay for their allocable share of the costs for operating and maintaining the network. The Company recognizes this revenue monthly as services are provided.

The cost of revenue associated with the revenue recognized for dark fiber agreements entered into prior to June 30, 1999, was determined based on an allocation of the total estimated costs of the network to the dark fiber provided to the customers. The allocation takes into account the service capacity of the specific dark fiber provided to customers relative to the total expected capacity of the network. Changes to total estimated costs and network capacity are included in the allocation in the period in which they become known. Cost of revenue associated with the sale of a portion of the trans-Atlantic submarine cable was determined based on actual costs incurred by Level 3 and its contractors to construct such assets. Cost of revenue also includes leased capacity, right-of-

way costs, access charges and other costs directly attributable to the network.

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## LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Accounting practice and guidance with respect to the treatment of submarine dark fiber sales and terrestrial IRU agreements continue to evolve. Any changes in the accounting treatment could affect the way the Company accounts for revenue and expenses associated with these transactions in the future.

Information services revenue is primarily derived from the computer outsourcing business and the systems integration business. Level 3 provides outsourcing services, 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 recognized on a time and materials basis or percentage of completion basis depending on the extent of the services provided. Cost of revenue includes costs of consultants' salaries and other direct costs for the information services business.

The communications and information services industry is highly competitive. Many of the Company's existing and potential competitors in the communications and information services industry have financial, personnel, marketing and other resources significantly greater than those of the Company, as well as other competitive advantages including existing customer bases. Increased consolidation and strategic alliances in the industry resulting from the Telecommunications Act of 1996, the opening of the U.S. market to foreign carriers, technological advances and further deregulation could give rise to significant new competitors to the Company.

The Company provides telecommunications services to a wide range of customers, ranging from well capitalized national carriers to local Internet start-ups. The Company has in place policies and procedures to review the financial condition of potential and existing customers. Based on these policies and procedures, the Company believes its exposure to credit risk within the communications business is mitigated. Concentration of credit risk with respect to receivables is mitigated due to the dispersion of the Company's customer base among geographic areas and remedies provided by terms of contracts and statutes.

#### Coal Sales Contracts

Historically, 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 revenue was earned from long-term contracts during 2000, 1999, and 1998. 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. Beginning in 2001, a higher proportion of Level 3's sales will occur on the spot market as long-term contracts begin to expire. Costs of revenue related to coal sales include costs of mining and processing, estimated reclamation costs, royalties and production taxes.

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 more favorable geological conditions 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 these laws.

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 could pursue the available legal remedies.

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## LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

#### Depreciation and Amortization

Property, plant and equipment are recorded at cost. Depreciation and amortization for the Company's property, plant and equipment are computed on accelerated and straight-line methods based on the following useful lives:



Facility and Leasehold Improvements.....	20-40 years
Operating Equipment:	
Network Infrastructure (including fiber).....	7-25 years
Transmission equipment and electronics.....	3-7 years
Network Construction Equipment.....	5-7 years
Furniture, Fixtures and Office Equipment.....	3-7 years
Other.....	2-10 years

Depletion of mineral properties is provided primarily on a units-of- extraction basis determined in relation to coal committed under sales contracts.

### Investee Stock Activity

The Company recognizes gains and losses from the sale, issuance and repurchase of stock by its equity method investees in the statements of operations.

### Earnings Per Share

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 the dilutive effect of common stock that would be issued assuming conversion or exercise of outstanding convertible debt, stock options and other dilutive securities.

### Intangible Assets

Intangible assets primarily include amounts allocated upon acquisitions of businesses, franchises and subscriber lists. These assets are amortized on a straight-line basis over the expected period of benefit.

For intangibles originating from communications or other information services related acquisitions, the Company is amortizing these assets over a five year period. Intangibles attributable to other acquisitions and investments are amortized over periods which do 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. Determination 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

The Company follows the policy of providing an accrual for reclamation of mined properties, based on the estimated total cost of restoration of such properties to meet compliance with laws governing strip mining, by applying per-ton reclamation rates to coal mined. These reclamation rates are determined using the remaining

estimated reclamation costs and tons of coal committed under sales contracts. The Company reviews its reclamation cost estimates annually and revises the reclamation rates on a prospective basis, as necessary.

### 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. In 2000, Level 3 utilized a portion of its accumulated net operating tax losses to offset prior year taxable income. The remaining net operating losses not utilized can be carried forward for 20 years to offset future taxable income. A valuation allowance has been recorded against

deferred tax assets as the Company is unable to conclude under relevant accounting standards that it is more likely than not that net operating losses will be realizable.

### **Comprehensive Income (Loss)**

Comprehensive income (loss) includes net earnings (loss) and other non-owner related changes in equity not included in net earnings (loss), such as unrealized gains and losses on marketable securities classified as available for sale and foreign currency translation adjustments related to foreign subsidiaries.

### **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, expenses and cash flows are translated using average exchange rates prevailing during the year. Gains or losses resulting from currency translation are recorded as a component of accumulated other comprehensive income (loss) in stockholders' equity and in the statements of comprehensive income.

### **Stock Dividend**

Effective August 10, 1998, the Company issued a dividend of one share of Level 3 Common Stock for each share of Level 3 Common Stock then outstanding. All share information and per share data have been restated to reflect the stock dividend.

### **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 1998, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 133, Accounting for Derivative Instruments and Hedging Activities. SFAS No. 133 as amended by SFAS Nos. 137 and 138, is effective for fiscal years beginning January 1, 2001. SFAS No. 133 requires that all derivative instruments be recorded on the balance sheet at fair value. Changes in the fair value of derivatives are recorded each period in current earnings or other comprehensive income, depending on whether a derivative is designated as part of a hedge transaction, the type of hedge, and the extent of hedge ineffectiveness. The Company currently makes minimal use of derivative instruments as defined by SFAS No. 133. If the Company

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

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

does not increase the utilization of these derivatives, the adoption of this standard is not expected to have a significant effect on the Company's results of operations or its financial position.

In December 1999 the SEC staff released Staff Accounting Bulletin No. 101, Revenue Recognition in Financial Statements (SAB 101). SAB 101 provides interpretive guidance on the recognition, presentation and disclosure of revenue in the financial statements. The Company adopted SAB 101 as of January 1, 2000. The adoption did not have a material effect on the financial results as the Company's revenue recognition policies were already consistent with SAB 101.

### **Fiscal Year**

In May 1998, the Company's Board of Directors changed Level 3's fiscal year end from the last Saturday in December to a calendar year end. The results of operations for the additional four days in the 1998 fiscal year are reflected in the Company's Form 10-K for the period ended December 31, 1998 and were not material to the overall results of operations and cash flows.

### **Reclassifications**

Certain prior year amounts have been reclassified to conform to the current year presentation.

### **(2) Reorganization--Discontinued Construction Operations**

Prior to March 31, 1998, the Company had a two-class capital structure. The Company's Class C Stock reflected the performance of the construction operations (Construction Group) and the Class D Stock reflected the performance of the other businesses, including communications, information services and coal mining. In 1997 the Board of Directors of Level 3 approved a proposal for the separation of the Construction Group from the other operations of the Company through a split-off of the Construction Group (the Split-off). In December 1997, the Company's stockholders approved the Split-off and in March 1998, the Company received a ruling from the Internal Revenue Service that stated the Split-off would be tax-free to U.S. stockholders. The Split-off was effected on March 31, 1998. As a result of the Split-off, the Company no longer owns any interest in the Construction Group. Accordingly, the separate financial statements and management's discussion and analysis of financial condition and results of operations of Peter Kiewit Sons', Inc. should be obtained to review the results of operations of the Construction Group for the three months ended March 31, 1998.

On March 31, 1998, the Company reflected the fair value of the Construction Group as a distribution to the Class C stockholders because the distribution was considered non-pro rata as compared to the Company's previous two-class capital stock structure. The Company recognized a gain of \$608 million within discontinued operations, equal to the difference between the carrying value of the Construction Group and its fair value in accordance with FASB Emerging Issues Task Force Issue 96-4, Accounting for Reorganizations Involving a Non-Pro Rata Split-off of Certain Nonmonetary Assets to Owners. There were no taxes related to this gain due to the tax-free nature of the Split-off.

In connection with the Split-off, the Class D Stock became the common stock of Level 3 Communications, Inc. (Common Stock) on a one for one basis, and shortly thereafter, began trading on the Nasdaq National Market under the symbol LVLTT.

Prior to this Split-off, the Company's certificate of incorporation gave stockholders the right to exchange their Class C Stock for Class D Stock under a set conversion formula. That right was eliminated as a result of the Split-off. To replace that conversion right, Class C stockholders received an aggregate of 6.5 million shares

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#### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

of a new Class R Stock in January 1998, which were convertible into Common Stock in accordance with terms ratified by stockholders in December 1997. The Company reflected in the equity accounts the exchange of the conversion right and issuance of the Class R Stock at its fair value of \$92 million at the date of the Split-off.

On May 1, 1998, the Board of Directors of Level 3 Communications, Inc. determined to force conversion of all shares of the Company's Class R Stock into shares of Common Stock, effective May 15, 1998. The Class R Stock was converted into Common Stock in accordance with the formula set forth in the certificate of incorporation of the Company. Each holder of Class R Stock ultimately received .7778 of a share of Common Stock for each share of Class R Stock held. In total 6.5 million shares of Class R Stock were converted into

5.1 million shares of Common Stock. The value of the Class R Stock at the time of the forced conversion was \$164 million. The Company recognized the additional \$72 million of value upon conversion of the Class R Stock to Common Stock in the equity accounts.

#### (3) Discontinued Energy Operations

On January 2, 1998, the Company completed the sale of its energy assets to MidAmerican. These assets included approximately 20.2 million shares of MidAmerican common stock (assuming the exercise of 1 million options held by Level 3), Level 3's 30% interest in CE Electric and Level 3's investments in international power projects in Indonesia and the Philippines. Level 3 recognized an after-tax gain on the disposition of \$324 million and the after-tax proceeds of approximately \$967 million from the transaction were used in part to fund the business plan. Results of operations for the period through January 2, 1998 were not considered significant and the gain on disposition was calculated using the carrying amount of the energy assets as of December 27, 1997.

#### (4) Earnings Per Share

The Company had a loss from continuing operations for the years ended December 31, 2000, 1999 and 1998, therefore, the dilutive impact of the approximately 19 million shares and 13 million shares at December 31, 2000 and 1999, respectively, attributable to the convertible subordinated notes and the approximately 24 million, 21 million and 23 million options and warrants outstanding at December 31, 2000, 1999 and 1998 respectively, have not been included in the computation of diluted earnings (loss) per share because their inclusion would have been anti-dilutive to the computation.

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#### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

The following details the earnings (loss) per share calculations for the Level 3 Common Stock.

	Year Ended		
	2000	1999	1998
Loss from Continuing Operations (in millions).....	\$ (1,455)	\$ (487)	\$ (128)
Discontinued Operations:			
Earnings from discontinued energy operations.....	--	--	324
Gain on split-off of construction operations.....	--	--	608
Earnings from discontinued operations.....	--	--	932
Net Earnings (Loss) Excluding Discontinued Construction Operations.....	\$ (1,455)	\$ (487)	\$ 804
Total Number of Weighted Average Shares Outstanding used to Compute Basic and Dilutive Earnings Per Share (in thousands).....	362,539	334,348	301,976
Earnings (Loss) per Share (Basic and Diluted):			
Continuing operations.....	\$ (4.01)	\$ (1.46)	\$ (.43)
Discontinued energy operations.....	\$ --	\$ --	\$ 1.07
Gain on split-off of discontinued construction operations.....	\$ --	\$ --	\$ 2.02
Net earnings (loss) excluding discontinued construction operations.....	\$ (4.01)	\$ (1.46)	\$ 2.66
Net earnings (loss) excluding gain on split-off of construction operations.....	\$ (4.01)	\$ (1.46)	\$ .64

**(5) Acquisitions**

In April 1998, the Company acquired XCOM Technologies, Inc. (XCOM), a privately held company that at the time had developed technology which provided certain key components necessary for the Company to develop an interface between its Internet protocol-based network and the existing public switched telephone network. The Company issued approximately 5.3 million shares of Level 3 Common Stock and 0.7 million options and warrants to purchase Level 3 Common Stock in exchange for all the stock, options and warrants of XCOM.

The Company accounted for this transaction, valued at \$154 million, as a purchase. Of the total purchase price, \$30 million was allocated to in-process research and development and was taken as a nondeductible charge to earnings in 1998. The purchase price exceeded the fair value of the net assets acquired by \$115 million which was recognized as goodwill and is being amortized over a five-year period.

For the XCOM acquisition and the Company's other acquisitions, the excess purchase price over the fair market value of the underlying assets was allocated to goodwill, other intangible assets and property based upon preliminary estimates of fair value. The final purchase price allocation for these acquisitions did not vary significantly from preliminary estimates.

**(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 highly liquid instruments purchased with an original maturity of three months or less. The securities are stated at cost, which approximates fair value.

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Marketable and Restricted Securities

Level 3 has classified all marketable and restricted securities as available-for-sale. Restricted securities include investments in mutual funds that are restricted to fund certain reclamation liabilities of its coal mining ventures, cash deposits related to construction renovations for the New York Gateway facility, and cash to collateralize letters of credit. The 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 included in accumulated other comprehensive income (loss) within stockholders' equity.

At December 31, 2000 and 1999, the cost, unrealized holding gains and losses, and estimated fair values of marketable and restricted securities were as follows:

	Cost	Unrealized Holding Gains	Unrealized Holding Losses	Fair Value
	----- (dollars in millions) -----			
2000				
Marketable Securities:				
Commercial Paper.....	\$ 204	\$--	\$--	\$ 204
U.S. Treasury securities.....	2,534	4	--	2,538
	-----	-----	-----	-----
	\$2,738	\$ 4	\$--	\$2,742
	=====	=====	=====	=====
Restricted Securities:				
Cash and cash equivalents.....	\$ 173	\$--	\$--	\$ 173
Wilmington Trust:				
Intermediate term bond fund.....	14	--	--	14
Equity fund.....	11	4	--	15
	-----	-----	-----	-----
	\$ 198	\$ 4	\$--	\$ 202
	=====	=====	=====	=====
1999				
Marketable Securities:				
U.S. Treasury securities.....	\$2,231	\$--	\$ (4)	\$2,227
	-----	-----	-----	-----
	\$2,231	\$--	\$ (4)	\$2,227
	=====	=====	=====	=====
Restricted Securities:				
Cash and cash equivalents.....	\$ 21	\$--	\$--	\$ 21
Wilmington Trust:				
Intermediate term bond fund.....	13	--	--	13
Equity fund.....	10	7	--	17
	-----	-----	-----	-----
	\$ 44	\$ 7	\$--	\$ 51
	=====	=====	=====	=====

For debt securities, costs do not vary significantly from principal amounts. The Company did not recognize any realized gains and losses on sales of marketable and equity securities in 2000. Realized gains and losses on sales of marketable and equity securities were \$17 million and \$16 million in 1999, and \$10 million and \$1 million in 1998, respectively.

## LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

At December 31, 2000, the contractual maturities of the debt securities are as follows:

	Cost	Fair Value
	-----	
	(dollars in millions)	
Commercial Paper:		
Less than 1 year.....	\$ 204	\$ 204
	=====	=====
U.S. Treasury Securities:		
Less than 1 year.....	\$ 2,534	\$ 2,538
	=====	=====

Maturities for the restricted securities have not been presented as the types of securities included do not have a single maturity date.

**Long-Term Debt**

The fair value of long-term debt was estimated using the December 31, 2000 and 1999 average of the bid and ask price for the publicly traded debt instruments. The fair value of the outstanding amount under the Senior Secured Credit Facility and mortgages approximates their carrying values at December 31, 2000.

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

	2000		1999	
	-----		-----	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	-----			
	(dollars in millions)			
Cash and Cash Equivalents.....	\$1,269	\$1,269	\$1,214	\$1,214
Marketable Securities.....	2,742	2,742	2,227	2,227
Restricted Securities.....	202	202	51	51
Investments (Note 9).....	146	569	300	1,973
Long-term Debt, including current portion (Note 11).....	7,325	5,766	3,995	4,034

## LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

## (7) Receivables

Receivables at December 31, 2000 and 1999 were as follows:

	Information				
	Communications	Services	Coal	Other	Total
	-----				
	(dollars in millions)				

Accounts Receivable--Trade:					
Services.....	\$142	\$ 25	\$ 19	\$ 1	\$187
Dark Fiber.....	161	--	--	--	161
Joint Build Costs.....	252	--	--	--	252
Other Receivables.....	49	1	--	--	50
Allowance for Doubtful					
Accounts.....	(29)	(4)	--	--	(33)
	-----	-----	-----	-----	-----
	\$575	\$ 22	\$ 19	\$ 1	\$617
	=====	=====	=====	=====	=====

1999

Accounts Receivable--Trade:					
Services.....	\$ 64	\$ 19	\$ 18	\$ 1	\$102
Dark Fiber.....	2	--	--	--	2
Joint Build Costs.....	7	--	--	--	7
Other Receivables.....	46	2	--	--	48
Allowance for Doubtful					
Accounts.....	(6)	(3)	--	--	(9)
	-----	-----	-----	-----	-----
	\$113	\$ 18	\$ 18	\$ 1	\$150
	=====	=====	=====	=====	=====

Joint build receivables primarily relate to costs incurred by the Company for construction of network assets in which Level 3 is partnering with other companies. Generally, under these types of agreements, the sponsoring partner will incur 100% of the construction costs and bill the other party as certain construction milestones are accomplished. Joint build receivables include \$90 million attributable to FLAG Telecom Limited for its share of the costs of the Northern Asia submarine cable system.

The Company recognized bad debt expense in selling, general and administrative expenses of \$32 million, \$11 million and \$2 million in 2000, 1999 and 1998 respectively.

#### (8) Property, Plant and Equipment

##### Construction in Progress

The Company is currently constructing its communications network. Costs associated directly with the uncompleted network, including employee related costs, are capitalized. Interest expense incurred during construction is capitalized based on the weighted average accumulated construction expenditures and the interest rates related to borrowings associated with the construction (Note 11). Certain intercity segments, Gateway facilities, local networks and operating equipment have been placed in service. These assets are being depreciated over their useful lives, primarily ranging from 3-25 years.

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

The Company develops business support systems required for its business plan. The external direct costs of software, materials and services, payroll and payroll related expenses for employees directly associated with the project, and interest costs incurred when developing the business support systems are capitalized. Upon completion of the projects, the total cost of the business support systems are amortized over their estimated useful lives of three years.

Capitalized business support systems and network construction costs that have not been placed in service have been classified as construction-in-progress within Property, Plant & Equipment below.

Cost	Accumulated Depreciation	Book Value
-----	-----	-----
(dollars in millions)		

Land and Mineral Properties.....	\$ 167	\$ (11)	\$ 156
Facility and Leasehold Improvements			
Communications.....	1,246	(33)	1,213
Information Services.....	25	(4)	21
Coal Mining.....	68	(64)	4
CPTC.....	92	(12)	80
Network Infrastructure.....	3,420	(62)	3,358
Operating Equipment			
Communications.....	1,213	(361)	852
Information Services.....	54	(36)	18
Coal Mining.....	93	(85)	8
CPTC.....	17	(9)	8
Network Construction Equipment.....	143	(27)	116
Furniture, Fixtures and Office Equipment.....	429	(162)	267
Other.....	183	(68)	115
Construction-in-Progress.....	3,167	--	3,167
	-----	-----	-----
	\$10,317	\$ (934)	\$9,383
	=====	=====	=====
1999			
Land and Mineral Properties.....	\$ 60	\$ (15)	\$ 45
Facility and Leasehold Improvements			
Communications.....	400	(14)	386
Information Services.....	26	(3)	23
Coal Mining.....	73	(64)	9
CPTC.....	92	(9)	83
Network Infrastructure.....	211	(4)	207
Operating Equipment			
Communications.....	475	(79)	396
Information Services.....	54	(37)	17
Coal Mining.....	115	(103)	12
CPTC.....	17	(7)	10
Network Construction Equipment.....	98	(10)	88
Furniture, Fixtures and Office Equipment.....	150	(66)	84
Other.....	155	(28)	127
Construction-in-Progress.....	2,800	--	2,800
	-----	-----	-----
	\$ 4,726	\$ (439)	\$4,287
	=====	=====	=====

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Depreciation expense was \$534 million in 2000, \$192 million in 1999, and \$48 million in 1998. Depreciation expense attributable to the network construction equipment is capitalized and included in Construction-in-Progress until such time the constructed asset is placed in service.

(9) Investments

The Company holds significant equity positions in two publicly traded companies: RCN Corporation (RCN) and Commonwealth Telephone Enterprises, Inc. (Commonwealth Telephone). RCN is a facilities-based provider of bundled local and long distance phone, cable television and Internet services to residential markets primarily on the East and West coasts as well as Chicago. Commonwealth Telephone holds Commonwealth Telephone Company, an incumbent local exchange carrier operating in various rural Pennsylvania markets, and CTSI, Inc., a competitive local exchange carrier which commenced operations in 1997.

On December 31, 2000, Level 3 owned approximately 31% and 46% of the outstanding shares of RCN and Commonwealth Telephone, respectively, and accounts for each entity using the equity method. The market value of the Company's investment in RCN and Commonwealth Telephone was \$168 million and \$372 million, respectively, on December 31, 2000. Due to the changes in RCN's



and Commonwealth Telephone's stock price, the market value of the Company's investments in RCN and Commonwealth were \$285 million and \$386 million, respectively, as of January 24, 2001.

Level 3's proportionate share of RCN's fourth quarter losses exceeded the remaining carrying value of Level 3's investment in RCN. Level 3 does not have additional financial commitments to RCN; therefore it recognizes equity losses only to the extent of its investment in RCN. If RCN becomes profitable, Level 3 will not record its equity in RCN's profits until unrecorded equity losses have been offset. Level 3 recorded equity losses attributable to RCN of \$260 million for the twelve months ended December 31, 2000. The Company's investment in RCN, including goodwill, was zero and \$166 million at December 31, 2000 and December 31, 1999, respectively. The Company has not recognized approximately \$20 million of additional suspended equity losses attributable to RCN, which exceeded the Company's carrying value of RCN.

The Company recognizes gains from the sale, issuance and repurchase of stock by its equity method investees in its statements of operations. During 2000, RCN issued stock for the acquisition of 21st Century Telecom Group, Inc., completed in April, 2000, and for certain transactions which diluted the Company's ownership of RCN from 35% at December 31, 1999 to 31% at December 31, 2000. The increase in the Company's proportionate share of RCN's net assets as a result of these transactions resulted in a pre-tax gain of \$95 million for the Company for the year ended December 31, 2000. The Company recognized similar pre-tax gains of \$117 million and \$62 million in 1999 and 1998, respectively. The Company does not expect to recognize future gains on RCN stock activity until suspended equity losses are recognized by the Company.

In October 1999, RCN announced that Vulcan Ventures, Inc. had agreed to invest \$1.65 billion in RCN. The investment, which closed in February 2000, is in the form of mandatorily convertible preferred stock convertible into 26.6 million shares of RCN common stock. The preferred shares must be converted to common shares within a three to seven year period at \$62 per share.

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

The following is summarized financial information of RCN for the year ended December 31, 2000 (unaudited) and the years ended December 31, 1999 and 1998, and as of December 31, 2000 (unaudited) and December 31, 1999.

	Year Ended December 31,		
	2000	1999	1998
	-----	-----	-----
Operations:			
RCN Corporation:			
Revenue.....	\$ 333	\$ 276	\$ 211
Net loss available to common shareholders.....	(891)	(369)	(205)
Level 3's Share:			
Net loss.....	(260)	(134)	(91)
Goodwill amortization.....	(1)	(1)	(1)
	-----	-----	-----
	\$ (261)	\$ (135)	\$ (92)
	=====	=====	=====

	December 31,	
	2000	1999
	-----	-----
Financial Position:		
Current Assets.....	\$2,005	\$1,905
Other Assets.....	2,774	1,287
	-----	-----
Total assets.....	4,779	3,192

Current Liabilities.....	533	249
Other Liabilities.....	2,283	2,168
Minority Interest.....	75	130
Preferred Stock.....	1,991	253
	-----	-----
Total liabilities and preferred stock.....	4,882	2,800
	-----	-----
Common equity.....	\$ (103)	\$ 392
	=====	=====
Level 3's Investment:		
Equity in net assets.....	\$ --	\$ 139
Goodwill.....	--	27
	-----	-----
	\$ --	\$ 166
	=====	=====

On December 6, 2000, Commonwealth Telephone announced that it was going to record a charge to earnings for the restructuring of its CTCI subsidiary in the fourth quarter. Commonwealth Telephone indicated that the charge would range from \$46-\$72 million on an after-tax basis. Level 3 recorded \$27 million of equity losses, its proportionate share of the midpoint, or \$59 million, of the estimated restructuring charge.

During 2000 and 1999, Commonwealth Telephone issued stock for certain transactions which slightly diluted the Company's ownership of Commonwealth Telephone. The increase in the Company's proportionate share of Commonwealth Telephone's net assets as a result of these transactions resulted in pre-tax gains of \$5 million and \$1 million for the Company in 2000 and 1999, respectively. The Company's investment in Commonwealth Telephone, including goodwill, was \$105 million and \$126 million at December 31, 2000 and 1999, respectively.

In September 1998, Commonwealth Telephone conducted a rights offering of 3.7 million shares of its common stock. Under the terms of the offering, each stockholder received one right for every five shares of

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

Commonwealth Telephone Common Stock or Commonwealth Telephone Class B Common Stock held. The rights enabled the holder to purchase Commonwealth Telephone Common Stock at a subscription price of \$21.25 per share. Level 3, which owned approximately 48% of Commonwealth Telephone prior to the rights offering, exercised the 1.8 million rights it received with respect to the shares it held for \$38 million. As a result of subscriptions made by other stockholders, Level 3 maintained its 48% ownership interest in Commonwealth Telephone after the rights offering.

In June 1998, Cable Michigan announced that its Board of Directors had reached a definitive agreement to sell the company to Avalon Cable of Michigan, Inc. for \$40.50 per share in a cash-for-stock transaction. Level 3 received approximately \$129 million when the transaction closed in November 1998 and recognized a pre-tax gain on sale of assets of approximately \$90 million.

The Company continues to develop its program that involves making investments in certain public and private early stage Internet Protocol (IP) centric entities in connection with those entities agreeing to purchase various services from the Company. The Company records these transactions as cost method investments and deferred revenue. The value of the investment and deferred revenue is equal to the estimated fair value of the securities at the time of the transaction or the value of the services to be provided, whichever is more readily determinable. Level 3 closely monitors the success of these investees in executing their business plans. For those companies that are publicly traded, Level 3 also monitors current and historical market values of the investee as it compares to the carrying value of the investment. The Company recorded a charge of \$37 million in 2000 for an other-than temporary decline in the value of one such investment. Additional impairments, if any, will be recognized as they become apparent. If any of the privately held investments become publicly-traded and meet the criteria for available-for-sale securities pursuant to SFAS No. 115, Accounting for Certain Investments in Debt and Equity Securities, they will be accounted for accordingly. Otherwise, future appreciation will be recognized only upon sale or other disposition of the securities. As of December 31, 2000, the Company held investments with a carrying amount of \$37 million and had recognized less than \$1 million of revenue for services related to the investees in this program.

(10) Other Assets

At December 31, 2000 and 1999 other non-current assets consisted of the following:

	2000	1999
	-----	-----
	(in millions)	
Debt Issuance Costs, net.....	\$161	\$101
Goodwill, net of accumulated amortization of \$102 and \$52.....	68	118
Deposits.....	53	64
Prepaid Network Assets.....	35	30
CPTC Deferred Development and Financing Costs.....	14	15
Other.....	14	30
Pavilion Towers Office Complex.....	--	23
	-----	-----
	\$345	\$381
	=====	=====

Goodwill amortization expense, excluding amortization expense attributable to equity method investees, was \$50 million in 2000, \$36 million in 1999, and \$18 million in 1998.

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

(11) Long-Term Debt

At December 31, 2000 and 1999, long-term debt was as follows:

	2000	1999
	-----	-----
	(dollars in millions)	
Senior Notes (9.125% due 2008).....	\$ 2,000	\$ 2,000
Senior Notes (11% due 2008).....	800	--
Senior Discount Notes (10.5% due 2008).....	619	559
Senior Euro Notes (10.75% due 2008).....	465	--
Senior Discount Notes (12.875% due 2010).....	399	--
Senior Euro Notes (11.25% due 2010).....	279	--
Senior Notes (11.25% due 2010).....	250	--
Senior Secured Credit Facility:		
Term Loan Facility		
Tranche A (9.52% due 2007).....	200	200
Tranche B (10.27% due 2008).....	275	275
Commercial Mortgage:		
GMAC (9.20% due 2003).....	120	--
Lehman (10.11% due 2003).....	113	--
Convertible Subordinated Notes (6.0% due 2010).....	863	--
Convertible Subordinated Notes (6.0% due 2009).....	823	823
CPTC Long-Term Debt (with recourse only to CPTC)		
(7.6%-9.5% due 2004-2017).....	115	115
Other.....	4	23
	-----	-----
	7,325	3,995
Less current portion.....	(7)	(6)
	-----	-----
	\$ 7,318	\$ 3,989
	=====	=====

## 9.125% Senior Notes

In April 1998, the Company received \$1.94 billion of net proceeds from an offering of \$2 billion aggregate principal amount 9.125% Senior Notes Due 2008 (9.125% Senior Notes). Interest on the notes accrues at 9.125% per year and is payable on May 1 and November 1 each year in cash.

The 9.125% Senior Notes are subject to redemption at the option of the Company, in whole or in part, at any time or from time to time on or after May 1, 2003, plus accrued and unpaid interest thereon to the redemption date, if redeemed during the twelve months beginning May 1, of the years indicated below:

Year	Redemption Price
2003.....	104.563%
2004.....	103.042%
2005.....	101.521%
2006 and thereafter.....	100.000%

In addition, at any time or from time to time prior to May 1, 2001, the Company may redeem up to 35% of the original aggregate principal amount of the 9.125% Senior Notes at a redemption price equal to 109.125% of the principal amount of the 9.125% Senior Notes so redeemed, plus accrued and unpaid interest thereon to

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

the redemption date. The 9.125% Senior Notes are senior, unsecured obligations of the Company, ranking pari passu with all existing and future senior unsecured indebtedness of the Company. The notes contain certain covenants, which among other things, limit consolidated debt, dividend payments, and transactions with affiliates. The Company used the net proceeds of the note offering in connection with the implementation of its business plan to increase substantially its information services business and to expand the range of services it offers by building an advanced, international, facilities-based communications network based on IP technology.

Debt issuance costs of \$65 million were capitalized and are being amortized over the term of the Senior Notes.

#### 11% Senior Notes due 2008

On February 29, 2000, the Company received \$779 million of net proceeds, after transaction costs, from a private offering of \$800 million aggregate principal amount of its 11% Senior Notes due 2008 (11% Senior Notes). Interest on the notes accrues at 11% per year and is payable semi-annually in arrears in cash on March 15 and September 15, beginning September 15, 2000. The 11% Senior Notes are senior, unsecured obligations of the Company, ranking pari passu with all existing and future senior debt. The 11% Senior Notes cannot be prepaid, and mature on March 15, 2008. The 11% Senior Notes contain certain covenants, which among other things, limit additional indebtedness, dividend payments, certain investments and transactions with affiliates.

Debt issuance costs of \$21 million were capitalized and are being amortized as interest expense over the term of the 11% Senior Notes.

#### 10.5% Senior Discount Notes due 2008

In December 1998, the Company sold \$834 million aggregate principal amount at maturity of 10.5% Senior Discount Notes Due 2008 (10.5% Senior Discount Notes). The sales proceeds of \$500 million, excluding debt issuance costs, were recorded as long term debt. Interest on the 10.5% Senior Discount Notes accretes at a rate of 10.5% per annum, compounded semiannually, to an aggregate principal amount of \$834 million by December 1, 2003. Cash interest will not accrue on the 10.5% Senior Discount Notes prior to

December 1, 2003; however, the Company may elect to commence the accrual of cash interest on all outstanding 10.5% Senior Discount Notes on or after December 1, 2001, in which case the outstanding principal amount at maturity of each 10.5% Senior Discount Note will on the elected commencement date be reduced to the accreted value of the 10.5% Senior Discount Note as of that date and cash interest shall be payable on that Note on June 1 and December 1 thereafter. Commencing June 1, 2004, interest on the 10.5% Senior Discount Notes will accrue at the rate of 10.5% per annum and will be payable in cash semiannually in arrears. Accrued interest expense for the year ended December 31, 2000 on the 10.5% Senior Discount Notes of \$60 million was added to long-term debt.

The 10.5% Senior Discount Notes will be subject to redemption at the option of the Company, in whole or in part, at any time or from time to time on or after December 1, 2003 at the following redemption prices (expressed as percentages of accreted value) plus accrued and unpaid interest thereon to the redemption date, if redeemed during the twelve months beginning December 1, of the years indicated below:

Year	Redemption Price
----	-----
2003.....	105.25%
2004.....	103.50%
2005.....	101.75%
2006 and thereafter.....	100.00%

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

In addition, at any time or from time to time prior to December 1, 2001, the Company may redeem up to 35% of the original aggregate principal amount at maturity of the notes at a redemption price equal to 110.50% of the accreted value of the notes so redeemed, plus accrued and unpaid interest thereon to the redemption date. These notes are senior unsecured obligations of the Company, ranking pari passu with all existing and future senior unsecured indebtedness of the Company. The 10.5% Senior Discount Notes contain certain covenants which, among other things, restrict the Company's ability to incur additional debt, make certain restricted payments, pay dividends, enter into sale and leaseback transactions, enter into transactions with affiliates, and sell assets or merge with another company.

The net proceeds of \$486 million were used to accelerate the implementation of its business plan, primarily the funding for the increase in committed number of route miles of the Company's U.S. intercity network.

Debt issuance costs of \$14 million have been capitalized and are being amortized over the term of the 10.5% Senior Discount Notes.

**10.75% Senior Euro Notes due 2008**

On February 29, 2000, the Company received (Euro)488 million (\$478 million when issued) of net proceeds, after debt issuance costs, from an offering of (Euro)500 million aggregate principal amount 10.75% Senior Euro Notes due 2008 (10.75% Senior Euro Notes). Interest on the notes accrues at 10.75% per year and is payable in Euros semi-annually in arrears on March 15 and September 15 each year beginning on September 15, 2000. The 10.75% Senior Euro Notes are not redeemable by the Company prior to maturity. Debt issuance costs of (Euro)12 million (\$12 million) were capitalized and are being amortized over the term of the 10.75% Senior Euro Notes.

The 10.75% Senior Euro Notes are senior, unsecured obligations of the Company, ranking pari passu with all existing and future senior debt. The 10.75% Senior Euro Notes contain certain covenants, which among other things, limit additional indebtedness, dividend payments, certain investments and transactions with affiliates.

The issuance of the (Euro)500 million 10.75% Senior Euro Notes has been designated as, and is effective as, an economic hedge against the investment in certain of the Company's foreign subsidiaries. Therefore, foreign currency gains and losses resulting from the translation of the debt have been recorded in other comprehensive income (loss) to the extent of translation gains or losses on such investment. The 10.75% Senior Euro Notes were valued, based on current exchange rates, at \$465 million in the Company's financial statements at December 31, 2000. The difference between the carrying value at December 31, 2000 and the value at issuance was recorded in other comprehensive income.

## 12.875% Senior Discount Notes due 2010

On February 29, 2000, the Company sold in a private offering \$675 million aggregate principal amount at maturity of its 12.875% Senior Discount Notes due 2010 (12.875% Senior Discount Notes). The sale proceeds of \$360 million, excluding debt issuance costs, were recorded as long-term debt. Interest on the 12.875% Senior Discount Notes accretes at a rate of 12.875% per year, compounded semi-annually, to an aggregate principal amount of \$675 million by March 15, 2005. Cash interest will not accrue on the 12.875% Senior Discount Notes prior to March 15, 2005. However, the Company may elect to commence the accrual of cash interest on all outstanding 12.875% Senior Discount Notes on or after March 15, 2003. In that case, the outstanding principal amount at maturity of each 12.875% Senior Discount Note will, on the elected commencement date, be reduced to the accreted value of the 12.875% Senior Discount Note as of that date and

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

cash interest shall be payable on the 12.875% Senior Discount Notes on March 15 and September 15 thereafter. Commencing September 15, 2005, interest on the 12.875% Senior Discount Notes will accrue at the rate of 12.875% per year and will be payable in cash semi-annually in arrears. Accrued interest expense from the date of issuance through December 31, 2000 on the 12.875% Senior Discount Notes of \$39 million was added to long-term debt.

The 12.875% Senior Discount Notes are subject to redemption at the option of the Company, in whole or in part, at any time or from time to time on or after March 15, 2005. The Company may redeem the 12.875% Senior Discount Notes at the redemption prices set forth below, plus accrued and unpaid interest, if any, to the redemption date. The following prices are for 12.875% Senior Discount Notes redeemed during the 12-month period commencing on March 15 of the years set forth below:

Year	Redemption Price
2005.....	106.438%
2006.....	104.292%
2007.....	102.146%
2008 and thereafter.....	100.000%

In addition, at any time and from time to time, prior to March 15, 2003, the Company may redeem up to a maximum of 35% of the aggregate principal amount at maturity of the 12.875% Senior Discount Notes with the proceeds of one or more private placements to persons other than affiliates of the Company or underwritten public offerings of common stock of the Company resulting in gross proceeds of at least \$100 million in the aggregate. The Company may redeem the 12.875% Senior Discount Notes at a redemption price equal to 112.875% of the accreted value of the notes plus accrued interest, if any, to the redemption date.

The 12.875% Senior Discount Notes are senior, unsecured obligations of the Company, ranking pari passu with all existing and future senior debt. The 12.875% Senior Discount Notes contain certain covenants, which among other things, limit additional indebtedness, dividend payments, certain investments and transactions with affiliates. Debt issuance costs of \$9 million were capitalized and are being amortized as interest expense over the term of the 12.875% Senior Discount Notes.

## 11.25% Senior Euro Notes due 2010

On February 29, 2000, the Company received (Euro)293 million (\$285 million when issued) of net proceeds, after debt issuance costs, from an offering of (Euro)300 million aggregate principal amount 11.25% Senior Euro Notes due 2010 (11.25% Senior Euro Notes). Interest on the notes accrues at 11.25% per year and is payable semi-annually in arrears in Euros on March 15 and September 15 each year beginning September 15, 2000.

The 11.25% Senior Euro Notes are subject to redemption at the option of the Company, in whole or in part, at any time or from time to time on or after March 15, 2005. The 11.25% Senior Euro Notes may be redeemed at the redemption prices set forth below, plus accrued and unpaid interest, if any, to the redemption date. The following prices are for 11.25% Senior Euro Notes redeemed during the 12-month period commencing on March 15 of the years set forth below, and are expressed as percentages of principal amount.

Year	Redemption Price
2005.....	105.625%
2006.....	103.750%
2007.....	101.875%
2008 and thereafter.....	100.000%

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

In addition, at any time and from time to time, prior to March 15, 2003, the Company may redeem up to a maximum of 35% of the original aggregate principal amount of the 11.25% Senior Euro Notes. The Notes may be redeemed at a redemption price equal to 111.25% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to the redemption date. The redemption must be made with the proceeds of one or more private placements to persons other than affiliates of the Company or underwritten public offerings of common stock of the Company resulting in gross proceeds of at least \$100 million in the aggregate.

Debt issuance costs of (Euro)7 million (\$7 million) were capitalized and are being amortized over the term of the 11.25% Senior Euro Notes. The 11.25% Senior Euro Notes are senior, unsecured obligations of the Company, ranking pari passu with all existing and future senior debt. The 11.25% Senior Euro Notes contain certain covenants, which among other things, limit additional indebtedness, dividend payments, certain investments and transactions with affiliates.

The issuance of the (Euro)300 million 11.25% Senior Euro Notes has been designated as, and is effective as, an economic hedge against the investment in certain of the Company's foreign subsidiaries. Therefore, foreign currency gains and losses resulting from the translation of the debt have been recorded in other comprehensive income (loss) to the extent of translation gains or losses on such net investment. The 11.25% Senior Euro Notes were valued, based on current exchange rates, at \$279 million in the Company's financial statements at December 31, 2000. The difference between the carrying value at December 31, 2000 and the value at issuance was recorded in other comprehensive income.

11.25% Senior Notes due 2010

On February 29, 2000, the Company received \$243 million of net proceeds, after transaction costs, from a private offering of \$250 million aggregate principal amount of its 11.25% Senior Notes due 2010 (11.25% Senior Notes). Interest on the notes accrues at 11.25% per year and is payable semi-annually in arrears on March 15 and September 15 in cash beginning September 15, 2000.

The 11.25% Senior Notes are subject to redemption at the option of the Company, in whole or in part, at any time or from time to time on or after March 15, 2005. The Company may redeem the 11.25% Senior Notes at the redemption prices set forth below, plus accrued and unpaid interest, if any, to the redemption date. The following prices are for 11.25% Senior Notes redeemed during the 12-month period commencing on March 15 of the years set forth below:

Year	Redemption Price
2005.....	105.625%
2006.....	103.750%
2007.....	101.875%
2008 and thereafter.....	100.000%

In addition, at any time and from time to time, prior to March 15, 2003, the Company may redeem up to a maximum of 35% of the original aggregate principal amount of the 11.25% Senior Notes. The redemption must be made with the proceeds of one or more private placements to persons other than affiliates of the Company or underwritten public offerings of common stock of the Company resulting in gross proceeds of at least \$100 million in the aggregate. The Company may redeem the 11.25% Senior Notes at a

redemption price equal to 111.25% of the principal amount of the notes plus accrued interest, if any, to the redemption date.

The 11.25% Senior Notes are senior, unsecured obligations of the Company, ranking pari passu with all existing and future senior debt. The 11.25% Senior Notes contain certain covenants, which among other things, limit additional indebtedness, dividend payments, certain investments and transactions with affiliates.

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Debt issuance costs of \$7 million were capitalized and are being amortized as interest expense over the term of the 11.25% Senior Notes.

#### Senior Secured Credit Facility

On September 30, 1999, Level 3 and certain Level 3 subsidiaries entered into a \$1.375 billion secured credit facility (Senior Secured Credit Facility). The facility is comprised of a senior secured revolving credit facility in the amount of \$650 million and a two-tranche senior secured term loan facility aggregating \$725 million. The secured term loan facility consists of a \$450 million tranche A and a \$275 million tranche B term loan facility, respectively. At December 31, 2000, Level 3 had borrowed \$200 million and \$275 million under the tranche A and tranche B secured term loan facility, respectively. On January 8, 2001, Level 3 borrowed the remaining \$250 million available under tranche A.

The obligations under the revolving credit facility are secured by substantially all the assets of Level 3 and, subject to certain exceptions, its wholly owned domestic subsidiaries (other than the borrower under the term loan facility). Such assets will also secure a portion of the term loan facility. Additionally, all obligations under the term loan facility will be secured by the equipment that is purchased with the proceeds of the term loan facility.

Amounts drawn under the secured credit facility will bear interest, at the option of the Company, at an alternate base rate or reserve-adjusted LIBOR plus applicable margins. The applicable margins for the revolving credit facility and tranche A term loan facility range from 50 to 175 basis points over the alternate base rate and from 150 to 275 basis points over LIBOR and are fixed for the tranche B term loan facility at 250 basis points over the alternate base rate and 350 basis points over LIBOR. Interest and commitment fees on the revolving credit facility and the term loan facilities are payable quarterly with specific rates determined by actual borrowings under each facility.

The revolving credit facility provides for automatic and permanent quarterly reductions of the amount available for borrowing under that facility, commencing at \$17.25 million on March 31, 2004, and increasing to approximately \$61 million per quarter. The tranche A term loan facility amortizes in consecutive quarterly payments beginning on March 31, 2004, commencing at \$9 million per quarter and increasing to \$58.5 million per quarter. The revolving credit facility and tranche A term loan facility mature on September 30, 2007. The tranche B term loan facility amortizes in consecutive quarterly payments beginning on March 31, 2004, commencing at less than \$1 million and increasing to \$67 million in 2007.

The Senior Secured Credit Facility contains certain covenants, which among other things, limit additional indebtedness, dividend payments, certain investments and transactions with affiliates. Level 3 and certain Level 3 subsidiaries must also comply with specific financial and operational tests and maintain certain financial ratios. Debt issuance costs of \$24 million were capitalized and will be amortized as interest expense over the terms of Senior Secured Credit Facility.

#### GMAC Commercial Mortgage due 2003

On June 9, 2000, HQ Realty, Inc. (a wholly owned subsidiary of the Company) entered into a \$120 million floating-rate loan (GMAC Mortgage) providing secured, non-recourse debt to finance the Company's world headquarters. HQ Realty, Inc. is a single purpose entity organized solely to own, hold, operate and manage the world headquarters which has been 100% leased to Level 3 Communications, LLC in Broomfield, Colorado. Under the terms of the loan agreement, HQ Realty, Inc., will not engage in any business other than the ownership, management, maintenance and operation of the world headquarters. The assets of HQ

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Realty Inc. are not available to satisfy any third party obligations other than those of HQ Realty, Inc. In addition, the assets of the Company are not available to satisfy the obligations of HQ Realty, Inc. HQ Realty, Inc. received \$119 million of net proceeds after



transaction costs. The lender is holding \$13 million of the net proceeds as a reserve deposit.

The initial term of the GMAC Mortgage is 36 months with two one-year no cost extension options. Interest varies monthly with the 30 day London Interbank Offering Rate (LIBOR) for U.S. Dollar Deposits as follows:

The Index plus:

- (1) 240 basis points during the Initial Term;
- (2) 250 basis points during the First Extension Option; and
- (3) 260 basis points during the Second Extension Option.

At December 31, 2000 the interest rate was 9.20%.

The GMAC Mortgage may not be prepaid during the first twenty four months. Thereafter, the GMAC Mortgage may be prepaid at par in whole or in part in multiples of \$100,000. The entire principal is due at maturity or at the end of the elected extension period. Interest only is due during the initial three- year term. Interest and amortization are due during the extension terms based on a 30 year amortization period with a balloon payment at maturity.

Debt issuance costs of \$1 million were capitalized and are being amortized as interest expense over the term of the GMAC Mortgage.

### **Lehman Commercial Mortgage due 2003**

On December 19, 2000, 85 Tenth Avenue, LLC (a wholly owned subsidiary of the Company) entered into a \$113 million floating-rate loan (Lehman Mortgage) providing secured, non-recourse debt to finance the purchase and renovations of the New York Gateway facility. 85 Tenth Avenue, LLC is a single purpose entity organized solely to own, hold, sell, lease, transfer, exchange, operate and manage the New York Gateway facility. Under the terms of the loan agreement, 85 Tenth Avenue, LLC will not engage in any business other than the ownership, management, maintenance and operation of the New York Gateway facility. The New York Gateway facility has been 100% leased to Level 3 Communications, LLC. The assets of 85 Tenth Avenue, LLC are not available to satisfy any third party obligations other than those of 85 Tenth Avenue, LLC. In addition, the assets of the Company are not available to satisfy the obligations of 85 Tenth Avenue, LLC.

85 Tenth Avenue, LLC received \$105 million of net proceeds after transaction costs. Under the terms of the loan agreement, the gross loan proceeds plus \$32 million, deposited by 85 Tenth Avenue, LLC, are to be maintained in a Renovation Reserve account. The reserve is held by 85 Tenth Avenue, LLC as restricted cash and is maintained solely to perform the renovations of the New York Gateway facility.

The initial term of the Lehman Mortgage is 36 months with two one-year no cost extension options. There is a penalty if a principal payment is made prior to January 1, 2002. The entire principal is due at maturity or at the end of the elected extension period. Interest varies monthly with the 30 day LIBOR for U.S. Dollar Deposits plus approximately 350 basis points. Interest and amortization are due during the initial term based on a 20 year amortization period. At December 31, 2000 the interest rate was 10.11%.

Debt issue costs of \$8 million were capitalized and are being amortized as interest expense over the term of the Lehman Mortgage.

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

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

#### **6% Convertible Subordinated Notes due 2010**

On February 29, 2000, the Company received \$836 million of net proceeds, after transaction costs, from a public offering of \$863 million aggregate principal amount of its 6% Convertible Subordinated Notes due 2010 (Subordinated Notes 2010). The Subordinated Notes 2010 are unsecured and subordinated to all existing and future senior indebtedness of the Company. Interest on the Subordinated Notes 2010 accrues at 6% per year and is payable semi-annually in cash on March 15 and September 15 beginning September 15, 2000. The principal amount of the Subordinated Notes 2010 will be due on March 15, 2010.

The Subordinated Notes 2010 may be converted into shares of common stock of the Company at any time prior to the close of business on the business day immediately preceding maturity, unless previously redeemed, repurchased or the Company has caused the conversion rights to expire. The conversion rate is 7.416 shares per each \$1,000 principal amount of Subordinated Notes 2010, subject to adjustment in certain events.

Prior to March 18, 2003, Level 3, at its option, may redeem the Subordinated Notes 2010, in whole or in part, at the redemption prices

specified below plus accrued interest. Level 3 may exercise this option if the current market price of Level 3's common stock equals or exceeds triggering levels specified below for at least 20 trading days within any period of 30 consecutive trading days, including the last trading day of the period.

Period	Trigger Percentage	Redemption Price
February 29, 2000 through March 14, 2001.....	170% (\$229.23)	106.0%
March 15, 2001 through March 14, 2002.....	160% (\$215.74)	105.4%
March 15, 2002 through March 17, 2003.....	150% (\$202.26)	104.8%

On or after March 18, 2003, Level 3, at its option, may cause the conversion rights to expire. Level 3 may exercise this option only if the current market price exceeds approximately \$188.78 (which represents 140% of the conversion price) for at least 20 trading days within any period of 30 consecutive trading days, including the last trading day of that period. At December 31, 2000, no debt had been converted into shares of common stock.

Debt issue costs of \$27 million were capitalized and are being amortized as interest expense over the term of the Subordinated Notes.

#### 6% Convertible Subordinated Notes due 2009

On September 14, 1999, the Company received \$798 million of proceeds, after transaction costs, from an offering of \$823 million aggregate principal amount of its 6% Convertible Subordinated Notes Due 2009 (Subordinated Notes 2009). The Subordinated Notes 2009 are unsecured and subordinated to all existing and future senior indebtedness of the Company. Interest on the Subordinated Notes 2009 accrues at 6% per year and is payable each year in cash on March 15 and September 15. The principal amount of the Subordinated Notes 2009 will be due on September 15, 2009. The Subordinated Notes 2009 may be converted into shares of common stock of the Company at any time prior to maturity, unless the Company has caused the conversion rights to expire. The conversion rate is 15.3401 shares per each \$1,000 principal amount of Subordinated Notes 2009, subject to adjustment in certain circumstances. On or after September 15, 2002, Level 3, at its option, may cause the conversion rights to expire. Level 3 may exercise this option only if the current market price exceeds approximately \$91.27 (which represents 140% of the conversion price) for 20 trading days within any period of 30 consecutive trading days including the last day of that period. At December 31, 2000, less than \$1 million of debt had been converted into shares of common stock.

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Debt issuance costs of \$25 million were capitalized and are being amortized as interest expense over the term of the Subordinated Notes 2009.

The debt instruments above contain certain covenants which the Company believes it is in compliance with as of December 31, 2000.

Level 3 currently is using the proceeds from the senior securities, Senior Secured Credit Facility and subordinated notes for working capital, capital expenditures and other general corporate purposes in connection with the implementation of its business plan, including the acquisition of telecommunications assets.

The Company capitalized \$353 million and \$116 million of interest expense and amortized debt issuance costs related to network construction and business systems development projects for the years ended December 31, 2000 and 1999, respectively.

#### CPTC

California Private Transportation Company, LP's (CPTC) long-term debt consists of a term note with a consortium of banks. The liability under the term note was \$58 and \$61 million at December 31, 2000 and 1999, respectively. The interest rate on the bank note is based on LIBOR plus a varying rate with principal and interest payable quarterly. CPTC entered into an interest rate swap agreement with the same parties. The swap agreement expires in January 2004 and fixes the interest rate on the bank note from 9.21% to 9.71% during the term of the swap agreement. The impact to Level 3's consolidated results and financial condition as a result of adoption of SFAS No. 133 in 2001 is considered to be minimal. CPTC's long-term debt also consists of a term loan held by Connecticut General Life Insurance Company, a subsidiary of CIGNA Corporation and Lincoln National Life Insurance Company.

The liability under the term loan was \$35 million at December 31, 2000 and 1999. Additionally, CPTC had \$10 million and \$9 million of subordinated debt held by Orange County Transportation Authority at December 31, 2000 and 1999, respectively. The debt is due in varying amounts through 2004 and accrues interest at 9%. Lastly, CPTC had borrowed \$12 million as of December 31, 2000 and \$10 million as of December 31, 1999 from its partners. The debt is generally subordinated to all other debt of CPTC. Interest on the subordinated debt compounds annually at 9.3-9.5% and is payable only as CPTC generates excess cash flows.

**Future Debt Maturities:**

Scheduled maturities of long-term debt are as follows (in millions): 2001--\$7; 2002--\$10; 2003--\$237; 2004--\$59; 2005--\$115 and \$6,897 thereafter.

(12) Employee Benefit Plans

The Company applies the recognition provisions of SFAS No. 123, Accounting for Stock Based Compensation (SFAS No. 123). Under SFAS No. 123, the fair value of an option or other stock-based compensation (as computed in accordance with accepted option valuation models) on the date of grant is amortized over the vesting periods of the options in accordance with FASB Interpretation No. 28 Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans (FIN 28). As a result, the recognition provisions are applied to all stock awards granted in the year of adoption and are not applied to awards granted in previous years unless those awards are modified or settled in cash. Although the recognition of the value of the instruments results in compensation or professional expenses in an entity's financial statements, the expense differs from other compensation and professional expenses in that these charges may be settled in cash, but rather, generally are settled through issuance of common stock.

**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

The adoption of SFAS No. 123 has resulted in material non-cash charges to operations since its adoption in 1998, and will continue to do so. The amount of the non-cash charge will be dependent upon a number of factors, including the number of grants and the fair value of each grant estimated at the time of its award. The Company recognized a total of \$241 million, \$126 million and \$39 million of non-cash compensation in 2000, 1999 and 1998, respectively. In addition, the Company capitalized \$12 million, \$10 million and \$5 million in 2000, 1999 and 1998, respectively, of non-cash compensation for those employees directly involved in the construction of the network or development of the business support systems.

**Non-qualified Stock Options and Warrants**

The Company granted 230,000, 55,100, and 7,466,247 non-qualified stock options (NQSOs) and warrants to participants during the years ended December 31, 2000, 1999 and 1998, respectively. The expense recognized for the year ended December 31, 2000 for NQSOs and warrants in accordance with SFAS No. 123 was \$10 million. In addition to the expense recognized, the Company capitalized less than \$1 million of non-cash compensation costs for employees directly involved in the construction of the IP network and the development of the business support systems. As of December 31, 2000, the Company had not yet recognized \$10 million of unamortized compensation costs for NQSOs and warrants granted since 1998.

The expense recognized in accordance with SFAS No. 123 for NQSOs and warrants outstanding in 1999 and 1998 was \$7 million and \$11 million, respectively. In addition to the expense recognized, the Company capitalized \$1 million and \$2 million, respectively of non-cash compensation costs related to NQSOs for employees directly involved in the construction of the IP network and the development of the business support systems.

The fair value of NQSOs granted in 2000 was calculated using the Black- Scholes method with a risk free interest rate of 6.2% and expected life of 75% of the total life of the NQSOs and warrants. The Company used an expected volatility rate of 34%. The fair value of the NQSOs and warrants granted in 2000, in accordance with SFAS No. 123 was \$16 million.

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

	Shares	Exercise Price Per Share	Weighted Average Exercise Price
Balance December 27, 1997.....	14,688,000	\$ 4.04--\$ 5.42	\$ 4.95
Options granted.....	7,466,247	.12-- 41.25	8.67
Options cancelled.....	(668,849)	.12-- 34.69	5.52

Options exercised.....	(2,506,079)	.12--	34.69	4.22
Balance December 31, 1998.....	18,979,319	.12--	41.25	6.50
Options granted.....	55,100	41.44--	84.75	58.61
Options cancelled.....	(1,005,328)	.12--	41.25	10.84
Options exercised.....	(3,950,528)	.12--	41.25	5.60
Balance December 31, 1999.....	14,078,563	.12--	84.75	6.64
Options granted.....	230,000		21.69	21.69
Options cancelled.....	(1,840,529)	.12--	61.75	4.88
Options exercised.....	(2,079,326)	.12--	56.75	8.00
Balance December 31, 2000.....	10,388,708	\$ .12--	\$84.75	\$ 7.01
Options exercisable				
December 31, 1998.....	5,456,640	\$ .12--	\$41.25	\$ 4.67
December 31, 1999.....	6,291,624	.12--	\$41.25	6.13
December 31, 2000.....	5,666,636	.12--	\$84.75	7.36

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding as of 12/31/00	Weighted Average Remaining Life (years)	Weighted Average Exercise Price	Number Exercisable as of 12/31/00	Weighted Average Exercise Price
\$ 0.12--\$ 0.12	101,509	7.12	\$ .12	65,973	\$ .12
1.76-- 1.79	31,567	7.33	1.76	11,287	1.76
4.04-- 5.43	6,828,329	6.69	5.36	4,011,329	5.32
6.20-- 8.50	2,877,675	7.05	6.94	1,123,664	6.95
17.50-- 25.03	241,832	4.37	21.85	238,656	21.81
26.80-- 39.13	244,362	2.54	30.70	182,674	30.66
40.38-- 51.88	27,167	2.72	42.01	17,168	41.89
56.00-- 57.47	29,667	3.26	56.74	12,585	56.67
61.75-- 84.75	6,600	3.28	84.75	3,300	84.75
	10,388,708	6.62	\$7.01	5,666,636	\$7.36

Outperform Stock Option Plan

In April 1998, the Company adopted an outperform stock option (OSO) program that was designed so that the Company's stockholders would receive a market return on their investment before OSO holders receive any return on their options. The Company believes that the OSO program aligns directly management's and stockholders' interests by basing stock option value on the Company's ability to outperform the market in general, as measured by the Standard & Poor's (S&P) 500 Index. Participants in the OSO program do not realize any value from awards unless the Common Stock price outperforms the S&P 500 Index. When the stock price gain is greater than the corresponding gain on the S&P 500 Index (or less than the corresponding loss on the S&P Index), the value received for awards under the OSO plan is based on a formula involving a multiplier related to the level by which the Common Stock outperforms the S&P 500 Index. To the extent that the Common Stock outperforms the S&P 500, the value of OSOs to a holder may exceed the value of nonqualified stock options.

OSO grants are made quarterly to participants employed on the date of the grant. Each award vests in equal quarterly installments over two years and has a four-year life. Each award typically has a two year moratorium on exercising from the date of grant. As a result, once a participant is 100% vested in the grant the two year moratorium expires. Therefore, each grant has an exercise window of two years. Level 3 granted 2.1 million OSOs to employees in December 2000. These OSOs vest 25% after six months with the remaining 75% vesting after 18 months. The OSOs are exercisable immediately upon vesting and have a four- year life.

The fair value under SFAS No. 123 for the 5,402,553 OSOs granted to employees for services performed for the year ended December 31, 2000 was \$275 million. The Company recognized \$189 million of compensation expense in the year ended December 31, 2000 for OSOs granted to employees. In addition to the expense recognized, \$9 million of non-cash compensation was capitalized in 2000 for employees directly involved in the construction of the Internet Protocol network and development of business support systems. As of December 31, 2000, the Company had not yet recognized \$168 million of unamortized compensation costs for OSOs granted in 1999 and 2000. The Company recognized \$111 million and \$24 million of compensation expense for the years ended December 31, 1999 and 1998, respectively. In addition to the expense recognized the Company capitalized \$7 million and \$3 million of non-cash compensation for years ended December 31, 1999 and 1998, respectively.

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

Transactions involving stock awards granted under the OSO plan are summarized below:

	Shares	Option Price Per Share		Weighted Average Option Price
Balance December 27, 1997.....	--	\$ --	--	\$ --
Options granted.....	2,139,075	29.78--	37.13	34.85
Options cancelled.....	(46,562)	29.78--	37.13	35.53
Balance December 31, 1998.....	2,092,513	29.78--	37.13	34.85
Options granted.....	3,241,599	56.00--	78.50	66.58
Options cancelled.....	(157,623)	29.78--	78.50	51.31
Options exercised.....	(37,500)	29.78--	37.13	34.64
Balance December 31, 1999.....	5,138,989	29.78--	78.50	54.15
Options granted.....	5,402,553	26.87--	113.87	52.96
Options cancelled.....	(262,545)	26.87--	113.87	72.55
Options exercised.....	(214,409)	29.78--	37.13	36.28
Balance December 31, 2000.....	10,064,588	\$26.87--	\$113.87	\$53.50
Options vested but not exercisable as of				
December 31, 1999.....	2,098,337	\$29.78--	\$ 78.50	\$44.69
December 31, 2000.....	2,488,866	56.00--	113.87	71.68

Range of Exercise Prices	OSOs Outstanding at December 31, 2000			OSOs Exercisable at December 31, 2000	
	Number Outstanding	Weighted Average Remaining Life (years)	Weighted Average Option Price	Number Exercisable	Weighted Average Option Price
\$26.87--\$37.12	4,899,611	3.11	\$29.46	1,748,411	\$34.12

56.00-- 78.50	3,709,678	2.74	68.69	--	--
87.23--113.87	1,455,299	3.49	96.56	--	--
	-----			-----	
	10,064,588	3.03	\$53.50	1,748,411	\$34.12
	=====			=====	=====

In July 2000, the Company adopted a convertible outperform stock option program, (C-OSO) as an extension of the existing OSO plan. The program is a component of the Company's ongoing employee retention efforts and offers similar features to those of an OSO, but provides an employee with the greater of the value of a single share of the Company's common stock at exercise, or the calculated OSO value of a single OSO at the time of exercise.

C-OSO awards were made to eligible employees employed on the date of the grant. The awards were made in September 2000 and December 2000. Each award vests over three years as follows: 1/6 of each grant at the end of the first year, a further 2/6 at the end of the second year and the remaining 3/6 in the third year. Each award is immediately exercisable upon vesting. Awards expire four years from the date of the grant.

The fair value of the OSOs and C-OSOs granted in 2000 was calculated by applying a modified Black-Scholes formula with an S&P 500 expected dividend yield rate of 1.16% and an expected life of 2.5 years. The Company used a blended volatility rate of 27% calculated as a blended rate between the S&P 500 expected volatility rate of 16% and the Level 3 Common Stock expected volatility rate of 34%. The expected correlation factor of 0.65 was used to measure the movement of Level 3 stock relative to the S&P 500.

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

The fair value recognized under SFAS No. 123 for the approximately 2 million C-OSOs awarded to employees for services performed for the year ended December 31, 2000 was approximately \$140 million. The Company recognized \$17 million of compensation expense for the year ended December 31, 2000 for C-OSOs awarded in 2000. In addition to the expense recognized, \$1 million of non-cash compensation was capitalized for the year ended December 31, 2000 for employees directly involved in the construction of the network and development of business support systems. As of December 31, 2000, the Company had not reflected \$120 million of unamortized compensation expense in its financial statements for C-OSOs awarded in 2000.

Transactions involving stock awards granted under the C-OSO plan are summarized below:

	Shares	Option Price Per Share	Weighted Average Option Price
	-----	-----	-----
Balance December 31, 1999.....	--	\$ --	\$ --
Options granted.....	1,965,509	26.87-- 87.23	56.67
Options cancelled.....	(25,522)	87.23	87.23
	-----		
Balance December 31, 2000.....	1,939,987	\$26.87--\$87.23	\$56.27
	=====	=====	=====
Options vested but not exercisable as of December 31, 2000.....	--	--	--

C-OSOs Outstanding at December 31, 2000	C-OSOs Exercisable at December 31, 2000
-----	-----
Weighted Average	Weighted
Weighted	Weighted

Range of Exercise Prices	Number Outstanding	Remaining Life (years)	Average Option Price	Number Exercisable	Average Option Price
\$26.87.....	995,125	3.9	\$26.87	--	\$--
87.23.....	944,862	3.7	87.23	--	--
	-----			----	
	1,939,987	3.8	\$56.27	--	\$--
	=====	===	=====	===	=====

### Restricted Stock

In 2000, 1999 and 1998, 115,567, 17,117 and 177,183 shares, respectively, of restricted stock were granted to employees. The restricted stock shares were granted to employees at no cost. The shares typically vest over a one to three year period; however, the employees are restricted from selling these shares for three years. The fair value of restricted stock granted in 2000, 1999 and 1998 of \$7 million, \$1 million and \$7 million, respectively, was calculated using the value of the Common Stock the day prior to the grant. The expense recognized in 2000 under SFAS No. 123 for restricted stock grants was \$4 million. The expense recognized in 1999 and 1998 under SFAS No. 123 for restricted stock grants was \$4 million and \$3 million respectively.

As of December 31, 2000, the Company had not yet recognized \$3 million of compensation costs for restricted stock granted in since 1998.

### Shareworks

Level 3 has designed its compensation programs with particular emphasis on equity-based, long-term incentive programs. The Company has developed two plans under its Shareworks program: the Match Plan and the Grant Plan.

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## LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

**Match Plan**--The Match Plan allows eligible employees to defer between 1% and 7% of their eligible compensation to purchase Common Stock at the average stock price for the quarter. Any full time employee is considered eligible on the first day of the calendar quarter after their hire. The Company matches the shares purchased by the employee on a one-for-one basis. Stock purchased with payroll deductions is fully vested. Stock purchased with the Company's matching contributions vests three years after the end of the quarter in which it was made.

The Company's quarterly matching contribution is amortized to compensation expense over the vesting period of 36 months. In 2000, the Company's matching contribution was \$14 million under the Match Plan. The compensation expense recognized in 2000 under this plan was \$5 million. The non-cash compensation expense recognized in 1999 and 1998 for the Match Plan was \$1 million and less than \$1 million, respectively.

As of December 31, 2000, the Company had not reflected unamortized compensation expense of \$19 million related to the Company's matching contributions.

**Grant Plan**--The Grant Plan enables the Company to grant shares of Common Stock to eligible employees based upon a percentage of that employee's eligible salary up to a maximum of 3%. Level 3 employees employed on December 31 of each year, who are age 21 or older with a minimum of 1,000 hours credited service are considered eligible. The shares granted are valued at the fair market value as of the last business day of the calendar year. All prior and future grants vest immediately upon the employee's third anniversary of joining the Shareworks Plan.

The annual grant is expensed in the year of the grant. Compensation expense recorded for the Shareworks Grant Plan for 2000 was approximately \$11 million. Approximately \$3 million and \$1 million of compensation expense was recorded for the Shareworks Grant Plan for 1999 and 1998, respectively.

In addition to the compensation expense recognized, the Company capitalized \$2 million of non-cash compensation costs related to the Shareworks Plans for employees directly involved in the construction of the IP network and the development of the business support systems in 2000 and 1999 and less than \$1 million of non-cash compensation costs in 1998.

Foreign subsidiaries of the Company adopted Shareworks programs in 2000. These programs primarily include a grant plan and a stock purchase plan whereby employees may purchase Level 3 Common Stock at 80% of the share price at the beginning of the plan year.

The Company recorded approximately \$5 million of non-cash compensation expense for stock issued to employees during the year ended December 31, 2000. The non-cash compensation charge was based on the Company's stock price on the day prior to the grant date.

#### 401(k) Plan

The Company and its subsidiaries offer its qualified employees the opportunity to participate in a defined contribution retirement plan qualifying under the provisions of Section 401(k) of the Internal Revenue Code. Each employee was eligible to contribute, on a tax deferred basis, a portion of annual earnings not to exceed \$10,500 in 2000. The Company does not match employee contributions and therefore does not incur any compensation expense related to the 401(k) plan.

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

#### (13) Income Taxes

An analysis of the income tax (provision) benefit attributable to earnings (loss) from continuing operations before income taxes for the three years ended December 31, 2000 follows:

	2000	1999	1998
	-----		
	(dollars in millions)		
Current:			
United States Federal.....	\$ 50	\$161	\$(15)
State.....	(1)	3	(10)
	-----	-----	-----
	49	164	(25)
Deferred:			
United States Federal.....	255	56	50
State.....	--	--	--
	-----	-----	-----
	255	56	50
Valuation Allowance.....	(255)	--	--
	-----	-----	-----
Income Tax Benefit.....	\$ 49	\$220	\$ 25
	=====	=====	=====

The United States and foreign components of earnings (loss) from continuing operations before income taxes follows:

	2000	1999	1998
	-----		
	(dollars in millions)		
United States.....	\$ (995)	\$(578)	\$(142)
Foreign.....	(509)	(129)	(11)
	-----	-----	-----
	\$ (1,504)	\$ (707)	\$ (153)
	=====	=====	=====



A reconciliation of the actual income tax (provision) benefit and the tax computed by applying the U.S. federal rate (35%) to the earnings (loss) from continuing operations, before income taxes for the three years ended December 31, 2000 follows:

	2000	1999	1998
	-----	-----	-----
	(dollars in millions)		
Computed Tax at Statutory Rate.....	\$ 526	\$247	\$ 53
State Income Taxes.....	(1)	2	(7)
Write-off of In Process Research & Development.....	--	--	(11)
Coal Depletion.....	2	2	2
Goodwill Amortization.....	(17)	(12)	(5)
Taxes on Unutilized Losses of Foreign Operations.....	(35)	(9)	(4)
Foreign Tax Credits.....	--	(10)	--
Other.....	(1)	--	(3)
Valuation Allowance.....	(425)	--	--
	-----	-----	-----
Income Tax Benefit.....	\$ 49	\$220	\$ 25
	=====	=====	=====

For federal income tax reporting purposes, the Company has approximately \$638 million of net operating loss carryforwards, net of previous carrybacks, available to offset future Federal taxable income. The net operating loss carryforwards expire in 2020 and are subject to examination by the tax authorities.

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

The Internal Revenue Code contains provisions which may limit the net operating loss carryforwards available to be used in any given year upon the occurrence of certain events, including significant changes in ownership interests.

For federal income tax reporting purposes, the Company has approximately \$19 million of alternative minimum tax credits available to offset future regular federal income tax. The credits can be carried forward until fully utilized.

The components of the net deferred tax assets (liabilities) for the years ended December 31, 2000 and 1999 were as follows:

	2000	1999
	-----	-----
	(dollars in millions)	
Deferred Tax Liabilities:		
Investments in securities.....	\$ 18	\$ 2
Investments in joint ventures.....	4	15
Asset bases--accumulated depreciation.....	38	122
Coal sales.....	32	32
Provision for estimated expenses.....	12	--
Other.....	22	3
	-----	-----
Total Deferred Tax Liabilities.....	126	174
Deferred Tax Assets:		
Net operating loss carryforwards.....	223	--
Compensation and related benefits.....	154	76
Investment in subsidiaries.....	11	11
Provision for estimated expenses.....	94	27

Investment in joint ventures.....	69	--
Other.....	12	12
	-----	-----
Total Deferred Tax Assets.....	563	126
	-----	-----
Net Deferred Tax Assets/(Liabilities).....	437	(48)
Valuation Allowance Components:		
Net Deferred Tax Assets.....	(410)	--
Stockholders' Equity (primarily tax benefit from option exercises).....	(92)	--
	-----	-----
Net Deferred Tax Liabilities after Valuation Allowance.....	\$ (65)	\$(48)
	=====	=====

The 2000 current net deferred tax assets are \$15 million after a current valuation allowance of \$86 million and the non-current deferred tax liabilities are (\$80) million after non-current valuation allowance of \$416 million.

#### (14) Stockholders' Equity

On February 29, 2000, the Company raised \$2.4 billion, after underwriting discounts and offering expenses, from an offering of 23 million shares of its common stock through an underwritten public offering. In March 1999, the Company raised \$1.5 billion, after underwriting discounts and offering expenses, from the offering of 28.75 million shares of its common stock through an underwritten public offering. The net proceeds from both offerings are being used for working capital, capital expenditures, acquisitions and other general corporate purposes in connection with the implementation of the Company's business plan.

Issuances of Common Stock, for sales, conversions, option exercises and acquisitions, and repurchases of common shares for the three years ended December 31, 2000 are shown below. Prior to the Split-off, the

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Company was obligated to repurchase Class D shares from stockholders. The Level 3 Stock Plan permits option holders to tender shares to the Company to cover income taxes due on option exercises.

December 27, 1997.....	271,034,280
Shares Issued.....	2,240,467
Shares Repurchased.....	(30,506)
Issuances for Class C Stock Conversions.....	20,934,244
Issuances for Class R Stock Conversions.....	5,084,568
Option Activity.....	2,506,079
Shares Issued for Acquisition.....	6,105,574
	-----
December 31, 1998.....	307,874,706
Shares Issued.....	28,750,000
Option and Shareworks Activity.....	4,371,578
Shares Issued for Acquisition.....	396,379
6% Convertible Notes Converted to Shares.....	4,064
	-----
December 31, 1999.....	341,396,727
Shares Issued.....	23,000,000
Option and Shareworks Activity.....	3,202,760
6% Convertible Notes Converted to Shares.....	383
	-----
December 31, 2000.....	367,599,870
	=====

(15) Industry and Geographic Data

In 1998, the Company adopted SFAS No. 131 Disclosures about Segments of an Enterprise and Related Information. SFAS No. 131 establishes standards for reporting information about operating segments in annual financial statements and requires selected information about operating segments in interim financial reports issued to stockholders. It also establishes standards for disclosures about products and services and geographic areas. Operating segments are components of an enterprise for which separate financial information is available and which is evaluated regularly by the Company's chief operating decision maker, or decision making group, in deciding how to allocate resources and assess performance. Operating segments are managed separately and represent strategic business units that offer different products and serve different markets.

The Company's reportable segments include: communications, information services, and coal mining. Other primarily includes CPTC, equity investments, and other corporate assets and overhead not attributable to a specific segment.

Industry and geographic data for the Company's 1998 discontinued construction and energy operations are not included.

EBITDA, as defined by the Company, consists of earnings (loss) before interest, income taxes, depreciation, amortization, non-cash operating expenses (including stock-based compensation and in-process research and development charges) and other non-operating income or expense. The Company excludes non-cash compensation due to its adoption of the expense recognition provisions of SFAS No. 123. EBITDA is commonly used in the communications industry to analyze companies on the basis of operating performance. EBITDA is not intended to represent operating cash flow for the periods presented and is not a concept supported by generally accepted accounting principles (GAAP).

The information presented in the tables following includes information for twelve months ended December 31, 2000, 1999 and 1998 for all income statement and cash flow information presented, and as of December 31, 2000 and 1999 for all balance sheet information presented. Revenue and the related expenses are attributed to foreign countries based on where services are provided.

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

Industry and geographic segment financial information follows. Certain prior year information has been reclassified to conform with the 2000 presentation.

	Communications	Information Services	Coal Mining	Other	Total
	(dollars in millions)				
2000					
Revenue:					
North America.....	\$ 744	\$103	\$190	\$ 22	\$1,059
Europe.....	113	12	--	--	125
Asia.....	1	--	--	--	1
	-----	-----	-----	-----	-----
	\$ 858	\$115	\$190	\$ 22	\$1,185
	=====	=====	=====	=====	=====
EBITDA:					
North America.....	\$ (335)	\$ 2	\$ 86	\$ 7	\$ (240)
Europe.....	(247)	4	--	--	(243)
Asia.....	(37)	--	--	--	(37)
	-----	-----	-----	-----	-----
	\$ (619)	\$ 6	\$ 86	\$ 7	\$ (520)
	=====	=====	=====	=====	=====
Capital Expenditures:					
North America.....	\$4,625	\$ 11	\$ 2	\$--	\$4,638
Europe.....	1,122	1	--	--	1,123
Asia.....	183	--	--	--	183
	-----	-----	-----	-----	-----
	\$5,930	\$ 12	\$ 2	\$--	\$5,944

Depreciation and Amortization:					
North America.....	\$ 437	\$ 18	\$ 5	\$ 6	\$ 466
Europe.....	112	2	--	--	114
Asia.....	4	--	--	--	4
	-----	-----	-----	-----	-----
	\$ 553	\$ 20	\$ 5	\$ 6	\$ 584
	=====	=====	=====	=====	=====
1999					
Revenue:					
North America.....	\$ 145	\$122	\$207	\$ 19	\$ 493
Europe.....	14	8	--	--	22
Asia.....	--	--	--	--	--
	-----	-----	-----	-----	-----
	\$ 159	\$130	\$207	\$ 19	\$ 515
	=====	=====	=====	=====	=====
EBITDA:					
North America.....	\$ (390)	\$ 8	\$ 81	\$ 6	\$ (295)
Europe.....	(88)	1	--	--	(87)
Asia.....	(5)	--	--	--	(5)
	-----	-----	-----	-----	-----
	\$ (483)	\$ 9	\$ 81	\$ 6	\$ (387)
	=====	=====	=====	=====	=====
Capital Expenditures:					
North America.....	\$2,583	\$ 12	\$ 3	\$ 1	\$2,599
Europe.....	833	--	--	--	833
Asia.....	4	--	--	--	4
	-----	-----	-----	-----	-----
	\$3,420	\$ 12	\$ 3	\$ 1	\$3,436
	=====	=====	=====	=====	=====
Depreciation and Amortization:					
North America.....	\$ 176	\$ 12	\$ 5	\$ 9	\$ 202
Europe.....	24	2	--	--	26
Asia.....	--	--	--	--	--
	-----	-----	-----	-----	-----
	\$ 200	\$ 14	\$ 5	\$ 9	\$ 228
	=====	=====	=====	=====	=====

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**LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)**

	Communications	Information Services	Coal Mining	Other	Total
	(dollars in millions)				
1998					
Revenue:					
North America.....	\$ 23	\$120	\$228	\$ 20	\$ 391
Europe.....	1	--	--	--	1
Asia.....	--	--	--	--	--
	-----	-----	-----	-----	-----
	\$ 24	\$120	\$228	\$ 20	\$ 392
	=====	=====	=====	=====	=====
EBITDA:					
North America.....	\$ (186)	\$ (9)	\$ 92	\$ 9	\$ (94)
Europe.....	(6)	--	--	--	(6)
Asia.....	--	--	--	--	--

	\$ (192)	\$ (9)	\$ 92	\$ 9	\$ (100)
<b>Capital Expenditures:</b>					
North America.....	\$ 782	\$ 29	\$ 2	\$ 1	\$ 814
Europe.....	96	--	--	--	96
Asia.....	--	--	--	--	--
	\$ 878	\$ 29	\$ 2	\$ 1	\$ 910
<b>Depreciation and Amortization:</b>					
North America.....	\$ 38	\$ 11	\$ 5	\$ 11	\$ 65
Europe.....	1	--	--	--	1
Asia.....	--	--	--	--	--
	\$ 39	\$ 11	\$ 5	\$ 11	\$ 66
<b>Identifiable Assets</b>					
December 31, 2000					
North America.....	\$ 8,091	\$ 78	\$310	\$4,009	\$12,488
Europe.....	2,095	9	--	122	2,226
Asia.....	192	--	--	13	205
	\$10,378	\$ 87	\$310	\$4,144	\$14,919
December 31, 1999					
North America.....	\$ 3,699	\$ 81	\$336	\$3,751	\$ 7,867
Europe.....	993	8	--	18	1,019
Asia.....	18	--	--	2	20
	\$ 4,710	\$ 89	\$336	\$3,771	\$ 8,906
<b>Long-Lived Assets</b>					
December 31, 2000					
North America.....	\$ 7,548	\$ 49	\$217	\$ 15	\$ 7,829
Europe.....	1,852	3	--	--	1,855
Asia.....	190	--	--	--	190
	\$ 9,590	\$ 52	\$217	\$ 15	\$ 9,874
December 31, 1999					
North America.....	\$ 3,344	\$ 56	\$ 43	\$ 560	\$ 4,003
Europe.....	956	5	--	--	961
Asia.....	4	--	--	--	4
	\$ 4,304	\$ 61	\$ 43	\$ 560	\$ 4,968

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LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Product information for the Company's communications segment follows:

	Reciprocal Services	Dark Fiber, Compensation Conduit, IRUs	Trans-oceanic IRUs	Total

(dollars in millions)

Communications Revenue:

2000

North America.....	\$427	\$55	\$209	\$ 53	\$744
Europe.....	61	--	--	52	113
Asia.....	1	--	--	--	1
	----	----	----	----	----
	\$489	\$55	\$209	\$105	\$858
	=====	====	=====	=====	=====

1999

North America.....	\$ 84	\$24	\$ 35	\$ 2	\$145
Europe.....	14	--	--	--	14
Asia.....	--	--	--	--	--
	----	----	----	----	----
	\$ 98	\$24	\$ 35	\$ 2	\$159
	=====	====	=====	=====	=====

1998

North America.....	\$ 1	\$22	\$--	\$--	\$ 23
Europe.....	1	--	--	--	1
Asia.....	--	--	--	--	--
	----	----	----	----	----
	\$ 2	\$22	\$--	\$--	\$ 24
	=====	====	=====	=====	=====

The majority of North American revenue consists of services and products delivered within the United States. The majority of European revenue consists of services and products delivered within the United Kingdom. Trans-oceanic revenue for 2000 is allocated equally between North America and Europe as it represents services provided between these two regions.

In 1999 and 1998 Commonwealth Edison Company, a coal mining customer, accounted for 22% and 34% of total revenue.

The following information provides a reconciliation of EBITDA to loss from continuing operations for the three years ended December 31, 2000:

	2000	1999	1998
	-----	-----	-----
	(in millions)		
EBITDA.....	\$ (520)	\$ (387)	\$ (100)
Depreciation and Amortization Expense.....	(584)	(228)	(66)
Non-Cash Compensation Expense.....	(241)	(126)	(39)
Write-off of In-Process Research and Development.....	--	--	(30)
	-----	-----	-----
Loss from Operations.....	(1,345)	(741)	(235)
Other Income (Expense).....	(159)	34	82
Income Tax Benefit.....	49	220	25
	-----	-----	-----
Loss from Continuing Operations.....	\$ (1,455)	\$ (487)	\$ (128)
	=====	=====	=====

(16) Commitments and Contingencies

In August 1999, the Company was named as a defendant in *Schweizer vs. Level 3 Communications, Inc. et. al.*, a purported national class action, filed in the District Court, County of Boulder, State of Colorado which involves the Company's right to install its fiber optic cable network in easements and right-of-ways crossing the plaintiff's land. In general, the Company obtained the rights to construct its network from railroads,

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

utilities, and others, and is installing its network along the rights-of-way so granted. Plaintiffs in the purported class action assert that they are the owners of the lands over which the Company's fiber optic cable network passes, and that the railroads, utilities and others who granted the Company the right to construct and maintain its network did not have the legal ability to do so. The action purports to be on behalf of a national class of owners of land over which the Company's network passes or will pass. The complaint seeks damages on theories of trespass, unjust enrichment and slander of title and property, as well as punitive damages. The Company may in the future receive claims and demands related to the rights-of-way issues similar to the issues in the Schweizer litigation that may be based on similar or different legal theories. Although it is too early for the Company to reach a conclusion as to the ultimate outcome of this litigation, management believes the Company has substantial defenses to the claims asserted in the Schweizer action (and any similar claims which may be named in the future), and intends to defend them vigorously.

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

On August 24, 2000 the Company announced that it had signed a letter of intent to purchase more than 2 million cabled fiber kilometers of third generation LEAF fiber from Corning Inc. Level 3 plans to begin installing the fiber in its second conduit in the first quarter of 2001 and expects to be substantially complete by the end of the year. Corning's LEAF fiber will significantly increase Level 3's network capacity.

**Operating Leases**

The Company is leasing rights of way, communications capacity and premises under various operating leases which, in addition to rental payments, require payments for insurance, maintenance, property taxes and other executory costs related to the lease. Certain leases provide for adjustments in lease cost based upon adjustments in the consumer price index and increases in the landlord's management costs. The lease agreements have various expiration dates through 2019.

In addition to the items described above, future minimum payments for the next five years, under the non-cancelable operating leases with initial or remaining terms of one year or more, consist of the following at December 31, 2000 (in millions):

2001.....	\$ 66
2002.....	63
2003.....	60
2004.....	58
2005.....	58
Thereafter.....	374
	----
Total.....	\$679
	====

Rent expense under non-cancellable lease agreements was \$60 million in 2000, \$41 million in 1999 and \$18 million in 1998.

(17) Related Party Transactions

Peter Kiewit Sons', Inc. (Kiewit) acted as the general contractor on several significant projects for the Company in 2000, 1999 and 1998. These projects include the Phoenix Data Center, the U.S. intercity network, certain metro networks and certain Gateway sites, and the Company's new corporate headquarters in Colorado.

Kiewit provided approximately \$1,764 million, \$1,024 million and \$130 million of construction services related to these projects in 2000, 1999, and 1998 respectively.

Level 3 also receives certain mine management services from Kiewit. The expense for these services was \$29 million for 2000, \$33 million for 1999, and \$34 million for 1998, and is recorded in selling, general and administrative expenses.

In September 2000, the Company sold its entire interest in Walnut Creek Mining Company to Kiewit for cash of \$37 million. The sale resulted in a pre-tax gain of \$21 million to the Company, which is included in gain on sale of assets in the accompanying consolidated statement of operations.

In 2000, Level 3 and RCN entered into joint build arrangements for the construction of certain network facilities. Under these agreements Level 3 provided approximately \$10 million of construction services to RCN in 2000. RCN also purchased \$2 million and \$1 million of telecommunications services from the Company in 2000 and 1999, respectively.

#### (18) Other Matters

On February 17, 2000, Level 3 announced a co-build agreement whereby Global Crossing Ltd. participated in the construction of and obtained a 50% ownership interest in the previously announced Level 3 transatlantic fiber optic cable. Under the co-build agreement, Level 3 and Global Crossing Ltd. each separately owns and operate two of the four fiber pairs on the transatlantic cable. Level 3 also acquired additional capacity on Global Crossing Ltd.'s transatlantic cable, Atlantic Crossing 1, during 2000. The transatlantic cable was completed in November 2000.

On April 12, 2000, Level 3 signed an agreement with Viatel Inc. whereby Viatel Inc. agreed to purchase an ownership interest, in one fiber pair on Level 3's transatlantic fiber optic cable system installed by Level 3. As a result of this agreement, both companies own and operate one fiber pair on the transatlantic cable. The Company recognized revenue of \$94 million on this contract during the fourth quarter of 2000, with the remainder being recognized over the term of the contract.

On December 29, 2000, the Company signed an agreement to collaborate with FLAG Telecom on the development of the Northern Asia submarine cable system connecting Hong Kong, Japan, Korea and Taiwan. The system will include Level 3's previously announced eastern link connecting Hong Kong, Taiwan and Japan and a new western link that FLAG Telecom will build to connect Hong Kong, Korea and Japan. The Company expects the Hong Kong to Japan segment of the eastern link to be in service in the second quarter of 2001, with the eastern link's Taiwan segment to follow in late 2001. The Company expects the entire western link to be ready for service in early 2002. Level 3 and FLAG Telecom will each own three fiber pairs throughout the new system. The total cost of the entire Northern Asia system is estimated to be approximately \$900 million. Level 3's share of the cost is approximately \$450 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 31, 2000, Level 3 had outstanding letters of credit of approximately \$47 million. The Company does not believe it is practicable to estimate the fair value of the letters of credit and does not believe exposure to loss is likely nor material.

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### LEVEL 3 COMMUNICATIONS, INC. AND SUBSIDIARIES

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

#### (19) Subsequent Events

On January 18, 2001, Level 3 announced that in order to provide the company with additional flexibility in funding its business plan, it filed a universal shelf registration statement with the Securities and Exchange Commission relating to \$3.0 billion of common stock, preferred stock, debt securities, warrants, stock purchase agreements and depositary shares. The registration statement, (declared effective by the Securities and Exchange Commission on January 31, 2001), allows Level 3 to publicly offer these securities from time to time at prices and terms to be determined at the time of the offering. When combined with the remaining availability under its existing effective universal shelf registration statement, the availability under the registration statements allows Level 3 to offer an aggregate of up to \$3.156 billion of securities.

Level 3 currently intends to use the net proceeds of any offering of these securities for working capital, capital expenditures, acquisitions, and other general corporate purposes. Consistent with this approach, Level 3 may use the net proceeds for additions or expansions to its currently funded business plan.

#### (20) Unaudited Quarterly Financial Data



	March		June		September		December	
	2000	1999	2000	1999	2000	1999	2000	1999
	(in millions except per share data)							
Revenue.....	\$ 177	\$ 102	\$ 234	\$ 106	\$ 341	\$ 134	\$ 433	\$ 173
Loss from Operations....	(277)	(126)	(308)	(183)	(320)	(207)	(440)	(225)
Net Loss.....	(271)	(105)	(281)	(44)	(351)	(147)	(552)	(191)
Loss per Share (Basic and Diluted):								
Continuing Operations.....	\$ (.77)	\$ (.33)	\$ (.77)	\$ (.13)	\$ (.96)	\$ (.43)	\$ (1.50)	\$ (.56)

Loss per share was calculated for each three-month period on a stand-alone basis. As a result of stock transactions during the periods, the sum of the loss per share for the four quarters of each year may not equal the loss per share for the twelve month periods.

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#### Exhibit 21

Level 3 Communications, Inc.  
 PKS Information Services, Inc.  
 Level 3 Communications, LLC  
 BTE Equipment, LLC  
 Level 3 International, Inc.  
 Level 3 Holdings, B.V.

Level 3 Communications Limited (UK)

Level 3 Holdings, Inc.  
 KCP, Inc.

#### EXHIBIT 23.1

#### CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our report dated January 24, 2001 on the consolidated financial statements of Level 3 Communications, Inc. as of December 31, 2000 and 1999 and for the three years ended December 31, 2000, included in this Annual Report on Form 10-K into Level 3 Communications, Inc.'s previously filed Registration Statements on Forms S-3 (File Nos. 333-53914, 333-91899, 333-68887 and 333-71713) and on Forms S-8 (File Nos. 333-79533, 333-42465, 333-68447, 333-58691 and 333-52697).

/s/ Arthur Andersen LLP

Denver, Colorado  
 March 6, 2001

#### Exhibit 23.2

#### CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-53914, 333-91899, 333-68887 and 333-71713) and on Form S-8 (No. 333-79533, 333-42465, 333-68447, 333-58691 and 333-52697) of Level 3 Communications, Inc. of our report dated March 8, 2000 relating to the financial statements and financial statement schedules of RCN Corporation and Subsidiaries as of December 31, 1999 and 1998, which is incorporated by reference in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Philadelphia, Pennsylvania  
March 6, 2001

**End of Filing**

**FORM 10-K/A-1**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

(Mark One)  
**X ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934**

For the fiscal year ended December 31, 2000

OR

**- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

*Commission file number: 0-15658*

**Level 3 Communications, Inc.**

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

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

1025 Eldorado Boulevard, Broomfield, Colorado  
(Address of principal executive offices)

80021  
(Zip code)

(720) 888-1000  
(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 per share  
Rights to Purchase Series A Junior Participating Preferred Stock,  
par value \$.01 per share

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 X 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. (Cover continued on next page)

(Cover continued from prior page)

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Title Outstanding Common Stock, par value \$.01 per share 367,802,921 as of February 26, 2001

**DOCUMENTS INCORPORATED BY REFERENCE**

List hereunder the following documents if incorporated by reference and the Part of the Form 10-K (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; (2) Any proxy or information statement; and (3) Any prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act of 1933. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1980).

Portions of the Company's Definitive Proxy Statement for the 2001 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K

(End of cover)

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### Item 8 to the Level 3 Communications, Inc. (the Registrant) Annual Report on

Form 10-K for the year ended December 31, 2000 is hereby amended and restated in its entirety as set forth below.

Financial statements and supplementary financial information for Level 3 Communications, Inc. (f/k/a Peter Kiewit Sons', Inc.) and Subsidiaries begin on page F-1.

The financial statements of an equity method investee (RCN Corporation) are required by Rule 3.09 and are incorporated by reference from RCN's Form 10-K for the year ended December 31, 2000, filed under Commission No. 000-22825.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this amended report to be signed on its behalf by the undersigned, thereunto duly authorized, this 11th day of April, 2001.

### Level 3 Communications, Inc.

By: /s/ Neil J. Eckstein  
Name: Neil J. Eckstein  
Title: Vice President

## Exhibit 23.1

### CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our report dated January 24, 2001 on the consolidated financial statements of Level 3 Communications, Inc. as of December 31, 2000 and 1999 and for the three years ended December 31, 2000, incorporated by reference in this Annual Report on Form 10-K/A-1, into Level 3 Communications, Inc.'s previously filed Registration Statements on Forms S-3 (File Nos. 333-53914, 333-91899, 333-68887 and 333-71713) and on Forms S-8 (File Nos. 333-79533, 333-42465, 333-68447, 333-58691 and 333-52697).

/s/ Arthur Andersen LLP

Denver, Colorado  
April 10, 2001

## Exhibit 23.2

## CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-53914, 333-91899, 333-68887 and 333-71713) and on Form S-8 (No. 333-79533, 333-42465, 333-68447, 333-58691 and 333-52697) of Level 3 Communications, Inc. of our report dated March 2, 2001 relating to the financial statements and financial statement schedules of RCN Corporation and Subsidiaries as of December 31, 2000 and 1999, which is incorporated by reference in this Form 10-K/A.

*/s/ PricewaterhouseCoopers LLP*

*Philadelphia, Pennsylvania*

*April 10, 2001*

**End of Filing**

**Exhibit D**

**Illustrative Local Exchange Tariff**

LOCAL EXCHANGE SERVICE

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TARIFF SCHEDULE APPLICABLE TO  
LOCAL EXCHANGE SERVICES  
WITHIN THE STATE OF SOUTH DAKOTA  
BY  
LEVEL 3 COMMUNICATIONS, LLC

Issued by:

Thomas C. Stortz  
Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027  
(303) 926-3000

---

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

## LOCAL EXCHANGE SERVICE

CHECK SHEET

Current pages in this tariff are as follows:

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## LOCAL EXCHANGE SERVICE

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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 a rate increase.
- (L) To signify material relocated from or to another part of tariff schedule with no change in text, rate, rules or conditions.
- (N) To signify new materials including listing, rate, rule or condition.
- (R) To signify a rate reduction.
- (T) To signify change in wording of text but no change in rate, rule or condition.

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APPLICATION OF TARIFF

This Tariff contains the regulations and rates applicable to intrastate and local exchange access services provided by Company to business Customers for telecommunications between points within the State of South Dakota. Company's services are furnished subject to the availability of facilities and capacity 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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## LOCAL EXCHANGE SERVICE

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**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.

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.

Commission: South Dakota Public Utilities Commission.

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 Judgment 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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## LOCAL EXCHANGE SERVICE

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**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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## LOCAL EXCHANGE SERVICE

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**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.
- 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.

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LOCAL EXCHANGE SERVICE

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**SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)****2.5**     Terms and Conditions

- 2.5.1     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.
- 2.5.2     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.
- 2.5.3     The tariffs of the Company shall be interpreted and governed by the laws of the State of South Dakota 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.
- 2.6.2     Except for the extension of allowances to the Customer for interruption in service as set forth in Section 9.0, Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.
- 2.6.3     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

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## LOCAL EXCHANGE SERVICE

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

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emergencies, insurrections, riots, wars, unavailability of rights-of-way or materials, or strikes, lockouts, work stoppages, or other labor difficulties.

- 2.6.4 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.
- 2.6.5 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.
- 2.6.6 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.
- 2.6.7 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.
- 2.6.8 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.
- 2.6.9 Notwithstanding any other provision of this tariff and pursuant to S.D. Codified Laws Sections 49-13-1 and 49-13-1.1, any person claiming to be damaged by Company may either make complaint to the Commission or may bring suit on his own behalf for the recovery of damages in any court of competent jurisdiction in South Dakota, but no person may pursue both remedies at the same time.
- 2.6.10 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.
- 2.6.11 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

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## LOCAL EXCHANGE SERVICE

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

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construction, delays in obtaining right-of-way approvals and delays in actual construction work.

2.6.12 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.

2.6.13 **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.**

2.6.14 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

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## LOCAL EXCHANGE SERVICE

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

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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.
- 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

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## LOCAL EXCHANGE SERVICE

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

---

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.

2.8.9 Network Interface Device (NID)

A physical piece of equipment (jack, block or other device) that provides the point of interconnection between a Customer's inside wiring and Company's at a Customer's designated premises. The physical point where Company's network and network responsibilities terminate and a Customer's responsibilities begin. It is the Company's responsibility to install the NID.

2.8.9.1 There is no charge for this equipment, but there may be an installation charge if the Customer wants the NID located in an unusual location.

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 South Dakota Public Utilities Commission, 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.

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## LOCAL EXCHANGE SERVICE

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

**2.14 Universal Emergency Telephone Number Service**

- 2.14.1 This tariff does not provide for the inspection or constant monitoring of facilities to discover errors, defects or malfunctions in the service, nor does the Company undertake such responsibility.
- 2.14.2 911 information consisting of the names, addresses and telephone numbers of all telephone Customers is confidential. The Company will release such information via the Data Management System only after a 911 call has been received, on a call by call basis, only for the purpose of responding to an emergency call in progress.
- 2.14.3 The 911 calling party, by dialing 911, waives the privacy afforded by non-listed and non-published service to the extent that the telephone number, name and address associated with the originating station location are furnished to the Public Safety Answering Point.
- 2.14.4 After the establishment of service, it is the Public Safety Agency's responsibility to continue to verify the accuracy of and to advise the Company of any changes as they occur in street names, establishment of new streets, changes in address numbers used on existing streets, closing and abandonment of streets, changes in police, fire, ambulance or other appropriate agencies' jurisdiction over any address, annexations and other changes in municipal and county boundaries, incorporation of new cities or any other similar matter that may affect the routing of 911 calls to the proper Public Safety Answering Point.

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## LOCAL EXCHANGE SERVICE

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

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2.14.5 The Company assumes no liability for any infringement, or invasion of any right of privacy or any person or persons caused, or claimed to be caused, directly or indirectly by the use of 911 Service. The Public Safety Agency agrees, except where the event, incidents or eventualities set forth in this sentence are the result of the Company's gross negligence or willful misconduct, to release, indemnify, defend and hold harmless the Company from any and all loss or claims whatsoever, whether suffered, made, instituted or asserted by the Public Safety Agency or by any other party or person, for any personal injury to or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others. The Public Safety Agency also agrees to release, indemnify, defend and hold harmless the Company for any infringement of invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of 911 Service features and the equipment associated therewith, or by any services furnished by the Company in connection therewith, including, but not limited to, the identification of the telephone number, address or name associated with the telephone used by the party or parties assessing 911 Service hereunder, and which arise out of the negligence or other wrongful act of the Public Safety Agency, its user, agencies or municipalities, or the employees or agents of any one of them, or which arise out of the negligence, other than gross negligence or willful misconduct, of the Company, its employees or agents.

2.15 Operator Service Requirements

2.15.1 Company provided intrastate operator assisted communications services will observe the following requirements:

2.15.1.1 Identify itself at the time the end-user accesses its service.

2.15.1.2 Upon request, quote all rates and charges for its services to the end-user accessing its system

2.15.1.3 Arrange to have posted in plain view at each telephone location which automatically accesses the Company's operator service network and where its services are made available to the public or transient end-users:

2.15.1.3.1 the Company's operator service name and address;

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

- 2.15.1.3.2 bill and service dispute calling information including the operator service provider's dispute resolution phone number;
  - 2.15.1.3.3 clear and specific instructions informing the end-user how to access a local exchange telephone company operator as an alternative available to the end-user; and
  - 2.15.1.3.4 notice concerning any and all amounts to be billed by the Company's operator services on behalf of any host location or third party which will appear on the operator service provider's bill for services rendered.
- 2.15.1.4 In instances when the Company is unable to complete the call and it requires transfer to another telephone corporation which may affect the rates and charges applicable to the telephone bill, inform the caller of the transfer and its possible effect on the applicable rates and charges, before any charges are incurred.
- 2.15.1.5 In the case of such transfer, the telephone corporation or provider to which the call is transferred shall identify itself and inform the caller of the transfer's effect on the applicable rates and charges, before any charges are incurred.
- 2.15.2 The Company will comply with the following provisions:
- 2.15.2.1 Providers of intrastate operator assisted communications services shall not take any action or enter into any arrangement which restricts end-users selection among competing interexchange telephone corporations or end users access to competing providers of intrastate operator assisted communications services, or pay any commissions or other compensation to any entity engaged in such action or arrangement.

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**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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**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 Department 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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**SECTION 3 - OBLIGATIONS OF THE CUSTOMER (CONT'D)**

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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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## LOCAL EXCHANGE SERVICE

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**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 Customers will only be charged once, on either an interstate or intrastate basis, for any nonrecurring or optional features.
- 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

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**SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)**

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 local 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, Customer will be assessed a \$20.00 fee per check returned.

4.3 Discontinuance of Service

- 4.3.1 Upon nonpayment of any amounts owing to the Company, the Company may, by giving ten (10) days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- 4.3.2 Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving thirty (30) days prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- 4.3.3 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.
- 4.3.4 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.
- 4.3.5 Upon the Company's discontinuance of service to the Customer, 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%)).

4.4 Cancellation of Application for Service

- 4.4.1 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.

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**SECTION 4 – PAYMENT ARRANGEMENTS (CONT'D)**

- 4.4.2 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%)).
- 4.4.3 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.
- 4.4.4 The special charges described above will be calculated and applied on a case-by-case basis.

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**SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)**4.5 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.

4.6 Taxes

The Customer is responsible for the payment of Federal excise taxes, state and local sales and use taxes and all taxes, fees, the 911 tax and other exactions imposed on the Company or its services by governmental jurisdictions, other than taxes imposed generally on corporations. All such taxes, fees, and charges shall be separately designated on the Company's invoices, and are not included in the tariffed rates.

4.7 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. Any Customer who has a dispute shall be advised by the Company that the Customer may file a formal or informal complaint with the Commission.

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**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 Section 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 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 4.6, 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

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**SECTION 5 - USE OF CUSTOMER'S SERVICE BY OTHERS (CONT'D)**

- 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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**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.
- 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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**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.
- 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

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**SECTION 8 – CUSTOMER EQUIPMENT AND CHANNELS (CONT'D)**

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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 all requirements referenced herein 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 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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**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

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## LOCAL EXCHANGE SERVICE

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**SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE (CONT'D)**

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9.3 Two or More Service Interruptions

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.

9.4 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.

9.5 No credit allowance will be made for:

- 9.5.1 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;
- 9.5.2 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;
- 9.5.3 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;
- 9.5.4 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;
- 9.5.5 interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- 9.5.6 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;
- 9.5.7 interruption of service due to circumstances or causes beyond the control of the Company; and

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**SECTION 9 - ALLOWANCES FOR INTERRUPTIONS IN SERVICE (CONT'D)**

9.5.8 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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**SECTION 10 - APPLICATION OF RATES**

This Section is used to measure airline distance between two points of service. The application of these charges is to dedicated service.

**10.1 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:

10.1.2.1 Obtain the vertical and horizontal coordinates for each Point of Service location.

10.1.2.2 Compute the difference between the vertical coordinates of the two Points of Service; and compute the difference between the two horizontal coordinates.

10.1.2.3 Square each difference between the vertical coordinates and the horizontal coordinates.

10.1.2.4 Add the square of the vertical coordinates difference and the square of the horizontal coordinates difference.

10.1.2.5 Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained.

For example: 
$$\frac{(V2 - V1)^2 + (H2 - H1)^2}{10}$$

10.1.2.6 Take the square root of the result.

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## LOCAL EXCHANGE SERVICE

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**SECTION 11 - EXCHANGE ACCESS SERVICE**11.1 General

Exchange Access Service provides a business Customer with a telephonic connection and a unique telephone number address on the public switched telecommunications network. Each Exchange Access Service enables users to:

- 11.1.1 receive calls from other stations on the public switched telecommunications network;
- 11.1.2 access other services offered by the Company as set forth in this tariff;
- 11.1.3 access certain interstate and international calling services provided by the Company;
- 11.1.4 access (at no additional charge) the Company's operators and business office for service related assistance;
- 11.1.5 access (at no additional charge) emergency services by dialing 0- or 9-1-1; and
- 11.1.6 access services provided by other common carriers which purchase the Company's Switched Access services as provided under the Company's Federal and State tariffs, or which maintain other types of traffic exchange arrangements with the Company.
- 11.1.7 Exchange Access Service cannot be used to originate calls to other telephone companies' caller-paid information services (e.g., NPA 900, NXX 970, 540, etc.). Calls to those numbers and other numbers used for caller-paid information services will be blocked. Calls to numbers "NXX 976" will also be blocked unless otherwise specified by the Customer at the time service is ordered. Should a Customer request unblocking for access to the "NXX 976" caller-paid information service, the Company will bill and collect on behalf of the telephone companies' information provider holding the Customer fully liable for all charges incurred for use of the information provider's service.

Each Exchange Access Service is available on a "Full" service basis, whereby service is delivered to a demarcation/connection block at the Customer's premises.

The following Exchange Access Services are offered:

DID Trunk Service  
Digital Trunk Service

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**SECTION 11 - EXCHANGE ACCESS SERVICE (CONT'D)**

11.2 Exchange Access Service Areas

Exchange Access Services are provided (pursuant to Section 12.1) in limited geographic areas. Exchange Access Services bearing the following NPA-NXX designations are provided at the following locations and in the following areas:

<u>NPA-NXX</u>	<u>Exchanges in Which Full Service is Available</u>
----------------	---

Exchange Service areas will be supplied after interconnection agreement.

11.3 Calling Areas

Geographically-defined Local Calling Areas<sup>1</sup> are associated with each Exchange Access Service provided pursuant to Section 12.1. Exchange Access Services bearing the following NPA-NXX designations shall have the following local calling areas:

<u>NPA-NXX</u>	<u>Exchange</u>	<u>Additional Local Calling Exchanges</u>
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<sup>1</sup> Rates and rate plans for Local Calling Area calls placed over Company-provided Exchange Access Services are set forth in Section 13.

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**SECTION 11 - EXCHANGE ACCESS SERVICE (CONT'D)**

11.4 Digital Trunk Service (DID Trunks, Outbound Only Trunks, and Two-Way Combination Trunks)

Digital Trunk Service provides a Customer with a digital connection operating at a full DS1 speed of 1.544 Mbps which is time division multiplexed into 24 individual voice-grade telephonic communications channels, each of which can be used to place one-way inbound, one-way outbound and two-way (combination) trunks. Digital Trunks are provided for connection of compatible Customer-provided private branch exchanges (PBX) to the public switched telecommunications network. Each Digital Trunk is provided with dual tone multi-frequency (DTMF) or multi-frequency (MF) signaling, as specified by the Customer, Digital Trunks may be configured into hunt groups with other Company-provided Digital Trunks for the same Customer within the same local calling area. The terminal interface for each Digital Trunk Service is a smart jack.

Non-recurring and monthly recurring rates per Digital Trunk per point, apply as follows:

Link and Port:	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Per T-1	\$772.00	\$500.00
Port Element: DID, DID/DOD	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Per Channel	\$50.00	\$30.00

11.4.2 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.

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**SECTION 11 - EXCHANGE ACCESS SERVICE (CONT'D)**

11.4.3 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

11.5 Direct Inward Dial (DID) Service

11.5.1 DID service can be purchased in conjunction with Company provided trunk services. 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 trunk services contained herein.

11.5.2 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.

11.5.3 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

11.6 Directory Listings

For each Customer of Company-provided Exchange Access Service(s), Company shall arrange for the listing of the Customer's main billing telephone number in the directory(ies) published by the dominant Local Exchange Carrier in the area at no charge. At a Customer's option, Company will arrange for additional listing at the following rates:

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Each Additional Listing:	\$0.00	\$1.42

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LOCAL EXCHANGE SERVICE

**SECTION 12 - LOCAL CALLING SERVICE**

12.1 Description

Local Calling Service provides a Customer with the ability to originate calls from a Company-provided exchange access line to all other stations on the public switched telephone network bearing the designation of any central office of the exchanges and zones defined as local. The rates set forth in this section apply to all direct dialed local calls. For operator-assisted (non-aggregator) local calls, the operator charges listed in Section 12.3 apply in addition to the charges listed below.

12.2 Option 1 Local Calling Plan

12.2.1 Description

Option 1 Local Calling Plan provides Local Calling Service billable on a per minute basis. Option 1 calls will be billed in one-minute increments with an initial billing period of one minute. The rates set forth in this section apply to all outgoing direct-dialed calls placed to telephone stations within the caller's exchange area as defined in Section 11. Option 1 Local Calling Plan is the standard local calling plan provided with exchange access services, as described in Section 11.

12.2.2 Rates

	<u>Per Minute</u>
First Minute	\$0.06
Each Additional Minute	\$0.05

12.2.3 Information Services Call Blocking

The term "Information Services Call Blocking" denotes the Company's central office call blocking service that allows the Company's residential and business subscribers to block access to all directly-dialed, the Company's operator-assisted and the Company's operator entered billing 976 and 900 programs, and other local service providers within South Dakota and to all Interexchange Carrier 900 calls originating within the Telephone Company's service area.

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## LOCAL EXCHANGE SERVICE

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**SECTION 12 - LOCAL CALLING SERVICE (CONT'D)**12.3 Operator Services12.3.1 Description

12.3.1.1 Operator Handled Calling Services are provided to Customers and Users of Company-provided Exchange Access Services, and to Customers and Users of exchange access lines which the Customer subscribes to the Company's interexchange outbound calling services.

12.3.2 Definitions

Person-to-Person: Calls completed with the assistance of a Company operator to a particular person, station, department or PBX extension specified by the calling party. Charges may be billed to the Customer's commercial credit card and/or LEC calling card, calling station, called station, or a designated third-party station. Calls are dialed with the assistance of a Company operator.

Station-to-Station: Refers to calls other than person-to-person calls billed to either the end user's commercial credit card and/or non-proprietary calling card. Calls are dialed with the assistance of a Company operator. Collect calls to coin telephones and transfers of charges to third telephones which are coin telephones will not be accepted.

Operator Dialed Charge: The Customer places the call without dialing the destination number, although the capability to do it himself exists. The Customer will dial "0" for local calls and "00" for long distance calls and then requests the operator to dial the called station.

12.3.3 Rates

In addition to any applicable usage charges, the following operator-assisted charges will apply:

	<u>Per Call Charges</u>
Person-to-Person (Customer Dialed)	\$1.50
Station-to-Station (Customer Dialed) (Billed to Third Party, Collect)	\$0.75
Operator Dialed Charge (applies in addition to other operator charges)	\$0.75

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## LOCAL EXCHANGE SERVICE

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**SECTION 12 - LOCAL CALLING SERVICE (CONT'D)**12.3.4 Busy Line Verify and Line Interrupt Service12.3.4.1 Description

Upon request of a calling party the Company will verify a busy condition on a called line.

12.3.4.1.1 The operator will determine if the line is clear or in use and report to the calling party.

12.3.4.1.2 The operator will interrupt the call on the called line only if the calling party indicates an emergency and requests interruption.

12.3.5 Regulations

## 12.3.5.1 A charge will apply when:

12.3.5.1.1 The operator verifies that the line is busy with a call in progress.

12.3.5.1.2 The operator verifies that the line is available for incoming calls.

12.3.5.1.3 The operator verifies that the called number is busy with a call in progress and the Customer requests interruption. The operator will then interrupt the call, advising the called party the name of the calling party. One charge will apply for both verification and interruption.

## 12.3.5.2 No charge will apply:

12.3.5.2.1 When the calling party advises that the call is to or from an official public emergency agency.

12.3.5.2.2 Under conditions other than those specified in Section 12.3.5.1.

12.3.5.2.3 Busy Verification and Interrupt Service is furnished where and to the extent that facilities permit.

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LOCAL EXCHANGE SERVICE

**SECTION 12 - LOCAL CALLING SERVICE (CONT'D)**

12.3.5.2.4 The Customer shall identify and save the Company harmless against all claims that may arise from either party to the interrupted call or any person.

12.3.6 Rates

	<u>Per Request</u>
Busy Line Verify Service	\$0.75
Busy Line Verify Verification With Interrupt Service	\$1.55

12.4 Directory Assistance

12.4.1 Description

Customers and Users of the Company's calling services (excluding toll free services), may obtain Directory Assistance in determining telephone numbers within South Dakota by calling the Directory Assistance operator.

12.4.2 Rates

12.4.2.1 Customers are allowed three (3) free Directory Assistance calls per month. After the monthly three (3) free call allowance is exhausted, Directory Assistance charges will apply for all requests for which the Company's facilities are used. Each number requested is charged for as shown below. Requests for information other than telephone numbers will be charged the same rate as shown for the applicable request for telephone numbers.

	<u>Rate</u>
Per Number Requested	\$0.29

12.4.2.2 A credit will be given for calls to Directory Assistance when:

- 12.4.2.2.1 The Customer experiences poor transmission or is cut off during the call;
- 12.4.2.2.2 The Customer is given an incorrect telephone number; or
- 12.4.2.2.3 The Customer inadvertently misdials an incorrect Directory Assistance NPA.

To receive a credit, the Customer must notify the Company operator or Business Office of the problem experienced.

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## LOCAL EXCHANGE SERVICE

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**SECTION 13 - MISCELLANEOUS SERVICES AND SURCHARGES**13.1 Service Implementation13.1.1 Description

Absent a promotional offering, service implementation charges will apply to new service orders or to orders to change existing service.

13.1.2 RatesNon-Recurring

Per Service Order                      \$30.00

13.2 Restoration of Service13.2.1 Description

A restoration charge applies to the restoration of suspended service and facilities because of nonpayment of bills and is payable at the time that the restoration of the suspended service and facilities suspended is arranged. The restoration charge does not apply when, after disconnection of service, service is later re-installed.

13.2.2 RatesNon-Recurring

Per Occasion                              \$8.50

13.3 Maintenance of Service

13.3.1 When a Customer reports a trouble to the Company for clearance, and no trouble is found in the Company's facilities, the Customer shall be responsible for payment of a visit charge for the period of time from when Company personnel are dispatched to the Customer's premises to when the work is completed. Failure of Company personnel to find trouble Company facilities will result in no charge if the trouble is actually in those facilities, but not discovered at the time.

13.3.2 Where a NID exists, if the Company is unable to test for dial tone and the problem proves to be beyond the NID (within Customer premises), a maintenance charge is applicable. In the event there is no NID and/or the Company is unable to test for dial tone, then no maintenance charge will be assessed. In those cases where the Customer has bought an inside wire maintenance warranty/plan (a non-regulated service) from the Company, no maintenance charge will be applicable regardless of the dial tone test results or whether a NID exists or not.

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**SECTION 13 - MISCELLANEOUS SERVICES AND SURCHARGES (CONT'D)**

13.3.3 The Customer shall be responsible for payment of a visit charge when the Company dispatches personnel to the Customer's premises, and the trouble is in the equipment of communications system provided by other than the Company.

13.3.4 No credit allowance will be applicable for the interruption involved if the visit charge applies.

13.4 Rate

The applicable rate is \$65.00 per visit in addition to materials and/or labor charges.

13.5 Presubscription

Customers have a right to chose an intraLATA and an interLATA carrier when equipment and facilities permit. The Company allows Customers to presubscribe to the carrier of their choice for intraLATA and interLATA toll calls, without dialing an access code.

The following charge applies per line or per trunk for each local line or local trunk PIC charge requested. There is no charge for the first PIC charge.

PIC charge	
- per line or trunk	\$5.00

13.6 Telecommunication Relay Service (TRS)

Enables deaf, hard-of-hearing or speech-impaired persons who use a Text Telephone (TT) or similar devices to communicate freely with the hearing population not using TT and vice versa. A Customer will be able to access the state provider to complete such calls. The Company will impose a surcharge to all Customers at a level determined by the Commission.

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**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.

**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

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## LOCAL EXCHANGE SERVICE

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

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-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.

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## LOCAL EXCHANGE SERVICE

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**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

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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.
- 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.

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**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**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 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:

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**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

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14.6.2.5      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).

14.6.2.6      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 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 endpoint.

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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**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 Recurring Rate</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$1,200
Interoffice Channel Mileage (Per Mile)	\$30
Nonrecurring Installation Rate	\$1,000

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**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

14.7.2.2      Type II DS3 Service

<b>Monthly Recurring Rate</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$2,025
Interoffice Channel Mileage (Per Mile)	\$41
Nonrecurring Installation Rate	\$1,000

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## LOCAL EXCHANGE SERVICE

**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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LOCAL EXCHANGE SERVICE

**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 Recurring Rate</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$200
Interoffice Channel Mileage (Per Mile)	\$13.55
Nonrecurring Installation Rate	\$525

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LOCAL EXCHANGE SERVICE

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

14.7.3.2      Type II DS1 Service

<b>Monthly Recurring Rate</b>	<b>1 Year</b>
Interoffice Channel Mileage (Fixed)	\$200
Interoffice Channel Mileage (Per Mile)	\$13.55
Nonrecurring Installation Rate	\$525

ISSUED:

EFFECTIVE:

Issued By:            Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
                              Level 3 Communications, LLC  
                              1450 Infinite Drive  
                              Louisville, CO 80027

LOCAL EXCHANGE SERVICE

**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.

<b>Service Configuration</b>	<b>Non-Recurring</b>	<b>Recurring</b>
DS3 Channel between a Customer 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	

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

LOCAL EXCHANGE SERVICE

**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 Customer Locations		Standard DS3 Rate Schedule
Digital Channels @ Both Customer Locations	No incremental charge	No incremental charge

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

LOCAL EXCHANGE SERVICE

**SECTION 14 - DEDICATED ACCESS SERVICES (CONT'D)**

14.7.6 DS0 Service

14.7.6.1 Basic Type I DS0 Service

DS0 Service	Non- Recurring	Monthly Recurring	
		Fixed Charges	DS0 Mileage
64 kbps	\$300	\$150	.65/mile

ISSUED:

EFFECTIVE:

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Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027



LOCAL EXCHANGE SERVICE

**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.

Standard Rate Elements	Non-Recurring	Monthly Recurring
DS1 Channel between Customer 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

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

LOCAL EXCHANGE SERVICE

**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				

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

## LOCAL EXCHANGE SERVICE

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**SECTION 15 - SPECIAL ARRANGEMENTS****15.1 Individual Case Basis (ICB) Arrangements**

Arrangements will be developed on a case-by-case basis in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for a service offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such services in this tariff. ICB rates will be offered to the Customer in writing and on a nondiscriminatory basis.

ICBs will be filed with the Communications Division of the Commission.

**15.2 Promotional Programs**

The Company may make promotional offerings of its tariffed services which may include reducing or waiving applicable charges for the promoted service. No individual promotional offering will exceed six months in duration, and any promotional offering will be extended on a non-discriminatory basis to any Customer similarly classified who requests the specific offer.

At the Company's option, a letter outlining the promotion may be filed with the Commission Staff in lieu of filing language in the tariff.

**15.3 Special Assembly**

The Company may provide a unique intrastate service arrangement for a Customer where no tariffed services exists for the service. The unique service can be provided via a Special Assembly.

The Company will file the Special Assembly including the contract terms, conditions and rates by letter with the Communications Division.

**15.4 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:

---

**ISSUED:****EFFECTIVE:**

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

## LOCAL EXCHANGE SERVICE

---

**SECTION 15 - SPECIAL ARRANGEMENTS (CONT'D)**

- 15.4.1 where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- 15.4.2 of a type other than that which the Company would normally utilize in the furnishing of its services;
- 15.4.3 over a route other than that which the Company would normally utilize in the furnishing of its services;
- 15.4.4 in a quantity greater than that which the Company would normally construct;
- 15.4.5 on an expedited basis;
- 15.4.6 on a temporary basis until permanent facilities are available;
- 15.4.7 involving abnormal costs; or
- 15.4.8 in advance of its normal construction.

**15.5 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.

**15.6 Basis for Cost Computation**

The costs referred to in Section 15.4 preceding may include one or more of the following items to the extent they are applicable:

- 15.6.1 installed costs of the facilities to be provided including estimated costs for the rearrangements of existing facilities. Installed costs include the cost of:
  - 15.6.1.1 equipment and materials provided or used,
  - 15.6.1.2 engineering, labor and supervision,
  - 15.6.1.3 transportation,

---

**ISSUED:****EFFECTIVE:**

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

## LOCAL EXCHANGE SERVICE

---

**SECTION 15 - SPECIAL ARRANGEMENTS (CONT'D)**

15.6.1.4 rights of way, and

15.6.1.5 any other item chargeable to the capital account;

15.6.2 annual charges including the following:

15.6.2.1 cost of maintenance;

15.6.2.2 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;

15.6.2.3 administration, taxes and uncollectible revenue on the basis of reasonable average costs for these items;

15.6.2.4 any other identifiable costs related to the facilities provided; and

15.6.2.5 an amount for return and contingencies.

15.7 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.

15.7.1 The maximum termination liability is equal to the total cost of the special facility as determined herein, adjusted to reflect the redetermined estimate net salvage, including any reuse of the facilities provided.

15.7.2 The maximum termination liability 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.

15.8 Term

The minimum term for any Level 3 Communications, LLC dedicated access 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.

---

ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1450 Infinite Drive  
Louisville, CO 80027

**Exhibit E**

**Marketing Materials**



Products  
Corporate

Support  
Investors

Sales Inquiries  
Careers

Technical

## (3)CONNECT MODEM

- (3)Connect Modem
- Inquire Online
- Product Brochures
- Sales and Gateway Locations

For more information on Level 3 products and services, please call 1-877-4LEVEL3 (1-877-453-8353)

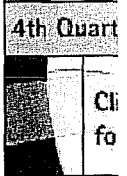
### (3)Connect Modem

If you require an end-to-end, dial-up solution, our (3)Connect Modem service is your answer. (3)Connect Modem, which supports the top nine dial-up ISPs in the U.S., allows you to concentrate on marketing your products, while remaining confident that your end users can access a high-quality network. Level 3 takes care of setting up a local Internet dial-up network, securing local numbers, deploying modems, and staffing a round-the-clock operations center to manage the network and hardware so you can do what you do best - service your own end users.

(3)Connect Modem service is offered out of 50 Gateways in the U.S. and two in Asia, covering more than 2,700 rate centers. Service is sold on a per-port basis for a flat monthly fee or on a metered basis based on the total number of hours used. The monthly charge includes local dial-in numbers, complete network coverage for a specific region, modems to collect the incoming traffic, and managed routers. In addition, our Dedicated service includes a dedicated connection (provisioned and maintained by Level 3) from the Level 3 Gateway to the customer.

[Click here](#) for a **Product Overview** brochure.  
[Click here](#) if you are interested in purchasing this product.

TOP





# (3)LINK<sup>SM</sup> PRIVATE LINE

## ➤ (3)Link Private Line

- (3)Link Private Line U.S. Intercity
- (3)Link Unprotected Private Line

## ➤ Inquire Online

## ➤ Product Brochures

## ➤ Sales and Gateway Locations

For more information on Level 3 products and services, please call 1-877-4LEVEL3 (1-877-453-8353)

## (3)Link Private Line

### (3)Link Private Line Metro

(3)Link Private Line Metro service makes it possible for Level 3 customers to transport high volumes of voice, video, or data over secure channels to your local presence. Our (3)Link Private Line Metro service provides you with an excellent solution for true end-to-end connectivity between two long-haul points-of-presence (POPs).

Ranging in speeds from DS-3 to OC-48 in 37 markets worldwide, (3)Link Private Line Metro services currently include two categories:

- Metro Point-to-Point - A circuit between two of your sites via the Level 3 Gateway. This application consists of two local circuits into our Gateway, one from each customer site. Both of the circuits must be On-Net.
- Metro Access - A circuit from your site to access Level 3's network services in a Level 3 Gateway. This service connects to the backbone and can be provided On-Net or Off-Net.

[Click here](#) for a (3)Link Private Line Metro **Product Overview** brochure.  
[Click here](#) if you are interested in purchasing this product.



### (3)Link Private Line U.S. Intercity

Level 3 provides dedicated point-to-point (3)Link Private Line service to more than 50 cities in North America. This service is ideal for customers with multiple locations who need to transport high volumes of voice, video, or data over a secure channel. As a (3)Link Private Line U.S. Intercity customer, you can easily migrate to higher capacity as your network requirements increase.

[Click here](#) for a (3)Link Private Line U.S. Intercity **Product Overview** brochure.  
[Click here](#) if you are interested in purchasing this product.



### (3)Link Unprotected Private Line

(3)Link Unprotected Private Line service in North America gives you the ability to create a new meshed network or add capacity or protection to your existing transport-based network. Called (3)Link UPL for short, this product gives you point-to-point connections at OC-3 or OC-12 concatenated bandwidths. (Concatenated services maximize the usable payload of the available bandwidth by removing the overhead needed to manage subrate services.)

(3)Link UPL includes segments between designated North American cities. (3)Link UPL in metropolitan markets (and metro route diversity) will be introduced in 2002. However, you can choose standard protected (3)Link Metro Private Line in combination with (3)Link UPL today.

[Click here](#) for a (3)Link Unprotected Private Line **Product Overview** brochure.





**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**

**For the Period of February 14, 2002 through February 20, 2002**

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3705 Fax: 605-773-3809

**CONSUMER COMPLAINTS**

**CT02-006 In the Matter of the Complaint filed by Lillian R. Lehi, Huron, South Dakota, against IDT America, Corp. and WebNet Communications, Inc. Regarding Unauthorized Switching of Services.**

Complainant states that she is receiving billings from IDT and WebNet which she did not authorize. Complainant requests that the PUC investigate her complaint and find out why these charges are appearing on her bills. South Dakota law requires the company who authorized the unauthorized billing to pay the consumer \$1,000.00.

Staff Analyst: Mary Healy  
Staff Attorney: Karen Cremer  
Date Docketed: 02/19/02  
Intervention Deadline: N/A

**TELECOMMUNICATIONS**

**TC02-016 In the Matter of the Filing by Z-Tel Communications, Inc. for Approval of Petition for Relief of Certification Requirement to Post Surety Bond.**

On March 9, 2001, the Commission issued a Certificate of Authority to Z-Tel Communications, Inc. The Certificate of Authority was issued with the requirement of a continuous \$25,000.00 surety bond. The bond has been cancelled by the insurer due to an ultra-conservative review of bond holdings by the United States Fire Insurance Company in the wake of the Enron failure. On February 15, 2002, Z-Tel filed a petition for relief of the company's certification requirement to post a surety bond.

Staff Analyst: Michele M. Farris  
Staff Attorney: Kelly Frazier  
Date Filed: 02/15/02  
Intervention Deadline: 03/08/02

**TC02-017 In the Matter of the Filing by McLeodUSA Telecom Development, Inc. for Approval of its Intrastate Switched Access Tariff and for an Exemption from Developing Company Specific Cost-Based Switched Access Rates.**

**FRIEBERG, ZIMMER, DUNCAN & NELSON, L.L.P.**

ATTORNEYS AT LAW

115 NORTH THIRD STREET

P.O. Box 511

**BERESFORD, SOUTH DAKOTA 57004-0511**

TELEPHONE: (605) 763-2107

TELECOPIER: (605) 763-2106

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JOHN H. ZIMMER  
DENNIS L. DUNCAN  
THOMAS H. FRIEBERG  
LARRY A. NELSON  
JEFFREY A. COLE  
GREGORY T. BREWERS  
BRENDA M. ASK (SD & IA)  
TIFFANI K. LANDEEN-HOEKE

OF COUNSEL: BLAINE O. RUDOLPH

AUGUST FRIEBERG (1863-1932)  
ROSCOE A. FRIEBERG (1903-1982)

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PARKER, SOUTH DAKOTA  
(605) 297-4446

CANTON, SOUTH DAKOTA  
(605)987-2686

LENNOX, SOUTH DAKOTA  
(605)647-5152

February 28, 2002

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

South Dakota Public Utilities Commission  
Capitol Building  
500 East Capitol Avenue  
Pierre, SD 57501-5070

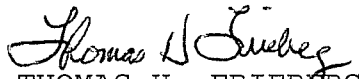
Re: Application of Level 3 Communications, LLC

Dear PUC:

Enclosed please find the original and ten copies of the Petition to Intervene that I am filing on behalf of the Beresford Municipal Telephone Company in regard to the Application of Level 3 Communications, LLC.

By copy of this letter, I am serving the same upon Russell M. Blau, Tamar E. Finn, Brian McDermott and David A. Gerdes.

Yours very truly,

  
THOMAS H. FRIEBERG  
For the Firm

THF/lj

Enc.

pc: Russell M. Blau, Tamar E. Finn, & Brian McDermott  
David A. Gerdes

BEFORE THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

\_\_\_\_\_  
Application of )  
 )  
**Level 3 Communications, LLC** )  
 )  
To Expand its Certificate of Public )  
Convenience and Necessity to Provide )  
Facilities-Based Local Exchange )  
Services in the Service Territory )  
of Beresford Municipal Telephone Co. )  
\_\_\_\_\_ )

Docket No. \_\_\_\_\_

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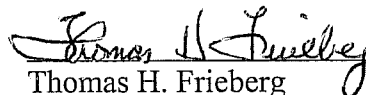
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

**PETITION TO INTERVENE**

Comes now the City of Beresford and Beresford Municipal Telephone Company and herby petitions the South Dakota Public Utilities Commission for an order granting intervenor status in the above docket. As a certified telecommunications provider within the City of Beresford, Beresford Municipal Telephone Company has an interest in the pending proceedings before the Commission. This Petition for Intervention is filed pursuant to ARSD 20:10:32:04 and Beresford Municipal therefore seeks intervenor status without the necessity of meeting the requirement for petitions to intervene set forth in ARSD Chapter 20:10:01.

Dated this 28<sup>th</sup> day of February, 2002.

Respectfully submitted,



\_\_\_\_\_  
Thomas H. Frieberg  
Attorney for Beresford Municipal  
Telephone Company  
Frieberg, Zimmer, Duncan & Nelson  
P.O. Box 511  
Beresford, South Dakota 57004  
(605) 763-2107


Certificate of Service

I, Thomas H. Frieberg, Attorney for Beresford Municipal Telephone Company, hereby certify that the original and ten true and correct copies of the foregoing Petition to Intervene were served by United States First Class Mail, postage prepaid, upon the South Dakota Public Utilities Commission, addressed to Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota, 57501-5070, and a true and correct copy was served upon:

Russell M. Blau  
Tamar E. Finn  
Brian McDermott  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007-5116

David A. Gerdes  
May, Adam, Gerdes & Thompson LLP  
503 S. Pierre St.  
Pierre, SD 57501

on this 28<sup>th</sup> day of February, 2002.

  
Thomas H. Frieberg  
Attorney for Beresford Municipal  
Telephone Company

LAW OFFICES  
**MAY, ADAM, GERDES & THOMPSON LLP**  
503 SOUTH PIERRE STREET  
P.O. BOX 160  
PIERRE, SOUTH DAKOTA 57501-0160

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DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
NEIL FULTON  
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March 26, 2002

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**MAR 26 2002**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

OF COUNSEL  
WARREN W. MAY

GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966

TELEPHONE  
605 224-8803

TELECOPIER  
605 224-6289

E-MAIL  
dag@magt.com

HAND DELIVERED

Debra Elofson, Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **LEVEL 3 COMMUNICATIONS; CERTIFICATE OF AUTHORITY APPLICATION  
FOR BERESFORD TERRITORY**  
Docket TC02-018  
Our file: 3848

Dear Debra:

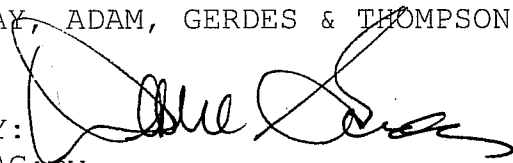
Enclosed are original and ten copies of Level 3 Communications response to staff data requests of March 12, 2002, which please file. I am also enclosing an extra face page from the response. Please date stamp it, enter the docket number and return it to me in the enclosed self-addressed stamped envelope.

With copies of this letter, I am sending the enclosure to the service list. Under separate cover, we are filing two items associated with this response pursuant to ARSD 20:10:01:41 as confidential material.

Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
DAG:mw

Enclosures

cc/enc: Keith Senger, Hand Delivered  
Kelly Frazier, Hand Delivered  
Brian McDermott/Tamar Finn, Federal Express  
Mike Romano, Federal Express  
Tom Freiberg, Beresford Telephone (two copies)  
First Class Mail

BEFORE THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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MAR 26 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

\_\_\_\_\_) )  
Application of ) )  
 ) )  
**Level 3 Communications, LLC** ) )  
 ) )  
To Expand its Certificate of Public ) )  
Convenience and Necessity to Provide ) )  
Facilities-Based Local Exchange ) )  
Services in the Service Territory ) )  
of Beresford Municipal Telephone Co. ) )  
\_\_\_\_\_ ) )

Docket No. TC02-018

**LEVEL 3 COMMUNICATIONS, LLC's RESPONSE TO STAFF REQUESTS**

Level 3 Communications, LLC ("Level 3" or "Applicant") submits the following responses to the Staff Requests dated March 12, 2002.

1. Please provide an "E-mail address" for the applicant. [pursuant to ARSD 20:10:32:03(1)].

**Mike.Romano@Level3.com**

2. Please provide "a description of the applicant's experience providing any telecommunications services in South Dakota or in other jurisdictions, including the types of services provided, and the dates and nature of state or federal authorization to provide the services." [ARSD 20:10:32:03(5)].

**As described in Footnote 1 and Paragraph 5 of the Application of Level 3 Communications, LLC for Approval to Expand its Certificate of Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Co. ("Application"), the Commission has granted Level 3 Communications, LLC ("Level 3") authority to provide telecommunications services in the State of South Dakota including facilities-based local exchange in the service territories of Qwest Corporation ("Qwest"). *Certificate of Authority of Level 3 Communications, LLC to provide telecommunications services in South Dakota*, Docket No. TC99-015 (November 2, 1999). As described in Paragraph 14 of the Application, Level 3 holds authority to provide telecommunications services in all fifty (50) states and the District of Columbia. The Applicant has not been denied authority to provide telecommunications services in any state. Level 3's certificates authorizing it to provide telecommunications services, to the best of its knowledge, are currently in good standing throughout the United States. As further clarification, Level 3**

states that it has not yet begun providing service in Qwest service territory in South Dakota and provides the following information concerning its experience in providing telecommunications services in other jurisdictions and the dates and nature of its state and federal authorizations:

- **Level 3 provides private line services in the following states: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington.**
- **Level 3 provides direct inward dial services in the following states: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin.**
- **Level 3 Communications, LLC holds an Overseas Common Carrier Section 214 license from the FCC (Actions Taken, Public Notice, 13 FCC Rcd. 3098, 3101 (1998); FCC File No. ITC-98-016).**
- **A list of the dates and nature of Level 3's state authorizations to provide telecommunications services is included in Attachment 1.**

3. Provide "a list and specific description of the types of services the applicant seeks to offer and the means by which the services will be provided including:

- (a) Information indicating the classes of customers the applicant intends to serve;
- (b) Information indicating the extent to and time-frame by which applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale;
- (c) A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers; and
- (d) Information identifying the types of services it seeks authority to provide by reference to the general nature of the service." [ARSD 20:10:32:03(7)]

3a) As described in Paragraph 20 of the Application, Level 3 intends to offer its limited scope of services to, among other customers, Internet service providers who may not have points of presence in many of the exchange areas covered by this Application. As further clarification, Level 3 states that it intends to offer its services to business customers who have a need for inbound-only data services or nonswitched services.

3b and c) Level 3 seeks to provide its services as soon as possible after receiving authority from the Commission. As discussed in Paragraph 9 of the Application, Level 3 intends to deploy an independent network by either building its own facilities or leasing the facilities of other carriers. As further clarification, Level 3 intends to use its own switch and facilities leased from other carriers authorized to provide service in Beresford Municipal Telephone Co. ("Beresford") service territory. At this time, Level 3 does not intend to

resell the services of other carriers. Since Level 3 is in the initial planning stages of entering this market, Level 3 has not yet entered into lease agreements for such facilities and therefore cannot name specific facilities or carriers which Level 3 intends to use.

3d) As stated in Paragraph 6 of the Application, Level 3 is authorized to provide telecommunications services in the State of South Dakota including facilities-based local exchange telecommunications services within the service territory of Qwest, and hereby seeks authorization to provide the same services in the exchanges served by Beresford.

As further clarification, Level 3 has revised its sample tariff to include only those services that Level 3 intends to provide immediately following certification. As shown by the revised tariff, included as Attachment 2 to this Response, Level 3 will provide the following services: direct inward dial trunks and service and dedicated access service. Level 3 is willing to limit its request for authority in Beresford territory to include only these service categories.

4. Provide "information regarding policies, personnel, or arrangements made by the applicant which demonstrates the applicant's ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements." [ARSD 20:10:32:03(9)(b)].

As stated in Paragraph 16, Level 3 maintains a toll-free customer service telephone number for customer inquiries ((877) 4-LEVEL-3 or (877) 453-8353). As further clarification, Level 3 notes that this number is available 24 hours a day, seven days a week. Level 3 also provides, as Attachment 3, a sample of its customer complaint intake form.

As described in Paragraph 5 of the Application, this Commission granted Level 3 a Certificate of Authority in Docket No. TC99-015 based in part upon finding that Level 3 possessed the requisite managerial and technical qualifications to provide telecommunications services in South Dakota. Together, Level 3's officers have decades of experience in the telecommunications industry which provides the technical and operational foundation necessary to execute the company's business plan, to provide its proposed telecommunications services, and to operate and maintain Level 3's facilities over which the proposed services will be deployed. Descriptions of the extensive telecommunications and managerial experience of Level 3's key management personnel were attached as *Exhibit B* to the Application. Level 3 is managerially and technically qualified to provide telecommunications services throughout the State of South Dakota and maintain its equipment to ensure compliance with any commission quality of service requirements.

As further clarification, if customers experience service-affecting problems, they may contact Level 3 at the same number used to receive customer inquiries or complaints ((877) 4-LEVEL-3 or (877) 453-8353), 24 hours a day, 7 days a week. The Technical Customer Account Manager ("TCAM") that receives the call will open a trouble ticket and dispatch/refer the ticket to the Network Operations Center ("NOC"). The NOC will then ensure that appropriate personnel are dispatched to clear the trouble and be responsible



for obtaining status and escalating the problem if necessary. Attachment 4 provides an overview of Level 3's NOC and TCAM procedures.

5. Provide "information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services." [ARSD 20:10:32:03(10)].

**As stated in Paragraph 7 of the Application, Level 3 will continue to comply with all applicable laws and regulations relevant to the provision of 911, enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services.**

**As further clarification, Level 3 provides the following information. At this time, Level 3 does not provide, nor does it intend to provide in the near future, dial tone access to the PSTN to its customers. As such, Level 3 requests a waiver of ARSD 20:10:32:10(1)-(6) & (8) and 20:10:32:03(10), concerning the provision of access to certain services, in the Request for Waiver it is filing with these Responses. Level 3 has therefore modified its proposed tariff accordingly and removed any reference to local calling, 911, operator services, directory assistance, presubscription, and telecommunications relay services. However, Level 3 will comply with all applicable laws and regulations regarding such functionalities/services prior to offering any outbound, dial tone, basic local exchange calling capability.**

6. The financial statements submitted with the application were for Level 3 Communications, Inc. Please submit the financial statements in accordance with ARSD 20:10:32:03(11) for the applicant, Level 3 Communications, LLC.

**In lieu of providing its own financial statements, Level 3 submitted the financial statement of its parent company. As explained in Paragraph 8 of the Application, Level 3 will continue to rely on the financial resources of Level 3 Communications, Inc., its ultimate parent, to provide initial capital investment and to fund its operations in the service territory of Beresford. Level 3 Communications, Inc. will continue to provide financial support to Level 3 so long as Level 3 requires additional capital and resources to construct or lease facilities.**

**As further clarification, Level 3 notes that Level 3 Communications, Inc.'s proforma consolidated 2000 operating revenues were approximately \$1,185,000,000.00. Level 3 Communications, Inc. proforma income statement and balance sheet appear beginning on page 51 of its SEC Form 10-K, which was attached as *Exhibit C* to the Application. To the extent the Commission finds it cannot rely on the financial statements of Level 3's parent company, Level 3 requests a waiver of ARSD 20:10:32:03(11) in the Request for Waiver Level 3 is filing simultaneously with these Responses. As explained in the Request for Waiver, instead of filing financial statements for the Applicant, Level 3 seeks to rely on the \$25,000 bond it filed in conjunction with its earlier certification in Qwest territory.**

7. It appears that item 9 of the application gives an explanation why Level 3 should receive a Commission waiver from ARSD 20:10:32:03(12). However, no request for waiver was provided. Please provide the specific information required by ARSD 20:10:32:03(12)(a), (b) and (c) or request a waiver in accordance with ARSD 20:10:32:03(22).

**As explained in Paragraph 9 of the Application, to the extent that Beresford possesses an exemption or suspension under Section 251(f) of the federal Communications Act, Level 3 does not seek interconnection under Section 251(c) at this time, nor does Level 3 seek at this time to challenge Beresford's exemption from any of the other obligations specified in Section 251(c). As clarification, Beresford is the local exchange carrier with whom Level 3 intends to interconnect. Level 3 contacted Beresford on March 11, 2002, to discuss its Application and negotiating interconnection arrangements. On March 18, 2002, QSI Consulting, a firm retained by Level 3 to assist in negotiating interconnection arrangements, contacted Beresford again to initiate negotiations and to provide Beresford with a draft traffic exchange agreement for its consideration. That correspondence, which was sent by electronic mail, is provided as Attachment 5 to these Responses.**

8. South Dakota Law at 49-31-1.1, 1.2 and 1.3 list what services are defined as noncompetitive, emerging competitive, and fully competitive. Item 11 of the application indicated that Level 3 is not providing cost supports because the services it provides in South Dakota are competitive services. Please provide a complete and comprehensive list of services the application intends to provide.

**As explained in Paragraph 6 of the Application, Level 3 initially sought to provide facilities-based local exchange services. As noted in response to Request No. 3(d) above, however, Level 3 has revised its sample tariff to narrow significantly its proposed services and is willing to similarly restrict the types of services Level 3 seeks authority to provide. As narrowed, these services include DID and dedicated access services. Level 3's dedicated access services are private line services that are therefore classified, pursuant to South Dakota Law at 49-31-1.3, as fully competitive services. Level 3's DID services are also classified as fully competitive. See *Inquiry into the Competitive Status of Optional Services in South Dakota*, Docket F-3744, Decision and Order (Feb. 21, 1989).**

9. Please indicate Level 3's target market for this application. [ARSD 20:10:32:03(15)].

**As stated in Paragraph 12 of the Application, Level 3 will continue to market its services in the same manner as it currently markets its services in other states. Level 3's primary way to market its services is through its direct sales force. Applicant does not intend to engage in telemarketing or multi-level marketing. A copy of marketing materials, available on Level 3's web-site, were attached as *Exhibit F* to the Application. In addition, as described in Paragraph 20 of the Application, Level 3 intends to offer its services to, among other customers, Internet service providers who may not have points of presence in many of the exchange areas covered by this Application. As further clarification, Level 3 provides as Attachment 6 a map showing the areas where Level 3 intends to market its services once its application is approved.**

10. Please provide “the date by which the applicant expects to meet the service obligations imposed pursuant to §20:10:32:15 and applicant’s plans for meeting the service obligations.” [ARSD 20:10:32:03(16)].

**As stated in Paragraph 13 of the Application, Level 3 acknowledged the requirements of §20:10:32:15 and reserved its right to seek a waiver of such requirements or extension of the deadline. At this time, Level 3 cannot provide the date by which it expects to meet the service obligations or a plan for meeting the service obligations. Therefore, pursuant to ARSD 20:10:32:18, Level 3 requests a waiver of ARSD 20:10:32:15 in the Request for Waiver it is filing simultaneously with these Responses.**

11. Please provide e-mail addresses for the contact individuals supplied in item 15 of the application. [ARSD 20:10:32:03(18)]

**Mike.Romano@Level3.com; Greg.Rogers@Level3.com**

12. Please provide “information concerning how the applicant plans to bill and collect charges from customers who subscribe to its proposed local exchange services.” [ARSD 20:10:32:03(19)].

**As stated in Paragraph 16 of the Application, Level 3 will comply with Commission regulations regarding customer billing and collection. Level 3’s proposed billing and collection terms, including due dates, late charges, disconnect procedures, and billing dispute procedures, are spelled out in detail in Section 4 of the sample tariff Level 3 included as *Exhibit E* to the Application, and the revised sample tariff included as Attachment 2 to these Responses. As further clarification, Level 3 states that it bills its customers directly and does not utilize a third-party billing agent. Nor, at this time, does Level 3 intend to require deposits from its customers.**

13. Please provide “information concerning the applicant’s policies relating to solicitation of new customers and a description of the efforts the applicant shall use to prevent the unauthorized switching of local service customers by the applicant, its employees, or agent.” [ARSD 20:10:32:03(20)].

**As stated in Paragraph 17 of the Application, Level 3 will comply with Commission regulations regarding unauthorized switching of customers. As further clarification, Level 3 includes as Attachment 7 a sample Letter of Authorization it uses to sign up its customers for service.**

14. Why is the federal tax identification number for Level 3 Communications, LLC provided in this filing different than the federal tax identification number provided in a previous filing (docket TC99-015)?

**The tax identification number is correct in the Application. Level 3 erroneously submitted the tax identification number for its parent corporation in Level 3's previous filing (docket TC99-015).**

15. Has Level 3 provided notice pursuant to ARSD 20:10:32:04?

**As noted in response to Request No. 7 above, Level 3 has contacted Beresford to discuss its Application and interconnection arrangements. Beresford intervened in this Docket on February 28, 2002. To Level 3's knowledge, Beresford is the only company providing local telephone service in the service territory in which Level 3 seeks certification. Therefore, because Beresford has actual knowledge of Level 3's Application, Level 3 requests that the notice requirement of ARSD 20:10-32:04 be waived. (See Request for Waiver).**


16. Is Level 3 requesting a waiver for ARSD 20:10:32:18 and ETC status? If so, can Level 3 provide evidence that they can provide the service or functionality's of 47 C.F.R. 54.101(a), 47 C.F.R. 54.405 and 47 C.F.R. 54.411?

**As stated in Paragraph 13 of the Application, Level 3 acknowledged the requirements of ARSD 20:10:32:15 and reserved its right to seek a waiver of such requirements or extension of the deadline under ARSD 20:10:32:18. As noted in Response No. 10 above, because Level 3 cannot provide the date by which it expects to meet the service obligations or a plan for meeting the service obligations, Level 3 is now requesting a waiver of ARSD 20:10:32:15, and the federal ETC services requirements (47 C.F.R. 54.101(a), 47 C.F.R. 54.405 and 47 C.F.R. 54.411) incorporated by reference therein. (See Request for Waiver.)**

17. Section 2.6 of the proposed tariff attempts to limit the liability of the company. Under South Dakota law found at 49-13-1 and 49-13-1.1, a person has the right to claim damages from a telecommunications company by coming before the Commission or a court of competent jurisdiction. Please delete sections 2.6.2 and 2.6.14. Please delete section 2.6.4 or explain how Level 3 would expect this provision to apply. In section 2.6.9, please change "49-13-1 and 49-13-1.1" to "49-13-1, 49-13-1.1 and any other applicable law."

Please see Attachment 2 for Level 3's revised illustrative tariff which incorporates the changes requested above.

Respectfully Submitted,

By:  5/26/2002

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COUNSEL FOR APPLICANT

# **Attachment 1**

## **List of Level 3 State Certifications**

State	Type of Certification	Date of Certification	Order Number
Alabama	Local Exchange Service & Telephone Toll Service	2/2/1999	26796
Alaska	Intrastate Interexchange Telecommunications Services	8/1/00	U-99-131
Alaska	Local Exchange Telecommunications Service	1/30/01	U-99-132
Arizona	Resold & Facilities-Based Local Exchange, Exchange Access and Interexchange Telecommunications Services	6/4/1999	Decision No. 61737
Arkansas	Facilities-Based and Resold Interexchange Telecommunication Services	12/16/98	Docket No. 98-325-U
Arkansas	Facilities-Based and Resold Local Exchange Telecommunications Services	7/16/01	Docket No. 00-085-U
California	InterLATA and IntraLATA Telecommunications Service as a Facilities-Based Carrier	2/17/98	Decision 98-020119
California	Facilities-Based Competitive Local Carriers and to Offer Resold Local Exchange Services & Intrastate, inter-Local Access and Transport Areas and IntraLATA Authority	3/26/98	Decision 98-03-066
California	Modification of Level 3's Certificate of Public Convenience and Necessity to Provide Switched and Dedicated, Resale and Facilities-Based, Interexchange and Local Exchange Telecommunications Services	8/3/00	Decision No. 00-08-016
Colorado	Local Exchange Telecommunications Services, Emerging Competitive Telecommunications Services	4/8/98	Decision No. C98-373
Connecticut	Installation of Telecommunications Facilities on Public Rights of Way	3/31/99	Docket No. 99-01-26
Connecticut	Reseller and Facilities-Based Provider of Local and Long Distance Services	12/23/98	Docket No 98-07-21
Delaware	Local Exchange Telecommunications Services and to provide Competitive Intrastate Telecommunications Services	12/1/98	Docket No. 98-114

District of Columbia	Resold and Facilities-Based Local Telecommunications Services	5/27/98	Order No. 11184
Florida	Alternative Local Exchange Telecommunication Services	11/19/98	Certificate No. 5725
Florida	Interexchange Telecommunications Service	11/19/98	Certificate No. 5724
Georgia	Interim Certificate of Authority to Resell Interexchange Telecommunications Services	5/19/98	Certificate No. R-516
Georgia	Certificate of Authority to Construct or Operate Telephone Line, Plant or System; IntraLATA and InterLATA Services throughout the State of Georgia	12/7/99	Authority No. X-993
Georgia	Interim Certificate of Authority to Provide Competitive Local Exchange Telecommunication Services	5/19/98	Certificate No. L-081
Georgia	Interim Certificate of Authority to Provide Competitive Local Exchange Telecommunication Services throughout the state of Georgia	Application Approved 3/19/02	Order Pending
Hawaii	Facilities-Based and Resold Intrastate Telecommunications Services	6/29/99	Decision and Order No. 17053
Idaho	Telecommunications services, including basic exchange services, within certain parts of Idaho	12/31/98	Order No. 27855
Illinois	Interexchange telecommunications services and to resell local exchange and interexchange telecommunications services; and to provide facilities-based exchange telecommunications services throughout the state of Illinois	3/27/98	Order No. 97-0676
Indiana	Resold Intrastate, Interexchange Intrastate Telecommunication Services	8/21/98	Certificate Number 9808-4
Indiana	Facilities-Based, Switched and Dedicated, Interexchange and Local Exchange Telecommunications Services and Resold Local Exchange Telecommunications Services	12/2/98	Cause No. 41263



Iowa	Resold Local Exchange Services in the exchanges currently served by US West	4/30/99	Docket No. TCU-99-1
Kansas	Resold and Facilities-Based, Switched and Dedicated Local Exchange Telecommunications Services	5/14/99	Docket No. 99-L3CT-318-COC
Kansas	Intrastate Interexchange Telecommunications Services	5/14/99	Docket No. 99-L3CC-319-COC
Kentucky	Local Exchange Reseller	10/3/98	Tariff Filing No. 59-929
Louisiana	Facilities-Based and Resold Competitive Local Exchange Carrier, Competitive Access Provider and Interexchange Telecommunications Services	10/25/99	Certificate Number TSP00282
Maine	Authority to Provide Local Exchange Service as a Reseller and Approving Schedule of Rates and Terms and Conditions	11/28/00	Docket No. 98-1000
Maine	Facilities Based Interexchange Service	8/18/99	Docket 99-13
Maryland	Authority to Operate as Provider of Local Exchange Service and Switched Access Service	3/17/98	Number TE-2636
Massachusetts	Authority to Provide Switched and Dedicated, Resale and Facilities Based, Interexchange and Local Exchange Telecommunications Services	12/30/97	
Michigan	Basic Local Exchange Service on both a Resold and Facilities Basis in All Exchanges Currently served by Ameritech Michigan & GTE North Incorporated	5/11/98	Case No. U-11640
Minnesota	Competitive Local Exchange Telecommunications Services and Interexchange Service	6/9/99	Docket No. P-5733/NA-98-1905
Mississippi	Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange and Interexchange Telecommunications Services	3/9/99	98-UA-815 - Utility ID # 1655
Missouri	Certificate of Service Authority to Provide Basic Local Telecommunications Services in Missouri	7/13/99	Case No. TA-99-171
Missouri	Certificate of Service Authority to Provide Intrastate Interexchange Telecommunications Services	12/17/98	Case No. TA-99-170

Montana	Local Exchange Service (Facilities-based and Resale) and Long Distance Service (Facilities-Based and Resale)			
Nebraska	33.5	9/21/98		Application No. C-1877
Nebraska	Resold and Facilities-Based, Switched and Dedicated, Local Exchange Telecommunications Services	12/22/98		Application No. C-1876
Nevada	Competitive Provider of Facilities-Based and Resold Local and Long Distance Telecommunications Services	11/16/98		CPC 2384 - Docket No. 98-9028
New Hampshire	Competitive intraLATA Toll Service	9/2/98		Authorization No. IXC30798 - Order No. 22,473
New Hampshire	Authority to Provide Switched and non-Switched Intrastate Local Telecommunications Services in the service territory of Bell Atlantic	9/2/98		Order No. 23,011
New Jersey	Authority to Provide Local Exchange and Interexchange Service	10/20/98		Docket No. TE97120913
New Mexico	Authority to Provide Local Exchange Telecommunications Services	2/20/01		Docket No. 98-558-TC, Utility Case No. 2940
New Mexico	Facilities Based and Resold Intrastate Long Distance Telecommunications Service and Operator Services	5/4/99		Docket No. 98-559-TC, Utility Case No. 2979
New York	Facilities-Based Common Carrier and Reseller of Telephone Services, including local exchange services	3/6/98		Case No. 97-C-2183
North Carolina	Intrastate, Interexchange Long Distance Services and Local Exchange and Exchange Access Telecommunications Services	2/16/99		Docket No. P-779, Sub 1
North Dakota	Resell Interexchange Telecommunications Service	4/14/99		Certificate Number 616
North Dakota	Local Exchange Telecommunications Reseller	4/14/1999		Certificate Number 617
North Dakota	Facilities-based local exchange and interexchange telecommunications services throughout the State of North Dakota	3/13/2002		CPCN Nos. 4798 and 4799
Ohio	Local Exchange Services Pursuant to Level 3's Tariff and Authority to Provide Competitive Telecommunication Services throughout the State of Ohio	2/18/99		Certificate Number 90-9062

Oklahoma	Local Exchange and Interexchange Telecommunications Services in the State of Oklahoma and within the Local Exchange Areas of Southwestern Bell Telephone Company and General Telephone Company of Southwest, Inc.	1/7/00	Order No. 437819
Oregon	Intraexchange Switched and Nonswitched Telecommunications Service and Level 3 is designated as a Competitive Telecommunications provider for intraexchange dedicated transmission service in the exchanges listed in the Certificate and for Interexchange tele	11/20/98	Order No. 98-480
Pennsylvania	Reseller of Interexchange Toll Services; Competitive Access Provider; Facilities-Based Interexchange Toll Services Carrier	5/26/98	F0002, F0003, F0004
Rhode Island	Facilities-Based and Resold Local Exchange Service	10/22/97	Docket 2628
South Carolina	Competitive Intrastate Local Exchange Services, both resold and facilities-based; Resold and facilities-based intrastate interexchange service	11/2/98	Order No. 98-855
South Dakota	Telecommunications Services, Including Local Exchange Services	4/26/99	Docket No. TC99-015
Tennessee	Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services throughout the state of Tennessee	11/24/98	Docket No. 98-00610
Texas	Facilities-based Telecommunications Services within the entire state of Texas	4/20/98	Docket No. 18598 - SPCOA No. 60161
Utah	Local and Interexchange Services and other public telecommunications services anywhere within the state of Utah, except within any local exchange with fewer than 5,000 access lines that is owned or controlled by an incumbent telephone company within fewer	3/8/99	Docket No. 98-2266-01
Vermont	Intrastate Telecommunications services, including local exchange service	5/28/99	Docket No. 6195
Virginia	Intrastate Local Exchange Telephone Service	3/31/98	Certificate No. T-409

Virginia	Interexchange Telecommunications Services	3/31/98	Certificate No. TT-49A
Washington	Interexchange Switched and Intraexchange Telecommunications Services	4/22/98	Docket UT0980491 and Docket UT-980492
West Virginia	Resold and Facilities-based Local exchange and Interexchange services	5/13/99	Case No. 98-1530-T-CN
Wisconsin	Alternative Telecommunications Utility - Reseller	1/28/99	Utility ID 7373
Wisconsin	Authorized to Provide Facilities-Based Switched Local Exchange Service to Residential and Business Customers in the Present Ameritech, Verizon, Mid-Plains, Tel USA, CCW, Kendall, CMW, CW, CNWW, CNW, CLR, CSW, CFBA, and CV Local Service Exchange Areas	3/21/01	Docket 7373-NC-100
Wyoming	Local Exchange Telecommunication Services	4/5/99	Docket No. 70043-TA-98-A (Record No. 4495)

# **Attachment 2**

**Revised Illustrative Tariff**

LOCAL EXCHANGE SERVICE

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TARIFF SCHEDULE APPLICABLE TO  
LOCAL EXCHANGE SERVICES  
WITHIN THE STATE OF SOUTH DAKOTA  
BY  
LEVEL 3 COMMUNICATIONS, LLC

Issued by:

Thomas C. Stortz  
Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
(720) 888-1000

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ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

LOCAL EXCHANGE SERVICE

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CHECK SHEET

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LOCAL EXCHANGE SERVICE

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Broomfield, CO 80021

LOCAL EXCHANGE SERVICE

---

**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 a rate increase.
- (L) To signify material relocated from or to another part of tariff schedule with no change in text, rate, rules or conditions.
- (N) To signify new materials including listing, rate, rule or condition.
- (R) To signify a rate reduction.
- (T) To signify change in wording of text but no change in rate, rule or condition.

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ISSUED:

EFFECTIVE:

Issued By:

Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

LOCAL EXCHANGE SERVICE

---

**APPLICATION OF TARIFF**

This Tariff contains the regulations and rates applicable to intrastate and local exchange access services provided by Company to business Customers for telecommunications between points within the State of South Dakota. Company's services are furnished subject to the availability of facilities and capacity 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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ISSUED:

EFFECTIVE:

Issued By: Thomas C. Stortz, Senior Vice President, General Counsel, and Secretary  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

## LOCAL EXCHANGE SERVICE

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**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.

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.

Commission: South Dakota Public Utilities Commission.

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 Judgment 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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## LOCAL EXCHANGE SERVICE

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**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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## LOCAL EXCHANGE SERVICE

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**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.
- 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.

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LOCAL EXCHANGE SERVICE

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

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 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.

2.5.2 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.

2.5.3 The tariffs of the Company shall be interpreted and governed by the laws of the State of South Dakota 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.

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## LOCAL EXCHANGE SERVICE

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

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- 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 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.
- 2.6.4 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.
- 2.6.5 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.
- 2.6.6 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.
- 2.6.7 Notwithstanding any other provision of this tariff and pursuant to S.D. Codified Laws Sections 49-13-1 and 49-13-1.1 and any other applicable law, any person claiming to be damaged by Company may either make complaint to the Commission or may bring suit on his own behalf for the recovery of damages in any court of competent jurisdiction in South Dakota, but no person may pursue both remedies at the same time.
- 2.6.8 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.

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## LOCAL EXCHANGE SERVICE

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

- 2.6.9 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.
- 2.6.10 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.
- 2.6.11 **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.**

**2.7 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.

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## LOCAL EXCHANGE SERVICE

---

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

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- 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.
- 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.

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## LOCAL EXCHANGE SERVICE

---

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

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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.

2.8.9 Network Interface Device (NID)

A physical piece of equipment (jack, block or other device) that provides the point of interconnection between a Customer's inside wiring and Company's at a Customer's designated premises. The physical point where Company's network and network responsibilities terminate and a Customer's responsibilities begin. It is the Company's responsibility to install the NID.

2.8.9.1 There is no charge for this equipment, but there may be an installation charge if the Customer wants the NID located in an unusual location.

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.

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## LOCAL EXCHANGE SERVICE

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**SECTION 2 - UNDERTAKING OF THE COMPANY (CONT'D)****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 South Dakota Public Utilities Commission, 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 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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## LOCAL EXCHANGE SERVICE

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**SECTION 3 - OBLIGATIONS OF THE CUSTOMER**

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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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## LOCAL EXCHANGE SERVICE

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**SECTION 3 - OBLIGATIONS OF THE CUSTOMER (CONT'D)**

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- 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 Department 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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LOCAL EXCHANGE SERVICE

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**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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## LOCAL EXCHANGE SERVICE

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**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 Customers will only be charged once, on either an interstate or intrastate basis, for any nonrecurring or optional features.

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.

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## LOCAL EXCHANGE SERVICE

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**SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)**

- 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 local 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, Customer will be assessed a \$20.00 fee per check returned.

**4.3 Discontinuance of Service**

- 4.3.1 Upon nonpayment of any amounts owing to the Company, the Company may, by giving ten (10) days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- 4.3.2 Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving thirty (30) days prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- 4.3.3 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.
- 4.3.4 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.
- 4.3.5 Upon the Company's discontinuance of service to the Customer, 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%)).

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## LOCAL EXCHANGE SERVICE

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**SECTION 4 – PAYMENT ARRANGEMENTS (CONT'D)**

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**4.4 Cancellation of Application for Service**

- 4.4.1 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.
- 4.4.2 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%)).
- 4.4.3 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.
- 4.4.4 The special charges described above will be calculated and applied on a case-by-case basis.

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Broomfield, CO 80021

## LOCAL EXCHANGE SERVICE

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**SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)**4.5 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.

4.6 Taxes

The Customer is responsible for the payment of Federal excise taxes, state and local sales and use taxes and all taxes, fees, the 911 tax and other exactions imposed on the Company or its services by governmental jurisdictions, other than taxes imposed generally on corporations. All such taxes, fees, and charges shall be separately designated on the Company's invoices, and are not included in the tariffed rates.

4.7 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. Any Customer who has a dispute shall be advised by the Company that the Customer may file a formal or informal complaint with the Commission.

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## LOCAL EXCHANGE SERVICE

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**SECTION 5 - USE OF CUSTOMER'S SERVICE BY OTHERS**

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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 Section 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 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.

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LOCAL EXCHANGE SERVICE

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**SECTION 5 - USE OF CUSTOMER'S SERVICE BY OTHERS (CONT'D)**

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, 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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LOCAL EXCHANGE SERVICE

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**SECTION 6 - CANCELLATION OF SERVICE**

[RESERVED FOR FUTURE USE]

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