

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

<b>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. )</b>	<b>ORDER DENYING MOTION TO DISMISS AND SPECIFYING PROCEDURE FOR DETERMINING COMPLETENESS  TC02-018</b>
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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>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