

**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.)	DETERMINATION CONCERNING ADEQUACY OF NOTICE TC02-018
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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 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 7th day of June, 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: <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