

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 14th day of  
February, 2008.

Application of Level 3 Communications, L.L.C.     )  
For Approval of Merger                                 )     **Case No. TM-2008-0203**

**ORDER APPROVING MERGER**

Issue Date: February 14, 2008

Effective Date: February 24, 2008

**Syllabus:** This order approves a proposed internal corporate restructuring plan whereby Level 3 Communications, L.L.C. ("Level 3 L.L.C.") and its wholly-owned subsidiary Eldorado Acquisition Three, L.L.C. ("Eldorado"), would be merged into one entity, Level 3 L.L.C.

**Background and Procedural History**

On December 19, 2007, Level 3 L.L.C. filed an application, pursuant to Section 392.300, RSMo 2000, and 4 CSR 240-3.525, requesting that the Commission grant approval for Level 3 L.L.C. to merge with its wholly-owned subsidiary Eldorado, with Level 3 L.L.C. being the surviving entity. On December 26, 2007, the Commission issued notice, set a deadline for intervention and directed its Staff to investigate and file a report and recommendation advising the Commission whether it should approve Level 3 L.L.C.'s application. The intervention deadline was January 15, 2008. No person, group or entity sought intervention, and no proper party requested a hearing.

In Missouri, Level 3 L.L.C. is authorized to provide interexchange, access, and competitive local exchange services pursuant to Commission Orders in Case No. TA-99-

170 and Case No. TA-99-171. Currently, Eldorado is a wholly owned subsidiary of Level 3 L.L.C. Level 3 L.L.C. is, in turn, a wholly owned subsidiary of Level 3 Communications, Inc. ("Level 3 Inc."), a Delaware corporation that is headquartered in Broomfield, Colorado. Through its various operating subsidiaries, Level 3 Inc. is authorized to provide competitive telecommunications services throughout the United States. Level 3 Inc. is also authorized to provide domestic interstate and international services by virtue of authority granted by the Federal Communications Commission. In its application, Level 3 L.L.C. emphasizes that none of the operations of the Level 3 Inc. operating companies, including those of Level 3 L.L.C., will be affected by the proposed reorganization.

### **Description of the Merger**

Level 3 Inc. proposes to complete an internal reorganization whereby Eldorado will be merged with and into Eldorado's direct parent, Level 3 L.L.C. Eldorado is a non-operating holding company that does not directly provide telecommunications or other products or services. Eldorado has not been granted a certificate of convenience and necessity from the Commission, has no Commission-approved tariff and has no Missouri telecommunications customers. Although as a legal matter, Level 3 L.L.C. will acquire all of the assets of Eldorado in connection with the proposed reorganization, the transaction will be entirely transparent to Level 3 L.L.C. and will not affect the rates, terms or conditions of Level 3 L.L.C.'s Missouri services.

Immediately following the closing of the proposed merger, Level 3 L.L.C. and Level 3 Inc.'s other operating subsidiaries will continue to provide service to their existing customers in Missouri under the name, pursuant to their existing authority, and under the same rates, terms and conditions as those services are currently provided. The proposed

change in company structure will not affect the ultimate ownership or control of Level 3 L.L.C. or any other Level 3 Inc. operating subsidiary. Level 3 L.L.C.'s ownership structure will not be affected by the proposed internal transaction. Level 3 L.L.C. asserts that the transaction will serve the public interest by streamlining the corporate ownership structure of the Level 3 Inc. entities and simplifying the corporate reporting requirements.

### **Staff's Recommendation**

Staff filed its verified recommendation and memorandum regarding the application on January 30, 2008. Staff indicates that Level 3 L.L.C.'s application substantially complies with Commission Rule 4 CSR 240-3.525, which sets forth the procedural filing requirements for telecommunications company applications seeking approval of mergers or consolidations.<sup>1</sup> Moreover, Staff advises that Level 3 L.L.C. has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates as described in Commission Rule 4 CSR 240-2.060(1)(K); does not have an annual report overdue, is not involved in bankruptcy proceedings and does not owe any past due PSC assessment fees as described in 4 CSR 240-2.060(1)(L); and that the proposed merger transactions will have no effect on tax revenues as described in 4 CSR 240-3.525(F).<sup>2</sup>

Staff's recommendation and supporting memorandum also demonstrate that after examining the proposed merger transactions, Staff has concluded that they are not detrimental to the public interest and recommends they be approved. Specifically, Staff notes that Level 3 L.L.C. is a competitively classified company, that the transactions will be

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<sup>1</sup> See Section 386.610, substantial compliance is sufficient to give effect to all of the rules, orders, acts and regulations of the Commission.

transparent to its Missouri customers, and that none of those customers will be switched to a different telecommunications services provider. The Office of the Public Counsel, which is the other party to this case (there were no intervenors), has not filed a recommendation of its own and has not opposed Staff's recommendation.<sup>3</sup>

## **Decision**

Substantively, mergers such as this are governed by Section 392.300.1, RSMo 2000, which provides that no telecommunications company may "sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system" or direct or indirectly merge or consolidate its "line or system, or franchises, or any part thereof" with any other corporation, person, or public utility without first obtaining permission from the Commission. Under that statute, "[t]he Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest."<sup>4</sup> Based on the information provided in the verified application, and upon the verified recommendation and memorandum of Staff, the Commission finds that the merger transactions involving Level 3 L.L.C. and Eldorado are not detrimental to the public interest and that the application shall be approved.

### **IT IS ORDERED THAT:**

1. Level 3 Communications, L.L.C.'s December 19, 2007, "Application for Approval of Merger" is granted.
2. Upon completion of the merger transactions described in the body of this order, Level 3 Communications, L.L.C. shall file an appropriate notice with the Commission

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<sup>3</sup> No proper party filed a response to Staff's recommendation within the ten days allowed for responses pursuant to Commission Rule 4 CSR 240-2.080(15).

and this case shall be closed.

3. This order shall become effective on February 24, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton, Appling,  
and Jarrett, CC., concur

Stearley, Regulatory Law Judge

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<sup>4</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (citing *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 392, 400 (Mo banc 1934)).