

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day
of June, 2006.

In the Matter of the Joint Application of Level 3)
Communications, Inc. and TelCove, Inc. for) **Case No. TM-2006-0433**
Approval of a Transfer of Control of TelCove)
Operations, Inc. and Related Transactions.)

ORDER DISMISSING JOINT APPLICATION

Issue Date: June 13, 2006

Effective Date: June 23, 2006

Syllabus: This order dismisses the Joint Application filed by Level 3 Communications, Inc., and TelCove, Inc. due to a lack of jurisdiction.

On May 11, 2006, Level 3 Communications, Inc., (“Level 3, Inc.”) and TelCove, Inc., filed an application for approval of the transfer of control of TelCove Operations, Inc. (“TelCove-Op”), to Level 3, Inc., and related transactions. Level 3, Inc., is a publicly traded (NASDAQ: LVLT) Delaware corporation. Level 3, Inc., provides voice and data services to carriers, ISPs, and other business customers over its IP-based network through its wholly owned indirect subsidiaries, Level 3 Communications, LLC (“Level 3, LLC”), WiTel Local Network, LLC, and Progress Telecom, LLC (collectively, the “Level 3-Ops”). The Level 3-Ops are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registrations or tariff requirements, or on a deregulated basis. The Level 3-Ops are authorized by the FCC to provide international and domestic interstate services. In Missouri, Level 3, LLC 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. WilTel Communications, LLC is authorized to provide interexchange telecommunications services pursuant to the Commission's Order in Case No. TA-99-66. WilTel Local Network, LLC is authorized to provide intrastate interexchange and non-switched local exchange telecommunications services pursuant to the Commission's Order in Case No. TA-2000-468.

The applicants propose a simultaneous multi-step transaction which will result in Level 3, Inc., becoming the ultimate parent of a fourth Commission certificated telecommunications company: TelCove-Op. TelCove-Op is currently the Missouri operating subsidiary of TelCove, Inc., a Delaware corporation authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate services. In Missouri, TelCove-Op, is authorized to provide basic local exchange and interexchange and nonswitched local exchange telecommunications services pursuant to certificates granted in Case Nos. TA-2000-215 and TA-2000-315, as amended in Case No. LN-2004-0592.

Applicants state that although the proposed transaction will result in a change in the direct ownership of TelCove-Op, no transfer of certificates, assets or customers will occur as a result, and TelCove-Op will retain its authorization to provide intrastate telecommunications services in Missouri. TelCove-Op will operate as a separate subsidiary of Level 3, Inc., and following the consummation of the transaction, its customers will continue to receive service under the same rates, terms and conditions of service. Applicants expect that the transaction will be transparent to TelCove-Op's customers.

On May 23, 2006, the Staff of the Commission filed a Motion to Dismiss Application for Lack of Jurisdiction. Staff states that Section 392.300.2, RSMo, does not apply to this transaction because TelCove-Op, as a Delaware corporation, is not organized or existing under or by virtue of the laws of this state. Staff also states that Section 392.300.1, RSMo, does not apply because TelCove-Op is neither disposing of nor merging its franchise, facilities, or system.

Section 393.300.2 states that no stock corporation, other than a telecommunications company, may buy more than ten percent of the stock of a telecommunications company organized or existing under the laws of this state without first obtaining the Commission's consent. TelCove-Op, the telecommunications company to be purchased, is not a Missouri corporation, but is organized under the laws of the state of Delaware. Thus, TelCove-Op is not subject to the requirements of Section 392.300.2, RSMo 2000.

Section 392.300.1 states that no telecommunications company shall sell or otherwise dispose of its franchise, facilities or system, or merge or consolidate its system or franchise without first having Commission authority to do so. If the Commission approves this transaction, TelCove-Op will retain all of its assets. The ownership interest of the company, however, will transfer to Level 3, Inc.

While the Commission is not bound by the precedent set out in its previous orders, the Commission has consistently interpreted the *Union Pacific* case¹ as stating that the Commission lacks jurisdiction where the transfer of control does not affect the operations of the certificated entity.

¹ *Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917).

Consistent with the recommendations of its Staff and its previous decisions, the Commission concludes that it has no jurisdiction over the proposed transactions.

IT IS ORDERED THAT:

1. The Joint Application filed by Level 3 Communications, Inc., and TelCove, Inc., on May 11, 2006, is dismissed for lack of jurisdiction.
2. This order shall become effective on June 23, 2006.
3. This case may be closed on June 24, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling,
CC., concur.
Gaw and Clayton, CC., dissent.

Voss, Regulatory Law Judge