## BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

## **STAFF RECOMMENDATION**

**COMES NOW** the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and respectfully states as follows:

- 1. On December 19, 2007, Level 3 Communications, LLC ("Level 3 LLC" or "Applicant") filed with the Commission an Application for approval for Level 3 LLC to merge with and into Eldorado Acquisition Three, LLC ("Eldorado"), the Applicant's wholly owned subsidiary, with Level 3 LLC being the surviving entity. According to the Application, Eldorado is a non-operating holding company that does not directly provide telecommunications or other services or products.
- 2. Level 3 LLC states that, following the proposed merger, it will continue to provide services to its Missouri customers under the same name and in accordance with the same rates, terms and conditions as those services are currently provided.
- 3. In an order issued December 26, 2007, the Commission directed the Staff to file its Recommendation in this matter no later than February 5, 2008.
- 4. Subsection 1 of 392.300 RSMo generally provides that no telecommunications company shall sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, *merge or consolidate* such line or system, or franchises, or any part thereof,

with any other corporation, person or public utility, without having first secured from the Commission an order authorizing it to do so.

- 5. The standard for approval of a merger is the same as that for the sale of assets; *i.e.*, that the transaction will not be detrimental to the public interest. See, *In the Matter of the Application of Computer Network Technology Corporation for Authority to Enter into a Merger and Transfer of Control Transaction with Condor Acquisition, Inc., and McDATA Corporation, and Their Respective Shareholders, Order Approving Merger And Directing Filing, Case XM-2005-0283 (March 29, 2005) (citing <i>State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980)).
- 6. In the attached Memorandum (Appendix A), the Staff concludes that the transaction is not detrimental to the public interest, and recommends that the Commission approve Level 3 LLC's proposal.

WHEREFORE, for the reasons stated in the attached Memorandum, the Staff recommends that the Commission issue an Order authorizing the proposed merger of Level 3 Communications, LLC and its wholly owned subsidiary, Eldorado Acquisition Three, LLC.

Respectfully submitted,

/s/ Dennis L. Frey

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## **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this  $30^{th}$  day of January 2008.

/s/ Dennis L. Frey