

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 *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<sup>th</sup> day of January 2008.

*/s/ Dennis L. Frey*