

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 19<sup>th</sup> day of  
February, 2009.

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

In the matter of the Application of	)	
Looking Glass Networks, Inc. and	)	
Level 3 Communications, LLC to	)	Case No. TO-2009-0251
Transfer Customers and	)	
Cancel Looking Glass Network's	)	
Certificate of Service Authority and Tariff	)	

**ORDER GRANTING APPLICATION FOR TRANSFER OF CUSTOMERS**

Issue Date: February 19, 2009

Effective Date: February 19, 2009

The Missouri Public Service Commission grants the application for transfer of customers filed by Level 3 Communications, LLC ("Level 3") and Looking Glass Networks, Inc., ("LGN"), subject to condition set forth in this order.

**Procedure**

On December 15, 2008, Level 3 and LGN ("Applicants") jointly filed a verified application ("application"). The application seeks the Commission's approval of a transfer of customers ("transfer") and cancellation of certificates of service authority and tariff.

The Commission issued an order setting the deadline for applications to intervene from any person at January 13, 2009. As of the date of this order, no person has filed an application to intervene. On January 23, 2009, the Commission's staff ("Staff") filed its

recommendation, with a supporting affidavit, favoring the application under certain conditions. Such conditions are the subject of Applicant's reply and Staff's surreply filed on February 17, 2009.

Because no person intervened and all parties agree with the application, no law requires a hearing before deciding the application,<sup>1</sup> so this action does not constitute a contested case.<sup>2</sup> Therefore, the Commission convened no hearing. The Commission bases its findings on the verified filings.

### **Findings of Fact**

1. Applicants are facilities-based telecommunications companies organized in Delaware and authorized to do business in Missouri. Applicants hold a certificate of service authority to offer the following services in Missouri.

<i>Applicant</i>	<i>State and Type Of Organization</i>	<i>Authority to Provide Services in Missouri</i>
Level 3	Delaware limited liability company	Basic local exchange and local exchange telecommunications services
LGN	Delaware corporation	Intrastate interexchange telecommunications services and non-switched local exchange telecommunications services

2. Level 3 owns Looking Glass Networks Holding Co., Inc. ("Holding"), a corporation that owns LGN. Applicants are reorganizing as follows.

- LGN will merge into Holding.
- Holding will merge into Level 3.
- Level 3 will serve LGN's customers.

To serve LGN's customers is the purpose of the transfer.

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<sup>1</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494 (Mo. App. 1989).

3. The transfer and reorganization will have no effect on Applicants' operations in Missouri.

4. Within the last three years before the application's filing, no pending action or final unsatisfied judgment or decision, involving customer service or rates, have occurred in any state or federal agency or court against Holding and the Applicants. Holding and Looking Glass have no overdue annual report or assessments fees. Applicants are not delinquent in Universal Service Fund charges for October 2008 and January 2009.

5. The reorganization and transfer will not be detrimental to the public interest.

### **Conclusions of Law**

1. The Commission has jurisdiction over mergers and transfers of certain assets:

**No telecommunications company shall** hereafter 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 so to do. [<sup>3</sup>]

That provision requires an order authorizing the transaction because a telecommunications company (LGN<sup>4</sup>) and a corporation (Holding) are merging. Staff and Applicants both cite the standard requiring Applicants to show that the reorganization and transfer are "not

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<sup>2</sup> Section 536.010(4). Sections are in the 2000 Revised Statutes of Missouri.

<sup>3</sup> Section 392.300.1 (emphasis added).

<sup>4</sup> Level 3 is also a telecommunications company. But Level 3 requires no such order because its certificate of service authority includes a waiver of § 392.300.1. Holding is not a telecommunications company, as far as anything before the Commission shows.

detrimental to the public interest[.<sup>5</sup>]" The application and recommendation show that the reorganization and transfer are not detrimental to the public interest.

2. Staff also cites Commission regulation 4 CSR 240-3.525(2)(E), which requires:

An estimate of the impact of the merger on the company's Missouri jurisdictional operations relative to the merger and acquisition in question.

The application and recommendation show that the reorganization will have no impact on Applicants' Missouri jurisdictional operations.

3. Staff further alleges that Level 3's Universal Service Fund charges for October 2008 and January 2009 remain unpaid. But Applicants' reply alleges that Level 3 timely paid Universal Service Fund charges for October 2008 and January 2009, and that Applicants provided supporting documentation to Staff. Staff's surreply agrees that Staff no longer disputes that such payments were timely.

4. Therefore, the Commission is granting the application.

5. Applicants also ask the Commission to cancel LGN's certificates of service authority and tariff upon completion of the transfer, so the Commission is ordering the Applicants to inform the Commission immediately when the transfer is complete.

#### **THE COMMISSION ORDERS THAT:**

1. The application of Level 3 Communications, LLC and Looking Glass Networks, Inc., to transfer customers, filed on December 15, 2008, is granted.

2. Level 3 Communications, LLC shall inform the Commission immediately upon completion of the transfer of customers authorized in ordered paragraph 1 of this order.

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<sup>5</sup> 4 CSR 240-3.520(2)(D) and 4 CSR 240-3.525(2)(D). The former provision, which Applicants cite, applies to

3. This order is effective immediately on issuance.

**BY THE COMMISSION**

( S E A L )

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a faint, illegible background.

Colleen M. Dale  
Secretary

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

Jordan, Regulatory Law Judge

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a transfer of assets. The latter provision, which Staff cites, applies to mergers.