

**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 Transfer)	Case No. TO-2009-0251
Customers and Cancel Looking Glass)	
Network's Certificate of Service Authority)	
And Tariff)	

STAFF'S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through Counsel, and submits this Recommendation to the Missouri Public Service Commission (Commission). For its Recommendation, Staff respectfully states the following:

1. On December 15, 2008, Looking Glass Networks, Inc. (LGN) and Level 3 Communications, LLC (Level 3), together known as the Applicants, filed an Application For Transfer Of Customers And Cancellation Of Certificates Of Service Authority And Tariff (Application). On February 2, 1999, Level 3 was granted certificates of service authority in Case No. TA-99-171, to provide local exchange and basic local telecommunication services in the state of Missouri. On September 21, 2000, LGN was granted certificates of service authority in Case No. TA-2001-55, to provide interexchange and nonswitched local exchange telecommunications services in the state of Missouri. LGN's tariff, MO P.S.C. Tariff No. 1, was also approved.

2. On December 19, 2008, the Commission issued its Order Directing Filing, allowing until January 13, 2009, for proper parties to intervene. The Order also directed Staff to file a recommendation as to the Application no later than January 23, 2009. No motions to intervene were received.

3. LGN's Application states "[i]n order to streamline and better organize the business and operations of Level 3's various operating companies, LGN will be merged into [Looking Glass Networks Holding Co., Inc. (LGN Holding)] and LGN Holding will then be merged into Level 3. LGN's Missouri customers will then become Level 3 customers." As such, the Application should have been filed under 4 CSR 240-3.525, the Commission's merger and consolidation rule, instead of 240-3.520, the Commission's sell, assign, lease, or transfer of assets rule.

4. The Application as filed can be analyzed under 240-3.525, as only one additional filing requirement is included under (2)(E) of the merger rule, that being the Applicants are to provide "[a]n estimate of the impact of the merger on the company's Missouri jurisdictional operations relative to the merger and acquisition in question." In this instance, the Missouri jurisdictional operations remain the same as the Application states LGN's customers will become Level 3 customers, to receive their existing services over the same facilities.

5. Additionally, the standard for Staff's review under 240-3.520 verses 240-3.525 is the same, whether the transaction is not detrimental to the public interest. *See State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W. 2d 393, 400 (Mo. banc 1934).

6. Staff's Memorandum, attached as Appendix A, finds the Applicants' transaction will not be detrimental to the public interest.

7. Applicants do not have any pending action or final unsatisfied judgments or decisions against them from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three years of the date of the Application.

8. Applicants are not delinquent in filing annual reports or payment of assessment fees to the Commission. However, Level 3 is delinquent in its October 2008 remittance of Missouri Universal Service Fund charges, and to date, January 2009 charges have not been remitted.

9. Applicants have requested LGN's certificates of authority and tariff be cancelled by the Commission when the transfer of customers from LGN to Level 3 is complete.

10. The Commission has the authority to cancel a telecommunications certificate pursuant to Section 392.410.5 RSMo (Supp. 2008), which provides "[a]ny certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected."

11. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. 1989). No motions to intervene were received.

WHEREFORE, Staff, through Counsel, recommends the Missouri Public Service Commission issue an order 1) conditioning approval of Looking Glass Networks, Inc.'s merger with Level 3 Communications, LLC, on Level 3's remittance of the delinquent Universal Service Fund charges for October 2008, and January 2009; and 2) requiring Level 3 Communications, LLC to notify the Commission when the transfer of customers is completed, thereafter Looking Glass Networks, Inc.'s certificates of authority and tariff can be cancelled by the Commission.

Respectfully submitted,

/s/ Jennifer Hernandez
Jennifer Hernandez
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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 23rd day of January, 2009.

/s/ Jennifer Hernandez
Jennifer Hernandez

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. TO-2009-0251

From: Lisa Mahaney, Telecommunications Department
William Voight 1/20/09
Utility Operations Division/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of
Competitive Company Transaction**

Date: 1/20/09

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- | | | |
|--|---|--|
| <input type="checkbox"/> Approve Merger
4 CSR 240-3.525 | <input type="checkbox"/> Approve Consolidation
4 CSR 240-3.525 | <input checked="" type="checkbox"/> Approve Sale of Assets
4 CSR 240-3.520 |
| <input type="checkbox"/> Approve Name Change
4 CSR 240-3.545(20) | | |
| <input checked="" type="checkbox"/> Cancel Certificate(s) & Tariff(s)
392.410.5 RSMo | <input type="checkbox"/> Approve Certificate(s) & Tariff(s)
4 CSR 240-3.510 | |

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- This transaction solely involves competitively classified companies.
- Customers have/will receive advance notice.
- Customers can switch to another provider.
- Customers will continue to receive service at the same rates, terms and conditions.
- Other:

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
Looking Glass Networks, Inc.	X		X			C	C	No. 1	
Level 3 Communications, LLC		X		X					

*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

No

Yes

Customers have been notified.

Customers will be notified at least 30 days prior to being switched to a different company. (4 CSR 240-3.525)

Company Name Change Notification

Company has notified its customers of the name change.

Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? Yes No

If yes, a copy of the bankruptcy order is attached.

Competitive Company Transaction Review Items

Administrative:

Application solely involves competitively classified companies.

No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No. CE-2009-0113

Missouri corporations: A Certificate of Good Standing.

Foreign corporations: Authorization to do business in Missouri.

If business conducted under a fictitious name: A copy of registration of the fictitious name.

- No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).
- A statement that no annual report or assessment fees are overdue for any applicant.

Are there additional recommendations or special considerations? No Yes

If yes, explain in an attachment.

- The Company is not delinquent in filing an annual report, and paying the PSC assessment, MoUSF, and Relay Missouri.
- The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

- (No annual report Unpaid PSC assessment. Amount owed:
 Unpaid MoUSF (**Level 3 Communications is late**) Unpaid Relay Missouri)

