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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
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|  | | Public Meeting held September 21, 2017 | | |
| Commissioners Present: | |  | | |
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| |  | | --- | | Gladys M. Brown, Chairman | | Andrew G. Place, Vice Chairman  David W. Sweet  John F. Coleman, Jr. | | | | | |
| Application of Level 3 Communications, LLC for Expanded Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public as a Competitive Local Exchange Carrier Public in the Service Territory of TDS Telecom/Mahanoy & Mahantango Telephone Company | | | A-2017-2605601 | |

ORDER

**BY THE COMMISSION:**

Before this Commission for review is an Application, filed May 19, 2017, by Level 3 Communications, LLC (Applicant or Level 3), for a Certificate of Public Convenience to provide telecommunications services to the public as a Competitive Local Exchange Carrier (CLEC) in the service territory of TDS Telecom/Mahanoy & Mahantango Telephone Company. The assigned utility code is 310633.

Level 3 is currently certified as a CLEC in the service territories of Verizon Pennsylvania LLC; Verizon North LLC; Windstream Pennsylvania LLC; Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company; The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink; Armstrong Telephone Company - North; Armstrong Telephone Company of Pennsylvania; Windstream Buffalo Valley, Inc.; Citizens Telephone Company of Kecksburg; Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications of New York, Inc.; Windstream Conestoga, Inc.; Windstream D&E, Inc.; Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Pennsylvania, LLC; Ironton Telephone Company; Laurel Highland Telephone Company; The North-Eastern Pennsylvania Telephone Company; Consolidated Communications of Pennsylvania Company; Palmerton Telephone Company; Pymatuning Independent Telephone Company; Lackawaxen Telecommunications Services, Inc.; North Penn Telephone Company; and South Canaan Telephone Company. Level 3 is also certified (statewide) as a Competitive Access Provider, an Interexchange Toll Facilities-based Carrier and as an Interexchange Toll Reseller.[[1]](#footnote-2)

The Applicant complied with notice requirements set forth in our *TA-96 Implementation Orders*[[2]](#footnote-3) by serving a copy of its Application upon TDS Telecom/Mahanoy & Mahantango Telephone Company, the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Attorney General. As required by 52 Pa. Code § 5.14, the Application also was published in the *Pennsylvania Bulletin.*[[3]](#footnote-4) The protest period for this Application expired July 31, 2017. No protests or petitions to intervene were filed and no hearings were held.

Information concerning the Applicant is as follows:

* The Applicant is a Delaware limited liability company with its company headquarters at 1025 Eldorado Boulevard, Broomfield, Colorado 80021, phone (720) 888‑1000, fax (720) 888-5134.
* The Applicant’s registered office provider within Pennsylvania is CT Corporation, 116 Pine Street, 3rd Floor, Suite 320, Harrisburg, Pennsylvania 17101.
* The Applicant’s Pennsylvania Emergency Management Agency contact is Michelle Scarboro, Network Planning & Implementation, at company headquarters, phone (720) 888-2979, fax (720) 567-2979.
* Correspondence to resolve complaints may be directed to Diane L. Peters, Senior Regulatory Affairs Manager, at 225 Kenneth Drive, Rochester, New York 14623, phone (585) 255-1425, fax (877) 769-9844, email [diane.peters@level3.com](mailto:diane.peters@level3.com).
* The Applicant will not be using a fictitious name.
* The Applicant has the following affiliates rendering public utility service within Pennsylvania: Broadwing Communications, LLC; Global Crossing Telecommunications, Inc.; Global Crossing Local Services Inc.; Telcove Operations, LLC, WilTel Communications, LLC; and tw telecom data services LLC.
* The Applicant and its affiliates operate throughout most of the United States.

The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing such operations.

The Applicant proposes to expand the service area for its CLEC authority to include customers in the service territory of TDS Telecom/Mahanoy & Mahantango Telephone Company. The Applicant provided proposed tariff supplements to its competitive local exchange services PA. P.U.C. Tariff No. 3 and its switched access services PA P.U.C. Tariff No. 4. Services will be offered to customers in the expanded territory using the same rates, terms and conditions offered to current customers.

Issues affecting CLECs have been addressed in a number of Commission proceedings.[[4]](#footnote-5) A CLEC applicant is expected to adhere to the requirements relative to universal service programs, as initially set forth or as subsequently enlarged or modified.[[5]](#footnote-6) Also, per federal rules, CLECs are required to ensure the efficient usage of their numbering resources and are required to semi-annually report their utilization and forecast data to the North American Numbering Plan Administrator. *See* 47 C.F.R. §§ 52.5 *et seq*. Any CLEC failing to comply with state and/or federal orders related to numbering may be subject to the reclamation of their numbering resources, as well as fines pursuant to the Public Utility Code (Code), 66 Pa. C.S. § 3301. *See Implementation of Numbering Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released March 31, 2000 –* *NXX Code Reclamation*, Docket No. M-00001373 (Order entered August 22, 2000), 30 *Pa.B.* 4701 (Commission established process for reclaiming NXX codes from carriers that have failed to activate them within six months of their availability for assignment to customers).

Further, Section 253(b) of TA-96 permits a state Commission to impose, on a competitively‑neutral basis and consistent with universal service provisions, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication services, and safeguard the rights of consumers. In response, we articulated explicit concerns relative to an applicant’s financial fitness, tariff compliance and rates.[[6]](#footnote-7)

The Commission requires that applicants seeking to provide local telecommunications services in Pennsylvania take steps to protect the public safety of consumers. One means of ensuring the public safety of consumers in the increasingly competitive telecommunications marketplace is to ensure that new entrants provide their consumers with access to a seamless communications infrastructure for emergency services, such as 911. Therefore, in accordance with the notarized affidavit (item #22 in the Application), the Applicant avers that it contacted by certified letter each county or municipal authority where it intends to provide CLEC telecommunications service and made the necessary arrangements for the provisioning of emergency 911 service.

Prior to approving an application for authority to provide local telecommunications services in Pennsylvania, the Commission seeks to ensure the financial fitness of the Applicant. In this case, Applicant is a viable company currently doing business in the Commonwealth of Pennsylvania and is, by reason of past performance, considered capable of providing service to the public in the Commonwealth of Pennsylvania.

We conclude that the Applicant has met the requirements for expanded certification as a CLEC in the service territory of TDS Telecom/Mahanoy & Mahantango Telephone Company consistent with this Order and subject to the conditions imposed on the Applicant in conjunction with its original certificate of authority. Premised upon our review of the Application and the proposed tariff supplement, and consistent with our Orders, the Code, our regulations and TA-96, we conclude that the Applicant’s proposed services do not raise concerns at this time regarding safety, adequacy, reliability or privacy.

We note, however, deficiencies in the Applicant’s proposed tariff supplements and shall therefore direct the Applicant to revise its proposed tariff supplements in accordance with the changes noted in Appendix A of this Order.[[7]](#footnote-8) The Applicant shall thereafter file its tariff supplement reflecting the requested changes on or before thirty days from the date of entry of this Order. The Applicant may file its tariff supplement electronically, consistent with Commission rules.[[8]](#footnote-9) Copies of the tariff supplements shall also be served upon the same entities receiving service of the original Application. If the time required for such resolution and filing exceeds thirty days, the Applicant may request an extension of an additional thirty days with the Commission’s Secretary. Thus, if the tariff supplements are not filed within sixty days (including the extension) of the entry of this Order, the Application will be dismissed and the authority granted herein will be revoked without further Commission Order. To the extent that the tariff supplements comply with all the applicable requirements, the tariff supplements may become effective on one day’s notice from the date upon which they are filed and served.

We note that the Commission will only approve tariff provisions regarding limitation of liability consistent with law. Any tariff provisions contained in the Applicant’s tariffs regarding limitation of liability found to be inconsistent with any applicable laws, rules and regulations will be deemed inoperative and superseded.

Further, the Commission makes no determination whether the Applicant’s switched access rates are in compliance with Chapter 30 of the Code, 66 Pa. C.S. § 3017(c).

In accordance with the affidavit that accompanied the application for a Certificate of Public Convenience, the Applicant has agreed to abide by all applicable federal and state laws and regulations and by the decisions of the Commission. We remind the Applicant that, in accordance with the our *TA-96 Implementation Orders*, a public utility that seeks Commission certification or that is certificated in Pennsylvania to provide telecommunications service, as defined by state and federal law, must provide the service in full compliance with all applicable provisions of Pennsylvania and federal law. This includes compliance with Section 1511 of Pennsylvania’s Business Corporation Law, 15 Pa. C.S. § 1511,[[9]](#footnote-10) when siting facilities/equipment in public rights‑of-way. Failure to comply with applicable law may result in fines being imposed against a public utility or in the suspension or revocation of the utility’s Certificate of Public Convenience, consistent with due process.

We remind the Applicant that certificated public utilities in Pennsylvania are required to file with the Commission an accurate annual financial report and an accurate separate statement of gross intrastate revenues for fiscal assessment purposes, as received from operations conducted pursuant to the authority granted by the Commission’s certification order.[[10]](#footnote-11) Additional reporting of intrastate retail revenues is also required for the purpose of Pennsylvania Universal Service Fund contribution assessments. Failure to comply with applicable reporting requirements may result in billing for back payments due and the imposition of fines and/or other lawful remedies, including revocation of certification, consistent with due process.

Conclusion

Accordingly, we shall grant the Application for extending Applicant's CLEC authority into the service territory of TDS Telecom/Mahanoy & Mahantango Telephone Company. Upon the approval of the tariff supplements, an amended Certificate of Public Convenience shall be issued evidencing the Applicant’s CLEC service territory expansion to include the service territory of TDS Telecom/Mahanoy & Mahantango Telephone Company, consistent with this Order, our decisions cited herein, and such other proceedings; **THEREFORE**;

**IT IS ORDERED:**

1. That the Application of Level 3 Communications, LLC for the expansion of its Competitive Local Exchange Carrier authority into the service territory of TDS Telecom/Mahanoy & Mahantango Telephone Company at Docket No. A-2017-2605601 is granted, consistent with this Order.
2. That Level 3 Communications, LLC shall either eFile or submit an original copy of the tariff supplements consistent with the requisite changes noted in Appendix A of this Order within thirty (30) days (sixty (60) days including an approved extension) after the date of entry of this Order. Level 3 Communications, LLC is directed to identify any changes made to the tariff supplements that are in addition to the changes noted in Appendix A. Level 3 Communications, LLC shall serve copies of the tariff supplements on each entity receiving a copy of the original Application. The tariff supplements may become effective on or after one (1) day’s notice from the date upon which they are filed and served.
3. That Level 3 Communications, LLC shall comply with all the provisions of the Public Utility Code, as now exist or as may be hereafter amended, and with all pertinent rules, regulations, and Orders of this Commission, now in effect or as may be prescribed by this Commission, including but not limited to those identified in this Order.
4. That Level 3 Communications, LLC shall continue to make 711 abbreviated dialing available to access Telecommunications Relay Service and to arrange its switching equipment to translate these calls to the assigned toll-free number, (888) 895‑1197, in order to route calls to the Telecommunications Relay Service Provider, in accordance with Commission’s Order entered on February 4, 2000, at Docket No. M‑00900239.
5. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to Level 3 Communications, LLC shall not be construed as conferring more than one operating right to Level 3 Communications, LLC.
6. That Level 3 Communications, LLC shall maintain accurate accounting records that properly classify and segment its Competitive Local Exchange Carrier revenues from its operations within the Commonwealth and file with the Commission an accurate annual financial report and an accurate separate statement of gross intrastate revenues for fiscal assessment purposes.
7. That Level 3 Communications, LLC shall maintain accurate accounting records that properly classify and segment its gross retail intrastate revenues for purposes of the Pennsylvania Universal Service Fund contribution assessment report.
8. That if Level 3 Communications, LLC has not, within sixty (60) days (including an approved extension) from the date of entry of this Order, complied with the requirements set forth herein, the Application shall be dismissed without any further proceeding and the expanded authority granted herein revoked without further Commission Order.
9. That upon the approval of the tariff supplements, Level 3 Communications, LLC’s Certificate of Public Convenience will be amended to reflect the authority to furnish services as a Competitive Local Exchange Carrier within the service territory of TDS Telecom/Mahanoy & Mahantango Telephone Company in addition to the service territories where it is currently certificated, consistent with this Order.
10. That Level 3 Communications, LLC shall file such affiliated interest agreements as may be necessary relative to any transactions with affiliates within thirty (30) days of entry of this Order.
11. That if Level 3 Communications, LLCplans to cease doing business within the Commonwealth of Pennsylvania, it shall request authority from the Commission for permission prior to ceasing.
12. That a copy of this Order be served on the Pennsylvania Department of Revenue, Bureau of Corporation Tax and the Pennsylvania Emergency Management Agency, Bureau of 9-1-1 Programs.

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**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 21, 2017

ORDER ENTERED: September 21, 2017

**Level 3 Communications, LLC**

**Docket No. A-2017-2605601**

**Expanded CLEC Authority**

The proposed tariff supplements contain certain deficiencies that must be addressed by the Applicant before the tariff and tariff supplement can be approved and the amended Certificate of Public Convenience issued. **The Applicant must submit a copy of this Appendix with its revised compliance tariff and tariff supplement.** On that copy please note the page/sheet of the compliance tariff where the required revision is located for each item below.

**Tariff deficiencies noted – CLEC Local Tariff No. 3**

1. On all pages in the footer, add the issuing officer’s first and last name.
2. On all pages, enter issued and effective dates as per ordering paragraph 2.

**Tariff deficiencies noted – CLEC Switched Access Tariff No. 4**

1. On the Title Page, the paragraph should read as follows:  
   The Company’s tariff is in concurrence with all applicable State and Federal Laws (including, but not limited to, 52 Pa. Code, 66 Pa. C.S. and the Telecommunications Act of 1934, as amended), and with the Commission’s applicable Rules and Regulations and Orders. Any provisions contained in this Tariff that are inconsistent with the foregoing mentioned will be deemed inoperative and superseded.
2. On all pages, enter issued and effective dates as per ordering paragraph 2.

1. *See* Docket Numbers: A-310633 *et al.* [↑](#footnote-ref-2)
2. In light of the policy objectives of the Telecommunications Act of 1996, 47 U.S.C. §§ 201 *et seq.* (TA-96), market entry requirements for telecommunication service providers are set out in *In Re: Implementation of the Telecommunications Act of 1996,* Docket No. M-00960799 (Order entered June 3, 1996; Order on Reconsideration entered September 9, 1996) (*TA‑96 Implementation Orders*). [↑](#footnote-ref-3)
3. *See* 47 *Pa.B.* 3942 (July 15, 2017). [↑](#footnote-ref-4)
4. *See, e.g., MFS Intelenet et al.,* Docket Nos. A-310203F0002 *et al.* (Orders entered October 4, 1995; July 31, 1996; and August 7, 1997); *Pa. PUC v. Bell,* Docket No. R-00963578 (Order entered February 6, 1997); *Pa. PUC v. GTE*, Docket No. R-00963666 (Order entered May 9, 2002); *Joint Petition of Nextlink Pennsylvania, Inc. et al.*, Docket Nos. P-00991648 and P-00991649 (Order entered September 30, 1999), *aff’d sub nom. Bell Atlantic‑Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440 (Pa. Cmwlth 2000), *vacated in part sub nom. MCI Worldcom Inc. v. Pa. PUC*, 844 A.2d 1239 (Pa. 2004) (state court lacked jurisdiction to review unbundled network elements) (*Global Order*); as well as other proceedings. [↑](#footnote-ref-5)
5. *See* *Universal Service Investigation*,Docket No. I-00940035 (Order entered January 28, 1997). [↑](#footnote-ref-6)
6. *See Application of Blue Ribbon Rentals II, Inc., d/b/a Talk One America, for Authority to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunication Services to the Public in the Commonwealth of Pennsylvania*,Docket No. A-310442 (Orders entered April 25 and August 4, 1997). [↑](#footnote-ref-7)
7. Regardless of the review process, any tariff provision(s) inconsistent with the provisions of the Code, TA-96, our regulations, or Orders will be deemed inoperative and superseded. [↑](#footnote-ref-8)
8. *See Final Rulemaking to Permit Electronic Filing*, Docket No. L-00070187 (Order entered May 23, 2008). [↑](#footnote-ref-9)
9. 15 Pa. C.S. § 1511(e) provides as follows: "A public utility corporation shall have the right to enter upon and occupy streets, highways, waters and other public ways and places for one or more of the principal purposes specified in subsection (a) and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes, including the placement, maintenance and removal of aerial, surface and subsurface public utility facilities thereon or therein. Before entering upon any street, highway or other public way, the public utility corporation shall obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof." [↑](#footnote-ref-10)
10. *See* 66 Pa. C.S. § 510(b); s*ee also* 52 Pa. Code §§ 63.31 *et seq.* We note that flexibility for the Applicant’s system of accounts is provided by our own annual reporting regulations for CLECs that the Applicant may also utilize. *See generally* 52 Pa. Code §§ 63.31(3) and 63.32(c). [↑](#footnote-ref-11)