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May 5, 2006

Ms. Renee Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699

FILED

MAY 05 2006

Clerk's Office
N.C. Utilities Commission

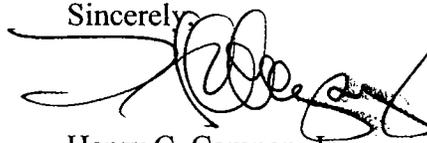
Re: Level 3 Petition to Amend Rule R17 to Streamline Procedures With Respect to Transfers of Control of Non-Dominant Competing Local Providers

Docket No. P-100, SUB 163

Dear Ms. Vance:

Please find enclosed the original and thirty-two (32) copies of Level 3 Petition to Amend Rule R17 to Streamline Procedures With Respect to Transfers of Control of Non-Dominant Competing Local Providers. Please file the original and return one (1) filed stamped copy to me via our courier.

Sincerely,



Henry C. Campen, Jr.

HCC:ckc

CHARLESTON, SC
CHARLOTTE, NC
COLUMBIA, SC
SPARTANBURG, SC

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

Docket No. P-100, SUB 163

FILED

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Clerk's Office
N.C. Utilities Commission

In the Matter of)	
)	
Petition of Level 3 Communications, LLC)	Level 3 Petition to Amend Rule R17
To Amend the Commission's Rules to)	to Streamline Procedures With
Streamline Procedures With Respect to)	Respect to Transfers of Control of
Transfers of Control of Non-Dominant)	Non-Dominant Competing Local
Competing Local Providers)	Providers

Level 3 Communications, LLC ("Level 3") petitions the North Carolina Utilities Commission ("Commission") to amend Rule R17 to exempt non-dominant, competing local providers ("CLPs") from the provisions of G.S. § 62-111(a) requiring pre-approval of transfer of control transactions. Level 3 has discussed this petition with the Public Staff and is authorized to say that the Public Staff supports an exemption and notice procedure as set forth in the proposed amendments to Rule R17.

I. Background and Rationale

Currently, CLPs seeking approval of a transfer of control must file an application describing the transaction, the applicants and their qualifications, including detailed financial information, a description of new management and owners, and a public interest statement. Commission staff reviews the application for completeness, and the Commission considers applications for transfer of control during its weekly Agenda Conference. Generally, six to eight weeks will elapse between filing and consideration of the application by the Commission.

This process is especially problematic for multi-state transactions. In many cases the Federal Communications Commission ("FCC") and, in some cases, the United States Department of Justice ("USDOJ"), and other states with streamlined procedures will have

already approved a transaction. However, CLPs must await the completion of the Commission approval process to complete the transaction. This is the case even where the CLP has only limited or *de minimis* operations or customers in North Carolina.

The approval process called for in G.S. § 62-111(a) was established prior to the advent of local competition when a single local exchange carrier was the exclusive provider of service in its designated territory. In that market structure, extensive government regulation of the dominant carrier was necessary to protect captive ratepayers and consumers of monopoly services. Under those circumstances it was important for the Commission to scrutinize each carrier's financial status and its business actions to safeguard consumers. However, the telecommunications market has changed dramatically. Consumers can now choose freely among non-dominant carriers offering competitive services.

Non-dominant CLPs today are motivated by robust competition for customers and financing to complete corporate acquisition and financing transactions quickly – often in just a few weeks time. BellSouth Telecommunications, Inc. and other incumbent local exchange carriers are exempted from the pre-approval process by their election to participate in the Commission's price regulation plan. G.S. § 62-133.5(g). Therefore, incumbent LECs are able to quickly adapt to today's competitive market environment. However, non-dominant CLPs remain constrained by legacy pre-approval requirements and thus cannot react quickly to rapidly changing market demands to meet their business needs.

The Commission continues to devote scarce agency resources to this approval process even though most approvals are routine and uncontested. On information and belief, only two applications for control transfer have been contested in recent Commission history.

Most carriers operating in multiple jurisdictions also hold authority from the FCC under Section 214 of the Communications Act of 1934 to operate as interstate common carriers. Under federal rules, such interstate carriers are required to obtain prior approval to transfer control. However, the FCC has reformed its rules to eliminate unnecessary delays and burdens on competitive carriers. Instead, the FCC has adopted streamlined approval procedures for the transfer transactions of a vast majority of non-dominant competitive interstate carriers.⁴ Specifically, FCC rules provide that applications for approval subject to streamlined treatment may be granted within 31 days of publication of the filing.⁵ In the case of a *pro forma* transaction, a carrier is required to file a notice with the FCC within 30 days after control is transferred.¹

II. Level 3's Proposal

Level 3 proposes that the Commission streamline its administrative process for transfers by amending Rule R17 to exempt non-dominant CLPs holding certificates of public convenience and necessity from the pre-approval requirements of G.S. § 62-111(a) and to implement a notice procedure applicable to non-dominant CLPs holding certificates of public convenience and necessity. In Attachment A, Level 3 sets forth the specific rule language that it proposes to be adopted by the Commission as an amendment to Rule R17. Generally, this amendment implements a streamlined notice procedure in the following manner:

⁴ Implementation for Further Streamlining Measures for Domestic Section 214 Authorizations, CC Docket No. 01-150, Report and Order FCC 02-78 (Released March 21, 2002).

⁵ Id. at para. 26; 47 C.F.R. § 63.03 (a).

¹ 47 C.F.R. § 63.03(d).

1. Parties to a transfer transaction involving a non-dominant CLP, holding a certificate, would file a notice of the transaction with the Commission (“Notice”).
2. The Notice would contain certain basic information about the certificated, non-dominant CLP, its operations and the transaction at issue.
3. The Commission would retain jurisdiction over the certificated, non-dominant CLP post-closing to make inquiries of the parties, and, if necessary, to take action to protect consumer interests, commence proceedings, and/or impose conditions on the CLP’s certificate(s), including reporting requirements.
4. Parties to a *pro forma* transaction involving a non-dominant CLP, holding a certificate, would file a notice with the Commission, post-transaction.

III. The Commission’s Statutory Authority to Amend Rule R17.

The Commission has ample statutory authority to amend Rule R17. G.S. § 62-110(f1) authorizes the Commission to promulgate rules to regulate CLPs. Indeed, when establishing the framework for regulation of CLPs in 1996, the Commission chose to exempt CLPs from many of the requirements of Chapter 62. *Order Setting Out Regulatory Structure for Competing Local Providers and Promulgating Rules*, Docket P-100, Sub 133, February 23, 1996. In doing so, the Commission cited its authority under G.S. § 62-2 and G.S. § 62-110(f1).

IV. Conclusion

Level 3 respectfully petitions the Commission to amend Rule R17 to exempt non-dominant CLPs holding certificates of public convenience and necessity from the pre-approval requirements of G.S. § 62-111(a) and to implement a streamlined administrative process for non-dominant CLPs engaged in transfer transactions, as outlined above.

Respectfully submitted this 5th day of May, 2006.

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Proposed Definitions

Rule R17-1. Definitions.

- (f) FCC -- The Federal Communications Commission.
- (j) Non-dominant CLP – A Competing Local Provider who lacks the power to control market prices for telecommunications services.
- (k) Notice -- A document filed with the Commission pursuant to Rule R17-8 which includes the following: (1) The name, address of the principal headquarters, and telephone and facsimile numbers for each of the parties to the Section 214 License Transfer or *Pro forma* Transaction and any changes in the Name and Contacts information provided in the non-dominant CLP's original Competing Local Provider Application; (2) A statement setting forth a description of the Section 214 License Transfer or *Pro forma* Transaction; (3) A copy of the application for a domestic Section 214 License Transfer, or in the case of a *Pro forma* Transaction the notification letter, filed with the FCC; and (4) A copy of the FCC's Public Notice of the Section 214 License Transfer or *Pro forma* Transaction.
- (n) *Pro forma* Transaction – Any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate.
- (o) Section 214 License Transfer – A transfer of control of lines or authorization to operate pursuant to section 214 of the Communications Act of 1934 subject to the streamlining procedures for domestic transfer of control applications in 47 C.F.R. § 63.03.
- (p) USDOJ – The United States Department of Justice.

Proposed Rule R17-8

Rule R17-8. Procedures for Transfers of Control

- (a) A non-dominant CLP holding a Certificate is exempt from the provisions of G.S. § 62-111(a) requiring approval of transfers of control transactions, except as set forth in this rule.
- (b) A non-dominant CLP holding a Certificate shall file a Notice with the Commission immediately upon filing an application for a domestic Section 214 License Transfer with the FCC pursuant to 47 C.F.R. § 63.03.
- (c) Notwithstanding the provision of subsection (b), the Commission retains authority to make inquiries, initiate proceedings and impose conditions on a Non-dominant CLP's Certificate(s) including reporting requirements, to protect consumer interests.

(d) Notwithstanding the close of a Section 214 License Transfer, any proceeding or investigation initiated by the Commission pursuant to subsection (c) shall continue in the Commission's discretion, and the Commission shall retain the authority to impose conditions on a CLP's Certificate(s) if necessary to protect consumer interests.

(e) A non-dominant CLP holding a Certificate shall file a Notice with the Commission no later than 30 days after control of the carrier is transferred pursuant to a *Pro forma* Transaction.

(f) Nothing in this rule shall be deemed to exempt an entity other than a non-dominant CLP holding a Certificate from the requirements of Rule R17-2.