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May 31, 2006

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Via Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor
400 North Street
Harrisburg, PA 17120

Re: Application of Level 3 Communications, LLC to Amend the Public Utility
Commission's Regulations to Streamline Transfer of Control and Affiliate Filing
Requirements for Competitive Carriers.
Docket No. A-_____

Dear Secretary McNulty:

Enclosed please find an original and three copies of an application filed by Level 3 Communications LLC ("Level 3") to amend the Public Utility Commission's ("Commission's") regulations concerning filings for the transfer of control and affiliate transactions for competitive telecommunications carriers.

Copies of this application have been served on the Commission's Office of Trial Staff, Office of Consumer Advocate and Office of Small Business Advocate and other interested parties as indicated on the enclosed Certificate of Service. Level 3 files this Application pursuant to Sections 1.5, 5.11 and 5.43 of the Commission's regulations, 52 Pa. Code §§ 1.5, 5.11 and 5.43. Level 3 requests instructions from the Secretary concerning any additional service or public notice prior to the Commission's consideration of this application.

Very truly yours,

Daniel P. Delaney
PA Attorney I.D. 23955
Counsel for Level 3 Communications, LLC

DPD/cem
Enclosures

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Kirkpatrick & Lockhart Nicholson Graham LLP

James J. McNulty, Secretary

May 31, 2006

Page 2

cc: Bohdan R. Pankiw, Esquire (w/Enclosures)
Janet Tuzinski (w/Enclosures)
Robert Wilson (w/Enclosures)
Service List (w/Enclosures)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Level 3 :
Communications, LLC to Amend the :
Public Utility Commission's : Docket No. A- _____
Regulations to Streamline Transfer of :
Control and Affiliate Filing :
Requirements for Competitive :
Carriers. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served true and correct copies of the foregoing document upon the individuals listed, in accordance with the requirements of Section 1.54 (relating to service by a participant).

Via First Class Mail

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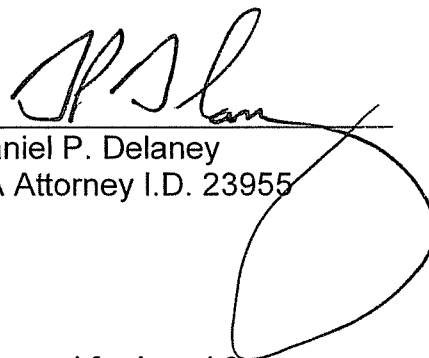
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Dated: May 31, 2006

A handwritten signature in black ink, appearing to read "D. Delaney", is written over a horizontal line. A large, loopy flourish extends from the end of the signature down and to the right.

Daniel P. Delaney
PA Attorney I.D. 23955

Counsel for Level 3
Communications, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Level 3 Communications, :
LLC to Amend the Commission's :
Regulations to Streamline Transfer of :
Control and Affiliate Filing Requirements :
for Competitive Carriers. :

Docket No. A-_____

APPROVED
JULY 10 2013
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION FOR RULEMAKING OF LEVEL 3 COMMUNICATIONS, LLC

Pursuant to Section 501(b) of the Public Utility Code, 66 Pa. C.S. § 501(b), and Sections 1.5, 5.11 and 5.43 of the Public Utility Commission's ("Commission's") regulations, 52 Pa. Code §§ 1.5, 5.11 and 5.43, Level 3 Communications, LLC ("Level 3") applies to the Commission to institute a rulemaking proceeding to streamline the administrative process by which competitive carriers holding certificates of public convenience may complete transfer of control and affiliate transactions. For the reasons set forth below, Level 3 proposes that the Commission adopt streamlined procedures that would eliminate lengthy prior approval periods and permit non-dominant, competitive carriers to complete transfer and affiliate transactions based on modified notice procedures.

1. Level 3 Communications, Inc. is a publicly traded (NASDAQ: LVLT) Delaware corporation headquartered in Broomfield Colorado. Through its wholly owned indirect subsidiaries, Level 3 Communications, LLC, WiTel Communications, LLC, WiTel Local Network, LLC, and Progress Telecom, LLC (collectively, the "Level 3 Companies"), Level 3 provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network. The Level 3 Companies are non-dominant carriers that are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis. The Level 3 Companies are also authorized by the FCC to provide international and domestic interstate services as non-dominant carriers.

2. In Pennsylvania, Level 3 Communications, LLC is authorized to provide facilities-based competitive local exchange, interexchange and competitive access services pursuant to an authorization granted by this Commission in Docket No. A-310633. WiTel

Communications, LLC is authorized to provide telecommunications services as (1) a competitive access provider, (2) a reseller of intra- and interLATA interexchange toll services, and (3) a facilities-based interexchange toll services carrier pursuant to certificates issued by the Commission in Docket No. A-310690.¹ WilTel Local Network, LLC is authorized to provide competitive access services pursuant to a certificate issued by the Commission in Docket No. A-310905.²

3. For the purposes of this Application, contacts for the Applicant are as follows:

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All questions concerning this Application should be directed to Daniel P. Delaney, counsel for Level 3 Communications.

I. Strict Regulation of Transfers of Control and Affiliate Transactions Was Designed To Address the Regulatory Needs of Another Era.

4. Level 3 proposes amendments that would eliminate outmoded prior approval procedures that impose unnecessary and burdensome requirements on non-dominant, competitive carriers. These requirements were established prior to the advent of local competition when a single local exchange carrier was the exclusive provider of service in its designated territory with little or no threat of competitive entry. In that market structure,

¹ These certificates were originally granted to Williams Communications, Inc. By letter dated January 29, 2001, the Commission was informed of the company's name change to Williams Communications, LLC. By letter dated November 13, 2002, the Commission was notified of the name change to WilTel-Comm.

² This authority was originally granted to Williams Local Network, Inc. By letter dated April 30, 2001, the Commission acknowledged the name change of Williams Local Network, Inc. to Williams Local Network, LLC. By letter dated November 18, 2002, the Commission was notified of the name change to WilTel-LN.

extensive government and economic regulation of the dominant carrier was necessary to protect captive ratepayers and consumers of monopoly services.

5. Where carriers do not face competition, or wield control over bottleneck facilities or enjoy a dominant market share, it is important for the Commission to scrutinize each carrier's financial status and its business actions in order to safe guard consumers from the monopoly carrier's potentially risky financial transactions and to ensure that rates and quality of service are not impaired. Although today the telecommunications market has changed dramatically so that consumers can choose freely among non-dominant carriers offering competitive services, the same burdensome administrative procedures aimed at regulating transfer and affiliate transactions of dominant, monopoly carriers remain in place for non-dominant, competitive carriers.

II. In Today's Competitive Market, Burdensome Prior Approval Procedures for Non-dominant Carrier Transfers and Affiliate Transactions Does Not Serve the Public Interest.

6. The public interest in a competitive environment does not require strict scrutiny of non-dominant carriers' business and affiliate operations. While appropriate for the pre-competition telecommunications market, burdensome pre-approval requirements for business transactions have become anachronisms in today's fast-paced competitive environment where new entrants risk capital to build and finance their operations with no guaranteed return.³

7. The competitive long distance and local carriers in Pennsylvania are not subject to rate regulation because they do not possess market power or control over local exchange bottleneck facilities. As such, non-dominant carriers bear the risks of their own financial

³ The FCC and the Commissions in California and Kentucky are just a few examples of regulatory agencies that have recognized the need to reform and reduce regulatory requirements to reflect competitive changes in the market. See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorization*, CC Docket No. 01-150, FCC 02-78, Report and Order (Released March 21, 2002) (streamlining domestic interstate approval requirements); CPUC Decisions 94-05-051, 96-02-004, 98-07-094, 04-10-038 (California Commission applying streamlined advice letter procedures to routine transaction of competitive carriers); Administrative Case No. 370, Exemptions for Providers of Local Exchange Carriers (Kentucky Public Service Commission January 8, 1998); Administrative Case No. 359, Exemptions for Interexchange Carriers, Long Distance Resellers, Operator Service Providers and Customer-Owned, Coin Operated Telephones (Kentucky Public Service Commission June 21, 1996) (Exempting competitive carriers from transfer and financing requirements).

decisions and competitive market forces -- *rather than government regulation* -- which determines whether a carrier is financially stable. From the consumer's perspective, adequate service at reasonable rates remains available by virtue of the freedom to choose among multiple providers.

A. Pennsylvania Transfer and Affiliate Approval Process Imposes Burdensome Delays.

8. A certificated carrier that seeks to complete a transfer transaction is subject to Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(3), and must obtain Commission approval prior to consummating the transaction.⁴ Similarly, certificated carriers are required to provide Commission notice in order to engage in a transaction with an affiliate.⁵ Although the Public Utility Code outlines the general authorization for Commission oversight of a transfer of control of a certificated carrier and the notice of an affiliated interest transaction, the statute does not mandate that the Commission follow a particular public notice period or otherwise specify in detail how the Commission is to implement its oversight authority. As such, the Commission retains the discretion to determine the administrative process by which it exercises oversight authority over business transactions. It is within the Commission's authority to modify its procedures through administrative rule amendments to reflect significant market changes.

9. The Commission has set forth the administrative approval process in its regulations, as interpreted and implemented by Commission staff over time. The Pennsylvania approval process requires parties to prepare and file an application describing the transaction, including detailed financial information, a description of new management and owners, in the case of a transfer, and a description of the financing arrangement, in the case of stock or debt financing. Each application must describe the public interest reasons why the application should be granted.

⁴ Transfers of control include sales of majority stock interests or other cognizable controlling interests, mergers, *pro forma* changes, and sales of substantially all assets. See 52 Pa. Code § 69.901(b).

⁵ Affiliated Interests are defined in Chapter 21 of the Public Utility Code, 66 Pa. C.S. §§ 2101-2107. Section 3019(b)(1) requires a telecommunications carrier to file affiliated interest agreements with the Commission.

10. Commission staff reviews the filing for completeness and may prepare written data requests seeking additional information on a case-by-case basis regarding the extent of in-state operations, financial information, or seeking other information determined to be relevant by staff. In response to these inquiries, the parties must gather the requested information and respond in writing to the staff data requests. The Commission Secretary may direct the publication of a notice of the filing of the application in the Pennsylvania Bulletin thereby presenting an opportunity for interested parties to comment on or file protests to the application.

11. It is the rare exception that comments or protests are submitted with respect to any non-dominant carrier application. After the public notice period closes, Commission staff will prepare its recommendations to the Commission for ultimate disposition. Once this process is complete, the matter is placed on the agenda for the Commission to rule on at the next scheduled Commission public meeting. Following the Commission's ruling at the meeting, the approval will usually become effective upon the entry of the Commission's order and the completion of any required compliance filings.

12. The process from filing to effective Commission approval requires 2-3 months, at a minimum, to obtain approval for a transfer. It is not uncommon for administrative processing times to stretch to 6 months or significantly longer if the application is referred to the Office of Administrative Law Judge for hearing. The longer processing times are usually not caused by the need for additional review of substantive issues raised by the request but as a result of increased Commission staff workloads. In an era of real-time transactions, the 3-6 month process for securing these regulatory approvals represents an untenable delay.

13. In Pennsylvania, carriers that are pressed by important commercial needs have no procedural means to avoid this protracted administrative processing or provide needed certainty to parties in the transaction. This process is burdensome on multi-state transactions. Even when the Federal Communications Commission ("FCC") and, in some cases, the United States Department of Justice, and other states that have implemented streamlined measures have already approved the transaction, carriers certified in Pennsylvania must await the completion of the administrative process to close their transaction. This is the case even where the carrier has only limited or *de minimus* operations or customers in the state.

B. The Pennsylvania Administrative Approval Process Harms Non-dominant Competitive Carriers, Their Customers, Vendors and Employees.

14. Non-dominant carriers 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. However, non-dominant carriers remain constrained by legacy pre-approval requirements and thus cannot react quickly to rapidly changing market demands to meet their business needs. During the period during which a carrier’s application winds its way through the administrative approval process, the non-dominant provider is forced to put on hold the completion of consolidations, corporate changes, or other arrangements.

15. The simple reality is that these delays expose businesses to substantial and unnecessary risks in the marketplace. Delays of a few months put at risk the successful closing of transfer and related transactions. Rapid changes in market conditions during the regulatory-enforced delay can increase the cost of the transaction or even result in market changes that foreclose successful completion. While parties await approval, they are exposed to economic risks of delay including lost revenue and synergies, customer defections, impaired service, or even the collapse of the transaction. Failure to close a transaction has real-world adverse consequences for the employees, vendors, customers and shareholders of competitive carriers. Often this protracted state regulatory process is at odds with management’s best business judgment and a carrier’s fiduciary duty to employees, shareholders and customers.

C. The Current Approval Process Wastes Valuable Commission Resources.

16. The Commission continues to be required to devote scarce agency resources to this approval process even though most approvals are routine, non-controversial and uncontested. Agency resources are further strained by Commission staff attempts to quickly respond to carriers’ request for expedited treatment in order to meet compelling commercial circumstances.

D. Competing Enhanced Service Providers Do Not Face the Same Burdensome Regulation as Non-dominant Carriers.

17. Not only are non-dominant carriers pressed to complete commercial transactions on an accelerated timeframe in today's rapidly moving telecommunications market, they face increasing competition for customers from Enhanced Service Providers. Due to the growth of IP technologies, the U.S. long distance and local telecommunications market is undergoing a revolution in how services are provided. It is increasingly the case that customers no longer receive a complete services package from a regulated monopoly, but instead from Voice over Internet Protocol ("VoIP") carriers that rely upon components provided by a number of different companies.

18. In today's environment, the Enhanced Service Provider is free to merge with another Enhanced Service Provider without suffering the delays and costs of obtaining government approvals. Yet, when a non-dominant provider wants to complete a strategic acquisition so that it can expand its network to compete with the Enhanced Service Provider, the non-dominant carrier is subject to the cumbersome government approval process.

III. The Commission Regulations Should be Amended to Streamline the Administrative Approval Process for Non-dominant Competitive Carriers Engaging in Transfer and Affiliate Transactions.

19. Level 3 recognizes that it is important to preserve the Commission's ability to regulate carriers certified to provide intrastate services including to monitor transfer of control and affiliate transactions. However, in light of the dramatic changes to the telecommunications market that have occurred since this administrative process was first established, all parties -- the Commission, regulated carriers, their vendors, employees and consumers of telecommunications services in Pennsylvania -- would benefit by streamlining the approval procedures that apply to non-dominant carriers in transfer and affiliate transactions.

20. Level 3 hereby proposes that the Commission streamline its administrative process for transfer and affiliate approval by amending its regulations to implement a notice procedure applicable to non-dominant, competitive carriers. In Attachment A hereto, Level 3

sets forth the specific regulation language that it proposes to be adopted by the Commission as a supplement to Chapter 63 of its regulations. Generally, this supplement implements a streamlined notice procedure in the following manner:

- A. The timing of the revised administrative process is aligned with the streamlined administrative approval procedures of the FCC.

Most carriers operating in multiple jurisdictions also hold authority from the FCC under Section 214 of the Communications Act of 1934, as amended, 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 processes and rules to eliminate unnecessary delays and burdens on competitive carriers and applies streamlined approval processing procedures to the transfer transactions of a vast majority of non-dominant competitive interstate carriers.⁶ Specifically, FCC rules provide that applications for approval subject to streamlined treatment may be granted within 31 days of publication of the filing.⁷ In the event a transaction does not qualify for streamlining (based on, for instance, the dominant position of the carriers in the transaction), the FCC attempts to complete its review of those transactions within six months.

- B. Parties to a transfer or affiliate transaction involving a non-dominant carrier operating in multiple state jurisdictions need only file a notice (“Notice”) of the transaction with the Pennsylvania Commission.
- C. The Notice must contain certain basic information about the carrier, its operations and the transaction at issue.
- D. The Notice shall be deemed effective approval under Pennsylvania regulations within 15 days if the Commission does not extend the consideration period or reject the filing within that period.

⁶ 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).

⁷ Id. at para. 26; 47 C.F.R. § 63.03 (a).

- E. The Pennsylvania Commission shall retain jurisdiction over the certificated carrier 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 carrier's certificate(s), including reporting requirements.

- F. The foregoing Notice procedure shall be available only to non-dominant competitive telecommunications carriers other than local incumbent exchange carriers as defined in the Telecommunications Act of 1996. Pursuant to 47 U.S.C. § 251(h) (1996), an incumbent local exchange carrier means “with respect to an area, the local exchange provider that (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such areas; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to Section 69.601(b) of the [FCC's] regulations (47 C.F.R § 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).”

IV. The Relief Requested in this Application Is Reasonable and Should Be Approved by the Commission.

21. Level 3 submits that the streamlined proposals in this application are reasonable and should be approved for non-dominant carriers engaged in transfer and/or affiliate transactions as identified in Attachment A. The purpose of these proposals is similar to those underlying Act 183 recently enacted by the General Assembly adding a revised Chapter 30 to the Public Utility Code (66 Pa. C.S. §§ 3011-3019). The legislative policy in enacting Act 183 is identified in Section 3011 and includes the promotion and encouragement of the provision of competitive services by a variety of service providers on equal terms throughout all geographic areas of the Commonwealth (§ 3011(8)). The 13 enumerated legislative policies underlying Act 183 which are identified in Section 3011 are designed to reduce the Commission's regulation of telecommunications providers while encouraging the development of competition and the installation of advanced technologies in the Commonwealth. The proposals advanced in this application are consistent with this legislative policy.

22. As explained in the prior sections of this application, the current procedures imposed on non-dominant carriers engaged in transfer and/or affiliate transactions are burdensome and outmoded by the changes that have occurred as a result of increasing competition in the marketplace. The proposed procedures for the Commission's approval of transfers of control are modeled on the abbreviated securities certificate procedures identified in Section 3.602 of the Commission's regulations, 52 Pa. Code § 3.602. The procedures proposed for providing the Commission with notice of transactions with affiliates are consistent with Section 3019(b)(1) of the Public Utility Code, 66 Pa. C.S. § 3019(b)(1), and should be approved by the Commission.

V. Conclusion

23. Level 3 hereby requests the Commission to institute a rulemaking proceeding to amend its regulations to implement a streamlined administrative approval process for non-dominant carriers engaged in transfer and/or affiliate transactions, as outlined above. These streamlined procedures are warranted by the dramatic changes that have taken place in the telecommunications market since the approval procedures were first instituted. Strict regulation of transfers and affiliate transactions of non-dominant carriers is not required to protect consumers in Pennsylvania or the public interest. Eliminating the burdensome and unnecessary regulatory procedures will permit carriers, consumers and the Commission to take full advantage of the efficiencies of today's competitive market.

WHEREFORE, for all of the foregoing reasons, Level 3 respectfully requests the Commission to:

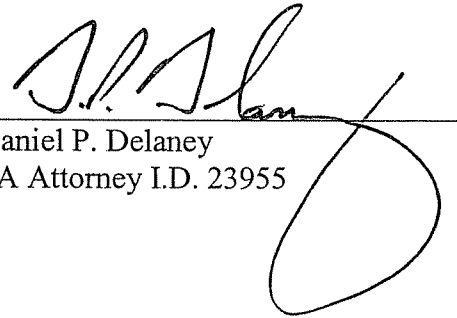
1. Institute a rulemaking proceeding to streamline the administrative process by which competitive carriers holding certificates of public convenience may complete transfer of control and affiliate transactions; and
2. Grant any additional relief that is just and reasonable under the circumstances.

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Dated: May 31, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D.P. Delaney", is written over a horizontal line. A large, stylized flourish or loop extends from the end of the signature downwards and to the right.

Daniel P. Delaney
PA Attorney I.D. 23955

Gregg Strumberger, Esquire

Counsel for Level 3
Communications, LLC

ATTACHMENT A

Proposed New Regulation Language

New Subchapter O of Chapter 63 of Public Utility Commission regulations on Telephone Service, 52 Pa. Code §§ 63.311-63.313.

Subchapter O

Filing procedures for competitive carriers related to certain transactions

§ 63.311 Definitions and applicability

(a). *Definitions.* As used in this section:

(1) For the purposes of this Subchapter, a “Competitive Carrier” means a provider of public telecommunications services certificated by the Commission pursuant to 66 Pa.C.S. § 1101, other than an ILEC.

(2) “ILEC” means an incumbent local exchange carriers as defined pursuant to 47 U.S.C. § 251(h) (1996).

(b). *Applicability.*

This Subchapter shall apply to Competitive Carriers but shall not apply to ILECs. The transactions encompassed in this Section include those governed by Section 69.901 of the Commission’s regulations pursuant to 66 Pa. C.S. § 1102(a)(3).

§ 63.312 Filing procedures for competitive carriers for transfers of assets and transfers of control

(a) For Transfers of Assets and Transfers of Control (other than *Pro Forma*)

(1) Any transaction that will result in the transfer of (a) substantially all of the assets of a Competitive Carrier (excluding the transfer of a Certificate) or (b) direct or indirect control of a Competitive Carrier, shall require notification to the Commission. Such notification shall be filed simultaneously with the filing with the Federal Communications Commission (“FCC”) of an application for approval of the transaction (“FCC Application”); or (b) the filing of a notice with the United States Department of Justice (“DOJ”) pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (“HSR Filing”). If neither approval by the FCC or an HSR filing is required, the notification of transaction shall be filed with the Commission at least 20 calendar days prior to the closing of the transaction.

- (2) The notification of the transaction shall include the following information:
- (1) Information identifying the parties to the transaction;
 - (2) A summary description of the transaction;
 - (3) A statement of the compliance status of the affected Competitive Carriers with respect to the Commission's compliance obligations and filings; and
 - (4) A copy of the application filed at the FCC, if any.

(3) While any FCC Applications or DOJ proceedings related to the transaction are pending, the parties to the transaction shall file with the Commission copies of all procedural motions, public responses to discovery, and orders or other actions terminating the proceedings. The parties shall also supplement the notification filing with any FCC Public Notice issued concerning the transaction.

(4) Unless the Commission extends the consideration period or rejects the filing, the transaction identified in the notification will be deemed approved in law and fact 15 days after filing and the Commission will issue a Secretarial Letter stating approval of the transaction pursuant to Section 1103 of the Public Utility Code, 66 Pa. C.S. § 1103.

(5) The Commission retains discretion to make inquiries of the parties, and if necessary, to take action to protect consumer interests that it determines is necessary as a result of the transaction. Such action may include initiating proceedings and/or imposing conditions on the Competitive Carrier's certificate(s) to protect consumer interests.

(b). *Pro forma changes.*

In the event of a *pro forma* change, including but not limited to a corporate restructuring, internal transfer, or other change in form which does not result in a change of the ultimate ownership or control of the Competitive Carriers or its assets, Competitive Carriers are required to file a post-transaction notice with the Commission within 30 days following completion of the transaction.

§ 63.312 Approval of contracts between competitive carriers and affiliates

(1) Any contract or transaction between a Competitive Carrier and an affiliated interest does not require approval by the Commission pursuant to 66 Pa. C.S. § 3019(b)(1).

(2) The Competitive Carrier shall file a written summary of such contract or arrangement with the Commission unless such agreements involve services declared to be competitive. Competitive Carriers need not file such contracts or arrangements at the Commission but must retain a copy of such contract or arrangement, and, in the case of an oral contract or arrangement, a written summary of such contract or arrangement. Competitive Carriers must make such copies or summaries available on request of the Commission and shall file such copies or summaries at the specific request of the Commission pursuant to 66 Pa. C.S. § 3019(b)(1).

(3) The Commission retains discretion to make inquiries of the parties with respect to such contracts or arrangements including audits, and if necessary, to take action to protect consumer interests. Such action may include initiating proceedings to review such contracts or arrangements for purposes of determining whether they are in the public interest.