

210298

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OMAHA
DENVER

March 12, 2004

RECEIVED

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: Docket No. AB-600, Yakima Interurban Lines Association –
Adverse Abandonment – Yakima County, Washington

Dear Mr. Williams:

Enclosed please find an original and ten copies of our Protest, for filing with the Board in the above-referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the enclosed, self-addressed, stamped envelope.

Very truly yours,



Mark C. Laughlin
FOR THE FIRM

MCL:sb
Enclosures
346233

ENTERED
Office of Proceedings

MAR 16 2004

Part of
Public Record

210298

BEFORE THE
SURFACE TRANSPORTATION BOARD

YAKIMA INTERURBAN LINES)
ASSOCIATION-ADVERSE)
ABANDONMENT IN)
YAKIMA COUNTY, WASHINGTON)

DOCKET NO.
AB-600

PROTEST

Level 3 Communications, LLC

Mark C. Laughlin
Joseph E. Jones
FRASER STRYKER MEUSEY
OLSON BOYER & BLOCH, P.C.
500 Energy Plaza
409 South 17th Street
Omaha, Nebraska 68102
(402) 341-6000

DATE FILED: March 12, 2004

COMES NOW Level 3 Communications, LLC, ("Level 3"), and hereby submits this protest to the Application for Adverse Abandonment filed by Kershaw Sunnyside Ranches, Inc. ("Kershaw"). Kershaw seeks to have one mile, which is located in the middle of the approximately eleven mile Naches Branch, authorized for abandonment. Kershaw's main argument in favor of abandonment is that the line is idle. This is not true. First, the County of Yakima intends to put this rail corridor to use in the future. Second, the Naches Branch right of way is currently being used by the City of Yakima (water) and Level 3 (telecommunications services) to provide essential public services to the residents of the State of Washington and beyond.

INTRODUCTION

Level 3 has contracted with both the current owner of the Naches Branch railroad right of way, Yakima Interurban Lines Association ("YILA"), and the previous owner of the Naches Branch, The Burlington Northern and Santa Fe Railway Company ("BNSF") for the right to lay fiber optic telecommunications within the Naches Branch right of way that runs through Kershaw's property. Additionally, Level 3 has obtained all necessary state governmental permits to provide its public service. Specifically, the Washington Utilities and Transportation Commission has approved Level 3 as a telecommunications company, which it can only do by recognizing that Level 3 provides services that are in the public interest. The Washington Constitution and Washington Statutes expressly allow telecommunications companies, such as Level 3, the right to use railroad rights of way for running telecommunications cable. Moreover, Level 3 has incurred substantial expense to run the fiber optic cables in the right of way. Level 3's cable is underground, and thus its burden on Kershaw's property is little to none.

In June 2000, Kershaw initiated a lawsuit against YILA, BNSF, and Level 3. Kershaw sought to quiet title to the Naches Branch right of way in Kershaw's favor. Level 3 filed a motion for summary judgment that railroad right of way on the Kershaw property had not been abandoned as a matter of law. On August 10, 2001, Judge Heather Van Nuys of the Superior Court of the State of Washington In and For the County of Yakima ruled, "As a matter of law, the surface rail line has not been abandoned." Notably, after three years of litigation over these issues, Kershaw did not even notify Level 3, BNSF, or YILA of its Adverse Abandonment Application.

FACTS

On October 4, 1905, Edward and Ora Kershaw conveyed by statutory warranty form deed certain property located in Yakima County, Washington, to the North Yakima & Valley Railway Company ("North Yakima"). North Yakima used the property as a railroad right of way. Through subsequent conveyances and corporate acquisitions The Burlington Northern and Sante Fe Railway Company ("BNSF") acquired the right of way. On February 18, 1999, BNSF executed a quitclaim deed transferring the railroad right of way to Yakima Interurban Lines Association ("YILA"), which acquired the rail line for the purpose of continued rail operations. Around the same time that YILA acquired the property, Level 3 entered into private agreements with both YILA and BNSF to install and maintain fiber optic telecommunication cables within the Naches Branch right of way.

Level 3 provides telecommunication services through its extensive nationwide fiber optic network. Level 3 is a Delaware limited liability company authorized to do business in Washington state. (See Certificate of Existence/Authorization, attached hereto as Exhibit A; Certificate of Registration, attached hereto as Exhibit B.). Level 3 is a public service company, which is regulated by the Washington Utilities and Transportation Commission ("WUTC"). (See RCWA, Chapter

80.01.040 attached hereto as Exhibit C; Exhibits A and B). Prior to installing fiber optic cable within public rights of way in Washington, Level 3 applied for and obtained necessary certificates pursuant to Washington law to provide telecommunications services to the public in the State of Washington. By granting Level 3 these permits, the WUTC recognized the public necessity of the services that Level 3 provides. The WUTC issues permits so that public utility companies, such as Level 3, may provide their services in the public interest. In 1998, Level 3 applied to the WUTC for the following certificates:

- (1) a certificate of registration and authority to provide interexchange, switched intraexchange and local exchange telecommunications services in Washington;
- (2) a certificate of classification as a competitive telecommunications company.

The WUTC granted Level 3's applications on April 22, 1998 and October 14, 1998, respectively. (See Order Granting Registration Application and Authorizing the Provision of Interexchange Switched Intraexchange Telecommunications Services attached hereto as Exhibit D; and Order Granting Petition for Classification as a Competitive Telecommunications Company attached hereto as Exhibit E).

The services Level 3 provides through these grants of authority and classification by the WUTC are considered to be an essential public service. See, e.g., Williams Telecomm. Co. v. Gragg, 750 P.2d 398, 403 (Kan. 1988). These services include providing Washington customers with both local service and switched access service, including such features as access to 911 emergency services, lifeline service, directory assistance, operator assisted services and relay services. (See Affidavit of Gregory Rogers, attached hereto as Exhibit F; see also Exhibit D). In Washington, Level 3 provides these essential public services by running portions of its fiber optic

network along rail corridors. In particular, a portion of Level 3's network is installed in the Naches Branch right of way Abandonment of the Naches Branch will interrupt continued provision of these services.

Level 3 is authorized to maintain its fiber optic telecommunication cables within the Naches Branch right of way pursuant to Washington law, as well as private agreement. In Washington, telecommunication companies, such as Level 3, are given both a constitutional and statutory right to use railroad rights of way for the construction and installation of their telecommunication cables. (See Wash. Const. art. 12, § 19 attached hereto as Exhibit G; Wash. Rev. Code § 80.36.040, attached hereto as Exhibit H) In addition, Level 3 entered into private agreements with both the owner of the Naches Branch, YILA, and the prior owner of the Naches Branch, BNSF, to install and maintain its fiber optic telecommunication cables within the Naches Branch.

STANDARD FOR ABANDONMENT

An adverse or involuntary abandonment, like any other abandonment, is not to be authorized unless the STB finds the present or future public convenience and necessity require or permit the abandonment. See 49 U.S.C. § 10903(d). In implementing this standard, the STB considers the relative burdens that continuation of service on the one hand, and cessation of the service on the other, would have on the involved carrier, on the owner-lessor of the rail-line, and on the public. Additionally, § 10903(d) provides that "[i]n making the finding, the Board shall consider whether the abandonment...will have a serious, adverse impact on rural and community development."

ARGUMENT

I. The Naches Branch Should Not Be Authorized for Abandonment Because Public Utilities Are Using it to Provide Essential Public Services to the People of the State of Washington.

Kershaw is attempting to use this adverse abandonment procedure to ultimately eject Level 3 from the Naches Branch right of way. This will interrupt essential public services. The STB should not authorize abandonment unless the public convenience and necessity allow. In this case, abandonment will have the opposite effect.

In addition to Level 3, the City of Yakima also uses the Naches Branch right of way to provide essential public services to the people of the State of Washington. The City of Yakima maintains a 48-inch concrete water transmission main within portions of the Naches Branch corridor. This water transmission main provides the domestic water supply for most of the City of Yakima. (See Affidavit of Dave Brown, attached hereto as Exhibit I). While the 48-inch concrete transmission main is not located within the one mile portion of track that the Kershaw's seek to have abandoned, abandonment of the Naches Branch would nevertheless adversely affect the operation of Yakima's domestic water system. The one mile that the Kershaw's seek to have abandoned is not located at either end of the Naches Branch. Rather, the one mile in question is located in the middle of the Naches Branch. If the STB were to authorize abandonment of this one mile, it would cut off that portion of the Branch that lies between Kershaw's property and the town of Naches from the rest of the Naches Branch.

If Kershaw's application is approved, abandonment is a foregone conclusion for the remaining remnants on the Naches Branch, resulting in a de facto abandonment of the entire Naches Branch right of way. The STB takes the position that it loses jurisdiction over pieces of rail line

isolated from the interstate rail system (See RLTD Railway Corp. v. STB, 166 F.3d 808 (6th Cir. 1999)). It follows that Kershaw's application must be viewed as a de facto abandonment of the severed line from the Kershaw's property into the town of Naches, as well as the unusable remnant at the Yakima end. This effectively results in de facto abandonment of the entire length of the Naches Branch right of way from milepost 2.97 to milepost 14.26. Because the City of Yakima's water main is located within the Naches Branch right of way, granting Kershaw's adverse abandonment application will jeopardize the City of Yakima's water supply and Level 3's services.

II. Washington Law Recognizes the Public Utilities' Right to Use the Naches Branch Right of Way to Provide Essential Public Services.

Under Washington law, telecommunications companies such as Level 3 are expressly given both a constitutional and statutory right to install their telecommunications cables within public rights of way, including railroad rights of way. Article 12, Section 19 of the Washington Constitution provides that, "Railroad corporations organized or doing business in this state shall allow telegraph and telephone corporations and companies to construct and maintain telegraph lines on and along the rights of way of such railroads and railroad companies." The Code of Washington, Section 80.36.040 provides that, "Any telecommunications company, or lessee thereof, doing business in this state, shall have the right to construct and maintain all necessary telecommunications lines for public traffic along and upon any public road, street or highway, along or across the right of way of any railroad corporation..."

As evidenced by the Washington constitution and statutory code, a telecommunications company is authorized to use of a railroad right of way to provide essential public services. Level 3's fiber optic cable is properly located within the Naches Branch right of way. Level 3's proper use

of the Naches Branch right of way for a recognized public purpose should defeat Kershaw's application for adverse abandonment.

CONCLUSION

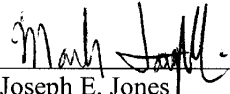
Level 3 has private contractual rights, as well as Washington statutory and constitutionally protected rights to maintain its fiber optic cable in the Naches Branch right of way. The Washington Utilities and Transportation Commission has approved Level 3 as a telecommunications company, and recognized that Level 3 provides essential public services to the public.

After more than three years of litigation in state court, Kershaw has become disenchanted with its inability to acquire property rights to the Naches Branch right of way. Thus, Kershaw has turned to the STB to try a new tactic. After three years of litigation, Kershaw did not notify Level 3, BNSF, or YILA of its application for adverse abandonment authorization. The only explanation for such a glaring omission is that Kershaw is attempting to get through the back door of the STB that which it could not get through the front door of the state court system.

Level 3 is a public utility providing an essential public service. Level 3 is using the Naches Branch right of way to provide telecommunications services to the residents of the State of Washington and beyond. Level 3's use of the right of way is proper under Washington statute and constitution.

Kershaw should not be allowed to use the STB as an alternative to the state court system to assert its private property rights. Level 3 respectfully requests that the STB deny Kershaw's application for adverse abandonment.

Respectfully submitted,
Level 3 Communications, LLC

By: 
Joseph E. Jones
Mark C. Laughlin
FRASER STRYKER MEUSEY
OLSON BOYER & BLOCH, P.C.
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102
(402) 341-6000

346011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served this 12th day of March, 2004, by U.S. Mail, postage pre-paid, first class, upon the following:

Sarah Wixson, Velikanje Moore & Shore
P. O. Box 22550
Yakima, WA 98907
(for Kershaw)

Jeanne A. Cushman
Office of the Attorney General
Transportation and Public Construction Division
905 Plum Street, Building 3
P. O. Box 40113
Olympia, WA 98504-0113
(for Washington Department of Transportation)

Charles H. Montange
426 N.W. 162nd Street
Seattle, WA 98177
(for Yakima County)

Raymond L. Paoella
Legal Department
200 South Third Street
Yakima, WA 98901-2830
(for City of Yakima)

Paul D. Edmondson
P. O. Box 384
313 North Third Street
Yakima, WA 98901
(for Yakima Interurban Lines Association)

Gregory S. Lightly
Halverson Applegate, P.S.
311 North Fourth Street
P. O. Box 22730
Yakima, WA 98907-2715
(for City of Naches)

UNITED STATES OF AMERICA

The State of Washington

Secretary of State

I, **SAM REED**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF EXISTENCE/AUTHORIZATION

OF

LEVEL 3 COMMUNICATIONS, LLC

I FURTHER CERTIFY that the records on file in this office show that the above named Limited Liability Company was formed under the laws of the State of DE and was issued a Certificate Of Registration in Washington on 12/10/1997.

I FURTHER CERTIFY that as of the date of this certificate, **LEVEL 3 COMMUNICATIONS, LLC** remains active and has complied with the filing requirements of this office.

Date: February 19, 2004

UBI: 601-837-741



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Sam Reed, Secretary of State

EXHIBIT

A

UNITED STATES OF AMERICA

The State of Washington

Secretary of State

I, **SAM REED**, Secretary of State of the State of Washington and custodian of its seal,
hereby issue this

CERTIFICATE OF REGISTRATION

to

LEVEL 3 COMMUNICATIONS, LLC

a/an DE Limited Liability Company. Charter documents are effective on the date
indicated below.

Date: 12/10/1997

UBI Number: 601-837-741

APPID: 5104



Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

Sam Reed, Secretary of State

EXHIBIT

B

RCW 80.01.040

General powers and duties of commission.

The utilities and transportation commission shall:

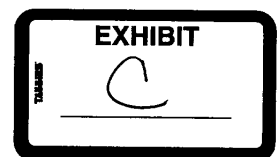
- (1) Exercise all the powers and perform all the duties prescribed therefor by this title and by Title 81 RCW, or by any other law.
- (2) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging in the transportation by whatever means of persons or property within this state for compensation, and related activities; including, but not limited to, air transportation companies, auto transportation companies, express companies, freight and freight line companies, motor freight companies, motor transportation agents, private car companies, railway companies, sleeping car companies, steamboat companies, street railway companies, toll bridge companies, storage warehousemen, and wharfingers and warehousemen.
- (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.
- (4) Make such rules and regulations as may be necessary to carry out its other powers and duties.

[1985 c 450 § 10; 1961 c 14 § 80.01.040. Prior: (i) 1949 c 117 § 3; Rem. Supp. 1949 § 10964-115-3. (ii) 1945 c 267 § 5; Rem. Supp. 1945 § 10459-5. (iii) 1945 c 267 § 6; Rem. Supp. 1945 § 10459-6. Formerly RCW 43.53.050.]

NOTES:

Severability -- Legislative review -- 1985 c 450: See RCW 80.36.900 and 80.36.901.

Flaggers -- Safety standards: RCW 49.17.350.



Dockets UT-980491 and UT-980492 Page 1

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Applications)
 of Level 3 Communications LLC) DOCKET UT-980491 and
 for an Order Authorizing Registration) DOCKET UT-980492
 as a Telecommunications Company)
) ORDER GRANTING
 And to Provide Local Exchange) REGISTRATION APPLICATION
 Services and Authorizing) AND AUTHORIZING THE
 Provision of Intraexchange) PROVISION OF Telecommunications Services)
 INTEREXCHANGE SWITCHED) INTRAEXCHANGE
) TELECOMMUNICATIONS
) SERVICES

On March 30, 1998, Level 3 Communications, LLC (Level 3) filed applications for registration, pursuant to RCW 80.36.350, for authority to provide interexchange and local exchange telecommunication services in Washington. The applicant proposes to offer resold and facilities based switched and dedicated direct dial long distance, switched and dedicated inbound 800/888, and access services to the public.

Level 3 also plans to offer a range of local exchange services. Level 3 plans to offer Washington customers both local service and switched access services, and these services may be equipped with various features and functions. Level 3 will provide customers access to 911 emergency services, directory assistance, operator assisted services, relay services, lifeline service and will also provide vertical features such as call waiting, call forwarding and Caller I.D. Level 3 is a limited liability company, headquartered in Omaha, Nebraska and is owned by its member company, PKS Information Services, Inc., which in turn is wholly owned by Level 3 Communications, Inc.

Level 3's Washington facilities-based operations will utilize switching and fiber optic facilities to provide broadband digital communications services and will purchase wholesale basic local exchange services from incumbent local exchange companies.

Level 3 has voluntarily committed to collect and remit to appropriate administrative agencies relevant excise taxes in support of various social programs, including enhanced 911, telecommunications relay services, and lifeline. Level 3 does not propose to collect advanced payments or deposits from customers. Level 3 has provided information showing that it meets the requirements of RCW 80.36.350.

FINDINGS



THE COMMISSION FINDS:

1. Level 3 Communications, LLC is a public service company subject to the jurisdiction of this Commission under the provisions of chapter 80.36 RCW.
2. As to form, the applications filed by Level 3 Communications, LLC meets the requirements of RCW 80.36.350 and the rules and regulations of the Commission adopted pursuant thereto.
3. It appears, upon investigation, that the request for authority to provide interexchange and intraexchange switched telecommunications services should be approved.
4. In this proceeding, the Commission in no way endorses the financial viability of applicant nor the investment quality of any securities it may issue.

ORDER

THE COMMISSION ORDERS:

1. After the effective date of this order and subject to the conditions hereof, the Commission approves the applications of Level 3 Communications, LLC filed pursuant to RCW 80.36.350 for registration as a telecommunications company to provide interexchange and switched intraexchange telecommunications services is hereby granted.
2. This order shall in no way affect the authority of this Commission over rates, service, accounts, valuations, estimates or determination of costs, or any matters whatsoever that may come before it, nor shall anything herein be construed as an acquiescence in any estimate or determination of costs, or any valuation of property claimed or asserted.
3. The proposed tariff as filed and amended, in Exhibit G attached to the applications, is satisfactory. Prior to supplying service to the public as a long distance and local exchange carrier or provision of resold services of incumbent and other local exchange carriers, Level 3 Communications, LLC shall file and receive permission and approval for an initial tariff with the Commission. The tariff shall bear an effective date not less than 30 days subsequent to the date of receipt by the Commission.
4. As a telecommunications company providing service to the public in this state, Level 3 Communications, LLC is subject to the jurisdiction of this Commission under the provisions of Title 80 RCW and all rules and regulations of the Commission adopted pursuant thereto.
5. Level 3 Communications, LLC shall not collect advanced payments or deposits without first showing that it has a satisfactory arrangement to protect customer monies as stated in WAC 480-121-040.

DATED at Olympia, Washington, and effective this 22nd day of April, 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PAUL CURL, Acting Secretary

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)
)
LEVEL 3 COMMUNICATIONS, L.L.C.,) DOCKET UT-980578
)
)
for Classification as a Competitive) ORDER GRANTING PETITION
Telecommunications Company.)
.....)

By petition filed March 30, 1998, Level 3 Communications, L.L.C. (Level 3), seeks classification in Docket UT-980578 as a competitive telecommunications company pursuant to RCW 80.36.320 and WAC 480-120-023.

Level 3 was registered with the Commission in Docket UT-980491 and UT-980492 as a telecommunications company to provide interexchange and switched intraexchange telecommunications services to the public.

In support of its petition, Level 3, alleges inter alia that its services compete with other interexchange carriers' telecommunication services. The company filed written testimony in support of competitive classification, which accompanied its petition.

In conjunction with classification, the company is seeking waiver of the requirements of various provisions of chapter 80.36 RCW and chapter 480-120 WAC.

The company seeks the following waivers:

RCW 80.04.300 Budgets to be filed by companies--supplementary budgets
RCW 80.04.310 Commission's Control Over Expenditures
RCW 80.04.320 Budget rules
RCW 80.04.330 Effect of Unauthorized Expenditure - Emergencies
RCW 80.04.360 Earnings in Excess of Reasonable Rate - Consideration
in Fixing Rates
RCW 80.04.460 Investigation of Accidents
RCW 80.04.520 Lease of Utility Facilities
Chapter 80.08 RCW Securities (Except RCW 80.08.140, State not obligated)
Chapter 80.12 RCW Transfers of Property
Chapter 80.16 RCW Affiliated Interests
RCW 80.36.100 Tariff schedules to be filed and open to public RCW 80.36.110 Tariff
changes--Statutory notice--Exception
WAC 480-120-026 Tariffs
WAC 480-120-031 Accounting



WAC 480-120-032 Accounting--Political information and political
education activities

WAC 480-120-036 Finance--Securities, affiliated interest, transfer of property
WAC 480-120-046 Services offered
WAC 480-120-131 Reports of accidents
Chapter 480-80 WAC Tariffs

Chapter 480-140 WAC Budgets

Chapter 480-143 WAC Transfers of Property
Chapter 480-146 WAC Securities and Affiliated Interests
Rules invoked include those within chapter 480-09 WAC, specifically WAC 480-09-520 and WAC 480-120-022, WAC 480-120-023, WAC 480-120-024, and WAC 480-120-025. Statutes invoked include RCW 80.36.145 and 80.36.320. The ultimate issues are whether Level 3 should be classified as a competitive telecommunications company, and the extent to which it should be relieved of regulatory requirements to which it would otherwise be subject.

Based upon the entire record and the file in this matter, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

DOCKET UT-980578 PAGE 1

1. Level 3 is registered with the Commission as a tele-communications company to provide interexchange and switched intraexchange telecommunications services to the public.
2. Alternative providers of service to that of Level 3 include, but are not limited to, AT&T Communications, Inc., U S WEST Communications, Inc., MCI Communications Corp., and Sprint Communications Company. All services are fully available from alternative providers in the relevant market.
3. The relevant market is the state of Washington.
4. Level 3 has no captive customer base.
5. The services offered are subject to effective competition.
6. Level 3 should be permitted to provide services under a price list.
7. Level 3 requested waivers of certain laws and rules relating to telecommunications

services. The laws and rules for which waivers should be granted are listed on Appendix A, attached, incorporated by this reference, and made a part of this Order.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this classification proceeding and the parties.
2. Level 3 should be classified as a competitive telecommunications company pursuant to RCW 80.36.320(1).
3. Level 3 will be permitted to provide services under price lists pursuant to RCW 80.36.320 (2), the format of which will be subject to prior approval by the Commission. These services will not include alternate operator services as defined in WAC 480-120-141.
4. Level 3 should be granted waiver of the laws and rules listed in Appendix A. Waiver of laws and rules requested that are not included in Appendix A should be denied.

ORDER

THE COMMISSION ORDERS:

1. The petition of Level 3 Communications, L.L.C., for classification as a competitive telecommunications company, is granted.
2. Waiver is granted of the laws and rules listed in Appendix A.
3. Level 3 Communications, L.L.C. is authorized to offer services under price lists, the format of which will be subject to prior approval by the Commission, with price lists effective only after ten days notice to the Commission and to customers. In the event of a price reduction or a change in terms or conditions which do not have rate impact, personal notice to customers will not be required. Although the Commission does not have authority to waive the notice requirement, Level 3 Communications, L.L.C., will have the option to publish notice of price reductions by a display advertisement in such newspaper or newspapers as are geographically situated so as to be circulated over the company's service area.
4. The services offered by Level 3 Communications, L.L.C., are not to include alternate operator services as defined in WAC 480-120-141.
5. The Commission retains jurisdiction over the subject matter and the parties to effectuate the terms of this Order.

DOCKET UT-980578 PAGE 4

DATED at Olympia, Washington, and effective this 14th day of October, 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN
Secretary

DOCKET UT-980578

APPENDIX A

RCW 80.04.300 Budgets to be filed by companies--Supplementary budgets
RCW 80.04.310 Commission's control over expenditures
RCW 80.04.320 Budget rules
RCW 80.04.330 Effect of unauthorized expenditure--Emergencies
RCW 80.04.360 Earnings in excess of reasonable rate--Consideration in fixing rates
RCW 80.04.460 Investigation of accidents
RCW 80.04.520 Lease of utility facilities
RCW 80.36.100 Tariff schedules to be filed and open to public
RCW 80.36.110 Tariff changes--Statutory notice--Exception

Chapter 80.08 RCW Securities (except RCW 80.08.140, State not obligated)
Chapter 80.12 RCW Transfers of Property
Chapter 80.16 RCW Affiliated interests

Chapter 480-80 WAC Tariffs
Chapter 480-140 WAC Budgets
Chapter 480-143 WAC Transfers of Property
Chapter 480-146 WAC Securities and affiliated interests

WAC 480-120-026 Tariffs
WAC 480-120-031 Accounting
WAC 480-120-032 Accounting-Political information and political education activities
WAC 480-120-036 Finance--Securities, affiliated interest, transfer of property
WAC 480-120-046 Services offered
WAC 480-120-131 Reports of accidents

STATE OF COLORADO)
) ss:
COUNTY OF BROOMFIELD)

COMES NOW the affiant, Gregory L. Rogers, and having been duly sworn upon oath,
deposes and states as follows:

1. I am the Director of State Regulatory Affairs for Level 3 Communications, LLC ("Level 3"). In this capacity, I am responsible for Level 3's activities concerning state regulatory authorities. I have personal knowledge of the facts to which I am attesting.
2. Level 3 provides wholesale communications services. Its primary customers include local and long distance telephone carriers, including Qwest, Internet service providers ("ISP"), wireless service providers, cable television service providers and satellite television companies.
3. Level 3's network and services support Washington residents' and businesses' ability to access the Internet and communicate through data and voice transmissions.
4. Level 3 currently provides services to: (i) the top four largest local telephone carriers in the United States, including Washington carrier Qwest; (ii) nine of the top ten ISP's in the United States, including AOL, MSN and Earthlink; and (iii) the top four largest long distance telephone carriers in the United States. Level 3 provides bandwidth and other services which these companies require for the operation of their networks.
5. Level 3 provides telecommunications services such as intrastate private line services and direct inward dial capabilities for sale within Washington.
6. Level 3's (3)Connect Modem service provides a dial-up connection allowing access to the Internet. The service works as follows: an end user in Washington dials into the Internet via a personal computer and standard modem connection; the call is routed through the local telephone company and into Level 3's network facilities located in Washington where Level 3's equipment converts the transmission and then routes the call into the Internet. Level 3 also supports Internet access services that do not require a dial-up connection.
7. Level 3 sells its (3)Connect Modem to Internet Service Provider customers.
8. Level 3's (3)Link Private Line, (3)Link Dark Fiber and (3)Link Global Wavelength services provide capacity along Level 3's network. Such services allow local telephone companies, long-distance carriers, ISPs and any number of other communications-intensive companies to purchase capacity along Level 3's network for the purpose of transporting voice, video or data traffic. Through these services a telephone call from someone in Washington could



be routed through Level 3's network to its destination in another part of the same city, another part of the state, a different state or somewhere in a different part of the world.

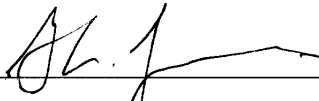
9. Level 3's (3)Center Colocation services allow customers to exchange voice, video and data traffic with other telecommunications companies and ISPs in the same Gateway, in other Level 3 Gateways, or with other networks directly connected to Level 3's network. Direct connections are provided by Level 3's (3)Link Cross Connect service.

10. Level 3 has fiber optic cable located within the Naches Line railroad right-of-way, including that portion of the Naches Line railroad right-of-way that runs across the property owned by Kershaw Sunnyside Ranches.

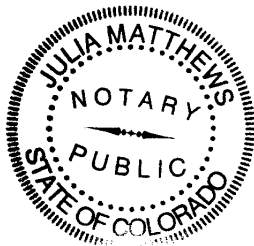
11. The fiber optic cable located within the Naches Line railroad right-of-way is connected with the rest of the Level 3 network in Washington. The fiber optic cable placed in the Naches Line railroad right-of-way is an essential piece of providing telecommunications services to business and residents of Washington and the pacific northwest.

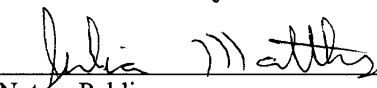
FURTHER AFFIANT SAYETH NOT.

DATED this 10th day of March, 2004.



SUBSCRIBED AND SWORN to before me this 10th day of March, 2004.





Notary Public
my commission Expires: 11/18/07

RCWA Const. Art. 12, § 19

**ARTICLE XII
CORPORATIONS OTHER THAN MUNICIPAL**

SECTION 19 TELEGRAPH AND TELEPHONE COMPANIES. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this state, and said companies shall receive and transmit each other's messages without delay or discrimination and all of such companies are hereby declared to be common carriers and subject to legislative control. Railroad corporations organized or doing business in this state shall allow telegraph and telephone corporations and companies to construct and maintain telegraph lines on and along the rights of way of such railroads and railroad companies, and no railroad corporation organized or doing business in this state shall allow any telegraph corporation or company any facilities, privileges or rates for transportation of men or material or for repairing their lines not allowed to all telegraph companies. The right of eminent domain is hereby extended to all telegraph and telephone companies. The legislature shall, by general law of uniform operation, provide reasonable regulations to give effect to this section.

EXHIBIT

G

RCW 80.36.040

Use of road, street, and railroad right-of-way -- When consent of city necessary.

Any telecommunications company, or the lessees thereof, doing business in this state, shall have the right to construct and maintain all necessary telecommunications lines for public traffic along and upon any public road, street or highway, along or across the right-of-way of any railroad corporation, and may erect poles, posts, piers or abutments for supporting the insulators, wires and any other necessary fixture of their lines, in such manner and at such points as not to incommode the public use of the railroad or highway, or interrupt the navigation of the waters: PROVIDED, That when the right-of-way of such corporation has not been acquired by or through any grant or donation from the United States, or this state, or any county, city or town therein, then the right to construct and maintain such lines shall be secured only by the exercise of right of eminent domain, as provided by law: PROVIDED FURTHER, That where the right-of-way as herein contemplated is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telecommunications lines can be erected thereon.

[1985 c 450 § 18; 1961 c 14 § 80.36.040. Prior: 1890 p 292 § 5; RRS § 11352.]



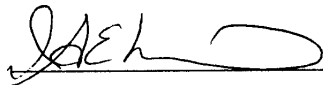
STATE OF WASHINGTON)
) ss:
COUNTY OF YAKIMA)

COMES NOW the affiant, David E. Brown, and having been duly sworn upon oath,
deposes and states as follows:

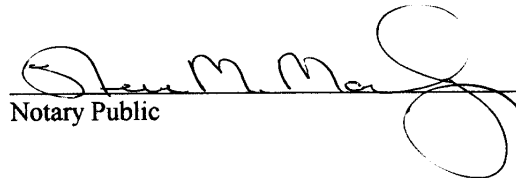
1. I am the Water/Irrigation Division Manager for the City of Yakima, Washington. In my position as the Water/Irrigation Division Manager I manage the operation and maintenance of the Domestic Water Treatment Plant, distribution system, storage reservoirs, wells, pump stations, river diversions and water quality. I also manage the operation and maintenance of the non-potable irrigation system, river diversions, screens, pumps and distribution system. I have personal knowledge of the facts to which I am attesting.
2. In 1969 the City of Yakima obtained a permit to construct a 48-inch concrete transmission main within portions of the railroad right-of-way along the Naches Rail corridor.
3. The 48-inch concrete transmission main runs to the city of Yakima from the Naches River Water Treatment Plant at 6390 U.S. Highway 12 and along the Naches Rail line.
4. The city of Yakima operates the 48-inch concrete transmission main. This water transmission main provides the domestic water supply for most of the city of Yakima.

FURTHER AFFIANT SAYETH NOT.

DATED this 5th day of March, 2004.



SUBSCRIBED AND SWORN to before me this 5th day of March, 2004.



Notary Public

W347028

