

Decision No. C23-0209

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23U-0076T

IN THE MATTER OF THE LEVEL 3 PETITION FOR DECLARATION OF INTENT TO SERVE WITHIN THE TERRITORY OF A RURAL TELECOMMUNICATIONS PROVIDER, AS PROVIDED IN RULE 2107.

COMMISSION DECISION GRANTING PETITION

Mailed Date: March 29, 2023

Adopted Date: March 29, 2023

I. BY THE COMMISSION

A. Statement

1. On February 14, 2023, Level 3 Communications, LLC (Level 3), a subsidiary of CenturyLink, Inc., now doing business as Lumen Technologies (Lumen), filed a petition stating its Declaration of Intent to Serve Within the Territory of a Rural Telecommunications Provider (Petition) pursuant to Rules 2003(a)(III) and 2107 of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* (CCR) 723-2.

2. The services to be provided are located in the serving territory of Eastern Slope Rural Telephone Association (Eastern Slope). Level 3 intends to provide voice and data services in the exchanges of Bennett, Eads, Flagler, Haswell, Kit Carson, and Woodrow.

3. Level 3 has represented in its Petition that it has directly notified Eastern Slope the rural incumbent affected, by first class mail of their Declaration of Intent to Serve. This is a requirement of Rule 2107.

4. No petition to intervene or notice of intervention has been filed; thus, the Petition is uncontested. Accordingly, the Petition will be determined without a formal hearing in accordance with § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1.

B. Discussion

5. The service territory of Eastern Slope is currently open to competitive providers and competition. The service territory of Eastern Slope is also subject to competition as demonstrated by interconnection agreements (including Proceeding Nos. 06T-093 Verizon Wireless and 22T-0312 Level 3 Communications).

6. Level 3 was granted a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange telecommunications by Decision No. C98-373, in Proceeding No. 98A-092T, mailed date of April 8, 1998.

7. In 2014, the General Assembly passed telecom deregulation legislation that reclassified many services into Part 4 of Title 40, Article, 15. *See* § 40-15-401, C.R.S. Subject to certain exceptions, including those for basic service as provided in § 40-15-401(1)(b), C.R.S., products, services, and providers listed in § 40-15-401, C.R.S. (Part 4), “are exempt from regulation under this article or under the ‘Public Utilities Law’ of the state of Colorado.” § 40-15-401(1), C.R.S. Section 402 also emphasizes the deregulatory status of services listed in section 401, by stating: “Nothing in articles 1 to 7 of this title [40] or parts 2 and 3 of this article [15] shall apply to deregulated services and products pursuant to this part 4.” § 40-15-402(1), C.R.S.

8. We acknowledge that Level 3's services are no longer regulated under Part 2 of § 40-15-201, C.R.S., but Level 3 is requesting approval of its intent to serve pursuant to Rule 2107 adopted September 1, 2017. The Commission, by this Decision, is not asserting jurisdiction over Level 3's services.

9. The Commission updated its existing telecommunications rules to be consistent with the 2014 Telecommunications Reform Legislation. *See Proceeding No. 16R-0453T*. The 2014 Telecommunications Reform Legislation made changes that no longer require Commission authorization (a CPCN) to offer deregulated local exchange services.

10. The Commission will consider Level 3's Petition but affirms that it does not assert any jurisdiction over deregulated services of local exchange services. Level 3 intends to provide these services in the Bennett, Eads, Flagler, Haswell, Kit Carson, and Woodrow exchange.

11. We find that granting Level 3's Petition is consistent with the legislative policy statements contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S., the Telecommunications Act of 1996, 47 U.S.C. § 251, and with the public interest in Level 3 to provide competitive services in the requested rural exchanges.

II. ORDER

A. The Commission Orders That:

1. The Petition filed by Level 3 Communications, LLC on February 14, 2023, stating its Declaration of Intent to Serve Within the Territory of a Rural Telecommunications Provider to serve in the Bennett, Eads, Flagler, Haswell, Kit Carson, and Woodrow exchange is granted. Notwithstanding the granting of the Petition, the Commission is not exerting jurisdiction over Level 3 Communications, LLC services.

2. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 29, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read 'G. Harris Adams'.

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners