

Decision No. C23-0384

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23U-0209T

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: June 16, 2023

Adopted Date: June 7, 2023

I. BY THE COMMISSION

A. Statement

1. On April 27, 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. Level 3 is authorized to provide facilities-based and resold local exchange services and emerging competitive communications services.

3. The services to be provided are located in the service territory of Delta County Tele-Comm, Inc., d/b/a TDS Telecom (TDS). The Company intends to provide services in the Cedaredge, Crawford, Eckert, Hotchkiss, Paonia, and Somerset exchanges.

4. Level 3 represented in its Petition that it had directly notified Delta County Tele-Comm, Inc., d/b/a TDS Telecom the rural incumbent affected, by first class mail of their Declaration of Intent to Serve. This is a requirement of Rule 2107.

5. On May 17, 2023, Level 3 filed a Notice of Supplemental Notice of Filing. This filing represented that the initial notice sent by Level 3 to TDS was returned as undeliverable. Level 3 subsequently obtained an updated address and resent a notice of its Petition to TDS on May 17, 2023.

6. No petition to intervene or notice of intervention has been filed, and 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

7. The service territory of TDS is currently open to competitive providers and competition. The service territory of TDS is also subject to competition as demonstrated by interconnection agreements (including Proceeding Nos. 19T-0296 Bresnan Broadband of Colorado and 20T-0181 Bandwidth.COM).

8. 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.

9. 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.

10. 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.

11. 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.

12. The Commission will consider Level 3’s Petition but affirms that it does not assert any jurisdiction over deregulated services of local exchange services. The Company intends to provide these services in the Cedaredge, Crawford, Eckert, Hotchkiss, Paonia, and Somerset exchanges.

13. 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.

14. Level 3 may begin offering services no sooner than July 1, 2023, which is 45 days from the date on which it sent the corrected notice to TDS. This accords with Rule 2107 which generally provides that the incumbent rural telecommunications provider (here, TDS) should receive notice of the intent to serve roughly 45 days before the entrant provider (here, Level 3) begins providing service.

II. ORDER

A. The Commission Orders That:

1. The Petition filed by Level 3 Communications, LLC on April 27, 2023, stating its Declaration of Intent to Serve Within the Territory of a Rural Telecommunications Provider to serve in the Cedaredge, Crawford, Eckert, Hotchkiss, Paonia, and Somerset exchanges, 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
June 7, 2023.**

(S E A L)



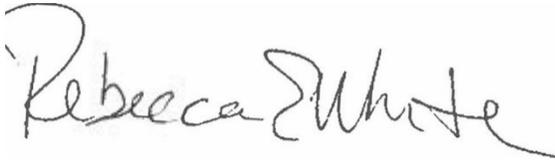
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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners



Rebecca E. White,
Director

COMMISSIONER MEGAN M. GILMAN
ABSENT