

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>LEVEL 3 COMMUNICATIONS, LLC | DOCKET NO. TF-05-31<br>(TCU-99-1) |
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**ORDER REJECTING TARIFF AND DENYING CERTIFICATE**

(Issued April 7, 2005)

On April 30, 1999, the Utilities Board (Board) issued an order in Docket No. TCU-99-1 approving an application for certificate of public convenience and necessity filed by Level 3 Communications, LLC (Level 3), pursuant to Iowa Code § 476.29 (1999). The order stated that a certificate would be issued when Level 3 obtained an approved tariff setting forth the prices, terms, and conditions of local exchange service in Iowa.

On February 2, 2002, Level 3 filed a proposed local exchange tariff identified as TF-02-54. This tariff did not include business or residential service rates and was instead designed for the provision of service only to Internet service providers (ISPs). On February 25, 2002, the Board issued an order rejecting the proposed tariff.

On January 31, 2005, Level 3 filed a proposed local exchange tariff identified as TF-05-31. Revisions to the proposed tariff were filed on February 7 and March 15, 2005.

Through conversations with Level 3, Board staff learned that Level 3 proposes to tariff only a wholesale interconnection between itself and enhanced service providers (ESPs) such as providers of Voice-over Internet Protocol (VoIP). Level 3

also proposes to provide telephone numbers to VoIP carriers to enable those carriers to provide service to their end-user customers. Level 3 does not intend to provide retail local exchange service directly to end-use customers.

Iowa Code § 476.29(1) (2005) provides that a utility must have a certificate before furnishing land-line local telephone service in Iowa. A telecommunications utility is defined in § 476.1 as being a utility that provides communications services to the public for compensation. The question that is raised by Level 3's proposed tariff is whether the nature of Level 3's operations, i.e., the provision of wholesale service to ESP's, constitutes services to the public.

The term "to the public" has been defined by the Iowa Supreme Court in Iowa State Commerce Comm'n v. Northern Natural Gas Co., 161 N.W.2d 111, 115 (Iowa 1968) as it is used in § 476.1, as being service "to sufficient of the public to clothe the operation with a public interest and does not mean willingness to sell to each and every one of the public without discrimination." Northern Natural Gas, 161 N.W.2d at 115. Unlike most certificated telecommunications carriers in Iowa, Level 3 does not intend to provide retail local exchange service directly to end-use customers. Rather, the nature of Level 3's proposed operations is to serve as a wholesaler of service, offering interconnection, including telephone numbers, to VoIP providers who in turn offer communications services to the public for compensation. The provision of wholesale services only to other retail providers does not appear to amount to sufficient sales to the public so as to "clothe the operation with a public interest." Id.

Level 3 has not established that it is entitled to a certificate under these circumstances. Moreover, Level 3's desire to obtain telephone numbers to then in

turn sell those numbers to its ESP customers appears to have been rendered moot by a recent decision by the Federal Communications Commission (FCC) that allows VoIP providers to apply directly to the North American Numbering Plan Administrator (NANPA) for any needed telephone numbers rather than requiring them to obtain numbers from a wholesale provider or through the usual state authorization process. Therefore, the Board will reject Level 3's tariff without prejudice and deny Level 3 a certificate at this time.

**IT IS THEREFORE ORDERED:**

1. The proposed tariff filed by Level 3 Communications, LLC, on January 31, 2005, and amended on February 7 and March 15, 2005, identified as TF-05-31, is rejected without prejudice as described in this order.
2. The request for a certificate of public convenience and necessity initially filed on April 30, 1999, by Level 3 Communications, LLC, and identified as Docket No. TCU-99-1, is denied without prejudice.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 7<sup>th</sup> day of April, 2005.