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June 12, 2017

Dr. Talina Mathews
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: Case No. 2017-00177 Motion Of Level 3 Telecom Of KY To Exempt Telecommunications Utilities From The Obligation To Obtain A Certificate Of Convenience And Necessity To Bid On Franchises

Dear Dr. Mathews:

By Order dated May 17, 2017 the Commission invited comments on Level 3 Telecom KY, LLC's ("Level 3") Motion to exempt telecommunications utilities from the obligation to obtain a Certificate of Convenience and Necessity to bid on franchises. AT&T Kentucky, the only party to file comments, supported the relief requested by Level 3.

AT&T Kentucky also suggested that as an alternative the Commission could issue an Order "making clear that any telecommunications utility doing business in Kentucky pursuant to the Commission's Orders in Administrative Case Nos. 359 and 370 is exempt from the requirements of KRS 278.020(5)." AT&T Kentucky states "[t]here is no valid reason for anyone to suggest that CLECs or wireless carriers already authorized to provide services pursuant to [those Orders] should have to incur the time and expense of duplicative and unnecessary administrative proceedings. . ."

Level 3 agrees with AT&T Kentucky's reasoning. Indeed, nine years ago Level 3's predecessor in interest, tw telecom of kentucky, raised the same issue when it sought a CCN for Fayette County, noting it was implicit that since the *January 1998 CLEC Order*¹ in Administrative Case No. 370 the Commission has presumed that the public convenience and necessity require competitive entry and, where it occurs, there is demand and need for the service to be rendered.² That presumption of demand would logically apply not only for CLECs, but

¹ Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers, PSC Admin. Case No. 370 (Jan. 8, 1998).

² *Application of tw telecom of kentucky*, Case No. 2008-00438 (filed October 10, 2008) (seeking a CCN showing a demand and need for service in Fayette County) (*tw telecom 2008 Application*).

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also to other telecommunications utilities seeking franchises, including ILECs. Yet, as tw telecom noted in its 2008 petition, an earlier 2008 order granting a CCN to Windstream East for Fayette County did not mention the *1998 CLEC Order*³ but did quote the statutory language that "[n]o utility shall apply for or obtain any franchise" until it has obtained a CCN.

The Commission granted tw telecom a CCN for Fayette County in that 2008 case rather than declaring the requirement had been waived generally, or for CLECs specifically. Therefore, for the purposes of the Motion here, Level 3 presumed the statutory requirement applies until the Commission explicitly says otherwise, as it may do pursuant to KRS 278.512(2).

Since there is support for Level 3's Motion, and no opposition, and since the *January 1998 CLEC Order* did not discuss franchises, this case provides the right opportunity for the Commission to end any uncertainty by granting the relief requested in the Motion. The Commission should declare that telecommunications utilities are not required to obtain a CCN to bid on a franchise. If the Commission grants the Motion it should also clarify that telecommunications utilities are not required to file a copy of any franchises, licenses or permits with the Commission.⁴

Please confirm your receipt of this filing by placing the stamp of your office with the date received on the enclosed additional copies and return them to me via our runner.

Should you have any questions please contact me at your convenience.

Very truly yours,

STOLL KEENON OGDEN PLLC



Douglas F. Brent

Counsel for Level 3 Telecom

³ *tw telecom 2008 Application* at ¶¶ 9-10.

⁴ See 807 KAR 5:001, Section 15. 4(b). Arguably, this filing requirement was already waived in the August 8, 2000 Order in Administrative Case 359/370, which did not mention the filing rule as one of several administrative rules that would continue to apply to CLECs. See August 8, 2000 Order at pp. 4-5.

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CERTIFICATE OF SERVICE

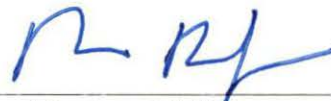
I hereby certify that a true and correct copy of the foregoing was served upon the following, this 12th day of June, 2017.

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