

STATE OF FLORIDA

Commissioners:  
E. LEON JACOBS, JR., CHAIRMAN  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI



DIVISION OF APPEALS  
DAVID SMITH  
DIRECTOR  
(850) 413-6245

**Public Service Commission**

May 8, 2001

Mr. Carroll Webb  
Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, Florida 32399-1300

Re: PSC Docket No. 010650-TX

Dear Mr. Webb:

The Commission received a Petition for Declaratory Statement from Level 3 Communications, LLC. on May 1, 2001. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Weekly on Friday, May 18, 2001.

Sincerely,

*Martha Carter Brown*

Martha Carter Brown  
Associate General Counsel

MCB  
Enclosure  
cc: Division of Records and Reporting

DOCUMENT NUMBER - DATE

05808 MAY -86

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC's )  
Petition for Declaratory Statement )  
\_\_\_\_\_ )

Docket No. 010650-TX

Filed: May 1, 2001

**LEVEL 3 COMMUNICATIONS, LLC'S**  
**PETITION FOR DECLARATORY STATEMENT**

Level 3 Communications, LLC ("Level 3"), by and through its undersigned counsel, and pursuant Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, hereby files this Petition for Declaratory Statement which seeks a determination from the Commission that the collocation revenues reported by Level 3 should not be included as "gross operating revenues derived from intrastate business" as contemplated by Rule 25-4.0161, Florida Administrative Code, and Sections 350.113(3)(b) and 364.336, Florida Statutes, for purposes of calculating the regulatory assessment fee ("RAF") for calendar year 1999. In support of this Petition, Level 3 states as follows:

1. The name, address, telephone number and facsimile number of the Petitioner is as follows:

Level 3 Communications, LLC  
Gregory Rogers, Esq.  
1025 Eldorado Boulevard  
Broomfield, Colorado, 80021.  
(720) 888-2512 (Telephone)  
(720) 888-5134 (Facsimile)

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2. The name, address, telephone number and facsimile number of Level 3's counsel in this docket is as follows:

Kenneth A. Hoffman, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P. O . Box 551  
Tallahassee, FL 32301  
(850) 681-6788 (telephone)  
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### **BACKGROUND**

3. Level 3 seeks a declaratory statement regarding the application of Rule 25-4.0161, Florida Administrative Code, and Sections 350.113(3)(b) and 364.336, Florida Statutes, to Level 3's particular set of circumstances as outlined below.

4. Level 3 is an alternative local exchange telecommunications company ("ALEC") authorized by the Florida Public Service Commission ("Commission") to provide local exchange services pursuant to ALEC Certificate No. 5725. As a regulated ALEC in the state of Florida, Level 3 is required to pay an annual RAF of 0.0015 of "its gross operating revenues derived from intrastate business" pursuant to Rules 25-4.0161, and 25-24.835 F.A.C., and Sections 350.113(3)(b) and 364.336 of the Florida Statutes. On August 9, 2000 Level 3 was informed by the Auditing Services division of the Commission that it had been randomly selected to have its 1999 RAF filing audited. A result of the audit of Level 3's 1999 RAF filing was that Commission staff concluded that Level 3 should include revenues from collocation in 1999 in the amount of \$381,342.00 as part of its "gross operating revenues derived from intrastate business" to calculate the RAF due.<sup>1</sup> Level

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<sup>1</sup>By letter dated April 9, 2001, Staff has agreed to withhold sending the results of its audit to the Division of Administration for billing of Level 3's 1999 RAF until this Petition is resolved.

3 is substantially affected by the Staff's interpretation of Rule 25-4.0161, F.A.C. and Sections 350.113(3)(b) and 364.336, Florida Statutes. Therefore, it requests a declaratory statement from the Commission determining that said rule and statutes do not include revenues an ALEC generates from collocation for the purpose of calculating the annual RAF.

### **ARGUMENT**

5. The primary issue raised in this Petition is whether revenues realized from the provision of collocation space should be considered "gross operating revenues derived from intrastate business" under the aforementioned rule and statutes for purposes of calculating the RAF. Collocation revenues represent nothing more than lease payments for occupying space in Level 3's Gateway facilities. In other words, collocation is a simple real property transaction. While the collocation space typically houses customers' equipment which is used for the provision of telecommunications and/or information services, collocation in and of itself does not involve the provision of telecommunications services by Level 3. In fact, it would be extremely difficult to determine whether the collocation space that is leased is ultimately being used to provide regulated or unregulated services. Because collocation is not a regulated telecommunications service, Level 3 maintains that collocation revenues should not be included as part of Level 3's gross operating revenues used to determine the annual RAF it must pay as a regulated ALEC in Florida.

6. Level 3's position is supported by the recent declaratory statement issued by the Commission in Docket No. 001556-TL. In that docket, Verizon Florida, Inc. ("Verizon") filed a petition with the Commission seeking a declaration that it is not required to pay regulatory assessment fees on directory advertising revenues. By Order No. PSC-01-0097-DS-TL issued January 11, 2001, the Commission determined that Verizon is required to pay regulatory assessment

fees on the directory advertising revenues of its directory affiliate (Verizon Directories Corp.).

However, in reaching its conclusion, the Commission emphasized:

Verizon's directory affiliate may not itself meet the terms of a definition of a telecommunications company if it does not offer "two-way telecommunications service". Nevertheless, it is providing a service that Verizon is required to provide by virtue of Verizon being certificated to provide basic local telecommunications service, defined to include an alphabetical directory listing. §364.02(2), Fla. Stat. (2000).<sup>2</sup>

7. The rationale for the Commission's decision in the Verizon declaratory statement proceeding underscores Level 3's position that collocation revenue is not subject to regulatory assessment fees. First, in contrast to the "service" that Verizon is "required" to provide (either directly or through its affiliate), Level 3 is under absolutely no legal obligation to provide collocation to other carriers. That is an obligation strictly limited by federal law to incumbent local exchange companies.<sup>3</sup> The final order in the Verizon Declaratory Statement proceeding makes it clear that Sections 350.113(3)(b) and 364.336, Florida Statutes, were never intended to impose a regulatory assessment fee on the revenues of a regulated telecommunications company that are not derived from a required component of that telecommunications company's communications service. Taken to its logical conclusion, the staff position would subject optional, non-telecommunications services and revenues such as collocation or, for that matter, the sale of customer premises equipment, to the RAF. Clearly, the two statutes at issue were never intended to capture such revenues in calculating the RAF.

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<sup>2</sup>Order No. PSC-01-0097-DS-TL, at 4. (Emphasis supplied).

<sup>3</sup>See 47 U.S.C. §251(c)(6).

8. Second, the collocation provided by Level 3 is not a "two-way telecommunications service." While that term, or the term "telecommunications service," is not defined under Chapter 364, Florida Statutes, relevant definitions are found in the Federal Telecommunications Act of 1996.

Specifically, under 47 U.S.C. §153(43), the term "telecommunications" is defined to mean:

... the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

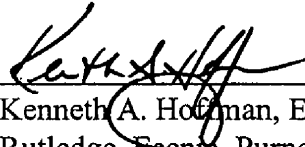
Similarly, under 47 U.S.C. §153(46), the term "telecommunications service" is defined to mean:

... the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

9. Clearly, Level 3's leasing of real property to other carriers or entities does not fit within the four corners of the federal statutory definitions of the terms "telecommunications" or "telecommunications service". Accordingly, under the rationale employed by the Commission in the Verizon Declaratory Statement proceeding, collocation revenues should not be construed to be part and parcel of "two-way telecommunications service" and, therefore, not subject to regulatory assessment fees.

WHEREFORE, for the foregoing reasons, Level 3 requests the Commission to issue a declaratory statement determining that Level 3's collocation revenues are not "gross operating revenues derived from intrastate business" under Sections 350.113(3)(b) and 364.336, Florida Statutes, and Rule 25-4.0161, F.A.C., and that such collocation revenues should be excluded from the calculation of Level 3's regulatory assessment fee due for calendar year 1999.

Respectfully submitted,



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