STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

LEVEL 3 COMMUNICATIONS —
LICENSES BY NOTIFICATION PURSUANT TO RSA 371:17-b

CRS _____

Motion for Confidential Treatment

Level 3 Communications, LLC and Telcove Operations, LLC, doing business as Level 3 Communications (collectively, "Level 3") seek confidential treatment pursuant to RSA 95-A:5, IV and N.H. Code of Administrative Rules Puc 203.08 for the list of facility crossings attached to the accompanying notification. Level 3 has a strong privacy interest in this detailed compilation of the locations of its telecommunications facilities in the state. Release of the list would provide competitors or malefactors with comprehensive data regarding where Level 3 has telecommunications transmission cables and associated facilities, and, accordingly, where it provides or is able to provide service. There is little public interest in the release of the information, in particular because citizens have little to learn about the workings of state government from the release of the information. Even if there were a public benefit, it is far outweighed by the potential harm, competitive and otherwise, to Level 3 if the information were made public.

Discussion

In determining whether to grant confidential treatment to information submitted to the Commission, the Commission employs a three-step test:

> The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether a document, or the information contained

> within it, falls within the category of "confidential, commercial, or financial information" under RSA 91-A:5, IV. Under that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Finally, the Commission balances those competing interests and decides whether disclosure is appropriate. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted.

In re Pennichuck East Utility, Inc. — Petition for Authority to Issue Long Term Debt, DW 14-321, Order *Nisi* Approving Long Term Debt and Granting Motion for Confidential Treatment, Order No. 25,758, at 5 (January 21, 2015) (internal citations omitted).

The first factor, whether a privacy interest exists, is satisfied in this case. Level 3 is a competitive telecommunications provider and has a strong privacy interest in keeping from competitors' and malefactors' eyes the list showing numerous specific and precise locations of its facilities throughout the State of New Hampshire. Level 3 created the list for purpose of this filing. It has not otherwise been disclosed outside the company. Only specifically-designated company personnel and counsel who are responsible for this filing have access to these lists. Creating the list required significant time and effort and the use of sophisticated computer mapping software and data.

The Commission consistently and for many years has determined that information regarding competitive carriers' networks, including their location, configuration, and equipment used, is proprietary and competitively sensitive information deserving of protection from disclosure to the public or to competitors. Among the types of information that the Commission has protected are network maps. *E.g., In re New Hampshire Regulated Utilities — October 2011 Snow Storm*, Order Granting Requests for Confidential Treatment, Order No. 25,457 at 8 (Jan. 18, 2013) (system circuit maps contain sensitive commercial information that warrants protection); *In re Union Telephone Company — Petition for Approval of an Alternative Form of*

Regulation, DT 11-024, Order on Petition and Motion for Confidential Treatment, Order No. 25,235 at 17-19 (June 15, 2011) (carrier has developed its facilities to benefit its business and competitive harm could befall it should the extent and capabilities of its facilities be revealed in such an explicit manner as on detailed network maps).

Likewise, in the wire center reclassification proceedings, DT 05-83 and DT 12-337, the Commission recognized the highly sensitive nature of competitive carriers' network information. In investigating the contentions by the incumbent local exchange carrier (Verizon or FairPoint) that various "fiber-based collocators" were present in specific wire centers in the state, the Commission and its Staff undertook a detailed investigation of the network configuration and equipment of each collocator in a given wire center. Recognizing the potential harm that would ensue if such details about one competitive carrier became available to other competitive carriers, the Commission developed protocols to prevent the identification of the specific providers at a wire center and to quarantine information about individual providers' network information from disclosure to competitors. These processes included investigations by the Staff of collocators' network information on a confidential basis and publication of a report that masked the identities of the individual providers. *In re Verizon New Hampshire — Wire Center Investigation*, DT 05-083, Third-Party Verification of Staff's Analysis, Affidavit of Kath Mullholand (filed Feb. 8, 2006).

Just last year, the Commission established procedures for investigating future wire center reclassifications. *In re Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE — Tariff Filing to Implement Wire Center Reclassification*, DT 12-337, Order Approving Process for Future Wire Center Reclassification Investigations and Denying Motion for Clarification, Order No. 25,631, (Feb. 21, 2014). In so doing, the Commission built

in safeguards to prevent disclosure of competitive carriers' network information. Under the procedures, for example, when proposing a wire center reclassification, FairPoint is obligated to provide detailed network information to the Commission, which will maintain the confidentiality of that information. *Id.*, Appendix A, ¶ 11 ("Confidentiality restrictions and procedures will apply as in the investigation conducted in Docket DT 12-337, in order to protect any information that associates a particular alleged collocator with a particular wire center."). Among these restrictions, any given carrier in a wire center will have access only to information about itself and not to that of any other carrier. *Id.*, ¶ 2 ("No later than the date of the tariff filing, FairPoint will provide a redacted copy of its tariff filing to each alleged FBC [fiber-based collocator], including only the FP Supporting Documentation specific to that alleged FBC.").[1]

Like the network maps described above and the collocation information in the wire center proceedings, the list attached to Level 3's filing contains specific information regarding Level 3's network that warrants protection. With the precise latitude and longitude information contained in the list, competitors can easily determine the locations of Level 3's transmission facilities. Further, the lists comprehensively compile this precise, highly granular information in one place. With this information, competitors would have a far easier time crafting tailored responses to Level 3's offerings, with resulting competitive harm to Level 3. The Commission has protected compilations of data from disclosure, no doubt recognizing that compilations are more valuable to competitors that scattered, disorganized, individual bits of information. *In re City of Nashua — Petition for Valuation Pursuant to RSA 38:9,* DW 04-048, Order Granting

[1] It should be noted that in the wire center proceedings, there was no controversy over whether competitive carriers' network information should be protected. Indeed, it was precisely because the Commission acknowledged the sensitivity of that network information – and that one competitor should not be privy to the network information of other competitors – that the Commission and its Staff conducted the reclassification investigation and factfinding in each case, in the process protecting that information from disclosure.

Protective Treatment, Order No. 24,605 (Mar. 24, 2006) (compilation of water/utility sales data fro apprasisals was subject to protective order limiting disclosure).

Step two of the analysis is an assessment of whether there is a public interest in disclosure of the materials. No public interest is served by disclosure. The objective of the disclosure statute is to allow citizens to understand "the conduct and activities of its government." *In re Pennichuck East Utility*, Order No. 25,758, at 5. Nothing about the workings of the government may be learned from disclosure of the information here. These lists are being filed pursuant to RSA 371:17-b. That statute provides that upon a filing of such lists, "no further inquiries or investigations by the commission shall be undertaken." Therefore, there are no governmental activities to observe, and citizens will learn nothing about the workings of the government if this information were released. "Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted." *Pennichuck East Utility*, at 5; *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009).

Even if the public obtained some small benefit by obtaining the list, any such benefit would be far outweighed by the competitive harm that Level 3 would suffer from the release of this comprehensive list containing precise geographic locations of numerous facilities in the state. The balance clearly favors treating this information as confidential.

Level 3 is aware that certain other providers have filed crossing lists without a claim of confidentiality. That is irrelevant to whether Level 3's list warrant confidential treatment. First, the business decisions of other carriers are based on particular, individual considerations that may be very different from those of Level 3. For example, Bretton Woods Telephone Company (CRS 15-179) is a rural incumbent LEC not subject to the same competitive pressures as Level 3;

the benefits to Bretton Woods from confidential treatment of its crossings list might not have been worth the effort and expense. Second, as the Commission has recognized, the markets in which competitive carriers operate call for different degrees of proprietariness of information than in less competitive markets. Competitive carriers like Level 3 frequently build their networks to serve particular customer locations or locations where customers may be located in the future. Giving other competitors ready access to the locations of large portions of Level 3's network would allow them to target Level 3's customers with competitive offerings of their own. Undoubtedly, competitors jousting over customers is the essence of competition and is good for consumers. But it is a far different matter for a competitor to acquire useful competitive intelligence though individual sales call or visits than it is to download Level 3's entire network configuration from the Commission's web site.

Conclusion

For the foregoing reasons, the Commission should grant confidential treatment to the lists attached to the accompanying notification.

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Respectfully Submitted,

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