AGENDA ITEM #2B
April 20, 2010

Introduction

MEMORANDUM

April 16, 2010

TO: County Council

FROM: Amanda M. Mihill, Legislative Analyst

SUBJECT: **Introduction:** Resolution to approve a franchise agreement for use of public right-of-way: Level 3 Communications, LLC

At the request of the County Executive, the Council President is scheduled to introduce a resolution on April 20, 2010 that would grant a franchise agreement to Level 3 Communications, LLC to construct a fiber optic telecommunications network. As noted in the Executive's transmittal memorandum, Level 3 is a first-time applicant, though it acquired existing facilities in the County's right-of-way from several other telecommunications companies. The proposed franchise agreement is for an initial 15-year term, and the County will reserve the right to charge Level 3 5% of gross revenues or another amount set by County law or resolution.

The Executive recommends approval of the attached franchise agreement. Under Chapter 49 of the County Code, the Council has sole authority to grant a franchise for use of the public right-of-way. Level 3 published notice of the franchise application, and the Executive did not receive any comments by the March 25 deadline. Since no public comments were received, the Executive was not required to conduct a public hearing on the franchise application.

A Management and Fiscal Policy Committee worksession will be scheduled at a later date. A draft resolution for approval of the Level 3 franchise agreement is attached on ©19.

This packet includes:	Circle
Memorandum from the County Executive	1
Proposed Franchise Agreement	2
Proof of publication	18
Draft resolution	19

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OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

MEMORANDUM

Timothy L. Firestine
Chief Administrative Officer

April 6, 2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Timothy L. Firestine, Chief Administrative Officer

SUBJECT: Franchise Agreement for Level 3 Communications, LLC ("Level 3")

I am pleased to transmit to you a proposed franchise agreement with Level 3. The County Executive recommends approval of the agreement.

Level 3 is a first-time applicant for a franchise agreement, though it owns existing facilities in the County's right-of-way. As is noted in the franchise agreement, Level 3 acquired those facilities from several other telecommunications companies. The location of the facilities is depicted on the attached "Exhibit A."

The proposed franchise is for a fifteen-year term and reserves the County's right to charge a franchise fee in the future. As is reflected in the attached proof of advertising document, the proposed franchise was advertised between February 21, 2010, and March 7, 2010. No public comments were received.

Executive staff is available to assist you in this matter. If you have any questions or need additional information, please contact Clifford L. Royalty at x76739.

TLF:tjs

Attachments

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MONTGOMERY COUNTY
COUNCIL
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FRANCHISE AGREEMENT

The County Council for Montgomery County, Maryland, having approved by Resolution No. _____ dated the _____ day of _____, 2010, a Franchise to construct and maintain telecommunications facilities in the Public Right-of-Way, this Franchise Agreement is made as of this _____ day of _____, 2010, by and between Montgomery County, Maryland, a body corporate and politic (hereafter the "County"), and Level 3 Communications, LLC, a Delaware corporation (hereafter "Level 3").

RECITALS

WHEREAS, under Maryland and County laws, the County has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of telecommunications facilities in the Public Right-of-Way within the limits of the County; and

WHEREAS, Level 3 wishes to construct, install, operate, and maintain Facilities within the Public Right-of-Way; and

WHEREAS, Level 3 has made application to the County for a franchise to construct, install, operate, and maintain the Facilities in, under, over, and upon the Public Right-of-Way of the County, pursuant to Chapter 49 of the Montgomery County Code 2004, as amended; and

WHEREAS, Level 3 has caused said franchise application to be published once a week for three consecutive weeks in one or more newspapers having general circulation in the County, setting forth the location, character and extent of the franchise sought, and stating the terms and compensation to be received therefor; and

WHEREAS, it appears to Montgomery County that the granting of the requested franchise is proper pursuant to Chapter 49 of the Montgomery County Code 2004, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this Franchise Agreement is entered into by and between the parties subject to the following terms and conditions:

1. DEFINITIONS.

For the purposes of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. The word "shall" is always mandatory.

1.1 "Affiliate" of a Person means a corporation, partnership, limited partnership, limited liability company, or similar entity that controls, is controlled by, or is under common control with the Person.

1.2 "Agency" means any governmental agency or quasi-governmental agency other than the County, including the FCC and the PSC.

1.3 "Agreement" means this Franchise Agreement.

1.4 "CAO" means the Chief Administrative Officer of the County or authorized designee.

1.5 "County" means Montgomery County, Maryland.

1.6 "Effective Date" means the date of the Council resolution approving this Agreement.

1.7 "Facilities" means fiber optic cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located or to be located by Level 3 in the Public Right-of-Way and used or useful for providing Services.

1.8 "FCC" means the Federal Communications Commission.

1.9 "Gross Revenues" means all revenues and other consideration derived by Level 3 or its Affiliates, or any other person, from Services provided in the County and from the use, operation, lease, or license of all or part of the Facilities, including but not limited to all revenues and consideration derived from co-location agreements. "Gross Revenues" does not include the local, state, or federal taxes collected by Level 3 that have been billed to a Subscriber and separately stated on such bill.

1.10 "Law" means any and all judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other requirement of the Federal Government, State, or County, or other Agency having joint or several jurisdiction over the parties to this Agreement, in effect either on the Effective Date or at any time during the presence of a Telecommunications System in the Public Right-of-Way.

1.11 "Level 3" means Level 3 Communications, LLC, a limited liability company duly organized under the laws of the State of Delaware and its lawful successors, assigns, and transferees.

1.12 "Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association or organization of any kind.

1.13 "PSC" means the Maryland Public Service Commission.

1.14 "Public Right-of-Way" means any location in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, sidewalks, and places, or other easements now or hereafter held by the County for any public purpose, as the same now or may thereafter exist that are under the jurisdiction of the County. This term shall not refer to

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property owned by any Person or Agency other than the County, except as provided by applicable Laws or pursuant to an agreement between the County and any such Person or Agency.

1.15 "Services" means the transmission, using the Facilities, of any information, including, but not limited to, voice, video, or data. "Services" includes telephone, telecommunications, and internet service but does not include (i) over-the-air broadcasts to the public at large licensed by the FCC or any successor thereto, (ii) cable service (the one-way transmission to Subscribers of video programming or other programming services, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service), or (iii) OVS service (cable-like services provided through an open video system for which certification is granted by the FCC under Section 653 of the Telecommunications Act of 1996.)

1.16 "Subscriber" means any Person to whom Level 3 provides Services or that, by contract or agreement with Level 3, uses any part of the Facilities. "Subscriber" includes Persons outside the County that Level 3 has allowed, by contract or agreement, to use the Facilities in the County.

1.17 "Telecommunications System" or "System" means all or any part of the fiber optic cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities placed by Level 3 in the County and used to provide Services.

2. TERM.

This Agreement shall be for a term of fifteen (15) years, unless it is earlier terminated by either party in accordance with the provisions herein, and shall commence on the Effective Date. This Agreement, and any permits issued hereunder, are subject to any present and future franchise or taxation legislation or resolution that may be enacted by the County Council.

3. SCOPE OF FRANCHISE.

3.1 Any and all rights expressly granted to Level 3 under this Agreement, which shall be exercised at Level 3's sole cost and expense, shall be subject to the prior and continuing right of the County under applicable Law to use any and all parts of the Public Right-of-Way only, exclusively or concurrently, with any other Person or Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the Public Right-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in Level 3, including any fee, leasehold interest, or easement. The County makes no representations or warranties with respect to the title to the Public Right-of-Way or the nature of the County's interest in the Public Right-of-Way. If there are other interests, if any, in the Public Right-of-Way, Level 3 must obtain the necessary consent for its use from each Person who holds any such interest. Level 3 must indemnify and hold the County harmless from any claims or costs arising out of or related

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to a constitutional takings claim or other legal action by reason of Level 3's use of the Public Right-of-Way.

3.2 The County hereby grants a non-exclusive right to Level 3 to construct, reconstruct, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace the Facilities in or upon, under, above, and across the Public Right-of-Way, in accordance with County laws for use in the provision of Services to Persons located inside or outside the County. During the term of this Agreement, the proposed location of the Facilities by Level 3 or its designee shall be disclosed, in writing, to the County by Level 3 at least fifteen (15) days prior to its construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation. Such proposed locations shall be incorporated in Exhibit A and attached to this Agreement. Level 3 warrants that, to the best of Level 3's current knowledge and belief, Exhibit A accurately depicts existing Facilities. No later than 6 months after the Effective Date, Level 3 may, amend Exhibit A to correct any errors that Level 3 discovers. Level 3's rights under this paragraph also apply to lateral facilities necessary to connect one or more Level 3 customers to the Facilities specified in Exhibit A.

3.3 The County hereby further authorizes and permits Level 3 to construct, reconstruct, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace its Facilities in or on street light poles, power poles, or other property owned by public utility companies or other property owners located within the Public Right-of-Way as may be permitted by the public utility company or property owner, as the case may be. To the extent required by Law, Level 3 shall obtain permission from the individual utility or property owner prior to the time that Level 3 undertakes any of the activities permitted by this Agreement. Upon request, Level 3 shall provide documentation of said permission to the County. Prior to undertaking any construction activity, Level 3 shall provide reasonable advance notice to affected property owners as required by Law.

3.4 Except as permitted by applicable Law or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, Level 3 shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and County or municipal property without the express written approval of the owner or owners of each affected property.

3.5 Level 3 shall comply with all applicable Law in the exercise and performance of its rights and obligations under this Agreement. Level 3 hereby acknowledges that the rights granted by this Agreement are subject to the police powers of the County.

3.6 Level 3 represents and agrees that the Facilities subject to this Agreement will be used exclusively for the rendering of Services and no other services, except to the extent that Level 3 is required by State or Federal authorities, in the proper exercise of their jurisdiction over such matters, to make the Facilities available for use by third parties.

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4. FEES AND TAXES.

4.1 Level 3 acknowledges and agrees that the County may require Subscribers to pay a users' tax to the County. If Level 3 provides Service to any Subscribers who are subject to a users' tax, Level 3 agrees to collect the tax from any such Subscribers and remit such tax to the County in accordance with applicable County law.

4.2 The County is not presently seeking monetary compensation for Level 3's use and occupation of the Public Right-of-Way. The County reserves the right to charge Level 3, as compensation for this Agreement, an amount equal to 5 percent (5%) of Level 3's Gross Revenues or such other amount set by County law or resolution. If such a charge is instituted, Level 3 will pay the amount every six (6) months. Level 3 acknowledges the County's authority to obtain compensation for the use and occupation of the Public Right-of-Way.

4.3 Level 3 shall keep accurate books of account, and if the County charges Level 3 monetary compensation, shall make such books of account available for inspection in the County for the purpose of determining the amounts due to the County under Section 4.2. The County shall have the right to inspect Level 3's books of account at any time during regular business hours on five (5) days' prior written notice and may audit the books from time to time at the County's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under Section 4.1 or 4.2. No later than one hundred twenty days from the end of Level 3's fiscal year, Level 3 must file with the County an annual statement of revenues, certified by Level 3's chief financial officer, relating to its operations and revenues within the County. The County agrees to keep confidential any non-public information it receives from Level 3 in accordance with applicable law. The statement of revenues shall include a detailed breakdown of the Gross Revenues and uncollectible accounts for the fiscal year, and shall be prepared in accordance with Generally Accepted Accounting Principles.

4.4 Level 3 shall reimburse the County within thirty (30) days of the receipt of a request, for all reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed Two Thousand Dollars ($2,000) in the aggregate.

5. OTHER SERVICES.

5.1 Pursuant to the KMC Franchise Agreement approved by Resolution No. 15-1069 dated July 12, 2005 and transferred to Telcove, Inc. by Resolution No. 15-1070 dated July 12, 2005, Level 3's predecessor, KMC Telecom III, LLC ("KMC") made, and Level 3 shall continue to make, available to the County two (2) dark fiber optic strands throughout the backbone of Telecommunications System for the use by the County for governmental and educational purposes, as depicted in Exhibit A.

5.2 Pursuant to the LGN Franchise Agreement approved by Resolution No. 15-456 dated December 9, 2003, Level 3's predecessor, Looking Glass Networks, Inc. ("LGN") made, and Level 3 shall continue to make, available to the County six (6) dark fiber optic strands

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throughout the Telecommunications System for use by the County, as depicted in Exhibit A. The County may request exclusive use of dark fiber optic strands in LGN facilities outside the County that are connected to the Telecommunications System (such as another segment of the same fiber optic "ring" or an interconnected ring), provided that the total length of the dark fiber strands available for County use, both in and outside the County, shall not exceed 6 times the total length of the Telecommunications System.

5.4 Level 3 shall be solely responsible for the repair, replacement, and maintenance of the aforementioned dark fiber optic strands used by the County within the Telecommunications System, including the fiber from the splice point on the backbone of the Telecommunications System to the interconnection point. Level 3 shall perform routine and preventive maintenance on the fiber provided for the County's use within the Telecommunications System in the same time and in the same fashion as routine and preventive maintenance is performed for Level 3's subscribers, without charge to the County. Level 3 shall provide the County two weeks' notification of any planned activities affecting service that may occur in the normal operation of its business and shall use its best efforts to minimize the duration of such activities and to undertake them in periods of low usage by the County. Level 3 shall maintain the highest standards for response and restoration of service following emergency or unplanned service affecting conditions that are available to any of its subscribers. For any segment of the dark fiber optic strands or conduit that the County notifies Level 3 will be used for public safety or other critical purposes, the response time under the previous sentence shall not exceed two hours.

5.5 The County shall be solely responsible for (i) repair, replacement, and maintenance of the dark fiber optic strands on the County's side of the interconnection point, and (ii) all equipment and wiring on the County's side of the interconnection point, including without limitation any electronics or other equipment or devices that are required for the transmission of information using the Telecommunications System which Level 3 understands the County will own exclusively.

5.6 Any lateral fiber between a County facility and an interconnection point shall be the sole responsibility of the County. Nothing in this Agreement limits the County's authority or discretion to perform these lateral installations itself, or through its contractors.

6. REMOVAL AND RELOCATION OF TELECOMMUNICATIONS SYSTEM.

6.1 Level 3 understands and acknowledges that the County may require Level 3 to relocate the Facilities. At the County's request, Level 3 shall, within thirty (30) days after receipt of prior written notice in situations described in subsection (i) below, and immediately in situations described in subsections (ii) and (iii) below, relocate the Facilities, at Level 3's sole cost and expense, whenever the County reasonably determines that relocation is needed: (i) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a County project, facility, or service; (ii) because the Facilities are interfering with or adversely affecting proper operation of the County light poles, traffic signals, or other County facilities, or (iii) to protect or preserve the public health, safety, or welfare including, without limitation, any emergency situation. Level 3 must obtain all permits and approvals required by the County

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before relocating the Facilities. If Level 3 fails to relocate the Facilities as requested by the County in accordance with this paragraph, the County shall be entitled to remove the Facilities at Level 3's sole cost and expense.

6.2 In the event that any part of the Facilities subject to this Agreement is abandoned by not being placed in service for a period of six (6) months or more, Level 3 promptly shall notify the County, and Level 3 must, at Level 3's sole cost and expense, promptly remove the abandoned part of the Facilities or dedicate the same to the County. The County shall not issue notice to Level 3 that the County requires removal or dedication of any part of the Facilities, unless and until the County first issues all required County permits and approvals required of the County for such activity and gives fifteen (15) days' prior written notice to Level 3 to remove the telecommunications system. If Level 3 shall fail to remove any part of the Facilities as required by the County under this paragraph, the County shall be entitled to remove any part of the Facilities at Level 3's sole cost and expense. Level 3 shall execute such documents of title as will convey all right, title, and interest in the abandoned Facilities, but in no other property, intellectual or otherwise, to the County.

6.3 Whenever the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities is performed by Level 3 under this Agreement, and such construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation shall cause the Public Right-of-Way to be damaged, Level 3, at its sole cost and expense, promptly shall repair and return the Public Right-of-Way in which the Facilities are located to its previous condition. If Level 3 does not repair the site as required, then the County shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of Level 3 and charge Level 3 for the proposed costs to be incurred at the County's standard rate, if any, or the actual costs incurred by the County. Upon the receipt of a demand for payment by the County, Level 3 shall reimburse the County for such costs.

7. CONSTRUCTION PERMIT AND SECURITY DEPOSIT.

7.1 In the event that the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities shall require any construction work in the Public Right-of-Way, Level 3 shall apply for the appropriate street opening and other permits required by Law. Level 3 shall perform such construction work as required by the permits and in accordance with all applicable Laws.

7.2 Within thirty (30) days of the completion of any construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation work, Level 3 promptly shall furnish to the County, in hard copy and electronic format or other format reasonably acceptable to the County, suitable documentation containing a full set of drawings showing, in detail, the exact location of the Facilities in the Public Right-of-Way.

7.3 Level 3 shall deposit or file with the County a cash security deposit, a surety bond acceptable to the County Attorney, or letter of credit acceptable to the County Attorney within thirty (30) days of the Effective Date, in the amount of Fifty Thousand Dollars ($50,000) as

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security for the faithful performance by Level 3 of the provisions of this Agreement and the Laws. If Level 3 fails to pay the County any taxes, fees, costs or expenses within ten (10) days of receipt of notice to pay from the County, or fails to comply with any provision of this Agreement or the Laws that can be remedied by an expenditure from the security fund, then the County may proceed to immediately withdraw the amount thereof or proceed against the surety bond or the letter of credit. Such action by the County is in addition to any other remedy provided to the County by this Agreement or the Laws. In the event that the Franchise is terminated or revoked for cause by the County, the security fund shall become the property of the County, unless there are no outstanding defaults or moneys owed to the County, in which case, Level 3 may request that the County return the security deposit, the surety bond, or the letter of credit.

8. INDEMNIFICATION AND WAIVER.

8.1 Level 3 agrees at its sole cost and expense to indemnify, protect, defend (with counsel acceptable to the County) and hold harmless the County, the county executive, county council members, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising, directly or indirectly, in whole or in part, out of the activities or facilities of Level 3, its officers, employees, agents, consultants, attorneys, and contractors, described in this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of the County, the county executive, county council members, officers, employees, agents, or contractors.

8.2 The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

8.3 Level 3 waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to the Telecommunications System or any loss or degradation of the Services as a result of a sudden or gradual loss or change of electrical power caused by or arising from the installation, maintenance, replacement, or relocation of any County-owned facility in the Public Right-of-Way (except to the extent caused by or arising from the gross negligence or willful misconduct of the County), or an Act of God, an event or occurrence which is beyond the reasonable control of the County, a power outage, or a lightning strike. Nothing herein shall be construed to waive the County's governmental immunity.

9. INSURANCE.

9.1 Level 3 shall obtain and maintain at all times during the term of this Agreement comprehensive general liability insurance and comprehensive automotive liability insurance protecting Level 3 in an amount of not less than two million dollars ($2,000,000) (including umbrella or excess coverage) per occurrence (combined single limit), including bodily injury and

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property damage, and not less than two million dollars ($2,000,000) (including umbrella or excess coverage) aggregate, for each personal injury, products-completed operations, and each accident. Such insurance shall name the County, the county executive, its council members, officers, employees, agents, and contractors as additional insured for any liability arising out of Level 3's performance of work under this Agreement, or suitable additional- insured endorsement acceptable to the County. Coverage shall be provided in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. Such insurance shall not be canceled or materially altered to reduce coverage until the County has received at least thirty (30) days advance written notice of such cancellation or change. Level 3 shall be responsible for notifying the County of such change or cancellation.

9.2 Level 3, within thirty (30) days of the Effective Date of this Agreement, shall file the required original certificate(s) of insurance with endorsements with the County, subject to the County's prior approval, which shall clearly state all of the following:

9.2.1 Policy number; name of insurance company; name, address, and telephone number of the agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts. Each policy of insurance required by this Agreement shall be issued by a responsible insurance company qualified and authorized to do business in the State of Maryland.

9.2.2 That thirty (30) days prior written notice to the County is required for any change or cancellation to the insurance policy.

9.2.3 Level 3's insurance is primary to any other valid or collectible insurance that the County may possess, including any self-insured retentions the County may have, and any other insurance the County does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

The certificate(s) of insurance with endorsements and notices shall be mailed to:

Chief Administrative Officer
Montgomery County, Maryland
Executive Office Building
101 Monroe Street
Rockville, Maryland 20850

With a copy to: Department of Technology Services
Office of Cable and Communications Services
100 Maryland Avenue, Suite 250
Rockville, Maryland 20950
ATTN: Cable Administrator

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9.3 Level 3 shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than five hundred thousand dollars ($500,000) or such other amounts required by Maryland law, and furnish the County with a certificate showing proof of such coverage.

9.4 Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the County prior to the execution of this Agreement.

10. NOTICES.

All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by facsimile transmission, if followed by a hard copy of the same delivered through the U.S. mail or by overnight delivery service as just described, as follows:

County:	Chief Administrative Officer Executive Office Building 101 Monroe Street Rockville, Maryland 20850
With a copy to:	Department of Technology Services Office of Cable and Communications Services 100 Maryland Avenue, Suite 250 Rockville, Maryland 20850 ATTN: Cable Administrator
Level 3:	Level 3 Communications, L.L.C. 1025 Eldorado Blvd. Broomfield, CO 80021 ATTN: Manager, Network Infrastructure Services
With a copy to:	Level 3 Communications, L.L.C. 1025 Eldorado Blvd. Broomfield, CO 80021 ATTN: General Counsel

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

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11. TERMINATION AND DEFAULT.

11.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days or thereafter fails to thereafter diligently prosecute such cure to completion), provided that the grace period for any monetary default is ten (10) business days from receipt of notice.

11.2 The County reserves the right to revoke the Franchise, subject to reasonable notice and the opportunity to cure as set forth in Section 11.1 for a material breach of the Franchise, including, but not limited to the following: (i) non-payment of franchise fees, (ii) failure to comply with the provisions of the Laws and this Agreement, (iii) use of the Public Rights-of-Way in violation of this Agreement, and (iv) misreporting the required compensation amount.

11.3 Each party retains all of its rights to enforce this Agreement. The County reserves the right to seek injunctive relief, mandamus, or any other appropriate relief as may be necessary to enforce or correct a violation of the provisions of the Law or this Agreement.

12. MISCELLANEOUS PROVISIONS.

12.1 Level 3 shall not transfer or assign the franchise, Facilities, or System or any part thereof without the express prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Level 3 shall give the County prior written notice of any proposed assignment or transfer for which the County's consent is required hereunder. The County Council shall give Level 3 written approval or disapproval of any such proposed assignment or transfer within a reasonable time period not to exceed ninety (90) days after the Council receives Level 3's request therefor, and the County Council's failure to approve or disapprove any such request within such ninety (90) day period shall be deemed an approval. Level 3 shall provide all information and documents reasonably requested by the County relating to the assignment or transfer.

12.2 Level 3 understands that this Agreement does not provide Level 3 with exclusive use of the Public Right-of-Way and that the County shall have the right to permit other providers of telecommunications systems to install equipment or devices in the Public Right-of-Way.

12.3 This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements, whether written or oral. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

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12.4 This Agreement may not be amended except pursuant to a written instrument signed by both parties.

12.5 If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

12.6 Level 3 shall be available to the staff employees of any County department having jurisdiction over Level 3 activities 24 hours a day, 7 days a week, regarding problems or complaints resulting from the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities. The County may contact Level 3 by telephone at the Level 3 Network Control Center, telephone (800) regarding such problems or complaints.

12.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, or in the United States District Court of Maryland, Southern Division.

12.8 All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

12.9 This Agreement is binding upon the successors and assigns of the parties hereto.

12.10 Level 3 acknowledges that the County may develop rules, regulations, and specifications that apply to the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities in the Public Right-of-Way, and such rules, regulations, and specifications, when finalized, shall govern Level 3's activities hereunder as if they were in effect at the time this Agreement was executed.

12.11 Level 3 agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. Level 3 assures the County that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference, or handicap.

B

12.12 Level 3 represents that it has not retained anyone to solicit or secure this Agreement from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or a bona fide established commercial selling or leasing agency maintained by Level 3 for the purpose of securing business or an attorney rendering a professional legal service consistent with applicable canons of ethics.

12.13 Level 3 understands that, unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code 1994, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

12.14 It is expressly understood that the County shall not be construed or held to be a partner or associate of Level 3 in the conduct of Level 3's business.

12.15 In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent.

12.16 Nothing in this agreement shall impair, diminish, supersede, or otherwise affect any authority or remedy that the County may have against Level 3 or any other Person, such as another current or former franchisee. This franchise is granted to Level 3 subject to any such authority or remedy, even if the exercise of that authority or remedy affects the System. Level 3 agrees to cooperate with the County in any action to enforce County law or any franchise agreement against another Person.

WITNESS: **MONTGOMERY COUNTY, MARYLAND**

_____ By: _____

Linda M. Lauer, Clerk of the Council

Nancy Floreen, President
Montgomery County Council

The Provisions of this Agreement are agreed to and hereby accepted.

WITNESS: **Level 3 Communications, LLC**

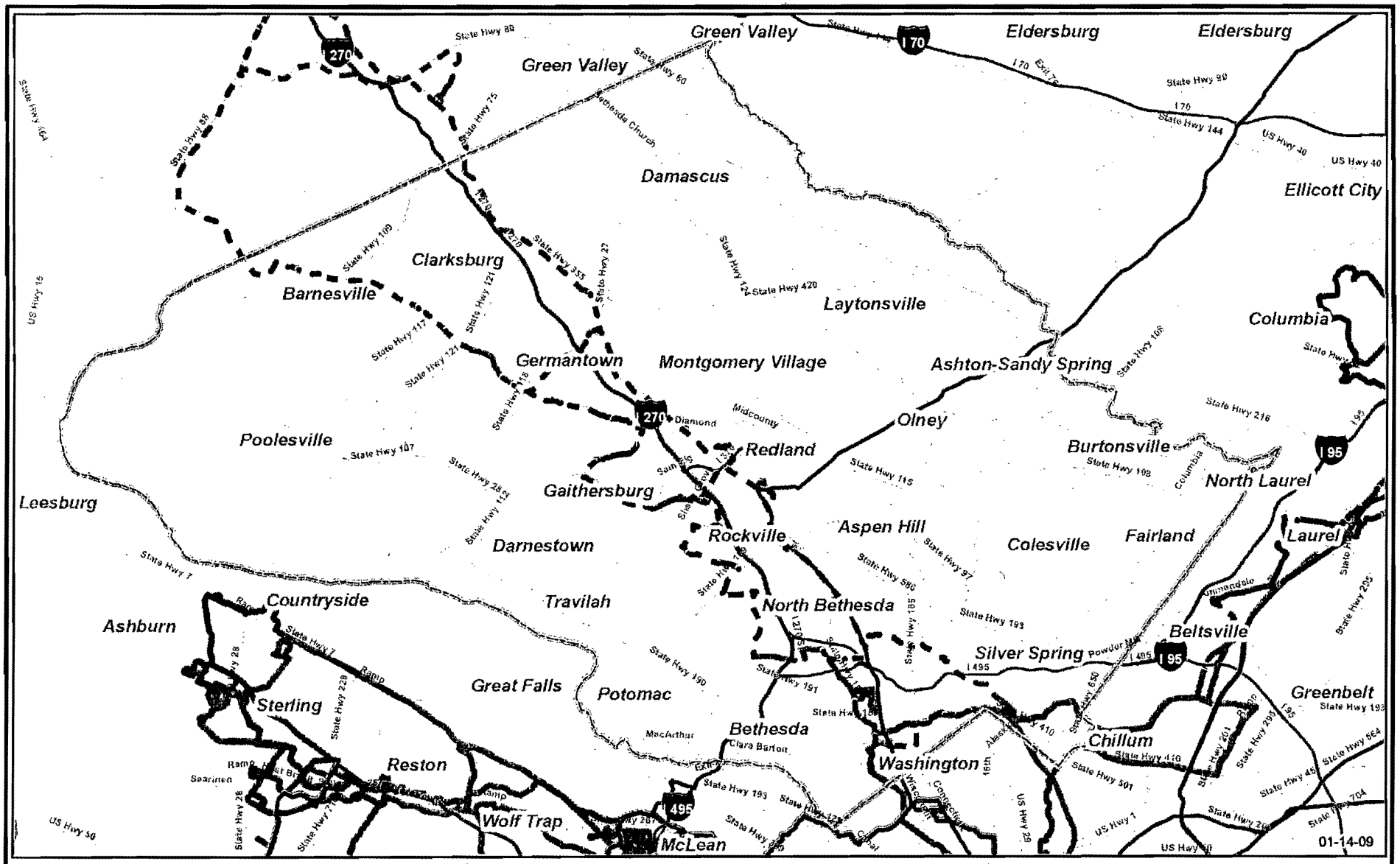
_____ By: Stephanie Stokes

Title: Sr. Manager

(15)

EXHIBIT A

Depiction of Facilities



Level 3 Network
Montgomery County, MD

0 5 10 Miles

Legend

- Aerial Fiber
- Intercity Fiber
- County Boundary
- Underground Fiber
- Metro Fiber

Level(3) COMMUNICATIONS

Confidential & Proprietary

5

The Examiner
washingtonexaminer.com

Client:

Level 3 Communications

Account # 82903 Ad # 684576

Phone: (704) 357-6213

Fax:

Address: 4021 Rose Lake Drive 100

Charlotte, NC 28217

Sales Rep.:

DC23 Jaeda Mohr (DC)

Phone: (703) 738-0657

Fax: (703) 738-0619

Email: jmohr@dcexaminer.com

Entry date: 02/17/2010 04:23 PM

Class.: 0998 Legals

Requested By:

RUSSELL

PO #:

Entered By: JMOHR

Printed By: JMOHR

Start Date: 02/21/2010

End Date: 03/07/2010

Nb. of Inserts: 6

Dimensions: 2 col. x 48.00 Agate Lines

Publications: Online Examiner

Washington Examiner

Total Price: $498.24

Paid Amount: $0.00

Balance: $498.24

Page 1 of 1

PUBLIC NOTICE

Proposed Award by Montgomery County, Maryland of Non-Exclusive Franchise to Level 3 Communications, LLC

Level 3 Communications, LLC ("Level 3") has submitted an application for a non-exclusive franchise in Montgomery County, Maryland to attach, install, operate, construct and maintain telecommunications facilities within the Public Rights-of-Way throughout the County for the purpose of operating its telecommunications system.

Level 3 has proposed to pay Montgomery County's reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed two thousand dollars ($2,000.00) in the aggregate. The County reserves the right to charge Level 3, as compensation for the franchise, an amount equal to five percent (5%) of Level 3's gross revenues or such other amount set by County law or resolution. The franchise agreement shall be for a term of fifteen (15) years.

Any objection to the proposed granting of the franchise by the County must be filed, in writing, with the County Executive by the close of business on March 25th at 5:00 pm at the Executive Office Building, 2nd Floor, 101 Monroe Street, Rockville, Maryland 20850. Copies of the proposed franchise agreement are available at the Office of the County Attorney, 101 Monroe Street, 3rd Floor, Rockville, Maryland 20850. For further information, contact Clifford Royalty at (240) 777-6700

February 21, 28, March 7, 2010 684576

(18)

Resolution No: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND

By: Council President at the Request of the County Executive

Subject: Grant of franchise to Level 3 Communications, LLC to use the public right-of-way.

Background

1. Sections 49-20 and 49-21 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:

   a) the franchise applicant publishes notice of the application once a week for three consecutive weeks in a newspaper of general circulation in the County;

   b) the County Executive investigates the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;

   c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after the last notice of the application is published;

   d) the Executive makes a written recommendation to the Council about the franchise, including findings about the value of the franchise, any response to objections that have been raised, and any other relevant issues; and

   e) the Council decides that the franchise is expedient and proper.

2. Between February 21 and March 7, 2010, Level 3 Communications, LLC published notice of its application for a franchise to use the public right-of-way to construct a fiber optic telecommunications network. The Executive received no objection to the franchise by the March 25 deadline and was therefore not required to conduct a hearing on the franchise application.

3. On April 6, 2010, the Council received the Executive's recommendation to grant a franchise to Level 3 Communications, LLC and a proposed franchise agreement.

4. On {*date*}, the Council's Management and Fiscal Policy Committee considered the franchise application and recommended {*that the Council grant the franchise as*

recommended by the Executive or with certain changes to the proposed franchise agreement}.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The County Council finds that granting a franchise to Level 3 Communications, LLC for use of the public right-of-way for a fiber optic telecommunications network {*is/is not*} expedient and proper. The Council {*grants/denies/modifies*} the franchise under the terms of the attached franchise agreement.

This is a correct copy of Council action.

_____

Linda M. Lauer, Clerk of the Council

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(20)