

**RESOLUTION 17-**

**GRANTING A TELECOMMUNICATIONS SERVICES FRANCHISE TO  
LEVEL 3 COMMUNICATIONS, LLC**

**KNOW ALL MEN BY THESE PRESENTS, THAT,**

**WHEREAS**, LEVEL 3 COMMUNICATIONS, LLC has applied and petitioned, pursuant to A.R.S. §§ 40-283, 9-583 B, 40-283 C, 9-583 G.2 and 9-581 et seq., to the Board of Supervisors of Cochise County, Arizona, for the right, privilege, license, and franchise to construct, install, operate, and maintain along, over, under, and across the streets, alleys, and highways, within the County, facilities for the purpose of maintaining and operating a telecommunication system, and all other facilities and improvements necessary for local network and intrastate telecommunications services; and

**WHEREAS**, LEVEL 3 COMMUNICATIONS, LLC has acquired WILLIAMS COMMUNICATIONS, INC. and has applied to consolidate the franchises into one, under the name of LEVEL 3 COMMUNICATIONS, LLC; and

**WHEREAS**, reasonable public notice has been provided concerning the Board's intention to grant the requested franchise and of the public hearing on this matter, which is set for August 8, 2017 at 10:00 a.m. at the regular meeting place of the Cochise County Board of Supervisors in the City of Bisbee, Arizona, pursuant to A.R.S. § 40-283; and

**WHEREAS**, it appears from the affidavit of publication of the San Pedro Valley News-Sun that notice of the date, time, and place set for the consideration of this franchise has been published once a week for three (3) consecutive weeks prior to the date of the public hearing in the following issues: July 19, 2017; July 26, 2017; and August 2, 2017; and

**WHEREAS**, the hearing having been called as noticed, and the Board of Supervisors having not received a petition requesting the franchise be denied by more than 50% of the qualified electors of Cochise County on or before the date of the public hearing; and

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**WHEREAS**, said franchise application having been considered by the Board of Supervisors at the public hearing on the 8th day of August, 2017, and the Board having found good cause to grant the franchise,

**NOW, THEREFORE**, the Board of Supervisors of Cochise County having determined that the grant of this franchise is regular, proper, authorized by law, and in the best interest of Cochise County and the inhabitants thereof;

**NOW, THEREFORE, IT IS HEREBY ORDAINED:**

1. That this Board of Supervisors of Cochise County, Arizona, acting for and on behalf of said County (the "County"), does hereby grant unto LEVEL 3 COMMUNICATIONS, LLC, (hereinafter called "Grantee") a nonexclusive right, privilege, license, and franchise (hereinafter "the franchise") to construct, install, operate, and maintain along, over, under and across the streets, alleys, and highways under the jurisdiction of the County, facilities for the purpose of maintaining and operating a telecommunications system, and all other facilities and improvements necessary for telecommunications. This grant does not include the authorization to use State highways and those areas within the corporate boundaries of any city or town. This grant is subject to the terms, conditions, and limitations expressed below or incorporated herein by reference.

2. The County reserves the right to impose future restrictions, limitations and conditions upon the exercise of the rights granted herein as it deems best for the public safety and welfare, which shall be applied on a competitively neutral and non-discriminatory basis. The Grantee is further required to comply with all lawful, applicable ordinances of Cochise County regulating the conduct of work within the public rights-of way; as such ordinances are now enacted or may be amended or adopted from time to time. The Grantee is required to obtain a separate Right-of-Way Use Permit from the County prior to initiating any construction in the right-of-way and to pay the applicable fees for the associated inspections.

3. The franchise granted hereby shall not be exclusive, and nothing herein shall be construed to prevent the County from granting other like or similar franchises to any other person, firm, or corporation.

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4. The Grantee shall bear all expenses and costs, including damages and compensation for any alteration of the direction, surface, grade, or alignment of a public roadway made for the purpose of this franchise or for revenues lost by the Grantee that may arise in connection with its exercise of the rights granted herein.

5. The Grantee shall erect, construct, and maintain all facilities authorized herein in a good and workmanlike manner and in compliance with all applicable valid laws, ordinances, and regulations, which may be in force from time to time. All such work shall be performed in such a manner as may be reasonably necessary to avoid any unreasonable damage, disturbance, or modification to existing public rights-of-ways, including roads, streets, highways, bridges, borrow ditches or shoulders thereon.

6. The Grantee shall, immediately upon erecting, constructing, replacing or repairing its facilities, or any part thereof, at its own cost and expense, restore any effected public right-of-way, including any road, street, highway, bridge, borrow ditch or shoulder thereon, to not less than the same condition which existed prior to the Grantee's action.

7. The County does not waive or relinquish any rights it may have to the full and complete use of the public rights-of-way subject to this franchise, whether for road purposes or otherwise. The rights of the County in and to the use of the right-of-way are, and shall be, paramount and superior to the rights of the Grantee. In the event that the location of the Grantee's facilities may interfere or conflict with the County's use, expanded use, alteration, improvement, or maintenance of the County's rights-of-way, the County may require the Grantee to relocate, at the Grantee's expense, all facilities which give rise to such interference or conflict. The County will provide the Grantee with reasonable notice of any relocation requirement and will provide a reasonable period of time for the Grantee to perform such relocation.

8. The Grantee assumes the sole responsibility for all liability for any injury or damage to any person or property, or to the road and right-of-way itself, caused by or arising out of the exercise of the rights granted herein and attributable to any act or commission of the Grantee. The Grantee shall indemnify, defend and hold harmless Cochise County, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature, including all reasonable costs of legal defense, arising out of the exercise of these rights which are attributed to any act or omission of the Grantee, its agents,

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employees, or anyone acting under its direction, control, or on its behalf. The County shall indemnify, defend and hold harmless Grantee, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature, including all reasonable costs of legal defense, arising out of the exercise of these rights which are attributed to any act or omission of the County, its agents, employees, or anyone acting under its direction, control or on its behalf.

9. The County grants this franchise for a term of five (5) years from the date of its authorization by the County and may be renewed pursuant to A.R.S. §9-583. This franchise may not be sold, leased, assigned, conveyed or transferred in any manner, in whole or in part, including pursuant to the sale or merger of the Grantee itself, without the express written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any provision in this agreement to the contrary, Grantee shall have the right to assign this franchise to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Grantee, or to any entity into which Grantee may be merged or consolidated or which purchases all or substantially all of the equity of Grantee or of the assets of the Grantee that are subject to this franchise. Notwithstanding anything contained herein to the contrary, Grantee may, without County's consent, provide capacity across Grantee's facilities to a third party as long as management and control of the facilities remain with Grantee.

10. The County reserves the right to alter or amend the terms of this franchise in any manner necessary to protect the safety or welfare of the public or the public interest. This reservation includes, but is not limited to, the authority to impose such amended franchise fees, rentals or use payments, or other form of compensation or assessment as the County may be authorized, now or in the future, to impose under the laws of the State of Arizona and the United States.

11. The County may terminate this franchise in the event that the Grantee fails to comply with the material terms and conditions of this franchise. The Board of Supervisors, or its designee, shall provide the Grantee with written notice of noncompliance and allow the Grantee a period of not less than sixty (60) days to remedy any breach. If the Grantee continues to fail to comply with the terms of this franchise after this notice and remedy period, the Board of Supervisors may, following a public hearing, revoke all rights granted herein and render this franchise null and void. Grantee

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may terminate any site license or permit granted hereunder for convenience upon thirty (30) days written notice to County.

12. Upon termination of the franchise, whether by expiration of its term, or for cause, or by voluntary abandonment, and after written notice from the County, the Grantee shall remove all of its facilities installed pursuant to the rights granted herein within one hundred eighty (180) days of such termination, and shall repair any damages caused thereby. All such facilities which are not removed within this period shall be deemed to be abandoned and shall become the property of the County.

13. This franchise will not be effective for any purpose until the Grantee has indicated its acceptance in writing below.

14. The rights, privileges, and franchise granted herein are made pursuant to the laws of Arizona, including A.R.S. §§ 40-283 and 9-581 et seq., which are incorporated herein by reference.

**IN WITNESS WHEREOF**, the Board of Supervisors of the County of Cochise, State of Arizona, has caused these presents to be executed and signed by the Chairman of the Board of Supervisors on this 8th day of August, 2017.

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Ann English, Chairman  
Cochise County Board of Supervisors

**ATTEST:**

**APPROVED AS TO FORM:**

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Arlethe G. Rios  
Clerk of the Board

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Elda E. Orduño  
Civil Deputy County Attorney

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Page 6 This is to certify that the Grantee, **LEVEL 3 COMMUNICATIONS, L.L.C.**, has on this 16<sup>th</sup> day of August, 2017, accepted the foregoing franchise. Grantee agrees that it will be bound by, observe, and carry out the terms and conditions of this franchise.

**GRANTEE:**

  
By: Danett Kennedy  
Title: SR Manager NKS

Dated: 8-16-17

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**CERTIFICATE OF CLERK**

I, **ARLETHE G. RIOS**, Clerk of the Board of Supervisors of Cochise County, Arizona, do hereby certify that the foregoing excerpt from the minutes of the meeting of the Board of Supervisors of Cochise County, Arizona, held on [REDACTED], 2017, constitutes a true and correct copy of the said minutes insofar as they relate to the Application of LEVEL 3 COMMUNICATIONS, L.L.C., for a telecommunications services franchise in the County and to the granting of said telecommunications services franchise pursuant to the resolution hereinabove set out, all as appears in the official records of the Board of Supervisors.

**IN WITNESS WHEREOF**, I have set my hand and official seal of the Board of Supervisors of Cochise County, Arizona, this [REDACTED] day of [REDACTED], 2017.

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**Arlthe G. Rios, Clerk of the Board  
Cochise County, Arizona**

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