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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN K. MAYES  
Commissioner  
BARRY WONG  
Commissioner

Arizona Corporation Commission  
**DOCKETED**  
DEC 21 2006

DOCKETED BY	nr
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IN THE MATTER OF THE JOINT  
APPLICATION OF BROADWING  
COMMUNICATIONS, LLC, LEVEL 3  
COMMUNICATIONS, LLC, WILTEL  
COMMUNICATIONS, LLC AND WILTEL  
LOCAL NETWORK, LLC FOR A LIMITED  
WAIVER OF THE PUBLIC UTILITY  
HOLDING COMPANIES AND  
AFFILIATED INTEREST RULES (A.A.C.  
R14-2-801 ET SEQ.) AND FOR  
AUTHORIZATION TO ENCUMBER  
AND/OR MORTGAGE ASSETS OF  
BROADWING COMMUNICATIONS, LLC.

DOCKET NOS. T-04176A-06-0673  
- T-03654A-06-0673  
- T-03708A-06-0673  
T-03779A-06-0673

DECISION NO. 69212  
ORDER

Open Meeting  
December 19 and 20, 2006  
Phoenix, Arizona

BY THE COMMISSION:

Introduction

On October 18, 2006, Broadwing Communications, LLC ("Broadwing"), Level 3 Communications, LLC ("Level 3 LLC"), WilTel Communications, LLC and WilTel Local Network, LLC (collectively, "Applicants"), pursuant to Arizona Administrative Code ("A.A.C.") R14-2-806, requested a limited waiver of the Arizona Corporation Commission's ("ACC's") Public Utility Holding Companies and Affiliated Interest Rules, A.A.C. R14-2-801 to R14-2-806, in connection with a proposed transaction whereby Level 3 LLC will acquire indirect control of Broadwing. The Applicants also requested an order from the Commission (i) authorizing the pledge, mortgage, lien and/or encumbrance of the utility plant and assets of Broadwing in

1 connection with the participation of Broadwing in existing financing arrangements of Level 3  
2 Financing, Inc. ("Level 3 Financing") in accordance with A.R.S. § 40-285; and (ii) granting a  
3 limited waiver of A.A.C. R14-2-804(B) for Broadwing to guarantee the obligations of Level 3 or,  
4 in the alternative, authorizing Broadwing to guarantee the obligations of Level 3 Financing  
5 pursuant to A.A.C. R14-2-804(B). The Applicants also requested that their Application be  
6 reviewed without a hearing no later than at the December 19-20, 2006 Open Meeting.

7 The Applicants responded to several Staff requests for additional information via emails  
8 and conference calls.

9 On November 7, 2006, the Applicants agreed to extend the 30-day deadline under A.A.C.  
10 R14-2-806 to December 20, 2006. The extension was communicated via email.

#### 11 FINDINGS OF FACT

##### 12 Background of Applicants

13 The Company in its Application represents the following:

14 1. Broadwing Corporation ("Broadwing Parent") is a publicly traded (NASDAQ  
15 BWNG) Delaware corporation with principal offices at 1122 Capital of Texas Highway South,  
16 Austin, Texas 78746. Broadwing Parent, through its subsidiaries, is a provider of data, Internet,  
17 broadband transport, and voice communications services to small and large enterprise customers  
18 and other communications service providers over a nationwide facilities-based network  
19 connecting 137 cities nationwide.

20 2. Broadwing, an indirect subsidiary of Broadwing Parent, is a telecommunications  
21 provider that is authorized to provide telecommunications service in all 50 states and the District  
22 of Columbia. Broadwing is authorized to provide local exchange telecommunications services in  
23 19 states and the District of Columbia. In Arizona, Broadwing is authorized to provide resold  
24 and facilities-based intrastate interexchange telecommunications services pursuant to Decision  
25 No. 66105, Docket No. T-04176A-03-0185, granted by the Commission on July 25, 2003. Level  
26 3 LLC is a wholly-owned indirect subsidiary of Level 3 Communications Inc., ("Level 3"), a  
27 publicly traded (NASDAQ: LVLT) Delaware corporation headquartered in Broomfield,  
28 Colorado.

1 The Companies' Request

2 The Applicants represent the following:

3 3. On October 16, 2006, Broadwing Parent, Level 3, and Level 3's wholly owned  
4 subsidiary, Level 3 Services, LLC ("Level 3-Services"), entered into an Agreement and Plan of  
5 Merger (the "Agreement") to allow Broadwing Parent to merge with and into Level 3-Services.  
6 As a result, control of Broadwing will be transferred to Level 3.

7 4. Level 3 LLC will acquire Broadwing in a multi-step transaction, with all steps  
8 occurring in immediate succession on the day of consummation, resulting in Level 3-Services  
9 and Broadwing being wholly-owned subsidiaries of Level 3 LLC.

10 5. First, Broadwing Parent will merge with Level 3-Services, with Level 3-Services  
11 surviving. Second, Level 3 will contribute all of the membership interest in Level 3-Services to  
12 Level 3 Financing, Inc. ("Level 3 Financing"), another Level 3 direct, wholly owned subsidiary.  
13 Third, Level 3 Financing will contribute all of the membership interest in Level 3-Services to  
14 Level 3 LLC, Level 3's principal, indirect operating subsidiary in the United States.

15 6. Following the completion of these three steps, Level 3-Services will be a direct  
16 subsidiary of Level 3 LLC, and Broadwing will be an indirect subsidiary of Level 3 LLC.  
17 Following consummation of the transaction, Broadwing will operate its facilities and provide  
18 service to its customers under the same name and at the same rates, terms, and conditions,  
19 ensuring seamless transition for those customers.

20 7. Applicants request authority for the transfer of control of Broadwing to Level 3  
21 LLC as well as any necessary authority for the pro forma changes that occur to Broadwing as a  
22 result of the transaction steps outlined in this application.

23 8. Under terms of the Agreement, Level 3 will pay total consideration of  
24 approximately \$1.4 billion for approximately 89.9 million shares of stock of Broadwing Parent.  
25 Broadwing Parent stockholders will receive \$8.18 in cash for each share of Broadwing Parent  
26 stock plus 1.3411 shares of Level 3 stock. In total, Level 3 currently expects to pay  
27 approximately \$744 million of cash and issue approximately 122 million shares. Broadwing

28 ...

1 Parent's debt and cash, in the approximate amount of \$180 million and \$300 million,  
2 respectively, would remain with Level 3 Services, as the surviving company of the merger.

3 9. In addition, upon closing it is expected that Broadwing will be required to provide  
4 a guaranty for existing indebtedness of Level 3 Financing, Inc. including: (1) an offering of  
5 10.75% Senior Notes due in 2011 in the aggregate principal amount of \$500 million; (2) a \$730  
6 million senior secured term loan that will mature in 2011 and has an interest rate of LIBOR plus  
7 an applicable margin of 300 basis points (the "Credit Agreement"); and (3) \$150 million of  
8 floating rate Senior Notes due in 2011 and \$550 million of 12.25% Senior Notes due in 2013.  
9 Upon closing, it is anticipated that Broadwing will pledge its assets as security for the guaranty  
10 that Broadwing is expected to provide under the Credit Agreement.

11 10. Applicants request a waiver under the Rules, to the extent necessary, and approval  
12 under A.R.S. § 40- 285 for Broadwing to participate in the financing arrangements described  
13 above.

#### 14 Staff's Analysis & Recommendations

15 11. The Applicants' merger agreement was signed on October 16, 2006, two days  
16 before the Application was file, and states that termination will occur automatically on October  
17 16, 2007 if closing has not occurred. The Applicants' propose, however, to complete the  
18 transaction before December 31, 2006.

19 12. The accelerated closing date appears to have been established to mitigate financial  
20 consequences associated with market uncertainties created by a change of ownership and  
21 potential impacts on customer communications, employee relations, and investor relations. The  
22 Applicants also believe that the ability to achieve merger synergies, retain employees, invest in  
23 the operating entities, as well as the ultimate value of the stock portion of the acquisition price  
24 are impacted by the closing date of the merger.

25 13. Applicants state that their investment in Arizona should not be adversely impacted  
26 by the proposed transaction. The Applicants have indicated to Staff that any changes to the  
27 networks used by the Applicants will depend upon integration that could occur at a later date. At  
28 ...

1 this time, the Applicants do not have plans to decommission facilities in Arizona as a result of  
2 this transaction. Level 3 LLC hopes to gain additional network footprints in Arizona.

3 14. The Applicants expect that the proposed acquisition will enable both Broadwing  
4 and Level 3 LLC to strengthen their competitive positions to the benefit of Arizona consumers  
5 and the telecommunications marketplace but have not provided any specific details related to this  
6 merger.

7 15. As Broadwing only provides long distance services and Level 3 and WilTel  
8 affiliates only service business customers primarily on a wholesale basis, the Transaction has  
9 only limited potential to negatively impact the Competitive Local Exchange Market.

10 16. The Applicants indicate that at the present time, Broadwing has a total of 13  
11 employees in Arizona, while Level 3 employs 12 individuals in Arizona. The Applicants further  
12 state that they do not currently have Transaction plans that are expected to affect Broadwing's  
13 Arizona employees.

14 17. The Applicants have not yet informed Broadwing customers of the proposed  
15 Transaction but have provided Staff with a proposed Customer Notice, attached as Exhibit A.

16 18. At Staff's request, Level 3 LLC has reviewed its Central Office Code inventory in  
17 Arizona and returned two number blocks. As such, Staff does not believe a condition requiring  
18 the Applicants to review their numbering resources in the 480, 520, 602, 623, and 928 NPAs is  
19 necessary.

20 19. Although the Applicants total debt increases by \$180 Million as a result of this  
21 proposed Transaction, the relative change is positive since Broadwing will also contribute \$300  
22 Million in cash. The Pro Forma Debt/Equity Ratio, of the resulting entity, actually improves  
23 considerably as a result of the proposed Transaction.

24 20. Based upon information currently available to Level 3 as to the expected value of  
25 Broadwing's total tangible assets it is expected that within 45 days after closing the proposed  
26 Transaction, Broadwing will be required to both provide a guaranty of the existing Level 3  
27 Financing, Inc. Amended and Restated Credit Agreement as well as pledge its assets to support  
28 this guaranty. The assets will be pledged to the Collateral Agent for the lenders under the

1 Amended and Restated Credit Agreement which currently matures on December 1, 2011. Since  
2 Broadwing customers have access to many competitive alternative providers and Broadwing  
3 does not collect end-user Advances or Deposits, Staff does not believe this Transaction will pose  
4 any significant threat to customer service or the competitive environment.

5 21. At the time this Application was filed, Broadwing was not fully in compliance  
6 with its Rule 805 filing but has subsequently submitted the appropriate information. The  
7 Applicants have otherwise been found to be in compliance and in good standing by the  
8 Commission's Compliance and Consumer Services sections.

9 22. Staff recommends that the joint application of Broadwing Communications, LLC,  
10 Level 3 Communications, LLC, WilTel Communications, LLC and WilTel Local Network, LLC  
11 requesting a limited waiver of the Arizona Corporation Commission's Public Utility Holding  
12 Companies and Affiliated Interest Rules in connection with a proposed transaction whereby  
13 Level 3 LLC will acquire indirect control of Broadwing be approved.

14 23. Staff also recommends that the joint application of Broadwing Communications,  
15 LLC, Level 3 Communications, LLC, WilTel Communications, LLC and WilTel Local Network,  
16 LLC requesting an order from the Commission (i) authorizing the pledge, mortgage, lien and/or  
17 encumbrance of the utility plant and assets of Broadwing in connection with the participation of  
18 Broadwing in existing financing arrangements of Level 3 Financing, Inc. ("Level 3 Financing")  
19 in accordance with A.R.S. § 40-285; and (ii) granting a limited waiver of A.A.C. R14-2-804(B)  
20 for Broadwing to guarantee the obligations of Level 3 or, in the alternative, authorizing  
21 Broadwing to guarantee the obligations of Level 3 Financing pursuant to A.A.C. R14-2-804(B)  
22 be approved.

23 24. Staff further recommends that the Commission order include the following  
24 conditions:

- 25 1. That for one year following acquisition close or until Broadwing  
26 Communications, LLC, Level 3 Communications, LLC, WilTel Communications,  
27 LLC And WilTel Local Network, LLC inform the Commission by filing an  
28 affidavit with Docket Control that acquisition-related activities are completed,



1 connection with the participation of Broadwing in existing financing arrangements of Level 3  
2 Financing, Inc. ("Level 3 Financing") in accordance with A.R.S. § 40-285; and (ii) granting a  
3 limited waiver of A.A.C. R14-2-804(B) for Broadwing to guarantee the obligations of Level 3 or,  
4 in the alternative, authorizing Broadwing to guarantee the obligations of Level 3 Financing  
5 pursuant to A.A.C. R14-2-804(B).

6 5. The Commission, having reviewed the filing and Staff's Memorandum dated  
7 November 30, 2006, concludes that it is in the public interest to grant the joint application of  
8 Broadwing Communications, LLC, Level 3 Communications, LLC, WilTel Communications,  
9 LLC and WilTel Local Network, LLC without a hearing.

10 ORDER

11 IT IS THEREFORE ORDERED that the joint application of Broadwing Communications,  
12 LLC, Level 3 Communications, LLC, WilTel Communications, LLC And WilTel Local  
13 Network, LLC for a limited waiver of the Arizona Corporation Commission's Public Utility  
14 Holding Companies and Affiliated Interest Rules in connection with a proposed transaction  
15 whereby Level 3 LLC will acquire indirect control of Broadwing be approved.

16 IT IS FURTHER ORDERED that the joint application of Broadwing Communications,  
17 LLC, Level 3 Communications, LLC, WilTel Communications, LLC and WilTel Local Network,  
18 LLC requesting an order from the Commission (i) authorizing the pledge, mortgage, lien and/or  
19 encumbrance of the utility plant and assets of Broadwing in connection with the participation of  
20 Broadwing in existing financing arrangements of Level 3 Financing, Inc. ("Level 3 Financing")  
21 in accordance with A.R.S. § 40-285; and (ii) granting a limited waiver of A.A.C. R14-2-804(B)  
22 for Broadwing to guarantee the obligations of Level 3 or, in the alternative, authorizing  
23 Broadwing to guarantee the obligations of Level 3 Financing pursuant to A.A.C. R14-2-804(B)  
24 be approved.

25 IT IS FURTHER ORDERED that for one year following acquisition close or until  
26 Broadwing Communications, LLC, Level 3 Communications, LLC, WilTel Communications,  
27 LLC and WilTel Local Network, LLC inform the Commission by filing an affidavit with Docket  
28 Control that acquisition-related activities are completed, whichever occurs last, Broadwing

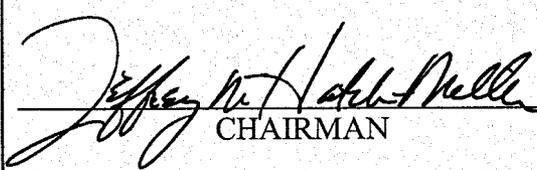
1 Communications, LLC, Level 3 Communications, LLC, WilTel Communications, LLC And  
 2 WilTel Local Network, LLC provide written notification to the Director of the Utilities Division  
 3 and to the individual members of the Commission, at least 60 days in advance, of any planned  
 4 acquisition-related Arizona workforce layoffs; any planned acquisition-related Arizona plant  
 5 closings; and any planned acquisition-related Arizona facility closings.

6 IT IS FURTHER ORDERED that customer notices be mailed to all existing Broadwing  
 7 Communications, LLC customers within 30 days of a Commission decision in this application

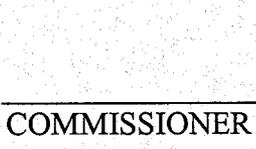
8 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

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**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

  
 CHAIRMAN

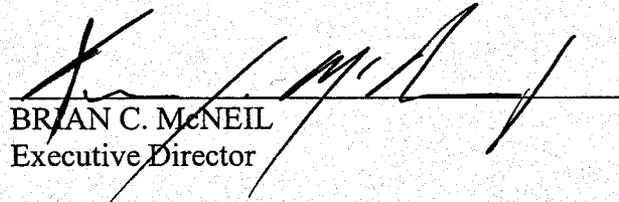
  
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IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive  
 Director of the Arizona Corporation Commission, have  
 hereunto, set my hand and caused the official seal of this  
 Commission to be affixed at the Capitol, in the City of  
 Phoenix, this 21<sup>st</sup> day of December, 2006.

  
 BRIAN C. McNEIL  
 Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EGJ:AFF:tdp/KT

1 SERVICE LIST FOR: Broadwing Communications, LLC, Level 3 Communications, LLC,  
2 Wiltel Communications, LLC and Wiltel Local Network, LLC  
3 DOCKET NOS. T-04176A-06-0673, T-03654A-06-0673, T-03708A-06-0673 and T-03779A-  
4 06-0673

5 Mr. Thomas H. Campbell  
6 Michael T. Hallam  
7 40 North Central Avenue, Suite 1900  
8 Phoenix, Arizona 85004

9 Mr. Ernest G. Johnson, Esq., Director  
10 Utilities Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Mr. Christopher Kempley, Chief Counsel  
15 Legal Department  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007  
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1 EXHIBIT A

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[LOGO]

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November -, 2006

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Dear Valued Customer:

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Broadwing is pleased to inform you that Level 3 Communications, Inc. has agreed to acquire Broadwing Communications, LLC. The parties hope to complete the transaction by the end of December, 2006. Level 3 (NASDAQ: LVLT) operates one of the largest Internet backbones in the world. The company provides a comprehensive suite of services over its broadband fiber optic network including Internet Protocol (IP) services, broadband transport and infrastructure services, colocation services, voice services and voice over IP services. These services provide building blocks that enable Level 3's customers to meet their growing demands for advanced communications solutions. As part of the Level 3 family of companies, Broadwing will have access to these additional resources to benefit our customers.

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Following the transaction, Broadwing will provide your service under the same name and pursuant to the same rates, terms and conditions of service that you receive with no interruption or diminution in the quality of service. Notice of any future changes in rates, terms and conditions of service will be provided to you in writing or as otherwise required or permitted by law.

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If you have any questions, please feel free to contact Broadwing's toll-free customer service number at 1-888-362-2522. You can also contact Broadwing in writing at 1122 Capital of Texas Highway South, Austin, Texas 78746. Broadwing appreciates your business and looks forward to continuing to meet your telecommunications needs.

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Sincerely,

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[INSERT]

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