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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

DOCKETED

JUN 23 2009

DOCKETED BY NR

IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, AND WILTEL COMMUNICATIONS, LLC, FOR A LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 ET SEQ.) AND APPROVAL OF ENCUMBRANCE OF ASSETS.

DOCKET NO. T-03654A-09-0174
T-04176A-09-0174
T-03708A-09-0174

DECISION NO. 71176

OPINION AND ORDER

Open Meeting
June 23 and 24, 2009
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On April 6, 2009, Level 3 Communications, LLC ("Level 3"), Broadwing Communications, LLC ("Broadwing"), and WilTel Communications, LLC ("WilTel") (collectively "Applicants") pursuant to A.A.C. R14-2-806 and any other regulations deemed applicable, jointly filed an application with the Arizona Corporation Commission ("Commission") requesting a limited waiver of the Public Utility Holding Companies and Affiliated Interest Rules A.A.C. R14-2-801 to - 806 ("Rules"), and approval of the encumbrance of their assets pursuant to A.R.S. § 40-285 to incur additional debt obligations of up to \$500 million and to secure the debt by liens on Applicants'

21 CD

1 assets.¹

2 2. On May 7, 2009, Applicants filed an Affidavit of Publication showing that public
3 notice of the application had been published in *The Arizona Republic*, a newspaper of general
4 circulation on April 24, 2009.

5 3. On May 13, 2009, Applicants docketed a Supplement to Application (“Supplement”),
6 which informed the Commission that the Applicants had received an additional \$60 million in
7 commitments from lenders and that although the overall amount the Applicants were requesting
8 remained at \$500 million, the initial commitment would now be \$280 million instead of \$220
9 million, with the remainder of the \$500 million to be raised at a later date.

10 4. On June 5, 2009, the Utilities Division (“Staff”) filed a Staff Report recommending
11 denial of the limited waiver of the Rules, but recommending conditional approval of the Applicants’
12 alternative request to encumber their assets and provision of a guarantee.

13 5. On June 8, 2009, Applicants filed a Request for Expedited Treatment (“Request”).
14 The Request stated that the Applicants expected to have all required state approvals finalized by June
15 15, 2009, and Applicants desired to have the Recommended Opinion and Order (“ROO”) placed on
16 the June 23-24, 2009, Open Meeting.

17 6. On June 9, 2009, the Applicants filed a Waiver of Exceptions Period, which stated
18 they agreed to waive the ten day period to file exceptions to the ROO.

19 **Discussion**

20 7. Level 3 is a Delaware limited liability company authorized in Commission Decision
21 No. 61737 (June 4, 1999), to provide facilities-based and resold local exchange, toll, access services,
22 and intrastate interexchange telecommunication services in Arizona. Level 3 is a wholly owned
23 subsidiary of Level 3 Financing, Inc. (“Financing”), whose ultimate parent company is Level 3
24 Communications, Inc. All three companies have principal offices in Bloomfield, Colorado.

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28 ¹ Broadwing is not Class A utility subject to the Rules. As a result, Broadwing only seeks approval pursuant to A.R.S. § 40-285 in relation to the encumbrance of assets.

1 8. Broadwing, a subsidiary of Level 3, is a Delaware limited liability company
2 authorized in Commission Decision No. 66105 (July 25, 2003), to provide resold and facilities-based
3 intrastate telecommunications services in Arizona.

4 9. WilTel, a subsidiary of Level 3, is a Delaware limited liability company and was
5 authorized in Commission Decision No. 62025 (November 2, 1999), to provide competitive resold
6 and facilities-based local exchange, exchange access, and intrastate dedicated access
7 telecommunications services in Arizona.

8 10. In this application, the Applicants request approval to initially incur debt obligations
9 of up to \$280 million.² Applicants further request that they be allowed to borrow, at some later date,
10 an additional \$220 million for a total of \$500 million, under an existing Credit Agreement approved
11 by the Commission in Decision No. 69580 (May 21, 2007).³ According to the application,
12 Applicants will incur debt either as co-borrowers or guarantors of Financing's debt and that debt will
13 be secured by liens on Applicants' assets and/or pledge of the Applicants' capital stock held by their
14 respective immediate corporate parents. The application states the proceeds will be advanced to
15 Level 3 for an intercompany demand note.⁴

16 11. The Applicants assert their ability to incur additional long-term debt is allowable
17 under the "accordion provision" of the existing Credit Agreement approved in Commission Decision
18 No. 69580. According to the application, "the accordion provision allows Financing to increase the
19 amount of debt based on a modified version of the company's earnings before interest, taxes,
20 depreciation, and amortization (EBITDA)."⁵ Further, the application states that because "Financing
21 and its subsidiaries, including Applicants, were free cash flow positive for the fourth quarter 2008
22 and expect to be free cash flow positive for all of 2009. . . Financing is able to seek additional debt
23 funding under the 2007 Financing."⁶

24 _____
25 ² Supplement to Application at 1.

26 ³ Commission Decision No. 69580 granted the Applicants authority to pledge their Arizona assets as security for: 1) \$1
27 billion in new notes, comprised of 8.75 percent fixed interest rate notes with a maturity date of 2017 and variable rate
28 interest notes with maturity dates in 2015, and 2) a \$1.4 billion Credit Agreement with maturity in 2014 ("hereinafter
2007 Financing").

⁴ Application at 2.

⁵ Application at 5.

⁶ Id.

1 12. Applicants state that no new Arizona assets will be pledged or encumbered as
2 collateral as a part of the incremental borrowing. Further, Applicants intend to use the funds from the
3 loans for working capital, general corporate purposes, including debt repurchases. Applicants assert
4 that no customer deposits and prepayments will be encumbered as a part of the application's
5 proposed financial transactions.

6 13. Applicants state that the proposed financial transactions will not result in a change in
7 management or adversely effect day-to-day operations or Arizona customers, but will allow
8 Applicants to expand into new markets and bring additional services to consumers.

9 14. After reviewing the proposed transaction, Staff concluded that the proposed financial
10 transactions would not impair the availability of service to customers because Applicants' services
11 are competitive and there are alternative service providers to the types of services Applicants provide.
12 Staff expressed concern that the Applicants' proposed financial transactions may expose Arizona
13 customers to potential losses to the extent that they have prepaid for service or made deposits and that
14 any authorization for encumbrance should provide customer protection for prepayments and deposits.

15 15. Staff recommends denial of the Applicants' request for a limited waiver of the Rules.
16 However, Staff recommends approval of the Applicants' alternative request to guarantee the Credit
17 Agreement that provides up to \$500 million of additional long-term borrowing capacity and to secure
18 the debt by liens on the Applicants' assets and/or capital stock subject to the condition that all
19 Arizona customer deposits and prepayments, if any, be excluded from encumbrance, or in the
20 alternative, that all Arizona customer deposits and prepayments, if any, be secured by a bond or
21 irrevocable sight draft letter of credit, which is not included in the pledged collateral.

22 16. Staff further recommends that if the Applicants exercise the option of procuring a
23 performance bond or irrevocable sight draft letter of credit to protect Arizona customer deposits and
24 prepayments, Applicants should be required to file the performance bond or irrevocable sight draft
25 letter of credit with the Commission's business office, within 60 days of the effective date of the
26 Decision in this matter.

27 17. Staff further recommends authorizing Applicants to engage in any transaction and to
28 execute any documents necessary to effectuate the authorization granted in this proceeding.

1 encumbrance, within 60 days of the effective date of this Decision, as a compliance item in this
2 docket.

3 IT IS FURTHER ORDERED that Level 3 Communications, LLC, Broadwing
4 Communications, LLC, and WiTel Communications, LLC, are hereby authorized to engage in any
5 transactions and to execute or cause to be executed any documents so as to effectuate the
6 authorizations granted herein.

7 IT IS FURTHER ORDERED that Level 3 Communications, LLC, Broadwing
8 Communications, LLC, and WiTel Communications, LLC, shall file with Docket Control, within 60
9 days of executing any financing transaction authorized herein, documentation showing that the
10 transaction has been executed and the date on which it was executed.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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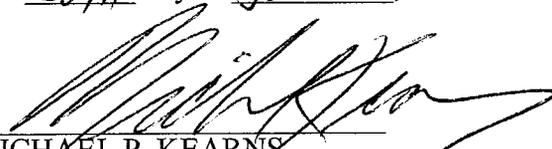
15 CHAIRMAN COMMISSIONER

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17 COMMISSIONER COMMISSIONER COMMISSIONER

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19 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
20 Executive Director of the Arizona Corporation Commission,
21 have hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this 30th day of June, 2009.

24 
25 MICHAEL P. KEARNS
26 INTERIM EXECUTIVE DIRECTOR

27 DISSENT _____

28 DISSENT _____

YBK:db

1 SERVICE LIST FOR: LEVEL 3 COMMUNICATIONS, LLC,
2 BROADWING COMMUNICATIONS, LLC, AND
WITEL COMMUNICATIONS, LLC

3 DOCKET NOS.: T-03654A-09-0174, T-04176A-09-0174, and T-03708A-
4 09-0174

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