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BEFORE THE ARIZONA CORPORATION COMMISSION

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GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

Arizona Corporation Commission

DOCKETED

JUN 27 2011

DOCKETED BY
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IN THE MATTER OF THE JOINT
APPLICATION OF LEVEL 3
COMMUNICATIONS, LLC, GLOBAL
CROSSING TELECOMMUNICATIONS,
INC., GLOBAL CROSSING LOCAL
SERVICES, INC., BROADWING
COMMUNICATIONS, LLC, WITEL
COMMUNICATIONS, LLC FOR
APPROVAL OF LIMITED WAIVERS OF
THE PUBLIC UTILITY HOLDING
COMPANIES AND AFFILIATES
INTEREST RULES (A.A.C. R14-2-801 ET
SEQ.) AND APPROVAL TO ENCUMBER
AND/OR MORTGAGE ASSETS

DOCKET NOS. T-03654A-11-0167
T-02438B-11-0167
T-03658A-11-0167
T-04176A-11-0167
T-03708A-11-0167

DECISION NO. 72431
ORDER

Open Meeting
June 21 and 22, 2011
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On April 18, 2011, Level 3 Communications, LLC ("Level 3 LLC"), Global Crossing Telecommunications, Inc. ("GC Telecommunications") and Global Crossing Local Services, Inc. ("GC Local") filed an application with the Arizona Corporation Commission ("Commission") to request a limited waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, Arizona Administrative Code ("A.A.C." R14-2-801 et seq. R14-2-806 referred to as the "Affiliated Interests Rules"), in connection with a proposed

1 transaction whereby Level 3 LLC proposes to acquire indirect control of GC Telecommunications
2 and GC Local.¹ In the alternative, Level 3 LLC, GC Telecommunications and GC Local request,
3 to the extent necessary, authorization under the A.A.C. R14-2-803 for Level 3 LLC's acquisition
4 of GC Telecommunications and GC Local.

5 2. Level 3 LLC also requests a limited waiver of the Affiliated Interests Rules in
6 connection with new financing arrangements of Level 3 LLC's affiliate Level 3 Financing, Inc.
7 ("Level 3 Financing") under which Level 3 LLC will provide a guarantee. In the alternative, Level
8 3 LLC requests, to the extent necessary, approval under A.A.C. R14-2-804 for Level 3 LLC to
9 provide the guarantee for the new financing arrangements of Level 3 Financing.

10 3. Level 3 LLC, Broadwing Communications, LLC ("Broadwing"), WilTel
11 Communications, LLC ("WilTel")², GC Telecommunications and GC Local also request an order
12 from the Commission under Arizona Revised Statutes ("A.R.S." § 40-285 authorizing the pledge,
13 mortgage, lien and/or encumbrance of the utility plant and assets of all the Parties in connection
14 with their participation in certain new financing arrangements of Level 3 Financing and, with
15 respect to GC Telecommunications and GC Local, to pledge, mortgage, lien and/or encumbrance
16 of the utility plant and assets in connection with certain existing financing arrangement of Level 3
17 Financing.

18 4. Finally, the Level 3 Companies and the GC Companies (collectively, the
19 "Applicants") request a finding from the Commission that the requirements of A.R.S § 40-301 et
20 seq. are inapplicable to the Applicants as a foreign public service corporation providing
21 communications service within the State of Arizona pursuant to the exemption set forth

22 Background

23 **The Level 3 Companies**

24 5. The Level 3 Companies are wholly owned indirect subsidiaries of Level 3
25 Communications, Inc. ("Level 3"). Level 3 is a publicly traded (NASDAQ: LVLT) Delaware
26 corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021.

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28 ¹ GC Local with GC Telecommunications, the "GC Companies"

² Level 3 LLC, Broadwing and WilTel, collectively the "Level 3 Companies"

1 6. Level 3 LLC is authorized to provide facilities-based and resold local exchange, toll
2 and access services pursuant to a Certificate of Convenience & Necessity (“CC&N”) granted by
3 the Commission in Decision No. 61737, dated June 4, 1999, in Docket No. T-03654A-98-0641.
4 Broadwing is authorized to provide resold and facilities-based local exchange and interexchange
5 service pursuant to a CC&N granted by the Commission in Decision No. 66105, dated on July 25,
6 2003, in Docket No. T-04176A-03-01785. WilTel is authorized to provide resold and facilities-
7 based local exchange and interexchange telecommunications services pursuant to a CC&N granted
8 by the Commission in Decision No. 62025, on November 2, 1999, in Docket No. T-03708A-99-
9 0074.

10 **The GC Companies**

11 7. The GC Companies are Michigan corporations and wholly owned indirect
12 subsidiaries of Global Crossing North America, Inc. (“Global Crossing”). Global Crossing, a New
13 York corporation, is headquartered at 225 Kenneth Drive, Rochester, New York 14623.

14 8. GC Telecommunications is authorized to provide interexchange
15 telecommunications services pursuant to its CC&N granted by the Commission in Decision No.
16 54505 on April 29, 1985, in Docket No. U-2438-84-101. The CC&N was expanded by Decision
17 No. 60501, on November 25, 1997. GC Local is authorized to provide facilities-based local
18 exchange telecommunications services pursuant to its CC&N granted by the Commission in
19 Decision No. 61622, on April 1, 1999, in Docket T-03658A-98-0653.

20 The Transaction

21 9. The Level 3 Companies and the GC Companies in their application represent the
22 following:

- 23 a. On April 11, 2011, Level 3, Apollo Sub (formed for the purposes of the merger), and
24 Global Crossing’s indirect parent company, Global Crossing Limited (“GCL”) entered into an Agreement and Plan of Amalgamation (the “Agreement”) whereby
25 Apollo Sub and GCL will be merged (“amalgamated”) under Bermuda Law.
- 26 b. Pursuant to the Agreement, each issued and outstanding common share and
27 convertible preferred stock of GCL (other than any shares owned by Level 3, GCL, or
28 their respective subsidiaries and any dissenting shares) will be exchanged for shares
of common stock of Level 3.

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- 1 c. Following the merger of GCL and Apollo Sub, the separate corporate existence of
2 Apollo Sub and GCL will cease, and the combined company, renamed Level 3 GC
3 Limited., will exist as a wholly owned subsidiary of Level 3 Financing and ultimately
4 a wholly owned subsidiary of Level 3 LLC. As a result of the transaction, Level 3
5 will indirectly control the GC Companies.
- 6 d. An indirect minority transfer of ownership of the Level 3 Companies will also occur
7 as a consequence of the merger transaction. As result of the exchange of shares in
8 connection with the merger, STT Crossing Ltd, a current direct investor in GCL and
9 an indirect investor in Global Crossing and the GC Companies, will obtain a minority
10 interest of approximately 24 percent to 26 percent in Level 3, and indirectly in the
11 Level 3 Companies.
- 12 e. In addition, Southeastern Asset Management, Inc., which is currently the largest
13 Level 3 stockholder with an approximate 30 percent interest, will hold
14 approximately 15 percent of Level 3. Other than STT Crossing Ltd. and Southeastern
15 Asset Management, Inc., no other individual or entity is expected to hold 10 percent
16 or more of Level 3. The majority of the Level 3 stock will continue to be held by
17 current investors.
- 18 f. To participate in certain financing arrangements, Level 3 Financing proposes to enter
19 into a \$650 million Term Loan with a six-year maturity date. Level 3 Financing
20 plans to lend the net proceeds it receives to its subsidiary, Level 3 LLC, in return for
21 an intercompany demand note, and in turn, Level 3 LLC may lend the net proceeds to
22 Level 3 GC Limited in return for an intercompany demand note. The Level 3
23 Companies and the GC Companies will pledge their assets and act as guarantors in
24 support of the \$650 million Term Loan.
- 25 g. In support of the merger transaction, Level 3 Financing also plans to either (a) issue
26 \$1.1 billion in Senior Notes in a registered public offering or a private placement or
27 (b) enter into a \$1.1 billion Bridge Loan with a one-year maturity date from closing
28 (“Bridge Loan”). Pursuant to either arrangement, Level 3 Financing will lend the net
proceeds it receives to its subsidiary, Level 3 LLC, in return for an intercompany
demand note, and in turn, Level 3 LLC may lend the net proceeds to Level 3 GC
Limited in return for an intercompany demand note.
- h. The proceeds from the \$1.1 billion Senior Note or Bridge Loan financing
arrangement will be used to repay the existing indebtedness of Level 3 GC Limited.
The Level 3 Companies and the GC Companies will act as guarantors for the \$1.1
billion financing arrangement. Should Level 3 Financing enter into the \$1.1 billion
Bridge Loan, Level 3 Financing has the option at maturity of the Bridge Loan to
either (1) refinance the Bridge Loan by entering into a Rollover Loan with a six-year
maturity date or (2) replace the Bridge Loan by issuing Exchange Notes with a six-
year maturity date. The Level 3 Companies and the GC Companies will act as
guarantors for either the Rollover Loan or the Exchange Notes.
- i. Upon closing of the merger, it is expected that the GC Companies will be required to
provide a guaranty for existing unsecured indebtedness of Level 3 Financing

1 including certain Senior Notes and an existing credit facility. It is also anticipated
2 that the GC Companies will pledge their assets as security for the credit facility.

3 Staff's Analysis

4 10. Staff's review of the Applicants 2010 Annual Reports, filed with the Commission
5 on April 15, 2011, indicates that the Level 3 LLC, WiTel and GC Telecommunications are Class
6 A utilities subject to the Commission's Public Utility Holding Companies and Affiliated Interests
7 Rules. Broadwing and GC Local are not Class A utilities based on their 2010 Annual Reports.
8 The Applicants in their application provided information required by A.A.C. R14-2-803.A.1-11.
9 The Applicants also provided the additional information requested by Staff during an April 26,
10 2011 conference call and subsequent emails.

11 11. The proposed merger seeks to combine the resources of companies jointly
12 employing more than 10,500 and serving 700 markets in 70 countries.³ Level 3 and Global
13 Crossing possess nearly equal numbers of Intercity Fiber Route Miles (~57,000 and ~51,000,
14 respectively), however, the distribution of those facilities are ~77 percent within North America
15 for Level 3 while only ~32 percent for Global Crossing. Additionally, Level 3 and Global
16 Crossing are joining significant amounts of Metropolitan Fiber Route Miles - ~27,000 for Level 3
17 and ~2,000 for Global Crossing. The result should be a company with improved international and
18 national competitive resources and presence.

19 12. Staff requested an explanation of the proposed merger's synergies applicable to
20 Arizona. In response, Level 3 stated that a discrete financial analysis for the synergies to be
21 realized by the transaction on a state-by-state basis had not been developed. However, the annual
22 synergy impact of the corporate transaction is calculated currently at \$340 million, representing the
23 EBITDA⁴ synergies and capital expenditure reduction synergy projected to be realized. The total
24 net present value of both synergies is projected to be \$2.5 billion.

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28 ³ <http://www.networkedworld.com>, Level 3 and Global Crossing fact sheet, April 11, 2011

⁴ Earnings Before Interest, Taxes, Depreciation and Amortization

1 13. A.A.C. R14-2-804 requires that a utility will not consummate certain financial
2 transactions without prior approval of the Commission.⁵ The rule serves to determine if
3 transactions would impair the financial status of the public utility, otherwise prevent it from
4 attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide
5 safe, reasonable and adequate service.

6 14. The financial details of the stock-for-stock transaction are outlined in Level 3's
7 April 11, 2011 press release.⁶ The press release describes "Adjusted EBITDA synergies of
8 approximately \$300 million and annualized capital expenditure reduction of approximately \$40
9 million" and states that Level 3 "expects to realize approximately two-thirds of the run rate
10 Adjusted EBITDA synergies within 18 months of closing." Level 3's press release also states that
11 "the ratio of net debt (including capital leases) to Adjusted EBITDA is expected to improve from
12 6.8x to 4.4x as of Dec. 31, 2010." Staff believes the stock market's reaction is a positive
13 evaluation of the details provided by Level 3 in its press release for the proposed transaction.
14 Based on its evaluation of the proposed transaction, Staff concludes that the transaction would not
15 impair the financial status of the Applicants, would not impair its ability to attract capital, nor
16 would it impair the ability of the Applicants to provide safe, reasonable, and adequate service.

17 15. Staff requested an explanation of the proposed merger's impacts on Arizona
18 employees and facilities. In response, the Applicants stated they jointly employ 260 individuals in
19 Phoenix and Tucson. Global Crossing maintains operations facilities in Arizona along with an
20 Internet Protocol Lab while Level 3 entities serve customers with many considerable miles of
21 fiber. The Applicants have indicated to Staff that no merger-related plans exist at this time to
22 reduce the Arizona employee-base or company assets of the joint Applicants' operations.
23 Additionally, Staff is not aware of any parties that have raised concerns or filed objections to this
24 transaction.

25 16. The proposed transaction will result in a change of ownership of the GC Companies
26 but not a transfer of CC&Ns, assets or customers. Additionally, the Applicants state that following

27 ⁵ Commission Review of Transactions Between Public Utilities and Affiliates

28 ⁶ <http://www.level3.com/en/About-Us/Newsroom/Press-Release-Archive/2011/2011-04-11-globalcrossing.aspx>, Level 3 to Acquire Global Crossing Press Release, April 11, 2011

1 consummation of the transaction, the GC Companies will continue to operate their facilities and
2 provide service to their customers at the same rates, terms, and conditions, ensuring a seamless
3 transition of ownership.

4 17. Staff notes that two Global Crossing entities have cancelled CC&Ns within the last
5 year. Global Crossing North American Networks was merged into Global Crossing
6 Telecommunications, Inc., with Commission approval in Decision No. 71784 on July 12, 2010.
7 Global Crossing Telemanagement was merged into Global Crossing Local Services with
8 Commission approval in Decision No. 71908 on September 28, 2010. The CC&Ns for both
9 entities were cancelled with the effective date of the merger on December 31, 2010. Were the
10 Applicants to propose future CC&N cancellations, Staff would review the applications at the
11 appropriate time.

12 18. A.R.S. § 40-285 requires public service corporations to obtain Commission
13 authorization to encumber certain utility assets. The statute serves to protect captive customers
14 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
15 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
16 service. A pledge of the Applicants' Arizona assets should not impair the availability of service to
17 customers since the Applicants provide competitive services that are available from alternative
18 service providers. Customers may still have exposure to losses to the extent they have prepaid for
19 service or made deposits. Any authorization for encumbrance should provide customer protection
20 for prepayments and deposits. Level 3 LLC has stated to Staff that the proposed financing will
21 specifically exclude Arizona customer deposits, advances and prepaid funds. Therefore, to the
22 extent that Level 3 LLC holds any Arizona customer deposits or prepayments, those funds should
23 not be pledged as part of the transaction.

24 19. A.R.S. § 40-301.D states "The provisions of this article shall not apply to foreign
25 public service corporations providing communications service within this state whose physical
26 facilities are also used in providing communications service in interstate commerce." The
27 Applicants have stated that all companies are either Delaware corporations (the Level 3
28 Companies) or Michigan corporations (the GC Companies) and as such qualify as foreign public

1 service corporations. Additionally, the Applicants are generally known by Staff and the
2 telecommunications industry to be providing interstate services as well as services within the state
3 of Arizona.

4 20. On April 25, 2011, the Applicants filed with the Commission's Docket Control an
5 affidavit of publication verifying public notice of its proposed transaction. The Company
6 published notice of its application in the *Arizona Republic* on April 21, 2011.

7 21. Staff recommends that the application filed by the Level 3 Companies and GC
8 Companies seeking approval for the transfer of control and the financing arrangements described
9 herein pursuant to A.A.C. R14-2-803, A.A.C. R14-2-804(B), A.R.S § 40-285, and A.R.S § 40-301
10 et seq. be approved with the following conditions:

- 11 a. That Level 3 Companies and the GC Companies shall for the first two complete years
12 following merger closing submit an Arizona Merger Benefits report to Docket
13 Control. The report shall at minimum detail (1) any cost, capital and synergy savings
14 and (2) any service improvements that have resulted from the proposed transaction
15 and have been passed on to or made available to Arizona customers.
- 16 b. That for one year following the closing of the proposed transaction or until the Level
17 3 Companies and the GC Companies inform the Commission by filing an affidavit
18 with Docket Control that transaction-related activities are completed, whichever
19 occurs last, the Applicants provide written notification to the Director of the Utilities
20 Division and to the individual members of the Commission, at least 60 days in
21 advance, of any planned acquisition-related Arizona workforce layoffs; any planned
22 acquisition-related Arizona plant closings; and any planned acquisition-related
23 Arizona facility closings.
- 24 c. That Level 3 Companies and the GC Companies provide updates in Docket Control,
25 as a compliance matter in this docket, by April 15, 2012 and April 15, 2013 on the
26 status of plans related to the proposed transaction to increase employees and
27 investment in Arizona.
- 28 d. That Level 3 Companies and the GC Companies file updates in Docket Control, as a
compliance item in this docket, by April 15, 2012 and April 15, 2013 of any changes
in the status of debt financing plans.
- e. That all customer deposits and prepayments be excluded from encumbrance and
equivalent amounts be retained by Level 3 Companies and GC Companies, as
corresponding. Staff further recommends that one copy of executed loan documents
be filed with Docket Control, as a compliance item in this docket, within 90 days
following execution of such documents.

1 resulted from the proposed transaction and have been passed on to or made available to Arizona
2 customers.

3 IT IS FURTHER ORDERED that for one year following the closing of the proposed
4 transaction or until Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel
5 Communications, LLC, Global Crossing Telecommunications, Inc. and Global Crossing Local
6 Services, Inc. inform the Commission by filing an affidavit with Docket Control that transaction-
7 related activities are completed, whichever occurs last, Level 3 Communications, LLC, Broadwing
8 Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc.
9 and Global Crossing Local Services, Inc. provide written notification to the Director of the
10 Utilities Division and to the individual members of the Commission, at least 60 days in advance, of
11 any planned acquisition-related Arizona workforce layoffs; any planned acquisition-related
12 Arizona plant closings; and any planned acquisition-related Arizona facility closings.

13 IT IS FURTHER ORDERED that Level 3 Communications, LLC, Broadwing
14 Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc.
15 and Global Crossing Local Services, Inc. file updates in Docket Control, as a compliance item in
16 this docket, by April 15, 2012 and April 15, 2013 on the status of plans related to the proposed
17 transaction to increase employees and investment in Arizona.

18 IT IS FURTHER ORDERED that Level 3 Communications, LLC, Broadwing
19 Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc.
20 and Global Crossing Local Services, Inc. file updates in Docket Control, as a compliance item in
21 this docket, by April 15, 2012 and April 15, 2013 of any changes in the status of debt financing
22 plans.

23 IT IS FURTHER ORDERED that all customer deposits and prepayments be excluded from
24 encumbrance and equivalent amounts be retained by Level 3 Communications, LLC, Broadwing
25 Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc.
26 and Global Crossing Local Services, Inc., as corresponding.

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IT IS FURTHER ORDERED that one copy of executed loan documents be filed with Docket Control, as a compliance item in this docket, within 90 days following execution of such documents.

IT IS FURTHER ORDERED that this Decision become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION


CHAIRMAN


COMMISSIONER

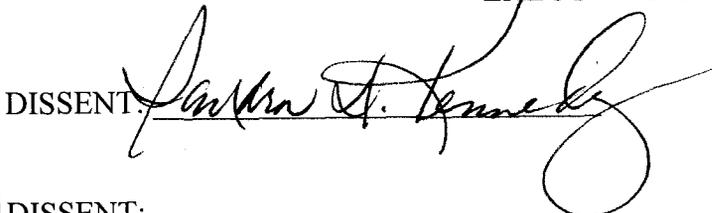

COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, 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 27 day of June, 2011.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: 

DISSENT: _____

SMO:AFF:lh\RM

1 SERVICE LIST FOR: Level 3 Communications, LLC, Global Crossing Telecommunications,
2 Inc., Global Crossing Local Services, Inc., Broadwing Communications,
3 LLC, WilTel Communications, LLC
4 DOCKET NOS. T-03654A-11-0167, T-02438B-11-0167, T-03658A-11-0167, T-04176A-
5 11-0167 and T-03708A-11-0167

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