

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

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PAUL NEWMAN
Commissioner

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[Signature]

BRENDA BURNS
Commissioner

In the Matter of the Joint Application of)

(1) Level 3 Communications, LLC for a)
Limited Waiver of the Public Utility Holding)
Companies and Affiliated Interest Rules)
(A.A.C. R14-2-801 et seq.) or, in the alternative,)
Approval of Guarantee under A.A.C. R14-2-804;)
and)

) Docket

T-03654A-11-0440
T-02438B-11-0440
T-03658A-11-0440
T-04176A-11-0440
T-03708A-11-0440

(2) Level 3 Communications, LLC, Broadwing)
Communications, LLC, WilTel Communications,)
LLC, Global Crossing Telecommunications, Inc.)
and Global Crossing Local Services, Inc. for)
Authorization to Encumber and/or Mortgage)
their Assets)

) (Expedited approval requested)

**VERIFIED JOINT APPLICATION FOR:
(1) LIMITED WAIVERS OF THE PUBLIC UTILITY HOLDING
COMPANIES AND AFFILIATES INTEREST RULES (A.A.C. R14-2-801 et seq.)
AND
(2) APPROVAL TO ENCUMBER AND/OR MORTGAGE ASSETS**

Pursuant to A.A.C. R14-2-806, Level 3 Communications, LLC ("Level 3 LLC") requests a limited waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 to R14-2-806 (the "Rules"), in connection with certain financing arrangements of Level 3 LLC's affiliate Level 3 Financing, Inc. ("Level 3 Financing") under which Level 3 LLC will provide a guarantee. In the alternative, Level 3 LLC requests, to the extent necessary, approval under

A.A.C. R14-2-804 for Level 3 LLC to provide the guarantee for the new financing arrangements of Level 3 Financing.

Additionally, Level 3 LLC, Broadwing Communications, LLC (“Broadwing”), WilTel Communications, LLC (“WilTel”), Global Crossing Telecommunications, Inc. (“GC Telecommunications”), and Global Crossing Local Services, Inc. (“GC Local”) (collectively, with Level 3 LLC, the “Applicants”) request an order from the Commission under A.R.S. § 40-285 authorizing the pledge, mortgage, lien and/or encumbrance of the utility plant and assets of the Applicants in connection with the Applicants participation in certain new financing arrangements of Level 3 Financing.

The Applicants are competitive telecommunications carriers that hold authority to provide intrastate telecommunications service in Arizona. As discussed below, the proposed transactions will produce certain important public interest benefits. Applicants request that the Commission act expeditiously to grant the approval requested herein so that Applicants can timely consummate the proposed transactions.

INTRODUCTION

Level 3 LLC holds a Certificate of Convenience and Necessity (“CCN”) to provide competitive telecommunications services in Arizona. Decision No. 61737 (June 4, 1999). Based on its operational revenues,¹ Level 3 LLC is considered a Class A utility and, therefore, subject to the Rules. The Rules regulate certain transactions and activities between public service corporations and their affiliated interests. According to the Commission, the Rules are intended to: (i) prevent the commingling of utility and non-utility funds; (ii)

¹ Based on its 2010 Annual Report filed with the Commission, Level 3 LLC had greater than \$1 million in jurisdictional revenue. Based on their 2010 Annual Reports filed with the Commission, Broadwing, WilTel, GC Telecommunications, and GC Local each had less than \$1 million in jurisdictional revenue and therefore are not considered Class A utilities.

prohibit cross-subsidization of non-utility activities by utility ratepayers; (iii) prevent negative impact of non-utility activities on a utility's financial credit; and (iv) ensure that the utility and its affiliates provide the Commission with the information necessary to "carry out its regulatory responsibilities." *See* Decision Nos. 56618 and 56844.

Applicants submit that, in light of the Rules' stated purposes, Applicants should be exempt from the requirements of the Rules for the purposes of the financing arrangements described herein. As explained below, Applicants operate in a highly competitive environment that effectively protects customers from activities that will detrimentally affect service to customers. The financing arrangements will be transparent to the customers of the Applicants. In this instance, application of the Rules to Applicants would be unreasonably costly and burdensome. Finally, limited waivers of these Rules is in the public interest.

Therefore, Applicants request limited waivers of the Rules as they may apply to the financing arrangements described below.

DESCRIPTION OF APPLICANTS

Level 3 Communications, Inc. ("Level 3") is a publicly traded (NYSE: LVLT) Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021. Level 3 provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network through its wholly owned indirect subsidiaries, including the Applicants. The Applicants are non-dominant carriers that are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis.

In Arizona, the Applicants hold the following authorizations:

1. Level 3 LLC is authorized to provide facilities-based and resold local exchange, toll and access services pursuant to a CCN granted in Decision No. 61737 issued by the Commission in Docket No. T-03654A-98-0641 on June 4, 1999.
2. Broadwing² is authorized to provide resold and facilities-based local exchange and interexchange service pursuant to a CCN granted in Decision No. 66105 issued in Docket No. T-04176A-03-01785 on July 25, 2003.
3. WilTel³ is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to a CCN granted in Decision No. 62025 issued by the Commission in Docket No. T-03708A-99-0074 on November 2, 1999.
4. GC Telecommunications⁴ is authorized to provide interexchange telecommunications services pursuant to its CCN granted by Decision No. 54505 issued by the Commission in Docket No. U-2438-84-101 on April 29, 1985 as expanded by Decision 60501 issued on November 25, 1997.
5. GC Local⁵ is authorized to provide facilities-based local exchange telecommunications services pursuant to its CCN granted by Decision No. 61622 issued by the Commission in Docket T-03658A-98-0653 on April 1, 1999.

² At the time the CCN was issued, Broadwing was named C III Communications Operations, LLC.

³ At the time the CCN was issued, WilTel was named Williams Communications, Inc.

⁴ At the time the CCN was issued, GC Telecommunications was named Allnet Communications Services, Inc.

⁵ At the time the CCN was issued, GC Local was named Frontier Local Services, Inc.

The Applicants are also authorized by the Federal Communications Commission (“FCC”) to provide international and domestic interstate services as non-dominant carriers. For the Commission’s convenience, a chart demonstrating the corporate organization of the Applicants and their affiliates is attached hereto as Exhibit A.

CONTACT INFORMATION

For the purposes of this Application, contacts for the Applicants are as follows:

For the Applicants:

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DESCRIPTION OF FINANCING TRANSACTIONS

Level 3 Financing, a wholly owned unregulated non-carrier subsidiary of Level 3, has entered into a \$550 million term loan with a maturity of up to seven (7) years (the "Term Loan"). Level 3 Financing has lent the net proceeds it received to its subsidiary, Level 3 LLC, in return for an intercompany demand note. The Applicants will pledge their assets and act as guarantors in support of the \$550 million Term Loan.

Applicants emphasize that their participation in the financing as guarantors will not result in a change in their ownership or in their day-to-day operations. The proceeds from the Term Loan will be used for working capital and for other permissible general corporate purposes. The Applicants expect the financing to further enable the Applicants to bring services to new markets and allow more consumers to benefit from their competitive services. Accordingly, and to the extent required, Applicants request that the Commission approve their participation in the financing arrangements described herein.

BASIS FOR LIMITED WAIVERS

A. The Proposed Financing Arrangements Will Not Directly or Indirectly Result in or Cause an Increase in Applicants' Maximum Rates on File with the Commission for Any Competitive Service.

The Commission has granted partial waivers of the Rules. *See e.g.* Decision Nos. 64737, 68346 and 69212. In granting such waivers, the Commission determined that only when a transaction "could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service" would a company have to make the necessary filings under A.A.C. R14-2-803, R14-2-804(A), (B), and (C), and R14-2-805. *See* Decision No. 64737. Indeed, the Commission has granted Level 3 LLC and its affiliates similar waivers in the past in comparable situations, namely the acquisitions of other telecommunications entities by Level 3 LLC's ultimate parent company. *See* Decision

No. 72300 (Level 3 financing waiver approval). There is no reason to treat this transaction differently.

In Arizona, Applicants primarily provide competitive wholesale services to other carriers, VoIP providers, and Internet Service Providers. The market for such services is highly competitive and prices are set by competition. With every product pricing change initiated by Applicants, competitors inevitably introduce new services or reprice their service in a manner believed to be even more attractive to the consumer. Accordingly, Applicants have no incentive or ability to charge unduly high or above-market prices that could be used to fund or subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner that is harmful to Arizona consumers.

In addition, following the consummation of the financing arrangements, Applicants will continue to offer their services with no change in the rates or terms and conditions. Applicants do not anticipate that financing arrangements will cause them to increase their maximum rates on file with the Commission for their competitive services.

B. Applying the Rules to the Financing Arrangements Would Be Unnecessarily Costly and Burdensome

As any company who has been subject to the Rules can attest, filings under R14-2-804(B), (C) and (D) require a significant amount of financial and business information, some of which may not be part of the normal analysis a competitive company may go through in determining whether to undertake a transaction. A competitive company expends significant resources and time to comply with the Rules. Further, once the voluminous amount of information is filed, the approval process can take many months. In a competitive industry, delaying a transaction for an indefinite period of time while awaiting Commission approval

can have significant negative effects on the value of the transaction for both parties and in some instances may preclude the companies from going forward with the transaction at all.

In instances such as this when a public utility with no monopoly power competes in a competitive market, with its revenues from and investment in Arizona comprising only a small portion of its total corporate family revenues and investment, application of the Rules is not necessary for such a transaction. The risk to Arizona consumers from Applicants' proposed financing transaction is remote at best and compliance with the Rules would be unduly burdensome. Applying the Rules to the financing arrangements would constitute over-regulation and would cause needless expense and unnecessary administrative burdens for the Applicants and the Commission.

C. The Proposed Transaction and Related Financing Arrangements Is Otherwise in the Public Interest

Applicants submit that the financing transactions described herein will serve the public interest. Applicants emphasize that their participation in the financing as guarantors will not result in a change in their ownership or in their day-to-day operations. The proceeds from the Term Loan will be used for working capital and for other permissible general corporate purposes. The Applicants expect the financing to further enable the Applicants to bring services to new markets and allow more consumers to benefit from their competitive services. Accordingly, and to the extent required, Applicants request that the Commission approve their participation in the financing arrangements described herein.

Applicants submit that the financing transaction described herein will serve the public interest. The terms of the Term Loan are the same as the terms of the Tranche B II loan that the Commission determined was in the public interest and for which it granted approval

earlier this year.⁶ Applicants expect that the transaction will be conducted in a manner that will be largely transparent to their customers, and will not result in a change of carrier for customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. Following consummation of the financing, Applicants will continue to provide high-quality communications services to their customers without interruption and without immediate change in rates, terms or conditions.

The public interest will also be served by expeditious consideration and approval of the transaction. For various important business, tax and financial reasons, Applicants require that the approval of the financing be obtained as quickly as possible. Delay in the regulatory approval process – and thus in the ability of the Applicants to move forward promptly with completing all elements of the financing – risks creating uncertainty and competitive harm. In particular, the competitive telecommunications marketplace continues to be a very challenging business environment. The proposed transaction is aimed at strengthening the competitive position of the Applicants, and therefore, delay in the regulatory approval process prevents the parties from realizing the certainty of the capital acquisition associated with the financing described herein.

D. Verification.

Under A.A.C. R14-2-806(B), any request for a waiver of the Rules must be made by verified application. Accordingly, attached hereto is the Affidavit of Richard E. Thayer, the Senior Counsel of Level 3 Communications, LLC, attesting to the accuracy of the factual statements in this Application.

⁶ See *Decision No. 72431*, Docket Nos. T-03654A-11-0167, T-02438B-11-0167, T-03658A-11-0167, T-04176A-11-0167, T-03708A-11-0167 (June 21, 2011).

ALTERNATIVE REQUEST FOR APPROVAL UNDER RULE 804.

A. Introduction.

If the Commission does not grant the limited waivers requested above, Applicants request that the Commission authorize Level 3 LLC to provide the guarantee under A.A.C. R14-2-804(B)(1), which contemplates there will be situations where a certificated public service provider will need to issue guarantees for a holding company. As set forth in more detail above, approval of this application will enable Applicants to complete a transaction and enter into financing arrangements that will benefit the combined entity. This will strengthen Applicants, and it will also serve to promote competition in Arizona's telecommunications markets.

B. Rule 804 information.

Level 3 LLC's alternative request for approval under A.A.C. R14-2-804(B)(1) is in the public interest for the reasons already set forth above. Under A.A.C. R14-2-804(C), the Commission will review the proposed guarantee to "to determine if the transaction would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service." This is often known as the "no impairment" standard. The proposed guarantee does not violate the no impairment standard because the financing arrangements will strengthen the financial status of the public utility, as described herein.

REQUEST FOR APPROVAL OF ENCUMBRANCE

Under A.R.S. § 40-285(A), a "public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant, or system necessary or useful in the performance of its duties to the public, or any

franchise or permit or any right thereunder” without approval from the Commission.

Accordingly, the Applicants request approval to encumber any part of their “line, plant or system” located in Arizona in connection with the transactions described herein. The proposed encumbrance is described in “Description of the Financing Transactions” above.

The encumbrance is in the public interest because it will enable the Applicants to complete the proposed financing transactions, thus strengthening their ability to compete in the highly-competitive telecommunications marketplace.

RELIEF REQUESTED

WHEREFORE, Applicants respectfully request that the Commission:

1. Waive the requirement of A.A.C. R14-2-804(B) that Level 3 LLC obtain Commission approval, to the extent necessary, prior to Level 3 LLC providing a guarantee in connection with the financing arrangements described herein, or in the alternative, authorize Level 3 LLC to provide a guarantee in support of such financing arrangements.
2. Waive any other applicable requirements of the Rules as they may apply to the financing transaction described herein.
3. Authorize the Applicants under A.R.S. § 40-285 to pledge, mortgage, lien and/or encumbrance of the utility plant and assets of Applicants in connection with certain financing arrangements described herein.
4. Finding that the requirements of A.R.S. § 40-301 *et seq.*, as they otherwise apply to this transaction, are inapplicable to the Applicants as a foreign public service corporation providing communications service within the State of Arizona pursuant to the exemption set forth in A.R.S. § 40-301(D).

For various important business and financial reasons, Applicants require that the transaction be closed as quickly as possible. Applicants require the expeditious consideration and approval of the transaction to allow the Applicants to realize the certainty of the capital acquisition associated with the financing described herein. Applicants emphasize that the proposed financing arrangements will be seamless and completely transparent to Applicants' customers, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. Accordingly, Applicants request that the Commission commence its examination of this Application as soon as possible and complete its review.

CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by limited waivers of Commission Rules and/or authorization for the participation of Applicants in certain financing arrangements of Level 3 Financing. Applicants respectfully request the expeditious consideration and approval of the transaction.

RESPECTFULLY SUBMITTED this TH ___ day of December, 2011.

ROSHKA DEWULF & PATTEN



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Attorneys for Applicants

ORIGINAL and thirteen (13) copies
of the foregoing filed
this 7th day of December, 2011, with:

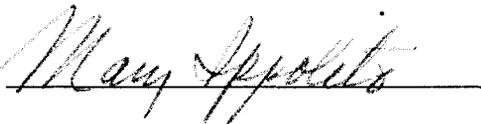
The Arizona Corporation Commission
Docket Control
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Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 7th day of December, 2011, to:

Janice Alward, Esq., Chief Counsel
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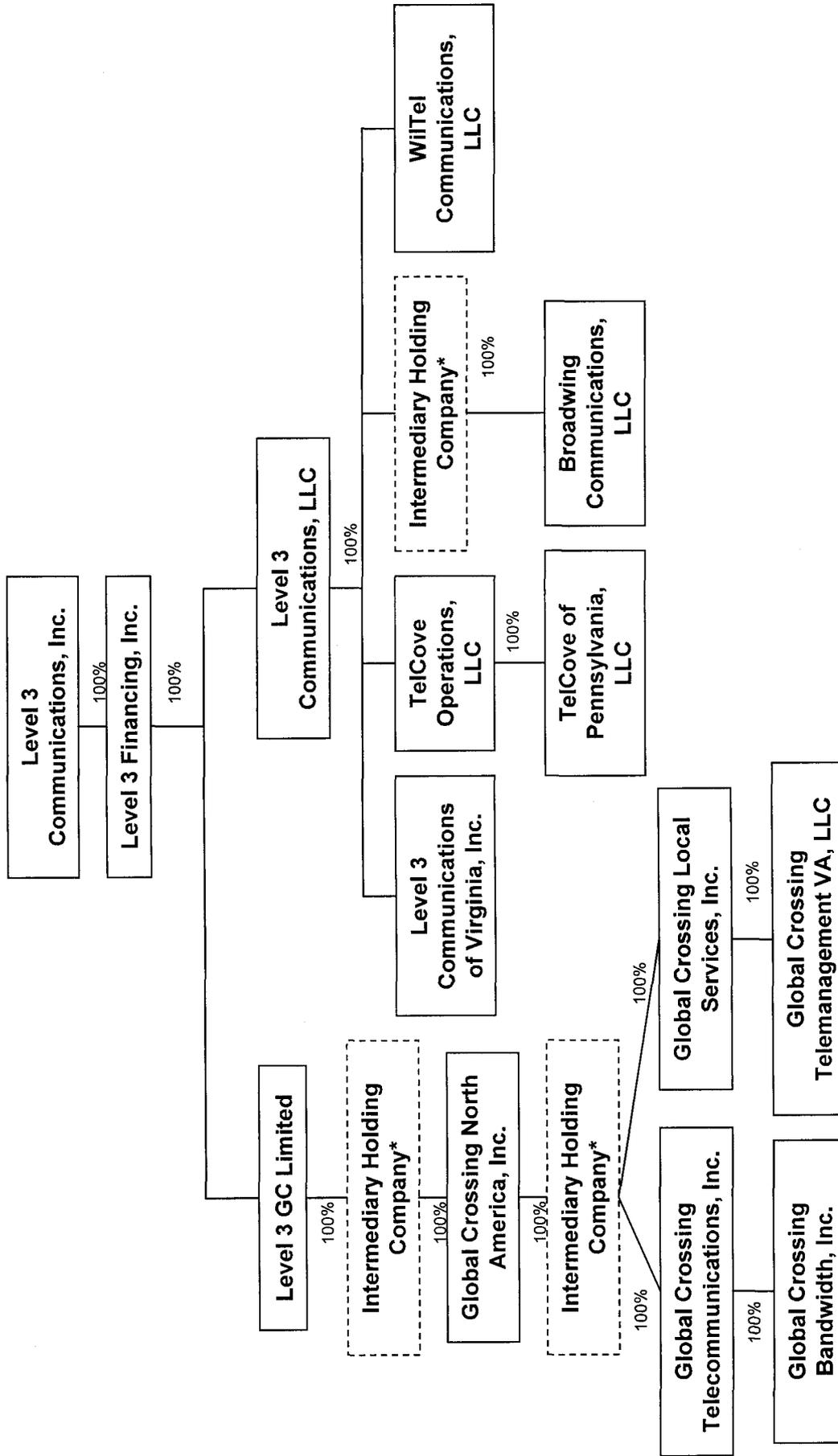
Lyn Farmer, Esq., Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007



EXHIBIT

"A"

Level 3 Corporate Structure



*Intermediary holding companies omitted for purposes of clarity--none are certificated telecommunications service providers. Broadwing Communications, LLC is 100% indirectly owned by Level 3 Communications, LLC. Level 3 Communications of Virginia, Inc., TelCove Operations, LLC and WIITel Communications, LLC are each 100% directly held by Level 3 Communications, LLC.

EXHIBIT

"B"

VERIFICATION

STATE OF COLORADO

§

COUNTY OF BROOMFIELD

§

§

I, Richard E. Thayer, state that I am Senior Counsel for Level 3 Communications, LLC; that I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.



Name: Richard E. Thayer
Title: Senior Counsel
Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 21st day of November, 2011.


Notary Public

My commission expires: 11/16/13

