

**ORIGINAL**

**NEW APPLICATION**



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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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Arizona Corporation Commission  
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FEB 16 2012

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In the Matter of the Application of )  
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 )

T-03654A-12-0057

Docket Nos. T-03654A-12-\_\_\_

**VERIFIED APPLICATION FOR  
LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING  
COMPANIES AND AFFILIATES INTEREST RULES (A.A.C. R14-2-801 et seq.)**

Pursuant to A.A.C. R14-2-806, Level 3 Communications, LLC (“Level 3 LLC” or “Applicant”) 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”), authorizing Applicant to participate in certain financing arrangements made in connection with the issuance of certain Senior Notes as further described herein (the “Financing”). Level 3 LLC further requests that the Commission allow this waiver to go into effect by operation of A.A.C. R14-2-806(C). In the alternative, Level 3 LLC requests, to the extent necessary, approval under A.A.C. R14-2-804.

Applicant is a competitive telecommunications carrier that holds authority to provide intrastate telecommunications service in Arizona. As discussed below, the proposed transaction will produce certain important public interest benefits.

### **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,<sup>1</sup> 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) 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.

Applicant submits that, in light of the Rules’ stated purposes, Applicant should be exempt from the requirements of the Rules for the purposes of the financing arrangements described herein. As explained below, Applicant operates 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 Applicant. In this instance, application of the Rules to Applicant would be unreasonably costly and burdensome. Finally, limited waivers of these Rules are in the public interest.

Therefore, Applicant requests a limited waiver of the Rules as they may apply to the financing arrangements described below.

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<sup>1</sup> Level 3 LLC had greater than \$1 million in jurisdictional revenue in 2011.

## DESCRIPTION OF APPLICANT

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 Financing, Inc. ("Level 3 Financing"), a Delaware corporation wholly owned by Level 3, is the parent of Level 3 LLC and other regulated subsidiaries.<sup>2</sup> 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 Applicant. The Applicant, a Delaware limited liability company, is a non-dominant carrier that is 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, 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. The Applicant is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate services as a non-dominant carrier.

## CONTACT INFORMATION

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

For the Applicant:

Michael W. Patten  
Timothy J. Sabo  
Roshka DeWulf & Patten

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<sup>2</sup> The regulated subsidiaries in Arizona are: Broadwing Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc., and Global Crossing Local Services, Inc. Other than Level 3 LLC, none of these regulated subsidiaries plan to participate in the Financing. To the extent the regulated entities seek to participate in the Financing in the future, they will separately request Commission approval as applicable.

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### **DESCRIPTION OF FINANCING TRANSACTION**

Level 3 Financing has issued \$900 million in 8.625% Senior Notes due 2020 in a private offering to qualified institutional buyers that is exempt from registration under U.S. Federal securities laws. Level 3 Financing has lent the net proceeds it received in the offering of the notes plus available cash to its subsidiary, Level 3 LLC, in return for an intercompany demand note issued by Level 3 LLC to Level 3 Financing. Approximately \$867 million of the proceeds will be used to redeem all of Level 3 Financing's outstanding

9.25% Senior Notes due 2014 and to pay the expenses of the offering.<sup>3</sup> The remaining proceeds will be used to fund the cost of construction, installation, acquisition, lease, development or improvement of any telecommunications assets. Level 3 LLC requests approval from the Commission to act as a guarantor of the \$900 million Senior Notes issued by Level 3 Financing. Level 3 LLC will enter into the guarantee in support of the \$900 million Senior Notes upon receipt of all required regulatory approvals.

Applicant emphasizes that participation in the Financing will not result in a change in Level 3 LLC's management or in its day-to-day operations in Arizona; nor will it adversely affect Level 3 LLC's operations in Arizona. Moreover, Level 3 LLC will not be encumbering any assets as part of the financing transaction. Therefore, to the extent that Level 3 LLC holds any customer deposits or prepayments, those funds will not be pledged as part of the transaction. The Financing will enable Level 3 LLC to bring services to new markets and allow more consumers to benefit from its competitive services as a result of its parent company being able to successfully refinance its 9.25% Senior Notes. Accordingly, and to the extent required, Applicant requests that the Commission approve the participation of Level 3 LLC in the Financing described herein.

#### **BASIS FOR LIMITED WAIVER**

**A. The Proposed Financing Arrangement 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

<sup>3</sup> The Commission previously waived approval requirements for Applicant to guarantee the 9.25% notes due 2014. *See* Order issued in Docket No. T-03654A-06-0689 on March 22, 2007. The Commission also previously waived approval requirements for Applicant to guarantee \$500 million in 9.375% Senior Notes due 2019, the proceeds of which were used to repurchase a portion of the 9.25% notes due 2014. *See* Order issued in Docket No. T-03654A-11-0106 on April 27, 2011.

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, Applicant primarily provides 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 Applicant, competitors inevitably introduce new services or reprice their service in a manner believed to be even more attractive to the consumer. Accordingly, Applicant has 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.

Moreover, Level 3 LLC will not be encumbering any assets as part of the financing transaction. Therefore, to the extent that Level 3 LLC holds any customer deposits or prepayments, those funds will not be pledged as part of the transaction.

Finally, following the consummation of the financing arrangement, Applicant will continue to offer its services with no change in the rates or terms and conditions. Applicant does not anticipate that financing arrangements will cause it to increase its maximum rates on file with the Commission for its competitive services.

**B. Applying the Rules to the Financing Arrangement 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 Applicant and the Commission.

**C. The Proposed Financing Arrangement Is Otherwise in the Public Interest.**

The Financing transaction described herein will serve the public interest. The Financing enables Applicant and its parent to refinance their obligations now allowing them to extend significantly the maturity dates of certain obligations at reasonable terms thus reducing the future refinancing risks associated with the 2014 scheduled maturities. This

step is a part of the companies' ongoing efforts to manage their maturity profile and continue to strengthen their overall credit profile. By eliminating risk associated with the uncertainties of future credit markets, it is expected that the capital markets will view this step on the part of companies favorably. As such, Applicant expects the Financing will provide greater access to capital, which will yield both financial benefits and operational flexibility that will ultimately inure to the benefit of Level 3 LLC's Arizona customers. The Financing will strengthen Level 3 LLC's financial position and its ability to bring competitive telecommunications services to consumers in the State of Arizona. Furthermore, the Financing will be conducted in a manner that will be largely transparent to 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, Applicant will continue to provide high-quality communications services to its 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 and financial reasons, Applicant requires 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 Applicant 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 Applicant, and therefore, delay in the regulatory approval process

prevents the parties from realizing the certainty of note redemption associated with the Financing described herein.

**D. Any Customer Deposits or Prepayments in Arizona will not be Pledged.**

Moreover, Level 3 LLC will not be encumbering any assets as part of the financing transaction. Therefore, to the extent that Level 3 LLC holds any customer deposits or prepayments, those funds will not be pledged as part of the transaction.

**E. Level 3 LLC would provide Staff a Copy of the pertinent Loan Documents.**

Regardless of whether the Commission grants the waiver through an order or allows the waiver to become effective through A.A.C. R14-2-806(C). Level 3 LLC will provides Commission Staff with a copy of the executed loan documents within 30 days of execution of such documents.

**F. 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 as Exhibit A 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.

**ALTERNATIVE REQUEST FOR APPROVAL UNDER RULE 804.**

**A. Introduction.**

If the Commission does not grant the limited waiver requested above, Applicant requests 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 Applicant to enter into a financing

arrangement that will benefit the company. This will strengthen Applicant, and it will also serve to promote competition in Arizona's telecommunications markets.

Moreover, Level 3 LLC will not be encumbering any assets as part of the financing transaction. Therefore, to the extent that Level 3 LLC holds any customer deposits or prepayments, those funds will not be pledged as part of the transaction.

**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.

**RELIEF REQUESTED**

For the reasons stated above, Applicant respectfully submits that the public interest, convenience, and necessity would be furthered by limited waivers of Commission Rules and/or authorization for the participation of Applicant in certain financing arrangements of Level 3 Financing. Here, Level 3 LLC has filed a verified application for waiver from A.A.C. R14-2-806. Moreover, Level 3 LLC has verified that any deposits and prepayments will not be encumbered or otherwise pledged as part of the guaranty underlying the financing arrangement. Therefore, Level 3 LLC requests that the Commission allow this verified application for waiver to go into effect by operation of A.A.C. R14-2-806(C).

In the alternative, Level 3 LLC requests that the Commission issue an order granting the waiver or otherwise authorizing Level 3 LLC to provide a guarantee in support of the financing arrangement.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of February, 2012.

ROSKA DEWULF & PATTEN

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ORIGINAL and thirteen (13) copies  
of the foregoing filed  
this 16<sup>th</sup> day of February, 2012, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
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Copy of the foregoing hand-delivered  
this 16<sup>th</sup> day of November, 2011, to:

Lyn Farmer, Esq., Chief Administrative Law Judge  
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*Mary Spolito*

# EXHIBIT

"A"

**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 8<sup>th</sup> day of January, 2012.

  
Notary Public

My commission expires: 11/16/13

