

ORIGINAL

OPEN MEETING



MEMORANDUM

Arizona Corporation Commission

DOCKET CONTROL

OCT 23 2012

DOCKET CONTROL

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

TO: THE COMMISSION

FROM: Utilities Division

DATE: October 23, 2012

RE: IN THE MATTER OF THE JOINT APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, WILTEL COMMUNICATIONS, LLC, AND GLOBAL CROSSING TELECOMMUNICATIONS, INC. 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 LEVEL 3 COMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, WILTEL COMMUNICATIONS, LLC, AND GLOBAL CROSSING TELECOMMUNICATIONS, INC. FOR AUTHORIZATION TO ENCUMBER AND/OR MORTGAGE THEIR ASSETS (DOCKET NOS. T-03654A-12-0380, T-04176A-12-0380, T-03708A-12-0380, AND T-02438B-12-0380)

Introduction

On August 30, 2012, pursuant to Arizona Administrative Code ("A.A.C.") R14-2-806, Level 3 Communications, LLC ("Level 3 LLC"), Broadwing Communications, LLC ("Broadwing"), WilTel Communications, LLC ("WilTel"), and Global Crossing Telecommunications, Inc. ("GC Telecommunications"), collectively the ("Applicants"), filed a joint application with the Arizona Corporation Commission ("Commission") to request a limited waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 to R14-2-806 (the "Rules"), in connection with three separate financing arrangements of Applicants' affiliate Level 3 Financing, Inc. ("Financing") under which the Applicants will provide guarantees. In the alternative, Applicants request, to the extent necessary, approval under A.A.C. R14-2-804 for Applicants to provide guarantees for new financing arrangements of Financing. In addition, Applicants request an order from the Commission under Arizona Revised Statutes ("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 Applicants' participation in certain new financing arrangements of Financing.

Background

Level 3 Communications, Inc. ("Level 3") is a publicly traded (NASDAQ: LVL3) Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield CO 80021. The Applicants are indirect wholly owned subsidiaries of Level 3 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, Level 3 LLC is authorized to provide facilities-based and resold local exchange, toll and access services pursuant to a Certificate of Convenience and Necessity ("CC&N") granted in Decision No. 61737 on June 4, 1999.

Broadwing is authorized to provide resold and facilities-based intrastate interexchange telecommunications services pursuant to a CC&N granted in Decision No. 66105 on July 25, 2003.

Global Crossing is authorized to provide interLATA telecommunications services pursuant to its CC&N granted by Decision No. 54505 on April 29, 1985, and intraLATA service except local exchange service in Decision No. 60501 dated November 25, 1997.

WilTel is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to a CC&N granted in Decision No. 62025 on November 2, 1999.

Applicants' Financing Transactions

The Applicants' represent the following three financing transactions:

First, Financing has issued \$775 million aggregate principal amount of 7% Senior Notes due 2020 in a private offering to Buyers that was exempt from registration under U.S. Federal securities law. Financing has lent the net proceeds it received to Level 3 LLC, in return for an intercompany demand note. The funds will be used to redeem existing senior notes previously guaranteed by Level 3 LLC and issued by Financing with an interest rate of 8.75% due 2017.

Level 3 LLC requests approval from the Commission to act as grantor of the \$775 million Senior Notes issued by Financing. This will enable Financing to redeem its senior notes at an interest rate lower than 8.75% and borrow funds under favorable extended maturity terms and reduced interest expense. The financing arrangements will also provide Financing, the immediate corporate parent of Level 3 LLC, with funding to maintain and expand Applicants' networks and services.

In a second transaction, Level 3 and Financing have entered into two different types of term loans totaling \$1.415 billion. The loans are for \$815 million with a 2019 maturity date and \$600 million with a 2016 maturity date.

Financing has lent the net proceeds it received to Level 3 LLC, in return for an intercompany demand note. The funds were used to prepay an existing \$1.4 billion term loan with a 2014 maturity date and approximately \$15 million in other indebtedness. The Applicants request Commission

approval to pledge their assets and act as guarantors in support of the term loan arrangements of up to \$1.415 billion.

The 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.

In a third transaction, Level 3 and Financing are beginning to negotiate the terms of additional financing in an amount up to \$300 million, such amount to be used for prepayment of indebtedness, working capital requirements, and general corporate purposes. This financing arrangement will be in the form of an additional term loan or additional issuance of senior notes by Level 3 or Financing depending market conditions. Although the terms of this transaction have not been finalized, the Applicant's state that the interest rates will likely be the market rate of such financings. Applicants anticipate that this financing will require Applicants to pledge assets and/or act as guarantors on the same terms as the other financing arrangements, and therefore request approval necessary for their participation in the financing arrangements. Applicants believe that having received Commission approval in advance will provide for better execution of the transaction in the marketplace than without having received Commission approval in advance of the transaction.

The Applicants' participation in these new financing arrangements will not result in a change in the Applicants' management or in their day-to-day operations; nor will it adversely affect Applicant's current or proposed operations in Arizona.

In addition, Applicants' will not be encumbering any customer deposits or prepayments as part of the financing transactions. These improved financing arrangements are in the public interest because they will enable the Applicants to continue delivering services to new markets thereby allowing more consumers to benefit from competitive services.

Staff's Analysis and Conclusions

Staff's review of the Applicants' 2011 Annual Reports, filed with the Commission on April 15, 2011, indicates that Level 3 LLC, WelTel and GC Telecommunications are Class A utilities subject to the Commission's Public Utility Holding Companies and Affiliated Interests Rules. Broadwing is not a Class A utility based on its 2011 Annual Report.

A.A.C. R14-2-804, Commission Review of Transactions Between Public and Affiliates, requires that a utility will not consummate certain financial transactions without prior approval of the Commission. The rule serves to determine if the transactions 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. Based on its evaluation of the proposed transactions, Staff concludes that the transactions would not impair the financial status of the Applicants, would not impair their ability to attract capital, nor would they impair the ability of the Applicants to provide safe, reasonable, and adequate service.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers; thus, it serves to preempt any service impairment due to the disposal of assets essential for providing service. A pledge of the Applicants' Arizona assets should not impair the availability of service to customers since the Applicants provide competitive services that are available from alternative services providers. Customers may still have exposure to losses to the extent they have prepaid for services or made deposits. Any authorization for encumbrance should provide customer protection for prepayments and deposits. In the Application, Applicants state that they will not be encumbering any customer deposits or prepayments as part of the financing transactions. Therefore, to the extent that Applicants hold any Arizona customer deposits or prepayments, those funds should not be pledged as part of the financing transactions.

On September 13, 2012, the Applicants filed with the Commission's Docket Control an affidavit of publication verifying public notice of its three proposed financing transactions. The Applicants' published notice of its application in *The Arizona Republic* on September 7, 2012.

Staff's Recommendations

Staff recommends that the application filed by Level 3 LLC, Broadwing, WilTel and GC Telecommunications seeking approval of certain financing arrangements with approval to guarantee such financing arrangements and authorization to encumber their assets be approved with the following conditions:

1. That all customer deposits and prepayments are exclude from encumbrance and equivalent amounts be retained by the Applicants.
2. That one copy of executed loan documents is filed with the Utilities Division within 30 days following the execution of such documents and a confirmation letter of such filing be filed with Docket Control on the same date.



Steven M. Olea
Director
Utilities Division

SMO: JFB: sms/BH

ORIGINATOR: John Bostwick

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE JOINT APPLICATION OF LEVEL 3 COMMUNICATONS, LLC, BROADWING COMMUNICATIONS, LLC, WITEL COMMUNICATIONS, LLC, AND GLOBAL CROSSING TELECOMMUNICATIONS, INC. 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 LEVEL 3 COMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, WILTEL COMMUNICATIONS, LLC, AND GLOBAL CROSSING TELECOMMUNICATIONS, INC. FOR AUTHORIZATION TO ENCUMBER AND/OR MORTGAGE THEIR ASSETS

) DOCKET NOS. T-03654A-12-0380
T-04176A-12-0380
T-03708A-12-0380
T-02438B-12-0380

) DECISION NO. _____

ORDER

Open Meeting
November 7 and 8, 2012
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On August 30, 2012, pursuant to Arizona Administrative Code (“A.A.C.”) R14-2-806, Level 3 Communications, LLC (“Level 3 LLC”), Broadwing Communications, LLC (“Broadwing”), WilTel Communications, LLC (“WilTel”), and Global Crossing Telecommunications, Inc. (“GC Telecommunications”), collectively the (“Applicants”), filed a

1 joint application with the Arizona Corporation Commission (“Commission”) to request a limited
 2 waiver of the Commission’s Public Utility Holding Companies and Affiliated Interests Rules,
 3 A.A.C. R14-2-801 to R14-2-806 (the “Rules”), in connection with three separate financing
 4 arrangements of Applicants’ affiliate Level 3 Financing, Inc. (“Financing”) under which the
 5 Applicants will provide guarantees. In the alternative, Applicants request, to the extent necessary,
 6 approval under A.A.C. R14-2-804 for Applicants to provide guarantees for new financing
 7 arrangements of Financing.

8 2. In addition, Applicants request an order from the Commission under Arizona
 9 Revised Statutes (“A.R.S”) § 40-285 authorizing the pledge, mortgage, lien and/or encumbrance of
 10 the utility plant and assets of the Applicants in connection with Applicants’ participation in certain
 11 new financing arrangements of Financing.

12 Background

13 3. Level 3 Communications, Inc. (“Level 3”) is a publicly traded (NASDAQ: LVLT)
 14 Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield CO
 15 80021. The Applicants are indirect wholly owned subsidiaries of Level 3 that are authorized to
 16 provide resold and/or facilities-based telecommunications services nationwide pursuant to
 17 certification, registration or tariff requirements, or on a deregulated basis.

18 4. Level 3 LLC is authorized to provide facilities-based and resold local exchange, toll
 19 and access services pursuant to a Certificate of Convenience and Necessity (“CC&N”) granted in
 20 Decision No. 61737 on June 4, 1999.

21 5. Broadwing is authorized to provide resold and facilities-based intrastate
 22 interexchange telecommunications services pursuant to a CC&N granted in Decision No. 66105 on
 23 July 25, 2003.

24 6. Global Crossing is authorized to provide interLATA telecommunications services
 25 pursuant to its CC&N granted by Decision No. 54505 on April 29, 1985, and intraLATA service
 26 except local exchange service in Decision No. 60501 dated November 25, 1997.

27 ...

28 ...

1 7. WilTel is authorized to provide facilities-based and resold local exchange and
2 interexchange telecommunications services pursuant to a CC&N granted in Decision No. 62025 on
3 November 2, 1999.

4 Applicants' Financing Transactions

5 8. First, Financing has issued \$775 million aggregate principal amount of 7% Senior
6 Notes due 2020 in a private offering to Buyers that was exempt from registration under U.S.
7 Federal securities law. Financing has lent the net proceeds it received to Level 3 LLC, in return
8 for an intercompany demand note. The funds will be used to redeem existing senior notes
9 previously guaranteed by Level 3 LLC and issued by Financing with an interest rate of 8.75% due
10 2017.

11 9. Level 3 LLC requests approval from the Commission to act as grantor of the \$775
12 million Senior Notes issued by Financing. This will enable Financing to redeem its senior notes at
13 an interest rate lower than 8.75% and to borrow funds under favorable extended maturity terms
14 and reduced interest expenses. The financing arrangements will also provide Financing, the
15 immediate corporate parent of Level 3 LLC, with funding to maintain and expand Applicants'
16 networks and services.

17 10. In a second transaction, Level 3 and Financing have entered into two different types
18 of term loans totaling \$1.415 billion. The loans are for \$815 million with a 2019 maturity date
19 and \$600 million with a 2016 maturity date

20 11. Financing has lent the net proceeds it received to Level 3 LLC, in return for an
21 intercompany demand note. The funds were used to prepay an existing \$1.4 billion term loan with
22 a 2014 maturity date and approximately \$15 million in other indebtedness. The Applicants request
23 Commission approval to pledge their assets and act as guarantors in support of the term loan
24 arrangements of up to \$1.415 billion.

25 12. The Applicants emphasize that their participation in the financing as guarantors will
26 not result in a change in their ownership or in their day-to-day operations. The proceeds from the
27 Term Loan will be used for working capital and for other permissible general corporate purposes.

28 ...

1 13. In a third transaction, Level 3 and Financing are beginning to negotiate the terms of
2 additional financing in an amount up to \$300 million, such amount to be used for prepayment of
3 indebtedness, working capital requirements, and general corporate purposes. This financing
4 arrangement will be in the form of an additional term loan or additional issuance of senior notes by
5 Level 3 or Financing, depending on market conditions. Although the terms of this transaction
6 have not been finalized, the Applicants state that the interest rates will likely be the market rate of
7 such financings. Applicants anticipate that this financing will require Applicants to pledge assets
8 and/or act as guarantors on the same terms as the other financing arrangements, and therefore
9 request approval necessary for their participation in the financing arrangements. Applicants
10 believe that having received Commission approval in advance will provide for better execution of
11 the transaction in the marketplace than without having received Commission approval in advance
12 of the transaction.

13 14. The Applicants' participation in these new financing arrangements will not result in
14 a change in the Applicants' management or in their day-to-day operations; nor will it adversely
15 affect Applicants' current or proposed operations in Arizona.

16 15. In addition, Applicants will not be encumbering any customer deposits or
17 prepayments as part of the financing transactions. These improved financing arrangements are in
18 the public interest because they will enable the Applicants to continue delivering services to new
19 markets thereby allowing more consumers to benefit from competitive services.

20 Staff's Analysis and Conclusions

21 16. Staff's review of the Applicants' 2011 Annual Reports, filed with the Commission
22 on April 15, 2011, indicates that Level 3 LLC, WeTel and GC Telecommunications are Class A
23 utilities subject to the Commission's Public Utility Holding Companies and Affiliated Interests
24 Rules. Broadwing is not a Class A utility based on its 2011 Annual Report.

25 17. A.A.C. R14-2-804, Commission Review of Transactions between Public Utilities
26 and Affiliates, requires that a utility will not consummate certain financial transactions without
27 prior approval of the Commission. The rule serves to determine if the transactions would impair
28 the financial status of the public utility, otherwise prevent it from attracting capital at fair and

1 reasonable terms, or impair the ability of the public utility to provide safe, reasonable, and
2 adequate service. Based on its evaluation of the proposed transactions, Staff concludes that the
3 transactions would not impair the financial status of the Applicants, would not impair their ability
4 to attract capital, nor would they impair the ability of the Applicants to provide safe, reasonable,
5 and adequate service.

6 18. A.R.S. § 40-285 requires public service corporations to obtain Commission
7 authorization to encumber certain utility assets. The statute serves to protect captive customers;
8 thus, it serves to preempt any service impairment due to the disposal of assets essential for
9 providing service. A pledge of the Applicants' Arizona assets should not impair the availability of
10 service to customers since the Applicants provide competitive services that are available from
11 alternative services providers. Customers may still have exposure to losses to the extent they have
12 prepaid for services or made deposits. Any authorization for encumbrance should provide
13 customer protection for prepayments and deposits. In the Application, Applicants state that they
14 will not be encumbering any customer deposits or prepayments as part of the financing
15 transactions. Therefore, to the extent that Applicants hold any Arizona customer deposits or
16 prepayments, those funds should not be pledged as part of the financing transactions.

17 19. On September 13, 2012, the Applicants filed with the Commission's Docket
18 Control an affidavit of publication verifying public notice of its three proposed financing
19 transactions. The Applicants published notice of its application in *The Arizona Republic* on
20 September 7, 2012.

21 20. Staff has recommended that the application filed by Level 3 LLC, Broadwing,
22 WilTel and GC Telecommunications seeking approval of certain financing arrangements with
23 approval to guarantee such financing arrangements and authorization to encumber their assets be
24 approved on the condition that all customer deposits and prepayments will be excluded from
25 encumbrance and equivalent amounts be retained by the Applicants. In addition, Staff
26 recommends that one copy of executed loan documents be filed with the Utilities Division within
27 30 days following the execution of such documents and a confirmation letter of such filing be filed
28 with Docket Control on the same date.

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CONCLUSIONS OF LAW

1. Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel Communications, LLC, and Global Crossing Telecommunications, Inc. are public service corporations within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel Communications, LLC, and Global Crossing Telecommunications, Inc. and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated October 23, 2012, concludes that it is in the public interest to grant approval as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the application of Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel Communications, LLC), and Global Crossing Telecommunications, Inc. seeking approval of the proposed transactions pursuant to A.A.C. R14-2-804 and A.R.S. § 40-285 be and hereby is approved, as discussed herein.

IT IS FURTHER ORDERED that Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel Communications, LLC, and Global Crossing Telecommunications, Inc. be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorization granted.

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1 IT IS FURTHER ORDERED that the application of Level 3 Communications, LLC,
 2 Broadwing Communications, LLC, WiTel Communications, LLC, and Global Crossing
 3 Telecommunications, Inc. is subject to the condition that all customer deposits and prepayments be
 4 excluded from this transaction.

5 IT IS FURTHER ORDERED that copies of executed loan documents be filed with the
 6 Utilities Division by Level 3 Communications, LLC, Broadwing Communications, LLC, WiTel
 7 Communications, LLC, and Global Crossing Telecommunications, Inc. and a letter be filed in
 8 Docket Control confirming the filing of executed loan documents, as a compliance item in the
 9 docket, within 30 days following the execution of such documents.

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

11

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

13

14 CHAIRMAN COMMISSIONER COMMISSIONER

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16 COMMISSIONER COMMISSIONER

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18 IN WITNESS WHEREOF, I ERNEST G. JOHNSON,
 19 Executive Director of the Arizona Corporation Commission,
 20 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 _____ day of _____, 2012.

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22

23 ERNEST G. JOHNSON
 24 EXECUTIVE DIRECTOR

25 DISSENT: _____

26

27 DISSENT: _____

28 SMO: JFB:sms\BH

1 SERVICE LIST FOR: Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel
2 Communications, LLC, and Global Crossing Telecommunications, Inc.
3 DOCKET NOS.: T-03654A-12-0380, T-04176A-12-0380, T-03708A-12-0380, and T-
4 02438B-12-0380

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