

ORIGINAL

OPEN MEETING



0000141323

MEMORANDUM

AZ CORP COM
DOCKET 0000141323

2013 JAN 9 PM 2 15

TO: THE COMMISSION

FROM: Utilities Division

DATE: January 9, 2013

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-12-0487, T-04176A-12-0487, T-03708A-12-0487 AND T-02438B-12-0487)

Introduction

On December 5, 2012, 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 an application pursuant to Arizona Administrative Code ("A.A.C.") R14-2-806 to request 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 a term loan arrangement completed by Level 3 Communications, Inc. ("Level 3") and Level 3 Financing, Inc. ("Financing") for a total amount of \$1.2 billion 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 the new financing arrangement. 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 their Arizona utility plant and assets in connection with Applicants' participation in the new financing arrangement. Level 3 and Financing entered into the \$1.2 billion loan arrangement to refinance two different term loans into a single loan at a lower interest rate than the interest rate approved by the Commission to reduce annual interest expenses by approximately \$12 million.

Arizona Corporation Commission

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Background

Level 3 is a publicly traded (NASDAQ: 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, internet service providers (“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. Applicants are also authorized by the Federal Communication Commission to provide international and domestic interstate services as non-dominant carriers.

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.

GC Communications 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, in Decision No. 60501 on 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 request Commission approval to participate in a financing arrangement. Level 3 and Financing entered into a \$1.2 billion term loan arrangement to refinance into a single loan the \$650 million and the \$550 million for which the Applicants pledged assets and acted as guarantors pursuant to Commission approval of the \$650 million term loan on June 27, 2011, in Decision No. 72431 and the \$550 million term loan on February 17, 2012, in Decision No. 72889. The \$1.2 billion term loan has a 2019 maturity date and a 1% lower interest rate than the \$650 million and the \$550 million term loans approved by the Commission. The 2019 maturity and low interest rate will reduce the annual interest expense by approximately \$12 million. Financing has loaned the proceeds of the \$1.2 billion term loan to Level 3 LLC in return for an intercompany demand note. The funds were used to prepay in full the \$650 million and the \$550 million term loans that were due to mature in 2018. Applicants further request Commission approval to pledge their assets and act as guarantors in support of the \$1.2 billion term loan arrangement.

The Applicants’ participation in the new financing arrangement will not result in a change in the Applicants’ management or in their day-to-day operations; nor will it adversely affect Applicants’

current or proposed operations in Arizona. In addition, Applicants' will not be encumbering any customer deposits or prepayments as part the financing arrangement. The financing arrangement is in the public interest because it will strengthen the Applicants' financial position and their ability to bring competitive telecommunications services to consumers in Arizona. The Applicants will continue to offer high-quality communications services to their customers without interruptions and without immediate change in rates or terms and conditions.

Staff's Analysis and Conclusions

Staff's review of the Applicants' 2011 Annual Reports, filed with the Commission on April 15, 2012, indicates that Level 3 LLC, WiTel, and GC Telecommunications had greater than \$1 million in Arizona revenue. Consequently, these Applicants are considered Class A utilities and subject to the requirements of the Rules. Based on its 2011 Annual Report, Broadwing had less than \$1 million in Arizona revenue. Broadwing is not a Class A utility and not subject to the requirements of the Rules.

Under R14-2-804(B) (1), a utility will not consummate certain financial transactions without prior approval of the Commission. According to R14-2-804(C), a review of the financing arrangement is required to determine if the proposed financing arrangement "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 financing arrangement, Staff concluded that the financing arrangement would not impair the financial status of the Applicants, would not impair their ability to attract capital, nor would it impair the ability of the Applicants to provide safe, reasonable, and adequate service.

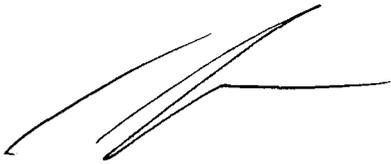
Under A.R.S. § 40-285(A), a "public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder" without approval from the Commission. The Applicants request approval to encumber any part of their "line, plant or system" located in Arizona in connection with the financing arrangement. Applicants will not encumber any customer deposits or prepayments. 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 December 13, 2012, the Applicants filed with the Commission's Docket Control an affidavit of publication verifying public notice of its proposed financing arrangement. The Applicants' published notice of its application in *The Arizona Republic* on December 10, 2012.

Staff's Recommendations

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

1. That all customer deposits and prepayments are excluded from encumbrance and equivalent amounts be retained by the Applicants.
2. That one copy of executed loan documents is filed with the Utilities Division Compliance Section 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/WVC

ORIGINATOR: John Bostwick

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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
Chairman
GARY PIERCE
Commissioner
BRENDA BURNS
Commissioner
BOB BURNS
Commissioner
SUSAN BITTER SMITH
Commissioner

IN THE MATTER OF THE JOINT APPLICATION OF LEVEL 3 COMMUNICATONS, 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-12-0487
T-04176A-12-0487
T-03708A-12-0487
T-02438B-12-0487

DECISION NO. _____

ORDER

Open Meeting
January 30 and 31, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On December 5, 2012, 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 an application pursuant to Arizona Administrative Code (“A.A.C.”) R14-2-806

1 to request a limited wavier of the Arizona Corporation Commission's ("Commission") Public
2 Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 to R14-2-806 (the
3 "Rules"), in connection with a term loan arrangement completed by Level 3 Communications, Inc.
4 ("Level 3") and Level 3 Financing, Inc. ("Financing") for a total amount of \$1.2 billion under
5 which the Applicants will provide guarantees.

6 2. In the alternative, Applicants request, to the extent necessary, approval under
7 A.A.C. R14-2-804 for Applicants to provide guarantees for the new financing arrangement. In
8 addition, Applicants request an order from the Commission under Arizona Revised Statutes
9 ("A.R.S.") § 40-285 authorizing the pledge, mortgage, lien and/or encumbrance of their Arizona
10 utility plant and assets in connection with Applicants' participation in the new financing
11 arrangement. Level 3 and Financing entered into the \$1.2 billion loan arrangement to refinance
12 two different term loans into a single loan at a lower interest rate than the interest rate approved by
13 the Commission to reduce annual interest expenses by approximately \$12 million.

14 Background

15 3. Level 3 is a publicly traded (NASDAQ: LVLT) Delaware corporation with
16 principal offices located at 1025 Eldorado Boulevard, Broomfield CO 80021. Level 3 provides
17 high-quality voice and data services to carriers, internet service providers ("ISPs"), and other
18 business customers over its IP-based network through its wholly owned indirect subsidiaries,
19 including the Applicants. The Applicants are non-dominant carriers that are authorized to provide
20 resold and/or facilities-based telecommunications services nationwide pursuant to certification,
21 registration or tariff requirements or on a deregulated basis. Applicants are also authorized by the
22 Federal Communication Commission to provide international and domestic interstate services as
23 non-dominant carriers.

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

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28 ...

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

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

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

10 Applicants' Financing Transaction

11 8. The Applicants request Commission approval to participate in a financing
12 arrangement. Level 3 and Financing entered into a \$1.2 billion term loan arrangement to refinance
13 into a single loan the \$650 million and the \$550 million for which the Applicants pledged assets
14 and acted as guarantors pursuant to Commission approval of the \$650 million term loan on June
15 27, 2011, in Decision No. 72431 and the \$550 million term loan on February 17, 2012, in Decision
16 No. 72889. The \$1.2 billion term loan has a 2019 maturity date and a 1% lower interest rate than
17 the \$650 million and the \$550 million term loans approved by the Commission. The 2019
18 maturity and low interest rate will reduce the annual interest expense by approximately \$12
19 million. Financing has loaned the proceeds of the \$1.2 billion term loan to Level 3 LLC in return
20 for an intercompany demand note. The funds were used to prepay in full the \$650 million and the
21 \$550 million term loans that were due to mature in 2018. Applicants further request Commission
22 approval to pledge their assets and act as guarantors in support of the \$1.2 billion term loan
23 arrangement.

24 9. The Applicants' participation in the new financing arrangement will not result in a
25 change in the Applicants' management or in their day-to-day operations; nor will it adversely
26 affect Applicants' current or proposed operations in Arizona. In addition, Applicants' will not be
27 encumbering any customer deposits or prepayments as part the financing arrangement. The
28 financing arrangement is in the public interest because it will strengthen the Applicants' financial

1 position and their ability to bring competitive telecommunications services to consumers in
2 Arizona. The Applicants will continue to offer high-quality communications services to their
3 customers without interruptions and without immediate change in rates or terms and conditions.

4 Staff's Analysis and Conclusions

5 10. Staff's review of the Applicants' 2011 Annual Reports, filed with the Commission
6 on April 15, 2012, indicates that Level 3 LLC, WiTel, and GC Telecommunications had greater
7 than \$1 million in Arizona revenue. Consequently, these Applicants are considered Class A
8 utilities and subjected to the requirements of the Rules. Based on its 2011 Annual Report,
9 Broadwing had less than \$1 million in Arizona revenue. Broadwing is not a Class A utility and
10 not subjected to the requirements of the Rules.

11 11. Under R14-2-804(B) (1), a utility will not consummate certain financial
12 transactions without prior approval of the Commission. According to R14-2-804(C), a review of
13 the financing arrangement is required to determine if the proposed financing arrangement "would
14 impair the financial status of the public utility, otherwise prevent it from attracting capital at fair
15 and reasonable terms, or impair the ability of the public utility to provide safe, reasonable, and
16 adequate service." Based on its evaluation of the proposed financing arrangement, Staff concluded
17 that the financing arrangement would not impair the financial status of the Applicants, would not
18 impair their ability to attract capital, nor would it impair the ability of the Applicants to provide
19 safe, reasonable, and adequate service.

20 12. Under A.R.S. § 40-285(A), a "public service corporation shall not sell, lease,
21 assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line,
22 plant or system necessary or useful in the performance of its duties to the public, or any franchise
23 or permit or any right thereunder" without approval from the Commission. The Applicants request
24 approval to encumber any part of their "line, plant or system" located in Arizona in connection
25 with the financing arrangement. Applicants will not encumber any customer deposits or
26 prepayments. Therefore, to the extent that Applicants hold any Arizona customer deposits or
27 prepayments, those funds should not be pledged as part of the financing transactions.

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1 IT IS FURTHER ORDERED that the request for a limited waiver of the Arizona
2 Corporation Commission's Public Utility Holding Companies and Affiliated Interests Rules,
3 A.A.C. R14-2-801 to R14-2-806 be and hereby is denied.

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

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

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

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

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

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 CHAIRMAN COMMISSIONER COMMISSIONER
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 16 _____
 COMMISSIONER COMMISSIONER

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 18 IN WITNESS WHEREOF, I, JODI JERICH, Executive
 19 Director of the Arizona Corporation Commission, have
 20 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 _____, 2013.

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 23 _____
 JODI JERICH
 EXECUTIVE DIRECTOR

24
 25 DISSENT: _____

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 27 DISSENT: _____

28 SMO: JFB: sms/WVC

1 SERVICE LIST FOR: Level 3 Communications, LLC, Broadwing Communications, LLC, WiTel
2 Communications, LLC, and Global Crossing Telecommunications, Inc.
3 DOCKET NOS.: T-03654A-12-0487, T-04176A-12-0487, T-03708A-12-0487, and T-
4 02438B-12-0487

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23 Arizona Corporation Commission
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