



STATE OF DELAWARE
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July 16, 2014

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Vincent O. Ikwuagwu, Public Utilities Analyst

SUBJECT: IN THE MATTER OF THE JOINT APPLICATION OF LEVEL 3 COMMUNICATIONS, INC. SATURN MERGER SUB 1, LLC, SATURN MERGER SUB 2, LLC, LEVEL 3 COMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, GLOBAL CROSSING TELECOMMUNICATIONS, INC., WILTEL COMMUNICATIONS, LLC, TELCOVE OPERATIONS, LLC AND TW TELECOM INC., TW TELECOM HOLDINGS, INC., TW TELECOM DATA SERVICES, LLC FOR APPROVAL OF TRANSFER OF CONTROL AND RELATED ARRANGEMENTS
(FILED JULY 2, 2014) - PSC DOCKET NO. 14-0229

Application

Level 3 Communications, Inc. (“Level 3”), and its direct and indirect subsidiaries Saturn Merger Sub 1, LLC and Saturn Merger Sub 2, LLC (together the “Merger Subs”), Level 3 Communications, LLC (“Level 3 LLC”), Broadwing Communications, LLC (“Broadwing”), Global Crossing Telecommunications, Inc. (“GC Telecommunications”), WilTel Communications, LLC (“WilTel”), and TelCove Operations, LLC (“TelCove”) and collectively with Level 3 LLC, Broadwing, GC Telecommunications, and WilTel, (the “Level 3 Companies”) and tw telecom, inc (“tw telecom”) and its subsidiaries tw telecom holdings, inc. (“tw telecom holdings”) and tw telecom data services, LLC (“tw telecom data”) (Collectively, Level 3, Merger Subs, the Level 3 Companies, tw telecom, tw telecom holdings and tw telecom data, the “Applicants”)

has filed an application seeking Commission approval to consummate a transaction whereby Level 3 will acquire indirect control of tw telecom data.¹

Also, the approval will allow the participation of Applicants in certain new financing arrangements necessary to accomplish the acquisition of tw telecom, tw telecom holdings and tw telecom data, as well as the participation of tw telecom data in certain existing financing arrangements put in place by Level 3's subsidiaries which were granted by the Commission in PSC Docket No. 14-2. The proposed transactions will involve a change in the ultimate ownership of tw telecom data at the tw telecom holding company level but will not result in any assignment of any certificates, assets or customers. The Level 3 Companies and tw telecom data will continue to serve their existing customers in Delaware pursuant to their respective authorizations under the same rates, terms and conditions

Applicants

Level 3, Merger Subs and Level 3 Companies.

Level 3 is a Delaware corporation with principal business office at 1025 Eldorado Boulevard, Broomfield, CO 80021. The Merger Subs are Delaware limited liability companies and wholly owned subsidiaries of Level 3 that were recently formed for the purpose of accomplishing the proposed transactions. Level 3 provides high-quality voice and data services to enterprise, government, wholesale and carrier customers over its IP-based network through its wholly owned indirect subsidiaries, the Level 3 Companies.

Below is a brief description of the Delaware authority held by each of the Level 3 Companies:

- A. Level 3 LLC is authorized to provide interexchange and competitive local exchange telecommunications services pursuant to authority granted in PSC Docket No. 98-114, Order No. 4969.
- B. Broadwing is authorized to provide interexchange and competitive local exchange telecommunications services pursuant to authority granted in PSC Order No. 6565 and 6174.
- C. GC Telecommunications is authorized to provide intrastate telecommunications services pursuant to authority granted in PSC Docket No. 95-194, issued on December 20, 1995.
- D. TelCove is authorized to provide facilities-based common carrier and resold local exchange interexchange telecommunications services pursuant to authority granted in PSC Docket No. 00-403, Order No. 5586.
- E. WilTel is authorized to provide resold telecommunications services pursuant to authority granted in PSC Docket No. 99-25, Order No. 5037.

¹ tw telecom data has a CPCP application pending before the Commission in PSC Docket No. 14-117. If the Commission grants the CPCN, Applicants are hereby requesting approval to transfer control of tw telecom data.

tw telecom inc., tw telecom holdings inc., and tw telecom data services llc

tw telecom is a publicly traded Delaware corporation with its principal business address at 10475 Park Meadows Drive, Littleton, CO 80124. tw holdings, a wholly owned subsidiary of tw telecom, is the parent of tw telecom data. tw telecom through its subsidiaries provide managed network services, business Ethernet and data networking to a broad range of businesses and carrier customers.

tw telecom operating subsidiaries are authorized to provide telecommunications services as competitive, non-dominant carriers pursuant to certification, registration or tariff requirements. In Delaware, tw telecom data has a certification application pending in Docket No. 14-117.

Transaction

On June 15, 2014, Level 3, the Merger Subs, and tw telecom entered into an agreement and Plan of Merger (the "Agreement") whereby Saturn Merger Sub 1, LLC and tw telecom will be merged, with tw telecom surviving the merger. Next, tw telecom will merge with and into Saturn Merger Sub 2, LLC, with Saturn Merger Sub 2, LLC surviving the merger and continuing as a wholly owned subsidiary of Level 3 and Level 3 Financing. Saturn Merger Sub 2, LLC will be renamed tw telecom llc. These steps will transfer ultimate control of tw telecom data and other tw telecom subsidiaries.

Immediately after consummation of the transaction, tw telecom data will continue to operate its facilities and provide services to its customers under the same name and at the same rates, terms, and conditions, ensuring a seamless transition of ownership without confusion or adverse impact to customers.

Also, Applicants request approval to authorize Level 3 Companies and tw telecom data to participate in certain financing arrangements necessary to incorporate the tw telecom companies in Level 3's financial structure in connection with the merger, to fund a portion of the purchase price relating to the transfer of control transaction and to provide additional working capital.

Upon closing the merger, the tw telecom subsidiaries, including tw telecom data, will be required to participate in Level 3 Financing's current financing arrangements by providing a guaranty of Level 3 Financing's existing indebtedness including various issuances of Senior Notes and Level 3 Financing's existing credit facility.

Further, Level 3 Financing plans to enter into additional financing arrangements in an amount of up to 3.2 billion in order to:

- i. Fund a portion of the consideration payable to tw telecom stockholders in connection with the proposed transaction
- ii. Pay costs and expenses related to the transaction including a \$10 cash consideration for each tw telecom share
- iii. Refinance existing tw telecom debt
- iv. Provide Level 3 additional working capital

- v. Level 3 Financing plans to lend the net proceeds it receives to its subsidiary, Level 3 LLC, in return for an intercompany demand note.

Level 3 projects that up to \$2.6 billion of the total amount of new financing will be secured by assets of the merged companies. The company's subsidiaries will also provide guaranties for the secured amount. The remainder of the amount will be unsecured. The new financing will consist of long-term loans, secured and/or unsecured senior notes, and /or bridge loans that are convertible to long-term loans. The long-term indebtedness incurred as part of this new financing will mature between six (6) and eight (8) years after issuance depending on the type of debt issued. Interest rates will be market rate for similar financing, fixed or floating or a combination of these financing vehicles in response to rapidly changing market and the type of debt securities, and will be determined at the time financing is finalized.

Public Interest

The Applicant asserts that the public interest will be served. The transaction will bring together two successful competitive carrier organizations that have proven themselves in a highly competitive market. Applicants asserts that the merger will enable the combined entity in ensuring financial, technical, and managerial resources to better meet the local, national, and global needs of enterprises, wholesale buyers, and other customers. The present customers will not be affected and will continue to enjoy continuity of high quality telecommunications service supported by Applicant's experienced and well-qualified management team. Also, by combining these two complementary, non-dominant carriers will strengthen their ability to compete against larger carriers such as AT&T and Verizon in enterprise and wholesale markets in the United States. The transaction will conducted in a manner that will be transparent to customers of the Level 3 Companies and tw telecom data. The transaction 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.

Staff Recommendation

Applications seeking financing arrangements approval by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 *Del. C.* §215 because the companies are deemed to be public utilities. The applicants have represented that the financing arrangements are in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. This will have the effect, under 26 *Del. C.* §215(d), of the application being approved. Staff will also require a notice from the Applicant that the proposed merger, transfer, and financing arrangements have been completed.