

BEFORE THE
DELAWARE PUBLIC SERVICE COMMISSION

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DELAWARE P.S.C.

 In the Matter of the Joint Application)
)
 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, and)
 TelCove Operations, LLC)
)
 and)
)
 tw telecom inc.,)
 tw telecom holdings inc., and)
 tw telecom data services llc)
)
 For Approval of a Transfer of Control and)
 Related Financing Arrangements)
 _____)

Docket No. _____

**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, TW TELECOM INC., TW TELECOM HOLDINGS INC. AND TW
 TELECOM DATA SERVICES LLC FOR APPROVAL OF AN INDIRECT CHANGE
 IN CONTROL AND FOR PERMISSION TO ENGAGE IN CERTAIN
 RELATED FINANCIAL ARRANGEMENTS**

This Joint Application is being filed by:

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Counsel for Applicants

**BEFORE THE
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In the Matter of the Joint Application)
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Level 3 Communications, Inc.,)
Saturn Merger Sub 1, LLC,)
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Global Crossing Telecommunications, Inc.,)
WilTel Communications, LLC, and)
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and)
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tw telecom inc.,)
tw telecom holdings inc., and)
tw telecom data services llc)
)
For Approval of a Transfer of Control and)
Related Financing Arrangements)
_____)

JOINT APPLICATION

1. 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”), through their undersigned counsel, submit this Application pursuant to 26 Del. C. §215, and any other applicable legal provisions. Applicants herein request Delaware Public

Service Commission (“Commission”) approval, or such authority as may be necessary or required, to enable the Applicants to consummate a transaction whereby Level 3 will acquire indirect control of tw telecom data.¹ In addition, Applicants request approval, to the extent required, for 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 subsidiary Level 3 Financing, Inc. (“Level 3 Financing”).²

2. On previous occasions in which applications have been presented to this Commission for approval of transactions between holding companies whose regulated operating subsidiaries are spread out among numerous states and countries, the Commission has allowed the transactions to be approved by operation of law by declining to take action thereon within thirty (30) days. *See* 26 Del. C. § 215(d) (“In the absence of any such action within such period of time, any such proposed merger . . . or acquisition shall be deemed approved.”). As the Commission Staff recently stated, when presented with an application “to approve mergers by large multi-state competitive telecommunications carriers,” the Commission has “allowed such applications to become effective by statutory approval without Commission action.” *Joint Application of BellSouth Long Distance, Inc., BellSouth Corporation, BellSouth Mobile Data, Inc. and AT&T Inc.*, Docket No. 11-138 (March 1, 2011); *Joint Application of SBC Communications Inc. and AT&T Corp. for Approval of a Transfer of Control of Their Delaware Operating Subsidiaries*, Docket No. 05-72, Memorandum at 3 (Del. Pub. Serv. Comm’n Mar.

¹ tw telecom data has a certification application pending before the Commission in Docket No. 14-117, which is scheduled for Commission action at the July 8, 2014 meeting. Assuming the Commission grants the certification request, Applicants are hereby requesting approval to transfer control of tw telecom data.

² The Level 3 Companies have previously obtained Commission authority to participate in these financing arrangements. *See* footnote 7.

30, 2005) (attached as Exhibit A); *Joint Application of Bell Atlantic Corp. and GTE Corp. for Approval of Agreement and Plan of Merger*, 1998 Del. PSC LEXIS 238, at *1 (Del. Pub. Serv. Comm'n Oct. 27, 1998); *Petition of MCI Communications Corp. et al.*, 1997 Del. PSC LEXIS 145 (Del. Pub. Serv. Comm'n Mar. 4, 1997); *Application of WorldCom, Inc.*, 1997 Del. PSC LEXIS 369 (Del. Pub. Serv. Comm'n Dec. 9, 1997); *Joint Application of AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc. for Approval of Merger*, (PSC Docket No. 06-123 (April 5, 2006). The Commission has generally "limited its approval processes to those instances where the merger will have some *direct* result on subsidiary carriers certificated to operate in this State." *Bell Atlantic*, 1998 Del. PSC LEXIS 238, at *4 (emphasis added).

3. That same approach is warranted here. The Level 3 Companies are each competitive telecommunications carriers that hold authority to provide intrastate telecommunications services in Delaware and tw telecom data has a certification application pending in Delaware.³ As discussed in Section IV below, the proposed transactions are in the public interest and will produce benefits to the advantage of customers. 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. Accordingly, for all practical purposes, these transactions will be transparent to the customers of the Level 3 Companies and tw telecom data.

4. Applicants request that the Commission take no action on this Application, which will result in statutory approval of this transaction within thirty (30) days after the filing, pursuant to

³ See Docket No. 14-117 (filed March 21, 2014).

26 Del. C. §215(d) or, in the alternative, act expeditiously to grant the approval requested herein no later than at the Commission's Meeting scheduled for September 9, 2014.

5. In the event the Commission decides to act upon this Application, the Applicants respectfully state the following in support thereof:

I. DESCRIPTION OF THE APPLICANTS

A. Level 3, Merger Subs and the Level 3 Companies

6. Level 3 is a publicly traded (NYSE: LVLT) Delaware corporation with principal offices located 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 transaction. 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. Level 3 serves 119 markets in North America with 74,000 intercity fiber route miles. The Level 3 Companies 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. The Level 3 Companies are also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate services as non-dominant carriers.

7. 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 telecommunications services and competitive local exchange telecommunications services pursuant to authority granted by the Commission in Order No. 4969 issued in Docket No. 98-114.
- B. Broadwing is authorized to provide interexchange and local exchange telecommunications services pursuant to authority granted by the Commission in Order Nos. 6565 and 6174.

- C. GC Telecommunications is authorized to provide intrastate telecommunications services pursuant to authority granted by the Commission in Docket No. 95-194 issued on December 20, 1995.
- D. TelCove is authorized to provide facilities-based common carrier and resold local exchange and interexchange services pursuant to authority granted by the Commission in Order. 5586 in Docket Nos. 00-403 and 04-0226T.
- E. WilTel is authorized to provide resold telecommunications services pursuant to Order No. 5037 issued in Docket No. 99-25.

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

8. tw telecom is a publicly traded (NASDAQ: TWTC) Delaware corporation with its headquarters at 10475 Park Meadows Drive, Littleton, CO 80124. tw telecom holdings, a wholly owned subsidiary of tw telecom, is the parent of tw telecom data. tw telecom's operating subsidiaries, including tw telecom data, provide managed network services, business Ethernet, data networking, converged, Internet Protocol ("IP") based virtual private network or "IP VPN", Internet access, voice, including voice over Internet Protocol or "VoIP", and network security services to a broad range of business and carrier customers. tw telecom serves approximately 76 markets in the U.S. with its own fiber network and its network spans over 24,300 route miles.

9. tw telecom's operating subsidiaries are authorized to provide telecommunications services as competitive, non-dominant carriers pursuant to certification, registration or tariff requirements, or on a deregulated basis in 46 states⁴ and the District of Columbia. tw telecom's operating subsidiaries are also authorized by the FCC to provide international and domestic interstate services as non-dominant carriers. In Delaware, tw telecom data has a certification application pending in Docket No. 14-117.

II. CONTACT INFORMATION

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

⁴ tw telecom data has state authorization applications pending before state commissions in Delaware, Maine and Wyoming. tw telecom of iowa llc has a state authorization to expand its scope of service pending before the state commission in Iowa.

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tammy.chatfield@twtelecom.com

III. REQUEST FOR APPROVAL OF TRANSFER OF CONTROL AND FINANCING ARRANGEMENTS

A. Transfer of tw telecom data

11. 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. Immediately thereafter, 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. Pursuant to the Agreement, each issued and outstanding common share of tw telecom (other than any shares owned by any dissenting stockholders) will be exchanged for 0.7 shares of Level 3 common stock plus \$10 cash. In total, Level 3 currently expects to issue approximately 98 million shares. These steps will transfer ultimate control of tw telecom data and other tw telecom subsidiaries.

12. STT Crossing Ltd. currently holds an approximate 23.4% interest in Level 3 and will hold approximately 16.3% of the outstanding Level 3 common stock as a result of these transactions.⁵ Southeastern Asset Management, Inc. currently holds an approximate 21.7% interest in Level 3 and will hold approximately 16.6% of the outstanding Level 3 common stock as a result of these transactions.⁶ Other than STT Crossing Ltd. and Southeastern Asset Management, Inc., no other individual or entity is expected to hold 10% or more of the outstanding Level 3 common stock. As a result of these transactions, Level 3 will indirectly control tw telecom's operating subsidiaries including tw telecom data. For the Commission's convenience, pre- and post-transaction organizational charts are provided as Exhibit A. A copy of the Agreement is included as an exhibit to the Form 8-K filed by Level 3 with the U.S. Securities and Exchange Commission and is available at https://www.sec.gov/Archives/edgar/data/794323/000110465914046560/a14-15513_4ex2d1.htm.

13. Immediately after consummation of the transaction, tw telecom data will continue to operate its facilities and provide service 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. Accordingly, Applicants request authority for the transfer of

⁵ The percentages reflected are accurate based upon public records available as of the date of this filing.

⁶ The percentages reflected are accurate based upon public records available as of the date of this filing.

control of tw telecom data to Level 3 and other approvals necessary for consummation of the proposed transaction.

B. Participation in Certain Financing Arrangements of Level 3 Financing

14. Applicants also request approval to authorize the 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 consummation of the merger, to fund a portion of the purchase price relating to the transfer of control transaction described herein and provide additional working capital.

15. First, upon closing of 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.⁷ Level 3 Financing is a wholly owned unregulated non-carrier subsidiary of Level 3. It is also anticipated that the tw telecom subsidiaries will pledge their assets as security for the provided guarantees of the Level 3 Financing existing credit facility. Accordingly, Applicants request authority, to the extent necessary, for tw telecom data to provide various guaranties and a pledge of its assets in connection with Level 3's existing financing arrangements.

16. Second, 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

⁷ The Level 3 Companies have previously obtained Commission authority for these financing arrangements. *See e.g.*, Docket No. 14-2 granted February 3, 2014 (\$640M 6.125% Senior Notes due 2021); Docket No. 13-433 granted November 28, 2013 (\$815M Tranche B-III 2019 Term Loan, \$595.5M Tranche B 2020 Term Loan, and \$1.2B Additional Tranche B 2020 Term Loan); Docket No. 12-411 granted September 18, 2012 (\$775M 7% Senior Notes due 2020 and \$300M floating notes); Docket No. 12-93 granted February 23, 2012 (\$900M 8.625% Senior Notes due 2019); Docket No. 11-536 granted March 6, 2012 (additional \$100M 8.125% Senior Notes due 2019); Docket No. 11-219 granted May 18, 2011 (\$1.1B 8.125% Senior Notes due 2019); Docket No. 11-149 granted March 22, 2011 (\$500M 9.375% Senior Notes).

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; and iv) provide Level 3 additional working capital. Level 3 Financing plans to lend the net proceeds it receives to its subsidiary, Level 3 LLC, in return for an intercompany demand note. Appropriate intercompany arrangements will be implemented to fund the necessary amounts required to repay or prepay the existing tw telecom debt. Some of these arrangements may result in the appropriate tw telecom subsidiary providing an intercompany demand note in return for the cash proceeds required to repay the existing tw telecom debt.

17. Level 3 expects 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 (including upon completion of the transaction the tw telecom entities) will also provide guaranties for the secured amount. The remainder, or difference, of the amount borrowed that is secured debt (up to \$2.6 billion) subtracted from a total of \$3.2 billion will be unsecured. Level 3 expects that the new financing will consist of long-term term loans under Level 3 Financing's existing credit facility, secured and/or unsecured senior notes, and/or bridge loans that are convertible to long-term loans or which will be refinanced with the issuance of senior notes in exchange for the bridge loans. Level 3 expects that the long-term indebtedness incurred as a part of this new financing will mature between six (6) and eight (8) years after issuance, depending on the type of debt issued. Level 3 will pursue the most favorable combination of these financing vehicles in response to rapidly changing market conditions. Interest rates will be the market rate for similar financings, could be fixed or floating, (or a combination thereof depending on the type of debt securities and market conditions), and will be determined at the time the financing is finalized. Accordingly, in order to maintain adequate flexibility to respond to rapidly changing market requirements for the new financing, Applicants

seek authority for the Level 3 companies and tw telecom data to provide necessary guaranties and related pledges of assets as security for the new financing arrangements in the aggregate amount of \$3.2 billion consistent with the parameters outlined above.

IV. PUBLIC INTEREST CONSIDERATIONS

18. Applicants submit that the transactions described herein will serve the public interest. The transaction will bring together two successful competitive carrier organizations that have proven themselves in a highly competitive marketplace. Applicants expect that the merger will enable the combined entity to better meet the local, national and global needs of enterprises, wholesale buyers, and other customers. tw telecom's customers will benefit from Level 3's extensive local-to-global footprint. Existing and prospective customers of both companies will benefit from the combined product portfolio, including a focus on helping enterprises and carriers manage growth.

19. The transaction will enhance competition by combining two complementary, non-dominant carriers and strengthen their ability to compete against larger carriers such as AT&T and Verizon in enterprise and wholesale markets in the United States. Level 3's extensive long-haul and metro networks are complementary to tw telecom's deep metro footprint. Operation as an integrated company will allow each of the operating companies to be more competitive and to deliver greater value and variety of services to their customers than they do individually.

20. Significant financial benefits are expected to be generated from the transaction. The combination is expected to provide \$240 million of annualized synergies, with \$200 million of annualized adjusted EBITDA savings and \$40 million from capital expense savings. The net present value of the potential synergies is expected to be approximately \$2 billion. The transaction is expected to be accretive to Level 3's Free Cash Flow per share after the first year

following closing and deleveraging since Level 3's Net Debt to adjusted EBITDA is expected to improve from 4.6x to 4.5x.

21. Moreover, the transaction will be 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. Following consummation of the transaction, the Level 3 Companies and tw telecom data will continue to provide high-quality communications services to their customers without interruption and without immediate change in rates, terms or conditions.

22. 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 transaction be closed as quickly as possible. Delay in the regulatory approval process – and thus in the ability of the Applicants to move forward promptly with the integration process – 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 combined entities and, therefore, delay in the regulatory approval process prevents the parties from realizing the economic benefits of integration of the carriers' networks or offering the expanded combined network footprint to customers as quickly as the parties otherwise could.

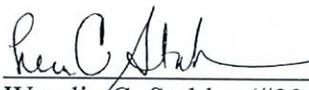
23. In light of the many business and financial considerations affected by the timing of the approval process, Applicants respectfully request that the Commission decline to take action on this Application and thereby allow the transaction and related financings to be approved by operation of law, or in the alternative, promptly commence its examination of the

proposed transaction as soon as possible and complete its review and approval no later than at the Commission's Meeting scheduled for September 9, 2014.

V. CONCLUSION

24. For the reasons stated above, Applicants respectfully submit that the public interest would be furthered by a grant of this Application for the transfer of control and related transactions, including certain financing arrangements, and that the transactions set forth herein are "in accordance with law, for a proper purpose, and consistent with the public interest." 26 Del C. §215(d).

Respectfully submitted,

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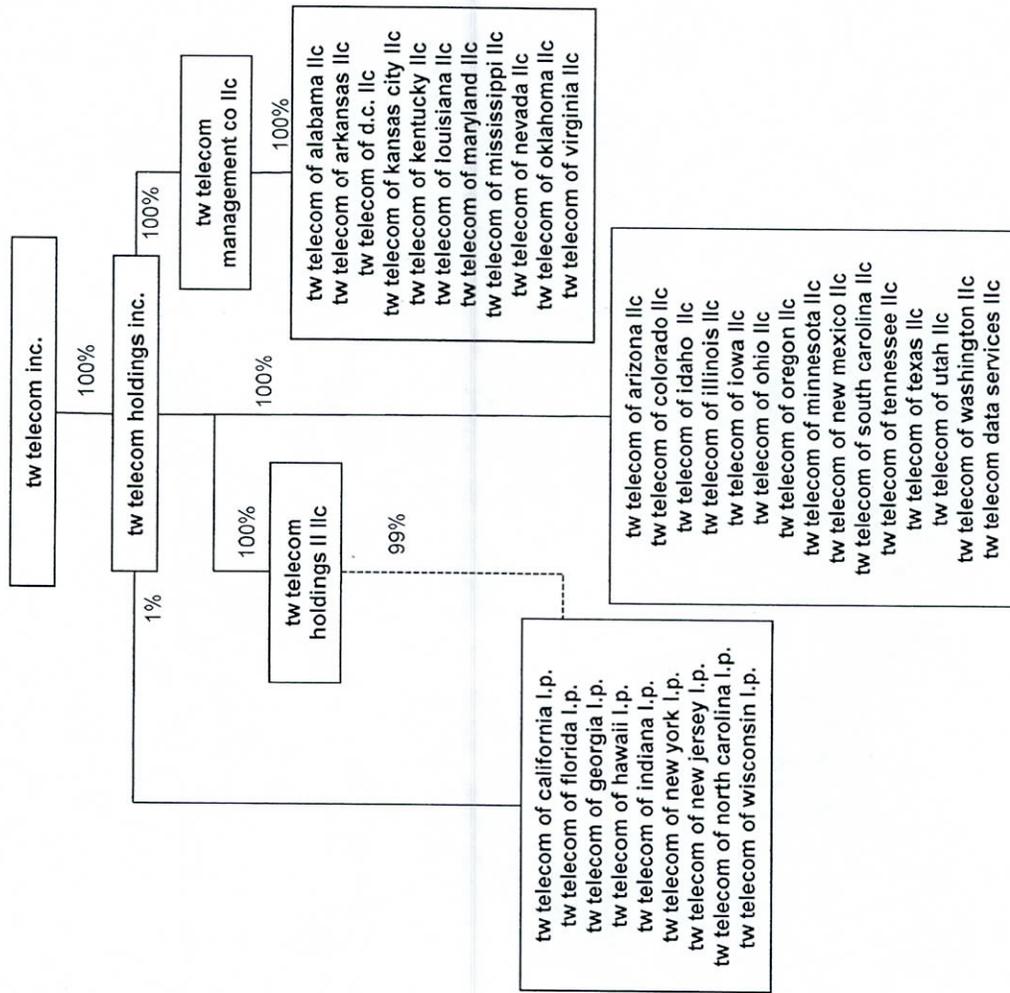
Counsel for the Applicants

Dated: July 2, 2014

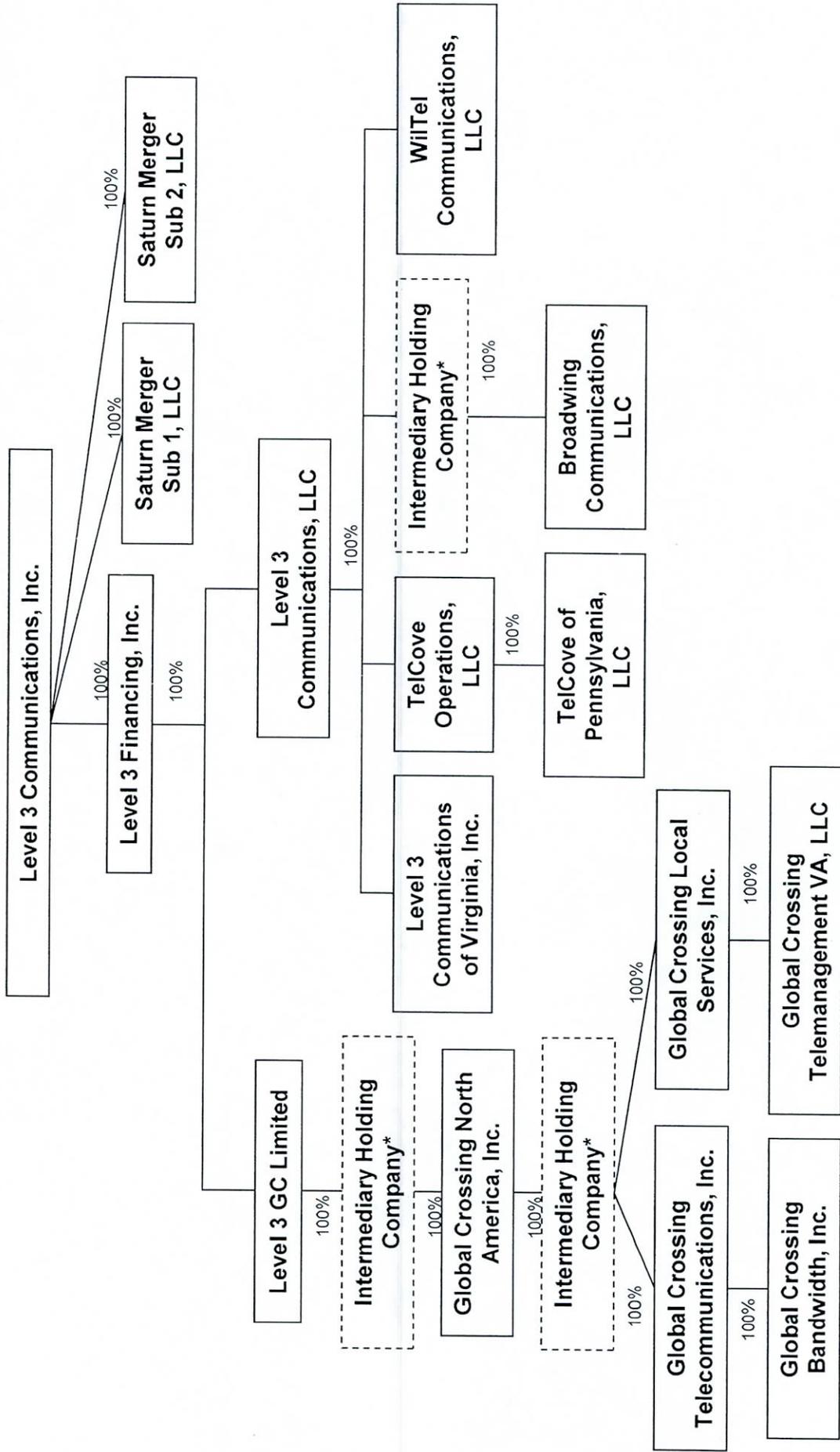
EXHIBIT A

Pre- and Post-Transaction Organizational Charts

Pre-Transaction tw telecom Corporate Structure

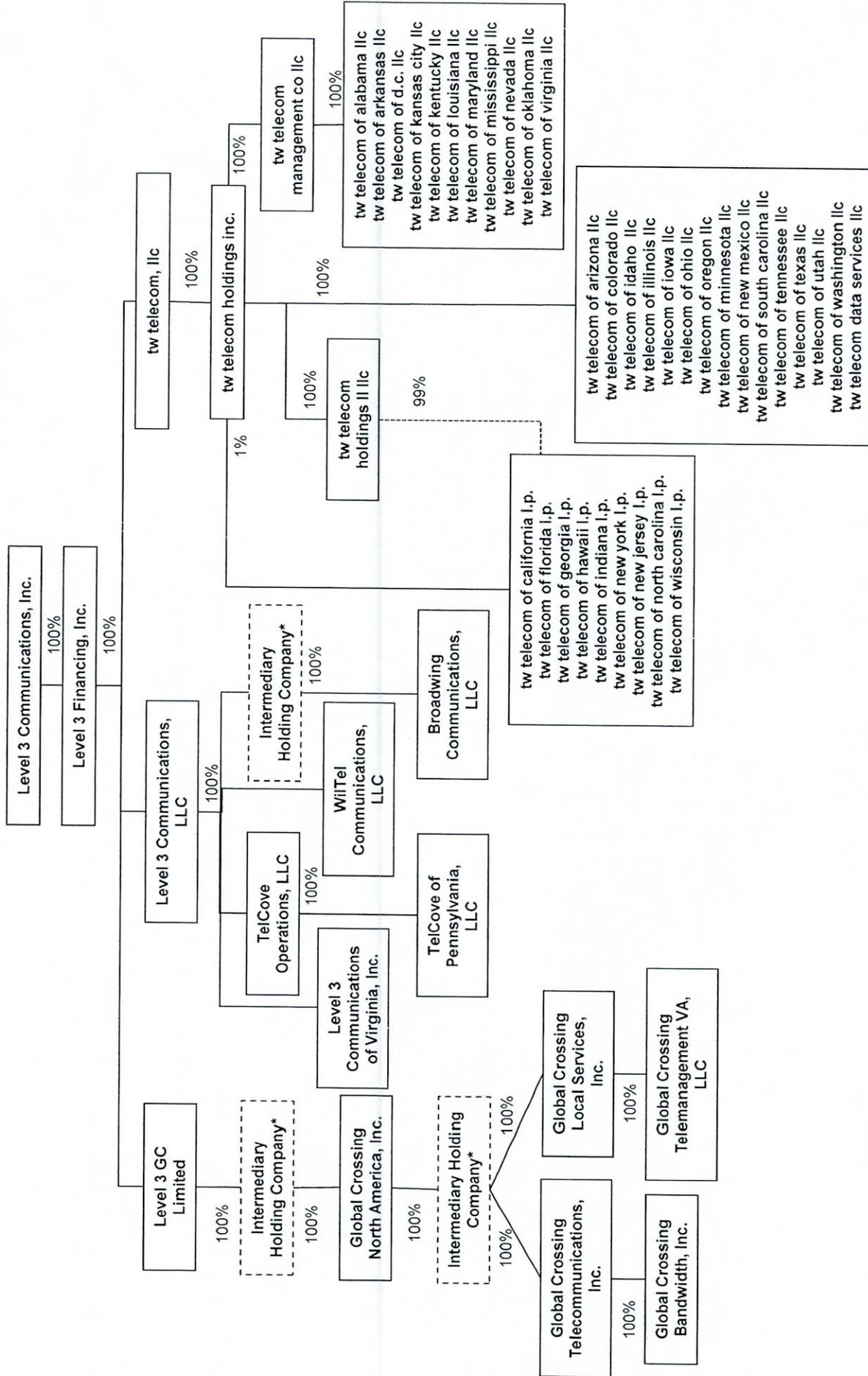


Pre-Transaction Level 3 Corporate Structure



*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.

Post-Transaction 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 WiTel Communications, LLC are each 100% directly held by Level 3 Communications, LLC.

VERIFICATIONS

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, Inc. and its subsidiaries (“Level 3”); that the foregoing filing was prepared under my direction and supervision; and that the statements with respect to Level 3 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 26th day of June, 2014.

HEATHER DIANE KAVANAUGH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124071845
MY COMMISSION EXPIRES 11/07/2016


Notary Public

My commission expires: _____

VERIFICATION

STATE OF COLORADO

§

COUNTY OF DOUGLAS

§

§

I, Tina A. Davis, state that I am the Senior Vice President, General Counsel and Secretary for **tw telecom inc.**; that I am authorized to make this Verification on behalf of **tw telecom inc.** and its subsidiaries (“tw telecom”); that the foregoing filing was prepared under my direction and supervision; and that the statements with respect to tw telecom in the foregoing document are true and correct to the best of my knowledge, information, and belief.

Tina Davis

Name: Tina A. Davis

Title: Senior Vice President, General Counsel and Secretary

tw telecom inc.

SWORN TO AND SUBSCRIBED before me on the 27th day of June, 2014.

Cheryll B Hart

Notary Public

My commission expires: 2/03/2017

CHERYLL B. HART
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054004699
MY COMMISSION EXPIRES FEB. 3, 2017