



Agenda Date: 9/30/14  
Agenda Item: IVD

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 9<sup>th</sup> Floor**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

**TELECOMMUNICATIONS**

IN THE MATTER OF THE VERIFIED JOINT PETITION )	ORDER
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., GLOBAL CROSSING )	
LOCAL SERVICES, INC., WILTEL COMMUNICATIONS, )	
LLC, AND TELCOVE OPERATIONS, LLC, AND TW )	
TELECOM INC., TW TELECOM HOLDINGS INC., AND )	
TW TELECOM OF NEW JERSEY L.P., FOR )	
APPROVAL OF THE TRANSFER OF CONTROL AND )	
RELATED FINANCING ARRANGEMENTS )	DOCKET NO. TM14070710

**Parties of Record:**

**Dennis Linken, Esq.**, Scarinci & Hollenbeck, LLC, on behalf of Petitioners  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On July 2, 2014, 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"), Global Crossing Local Services, Inc. ("GC Local"), WilTel Communications, LLC ("WilTel"), and TelCove Operations, LLC (TelCove" and collectively with Level 3 LLC, Broadwing, GC Telecommunications, GC Local, 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 of new jersey l.p. (tw telecom new jersey") (collectively Level 3, Merger Subs, the Level 3 Companies, tw telecom, tw telecom holdings and tw telecom new jersey, the "Petitioners"), by their counsel and pursuant to N.J.S.A. 48:2-51.1 and 48:3-10, filed a petition with the New Jersey Board of Public Utilities ("Board") for approval to consummate a transaction whereby Level 3 will acquire indirect control of tw telecom new jersey and related financing. The Petitioners also request authority to participate in certain new financing arrangements necessary to accomplish the acquisition of tw telecom and tw telecom new jersey, including for intercompany demand notes to remain unpaid for more than 12 months from the date of

issuance, as well as the participation of tw telecom new jersey in certain existing financing arrangements put in place by Level 3's subsidiary Level 3 Financing, Inc. ("Level 3 Financing"). Following the proposed transfer of control and financing arrangement, Petitioners will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

## BACKGROUND

Level 3 is a publicly traded Delaware corporation with principal offices located in Broomfield, Colorado. The Merger Subs are Delaware limited liability companies and wholly-owned subsidiaries of Level 3 that were formed for the purpose of accomplishing the proposed transaction. According to the petition, Level 3 provides voice and data services to carriers, ISP's and other business customers over its 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. In the state of New Jersey, Level 3 has six operating subsidiaries that are certified by the Board: Level 3 LLC, Broadwing, GC Telecommunications, GC Local, TelCove and WilTel.

tw telecom is a publicly traded Delaware corporation with principal offices located in Littleton, Colorado. tw telecom's operating subsidiaries ("tw telecom subsidiaries"), including tw telecom new jersey, provide managed network services, business Ethernet, data networking, Internet Protocol based virtual private network, Internet access, voice, voice over Internet Protocol or "VoIP", and network security services to business and carrier customers. The petition states that tw telecom serves approximately 76 markets in the U.S. with its own fiber network spanning over 24,300 route miles.

tw telecom holdings, a wholly owned subsidiary of tw telecom, is the parent of tw telecom of new jersey. tw telecom's operating subsidiaries are authorized to provide telecommunications services in 46 states and the District of Columbia. tw telecom new jersey (f/k/a Time Warner Telecom of New Jersey, L.P.) was authorized by the Board to provide telecommunications service in New Jersey on July 28, 1999. See Order, In the Matter of the Application of Time Warner Telecom of New Jersey, L.P., for Authority to Provide Local Telecommunications Services Within the State of New Jersey, Docket No. TE98121438. tw telecom of new jersey has two (2) employees located in New Jersey.

## DISCUSSION

The Petition states that 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 Sub2, 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 held by dissenting stockholders) will be exchanged for 0.7 shares of Level 3 common stock plus \$10 cash. These steps will transfer ultimate control of tw telecom new jersey and other tw telecom subsidiaries to Level 3. Petitioners state that immediately after consummation of the transaction, tw telecom new jersey will continue to operate its facilities and provide service to its customers under the same name and at the same rates, terms and conditions.

Petitioners have also requested approval to authorize the Level 3 Companies and tw telecom new jersey 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 to provide additional working capital. First, upon closing of the merger, the tw telecom subsidiaries, including tw telecom new jersey, 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. 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 guaranties of the Level 3 Financing existing credit facility. Accordingly, Petitioners have requested authority, to the extent necessary, for tw telecom new jersey to provide various guaranties and a pledge of its assets in connection with Level 3's existing financing arrangements. Second, Level 3 Financing plans to enter into additional financing arrangements in an amount of up to \$3.2 billion in order to fund a portion of the consideration payable to tw telecom stockholders in connection with the proposed transaction, pay costs and expenses related to the transactions including a \$10 cash consideration for each tw telecom share, refinance existing tw telecom debt, and 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.

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. Level 3's subsidiaries including, upon completion of the transaction, the tw telecom subsidiaries 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 debt 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, Petitioners seek authority for the Level 3 Companies and tw telecom new jersey 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.

In evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1; N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board is required to determine whether the public

utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees.

The Staff's review indicates that the financing transactions and the use of the proceeds associated therewith are appropriate. While there is no guarantee in this regard, especially given the competitive environment in which Petitioners operate, the Board is satisfied that the transactions will not have an adverse impact on Petitioners' operations in New Jersey.

Petitioners assert that approval of the proposed transactions serve will serve the public interest. The proposed transactions will be transparent to customers of the Level 3 Companies and tw telecom new jersey. The transaction will not result in a change of carriers for customers or any assignment of authorizations. Following the consummation of transactions, the Level 3 Companies and tw telecom new jersey will continue to provide services consistent with the quality of services currently provided to their customers at the same rates terms and conditions.

The New Jersey Division of Rate Counsel has reviewed this matter and, by letter dated August 4, 2014, stated that it does not oppose approval of the Petition.

### **FINDINGS AND CONCLUSION**

After a thorough review of the Petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality since Petitioners' New Jersey customers will continue to receive the same services from the same entities at the same or similar rates, terms, and conditions. The Board is also satisfied that positive benefits will flow to customers based on the record presented by the Petitioners, as the transfer and financing arrangement will strengthen the Petitioners' competitive posture in the telecommunications market in New Jersey by giving the Petitioners access to additional resources. In addition, the Board is persuaded that petitioners will make every effort to minimize any potential adverse impact to employees in New Jersey.

The Board **FINDS** that the proposed transfer of control transaction and financing arrangements are consistent with the applicable law and are not contrary to the public interest, and therefore **FINDS** that the transfer of control is in accordance with the law and is in the public interest and **HEREBY AUTHORIZES** Petitioners to enter into the proposed financing agreements in connection with the consummation of the merger and for the Level 3 Companies and tw telecom new jersey to provide necessary guaranties and related pledges of assets as security for the new financing arrangements in the aggregate amount of \$3.2 billion. The Board **HEREBY ORDERS** Petitioners to notify the Board of the closing of the proposed transfer of control within seven (7) days of consummation.

This Order is subject to the following provisions.

1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.

3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.
4. Petitioners shall notify the Board, within five business days, of any material changes in the proposed financing, and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.
5. Petitioners shall notify the Board of any material default on the terms of the notes within five business days of such occurrence.

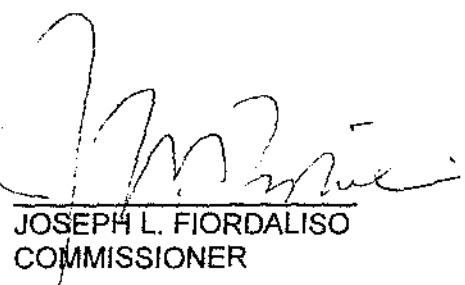
This Order shall become effective upon the earlier of (a) five (5) days after the date hereof, or (b) the receipt by the Board of a Certification by or on behalf of Petitioner that (i) it has received a copy of this Order and that (ii) a copy of this Order has been hand-delivered to Rate Counsel or delivered to Rate Counsel via overnight delivery service.

DATED: 9/30/14

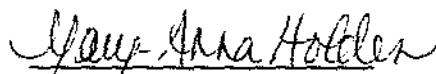
BOARD OF PUBLIC UTILITIES  
BY:



DIANNE SOLOMON  
PRESIDENT

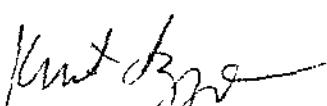


JOSEPH L. FIORDALISO  
COMMISSIONER



MARY ANNA HOLDEN  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



IN THE MATTER OF THE VERIFIED JOINT PETITION 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., GLOBAL CROSSING LOCAL SERVICES, INC., WITTEL  
COMMUNICATIONS, LLC, AND TELCOVE OPERATIONS, LLC, AND TW TELECOM INC.,  
TW TELECOM HOLDINGS INC., AND TW TELECOM OF NEW JERSEY L.P., FOR  
APPROVAL OF THE TRANSFER OF CONTROL AND RELATED FINANCING  
ARRANGEMENTS - Docket No. TM14070710

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