

ATTACHMENT 4

Memorandum (and Staff Recommendation), Docket No. 11-219, Delaware Pub. Serv. Comm'n
(May 4, 2011).



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
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May 12, 2011

MEMORANDUM

Danielle Burt, Esquire
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006-1806

RE: IN THE MATTER OF THE JOINT APPLICATION OF LEVEL 3 COMMUNICATIONS, INC., APOLLO AMALGAMATION SUB, LLC, BROADWAY COMMUNICATIONS, LLC, WITEL COMMUNICATIONS, LLC, TELCOVE OPERATIONS, LLC, GLOBAL CROSSING NORTH AMERICA, INC., AND GLOBAL CROSSING TELECOMMUNICATIONS, INC. FOR APPROVAL OF THE TRANSFER OF CONTROL AND RELATED TRANSACTIONS INCLUDING CERTAIN FINANCING ARRANGEMENTS (FILED APRIL 18, 2011) PSC DOCKET NO. 11-219

Dear Ms. Burt:

After discussion and review of my memorandum dated May, 4, 2011, the Commission took no action in PSC Docket No. 11-219. If you would like, I will send you a copy of the minutes of the May 10, 2011 Commission Meeting.

Sincerely,

A handwritten signature in cursive script that reads "James G. Strong".

James G. Strong
Public Utilities Analyst

Attachment



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION

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May 4, 2011

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Jim Strong, Public Utilities Analyst *JGS*

SUBJECT: IN THE MATTER OF THE JOINT APPLICATION OF LEVEL 3 COMMUNICATIONS, INC., APOLLO AMALGAMATION SUB, LLC, BROADWAY COMMUNICATIONS, LLC, WILTEL COMMUNICATIONS, LLC, TELCOVE OPERATIONS, LLC, GLOBAL CROSSING NORTH AMERICA, INC. AND GLOBAL CROSSING TELECOMMUNICATIONS, INC. FOR APPROVAL OF THE TRANSFER OF CONTROL AND RELATED TRANSACTIONS INCLUDING CERTAIN FINANCING ARRANGEMENTS (FILED APRIL 18, 2011) PSC DOCKET NO. 11-219

Summary of the Application

Level 3 Communications, Inc. ("Level 3"), and its direct and indirect subsidiaries: (1) Apollo Amalgamation Sub, Ltd. ("Apollo Sub"); (2) Level 3 Communications, LLC (Level 3 LLC); (3) Broadwing Communications, LLC ("Broadwing"); (4) WilTel Communications, LLC ("WilTel"); and (5) TelCove Operations, LLC ("TelCove" and collectively with Level 3 LLC, Broadwing, and WilTel the "Level 3 Companies") and Global Crossing North America, Inc. ("Global Crossing"), and its indirect subsidiary Global Crossing Telecommunications, Inc. ("GC Telecommunications") (collectively, Level 3, Apollo Sub, Level 3 Companies, Global Crossing, and GC Telecommunications, the "Applicants") submit this application that, if approved, would enable the parties to consummate a transaction whereby Level 3, the ultimate parent of Apollo Sub, will acquire indirect control of GC Telecommunications. The Applicants also request approval of the related transfer for an indirect minority ownership interest (of 24% to 26%) in the Level 3 Companies.

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In addition, Applicants seek approval, to the extent required, for the participation of the Applicants in certain new financing arrangements necessary to accomplish the acquisition of GC Telecommunications, as well as the participation of GC Telecommunications in certain existing financing arrangements put in place by Level 3's subsidiary, Level 3 Financing, Inc. ("Level 3 Financing").

Description of the Applicants

Level 3

Level 3 is a publicly traded (NASDAQ: LVL3) Delaware corporation with principal offices in Broomfield, CO. Apollo Sub, is a Bermuda company and wholly-owned subsidiary of Level 3, was recently formed for the purpose of accomplishing the proposed transaction. Level 3 is a CLEC that provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network through its wholly owned indirect subsidiaries, the Level 3 Companies. In Delaware, Level 3 is authorized to provide interexchange telecommunications services pursuant to authority granted by the Delaware Public Service Commission ("Commission") in PSC Docket No. 98-114 through Order No. 4969 issued on December 1, 1998.

Level 3 has several subsidiaries that are certificated to provide telecommunications services in Delaware. Broadwing is authorized to provide interexchange and local exchange telecommunications services pursuant to authority granted by the Commission in Order Nos. 6565 and 6174. WilTel is authorized to provide resold telecommunications services pursuant to Order No. 5037 issued in Docket No. 99-25 on March 9, 1999. TelCove is authorized to provide competitive local exchange and interexchange telecommunications services pursuant to authority granted by the Commission in Order 5586 in Docket Nos. 00-403 and 04-226T.

Global Crossing

Global Crossing, a New York corporation, is headquartered in Rochester, New York. Global Crossing's indirect operating subsidiary, GC Telecommunications, together with its other U.S. and international affiliates, provides telecommunications solutions over the world's first integrated global IP-based network. Its core network connects more than 300 major cities in twenty-nine countries worldwide, and delivers services to more than 600 cities in sixty countries and six continents around the globe. GC Telecommunications and other affiliates offer a full range of managed data and voice products to enterprise customers, carriers, mobile operators and ISPs.

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GC Telecommunications

GC Telecommunications is a Michigan corporation and wholly-owned indirect subsidiary of Global Crossing. GC Telecommunications is authorized to provide telecommunications services as a competitive, nondominant carrier pursuant to certification, registration or tariff requirements, or on a deregulated basis in all fifty states and the District of Columbia. GC Telecommunications operates as a nondominant domestic interstate telecommunications carrier under the FCC's blanket authority and operates as an international telecommunications carrier through FCC authority held by Global Crossing. In Delaware, GC Telecommunications is authorized to provide interexchange telecommunications services pursuant to authority granted by the Commission in PSC Docket No. 95-194 on December 20, 1995.

Description of the Transfer of Control of GC Telecommunications

On April 11, 2011, Level 3, Apollo Sub, and Global Crossing's indirect parent company, Global Crossing Limited ("GCL"), entered into an Agreement and Plan of Amalgamation (the "Agreement") whereby Apollo Sub and GCL will be merged ("Amalgamated") under Bermuda Law. Pursuant to the Agreement, each issued and outstanding common share and convertible preferred stock of GCL (other than any shares owned by Level 3, GCL, or their respective subsidiaries and any dissenting shares) will be exchanged for shares of common stock of Level 3. In total, Level 3 currently expects to issue approximately 1.3 billion shares. Following the merger of GCL and Apollo Sub, the separate corporate existence of Apollo Sub and GCL will cease, and the combined company, renamed Level 3 GC, Limited, will exist as a wholly owned subsidiary of Level 3 Financing and ultimately a wholly owned subsidiary of Level 3 LLC. As a result of the transaction, Level 3 will indirectly control GC Telecommunications. For the Commission's convenience, pre- and part transaction organizational charts are provided as Exhibit A, Pages 1 of 3, 2 of 3, and 3 of 3.

Participants in Certain Financing Arrangements of Level 3 Financing

Applicants request approval to authorize the Level 3 Companies and GC Telecommunications to participate in certain financing arrangements in connection with the transfer of control transaction described herein. First, Level 3 Financing, a wholly-owned unregulated non-carrier subsidiary of Level 3, plans to enter into a \$650 million Term Loan with a six-year maturity date. Level 3 Financing plans to lend the net proceeds it receives to its subsidiary, Level 3 LLC, in return for an intercompany demand note, and in turn, Level 3 LLC may lend the net proceeds to Level 3 GC, Limited in return for an intercompany demand note. The Level 3 Companies and GC Telecommunications seek approval to pledge assets and act as guarantors in support of the \$650 million Term Loan.

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Second, in support of the merger transaction, Level 3 Financing also plans to either (a) issue \$1.1 billion in Senior Notes in a registered public offering or a private placement or (b) enter into a \$1.1 billion Bridge Loan with a one-year maturity date from closing ("Bridge Loan"). Pursuant to either arrangement, Level 3 Financing will lend the net proceeds it receives to its subsidiary, Level 3 LLC, in return for an intercompany demand note, and in turn, Level 3 LLC may lend the net proceeds to Level 3 GC, Limited in return for an intercompany demand note. The proceeds from the \$1.1 billion Senior Note or Bridge Loan financing arrangement will be used to repay the existing indebtedness of Level 3 GC, Limited. The Level 3 Companies and GC Telecommunications seek approval to act as guarantors for the \$1.1 billion financing arrangement. Should Level 3 Financing enter into the \$1.1 billion Bridge Loan, Level 3 Financing has the option at maturity of the Bridge Loan to either (1) refinance the Bridge Loan by entering into a Rollover Loan with a six-year maturity date or (2) replace the Bridge Loan by issuing Exchange Notes with a six-year maturity date. The Level 3 Companies and GC Telecommunications also seek approval, as necessary, to act as guarantors for either the Rollover Loan or the Exchange Notes.

Indirect Minority Ownership Transfer of the Level 3 Companies

Applicants request approval for an indirect minority transfer of ownership of the Level 3 Companies that will occur as a consequence for the merger transaction. As a result of the exchange of shares in connection with the merger, STT Crossing Ltd., a direct current investor in GCL and an indirect investor in Global Crossing and GC Telecommunications, will obtain a minority interest of approximately 24% to 26% in Level 3, and indirectly in the Level 3 Companies. In addition, Southeastern Asset Management, Inc., which is currently the largest Level 3 stockholder with an approximate 30% interest, will hold approximately 15% of Level 3. Other than STT Crossing Ltd. and Southeastern Asset Management, Inc., no other individual or entity is expected to hold 10% or more of Level 3. The majority of Level 3 stock will continue to be held by current investors.

Public Interest Considerations

The Applicants maintain that the transactions described in their application will serve the public interest. The 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. The Applicants state within their application that the transaction will bring together two successful carrier organizations that have proven themselves in a highly competitive marketplace and assert that these transactions will help create a stronger competitor by bringing together each organization's respective strengths. 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.

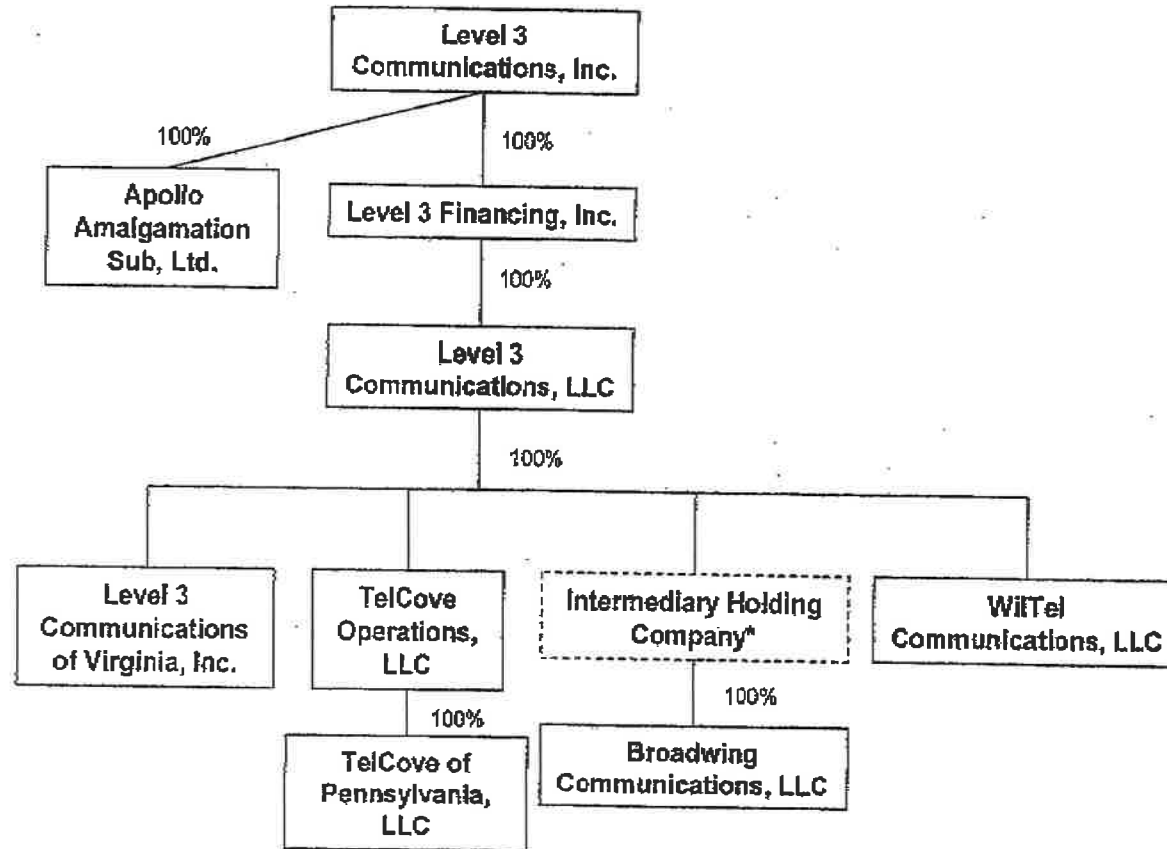
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The Applicants submit that the transactions will be conducted in a manner that will be largely transparent to customers of the Level 3 Companies and GC Telecommunications. The transactions will not result in a change of carrier for customers or any 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 transactions, the Level 3 Companies and GC Telecommunications will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms, or conditions.

Staff Recommendation

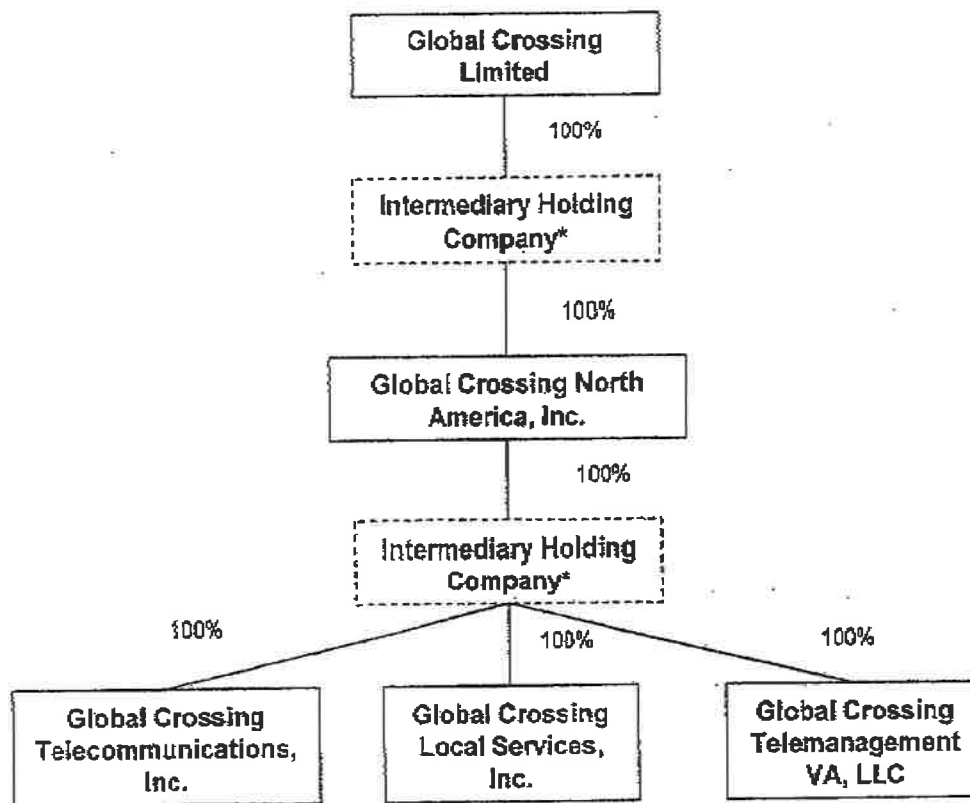
Applications seek financing approval by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 *Del. C* §215 because the resellers are deemed to be public utilities. The applicants have represented that the proposed transaction is in accordance with the 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, of the application being approved. Staff will also acquire verification from the Applicants that the proposed indirect transfer of control has been completed.

Pre-Transaction Level 3 Corporate Structure



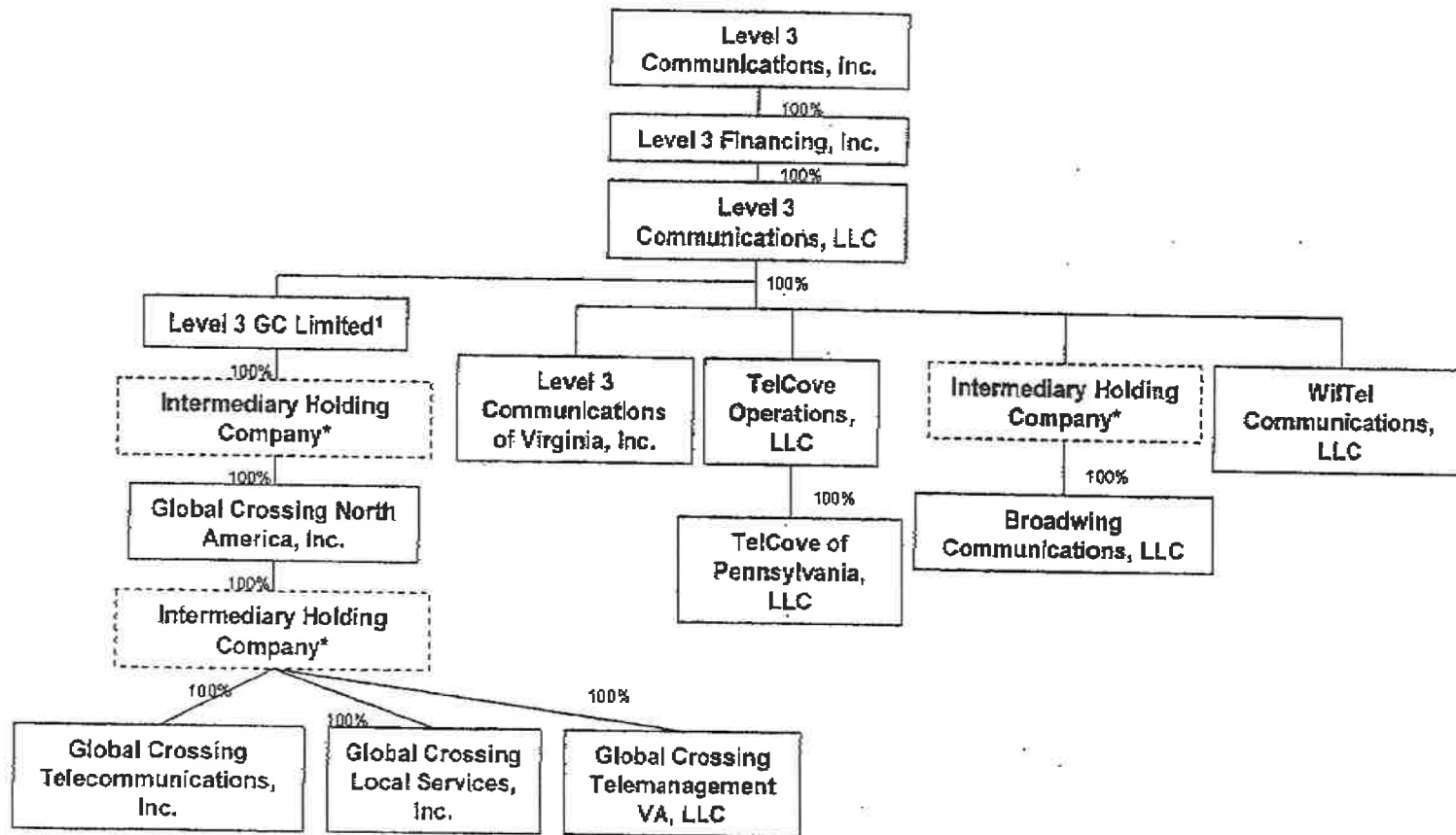
*Intermediary holding companies omitted for purposes of clarity—none are certificated telecommunications service providers. Broadwing Communications, LLC is 100% *indirectly* owned by Level 3 Communications, LLC. Level 3 Communications of Virginia, Inc., Telcove Operations, LLC and WITel Communications, LLC are each 100% *directly* held by Level 3 Communications, LLC.

Pre-Transaction Global Crossing Corporate Structure



*Intermediary holding companies omitted for purposes of clarity—none are certificated telecommunications service providers. Each of Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc., and Global Crossing Telemangement VA, LLC are 100% indirectly owned by Global Crossing North America, Inc.

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.

¹ Immediately following the merger, Level 3 GC Limited (the new company formed upon completion of the combination of Apollo Amalgamation Sub Ltd. and Global Crossing Limited) will be 100% *directly* held by Level 3 Financing, Inc., and ultimately will become a wholly owned subsidiary of Level 3 Communications, LLC.