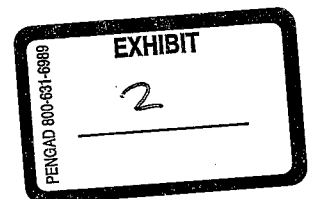


SUPPLEMENTAL EXHIBIT 2  
To Joint Application

(Docket No. 14-2351-01)







# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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DA 14-1022  
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## APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF TW TELECOM INC. TO LEVEL 3 COMMUNICATIONS, INC.

### PLEADING CYCLE ESTABLISHED

WC Docket No. 14-104

**Comments/Petitions Due: August 18, 2014**  
**Reply/Oppositions Due: September 2, 2014**

Level 3 Communications, Inc. (Level 3 Parent) and tw telecom inc. (TWT Parent) (together, Applicants) filed a series of applications<sup>1</sup> pursuant to sections 214 of the Communications Act of 1934, as amended (Act),<sup>2</sup> and the Cable Landing License of 1921,<sup>3</sup> seeking approval for various transfers of control of licenses and authorizations held by TWT Parent's subsidiaries (TWT Subsidiaries) to Level 3 Parent.

TWT Parent, a publicly traded Delaware corporation, wholly owns tw telecom holdings inc. (TWTH), a Delaware corporation that is the direct or indirect parent of 35 TWT Subsidiaries currently providing interstate and international telecommunications services in 46 states and the District of Columbia.<sup>4</sup> Applicants state that the TWT Subsidiaries provide business Ethernet, data networking, IP-based virtual private network, Internet access, voice, Voice over Internet Protocol, and network services to enterprise customers and carriers.<sup>5</sup> They further state that the TWT Subsidiaries serve 76 U.S. metropolitan markets and operate a fiber network spanning more than 24,300 route miles with direct connections to more than 20,000 buildings, including 550 third-party data centers.<sup>6</sup> One of the subsidiaries, tw telecom of hawaii l.p. (TWT Hawaii), has a joint interest in the Hawaiian Islands Fiber Network (HIFN), a non-common carrier submarine cable system connecting six of the Hawaiian Islands.<sup>7</sup>

<sup>1</sup> See *tw telcom inc. and Level 3 Communications, Inc. Application for Consent to Transfer Control of Authority to Provide Global Facilities-Based and Global Resale International Telecommunications Services and of Domestic Common Carrier Transmission Lines, Pursuant to Section 214 of the Communications Act of 1934, as Amended*, WC Docket No. 14-104 (filed July 8, 2014) (Application); ITC-T/C-20140707-00193 (filed July 7, 2014); and, SCL-T/C-20140707-00005 (filed July 7, 2014).

<sup>2</sup> 47 U.S.C. §§ 214, 310(d).

<sup>3</sup> See *id.* §§ 34-39.

<sup>4</sup> Application at 3-6.

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.*

<sup>7</sup> TWT Hawaii owns HIFN jointly with Wavecom Solutions Corporation (Wavecom), a subsidiary of Hawaiian Telcom Inc. This transaction does not affect the Wavecom ownership in HIFN. *Id.* at 13.

Applicants state that TWT Parent was originally founded as a division of Time Warner Cable, which was owned by Time Warner Inc. Time Warner Inc. sold its ownership stake in TWT Parent in 2006, and, according to Applicants, neither Time Warner Inc. nor Time Warner Cable currently hold any ownership interest in TWT Parent.<sup>8</sup>

Applicants state that Level 3 Parent, a publicly-traded Delaware corporation, through its operating subsidiaries, offers communications services over its broadband fiber-optic network in North America, Europe, and Asia, including IP-based services, broadband transport, collocation services, and voice services.<sup>9</sup> After consummation of the proposed transaction, Applicants assert that the following entities will hold a ten percent or greater interest in Level 3 Parent: Southeastern Asset Management, Inc. (16.6 percent), a Tennessee corporation, and, indirectly, Temasek Holdings (Private) Limited (Temasek) (16.3 percent), which is wholly owned by the Government of Singapore.<sup>10</sup>

According to Applicants, Level 3 Parent will acquire all of the issued and outstanding stock of TWT Parent through what they describe as a two-step “double reverse triangular merger.”<sup>11</sup> They explain that Level 3 Parent and its special-purpose subsidiaries, Saturn Merger Sub 1, LLC (Merger Sub 1) and Saturn Merger Sub 2, LLC (Merger Sub 2), both Delaware limited liability companies, have agreed to acquire TWT Parent in a stock and cash transaction that will result in Level 3 Parent controlling the TWT Subsidiaries.<sup>12</sup> In the first step of the merger, Merger Sub 1 will merge into TWT Parent, with TWT Parent surviving. In the second step, Merger Sub 2 will merge into TWT Parent, with Merger Sub 2 surviving as a wholly-owned, direct subsidiary of Level 3 Parent and renamed as tw telecom llc.<sup>13</sup> After consummation of the proposed transaction, TWTH and the TWT Subsidiaries will be direct or indirect subsidiaries of tw telecom llc. As a part of the transaction, Applicants state that Level 3 Parent anticipates issuing approximately 98 million shares of common stock, which will dilute the ownership interest of Level 3 Parent’s existing shareholders, including existing foreign shareholders.<sup>14</sup>

Applicants assert that the proposed transaction is in the public interest. They maintain that Level 3 Parent and its subsidiaries are qualified to serve TWT Parent’s customer base and that the transaction will increase competition by joining two complementary, non-dominant providers and strengthening their ability to compete with larger incumbent providers and with other competitive carriers.<sup>15</sup> They further assert that the proposed transaction will not impact competition for local exchange and interstate services because the TWT Subsidiaries and the subsidiaries of Level 3 Parent have focused on different segments of the enterprise market for these services and compete against many incumbent and competitive carriers.<sup>16</sup> They also commit to comply with the existing network security agreement between Level 3

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 18-19.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.* at 10-14.

Parent and the Department of Defense, Department of Homeland Security, and the Department of Justice.<sup>17</sup>

## SECTION 214 AUTHORIZATIONS

### A. International

The application for consent to the transfer of control of the international section 214 authorization held by TWTW from TWT Parent to Level 3 Parent has been assigned the file number listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20140707-00193	tw telecom holdings inc.	ITC-214-20000927-00570

### B. Domestic

Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction. In light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, the domestic transfer of control application is not subject to streamlined treatment.<sup>18</sup>

## CABLE LANDING LICENSE APPLICATION

The application for consent to the transfer of control of the joint interest in cable landing license for the HIFN system held by TWT Hawaii from TWT Parent to Level 3 Parent has been assigned the file number listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20140707-00005	tw telecom of hawaii l.p.	SCL-MOD-20001025-00036 SCL-MOD-20131114-00012

## REQUEST FOR RECLASSIFICATION

Four subsidiaries of Level 3 Parent (Level 3 International Carriers) have filed petitions pursuant to section 63.13 of the Commission's rules,<sup>19</sup> requesting that they be reclassified as non-dominant carriers under section 63.10 of the Commission's rules on the U.S.-Singapore route.<sup>20</sup> The Level 3 International Carriers request that the Commission act on these petitions concurrently with the applications filed in connection with Level 3 Parent's acquisition of TWT Parent and that such reclassification be effective upon consummation of that acquisition. The Level 3 International Carriers are classified as dominant on the U.S.-Singapore route due to their affiliation with Singapore Telecommunications LTD (SingTel), a

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<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *See* 47 C.F.R. § 63.03(c)(1).

<sup>19</sup> *See id.* § 63.13.

<sup>20</sup> *See id.* § 63.10.

foreign carrier presumed to have market power in Singapore,<sup>21</sup> through Temasek, which holds an indirect, controlling interest in SingTel. Upon consummation of the proposed merger with TWT Parent, Temasek's indirect interest in Level 3 Parent and the Level 3 International Carriers will decrease to approximately 16.3 percent, below the Commission's threshold for affiliation.<sup>22</sup> These petitions have been assigned File Nos. ISP-PDR-20140707-00005 (Level 3 Communications, LLC), ISP-PDR-20140707-00006 (Global Crossing Americas Solutions, Inc.), ISP-PDR-20140707-00007 (Level 3 International, Inc.), and ISP-PDR-20140707-00008 (Global Crossing North America, Inc.).

## **GENERAL INFORMATION**

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file comments **on or before August 18, 2014**, and reply comments **on or before September 2, 2014**.

Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>23</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>24</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

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<sup>21</sup> See *International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers That Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 22 FCC Rcd 945, 947 (Int'l Bur. 2007).

<sup>22</sup> See 47 C.F.R. § 63.09(e) ("Two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one. Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.").

<sup>23</sup> 47 CFR §§ 1.415, 1.419.

<sup>24</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**In addition, provide one copy of each pleading to each of the following:**

- 1) The Commission's duplicating contractor, Best Copy and Printing, Inc., [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com); phone: (202) 488-5300; facsimile: (202) 488-5563;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, [dennis.johnson@fcc.gov](mailto:dennis.johnson@fcc.gov) or (202) 418-1413 (facsimile);
- 3) David Krech, Policy Division, International Bureau, [david.krech@fcc.gov](mailto:david.krech@fcc.gov) or (202) 418-2824 (facsimile);
- 4) Neil Dellar, Office of General Counsel, [TransactionTeam@fcc.gov](mailto:TransactionTeam@fcc.gov) or (202) 418-1234 (facsimile).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>25</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.<sup>26</sup> A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are

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<sup>25</sup> 47 C.F.R. §§ 1.1200 *et seq.*

<sup>26</sup> *See id.* §1.45(c).

discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-0809; David Krech, Policy Division, International Bureau, (202) 418-7443.

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