

William J. Evans (5276)  
Joseph M. Stultz (12251)  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Tel: (801) 532-1234  
Fax: (801) 536-6111  
[bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com)  
[jstultz@parsonsbehle.com](mailto:jstultz@parsonsbehle.com)

Counsel for Level 3 and the Level 3  
Companies

Jerold G. Oldroyd  
BALLARD SPAHR LLP  
201 South Main Street, Suite 800  
Salt Lake City, UT 84111  
Tel: (801) 517-6801  
Fax: (801) 531-3001  
[oldroydj@ballardspahr.com](mailto:oldroydj@ballardspahr.com)

Counsel for tw telecom, tw telecom holdings  
and tw telecom utah

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**BEFORE THE  
PUBLIC SERVICE COMMISSION OF UTAH**

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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.,  
Global Crossing Local Services, Inc.  
WilTel Communications, LLC**

**and**

**tw telecom inc.,  
tw telecom holdings inc.,  
tw telecom of utah llc**

For Approval of Transfer of Control and  
Related Transactions

JOINT APPLICATION FOR APPROVAL  
OF  
TRANSFER OF CONTROL AND  
RELATED TRANSACTIONS

Docket No. \_\_\_\_\_

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**JOINT 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”), Global Crossing Local Services, Inc. (“GC Local”), and WilTel Communications, LLC (“WilTel” and collectively with Level 3 LLC, Broadwing, GC Telecommunications, and GC Local, the “Level 3 Companies”) and tw telecom inc. (“tw telecom”) and its subsidiaries tw telecom holdings inc. (“tw telecom holdings”) and tw telecom of utah llc (“tw telecom utah”) (collectively, Level 3, Merger Subs, the Level 3 Companies, tw telecom, tw telecom holdings and tw telecom utah, the “Applicants”), through their undersigned counsel, submit this Application pursuant to Utah Code Ann. §§ 54-4-28 & 54-4-29 and the rules of the Public Service Commission of Utah, including R746-349-7. Applicants request 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 utah. In addition, Applicants plan to participate in certain new financing arrangements necessary to accomplish the acquisition of tw telecom and tw telecom utah and establish tw telecom utah as a participant in certain existing financing arrangements of Level 3’s subsidiary Level 3 Financing, Inc. (“Level 3 Financing”).

The Level 3 Companies and tw telecom utah are each competitive telecommunications carriers that hold authority to provide intrastate telecommunications services in Utah. As discussed in Section V 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 utah 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 utah will continue to serve their existing customers in Utah 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 utah.

In light of the many business and financial considerations affected by the timing of the approval process, Applicants respectfully request that the Commission act promptly on the Application so that Applicants can complete the hearing and obtain an order on the Application by September 30, 2014.

In support, Applicants state:

**I. DESCRIPTION OF THE APPLICANTS**

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

Level 3 is a publicly traded (NYSE: LVLТ) 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.

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

- A. Level 3 LLC is authorized to provide facilities-based and resold local and interexchange services and other public telecommunications services pursuant to authority granted by the Commission in Docket No. 98-2266-01 on March 8, 1999.
- B. Broadwing is registered to provide interexchange telecommunications services.
- C. GC Telecommunications is authorized to provide intrastate telecommunications services pursuant to authority granted by the Commission, as revised on September 22, 1999.
- D. GC Local is authorized to provide intrastate telecommunications services pursuant to authority granted by the Commission in Docket No. 10-2246-01.
- E. WilTel is authorized to provide facilities based and resold local and interexchange telecommunications services pursuant to authority granted by the Commission in Docket No. 99-227 1-01 on October 6, 1999, and an Erratum Order on October 7, 1999.

**B. tw telecom inc., tw telecom holdings inc. and tw telecom of utah llc**

tw telecom is a publicly traded (NASDAQ: TWTC) Delaware corporation with its headquarters at 10475 Park Meadows Drive, Littleton, CO 80124. tw telecom’s operating subsidiaries, including tw telecom utah, 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.

tw telecom holdings, a wholly owned subsidiary of tw telecom, is the parent of tw telecom utah.

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 states<sup>1</sup> 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 Utah, tw telecom utah is authorized pursuant to a Certificate issued in Docket No. 08-2351-01 on July 15, 2008.<sup>2</sup>

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<sup>1</sup> tw telecom data services llc has state authorization applications pending before state commissions in Delaware, Maine and Wyoming. tw telecom of iowa llc has a state authorization application to expand its scope of service pending before the state commission in Iowa.

<sup>2</sup> tw telecom utah's authority was granted to Time Warner Telecom in Docket No. 00-2351-01 on December 11, 2000. The name was changed to tw telecom utah in Docket No. 08-2351-01.

## II. CONTACTS

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

For Level 3, Merger Subs and the Level 3 Companies:

William J. Evans  
Joseph M. Stultz  
Parsons, Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Tel: (801) 536-6817  
Fax: (801) 536-6111  
[WEvans@parsonsbehle.com](mailto:WEvans@parsonsbehle.com)  
[Jstultz@parsonsbehle.com](mailto:Jstultz@parsonsbehle.com)

with copies to

Catherine Wang  
Danielle Burt  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, DC 20006  
Tel: (202) 373-6000  
Fax: (202) 373-6001  
[catherine.wang@bingham.com](mailto:catherine.wang@bingham.com)  
[danielle.burt@bingham.com](mailto:danielle.burt@bingham.com)

and:

Richard E. Thayer  
Senior Counsel  
Level 3 Communications, Inc.  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Tel: (720) 888-2620  
Fax: (720) 888-5134  
[rick.thayer@level3.com](mailto:rick.thayer@level3.com)

For tw telecom, tw telecom holdings and tw telecom utah:

Jerold G. Oldroyd  
Ballard Spahr LLP  
201 South Main Street, Suite 800  
Salt Lake City, UT 84111  
Tel: (801) 517-6801  
Fax: (801) 531-3001  
[oldroydj@ballardspahr.com](mailto:oldroydj@ballardspahr.com)

with copies to:

Greg Diamond  
Vice President of Regulatory  
tw telecom  
10475 Park Meadows Drive  
Littleton, CO 80124  
Tel: (206) 676-8052  
[greg.diamond@twtelecom.com](mailto:greg.diamond@twtelecom.com)

### **III. REQUEST FOR APPROVAL OF TRANSFER OF CONTROL AND RELATED TRANSACTIONS**

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 utah and other tw telecom subsidiaries.

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.<sup>3</sup> 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.<sup>4</sup> 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 the transaction, Level 3 will indirectly control tw telecom’s operating subsidiaries including tw telecom utah. 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

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<sup>3</sup> The percentages reflected are accurate based upon public records available as of the date of this filing.

<sup>4</sup> The percentages reflected are accurate based upon public records available as of the date of this filing.

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](https://www.sec.gov/Archives/edgar/data/794323/000110465914046560/a14-15513_4ex2d1.htm).

Immediately after the transaction, tw telecom utah 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 control of tw telecom utah to Level 3 and other approvals necessary for consummation of the proposed transaction.

#### **IV. INFORMATION REQUIRED BY R746-394-7**

Pursuant to R746-394-7, Applicants provide the following information:

**a. identification that it is not an ILEC,**

Applicants confirm that none of the Applicants or their affiliates serve as an ILEC in Utah.

**b. identification that it seeks approval of the Application pursuant to this rule,**

Applicants confirm that they seek approval of the Application pursuant to the informal adjudication process set forth in this rule.

**c. a reasonably detailed description of the transaction for which approval is sought,**

A detailed description of the transaction is provided in Section III, above.

**d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and**

Applicants will file a Domestic and International Section 214 Application with the FCC. A copy of that Application will be filed with this Commission after it is submitted to the FCC. In connection with this transaction, Applicants also expect to request approval from the utility regulatory agencies (“PUCs”) in the following states: Arizona, California, Colorado, Delaware, Georgia,



Hawaii, Indiana, Louisiana, Maryland, Minnesota, Mississippi, Pennsylvania, New Jersey, New York, Ohio, Texas, Virginia, West Virginia, and the District of Columbia. Due to the voluminous nature of the state filings, most of which contain the same information, Applicants have only attached as Exhibit B a copy of the New York filing requesting approval. Applicants are also required to provide prior notice to the PUCs in the following jurisdictions: Connecticut, Idaho, Kentucky, Massachusetts, Nebraska, Nevada, New Mexico, North Carolina, Rhode Island, and South Dakota. Due to the voluminous and repetitive nature of the notices to be sent to the PUCs, Applicants have not included copies of the notice filings. Applicants will provide any additional filings at the request of the Commission or the parties.

- e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the Application.**

Applicants have not yet received any notices, correspondence or orders from any federal agency or PUC reviewing the transaction. To the extent requested by the Commission, Applicants will forward any orders or similar actions granting or denying the request for transfer of control.

## **V. PUBLIC INTEREST STATEMENT**

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.

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.

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.

Moreover, the transaction will be conducted in a manner that will be transparent to customers of the Level 3 Companies and tw telecom utah. 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 utah will continue to provide high-quality communications services to their customers without interruption and without immediate change in rates, terms or conditions.

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.

## **VI. CONCLUSION**

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. Applicants respectfully request that the Commission act promptly so that an order approving the Application can be issued by September 30, 2014.

*(Signature page follows.)*

Dated this 2nd day of July, 2014.

Respectfully submitted,

By: /s/ William J. Evans

William J. Evans (5276)  
Joseph M. Stultz (12251)  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Tel: (801) 532-1234  
Fax: (801) 536-6111  
[bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com)  
[jstultz@parsonsbehle.com](mailto:jstultz@parsonsbehle.com)

Counsel for Level 3 and the Level 3 Companies,

By: /s/ Jerold G. Oldroyd

Jerold G. Oldroyd  
BALLARD SPAHR LLP  
201 South Main Street, Suite 800  
Salt Lake City, UT 84111  
Tel: (801) 517-6801  
Fax: (801) 531-3001  
[oldroydj@ballardspahr.com](mailto:oldroydj@ballardspahr.com)

Counsel for tw telecom, tw telecom holdings and tw  
telecom utah

## **LIST OF EXHIBITS**

Exhibit A	Pre- and Post-Transaction Organizational Charts
Exhibit B	Copy of New York Public Service Commission Petition
Verifications	

**EXHIBIT A**

**Pre- and Post-Transaction Organizational Charts**

**[electronically filed as a separate document]**

**EXHIBIT B**

**Copy of New York Public Service Commission Petition**

**[electronically filed as a separate document]**

**VERIFICATIONS**

**[electronically filed as a separate document]**



## CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2014, I caused a true and correct copy of the foregoing **JOINT APPLICATION FOR APPROVAL OF TRANSFER OF CONTROL AND RELATED TRANSACTIONS**, to be sent via electronic mail to the following:

Patricia Schmid  
ASSISTANT ATTORNEYS GENERAL  
500 Heber Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

Brent Coleman  
ASSISTANT ATTORNEYS GENERAL  
500 Heber Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
[brentcoleman@utah.gov](mailto:brentcoleman@utah.gov)

Michele Beck  
Executive Director  
UTAH OFFICE OF CONSUMER SERVICES  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, UT 84111  
[mbeck@utah.gov](mailto:mbeck@utah.gov)

Christopher R. Parker  
Director  
UTAH DIVISION OF PUBLIC UTILITIES  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)

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/s/ Colette V. Dubois