

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Joint Docket No. 14-2351-01
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.; WiTel
Communications, LLC,

and

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

For Approval of Transfer of
Control and Related Transactions

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
 Hearing Room 451
 160 East 300 South
 Salt Lake City, Utah

DATE: Wednesday, August 6, 2014

TIME: 10:01 a.m.

REPORTED BY: Teena Green, RPR, CSR, CRR, CBC

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE: MELANIE REIF

FOR DIVISION OF PUBLIC UTILITIES:

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ALSO PRESENT: RON SLUSHER
(Telephonically) Greg Diamond
(telephonically) Richard Thayer

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I N D E X

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EXHIBITS RECEIVED INTO EVIDENCE

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| 1 | Supplemental Exhibit No. 1 | 21 |
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| | July 31 filing by the Division | 21 |

1 August 6, 2014 10:01 a.m.

2 PROCEEDINGS

3 THE HEARING OFFICER: We're on the record.

4 Good morning, everyone. My name is
5 Melanie Reif and I am the administrative law judge for
6 the Utah Public Service Commission.

7 This morning, we are hearing
8 Docket No. 14-2351-01. This is a joint application
9 for approval to transfer control. It involves a
10 number of parties. And essentially, it will allow
11 what has been identified as L3 to acquire indirect
12 control of tw telecom of utah.

13 And at this time, I'd like to start by
14 taking appearances, starting with you, sir.

15 MR. EVANS: I am William Evans. And with
16 me is Joseph Stultz, both of Parsons, Behle & Latimer.
17 And we are appearing for Level 3 Communications, Inc.;
18 Saturn Merger Sub 1, LLC; Saturn Merger Sub 2, LLC;
19 Level 3 Communications, LLC; Broadwing Communications,
20 LLC; Global Crossing Telecommunications, Inc.; Global
21 Crossing Local Services, Inc.; and WilTel
22 Communications, LLC.

23 And for brevity, from here on out, we'll
24 call all of those entities "Level 3," if that's
25 acceptable.

1 And with us on the phone today is our
2 witness, Richard Thayer, T-H-A-Y-E-R.

3 THE HEARING OFFICER: Thank you very much.
4 Mr. Oldroyd, it's nice to have you here
5 this morning.

6 MR. OLDROYD: It's nice to be here. Thank
7 you.

8 I'm Jerry Oldroyd with Ballard Spahr. I'm
9 here representing tw telecom inc., tw telecom holdings
10 inc., and tw telecom of utah llc.

11 And on the phone, I have Mr. Greg Diamond
12 from tw telecom, who will be our witness.

13 THE HEARING OFFICER: Thank you.
14 Mr. Justin Jetter, thank you for being
15 here.

16 MR. JETTER: Thank you. And I'm Justin
17 Jetter, representing the Utah Division of Public
18 Utilities. And with me is Ron Slusher, also with the
19 Division of Public Utilities.

20 THE HEARING OFFICER: Thank you, again,
21 everyone.

22 Mr. Evans, this is your application.
23 Would you like to proceed?

24 MR. EVANS: Yes. Thank you.

25 The joint application of Level 3 and

1 tw telecom was filed on July 2, 2014. This
2 application seeks Public Service Commission approval
3 to consummate a transaction under which Level 3 will
4 acquire indirect control of tw telecom of utah. The
5 Commission issued an action request on July 2 to the
6 Division of Public Utilities and they have filed a
7 report, as of July 31, on the application, which we
8 will let Mr. Slusher comment on.

9 The applicable statute in this case
10 requires that in order for the Commission to approve
11 this transaction, it has to be shown that -- after
12 hearing, that the transactions are in the public
13 interest, under the applicable commission regulation,
14 it is presumed that approval is in the public
15 interest.

16 So the purpose of presenting testimony
17 today is to make sure that the record is complete,
18 give the Commission and others an opportunity to ask
19 questions that might bear upon the Commission's
20 decision of whether to approve this transaction.

21 So with that, we're ready to call our
22 witness, Rick Thayer.

23 THE HEARING OFFICER: Mr. Thayer, are you
24 on the line?

25 THE WITNESS: Yes, I am.

1 THE HEARING OFFICER: Okay. Thank you,
2 sir.

3 Are you prepared to testify this morning?

4 THE WITNESS: Yes, I am.

5 THE HEARING OFFICER: Okay. Very good.
6 Would you kindly raise your right hand,
7 please.

8 Do you swear that the testimony you will
9 be giving today is the truth?

10 THE WITNESS: I do.

11 THE HEARING OFFICER: Okay. Very good,
12 sir.

13 Please proceed, Mr. Evans.

14 RICHARD E. THAYER,
15 called as a witness for and on behalf of the
16 applicant, being first duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. EVANS:

20 Q. Thank you.

21 Good morning, Mr. Thayer. For the record,
22 would you please state your name, business address,
23 and your position in Level 3?

24 A. I am Richard E. Thayer, senior counsel for
25 Level 3 Communications, Inc. My business address is

1 1025 Eldorado Boulevard, Broomfield, Colorado, 80021.

2 Q. Are you the same Richard Thayer that
3 signed the verification accompanying the joint
4 application that was filed with the Utah Commission in
5 this docket?

6 A. Yes, I am.

7 Q. Is it still the case that the information
8 stated in the joint application is true and correct,
9 to the best of your knowledge?

10 A. Yes, it is.

11 Q. Are there any changes or corrections that
12 need to be made to the joint application?

13 A. No, there are not.

14 Q. And on July 10, did you cause to be filed
15 with the Commission the joint applicant's Supplemental
16 Exhibit 1 to the joint application?

17 A. Yes, I did.

18 Q. Can you please explain to us what that is.

19 A. The Supplemental Exhibit 1 is the
20 consolidated application of tw telecom and Level 3
21 that we filed with the FCC on July 7, 2014, requesting
22 streamlined treatment and consent from the FCC to the
23 same transfer and control, for which we are seeking
24 Utah Commission's approval here today.

25 Q. Has the FCC taken any action on that

1 application?

2 A. Yes, it has. On July 18, it issued a
3 public notice establishing a pleading cycle and
4 commentary for the application.

5 Q. Was streamlined treatment granted for that
6 application?

7 A. No, it was not.

8 We had to file multiple applications with
9 the FCC because of the nature of the application and
10 the applicant and the assets involved. So the FCC
11 wasn't able to streamline the process, it set up
12 schedules for receiving comments.

13 Q. And do you have a copy of the public
14 notice in front of you?

15 A. Yes, I do.

16 Q. Can you confirm the FCC's WC docket number
17 in that matter?

18 A. It's WC Docket No. 14-104.

19 MR. EVANS: May I approach?

20 THE HEARING OFFICER: Yes, you may.

21 MR. EVANS: I have just handed around
22 Joint Applicant's Supplemental Exhibit 2, which is the
23 public notice that Mr. Thayer was referring to, issued
24 by the FCC on July 18, 2014, and request that that be
25 marked as Supplemental Exhibit 2.

1 BY MR. EVANS:

2 Q. Mr. Thayer, do you know whether there have
3 been any comments filed yet at the FCC?

4 A. To my knowledge, there have not been any
5 comments filed at the FCC as yet.

6 Q. Do you anticipate that the FCC application
7 will ultimately result in an approval?

8 A. Yes, I do.

9 Q. Do you have a copy of the Utah application
10 in front of you?

11 A. I do.

12 Q. Would you take a look at the application
13 at the bottom of page 8.

14 A. Okay.

15 Q. And it says their existing and
16 prospective -- let's see.

17 A. Was there a question? I'm sorry. We
18 broke up.

19 Q. I'm sorry.

20 The question is, on the bottom of page 8
21 and 9, it says, "The applicants expect to request
22 approval from utility regulatory agencies in the
23 following states," and then the application lists a
24 dozen or so states there.

25 Is this list complete, to the best of your

1 knowledge?

2 A. Yes, it is.

3 Q. Have any commissions, in states where
4 approval is required, issued orders approving the
5 transaction that's under consideration here today?

6 A. Yes. As of today, we have received
7 approval from four states: Delaware, Arizona, Ohio,
8 and Louisiana.

9 Q. Has there been any opposition to the
10 application filed in any of these states?

11 A. No, there has not.

12 Q. Are you aware of any opposition to the
13 Utah application?

14 A. No, I am not.

15 Q. Would you please describe to us why the
16 proposed transaction is in the public interest.

17 A. Sure.

18 This really represents the combination of
19 two very competitive and strong telecommunication
20 carriers in the industry. We expect that the merger
21 is going to allow this combined entity to better meet
22 the local, national, and global needs of customers,
23 which, in the current environment, is extremely
24 important.

25 Existing and prospective customers of both

1 companies are going to benefit from the combined
2 product offering, including the focus on helping
3 enterprises and carriers manage growth. The
4 transaction is also going to enhance competition by
5 combining -- as I said, the two are nondominant
6 carriers in the -- that have a national footprint, if
7 you will. It's going to allow us to compete against
8 carriers such as AT&T and Verizon in the enterprise
9 and wholesale marketplace in Utah and throughout the
10 United States.

11 The operation, as an integrated company,
12 is going to allow each of our operating companies to
13 be more competitive and deliver greater value,
14 variety, and innovative services to our customers than
15 we can individually.

16 The transaction will be conducted so that
17 it's transparent to the Utah customers of Level 3 and
18 tw telecom. There's going to be no change of carrier
19 for these customers, no assignment of authorizations
20 required, and no discontinuance or impairment of
21 service.

22 Following the completion of the
23 transaction, customers will receive the same
24 high-quality communication services that they do at
25 present, without interruption and without any

1 immediate change in rate, terms, or conditions.

2 Q. Okay. Thank you.

3 MR. EVANS: Mr. Thayer is now available
4 for cross.

5 THE HEARING OFFICER: Questions for
6 Mr. Thayer?

7 MR. OLDROYD: I have no questions.

8 MR. JETTER: No questions from the
9 Division.

10 THE HEARING OFFICER: Thank you,
11 Mr. Evans.

12 Thank you, Mr. Thayer.

13 THE WITNESS: Thank you.

14 THE HEARING OFFICER: Your testimony has
15 been noted and you may be excused, or if you wish to
16 hold the line, you may do so.

17 Mr. Oldroyd?

18 THE WITNESS: I'll hold the line.

19 MR. OLDROYD: Thank you. I would like to
20 call Mr. Greg Diamond from tw telecom.

21 THE HEARING OFFICER: Mr. Diamond, are you
22 on the line?

23 THE WITNESS: Yes, I am.

24 And, Mr. Oldroyd, if you wouldn't mind
25 speaking up, that would be good, I could hear you a

1 little bit better.

2 DIRECT EXAMINATION

3 BY MR. OLDROYD:

4 Q. I'm sorry, Mr. Diamond. Is that better?

5 A. That's better, sir. Thank you.

6 Q. Mr. Diamond, would you please state your
7 full name, your business address, and your title with
8 tw telecom?

9 THE HEARING OFFICER: Just one moment,
10 please. I haven't put him under oath yet, so let me
11 go ahead and do that.

12 MR. OLDROYD: I'm sorry.

13 THE HEARING OFFICER: Mr. Diamond, one
14 issue we need to take care of before you give your
15 testimony this morning is to put you under oath. And
16 so if you would kindly raise your right hand.

17 THE WITNESS: Great.

18 THE HEARING OFFICER: And do you swear to
19 tell the truth this morning during your testimony?

20 THE WITNESS: I do.

21 THE HEARING OFFICER: Thank you.

22 Mr. Oldroyd, you may proceed. Thank you.

23 MR. OLDROYD: Again, I apologize.

24 GREGORY T. DIAMOND,
25 called as a witness for and on behalf of the

1 applicant, being first duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. OLDROYD:

5 Q. Mr. Diamond, would you please state your
6 full name, your business address, and your title with
7 tw telecom.

8 A. Certainly.

9 Gregory T. Diamond, business address is
10 10475 Park Meadows Road, Littleton, Colorado. And my
11 title is vice president of regulatory affairs.

12 Q. Mr. Diamond, as vice president of
13 tw telecom, are you familiar with the joint
14 application for transfer of control that was filed on
15 July 2?

16 A. Yes, I am.

17 Q. Did you participate in drafting that
18 document?

19 A. Yes, I did.

20 Q. Is that document true and correct and
21 represents the position of tw telecom, as far as
22 you're aware of today?

23 A. Yes, it is.

24 Q. Do you have any changes that you believe
25 should be made -- any changes, modifications or

1 corrections?

2 A. No changes, no.

3 Q. Okay. Will you please summarize, to the
4 best of your ability, why the approval of the
5 application and the completion of the transfer of
6 control between Level 3 and tw telecom would be in the
7 public interest.

8 A. Well, certainly in addition to, and I
9 would like to adopt all of the statements made by
10 Mr. Thayer. Certainly, the combined company will have
11 a greater opportunity to compete against carriers,
12 such as CenturyLink in Utah and the Salt Lake Valley
13 and elsewhere, and will provide tw telecom, which has
14 a deep metro fiber footprint, to take advantage of the
15 long-haul capabilities of Level 3.

16 And we have recently announced our entry,
17 for the first time, into the Utah market late last
18 year and have already begun to serve the new
19 customers. And the combined company will allow an
20 even greater opportunity to provide competitive
21 services to customers in the Salt Lake Valley.

22 Q. Thank you, Mr. Diamond. I have no further
23 questions.

24 MR. OLDROYD: I'll submit Mr. Diamond for
25 cross-examination.

1 THE HEARING OFFICER: Mr. Evans?

2 MR. EVANS: No questions here. Thank you.

3 MR. JETTER: No questions from the
4 Division. Thank you.

5 THE HEARING OFFICER: Thank you.

6 Mr. Diamond, just one question for you,
7 please.

8 Do you know if there's been any opposition
9 to the application that's pending before the
10 Commission?

11 THE WITNESS: None that I'm aware of. No,
12 Your Honor.

13 THE HEARING OFFICER: Okay. Thank you.
14 Any follow-up?

15 MR. OLDROYD: No.

16 THE HEARING OFFICER: Okay. Mr. Diamond,
17 you are excused. You may hold the line, if you wish
18 to do so. I just ask that you please mute your end,
19 and if it becomes necessary to participate further, to
20 unmute at that time. Thank you.

21 THE WITNESS: Thank you very much.

22 THE HEARING OFFICER: Mr. Jetter?

23 MR. JETTER: Thank you.

24 The Division would like to call our
25 witness, Ron Slusher.

1 THE HEARING OFFICER: Good morning,
2 Mr. Slusher.

3 THE WITNESS: Good morning.

4 THE HEARING OFFICER: Are you prepared to
5 testify this morning?

6 THE WITNESS: Yes.

7 THE HEARING OFFICER: And would you kindly
8 raise your right hand.

9 Do you swear that your testimony this
10 morning will be the truth?

11 THE WITNESS: Yes.

12 THE HEARING OFFICER: Thank you.

13 RON SLUSHER,
14 called as a witness for and on behalf of the
15 applicant, being first duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JETTER:

19 Q. Mr. Slusher, would you please state your
20 name and occupation for the record.

21 A. The name is Ron Slusher, S-L-U-S-H-E-R.
22 I'm the utility technical consultant for the Public
23 Utilities Division.

24 Q. Thank you.

25 And with your involvement in this docket,

1 have you reviewed the joint application filed by the
2 parties, along with the attending exhibits, as well as
3 Supplemental Exhibit 1 that was filed July 10 in this
4 docket?

5 A. Yes, I have.

6 Q. And did you prepare the memorandum, dated
7 July 31, 2014, that was filed by the Division of
8 Public Utilities?

9 A. Yes, I did.

10 Q. Does the recommendation made in that
11 memorandum still reflect the current position of the
12 Division of Public Utilities?

13 A. Yes, it does.

14 Q. And do you have any edits or changes you'd
15 like to make to that?

16 A. I do not.

17 Q. Have you reviewed what's been presented
18 today as Supplemental Exhibit 2, which is the public
19 notice from the FCC in Docket WC 14-104?

20 A. Yes, I did.

21 Q. And did that raise any new concerns or
22 change your opinion on the approval of this
23 application?

24 A. It has not.

25 Q. And so with all of that information taken

1 into account, do you believe that approval of the
2 application is just and reasonable and in the public
3 interest?

4 A. Yes.

5 Q. And finally, are you aware of any
6 opposition or reasons why this application should not
7 be granted by the Commission?

8 A. I have not seen any intervenors objecting
9 to this application and still feel it is in the public
10 interest and should go forward.

11 Q. Thank you.

12 MR. JETTER: With that, I'd submit
13 Mr. Slusher to cross-examination.

14 THE HEARING OFFICER: Mr. Evans?

15 MR. EVANS: No questions. Thank you.

16 THE HEARING OFFICER: Mr. Oldroyd?

17 MR. OLDROYD: No questions.

18 THE HEARING OFFICER: Okay. Mr. Slusher,
19 just a follow-up question to your response to
20 Mr. Jetter's question about whether there has been
21 opposition.

22 Apart from there being no intervenors, are
23 you aware of any objection or concerns that have been
24 raised with your division about this --

25 THE WITNESS: I have not seen or heard of

1 any.

2 THE HEARING OFFICER: Okay. Thank you
3 very much for that clarification. Very good.

4 I think now would be a good opportunity to
5 admit what has been filed in the docket, just for
6 clarification. And to make things simple, if you
7 don't mind, the Commission will admit the application,
8 as well as the Supplemental Exhibit No. 1 and the
9 Supplemental Exhibit No. 2, which was submitted this
10 morning and which should be attached to the transcript
11 when it is prepared so that it does become part of the
12 record in this docket.

13 The Commission also admits the July 31
14 filing by the Division, which is their recommendation
15 to approve the application.

16 (Supplemental Exhibit No. 1, Supplemental
17 Exhibit No. 2, and the July 31 filing by the Division
18 were received into evidence.)

19 THE HEARING OFFICER: And before my final
20 question in this matter, I do want to ask, just as a
21 matter of procedure, whether there is anyone here
22 present who wishes to speak on behalf of the
23 application who has not already done so.

24 Hearing no such indication, the Commission
25 will take notice that there has been no objection and

1 will proceed with preparing the order as timely as
2 possible when we receive the transcript.

3 Mr. Evans, I do want to ask you, just for
4 clarification, because you do specify a date in your
5 application of a desired date on which you would like
6 to complete this transaction, which is the 30th of
7 September. And generally speaking, we usually have a
8 couple of weeks before we get the transcript and then,
9 generally speaking, a couple of weeks after that
10 before the order is issued.

11 Has there been any change in your
12 timeline?

13 MR. EVANS: There has not, as far as I
14 know. With the proceeding at the FCC taking the track
15 that it has and with their comment period, et cetera,
16 I still think that it is -- that Level 3 hopes that
17 the Commission could issue an order by September 30.

18 THE HEARING OFFICER: Okay. I think that
19 should be very doable. I just wanted to make sure
20 that nothing had changed on your end.

21 MR. EVANS: No. Thank you.

22 THE HEARING OFFICER: Is there anything
23 further before the Commission this morning?

24 Okay. All right. Well, thank you very
25 much for being here, and an order will be forthcoming.

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Thank you.

(Concluded at 10:23 a.m.)

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CERTIFICATE

This is to certify that the proceedings in the foregoing matter were reported by me in stenotype and thereafter transcribed into written form;

That said proceedings were taken at the time and place herein named;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

Teena Green



Teena Green, RPR, CSR, CRR, CBC