

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of)	<u>DOCKET NO. 14-2351-01</u>
)	
Level 3 Communications, Inc.,)	<u>ORDER APPROVING JOINT</u>
Saturn Merger Sub 1, LLC,)	<u>APPLICATION TO TRANSFER CONTROL</u>
Saturn Merger Sub 2, LLC,)	<u>AND RELATED TRANSACTIONS</u>
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)	
)	

ISSUED: August 18, 2014

This matter is before the Commission on the joint application of Level 3 Communications, Inc. (“Level 3”), and its direct and indirect subsidiaries, 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., and WilTel Communications, LLC, along with tw telecom inc. (“tw telecom”), and its subsidiaries, tw telecom holdings inc., and tw telecom of utah llc (“tw telecom utah”), (altogether referred to as “Applicants”), for approval of a pending transaction between Level 3 and tw telecom utah which will allow Level 3 to acquire indirect control of tw telecom utah. In addition, Applicants plan to participate in certain new financing arrangements necessary to accomplish the acquisition

DOCKET NO. 14-2351-01

- 2 -

of tw telecom utah and, to the extent necessary, tw telecom. Applicants filed for Commission approval on July 2, 2014.¹ The application contains all the information required by Utah Admin. Code R746-349-7(A)(1)(a)-(e).

Pursuant to Utah Code Ann. § 54-4-30, the Commission issued a notice of application, notice of comment period, and notice of hearing on July 3, 2014, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On July 31, 2014, in response to a Commission action request, the Division of Public Utilities (“Division”) submitted a recommendation to approve the application. The Division’s memo states: “The Division has reviewed the joint application between Level 3 and tw telecom and has found that they have provided the necessary information to fulfill the requirements as stated in . . . Public Service Commission Rule R746-349-7. The Division believes that the public interest will be promoted by recommending that the Commission approve the[] application. As a result . . . of the acquisition, the [Applicants] should be in a better position to provide expanded and advanced telecommunications services in the State. . . .”²

On August 6, 2014, the Administrative Law Judge (“ALJ”) for the Commission held a hearing, pursuant to Utah Code Ann. § 54-4-30. William J. Evans and Joe Stultz appeared on behalf of Level 3 and were joined, telephonically, by Richard Thayer, Level 3’s witness.

¹ Applicants filed a supplemental exhibit on July 10, 2014. Also, at the August 6, 2014, hearing held in this docket, Applicants provided a second supplemental exhibit of the July 18, 2014, public notice from the Federal Communications Commission, establishing that a streamlined process is not available given the multiple applications pending before the FCC with respect to this transaction.

² Division Memo at 3, filed July 31, 2014.

Jerold G. Oldroyd appeared on behalf of tw telecom and was joined, telephonically, by Greg Diamond, tw telecom's witness. Justin C. Jetter, Utah Assistant Attorney General, appeared for the Division, and was accompanied by Ron Slusher, Utility Technical Consultant for the Division.

The ALJ admitted into evidence the memorandum filed by the Division recommending approval of the application as well as the application and supplemental exhibits submitted by Applicants. Mr. Thayer testified on behalf of Level 3 and offered the following summary of why the transaction is in the public interest:

....

Existing and prospective customers of both companies are going to benefit from the combined product offering, including the focus on helping enterprises and carriers manage growth. The transaction is also going to enhance competition by combining . . . two . . . nondominant carriers . . . that have a national footprint.... It's going to allow us to compete against carriers such as AT&T and Verizon in the enterprise and wholesale marketplace in Utah and throughout the United States.

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

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

Following the completion of the transaction, customers will receive the same high-quality communication services that they do at present, without interruption and without any immediate change in rate, terms, or conditions.

Transcript of Hearing at 11, line 25; id. at 12, lines 1-25; and id. at 13, line 1. Mr. Diamond adopted the testimony of Mr. Thayer and offered this additional testimony on behalf of tw telecom as to why the transaction is in the public interest:

...Certainly, the combined company will have a greater opportunity to compete against carriers, such as CenturyLink in Utah and the Salt Lake Valley and elsewhere, and will provide tw telecom, which has a deep metro fiber footprint, to take advantage of the long-haul capabilities of Level 3.

...[T]he combined company will allow an even greater opportunity to provide competitive services to customers in the Salt Lake Valley.

Id. at 16, lines 10-15 and 19-21.

Mr. Slusher testified on behalf of the Division in support of the application. Mr. Slusher further testified that approval of the joint application is just and reasonable, and in the public interest. Id. at 20, line 4. No one appeared at the hearing objecting to the application.

Under Utah Admin. Code R746-349-7, “[i]f no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.” Utah Admin. Code R746-349-7(A)(3). Because there is no objection to the granting of the application, the Commission thus presumes the application for approval of the transfer of customers and certain assets is in the public interest. Moreover, the Division’s memoranda and testimony provide additional support for approval of the application.

DOCKET NO. 14-2351-01

- 5 -

ORDER

For the foregoing reasons, the Commission approves the transfer of control of tw telecom to Level 3, and related transactions.

DATED at Salt Lake City, Utah, this 18th day of August, 2014.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 18th day of August, 2014, as the Order Approving Transfer of Customers and Certain Assets issued by the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

DW#259779

DOCKET NO. 14-2351-01

- 6 -

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 18th day of August, 2014, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail:

William J. Evans (bevans@parsonsbehle.com)
Joseph M. Stultz (jstultz@parsonsbehle.com)
Parsons Behle & Latimer
Counsel for Level 3 and Level 3 Companies

Jerold G. Oldroyd (oldroydj@ballardspahr.com)
Ballard Spahr LLP
Counsel for tw telecom, tw telecom holdings, and tw telecom utah

Brett N. Anderson (bretta@blackburn-stoll.com)

Vicki Baldwin (vbaldwin@parsonsbehle.com)

Sharon Bertelsen (bertelsens@ballardspahr.com)

Larry Bowman (larry.bowman@charter.com)

Brian W. Burnett (brianburnett@cnmlaw.com)

(cflregulatory@chartercom.com)

Eddie L. Cox (ecox@cut.net)

Phillip Cross (pcross@pur.com)

James Farr (james.farr@centurylink.com)

Russ Fellows (russ.fellows@beehive.net)

Jared Garcia (jared@beehive.net)

Amy Gross (agross@tminc.com)

Alan Haslem (ahaslem@mleainc.com)

William Huber (William.huber@questar.com)

Bill Hunt (williamp.hunt@dish.com)

Kristin L. Jacobson (Kristin.l.jacobson@sprint.com)

Brock Johansen (bjohansen@emerytelcom.com)

Robyn Kashiwa (rakashiwa@hollandhart.com)

Dawn Kubota (kubotad@ballardspahr.com)

Jasen Lee (jlee@desnews.com)

Kirk Lee (kirk.lee@ftr.com)

Shirley Malouf (srmalouf@stoel.com)

Jennifer H. Martin (jhmartin@stoel.com)

Steve Mecham (sfmecham@cnmlaw.com)

Roger Moffitt (roger.moffitt@att.com)

Gregory Monson (gbmonson@stoel.com)

Sharon Mullin (slmullin@att.com)

Thorvald Nelson (tnelson@hollandhart.com)

Steven M. Oberbeck (steve@sltrib.com)

Janice Ono (Janice.ono@att.com)

Sheila Page (spage@utah.gov)

Mike Peterson (mpeterson@utahcooperatives.org)

Pam Pittenger (pam.pittenger@ftr.com)

Jenny Prescott (jenny.prescott@allwest.com)

Bruce Rigby (bruce@ucmc-usa.com)

Gary Sackett (gsackett@joneswaldo.com)

Kira Slawson (kiram@blackburn-stoll.com)

Alan L. Smith (alanakaed@aol.com)

Ted D. Smith (tsmithlaw@earthlink.net)

Joe Solana (compliancemanager@gsaudits.com)

Stanley K. Stoll (sstoll@blackburn-stoll.com)

Kendra Thomas (kthomas@kfrservices.com)

Bruce H. Todd (btodd@stratanetworks.com)

Heidi Toth (htoath@heraldextra.com)

James H. Woody (jwoody@union-tel.com)

John Woody (jwoody@union-tel.com)

Union Telephone Company

Patricia Schmid (pschmid@utah.gov)

Justin Jetter (jjetter@utah.gov)

Utah Assistant Attorneys General

By Hand Delivery

Division of Public Utilities
160 East 300 South, 4th Flr.
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Flr.
Salt Lake City, Utah 84111

Administrative Assistant