

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 6, 2007

IN RE:

JOINT APPLICATION OF LEVEL 3
COMMUNICATIONS, INC., BROADWING
CORPORATION AND BROADWING
COMMUNICATIONS, LLC FOR APPROVAL
FOR THE TRANSFER OF CONTROL OF
BROADWING COMMUNICATIONS, LLC AND
RELATED TRANSACTIONS, INCLUDING THE
PARTICIPATION OF BROADWING
COMMUNICATIONS, LLC IN CERTAIN FINANCING
ARRANGEMENTS OF LEVEL 3 FINANCING, INC.

DOCKET NO.
06-00261

ORDER APPROVING TRANSFER OF AUTHORITY
AND FINANCING TRANSACTION

This matter came before Director Eddie Roberson, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 4, 2006 for consideration of the *Joint Application* of Level 3 Communications, Inc. ("Level 3"), Broadwing Corporations ("Broadwing Parent") and Broadwing Communications, LLC. ("Broadwing") (collectively "Applicants"), requesting Authority approval to consummate a transfer of authority transaction pursuant to Tenn. Code Ann. § 65-4-112 (2004) and to enter into certain financing transactions pursuant to Tenn. Code Ann. § 65-4-109 (2004).

The Joint Application

Through its wholly-owned indirect subsidiaries, Level 3 provides voice and data services to carriers, ISPs, and other businesses over its IP-based network. Level 3's subsidiaries include Level 3

Communications, LLC (“Level 3 LLC”),¹ WilTel Communications, LLC,² WilTel Local Network, LLC, and WilTel Communications of Virginia, Inc., Progress Telecom, LLC, Looking Glass Networks, Inc., Looking Glass Networks of Virginia, Inc., ICG Telecom Group, Inc. and various TelCove operating subsidiaries (collectively, the “Level 3-Ops”).³

Broadwing, an indirect subsidiary of Broadwing Parent, is authorized to provide telecommunications service in all fifty states and the District of Columbia, and is authorized to provide local exchange telecommunications services in nineteen states and the District of Columbia.⁴ Broadwing has approximately 1,085 customers located in Tennessee. Broadwing Parent, through its subsidiaries, provides data, Internet, broadband transport and voice communications services to small and large enterprise customers and other communications service providers over a nationwide facilities-based network.

The *Joint Application* filed on October 17, 2006 requests approval to consummate a transaction whereby Level 3 will acquire indirect control of Broadwing. The Applicants further request approval of related financing transactions including the participation of Broadwing in certain

¹ In Tennessee, Level 3 LLC is authorized to provide facilities-based and resold local exchange telecommunications services pursuant to a certificate of Public Convenience and Necessity (“CCN”) granted by the Authority in Docket No. 98-00610 on November 24, 1998. The authorization was amended on June 28, 2002 in Docket No. 02-00230, in which the Authority granted Level 3 LLC statewide authority to provide telecommunications services in areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in service.

² WilTel Communications, LLC is authorized to provide resold and facilities-based local exchange, interexchange and exchange access telecommunications services pursuant to a CCN granted by the Authority in Docket No. 99-00398 on October 13, 1999. It was granted a CCN to provide service as a reseller and operator service provider on April 6, 1999 in Docket No. 99-00034. The CCN's were originally granted to Williams Communications, Inc. d/b/a Vyxx, Inc. On February 27, 2001 the Authority approved the name change to WilTel Communications, LLC d/b/a Vyxx, Inc. The Authority approved the name change to WilTel Communications, LLC on July 28, 2005 in Docket No. 04-00448.

³ The Level-3 Ops 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. TelCove Operations, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Authority approval in Docket No. 98-00732 as amended by Docket Nos. 00-00271 and 03-00458. TelCove of Nashville, L.P. is authorized to provide resold local and interexchange telecommunications services pursuant to Authority approval in Docket No. 94-00661 as amended by Docket Nos. 00-00958 and 03-00458.

⁴ In Tennessee, Broadwing is authorized to provide telecommunications services pursuant to a CCN granted by the Authority in Docket No. 03-00240. The authorization was originally granted to C III Communications Operations, LLC, which changed its name to Broadwing. This name change was granted by the Authority on January 26, 2004 in Docket No. 03-00559. Broadwing is authorized to provide interstate and international communications pursuant to Section 214 authorization granted by the Federal Communications Commission.

existing financing arrangements of Level 3 Financing, Inc. (“Level 3 Financing”). The *Joint Application* states that although the proposed transaction will result in a change of ownership of Broadwing, no transfer of assets or customers will occur. Broadwing will continue to provide service to its Tennessee customers pursuant to existing authorizations, under the same rates, terms and conditions. The transfer will be transparent to the customers of Broadwing.

On October 16, 2006, Broadwing Parent, Level 3, and Level 3’s wholly-owned subsidiary, Level 3 Services, LLC (“Level 3-Services”), entered into an Agreement and Plan of Merger (the “Agreement”) to allow Broadwing to merge with and into Level 3-Services as described herein. As a result, control of Broadwing will be transferred to Level 3. Level 3 LLC will acquire Broadwing in a multi-step transaction, with all steps occurring in immediate succession on the day of consummation, ultimately resulting in Level 3-Services and Broadwing becoming wholly-owned subsidiaries of Level 3 LLC. First, Broadwing Parent will merge with Level 3-Services, with Level 3-Services surviving. Next, Level 3 will contribute all of the membership interest in Level 3-Services to Level 3 Financing, another wholly-owned subsidiary of Level 3. Then, Level 3 Financing will contribute all of the membership interest in Level 3-Services to Level 3 LLC.⁵ Following the completion of these three steps, Level 3-Services will be a direct subsidiary of Level 3 LLC, and Broadwing will be an indirect subsidiary of Level 3 LLC. Following the consummation of this transaction, Broadwing will continue to operate its facilities and provide service to its customers under the same rates, terms and conditions, ensuring a seamless transition for those customers. The Applicants request authority for the transfer of authority of Broadwing to Level 3 LLC as well as any necessary authority for the *pro forma* changes that occur to Broadwing as a result of the transaction steps outlined above.⁶

⁵ Level 3’s principal, indirect operating subsidiary in the United States.

⁶ After signing the Agreement and prior to closing, the minority interest in C III Communications, LLC (“CIII”) will be extinguished by (1) a merger between CIII and a merger subsidiary of Broadwing Communications Holdings, Inc., with CIII surviving or (2) the purchase of the minority interest by Broadwing Parent.

Upon closing, Broadwing will be required to provide a guaranty for the existing indebtedness of Level 3 Financing, including, (1) an offering of 10.75% Senior Notes due in 2011 in the aggregate principal amount of \$500 million; (2) a \$730 million senior secured term loan that will mature in 2011 and has an interest rate of LIBOR plus an applicable margin of 300 basis points (the “Credit Agreement”); and (3) \$150 million of floating rate Senior Notes due in 2011 and \$550 million of 12.25% Senior Notes due in 2013. Level 3 intends to use a portion of the funds from these financing arrangements to repay existing indebtedness and to fund the cash purchase of certain Level 3-Ops. In addition, Broadwing will pledge its assets as security for the guaranty.

The *Joint Application* states that Level 3 has the technical, managerial and financial qualifications to acquire control of Broadwing. Through its operating subsidiaries, Level 3 is a global communications company, operating one of the world’s newest and most advanced telecommunications platforms. The *Joint Application* states that Level 3 is operated by a highly qualified management team, all of whom have extensive backgrounds in telecommunications.

The Applicants assert that the transaction will serve the public interest by providing Broadwing with access to Level 3’s substantial technical and management expertise, financial resources, and complimentary suite of services; in addition, it will enable Broadwing’s customers to benefit from Level 3’s national network and broad suite of IP-based services. These benefits are expected to strengthen Broadwing’s ability to expand its offerings and provide more advanced telecommunications services to a broader customer base in Tennessee. Additionally, the merger will enable both Broadwing and Level 3 to strengthen their competitive positions to the benefit of Tennessee customers and the telecommunications marketplace.

The December 4, 2006 Authority Conference

Tenn. Code Ann. § 65-4-112 (2004) requires that public utilities obtain TRA approval before merging or consolidating property, rights or franchises with utilities of like character holding a CCN in the State of Tennessee. Tenn. Code Ann. § 65-4-112(a) (2004) provides:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Regarding the financing transaction, Tenn. Code Ann. § 65-4-109 (2004) states:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At a regularly scheduled Authority Conference held on December 4, 2006, the panel voted unanimously to approve the *Joint Application* and made the following findings:⁷

1. The transfer of authority is reviewed by the Authority pursuant to Tenn. Code Ann. § 65-4-112 (2004);
2. Upon completion of the transfer of authority, Broadwing customers will continue to receive the same services from the same provider under the same rates, terms, and conditions as they received prior to the transfer, and customer notice is not required;
3. The proposed financing transaction is subject to approval pursuant to Tenn. Code Ann. § 65-4-109 (2004);
4. The proposed transaction is being made in accordance with the laws enforceable by the Authority; and

⁷ In addition to his concurrence with the panel decision, Director Jones adopted the additional findings that have been previously identified in Docket No. 06-00240 and are as follows:


1. The proposed financing transaction is expected to affect the Tennessee assets of a Tennessee certificated entity;
2. The applicants have filed similar petitions or notices in other states;
3. Tennessee has a legitimate interest in monitoring the integrity of the competitive marketplace, which includes obtaining information on the financial transactions and fitness of certificated telecommunications carriers; and
4. The burden of compliance with Tenn. Code Ann. § 65-4-109 (2004) is minimal, as such compliance should be perfunctory, given the telecommunications industry's movement to a competitive environment.

5. The proposed transfer of authority and financing transaction are in the public interest.

IT IS THEREFORE ORDERED THAT:

1. Level 3 Communications, Inc., Broadwing Corporations and Broadwing Communications, LLC. are authorized to enter into the transfer of authority and financing transactions as described in the *Joint Application* and discussed herein.

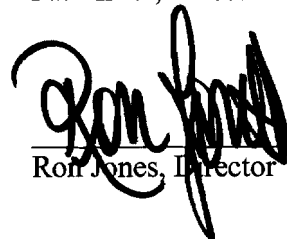
2. The authorization and approval given hereby shall not be used by any party, including, but not limited to, any lending party, for the purpose of inferring an analysis or assessment of the risk involved to a purchaser has been performed. Nothing contained herein creates or is intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof for the transactions approved herein.



Eddie Roberson, Director



Pat Miller, Director



Ron Jones, Director