

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LEVEL 3 COMMUNICATIONS, LLC,)
BROADWING COMMUNICATIONS, LLC, and)
WITEL COMMUNICATIONS, LLC)
For Approval to Participate in a)
Financing Arrangement.)
_____)

DOCKET NO. 2009-0080

DECISION AND ORDER

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DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

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FILED

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OF THE STATE OF HAWAII

In the Matter of the Application of)	
LEVEL 3 COMMUNICATIONS, LLC,)	
BROADWING COMMUNICATIONS, LLC, and)	Docket No. 2009-0080
WILTEL COMMUNICATIONS, LLC)	
For Approval to Participate in a)	
Financing Arrangement.)	
_____)	

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a), 269-17, and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to the request by LEVEL 3 COMMUNICATIONS, LLC ("Level 3"), BROADWING COMMUNICATIONS, LLC ("Broadwing"), and WILTEL COMMUNICATIONS, LLC ("WilTel") (collectively, "Applicants") to participate in a financing arrangement.

I.

Background

A.

Description of Applicants

Level 3 is a Delaware limited liability company, presently authorized to provide facilities-based and resold

telecommunications services in the State of Hawaii ("State").¹ It is a wholly owned subsidiary of Level 3 Financing, Inc. ("Level 3 Financing"), which in turn is a wholly owned subsidiary of Level 3 Communications, Inc.²

Broadwing is authorized to provide interexchange telecommunication services in Hawaii.³ It is a subsidiary of Level 3.⁴

WilTel has authority to provide intrastate resold interexchange telecommunications services in Hawaii.⁵ It is a wholly owned subsidiary of Level 3 and the corporate parent of WilTel-Comm.⁶

¹See In re Level 3 Communications, LLC, Docket No. 99-0049, Decision and Order No. 17053, filed on June 29, 1999.

²See Applicants' application filed on April 6, 2009, at 2.

³See In re Broadwing Communications, LLC, Docket No. 03-0359 Decision and Order No. 20756, filed on January 13, 2004.

⁴See In re Level 3 Communications, LLC, Broadwing Communications, LLC, and WilTel Communications, LLC, Docket No. 2007-0046, Decision and Order No. 23386, filed on April 26, 2007 ("Decision and Order No. 23386") at 2.

⁵See In re Williams Communications, Inc., Docket No. 99-0052, Decision and Order 17092, filed on July 22, 1999. By letter filed on November 18, 2002, the commission was informed of Williams Communications, Inc.'s name change to WilTel, effective January 29, 2003.

⁶See Decision and Order No. 23386 at 2.

B.

Application

On April 6, 2009, Applicants filed an application ("Application")⁷ seeking commission approval pursuant to HRS §§ 269-17 and 269-19, and other regulations deemed applicable, to incur additional debt obligations of up to \$500 million and to secure the debt by liens on Applicants' assets. Applicants represent that Level 3 Financing, Level 3's immediate corporate parent, anticipates that the financing arrangement will involve additional long-term loans under the accordion provision of the existing Credit Facility that was approved by the commission in Decision and Order No. 23386 (hereinafter "2007 Financing").⁸

Specifically, Applicants are seeking approval to participate in a financing arrangement whereby they will incur additional debt obligations of up to 1.5 times the approximate operating income of Level 3 Financing and its subsidiaries. Based on that formula, Applicants state that they will raise an

⁷Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

⁸According to Applicants, the 2007 Financing documents incorporated an "accordion" provision that enables Level 3 Financing to obtain additional debt funding as its operating income grows. Under the approved agreement, Level 3 Financing is able to borrow the greater of \$1.4 billion or the dollar amount that results from an approximation of the operating income of the business as defined in the Credit Facility being multiplied by 1.5. See Application at 1-2 n.2.

additional \$220 million.⁹ In addition to the \$220 million, Applicants seek approval to engage in further borrowing up to an additional \$280 million as allowed under the provisions of the 2007 Financing for a total of an additional \$500 million. According to Applicants, the accordion provision of the 2007 Financing allows Level 3 Financing to increase the amount of debt based on a modified version of its earnings before interest, taxes, depreciation, and amortization.

Applicants state that they will act as co-borrowers or guarantors of Level 3 Financing's debt and pledge their assets. "Consistent with the terms of the approved 2007 Financing, Applicants will grant a security interest in their assets and their capital stock or membership interests will be pledged."¹⁰ Applicants note that all of the jurisdictional assets, capital stock and/or membership interests were pledged in the 2007 Financing. Applicants represent that the funds from the proposed financing may be used for working capital and for other general corporate purposes, including debt repurchases. In addition, Applicants state that proceeds from the increased borrowing will be advanced to Level 3 in exchange for an intercompany demand note.

⁹Level 3 Financing anticipates that it will receive approximately \$215 million, after fees, expenses and discounts, as proceeds from the immediate \$220 million borrowing.

¹⁰See Application at 5.

Thus, Applicants seek in their Application, commission approval of the proposed financing arrangement, the related guarantee, and pledge of assets, as described above and set forth in the Application (collectively "Proposed Financial Transactions").

Applicants represent that the Proposed Financial Transactions are consistent with the public interest and will not result in a change in Applicants' management or in their day-to-day operations in Hawaii; nor will it adversely affect Applicants' current or proposed operations in Hawaii. According to Applicants, the Proposed Financial Transactions will "enable Applicants to bring services to new markets and allow more consumers to benefit from its competitive services more quickly and efficiently."¹¹

C.

Consumer Advocate's Statement of Position

On April 28, 2009, the Consumer Advocate submitted its Statement of Position informing the commission that it will not be participating in this proceeding.¹²

¹¹Id.

¹²The Consumer Advocate notes in its statement that its position to not participate in this docket should not be construed as either accepting, supporting, or adopting any of the positions proposed, justifications offered, or requested relief articulated in the Application.

II.

Discussion

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, the commission finds, at this time, that the telecommunications services currently provided by Applicants are fully competitive, and that Applicants are non-dominant carriers in Hawaii. The commission also finds that the Proposed Financial Transactions are consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the requirements of HRS §§ 269-7(a), 269-17, and 269-19, to the extent applicable, should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.¹³ This decision is consistent

¹³The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a), 269-17, and 269-19 should be waived. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

with the commission's determination with respect to the 2007 Financing.¹⁴

Similarly, based on the findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Application fails to meet any of these filing requirements.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financial Transactions, described in the Application filed on April 6, 2009.

2. To the extent that the Application does not fully comply with the filing requirements of HAR chapter 6-61, those requirements, including HAR §§ 6-61-101 and 6-61-105, are also waived.

3. This docket is closed unless otherwise ordered by the commission.

¹⁴See Decision and Order No. 23386 at 8.

DONE at Honolulu, Hawaii MAY 26 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Ji Sook Kim
Commission Counsel

2009-00800.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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