BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the 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 Existing Financing
Arrangements of Level 3 Financing, Inc.

DOCKET NO. 2006-0417

DECISION AND ORDER NO. 23103

Filed Dec. 4, 2006
At 12 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the 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 Existing Financing Arrangements of Level 3 Financing, Inc.

Docket No. 2006-0417
Decision and Order No. 23103

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 LEVEL 3 COMMUNICATIONS, INC. ("Level 3"), BROADWING CORPORATION ("Broadwing Parent"), and BROADWING COMMUNICATIONS, LLC’s ("Broadwing") (collectively, "Applicants") request to approve certain transactions that would 1) allow Level 3 to acquire indirect control of Broadwing, a provider of telecommunications services in the State of Hawaii; and 2) allow Broadwing to participate in certain financing transactions of Level 3 Financing, Inc. ("Level 3 Financing") (collectively, "Proposed Transactions").
I. 

Background

A. 

Description of Subject Entities

Broadwing is a Delaware limited liability company ("Broadwing") and is presently authorized to provide resold telecommunications services in the State of Hawaii. It is an indirect subsidiary of Broadwing Parent, a Delaware corporation, with its principal place of business in Austin, Texas.

Level 3 is publicly traded Delaware corporation with its principal offices in Broomfield, Colorado. Through its wholly owned subsidiaries, Level 3 provides high quality voice and data services to carriers, ISPs, and other business customers over its IP-based network.

B. 

Application

On October 19, 2006, Applicants filed a joint petition ("Application") seeking expedited commission approval of the Proposed Transactions, pursuant to HRS §§ 269-17 and 269-19. 

---

1Broadwing received its Certificate of Authority by Decision and Order No. 20756, filed on January 13, 2004, in Docket No. 03-0359.

2Among Level 3's indirect subsidiaries are Level 3 Communications, LLC, which is authorized to provide facilities-based and resold intrastate telecommunications services in Hawaii, and WilTel Communications, LLC, which is authorized to provide intrastate resold interexchange telecommunications services in the State of Hawaii.

3Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
According to Applicants, pursuant to an Agreement and Plan of Merger dated October 16, 2006, between Broadwing Parent, Level 3 and Level 3's wholly owned subsidiary, Level 3 Services, LLC ("Level 3 Services"), Broadwing Parent will merge with and into Level 3 Services, which will result in control of Broadwing being transferred to Level 3, as further described in the Application. In addition, at closing, Broadwing will be required to provide a guaranty for existing indebtedness of Level 3 Financing and will also pledge its assets as security for the guaranty, as further described in the Application.

Applicants state that the Proposed Transactions will provide Broadwing with access to Level 3's substantial technical and management expertise, financial resources and complementary suite of services, which will strengthen Broadwing's ability to expand its offerings and provide more advanced telecommunications services to a broader customer base in Hawaii. According to Applicants, the Proposed Transactions will be transparent to Broadwing's customers and will not result in a change of carrier or an immediate change in rates, terms or conditions of service.

Applicants request approval of the Proposed Transactions no later than December 15, 2006, for business, tax and financial reasons.

CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.
C. Consumer Advocate’s Statement of Position

On November 16, 2006, the Consumer Advocate filed its statement of position in which it states that it does not object to commission approval of the Proposed Transactions. In the alternative, the Consumer Advocate recommends that the commission, on its in motion, waive the approval requirements of HRS § 269-19, pursuant to HRS § 269-16.9 and HAR § 6-80-135.

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, we find, at this time, that Broadwing is a non-dominant carrier in the State. We also find that the Proposed 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 should be waived, to the extent applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135. Similarly, based on these findings and conclusions stated above, we 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 Transactions, described in the Application filed on October 19, 2006.

2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

The Consumer Advocate argued in its Statement of Position that HRS § 269-17 was not applicable to the Proposed Transactions. As the commission has found that a waiver is appropriate, it need not determine the applicability of HRS § 269-17.

The 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 or 269-19 should be waived. Thus, our waiver in this instance 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.
DONE at Honolulu, Hawaii       DEC - 4 2006

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso, Chairman

By John E. Cole, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Commission Counsel
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23103 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI   96809

JUDY TANAKA  
PAUL JOHNSON PARK & NILES  
ASB Tower, Suite 1300  
1001 Bishop Street  
PO Box 4438  
Honolulu, HI  96812

Counsel for LEVEL 3 COMMUNICATIONS, INC.

WILLIAM P. HUNT, III  
VICE PRESIDENT OF PUBLIC POLICY  
LEVEL 3 COMMUNICATIONS, INC.  
1025 Eldorado Boulevard  
Broomfield, CO   80021

CATHERINE WANG  
BRETT P. FERENCHAK  
BINGHAM McCUTCHEN LP  
3000 K Street, NW, Suite 300  
Washington DC   20007-5116

Counsel for BROADWING CORPORATION and BROADWING COMMUNICATIONS, LLC

LAWRENCE E. STRICKLING  
CHIEF REGULATORY OFFICER  
BROADWING COMMUNICATIONS, LLC  
200 North LaSalle Street, Suite 1000  
Chicago, IL   60601

DATED:   DEC - 4 2006  

Karen Higashi