

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Applications of
Broadwing Communications, LLC (U5525C);
Global Crossing Local Services, Inc.
(U5685C); Global Crossing
Telecommunications, Inc. (U5005C); IP
Networks, Inc. (U6362C); Level 3
Communications, LLC (U5941C); Level 3
Telecom of California, LP (U5358C); WilTel
Communications, LLC (U6146C); and Level
3 Communications, Inc., a Delaware
Corporation; and CenturyLink, Inc., a
Louisiana Corporation, for Approval of
Transfer of Control of the Level 3 Operating
Entities Pursuant to California Public Utilities
Code Section 854(a).

Application 17-03-016
(Filed March 22, 2017)

**PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES,
THE UTILITY REFORM NETWORK, AND THE GREENLINING
INSTITUTE TO APPLICATION 17-03-016**

CANDACE CHOE
Attorney for
The Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

CHRISTINE MAILLOUX
Attorney for
The Utility Reform Network
1620 Fifth Avenue, Suite 810
San Diego, CA 92101

PAUL GOODMAN
Senior Legal Counsel for
VINHCENT LE
Legal Fellow for
The Greenlining Institute
360 14th Street, 2nd Floor
Oakland, CA 94612

May 5, 2017

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), and The Greenlining Institute (Greenlining) (collectively, Joint Consumer Groups), file this protest to the Joint Application (Application) of Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., IP Networks, Inc., Level 3 Communications, LLC, Level 3 Telecom of California, LP, and WilTel Communications, LLC (collectively the Level 3 Operating Entities); CenturyLink, Inc. (CenturyLink); and Level 3 Communications, Inc. (Level 3) (collectively, the Joint Applicants). The Joint Applicants seek Commission approval to transfer control of Level 3 Operating Entities to CenturyLink (Proposed Transaction). As further discussed below, based on the information provided in the Application, the Proposed Transaction does not appear to be in the public interest. On its face, the Application claims only to impact the transfer of licenses among the Joint Applicants with no impact to day-to-day operations. However, the Proposed Transaction would make CenturyLink one of the largest providers of enterprise and backhaul services in California. The Joint Applicants, particularly the Level 3 Operating Entities, have a strong presence in California with an extensive network, significant infrastructure, and a large number of enterprise and wholesale customers. The Commission should review the Proposed Transaction and consider its effects on safety, reliability, network infrastructure, investment, and competition. This transaction will have a direct and significant impact on the availability of backhaul and other wholesale services that are critically important to ensuring a robust marketplace for broadband services as well as many other offerings that ultimately impact all California consumers.

II. SUMMARY OF RECOMMENDATIONS

In reviewing the Application, the Commission must determine that the Proposed Transaction is in the public interest. The Joint Applicants do not provide sufficient information or detail in their Application to meet their burden of proof regarding the public interest and the benefits of the Proposed Transaction. The Joint Applicants claim that this transaction will generate \$975 million in cash synergies.¹ However, the Joint Applicants make no attempt to demonstrate California-specific benefits for ratepayers. The Joint Applicants must make concrete California-specific commitments related to network infrastructure investments in the state; service quality and reliability; consumer protections, including pricing of services; and jobs. As discussed below, this Commission must use the criteria as set forth in the Public Utilities Code, such as the impact on competition, economic benefits, jobs, and service quality, to analyze the Proposed Transaction and ensure that it is in the public interest. Therefore, the Commission should require the Joint Applicants to amend the Application to include these commitments before determining whether the merger is in the public interest.

III. DISCUSSION

A. Jurisdiction

The Joint Applicants filed their Application pursuant to Public Utilities (P.U.) Code § 854(a).² However, despite the fact that the two parties to the transaction do not meet the specific revenue threshold limits, the Commission has the authority to perform a public interest analysis using § 854 (b) and (c), and has done so in the past.³ Level 3 and CenturyLink offer wholesale Internet access, voice services, and backhaul transport to many types of carriers, including telecommunication providers, Wireless Internet Service

¹ Application at p. 19, citing the FCC Public Interest Statement in support of benefits from this transaction. At page B-14, companies point to “about \$975 million of annual run-rate cash synergies.”

² All statutory references are to the Public Utilities Code.

³ Interim Opinion Approving, with Conditions, Transfer of Indirect Control and Authorizing, With Conditions, Exemption from Public Utilities Code Section 852 For Some Investors in Knight Holdco, D.07-05-061, (A.06-09-016, et al., filed, September 18, 2006), p. 24.

Providers (WISPs) and wireless telephone providers which raises concerns regarding the protection of consumer interests and of the interests of other market participants. §854(a) requires the Commission to determine that an acquisition/merger is within the public interest and that even “where §854 (b) and (c) do not expressly apply to a transaction, the Commission has used the criteria set forth in those statutes to provide context for a public interest assessment.”⁴ Additionally, the Commission should and, in fact, is required pursuant to § 854(b)(3) to consider whether this transaction will have an adverse impact on competition in the California marketplace and whether the transaction raises antitrust concerns, because “antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy.”⁵ Due to the concerns raised by this Proposed Transaction, the Commission must require the Joint Applicants to submit more information demonstrating California-specific benefits and commitments so that the Commission can assess whether the Proposed Transaction is in the public interest.

B. The Application Does Not Provide Sufficient, Detailed Information to Establish Whether the Proposed Merger is in the Public Interest

To approve the Joint Application, the Commission has a responsibility to find that the Proposed Transaction is in the public interest. To do so, the Commission must consider and review the effects that the Proposed Transaction will have on competition, service quality and reliability, network infrastructure investment, consumer protections, and California jobs. Without concrete California-specific commitments, the record will not support, and the Commission cannot find, that the Proposed Transaction will be in the public interest. The Applicants have not met their burden pursuant to § 854(e) because the Application does not provide enough information for the Commission to analyze these issues and determine whether the public interest standard will be met. Instead, the

⁴ Interim Opinion Approving, with Conditions, Transfer of Indirect Control and Authorizing, With Conditions, Exemption from Public Utilities Code Section 852 For Some Investors in Knight Holdco (D.07-05-061), September 18, 2006, p. 24.

⁵ Northern California Power Agency v. Public Utilities Commission (1971) 5 Cal.3d 370, 377.

Joint Applicants repeatedly assure the Commission that the transaction will not impact the operations of the affiliated entities here in California and, thus, the transaction will do no harm, be “transparent” to customers, and maintain the Commission’s regulatory authority over the companies.⁶ However, merely finding a lack of harm is not sufficient to ensure that this transaction is in the public interest and will provide benefits to California consumers. Moreover, it appears from the Application’s attempts to proffer benefits from this transaction, that this merger will indeed change the way both companies conduct business in California.⁷ The merged entity must make some changes in the way they do business to generate the claimed synergies as set forth in their Advice Letter.⁸ The Application tries to make cost savings claims with unsupported statements regarding their ability to rely less on leased fiber and increased access to capital; however, such cost savings could just as easily come through elimination of jobs, throttling network infrastructure investment (expansion and deployment), or limiting maintenance. The Commission must investigate these issues and obtain Joint Applicants’ written assurance that, on balance, California consumers will be better off as a result of this merger.

Except for a “do no harm” analysis, the Joint Applicants do not point to any California-specific benefits in the areas identified above. For example, the Application states that, “there will be no negative effect on service quality because CenturyLink and Level 3’s enterprise and wholesale customers are sophisticated customers who typically demand network reliability assurances via contract.”⁹ However, the Joint Applicants provide no details or metrics on either company’s current service quality record or how the merger might impact maintenance and operational practices of either company. Nor do they make any specific commitment to improve service in areas that may be

⁶ Application 17-03-016, p. 3.

⁷ *Id.*, p. 17, noting that Level 3 will “have access to” operational and managerial resources of CenturyLink and the companies can share best practices; p. 18, companies will be “combining their financial and technical resources,” integrate operations and coordinate network planning and engineering.

⁸ Joint Applicants Advice Letter No. 591, January 17, 2017, p. 8.

⁹ *Id.*, p. 17.

experiencing outages or service degradations. Without this information, the Commission cannot ensure that customers will receive, or even currently receive, adequate service quality.

Furthermore, the Application states that the “proposed transfer of control will benefit California and enhance competition in the California middle mile market.”¹⁰ However, no data or analyses are provided to support these claims. Recognizing that wholesale and middle mile services have a direct impact on wireless and last mile residential and small business customers,¹¹ the Commission should perform a detailed assessment of the Proposed Transaction to better understand the benefits of this transaction. The Joint Applicants provide wholesale Internet access and backhaul services that provide essential middle mile connections that enable other providers to connect residential and mobile customers to the Internet or the Public Switched Telephone Network.¹² Therefore, the Commission must confirm the Proposed Transaction does not increase the potential for barriers to wholesale access. The Joint Applicants’ facilities extend to many parts of this large and geographically diverse state. The Commission should ensure that the benefits put forth by Joint Applicants are concrete and fairly distributed. This is especially the case because competition in wholesale access (network availability, price of transport service, level of quality, etc.) could spur other companies to enter the market and offer residential and small business broadband services at more competitive prices.¹³

Additionally, the Application does not include information on further deployment of network infrastructure in California through investment in infrastructure that would benefit unserved/underserved communities (e.g. rural communities, tribal lands). Network infrastructure investments bring important economic opportunities to areas that

¹⁰ *Id.*, p. 18.

¹¹ Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring, and Reporting on the Market (D.16-12-025), December 8, 2016, pp. 98, 103-104.

¹² Level 3, Wholesale Voice, <http://www.level3.com/en/resource-library/br-wholesale-voice-overview/>

¹³ [D.16-12-025](#), pp. 3, 36-37.

are at risk of being on the wrong side of the digital divide and these investments address important public safety concerns, such as the ability to reach 911 in the event of a natural disaster.¹⁴ The Commission is currently looking into intrastate rural call completion issues, and this Proposed Transaction presents an opportunity for the Commission to ensure the Joint Applicants are maintaining a robust network that can handle serious public safety issues.¹⁵ The Commission should review this transaction to ensure that the Joint Applicants will offer services that are beneficial to state and local economies through opportunities for connection to rural communities.

The Commission must require the Joint Applicants to make California-specific commitments to ensure tangible public benefits to California’s telecommunications market. The Application cites no California-specific benefits or commitments and instead, points to a Public Interest Statement filed at the national level with the Federal Communications Commission (FCC).¹⁶

The Application also states that, “both companies will continue to make significant capital investments in the state as they have done for years.”¹⁷ This is a vague statement and contrasts with CenturyLink’s previously stated plans to spend approximately \$400 million less on capital expenditures nationwide as a result of the Proposed Transaction.¹⁸ The Commission can ensure that California is not negatively

¹⁴ D.16-12-025, p. 143, “Not all customer segments appear to benefit on the same scale from the technological advances described above. Rural customers in particular stand out as not receiving the same service.”

¹⁵ Docket I.14-05-012, Order Instituting Investigation to Address Intrastate Rural Call Completion Issues.

¹⁶ Application 17-03-016, p. 19.

¹⁷ *Ibid.*

¹⁸ [CenturyLink plans to spend \\$400M less in 2017 capex, expects Level 3 network synergies](http://www.fiercetelecom.com/telecom/centurylink-plans-to-spend-400m-less-2017-capex-expects-level-3-network-synergies?utm_medium=nl&utm_source=internal&mrkid=4539002&mkt_tok=eyJpIjoiTkRjd11XTXpORE0xWmpjdyIsInQiOiJXZHB5NGREcTM1XC95YkFSTXNBMXV6aG9rZm5uRVhwWk5MT2dRdVRJdmVUa0U4dGNwd1dKd3NGMTI0OCsxanNCWUNldURmbCt3ZDFrMDhq0dnelpZaWFta0ZZbXV2N2tIS09mTHYrRkpERmMwUkthOXR1WDJEOUV0MkpwVFVwSIYifQ%3D%3D) Fierce Telecom, Sean Buckley, March 8, 2017, last retrieved May 4, 2017, http://www.fiercetelecom.com/telecom/centurylink-plans-to-spend-400m-less-2017-capex-expects-level-3-network-synergies?utm_medium=nl&utm_source=internal&mrkid=4539002&mkt_tok=eyJpIjoiTkRjd11XTXpORE0xWmpjdyIsInQiOiJXZHB5NGREcTM1XC95YkFSTXNBMXV6aG9rZm5uRVhwWk5MT2dRdVRJdmVUa0U4dGNwd1dKd3NGMTI0OCsxanNCWUNldURmbCt3ZDFrMDhq0dnelpZaWFta0ZZbXV2N2tIS09mTHYrRkpERmMwUkthOXR1WDJEOUV0MkpwVFVwSIYifQ%3D%3D

impacted by the Proposed Transaction by, at a minimum, obtaining California-specific commitments, including, but not limited to the following:

- a. **Network infrastructure investment:** The Joint Applicants should commit to investing a certain amount of money in network infrastructure to benefit local economies, including unserved/underserved communities. The Joint Applicants should also commit to building out middle mile infrastructure and more Points of Presence in their middle mile infrastructure that would benefit unserved/underserved communities, including communities of color, along their existing network to ensure that the merger is providing concrete “short-term and long term economic benefits to ratepayers.”¹⁹
- b. **Service quality commitments:** The Joint Applicants should provide more detail in the NORS outage reports that they currently file with the Commission. The Commission should review lower reporting thresholds for the outage data of these two companies. Additionally, for both the transport functions and user minutes, the Commission should consider a lower threshold than what is currently required by the FCC. The threshold could differ for rural parts of the state if necessary. Moreover, these companies should commit to an outage notification process at meaningful thresholds, including specific timeframes for outage notices to customers and local emergency officials of affected communities. If the customer is a wholesale company, then the Commission should require both companies to coordinate the outage notices to ensure all affected customers are informed.
- c. **Price commitments:** The Joint Applicants should commit that they will continue to honor commitments for the terms of their contracts even where a change of control may allow the companies to revise the terms of these contracts, and not increase rates for their wholesale intrastate tariffs for a specific period of time.
- d. **Diversity:** The Joint Applicants should commit to take efforts to increase their executive, workforce, and supplier diversity to accurately reflect the growing diversity of California.
- e. **California Employees:** The Joint Applicants should commit to no net job losses in California.

¹⁹ § 854 (b)(1) and (c)(6).

Finally, the Joint Applicants fail to address a critical public policy matter before the Commission. § 854 (b) requires the Commission to find that this transaction will not adversely affect competition. The Application suggests that the Level 3 Operating Entities and CenturyLink will continue to market and offer their wholesale and enterprise services as separate entities in California.²⁰ However, CenturyLink is an incumbent local exchange carrier in many parts of the country. As this Commission has recognized, competitive carriers often accuse incumbent local exchange carriers of anticompetitive behavior and unfair business practices over their wholesale services.²¹ By eliminating Level 3 as a potential competitor in the market for wholesale and enterprise services, the Commission may indirectly increase rates for wholesale services and place additional barriers on competitors that remain in the marketplace. The Joint Applicants make no attempt to address how this merger will impact the long-term business plans and practices of Level 3 and CenturyLink in its competition with incumbent carriers like AT&T and Frontier. The Commission should require further assurances that Level 3 will remain an independent competitive carrier throughout California and will continue to advocate for reasonable and fair access to wholesale inputs offered by incumbent carriers.

C. Procedural Matters

As noted previously, the Commission should require Joint Applicants to amend the Application to affirmatively address the issues raised above so that the Commission may determine whether the Proposed Transaction is in the public interest.

The Joint Applicants request expedited approval of the Application and the Joint Consumer Groups will attempt to accommodate their proposed schedule. Therefore, it is critical that the Joint Applicants commit to California-specific benefits as soon as possible. The Joint Consumer Groups have been working with the Joint Applicants in

²⁰ Application 17-03-016, p. 16.

²¹ D.16-12-025, pp. 105, 118-119, 147-148. (“It appears to us that complaints about access to interconnection and special access facilities are common among competitive carriers.” Noting testimony that some incumbent carriers not only take advantage of vertical integration to price backhaul at anticompetitive rates, but also information asymmetry regarding location of facilities, and market power in the ownership of poles and conduits.)

attempts to clearly identify California commitments, but have thus far been unsuccessful. The Joint Consumer Groups will continue to work with the Joint Applicants in such efforts.

IV. CONCLUSION

For the above reasons, the Commission must require the Joint Applicants to amend the Application to provide sufficient information, data, and analysis so that the Commission can conduct a thorough review of the Proposed Transaction. The Application must demonstrate that there will be no negative impact on competition, enhanced service quality and reliability, further investment in network infrastructure, consumer protections, and no negative impact to California jobs. Finally, it is imperative that the Commission require California-specific commitments from the Joint Applicants to ensure the Proposed Transaction is in the public interest.

Respectfully submitted,

/s/ CHRISTINE MAILLOUX

/s/ CANDACE CHOE

CHRISTINE MAILLOUX

CANDACE CHOE

Attorney for
The Utility Reform Network
1620 Fifth Avenue, Suite 810
San Diego, CA 92101
Telephone: (619) 398-3680
Email: cmailloux@turn.org

Attorney for the Office of
Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-5651
Email: candace.choe@cpuc.ca.gov

/s/ PAUL GOODMAN

PAUL GOODMAN

Senior Legal Counsel
The Greenlining Institute
360 14th Street, 2nd Floor
Oakland, CA 94612
Telephone: (510) 898-2053
Email: paulg@greenlining.org

May 5, 2017