

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of)	Application No.17-03-016
)	(Filed: March 22, 2017)
Broadwing Communications, LLC (U-5525-C);)	
Global Crossing Local Services, Inc. (U-5685-)	
C); Global Crossing Telecommunications, Inc.)	
(U-5005-C); IP Networks, Inc. (U-6362-C);)	
Level 3 Communications, LLC (U-5941-C);)	
Level 3 Telecom of California, LP (U-5358-C);)	
WilTel Communications, LLC (U-6146-C);)	
)	
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))	
_____)	

**RESPONSE BY JOINT APPLICANTS TO REQUEST FOR INFORMATION
FROM ADMINISTRATIVE LAW JUDGE**

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*On Behalf of Level 3 Communications, Inc. and
the Level 3 Operating Entities*

Dated: August 3, 2017

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*On behalf of CenturyLink, Inc. and the
CenturyLink Operating Entities*

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of)	Application No.17-03-016
)	(Filed: March 22, 2017)
Broadwing Communications, LLC (U-5525-C);)	
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**RESPONSE BY JOINT APPLICANTS TO REQUEST FOR INFORMATION FROM
ADMINISTRATIVE LAW JUDGE**

The Joint Applicants¹ hereby respond to Administrative Law Judge (“ALJ”) DeAngelis’ email ruling dated July 10, 2017 requesting information in preparation for the August 8, 2017 Pre-Hearing Conference. The Joint Applicants hope that providing this information in advance

¹ The Joint Applicants include: Broadwing Communications, LLC (U-5525-C), Global Crossing Local Services, Inc. (U-5685-C), Global Crossing Telecommunications, Inc. (U-5005-C), IP Networks, Inc. (U-6362-C), Level 3 Communications, LLC (U-5941-C), Level 3 Telecom of California, LP (U-5358-C), and WilTel Communications, LLC (U-6146-C) (collectively the “Level 3 Operating Entities”); CenturyLink, Inc., the post-merger ultimate parent of the Level 3 Operating Entities; and Level 3 Communications, Inc., the current ultimate parent of the Level 3 Operating Entities.

will facilitate discussion at the PHC and make the process for concluding this proceeding more efficient.

1. Current Status of Required Regulatory Approvals

CenturyLink and Level 3 have received approvals (or secured their equivalent) in 23 of the 25 states and territories (including the District of Columbia) which require approval or some level of review with respect to the underlying transaction.² The only two states where approval has not yet been obtained are California and New Jersey (where the merger is slated for the Board's August 23, 2017 public meeting).

The twenty-three jurisdictions where approval or the necessary clearances have been obtained include Alaska, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Indiana, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nevada, New York, Ohio, Pennsylvania, Puerto Rico, Texas, Utah, Virginia, Washington, and West Virginia.

The Joint Applicants also note that it is their understanding that the FCC/DOJ review is proceeding in a timely manner and do not expect the FCC's recent pause of the 180-day merger "shot clock" to impede this timetable. They continue to work toward securing the necessary federal regulatory approvals in time to close by the end of September 2017.

2. Deadlines for Receipt of Regulatory Approvals

The Merger Agreement explicitly establishes a termination date for the Agreement of October 31, 2017 if all conditions precedent to closing have not been satisfied or the agreement

² There is no such requirement in the remaining states, although some required Notice.

has not otherwise been extended by the Parties.³ The intent of the parties to the transaction, however, has been (and remains) to close by the end of Q3-2017; i.e., on September 30, 2017, and they have publicly and consistently made statements to that effect.⁴ Meeting this closing date requires satisfaction of all conditions precedent to effectuating the Merger, as described in the Merger Agreement. These conditions include a requirement to obtain all necessary regulatory approvals and consents.⁵

³ See Merger Agreement at Section 9.1(b) (which provides in relevant part as follows):

Section 9.1. Termination. This Agreement may be terminated and the Combination abandoned at any time prior to the Effective Time, by action taken or authorized by the Board of Directors of the terminating party or parties, and except as provided below, whether before or after approval of the matters presented in connection with the Merger by the stockholders of the Company or the shareholders of the Parent:

(b) By either the Company or Parent if the Effective Time shall not have occurred on or before October 31, 2017, (the “Termination Date”); provided, however, that if all of the conditions to Closing shall have been satisfied or shall be then capable of being satisfied, other than the conditions set forth in Sections 8.1(d) and (e), the Termination Date may be extended by Parent or the Company, by written notice to the other party, to a date not later than January 31, 2018; provided, further, that if the Termination Date is not extended pursuant to the preceding proviso, and the Marketing Period has commenced fewer than eighteen (18) Business Days prior to the original Termination Date, the Termination Date shall be automatically extended to the Business Day following the final day of the Marketing Period; provided, further, that the right to extend or terminate this Agreement under this Section 9.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the primary cause of the failure of the Effective Time to occur on or before the Termination Date and such action or failure to perform constitutes a breach of this Agreement;...

For a copy of the complete Merger Agreement, see <file:///C:/Users/lmb/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.Outlook/K6C8L2MV/Agreement%20and%20Plan%20of%20Merger%208K%20Exh%202.1.htm>

⁴ See e.g., Reply to CETF Protest at Section IV; Settlement Motion at Sections VI and VII; Joint Motion for Expedited Treatment, Joint Application at Section VII; Consolidated Reply to Protests at Section X.

⁵ See Merger Agreement at Section 8.1(e) which provides, in relevant part, as follows:

As the Joint Applicants have explained previously, delay in the closing date beyond the end of September has material negative consequences including, but not limited to, the additional accrual of substantial ticking fees⁶ and interest payments without any of the anticipated incoming revenue to offset those costs. In addition, the inability to close in a timely fashion creates business uncertainty and otherwise delays the implementation of the commitments made in the Settlement Agreement as well as those which are inherent to the merger itself for employees, customers, shareholders and vendors (e.g., the outside vendors that do the actual buildout of the network) that rely on the Joint Applicants and the markets both in California and beyond.

The September 30th target closing date was not chosen lightly. It was based on a number of factors including the expected timeframe for satisfying all conditions precedent (e.g., obtaining the necessary regulatory approvals and consents from all the jurisdictions noted above); the desirability from an accounting standpoint of closing at the end of a quarter; mitigating the accrual of financing costs without the benefit on any anticipated post-merger revenue; and the safeguard

Section 8.1. Conditions to Each Party's Obligation to Effect the Combination. The obligations of the Company, Parent, Merger Sub 1 and Merger Sub 2 to effect the Combination are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(e) FCC, CFIUS, State Regulator and other Approvals. The (i) authorizations required to be obtained from the FCC; (ii) Consents required to be obtained from the State Regulators identified on Schedule 8.1(e) of the Company Disclosure Schedule; (iii) Completion of CFIUS Process, if a notice of the Merger is provided to CFIUS in accordance with the terms of this Agreement; and (iv) Consents required to be obtained from the Governmental Entities set forth on Schedule 8.1(e) of the Company Disclosure Schedule in connection with the consummation of the Combination shall have been obtained, except, in the case of clauses (ii) and (iv), to the extent the failure to obtain such Consents would not have a Specified Material Adverse Effect or prevent Parent and its Subsidiaries from operating in the relevant jurisdiction following the Combination.

⁶ “Ticking fees” are the fees charged by lenders in exchange for their commitment to lend money.

of satisfying all the conditions precedent in advance of the Merger Agreement's Termination Date to promote the timely and orderly consummation of the merger.

3. Outstanding Prerequisites to Closing the Transaction

The Joint Applicants note that other than the pending approvals from California, New Jersey and the FCC/DOJ referenced above, all other conditions precedent to the Transaction have been satisfied.

Respectfully submitted this 3rd day of August, 2017 in San Francisco, California.

_____/s/
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