



Agenda Date: 8/12/20
Agenda Item: IVB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF) ORDER
LEVEL 3 COMMUNICATIONS, LLC FOR APPROVAL)
TO PARTICIPATE IN A FINANCING ARRANGEMENT)
) DOCKET NO. TF20060472

Parties of Record:

Colleen A. Foley, Esq., Saul Ewing Arnstein and Lehr, LLP
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On or about June 29, 2020, Level 3 Communications, LLC (“Level 3 LLC” or “Petitioner”), filed a petition pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-9 requesting approval from the New Jersey Board of Public Utilities (“Board”) to participate in a financing arrangement in connection with the issuance of \$1.2 billion aggregate principal amount of 4.250% Senior Notes due 2028 (the “Senior Notes”) by its parent company, Level 3 Financing, Inc. (“Financing”), for the intended purpose of permitting Financing to redeem \$1.2 billion aggregate principal amount of other debt. Petitioner stated that this request is a refinancing in part of transactions previously approved by the Board in 2014 and 2015.¹

Specifically, Petitioner requested approval to act as guarantor for the Senior Notes upon receipt of the required regulatory approvals, including from the Board. Additionally, Level 3 LLC has issued an intercompany demand note (the “Intercompany Demand Note”) to Financing as part of this financing. Level 3 LLC states that this action is consistent with prior financing arrangements previously approved by the Board.² Petitioner requested approval to permit the Intercompany Demand Note used in exchange for the proceeds of the Senior Notes to remain unpaid for more than 12 months from the date of issuance.

¹ Specifically, the 5.375% Senior Notes due 2022 were issued in August of 2014 and the 5.625% Senior Notes due 2023 were issued in January of 2015. The Board approved these financings in the following matters: In The Matter of The Verified Joint Petition of Level 3 Communications, Inc., et al. For Approval of The Transfer of Control and Related Financing Arrangements, BPU Docket No. TM14070710, Order (dated Sept. 30, 2014); and, In The Matter of the Verified Petition of Level 3 Communications, LLC For Approval to Participate in a Financing Arrangement, BPU Docket No. TF15020239, Order (dated Apr. 15, 2015).

² See e.g., New Jersey Board of Public Utilities, Order, Docket No. TF17111187, at 3 (Jan. 31, 2018).

BACKGROUND

Level 3 LLC is a wholly-owned subsidiary of Financing, which in turn is a subsidiary of Level 3 Parent, LLC (“Level 3 Parent”). Level 3 Parent is a Delaware limited liability company with principal offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021, and is an indirect, wholly-owned subsidiary of CenturyLink, Inc.

Level 3 LLC is a non-dominant carrier that is authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis. Level 3 LLC is also authorized by the Federal Communications Commission to provide international and domestic interstate services as a non-dominant carrier. In New Jersey, Level 3 LLC is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services throughout the State pursuant to the Board’s Order of Approval issued on October 20, 1998 in BPU Docket No. TE97120913.

Additional information concerning the Petitioner’s legal, technical, managerial and financial qualifications has been submitted to the Board with various and numerous prior submissions with respect to the Petitioner’s certifications and several prior transactions and, therefore, is a matter of public record. The Board therefore takes official notice of these descriptions of Petitioner’s qualifications and incorporates them herein by reference.

DISCUSSION

Petitioner requests Board approval to participate in a new financing arrangement (the “financing arrangement”) as addressed and described in greater detail in the Petition. Financing has issued \$1.2 billion aggregate principal amount of its Senior Notes in a private offering that was not registered under the Securities Act of 1933. Concurrently with the issuance of the Senior Notes, Financing has lent funds equal to the \$1.2 billion proceeds of the Senior Notes to Level 3 LLC in return for the Intercompany Demand Note. Petitioner states that the Intercompany Demand Note is in substantially the same form as the notes utilized for financing arrangements previously approved by the Board.³

Upon receipt of the requisite regulatory approvals pursuant to N.J.S.A. 48:3-7 and any other laws or regulations deemed applicable, Petitioner requests approval from the Board to act as guarantor of the Senior Notes, and for its equity and other assets to be pledged in support of the Senior Notes. Petitioner states that its guaranty obligations in support of the Senior Notes will not be effective until all required regulatory approvals are received, including approval from the Board.

Petitioner also requests authority from the Board, to the extent required, for the issuance of the Intercompany Demand Note to Financing pursuant to N.J.S.A. 48:3-9. Petitioner states that the

Intercompany Demand Note is payable on demand, and since it is neither indebtedness “payable later than 12 months after the date of the original instrument,” nor expressly payable within 12 months, the applicability of N.J.S.A. 48:3-9 is unclear. Petitioner states that, in an abundance of caution, it seeks Board approval pursuant to N.J.S.A. 48:3-9 in the event the Intercompany Demand Note were to remain unpaid for more than 12 months from the date of issuance.

³ See Petition, at 4.

According to the Petitioner, participation in the new financing arrangement will not result in a change in its management or in its day-to-day operations in New Jersey, nor will it adversely affect the Petitioner's current or proposed operations in New Jersey. The Petitioner also asserts that the financing arrangement will have no impact on its ability to fulfill its pension obligations.

Petitioner states that the financing arrangement will enable Financing and Level 3 Parent to take advantage of lower interest rates and more favorable maturity terms, thereby significantly reducing interest expenses. According to the Petition, the financing arrangement will provide Petitioner with the financial flexibility to maintain and expand its networks and services. Petitioner further asserts that the financing arrangement will enable it to continue delivering services to new markets, thus allowing more consumers to benefit from its competitive services.

Petitioner also states that the financing arrangement will be conducted in a manner that will be transparent to customers and will not result in a change of carrier for customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. Following completion of the financing arrangement, Petitioner asserts it will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms, or conditions.

The Division of Rate Counsel has reviewed this matter and, by letter dated July 30, 2020, stated that it does not oppose the Board's grant of the petitioned requests. Notwithstanding its lack of objection, Rate Counsel has requested that the Board impose two conditions upon its approval of the proposed financing arrangement: 1) require Petitioners to notify the Board and Rate Counsel if Petitioners effect a reduction in New Jersey jobs that is greater than fifteen percent (15%) throughout a three (3) year period post-issuance of the Board's Order; and 2) direct Petitioner to certify that the proposed financing transaction will not adversely affect or reduce New Jersey employee's existing rights in any pension/retirement benefit plan currently offered by Petitioner.

By letter dated July 31, 2020, Petitioner has expressed its objection to Rate Counsel's requested conditions and asked that the Board reject the same. In addition, Petitioner notes that it has already certified on page 4 of its Petition that the proposed financing arrangement would "have no impact on Petitioner's ability to fulfill its pension obligations to its employees..."

FINDINGS AND CONCLUSIONS

After careful review of this matter, the Board **FINDS** that the proposed financing arrangement is consistent with applicable law. With respect to the conditions proposed by Rate Counsel, the Board declines to impose them upon Petitioner in this case. As to employee pension obligations, Petitioner has already made the requisite certification in its Petition and the proposed condition is moot because it has already been satisfied. With respect to the request for notification as to a reduction in New Jersey jobs, the Board also declines to impose that condition. The Board reserves its right to impose such a condition in future cases. However, it does not see a reason to exercise that right at this time given the absence of change in control over the Petitioner as a result of the proposed financing arrangement and the representation by Petitioner that the proposed financing arrangement will merely serve to strengthen the financial position of Petitioner through the reduction of interest costs.

Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to participate in the financing arrangement as described herein and in the Petition.

This Order is issued subject to the following provisions:

1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioner.
2. Petitioner shall notify the Board, within five business days, of any material changes in the proposed financing arrangement and shall provide complete details of such changes including any anticipated effects upon service in New Jersey.
3. Petitioner shall notify the Board of any material default in the terms of the proposed financing within five business days of such occurrence.
4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing arrangement or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
5. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by the Petitioner.

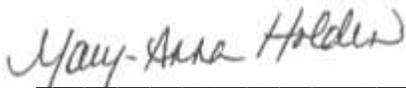
This Order shall become effective on August 22, 2020.

DATED: August 12, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



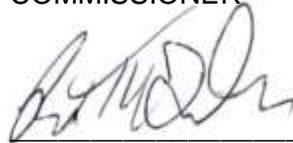
MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE VERIFIED PETITION OF LEVEL 3 COMMUNICATIONS, LLC FOR
APPROVAL TO PARTICIPATE IN A FINANCING ARRANGEMENT
DOCKET NO. TF20060472

SERVICE LIST

<p>Colleen Foley, Esq. Saul Ewing Arnstein and Lehr LLP One Riverfront Plaza, Suite 1520 1037 Raymond Blvd. Newark, NJ 07102 colleen.foley@saul.com</p> <p>Sue Benedek, Esq. Associate General Counsel CenturyLink 240 North Third Street, Suite 300 Harrisburg, PA 17101 sue.benedek@centurylink.com</p> <p>Pamela Sherwood, Esq. Assistant General Counsel CenturyLink 4625 W. 86th Street Indianapolis, IN 46268 pamela.sherwood@centurylink.com</p> <p>Division of Rate Counsel 140 East Front Street, 4th Floor Trenton, NJ 08625-0003</p> <p>Stefanie A. Brand, Esq., Director sbrand@rpa.nj.gov</p> <p>Brian Lipman, Esq. blipman@rpa.nj.gov</p> <p>Maria Novas-Ruiz, Esq. mnovas-ruiz@rpa.state.nj.us</p>	<p>Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch, Secretary Board.secretary@bpu.nj.gov</p> <p>Dr. Benjamin Witherell, Chief Economist Benjamin.witherell@bpu.nj.gov</p> <p>Christine Lin Christine.lin@bpu.nj.gov</p> <p>Carol Artale, Esq. Deputy General Counsel Carol.artale@bpu.nj.gov</p> <p>Lanhi Saldana, Esq. lanhi.saldana@bpu.nj.gov</p> <p><u>Office of Cable Television and Telecommunications</u></p> <p>Lawanda Gilbert, Director Lawanda.gilbert@bpu.nj.gov</p> <p>Harold Bond, Chief Harold.bond@bpu.nj.gov</p> <p>NJ Department of Law and Public Safety Richard J. Hughes Justice Complex 25 Market Street, P.O. Box 112 Trenton, NJ 08625</p> <p>Pamela Owen, Esq. Assistant Section Chief pamela.owen@law.njoag.gov</p> <p>Meliha Arnautovic, DAG meliha.arnautovic@law.njoag.gov</p> <p>Terel Klein, DAG terel.klein@law.njoag.gov</p>
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