

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Applications filed by Global Crossing Limited and
Level 3 Communications, Inc. for Consent to
Transfer Control
IB Docket No. 11-78

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: September 29, 2011

Released: September 29, 2011

By the Chief, Wireline Competition Bureau and Chief, International Bureau:

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## I. INTRODUCTION

1. Global Crossing Limited (GCL) and Level 3 Communications, Inc. (Level 3) (together, Applicants) seek Commission approval to transfer control of licenses and authorizations held by GCL and its subsidiaries to Level 3.<sup>1</sup> We conclude that approval of the applications will serve the public interest, convenience, and necessity, and hereby grant the applications. We reach this decision pursuant to our review under sections 214 and 310(d) of the Communications Act of 1934, as amended (the Communications Act or Act), and under section 2 of the Cable Landing License Act.<sup>2</sup> We also grant Level 3's petition for a declaratory ruling regarding indirect foreign ownership under section 310(b)(4) of the Act.<sup>3</sup>

## II. BACKGROUND

### A. Applications and Review Process

#### 1. Bureau Review

2. On May 11, 2011, GCL and Level 3 filed a series of applications seeking approval for the transfer of control of GCL and its subsidiaries.<sup>4</sup> On June 9, 2011, the International Bureau and the Wireline Competition Bureau issued a consolidated public notice in IB Docket No. 11-78 (Public Notice) seeking comment on the proposed transaction.<sup>5</sup> In response to the Public Notice, two parties filed against

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<sup>1</sup> The Applicants filed a series of applications pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214; sections 34–39 of the Cable Landing License Act, 47 U.S.C §§ 34–39; Executive Order No. 10,530, Exec. Ord. No. 10,530 reprinted as amended in 3 U.S.C. § 301; and the Commission's implementing rules and policies. *See* Global Crossing Limited, Transferor, and Level 3 Communications, Inc., Transferee, Application for Consent to Transfer Control of Cable Landing Licenses for Atlantic Crossing-1, Atlantic Crossing-2, Mid-Atlantic Crossing, Pan American Crossing, South American Crossing, Americas-II (joint interest) (Cable Landing Application); Global Crossing Limited, Transferor, and Level 3 Communications, Inc., Transferee, Application for Consent to Transfer Control of Authority to Provide Global Facilities-Based and Global Resale International Telecommunications Services and of Domestic Common Carrier Transmission Lines, Pursuant to Section 214 of the Communications Act, as Amended (Section 214 Application); Application for Satellite Space and Earth Station Authorizations for Transfer of Control or Assignment filed by Global Crossing Americans Solutions, Inc. (Global Crossing Limited, Transferor, Level 3 Communications, Inc., Transferee) (Satellite Earth Station Application) (collectively Applications); Level 3 Communications, Inc. Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-78 (filed May 13, 2011) (Petition for Declaratory Ruling). Applicants filed several updates to their applications. Letter from Kent D. Bressie and Kristine Laudadio Devine, Counsel for Level 3, to Marlene H. Dortch, Secretary, FCC, IB Docket 11-78 (filed June 24, 2011) (June 24, 2011 Letter); Letter from Brian W. Murray, Counsel for Global Crossing Limited, to Marlene H. Dortch, Secretary, FCC, IB Docket 11-78 (filed July 27, 2011) (July 27, 2011 Letter); Letter from Kent D. Bressie and Kristine Laudadio Devine, Counsel for Level 3, to Marlene H. Dortch, Secretary, FCC, IB Docket 11-78 (filed July 28, 2011) (July 28, 2011 Letter); Letter from Kent D. Bressie and Kristine Laudadio Devine, Counsel for Level 3, to Marlene H. Dortch, Secretary, FCC, IB Docket 11-78 (filed Aug. 5, 2011) (Bressie August 5, 2011 Letter); Letter from Brian W. Murray, Counsel for Global Crossing Limited, to Marlene H. Dortch, Secretary, FCC, IB Docket 11-78 (filed Aug. 5, 2011) (Murray August 5, 2011 Letter); and Letter from Kristine Laudadio Devine to Marlene H. Dortch (filed Aug. 8, 2011) (August 8, 2011 Letter).

<sup>2</sup> *See* 47 U.S.C. §§ 34–39, 214(a), 310(d).

<sup>3</sup> 47 U.S.C. § 310(b)(4).

<sup>4</sup> *See generally* Applications.

<sup>5</sup> *Applications Filed for the Transfer of Control of Global Crossing Limited to Level 3 Communications, Inc.—Pleading Cycle Established*, IB Docket No. 11-78, Public Notice, 26 FCC Rcd 8359 (IB 2011).

the applications and several parties filed in support.<sup>6</sup>

## 2. Department of Justice Review

3. The Antitrust Division of the U.S. Department of Justice (DOJ) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.<sup>7</sup> The Antitrust Division's review is limited solely to an examination of the potential competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between Level 3 and GCL and on September 29, 2011, approved the transaction without conditions.<sup>8</sup>

### B. The Applicants

#### 1. The Transferor

4. GCL is a publicly traded exempted limited-liability company organized under the laws of Bermuda, with its principal executive offices in Hamilton, Bermuda and its principal administrative offices in Florham Park, New Jersey.<sup>9</sup> Through its subsidiaries, including the FCC-Licensed Subsidiaries, GCL owns and operates a global Internet Protocol (IP)-based fiber optic network directly connecting more than 300 cities in 30 countries.<sup>10</sup> GCL subsidiaries use this network to provide telecommunications services and data and IP-based services to corporations, government agencies, and telecommunications carriers.<sup>11</sup> GCL's U.S. operating subsidiaries hold Commission authorizations for international telecommunications services, undersea cable facilities, and non-common-carrier satellite earth stations.<sup>12</sup> In addition, certain GCL domestic operating companies provide domestic interstate, intrastate and local exchange service and international telecommunications and information services in all 50 states and the District of Columbia, relying on blanket authority to provide domestic telecommunications services.<sup>13</sup>

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<sup>6</sup> The pleadings filed in this proceeding are available on the Commission's Electronic Comment Filing System at <http://webapp01.fcc.gov/ecfs/>.

<sup>7</sup> 15 U.S.C. § 18.

<sup>8</sup> See DOJ, Transaction Granted: Early Termination (Sept. 29, 2011), *available at* <http://www.ftc.gov/bc/earlyterm/2011/09/et110928.pdf>.

<sup>9</sup> See Cable Landing Application at 4. GCL is controlled by STT Crossing, Ltd. (STT Crossing) a Mauritius private limited-liability company. STT Crossing is wholly owned by STT Communications Ltd, a company organized under the laws of Singapore, which is wholly owned by Singapore Technologies Telemedia Pte Ltd (ST Telemedia), an investment holding company organized as a private limited company under the laws of Singapore. ST Telemedia is wholly owned by Temasek Holdings (Private) Limited (Temasek), a Singapore-based investment holding company, which is wholly owned by the Government of Singapore through the Minister for Finance. ST Telemedia is affiliated with foreign carriers in various countries, notably Singapore, Laos and Ireland. See Cable Landing Application at 5; Section 214 Application at 4–5; Petition for Declaratory Ruling at 4–5; see also *Global Crossing Ltd. (Debtor in Possession), Transferor, and GC Acquisition Limited, Transferee, Applications for Consent to Transfer Control of Various FCC Licenses*, IB Docket No. 02-286, Order and Authorization, 18 FCC Rcd 20301, 20346–47 (IB, WCB, and WTB 2003) (*GCL Transfer Order*); *International Authorizations Granted*, Public Notice, 22 FCC Rcd. 12888, 12889 (2007) (approving increase in ST Telemedia's indirect ownership from 61.5% as authorized in the *GCL Transfer Order* to 66.25%).

<sup>10</sup> See Cable Landing Application at 4.

<sup>11</sup> See *id.*

<sup>12</sup> Appendix A provides charts of both the pre-closing ownership structure and post-closing ownership structure of the Applicants and their relevant subsidiaries.

<sup>13</sup> See 47 C.F.R. § 63.01(a).

5. The Applicants seek Commission consent to transfer control from GCL to Level 3 of ten cable landing licenses, five international 214 authorizations and 19 non-common carrier earth station licenses held by it or its subsidiaries. Global Crossing Americas Solutions, Inc. (GCAS), a Delaware corporation and a wholly owned, indirect subsidiary of GCL, principally provides private-line voice, data, video and business telecommunications services between the United States and Latin America and is an incidental provider of interstate interexchange services.<sup>14</sup> GCAS holds international section 214 authority and blanket domestic section 214 authority. GCAS is also a joint cable landing licensee for the Americas-II undersea cable system (A-II).<sup>15</sup> GCBI, a California corporation and a wholly owned, indirect subsidiary of GCL, principally provides domestic interexchange services. GCBI provides services under blanket domestic section 214 authority and through the international section 214 authority of its parent, Global Crossing North America, Inc. (GCNA).<sup>16</sup> GCLS, a Michigan corporation and wholly owned, indirect subsidiary of GCL, provides competitive access and competitive local exchange services. GCLS relies on blanket domestic 214 authority.<sup>17</sup> GCNA, a New York holding company with an international 214 authorization from the Commission, is a wholly owned, indirect subsidiary of GCL.<sup>18</sup> GCTI, a Michigan corporation and wholly owned, indirect subsidiary of GCL, principally provides toll resale and facilities-based services. GCTI relies on blanket domestic 214 authority and on the international 214 authorization of its parent GCNA.<sup>19</sup>

6. GCL's major undersea cable subsidiary is GT Landing II Corp., a Delaware corporation and a wholly owned, indirect subsidiary of GCL. GT Landing II Corp. principally owns and operates the U.S. territory portions of the following undersea cable systems, for which it holds cable landing licenses: (1) Atlantic Crossing-1 (AC-1), a non-common carrier system connecting Brookhaven Township, New York, with Sylt, Germany; Beverwijk, the Netherlands; and Whitesands, United Kingdom; (2) Atlantic Crossing-2 (AC-2), where GT Landing II owns a half-interest in a non-common carrier system connecting Brookhaven, New York with Bude, United Kingdom and the other half-interest (called the Yellow system) is owned by Level 3 Communications, LLC; (3) Mid-Atlantic Crossing (MAC), a non-common carrier system connecting Brookhaven, New York; Hollywood, Florida; and St. Croix, U.S. Virgin Islands; (4) Pan American Crossing (PAC), a non-common carrier system connecting Grover Beach, California; Tijuana and Mazatlan, Mexico; Jaco, Costa Rica; Fort Amador and Ambush Range, Panama; Puerto Viejo, Venezuela; and St. Croix, U.S. Virgin Islands; and (5) South American Crossing (SAC), a non-common carrier system connecting St. Croix, U.S. Virgin Islands, with Fortaleza, Rio De Janeiro and Santos, Brazil; Las Toninas, Argentina; Valparaiso, Chile; Lurin, Peru; and Fort Amador, Panama.<sup>20</sup>

## 2. The Transferee

7. Level 3 is a publicly-traded Delaware corporation headquartered in Broomfield,

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<sup>14</sup> GCAS is wholly owned by Impsat Fiber Networks, Inc., a Delaware holding corporation, which is wholly owned by GC Impsat Holdings II Ltd., a United Kingdom holding company, which is wholly owned by GC Impsat Holdings I Ltd., a United Kingdom holding company. GC Impsat Holdings I Ltd. is wholly owned by GC Impsat Holdings Netherlands B.V., a Netherlands holding company, which is wholly owned by Global Crossing Holdings Limited, a Bermuda holding company, which is wholly owned by GCL. See Cable Landing Application at 8-9, 16; App. A.

<sup>15</sup> Cable Landing Application at 8-9; Section 214 Application at 5.

<sup>16</sup> Section 214 Application at 5-6; App. A.

<sup>17</sup> Section 214 Application at 6; App. A.

<sup>18</sup> Section 214 Application at 6; App. A.

<sup>19</sup> Section 214 Application at 6-7; App. A.

<sup>20</sup> Cable Landing Application at 6-8; App. A.

Colorado.<sup>21</sup> Through its subsidiaries, Level 3 offers a variety of communications services throughout North America, Europe, and Asia, and holds numerous Commission authorizations for international telecommunications services, undersea cable facilities, satellite earth stations, and terrestrial wireless facilities, as well as blanket authority to provide domestic telecommunications services.<sup>22</sup> The largest shareholder of Level 3 is Southeastern Asset Management, Inc., a Tennessee corporation that holds approximately a 31.46% ownership interest in Level 3.<sup>23</sup>

8. In addition to the transfer of control applications, the Applicants request approval for indirect foreign ownership in excess of 25% for 377 common carrier radio licenses held by Level 3 subsidiaries.<sup>24</sup> TelCove FWL, Inc. (TelCove) is a Delaware corporation and a wholly-owned, indirect subsidiary of Level 3. TelCove holds 193 common carrier LMDS and radio licenses and 177 common carrier 39 GHz licenses.<sup>25</sup> Vyvx, LLC (Vyvx) is a Delaware limited-liability company and a wholly-owned, indirect subsidiary of Level 3. Vyvx holds seven fixed point-to-point microwave licenses, one common-carrier satellite earth station license and one local television transmission license.<sup>26</sup>

### C. The Transaction

9. Under the terms of an Agreement and Plan of Amalgamation, GCL and Amalgamation Sub—a wholly owned subsidiary of Level 3 created to effectuate this transaction—will amalgamate in a stock for stock exchange.<sup>27</sup> As a result of the amalgamation, the separate corporate existence of Amalgamation Sub and GCL will cease and the assets and liabilities of both companies will become those of the amalgamated company, Level 3 GC Limited (Level 3 GC), which will become a wholly owned direct subsidiary of Level 3.<sup>28</sup> All GCL common shares and convertible preferred shares (excluding those held by dissenting shareholders) will be cancelled and cease to exist. Existing shareholders of GCL (excluding dissenting shareholders) will receive shares in Level 3, with each GCL common or convertible preferred share to be exchanged for 16 shares of Level 3 common stock. Dissenting shareholders will receive the right to payment of their stock, which will have been cancelled.<sup>29</sup> GCL will thus cease to exist, having been amalgamated into Level 3 GC. Its subsidiaries will be wholly owned by Level 3 GC, which will be wholly owned by Level 3, which will be owned by STT Crossing Ltd. (STT Crossing) (23.92%), Southeastern Asset Management, Inc. (SAM) (20.73%) and by other non-controlling shareholders (in aggregate, 55.35%).<sup>30</sup>

## III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. Pursuant to sections 214(a) and 310(d) of the Act,<sup>31</sup> and sections 34 through 39 of the

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<sup>21</sup> Section 214 Application at 7.

<sup>22</sup> Section 214 Application at 7.

<sup>23</sup> Section 214 Application, Exh. D. Other non-controlling shareholders hold the remainder of the ownership interest.

<sup>24</sup> See Applications and Petition for Declaratory Ruling, *passim*.

<sup>25</sup> See Petition for Declaratory Ruling at 6; App. A.

<sup>26</sup> See Petition for Declaratory Ruling at 6; June 24, 2011 Letter.

<sup>27</sup> Section 214 Application at 8–9.

<sup>28</sup> Section 214 Application at 8–9.

<sup>29</sup> See *id.*

<sup>30</sup> See July 28, 2011 Letter; Bressie August 5, 2011 Letter; App. A.

<sup>31</sup> 47 U.S.C. §§ 214(a), 310(d).

Cable Landing License Act,<sup>32</sup> the Commission must determine whether the proposed transfer of assets, licenses, and authorizations held and controlled by GCL to Level 3 will serve the public interest, convenience, and necessity.<sup>33</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.<sup>34</sup> If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.<sup>35</sup> The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits.<sup>36</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>37</sup> If we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, we must designate the applications for hearing.<sup>38</sup>

11. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"<sup>39</sup> which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public

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<sup>32</sup> 47 U.S.C. §§ 34–39. The Cable Landing License Act provides that approval of a license application may be granted "upon such terms as shall be necessary to assure just and reasonable rates and service." 47 U.S.C. § 35. The Commission does not conduct a separate public interest analysis under this statute. *See, e.g., SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, para. 16 n.59 (2005) (*SBC/AT&T Order*); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18442, para. 16 n.58 (2005) (*Verizon/MCI Order*); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 (1998) (*WorldCom/MCI Order*).

<sup>33</sup> 47 U.S.C. § 310(d) requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order & Declaratory Ruling, 23 FCC Rcd 17444, 17460–61, para. 26 (2008) (*Verizon/ALLTEL Order*); *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, WT Docket No. 06-96, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 13580, 13588, para. 13 (2006) (*DoCoMo/Guam Cellular Order*); *SBC/AT&T Order*, 20 FCC Rcd at 18300, n.60.

<sup>34</sup> *CenturyTel Order*, 24 FCC Rcd at 8745-46, para. 9.

<sup>35</sup> *Id.*

<sup>36</sup> *See, e.g., AT&T/BellSouth Order*, 22 FCC Rcd at 5672, para. 19.

<sup>37</sup> *See, e.g., id.*

<sup>38</sup> *See, e.g., Application of Echostar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and Echostar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, at para. 25 (2002) (*EchoStar/DirectTV Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, et al.*, WT Docket Nos. 04-70, 04-254, and 04-323, Memorandum Opinion & Order, 19 FCC Rcd 21522, 21542-44, at para. 40 (2004) (*Cingular/AT&T Wireless Order*).

<sup>39</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

interest.<sup>40</sup> Our public interest analysis may also entail assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.<sup>41</sup> In conducting this analysis, the Commission may consider technological and market changes, as well as trends within the communications industry, including the nature and rate of change.<sup>42</sup>

12. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>43</sup> The Department of Justice (DOJ) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.<sup>44</sup> Under the Commission's review, the applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.<sup>45</sup> DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.<sup>46</sup> The Commission's competitive analysis under the public interest standard is somewhat broader—for example, it considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.<sup>47</sup>

13. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.<sup>48</sup> Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions to ensure that the public interest is served.<sup>49</sup> Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.<sup>50</sup> Similarly, section 214(c) of the Act authorizes the Commission to impose “such terms and conditions as

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<sup>40</sup> See 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), Preamble; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18301, at para.17 (2005) (*SBC/AT&T Order*); see also *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom Inc.*, WC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-31, para. 9 (1998) (*WorldCom/MCI Order*); cf. 47 U.S.C. §§ 301, 303, 309(j), 310(d), 521(4), 532(a).

<sup>41</sup> See *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

<sup>42</sup> See *id.*

<sup>43</sup> See, e.g., *id.* at 5673, para. 21.

<sup>44</sup> 15 U.S.C. § 18.

<sup>45</sup> See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17462, at para. 28 (2008) (*Verizon/ALLTEL Order*).

<sup>46</sup> See *id.*

<sup>47</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17462, para. 28; *Applications for Consent to Transfer Control of Licenses, XM Satellite Radio Holdings, Inc. to Sirius Satellite Radio Inc.*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd.12348, 12366, at para. 32 (2008) (*XM/Sirius Order*).

<sup>48</sup> See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21.

<sup>49</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17462, para. 29; *XM/Sirius Order*, 23 FCC Rcd. at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>50</sup> 47 U.S.C. § 303(r); see also *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

in its judgment the public convenience and necessity may require.”<sup>51</sup> Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.<sup>52</sup> In using this broad authority, the Commission has generally imposed conditions to remedy specific harms likely to arise from transactions and that are related to the Commission’s responsibilities under the Act and related statutes.<sup>53</sup>

#### IV. DISCUSSION

##### A. Applicants’ Qualifications to Hold Licenses

14. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign and transfer licenses under section 310(d) of the Act and the Commission’s rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.<sup>54</sup> The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>55</sup> This is not the case here. Thus we need not re-evaluate either GCL’s basic qualifications or those of the current GCL shareholders.

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<sup>51</sup> 47 U.S.C. § 214(c); see also *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>52</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; see also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

<sup>53</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>54</sup> See *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Applications of Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11536, para. 17 (2006) (*ALLTEL/Midwest Wireless Order*); *Applications of Nextel Partners, Inc., Transferor, and Nextel Wip Corp. and Sprint Nextel Corporation, Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7362, para. 10 (2006) (*Sprint Nextel/Nextel Partners Order*); *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13979, para. 24 (2005) (*Sprint/Nextel Order*); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13063–64, para. 18 (2005) (*ALLTEL/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21546, para. 44 (2004) (*Cingular/AT&T Wireless Order*); *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9790, para. 19 (2001) (*Deutsche Telekom/VoiceStream Order*); *Verizon/ALLTEL Order*, 23 FCC Rcd at 17464, para. 31; *Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582–82, para. 23 (2008) (*Sprint Nextel/Clearwire Order*).

<sup>55</sup> See *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *ALLTEL/Midwest Wireless Order*, 21 FCC Rcd 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *Sprint/Nextel Order*, 20 FCC Rcd at 13979, para. 24; *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13063–64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, para. 19; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17464, para. 31; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd 17582–83, para. 23.



15. Section 310(d) also requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.<sup>56</sup> Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite “citizenship, character, financial, technical, and other qualifications.”<sup>57</sup> No challenges have been raised with respect to the basic qualifications of Level 3, which has previously been found qualified to control entities holding Commission licenses and authorizations.

## **B. Potential Public Interest Harms**

### **1. Internet Transport—Tier 1 ISPs**

16. We conclude that the proposed merger is unlikely to result in public interest harms in the provision of transport by Internet service providers (ISPs).<sup>58</sup> We also conclude that, while the merger will result in the loss of one Tier 1 ISP, the record does not support a finding that the merger is likely to result in “tipping” of the Internet backbone market, an increase in prices to supra-competitive levels, or lower service quality.

17. XO, a competitive local exchange carrier (LEC), initially asserted that, although the Tier 1 ISP market is “generally considered competitive,” the combination of Level 3 and Global Crossing would create a dominant firm that could “tip” the market.<sup>59</sup> XO subsequently stated that it supported the proposed merger. Nevertheless, we consider XO’s initial allegations in order to determine whether the transaction is in the public interest. After review of the record, we are not persuaded by XO’s initial allegations that the combination is likely to harm competition, and thus we do not find cause either to deny the merger or to impose conditions on it.

18. *Relevant Product and Geographic Markets.* The Internet traffic of content providers and Internet access customers often travels over the networks of several different entities before reaching its destination. Most of these entities are ISPs, although Internet traffic may also be carried by other types of

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<sup>56</sup> Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. See 47 U.S.C. § 308. Our rules implementing the provisions of section 308 regarding an applicant’s qualifications to hold the Commission licenses involved in this transfer are set forth in Parts 5, 25, and 63 of the Commission’s rules. See 47 C.F.R. Parts 5, 25, 63; see also *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *ALLTEL/Midwest Wireless Order*, 21 FCC Rcd at 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13063–64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44.

<sup>57</sup> See *AT&T/BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *Applications of SBC Communications Inc. and BellSouth Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, WT Docket No. 00-81, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25465, para. 14 (2000) (*SBC/BellSouth Order*); see also 47 U.S.C. §§ 308, 310(d); 47 C.F.R. Parts 5, 25, 63.

<sup>58</sup> We recognize that there have been changes in how Internet traffic is transported. See *Level 3/GCL Reply* at 8–11 (arguing that Tier 1 ISPs are subject to new sources of competition). In analyzing the potential public interest harms, however, we have assumed, without defining a relevant market, a “worst-case scenario” in which the transport services offered by Tier 1 ISPs are a distinct category of service.

<sup>59</sup> XO Comments at ii. XO and Level 3 subsequently filed a joint letter informing the Commission that they had come to an agreement that addressed all of XO’s concerns raised in its comments, and that XO believed “that the transaction is in the public interest and should be approved by the Commission.” Letter from John Nakahata, et al. to Marlene H. Dortch, Secretary, FCC, IB Docket No. 11-78, at 1 (Aug. 5, 2011). XO did not, however, withdraw its comments to the proceeding. As such, we treat them as remaining on the record.

entities.<sup>60</sup> Privately negotiated commercial agreements govern the relationships among entities carrying Internet traffic. These agreements often specify such things as the networks to which a provider will deliver traffic, which provider is responsible for carrying that traffic the greater distance, what ratios of traffic delivered and received are acceptable, and what payment, if any, is required.

19. Over time, broad categories of agreements regarding carriage of Internet traffic have developed. One common type of agreement is “peering.” Peering involves the exchange of traffic destined for addresses on the peering entities’ own networks or the networks of their customers.<sup>61</sup> Settlement-free peering currently is the dominant arrangement for peering,<sup>62</sup> and involves the exchange of traffic without the exchange of money. Paid peering requires one network to compensate the other for the exchange of traffic, and may include different pricing for on-net versus off-net routes.<sup>63</sup> Contrasted with peering, transit arrangements are not limited to certain routes, but involve a customer purchasing access to, at a minimum, an Internet region.<sup>64</sup> ISPs historically have been differentiated by “tier,” based on their ability to reach various parts of the Internet: Tier 1 ISPs are able to reach the entire Internet without purchasing transit from other ISPs, while Tier 2 or 3 ISPs must purchase transit from other ISPs in order to reach some addresses.<sup>65</sup>

20. XO argues that the Tier 1 ISP market constitutes a separate product market, distinct from the more general market for exchange of Internet traffic, due to Tier 1 ISPs’ ability to reach all autonomous systems without purchasing transit from another ISP.<sup>66</sup> XO asserts that the product market is national, if not global.<sup>67</sup> Applicants acknowledge that the Commission has found that Tier 1 ISP services

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<sup>60</sup> These include content distribution networks (CDNs), which are overlay networks that cache content closer to users and compete with transit providers for certain classes of customers. See MARKUS HOFMAN & LELAND R. BEAUMONT, *CONTENT NETWORKING: ARCHITECTURE, PROTOCOLS, AND PRACTICE* 275–76 (2005).

<sup>61</sup> *WorldCom/MCI Order*, 13 FCC Rcd at 18105–06 paras. 144–46; Vytautas Valancis, et al., *How Many Tiers? Pricing in the Internet Transit Market*, 2011 ACM SIGCOMM 194, 195 (2011) (*How Many Tiers?*).

<sup>62</sup> See Bill Woodcock & Vijay Adhikari, *Survey of Characteristics of Internet Carrier Interconnection Agreements*, Packet Clearing House at 2 (2011) (“In the more common symmetric relationship, the parties to the agreement simply exchange customer routes with each other, without settlements or other requirements.”), available at <https://www.pch.net/resources/papers/peering-survey/PCH-Peering-Survey-2011.pdf>.

<sup>63</sup> *How Many Tiers?* at 195.

<sup>64</sup> *Id.* at 195; *WorldCom/MCI Order*, 13 FCC Rcd at 18105–06 paras. 144–46; *SBC/AT&T Order*, 20 FCC Rcd at 18351–52, para. 110. Additionally, the market for exchanging and carrying traffic is diversifying into more complex pricing arrangements based on metrics attempting to approximate the cost of carrying traffic. *How Many Tiers?* at 195 (identifying several different departures from flat rate pricing).

<sup>65</sup> See Craig Labovitz et al., *The Impact of Internet Policy and Topology on Delayed Routing Convergence*, 2001 IEEE INFOCOMM 537, 540 (2001); William B. Norton, *Tier 1 ISP*, DRPEERING INTERNATIONAL (last visited Sept. 15, 2011), <http://drpeering.net/white-papers/Ecosystems/Tier-1-ISP.html>; William B. Norton, *Tier 2 ISP*, DRPEERING INTERNATIONAL (last visited Sept. 15, 2011), <http://drpeering.net/white-papers/Ecosystems/Tier-2-ISP.html>. Tier 1 ISPs, which are sometimes called Internet “backbone” providers, have peering relationships with each other for exchange of Internet traffic, and they also sell “transit” services to customers—mainly enterprises, smaller ISPs, and content providers—that enable the customers to exchange traffic with all points on the Internet through some means other than peering.

<sup>66</sup> XO Comments at 34. An “autonomous system (AS)” is a “connected group of one or more IP prefixes run by one or more network operators which has a single and clearly defined routing policy.” J. Hawkinson et al., IETF, *Guidelines for creation, selection, and registration of an Autonomous System*, RFC 1930 at 3 (Mar. 1996), available at <http://tools.ietf.org/pdf/rfc1930.pdf>.

<sup>67</sup> XO Comments at 34.

constitute a separate product market, and that the relevant geographic market for Tier 1 services is national.<sup>68</sup> Applicants argue, however, that the market has changed since the Commission last analyzed a merger implicating the market for exchange of Internet traffic, and that applying the Commission's historical analysis would ignore competitors it argues are offering substitutable services, such as content delivery networks (CDNs).<sup>69</sup> They further argue that potential customers may peer directly with other service providers at public or private Internet exchange points, drastically reducing the amount of transit they need to purchase.<sup>70</sup>

21. For the purpose of analyzing XO's arguments, we apply the Commission's existing precedent. The Commission has identified Tier 1 ISPs (or Internet backbone providers) as a distinct subset of ISPs that offer non-substitutable services in terms of quality and price.<sup>71</sup> These Tier 1 ISPs interconnect with other Tier 1 ISPs, usually on a settlement-free basis, and lower-tier ISPs must purchase transit from Tier 1 ISPs to reach a portion of the Internet.<sup>72</sup> We recognize marketplace developments that the Applicants highlight, but because we find unpersuasive the record evidence of risks of public interest harms under the Commission's historical analysis, we need not address at this time Applicant's arguments that the relevant product market should be expanded to include additional sources of competition.

22. *Market Participants and Market Share.* XO submits that the Tier 1 ISPs in the United States are Level 3, GCL, NTT Communications, Sprint, TiNet, Qwest, AT&T, Verizon, Cogent, Tata Communication, TeliaSonera, and XO.<sup>73</sup> Applicants do not dispute XO's enumeration of Tier 1 ISPs, but argue that the Commission should also consider competition provided by other competitive providers of transit services.<sup>74</sup>

23. Based on its calculations, XO argues that the merged entity will have a combined market share of approximately 35%, and that this would provide it with the ability to raise prices for transit of

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<sup>68</sup> *SBC/AT&T Order*, 20 FCC Rcd at 18352–53, paras. 112–14; *Verizon/MCI Order*, 20 FCC Rcd at 184935, para. 115.

<sup>69</sup> See Level 3/GCL Reply at ii (discussing developments in the marketplace). CDNs have taken advantage of the rise of bandwidth-intensive content and have been able to provide service to content providers that historically would have purchased transit. See Level 3/GCL Reply at 10. CDNs such as Akamai have seen a dramatic increase in traffic handled: Akamai claims to carry between 15–30% of all Internet traffic. Akamai, MIT Technology Review, <http://www.technologyreview.com/tr50/akamai/> (last visited Sept. 13, 2011). Indeed, “providers that used to charge content networks for transit now offer settlement-free interconnection, or in some cases, may even pay the content networks for access.” CRAIG LABOVITZ ET AL., ATLAS INTERNET OBSERVATORY 2009 ANNUAL REPORT 2 (2009).

<sup>70</sup> See, e.g., Jose Miguel Guzman, Google Peering Policy, presentation at the Latin America and Caribbean Internet Addresses Registry Meeting (2008) (describing Google's peering policy), available at <http://www.lacnic.net/documentos/lacnicxi/presentaciones/Google-LACNIC-final-short.pdf>. Although Google is a major transit purchaser, it uses a variety of methods to reduce its transit costs. See John Paczkowski, *Credit Suisse Far Better at Analyzing Derivatives than YouTube Infrastructure Costs*, ALL THINGS D (June 17, 2009 7:06 AM), <http://allthingsd.com/20090617/credit-suisse-far-better-at-analyzing-derivatives-than-youtube-infrastructure-costs/> (noting that in 2009 Google paid for only about 27% of YouTube's bandwidth).

<sup>71</sup> *SBC/AT&T Order*, 20 FCC Rcd at 18352–53, paras 112–13; *Verizon/MCI Order*, 20 FCC Rcd at 18493–94, para. 110–13.

<sup>72</sup> *SBC/AT&T Order*, 20 FCC Rcd at 18352–53, paras 112–13; *Verizon/MCI Order*, 20 FCC Rcd at 18493–94, para. 110–13.

<sup>73</sup> XO Comments, Attach. 2, Marcellus Nixon Declaration at 4.

<sup>74</sup> Level 3/GCL Reply at iii, 19.

Internet traffic.<sup>75</sup> In addition, XO argues that the merged entity will have the incentive and ability to de-peer a number of its current peers, including XO.<sup>76</sup> XO estimated market share using two methods. First, it relied on Renesys data for the 10 largest Tier 1 ISPs.<sup>77</sup> Second, XO calculated the share of traffic that each Tier 1 ISP exchanges with XO and extrapolated relative market shares, assuming that they reflect each Tier 1 provider's share of the national market.

24. Applicants challenge XO's market share calculation on several grounds. They contend that there is no reason to limit the market analysis to the top 10 providers and that analyzing the complete Renesys data suggests that the combined entity would have a market share of approximately 10%.<sup>78</sup> The Applicants also assert that XO's methodology tends to inflate the Applicants' market shares relative to other large providers.<sup>79</sup> The Applicants also claim that there is no reason to assume, as XO did, that each Tier 1 provider's total traffic is proportional to the amount of traffic that the provider exchanges with XO.<sup>80</sup> The Applicants assert that data from TeleGeography represent a better measure of market share, because those data aggregate commonly-owned autonomous systems.<sup>81</sup> If the analysis by number of AS connections were applied to the TeleGeography data, the Applicants claim the market share of the combined entity, as calculated by the number of AS connections, would drop to 11%.<sup>82</sup> The Applicants also claim that if market share is measured as a percentage of Internet traffic rather than connections to autonomous systems, the combined entity would have a maximum of 15.11% market share.<sup>83</sup>

25. *Competitive Effects Analysis.* The record does not support a finding that the merger is likely to result in competitive harm in the Tier 1 market. Based on the evidence before us, we are not persuaded by XO's allegations that the merger will result in tipping of the market, or that the merged entity will have either the ability to unilaterally increase prices or an increased incentive to de-peer other Tier 1 ISPs.

26. We note at the outset that there is no single, generally-accepted metric to measure relative market shares of ISPs, nor any single measure that perfectly calculates the relative size and importance of competing ISPs.<sup>84</sup> Nevertheless, we are skeptical of XO's assertion that the combined entity will have a

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<sup>75</sup> XO Comments at 36–39.

<sup>76</sup> XO Comments at 43–45.

<sup>77</sup> Renesys collects and analyzes a variety of data regarding ISPs including AS connections, routes, and flows to derive a metric by which they rank ISPs and provide “market intelligence” to allow ISPs to identify potential customers and peers. *See generally* Renesys Corporation, Market Intelligence 4.0 Overview (2010).

<sup>78</sup> Level 3/GCL Reply at iii.

<sup>79</sup> Applicants note that the Renesys rankings are based on autonomous systems rather than by provider. Some providers, including AT&T, Verizon and Comcast, operate several autonomous systems and have the connectivity split among those systems. In contrast, Level 3 and Global Crossing each operate a single autonomous system. This ranking method tends to inflate the Applicants' market shares relative to providers that operate multiple autonomous systems. *See* Level 3/GCL Reply at 18–19.

<sup>80</sup> Level 3/GCL Reply at 19–20.

<sup>81</sup> *See supra* note 79.

<sup>82</sup> Level 3/GCL Reply at 19. This calculation uses TeleGeography's Worldwide 2009 rankings.

<sup>83</sup> Craig Labovitz et al., Presentation of the ATLAS Internet Observatory 2009 Annual Report at the 47th North American Network Operators Group Meeting at 13 (2009), [http://www.nanog.org/meetings/nanog47/presentations/Monday/Labovitz\\_ObserveReport\\_N47\\_Mon.pdf](http://www.nanog.org/meetings/nanog47/presentations/Monday/Labovitz_ObserveReport_N47_Mon.pdf)

<sup>84</sup> A number of sources purport to quantify the market share of ISPs, using a variety of metrics. Some rely primarily on traffic, some rely primarily on connections between autonomous systems, and some rely on multiple factors. *See, e.g.*, The Cooperative Association for Internet Data Analysis, AS Rank: AS Ranking, <http://as-rank.caida.org/> (last continued....)

35% share of the relevant market and recognize that other metrics suggest the combined entity will have a significantly smaller market share. The Renesys data that XO relied on represent only the top 10 ranked ISPs, as calculated by the number of AS connections.<sup>85</sup> This data set artificially constrains the number of market participants and concomitantly inflates the ranking of Level 3 and GCL in the analysis. Even under XO's own analysis, there are more than 10 Tier 1 ISPs.<sup>86</sup> Furthermore, when used for this purpose, the Renesys data tends to overstate the Applicants' market power relative to some competitors since Renesys data does not aggregate commonly-owned autonomous systems.<sup>87</sup> Moreover, we agree with Applicants that there is no reason to assume, without supporting data, that market share calculations based on XO's traffic exchanges with other ISPs are an indicator of relative Tier 1 ISP traffic overall.<sup>88</sup>

27. Even if we accepted that the combined entity would have direct connections to 35% of autonomous systems, we are not convinced based on this record that the transaction would result in market tipping or enable the merged entity to engage in de-peering to a competitively significant extent. First, there is evidence in the record that disputes XO's claim that a 35% market share would lead to the market tipping.<sup>89</sup> Second, there is uncontested evidence in the record that 86% to 88% of Level 3 and GCL transit or direct Internet access (DIA) customers are "multi-homed" with providers other than Level 3 and GCL.<sup>90</sup> This suggests that if the combined entity were to engage in connection degradation or price increases, a large percentage of its customer base would be able to transition easily to another provider.<sup>91</sup> As the economic literature explains, "increases in multi-homing . . . are equivalent . . . to a loss of market share for the large backbone provider."<sup>92</sup> Third, Level 3 and GCL each are peered with numerous other entities, including ones that compete with them in the sale of transit.<sup>93</sup> This suggests that the high market share attributed to Level 3 and GCL by XO is not a reliable measure of leverage over other ISPs in

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visited Aug. 31, 2011) (using a "customer cone" analysis that analyzes connections between autonomous systems); Renesys Corporation, Market Intelligence 4.0 Overview at 3 (2010) (using a variety of data including routes, flows, and connections to "rank" autonomous systems); Craig Labovitz, et al., *Internet Inter-Domain Traffic*, 2010 ACM SIGCOMM 75 (2010) (using traffic flows to calculate market share).

<sup>85</sup> XO Comments, Attach. 3, Rogerson White Paper at 5–6. The numbers analyzed by Prof. Rogerson were culled from a Renesys blog post. See Clint Hepner, A Baker's Dozen 2010 Edition, RENESYS BLOG (Jan. 10, 2011, 12:57 PM), <http://www.renesys.com/blog/2011/01/a-bakers-dozen-2010-edition.shtml>.

<sup>86</sup> XO Comments, Attach. 2, Marcellus Nixon Declaration at 4 (listing 12 such providers).

<sup>87</sup> See Level 3/GCL Reply at 19–20.

<sup>88</sup> See Level 3/GCL Reply at 20.

<sup>89</sup> One economic study, which the Applicants cited, suggests that a market share of at least 50% is necessary but not sufficient for a tipping strategy to be profitable. See David Malueg & Marius Schwartz, *Compatibility Incentives of a Large Network Facing Multiple Rivals*, 54 J. INDUS. ECON. 527, 531 (2006).

<sup>90</sup> Level 3/GCL Reply at 13–14. Both DIA and transit involve advertising the customer route in the border gateway protocol (BGP) routing table of the service provider, however DIA service is generally more expensive than transit and is targeted towards customers who do not operate their own AS and do not have the capability to carry their own traffic to the service provider's regional point of presence.

<sup>91</sup> Level 3/GCL Reply at 13–14.

<sup>92</sup> See Level 3/GCL Reply at 13; Stanley Besen et al., *Advances in Routing Technologies and Internet Peering Agreements*, 91 AM. ECON. REV. 292, 295 (2001).

<sup>93</sup> See Letter from John T. Nakahata, Counsel to Level 3, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 11-78 (filed Sept. 19, 2011) (stating that "of the 37 entities with which the combined Level 3 and Global Crossing have peering relationships, 20 provide transit service in North America"); Letter from John T. Nakahata, Counsel to Level 3, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 11-78 (filed Sept. 23, 2011) (stating that Level 3 peers with 21 providers in North America, 11 of whom provide transit service).

negotiating prices or terms. Both entities currently peer with numerous providers who have much smaller market shares, indicating that both entities lack the incentives to leverage their relative size. It stands to reason that the combined entity—whose market share would fall well short of a majority by all suggested metrics—will also lack incentives to selectively de-peer or degrade its connections for anticompetitive reasons.<sup>94</sup> If it did so, the combined entity would lose customers to its remaining peers, because those entities would still enjoy ubiquitous Internet connectivity and, hence, would be more attractive to customers.

28. As an additional matter, we note that the number of Tier 1 ISPs appears to have grown since 2005. In the *SBC/AT&T Order*, the Commission enumerated eight Tier 1 providers: AT&T, MCI, Sprint, Qwest, Level 3, GCL, SAVVIS, and Cogent.<sup>95</sup> XO identifies twelve Tier 1 ISPs today.<sup>96</sup> The emergence of several new Tier 1 peers in the past six years undercuts the argument that there are overwhelming barriers to entry into the Tier 1 market.<sup>97</sup>

29. Finally, if we were to consider the role of non-Tier 1 ISPs in the marketplace, there may be as many as 38 providers that sell transit or offer peering on a nationwide basis.<sup>98</sup> XO did not respond to Applicants' assertions that the overall market for exchange of Internet traffic has diversified such that Tier 1 ISPs are no longer the only economical means to obtain connectivity to the entire Internet,<sup>99</sup> and thus no longer represent a uniquely important set of participants in exchange of Internet traffic.

## 2. International Transport Competition

30. We find that international transport, particularly submarine cable capacity, is a relevant market for purposes of this merger analysis. Level 3 and GCL participate in the international transport market through their ownership in international submarine cables. Level 3 and GCL are also participants in the international transport market through their ownership in international submarine cables. International transport refers to the international physical transmission paths carriers use to offer services between the United States and other countries. International traffic can be transmitted via submarine cable, satellite, or terrestrial links. Because most U.S. international traffic is transmitted over submarine cables,<sup>100</sup> and because neither of the Applicants owns international satellite capacity, we focus on how the

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<sup>94</sup> See David Malueg & Marius Schwartz, *Compatibility Incentives of a Large Network Facing Multiple Rivals*, 54 J. INDUS. ECON. 527, 559 (2006) (“Moreover, a common intuition holds that . . . [the market will tip to] the largest firm if its installed-base share exceeds fifty percent . . . . We showed that this intuition is flawed when the largest firm faces two or more rivals who are themselves compatible: if the largest firm were to choose incompatibility, the unique equilibrium can be tipping to the rivals.”).

<sup>95</sup> *SBC/AT&T Order*, 20 FCC Rcd at 18356–57, para 123; see also *Verizon/MCI Order*, 20 FCC Rcd at 18495, para. 116.

<sup>96</sup> XO Comments, Attach. 2, Marcellus Nixon Declaration at 4; see also *supra* para. 21; Clint Hepner, A Baker's Dozen 2010 Edition, RENESYS BLOG (Jan. 10, 2011, 12:57 PM) <http://www.renesys.com/blog/2011/01/a-bakers-dozen-2010-edition.shtml> (identifying several other potential Tier 1 providers). As the author notes, however, the term Tier 1 “is becoming less and less meaningful in the increasingly complex business relationships found on today's Internet.” *Id.*

<sup>97</sup> See XO Comments at 40–41.

<sup>98</sup> Level 3/GCL Reply at 16. According to Renesys, 38 national providers compete to offer peering or provide transit on a national basis using an IP backbone. *Id.*

<sup>99</sup> Level 3/GCL Reply at 8–11; Section V.A.1.b, *infra*.

<sup>100</sup> In 2009, submarine cables accounted for 81.4% of the reported active common carrier transmission capacity. Terrestrial links accounted for 18.5% and satellites 0.1% of international common carrier circuits. See 2009 Section 43.82 Circuit Status Data, at 3 (2010), available at <http://transition.fcc.gov/ib/pd/pf/csmanual.html> (2009 Circuit (continued....))

merger will affect concentration of ownership of submarine cables.

31. The Commission employs a regional approach in analyzing the international transport market, although at times it also has examined international transport capacity on particular routes.<sup>101</sup> Typically, we evaluate submarine cable capacity in the Atlantic, Pacific, and the Americas regions. Our concern is whether the proposed merger could increase ownership concentration to such an extent that the combined entity would have the ability to exercise market power through unilateral or coordinated action. We examine existing submarine cable capacity and take into account future capacity that may be achieved through the use of new technology and upgrades to the submarine cables within the next two years.

32. We find that the merger will not increase concentration significantly in any of the international transport market regions, and is not likely to result in anticompetitive effects. GCL has interests in submarine cables in the Americas and Atlantic regions. Specifically, GT Landing II Corp (GT Landing II) and Global Crossing Americas Solutions, Inc. (GCAS), subsidiaries of GCL, hold interests in five international cable landing licenses and one U.S. domestic cable system.<sup>102</sup> Level 3 Communications, LLC holds an interest in only one cable landing license, for which GT Landing II is the other licensee.<sup>103</sup> That submarine cable serves the Atlantic region, and therefore we limit our review to that region.<sup>104</sup>

33. Eight submarine cables are currently licensed to land in the United States and serve the Atlantic region; in addition to the two submarine cables owned and operated by GCL and Level 3, there are six submarine cables owned and operated by entities unaffiliated with the Applicants.<sup>105</sup> In 2010 we

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*Status Report*). Common carrier circuits account for approximately 10% of overall capacity on U.S.-international submarine cables. *Id.* at 4; *see also id.* at Tbl. 7-A.

<sup>101</sup> *See AT&T/BellSouth Order*, 22 FCC Rcd at 5741, para. 159; *Verizon/MCI Order*, 20 FCC Rcd at 18514–15, para. 158 (2005); *see also Merger of MCI Communications Corp. and British Telecommunications PLC, GN, Memorandum Opinion and Order*, Docket No. 96-245, 12 FCC Rcd 15351, 15389–97, paras. 94–122 (1997) (*BT/MCI Order*).

<sup>102</sup> *See supra* para. 6

<sup>103</sup> Yellow system, SCL-MOD-20000511-00018, refers to Level 3 Communications, LLC's half-interest in a non-common carrier system connecting Brookhaven, New York, with Bude, United Kingdom (GT Landing II holds the other half-interest and joint cable landing licensee, though GT Landing's interest is known as the Atlantic Crossing-2 system).

<sup>104</sup> We note that several countries ("thin route" countries) are not linked to the United States by cable and are served only by satellites. *See, e.g., AT&T/BellSouth Order*, 22 FCC Rcd at 5741, para. 159, n.432; *WorldCom/MCI Order*, 13 FCC Rcd at 18073–74, para. 85. GCL and Level 3 do not hold any ownership interest in satellite systems or satellite transponder capacity that would serve thin route countries. Thus, the merger will not increase concentration in the provision of transport capacity on these routes. Additionally, we note that traffic on the U.S.-Mexico and U.S.-Canada routes primarily uses terrestrial facilities. We are not aware of any shortage of capacity on these routes. *See, e.g., 2009 Circuit Status Report* at Tbl. 4 (in 2008 carriers reported 661,082 active and 605,213 idle common carrier circuits on U.S.-Canada route; 410,844 active and 470,687 idle common carrier circuits on U.S.-Mexico route). Therefore, we do not review either the thin route markets or the U.S.-Mexico and U.S.-Canada routes as part of our transport capacity analysis in this proceeding.

<sup>105</sup> The other six cables on the trans-Atlantic route are: (1) Apollo Cable, SCL-LIC-20010122-00002, a non-common carrier system owned and operated by Cable & Wireless Americas Systems, Inc.; (2) Columbus III, SCL-LIC-19980527-00007, a common carrier consortium owned system; (3) FLAG Atlantic-1, SCL-LIC-19990301-00005, a non-common carrier system owned and operated by Reliance Globalcom Limited; (4) Hibernia Atlantic, SCL-LIC-19990804-00012, a non-common carrier system owned and operated by Hibernia Atlantic U.S., LLC; (5) TAT-14, SCL-LIC-19990303-00004, a non-common carrier consortium owned system; and (6) TGN Atlantic, SCL-LIC-20000308-00007, a non-common carrier system owned and operated by Tata Communications (America) Inc.

estimate that there was approximately 13 terabits per second (Tbps) of capacity on the trans-Atlantic submarine cables landing in the United States.<sup>106</sup> The two submarine cables owned and operated by the Applicants accounted for 3.6 Tbps, or approximately 28% of that capacity.<sup>107</sup> We project that with new technology and upgrades to the submarine cables, in 2012 there will be approximately 16.7 Tbps capacity on these trans-Atlantic cables and that the Applicants will account for 4.2 Tbps of that or approximately 24.9%.<sup>108</sup> Given that over 70% of the available capacity is owned and controlled by entities unaffiliated with the Applicants, the anticipated decrease in the Applicants' share of the available capacity, the low barriers to entry, and the substantial amount of transport capacity available now and upgradable with new technology, we find that the merger does not pose any anticompetitive concerns in the international transport market.

### 3. Foreign Carrier Affiliations

34. As a part of our public interest analysis under section 214(a) of the Act, we also consider whether the transaction will lead the international section 214 authorization holders to have foreign carrier affiliations that cause it to be dominant on any international route.<sup>109</sup> Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as "dominant" on a particular international route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.<sup>110</sup> A dominant carrier is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules.<sup>111</sup>

35. Similarly, under section 1.767(a)(8) and (a)(11) and section 1.768 of the Commission's rules, a submarine cable licensee that proposes to transfer control of an interest in a submarine cable landing license granted pursuant to the Cable Landing License Act is required to disclose if it will become affiliated with a foreign carrier as a result of the transfer of control.<sup>112</sup> The Commission applies competitive safeguards to a cable landing license held by a licensee that is, or is affiliated with, a carrier with market power in relevant input markets on the foreign end of the cable that could result in harm to

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<sup>106</sup> See *2009 Circuit Status Report* at Tbl. 7-A.

<sup>107</sup> See *id.*

<sup>108</sup> See *id.*

<sup>109</sup> 47 U.S.C. § 214(a). For international section 214 applicants, the terms "affiliated" and "foreign carrier" are defined in section 63.09 of the Commission's rules. 47 C.F.R. § 63.09.

<sup>110</sup> 47 C.F.R. § 63.10. See *Rules and Policies on Foreign Participation in the U.S. U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23969-70, paras. 177-78, 23987, para. 215, 23991-99, paras. 221-39 (1997) (*Foreign Participation Order*) (subsequent history omitted).

<sup>111</sup> See 47 C.F.R. § 63.10(c), (e). These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. U.S. international services could discriminate against rivals of its U.S. U.S. affiliates. In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from World Trade Organization (WTO) Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. U.S. market – where the standard safeguards and additional conditions would be ineffective – the Commission reserves the right to deny the applications. *Foreign Participation Order*, 12 FCC Rcd at 23913-14, para. 51.

<sup>112</sup> 47 C.F.R. §§ 1.767(a)(8), (a)(11), 1.768; see also 47 U.S.C. §§ 34-39; Exec. Ord. No. 10,530 § 5(a), *reprinted as amended* in 3 U.S.C. § 301. For submarine cable applicants, the terms "affiliated" and "foreign carrier" are defined as in § 63.09 of the Commission's rules, 47 C.F.R. § 63.09, except that the term "foreign carrier" also shall include any entity that owns or controls a cable landing station in a foreign market. See 47 C.F.R. § 1.767 nt.



competition in the U.S. market.<sup>113</sup>

36. Level 3 certifies that it has an affiliation with foreign carriers in 23 countries but that none of those carriers has market power, and thus Level 3 is not classified as a dominant carrier pursuant to section 63.10 on any route.<sup>114</sup> GCL and its affiliates control 38 foreign carriers in 32 destination markets.<sup>115</sup> GCAS and GCNA have been classified as dominant carriers pursuant to section 63.10 on the U.S.-Laos and U.S.-Singapore routes.<sup>116</sup> The Applicants state that as a result of the proposed transaction Level 3 will become affiliated with foreign carriers in 18 new destination countries, but that it will not become affiliated with entities controlled by ST Telemedia or SingTel because ST Telemedia will not own directly or indirectly more than 25% of the capital stock of, or control, Level 3.<sup>117</sup>

37. The Applicants also state that as a result of the of the proposed transaction, Level 3 will become affiliated with foreign carriers in the destination markets for the Americas-II, AC-1, AC-2, PAC, and SAC submarine cables, some of which own the cable landing station in the destination market.<sup>118</sup> The Applicants further state that all of these foreign carriers are non-dominant in the destination market.<sup>119</sup>

38. The Applicants request that Level 3 and its subsidiaries be classified as non-dominant on all U.S.-international routes because their affiliates lack 50% market share in the international transport and the local access markets on the foreign ends of these routes and do not have any ability to discriminate against unaffiliated U.S. international carriers through the control of bottleneck services or facilities in its respective international market.<sup>120</sup> Further, Applicants seek to have GCAS and GCNA reclassified as non-dominant on U.S.-Laos and U.S.-Singapore routes since they will no longer be affiliated with a foreign carrier on those routes.<sup>121</sup> The Applicants also request that the Commission remove the requirement that GCL comply with the reporting requirements of section 1.767(l) for the Americas-II submarine cable for the U.S. Singapore route since the Americas-II cable does not land in

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<sup>113</sup> 47 C.F.R. §§ 1.767(l), 1.768(f); *see also Submarine Cable Report and Order*, 16 FCC Rcd at 22180, para. 25. Relevant foreign carrier input markets include those facilities or services for the landing, connection, or operation of submarine cables. *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22180, para. 23 (2001) (*Submarine Cable Report and Order*). The Commission found that these competitive safeguards should be sufficient in all but the most exceptional of circumstances to detect and deter any anticompetitive behavior associated with market power in WTO Member markets where U.S.-licensed cable systems land and operate. *Id.*

<sup>114</sup> *See* International 214 Application at 15, 19–24. A list of the foreign affiliates of Level 3 and the destination countries is provided in Table 1. *Id.* at 21.

<sup>115</sup> *Id.* at 22, Tbl. 2.

<sup>116</sup> *Id.* at 15.

<sup>117</sup> *Id.* at 19. The Applicants state that should ST Telemedia's indirect interests in Level 3 exceed that threshold, as permitted under the Stockholder Rights Agreement between STT Crossing and Level 3, GCAS, GCNA, and other subsidiaries of Level 3 holding international Section 214 authority will notify the Commission as required by 47 C.F.R. § 63.11. *Id.* at 19–20.

<sup>118</sup> Cable Landing Application at 20–22. A list of the foreign affiliates in the destination countries of each submarine cable, including an identification of which affiliates own the cable landing station in the destination market, is provided in Tables 3–6. *Id.* at 21. The MAC submarine cable is a domestic cable and does not land any foreign countries. *Id.* at 20.

<sup>119</sup> *Id.* at 20–22.

<sup>120</sup> International 214 Application at 23.

<sup>121</sup> *Id.* at 15–16, 23.

Singapore and following the transaction the Applicants will no longer be affiliated with dominant carriers or cable station owners in Singapore.<sup>122</sup>

39. We find that the Applicants have demonstrated that the foreign carriers with which they are or will become affiliated with through the proposed transaction lack market power on the foreign end of the U.S.-international routes to be served by the Applicants and the destination markets of the submarine cables. Therefore we will classify the Applicants as non-dominant of those routes regarding the stated affiliations pursuant to section 63.10, and we will not impose the reporting requirements in section 1.767(l).<sup>123</sup> Consequently, we concur with the Applicants that, upon the closing of the proposed transaction, GCAS and GCNA will lose their current foreign affiliations in Laos and Singapore because the ownership in Level 3 by ST Telemedia will be below the 25% threshold for affiliation.<sup>124</sup> Further, we agree with the Applicants that GCL should not be required to comply with the reporting requirements in section 1.767(l) for the Americas-II submarine cable for the U.S.-Singapore route since the submarine cable does not land in Singapore.<sup>125</sup>

#### 4. Issues Related to Toll-Free Tariffing

40. In its comments, Pac-West asserts that the Commission should decline to grant approval of the proposed transfer of control unless the Commission first addresses certain practices regarding compensation for toll-free traffic.<sup>126</sup> Pac-West asserts that neither GCL nor Level 3 appropriately compensates downstream LECs for services performed that enable the companies to offer toll-free services.<sup>127</sup> Specifically, Pac-West asserts that Level 3 does not compensate LECs like Pac-West for the work they perform in a typical toll-free call flow (*i.e.*, local switching, database queries, and transport), and that GCL pays amounts without regard to the Commission's rules or the LECs' tariffs.<sup>128</sup> Pac-West is concerned that the combined entity will adopt Level 3's practices and refuse to make payments at tariffed rates for such services.<sup>129</sup>

41. The tariffing issues that Pac-West raises focus on issues that the Commission is addressing in a separate proceeding. On June 28, 2011, Pac-West filed a petition seeking a declaratory ruling that "an interexchange carrier (IXC) is required to pay a LEC's tariffed access charges when a LEC performs the necessary database query services, the query identifies a particular IXC as the intended recipient, and the LEC delivers a toll-free (or 8YY) call to the responsible IXC (or an intermediate LEC with which the IXC is directly interconnected), regardless of whether the call was initiated as Voice-over-IP ('VoIP') or Time Division Multiplexing (TDM) format."<sup>130</sup> The Commission has requested comment

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<sup>122</sup> Cable Landing Application at 26–27.

<sup>123</sup> 47 C.F.R. §§ 1.767(l), 63.10. Carriers must notify the Commission if they subsequently become affiliated with a foreign carrier. 47 C.F.R. §§ 1.768, 63.11. If that foreign carrier has market power on the foreign end of the relevant U.S.-international route, the safeguards will apply. *See* 47 C.F.R. §§ 1.767(l), 63.10(c).

<sup>124</sup> *See* 47 C.F.R. § 63.09(e).

<sup>125</sup> *See* 47 C.F.R. § 1.767(l).

<sup>126</sup> *See* Pac-West Comments at 5–6.

<sup>127</sup> *See Id. at 2.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *See* Petition of Pac-West Telecom, Inc. for Declaratory Ruling Regarding Access Charges Assessed on VoIP-Initiated Access Traffic, WC Docket No. 11-115, at 1–2 (filed June 28, 2011).

on Pac-West's petition.<sup>131</sup> We find that proceeding to be an adequate and more appropriate forum in which to address these issues, and therefore reject Pac-West's proposal to impose related conditions in the context of this merger.<sup>132</sup>

### C. Potential Public Interest Benefits

42. In addition to assessing the potential competitive harms of the proposed transaction, we also consider whether the proposed transaction is likely to generate public interest benefits. As discussed below, we find that the proposed transaction is likely to generate public interest benefits, although it is difficult to quantify precisely the magnitude of the benefits.

43. The Commission applies a "sliding scale approach" when evaluating benefit claims. Under this sliding scale approach, where potential harms appear "both substantial and likely, the Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."<sup>133</sup> On the other hand, where potential harms appear to be less likely or less substantial, as in this case, we will accept a lesser showing to approve the transaction.<sup>134</sup> We do not find substantial public interest harms and we find the benefits that are likely to result from the transaction are sufficient for us to find that the proposed transaction serves the public interest.

44. The combination of Level 3's businesses serving local and regional enterprise and wholesale and content customers with GCL's experience and assets serving multinational corporations and carrier customers on a global basis is likely to lead to significant synergies and enhanced competition against similar providers, including some of the largest providers in the U.S. market.<sup>135</sup>

### D. Foreign Ownership

45. Level 3 requests a declaratory ruling that it is consistent with the public interest to authorize up to 43.52% indirect foreign ownership as of the closing of the proposed transaction of TelCove and Vvix, common carrier radio licensees pursuant to section 310(b)(4) of the Act and an additional 25% allowance.<sup>136</sup> The 43.52% of anticipated foreign ownership consists of the following:

- (1) an approximate 23.92% indirect equity and voting interest to be acquired by STT Crossing and its parents including ST Telemedia (the "Singapore-Line-of-Ownership");
- (2) an aggregate approximate 12.92% indirect equity and voting interests to be held by other

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<sup>131</sup> *Pleading Cycle Established for Comments on Pac-West Telecomm, Inc. and Verizon Petitions for Declaratory Ruling*, WC Docket No. 11-115, Public Notice, DA 11-1171 (WCB Jul. 7, 2011).

<sup>132</sup> See, e.g., *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17606, para. 92 (declining to address an issue raised in the context of a transfer of control proceeding that fell within the scope of another open proceeding).

<sup>133</sup> *Verizon/ALLTEL Order*, 23 FCC Rcd at 17496, para. 118; *EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferees)*, 17 FCC Rcd 20559, 20631, para. 192 (2002) (*EchoStar-DirecTV HDO*) (quoting *SBC/Ameritech Order*, 14 FCC Rcd 14712, 14825, para. 256); cf. DOJ/FTC Guidelines § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

<sup>134</sup> See, e.g., *Applications of Cellco Partnership D/B/A/ Verizon Wireless and AT&T, Inc., Memorandum Opinion and Order and Declaratory Ruling*, WT Docket No. 06-96, 25 FCC Rcd 10985, 11009, para. 54 (2010) (*Cellco Partnership Order*); *Verizon/ALLTEL Order*, 23 FCC Rcd at 17496, para. 118.

<sup>135</sup> See Level 3/GCL Reply at 2-5 (estimating annual cost savings to the combined entity of \$340 million).

<sup>136</sup> 47 U.S.C. § 310(b)(4).

investors from WTO-Member countries; and  
(3) an aggregate of approximately 6.68% indirect equity and voting interests to be held by retail investors of unknown nationality and by one investor from a non-WTO-Member country.<sup>137</sup>

46. In addition to the 43.52% of indirect foreign ownership which will result from the transaction, Level 3 also requests that the Commission grant an allowance of an aggregate 25% indirect equity and voting interests for TelCove and Vyvx which might be held by foreign investors without obtaining further specific Commission approval provided that: (1) additional foreign ownership held indirectly by ST Telemedia (the “Singapore-Line-of-Ownership”) is limited to 10.58% (for a total of 34.5% total),<sup>138</sup> (2) no more than 25% of Level 3’s total ownership is attributable to entities from non-WTO-Member countries, and (3) no more than 25% is attributable to any single previously unidentified entity from a WTO-Member country.<sup>139</sup> The total amount of indirect foreign ownership requested is thus 68.52%. Level 3 states that the pre-authorized allowance would afford fluctuation in foreign ownership of publicly traded Level 3 stock.<sup>140</sup>

47. For the reasons set forth below, we conclude, pursuant to 310(b)(4), the *Foreign Participation Order*, and the record before us that it would not serve the public interest to deny Level 3’s Petition for authorization of indirect foreign ownership in excess of the statutory 25% limit for TelCove and Vyvx common carrier radio licensees through Level 3 and as otherwise specified and conditioned herein. In doing so, we authorize up to 68.52% indirect foreign ownership in TelCove and Vyvx, as a result in ownership in Level 3.

#### 1. The Parties Post-Consummation

48. Level 3’s indirect subsidiaries TelCove and Vyvx will continue to be owned through their existing parents, which, together, will constitute a chain of ownership down from Level 3 which will be parallel to that of the Level 3 GC chain.<sup>141</sup>

49. As a result of the Amalgamation Agreement, ST Telemedia, through STT Crossing (Singapore line of ownership), will acquire 757,478,896 shares of Level 3 common stock in exchange for 29,342,431 shares of GCL common stock and 18,000,000 shares of GCL convertible preferred stock. The shares of Level 3’s common stock being issued to the Singapore line of ownership represent approximately 23.92% of Level 3’s issued and outstanding shares of common stock following the closing of the Proposed Transaction.<sup>142</sup>

50. In connection with the amalgamation, Level 3 and STT Crossing also entered into a Stockholder Rights Agreement whereby the ability of ST Telemedia to influence or to obtain additional

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<sup>137</sup> Petition for Declaratory Ruling at 2, *passim*; July 28, 2001 Letter, Exh. A (Tbl. Listing Post-Close Foreign Ownership Interests) and Exh. C (Diagram Showing Post-Close Direct and Indirect Ownership of TelCove TWL, Inc., and Vyvx, LLC); August 5, 2011 Letter.

<sup>138</sup> Petitioner requested an allowance of 10.03%, see Petition for Declaratory Ruling at 2, the difference between 24.47% originally requested in the Petition and the 34.5% referenced in the Shareholders Agreement as the limit for additional acquisition by ST Telemedia absent special board approval, see *infra* paragraph 50. We revise this figure, however, because the Petitioner subsequently notified the Commission that the initial holding by STT Crossing is anticipated to be 23.92% rather than 24.47%, a decrease of 0.55%; thus, our revision adds 0.55% to the 10.03% for a total of 10.58%.

<sup>139</sup> Petition for Declaratory Ruling at 2, 3 and 13.

<sup>140</sup> Petition for Declaratory Ruling at 3.

<sup>141</sup> See App. A.

<sup>142</sup> See Petition for Declaratory Ruling at 7; July 28, 2011 Letter; Bressie August 5, 2011 Letter; App. A.

ownership of Level 3 is subject to various conditions. According to the Applicants, the Stockholder Rights Agreement (Agreement) limits ST Telemedia's ability to make any share acquisitions unless, after giving effect to such share acquisitions, ST Telemedia's interest in Level 3 is less than 34.5%, absent written consent by a majority of Level 3's board of directors (excluding directors designated by STT Crossing).<sup>143</sup> The Agreement limits ST Telemedia's ability to make any share acquisitions over 34.5% total, absent written consent by a majority of Level 3's board of directors (excluding directors designated by STT Crossing). According to Level 3, after consummation of the transaction, Level 3 will have an 11 member board, of which STT Crossing will have the right to designate three members.<sup>144</sup> Thereafter, STT Crossing has the right to nominate such number of designees to future boards of directors of Level 3 in proportion to its shareholding.<sup>145</sup>

51. Following the consummation of the transaction, the following parties will have significant shares of Level 3: STT Crossing, ST Telemedia and SAM. STT Crossing is a holding company organized as a Mauritius limited-liability company. STT Crossing directly holds a majority interest in GCL of approximately 59.9%. Following the consummation of the proposed transaction, STT Crossing will become a minority shareholder of Level 3, holding approximately 23.92%.<sup>146</sup> ST Telemedia is a Singapore investment holding company, with investments in various information communications companies. It is organized as a private limited company under the laws of the Republic of Singapore. Following receipt of U.S. Government and other approvals, including Commission consents, ST Telemedia acquired control of GCL in December 2003.<sup>147</sup> Through STT Crossing and another intermediate holding company, ST Telemedia indirectly holds a majority interest in GCL of approximately 59.9%. ST Telemedia is wholly-owned by Temasek Holdings (Private) Limited ("Temasek"), a Singapore-based investment holding company which, in turn, is wholly-owned by the Government of Singapore through the Minister for Finance.<sup>148</sup> SAM, a corporation organized and headquartered in Tennessee, holds sole or shared voting rights for 17.37% of outstanding shares of Level 3 that are otherwise owned by other entities for whom SAM acts as an investment advisor. None of SAM's owners holds a ten-percent-or greater direct or indirect interest in Level 3. Following the consummation of the Proposed Transaction, SAM will be a minority shareholder of Level 3, holding approximately 20.73%.<sup>149</sup>

## 2. Legal Standard for Foreign Ownership of Radio Licensees

52. We review the prospective foreign ownership of TelCove and Vvvx (to be held in their U.S. parent, Level 3) under section 310(b)(4) of the Act and the Commission foreign ownership policies established in the *Foreign Participation Order*.<sup>150</sup> As part of that analysis, we consider any national

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<sup>143</sup> See Cable Landing Application at 11–12; Section 214 Application at 9; Satellite Earth Station Application, Exh. F at 7; Petition for Declaratory Ruling at 7–8.

<sup>144</sup> July 28, 2011 Letter.

<sup>145</sup> Cable Landing Application at 11–12; Section 214 Application at 9; Petition for Declaratory Ruling at 7–8.

<sup>146</sup> Petition for Declaratory Ruling at 5.

<sup>147</sup> *GCL Transfer Order*, 18 FCC Rcd at 20323, para. 27.

<sup>148</sup> Cable Landing Application at 4–5; Section 214 Application at 4; Satellite Earth Station Application, Exh. E at 3; Petition for Declaratory Ruling at 4.

<sup>149</sup> Petition for Declaratory Ruling at 11; August 8, 2011 Letter.

<sup>150</sup> See *Foreign Participation Order*, 12 FCC Rcd 23891 (1997).

security, law enforcement, foreign policy, or trade policy concerns raised by the proposed transaction.<sup>151</sup>

53. Section 310(b)(4) of the Communications Act establishes a 25% benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized parent entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>152</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee U.S.-organized parent in excess of 25% triggers the applicability of section 310(b)(4)'s statutory limit.<sup>153</sup> Once the limit is reached, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."<sup>154</sup>

54. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by facilitating investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and aeronautical *en route* radio licensees.<sup>155</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.<sup>156</sup> In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a five-factor "principal place of business" test to determine the nationality or "home market" of foreign investors.<sup>157</sup>

55. In light of Commission policies adopted in the *Foreign Participation Order*, we begin our evaluation of the indirect foreign ownership of TelCove and Vyvx under section 310(b)(4) by

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<sup>151</sup> The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). *Foreign Participation Order*, 12 FCC Rcd at 23941, para. 114, at 23918–21, paras. 59–66.

<sup>152</sup> See 47 U.S.C. § 310(b)(4) (providing that "[n]o broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license").

<sup>153</sup> The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent. See *Skyterra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer of Control of Sky-Terra Subsidiary, LLC*, IB Docket No. 08-184, 25 FCC Rcd 3059, 3069, para. 18 n. 65 (2010) (*SkyTerra Order*); *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973, para. 22 (1995) (*BBC License Subsidiary*). The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests. *BBC License Subsidiary*, at 10972, para. 20, 10973–74, paras. 22–25.

<sup>154</sup> 47 U.S.C. § 310(b)(4).

<sup>155</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896, para. 9, 23913, para. 50, 23940, paras. 111–12.

<sup>156</sup> *Id.* The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25% of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. See *id.* at 23946, para. 131.

<sup>157</sup> See *infra* para. 58.

calculating the foreign equity and voting interests that will be held in its U.S. parent, Level 3, upon consummation of the proposed transaction.<sup>158</sup> We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries.

### 3. Attribution of Foreign Ownership Interests

56. In the instant case, we evaluate the proposed indirect foreign equity and voting interests in Vyvx and TelCove by calculating those interests that would be present in Level 3, their ultimate U.S. parent upon closing.<sup>159</sup> We then determine whether these foreign interests are properly ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO-Member countries.

57. We first describe the foreign equity and voting interests in Level 3 that are to be held through the Singapore Line of Ownership. As discussed above, consummation of the proposed transaction will result in STT Crossing acquiring 23.92% of Level 3.<sup>160</sup> STT Crossing is a holding company organized under the laws of Mauritius, a WTO-Member country. We attribute STT Crossing's equity and voting interests through each of its wholly owned parent companies, all Singapore entities, and to their ultimate parent, the Government of Singapore.<sup>161</sup>

58. Applying the five-factor principal place of business test, we find that ST Telemedia's home market is Singapore, a WTO-Member country.<sup>162</sup> ST Telemedia is organized under the laws of

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<sup>158</sup> In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. *See BBC License Subsidiary*, 10 FCC Rcd at 10973–74, paras. 24–25. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. *Id.* at 10973, para. 23; *see also Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 103 F.C.C. 2d 511, 522, para. 19 (1985) (*Wilner & Scheiner I*), *recon. in part*, 1 FCC Rcd 12 (1986). In circumstances where the voting interests in the U.S. U.S. parent of a common carrier licensee are held through intervening partnerships, a general partner is considered to hold the same voting interest as the partnership holds in the company positioned below it. Similarly, in the absence of a demonstration that a limited partner effectively is insulated from active involvement in partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership holds in the company positioned below it. *See Applications of XO Communications, Inc.*, IB Docket No. 02-50, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19212, 19221–23, paras. 22, 25 (IB, WCB, and WTB 2002) (*XO Communications*).

<sup>159</sup> As fully depicted in App. A, TelCove and Vyvx are wholly-owned subsidiaries of TelCove Operations, LLC and WilTel Communications, LLC, respectively, both Delaware LLCs, which are themselves wholly owned by Level 3 Communications LLC, a Delaware LLC, which, in turn, is wholly owned by Level 3 Financing, Inc., a Delaware corporation which is wholly owned by Level 3.

<sup>160</sup> *See* Petition for Declaratory Ruling at 5; *supra* para. 51; App. A.

<sup>161</sup> *See supra* note 9.

<sup>162</sup> To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity incorporation, organization or charter, (2) the nationality of all investment principals, officers, and directors, (3) the country in which the world headquarters is located, (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located, and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *See id.* at 23941, para. 116 (citing *Foreign Carrier Entry Order*, 11 FCC Rcd at 3951, para. 207).

Singapore; five of its eight directors are Singapore citizens; two of its five senior management Members are Singapore citizens; ST Telemedia's headquarters and the majority of its tangible property, operations and personnel are located in Singapore. ST Telemedia is a direct wholly-owned subsidiary of Temasek, a Singapore investment company that is wholly owned by the Government of Singapore.<sup>163</sup> We note that the Commission previously found the home market of Temasek and ST Telemedia to be Singapore.<sup>164</sup> Similarly, we find that the parent entities of STT Crossings have home markets in Singapore. The 23.92% ownership held by ST Telemedia, Temasek, and ultimately, the Government of Singapore, is therefore entitled to a rebuttable presumption that it would not pose a risk to competition in the U.S. market that would justify denial of the Applications.<sup>165</sup> We are persuaded that the presumption is sustained given the absence of rebutting evidence.

59. We note that Level 3 has disclosed the identity of additional foreign investors from WTO-Member country citizenship that, in aggregate, will hold approximately 12.92% interests in Level 3 and one investor holding a de minimis (0.000020%) interest from the Bailiwick of Jersey, which Petitioner characterizes as a non-WTO-Member.<sup>166</sup> Approximately 6.68% of Level 3's interests will be held by shareholders of unknown citizenship and 4.01% interests will be issued in future Restricted Stock Units, options and warrants to Level 3 employees, the citizenship of whom will be known, calculated and tracked by Level 3 at the time of issuance.<sup>167</sup>

60. In summary, virtually all of Level 3's proposed indirect foreign equity and voting interests are properly ascribed to individuals and entities from WTO Member countries. Therefore, the Applicants are entitled to a rebuttable presumption that the proposed indirect foreign ownership of TelCove and Vyvx would not pose a risk to competition in the U.S. market that would justify denial of Level 3's Petition. As discussed above, there is no credible evidence in the record that would rebut this presumption and, as we explain more fully in Section IV.B, the proposed transaction does not raise any significant competitive concerns. We also determine in Section IV.E that the agreement between the Applicants and the Executive Branch addresses any national security and law enforcement concerns.

61. Pursuant to the *Foreign Participation Order*, Level 3 is entitled to a rebuttable presumption that the proposed foreign ownership does not pose a risk to competition in the U.S. market that would justify denial of the Applications. This presumption could be rebutted only if we were to find that grant of the Applications would pose a very high risk to competition in the U.S. market, where our general safeguards and other conditions would be ineffective at preventing harm to U.S. consumers. We know of no evidence of the existence of any such risk. Therefore, pursuant to section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*, we grant Level 3's petition subject to the limits specified below. Specifically, this ruling permits TelCove and Vyvx to be owned indirectly: (1) by STT Crossing (23.92% equity and voting interests) and its existing parents referenced in the Petition for Declaratory Ruling, including STT Communications, ST Telemedia, Temasek and the Government of Singapore and (2) by investors identified by the Petitioner in filings made to the Commission in connection with this transaction and which are from WTO Member countries (an aggregate 12.92% equity and voting interests). TelCove and Vyvx may accept up to and including an additional, aggregate 25% equity and/or voting interests from these foreign investors and other foreign investors without seeking prior Commission approval, subject to the following conditions. First, TelCove and Vyvx shall

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<sup>163</sup> Petition for Declaratory Ruling at 4; *supra* para. 5; App. A.

<sup>164</sup> *GCO*, 18 FCC Rcd at 20323–24 para. 27.

<sup>165</sup> *Foreign Participation Order* at 23897–98, para. 13, 23912, para. 50, and 23940, paras. 111–13.

<sup>166</sup> *See, e.g.*, Petition for Declaratory Ruling 14.

<sup>167</sup> *See* Petition for Declaratory Ruling 11; Exh. A, Table Listing Post-Close Foreign Ownership Interests filed by Level 3 July 28, 2011; August 5, 2011 Letter, Exh. C.



obtain prior approval before any single foreign individual or entity other than ST Telemedia and its parents identified herein (the “Singapore-Line-of-Ownership”) acquires an indirect equity and/or voting interest in TelCove and Vyvx that exceeds 25%. Second, TelCove and Vyvx shall obtain prior approval before their total indirect foreign equity or voting interests from non-WTO investors, including TelCove and Vyvx unidentified foreign investors, exceeds 25%. For purposes of calculating the aggregate 25% amount, TelCove and Vyvx shall include all equity and voting interests held by shareholders of unknown nationality and the citizen of the Bailiwick of Jersey (approximately 6.68%), and any additional foreign ownership held indirectly by ST Telemedia and its parents identified herein (the “Singapore-Line-of-Ownership”) is limited to 10.58% (for a 34.5% total).<sup>168</sup>

#### **E. National Security, Law Enforcement, Foreign Policy, and Trade Concerns**

62. When analyzing a transfer of control or assignment application in which foreign investment is an issue, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.<sup>169</sup> On September 26, 2011, the Department of Justice, including the Federal Bureau of Investigation (collectively, DOJ), the Department of Homeland Security (DHS), and the Department of Defense (DOD) filed a Petition to Adopt Conditions to Authorizations and Licenses (DOJ/DHS/DOD Petition).<sup>170</sup> DOJ, DHS, and DOD have negotiated a Security Agreement with the Applicants.<sup>171</sup> DOJ, DHS, and DOD state that they have no objection to the Commission granting the applications and petition for declaratory ruling provided that the Commission condition its consent on compliance with the commitments set forth in the Security Agreement.<sup>172</sup>

63. In assessing the public interest, we take into account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.<sup>173</sup> As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.<sup>174</sup> In accordance with the request of the DOJ, DHS, and DOD in the absence of any objection from the Applicants, we condition our grant of the applications and petition for declaratory ruling Applicants’ compliance with the commitments set forth in the Security Agreement. The Petition and Security Agreement are publicly available on the Commission’s website.<sup>175</sup>

#### **V. CONCLUSION**

64. Upon review of the Application and the record in this proceeding, we conclude that approval of this transaction is in the public interest.

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<sup>168</sup> Accordingly, the available allowance or cushion is 7.74% (25% - 6.68% - 10.58%).

<sup>169</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918, para. 58.

<sup>170</sup> DOJ/DHS/DOD, Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 11-78 (filed Sept. 26, 2011), available at <http://webapp01.fcc.gov/ecfs/document/view?id=7021711200>.

<sup>171</sup> Agreement attached to DOJ/DHS/DOD, Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 11-78 (filed Sept. 26, 2011) (Security Agreement), available at <http://webapp01.fcc.gov/ecfs/document/view?id=7021711201>.

<sup>172</sup> DOJ/DHS/DOD Petition at 2.

<sup>173</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918–21, paras. 59–66.

<sup>174</sup> *Id.* at 23919, para. 62.

<sup>175</sup> See DOJ/DHS/DOD Petition, available at <http://webapp01.fcc.gov/ecfs/document/view?id=7021711200>; Security Agreement, available at <http://webapp01.fcc.gov/ecfs/document/view?id=7021711201>.

**VI. ORDERING CLAUSES**

65. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i)–(j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 214, 309, 310(b), 310(d), and section 2 of the Cable Landing License Act, 47 U.S.C. §§ 34-39, the Applications to transfer control of submarine cable landing licenses, international 214 authorizations and satellite earth station licenses from Global Crossing Limited to Level 3 Communications, Inc. ARE GRANTED, to the extent specified and as conditioned in this Memorandum Opinion and Order and Declaratory Ruling.

66. IT IS FURTHER ORDERED that Level 3 and its affiliates WILL BE CLASSIFIED as non-dominant on all U.S.-international routes, including the U.S.-Laos and U.S.-Singapore routes, pursuant to section 63.10 of the Commission's rules, 47 C.F.R. § 63.10.

67. IT IS FURTHER ORDERED that GCL is NO LONGER REQUIRED to comply with the reporting requirements in section 1.767(l) of the Commission's rules, 47 C.F.R. § 1.767(l), for the Americas-II submarine cable for the U.S.-Singapore route.

68. IT IS FURTHER ORDERED that, pursuant to sections 4(i)–(j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 214, 309, 310(b), 310(d), that grant of the applications and associated petition for declaratory ruling IS CONDITIONED UPON compliance by Level 3 with the provisions of the Agreement between the Department of Justice, and the Federal Bureau of Investigation, the Department of Defense, and the Department of Homeland Security, dated September 26, 2011, which is publicly available on the Commission's website.<sup>176</sup>

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<sup>176</sup> See DOJ/DHS/DOD Petition, available at <http://webapp01.fcc.gov/ecfs/document/view?id=7021711200>; Security Agreement, available at <http://webapp01.fcc.gov/ecfs/document/view?id=7021711201>.

FEDERAL COMMUNICATIONS COMMISSION

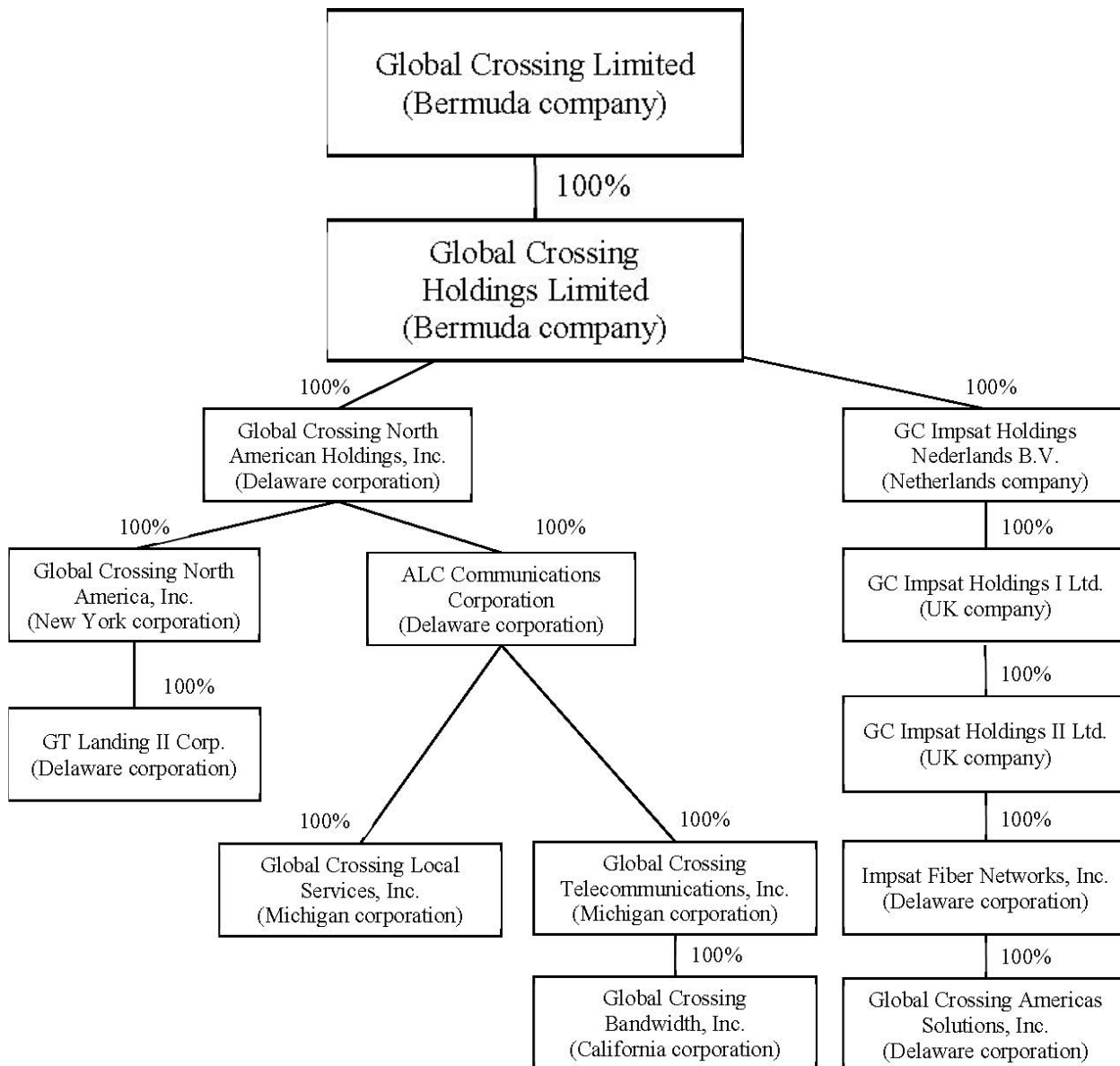
Sharon E. Gillett  
Chief, Wireline Competition Bureau

Mindel De La Torre,  
Chief, International Bureau

APPENDIX

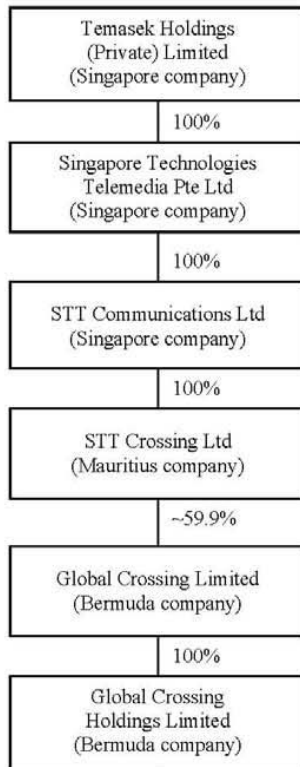
Pre- and Post-Consummation Corporate Structure of Level 3 Communications, Inc. and Global Crossing Limited

Global Crossing Limited and its Relevant U.S. Operating Subsidiaries

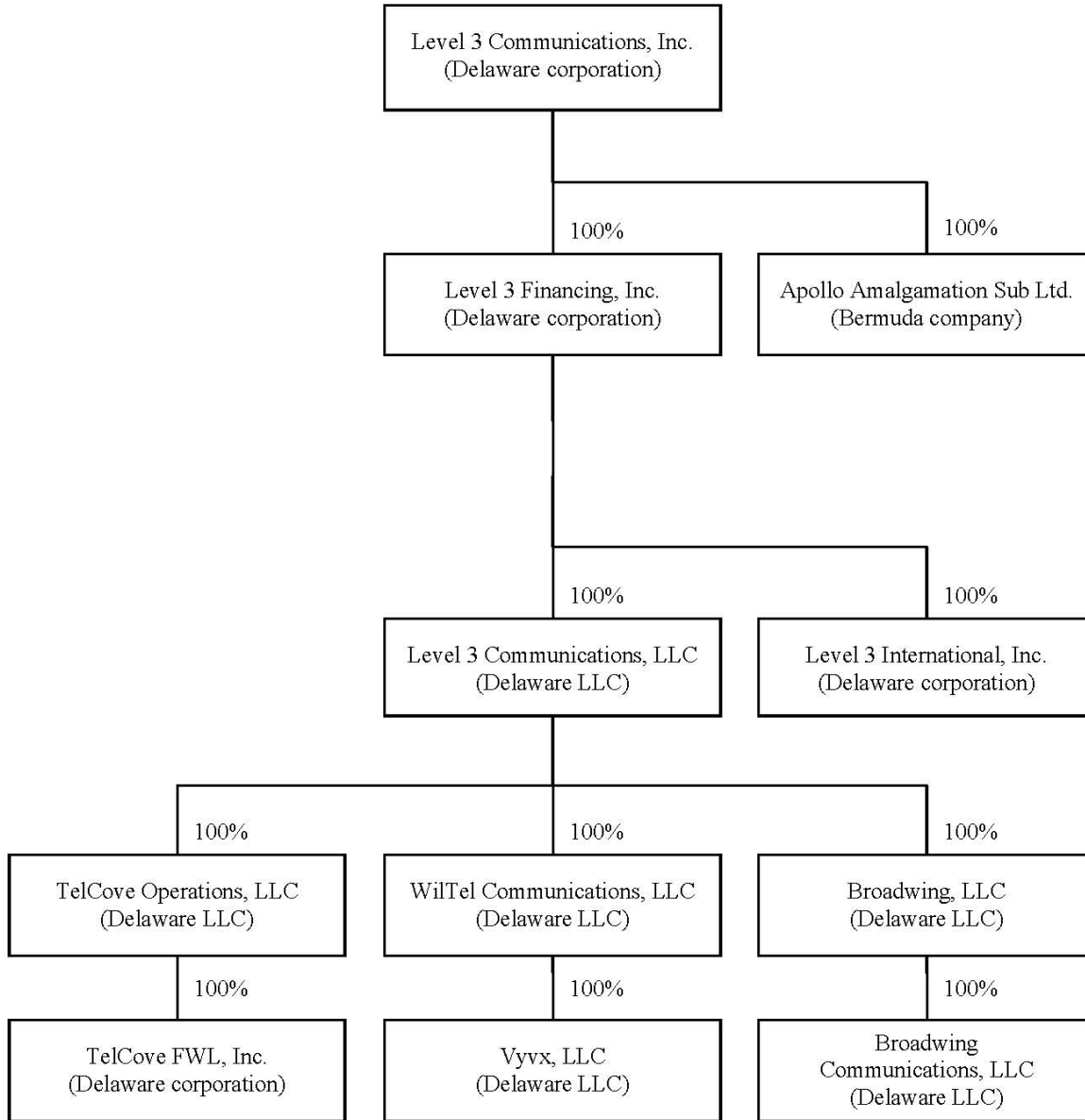


International Optical Network LLC is 50% owned by Global Crossing Telecommunications, Inc.

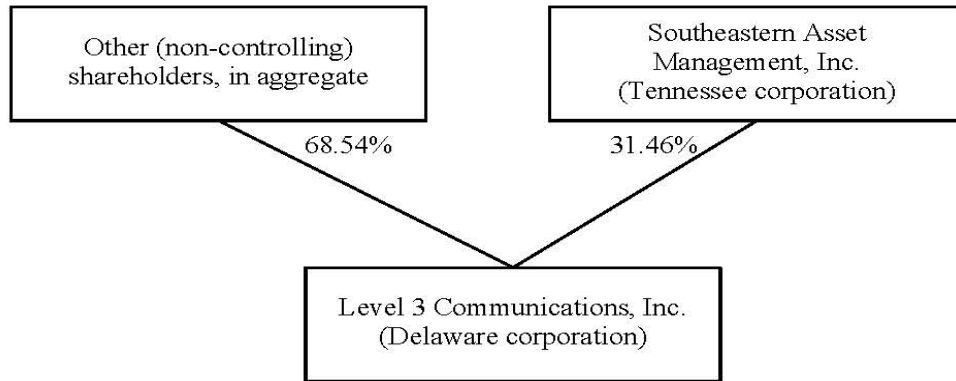
**Pre-Consummation Ownership of Global Crossing Limited**



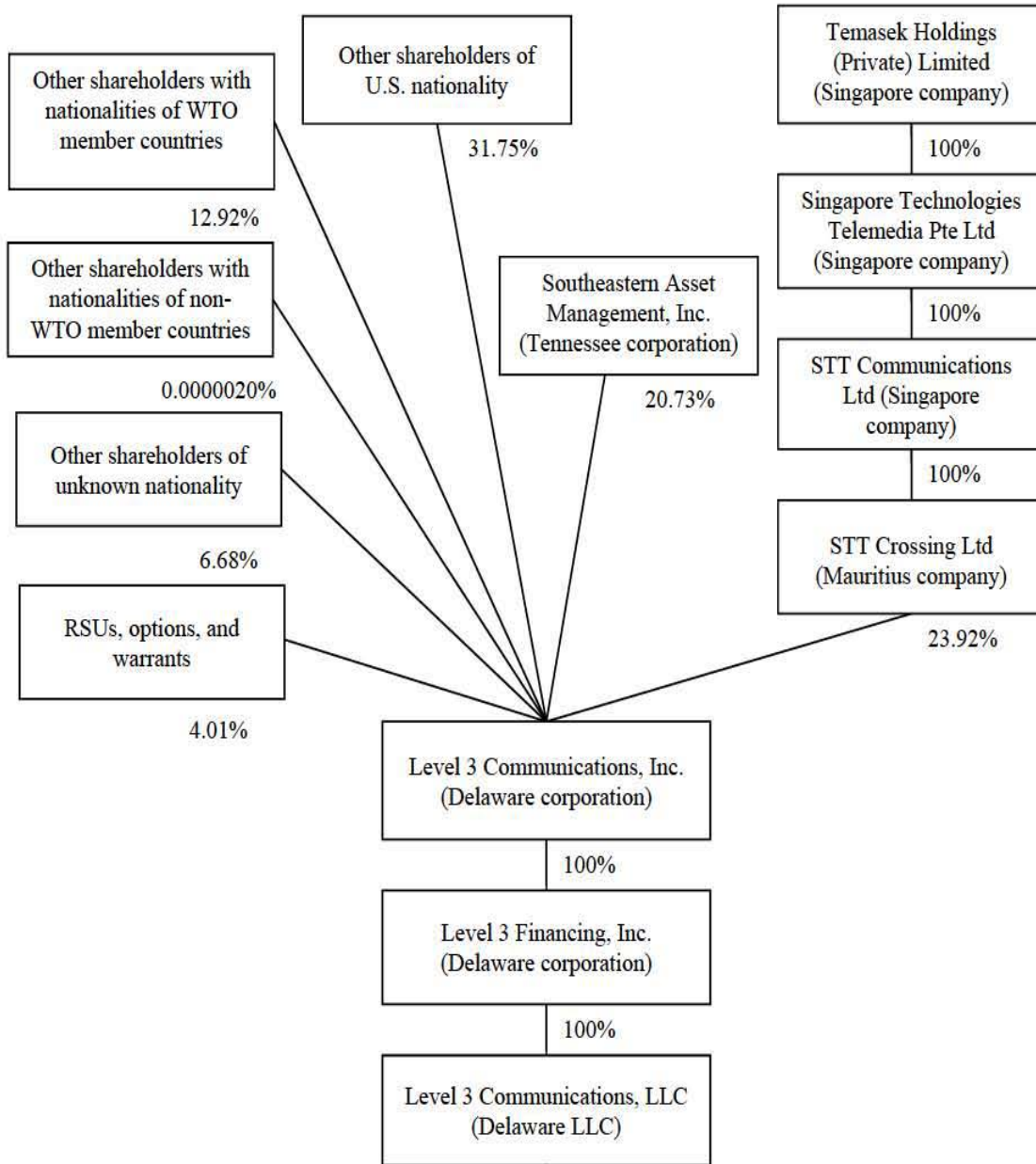
**Level 3 Communications Inc. and Its Relevant U.S. Operating Subsidiaries**



**Pre-Consummation Ownership of Level 3 Communications, Inc.**

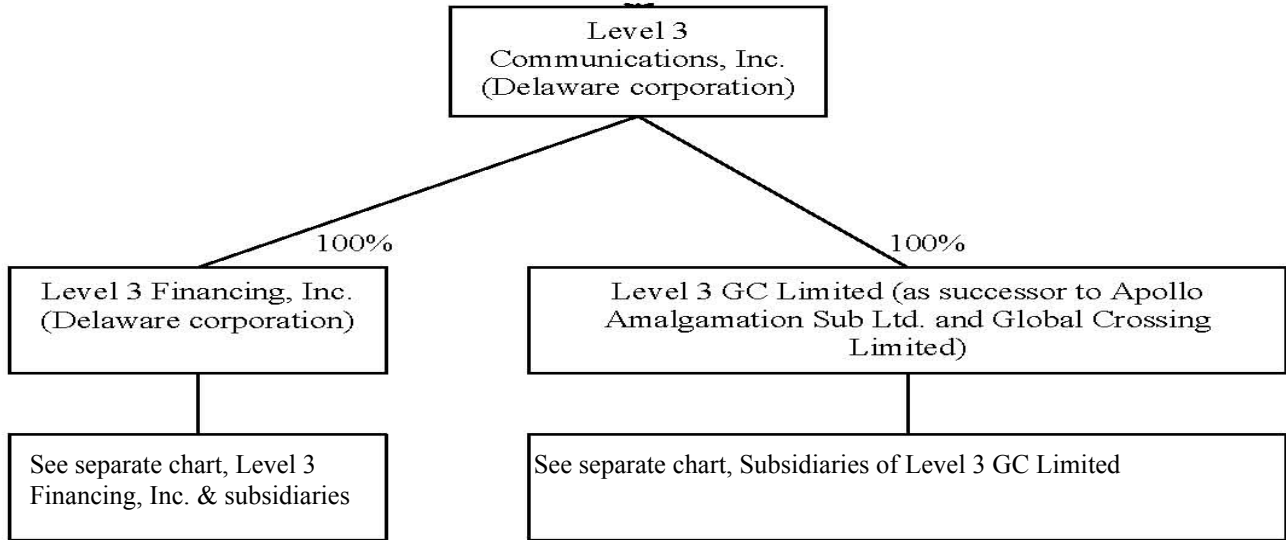


Post-Consumption Ownership of Level 3 Communications, Inc.

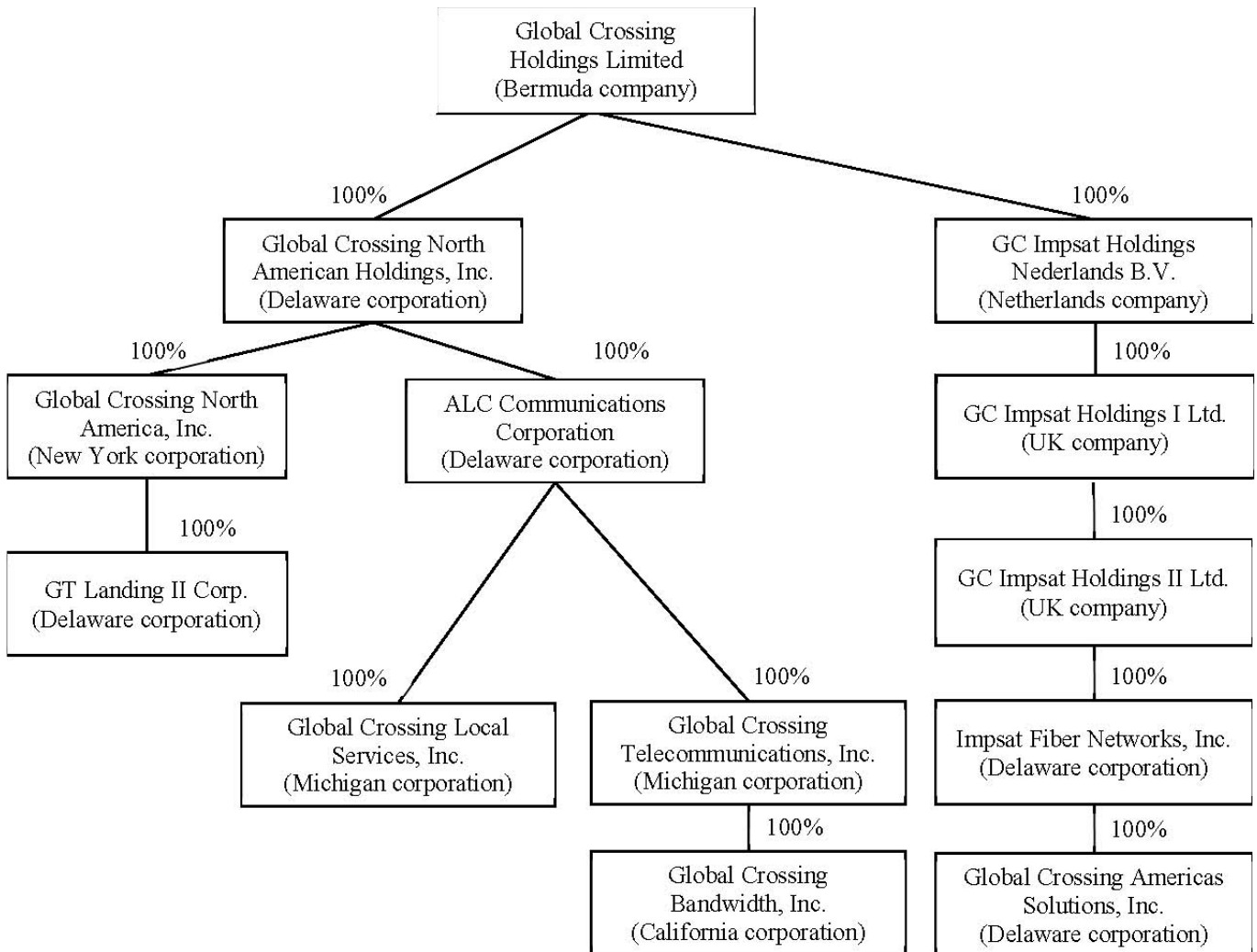




Post-Consummation Subsidiaries of Level 3 Communications, Inc.



**Post-Consummation  
Relevant U.S. Operating Subsidiaries of Level 3 GC Limited**



International Optical Network LLC is 50% owned by Global Crossing Telecommunications, Inc.

Level 3 Financing, Inc. and its Relevant U.S. Operating Subsidiaries

