MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

November 17, 2014

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Level 3 Communications, LLC, Broadwing Communications, LLC, et al. v. Joseph L. Maciejewski*
Document Received:	Verified Petition
Name of Petitioners:	Level 3 Communications, LLC, et al.
Petitioners' Attorney:	Ingram Yuzek Gainen Carroll & Bertolotti, LLP 250 Park Avenue, 6th Floor New York, NY 10177

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

MAS:dld
Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of LEVEL 3 COMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, GLOBAL CROSSING NORTH AMERICA, INC., and GLOBAL CROSSING TELECOMMUNICATIONS, INC., Petitioners, -against- JOSEPH L. MACIEJEWSKI, as Director of Real Property Tax Services for the County of Erie, Respondent, for a judgment pursuant to Article 78 of the Civil Practice Law and Rules.	Index No.: I 2014 000195 **NOTICE OF PETITION**

PLEASE TAKE NOTICE that upon the annexed Petition of Petitioners Level 3 Communications, LLC ("Level 3"), Broadwing Communications, LLC ("Broadwing"), Global Crossing North America, Inc. ("GC North America"), and Global Crossing Telecommunications, Inc. ("GC Telecom"), verified on October 29, 2014, and the exhibits annexed thereto, the undersigned attorneys will move this Court at the Courthouse located at the Erie County Court Building, 25 Delaware Avenue, Buffalo, NY 14202, at 9:30 A.M. on December 22, 2014, or as soon thereafter as counsel may be heard, for an Order, pursuant to Article 78 of the New York State Civil Practice Law and Rules ("CPLR"):

(a) compelling Respondent Joseph L. Maciejewski, as Director of Real Property Tax Services for County of Erie, to issue written reports and recommendations

concerning applications for refunds under RPTL 556 filed by Petitioners Level 3 and Broadwing;

(b) compelling Respondent Joseph L. Maciejewski, as Director of Real Property Tax Services for County of Erie, to issue written reports and recommendations concerning applications under RPTL 554 filed by Petitioners Level 3, Broadwing, GC North America, and GC Telecom for correction of the tax roll of the City of Buffalo;

(c) compelling Respondent Joseph L. Maciejewski, as Director of Real Property Tax Services for County of Erie, to issue a written report and recommendation concerning an application under RPTL 554 filed by Petitioner Level 3 for correction of the tax roll of City of Lackawanna; and

(d) for such other relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 7804(3), an answer and supporting affidavits, if any, must be served at least five (5) days prior to the return date.

Dated: New York, New York
October 29, 2014

INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI, LLP

By: _____
John G. Nicolich
Roger Cukras
Attorneys for Petitioners
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TO: JOSEPH L. MACIEJEWSKI
Director of Real Property Tax
Tax Services for County of Erie
95 Franklin Street, Room 100
Buffalo, New York 14202

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of LEVEL 3 COMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, GLOBAL CROSSING NORTH AMERICA, INC., and GLOBAL CROSSING TELECOMMUNICATIONS, INC., Petitioners, -against- JOSEPH L. MACIEJEWSKI, as Director of Real Property Tax Services for the County of Erie, Respondent, for a judgment pursuant to Article 78 of the Civil Practice Law and Rules.	Index No.: **VERIFIED PETITION**

Petitioners, by their attorneys, Ingram Yuzek Gainen Carroll & Bertolotti, LLP, for their Verified Petition asserting claims under Article 78 of the New York Civil Practice Law and Rules ("CPLR"), allege as follows:

1. Petitioners are affiliated entities and bring this proceeding to compel Respondent to comply with his statutory duty to transmit written reports and recommendations with respect to certain applications for correction of the tax roll and for tax refunds that Petitioners submitted to Respondent under Sections 554 and 556 of the Real Property Tax Law ("RPTL").

A. Parties And Background

2. Petitioners Level 3 Communications, LLC ("Level 3") and Broadwing Communications, LLC ("Broadwing") are limited liability companies organized under the laws

of the State of Delaware, are duly authorized to do business in the New York State, and have their executive offices at 1025 Eldorado Boulevard, Bloomfield, Colorado.

3. Petitioner Global Crossing North America, Inc. ("GC North America") is a corporation organized under the laws of the State of New York and has its executive offices at 1025 Eldorado Boulevard, Bloomfield, Colorado.

4. Petitioner Global Crossing Telecommunications, Inc. ("GC Telecom") is a corporation organized under the laws of the State of Michigan, is duly authorized to do business in New York, and has its executive offices at 1025 Eldorado Boulevard, Bloomfield, Colorado.

5. Upon information and belief, Respondent Joseph L. Maciejewski is the Director of Real Property Tax Services for the County of Erie (the "County Director").

6. As relevant herein, in *Matters of RCN N.Y. Communications, LLC and Level 3 Communications, LLC v. Tax Comm'n of the City of New York*, 95 A.D.3d 456, 457 (1st Dep't), *leave to appeal denied,* 20 N.Y.3d 855 (2012), the Appellate Division, First Judicial Department, held that Level 3's fiber optic cables on private property in the City of New York are not "for electrical conductors" and, accordingly, that Level 3's fiber optic cables on private property are not taxable real property under the RPTL 102(12).

7. After the Court of Appeals denied leave to appeal in *Matter of RCN*, Petitioners sought to obtain corrections of tax rolls and refunds of taxes in other jurisdictions in the State of New York which imposed real property tax on Petitioners' fiber optic properties.

8. In June 2013, Petitioners Level 3 and Broadwing, by undersigned counsel, filed applications for correction of tax rolls and for refunds of taxes with the county directors of real property tax services of a number of counties in the State of New York, including Erie County and Essex County. Petitioners submitted their applications to the county directors on Form RP-

556-b, which is a form prescribed under RPTL 556-b by the commissioner of taxation and finance of the New York State Department of Taxation and Finance.

B. Level 3's And Broadwing's Original Applications To The County Director

9. On or about June 3, 2013, Petitioners Level 3 and Broadwing, by undersigned counsel, mailed to County Director Maciejewski three copies each of applications for correction of errors and for refunds on Form RP-556-b (the "Original Applications").

10. The Original Applications, each titled "Application for Correction of Multiple-Parcel Errors," sought correction of the tax roll and refunds of taxes paid for the 2010, 2011, and 2012 tax years on grounds that the challenged tax assessments were made upon personal property — *i.e.*, fiber optic cables and inclosures therefor, located on private rights of way in Erie County. The Original Applications further alleged that the assessments were based on an "unlawful entry" under RPTL 550(7)(c) because the assessor had no authority to assess personal property.

11. On or about January 30, 2014, the County Director mailed to undersigned counsel determinations of tax levying bodies denying virtually all of the Original Applications that Petitioners Level 3 and Broadwing had filed with the County Director. Petitioners Level 3 and Broadwing never received determinations of the remaining Original Applications.

12. On May 14, 2014, Petitioners Level 3 and Broadwing commenced a proceeding in this Court under Article 78 of the CPLR, captioned *Matter of Level 3 Communications, LLC, et al., v. Erie County, et al.*, Index No. 2014-00064, which has been assigned to and is pending before Honorable Timothy J. Walker (the "Prior Proceeding"). In the Prior Proceeding, Petitioners Level 3 and Broadwing requested, *inter alia*, an order (a) annulling the determinations denying the Original Applications, and (b) requiring the tax levying bodies to grant the Original Applications.

C. The Essex County Proceeding

13. In October 2013, Petitioner Level 3 had commenced a separate Article 78 proceeding in Supreme Court, Essex County, Index No. 603-13, which requested, *inter alia*, an order annulling determinations denying applications by Level 3 for correction of the tax roll and refunds on Form RP-556-b with respect to real property taxes imposed by tax levying bodies in Essex County (the "Essex County Proceeding").

14. In a decision, order and judgment dated May 29, 2014, the Supreme Court, Essex County, denied Level 3's applications for refunds in the Essex County Proceeding. The Supreme Court, Essex County, denied refunds to Level 3 on the ground, *inter alia*, that Level 3's applications were untimely because RPTL 554(2) requires those applications to have been filed before the expiration of the tax warrant, whereas Level 3's applications had been filed more than three months after the warrants expired. Level 3 has appealed to the Appellate Division, Third Department, from the judgment entered in the Essex County Proceeding.

D. Level 3's And Broadwing's Applications On Form RP-556

15. On June 23, 2014, not long after Petitioners' receipt of the May 29, 2014 decision, order and judgment of the Supreme Court, Essex County, Petitioners Level 3 and Broadwing, by undersigned counsel, sent new applications for refunds of taxes on Form RP-556 to County Director Maciejewski in Erie County ("Form RP-556 Applications"). Copies of those Form RP-556 Applications, with counsel's transmittal letter dated June 23, 2014, are annexed as Exhibit A.

16. The Form RP-556 Applications were signed on behalf of Level 3 and Broadwing by Lisa Akins, Level 3's Director of Tax, and the addendum to each Form RP-556 Application represented that "the assessments in issue were made on Applicant's fiber optic cables and inclosures therefor located on private right of way," that "Applicant's fiber optic cables and the

inclosures therefor are not taxable as real property under New York law," and that taxes "were assessed on the properties in issue based on an 'unlawful entry.'"

17. Petitioners Level 3 and Broadwing submitted the Form RP-556 Applications to County Director Maciejewski pursuant to RPTL 556, which provides that tax levying bodies may provide refunds of taxes where an application for refunds "is made within three years from the annexation of the warrant for such tax."

18. By letter dated June 26, 2014, the County Director returned the Form RP-556 Applications to Petitioners' counsel, stating that "Erie County does not handle corrections" for "city or city school taxes" and that the remaining Form RP-556 Applications "are duplicates of the petitions submitted and acted on based on your prior submission." A copy of the County Director's letter dated June 26, 2014 is annexed as Exhibit B.

19. By letter dated and sent on July 1, 2014, counsel for Petitioners returned the Form RP-556 Applications to the County Director and stated to the County Director that (a) Petitioners Level 3 and Broadwing had submitted the Form RP-556 Applications "without prejudice to their rights based on their prior submission of applications on Form RP-556-b"; and (b) "pursuant to Section 556 [of the RPTL], all such applications on Form RP-556 are to be filed with the county director, who is to investigate and make a determination thereon to the tax levying body (including tax levying bodies that levy city and school taxes)." A copy of the letter sent to the County Director on July 1, 2014 is annexed as Exhibit C.

20. The last sentence of the July 1, 2014 letter sent to the County Director stated as follows (Exh. C, p. 2):

> Please make your recommendations and send these applications to the appropriate tax levying bodies, as provided in Section 556 of the Real Property Tax Law.

21. As of the date of this Petition, Petitioners Level 3 and Broadwing have not received determinations of their RP-556 Applications, nor have Petitioners Level 3 and Broadwing received any notice that the County Director has transmitted written reports of his investigation and recommendations for action thereon to any of the tax levying bodies.

22. Upon information and belief, the County Director has taken no action with respect to the RP-556 Applications filed by Petitioners Level 3 and Broadwing, and the County Director has not sent written reports and recommendations concerning the RP-556 Applications to the tax levying bodies.

E. Petitioners' Applications On Form RP-554 Concerning City Of Buffalo Taxes

23. The City of Buffalo has rendered 2014-15 bills to Petitioners Level 3, Broadwing, GC North America, and GC Telecom for taxes assessed on Petitioners' fiber optic properties in the City of Buffalo (*see* Exhibit D hereto).

24. By letter dated July 29, 2014, Petitioners Level 3, Broadwing, GC North America, and GC Telecom sent County Director Maciejewski applications on Form RP-554 for the correction of the 2014-15 tax roll of the City of Buffalo ("Buffalo RP-554 Applications"). Copies of the Buffalo RP-554 Applications and the July 29, 2014 letter accompanying the Buffalo RP-554 Applications are annexed as Exhibit D.

25. Petitioners' Buffalo RP-554 Applications sent to the County Director requested correction of the 2014-15 tax roll for the City of Buffalo with respect to Petitioners' fiber optic properties assessed by the City of Buffalo.

26. Petitioners submitted the Buffalo RP-554 Applications to the County Director pursuant to RPTL 554, which provides that tax levying bodies may correct unlawful entries on the tax rolls when an application is filed "at any time prior to the expiration of the warrant."

27. As of the date of this Petition, Petitioners have not received determinations of their Buffalo RP-554 Applications, nor have Petitioners received any notice that the County Director has transmitted written reports of his investigation and recommendations for action thereon to any of the tax levying bodies.

28. Upon information and belief, the County Director has taken no action with respect to the Buffalo RP-554 Applications and has not sent written reports and recommendations for action thereon concerning the Buffalo RP-554 Applications to the City of Buffalo.

F. Level 3's Application On Form RP-554 Concerning City Of Lackawanna Taxes

29. The City of Lakawanna has rendered a 2014-15 bill to Petitioner Level 3 for taxes assessed on Level 3's fiber optic properties in the City of Lackawanna (*see* Exhibit E hereto).

30. On or about August 11, 2014, Petitioner Level 3 sent County Director Maciejewski an application on Form RP-554 for the correction of the 2014-15 tax roll of the City of Lackawanna ("Lackawanna RP-554 Application"). A copy of the Lackawanna RP-554 Application is annexed as Exhibit E.

31. Level 3's Lackawanna RP-554 Application sent to the County Director requested correction of the 2014-15 tax roll for the City of Lackawanna with respect to Level 3's fiber optic properties assessed by the City of Lackawanna.

32. Level 3 submitted the Lackawanna RP-554 Application to the County Director pursuant to RPTL 554, which provides that tax levying bodies may correct unlawful entries on the tax rolls when an application is filed "at any time prior to the expiration of the warrant."

33. By letter dated September 15, 2014, a copy of which is annexed as Exhibit F, Stephanie Halt, Real Property Tax Systems Coordinator of the Department of Real Property Tax Services for Erie County, returned the Lackawanna RP-554 Application to Level 3, stating that

"we do not process city and city school tax corrections here at this county. The application should be sent directly to the City of Lackawanna."

34. As of the date of this Petition, Petitioner Level 3 has not received a determination of the Lackawanna RP-554 Application, nor has Level 3 received any notice that the County Director has transmitted a written report of his investigation and a recommendation for action thereon to the City of Lackawanna.

35. Upon information and belief, the County Director has taken no action with respect to the Lackawanna RP-554 Application and has not transmitted a written report and recommendation for action thereon concerning the Lackawanna RP-554 Application to the City of Lackawanna.

FIRST CAUSE OF ACTION

(Writ of Mandamus Compelling County Director To Transmit Written Reports And Recommendations Concerning Form RP-556 Applications To Tax-Levying Bodies)

36. Petitioners repeat and reallege the preceding paragraphs of this Petition as if fully set forth here.

37. Under RPTL 556, a county director of real property tax services is required to investigate the circumstances underlying an application for refunds within ten days and to immediately transmit a written report and recommendation for action thereon to the tax-levying body.

38. The Form RP-556 Applications of Petitioners Level 3 and Broadwing were sent to the County Director on or about June 23, 2014.

39. In response to the Form RP-556 Applications submitted by Petitioners Level 3 and Broadwing, the County Director did not transmit written reports and recommendations to the

tax-levying bodies as required under RPTL 556, and instead improperly returned the Form RP-556 Applications to Petitioners' undersigned counsel.

40. By letter dated July 1, 2014, Petitioners Level 3 and Broadwing, by undersigned counsel, demanded that the County Director make recommendations and transmit the Form RP-556 Applications to the appropriate tax levying bodies, as provided by RPTL 556.

41. To date, upon information and belief, the County Director has failed to transmit written reports and recommendations concerning the Form RP-556 Applications to the appropriate tax-levying bodies.

42. By failing to transmit written reports and recommendations to the applicable tax-levying bodies, the County Director failed to perform duties enjoined upon him by law, and has precluded the appropriate tax-levying bodies from acting on the Form RP-556 Applications filed by Petitioners Level 3 and Broadwing.

43. Accordingly, Petitioners Level 3 and Broadwing are entitled to a writ of mandamus compelling the County Director to comply with his statutory obligations by transmitting written reports and recommendations to the appropriate tax-levying bodies for each of the Form RP-556 Applications filed by Level 3 and Broadwing.

SECOND CAUSE OF ACTION

(Writ of Mandamus Compelling County Director To Transmit Written Reports And Recommendations Concerning Buffalo RP-554 Applications)

44. Petitioners repeat and reallege the preceding paragraphs of this Petition as if fully set forth here.

45. Under RPTL 554, a county director of real property tax services is required to investigate the circumstances underlying an application for correction of errors within ten days

and to immediately transmit a written report and recommendation for action thereon to the tax levying body.

46. The Buffalo RP-554 Applications of Petitioners Level 3, Broadwing, GC North America, and GC Telecom were sent to the County Director on or about July 29, 2014.

47. To date, upon information and belief, the County Director has failed to transmit written reports and recommendations concerning Petitioners' Buffalo RP-554 Applications to the City of Buffalo.

48. By failing to transmit written reports and recommendations to the City of Buffalo, the County Director failed to perform a duty enjoined upon him by law, and has precluded the City of Buffalo from acting on the Buffalo RP-554 Applications filed by Petitioners Level 3, Broadwing, GC North America, and GC Telecom.

49. Accordingly, Petitioners Level 3, Broadwing, GC North America, and GC Telecom are entitled to a writ of mandamus compelling the County Director to comply with his statutory obligations by transmitting written reports and recommendations to the City of Buffalo for each of the Buffalo RP-554 Applications filed by Petitioners Level 3, Broadwing, GC North America and GC Telecom.

THIRD CAUSE OF ACTION

(Writ of Mandamus Compelling County Director To Transmit A Written Report And Recommendation Concerning Lackawanna RP-554 Application

50. Petitioners repeat and reallege the preceding paragraphs of this Petition as if fully set forth here.

51. Under RPTL 554, a county director of real property tax services is required to investigate the circumstances underlying an application for correction of errors within ten days

and to immediately transmit a written report and recommendation for action thereon to the tax-levying body.

52. The Lackawanna RP-554 Application of Petitioner Level 3 was sent to the County Director on or about August 11, 2014.

53. In response to the Lackawanna RP-554 Application, the County Director did not transmit a written report and recommendation for action thereon to the City of Lackawanna as required under RPTL 554, and instead improperly returned the Lackawanna RP-554 Application to Level 3.

54. To date, upon information and belief, the County Director has failed to transmit a written report and recommendation concerning the Lackawanna RP-554 Application to the City of Lackawanna.

55. By failing to transmit a written report and recommendation to the City of Lackawanna, the County Director failed to perform a duty enjoined upon him by law, and has precluded the City of Lackawanna from acting on the Lackawanna RP-554 Application filed by Petitioner Level 3.

56. Accordingly, Petitioner Level 3 is entitled to a writ of mandamus compelling the County Director to comply with his statutory obligations by transmitting a written report and recommendation to the City of Lackawanna for the Lackawanna RP-554 Application filed by Level 3.

WHEREFORE, Petitioners respectfully request that this Court award judgment as follows:

(a) Compelling Respondent Joseph L. Maciejewski, in his capacity as Director of Real Property Tax Services for County of Erie, to comply with his statutory obligations by

transmitting written reports and recommendations to the appropriate tax-levying bodies for each of the Form RP-556 Applications filed by Petitioners Level 3 and Broadwing;

(b) Compelling Respondent Joseph L. Maciejewski, in his capacity as Director of Real Property Tax Services for County of Erie, to comply with his statutory obligations by transmitting written reports and recommendations to the City of Buffalo for each of the Buffalo RP-554 Applications filed by Petitioners Level 3, Broadwing, GC North America, and GC Telecom;

(c) Compelling Respondent Joseph L. Maciejewski, in his capacity as Director of Real Property Tax Services for County of Erie, to comply with his statutory obligations by issuing a written report and recommendation to the City of Lackawanna for the Lackawanna RP-554 Application filed by Petitioner Level 3; and

(d) For such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 29, 2014

INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI, LLP

By: _____
John G. Nicolich
Roger Cukras

Attorneys for Petitioners
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Broadwing Communications, LLC,
Global Crossing North America, Inc., and
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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

The undersigned, John G. Nicolich, being duly sworn, states that he is a partner of Ingram Yuzek Gainen Carroll & Bertolotti, LLP, attorneys for Petitioners in the above-entitled proceeding; that he has read the foregoing Verified Petition; and that the contents are true to the best of his knowledge, except as to those matters which are alleged upon information and belief, which he believes to be true. The grounds for deponent's belief are statements and information set forth in documents relating to the matters at issue in this proceeding. Deponent makes this verification pursuant to CPLR 3020 because all the material allegations of the Petition are within deponent's personal knowledge.

JOHN G. NICOLICH

Sworn to before me this
29 day of October, 2014

Notary Public

MAUREEN McCABE
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01MC4636104
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES DEC. 31, 2014