



PUBLIC NOTICE

Federal Communications Commission
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DA 05-2958

Released: November 10, 2005

**DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL
OF WILTEL COMMUNICATIONS, LLC, AND VYVX, LLC TO LEVEL 3
COMMUNICATIONS, LLC**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-313

Comments Due: November 24, 2005

Reply Comments Due: December 1, 2005

On November 2, 2005, Leucadia National Corporation (“Leucadia,”), and Level 3 Communications, LLC (“Level 3”), filed an application, pursuant to sections 63.03 and 63.04 of the Commission’s rules,¹ seeking consent to the transfer of control to Level 3 of certain Section 214 authorizations held by WilTel Communications, LLC (“WilTel”) and Vyvx, LLC (“Vyx”) (collectively, with Leucadia and Level 3, “Applicants”), as well as WilTel’s domestic common carrier transmission lines.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission’s rules because, post-consummation, (a) Level 3 will continue to have a market share in the interstate, interexchange market of less than ten percent; (b) Level 3 does not provide telephone exchange services or exchange access services in the areas served by WilTel, and all areas where WilTel provides such services are served by a dominant local exchange carrier that is not a party to the Proposed Transaction; and (c) neither WilTel nor Level 3 nor any of their respective affiliates is regulated as dominant for the provision of any service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services. In addition, the Applicants have applied for Commission consent to transfer to Level 3 WilTel’s joint interest in the cable landing license for the China-U.S. Cable Network, as well as Vyvx’s terrestrial wireless licenses and satellite earth station authorizations. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

Both WilTel and Vyvx are Delaware limited-liability companies headquartered in Tulsa, Oklahoma. WilTel provides customized communications services, including voice, data, and IP-based services, for enterprise and carrier customers. WilTel is a non-dominant carrier that holds authority to provide intrastate interexchange telecommunications services in all 50 states and competitive local exchange telecommunications services in fewer than five states. Vyvx provides interstate interexchange and international media transmission services, and is a wholly-owned operating subsidiary of WilTel. WilTel is a wholly-owned operating subsidiary of WilTel Communications Group, LLC (“WCG”), a Nevada limited liability company that acts as a holding company engaged in the business of telecommunications. WCG is an indirect, wholly-owned subsidiary of Leucadia, a New York corporation and holding company engaged in telecommunications, banking and lending, and other businesses. Leucadia’s shares are publicly traded on the New York Stock Exchange, and it is the ultimate sole owner of WCG, WilTel, and Vyvx.

Level 3 is a Delaware limited-liability company headquartered in Broomfield, Colorado, that provides domestic and international communications and information services. Level 3 is a wholly-owned subsidiary of Level 3 Financing, Inc. (“Level 3 Financing”), a Delaware corporation headquartered in Broomfield, Colorado, that provides managed information technology infrastructure services across a variety of platforms. Level 3 Financing, in turn, is a wholly owned subsidiary of Level 3 Communications, Inc. (“Level 3 Inc.”), a Delaware corporation also headquartered in Broomfield, Colorado. Level 3 Inc. is a global communications and information services company that offers a wide range of services over its 23,000 mile broadband fiber optic network, including Internet-protocol-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 Inc. is a publicly traded company listed on NASDAQ. Three entities hold a 10% or greater direct or indirect interest in Level 3 Inc., none of which holds a seat on the board of directors of Level 3 Inc.:

- (1) Southeastern Assets Management, Inc. (“SAM”) is a Tennessee corporation providing investment advisory services. SAM holds sole or share voting rights for 22.15 percent of outstanding shares of Level 3 Communications, Inc., that are otherwise owned by other entities for whom SAM acts as an investment advisor, including shared voting rights for the shares owned by Longleaf Partners (“LPF”). Other than LPF, none of the other owners of outstanding shares of Level 3 Communications, Inc., whose shares are voted by SAM owns a 10 percent or greater direct or indirect interest in Level 3 Inc.
- (2) LPF is a Massachusetts business trust engaged in the business of investment. LPF owns 11.8 percent of the outstanding shares of Level 3 Inc., and shares with SAM the voting rights for those shares.
- (3) Legg Mason, Inc. (“Legg Mason”) is a Maryland corporation engaged, through its subsidiaries, in providing financial services, including investment advisory services, securities brokerage, and capital markets services. In aggregate, two subsidiaries of Legg

Mason vote 10.776 percent of the outstanding shares of Level 3 Inc., that are otherwise owned by other entities for whom the subsidiaries act as an investment advisor. These subsidiaries are: (1) Legg Mason Capital Management, Inc. ("LMCM"), which holds a 5.764 percent voting interest, and (2) LMM, LLC ("LMM"), which holds a 5.012-percent voting interest. LMCM is a wholly-owned subsidiary of Legg Mason, while LMM is 50-percent owned by Legg Mason.

On October 30, 2005, Leucadia and its affiliates and Level 3 and its affiliates entered into a Stock Purchase Agreement ("Agreement") to allow Level 3 to acquire all of the outstanding shares of WCG and, therefore, control of WilTel and Vyvx, including, among other assets, WilTel's domestic common carrier transmission lines. Under the terms of the Agreement, WilTel and Vyvx will continue to operate their facilities and provide service to their existing customers, ensuring a seamless transition for those customers. Applicants state that the proposed transaction will have no impact on any participant's share of the local exchange and exchange access market segments. WilTel does not provide any local exchange or exchange access services, while Level 3 is a very minor participant in local exchange and exchange access markets, where it competes with unaffiliated dominant local exchange carriers.⁴ In addition, applicants state that the proposed transaction will not significantly affect any participant's share of the interstate interexchange market segment, as both WilTel and Level 3 are insignificant participants in the market for interstate interexchange services.⁵

The Applicants assert that the proposed transaction will yield affirmative public interest benefits, as it will strengthen and expand Level 3's customer service offerings and networks and allow Level 3 to compete more effectively within the market. In addition, as WilTel and Vyvx will continue to operate their facilities and provide service to their existing customers post-consummation, Applicants expect that the transfer will be seamless for those customers.

⁴ Applicants assert that, even if Level 3 derived all of the communications revenue (excluding interexchange revenue and reciprocal compensation revenue) reported in the 2004 10-K for Level 3, Inc., from local exchange and exchange access (when in fact, it derived only a fraction of its revenues from such services), Level 3's revenues would likely account for less than one percent of all nationwide local exchange and exchange access revenues. See 2004 Form 10K, Item 7, of Level 3 Communications, Inc.; FCC, STATISTICS OF COMMUNICATIONS COMMON CARRIERS, at 202, Tbl. 5.20 (2003/2004 ed.) (providing 2002 data); FCC, TRENDS IN TELEPHONY SERVICE, Tbl. 8.7 (2005) (providing 2003 data). Applicants further note that a direct year-to-year comparison is not possible, as the FCC's reports do not include 2004 data.

⁵ Applicants state that, in 2003, the most recent year for which the Commission has publicly disclosed revenue data, WilTel's toll revenues (of which only a portion are interstate interexchange revenues), generated primarily in the highly competitive private line, data, and switched voice toll service sector, totaled \$1.112 billion. They further state that Level 3's toll revenues in 2003 (only a portion of which are interstate interexchange revenues) were slightly over \$134 million. According to Applicants, by comparison, total industry-wide toll revenues for all in 2003 exceeded \$77 billion, and total revenues for all non-LEC, non-wireless toll service providers exceeded \$56 billion. Thus, Applicants claim, even assuming that all WilTel and Level 3 toll revenues were interstate interexchange revenues (and they are not), the combined interexchange revenues of WilTel and Level 3 would amount to no more than 2.2% of total industry-wide toll revenues, and even less than that percentage if all non-LEC, non-wireless toll services are included.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before November 24, 2005** and **reply comments on or before December 1, 2005**.⁶ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁷ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com, phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: tracey.wilson-parker@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Alex Johns at (202) 418-1167.

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