



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 06-2097
Released: October 23, 2006

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF
CONTROL OF BROADWING CORPORATION TO
LEVEL 3 COMMUNICATIONS, LLC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-193

Comments Due: November 6, 2006

Reply Comments Due: November 13, 2006

On October 17, 2006, Broadwing Corporation (“Broadwing Parent”) and Level 3 Communications, LLC (“Level 3 LLC” or “Transferee”) (together, “Applicants”) filed an application (“Application”) pursuant to section 63.04 of the Commission’s rules¹ requesting authority to transfer control of Broadwing Parent to Level 3 LLC.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission’s rules because, immediately following the transaction: (1) Transferee will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Transferee will provide competitive telephone exchange services or exchange access services only in geographic areas served by dominant local exchange carriers (none of which are parties to the proposed transaction); and (3) neither of the Applicants nor their affiliates are dominant with respect to any service.³

Broadwing Parent, a Delaware corporation, is a holding company with two wholly-owned, principal operating subsidiaries: (1) Broadwing Communications, LLC (“Broadwing”), a Delaware limited liability company providing data, video, and voice (local, intrastate,

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

² Applicants filed a supplement to the application on October 19, 2006. Applicants have also filed an application for transfer of control associated with authorization for international services. 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).

interstate) services in all 50 states and the District of Columbia to businesses, carriers, and some residential customers, and (2) Corvis Equipment, LLC, a developer of network equipment. Applicants state that Broadwing Parent owns 100 percent of Broadwing Communications Holdings, Inc., a Delaware corporation, that in turn owns 100 percent of C III Communications, LLC, a Delaware limited liability company. Both of these latter entities operate as holding companies and are not involved in telecommunications operations.

Level 3 LLC, a Delaware limited liability company, provides domestic telecommunications and information services on a nationwide basis. It is an indirect, wholly-owned subsidiary of Level 3 Communications, Inc. (Level 3 Parent), a Delaware corporation that offers, through its operating subsidiaries, communications services on a nationwide basis, including Internet-protocol-based services, broadband transport, collocation services, and voice services. Level 3 LLC is a wholly-owned subsidiary of Level 3 Financing, Inc. (“Level 3 Financing”), and Level 3 Financing, LLC, in turn, is a wholly-owned subsidiary of Level 3 Parent. Level 3 Services, LLC, a Delaware limited liability company established for the purpose of merging with Broadwing Parent, offers no services and is a direct, wholly-owned subsidiary of Level 3 Parent. Level 3 Parent is a publicly-traded Delaware company. Applicants state that one entity owns or controls 10 percent or more of Level 3 Parent: Southeastern Asset Management, Inc. (“SAM”), a Tennessee investment corporation that is employee-owned and that holds sole or shared voting rights for 13.09 percent of the outstanding shares of Level 3 Parent that are otherwise owned by other entities for whom SAM acts as an investment advisor. Applicants state that none of SAM’s owners holds a 10 percent or greater direct or indirect interest in Level 3 Parent.

Pursuant to an October 16, 2006 Agreement and Plan of Merger (“Agreement”), Level 3 Parent will acquire all of Broadwing Parent’s outstanding shares by paying total consideration of approximately \$1.4 billion. Level 3 Parent will acquire Broadwing Parent in a simultaneous three-step transaction. First, Broadwing Parent will merge with Level 3 Services, LLC, with Level 3 Services, LLC surviving. Second, Level 3 Parent will immediately contribute all of its membership interest in Level 3 Services, LLC to Level 3 Financing, Inc. Third, Level 3 Financing, Inc. will contribute all of the membership interest in Level 3 Services, LLC to Level 3 LLC, at which time Level 3 Services, LLC may be re-named. Following the completion of these three steps, Level 3 Services, LLC will then be a direct subsidiary of Level 3 LLC, and Broadwing will be an indirect, wholly-owned subsidiary of Level 3 LLC. Applicants further state that no existing stockholder or controlling group of stockholders of Broadwing Parent will have a 10 percent or greater direct or indirect interest in Level 3 Parent or Level 3 LLC as a result of the proposed transaction.

Applicants state that the proposed transaction will serve the public interest, convenience and necessity because: (1) Broadwing will continue to operate its facilities and provide service to existing customers at the same rates, terms, and conditions, ensuring a seamless transition for

those customers; and (2) it will allow Level 3 to use its acquisition of Broadwing to expand further into the enterprise market.⁴

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 6, 2006 and reply comments on or before November 13, 2006.**⁵ 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.⁶ 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,

⁴ Applicants assert that the proposed transaction will have no impact on any participant's share of the local exchange, exchange access, or interstate interexchange markets. Applicants state that, even if Level 3 Parent and its operating subsidiaries derived all of the communications revenue (excluding interexchange revenue and reciprocal compensation revenue) reported in the 2005 10-K for Level 3 Communications, Inc. from local exchange and exchange access services (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. *Citing* 2005 Form 10K, Item 7, of Level 3 Communications, Inc.; FCC, Statistics of Communications Common Carriers, at 154, Tbl. 5.20 (2004/2005 ed.) (providing 2003 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 Commission's reports do not include 2005 data. Applicants also state that, even assuming that all Broadwing and Level 3 toll revenues were interstate interexchange revenues (and they are not), the combined interexchange revenues of both would amount to less than three percent of total industry-wide toll revenues, and only two percent if all non-local exchange carrier, non-wireless toll services are included.

⁵ *See* 47 C.F.R. § 63.03(a).

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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.

The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 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, S.W., Washington D.C. 20554.

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, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Cecilia Seppings, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C230, Washington, D.C. 20554; email: cecilia.seppings@fcc.gov;

- (3) Jodie May, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: jodie.may@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, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

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).

For further information, please contact Cecilia Seppings at (202) 418-1588, or Jodie May at (202) 418-0913.

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