



# PUBLIC NOTICE

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**DA 06-336**

**Released: February 10, 2006**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF PROGRESS TELECOM, LLC BY LEVEL 3 COMMUNICATIONS, LLC**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 06-39**

**Comments Due: February 24, 2006**

**Reply Comments Due: March 3, 2006**

On February 3, 2006 Progress Energy, Inc. (“Progress Energy”), Odyssey Telecorp, Inc. (“Odyssey”) (collectively, “Transferors”) and Level 3 Communications, LLC (“Level 3”) filed an application pursuant to sections 63.03 and 63.04 of the Commission’s rules<sup>1</sup> seeking consent to transfer control of the domestic common-carrier transmission lines of Progress Telecom, LLC (“Progress Telecom”) to Level 3.

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 less than a 10% market share in the interstate, interexchange market; (b) Level 3 provides some telephone exchange and exchange access services in the areas served by Progress Telecom, but only in areas that are served by a dominant local exchange carrier that is not a party to the Proposed Transaction; and (c) neither Progress Telecom nor Level 3 is dominant with respect to any service.<sup>2</sup>

Progress Telecom, a Delaware limited-liability company, is a regional wholesale network services company which provides wholesale telecommunications broadband (including DWDM, SONET, and SDH), collocation, and dark fiber services to other carriers and Internet service providers, primarily in the southeastern United States. Progress Telecom serves approximately 200 customers, with a significant concentration of international and wireless carrier customers. Progress Telecom also offers last-mile, point-to-multipoint wireless services using unlicensed spectrum in the 900 MHz, 2.4 GHz, and 5 GHz frequency bands. Progress Telecom is a non-

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

<sup>2</sup> 47 C.F.R. § 63.03(b)(2)(i).

dominant carrier that holds authority to provide intrastate interexchange telecommunications services and competitive local exchange telecommunications services in 5 states and the District of Columbia.<sup>3</sup> PT Holding Company, LLC (“PT Holding”), a Delaware limited liability company, is the sole direct owner of Progress Telecom (100% direct interest). PT Holding is owned by Progress Energy, a publicly-traded North Carolina corporation engaged in diversified energy businesses (55%); and Odyssey, a Delaware corporation that operates as a holding company for telecommunications assets and businesses (45%). Post-consummation, ownership of PT Holding will be retained by Progress Energy and Odyssey.

Level 3, a Delaware limited-liability company, provides domestic and international communications and information services. It is a wholly-owned subsidiary of Level 3 Financing, Inc. (“Level 3 Financing”), a Delaware corporation 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., a Delaware corporation which offers a wide range of communications services over its 23,000-mile broadband fiber optic network, including IP-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Two parties hold a 10% or greater direct or indirect interest in Level 3 Communications, Inc.: (1) Southeastern Asset Management, Inc. (“SAM”), a Tennessee corporation, holds sole or shared voting rights for 38.83% of the outstanding shares of Level 3 Communications, Inc.;<sup>4</sup> and (2) Leucadia National Corporation (“Leucadia”), a publicly-traded New York corporation, owns 14.1% of the outstanding shares of Level 3 Communications, Inc.<sup>5</sup> None of the parties holding a 10% or greater direct or indirect interest in Level 3 Communications, Inc., holds a seat on the board of directors of Level 3 Communications, Inc.

On January 25, 2006, Progress Energy subsidiaries, Odyssey, Odyssey subsidiaries, and Level 3 entered into a Purchase Agreement (“Agreement”) to allow Level 3 to acquire all of the

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<sup>3</sup> Progress Telecom also owns certain assets and subsidiaries to be excluded from Level 3’s purchase of Progress Telecom, including: two wholly-owned subsidiaries, Progress Telecom International, LLC (“PT International”) and Progress Telecom Virginia, LLC (“PT Virginia”); PT Wireless, LLC (“PT Wireless,” in which Progress Telecom owns a 41% interest); and two Title III radio licenses, call signs WQDF545 and WQDF546, all of which will be retained by Progress Telecom’s current owners.

<sup>4</sup> SAM holds voting rights for outstanding shares that are otherwise owned by other entities for whom SAM acts as an investment advisor. None of the other owners of outstanding shares of Level 3 Communications, Inc. whose shares are voted by SAM owns a 10% or greater direct or indirect interest in Level 3 Communications, Inc.

<sup>5</sup> In November 2005, Level 3 filed for approval of a section 214 transfer of control with WilTel Communications, LLC (“WilTel”) and Vyvx, LLC (“Vyvx”), which was granted under our streamlined rules on December 11, 2005. *See Notice of Streamlined Domestic 214 Application Granted*, WC Docket No. 05-313, Public Notice, DA 05-3173 (rel.: Dec. 12, 2005). At the time that application was filed, three entities held 10% or greater interests in Level 3 Communications, Inc., but consummation of the WilTel/Vyvx transaction added Leucadia as a major shareholder and diluted the interests of Level 3’s other shareholders below the 10% or greater threshold.

membership interest in Progress Telecom currently controlled by Progress Energy and Odyssey. The Agreement excludes from purchase certain of Progress Telecom's existing subsidiaries and assets, including (1) PT International; (2) a 41% interest in PT Wireless; (3) PT Virginia; and (4) two Title III radio licenses.<sup>6</sup> To complete the proposed transaction and the exclusion of these subsidiaries and assets, the Agreement provides that the Transferors will engage in a corporate reorganization resulting in a *pro forma* transfer of control of PT International and PT Virginia to PT Holding Company LLC, a *pro forma* assignment of Progress Telecom's two Title III radio licenses to PT Holding Company LLC. These *pro forma* transfers and assignments will occur in advance of the consummation of the substantive transfer of control contemplated in the Agreement. Following consummation of the proposed transaction, Progress Telecom will be a direct, wholly-owned subsidiary of Level 3.

Applicants state that the proposed transaction will serve the public interest, convenience and necessity because it will provide Progress Telecom with access to Level 3's technical, managerial, financial, and product strengths, which will enhance the companies' ability to expand their offerings and provide more advanced telecommunications services to a broader customer base. Applicants also expect the Proposed Transaction will enable Level 3 to strengthen its competitive position to the benefit of U.S. consumers. Applicants further assert that the proposed transaction will not significantly affect any participant's share of the local exchange, exchange access, or interstate interexchange markets.<sup>7</sup>

## **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 February 24, 2006** and **reply comments on or before March 3, 2006**.<sup>8</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer the

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<sup>6</sup> See footnote 4, *supra*.

<sup>7</sup> 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. Applicants also state that, even assuming that all Progress Telecom and Level 3 toll revenues were interstate interexchange revenues (and they are not), the combined interexchange revenues of Progress Telecom and Level 3 would amount to no more than 2% of total industry-wide toll revenues, and even less than that percentage if all non-LEC, non-wireless toll services are included. *Id.*, Tbl. 9.1.

<sup>8</sup> See 47 C.F.R. § 63.03(a).

assets and related control on the 31<sup>st</sup> day after the date of this notice.<sup>9</sup> 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](mailto: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.

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.

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](mailto:fcc504@fcc.gov)

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<sup>9</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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](mailto: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.bcpweb.com](http://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](mailto: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](mailto: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](mailto: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](mailto: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.bcpweb.com](http://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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