

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** October 30, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Compliance (M. Watts)  
Office of the General Counsel (Brooks)

**RE:** Docket No. 080619-TP – Joint petition of Progress Telecom LLC and Level 3 Communications, LLC for waiver of Rule 25-4.118, F.A.C., to allow transfer of Progress' customers to Level 3, request for cancellation of Progress' CLEC Certificate No. 7448, and for acknowledgment of cancellation of IXC Registration No. TJ639, effective December 31, 2008.

**AGENDA:** 11/13/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\RCP\WP\080619.RCM.DOC

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### Case Background

On October 1, 2008, Progress Telecom LLC (Progress) and Level 3 Communications, LLC (Level 3), both competitive local exchange telecommunications companies (CLECs) and intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.), for the transfer of Progress' private line services customers to Level 3. The only telecommunications services Progress provides in Florida are private line services. Private line services are dedicated point-

to-point or point-to-multipoint services for the transmission of any public telecommunications service.

Level 3 is the parent company of Progress and is acquiring all, approximately 56, private line services customers from Progress. For the past several years Level 3 has been integrating the networks and systems of its various subsidiaries, including Progress. Progress' customers are being transferred to Level 3 to streamline and better organize the business and operations of Level 3's various operating companies.

Level 3 seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, Level 3 can protect itself from possible complaints of unauthorized carrier changes. Customers will benefit because they will not be subject to a loss of service during the transfer.

In the petition, Progress also requested that its CLEC certificate and IXC registration be canceled upon completion of the transaction. This recommendation addresses only the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., for the transfer of customers from Progress to Level 3. The CLEC certificate and IXC registration cancellation will be processed in accordance with the requirements of Sections 2.11.B.2.c and 2.07.C.5.i., Administrative Procedures Manual, respectively.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.335, 364.336, 364.337, 364.345, and 364.603, Florida Statutes (F.S.). Accordingly, staff believes the following recommendations are appropriate.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Progress Telecom LLC's private line services customers to Level 3 Communications, LLC?

**Recommendation:** Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. Any waiver approved by the Commission should only apply to the specific set of customers identified in the petition. The petitioners should be required to provide the Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by the Commission shall be null and void. **(M. Watts/Brooks)**

**Staff Analysis:** Pursuant to Rule 25-4.118(1), F.A.C., a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.475(3), F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), F.A.C., provides that an IXC may petition for a waiver of any provision of the rules governing IXCs. The Commission can grant in whole, grant in part, or deny the petition for waiver based on the following:

- The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- Alternative regulatory requirements for the company which may serve the purposes of this part; and
- The extent to which a waiver would serve the public interest.

Pursuant to Rule 25-24.845, F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), F.S., states in pertinent part:

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, F.A.C., is found in Section 364.603, F.S., which is a section the Commission is authorized to waive.

Level 3 has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that will be sent to Progress' customers and finds it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Neither Level 3 nor Progress has any outstanding complaints as of the filing date of this recommendation. After the transaction is consummated, Level 3 will resolve any customer complaints that arise from issues occurring prior to the transfer. Further, neither Level 3 nor Progress has any outstanding regulatory assessment fees, penalties or interest associated with its CLEC certificate or IXC registration.

Staff believes that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, F.A.C. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their private line services. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. Any waiver approved by the Commission should only apply to the specific set of customers identified in the petition. The petitioners should be required to provide the Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by the Commission shall be null and void.

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**Issue 2**: Should this docket be closed?

**Recommendation**: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this order should become final upon issuance of a consummating order. This docket should remain open pending the cancellation of Progress' CLEC Certificate No. 7448 and IXC Registration No. TJ639. Upon completion of these actions, this docket should be closed administratively. **(Brooks)**

**Staff Analysis**: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this order should become final upon issuance of a consummating order. This docket should remain open pending the cancellation of Progress' CLEC Certificate No. 7448 and IXC Registration No. TJ639. Upon completion of these actions, this docket should be closed administratively.