

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 080619-TP  
ORDER NO. PSC-08-0805-PAA-TP  
ISSUED: December 4, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING  
PROGRESS TELECOM LLC AND LEVEL 3 COMMUNICATIONS, LLC'S JOINT  
PETITION FOR WAIVER OF CARRIER SELECTION REQUIREMENTS AND TRANSFER  
OF CUSTOMERS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**I. 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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 and Progress seek 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 cancelled upon completion of the transaction. This order 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.

We are 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.).

## II. 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. We 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 this 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. Our 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, and 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.

We find 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 service. Furthermore, granting this waiver will avoid unnecessary slamming complaints during this transition.

### **III. Decision**

Therefore, we find it appropriate to approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, allowing transfer of Progress Telecom LLC's private line services customers to Level 3 Communications LLC.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the migration of customers from Progress Telecom LLC to Level 3 Communications, LLC is granted. It is further

ORDERED that this waiver shall only apply to the specific set of customers identified in the petition. The petitioners shall provide this Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, this waiver shall be null and void. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall 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.

By ORDER of the Florida Public Service Commission this 4th day of December, 2008.



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ANN COLE  
Commission Clerk

( S E A L )

TJB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This

ORDER NO. PSC-08-0805-PAA-TP  
DOCKET NO. 080619-TP  
PAGE 5

petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 25, 2008.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.