

A M O D I O S T A N L E Y & R E E V E S L L C
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VIA HAND DELIVERY

Joyce McGowan
Records and Filings
Regulatory Commission of Alaska
701 W. Eighth Avenue Suite 300
Anchorage, Alaska 99501

Re: Petition of Level 3 Communications, LLC to Institute Rulemaking
 Docket to Amend the Commission's Regulations to Streamline
 Transfer of Control Requirements

Dear Ms. McGowan:

Enclosed for filing in the above-referenced matter are an original and ten (10) copies of Level 3 Communications LLC's Petition to Institute Rulemaking Docket to Amend the Commission's Regulations to Streamline Transfer of Control Requirements, along with proposed draft regulations. Please date-stamp the file copy and have it returned to me via hand-delivery.

If you have any questions or require additional information, please contact me.

Sincerely,
AMODIO STANLEY & REEVES LLC


Thomas P. Amodio

Enclosures

cc: William P. Hunt III (w/ enc.)

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exchange carrier was the exclusive provider of service in its designated territory with little or no threat of competitive entry. In that market structure, extensive government and economic regulation of the dominant carrier was necessary to protect captive ratepayers and consumers of monopoly services. Where carriers do not face competition or wield control over bottleneck facilities or enjoy a dominant market share, it is important for the Commission to scrutinize each carrier's financial status and its business actions to safeguard consumers from the monopoly carrier's potentially risky financial transactions and to ensure that rates and quality of service are not impaired. Although today the telecommunications market has changed dramatically so that consumers can choose freely among non-dominant carriers offering competitive services, the same burdensome administrative procedures aimed at regulating transfer transactions of dominant, monopoly carriers remain in place for non-dominant, competitive carriers.

II. In Today's Competitive Market, Burdensome Prior Approval Procedures for Non-dominant Carrier Transfers Does Not Serve the Public Interest.

The public interest in a competitive environment does not require strict scrutiny of non-dominant carriers' business and financial operations. While appropriate for the pre-competition telecommunications market, burdensome pre-approval requirements for business transactions have become anachronisms in today's fast-paced competitive environment where new entrants risk capital to build and finance their operations with no guaranteed return.¹ Although the

¹ The FCC and the Commissions in California and Kentucky are just a few examples of regulatory agencies that have recognized the need to reform and reduce regulatory requirements to reflect competitive changes in the market. *See Implementation of Further Streamlining Measures for Domestic Section 214 Authorization*, CC Docket No. 01-150, FCC 02-78, Report and Order (Released March 21, 2002) (streamlining domestic interstate approval requirements); CPUC Decisions 94-05-051, 96-02-004, 98-07-094, 04-10-038 (California Commission applying streamlined advice letter procedures to routine transaction of competitive carriers); Administrative Case No. 370, Exemptions for Providers of Local Exchange Carriers (Kentucky Public Service Commission January 8, 1998); Administrative Case No. 359, Exemptions for Interexchange Carriers, Long Distance Resellers, Operator Service Providers and

competitive long distance and local carriers in Alaska are subject to some rate regulation, they do not possess market power or control over local exchange bottleneck facilities. As such, non-dominant carriers bear the risks of their own financial decisions and competitive market forces determine whether a carrier is financially stable *rather than government regulation*. From the consumer's perspective, adequate service at reasonable rates remains available by virtue of the freedom to choose among multiple intermodal providers.

A. Alaska's Transfer Approval Process Imposes Burdensome Delays.

In Alaska, a certificated carrier that seeks to complete a transfer transaction is subject to Commission regulations, including 3 AAC 48.645 and 3 AAC 48.661, and must obtain Commission approval prior to consummating the transaction.² Although the Alaska statutes provide authorization for Commission oversight of a transfer of control of a certificated carrier,³ the statutes do not mandate that the Commission follow a particular public notice period or otherwise specify how the Commission is to implement its oversight authority. As such, the Commission retains the discretion to determine the administrative process by which it exercises oversight authority. It is within the Commission's authority to modify its procedures through administrative rule amendments to reflect significant market changes.

The Commission has set forth the administrative approval process in 3 AAC 48.600 – 3 AAC 48.661. The Alaska approval process requires parties to prepare and file an application describing the transaction, including detailed financial information, a description of new

Customer-Owned, Coin Operated Telephones (Kentucky Public Service Commission June 21, 1996) (Exempting competitive carriers from transfer requirements).

² Transfers of control include sales of majority stock interests or other cognizable controlling interests, mergers, *pro forma* changes, and sales of substantially all assets.

³ See AS 42.05.281.

management and owners, in the case of a transfer. Each application must describe the public interest reasons why the application should be granted. Commission staff reviews the filing for completeness and may seek further data from the parties on a case-by-case basis regarding the extent of in-state operations, financial information, or seeking other information determined to be relevant by staff. In response to these inquiries, the parties must gather the requested information and respond in writing to the staff requests. Once the Commission staff deems the filing complete and initially acceptable, it places the matter on public notice for a period of 30 days thereby presenting an opportunity for interested parties to comment on the application. It is the rare exception that comments are submitted with respect to any non-dominant carrier application. After the public notice period closes, if no comments or objections are received, commission staff will prepare its recommendations to the Commission for ultimate disposition. If objections or comments are received, the Commission may schedule a hearing before ruling on the application. Once this process is complete, the Commission will issue an order granting or denying the application.

Typically, the process from filing to effective Commission approval requires a minimum of 180 days to obtain approval for a transfer, if the application is complete when filed. In fact, the Commission's regulations provide that the Commission has 6 months from the date an application is deemed complete to rule on such an application.⁴ In an era of real-time transactions, the 180-day process for securing these regulatory approvals represents an untenable delay. Carriers that are pressed by important commercial needs have no procedural means to avoid this administrative processing or provide needed certainty to parties in the transaction.

⁴ See 3 AAC 48.661(d).

This process is particularly burdensome on multi-state transactions. Even when the Federal Communications Commission and, in some cases, the United States Department of Justice, and other states that have implemented streamlined measures have already approved the transaction, carriers certified in Alaska must await the completion of the administrative process to complete their transaction. This is the case even where the carrier has only limited or *de minimus* operations or customers in the state.

B. The Alaska Administrative Approval Process Harms Non-dominant Competitive Carriers, Their Customers, Vendors and Employees.

Non-dominant carriers today are motivated by robust competition for customers and to complete corporate acquisition transactions quickly – often in just a few weeks time. However, non-dominant carriers remain constrained by legacy pre-approval requirements and thus cannot react quickly to rapidly changing market demands to meet their business needs. The period during which a carrier’s application winds its way through the administrative approval process, the non-dominant provider is forced to put on hold the completion of consolidations or corporate changes.

The reality is that these delays expose businesses to substantial and unnecessary risks in the marketplace. Delays of a few months put at risk the successful closing of transfer transactions. Rapid changes in market conditions during the regulatory-enforced delay can increase the cost of the transaction or even result in market changes that foreclose successful completion. While parties await approval, they are exposed to economic risks of delay including lost revenue and synergies, customer defections, impaired service, or even the collapse of the transaction. Failure to close a transaction has real-world adverse consequences for the

employees, vendors, customers and shareholders of competitive carriers. Often this protracted state regulatory process is a odds with management's best business judgment and a carrier's fiduciary duty to employees, shareholders and customers.

C. The Prior Approval Process Wastes Valuable Commission Resources.

The Commission continues to be required to devote scarce agency resources to this approval process even though most approvals are routine, non-controversial and uncontested. Agency resources are further strained by Commission staff attempts to quickly respond to carriers' request for expedited treatment in order to meet compelling commercial circumstances.

D. Competing Enhanced Service Providers Do Not Face the Same Burdensome Regulation as Non-dominant Carriers.

Not only are non-dominant carriers pressed to complete commercial transactions on an accelerated timeframe in today's rapidly moving telecommunications market, they face increasing competition for customers from Enhanced Service Providers. Due to the growth of IP technologies, the U.S. long distance and local telecommunications market is undergoing a revolution in how services are provided. It is increasingly the case that customers no longer receive a complete services package from a regulated monopoly, but instead from Voice over Internet Protocol ("VoIP") carriers that rely upon components provided by a number of different companies.

In today's environment, the Enhanced Service Provider is free to merge with another Enhanced Service Provider without suffering the delays and costs of obtaining government approvals. Yet, when a non-dominant provider wants to complete a strategic acquisition so that it can expand its network to compete with the Enhanced Service Provider, the non-dominant carrier is subject to the cumbersome government approval process.

III. The Commission Rules Should be Amended to Streamline the Administrative Approval Process for Non-dominant Competitive Carriers Engaging in Transfer Transactions.

Level 3 recognizes that it is important to preserve the Commission's ability to regulate carriers certified to provide intrastate services including monitoring transfer of control transactions. However, in light of the dramatic changes to the telecommunications market that have occurred since this administrative process was first established, all parties—the Commission, regulated carriers, their vendors, employees and consumers of telecommunications services in Alaska—would benefit by streamlining the approval procedures that apply to non-dominant carriers in transfer transactions.

Level 3 proposes that the Commission streamline its administrative process for transfer approval by amending its regulations, and adopting proposed regulation 3 AAC 48.646 (or a substantially similar one) to implement a notice procedure applicable to non-dominant, competitive carriers. The proposed regulation also requires the applicant to verify that it has a current, valid bond on file with the Commission, or to file such a bond with the Commission. In Attachment A hereto, Level 3 sets forth the specific regulation that it proposes to be adopted by the Commission. Generally, the proposed regulation implements a streamlined notice procedure in the following manner:

1. The timing of the revised administrative process is aligned with the streamlined administrative approval procedures of the FCC.

Most carriers operating in multiple jurisdictions also hold authority from the FCC under Section 214 of the Communications Act of 1934, as amended, to operate as interstate common carriers. Under federal rules, such interstate carriers are required to obtain prior approval to transfer control. However, the FCC has reformed its processes and rules to eliminate

unnecessary delays and burdens on competitive carriers and applies streamlined approval processing procedures to the transfer transactions of a vast majority of non-dominant competitive interstate carriers.⁵ Specifically, FCC rules provide that applications for approval subject to streamlined treatment may be granted within 31 days of publication of the filing.⁶ In the event a transaction does not qualify for streamlining (based on, for instance, the dominant position of the carriers in the transaction.), the FCC attempts to complete its review of those transactions within six months.

2. Parties to a transfer transaction involving a non-dominant carrier operating in multiple state jurisdictions need only file a notice ("Notice") of the transaction with the Commission.
3. The Notice must contain certain basic information about the carrier, its operations and the transaction at issue.
4. The Notice shall be deemed effective approval under the proposed rules upon filing.
5. The Commission shall retain jurisdiction over the certificated carrier post-closing to make inquiries of the parties, and, if necessary, to take action to protect consumer interests, commence proceedings, and/or impose conditions on the carrier's certificate(s), including reporting requirements.
6. The Notice procedure shall be available only to non-dominant competitive telecommunications carriers other than local incumbent exchange carriers as defined in the Telecommunications Act of 1996. Pursuant to 47 U.S.C. § 251(h) (1996), an incumbent local exchange carrier means "with respect to an area, the local exchange provider that (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such areas; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to Section 69.601(b) of the [FCC's] regulations (47 C.F.R § 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)."
7. The certificated carrier is required to file a bond with the Commission, or to verify that it has on file with the Commission a current, valid bond.

⁵ Implementation for Further Streamlining Measures for Domestic Section 214 Authorizations, CC Docket No. 01-150, Report and Order FCC 02-78 (Released March 21, 2002).

⁶ *Id.* at para. 26; 47 C.F.R. § 63.03 (a).

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IV. Conclusion

Level 3 petitions the Commission to institute a rulemaking proceeding to adopt proposed regulation 3 AAC 48.646, or a substantially similar one, to implement a streamlined administrative approval process for non-dominant carriers engaged in transfer transactions, as outlined above. These streamlined procedures are warranted by the dramatic changes that have taken place in the telecommunications market since the approval procedures were first instituted. Strict regulation of transfers of non-dominant carriers is not required to protect consumers in Alaska or the public interest. Eliminating the burdensome and unnecessary regulatory procedures will permit carriers, consumers and the Commission to take full advantage of the efficiencies of today's competitive market.

Respectfully submitted this 26th day of May, 2006.

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***PROPOSED STREAMLINING REGULATION
FOR CERTAIN TRANSFERS OF CONTROL***

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Proposed Section 3 AAC 48.646, amending 3 AAC 48, Article 4, Applications Generally.

3 AAC 48.646. Proposed Streamlined Procedures for Certain Transfers Subject to Oversight and Approval by the Federal Communications Commission

(a) This regulation applies to a telecommunication carrier or carriers, certificated in Alaska, which files applications with the Federal Communications Commission ("FCC") for domestic Section 214 license transfers pursuant to 47 C.F.R. § 63.03 and, if necessary, any Hart-Scott Rodino applications with DOJ.

- (1) Within 14 days of the filing at the FCC and/or DOJ, the parties will file a Notice with the Commission that includes:
 - (A) Information identifying the parties;
 - (B) A summary description of the transaction;
 - (C) A statement of the compliance status of the carrier(s) with respect to the Commission's compliance filings; and
 - (D) A copy of the application filed at the FCC.
 - (E) A bond in the amount of \$5,000.00, or a verified statement that the carrier has on file with the Commission a valid bond in the amount of \$5,000.00.
 - (F) During the pendency of the FCC and DOJ proceedings, the applicants will file copies of all procedural motions, responses to discovery, and orders with the Commission. The parties will also supplement the Notice filing with the FCC Public Notice once it becomes available.
- (2) Upon filing of the Notice described in subsection (a)(1), the Notice will be deemed approved.
- (3) At any time following filing of the Notice, the Commission may make inquiries of the parties, and if necessary, take action to protect consumer interests, initiate proceedings and/or impose conditions on the carrier's certificate(s) including reporting requirements, that address consumer interests. The parties understand that a certificate of public convenience and necessity may not be sold, leased, encumbered, or transferred without authorization by the Commission, and if required, the carriers must comply with additional Commission requirements during the pendency of the FCC and DOJ proceedings.

- (4) Upon receipt of FCC and, if necessary, DOJ approval, and upon filing of Notices with the Commission, the parties will be free to close their transfer transaction.
- (5) Issuance of the FCC and DOJ orders and closing of the transaction pursuant to subsection (a)(4) above shall neither end or terminate any state commission proceeding or investigation nor shall it preclude imposing conditions on a carrier's certificates(s) as described in subsection (c) on a post-closing basis.
- (6) Existing Commission customer notification requirements shall remain in effect.

(b) In the event of a *pro forma* transfer of control or change, including but not limited to a corporate restructuring, internal transfer, or other change in form which does not result in a change of the ultimate ownership or control of the carrier or its assets, only a post-transaction notice will be required by the Commission. Within 30 days following the transaction, consistent with the FCC's post-transaction notice requirement under 47 C.F.R. § 63.03(d), the carrier shall file such notice with the Commission.