

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**IN RE:**

**April 6, 2006**

**JOINT APPLICATION OF LEVEL 3  
COMMUNICATIONS, LLC & WITEL  
COMMUNICATIONS GROUP, LLC FOR  
APPROVAL OF AN INDIRECT  
TRANSFER OF CONTROL OF WITEL  
COMMUNICATIONS, LLC**

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**DOCKET NO. 05-00305**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Ron Jones, Director Deborah Taylor Tate, and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 12, 2005 for consideration of the *Joint Application* ("*Application*") filed by Level 3 Communications, LLC ("Level 3") and WilTel Communications Group, LLC ("WilTel") (together with Level 3 the "Applicants") on November 1, 2005. The Applicants request Authority approval to undergo a transaction whereby Level 3 will indirectly acquire 100 percent ownership of WilTel Communications, LLC ("WilTel-Comm").

**Background**

WilTel, the parent company of WilTel-Comm, is a limited liability company organized under the laws of the State of Nevada and is an indirect subsidiary of Leucadia National Corporation ("Leucadia"). Leucadia is a publicly traded New York corporation that is a diversified financial services company engaged through its consolidated subsidiaries in a variety of businesses, including telecommunications. Through its subsidiaries, WilTel operates and

manages a fiber-optic broadband network that spans approximately 30,000 route-miles connecting 118 cities in the United States and extends to Europe, Mexico and the Pacific Rim.

WilTel-Comm is a Delaware limited liability company that is a wholly-owned subsidiary of WilTel. WilTel-Comm is a non-dominant carrier that holds authority to provide intrastate interexchange telecommunications services in all 50 states and competitive local exchange telecommunications services in fewer than five states. In Tennessee, WilTel-Comm is authorized to provide resold and facilities-based local exchange, interexchange and exchange access telecommunications services pursuant to a certificate granted by the Authority in Docket No. 99-00398 by order issued October 13, 1999.<sup>1</sup> WilTel-Comm is also authorized to provide service as a reseller and operator service provider pursuant to a certificate granted by the Authority in Docket No. 99-00034 by order issued April 6, 1999.

Level 3 is a Delaware based limited liability company that provides voice and data services to carriers, Internet Service Providers (ISPs) and other business customers over its Internet Protocol (IP)-based network. Level 3 is a wholly owned subsidiary of Level 3 Communications, Inc., a publicly traded company. Level 3 is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to certificates granted by the Authority in Docket No. 98-00610 on November 24, 1998, as amended in Docket No. 02-00230 on June 28, 2002.

### **The Application**

According to the *Application*, Level 3 will acquire a 100 percent equity interest in WilTel, and thus, a 100 percent indirect ownership interest in WilTel-Comm. The Applicants expect that immediately following the transaction WilTel, along with WilTel-Comm, will continue to operate

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<sup>1</sup> The certificates were originally granted to Williams Communications, Inc. d/b/a Vyvx, Inc. On February 27, 2001 the Authority was notified of the name change to WilTel Communications, LLC d/b/a Vyvx, Inc. The Authority approved the name change to WilTel Communications, LLC in Docket No. 04-00448 on July 28, 2005.

as separate subsidiaries of Level 3. The Applicants assert that WilTel-Comm will continue to offer the services it currently offers with no change in the rates or terms and conditions of service following the consummation of the proposed transaction. Therefore, in terms of the services they receive, the indirect transfer of WilTel-Comm to Level 3 will be seamless and transparent to consumers in the State of Tennessee.

The Applicants maintain that the transaction will serve the public interest by providing WilTel access to Level 3's substantial technical and managerial expertise, financial resources and complimentary suite of services, which together are expected to strengthen WilTel's ability to expand its offerings and provide more advanced telecommunications services to a broader customer base in Tennessee. According to the *Application*, the proposed acquisition will enable both WilTel and Level 3 to strengthen their competitive positions in Tennessee to the benefit of Tennessee consumers and the State's telecommunications marketplace. Further, the Applicants assert that the indirect transfer of control of WilTel-Comm will not result in a change of carrier or any transfer of authorizations, and its customers will be provided with the same communications services without interruption and without immediate changes in rates, terms or conditions.

#### **December 12, 2005 Authority Conference**

Level 3 and WilTel filed their *Application* pursuant to Tenn. Code Ann. § 65-4-112 (2004). This transaction involves the merger or consolidation of property of two certificated public utilities in Tennessee which must be approved pursuant to Tenn. Code Ann. § 65-4-112. Tenn. Code Ann. § 65-4-112(a) states:

- (a) No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights, and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

At a regularly scheduled Authority Conference held on December 12, 2005, the panel found that no person or entity has intervened to contest the assertions made in support of the merger or any other aspect of the merger. In addition, the Applicants assert that WilTel-Comm will survive the transaction as a certificated competing carrier and continue to provide competitive services to Tennesseans. The panel voted unanimously to approve the *Application* and ordered that the Applicants file any documentation from the FCC or other federal agencies related to the transaction.

**IT IS THEREFORE ORDERED THAT:**

- 1) The indirect transfer of authority of WilTel Communications, LLC to Level 3 Communications, LLC as described in the *Application* and discussed herein is approved.
- 2) Because this transaction is an indirect transfer of authority, Level 3 Communications, LLC will acquire 100 percent indirect ownership interest in WilTel Communications, LLC, and WilTel Communications, LLC will retain its certificate of public convenience and necessity.
- 3) The parties are directed to file with the authority any documentation from the FCC or other federal agencies related to this transaction.

  
Ron Jones, Chairman

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Deborah Taylor Tate, Director<sup>2</sup>

  
Sara Kyle, Director

<sup>2</sup> Director Tate voted in agreement with the other directors but resigned her position as director before the issuance of this order