

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

**In the Matter of** )  
 )  
**EPANA NETWORKS, INC** )  
**(FRN 0007413867)** )  
**International Section 214 Authorization Holder** )  
 ) **File No. \_\_\_\_\_**  
**SIENNA LIMITED PARTNERSHIP III, LP** )  
**(FRN 0020042735)** )  
**Representative of Transferors of Control** )  
 )  
**PROGRESS INTERNATIONAL, LLC** )  
**(FRN 0005885090)** )  
**Transferee of Control** )  
 )  
**Application for Section 214 Authorization for a** )  
**Transfer of Control of International** )  
**Telecommunications Resale Operations** )

**APPLICATION FOR APPROVAL OF TRANSFER OF**  
**CONTROL OF ENTITY HOLDING SECTION 214 AUTHORIZATION**

Pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.24 of the Commission’s Rules (47 C.F.R. § 63.24), authorization is hereby requested for a transfer of control of Epana Networks, Inc. (“Epana”), as an authorized provider of Global or Limited Global Facilities-Based Service and Global or Limited Resale Service to international points on a non-dominant basis, from Sienna Limited Partnership III, LP (“Transferor”), as representative of the stockholders of Vivaro Corporation, to Progress International, LLC (“Progress” or “Transferee”). (Epana, Transferor and Progress are jointly referred to as “Applicants” herein). Progress is authorized under Section 214 of the Communications Act to provide resold international telecommunications services on a nondominant basis. It is requested

that the application be processed on a **streamlined basis** pursuant to Section 63.12 of the Commission's rules.

Progress is a Texas limited liability company that has one member company -- IXC International, Inc. ("IXC International"). IXC International is not a common carrier and does not have any Section 214 authorizations.

On June 18, 2010, the parent company of Epana, named Vivaro Corporation ("Vivaro"), was merged into a subsidiary of Progress, named Progress Ventures Acquisition Sub, Inc. ("Progress Subsidiary"). As a result, the separate corporate existing of Progress Subsidiary ceased and Vivaro continued as the surviving corporation of the merger. Epana thus remained a wholly owned subsidiary of Vivaro. Epana is engaged in the resale of international telecommunications services by virtue of its operation as a provider of prepaid calling cards.

At the time the merger occurred, Vivaro's board of directors had carefully evaluated the terms and conditions of the proposed acquisition and considered, among various other factors, (i) the amount of consideration to be received by the stockholders of Vivaro in connection with the proposed acquisition, (ii) the financial condition, historical results of operations and business and strategic objectives of Vivaro, as well as the risks involved in achieving those objectives, (iii) current economic, industry and market conditions, including the competitive advantages of the Vivaro's larger competitors, (iv) Vivaro's prospects if it were to remain independent, including the inherent risks in remaining independent, (v) the possible alternatives to the proposed acquisition, including the possibility of continuing to operate Vivaro as an independent entity and the possibility of raising additional capital through the sale of Vivaro's securities, and (vi) the range of possible benefits to the stockholders of Vivaro of the proposed acquisition and the possible alternatives to the proposed acquisition and the timing and likelihood of

accomplishing the goals of any alternatives to the proposed acquisition. Vivaro's board, having fully considered the terms and conditions of the proposed merger, deemed it advisable to proceed with the merger. The Applicants realize that Commission approval of the transaction is required and, through this application, they seek approval of the transfer of control resulting from the merger.

By a separate application, Special Temporary Authority is requested to allow for continued operations by Epana under the control of Progress while this application is considered by the International Bureau. Because Progress already is authorized by the Commission to provide resold telecommunications services to international points, it is submitted that the public interest has not been and will not be adversely affected by the transfer of control of Epana to Progress.

Information responsive to the format of the IBFS Main Form application follows.

**ANSWER TO QUESTION 10 - Section 63.18(c)-(d):**

(c) Correspondence concerning this application relating to the authorization holder and transferor should be sent to:

Epana Networks, Inc.  
Attn: Roberta Kraus, General Counsel  
1250 Broadway, 30<sup>th</sup> Floor  
New York, NY 10001  
Tel: 212-931-8773  
Email: rkraus@epana.com

With a copy to:

David L. Nace, Esq.  
Lukas, Nace, Gutierrez & Sachs, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, VA 22102  
Email: dnace@fcclaw.com

Correspondence concerning this application to the transferee should be sent to:

Progress International, LLC  
Attn: Craig McBurnett  
10190 Katy Freeway, Suite 410  
Houston, TX 77043

With a copy to:

David L. Nace, Esq.  
Lukas, Nace, Gutierrez & Sachs, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, VA 22102  
Tel: 703-584-8661  
Email: dnace@fcclaw.com

(d) Epana holds the following international Section 214 authorization which is the subject of this application: File No. ITC-214-20031020-00495, for Global or Limited Global Facilities-Based Service and Global or Limited Resale Service to international points. The transferee, Progress, currently has resale authority to provide international telecommunication services pursuant to the Commission's "Order, Authorization and Certificate" in File No. ITC-97-048, released on July 9, 1997. In addition, three transfers of control of Progress were approved under the File Numbers ITC-T/C-19990513 (July 2, 1999), ITC-T/C-19990804-00533 (October 26, 1999) and ITC-T/C-20011221-00651 (January 25, 2002).

**ANSWER TO QUESTION 11 – Section 63.18(h)**

The question calls for the name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). Applicants provide the following information in response:

Epana is a corporation organized under the laws of Delaware and its address is 1250 Broadway, 30<sup>th</sup> Floor, New York, NY 10001. Its principal business is the resale of telecommunications services by means of the sale of prepaid phone cards.

Epana is a wholly owned subsidiary of Vivaro Corporation, a Delaware corporation whose principal business is to serve as a holding company for Epana. The address of Vivaro Corporation is 1250 Broadway, 30<sup>th</sup> Floor, New York, NY 10001.

Vivaro Corporation is a wholly owned subsidiary of Progress International, LLC. (“Progress”), a Texas limited liability company. Progress is a wholesale provider of international telecommunications services. The address of Progress is 10190 Katy Freeway, Suite 410, Houston, TX 77043.

Progress is wholly owned by IXC International, LLC (“IXC”), a limited liability company organized under the laws of Delaware. The principal business of IXC is to serve as a holding company for Progress and its subsidiaries. The address of IXC is 10190 Katy Freeway, Suite 410, Houston, TX 77043.

IXC is wholly owned by Telecom Overseas C.V. (“TOCV”), a limited partnership organized under the laws of the Netherlands. TOCV functions solely as a holding company. The address of TOCV is AJ Ernstraat 199, Amsterdam, Netherlands.

TOCV has one general partner: Stichting Jarda which is a Dutch foundation. Stichting Jarda owns less than a one percent interest in TOCV. The address of Stichting Jarda is Baarerstrasse 75, CH-6300, Zug, Switzerland.

TOCV has one limited partner: Gustavo M. de la Garza Ortega, a citizen of Mexico whose principal business is his work as a telecommunications executive. Mr. De la Garza owns

more than a nine-nine percent interest in TOCV. The address of Mr. De la Garza is Avenida San Jeronimo 210 Poniente, Colonia San Jeronimo, Monterrey, Nuevo Leon.

**ANSWER TO QUESTION 12 – Interlocking Directorates with a Foreign Carrier**

Gustavo M. de la Garza Ortega is now a Director and the indirect controlling owner of Epana, in addition to being a Director and indirect controlling owner of Progress and of Marcatel Com, S.A. de C.V. ("Marcatel"), a Mexican long distance and international carrier. As a result, Epana is now "affiliated" with a foreign carrier in Mexico, Marcatel.

Alberto Ribe, a citizen of Mexico, is now a Director of Epana, in addition to being Marcatel's Chief Financial Officer.

**ANSWER TO QUESTION 13 – Narrative of Transfer of Control and Public Interest Statement**

As explained in the introductory portion of this application, the transfer of control occurred on June 18, 2010 upon a merger of Vivaro, the parent company of Epana, into a wholly owned subsidiary of Progress.

The proposed transaction is in the public interest. To maintain a high quality of service to the public, a merger of Vivaro into the Progress Subsidiary was approved by the Vivaro Board of Directors. Considerations leading to that conclusion by the Board of Directors are summarized in the introductory portion of this application. Since the transaction occurred Epana has provided the same high quality telecommunications services as was offered previously. The transaction has no potential to harm the public interest or to impair competition in any local exchange or in long distance toll markets. Epana's services have not been changed after the merger was completed.

#### **ANSWER TO QUESTION 14 – Affiliation of Transferee with a Foreign Carrier**

As previously approved by the Commission in File No. ITC-T/C-20011221-00651, Progress is "affiliated" with a foreign carrier in Mexico, Marcatel, which is a Mexican long distance and international carrier. Both Progress and Marcatel are under common control by virtue of the indirect controlling ownership of both companies by IXC International, LLC and its sole owner, Telecom Overseas C.V.

#### **ANSWER TO QUESTION 15 – Control of Section 214 Holder and Relationship to Foreign Carrier**

As the result of the subject transfer of control, the Section 214 authorization holder, Epana, is now controlled by Progress which is "affiliated" with a foreign carrier in Mexico, Marcatel, which is a Mexican long distance and international carrier. Both Progress and Marcatel are under common control by virtue of the indirect controlling ownership of both companies by IXC International, LLC and its sole owner, Telecom Overseas C.V.

#### **ANSWER TO QUESTION 16 – Non-Dominant Carrier Status**

Epana was previously classified as non-dominant and continues, after the transfer of control to Progress, to be entitled to non-dominant status on all international routes, including affiliated routes. Accordingly, Epana should be treated as a non-dominant carrier under Section 63.10(a)(3) of the FCC's rules. Section 63.10(a)(3) provides that if a foreign affiliate lacks a fifty percent market share in the international transport and the local access markets on the foreign end of the route, "the U.S. carrier shall presumptively be classified as non-dominant." Marcatel is a competitive long distance and international carrier in Mexico, with less than a two percent market share. As noted in the Commission's Order granting Progress its Section 214 authorization: "Marcatel has a limited market share, no market power, and a lack of control over bottleneck services or facilities." (See the Commission's Order granting Section 214

authorization to Progress in File No. ITC-97-048.) This remains true today. Marcatel is not on the FCC's "List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets." Thus, Marcatel has no market power in Mexico to affect competition adversely in the U.S. market, and Epana, as an indirect subsidiary of Progress satisfies the requirements of Section 63.10(a)(3) to be a presumptively a non-dominant carrier.

**ANSWER TO QUESTION 20 – Streamlined Processing and Section 63.18(p)**

This application qualifies for streamlined processing pursuant to Section 63.12 of the Commission's Rules (47 C.F.R. § 63.12). None of the circumstances listed in subpart (c) of Section 63.12 is applicable to Epana, Progress or their operations. Except for affiliation with Marcatel, which the Commission has found to have no "market power," as explained in the "Answer to Question 16 above, Epana and Progress have no affiliation with any foreign carrier. Customers of Epana and Progress complete international calls by means of resale of the facilities of unaffiliated international telecommunications carriers.

**CONCLUSION**

For the reasons set forth above, a grant of consent to the transfer of control of Epana is consistent with public interest considerations.