

Law Office of Mark C. Del Bianco
3929 Washington Street
Kensington, MD 20895
301.602.5892
mark@markdelbianco.com

April 17, 2017

Ex Parte Presentation

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket 16-403, *CenturyLink Inc. and Level 3 Communications Inc.*,
Applications for Transfer of Control

Dear Ms. Dortch:

On April 14, 2017, the undersigned and David Casem, representing Telnyx LLC, met with Jim Bird and Joel Rabinovich of OGC and Terri Natoli, Michael Ray, Zach Ross, Ramesh Nagarajan, Ginny Metallo, Pam Megna, Dan Kahn, Nagheen Sanjar and David Gutierrez of the Wireline Competition Bureau regarding the CenturyLink/Level 3 merger proceeding.

Telnyx provides Internet protocol communications services, including interconnected VoIP services, to IP communications services providers and enterprise customers. Most of Telnyx's customers are IP service providers (all of whom are competitive services providers, not incumbents), while a small portion is multi-location enterprise customers. In 2016, Telnyx received authorization to obtain numbering resources as a provider of interconnected VoIP services in *Telnyx LLC Authorization to Obtain Numbering Resources Pursuant to Section 52.15(g) of the Commission's Rules*, WC Docket No. 16-172 (2016). Telnyx has requested and received numbering resources in a number of states, and it has begun offering numbers as a service for its customers. It has been assigned over a million numbers.

All of Telnyx's inbound, outbound and E911 services are purchased from other providers, and resold to Telnyx's customers. Telnyx offers an interconnected VoIP service, but customers can also purchase one or more of Telnyx's unbundled services and resell them. For example, a service provider could purchase inbound calling capability and resell just that one service to a call center operator. A customer can also combine a Telnyx service with services from other providers, or it can combine Telnyx's inbound transit, outbound transit, switching, numbering and E-911 service into a complete interconnected voice offering of its own. Telnyx's services are all provided on a nomadic

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission

basis – the customer or its customers can access the service from anywhere with a broadband connection to the public Internet. This is precisely the type of innovative competition enabled by new technology that the Commission intended to facilitate when it adopted *Numbering Policies for Modern Communications*, Report and Order, rel. June 22, 2015 (Docket Nos. WC 13-97, WC 04-36, WC 07-243, CC 95-116, CC 01-92, WC 10-90, and CC 99-200) (the “*Numbering Order*”).

In considering whether to approve the transaction, the Commission is not limited to traditional antitrust principles, but rather also considers the broader public interest. Recent proceedings at the Commission demonstrate the critical need for an increase in the number of competitors for enterprise services, particularly those using new technologies. Therefore, the Commission must critically assess the impact of the proposed transaction in that market.

Telnyx discussed how the acquisition of Level 3 by CenturyLink has significant implications for competitive service providers that depend on unbundled wholesale services for resale to other service providers and enterprises. We pointed out that the communications market is becoming more application-centric and less device-centric, which places more emphasis on one-to-many-device numbering (and particularly the multiple-devices capabilities of interconnected VoIP service) and the ability to obtain and control numbering resources. Telnyx also discussed its difficulties in porting numbers from numbering partners, the importance of achieving IP interconnection with other providers, and the numerous benefits of obtaining direct access to numbers, including facilitating combatting robocalls. We emphasized that it is crucial for the growth of the competitive interconnected VoIP market that carriers continue to offer on a nationwide basis wholesale switching and transport (a/k/a access homing tandem) services for customer owned telephone numbers.

At present, to the best of Telnyx’s knowledge, the only providers of this unbundled inbound service are Level 3, Peerless and Inteliquent. Bandwidth.com is the other CLEC with the nationwide reach and capability to provide such a service, but it chooses not to offer the product. Inteliquent is apparently in the process of exiting the market. Last month, after the closing of its purchase by Onvoy and GTCR LLC, Inteliquent sent Telnyx notice that it was raising the price of wholesale switching and transport services for customer owned telephone numbers – its Host Switch product – by 700%, and that it would cease offering Host Switch as of May 1, 2018, the earliest day that it can do so under the parties’ existing agreement.

Mr. Casem explained that in searching for other suppliers, Telnyx had contacted Level 3 regarding its competing wholesale access tandem product, which Level 3 presently sells to other carriers. Members of Level 3’s sales team have recently informed Telnyx that Level 3 will not sell the product to Telnyx because after the merger the combined CenturyLink will likely not offer the product to competing service providers. If

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission

the combined CenturyLink does indeed refuse to offer this product to competitors going forward, then there may soon be only one provider of nationwide service - Peerless.

We emphasized that the problem is not just limited to Telnyx. These services are critical for many competitive providers of IP communications services to serve their customers, especially in the more rural service areas where Level 3 has much more extensive coverage than either Inteliquent or Peerless. The absence of wholesale switching and transport service offerings at reasonable rates and on reasonable terms will prevent the development of the types of new voice competition envisioned by the Commission in the *Numbering Order*.

We also discussed the market overlap between the Applicants and the fact that the transaction will eliminate Level 3 as an aggressive independent competitor in the wholesale space both in-region and out-of-region.

Telnyx urges the Commission to secure commitments to ensure that the transaction will increase, rather than reduce, enterprise and wholesale competition. If it is to grant the Applications, the Commission should condition the grant on a specific, enforceable merger condition that ensures continuity and fairness in the offering and pricing of these wholesale services to enable competition in the communications marketplace. Specifically, the Commission should require that after the merger is approved Level 3 (or its successor entity) continue to offer at reasonable prices and on a nationwide basis wholesale switching and transport services for customer owned telephone numbers.

If you have any questions, please feel free to contact me at the above number.

Sincerely,

A handwritten signature in black ink that reads "Mark C. Del Bianco". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Mark C. Del Bianco

Cc: Meeting attendees