

COPY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY 14 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Petition by the Florida Public Service Commission)
for Expedited Decision For Grant of Authority)
to Implement Number Conservation Measures)

File No. NSD-L-99-33

CC DOCKET 96-98

COMMENTS OF
LEVEL 3 COMMUNICATIONS, INC.

William P. Hunt, III
Regulatory Counsel
Level 3 Communications, Inc.
1450 Infinite Drive
Louisville, CO 80027

Richard M. Rindler
James N. Moskowitz
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Dated: May 14, 1999

Counsel for Level 3 Communications, Inc.

Received

MAY 17 1999

Common Carrier Bureau
Network Service Division
Office of the Chief

No. of Copies rec'd
List ABCDE

2

TABLE OF CONTENTS

SUMMARY	iii
I. INTRODUCTION	1
II. THE PETITION PROPOSES A NUMBER OF MEASURES THAT THE FPSC COULD EFFECTIVELY UTILIZE TO ADDRESS NXX CODE EXHAUST.	2
A. Reclamation of Inactive or Unused NXX Codes	2
B. Extension or Modification of Rationing Procedures	4
C. Enforcement Authority	5
III. STATES SHOULD NOT BE PERMITTED TO UTILIZE UNTESTED METHODS OF NUMBER CONSERVATION THAT ARE SUBJECT TO FURTHER DISCUSSION, DEVELOPMENT, AND STANDARDIZATION.	7
A. Thousands Block Number Pooling	7
B. Individual Telephone Number Pooling	9
C. Unassigned Number Porting	10
D. Minimum Fill Rates and Utilization Surveys	11
E. Consecutive Number Assignment Requirement	12
IV. CONCLUSION	14

SUMMARY

Level 3 Communications, Inc. ("Level 3") commends the Florida Public Service Commission ("FPSC") for its initiative in attempting to address the problems associated with NXX code shortages. Several of the FPSC's proposals could prove helpful in making better use of the numbering resources currently deployed in the telecommunications market. For example, allowing the FPSC to reclaim inactive NXX codes after an established period of time and pursuant to well-defined safeguards and procedures will promote greater accessibility to a carrier's reserves of NXX codes that might otherwise be unavailable for use by other carriers. Similarly, because the FPSC may be best able to determine when additional rationing measures are necessary in a given market, giving it the ability to extend or modify the use of NXX code rationing procedures would be reasonable and even desirable (as long as appropriate safeguards are in place). Finally, giving the FPSC the authority consolidate rate centers in conformity with national standards established by the Commission will help to alleviate demand for apparent shortages of NXX codes.

There are number of respects, however, in which Level 3 believes that the FPSC's Petition would undermine the establishment of national numbering administration procedures. Thousand number pooling and unassigned number porting are under consideration in an open Common Carrier Bureau proceeding, and require further discussion, development, and uniform resolution before they are turned over to states or to the numbering administrators for implementation. Finally, federal guidelines for implementing and deploying permanent number portability have already been established through a meticulous Commission proceeding and ought not be disturbed here by granting the FPSC the authority to expand the deployment of permanent number portability.

RECEIVED

MAY 14 1999

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Petition by the Florida Public Service Commission)
for Expedited Decision For Grant of Authority) File No. NSD-L-99-33
to Implement Number Conservation Measures)

COMMENTS OF
LEVEL 3 COMMUNICATIONS, INC.

Level 3 Communications, Inc. ("Level 3"), by undersigned counsel and pursuant to the Common Carrier Bureau's April 15 Public Notice,¹ hereby submits its Comments in the above-captioned proceeding.

I. INTRODUCTION

Level 3 is a communications and information services company that is building an advanced Internet Protocol technology-based network across the United States, connecting 25 cities. Level 3 will deploy its network in phases by 2001. The company also plans to build local networks in cities across the country and to interconnect those networks with its national long distance network. As a facilities-based provider of local services, Level 3 is dependent upon adequate access to numbering resources to serve customers and expand the geographic scope of its operations.

Level 3 welcomes the initiative on the part of the Florida Public Service Commission ("FPSC") in attempting to address the problems associated with NXX code shortages. Indeed, Level 3's inability to obtain NXX codes and telephone numbers is one of the most significant, artificial barriers to competitive entry and expansion. Level 3 agrees that many of the measures proposed by

¹ *Common Carrier Bureau Seeks Comment on Florida Public Service Commission's Petition for Authority to Implement Number Conservation Measures*, NSD File No. L-99-33, DA 99-725, Public Notice (rel. April 15, 1999).

the FPSC could in fact remedy the number allocation problems currently facing several Numbering Plan Areas ("NPAs").

There are several other respects, however, in which Level 3 believes that the FPSC's approach to the NXX code shortages is inappropriate. Rather than looking to novel measures as a panacea for code exhaust, the FPSC should use more tested and reliable means of increasing access to telephone numbers. There is no guarantee that these alternative conservation measures – such as number pooling, expanded deployment of permanent number portability, and unassigned number porting – will work, and it would be inefficient and burdensome for carriers to comply with what may become 50 separate number consolidation mechanisms. Level 3 believes that only after effective uniform federal solutions to these alternative conservation measures have been developed and tested should the states be encouraged to implement them.

II. THE PETITION PROPOSES A NUMBER OF MEASURES THAT THE FPSC COULD EFFECTIVELY UTILIZE TO ADDRESS NXX CODE EXHAUST.

Level 3 supports the following number conservation measures for which the FPSC seeks delegated implementation authority from the Commission.

A. Reclamation of Inactive or Unused NXX Codes

Level 3 believes that allowing the FPSC to investigate reclamation of inactive NXX codes from carriers is a reasonable means of making more efficient use of numbering resources.² While Level 3 believes that this is a technically feasible solution, some question remains relating to the timing of such reclamation. It is essential that carriers not be forced to return NXX codes prematurely if their business plans call for the use of those codes in the foreseeable future. In fact,

² FPSC Petition at 4.

many competitive local exchange carriers ("CLECs") place orders for NXX codes months in advance of entering a rate center in order to ensure that the numbering resources will be readily available once customer sales begin. CLECs may also decide to assign telephone numbers to a customer months in advance of serving that customer as part of their marketing efforts and business plans.

The Commission should help ensure the competitive neutrality of any rules the FPSC may adopt. If the FPSC is given authority to reclaim inactive or unneeded NXX codes, appropriate safeguards must be in place so that the state or numbering administrator is not given an inordinate amount of power over carriers' business plans. Among other things, the Commission may want to direct that the FPSC may only take action to reclaim an unused NXX code if the carrier has held the code for more than one year.³ The Commission should make clear that any delegation of authority to the FPSC with respect to reclamation of NXX codes only applies to those codes that have been inactive, and not to any codes that are subjectively determined by the state regulator to be unneeded.

³ Level 3 recognizes that current industry numbering guidelines direct carriers to return NXX codes to the numbering administrator if a code is no longer needed or is not activated within six months. However, in some cases customer requirements may cause a carrier to delay activation until several more months have passed. In light of the uncertainty of customer demand at times and the voluntary nature of the NXX code return policy set forth in the numbering guidelines, the FPSC should not take enforcement action to reclaim an inactive code until at least one year has passed.

B. Expanded Authority Over Rationing Procedures

Providing the FPSC with expanded authority to revise its NXX code rationing efforts, including the use of NXX lotteries, appears reasonable and even desirable.⁴ Unlike other number conservation measures discussed below, rationing does not require uniform national implementation or further testing and development at the federal level. In fact, the FPSC and other state commissions may be in the best position to judge when rationing will be needed and what impact it will have upon competition in the local exchange market.

Level 3 does not anticipate that an extension of rationing after the implementation of area code relief would cause undue harm to any carrier, although there should be safeguards in place to ensure that carriers are not forced to operate indefinitely under a rationing process. As a precautionary measure, however, the Commission should make clear that if a carrier believes that the FPSC revisions to the established industry rationing procedures are unjust or unreasonable, the affected carriers may seek expedited relief (on a 30-day basis) from the Common Carrier Bureau to stay or even vacate the proposed revisions to the rationing procedures.

Finally, the Commission should grant the FPSC's request for additional authority to institute NXX lotteries.⁵ Level 3 agrees with the FPSC that this system could serve as an equitable means of allocating scarce numbering resources so long as it is administered in a competitively neutral manner. Nevertheless, the Commission needs to ensure that where a carrier can demonstrate some unusual, immediate need for an NXX code, it can obtain that code by seeking relief from the

⁴ FPSC Petition at 3.

⁵ *Id.* at 3-4.

rationing process through the FPSC. In the interest of due process, the Commission should ensure that the FPSC has procedures in place to entertain and resolve on an expedited basis any protests to the award of an NXX code outside of the rationing procedure.

C. Rate Center Consolidation

The Commission has a proceeding underway in which it is considering establishing national standards for rate center consolidation ("RCC").⁶ While Level 3 believes that RCC can and should play an important role in responding to the increased demand for, and apparent shortage of, NXX codes in many NPAs, any authority delegated to the FPSC should be in conformity with the standards established in that proceeding. Merging two or more distinct rate centers into a single rate center could provide CLECs with better and more competitively neutral access to NXX codes and telephone numbers on a going forward basis. Many CLECs have to obtain a new NXX code each time they want to expand the geographical scope of their business. Furthermore, as the 1998 report released by the North American Numbering Council ("NANC Report") accurately notes, "RCC can be used as an NXX optimization measure to delay the exhaust of NPAs and future jeopardy situations."⁷ Thus, RCC could serve the dual purposes of opening new areas in each NPA to the benefits of competitive entry, and maximizing the "fill" of each NXX code.

⁶ See *Common Carrier Bureau Seeks Comment on North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures*, NSD File No. L-98-134, Public Notice, 13 FCC Rcd. 22233 (rel. Nov. 6, 1998) ("NANC Report Public Notice"). Comments on the NANC Report Public Notice were filed December 21, 1998.

⁷ Number Resource Optimization Working Group, *Modified Report to the North American Numbering Council on Number Optimization Methods*, § 1.5.1 (Oct. 20, 1998) ("NANC Report").

This is not to say, however, that RCC should be viewed as the only appropriate solution for number exhaust in every circumstance. For example, although the benefits of RCC are relatively clear, the costs of RCC are not as readily apparent or identifiable.⁸ In addition to the uncertainty relating to costs, implementation of RCC could have other impacts on competition depending upon the circumstances. Most significantly, E911 routing could be affected adversely if RCC is implemented in a haphazard manner.⁹

Notwithstanding the uncertainty surrounding the costs and administrative implications of implementing RCC on an individual case basis, Level 3 believes that it can be a valuable tool nationwide in promoting competitive entry, preserving numbering resources, and allowing carriers to make the most efficient use of the NXX codes they hold. To help alleviate this uncertainty and make the best use of RCC, Level 3 suggests that the Commission grant the FPSC authority to implement RCC on a case-by-case basis and only in conformity with any national standards the Commission promulgates as a result of its current NANC Report proceeding.

⁸ The NANC Report states that "the cost of RCC is subject to a number of variables unique to each geographical area and service provider." NANC Report at § 1.4. Although the NANC submitted questionnaires seeking to capture implementation cost information from carriers and consumers, it admits that "[i]t has been difficult to identify an overall cost that is applicable to all areas." *Id.*

⁹ *Id.* at § 1.9.1.

III. STATES SHOULD NOT BE PERMITTED TO UTILIZE UNTESTED METHODS OF NUMBER CONSERVATION THAT ARE SUBJECT TO FURTHER DISCUSSION, DEVELOPMENT, AND STANDARDIZATION.

Although Level 3 supports several aspects of the FPSC's Petition, Level 3 believes the Petition should be denied in part because it would undermine national efforts to develop uniform number administration procedures.

A. Thousands Block Number Pooling

The FPSC proposes to reclaim unused thousand number blocks from all NXX code holders and to implement a mandatory pooling regime.¹⁰ While Level 3 agrees that thousands block number pooling may prove useful in the future in making more efficient use of telephone numbers, much debate, discussion, and implementation remains before pooling can be considered an appropriate number conservation mechanism to which carriers in the marketplace should be bound. For example, the NANC Report sets forth an "Implementation Timeline" which indicates that there are several pooling administration steps, system modifications, and cost recovery decisions that are not yet finalized.¹¹ The Commission itself has targeted the fourth quarter of 1999 for the working implementation of thousands block number pooling.¹² Moreover, the conclusions set forth in the NANC Report – such as the establishment of a 10% block contamination threshold or the block assignment guidelines – are the subject of an open proceeding with the Common Carrier Bureau in which comments were filed in December 1998.¹³

¹⁰ FPSC Petition at 6-7, 9.

¹¹ NANC Report at § 5.3.

¹² *Id.* at 105.

¹³ See NANC Report Public Notice, *supra* n. 6.

The competitive implications of mandatory pooling on carriers that are not yet required to implement Local Number Portability also merit careful consideration and resolution before states are given the authority to compel participation in a pooling program. The FPSC has not addressed how it will minimize the potential damage to competition which may result from these proposals. Simply forcing carriers with only one or two NXX codes to pool those codes will have a significant impact on the cost structure of local exchange services. This will upset established business plans and may force carriers to withdraw from some markets altogether.

The Commission should therefore ensure that operationally sound and competitively neutral pooling guidelines are finalized before the states are given authority to compel participation in pooling mechanisms.¹⁴ For example, there must be some equitable method of recovering the costs associated with pooling participation. Furthermore, to be competitively neutral, rules should permit carriers to retain a minimum number of NXX codes which they do not have to pool. However, above all else, any mandatory pooling mechanism must first be demonstrated to be technically feasible and operationally sound, so that carriers are able to obtain and retain numbers without fear that the numbers they contribute to a pooling mechanism are effectively lost forever.

The Commission already has a proceeding underway to arrive at just such a result. It should not, at this late stage, prejudge or "short-circuit" the outcome of the Common Carrier Bureau's open consideration of these technical, operational, economic, and competitively sensitive questions by awarding the FPSC the ability to experiment with a mandatory pooling mechanism. Nor should the

¹⁴ Level 3 recognizes that pooling guidelines were issued by the Industry Numbering Committee in January 1999. These guidelines do not, however, resolve conclusively the matters still open for consideration before this Commission in the context of the NANC Report.

Commission give states experimental authority to compel participation in pooling regimes before it has clarified what the final national pooling guidelines should be. The prospect of 50 state governments erecting different pooling mechanisms presents a substantial technical and administrative burden for carriers. Given the vast disparity in resources among carriers, these burdens could prove to have a significant impact on the ability of smaller carriers to compete on a national basis. Level 3 therefore respectfully requests that the Commission decline to award the FPSC (or any other state commission) the authority to implement a mandatory pooling mechanism until: (i) comprehensive uniform federal pooling guidelines have been finalized and implemented; (ii) pooling has been demonstrated to work in terms of providing carriers with access to thousands number blocks as needed; and (iii) carriers are ensured that they will be able to recover the costs associated with implementing a pooling mechanism.

B. Hundreds Number Block Pooling and NXX Code Sharing

The FPSC is also seeking authority to institute hundreds block number pooling and to implement sharing of NXX codes in rate centers, which essentially amounts to the creation of small number pools.¹⁵ As in the case of thousands block number pooling, these number conservation mechanisms are simply too undeveloped to allow experimentation by the states. Thus, Level 3 submits that the Commission should not undermine its ongoing process and the uniform federal resolution of problems associated with pooling by giving the FPSC authority to experiment with these number conservation mechanisms. Moreover, because hundreds block number pooling and NXX code sharing involve technical, operational, economic, and competitive questions that are

¹⁵ FPSC Petition at 3.

similar to those involved in the consideration of thousands block number pooling, Level 3 submits that these number conservation mechanisms should likewise be addressed thoroughly at the federal level before its implementation is delegated to the states. The Commission should therefore deny the FPSC's request for expanded authority over hundreds block number pooling and implementation of sharing of NXX codes at centers, in addition to thousands block number pooling.

C. Unassigned Number Porting

The FPSC requests authority to utilize unassigned number porting ("UNP") as an additional tool to conserve numbering resources.¹⁶ This number conservation mechanism – like thousands block number pooling – is still in a developmental process and the subject of consideration in the Bureau's review of the NANC Report. For the same technical, operational, economic, and competitive reasons that warrant resolution of thousands block number pooling at the federal level, Level 3 urges the Commission to deny the FPSC request to implement UNP on an interim basis. The NANC Report again makes clear that the implementation of UNP at this point should be exclusively a federal question: "The provisioning methodologies, administrative procedures and interfaces used to support UNP shall be uniform nationwide."¹⁷ Granting the requested relief to the FPSC would violate this uniformity principle.

¹⁶ FPSC Petition at 5.

¹⁷ NANC Report at § 6.2.5.

D. Expanded Deployment of Permanent Number Portability

The FPSC requests the authority to expand the deployment of permanent number portability ("PNP").¹⁸ The Commission has already promulgated rules implementing a phased PNP deployment schedule, providing that local exchange carriers ("LECs") must implement PNP within specific deadlines in those switches which another carrier has requested portability.¹⁹ These rules represent the product of a long and technically complicated rulemaking proceeding which involved the input of many players in the industry, including incumbent LECs ("ILECs"), CLECs and the states.²⁰

Level 3 believes that the Commission should not now disturb these rules by granting states the general authority to alter PNP implementation beyond the mechanisms established in the Commission's rules. This is especially true given that the FPSC's request does not delineate the scope or nature of the authority it seeks.²¹ Nor does the FPSC offer any specific rationale in support of its request for expanded PNP authority. Level 3 believes that the Commission should be reluctant, under any circumstances, to upset the delicate balance of interests its current number portability rules represent. Where the Commission to decide to circumvent the present rules it would need sound and well documented reasons for doing so. The FPSC's request is simply insufficient to warrant the Commission abandoning its current number portability rules. As a result, Level 3 believes that the Commission should deny the FPSC's request relating to expanded deployment of PNP.

¹⁸ FPSC Petition at 4.

¹⁹ 47 C.F.R. §§ 52.21-.33.

²⁰ *See Telephone Number Portability*, CC Docket No. 95-116, Second Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd. 21204 (rel. October 20, 1998).

²¹ The FPSC simply requests authority to "expand deployment of permanent number portability[.]" without further comment or elaboration. FPSC Petition at 4.

E. Consecutive Number Assignment Requirement

The FPSC's Petition also indicates that it is seeking the authority to require that NXX code holders assign telephone numbers consecutively, beginning with the lowest available telephone number.²² Requiring all code holders to assign their numbers consecutively will reduce the availability of numbering services which consumers have come to rely upon. This is contrary to the 1996 Act's purpose of promoting new and inexpensive services.²³ Level 3 therefore urges the Commission to deny the FPSC the authority to mandate this requirement.

One of the most important options new carriers offer their customers is the ability to select telephone numbers. There are obvious business advantages to having vanity numbers that relate to a given customer's trade. Many customers consider this option a necessity and will only add services if they are able to obtain a desirable number. In addition, customers with multiple lines often demand that their telephone numbers be assigned in blocks that make logical sense. For example, if a customer needs fifty lines, they will request the numbers between NXX-XX00 and XX50. But if carriers are required to assign numbers consecutively and the next number up is NXX-XX19, they will not be able to offer their customers the simplicity they require. Thus, if carriers are forced to assign numbers consecutively, they will not be able to provide customers the flexibility to choose numbers that meet their business needs.

²² See FPSC Petition at 7. Despite the fact that the Commission has not yet had an opportunity to consider its request for authority, the FPSC has already started a state proceeding to implement this rule. *Id.*

²³ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Preamble (1996) (Preamble) (purpose of the act is to promote competition, secure lower prices and higher quality services and encourage rapid deployment of telecommunications services).

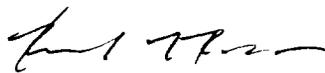
For these reasons, the Commission should not grant the FPSC the authority to require consecutive number assignment. This rule would have serious impact on the availability of numbering options that consumers have grown to expect. This result is contrary to the purpose of the 1996 Act and not in the public interest.²⁴ Furthermore, as discussed elsewhere in these comments, there are other, competitively neutral means of promoting number conservation. Therefore, Level 3 believes the Commission should reject this request.

²⁴ *Id.*

IV. CONCLUSION

Level 3 commends the FPSC for taking a pro-active approach to resolving the problems of NXX code exhaust. Many of the proposals set forth by the FPSC may ultimately assist in making much more efficient use of existing number resources. However, the problem with some of these proposals comes in their timing and their method of implementation. Certain of the FPSC's proposed measures are simply not ready for deployment in the market and the testing and implementation of these measures needs to be part of a coordinated national effort in order to best promote their competitive neutrality. In this instance, allowing the states to experiment with number pooling and related measures would only lead to inconsistency as each state, in isolation, attempts to resolve the technical, administrative, and competitive concerns. The Commission should therefore grant the FPSC a limited delegation of authority consistent with the recommendations set forth herein, but it should otherwise proceed within the context of its own number optimization docket to establish national guidelines

Respectfully submitted,



William P. Hunt, III
Regulatory Counsel
Level 3 Communications, Inc.
1450 Infinite Drive
Louisville, CO 80027

Richard M. Rindler
James N. Moskowitz
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Dated: May 14, 1999

Counsel for Level 3 Communications, Inc.

CERTIFICATE OF SERVICE

I, Ivonne J. Diaz, hereby certify that on this 14th day of May 1999, copies of the foregoing Comments of Level 3 Communications, Inc. were hand delivered to those parties marked with an asterisk. All others were served by first class mail.

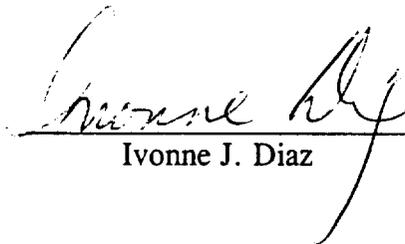
* Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
Portals II
445 Twelfth Street, S.W.
12th Street Lobby
Suite TW-325
Washington, D.C. 20554

* Al McCloud (two copies)
Federal Communications Commission
Portals II
445 Twelfth Street, S.W.
Room 6A-320
Washington, D.C. 20554

* International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20554

Joe Garcia
Chairman
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0854

Cynthia B. Miller
Senior Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0854


Ivonne J. Diaz