

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Connecticut Department of Public Utility)	RM No. 9258
Control Petition for Rulemaking to Amend the)	
Commission's Rules Prohibiting Technology-)	
Specific or Service-Specific Area Code Overlays)	
)	
Massachusetts Department of Telecommunications)	NSD File No. L-99-17
and Energy Petition for Waiver to Implement a)	
Technology-Specific Overlay in the 508, 617, 781,)	
and 978 Area Codes)	
)	
California Public Utilities Commission and the)	NSD File No. L-99-36
People of the State of California Petition for)	
Waiver to Implement a Technology-Specific or)	
Service-Specific Area Code)	

**REPLY COMMENTS OF
LEVEL 3 COMMUNICATIONS, INC.**

Level 3 Communications, Inc. ("Level 3") submits these reply comments in the above-captioned proceeding.¹ Level 3 submitted initial comments.²

I. NUMBER OPTIMIZATION MUST BE COMPETITIVELY NEUTRAL

Incumbent LECs propose that the Commission establish number optimization through measures harmful to competitive LECs. For example, they propose that before a LEC may receive

¹ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Notice of Proposed Rulemaking, rel. June 2, 1999 ("*Numbering NPRM*").

² Comments of Level 3 Communications, Inc. filed July 30, 1999.

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new or additional numbers it would have to meet Commission-defined utilization thresholds;³ that numbers would be obtained only after submission of a burdensome amount of information or a showing of special need;⁴ that carriers that meet utilization thresholds can opt-out of number pooling;⁵ or that numbers can be reclaimed unless placed in service within periods as short as 60 days.⁶

These measures would favor incumbent LECs because they possess adequate number resources and do not have the immediate, critical need for numbering resources that new entrants experience. Thus, requirements that attempt to maximize number optimization by placing restrictions on the party that requests new numbers will fall unevenly on new entrants. Prescribed utilization thresholds favor incumbent LECs because, having been in business longer, they have much higher utilization rates than do new market entrants, unless thresholds were set so low that they would not achieve conservation in any event. Similarly, special information requirements and difficult need showings will fall hardest on those who must request numbers and must meet those standards as opposed to incumbent LECs who are not as dependent upon new number resources.

Level 3 urges the Commission to reject regulatory alternatives for achieving number optimization that do so at the expense of competitive neutrality. Instead, the Commission should explore rate center consolidation ("RCC"), provision of reasonable levels of forecast and utilization data to the NANPA, "for cause" audits by independent third parties, and appropriate enforcement.

³ SBC at 24.

⁴ SBC at 42-43; Ameritech at 15; Bell Atlantic at 7.

⁵ SBC at 67; US West at 24.

⁶ SBC at 64-66.

These competitively neutral measures would do more to achieve number optimization than the restrictive measures proposed by incumbent LECs. The Commission should also reject the incumbent LEC position that competitive LECs should bear the primary burden of number optimization because new entrants are the primary requesters of new numbers. This point of view is similar to that expressed by incumbent LECs in the Commission's proceeding concerning costs of implementation of local number portability. There, incumbent LECs proposed cost recovery mechanisms that would entail competitive LECs bearing most of the costs of implementation of local number portability -- including incumbent LECs' costs -- on the ground that competitive LECs created the need for local number portability. The Commission rejected that argument finding it would not be competitive neutral to make new entrants bear the costs of number portability.⁷ The Commission should reject the similar view here that competitive LECs should bear the brunt of number optimization.

II. THE COMMISSION SHOULD NOT PURSUE SALE OF NUMBERS

Section 251(e)(2) of the Act provides that “[t]he cost of establishing telecommunications numbering administration arrangements ... shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”⁸ However, this provision does not authorize the Commission to establish regulatory programs for selling numbers based on prices that have nothing to do with recovery of the costs of number administration.

⁷ *Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, FCC 98-82, released May 12, 1998.

⁸ 47 U.S.C. Section 251(e)(2).

Nothing in the language of the Act or its legislative history indicates Congress intended to grant this authority to the Commission. If Congress had intended to confer authority on the Commission to conduct, or authorize others to conduct, sales of telephone numbers when it stated that carriers shall pay the costs of telephone number administration it would have directly said so. Level 3 submits that under that section the Commission may require carriers to pay for no more than the direct costs of number administration. Thus, the Commission's suggestion that numbers could be sold based on their "value" would be unlawful because value-based pricing is unrelated to the costs of number administration.

The Commission also lacks authority to establish programs designed to raise general revenues for the United States Treasury or to establish new funding mechanisms for telecommunications programs. As with auctions of spectrum and regulatory fees the Commission may not establish revenue raising programs without direct statutory authority.⁹

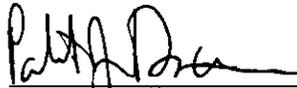
Level 3 urges the Commission to abandon further inquiry concerning sale of telephone numbers. There is no statutory basis for such a proposal. In addition, the sale of numbers would become just another measure whereby deep-pocketed incumbents could "corner" the market on the numbers that are the lifeline of new entrants. Thus, it would not be competitively neutral to sell telephone numbers.

⁹ See 47 U.S.C. Sections 158, 309(j).

IV. CONCLUSION

For these reasons, in addition to views expressed in its initial comments, Level 3 urges the Commission to establish number optimization measures that are competitively neutral. The Commission should abandon efforts to embark on a program of sale of telephone numbers.

Respectfully submitted,



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