

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996	)	WT Docket No. 96-198
	)	
Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities	)	

**Reply Comments of Level 3 Communications, LLC**

Level 3 Communications, LLC (“Level 3”), pursuant to the Notice of Inquiry issued by the Commission, submits these reply comments. As the record before the Commission demonstrates, regulation of Voice over Internet Protocol (“VOIP”) services at this juncture would be premature and is unnecessary to provide access to persons with disabilities. There is no reason for the Commission to depart from its longstanding policy of “unregulation” of IP-based services.

**I. Regulation of VOIP Services is Premature and Unnecessary**

In its initial comments, Level 3 explained that it has designed its state-of-the-art IP-based network to ensure quality that is equal or greater to the PSTN. Because no voice compression techniques are utilized by Level 3, TTY and other signals are not altered in order to be transported over Level 3's network. Carriers using Level 3's network, therefore, will be able to provide individuals with disabilities equal if not greater access to communications services.<sup>1/</sup>

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<sup>1/</sup> Level 3 at 2-3.

Other carriers also have stated that their VOIP services will be accessible to users with disabilities. MCIWorldcom, for example, stated that its VOIP services are capable of "maintaining full accessibility" for individuals with disabilities.<sup>2/</sup> Teleglobe said that it expects a continued "high level" of accessibility to VOIP services by individuals with disabilities.<sup>3/</sup> Similarly, Bell Atlantic declared that all of its services, whether circuit or packet-switched, will be accessible to users of TTY machines.<sup>4/</sup> The voluntary efforts being undertaken by the telecommunications industry to ensure that persons with disabilities continue to achieve high accessibility to future communications services was described by the VON Coalition.

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<sup>2/</sup> MCIWorldcom at 4.

<sup>3/</sup> Teleglobe at 3.

<sup>4/</sup> Bell Atlantic at 1. See also AT&T at 3.

What was not presented to the Commission, however, was any actual example of individuals with disabilities being denied access to VOIP services generally. As Teleglobe noted, the majority of commenters failed to illustrate specific accessibility issues posed with regard to the provision of VOIP services.<sup>5/</sup> In joint comments by the Telecommunications for the Deaf, Inc. and the Consumer Action Network (“TDI/CAN”), TDI/CAN offered no evidence of parties being denied access and could only point to “preliminary research” that there “may” be some interference due to the use of packet-switched services.<sup>6/</sup> Similarly, while the Self Help for Hard of Hearing People (“SHHH”) and others noted that certain discrete products used for placing long distance calls over the Internet are not “fully accessible,” no claim was made that individuals with disabilities will be denied access to VOIP services generally.<sup>7/</sup> The National Association for the Deaf (“NAD”) stated that the immediate goal of any regulation would be to ensure that new technologies are compatible with existing TTYs.<sup>8/</sup> Level 3 and the other carriers have indicated that that goal already has been met. Level 3 agrees with TDI/CAN and many of the other commenters that VOIP services should be accessible to individuals with disabilities. The record before the Commission, however, indicates that there are no accessibility issues with regard to VOIP services that would warrant regulation at this time. To

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<sup>5/</sup> Teleglobe at 4. Level 3 incorporates by reference those statements of Teleglobe regarding the failure of certain commenters to provide examples of actual accessibility problems as if fully set forth herein.

<sup>6/</sup> TDI/CAN at 7.

<sup>7/</sup> SHHH at 3; *see also* Dana Mulvaney at 2.

<sup>8/</sup> NAD at 3, 12.

the contrary, the majority of carriers have indicated that their VOIP services are and will be accessible to individuals with disabilities. Moreover, the fact that industry is working to develop international standards regarding evolving communications services in order to address the accessibility issues that may occur demonstrates that the regulation of VOIP services is premature and unnecessary.

## **II. The Commission Should Not Exercise Its Ancillary Jurisdiction Over VOIP Services**

Before the Commission may assert its ancillary jurisdiction over a service, it must find that the assertion of jurisdiction "is reasonably required to perform an express statutory obligation."<sup>9/</sup> In other words, the Commission must affirmatively find that asserting ancillary jurisdiction is necessary to meet the statutory requirement that telecommunications services are "accessible to and usable by persons with disabilities, if readily achievable."<sup>10/</sup>

In this proceeding, the Commission asserted its ancillary jurisdiction to find that providers of voicemail and interactive menus must provide access to those services to individuals with disabilities, despite the fact that they were information services. The Commission found that voicemail and interactive menus were "integral" to the use of today's telecommunications services and, therefore, that the denial of access to those services would "defeat the effective implementation" of Section

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<sup>9/</sup> *Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, FCC 99-181 at ¶ 95 (rel. Sept. 1999) ("NOI") (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177 (1968)).

<sup>10/</sup> 47 U.S.C. § 255 (c).

255.<sup>11/</sup> The Commission concluded, therefore, that the assertion of ancillary jurisdiction was proper because mandating access to voicemail and interactive menus was reasonably necessary to perform its statutory obligations under Section 255.

The record in this proceeding, however, cannot support a finding that asserting ancillary jurisdiction over VOIP services is warranted. As set forth above, those commenters that argue for the imposition of section 255 obligations on VOIP services have failed to identify general accessibility problems to those services. The Commission, therefore, has no basis to conclude that it is necessary to assert ancillary jurisdiction over VOIP services.

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<sup>11/</sup> NOI at ¶ 97, 103.

**IV. Conclusion**

The record before the Commission demonstrates that regulation of VOIP services, either through the assertion of ancillary jurisdiction or otherwise, is unnecessary to ensure accessibility to individuals with disabilities. The Commission, therefore, should continue its successful policy of “unregulation” of VOIP services.

Respectfully submitted,

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