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

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717	)	CC Docket No. 96-98

COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

William P. Hunt, III
Gregory L. Rogers
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-2516 (Tel)
(720) 888-5134 (Fax)

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

TABLE OF CONTENTS

Page No.

EXECUTIVE SUMMARY i

I. Introduction 1

II. The FCC Should Hold Related Carriers Liable for Only Egregious Violations of the Numbering Rules, Phase-In Penalties and Establish Safeguards 2

III. Withholding Numbering Resources Should be Reserved for Repeated Non-Compliance of the FCC's Numbering Rules and Must be Accompanied by Due Process Protections 4

IV. Auditing Responsibility Should Lie Solely with the Audits Branch of the Accounting Safeguards Division in the Common Carrier Bureau 4

V. The FCC Should Not Create a Market-Based Approached for Optimizing Numbering Resources 7

VI. The FCC Should Not Require Carriers to Become LNP-capable Solely For Purposes of Participating in Thousands-Block Number Pooling 11

VII. The FCC Should Establish a "Safety Valve" for the Assignment of Growth Codes.....13

VIII. Conclusion.....15

EXECUTIVE SUMMARY

Level 3 Communications, LLC ("Level 3") supports many of the initiatives contained in the *Second Report and Order*. Number conservation is essential to maintaining a competitive marketplace. In implementing additional numbering administration rules and regulations, it is important for the Federal Communications Commission ("FCC") to insure competitively neutrality so that any additional regulations foster competition. Facilities-based providers already face substantial barriers to entry. The FCC must tread lightly when implementing new rules and regulations that will further restrict carriers' access to numbering resources.

Level 3 believes that, under the proper circumstances, holding related carriers liable for a related entity's non-compliance with the mandatory reporting requirements would increase carrier compliance with the utilization and forecasting reporting rules. Withholding numbering resources should be reserved only for egregious violations of those rules. Further, the FCC should phase-in the sanction so that related carriers are not immediately barred from obtaining numbering resources nationwide. It is also important for the FCC to establish safeguards so that related carriers are afforded due process.

Similarly, withholding numbering resources as a sanction for non-compliance with other numbering rules must be accompanied with the appropriate safeguards. A system should be put in place where the relevant regulatory body recommends the sanction to the FCC. Withholding numbering resources should only be considered in cases where a carrier is repeatedly in non-compliance with the numbering rules. Carriers must be provided with the opportunity to show why the sanction should not be applied. Under no circumstances should state commissions possess the independent authority to bar carriers from obtaining numbering resources.

Level 3 supports the FCC empowering a single entity at the national level with auditing authority. Level 3 agrees that using auditors in the Audits Branch of the Accounting Safeguards division in the Common Carrier Bureau is the best choice. There is no need for state commissions to engage in parallel auditing. A single entity at the national level insures the adoption of uniform standards and consistent application of those standards.

Level 3 continues to oppose pricing for numbers. Level 3 believes that there is no way to price numbers in a competitively-neutral manner. Further, the FCC currently lacks the statutory authority to auction numbering resources.

Level 3 does not support the FCC's proposal to require carriers to become LNP capable solely for the purposes of implementing thousands-block number pooling. Imposing such a requirement would distort carriers' business plans. Also, the FCC should allow the marketplace to drive technological upgrades. Implementing thousands-block number pooling is a costly process that increases the prices end-users pay for telecommunications services. Additionally, allowing state commissions to mandate thousands-block number pooling with slow the introduction of more effective number conservation measures, such as rate center consolidation.

Level 3 supports the adoption of a "safety valve" whereby carriers can obtain growth codes even if they have not yet met the requisite utilization rate. Mechanical application of the numbering rules fails to account for unique situations facing carriers in widely diverse markets. When a carrier is approaching imminent exhaust, there should be a procedure that allows the carrier to explain why the current process for awarding growth codes fails to take into account the carriers' situation.

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

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717	)	CC Docket No. 96-98

COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

Level 3 Communications, LLC ("Level 3" or the "Company"), by undersigned counsel and pursuant to the Federal Communications Commission's ("Commission's") Further Notice of Proposed Rulemaking in the above-captioned proceeding, hereby submits its Comments.[1]

I. Introduction

Level 3 is a communications and information services company and is building an advanced Internet Protocol technology-based network that currently connects 63 international markets, 52 in the United States, 9 in Europe and 2 in Asia. Level 3 depends upon adequate access to numbering resources to serve customers and expand the geographic scope of its operations.

Level 3 supports many of the new initiatives set out in the *Second Report and Order*. Level 3 agrees, assuming proper safeguards are in place, that withholding numbering resources of related carriers and carriers that consistently do not comply with the FCC's numbering rules

[1] *See* Number Resource Optimization, *Second Report and Order*, CC Docket Nos. 96-98, 99-200 (rel. Jan. 24, 2001) ("*Second Report and Order*"); Number Resource Optimization, *Second Further Notice of Proposed Rulemaking*, CC Docket No. 99-200 (rel. Jan. 24, 2001) ("*Second Further Notice*").

will benefit number conservation. Level 3 recommends that the FCC implement an auditing program only at the national level. Level 3 agrees that with the imposition of a national utilization requirement, the FCC should provide a "safety valve" so carriers can still obtain growth codes when they face imminent exhaust but have not met the requisite utilization rate. Level 3 continues to disagree with the FCC concerning the establishment of a market based system for the allocation of numbering resources as the Company is not convinced that it could be accomplished in a competitively-neutral manner. Level 3 believes that the FCC should not require carriers to become LNP-capable solely for the purposes of thousands-block number pooling. Such a requirement would increase the costs of telecommunications services for end-users, distort the competitive marketplace and slow the introduction of other number conservation measures.

II. The FCC Should Hold Related Carriers Liable for Only Egregious Violations of the Numbering Rules, Phase-In Penalties and Establish Safeguards

The FCC has tentatively concluded that related carriers should have numbering resources withheld for failure to comply with mandatory reporting requirements.[2] Level 3 agrees with the adoption of an enforcement mechanism that encourages FCC rule compliance throughout a carrier's corporate structure. Reporting utilization and forecast data is essential to the number conservation effort. Level 3 recommends, however, that the FCC limit the application of the rule to egregious violations of the mandatory reporting rules. Also, the FCC should carefully and clearly define what corporate relationships will be covered and the geographic scope of the sanctions. Additionally, the FCC must develop safeguards for related carriers so that there is a process to insure that the sanction is not wrongly applied.

[2] *See Second Report and Order*, at para. 150.

In determining when to withhold numbering resources from related carriers, the FCC should make certain that the sanction is only imposed for serious non-compliance. Carriers may unintentionally miss deadlines or data may be lost accidentally. In order to insure that carriers do not face grave sanctions in the event of mistake, the FCC should limit the imposition of withholding numbering resources to those carriers that demonstrate a pattern of non-compliance.

In identifying corporate relationships, the FCC should not develop a system that favors one form of corporate existence over another. For example, liability should not depend on how either the non-compliant or the related carrier is organized. Rather, the application of the rule should depend on ownership. Where corporate ownership is less direct than wholly-owned subsidiaries, the imposition of sanctions will not necessarily insure compliance. Thus, the FCC must proceed cautiously when holding related carriers liable for the misdeeds of companies that are remotely related to the non-compliant carrier.

In terms of the geographic application of the sanction, Level 3 recommends that the FCC phase-in sanctions. For example, related carriers should first be barred from obtaining additional numbering resources in the same number plan area as the non-compliant carrier. If non-compliance continues, then the sanction should apply throughout the relevant Number Portability Administration Center region. In the face of further non-compliance, related carriers would be barred from obtaining numbering resources nationwide.

The FCC must afford due process to related carriers subject to sanctions. The FCC should adopt a process whereby the NANPA notifies the FCC in writing of its recommendation to withhold numbering resources from carriers related to the non-compliant carrier. With the written notification, the NANPA should provide evidence that notice of non-compliance had been sent to the non-compliant carrier and the related carrier(s), along with any relevant

correspondence from the parties facing sanctions. The notification should also contain a description of how many reporting periods the non-compliant carrier missed. After receiving the documentation, the FCC should allow the carriers(s) facing sanctions to respond to the recommendation of the Audits Branch and point out any errors and to explain any mitigating factors.

III. Withholding Numbering Resources Should be Reserved for Repeated Non-Compliance of the FCC's Numbering Rules and Must be Accompanied by Due Process Protections

As with the concerns associated with withholding numbering resources from carriers related to a non-compliant carrier, the FCC should bar a carrier from obtaining numbering resources in only the most extreme cases of non-compliance. Where a carrier refuses to cooperate with the Audits Branch, withholding numbering resources is a valid punishment. However, the FCC must carefully scrutinize both the degree and the nature of the non-compliance. Withholding numbering resources should be reserved as a sanction of last resort when all other methods of obtaining information have failed. The same procedural safeguards that are detailed in Section II should apply whenever any regulatory body involved in numbering administration is considering the sanction of withholding numbering resources. In no event should state commissions be granted independent authority to withholding numbering resources for perceived non-compliance.

IV. Auditing Responsibility Should Lie Solely with the Audits Branch of the Accounting Safeguards Division in the Common Carrier Bureau

The FCC is seeking comment on whether state commissions should be given authority to conduct "for cause" and random audits of carriers' forecast and utilization data in lieu of or in addition to the national audit program proposed in the *Second Report and Order*. Level 3 recommends that the FCC empower a single entity to conduct audits and that the implementation

occur at the national level. The FCC should proceed with its plan to implement a national audit program using auditors in the Audits Branch of the Accounting Safeguards division in the Common Carrier Bureau ("Audits Branch") and continue to deny state commissions' request for authority to engage in auditing.[3] A national auditing program would allow the Audits Branch to develop standard procedures for the necessary review. If state commissions were charged with performing audits, either in addition to or in lieu of the Audits Branch, all fifty state commissions would have to develop procedures and engage in auditing activities.

1. Conducting Audits at the National Level Ensures Consistent Standards

In establishing an auditing program, a key concern of the FCC should be consistent standards and uniform application of the adopted procedures. Empowering a single entity at the national level to conduct audits guarantees the development of a single standard and ensures uniform application of the rules. Level 3 shares the FCC's concerns that delegating authority to the states to conduct audits would result in subjecting carriers to a variety of inconsistent regulations.[4] Rather than plague the introduction of a new number conservation measure with confusion as to implementation, the FCC should direct the Audits Branch to establish procedures and standards at the national level.

2. The Proposed Structure of the Auditing Program Favors Implementation by a Single Entity

Aside from the benefits associated with consistency and uniformity, the structure of the auditing program supports implementation by a single entity. The Common Carrier Bureau, the North American Numbering Plan Administrator ("NANPA"), the Pooling Administrator and any state commission are all able to request that the Audits Branch conduct a "for cause" audit.[5]

---

[3] *See Second Report and Order*, at para. 90.
[4] *See Second Report and Order*, at para. 91.
[5] *See Second Report and Order*, at para. 86.

Since the resources of the Auditing Branch are open to every regulatory body involved in numbering administration, it is unclear as to why both the Audits Branch and the state commissions would have to independently conduct audits. State commissions are also allowed to participate in audit teams.[6] In light of the fact that state commissions can both request "for cause" audits and participate on auditing teams, it is hard to understand why state commissions would need independent authority to engage in parallel auditing activities.

3. Due to Administrative Convenience and Cost Considerations, a Single Entity Should Implement an Auditing Program

Administrative convenience and cost considerations also support empowering one regulatory body with auditing responsibility. The *Second Notice of Proposed Rulemaking* does not provide any justification for developing an auditing system at both the federal and state level. Level 3 cannot think of any reason why subjecting carriers to audits at both the federal and state level would make the measure any more effective than having it implemented solely by the Audits Branch. In the absence of clear benefits, the FCC should refrain from adopting a system that would impose additional regulatory burdens on carriers, complicate the regulatory framework and increase the cost of compliance.

4. The FCC Should Wait and See Whether it is Necessary to Allow State Commissions to Engage in Auditing

Even if it were to decide to ultimately delegate authority to state commissions to engage in auditing, the FCC should first determine the extent of the need for auditing activities. Auditing carriers' compliance with the FCC's numbering rules is a new number conservation method. Until it is applied, the need for additional oversight is unknown. Based on the results of audits conducted by the Audits Branch, the FCC and the industry will be able to determine whether there is a need for additional parties to engage in auditing activity. If the Audits Branch

[6] *See Second Report and Order*, at paras, 86, 92.

does not find many instances of fraud and is not overwhelmed with the request of "for cause" audits, then there would be no need for any additional regulatory bodies to engage in audits.

V. The FCC Should Not Create a Market-Based Approached for Optimizing Numbering Resources

In the *Second Further Notice*, the Commission has requested comments concerning its plan to develop a market-based allocation system for numbering resources. Recognizing that the industry unanimously opposed such a system, the FCC states "[w]e continue to believe that market-based methodologies for allocating numbering resources, either in conjunction with or as a substitute for some or all of the existing allocation rules, may best ensure that numbers will be allocated efficiently on an equitable and non-discriminatory basis."[7] The Commission's rules that govern the distribution of numbering resources already require carriers to incur substantial costs so that they may request such resources. The Commission must carefully consider the costs and the benefits associated with adding an additional layer of cost for numbering resources and further consider its impact on the larger competitive market. Perhaps the most significant fact that the Commission should consider when weighing the costs and benefits of pricing for numbers is that the overwhelming majority of parties that addressed this issue throughout the *Number Resource Optimization* proceeding have opposed the adoption of such a measure. More than any other issue considered in this proceeding, there was widespread agreement approaching unanimity in the opposition to pricing for numbers.[8]

---

[7] *See Second Further Notice*, at para. 157.

[8] *See, e.g., Numbering Resource Optimization*, Notice of Proposed Rulemaking, 14 FCC Rcd 10322 (1999) (comments filed by Ameritech at 53-57; AT&T at 61-63; Bell Atlantic at 6-7; Choice One and GST Comments at 5; GTE Comments at 60-63; Liberty at 6; MCI WorldCom at 48-50; NextLink at 21-24; Omnipoint at 31-34; Qwest at 6-7; Time Warner at 22-23; USTA at 12; WinStar Comments at 38-41). *See, e.g., Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000) (comments filed by *Ad* Hoc Telecommunications Users Committee at 8-14; AT&T at 10-13; Bell Atlantic at 9-11; BellSouth at 12-17; CompTel at 6-8; GTE Service Corporation at 10-13; Joint Comments of Midvale Telephone Exchange, Inc. et al. at 1-10; Media One Group at 7-9; Nextlink at 12-16; Personal Communications Industry Association at 16-22; SBC Communications Inc. at 15-18; USTA at 5-7; Verizon Wireless at 24-27; Winstar Communications, Inc. at 12-21).

Aside from close to universal rejection of the idea, a number of substantial hurdles remain to establishing such a system. First and foremost, the FCC does not possess the requisite statutory authority to implement such a system. Even if the FCC did have the requisite numbering authority, it could not implement a market-based allocation system in a competitively-neutral manner. Pricing the embedded base of numbers cannot be done in a manner that does not benefit ILECs.

1. The FCC Lacks Statutory Authority to Impose Fees for Numbering Resources

In order to set up a market-allocation system for assigning numbering resources, Congress would have to grant the FCC additional statutory authority. While Congress provided the FCC with plenary authority to administer the North American Numbering Plan,[9] the statute does not include the power to impose a market-based system for number allocation. Where Congress has provided the FCC with authority to conduct auctions for public resources, it has done so explicitly. For example, the FCC possesses similar plenary authority over radio spectrum as it does over numbering resources. However, rather than presume that existing statutory authority would allow the FCC to engage in the auctioning of radio spectrum, Congress specifically granted the FCC authority to conduct auctions.[10]

It is also clear from the plain language of the Section 251(e)(2) of the 1996 Act that the FCC's authority is limited. The relevant provision of the 1996 Act reads "[t]he *costs* of establishing number administration arrangements . . . shall be borne by all telecommunications carriers . . . ."[11] Carriers already pay for the costs associated with numbering administration, including number portability and all forms of area code relief. The FCC's proposed market-based allocation system is not meant to recover the costs associated with number administration,

[9] *See* 47 U.S.C. sec. 251(e)(2) (2000).
[10] *See* 47 U.S.C. sec 309(j) (2000).

rather, the proposed system is meant to distribute number resources through pricing such resources not at the cost of administration but at market values. Further, the FCC has suggested that any money collected from the auctioning of numbering resources would offset carrier contributions to programs such as universal service and other FCC-approved programs.[12] Section 251(e)(2) of the 1996 Act provides the Commission with the power to recoup costs associated with number administration activities. Since a market-based allocation system would recoup costs unrelated to number administration and the funds would be directed at activities wholly unrelated to number assignment, the FCC lacks the requisite statutory authority to impose a market-based allocation system on the industry.

2. The FCC Cannot Create a Competitively-Neutral-Market-Based Allocation System

Even if the FCC did have the statutory authority to establish a market-based allocation system for the distribution of numbering resources, it would be very difficult for the FCC to do so on a competitively-neutral basis. If the Commission were to charge carriers for the acquisition of new numbers, ILECs would reap great benefits as such a system would impose costs on new entrants that ILECs would not incur. ILECs have the ability to substantially satisfy customer demand for numbering resources either by activating numbers that they simply have by virtue of being monopoly providers for such a long period of time, or due to customer "churn." Since new entrants do not have the same embedded base of customers as ILECs have, competitive providers do not have access to the same numbering resources as ILECs. While new entrants are already at a competitive disadvantage as a result of this simple fact, charging for numbering resources will exacerbate the situation. While it is unclear whether the FCC agrees

[11] 47 U.S.C. sec. 251(e)(2) (2000).
[12] *See Second Further Notice*, at para. 159.

that charging simply for new numbers would negatively impact competition, the FCC does state that it would be "preferable" to charge for all numbers, including those already assigned.[13]

The Commission cannot cure the situation by charging carriers for numbering resources based on numbers allocated but not yet assigned. This approach also favors the incumbent. New entrants need to obtain numbering resources in areas in which they wish to expand their service area. New entrants thus begin from a zero base in a given service area. New entrants will, as a result, typically have a high percentage of unused numbers until they seek to attract customers to their service offerings. Monopoly providers have higher utilization rates since they are adding numbering resources to an embedded customer base. Thus, under this paradigm as well, new market entrants are put at a great disadvantage.

Charging for the embedded base of numbering resources also raises the question of how to determine a market price for such resources. In one portion of the *Second Further Notice*, the FCC recognizes the complexity of developing a system where regulators would set the "economically correct" price for numbering resources, while in another the FCC is seeking comment on how to "apply market prices to the embedded base of numbers."[14] The simple truth is there is no way to implement a "market based" system that would not favor ILECs to the detriment of competition no matter how complex or sophisticated a system the FCC hopes to devise. In fact, the more rules the FCC promulgates regarding this issue, the less likely the price will be based on market forces.[15]

---

[13] *Second Further Notice*, at para. 170. There have been a number of parties throughout the *Number Optimization* docket that have maintained this position. *See id*. at para. 170 n.384.

[14] *Second Further Notice*, paras. 165, 170.

[15] Rather than repeat past arguments, Level 3 points the FCC to comments filed by the Company on July 30, 1999 in CC Docket No. 99-200. Level 3 emphasized in those comments that superimposing a market based numbering administration system on a highly regulated market would result in the worst of both worlds. *See* Comments of Level 3 Communications, LLC, at p. 15.

VI. The FCC Should Not Require Carriers to Become LNP-capable Solely For Purposes of Participating in Thousands-Block Number Pooling

The FCC is seeking comment on whether to require carriers to participate in thousands-block number pooling even if they are not required under the FCC's rules to implement local number portability ("LNP"). Adopting such a requirement would require carriers that have not implemented LNP to do so prior to participating in thousands-block number pooling. While the FCC's rules have provided additional time to certain non-LNP-capable carriers to become LNP-capable, Section 251(b)(2) of the Communications Act of 1934, as amended, states that carriers have "[t]he duty to provide, *to the extent technically feasible*, number portability in accordance with the requirements prescribed by the Commission."[16] In light of this statutory limitation on the FCC's ability to proscribe number portability and the FCC's rules that require implementation of number portability in under certain circumstances,[17] Level 3 believes that the FCC should not require carriers to become LNP-capable solely to participate in thousands-block number pooling.

Rather than mandating LNP capability, the FCC should allow LNP development and deployment to be dictated by market-based needs. The FCC rules already provide carriers with the ability to request LNP capability of other carriers. Therefore, where the market demands number portability, there is a mechanism in place that provides for its implementation. The telecommunications market is already distorted by numerous regulatory requirements on the state and federal level. To impose substantial costs on carriers that are not related to the

[16] Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act") (emphasis added). The 1996 Act amended the Communications Act of 1934, 47 U.S.C. Secs. 151-174.

[17] *See Numbering Resource* Optimization, First Report and Order, 15 FCC Rcd. 7574 (rel. Mar. 31, 200), at 7632-33, para. 134 (concluding that CMRS providers do not have to participate in thousands-block number pooling until they become LNP-capable; 47 C.F.R. Sec. 52.23(b) (2000) (providing that only those carriers that receive a specific request must implement LNP).

demands of end-users will further distort the marketplace and will inhibit carriers from deploying capital according to their business plans.

The FCC should not ignore the costs associated with implementing number pooling. Number pooling imposes substantial costs on the industry that are ultimately passed on to end-users. While it is easy for state commissions to impose such requirements on telecommunications providers, end-users bear the brunt of such regulatory action. Thus, thousands-block number pooling should only occur as the result of market forces and not because of regulation.

In addition, allowing either state commissions or the national Pooling Administrator to require non-LNP capable carriers to participate in thousands-block number pooling will frustrate other more effective number conservation measures. State commissions are far more likely to impose thousands-block number pooling and measures aimed at artificially reducing demand for central office codes than they are to engage in timely area code relief and in rate center consolidation. The *Second Further Notice* is seeking comment on how policies at the national level could further the development of rate center consolidation.[18] One way to promote rate center consolidation is to deny state commissions the ability to require non-LNP capable carriers to participate in thousands-block number pooling. State commissions prefer to not introduce area code overlays even in the most extreme circumstances. Rate center consolidation continues to be ignored by state commissions as they prefer to seek greater authority to engage in thousands-block number pooling and to artificially restrict the demand for numbering resources either through number code lotteries or the rationing of numbering resources. One way to encourage other forms of number conservation is to maintain the current regulatory structure governing the imposition of thousands-block number pooling.

As the FCC is aware, thousands-block number pooling prolongs the life of a Number Plan Area, but does nothing to address the inherent problem associated with assigning numbers in blocks of 10,000 codes throughout each rate center contained in a NPA. Rate center consolidation addresses the fundamental, structural problem with the number assignment process in the United States. By combining rate centers, the service area of an NPA is expanded and the need for carriers to obtain numbering resources in blocks of 10,000 in numerous rate centers is minimized. Rate center consolidation is not dependent upon carriers implementing number portability or any other type of technology. Furthermore, thousands-block number pooling is of limited utility when an NPA is approaching exhaust. For these reasons, the FCC should not modify its rules and require carriers to become LNP-capable solely for the purposes of thousands-block number pooling. Instead, state commissions should implement rate center consolidation and other more effective forms of number conservation.

VII. The FCC Should Establish a "Safety Valve" for the Assignment of Growth Codes

The FCC is seeking comment on the need to establish a "safety valve" to allow carriers that do not meet the utilization threshold in a given rate center to still obtain additional numbering resources. Level 3 supports the adoption of a procedure where carriers could still obtain growth codes even though they have not met the requisite utilization level and do not qualify for waiver under the current rules. As a matter of policy, it is important that the FCC apply its numbering administration regulations with a certain amount of flexibility that would allow carriers to demonstrate why particular rules are not working in their practical application. The FCC recognized this fact in delegating authority to the California Commission to establish

[18] *See Second Further Notice*, at paras. 144-148.

fill rates.[19] In the *California Delegation Order*, the FCC stated that state regulators must "allow for some flexibility in establishing fill rates and applying them to carriers . . . [so that] fill rates not be applied in such a manner as to deprive customers of their choice of carriers . . . ."[20] Since the FCC has adopted a national utilization rate requirement, it is now necessary for the FCC to develop a process that will allow carriers to demonstrate their need for growth codes outside of the current waiver process.

There are a number of circumstances where the mechanical application of a utilization rate requirement fails to accommodate legitimate carrier need for numbering resources. As the FCC is aware, it takes a minimum of 66 days to activate codes after assignment. Due to this delay, rapidly growing carriers may need growth codes prior to reaching 75% utilization as a result of either consistently large demand for services by end-users or rapidly accelerating demand. Carriers facing imminent exhaust should receive codes regardless of their fill rates.

In implementing a "safety valve" procedure, the FCC must ensure that the process is expedient. Carriers in need of growth codes will need them quickly. Thus, Level 3 recommends that carriers directly submit requests to the NANPA for growth codes. The FCC Must require the NANPA to act on such requests within ten (10) days. Either state commissions or the FCC could provide carriers with a forum for appeals from the NANPA decisions. However, whichever entity is responsible for hearing appeals from the NANPA, the appellate decision body must also be complete within ten (10) days of receipt of the request for appeal.[21]

---

[19] *See* California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, Order, 14 FCC Rcd 17485 (1999) ("*California Delegation Order*").
[20] *See California Delegation Order*, at 17486 para. 26.
[21] *See* Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, Sec. 5.2.2 (Nov. 13, 2000) (requiring the NANPA to respond within 10 days upon receipt of an application for numbering codes); *California Delegation Order*, 14 FCC Rcd 17486 at para. 30 (requiring the California Public Utilities Commission to review compliance with their fill rate requirement within 10 days).

VIII. Conclusion

An important element of number resource optimization is enforcement. Equally important, is establishing necessary safeguards to insure that imposing sanctions is justified. Level 3 recommends that in establishing the sanction of withholding numbering resources, the FCC provide carriers with procedures that afford the appropriate level of due process and limit the application of the sanction to those carriers that repeatedly violate the FCC's rules. Level 3 further recommends that the FCC empower the Audits Branch as the entity responsible for auditing and not allow parallel audits by both the Audits Branch and state commissions. Level 3 urges the FCC to not establish a market based allocation system for numbering resources as the Company does not believe that such a system would be competitively neutral. The FCC should not require carriers to become LNP-capable because there are valid marketplace reasons for the exemptions and it would frustrate the development of other more effective number conservation measures. Finally, Level 3 recommends that the FCC adopt procedures whereby carriers can obtain growth codes even if they have not met the requisite utilization rate.

Respectfully submitted,

_____

William P. Hunt, III
Gregory L. Rogers
Level 3 Communications, Inc.
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-2516 (Tel)
(720) 888-5134 (Fax)

Richard M. Rindler
Ronald W. Del Sesto, Jr.
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: February 14, 2001

Counsel for Level 3 Communications, LLC