STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:	)	**DOCKET NO. SPU-02-___**
	)	
LEVEL 3 COMMUNICATIONS, LLC's	)	
APPEAL OF THE NORTH AMERICA	)	
NUMBERING PLAN	)	
ADMINISTRATION's DENIAL OF	)	
NUMBERING RESOURCES	)	

Pursuant to the Federal Communications Commission's Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, 15 FCC Rcd 7574 (2000) ("*First Numbering Order"*) at ¶ 98, Level 3 Communications, LLC ("Level 3") hereby appeals the North American Numbering Plan Administration's ("NANPA") denials of Level 3's requests for NXX codes in Iowa, and in support of its appeal states as follows.

1. Level 3 is a telecommunications carrier seeking to provide service in Iowa. Specifically, the services Level 3 initially intends to offer are direct inward dial services that allow for local connectivity to Level 3's Internet Service Provider ("ISP") customers. To be able to offer these services in Iowa, Level 3 must obtain numbering resources.

2. On January 11, 1999, Level 3 applied for a Certificate of Public Convenience and Necessity from the Iowa Utilities Board ("Board"). That application was granted, subject to filing a tariff, on April 30, 1999, see *In re Level 3 Communications LLC*, TCU-99-1 **[Attachment A].**

3. On February 2, 2002, Level 3 filed a proposed tariff with the Board that included a description and pricing for direct-inward-dial services. That tariff was rejected by the Board on February 25, 2002, see *In re Level 3 Communications LLC*, TF-02-54, TF-02-55 **[Attachment B]**. The Board's reason for rejecting the tariff was that "Level 3's proposed tariffs consist entirely of non-jurisdictional services."

4. On March 15, 2002, the Board rejected a certificate application from Intrado Communications for the same reasons the Board rejected the Level 3 tariff.[1] *See In re Intrado Communications Inc.*, TCU-02-1 ("*Intrado Order*")**[Attachment C]**.

5. In the *Intrado Order*, the Board recognized that the absence of a certificate should not preclude a carrier from doing business in Iowa. The *Intrado Order* specifically recognized that a carrier's rights under the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996, are independent of its holding of a state certificate:

> While ICI's proposed services do not qualify for certification. . . ICI appears to be a 'telecommunications carrier" as defined in 47 U.S.C. § 153(44), and, therefore, **entitled to all rights enjoyed by telecommunications carriers under 47 U.S.C. § 251.**

Intrado Order at 2 (emphasis added). The *Intrado Order* further required other carriers to interconnect with Intrado to allow Intrado to operate in Iowa. *See Intrado Order* at 2 ("On this basis, ICI may enter into interconnection, collocation, and resale agreements with LECs pursuant to 47 U.S.C. §251, and the Board's denial of ICI's application should not adversely affect ICI's ability to do so.")

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[1] "[T]he services ICI proposes to offer do not appear to be the type of service intended to be regulated under chapter 476." *Intrado Order* at 2.

6. On April 11, 2002, Level 3 applied for an operating company number ("OCN") from the National Exchange Carrier Association ("NECA"). That request was granted on April 23, 2002. **[Attachment D]**.

7. Level 3 has requested and has been granted NXX codes from NANPA for its operations in 43 states plus the District of Columbia. Level 3's operations and services in these states are substantially similar to the operations Level 3 proposes to undertake in Iowa.

8. On May 16, 2002, Level 3 applied for NXX codes from NANPA for use in Iowa. (See cover letter to applications. **[Attachment E]**)[2] NANPA denied these requests on May 29, 2002, because of the lack of state certification. **[Attachment F]**.

9. Level 3 contacted both NANPA and the Board regarding its options, and since that time has attempted to work cooperatively with the Board staff and other so-called "DLECs" on solutions that would provide Level 3 with necessary numbers while conserving numbering resources to the greatest extent possible. This effort, however, has taken substantial time and to date has not resulted in an operative solution. Level 3 is now prejudiced by the delay and is losing opportunities to serve customers; Level 3 brings this appeal to obtain a resolution that would allow it to begin offering service in Iowa. Level 3 remains committed to continuing to seek a negotiated resolution if possible. Further delay, however, will have a significant adverse financial impact on Level 3.

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[2] Only the cover letter is attached to document Level 3's application for number resources because Level 3 considers the information identifying the exact code requests confidential. Similarly, **Attachment F** is only one of the many responses denying Level 3's code requests and certain information is redacted. The other denials were all on the same day and are substantially similar.

10. Notwithstanding such efforts, and without waiving any rights by engaging in such efforts, Level 3 states that if allowed to stand by the Board, the denial by NANPA of Level 3's requested numbering resources is unlawful in, among other ways and without limitation, the following particulars that will be established in the course of this appeal:

a. By denying Level 3 necessary numbering resources, NANPA has created a complete barrier to Level 3's entry into Iowa that if allowed to stand by the Board will violate 47 U.S.C. § 253;

b. By denying Level 3 necessary numbering resources, NANPA has acted in a manner which is not competitively neutral, that if allowed to stand by the Board will violate 47 U.S.C. §§ 251(e)(1) and 253; 47 C.F.R. §§ 52.9(a)(1) and (2), § 52.13(b); in that providers of ISP service who are competitors or potential competitors of Level 3, but who are also voice carriers, are advantaged in their provision of non-voice ISP services as compared to Level 3;

c. By denying Level 3 necessary numbering resources, NANPA has acted in a manner which in not competitively neutral, that if allowed to stand by the Board will violate 47 U.S.C. §§ 251(e)(1) and 253; 47 C.F.R. §§ 52.9(a)(1) and (2), § 52.13(b), in that NANPA has previously provided to Sprint, a competitor or potential competitor of Level 3, numbering resources to provide ISP services;[3]

d. NANPA's decision to deny Level 3's requests for codes is arbitrary and capricious in that NANPA has previously provided Level 3 codes for the same services in 43 other states and the District of Columbia;

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[3] *See Sprint's Appeal of NANPA Denial*, SPU-02-11 at p.2

e. NANPA's decision to deny Level 3's requests for codes is arbitrary and capricious in that NANPA has previously provided Sprint codes to provide the same type of services in Iowa that Level 3 now seeks to provide;

f. NANPA's decision to deny Level 3's requests for codes violates this Board's *Intrado Order*, which (a) holds that absence of a certificate should not prevent a telecommunications carrier from providing services in Iowa; and (b) holds that, notwithstanding the absence of a certificate, a telecommunications carrier is entitled to all rights provided under 47 U.S.C. § 251, which includes § 251(e) pertaining to numbering resources;

g. NANPA's decision to deny Level 3's requests for codes violates the FCC's *First Numbering Order* in that it misinterprets ¶¶ 93-98. The *First Numbering Order* establishes two requirements that must be met in order to receive initial numbering resources. First, the applicant must provide documented proof that it is "authorized to provide service in the area for which numbering resources are requested." *First Numbering Order* at ¶96. Second, the applicant must provide documented proof that it is prepared to offer services within 60 days of the number resources activation date. *Id.* Further, these stated requirements must be read in the context of ¶¶ 94 and 96, which make it clear the intent of the Commission is to prevent carriers from "stockpiling" numbers in advance of increasing their geographic coverage within a state. The concern over "stockpiling" does not apply in the present case, where there is no evidence of Level 3 engaging in such "stockpiling";[4]

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[4] It must be noted that the interplay between NANPA's strict requirement of a Board Order and the Board's Order denying Level 3's tariffs for lack of jurisdiction over ISP-bound traffic creates an impenetrable barrier to Level 3's entry. If the Board truly lacks jurisdiction to grant Level 3 a local exchange certificate for its proposed services, NANPA's strict requirement

h. NANPA's decision to deny Level 3's requests for initial codes violates the FCC's *First Numbering Order* ¶¶ 96 and 97 by accepting as proof of authorization only a local exchange certificate or a specific order from the Board despite the clear language that such documents are only **examples** of acceptable evidence of proper authority. NANPA's overly narrow interpretation of the *First Numbering Order* fails to recognize that the combination of Level 3's conditionally granted Approval of Application from the Board, the Board's order rejecting Level 3's proposed tariff, the Board's *Intrado Order*, Level 3's ability to obtain an OCN number, proof of Level 3's 47 U.S.C. § 214 license, and Level 3's existing interconnection agreement with Qwest, see **Attachments A, C, D, E and F**, are more than sufficient to meet the requirements set out in ¶¶ 96 and 97 of the *First Numbering Order*.

11. The denial of access to numbering resources violates the authority over number resources that was conditionally delegated to the Board by the FCC in its order in *In the Matter of Numbering Resource Optimization- Iowa Utilities Board Petition for Delegation of Additional Authority and Request for Limited Waiver,* CC Docket No. 99-200, NSD File No. L-99-96; Rel. July 20, 2000 ("*Delegation Order*"). In the *Delegation Order* the FCC unequivocally states that "[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources." *Delegation Order* at ¶ 13. The denial of number resources to Level 3 in this instance is tantamount to an illegal exercise of authority by the Board.

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can never be satisfied. Note also that the Board relied on the FCC's *ISP Remand Order*, 01-131, to support its jurisdictional argument; that Order has been called into question by the D.C. Circuit Court of Appeals, see *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). On the other hand, if the services are, in fact, interstate, the inability for Level 3 to cross the Iowa border with the provision of those services implicates the Commerce Clause.

12. The denial of necessary regulated resources to permit Level 3 to conduct business in Iowa as it does in other states also implicates Level 3's constitutional rights under the Commerce, Due Process, and Takings clauses.

13. **Accordingly, Level 3 respectfully requests that the Board enter an Order requiring NANPA to grant Level 3's past and future code requests**.[5]

Respectfully submitted this 17th day of July, 2002.

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ATTORNEYS FOR LEVEL 3 COMMUNICATIONS

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[5] To the extent that Sprint raised additional or different arguments in SPU-02-11, Level 3 concurs in Sprint's appeal and adopts those as additional and/or alternative arguments as to why NANPA's denial of Level 3's requests should be reversed.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the document attached to this Certificate was hand delivered to the persons listed below at the addresses indicated, on the 17th day of July, 2002.

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Date: **July 17, 2002**

Company Name: **Level 3 Communications**

Subject Matter: **Appeal of NANPA's Denial of Numbering Resources**

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