

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

In the Matter of)	
)	
Petition of the California Public Utilities Commission for Delegated Authority to Implement Specialized Transitional Overlays)	CC Docket No. 99-200

**REPLY COMMENTS OF
LEVEL 3 COMMUNICATIONS, LLC**

Level 3 Communications, LLC (“Level 3”), by undersigned counsel files these Reply Comments in support of both the petitions for reconsideration filed by Pac-West Telecomm, Inc. (“Pac-West”)¹ and the California Cable & Telecommunications Association (“CCTA”),² and the supporting comments filed in the above-referenced docket.³ In particular, Level 3 joins these parties in urging the Federal Communications Commission’s Wireline Competition Bureau (“Bureau”) to reconsider its *Order* authorizing the California Public Utilities Commission (“CPUC”) to implement Specialized Overlays (“SOs”).⁴

¹ Petition for Reconsideration of Pac-West Telecomm, Inc., CC Docket No. 99-200 (filed Oct. 11, 2005)(“*Pac-West Petition*”).

² Petition of the California Cable & Telecommunications Association for Reconsideration, CC Docket No. 99-200 (filed Oct. 11, 2005)(“*CCTA Petition*”).

³ See Sprint Nextel Corporation Comments (“Sprint Nextel Comments”), Verizon’s Comments Supporting Petitions for Reconsideration of the Commission’s September 9, 2005 Order permitting California to Implement a Specialized Overlay (“Verizon Comments”); and Comments of j2 Global Communications, Inc. (“j2 Global Comments”).

⁴ See *Petition of the California Public Utilities Commission for Delegated Authority to Implement Specialized Transitional Overlays*, CC Docket No. 99-200, 20 FCC Rcd 14624 (2005) (“*Order*”).

I. Introduction and Summary

Level 3 is a leading global communications company, operating one of the world's newest and most advanced telecommunications platforms. Completed in 2001, the Level 3 network spans approximately 23,000 intercity route miles and delivers services to customers in major markets across the United States and Europe. Level 3 serves the world's largest and most sophisticated communications companies, including interexchange carriers, local phone companies, European PTTs, cable operators, ISPs, wireless companies, and Internet content providers.

Level 3 agrees with the analysis included in the comments filed in support of the Pac-West Petition and the CCTA Petition. It is telling that not one carrier, nor even the CPUC, filed comments defending the Bureau's *Order*, or the CPUC's underlying petition requesting authority to implement specialized overlays ("*CPUC Petition*"). As has been clearly demonstrated by the comments filed in this proceeding, the *CPUC Petition* did not comply with the instructions of the Federal Communications Commission ("FCC or Commission") for seeking authority to implement a specialized overlay.⁵ In addition, while the CPUC indicated in its petition that its request for authority had been adequately vetted with all industry segments, the comments filed by representatives of the various industry segments demonstrate there is virtually no industry support for the CPUC's proposal. Meanwhile the CPUC has made no effort to defend its initial request. Further, the *Order* establishes bad precedent for future requests for specialized overlays, and therefore should be rescinded.

⁵ Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability, CC Docket Nos. 99-200; 96-98; 95-116, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252, ¶¶ 71-72 (2001).

Level 3 believes that there are several critical errors with the *Order* that dictate a reconsideration and ultimate denial of the CPUC's request for specialized overlay authority. First, the *Order* creates a discriminatory market structure for competitive providers and new technologies, which directly conflicts with the fundamental public policies of the Communications Act of 1934, as amended. Second, the *Order* creates a situation where not only is there a waste of numbering resources because of duplicative inventories, but there will be major disincentives to use one of the most critical avenues to competitive market entry, number porting. Third, rather than undertaking a short-sighted and anticompetitive effort to conserve numbers, the Commission should instead be focused on long term solutions such as fixing the intercarrier compensation scheme, and consolidating rate centers. Fourth, Level 3 agrees with the comments of CCTA that the *Order* is inherently inconsistent with the *VoIP/911 Order*.⁶ And finally, fifth, many of the bases presented as support for the *Order* have been surpassed by the marketplace or proven incorrect since October 2003 when the CPUC originally requested this authority.

II. Discriminatory Market Structure for Competitive Providers and New Technologies

The Commission's rules specifically forbid the undue "favoring or disfavoring of any particular telecommunications industry segment or group of telecommunications consumers" in the implementation of numbering practices.⁷ Yet the Bureau's *Order* does exactly that by segregating VoIP services and customers into the new specialized overlay area codes while

⁶ IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 & 05-196, FCC 05-116 (released June 3, 2005)("VoIP/911 Order").

⁷ 47 C.F.R. Section 52.9(a)(2).

maintaining existing and future customers of LECs and wireless carriers in existing, familiar area codes. Because VoIP services are in their infancy, if the Commission segregates them into their own area code it will hurt their marketability as consumers prefer to stay with that which is familiar, and want telephone numbers with area codes corresponding to the areas in which they live.⁸ As pointed out in Sprint Nextel's comments, the Commission previously rejected as "unreasonably discriminatory" different area codes for wireless services when presented with a similar situation a decade ago when wireless services were just beginning to flourish.⁹ The technology might be different here, but the situation is the same. Therefore, the Bureau should reconsider this specialized overlay because it unreasonably discriminates against VoIP services.

III. Deleterious Impact on Number Portability

Level 3 fully supports the comments already submitted in this proceeding that detail why implementation of the *Order* would negatively impact the local number portability objectives of both the Commission and Congress.¹⁰ If the CPUC were to segregate various services into different area codes, it would preclude the migration of numbers across services. For instance, in the case of VoIP services, it would prevent wireline and wireless customers from porting their numbers to new VoIP service providers and vice-versa, otherwise there would be a mixing between services of overlay and existing area codes. Again, this unreasonably discriminates against VoIP services, and has a negative impact on number portability.

⁸ See, e.g., Sprint Nextel Comments at 3.

⁹ *Id.* at 2.

¹⁰ See, e.g., Sprint Nextel Comments at 4-5; Verizon Comments at 3-4.

IV. Better Ways to Address Numbering Resources Issues

There are better ways to solve the alleged shortage of numbers in California than the implementation of discriminatory specialized overlays. The fundamental cause of the continued drain on number resources is the outmoded intercarrier compensation system that requires each and every carrier to obtain their own supply of telephone numbers that cover rate centers or markets of very limited geographic reach to support local calling treatments. Rather than trying to devise ways to further bolster outdated systems and technologies, the Commission should look to expand the capabilities available to end users by focusing its attention on the complex but necessary reform of the industry's intercarrier compensation structure. As Verizon pointedly demonstrates, because we now have a broken scheme, the *Order* will merely exacerbate the problem, resulting in further confusion about the proper treatment and rating of various calls.¹¹ Working toward a more unified structure rather than creating ever more categories of traffic carriers are required to track is the direction the Commission ought to be moving. Further, other well-studied and demonstrably successful alternative solutions to number conservation exist that would be far preferable to a service specific overlay. For example, millions of numbers could be freed up for use by merely consolidating rate centers in California. The Commission's efforts would be far more beneficial to carriers and end-users if the current rate center structure in California were simplified and consolidated.

V. Inconsistencies with Prior VoIP Decisions

The Bureau's *Order* also should be reconsidered because its treatment of VoIP services is inconsistent with prior decisions at both the FCC and within California. First, the *Order* is partly

¹¹ Verizon Comments at 5-6.

based on suppositions about VoIP services that are inconsistent with the Commission's recent decision to require VoIP service providers to offer enhanced 911 capabilities.¹² The Bureau included VoIP services into the specialized overlay partly because it categorized them as non-geographic services. Yet in the recent *VoIP/911 Order*, the Commission found that VoIP is not totally devoid of geographic dependencies. In particular, when the Commission required interconnected VoIP service providers to provide enhanced 911 capabilities to their customers, the Commission specifically recognized that certain VoIP services have similar functionality with traditional land-line services and customers expect that VoIP services interconnected with the PSTN will function like traditional telephone services.¹³

Second, with respect to E911 support for nomadic VoIP services as they related to the CPUC's stated non-geographic nature of VoIP, it is ironic that the entire state of California is one of the least welcoming places in the country for these services. The California Department of Government Services, which is the agency responsible for overseeing implementation of 911 for VoIP services, has only recently released its exceedingly onerous processes for i2 E911 implementation in the state. The likely result of the DGS delay and its ultimate set of regulations is that VoIP providers will focus on providing services to fixed locations only, and will be unable to embrace the nomadic benefits inherent to VoIP service. This situation, created by the State of California's own regulators directly contradicts one of the key reasons the CPUC has set forth as justification for its ill-conceived service specific overlay experiment. With such divisions of opinion even within the California government, the Bureau's decision to treat all VoIP services as non-geographic services must be reconsidered.

¹² See *VoIP/911 Order*.

¹³ *Id.* at ¶¶ 19-23; see also CCTA Petition at 7,

VI. Changes in the Marketplace

Finally, changes that have occurred in the marketplace since the CPUC first filed its request for authority to implement specialized overlays demonstrate the misguided nature of the *Order*. For instance, the CPUC has included dial-up Internet services in the proposed overlay, presumably because they add to the strain on numbering resources.¹⁴ Yet within the last few years there has been a steady decline in telephone numbers dedicated to dial-up ISP services as more people adopt broadband. ISP services do not represent a growing threat to numbering resources in today's marketplace and, creating a new NPA for new ISP services will almost assuredly result in a waste of numbering resources rather than conserving them.

In addition, the VoIP services market and regulatory structure has changed too. While the market is still in its infancy, we have the benefit of hindsight and can see that the *CPUC Petition* is contrary to the positive developments that have occurred. As CCTA and others have argued, implementing inherently discriminatory specialized overlay area codes that included VoIP services would almost assuredly stall, if not kill, much of the progress that has been made.¹⁵

[Rest of Page Left Intentionally Blank]

¹⁴ CPUC Petition at 3.

¹⁵ CCTA Petition at 5.

VII. Conclusion

For the reasons stated above, Level 3 urges the Bureau to reconsider its decision granting the CPUC authority to implement specialized area code overlays in the Northern and Southern California regions. This action is necessary to prevent the CPUC from implementing a specialized overlay that is contrary to the Commission's rules and could hurt the public interest.

Respectfully submitted,

Greg L. Rogers
Director – State Regulatory Affairs
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
(720) 888-1000



Tamar E. Finn
Troy F. Tanner
SWIDLER BERLIN LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

February 6, 2006

CERTIFICATE OF SERVICE

I, Linda Crelling, do hereby certify that on this 6th day of February, 2006, I caused to be served a true and correct copy of the foregoing Reply Comments of Level 3 Communications, LLC by electronic filing or U.S. mail to the following:

+Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Randolph L. Wu
Sindy J. Yun
505 Van Ness Ave.
San Francisco, CA 94102

+Best Copy and Printing, Inc.
The Portals, 445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Jerome Fitch Candelaria
California Cable & Telecommunications
Association
360 22nd Street, Suite 750
Oakland, CA 94612

+Russell M. Blau
Richard M. Rindler
Ronald W. Del Sesto, Jr.
Counsel for Pac-West
Swidler Berlin LLP
3000 K Street, NW
Washington, DC 20007

Karen Zacharia
Amy P. Rosenthal
Verizon
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909

Luisa L. Lancetti
Charles W. Mckee
Sott R. Freiermuth
Sprint Nextel Corporation
401 9th Street, NW Suite 400
Washington, DC 20004

Philip L. Verveer
Karen Henein
Counsel for j2 Global Communications,
Inc.
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006

/s/ Linda Crelling
Linda Crelling

+ VIA ELECTRONIC FILING