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October 24, 2007

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Telephone Number Portability, CC Docket No. 95-116**
IP-Enabled Services, CC Docket No. 04-36

Dear Ms. Dortch:

On October 23, 2007, Bill Hunt with Level 3 Communications LLC ("Level 3"), and I met with John W. Hunter, Chief of Staff and Senior Legal Advisor to Commissioner Robert M. McDowell. On October 24, 2007, we met with Ian Dillner, Legal Advisor to Chairman Kevin J. Martin, Scott M. Deutchman, Legal Advisor to Commissioner Michael J. Copps, Scott Bergmann, Legal Advisor to Commissioner Jonathan S. Adelstein, Chris Moore, Legal Advisor to Commissioner Deborah Taylor Tate, and Wayne Leighton, Acting Legal Advisor to Commissioner Deborah Taylor Tate.

We distributed copies of the attached letter, previously filed in these dockets, which summarizes the points we raised in our presentation.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata", is written over a printed name.

John T. Nakahata
Counsel to Level 3 Communications, LLC



March 13, 2007

Ex Parte Submission – Filed Electronically

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telephone Number Portability*, CC Docket No. 95-116
IP-Enabled Services, CC Docket No. 04-36

Dear Ms. Dortch:

In its *IP-Enabled Services NPRM*, the Commission sought comment on whether the number portability requirements should be extended to IP-enabled service providers.¹ In its recent *Time Warner Declaratory Ruling*, the Wireline Competition Bureau reaffirmed that “because our number portability rules apply to all local exchange carriers, customers effectively are able to port numbers to VoIP providers today by virtue of their relationship with a wholesale local exchange carrier.”² Furthermore, in that decision the Bureau made clear that “it is most consistent with Commission policy that where a LEC wins back a customer from a VoIP provider, the number should be ported to the LEC that wins the customer at the customer’s request,” and it made such porting by VoIP providers and their wholesale carriers an explicit condition of the Section 251 rights explicated in that ruling.³ The Commission stated it would address other concerns about porting in the *IP-Enabled Services* proceeding.⁴

Level 3 Communications, LLC. (“Level 3”) now urges the Commission to move forward to clarify its number porting rules as follows:

- First, the rules should make clear both that interconnected VoIP providers can receive, i.e. “port in,” and have the obligation to “port out” numbers when requested, irrespective of whether a number was first “ported in” to the VoIP provider. In addition, the drafting of the current rules could be improved by clearly stating the obligations of covered service providers to port numbers upon customer request.

¹ *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863, 4911-13 (¶¶ 73-74) (2004).

² *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, DA 07-709, 22 FCC Rcd. 3513, 2007 FCC LEXIS 1752 at n. 46 (2007).

³ *Id.* at ¶ 16.

⁴ *Id.*

- Second, the rules should make clear that wholesale providers must also port in response to a request from their wholesale customer, when doing so does not affect the ultimate end user's service.
- Third, the rules should clearly require covered service providers to port first and dispute later, rather than hold customer changes of service providers hostage in porting disputes. Notwithstanding the Commission's clear direction that contract disputes are not a basis for refusing to port a telephone number,⁵ Level 3 has had other service providers refuse to port as a way to try to obtain leverage over their departing wholesale customer or as a way to simply stall the change. The same rule should also apply in disputes about the propriety of porting. If a number was ported inappropriately, the situation can later be rectified.
- Fourth, the Commission should clarify that all porting requests are requests to change service providers under the slamming rules, and therefore the service provider requesting the port has the same duties as a submitting carrier under the slamming rules, and the carrier carrying out the port has the same duties as an executing carrier under the slamming rules. This would also ensure that an executing carrier cannot validate the port or service change request, although the executing carrier may obtain the information necessary from the submitting carrier to verify that the correct number has been identified for the port, which the attached draft rules expressly would permit.
- Fifth, because failure of a carrier receiving a port request to timely execute the port frustrates consumer choice in the same manner as submission of an erroneous carrier change under the slamming rules, and is inconsistent with the Commission's rules, a service provider that receives a valid port request and fails to carry out a timely port in accordance with these rules should be subject to the same liability as a "submitting telecommunications carrier" under the slamming rules – enhanced liability "equal to 150% of all charges paid to the" carrier from whom the number is being ported "after such violation."⁶

Attached are proposed rule changes that would implement Level 3's proposals. Also attached is a section-by-section explanation.

These proposed rules do not attempt to resolve the issues raised by the *T-Mobile/Sprint Petition* as to the proper timeframes and information necessary for number porting.⁷ These proposed rules also do not attempt to define an appropriate time period for interconnected VoIP providers to be able to port. However, Level 3 notes that today, all interconnected VoIP providers obtain numbers from local exchange carriers, who all have an existing duty to provide number portability.

⁵ *Telephone Number Portability -- Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd. 20971, 20975-77 (¶¶ 13-18) (2003).

⁶ 47 C.F.R. § 64.1140.

⁷ *Telephone Number Portability*, T-Mobile USA, Inc. and Sprint Nextel Corporation Petition for Declaratory Ruling, CC Docket No. 95-116 (filed Dec. 20, 2006).

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If you have any questions about the proposal, please let me know.

Sincerely,

/s/

Lawrence E. Strickling
Level 3 Communications, LLC

Attachment

Proposed Number Portability Rules

Part 52 – Numbering

Subpart C – Number Portability

[Technical and conforming changes to other sections are not yet included. A section providing a timetable for the implementation of number portability by providers of interconnected VoIP service is not yet included.]

§ 52.21 Definitions. [Redlined to existing text.]

As used in this subpart:

(a) The term 100 largest MSAs includes the 100 largest MSAs as identified in the 1990 U.S. Census reports, as set forth in the Appendix to this part, as well as those areas identified as one of the largest 100 MSAs on subsequent updates to the U.S. Census reports.

(b) The term *broadband PCS* has the same meaning as that term is defined in § 24.5 of this chapter.

(c) The term *cellular service* has the same meaning as that term is defined in § 22.99 of this chapter.

(d) The term *covered CMRS* means broadband PCS, cellular, and 800/900 MHz SMR licensees that hold geographic area licenses or are incumbent SMR wide area licensees, and offer real-time, two-way switched voice service, are interconnected with the public switched network, and utilize an in-network switching facility that enables such CMRS systems to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

(e) The term *database method* means a number portability method that utilizes one or more external databases for providing called party routing information.

(f) The term *downstream database* means a database owned and operated by an individual carrier for the purpose of providing number portability in conjunction with other functions and services.

(g) The term *end user* means the person or entity that actually receives a telephone number, directly or indirectly, from a service provider to allow that specific person or entity to send or receive communications. Except with respect to numbers that they do not actually disclose and distribute to subscribers or users for their individual use, a telecommunications carrier or a provider of interconnected VoIP service is not an end user. Example 1 – A calling card provider or internet service provider operates using platform or gateway numbers into which its subscribers dial to obtain service. These

platform or gateway numbers, although disclosed and distributed to the calling card operator's or ISP's customers, are not provided to those calling card or ISP customers for their individual use, but to share with many other calling card or ISP customers. In this case, with respect to the gateway or platform number, the calling card provider or the ISP is the end user, not the calling card provider's or ISP's customer. Example 2 – A paging operator has a general number for receiving calls, and it assigns specific user codes to its specific subscribers. With respect to the general number for receiving calls, the paging operator and not its specific subscribers, is the end user.

(h) The term incumbent wide area SMR licensee has the same meaning as that term is defined in § 20.3 of this chapter.

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(i) The term interconnected VoIP service has the same meaning as that term is defined in § 9.3 of this chapter.

(j) The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access, whether as a wholesale or retail provider. For purposes of this subpart, such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under 47 U.S.C. 332(c).

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(k) The term local number portability administrator (LNPA) means an independent, non-governmental entity, not aligned with any particular telecommunications industry segment, whose duties are determined by the NANC.

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(l) The term location portability means the ability of users of telecommunications services or interconnected VoIP services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another.

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(m) The term long-term database method means a database method that complies with the performance criteria set forth in § 52.3(a).

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(n) The term number portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one service provider to another.

Deleted: l

Deleted: telecommunications carrier

(o) The term regional database means an SMS database or an SMS/SCP pair that contains information necessary for carriers to provide number portability in a region as determined by the NANC.

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(p) The term service control point (SCP) means a database in the public switched network which contains information and call processing instructions needed to process and complete a telephone call. The network switches access an SCP to obtain such information. Typically, the information contained in an SCP is obtained from the SMS.

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(q) The term service management system (SMS) means a database or computer system not part of the public switched network that, among other things:

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Proposed Number Portability Rules

(1) Interconnects to an SCP and sends to that SCP the information and call processing instructions needed for a network switch to process and complete a telephone call; and

(2) Provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call.

(p) The term *service portability* means the ability of users of telecommunications services or interconnected VoIP services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications service or interconnected VoIP service to another, without switching from one service provider to another.

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(s) The term *service provider* means all local exchange carriers, providers of covered CMRS services, providers of interconnected VoIP services, and any other entity that the FCC permits to obtain numbering resources directly from the North American Numbering Plan Administrator and/or Pool Administrator.

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(t) The term *service provider portability* means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one service provider to another.

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(u) The term *transitional number portability measure* means a method that allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria set forth in 52.3(a). Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF), Direct Inward Dialing (DID), Route Indexing -- Portability Hub (RI-PH), Directory Number Route Indexing (DNRI) and other comparable methods.

Deleted: telecommunications carrier

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(v) The term *wholesale service provider* means a service provider that provides telecommunications services or interconnected VoIP services to another service provider, rather than an end user that purchases a service for its own use or consumption.

New Text

Section 52.22_ – Obligation to Allow End Users to Retain Numbers And to Permit Wholesale Service Migrations.

(a) Upon request from an end-user, and subject to the limits set forth in this subpart, a service provider must provide and permit number portability when the end user switches to another service provider. Service providers must fulfill this obligation without impairing the quality, reliability or convenience of any end user's service and while using and allocating numbering resources in an efficient manner. A non-end user may not block an end user from porting a number pursuant to this section. Service providers must fulfill this obligation without delaying unreasonably the end user's transition from one service provider to another.

(b) A wholesale service provider may not refuse to port a number in response to a request from another service provider directly or indirectly serving the end user, provided that the requesting service provider is changing its service among wholesale service providers, the end user's service and use of the telephone number is not affected, and the end user's choice of the entity providing the service to which the end user subscribed is not altered. Service providers must fulfill this obligation without delaying unreasonably the requesting service provider's ability to change its wholesale service providers.

(c) No service provider may refuse to port a number pending resolution of a dispute with respect to whether a number may be properly ported pursuant to this section.

Section 52.22A – Applicability of Slamming Rules to Port Requests.

(a) All porting requests to any service provider shall be treated as a request for a change by a subscriber in the subscriber's selection of a provider of telecommunications services under 47 C.F.R. 64.1120. A service provider receiving a porting request on behalf of a customer from another service provider shall be deemed to be an "executing carrier," and service provider submitting a porting request on behalf of a customer to another service provider shall be deemed to be a "submitting carrier." Notwithstanding the foregoing, a service provider receiving a porting request may verify that the numbers to be ported are assigned to the requesting end user, in the case of a request pursuant to Section 52.22(a), or the requesting service provider, in the case of a request pursuant to Section 52.22(b).

(b) Any service provider that receives an otherwise valid porting request that fails to comply with the procedures prescribed in these sections 52.21 through 52.22A of this part, including the duty to provide porting without any unreasonable delay, shall be liable to the service provider submitting the port request in an amount equal to 150% of all charges paid to the service provider receiving the port request after such violation, as well as for additional amounts as prescribed in § 64.1170.

Section 52.22B – Number Portability Performance Criteria

When configuring its network and infrastructure to support number porting requests and when porting numbers pursuant to the obligation set forth in Sec. 52.22, a service provider must ensure that:

- (1) Supports network services, features, and capabilities existing at the time number portability is implemented, including but not limited to emergency services, CLASS features, operator and directory assistance services, and intercept capabilities;*
- (2) Efficiently uses numbering resources;*
- (3) Does not require end users to change their telecommunications numbers;*
- (4) Does not result in unreasonable degradation in service quality or network reliability when implemented;*
- (5) Does not result in any degradation in service quality or network reliability when customers switch carriers;*
- (6) Does not result in a carrier having a proprietary interest;*
- (7) Is able to migrate to location and service portability; and*
- (8) Has no significant adverse impact outside the areas where number portability is deployed.*

* * *