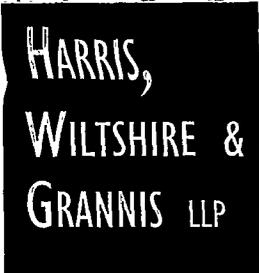


WC 08-154



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FILED/ACCEPTED
JUL 18 2008
Federal Communications Commission
Office of the Secretary

July 18, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, NW
Washington, DC 20554

BUCKET FILE COPY ORIGINAL

Re: Emergency Petition of Level 3 Communications, LLC, for Assignment of Additional Telephone Numbers in Area Code 603, and Request for Special Temporary Authorization of Thousand-Blocks in Area Code 603

Dear Ms. Shaffer:

On behalf of Level 3 Communications, LLC ("Level 3"), filed today with this letter are Level 3's Request for Special Temporary Authorization of Thousand-Blocks in Area Code 603 ("STA Request") and Emergency Petition of Level 3 Communications, LLC, for Assignment of Additional Telephone Numbers in Area Code 603 ("Emergency Petition"). Enclosed are an original and six copies of the STA Request and Emergency Petition, both redacted and unredacted versions.

Level 3 requests that the unredacted versions of the attached documents, which contain Level 3 proprietary commercial information, be withheld from public inspection pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459.

1. Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))

Level 3 seeks confidential treatment for the specific information designated as confidential in the unredacted version of the STA Request, Emergency Petition and accompanying exhibits. These submissions contain proprietary information about Level 3's operations and resources that Level 3 does not routinely make public. Public release of the submitted information could also cause competitive harm by revealing specific information about Level 3's telephone number resources in New Hampshire, where Level 3 has or will be exhausting its supply of numbers, and the ramifications of Level 3's shortage of telephone number resources in particular rate centers in New Hampshire. The

information also contains Level 3's projections of how fast it expects to use telephone numbers, should it gain access to additional numbers. This information could be used by Level 3's competitors to its commercial detriment.

2. Description of Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

Level 3 has applied to NANPA for the assignment of additional telephone numbers, and has been unjustly and unreasonably denied additional numbers. As described in the attached Petition, in the past Level 3 has submitted information related to its shortfall of numbering resources in New Hampshire as part of its applications for growth codes to NANPA. These NANPA applications are subject to confidential treatment in the ordinary course. In addition, the New Hampshire Public Utilities Commission has accorded confidential treatment to some information submitted in proceedings in that state. Level 3 now submits similar information, including information as to the extent and location of Level 3's shortages of telephone numbers and the effects on Level 3 and its actual and potential customers, as a necessary part of its STA Request and Emergency Petition and asks that here, as in the context of submissions to NANPA and the state commission, the Commission protect from public disclosure the limited portions of these documents identified as confidential and proprietary.

3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))

The attached documents contain Level 3 proprietary commercial information, including the particular rate centers in New Hampshire for which Level 3 has a shortfall of telephone numbers and accordingly is at or near the point of being unable to serve customers. The attached documents also contain Level 3's projections of how fast it expects to require additional telephone numbers to serve customers – information it is required by FCC rules and numbering guidelines to submit to NANPA with its application for additional telephone numbers. Therefore, the attached documents reveal information concerning Level 3's resources and operations that are commercially sensitive in nature.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The attached information concerns telecommunications services that are subject to rigorous competition. Level 3 is certified in New Hampshire as a facilities-based telecommunications carrier with an international network optimized for Internet Protocol technology. A large percentage of Level 3's services both in New Hampshire and across the country are provided to other carriers, interconnected VoIP providers, Internet Service Providers and enhanced service providers that use Level 3's telecommunications services to provide their own telecommunications, interconnected VoIP and/or

information services. Level 3 is subject to competition in the New Hampshire market for provision of these services.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

If such information were disclosed, Level 3's competitors would learn to what extent Level 3's numbering shortfall is hampering Level 3's ability to provide services to new and existing customers, as well as Level 3's estimates of how fast it could gain lines if the artificially imposed shortage on Level 3's numbers were alleviated. When Level 3 cannot meet a customer's needs because Level 3 lacks numbers, the customer turns to one of Level 3's competitors to procure its service. Competitors might also seek out these customers if the specific confidential information contained in the attached documents is made available to the public.

6. Identification of Any Measures Taken by Level 3 to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

Level 3 has never distributed to the public or its competitors the attached information regarding specific requests for numbering resources. To the extent information was submitted to NANPA, NANPA treats such information as confidential. Likewise, to the extent such information was provided to the New Hampshire Public Utilities Commission, such information was provided pursuant to requests for confidential treatment. Throughout the STA Request and Emergency Petition, Level 3 has identified confidential and proprietary information with clearly marked, bold-faced, capital type, "BEGIN CONFIDENTIAL" and "END CONFIDENTIAL" to designate the particular information, and has marked each page of the unredacted versions as "CONFIDENTIAL - NOT FOR PUBLIC INSPECTION."

7. Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

Level 3 has never distributed to the public or its competitors the attached information regarding specific requests for numbering resources. Level 3 has previously submitted information of this type to the New Hampshire PUC and to NANPA confidentially. Information regarding numbering resources and requests is closely-guarded information that is not disclosed to third parties.

8. Justification of Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))

Level 3 requests that the information marked as confidential throughout the STA Request and Emergency Petition remain undisclosed for a period of 5 years from the date of this confidentiality request. We believe that after 5 years, because of the ongoing

changes in Level 3's numbering inventory, the sensitivity of this information will become less relevant.

9. Other Information that Level 3 Believes May Be Useful in Assessing Whether its Request for Confidentiality Should Be Granted (Section 0.459(b)(9))

As noted in the attached Emergency Petition, Level 3 is seeking relief from the Commission after exhausting other resources with NANPA and the New Hampshire Public Utilities Commission. In those venues, confidential treatment has already been accorded to the types of information that Level 3 has redacted here. If this information is made available to the public, Level 3 could be irreparably harmed because it is already at a competitive disadvantage with other providers who have ample telephone numbers in rate centers in New Hampshire. Revealing the specific details of Level 3's number shortage could put the company at an even greater disadvantage.

For the reasons stated above, Level 3 believes that the attached unredacted versions of the STA Request and Emergency Petition should be withheld from public inspection. Should you have any questions regarding this confidentiality request, please contact me by phone at (202) 730-1320 or by email at jnakahata@harriswiltshire.com.

Respectfully submitted,



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July 18, 2008

Ms. Dana Shaffer
Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Request for Special Temporary Authorization of Thousand-Blocks in Area
Code 603

Dear Ms. Shaffer:

Pursuant to the Commission's plenary authority over numbering administration¹ and its delegation to the Wireline Competition Bureau of authority to resolve numbering disputes,² Level 3 Communications, LLC ("Level 3") requests that the Wireline Competition Bureau (the "Bureau") grant Level 3 a Special Temporary Authorization of thousand-blocks in area code 603. Today, Level 3 filed an Emergency Petition for the Assignment of Additional Telephone Numbers in Area Code 603 ("Petition"). Because of NANPA's unlawful refusal – at the behest of the New Hampshire Public Utilities Commission ("PUC") – to grant Level 3 additional thousand blocks, **[**BEGIN CONFIDENTIAL**]**

[END CONFIDENTIAL**]** Unless this Special Temporary Authorization is granted, Level 3 will be unable to serve additional customers in many rate centers in New Hampshire during the pendency of that Petition.

Accordingly, Level 3 requests that the Bureau direct the North American Numbering Plan Administrator ("NANPA") to assign and release immediately to Level 3

¹ See 47 U.S.C. §251(e); see also 47 C.F.R. §§ 52.3, 52.15 et seq.

² See *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Declaratory Ruling and Order*, 10 FCC Rcd 4596, 4612 ¶ 36 (1995) (authorizing the then-Common Carrier Bureau to "act for the Commission under delegated authority in resolving future number resource allocation disputes").

a thousand block of growth codes in each of the rate centers listed in Appendix A where exhaust has been reached or is imminent. In each of these rate centers, Level 3's inventory exceeds 90% utilization and is less than three months from exhaust – far above the industry guidelines for additional growth codes. Indeed, many of these rate centers exceed 99% utilization (meaning fewer than *ten* numbers remain for each thousand block). Level 3 also asks the Bureau to direct NANPA to grant Level 3 additional codes that reach this 90% utilization and three months to exhaust threshold during the pendency of this proceeding. This Special Temporary Authorization would be without prejudice to the Commission's consideration of the merits and would be subject to revocation or suspension by the Commission at any time.

As further documented in its Petition, Level 3 meets the basic qualifications for growth codes in each of the rate centers in Appendix A. Specifically:

- Level 3 is certified by the New Hampshire Public Utilities Commission to provide local exchange service in each of these exchanges. Level 3 has a certificate of public convenience and necessity to provide local exchange services in all of the former Bell Atlantic exchanges in New Hampshire.³
- Level 3 is providing local exchange service today in each of these rate centers – in particular Direct Inward Dial and Direct Outward Dial services – and will use these numbers to provide local exchange services.⁴
- Level 3 exceeds 75% utilization of its numbers in each of these rate centers. For the rate centers listed in Appendix A, Level 3 exceeds 90% utilization.⁵
- Level 3 projects number exhaust in each of these rate centers within 6 months. For the rate centers listed in Appendix A, Level 3 projects exhaust within three months.⁶

Level 3 has established a *prima facie* case for assignment of additional growth codes.

Level 3 has exhausted its remedies and has no other avenues to obtain additional growth codes in these rate centers. In September 2005, April to August 2007, and again in May 2008, Level 3 applied to NANPA for growth codes. Upon the instructions of the New Hampshire PUC, NANPA denied all of Level 3's applications on the patently false grounds that Level 3 was not certified in the rate centers for which it sought numbers. In accordance with industry guidelines, on September 12, 2007, Level 3 appealed NANPA's denial to the New Hampshire PUC and sought a safety valve request for additional growth codes. Ignoring industry guidelines that call for "Resolution by the state commission . . . in an expeditious manner,"⁷ the New Hampshire PUC has failed to act on Level 3's appeal and safety valve request for *ten* months. In the meantime, Level 3 has reclaimed numbers from its existing customers. Level 3 has used those numbers to fill additional orders for service, and those numbers are included in Level 3's utilization

³ See Petition, Exhibit 7.

⁴ See Petition, Exhibit 3.

⁵ See also Petition, Exhibit 2.

⁶ See also Petition, Exhibit 5.

⁷ Central Office Code (NXX) Assignment Guidelines (COCAG) Final Document, ATIS Standard § 12.1(d) (Jan. 18, 2008) (available at www.atis.org/INC/incguides.asp).

levels and months-to-exhaust estimates. Level 3's efficient use of its existing inventory will no longer suffice.

Accordingly, pursuant to industry guidelines and the Commission's orders, Level 3 files its Petition today to redress NANPA's denials and the New Hampshire PUC's failure to act, and to obtain non-discriminatory access to numbers.⁸ In the *Pennsylvania Numbering Order*, the Commission articulated its standard for extraordinary relief in the form of an immediate release of numbers.⁹ The Commission directed that "[i]f, in fact, those carriers cannot serve customers because they do not have numbers, or if they are having to use extraordinary and unreasonably costly measures to obtain numbers in order to provide service," a state commission should work with the numbering administrator to ensure that the carriers have access to codes.¹⁰ Further, if the state commission "unduly favors or disfavors a particular industry segment, or otherwise violates our guidelines for numbering administration, [carriers] may file a petition for declaratory ruling with this Commission to seek relief."¹¹ Subsequently, the Bureau applied the criteria set forth in the *Pennsylvania Numbering Order* and directed NANPA to assign and release numbering codes.¹² In those cases carriers had nearly reached the point of being unable to serve customers in some rate centers.¹³ Level 3 is past that point. [****BEGIN**

⁸ *Id.* § 12.2 ("Safety Valve Process") ("If a state does not reach a decision on a safety valve request within a reasonable timeframe, [service providers] may submit such requests to the FCC for resolution.")

⁹ *See 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, Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 19009 (1998) ("*Pennsylvania Numbering Order*"); *In the Matter of Numbering Resource Optimization; 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, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 16 FCC Rcd 306, 341-43 ¶ 76-80 (2000).

¹⁰ *See Pennsylvania Numbering Order*, 13 FCC Rcd at 19039 ¶ 49.

¹¹ *See id.* at 19027 ¶ 26.

¹² *See, e.g.,* Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, to Mr. Ronald R. Conners, Director, NANPA, DA 99-505, File No. 99-25 (March 12, 1999) (directing NANPA to release two central office codes to Sprint PCS after it demonstrated that it had "virtually exhausted all available numbers" in a rate center, that it was using "extraordinary and costly measures . . . to provide service to customers in the" NPA, and that without emergency relief, "at worst, [it] may be unable to provide service to customers" in the NPA); Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, to Mr. Ronald R. Conners, Director, NANPA, DA 99-663, NSD File No. 99-31 (April 7, 1999) (granting "extraordinary relief" and noting that if the carrier did not "obtain additional numbering resources very soon . . . they . . . , at worst, may be unable to provide service to customers in the [] NPA").

¹³ *See id.*

CONFIDENTIAL]**

[END CONFIDENTIAL**]**

Grant of this STA will not harm third parties. The 603 area code is nowhere near exhaust. The latest Number Resource Utilization Forecast (NRUF) report shows that 3,226,000 million numbers – or 47.8 percent of the numbers – are still available in the 603 area code.¹⁴ NANPA projects that the 603 area code will not reach exhaustion until the first quarter 2011.¹⁵ In addition, thousands-block number pooling has been implemented in each of the rate centers for which Level 3 seeks growth codes. Granting Level 3's request for an STA, therefore, will not place the 603 area code in a jeopardy situation.

Level 3 believes its Emergency Petition should be granted in its entirety immediately. Nonetheless, should the Commission seek comment on Level 3's Petition, Level 3's customers should not be denied their choice of service provider because of a lack of numbers during the pendency of the Petition. Immediate grant of this STA, without prejudice to the merits of the Petition and subject to modification or revocation by the Commission at any time, serves the two primary goals of the Commission's numbering policy – that the "limited numbering resources of the NANP" are used efficiently and "to ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications marketplace."¹⁶

Level 3 thus respectfully asks the Bureau to grant this STA to allow Level 3 to continue to add lines in affected New Hampshire rate centers during the pendency of its Petition. Should you have any questions regarding this request, please contact me by phone at (202) 730-1320 or by email at jnakahata@harriswiltshire.com.

¹⁴ See Numbering Resource Utilization in the United States, March 2008 at Table 6 (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280978A1.pdf).

¹⁵ See April 2008 NANP Exhaust Analysis, at 3 (available at http://www.nanpa.com/pdf/NRUF/April_2008_NANP_Exhaust_Analysis.pdf).

¹⁶ See *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, 7577 ¶ 1 (2000).

Respectfully submitted,



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Attachment

Appendix A

**[REDACTED – FOR PUBLIC
INSPECTION]**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Emergency Petition of Level 3
Communications, LLC, for the Assignment
of Additional Telephone Numbers in Area
Code 603, and for Preemption of the
Actions of the New Hampshire Public
Utilities Commission Pursuant to Section
253 of the Communications Act of 1934

WCB Docket No. _____

Emergency Petition of Level 3 Communications, LLC.

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July 18, 2008

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Emergency Petition of Level 3
Communications, LLC, for the Assignment
of Additional Telephone Numbers in Area
Code 603, and for Preemption of the
Actions of the New Hampshire Public
Utilities Commission Pursuant to Section
253 of the Communications Act of 1934

WCB Docket No. _____

Emergency Petition of Level 3 Communications, LLC.

INTRODUCTION AND SUMMARY

Level 3 Communications, LLC (“Level 3”), pursuant to Sections 251(e) and 253 of the Communications Act of 1934, as amended, and Sections 1.2 and 52.9 of the Commission’s rules, 47 C.F.R. §§ 1.2, 52.9, requests that the Commission direct the North American Numbering Plan Administrator (“NANPA”) to assign Level 3 additional thousand blocks of telephone numbers in each area in which Level 3 meets the industry guidelines of 75 percent utilization and six months or less until projected exhaust, including specifically the **[**BEGIN CONFIDENTIAL**] [REDACTED] [**END CONFIDENTIAL**]** rate centers listed in Exhibit 1.¹ Level 3 has run out of numbers in **[**BEGIN CONFIDENTIAL**] [REDACTED] [**END CONFIDENTIAL**]** rate centers in area

¹ Concurrently with this petition, Level 3 is filing a Request for Special Temporary Authorization of Thousands-Blocks in Area Code 603 (“STA Request”). The STA Request asks that the Wireline Competition Bureau direct NANPA to assign and release immediately a block of one thousand growth codes to Level 3 in each rate center where the inventory has reached 90 percent utilization and is less than three months from exhaust.

code 603² – New Hampshire’s only area code – and imminently will exhaust its supply of numbers in many more. **[**BEGIN CONFIDENTIAL**]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL]**

Level 3 has been trying to obtain additional thousand block growth codes in area code 603 since 2005, but has been continually denied. Each time, NANPA told Level 3, “[a]ccording to the New Hampshire Public Utilities Commission, [Level 3 is] not certified in the area in which [it is] requesting numbering resources.”³ But this is patently false. Level 3 has held a certificate from the New Hampshire Public Utilities Commission (“PUC”) to provide local exchange service since 1998, and long ago interconnected with Verizon, the incumbent LEC in Level 3’s service areas. The PUC apparently is using a claim of lack of certification as a tool to impose a *de facto* freeze on any Level 3 numbering requests.

This is not a case of number rationing in the face of area code jeopardy. There is no imminent shortage of numbers in New Hampshire – with over 3.2 million numbers available and no exhaust predicted before 2011. Indeed, Level 3 has contributed to that

² See Exhibit 2, Utilization Chart.

³ See, e.g., Pooling Administrator’s Response/Confirmation, dated June 3, 2008, attached as Exhibit 4. Exhibit 4 consists of one example of these responses, which is substantially the same as all other denials received by Level 3, contained on the CD attached as Exhibit 5.

number availability by donating [**BEGIN CONFIDENTIAL**] [REDACTED] [**END CONFIDENTIAL**] thousand block codes through the implementation of thousand block pooling.

Level 3 has no alternative but to seek numbers from the Commission. Without more numbers, Level 3 cannot offer service in New Hampshire. Level 3 has already reclaimed numbers from some of its customers for re-use. And after NANPA denied Level 3's second set of growth code requests in April to August 2007, Level 3 filed an appeal and safety valve request for number assignment with the PUC on September 12, 2007—on which the PUC has taken no action in over ten months.⁴

There is no legal basis for the PUC's continual instruction to NANPA that Level 3 is not certified as a LEC in the rate centers for which it seeks numbers. Level 3's competitive local exchange carrier ("CLEC") certificate in New Hampshire has never been revoked. While the PUC has issued orders that purport to ban the use of numbers for ISP-bound CLEC foreign exchange-like services, those orders never took effect, and thus are not at issue here.⁵ And while New Hampshire has had an open proceeding since

⁴ See *Level 3 Communications, LLC's Appeal of the North American Numbering Plan Administration's Denial of Numbering Resources*, DT 07-099 (filed Sept. 12, 2007) (Exhibit 6, attached).

⁵ See Order No. 24,080, *Final Order*, 87 NH PUC 749 (2002); Order No. 24,116, *Order Staying Effectiveness of Order 24,080 and Addressing Motions for Rehearing and Clarification*, 88 NH PUC 12 (2003); Order No. 24,218, *Order Clarifying and Granting Limited Rehearing of Order No. 24,080*, 88 NH PUC 462 (2003); Order No. 24,419, *Order Approving Agreements in DT 00-223 and DT 00-054*, 89 NH PUC 727 (2004); Order No. 24,466, *Order Denying Motion for Rehearing of Order No. 24,419*, 90 NH PUC 195 (2005); Order No. 24,514, *Order Suspending the Procedural Schedule and Establishing a Hearing Date for Further Consideration of Internet Telephony Issues*, 90 NH PUC 390 (2005) ("Order Suspending Rules"). See also Secretarial Letter in DT 00-223 and DT 00-054 dated November 17, 2005 from Debra H. Howland, New Hampshire PUC Executive Director and Secretary, re Suspension of Implementation Schedule ("Secretarial Letter").

2000 as to how to apply its "local presence" test for numbers for non-ISP-bound CLEC FX service,⁶ the PUC has never brought that docket to conclusion. In any event, the Commission never delegated to the PUC the authority to decide what types of uses of telephone numbers qualify for numbering resources when a CLEC is providing telephone exchange and exchange access services. To the contrary, the FCC expressly prohibited New Hampshire from "unduly favor[ing] or disfavor[ing] any particular telecommunications industry segment or group of telecommunications consumers" and from "unduly favor[ing] one telecommunications technology over another."⁷ Yet that appears to be precisely what the PUC is doing, especially because the PUC (or its staff) appears to believe that wholesale CLECs do not qualify for numbers because they do not bill the retail end user – a proposition at odds with the FCC's statements and precedent.

NANPA's and the PUC's failure to grant Level 3's request for growth codes violates the Commission's numbering rules and orders, and erects an impermissible barrier to entry that violates Section 253(a) of the Act. The Commission's rules are clear: NANPA must make numbers "available on an equitable basis," "facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers," "not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers," and "not unduly favor one telecommunications

⁶ See *Investigation into Whether Certain Calls are Local; Staff Investigation Into Number Usage, Order of Notice*, DT 00-223 (2000), discussed in Order No. 23,595, Prehearing Conference Order (2000) ("Order No. 23,595").

⁷ See *New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Area Code*, Order, 15 FCC Rcd 1252, 1255 ¶ 8 (1999) ("New Hampshire Delegation Order").

technology over another.”⁸ At the behest of the PUC, NANPA is violating each and every one of these rules, and denying Level 3’s customers their choice of carrier. Level 3 thus requests the Commission immediately direct NANPA to assign it additional thousand block numbers in the 603 area code in each rate center in which Level 3 meets the industry guidelines of 75% utilization and less than six months to exhaust.

BACKGROUND

Level 3 is certified in New Hampshire as a facilities-based telecommunications carrier with an international network optimized for Internet Protocol technology. Since 1998, Level 3 has provided local exchange telecommunications services in all of the former Bell Atlantic service areas in New Hampshire.⁹ Level 3 operates exclusively in those areas. Level 3 is interconnected with Verizon in New Hampshire, pursuant to a PUC-approved interconnection agreement.¹⁰ Level 3 offers direct inward dial (“DID”) and direct outward dial (“DOD”) services that allow for local connectivity to the public switched telephone network (“PSTN”) by Level 3’s customers and their end users.

As with any other carrier interconnected with the PSTN, Level 3’s telecommunications services rely on the assignment and use of public telephone number resources as an integral part of its service offerings. However, unlike some other carriers, Level 3’s business model has historically focused on wholesale services. A large percentage of Level 3’s services, both in New Hampshire and across the country, are

⁸ 47 C.F.R. § 52.9(a).

⁹ See *Level 3 Communications, LLC Petition for Authority to Provide Local Telecommunications Services*, Order NISI Granting Authorization, DC 98-133, Order No. 23,011, 83 NH PUC 461 (1998) (“Level 3 New Hampshire Certificate”) (Exhibit 7, attached).

¹⁰ See Letter from Debra A. Howland, Executive Director and Secretary, New Hampshire Public Utilities Commission, to Victor D. Del Vecchio, Senior Regulatory Counsel, Verizon New Hampshire (Dec. 6, 2004).

provided to other carriers, interconnected VoIP providers, Internet Service Providers (“ISPs”), and enhanced service providers (“ESPs”) that use Level 3’s telecommunications services to provide their own telecommunications, interconnected VoIP and/or information services. In New Hampshire, as in 47 other states, Level 3 has requested and has been granted NXX or NXX-X codes from NANPA for its local exchange carrier operations.¹¹ Level 3’s operations and services in other states are substantially similar to its operations in New Hampshire.

The assignment of telephone numbers is an essential component of Level 3’s offerings of interconnection, connectivity to the PSTN and 911 services to its wholesaler customers, as well as to enterprise users. Level 3’s interconnected VoIP, ISP, ESP and enterprise customers pay Level 3 for services that include the use of telephone numbers, just as other consumers of local telephone service do. When telephone numbers are provided with services that are sold to interconnected VoIP, ISP, ESP and enterprise customers, the service is working and available and the numbers can be used by its customers at any time.

In New Hampshire, Level 3 faces a critical shortage of telephone numbers that directly affects its ability to provision these services to its customers. In **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** rate centers, Level 3 has 10 or fewer telephone numbers remaining per thousand block and utilization is over 99 percent, with several at complete exhaust.¹² There are **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]**

¹¹ Level 3 does not utilize its own numbering resources to offer its local exchange services in Alaska, Hawaii and Maine.

¹² See Exhibit 2, Utilization Chart. In **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** of these rate centers, Level 3 is assigned only a single thousand block.

[END CONFIDENTIAL**]** rate centers that have more than 90 percent utilization.¹³

As of July 7, 2008, Level 3's telephone number utilization exceeds 75 percent in

[BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** New Hampshire rate centers, and in each of these rate centers, Level 3 projects exhaust in less than six months.¹⁴

Nonetheless, Level 3 has been unable to obtain additional numbers for New Hampshire rate centers since 2005, when PUC staff essentially froze Level 3's access to additional NXX growth codes by telling NANPA that Level 3 was not certified in any area where it was seeking codes.¹⁵ In 2005, New Hampshire was implementing new state rules regarding the use of numbers for CLEC foreign exchange services, particularly for dial-up ISP traffic, and for non-ISP-bound traffic when a CLEC does not have customers physically located within a particular rate center.¹⁶ Since that time, several changes have occurred. First, New Hampshire stayed the effective date of its rules for CLEC foreign exchange services, so that those rules have never taken effect.¹⁷ Second, Level 3 began offering wholesale interconnected VoIP services. Accordingly, Level 3 is providing service for end users physically located in all of the rate centers in New Hampshire in

¹³ See Exhibit 2.

¹⁴ See Exhibit 2. Level 3 has to date only applied for growth codes in **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** of these **[**BEGIN CONFIDENTIAL**]** **[**END CONFIDENTIAL**]** rate centers.

¹⁵ See, e.g., Exhibit 4.

¹⁶ *Investigation As to Whether Certain Calls are Local*, DT 00-223; *Independent Telephone Companies and Competitive Local Exchange Carriers—Local Calling Areas*, DT 00-054, Order No. 24,080, *Final Order*, 87 NH PUC 749, 767 (2002) (“Going forward, a CLEC may offer FX-like service for non-ISP bound traffic only when it is providing service to at least one customer physically located in the exchange from which the FX service is requested. For this purpose, the CLEC must be providing local dial tone via its own facilities, over an EEL arrangement or by using UNE loops.”).

¹⁷ See Order Suspending Rules and Secretarial Letter.

which it holds numbering resources. Third, the PUC audited Level 3's use of numbering resources. No adverse conclusions or findings were ever issued as a result of that audit. Fourth, although there is no near-term number shortage in New Hampshire,¹⁸ Level 3 reclaimed a substantial amount of numbers from its wholesale customers and reassigned them to fill other service orders, using Level 3's inventory even more efficiently.¹⁹ Furthermore, through the implementation of thousand block number pooling, Level 3 has donated **[**BEGIN CONFIDENTIAL**]** **[REDACTED]** **[**END CONFIDENTIAL**]** thousand blocks of numbers (i.e. **[**BEGIN CONFIDENTIAL**]** **[REDACTED]** **[**END CONFIDENTIAL**]** numbers) to the pool from what had been Level 3's initial NXX allocations.²⁰

Notwithstanding its reclamation efforts, Level 3's customers continue to need more numbers as demand for services grows. Indeed, since 2005, Level 3 has denied service to approximately **[**BEGIN CONFIDENTIAL**]** **[REDACTED]** **[**END CONFIDENTIAL**]** requesting about **[**BEGIN CONFIDENTIAL**]**

¹⁸ The latest Commission report shows 47.8 percent of numbers – over 3.2 million numbers – are still available in area code 603. See Numbering Resource Utilization in the United States, March 2008 at Table 6 (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280978A1.pdf). The current NANPA exhaust forecast for the 603 area code is the first quarter of 2011, and that forecast has been extended into the future every year since 2004. See April 2008 NANP Exhaust Analysis, at 3 (available at http://www.nanpa.com/pdf/NRUF/April_2008_NANP_Exhaust_Analysis.pdf).

¹⁹ See Declaration of Shaun Giesler, Exhibit 3, attached (“Giesler Declaration”). In addition to reclamation, Level 3 has taken other actions to actively manage its numbering resources efficiently. Level 3 has adopted an internal customer telephone number policy. The policy includes a “limit-per-rate-center rule,” whereby any request for 200 or more numbers is reviewed carefully to determine whether the order should be filled or denied. As part of its policy, Level 3 also adopted internal reclamation procedures, and requirements that Level 3's customers take an active role in efficiently managing the telephone numbers they obtain from Level 3.

²⁰ See Giesler Declaration ¶ 10.

Commission's *First Numbering Order* and under the "Safety Valve Process" set forth in the ATIS Standards NXX Assignment Guidelines,²⁶ Level 3 appealed NANPA's denial to the PUC in September 2007.²⁷ According to estimates made available by NANPA concerning state PUC Safety Valve procedures, the New Hampshire PUC typically needs only 20 days to make a decision.²⁸ Instead, this appeal has been pending for *more than ten months*. In fact, the PUC has not even issued an Order of Notice in the docket, which it typically does shortly after receiving such a request. The only activity in the docket has been a November 19, 2007 request for additional information from PUC staff, a December 5, 2007 response from Level 3, a February 13, 2008 meeting between Level 3 representatives and staff, a March 20, 2008 Memorandum from staff to the PUC Commissioners, and an April 8, 2008 response from Level 3 to the staff memorandum. The PUC has not scheduled any action on Level 3's appeal, and has not provided any indication of when, if ever, it intends to act. During this period of inaction by the PUC, Level 3's number shortage grows increasingly severe as it is unable to meet demand for its services throughout the state.²⁹

Most recently, on May 29, 2008, Level 3 once again applied to NANPA requesting growth codes, this time for **[**BEGIN CONFIDENTIAL**]** **[REDACTED]** **[**END CONFIDENTIAL**]** rate centers, some of which duplicated its 2007 requests and some

²⁶ See *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, 15 FCC Red 7574, 7615 ¶ 98 (2000) ("*First Numbering Order*"); see also Central Office Code (NXX) Assignment Guidelines (COCAG) Final Document, ATIS Standard (Jan. 18, 2008) (available at www.atis.org/INC/incguides.asp) ("*ATIS Guidelines*").

²⁷ See Exhibit 6.

²⁸ See Safety Valve Process – "Quick Sheet," available at http://www.nanpa.com/pdf/Summary_Quick_Sheet_for_SV_IMG_022708_FINAL.pdf.

²⁹ See Giesler Declaration.

of which were in addition to the 2007 requests.³⁰ Again, all these requests were for rate centers that had implemented thousand-block pooling. On June 3, 2008, based on direction from the PUC staff, NANPA again withheld additional numbering resources from Level 3 in all **[**BEGIN CONFIDENTIAL**]** **[REDACTED]** **[**END CONFIDENTIAL**]** rate centers.³¹ Level 3 has not filed a further appeal and safety valve request at the PUC as doing so would be futile in light of the PUC's failure to act on Level 3's 2007 appeal and safety valve request.

The Commission has only made limited and narrow delegations of numbering administration authority to the PUC – none of which delegated plenary policymaking authority. In 1999, the Commission conditionally granted the PUC's request for additional authority to implement various area code conservation measures in New Hampshire. Specifically, the Commission delegated to the state commission authority to “reclaim unused and reserved NXX codes; set numbering allocation standards, including the establishment of a requirement that carriers demonstrate facilities readiness and the setting of fill rates; enforce and audit carrier compliance with number utilization reporting requirements; require the submission of utilization and forecast information to the New Hampshire Commission; and institute a thousands-block pooling trial.”³²

When delegating this limited authority, the Commission did not abdicate its stewardship of a centralized, nationwide numbering policy. To that end, the Commission

³⁰ Although some of these requests duplicated its 2007 requests, Level 3 has not withdrawn its 2007 requests, so that the total number of rate centers in which Level 3 has sought and been denied additional growth codes is **[**BEGIN CONFIDENTIAL**]** **[REDACTED]** **[**END CONFIDENTIAL**]**.

³¹ See, e.g., Exhibit 4.

³² See *New Hampshire Delegation Order* ¶ 1.

made clear that the overarching goals of numbering administration must govern the PUC whenever it acts pursuant to its delegated authority: "Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible."³³ The scope of the delegated authority was constrained by national numbering policy.

The delegation of authority was further limited because the Commission issued this limited grant of authority as an interim measure, later superseded by the national guidelines for numbering optimization set forth in the *Numbering Resource Optimization Proceeding*.³⁴ In the subsequent *Numbering Resource Optimization Order*,³⁵ the Commission reiterated the limited nature of its delegation to the states of "certain elements of numbering administration," but again emphasized its own paramount responsibility for numbering policy, stating that "numbering resource optimization policy is part of our role as guardian of the nationwide NANP resource."³⁶ Notably, the Commission did not delegate a policy-making role to the PUC, did not grant the PUC the authority to determine "qualifying" and "non-qualifying" local exchange and exchange

³³ *New Hampshire Delegation Order* ¶ 9.

³⁴ *See New Hampshire Delegation Order* ¶ 2 (granting interim authority "subject to the caveat that this grant will be superseded by forthcoming decisions in the *Numbering Resource Optimization* proceeding that will establish national guidelines, standards, and procedures for numbering optimization").

³⁵ *See First Numbering Order* ¶ 98.

³⁶ *See First Numbering Order* ¶ 7 and n.17 (citing the *New Hampshire Delegation Order*, among others).

access services or uses, and required it to act in accordance with national numbering principles set forth in the Commission's rules: to ensure that numbers are made available on an equitable, efficient, timely, nondiscriminatory basis, without favoring or disfavoring particular industry segments, consumers, or telecommunications technologies.³⁷

ARGUMENT

I. **Assignment of Additional Thousand Blocks is Necessary to Remove the Barrier that Now Prevents Level 3 from Serving Some of its Potential Customers.**

Pursuant to the Commission's plenary authority over numbering administration,³⁸ Level 3 requests that the Commission direct NANPA to assign and release additional thousand block growth codes to Level 3 in rate centers within the 603 area code where Level 3 meets the eligibility criteria in industry guidelines. The Commission has articulated its standard for granting relief in the form of an immediate release of numbering resources in the *Pennsylvania Numbering Order*.³⁹ There, the Commission determined that "[i]f, in fact, those carriers cannot serve customers because they do not have numbers, or if they are having to use extraordinary and unreasonably costly measures to obtain numbers in order to provide service," a state commission should work

³⁷ See 47 C.F.R. § 52.9(a).

³⁸ See 47 U.S.C. §251(e); see also 47 C.F.R. §§ 52.3, 52.15 et seq.

³⁹ See *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, Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 19009 (1998) ("Pennsylvania Numbering Order"); *In the Matter of Numbering Resource Optimization; 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, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 16 FCC Rcd 306, 341-43 ¶ 76-80 (2000).