

**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 the Preemption of the
Actions of the New Hampshire Public
Utilities Commission Pursuant to Section
253 of the Communications Act of 1934

WCB Docket No. 08-154

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Reply Comments of Level 3 Communications, LLC.

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Reply Comments of Level 3 Communications, LLC

Introduction and Summary

In its Emergency Petition, Level 3 Communications LLC (“Level 3”) sought additional telephone numbers in the 603 area code so that it can again offer local exchange telecommunications services and its customers can obtain communications services from their provider of choice.¹ After three years of trying to demonstrate its eligibility for additional numbering resources in New Hampshire to the New Hampshire Public Utilities Commission (“New Hampshire Commission” or “PUC”), Level 3 has nowhere left to turn. Following the Commission’s rules and industry guidelines, after its complete and valid applications for growth codes were improperly denied, Level 3

¹ See Emergency Petition of Level 3 Communications, LLC, for the Assignment of Additional Telephone Numbers in Area Code 603, and for the Preemption of the Actions of the New Hampshire Public Utilities Commission Pursuant to Section 253 of the Communications Act of 1934 (filed July 18, 2008) (“Emergency Petition”). Concurrently with its Emergency Petition, Level 3 filed a request for special temporary authorization of additional growth codes in rate centers where it had exceeded 90 percent utilization and was within three months of exhaust. See Request of Level 3 Communications, LLC, for Special Temporary Authorization of Thousand-Blocks in Area Code 603 (filed July 18, 2008) (“STA Request”).

appealed to the PUC.² Rather than addressing the appeal in a timely manner, the PUC turned a deaf ear to Level 3's pleas. By refusing to address Level 3's appeal of the improper denials, the PUC has continued its longstanding practice of blocking Level 3 from obtaining additional growth codes by incorrectly advising the Pooling Administrator ("PA") that Level 3 is not certified in the state.³ The situation is now so extreme that

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CONFIDENTIAL ** and no relief is in sight.

The PUC's comments on Level 3's petition⁴ make clear that the PUC is denying telephone numbers for services to ESPs, ISPs and VoIP providers, and is unreasonably discriminating against wholesale telecommunications carriers who provide service to these entities, by only allowing carriers that also provide retail service in a rate center to

² See Emergency Petition at Exhibit 6; see also *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, 15 FCC Rcd 7574, 7615 ¶ 98 (2000); Central Office Code (NXX) Assignment Guidelines (COCAG) Final Document, ATIS Standard § 12.2 (Jan. 18, 2008) (available at www.atis.org/INC/ineguides.asp); *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, 19039 ¶ 49 (1998).

³ See Emergency Petition at Exhibit 4; see also Comments of NeuStar, Inc. as the National Thousands-Block Pooling Administrator, at 4, filed August 7, 2008 in response to Level 3's STA Request ("PA Comments") ("In each of the instances referenced in the Level 3 Petitions, the NHPUC staff advised the PA that Level 3 did not meet certification requirements in that rate center, and that the application should be denied. Accordingly, we denied the request.").

⁴ See Comments of the New Hampshire Public Utilities Commission (filed August 8, 2008) ("PUC Comments"). By letter, the New Hampshire Commission submitted comments in response to Level 3's Emergency Petition that were identical to the comments filed in response to Level 3's STA Request. See Letter from F. Anne Ross, Esq., Staff Attorney, New Hampshire Public Utilities Commission, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 8, 2008.

obtain numbers.⁵ Whichever rationale the New Hampshire Commission prefers, neither can be reconciled with the FCC's history of treating information service providers as end users and treating PSTN connectivity and interconnection services provided to ISPs as local exchange services. The PUC's misunderstanding of national numbering policy results in an ad hoc state-specific numbering policy that must be corrected.

The PUC's comments also confirm that by advising the PA that Level 3 is not certified in the rate centers in which it is seeking additional growth codes, the PUC is using a patently false pretext to deny Level 3 numbers. The PUC cannot advance any plausible or legally sustainable reason for falsely notifying the PA that Level 3 is not certified to provide service in the rate centers where it seeks numbers. The PUC concedes that Level 3 has been certified as a LEC since 1998 in all of the areas where it seeks growth codes. However, the PUC offers a series of post-hoc rationalizations for denying Level 3 numbers. None of these was ever actually proffered at the time of denying Level 3's requests, and all are hopelessly vague, wholly unsupported and meritless. To the extent the PUC raises procedural issues (none of which was actually the stated reason for denying Level 3's requests), these do not justify blocking all requests for additional growth codes for more than three years.

It is time for this Commission to end this anticompetitive and wholly non-transparent charade. The PUC is acting outside its limited and provisional delegated

⁵ See Memorandum from Jody O'Marra to Commissioners, New Hampshire Public Utilities Commission, at 10 (March 20, 2008) (attached as Exhibit 8 to the Emergency Petition) (recommending that Level 3's appeal of the PUC's denial of numbering resources be denied because "Level 3 . . . continues to request numbering resources for ESPs and ISPs. . . . Given . . . Staff's understanding of the service for which Level 3 wishes to obtain numbering resources, Staff recommends Level 3's appeal be denied. Level 3 may apply to the FCC for the numbering resources they require to continue their current business practices.").

authority. When the FCC delegated authority to New Hampshire to aid in the administration of numbering resources, the FCC did not give the PUC carte blanche. Time and time again, the FCC made clear that the delegated authority was not to be used to prevent carriers from obtaining numbers.

But that is exactly what is happening now. The PUC is hoarding numbers in area code 603 to avoid having to implement area code relief at some distant future date through an effective moratorium on the issuance of additional codes to carriers that the PUC believes are not directly billing retail service end users.

This moratorium must end, and only this Commission can end it. For these reasons, Level 3 has petitioned this Commission to direct the PA to assign Level 3 additional growth codes in the rate centers where Level 3 has met the utilization threshold and to preempt the actions of the New Hampshire Commission that have erected an impermissible barrier to entry in violation of Section 253(a) of the Communications Act of 1934, as amended.

I. The New Hampshire PUC Provides No Legitimate Grounds for Denying Growth Codes.

The standards for showing eligibility for growth codes are clear, and Level 3 has met them.⁶ As demonstrated by the PUC's comments, the PUC's alleged "parameters" for whether a carrier's request for phone numbers should be granted are a moving target. Its other reasons for blocking Level 3's growth code applications only offer illegitimate rationales for its advice to the PA that Level 3 should be denied growth codes. This advice, in turn, prevents Level 3 from expanding its service to meet customer demand.

⁶ See Emergency Petition at Exhibit 5.

A. The New Hampshire PUC Offers Only Post-Hoc Rationalizations for its Advice to the Pooling Administrator that Level 3 Is Not Certified.

The PUC concedes that the grounds it proffers to the PA for denying Level 3's requests for thousand blocks of growth codes are false and pretextual. The PUC admits that Level 3 has been certified as a LEC in New Hampshire continuously since 1998.⁷ Nonetheless, when Level 3 has applied for growth codes, the PUC throws out an immediate, pat answer—“not certified”⁸—which it knows to be false yet neither the PA nor Level 3 can dispute.⁹ The PUC can halt all further PA action to review Level 3's requests, no matter how acute Level 3's numbering exhaust. In defense, the PUC references a “disregard for the current parameters.”¹⁰

Without revealing these undisclosed “current parameters,” the PUC's comments reflect that it holds a core view that ISPs and VoIP service providers cannot obtain telephone numbers even indirectly through purchase of services from a certified carrier; telephone numbers are for carriers providing retail telecommunications service to end users other than ESPs, ISPs and VoIP. The PUC would deny growth codes to Level 3 because “Level 3 does not provide service to end-users.”¹¹ The PUC concedes, however,

⁷ PUC Comments at 4 (citing Order No. 23,011 in Docket No. DE 98-133); *see also* Part IC below.

⁸ *See* Emergency Petition at Exhibit 4.

⁹ The PUC and the PA have an established cooperative agreement that dictates this outcome. *See* 2005 National Thousands-Block Pooling Administration Annual Report p.18 (filed March 30, 2006) (cited in PA Comments n.6) (available at <http://www.nationalpooling.com/tools/archives/reports-archived/annual%20report/2005-Pooling%20Annual%20Report.pdf>) (“The NHPUC and the PA reached a cooperative agreement for processing applications in New Hampshire that was effective August 29 that involved the NHPUC staff informing the PA on a daily basis about whether existing wireline applications were consistent with the [state] order, and could be processed or denied.”).

¹⁰ PUC Comments at 11.

¹¹ *Id.* at 6.

that Level 3 provides service to ESPs and VoIP providers.¹² Thus, the PUC appears to be arguing that information service providers, including Internet service providers and interconnected VoIP providers, are *not "end users"* – and thus that neither Level 3 nor any other telecommunications carrier (whether or not they serve other end users in the rate center) can allow these information service providers to purchase telecommunications services that utilize telephone numbers.

This is legally incorrect. Twenty-five years ago, the Commission classified information service providers as end users, permitting them to purchase access to the PSTN through local exchange services.¹³ Were the PUC correct, Lexis/Nexis, Westlaw, dial-up audio news and weather services, and dial-up Internet access could never have existed because they would never have been able to purchase the telephone lines – and associated telephone numbers – they needed to offer their information services. The PUC ignores these twenty-five years of precedent without explanation.

The PUC also erroneously argues that PSTN connectivity and interconnection services provided to information service providers, including Internet service providers and interconnected VoIP providers, are *not local exchange services*.¹⁴ This is also legally incorrect. Level 3 provides direct inward dial service to ISPs and both direct inward dial and direct outward dial services to interconnected VoIP providers. It has and is using the facilities it requires to provide its local exchange services in each rate center – including 911 trunks for delivering interconnected VoIP 911 calls to PSAPs. The FCC has held that providing numbers and PSTN interconnection to dial-up ISPs falls squarely within

¹² See *id.* at 2.

¹³ See *MTS and WATS Market Structure*, 93 FCC 2d 241 (1983); see also *GCI v. ACS*, 16 FCC Rcd 2834 (2001).

¹⁴ See Emergency Petition at Exhibit 8.

the definition of local exchange services in Section 153(47) of the Communications Act, and there is no basis for distinguishing interconnected VoIP, which allows users within the same exchange to intercommunicate.¹⁵ Moreover, even if interconnected VoIP providers are classified as telecommunications carriers, both the retail interconnected VoIP services and the wholesale interconnection services that Level 3 provides would still be local exchange services.

In addition, the PUC's argument that LECs cannot use numbers to provide interconnection services to interconnected VoIP providers cannot be reconciled with the FCC's numbering rules and orders. The PUC brushes off these precedents by arguing that they do not establish an exemption from number utilization for wholesale carriers. That argument is a red herring that misses the point. The point is that the Commission has endorsed interconnected VoIP providers' ability to receive numbers as part of the services they purchase from underlying telecommunications carriers such as Level 3. In the *TRS Numbering Order*, for example, the Commission stated that it is "*consistent with our numbering rules*" for a non-carrier provider, such as an interconnected VoIP or IP TRS provider, to obtain numbering resources "through commercial arrangements with carriers (i.e. numbering partners)."¹⁶ The FCC understands and endorses the well established commercial structure where VoIP providers, which do not hold LEC

¹⁵ See *GCI v. ACS*, 16 FCC Red at 2847 ¶ 33 (holding that service to ISPs is "local exchange service" and upholding separation of costs associated with ISP-bound calls to the intrastate jurisdiction); 47 U.S.C. 153(47).

¹⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-151 ¶ 31 (2008) (emphasis added).

certificates themselves, obtain numbers from carriers that do.¹⁷ In adopting VoIP number portability rules, the FCC assumed the necessity of these arrangements as well:

Interconnected VoIP service enables users, over their broadband connections, to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. In order to have this capability, an interconnected VoIP service must offer consumers NANP telephone numbers. Interconnected VoIP providers generally obtain NANP telephone numbers for their customers by partnering with a local exchange carrier (LEC) through a commercial arrangement rather than obtaining them directly from the numbering administrator, which provides numbers only to entities that are licensed or certificated as carriers under the Act.¹⁸

There is no other way to make sense of this precedent. The PUC cannot now argue that it is illegitimate for Level 3 to provide numbers to interconnected VoIP providers, or that those numbers somehow do not count as assigned because service is purchased from Level 3 by the interconnected VoIP provider rather than directly by an interconnected VoIP retail customer. Indeed, even the PUC must concede that FCC orders “acknowledge the VoIP providers’ use of a carrier to obtain numbers for end use[r] customers.”¹⁹ Yet it nonetheless inexplicably has maintained that Level 3, in its capacity as a wholesale provider, is not entitled to numbers.²⁰

¹⁷ See *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19537 ¶ 12 (2007) (within the numbering regulatory framework, interconnected VoIP providers that are not certificated as carriers may obtain numbers through partnering arrangements from entities that are certificated).

¹⁸ *Id.* (citations omitted); see also Number Resource Utilization in the United States, Craig Stroup and John Vu, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, at 13 (August 2008) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284926A1.pdf) (“NRUF Report”) (“VoIP providers generally obtain NANP telephone numbers for their customers by partnering with a local exchange carrier, such as a CLEC, through a commercial arrangement rather than obtaining them directly from a numbering administrator.”).

¹⁹ PUC Comments at 3.

²⁰ See Emergency Petition, Exhibit 8 at 9.

The only other possible alternative is that the PUC is arguing that while it is permissible for information service providers, including dial-up ISPs and interconnected VoIP providers, to obtain interconnection services and numbers from an entity such as an ILEC that also in the same rate center serves residences and businesses that are not information service providers, it is not permissible for Level 3, to the extent it is a wholesale-only provider, to offer the same or similar services to these same ISP and interconnected VoIP customers. That cannot pass a test of reasonable non-discrimination. Nothing in the Act or the Commission's numbering policies permits the PUC to discriminate on the basis of whether a carrier also provides some retail services to non-information service providers within a rate center. In fact, the Commission's numbering policies prohibit such discrimination.

B. The New Hampshire Commission's Desire to Prevent Eventual Exhaust and Fend Off the Need for Area Code Relief Sometime in the Future Is Not a Sufficient Reason to Deny Growth Codes.

It is clear that the PUC has adopted a highly restrictive stance with respect to the 603 area code in an attempt to stave off area code relief forever. As part of this unapologetic stance with respect to New Hampshire number resources, the New Hampshire PUC believes that attempting to link the number of numbers available and assigned in the state to the number of residents in the state is somehow relevant to its number management role. The PUC cannot seem to understand why any carrier would forecast a need for more numbers than the population of a particular rate center.²¹

²¹ See PUC Comments at 9.

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Of course, the FCC's own numbering reports show that the number of assigned telephone numbers far exceeds the national population.²² Businesses, as well as individuals, require telephone numbers. And businesses, not just information service providers, as well as many individuals, require multiple lines and numbers for myriad communications services. Moreover, the minimum amount of numbers that a carrier can receive is 1000, and it can only gain additional numbers in blocks of 1000. Thus, it is inevitable that carriers will in some areas require allocation of more numbers than the local population.

In any event, in the vast majority of rate centers in which it is seeking growth codes, Level 3 today has only a single thousand block, and is seeking an additional thousand block. The largest number of thousand blocks that Level 3 is assigned in any rate center where it is seeking numbers is four. Thus, this is not a situation in which Level 3 is seeking to assign tens of thousands of numbers to a single customer from a single rate center. And contrary to the assertions of the PUC, Level 3 does not hold in reserve hundreds of thousands of numbers.²³

As the Commission has made clear, the PUC's desire to prevent eventual exhaust is not a sufficient basis to deny growth codes:

The grants of authority herein are not intended to allow the New Hampshire Commission to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code

²² Compare *NRUF Report* at Table 1 (reporting 639,036,000 assigned numbers, less than half of the total numbers) with U.S. CENSUS BUREAU, State and County Quick Facts (available at <http://quickfacts.census.gov/qfd/states/00000.html>) (estimating total U.S. population for the year 2006 to reach 299,398,484).

²³ The PUC has grossly miscounted the quantity of numbers that Level 3 currently holds. See PUC Comments at 5. The PUC has not accounted for the many thousands of thousand blocks Level 3 donated back to the PA through the implementation of thousand block pooling. See *Emergency Petition* at 5.

*relief. While we are giving the New Hampshire Commission tools that may prolong the lives of existing area codes, the New Hampshire Commission continues to bear the obligation of implementing area code relief when necessary, and we expect the New Hampshire Commission to fulfill this obligation in a timely manner. 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.*²⁴

The PUC has nonetheless consistently ignored this express direction, even when there is no imminent exhaust. The PUC is reluctant to give out any numbers for fear that it would "hasten the exhaust" of the state's inventory.²⁵ Yet, the New Hampshire has ample numbering resources in area code 603.²⁶ In its comments, the PUC admits that area code 603 is not in jeopardy.²⁷ Since Level 3 filed its initial Emergency Petition, the most recent data concerning numbering resources has been released demonstrating that New Hampshire is nowhere near needing to take the extraordinary measures it has taken: 3.2 million numbers remain available in area code 603.²⁸ Level 3 is seeking but a small fraction of them.²⁹ No exhaust is projected before the first quarter of 2011, and that projected exhaust date has been continually moved further out year after year.³⁰

²⁴ 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 ¶ 9 (1999) ("*New Hampshire Delegation Order*") (emphasis added).

²⁵ PUC Comments at 11.

²⁶ See Emergency Petition at 10 and n.18.

²⁷ See PUC Comments at 11.

²⁸ See NRUF Report at Table 4.

²⁹ See Emergency Petition at 3 and Exhibit 1 (Level 3 is seeking less than ****BEGIN CONFIDENTIAL**** [REDACTED] ****END CONFIDENTIAL**** in rate centers across New Hampshire.).

³⁰ See Emergency Petition at 10. See also 2008-1 NRUF and NPA Exhaust Analysis (available at http://www.nanpa.com/pdf/NRUF/2008_1_NPA_Exhaust_Projections.pdf).

Telephone numbers are a “nationwide NANP resource,”³¹ not a “New Hampshire resource,” as the PUC seems to believe.³² The FCC has emphasized the importance of national rules “to ensure efficient and consistent use of . . . numbering resources on a nationwide basis.”³³ The public interest at stake in administering numbering policy is not whether “the 603 area code is used for the citizens of New Hampshire”³⁴ but whether consumers benefit from the “competition envisioned by the Telecommunications Act of 1996.”³⁵

C. Level 3 Is Authorized to Provide Service in the Rate Centers for Which it Is Seeking Growth Codes.

Commission rules require that applicants for growth codes be “authorized to provide service in the area for which the numbering resources are being requested.”³⁶ Level 3 made a prima facie showing that it meets this and other criteria for growth codes. It has been certified as a LEC in all of the areas for which it seeks codes since 1998.³⁷ Level 3 received its initial allotment of telephone numbers based on the same certification. That certification has not changed. The PUC has never revoked or suspended Level 3’s certificate, yet it has proffered a lack of certification to the Pooling Administrator each time Level 3 requests growth codes.

³¹ See *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, 7580 ¶ 7 (2000); see also Emergency Petition at 13-14.

³² PUC Comments at 11.

³³ *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8371 ¶ 37 (1996).

³⁴ PUC Comments at 11.

³⁵ *New Hampshire Delegation Order* ¶ 9.

³⁶ 47 C.F.R. § 52.15(g)(2)(i).

³⁷ See Emergency Petition at Exhibit 7 (Petition for Authority to Provide Local Telecommunications Services, Order *Nisi* Granting Authorization, Order No. 23,011 (Sept. 2, 1998)).

The PA, in turn, must “look to the NH PUC to advise whether a carrier is authorized under New Hampshire law to provide service in the rate center for which each request for numbering resources was submitted.”³⁸ The PA can only guess what reasonable explanations might exist to justify the New Hampshire Commission’s advice that carriers like Level 3 are not certified: perhaps the certification is “smaller than the whole state” and a carrier is requesting growth codes outside of its certified area; perhaps the certification is “contingent upon the subsequent filing of tariffs or other subsequent actions”; or perhaps the “certification is not valid in a given rate center.”³⁹ It is all the PA can do to make its best guess, but none of these possible reasons is true. While Level 3 does not have statewide certification, it *does* have certification in the entire former Bell Atlantic region, and is not seeking codes outside of the region encompassed by its certificate. Level 3’s certification is not contingent on any subsequent action that Level 3 is aware of; the PUC has not placed any conditions on Level 3’s certificate. Level 3’s certificate remains valid in all of the rate centers for which it was issued in 1998, and, again, that certificate was a satisfactory basis for its initial allocation of telephone numbers in the state.

Level 3 is not alone in being denied numbers because the PUC advised the PA that its certification is not valid. The PA stated that of 893 requests for thousand blocks, the PA has denied 355 requests from 20 different companies “because the NH PUC staff advised that the carrier was not certified in that rate center.”⁴⁰ The PA has no choice but

³⁸ See PA Comments at 4.

³⁹ See *id.* at 4-6.

⁴⁰ See *id.* at 5.

to accept the state commission's direction on whether a carrier is certified.⁴¹ The process, therefore, does not allow for any recourse on the part of the carrier; Level 3 must raise its dispute with the New Hampshire Commission itself, the very entity that provided the false rationale in the first place.

To make matters worse, that entity has employed a process with respect to Level 3 and apparently many other carriers seeking numbers in New Hampshire that is not transparent by any means. In its comments, the PUC states that Level 3 should not get numbers because of a "lack of proof that it provides basic local exchange service in New Hampshire as certified, and due to missing, incomplete and incorrect state-required documents, as well as questionable NRUF submissions."⁴² Yet it fails to provide any specific examples of information that Level 3 has not provided that would help it determine whether Level 3 is exhausting its supply of numbers.

Level 3 sees no end in sight to the canned answer that the PUC transmits to the PA – "not certified." It has no other recourse to dispute the factual accuracy and legality of the New Hampshire Commission's actions other than to petition this Commission for relief.

II. The New Hampshire Commission Is Acting in Contravention of its Delegated Authority and National Numbering Policy.

When the FCC delegated limited authority to New Hampshire with respect to numbering administration, it did not grant carte blanche authority. The state commission was admonished to

ensure that numbers are made available on an equitable basis; that numbering resources are made available on an efficient and timely basis; that *whatever*

⁴¹ *See id.* at 4.

⁴² PUC Comments at 1.

*policies the New Hampshire PUC institutes with regard to numbering administration not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and that the New Hampshire Commission not unduly favor one telecommunications technology over another.*⁴³

In delegating this limited authority to the PUC, the Commission further insisted:

*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.*⁴⁴

The PUC cites only the affirmative parts of its delegation, and not any of these conditions and limitations also placed by the FCC. But the PUC cannot cherry-pick the FCC's delegation of authority – it must take the responsibilities with the powers. The PUC is discriminating in number assignment and denying customers their choice of preferred carrier. The PUC has erected a barrier to entry to competitors like Level 3 who provide service to ESPs, ISPs and VoIP providers by denying them access to telephone numbers, which are essential to the services that these companies offer. By hoarding numbers in area code 603 and denying additional codes to Level 3, the PUC is forcing Level 3 ****BEGIN CONFIDENTIAL**** [REDACTED] ****END CONFIDENTIAL**** to customers who would prefer Level 3 as their service provider. In the meantime, the PUC is spinning its wheels investigating a question outside the scope of its delegation and which the FCC has already answered in the affirmative – whether “CLECs, such as

⁴³ *New Hampshire Delegation Order* ¶ 8 (emphasis added).

⁴⁴ *Id.* ¶ 9 (emphasis added).

Level 3, [are entitled] to receive numbering resources for providers of non-traditional telephone-like service.”⁴⁵

The PUC thus cannot use its delegated authorities to shield its unlawful acts. Under Section 253 of the Act, the FCC is required to preempt the enforcement of a state legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Before this Commission, the PUC has offered no plausible non-discriminatory reason for denying telephone numbers to certified local exchange carriers serving information service providers, including dial-up ISPs and interconnected VoIP providers.

⁴⁵ Emergency Petition at Exhibit 8; *see also id.* at 18-23.

Conclusion

The New Hampshire Commission in its comments has only clarified that it is acting improperly by giving false information to the PA to discriminatorily shut down Level 3's expansion in the State of New Hampshire. The FCC must preempt the PUC's actions and direct the PA to release growth codes that Level 3 has validly requested in various rate centers so that Level 3 can once again offer its services to customers in New Hampshire.

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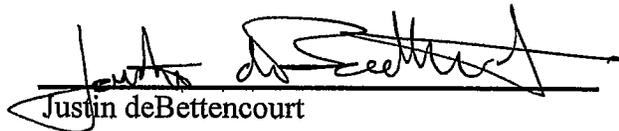
Certificate of Service

I HEREBY CERTIFY that on this 10th day of September, 2008, a true and correct copy of the foregoing Reply Comments of Level 3 Communications, LLC, in the Matter of Emergency Petition of Level 3 Communications, LLC, for the Assignment of Additional Telephone Numbers in Area Code 603, and for the Preemption of the Actions of the New Hampshire Public Utilities Commission Pursuant to Section 253 of the Communications Act of 1934 was served by overnight delivery service on the following:

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