Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

High-Cost Universal Service Support	)	WC Docket No. 05-537
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Implementation of Local Competition Provisions in the Telecommunication Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Carrier Compensation Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-bound traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS LLC ON REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

I. SUMMARY

Level 3 Communications LLC offers these Reply Comments in response to the Further Notice of Proposed Rulemaking released by the Federal Communications Commission ("Commission") on November 5, 2008.[1] In this pleading, Level 3 will focus on issues associated with proposed changes with Universal Service Reform.

[1] *High-Cost Universal Services Support: Federal State Joint Board on Universal Service, Lifeline and LInkUp: Universal Service Contribution Methodology; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Developing an Intercarrier Compensation Regime;*

II. UNIVERSAL SERVICE CONTRIBUTION REFORM

Level 3 proposes the Commission adopt a numbers based contribution methodology through which all residential and business numbers would be subject to contribution at a unified rate.[2] Introducing a hybrid numbers and connections based contribution methodology or one based solely on connections will introduce greater uncertainty, increasing the likelihood that some providers will take advantage of creative classifications to avoid contributing to USF in "questionable" cases.

A. The Commission Should Correct Several Problems with its Numbers-Based Proposals.

If the Commission adopts a numbers based contribution structure, it must address three issues to ensure proper implementation – (1) IP addresses should not be subject to any form of numbers-based contribution as this is not practical to implement; (2) change reporting requirements to eliminate double counting; and (3) USF collection and remittance obligations should be placed squarely on the retail provider and not wholesale providers.

1. IP Addresses Should Not be Considered Assessable Numbers

The FNRPM states that a functional equivalent identifier is not "intended to capture routing information used for routing of Internet traffic, unless such identifiers are used in place of a NANP number to provide the ability to make or receive calls on the

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Intercarrier Compensation for ISP Bound Traffic; IP Enabled Services; Numbering Resources Optimization Order on Remand and Report and Order and Further Notice of Proposed Rulemaking CC Dockets No. 96-45, 96-98, 99-68, 01-92, and 99-200, WC Dockets No. 05-337, 03-109, 06-122, 04-36, FCC 08-262 (rel. Nov. 5, 2008)("FNPRM").

[2] If the Commission determines that other services that do not utilize telephone numbers should also be required to contribute to universal service, the Commission can initiate a further rulemaking to consider an appropriate contribution process for these services. ,

PSTN."[3] Thus, it appears that the functional equivalent identifier is not intended to include IP addresses, except in those circumstances when an IP address is used to place or receive calls on the PSTN.[4] The Commission should not include IP addresses as Assessable Numbers for contribution purposes for several reasons.

In most cases, it would be difficult, if not impossible, for providers to identify those IP addresses that "are used in place of a North American Numbering Plan number" versus those IP addresses that are used for routing Internet traffic. The reason for the difficulty is that calls can originate from a computer anywhere in the world without an originating telephone number. All that is needed is a terminating telephone number. In those instances, it would be impossible to assess those IP addresses. First, IP addresses are not static. Dynamic Host Configuration Protocol ("DHCP") is a protocol used by networked devices (clients) to obtain the parameters necessary for operation in an IP network. This protocol reduces system administration workload, allowing devices to be added to the network with little or no manual configuration. When a DHCP-configured client (be it a computer or any other network-aware device) connects to a network, the DHCP client sends a query requesting necessary information from a DHCP server. The DHCP server manages a pool of IP addresses and information about client configuration. Upon receipt of a valid request the server will assign the computer an IP address, a lease (the length of time for which the allocation is valid), and other IP configuration parameters, such as the subnet mask and the default gateway. So it is likely that the person originating the call from their computer will not have the same IP address for each

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[3] FNPRM, App. A, at fn. 288.

[4] In fact, the record cite included in the FNPRM specifically refers to the use of an "IP address or other identifier" to provide voice services as the basis for a functional equivalency test. FNPRM, App. A, fn 315.

separate call or even for each application that is simultaneously run..

Even if a Contributor could identify which IP addresses were used by a particular subscriber, the Contributor would not be able to determine which addresses were used for calls to/from the PSTN, which were used to transmit data and which were used to access the Internet. In fact, it is possible a subscriber could do all of these in a single session making identification of the IP address as an Assessable Number more difficult.

If, despite these issues, the Commission decides to include IP addresses in Assessable Numbers,[5] the Commission must clarify the functional equivalency test to eliminate ambiguity as to when an IP address is an Assessable Number or avoid double counting. In many cases a customer who uses an IP based service will receive a telephone number from their service provider which is used as a mediation device to route calls to the assigned IP address. Level 3 believes that in such cases where an IP address is associated with a telephone number, the USF assessment should be applied on the telephone number alone to avoid penalizing users of newer technologies with two assessments whereas consumers relying on the PSTN will only pay for a single number. While Level 3 understands the Commission's desire to capture emerging IP based voice services in order to expand the contribution base, we believe that such calls represent less than one percent of all calls. The Commission should defer acting on such IP originated calls and take the time to study this issue further and develop a more practical and implementable way to assess USF on this type of traffic.

[5] Level 3 suggests the Commission defer this issue to a further rulemaking where it can consider the treatment of IP addresses together with other non-numbers based services.

2. The Proposed Reporting Requirements May Double Count Assessable Numbers

The reporting requirements will result in double counting and contribution for Assessable Numbers that are ported, installed or disconnected during the month. The proposals require providers to "report as an Assessable Number any such number that is in use by an end user during any point in the relevant month."[6] Thus, if one Contributor ports an Assessable Number to another Contributor during the month or installs or disconnects service in a particular month, both Contributors will be required to report the Assessable Number and to remit the applicable per month contribution. In fact, because reporting and remittance will be on a historic basis, Contributors will, in most cases, already have billed the customer for the monthly charge. Even if it were possible for Contributors to adjust their monthly Assessable Numbers to address numbers that ported in or out of their inventory, it would be difficult to implement the necessary billing system changes to prevent a USF contribution on the Assessable Number in the month it was ported out.

A number of easy-to-implement solutions exist. For instance, the Commission could require that if an Assessable Number is ported to another Contributor, only the porting-out Contributor report and contribute in that month as is done today with high cost line counts. The Contributor to whom the customer ported its services would report the Assessable Number in the next month. Alternatively, the Commission could require each Contributor report Assessable Numbers as of the end of the month. Customers that port away from one Contributor will not be counted in that Contributor's monthly Assessable Number total, but they will be counted in the total for the Contributor to

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[6] FNPRM, App. A, at ¶ 148; FNPRM, App. B, at ¶ 96; FNPRM, App. C, at ¶ 143.

whom they port. Either option would ensure proper reporting and contribution for the Assessable Number for each month and would not result in a double contribution.

3. Wholesale Providers Should Not be Held Liable for Their Customers' USF Contributions

The Commission's proposals place the contribution obligation on the retail provider in the first instance;[7] however, Proposal B would make a wholesale provider responsible for USF contributions if its customer is deemed to be an "end user."[8] The Commission should not shift the contribution obligation to wholesale providers and should clarify the definition of an "end user" so it is clear which entities must contribute.

Shifting the contribution obligation to wholesale providers is inconsistent with the rationale offered for imposing the obligation on the retail provider. As the Commission noted, the entity with the retail relationship to the end user "will have the most accurate and up-to-date information about how may Assessable Numbers it currently has assigned to end users," is in "the best position to distinguish residential users from business users," and is "benefiting from a supported PSTN."[9] The Commission has not explained why it is reasonable to shift the contribution obligation to a wholesale provider.

In addition, it is unclear what technologies or service providers the Commission perceives may be outside its authority to impose contribution obligations. The Commission has authority to require telecommunications providers that provide interstate services to contribute to the universal service.[10] The Commission has also exercised

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[7] FNPRM, App. A, at ¶ 117; FNRPM, App. B, at ¶ 163; FNPRM, App. C, at ¶ 113.

[8] FNPRM, App. B, at ¶ 163.

[9] FNPRM, App. A, at ¶ 117; FNPRM, App. B, at ¶ 64); FNPRM, App. C, at ¶ 113.

[10] 47 U.S.C. § 254(d).

authority over other providers of telecommunications services (not necessarily telecommunications services) to require private carriers, payphone aggregators, and interconnected VoIP providers to contribute to universal service.[11] Finally, in each of the proposals, the Commission notes "[p]roviders such as VoIP providers who are not "interconnected VoIP" providers, electronic facsimile service providers, unified messaging service providers, Internet-based TRS providers, one-way and two-way paging service providers, and telematics providers" are not "telecommunications carriers" yet the Commission has authority to require them to contribute.[12] Even if the Commission identifies other entities it has not yet required to contribute to universal service, the FNPRM establishes sufficient grounds to exercise authority over those entities if they rely on assignment of Assessable Numbers to an end user and take advantage of PSTN connectivity directly or indirectly.[13]

B. The Commission Should Not Adopt a Connections Based Methodology

The proposed connections-based methodology suffers from three fundamental flaws. First, it employs some poorly defined terms and concepts that have caused conflict under the existing revenue-based regime. Second, it introduces new definitions that are subject to different interpretation by different providers offering the same, competing service to customers or even offering components of a single service to the same customer. Third, it would create significant billing and implementation issues for the industry.

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[11] *See* FNPRM, App. A, at ¶ 100 (and authorities cited therein).

[12] FNPRM, App. A, at ¶ 103; FNRPM, App. B, at ¶ 50; FNPRM, App. C, at ¶ 99.

[13] FNPRM, App. A. at ¶ 103; FNPRM, App. B, at ¶ 50; FNRPM, App. C, at ¶ 99.

The pitfalls of the connection proposal in Proposal B start with the definition of an Assessable Connection.[14] This definition includes terms "telecommunications" and "telecommunications service" -- the interpretation and application of which the industry has disagreed about for years. The same arguments (and differing interpretation) that occur today over whether specific revenues are "telecommunications" revenues or information services revenues or whether Internet access service includes telecommunications components and what those components are, will apply to the definition of an Assessable Connection. The physical location requirement is also susceptible to differing interpretations that could lead to disputes or manipulation of the system. If a business end user is collocated in a carrier's central office and cross connected to the carrier's network, the collocation could be considered the end user's "premises" and the cross-connect an Assessable Connection. On the other hand, because the end user's physical location is not a facility it owns, this arrangement could be interpreted to be outside the definition of an Assessable Connection and not subject to contribution.

Moreover, assuming everyone can agree on the definition, its application to specific services creates uncertainty and can produce multiple, differing results. This problem can be demonstrated by comparing two different purchases of private line service by a business end user. In the first scenario, the customer purchases three private line segments from three different providers and connects all three circuits as one long-haul service. In the second, the customer purchases a single long-haul service from one

[14] The FNPRM defines an Assessable Connection as "an interstate telecommunications service or interstate service with a telecommunications component that connects a business end-user's physical location (e.g., premises) on a dedicated basis to the contributor's network or the PSTN." FNPRM, App. B, at ¶ 81.

provider. One interpretation of the first scenario is that each of the three segments is an Assessable Connection and therefore, each of the providers must remit the applicable charge for its segment. However, another interpretation is that the combined circuit is subject to three (or even six) Assessable Connection charges since each end of the segments provided by three providers would be a connection on a dedicated basis. It is reasonable to presume the second scenario involves one Assessable Connection; however, because both ends of the Private Line meet the definition of an Assessable Connection, one could argue the single service is two Assessable Connections subject to two charges. The proposal does not address these possible scenarios.

Even a single service provided by a solo provider lends itself to multiple interpretations. Dedicated Internet access service is a prime example. This service includes at least one Internet port, a transport component and a bandwidth or capacity component. Any of these components could be considered an Assessable Connection and applying the definition one way versus another could give a provider a competitive advantage, even if the contribution rate is not significant. A provider that interprets the definition of Assessable Connection only to include the Internet port would pay a single Assessable Connection charge per month, while a provider that interpreted the definition to include the port(s), the capacity and the transport would pay three (or more) such charges per month. Numerous other services consist of multiple components which could, depending upon the circumstances or the carrier's risk tolerance, be interpreted to fall within or outside an Assessable Connection. The proposal does not provide any guidance to help avoid or resolve these inconsistencies.

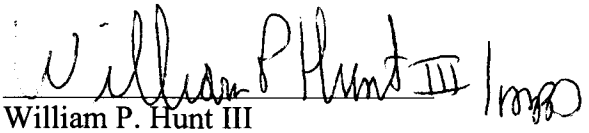
The proposal does not address the potential burden of the charge should capacity prices continue their steep downward trend. The Commission does not state, nor is it clear from the record, whether the proposed contribution rates are minimal vis-à-vis the cost of the services that will be subject to the fees. Even if they are, the price of capacity and capacity-related services has been steadily declining and will do so for the foreseeable future. As prices decline, the contribution rates will become a larger portion of the price and, as has happened in other industries such as the submarine cable industry and the Commission's International Bearer Circuit fees, the USF contribution could exceed the market price of the service. The potential for abuse in this situation only increases in a competitive market where the price of a service often makes or breaks a deal because carriers will have greater incentive to avoid defining a service, or service component, as an Assessable Connection. The Commission's proposal should take into consideration adjustments warranted by the changing price of the services involved.

III. CONCLUSION

While appreciating the difficulties involved with crafting any comprehensive reform plan for universal service, Level 3 urges the Commission to refrain from acting on the proposals in the FNPRM. While offering broad policy goals, the FNPRM does not provide the rules or specificity necessary to evaluate the impact of the proposals. Level 3 believes that unless regulators and the industry understand how the piece parts of the plan interrelate, the end result will do more harm than good.

It would not be a sign of failure if the Commission opted to defer action. The unique issues presented by universal service reform require careful reasoned consideration. There is plenty of time for that.

Respectfully submitted,
Level 3 Communications, LLC



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