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August 28, 2008

FILED/ACCEPTED
AUG 28 2008
Federal Communications Commission
Office of the Secretary

EX PARTE

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

Re: Level 3's Emergency Petition for additional numbers in area code 603, and the associated request for a Special Temporary Authorization to obtain additional numbers, WC Docket No. 08-154

Dear Ms. Dortch:

On August 27th, 2008, on behalf of Level 3 Communications LLC ("Level 3"), Greg Rogers of Level 3 and I met with Dana Shaffer, Bureau Chief of Wireline Competition Bureau, Ann Stevens, Deputy Chief Competition Policy Division, and Melissa Kirkel and Marilyn Jones of the Competition Policy Division. Our presentations are summarized in the attached documents, which were distributed to the attendees.

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Ms. Marlene H. Dortch
August 28, 2008
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Sincerely,



John T. Nakahata

cc: Dana Shaffer, Ann Stevens, Melissa Kirkel, Marilyn Jones

01/06/2009 11:09 FAX 2021001073

**The Commission Should Grant Level 3's STA
for Assignment of Additional Numbers in Area Code 603**

Level 3 is running out of numbers and is suffering irreparable harm.

- Level 3 has tried for 3 years to obtain numbers through the ordinary processes, including filing an appeal with the New Hampshire PUC, which has not acted.
- The number shortage is real. ****BEGIN CONFIDENTIAL**** [REDACTED] ****END CONFIDENTIAL****
- Customers are being denied their choice of telecommunications carrier.

Granting STA harms no one and will not cause number exhaust.

- **3.2 million numbers are available in area code 603.** No exhaust projected before first quarter 2011 (and that projected exhaust date has been continually moving further out.)
- Level 3 bears all the risk. STA request is without prejudice to the merits, and subject to revocation or modification at any time.

Level 3 has made prima facie showing that it meets the criteria for growth codes.

- Certified as a LEC since 1998 in the areas in which it seeks codes. (Undisputed)
- Over 75% utilization in each rate center where growth codes are sought; over 90% in the rate centers initially subject to the STA request.
- Less than six months to exhaust (3 months for STA).

New Hampshire PUC provides no legitimate grounds for denying growth codes (all post-hoc rationalizations).

- NH PUC now admits Level 3 is certified as a LEC and does not dispute that Level 3 is certified in the rate centers where it seeks codes.
- NH PUC erroneously argues that information service providers, including Internet service providers and interconnected VoIP providers, are not "end users." The Commission has always treated information service providers as end users, expressly permitting them to purchase access to the PSTN through local exchange services. *MTS and WATS Market Structure*, 93 FCC 2d 241 (1983).
- NH PUC 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. Commission has held these are local exchange services. *See GCI v. ACS*, 16 FCC Rcd 2834 (2001) (holding that service to ISPs is "local exchange service" and upholding separation of costs associated with ISP-bound calls to the intrastate jurisdiction). Even if interconnected VoIP providers are classified as telecommunications carriers, the interconnection services provided would still be local exchange services.
- NH PUC's argument that LECs cannot use numbers to provide interconnection services to interconnected VoIP providers cannot be reconciled with the FCC's number portability rules.
- Level 3 has and is using the facilities it requires to provide its local exchange services in each rate center – including 911 trunks for delivering calls to PSAPs.
- NH PUC fails to provide any specific examples of information that Level 3 failed to provide that would help it determine whether Level 3 is exhausting its supply of numbers. The NH PUC's standards are wholly opaque.
- NH PUC's desire to prevent eventual exhaust is not sufficient to deny growth codes.

Excerpts from *New Hampshire Numbering Delegation Order*
15 FCC Rcd 1252 (1999)

"We herein conditionally grant the New Hampshire Commission the 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." (§ 1)

"[W]hile we grant authority below to the New Hampshire Commission to engage in various matters related to administration of the NANP in New Hampshire, we require the New Hampshire Commission to abide by the same general requirements that the Commission has imposed on the numbering administrator. Thus, the New Hampshire Commission, to the extent it acts under the authority delegated herein, *must ensure that numbers are made available on an equitable basis; that numbering resources are made available on an efficient and timely basis; that whatever policies the New Hampshire Commission 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.*" (§ 8)(emphasis added)

"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 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.*" (§ 9)(emphasis added).

"Subject to the conditions set forth below, we also delegate authority to the New Hampshire Commission to require NXX code applicants to demonstrate that they have met certain fill rates in previously assigned NXX codes prior to obtaining additional numbering resources for use in a rate center, even if the NPA is not in jeopardy. . . . Based on Commission precedent, we delegate authority to the New Hampshire Commission to establish fill rates, subject to the same conditions the Commission imposed in prior orders." (§ 13)

"Although we do not wish to dictate the parameters of the fill-rate regime, we urge the New Hampshire Commission to allow for some flexibility in establishing fill rates and applying them to carriers. *Our primary concern is that fill rates not be applied in such a manner as to deprive customers of their choice of carriers from whom to purchase service upon request.*" (§ 14)(emphasis added)

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