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April 30, 2009

Ex Parte

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

Re: *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; Request for Special Temporary Authorization of Thousand-Blocks in Area Code 603, WC Docket No. 08-154*

Dear Ms. Dortch:

On April 29, 2009, Greg Rogers of Level 3 Communications, LLC (Level 3) and I met with Jennifer Schneider, Legal Adviser to Commissioner Copps, Mark Stone, Legal Adviser to Commissioner Adelstein, Nicholas Alexander, Legal Adviser to Commissioner McDowell, Ann Stevens, Deputy Division Chief, Wireline Competition Bureau, Competition Policy Division, Marilyn Jones and Melissa Kirkel, both of the Competition Policy Division staff. We provided the attached document as well our ex parte letter dated November 12, 2008, which is already filed in the record. These documents and this letter summarize the points made during our discussion.

It is critical that the Bureau grant Level 3's request for an STA in the above-captioned proceeding. As the Commission is aware, the New Hampshire Public Utilities Commission (NHPUC) is blocking any assignment of growth codes to Level 3, and has been doing so for the past several years, alleging, falsely, that Level 3 is not certificated in New Hampshire. Level 3 in fact is certificated to provide service in all of the former Bell Atlantic portions of New Hampshire, which is where Level 3 has sought additional growth codes.

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The NHPUC's unlawful manipulation of the growth codes process to block Level 3 from obtaining any additional numbers in any rate center in New Hampshire is blocking Level 3 from providing new service to customers in areas where Level 3 has exhausted its supply of numbers. The NHPUC is violating the Commission's directive that "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."¹ It is also violating Section 253(a) of the Communications Act.

Level 3 has already acknowledged and committed that an STA may be revoked or modified at any time and would be without prejudice to the ultimate merits of the proceeding. In addition, Level 3 has demonstrated feasible means to reclaim numbers granted under the STA should the Commission ultimately determine that Level 3 was not entitled to additional growth codes.²

The purpose of the STA is to allow Level 3 to serve consumers while the Commission adjudicates the merits of the underlying petition. Grant of the STA will cause no harm. Level 3 is assuming all of the risk in the event that it does not prevail. New Hampshire is in no danger of exhausting telephone numbers during the pendency of the petition; currently 3.2 million numbers are available in New Hampshire, and NANPA does not forecast exhaust of the 603 area code until the fourth quarter of 2011.³

Sincerely,



John T. Nakahata

Counsel to Level 3 Communications, LLC

¹ *New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Organization Measures in the 603 Area Code*, Order, 15 FCC Rcd 1252, 1255, ¶ 9 (1999).

² Ex Parte Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from John T. Nakahata, Counsel to Level 3 Communications, WC Docket No. 08-154 (dated Nov. 12, 2008).

³ See NRUF and NPA Exhaust Analysis at 4 (April 2009). In April 2008, NANPA had estimated exhaust in the first quarter of 2011, so over the course of the past year, exhaustion concerns have further diminished by nine months.

**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 fourth 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.