

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**OPPOSITION OF LEVEL 3 COMMUNICATIONS LLC TO  
PETITIONS FOR RECONSIDERATION BY THE NATIONAL EXCHANGE CARRIER  
ASSOCIATION, ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES AND WESTERN  
TELECOMMUNICATIONS ALLIANCE, FRONTIER COMMUNICATIONS  
CORPORATION AND WINDSTREAM COMMUNICATIONS, INC., AND THE  
UNITED STATES TELECOM ASSOCIATION**

Level 3 Communications, LLC (“Level 3”), hereby opposes the petitions for reconsideration filed by the National Exchange Carrier Association (“NECA”), Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and Western Telecommunications Alliance (“WTA”) (collectively “NECA et al.”), Frontier Communications Corp. and Windstream Communications, Inc. (“Frontier/Windstream”) and the United States Telecom Association (“USTA”) to the extent they variously address call signaling rules for originating non-interconnected VoIP traffic and the applicability of 47 C.F.R. § 51.913

to originating access for traffic that originates in TDM but that terminates in IP format.<sup>1</sup> The *CAF Order* correctly addressed both of these issues. The Commission should, however, grant Verizon’s Petition with respect to an exception to the call signaling requirements for technical feasibility and industry standards.

**I. THE COMMISSION SHOULD NOT REQUIRE NON-INTERCONNECTED VOIP PROVIDERS OR THEIR CARRIER PARTNERS TO PROVIDE CALLING PARTY NUMBER WHEN NO E.164 NUMBER IS ASSIGNED TO THE CALLING PARTY.**

The *CAF Order* and revised rule 47 C.F.R. § 64.1601 properly require telecommunications carriers and providers of interconnected VoIP services to transmit the calling party number, but did not extend that requirement to non-interconnected VoIP.<sup>2</sup> As the Commission recognized in the *Further Notice of Proposed Rulemaking*, it lacked the record to do so.<sup>3</sup> NECA et al nonetheless ask the Commission to “clarify” or “extend” the call signaling requirements to non-interconnected VoIP.<sup>4</sup> The Commission should do neither.

The rules need no clarification regarding non-interconnected VoIP: 47 C.F.R. § 64.1601(a)(1) expressly covers only “telecommunications carriers and providers of interconnected Voice over Internet Protocol (VoIP) services.” Moreover, proponents of extending such a requirement to non-interconnected VoIP never addressed the objections, raised

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<sup>1</sup> Level 3 neither supports nor opposes the remaining petitions for reconsideration at this time, but may file additional comments with respect to those proceedings.

<sup>2</sup> Level 3 agrees with Verizon, however, that the Commission should have adopted a technical feasibility and industry standards exception to that requirement. *See* Section II, below.

<sup>3</sup> *See Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, ¶1400 (rel. Nov. 18, 2011)(“*CAF FNPRM*”).

<sup>4</sup> *See* NECA et al. Petition for Reconsideration, WC Dockets 10-90 et al. at 36 (filed Dec. 29, 2011) (“NECA et al. Petition”).

by Level 3 and others,<sup>5</sup> that these services generally lack an assigned calling party number, and thus there is no number to be transmitted. To the extent proponents are advocating that a calling party number must be assigned, they never addressed the impact of such a requirement on number exhaust – a question on which the FCC has sought comment in the *FNPRM*. Moreover, there are no guidelines as to what E.164 number (including a North American Numbering Plan number) would be assigned to these highly nomadic services that can originate traffic from anywhere in the world.

It simply makes no sense to go through a process of assigning geographic numbers to non-interconnected VoIP – if that is even possible – for intercarrier compensation charges that are being subject to rapid rate level reductions and that would likely harmonize interstate and intrastate switched access termination rates before such number assignment could be fully implemented. The Commission should thus deny the petitions for reconsideration of NECA et al., Frontier/Windstream, and USTA with respect to this issue.

## **II. THE COMMISSION SHOULD NOT IMPOSE FINANCIAL PENALTIES ON INTERMEDIATE CARRIERS WITH RESPECT TO PHANTOM TRAFFIC.**

In the *CAF Order*, the Commission declined to adopt proposals to permit an intermediate carrier to be assessed the highest rate for traffic that arrives without identifying calling party number, or to impose treble damages. As the Commission found, “imposing upstream liability

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<sup>5</sup> See Section XV Comments of Level 3 Communications, WC Docket 10-90 et al., at 10-11 (filed Apr. 1, 2011); Section XV Reply Comments of Level 3 Communications, LLC at 9 (filed Apr. 18, 2011) (“Level 3 Section XV Reply Comments”); Comments of Level 3 Communications, LLC on the Universal Service-Intercarrier Compensation August 3, 2011 Public Notice, at 26 (filed Aug. 24, 2011).

on all carriers in a call path would be likely to generate confusion and result in the unintended consequence of yielding additional phantom traffic disputes.”<sup>6</sup>

NECA et al. nonetheless ask that the Commission reconsider and adopt proposals for a penalty rate for traffic that arrives without calling party number.<sup>7</sup> These proposals would impose penalties on intermediate carriers that fully passed on the information they received, and would make them the guarantors of payment of those penalties even though they themselves may lack contractual privity with the generator of the phantom traffic. Level 3 generally passes on the calling party number when it receives it (with exceptions when not technically feasible or industry standards dictate another result), but as an intermediate carrier Level 3 cannot pass on a calling party number that it does not receive. As discussed above, there may be legitimate reasons why such traffic lacks a calling party number, but the intermediate carrier – who may be the third or fourth (or more) carrier in the chain will lack the information necessary to such facts. All of this would serve to discourage indirect interconnection – but is also not economically feasible or efficient to interconnect directly with every carrier. NECA et al.’s proposal is not as simple in practice as they suggest and carries bad public policy consequences, and therefore should be rejected.

### **III. THE COMMISSION SHOULD GRANT VERIZON’S PETITION WITH RESPECT TO A TECHNICAL FEASIBILITY AND INDUSTRY STANDARDS EXCEPTION TO THE CALL SIGNALING RULES.**

Level 3 agrees with Verizon that the Commission should reconsider its omission of a technical feasibility and industry standards exception to the call signaling rules.<sup>8</sup> There was

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<sup>6</sup> *CAF NPRM* ¶ 732.

<sup>7</sup> *See* NECA et al. Petition at 37-38.

<sup>8</sup> *See* Verizon Petition for Reconsideration, WC Docket Nos. 10-90 et al. at 8-9 (filed Dec. 29, 2011)(“Verizon Petition”).

widespread support in the record for such an exception.<sup>9</sup> The consequences of not adopting such an exception will be a flood of waivers – some of which have already been filed. While Level 3 intends to file its own waiver request, Level 3 agrees with Verizon that “as a practical matter it is not even possible for Verizon and other carriers to analyze the myriad call flows and determine where a waiver of the rules may be necessary – and on what grounds – by the effective date of the new phantom traffic rules” (which has already passed).<sup>10</sup> Indeed, it will be difficult comprehensively to determine all situations in which compliance is impracticable, and the rule as it stands thus creates an unwarranted compliance trap under which carriers will be in violation of a rule with which they cannot comply until they can identify the issue and obtain the necessary waiver. Level 3 agrees with Verizon that this is a backwards way of proceeding, rather than creating a defense that can then be tested in any enforcement proceeding.

#### **IV. THE COMMISSION SHOULD DENY PETITIONS SEEKING TO EXCLUDE ORIGINATING ACCESS FROM THE INTERIM TOLL VOIP COMPENSATION REGIME.**

NECA et al., Frontier/Windstream, and USTA all seek either “clarification” or reconsideration of the inclusion of originating access from the interim toll VoIP compensation regime.<sup>11</sup> The result they seek is unbalanced: to assess full legacy intrastate access rates on traffic that terminates to VoIP, but to wholly deny originating access for traffic that originates in IP format. Neither clarification nor reconsideration is necessary or appropriate.

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<sup>9</sup> See Verizon Petition at n. 28; Level 3 Section XV Reply Comments at 9-10.

<sup>10</sup> Verizon Petition at 12.

<sup>11</sup> See NECA et al. Petition at 34-35; Petition for Reconsideration of the US Telecom Association, WC Docket Nos. 10-90 et al. at 39 (filed Dec. 29, 2011); Petition for Reconsideration of Frontier Communications and Windstream Communications, WC Docket Nos. 10-90 et al. at 21-27 (filed Dec. 29, 2011)(“Frontier/Windstream Petition”).

Notwithstanding the proponents' attempts to manufacture ambiguity, the express rule adopted by the Commission is clear: the toll VoIP regime applies to traffic "exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format"<sup>12</sup> Neither the rule nor any provision of the *Order* distinguishes between "originating" or "terminating" VoIP-PSTN traffic. In fact, as USTA acknowledges, footnote 1976 expressly contemplated that the toll VoIP regime applied to originating access.<sup>13</sup> Frontier/Windstream, in arguing for a reinterpretation, cite only general provisions of the Order, rather than the specific discussion of the VoIP-PSTN section, and the ABC Plan Proposal, which, of course, is not part of the Order.<sup>14</sup>

Moreover, the Commission should not change its approach. The Commission has dealt with the issue of charges for all traffic within its definition of "originat[ing] and/or terminat[ing] in IP format," establishing an explicit regime for all such traffic for the first time.<sup>15</sup> The Commission should not reinject legal uncertainty into originating access for traffic that terminates in IP, or that originates in IP, as petitioners would do.

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<sup>12</sup> 47 C.F.R. § 51.913(a). Originating or terminating in IP format is defined as, "originat[ing] from and/or terminat[ing] to an end-user customer of a service that requires Internet protocol compatible customer premises equipment." *Id.*

<sup>13</sup> *CAF Order* ¶ 961 n. 1976 ("Although we consequently do not believe that a permanent regime for section 251(b)(5) traffic could include origination charges, on a transitional basis we allow the imposition of originating access charges in this context, subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM.")

<sup>14</sup> See Frontier/Windstream at 22-24.

<sup>15</sup> 47 C.F.R. § 51.913(a).

**V. CONCLUSION**

The Commission should grant Verizon's petition for reconsideration with respect to a technical feasibility and industry standards exception to the call signaling rules, but should deny requests to extend calling party number requirements to interconnected VoIP. The Commission should also decline to alter the clear scope of its toll VoIP intercarrier compensation regime.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, John T. Nakahata, hereby certify that on this 9th day of February 2012, I served a copy of the foregoing Opposition to Petitions for Reconsideration by first-class U.S. mail, postage prepaid, on the following parties:

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