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EX PARTE

June 28, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

On June 26, 2012, Michael Mooney, General Counsel, Regulatory Policy, Andrea Pierantozzi, Vice President, Voice Services, and the undersigned, of Level 3 Communications, LLC ("Level 3") met with Angela Kronenberg, Wireline Legal Advisor for Commissioner Mignon Clyburn, to discuss Level 3's concerns about the industry-wide uncertainty that would be created by a Commission decision to grant voice over Internet protocol ("VoIP") provider petitions ("Petitions") for limited waiver of Section 52.15(g)(2)(i),¹ of the Commission's rules to allow them to obtain numbering resources directly from the North American Numbering Plan Administrator ("NANPA"). Level 3 explained that it believes that granting interconnected VoIP providers access to numbers on a waiver basis is not in the public interest, and that the Commission should deny the

¹ 47 C.F.R. § 52.15(g)(2)(i).

Petitions. If the Commission determines to consider when and under what circumstances it is appropriate to permit VoIP providers direct access to numbering resources, it should seek additional comment and address this critical issue within the context of a comprehensive rulemaking proceeding.

As discussed in more detail below, Level stated that it does not believe that granting the petitioners' waivers has any relationship to promoting IP interconnection, has the potential to disrupt call routing and number portability, and ultimately, is discriminatory to carriers and other VoIP providers who do not obtain waivers.

Level 3 stressed that granting the Petitions has significant policy implications, with the potential to negatively impact IP interconnection for voice service, number exhaust, call routing, and number portability. Level 3 also argued that granting the Petitions on an ad hoc waiver basis is discriminatory to other industry players, in particular, to carriers such as Level 3 who have made significant investments in becoming certificated carriers. Finally, Level 3 addressed its concerns about the impact a Commission decision to grant VoIP providers access to number resources on a waiver basis would have upon the intercarrier compensation regime.

Level 3 stated that arguments in this proceeding made by Vonage, other VoIP providers and certain incumbent local exchange carriers ("ILECs") (which presently refuse IP Interconnection with Level 3) to the effect that granting these Petitions would somehow foster IP Interconnection are red herrings.² Level 3 believes that providing VoIP providers direct access to numbers would do nothing to foster, and would likely actually hinder IP Interconnection, particularly with the ILECs, which appear to have no intention of voluntarily interconnecting on an IP basis with competitive local exchange carriers ("CLECs") like Level 3. Level 3 already connects to ILECs on a time-division multiplexing ("TDM") basis, and pays them for hundreds of thousands of TDM access circuits monthly. This creates an enormous revenue stream for the ILECs and an equally large financial disincentive for the ILECs to IP Interconnect with CLECs, which would jeopardize that revenue. Furthermore, because of the presently uncertain regulatory

² See Letter from Robert W. Quinn, Jr, Senior Vice President, Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200; *Connect America Fund, et al*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208 (filed May 21, 2012); Letter from Ann D. Berkowitz, Director, Federal Regulatory Affairs, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208 (filed Jun. 8, 2012); see e.g., Comments of Vonage Holdings Corp., CC Docket No. 99-200 (filed Jan. 25, 2012).

environment, ILECs can point to that uncertainty to refuse to IP interconnect with CLECs like Level 3 today.³

Level 3 argued that if non-carriers get access to phone numbers (particularly before the Commission clarifies and solidifies its rules on IP Interconnection) the ILECs could view that as an opportunity to interconnect on an IP-basis with these non-carriers without any Commission and state oversight. This would do nothing to foster IP interconnection more ubiquitously, as should be the Commission's goal. Level 3 stated that IP interconnection, and all of the rules around it, should be dealt with holistically as part of the Commission's *FNPRM*, and that granting non-carriers access to phone numbers could pave the way for additional, regulatory uncertainty in the IP interconnection space.

Level 3 also addressed its concerns about number exhaust, and call routing issues. Respecting number exhaust, Level 3 noted that estimates have suggested that the cost of adding a digit to the current ten-digit dialing scheme would be between 50 and 150 *billion* dollars, and that this issue should not be taken lightly.⁴ Level 3 added its concerns about how local routing numbers will be correctly assigned to a VoIP provider so that calls can be routed to them, as opposed to their CLEC or CMRS numbering partner. Level 3 noted that this issue has not been sufficiently addressed by any petitioner in the current record.

Level 3 addressed the fact that the National Association of Regulatory Utility Commissioners ("NARUC") passed several resolutions on this topic, including one in February of 2012, stating that the relief requested by the petitioners in this proceeding is

³ The Commission is in the process of investigating how IP interconnection should be governed in an *FNPRM*. See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform—Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, and WT Docket No. 10-208, at ¶¶ 1335-1402 (rel. Nov. 18, 2011) ("*CAF Order*" and "*FNPRM*") (requesting further comment on IP-to-IP interconnection issues).

⁴ See *In the Matter of Resource Optimization*, FCC 99-122, CC Docket 99-200, May 27, 1999, n. 8. See also *In the Matter of Resource Optimization*, FCC 00-104, CC Docket 99-200, March 31, 2000, ¶ 6 ("The cost of expanding the current NANP is anticipated to be enormous, and could take as long as ten years to design and implement. These estimated costs are substantial, and would, we believe, significantly outweigh the cost of implementing all of the numbering resource optimization solutions adopted in this *Report and Order*.")

broad and should be handled in the context of a rulemaking proceeding.⁵ The February resolution also urged the Commission to assure that the rules apply to competitors in a nondiscriminatory manner and emphasized the importance of requiring all service providers to comply with numbering utilization and optimization requirements, as well as the obligation to comply with all industry guidelines and practices approved by the Commission and numbering authority delegated to the States.⁶

Level 3 also stressed that while number portability is a fundamental expectation of American businesses and consumers, there are currently no rules requiring one-way VoIP providers to port telephone numbers.⁷ Further, Level 3 added that while two-way interconnected VoIP providers have legal obligations to port numbers, those who have filed for waivers have not explained how they intend to comply with these rules if they are given access to numbers directly. The only guidance provided by the Commission in this regard deals with the obligations of VoIP providers and their numbering partners.⁸ Most non-carriers to Level 3's knowledge have no network, and insufficient number portability systems or processes (without the ability to coordinate those processes with those of carrier or commercial mobile radio service ("CMRS") numbering partners).

⁵ See Letter from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 *et al.* (filed June 12, 2012) at 1-2.

⁶ *Id.* at 2.

⁷ The Commission's recent *Public Notice* does not discern whether it intends to grant waivers only to two-way interconnected VoIP providers. Its language merely states that it seeks to "refresh the record on numerous petitions for limited waiver of section 52.15(g)(2)(i) of the Commission's rules to allow the requesting **Voice over Internet Protocol** [emphasis added] (VoIP) providers direct access to numbering resources from the North American Numbering Plan." *Wireline Competition Bureau Seeks to Refresh Record on Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources, Pleading Cycle Established*, Public Notice, CC Docket No. 99-200, DA 11-2074 (Dec. 27, 2011) ("*Public Notice*") at 1.

⁸ See *Telephone Number Requirements for IP-Enabled Services Providers et al.*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, WC Docket Nos. 07-243, 07-244 and 04-36, CC Docket Nos. 95-116 and 99-200, at ¶ 20 (rel. Nov. 8, 2007) ("*VoIP LNP Order*"). Level 3 also noted that while these obligations are legally independent, in reality, they *require* two-way interconnected VoIP providers to partner with a CMRS provider or a wireline carrier to obtain the NANPA numbers necessary to serve their customers, and that CLEC and CMRS VoIP provider numbering partners have relied upon the Commission's decision to foster a regulatory regime where "both an interconnected VoIP provider and its numbering partner must facilitate a customer's porting request to or from an interconnected VoIP provider." *Id.*

Level 3 reinforced, as also recognized by the National Telecommunications Cooperative Association (“NTCA”),⁹ that the Commission made clear in the *CAF Order* that VoIP providers cannot block calls, recognizing that one-way and interconnected VoIP providers have the capability to do so.¹⁰ Surprisingly, the VON coalition, which includes Vonage and AT&T, has appealed these call blocking rules as applied to VoIP providers, arguing that the Commission “failed to articulate a rational explanation grounded in record evidence in adopting the No Blocking obligation, rendering its action arbitrary, capricious and an abuse of discretion”¹¹ It is not difficult to articulate reasons why those providing telephone service should not be permitted to block phone calls, but as Level 3 pointed out, apparently, Vonage, and presumably other VoIP providers who have filed Petitions and are members of VON, want direct access to phone numbers *and* the right to block telephone calls. This is precisely the kind of inconsistency that can result from ad hoc decision-making.

Level 3 also addressed its concerns that a Commission decision to grant VoIP providers access to numbers is discriminatory to carriers, including CMRS providers, who have invested the necessary resources to become certificated service providers before the Commission and the states. This competitive advantage is only amplified by a Commission decision to grant access to numbers on a waiver basis, where it would be engaging in picking “winners” and “losers.” Level 3 noted that it spent millions of dollars to become a state certified carrier where it operates, and invests heavily on an annual basis, to maintain those certifications. Level 3 noted that it has also acquired a number of other carriers, most of which had substantial sunk and ongoing costs in their

⁹ See Letter from Michael R. Romano, Senior Vice President - Policy, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, 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 a 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; *Vonage Holdings Corp. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200 (filed May 31, 2012) at 2.

¹⁰ *CAF Order* at ¶ 974.

¹¹ See “Consumer Protection Matters to the VON Coalition . . . Sometimes,” Michael R. Romano (Feb., 1, 2012), available at <http://www.ntca.org/new-edge/policy/consumer-protection-matters-to-the-von-coalition-sometimes>, stating that VON Coalition seeks review of the portions of the *CAF Order* that impose an obligation not to block calls on providers of two-way interconnected Voice Over Internet Protocol (VoIP) and one-way VoIP services, citing *The Voice on the Net Coalition v. Federal Communications Commission and the United States of America*, Docketing Statement, (filed January 18, 2012 (Tenth Circuit)).

own CLEC operations. Level 3 argued that the Commission should not tip the playing field by granting one-off waivers favoring some VoIP providers over others, and over all carriers. If the Commission is inclined to take action that results in a rule change, it should do so through a rulemaking proceeding, consistent with its traditional manner of effectuating incremental change.

Finally, Level 3 discussed its concerns about intercarrier compensation. CLECs are entitled as carriers to intercarrier compensation for their handling of other carriers' traffic, including VoIP traffic. Level 3 stated that it and all other carriers are in the midst of implementing the recently adopted *CAF Order*. Granting VoIP providers direct access to numbers would create yet another avenue to fashion reasons to dispute VoIP bills for intercarrier compensation, even under the *CAF Order*, which was designed to create certainty, not ambiguity, on compensation for VoIP traffic. Level 3 noted that it is currently in the midst of fighting disputes with two large interexchange carriers who are refusing to pay intercarrier compensation for VoIP traffic. Unless and until these VoIP disputes are resolved and carriers begin to pay according the Commission's rules as written, granting VoIP providers access to numbers only exacerbates the VoIP dispute issue.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Sincerely,

/s/ Erin Boone

Erin Boone

cc: Angela Kronenberg