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July 10, 2012

VIA ELECTRONIC FILING

EX PARTE

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

Re: *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244; *Telephone Number Portability*, CC Docket No. 95-116; *Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200

Dear Ms. Dortch,

Level 3 Communications, LLC (“Level 3”) files this ex parte in response to a recent letter¹ (“Letter”) filed by Bandwidth.com (“Bandwidth”), which alleges that Level 3 acts inappropriately and against the spirit of the recently adopted North American Numbering Council (“NANC”) Best Practice #67 through its current practice of accepting no more than 5,000 port-ins per day (where Level 3 stands to gain business) and allowing no more than 5,000 port-outs per day (where Level 3 stands to lose business) per customer.

¹ See Letter from Greg Rogers, Deputy General Counsel, Bandwidth.com, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-244, CC Docket No. 95-116, CC Docket No. 99-200 (filed June 11, 2012) (“Bandwidth Letter”).

While Best Practice #67 is not yet a Commission rule, Level 3 notes that its current practices are fully consistent with it, and Level 3 reiterates its support for adoption of Best Practice #67. Level 3 does not, however, support adoption of Best Practice #67 as unilaterally rewritten by Bandwidth. Having been an active participant in the development of Best Practice #67, Level 3 respectfully reminds Bandwidth that for port-outs of 51 or more telephone numbers, Best Practice #67 dictates no rigid port-out timeframe, and in two separate places, states specifically that the Old Service Provider is allowed to negotiate the total port-out interval²:

This proposed Best Practice seeks to reach consensus at the LNPA Working Group on an acceptable least common denominator in order to do the following:

3. Establish the minimum quantity of TNs on a port request that can be considered a “project” by the Old Service Provider for which the **due date** can be negotiated between the Old and New Service Providers . . . [emphasis in original].³

[and to establish that]

Note 5: . . . [t]he project completion date interval (port Due Date) will be no longer than 15 business days from receipt of the LSR **unless otherwise requested by the New Service Provider or negotiated by the Old Service Provider**. [emphasis added].⁴

Bandwidth seeks to revise Best Practice #67 to eliminate this flexibility completely—at least insofar as it applies to the Old Service Provider. Recognizing that Best Practice #67 provides the Old Service Provider the clear right to negotiate the due date for port projects (port of 51 or more numbers) Bandwidth proposes simply deleting

² We note further that this is fully consistent with the state of affairs before Best Practice #67 was considered. One main focus of Best Practice #67 was to address the lack of any industry standards in terms of when a port was small and simple enough that it could be accommodated in 4 days, and when the size of a port was larger (called a “project”) which may result in longer intervals “**and a due date that is negotiated between the Old Service Provider and the New Service Provider, which is dependent on the size and complexity of the port** [emphasis added].” LNPA Working Group Status Report to NANC, May 17, 2011 *available at* <http://www.fcc.gov/document/nanc-working-group-status-report-nanc>.

³ LNPA WG Best Practices Document, Item Number 67 at 2, *available at* <http://www.fcc.gov/document/nanc-lnpa-wg-best-practice-67-recommendation> (“Best Practice #67”).

⁴ Best Practice #67 at Note 5.

all flexibility in favor of the Old Service Provider, and replacing it instead with something completely contradictory to what the Best Practice says:

“Exceptions to the mandatory 15 business day porting interval requirement of NANC BP #67 shall only be allowed at the request of the New Service Provider.”⁵

That would mean that regardless of the size or complexity of a project port, the New Service Provider could insist on its completion within 15 days. This is not what was agreed to in Best Practice #67, and is entirely inconsistent with what those in the industry (including Level 3) supported when negotiating Best Practice #67. Bandwidth’s proposal would provide the New Service Provider with unbridled discretion (and provide the Old Service provider no flexibility whatsoever) to mandate that all project ports be completed within 15 days, whether the port was for 51 numbers, 51,000 numbers, or 5,100,000—and regardless of the port’s complexity.

Bandwidth also alleges that Level 3 is “the only carrier among ten [un-named Bandwidth sources] that maintained a policy of only allowing five thousand port outs per day”⁶ Despite these allegations, in Level 3’s experience, most carriers do, in fact, impose limits on the number of telephone numbers that can be ported-out per day. The example cited above is a recent and very relevant instance of the limitations of other carriers in the industry. The table below shows Level 3’s port-outs, by month, to Bandwidth for calendar year 2012. As the volume in the below table shows, Level 3 has successfully ported significant quantities to Bandwidth and has worked cooperatively with it to schedule in advance in order to maximize transactional volumes while staying within the bounds of Level 3’s policies and system capabilities.

Label	Jan	Feb	Mar	Apr	May	Jun	To Date
BANDWIDTH.COM CLEC	50651	98216	74053	53256	63967	45914	386057

Level 3’s current capabilities, which are applied equally to port-ins and port-outs, are system driven, and are designed to effectuate the maximum number of ports, in both directions, per day, based upon demand. Level 3 is currently spending significant capital resources on increasing its porting capabilities, which it will apply uniformly in both directions—*i.e.*, to port-ins and port-outs. Not only is the ability to port out quickly and responsibly the right thing to do for consumers, but Level 3 also stands to gain significant business more quickly by improving its port-in capabilities. For example, Level 3 has a current order involving a port in of over 300,000 telephone numbers. Obviously, Level 3 would like to port these numbers in as quickly as possible, and Level 3 has every incentive to improve its systems accordingly. It is important to note that, as exemplified in this very case, Level 3 is far from the only carrier in the industry with 5,000 port per

⁵ Bandwidth Letter at 2.

⁶ *Id.*

day system specifications. Level 3 has been informed by the losing carrier that even if Level 3's systems encompassed increased volume, the Old Service Provider involved in this port does not support more than (coincidentally) 5,000 port-outs per day.

Level 3's current practice of allowing a carrier 5,000 port-ins per day, and 5,000 port-outs per day, is not an anticompetitive practice employed to discriminate against Bandwidth or any other carrier, and is fully compliant with Best Practice #67 as drafted. While Level 3 disagrees with Bandwidth's revision of Best Practice #67, it would agree to work cooperatively with the Commission and the industry to develop more formal timeframes for complex project ports as part of the Commission's current open proceeding on Best Practice #67. Level 3 does, however, have a preliminary view that rigid rules in cases lacking uniformity may be unwise. Best Practice #67's solution of allowing flexibility between carriers, (and further recognizing that a 51 telephone number port and a 5,100,000 telephone number port may not fit within the same timeline) may ultimately be the best answer.

Sincerely,

/s/: Erin Boone

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cc: Ann Stevens
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