

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matters of</i>)	
)	
Numbering Policies for Modern Communications)	WC Docket No. 13-97
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
Telephone Number Requirements for IP-Enabled Service Providers)	WC Docket No. 07-243
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Connect America Fund)	WC Docket No. 10-90
)	
Numbering Resource Optimization)	CC Docket No. 99-200

COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

Joseph C. Cavender
Level 3 Communications, LLC
1220 L Street, NW, Suite #660
Washington, DC 20005
(571) 730-6533

Counsel for Level 3 Communications, LLC

July 19, 2013

In its Notice of Proposed Rulemaking, Order, and Notice of Inquiry,¹ the Commission envisions a future in which telecommunications carriers are no longer the only entities that may obtain and control telephone numbers. In these comments, Level 3 Communications, LLC (“Level 3”), on behalf of itself and its affiliates, urges the Commission to ensure that changes to its rules promote competition and ensure a level playing field for all providers.

I. DISCUSSION

A. The Commission’s Rules Should Treat Retail and Wholesale Providers of VoIP Service Equally.

Under the Commission’s rules, an entity requesting telephone numbers must provide evidence that the applicant is certified to provide service in the area for which it is requesting numbers.² Many providers of VoIP service, however, do not have such a certificate. As the Commission explains, those providers typically obtain telephone numbers by purchasing wholesale services from competitive local exchange carriers (CLECs) who hold the necessary certificates.³ In the NPRM, the Commission proposes to permit interconnected VoIP providers to obtain access to telephone numbers directly, without having to obtain them through a carrier.

The Commission’s proposal does not, however, specifically describe how these rule changes would apply to wholesale providers, nor does it acknowledge the wide variety of business models through which providers offer interconnected VoIP services to end users. Indeed, many providers of interconnected VoIP service combine a variety of services purchased from other providers with services they themselves develop. Further, the services obtained from others are frequently not obtained directly from a CLEC, but rather from another non-carrier provider—such as a wholesale provider of VoIP services. For example, Level 3’s affiliate Level

¹ See *Numbering Policies for Modern Communications*, WC Docket No. 13-97, et al., Notice of Proposed Rulemaking, Order, and Notice of Inquiry, FCC 13-51 (rel. Apr. 18, 2013) (“*Access to Numbers NPRM*”).

² See 47 C.F.R. § 52.15(g)(2)(i).

³ See *Access to Numbers NPRM* at ¶ 7.

Level 3 Enhanced Services, LLC (“Level 3 ES”) sells a variety of services that can support VoIP. Some of those services are sold as interconnected VoIP services directly in the enterprise market, but Level 3 ES also sells VoIP services on a wholesale basis.⁴ Level 3 ES, for its part, obtains services, including telephone numbers, from carriers like Level 3.

Level 3 urges the Commission to ensure that its rules accommodate the broad range of business models interconnected VoIP providers have adopted. The Commission should provide for access to numbers, on fair terms, both for those who provide interconnected VoIP service to end users directly as well as those who provide wholesale VoIP services that support such services. For that reason, permitting access to numbers solely for services that qualify as interconnected VoIP services is too narrow, and the proposed rules should be expanded to include wholesale VoIP applications. Specifically, the Commission should also provide access to numbers for “inbound only” services, as such service can be used as a fundamental building block for providing interconnected VoIP service.

B. Before Obtaining Numbers, Non-Carriers Should Be Required to Obtain Certificates, on a Showing of Technical, Managerial, and Financial Capability, from a State or the Commission.

Because many VoIP providers lack the certification required under section 52.15(g)(2)(i) of the Commission’s rules, the Commission seeks comment on what kind of documentation such providers should be required to present instead. Level 3 believes that the certificate requirement represents a fundamentally sound approach, though the requirement will need to be updated. Entities that control telephone numbers control a valuable and finite public resource, and must work cooperatively with the Commission, the states, and other stakeholders to support the Commission’s numbering policies. Requiring numbers holders to obtain a certificate based on a

⁴ In fact, many purchasers of Level 3 ES’s wholesale services combine the services they obtain from Level 3 ES with other services in order to offer a differentiated service in the market.

demonstration that they have the appropriate technical, managerial, and financial capacity—the typical requirements for obtaining a carrier certificate from a state—will help ensure that holders of these resources are viable, technically credible, and that they will work cooperatively with others in the communications ecosystem.

To take one example, numbers holders are essential participants in the number porting process, working together to ensure port requests are completed both quickly and smoothly. The Commission should ensure that numbers holders are capable and motivated to do so—particularly when completing porting-out requests, which involve the loss of a customer. A demonstration of technical and managerial capability will show that the numbers holder has the capability to perform its duties, and a demonstration of financial capability will ensure that, in the event the numbers holder fails to do so, an enforcement action against it (potentially involving the loss of certification and monetary penalties) will be meaningful.

Because some states may not offer certificates to VoIP providers, the Commission should establish a means of obtaining a certificate directly from the Commission. In this respect, the Commission would operate as a state commission for those states that do not have jurisdiction over non-carrier providers, much as the Commission acts in the place of a state commission when the state commission declines to arbitrate an interconnection dispute under section 252 of the Act, or when a state commission does not have jurisdiction to designate a carrier as an eligible telecommunications carrier for the purposes of receiving universal service support.⁵

As suggested above, the Commission should model its process on the requirements in place in many states that carrier applicants show an appropriate degree of managerial, technical, and financial capacity. The Commission should evaluate such requests carefully, but promptly, to ensure that the review process does not unduly delay a provider's ability to obtain numbers.

⁵ See 47 U.S.C. §§ 252(e)(5), 214(e)(6).

The Commission seeks comment on whether a VoIP provider should be ineligible to receive numbers if it is “red-lighted” by the Commission for unpaid debts or other reasons. Level 3 agrees that an applicant for a Commission-issued certification should be ineligible for that certification while it is subject to red-light treatment, just as applicants for any other Commission authorization would be. On the other hand, the Commission should not create a separate red-light check for one class of numbers holders when they actually request numbers. If the Commission creates a red-light check rule for certificated VoIP providers to obtain numbers, competitive fairness requires it establish such a rule for carriers as well.

C. Numbering Administration Requirements Should Be Competitively Neutral.

The Commission seeks comment on a variety of possible requirements for VoIP providers to get direct access to numbers. The key criterion such proposed requirements should be judged by is whether they are competitively neutral. While the Commission’s rules currently do not permit VoIP providers direct access to numbers (with the exception of SBCIS), they are, at least in that respect, neutral. The Commission should take care, as it modifies its rules governing access to numbers, not to introduce competitive distortions.

1. *Efficient Number Utilization.* Twice annually, numbers holders report number utilization statistics in their NRUF reports, consistent with the definitions set forth in section 52.15(f) of the Commission’s rules. But, the Commission observes, those reports may not be providing the visibility the Commission desires into the use of those numbers by customers of numbers holders.⁶ In particular, the Commission is focused on situations where VoIP providers’ LEC partners report numbers allocated to the VoIP provider as “assigned,” while the VoIP provider itself may or may not have a retail customer using that telephone number.⁷ The

⁶ See *Access to Numbers NPRM* at ¶ 22.

⁷ See *id.*; see also 47 C.F.R. § 52.15(f)(1)(iii).

Commission seeks comment on whether it should revise its numbers reporting requirements, including by potentially amending the definition of an “assigned” number to specify that the number must be activated or in use by a retail end user.⁸

It is important to note, however, that with respect to certain services, a LEC numbers holder may not have visibility into the use its customer is making of an assigned telephone number. That is, in some cases, the carrier provides services to the customer, including the ability to route incoming calls from the PSTN to the customer’s facilities for calls associated with that number, once the customer orders those services. The carrier may not know whether the customer has a retail end user associated with the number or what the customer’s facilities will do with such a call when it is received.⁹ Developing such a capability would be a significant undertaking, involving many systems. If the Commission modifies its rules to require such a capability, it must take care to establish rules that are unambiguous and explicit about what is required of numbers holders and how they are to determine whether a number is assigned, recognizing the wide variety of ways numbers can be appropriately used in modern communications (such as enabling voice, SMS, or video transmission). It should also provide industry with an appropriate period of time to implement that capability. Level 3 anticipates that it would take approximately 12 months to design, develop, test, and deploy such a capability.

2. Facilities Readiness. Under existing rules, carriers must demonstrate “facilities readiness” before they can obtain initial numbering resources.¹⁰ As the Commission notes, in that context carriers typically provide an interconnection agreement with the incumbent LEC.¹¹

⁸ See *Access to Numbers NPRM* at ¶ 23.

⁹ Nor can the carrier rely on metrics such as which numbers have received calls from the PSTN. Many such numbers may not receive any calls from the PSTN for extended periods of time even though they are in use, assigned to retail end users.

¹⁰ See 47 C.F.R. § 52.15(g)(2)(ii).

¹¹ See *Access to Numbers NPRM* at ¶ 29.

In granting SBCIS its waiver, the Commission provided that SBCIS would be able to provide, instead, evidence that it had ordered an interconnection service from the incumbent LEC pursuant to a tariff. The Commission seeks comment on whether that is an appropriate approach, or whether, as suggested by AT&T, VoIP providers should be able to satisfy that requirement by providing evidence, alternatively, of some other means of connecting to the PSTN, such as through a traffic exchange agreement with another LEC serving the area.¹² For the purposes of satisfying the facilities readiness requirement, and subject to the other comments herein, Level 3 agrees with AT&T's proposal: what is relevant, for these purposes, is whether the provider has access to the PSTN, not whether the provider has obtained services from one LEC serving the area as opposed to another.

3. *Vonage Commitments.* In its waiver request, Vonage offered a number of commitments that could serve as conditions to its obtaining direct access to numbers, and the Commission seeks comment on whether it should impose those conditions on all interconnected VoIP providers.¹³ Specifically, Vonage committed to (i) maintain at least a 65 percent utilization rate for telephone numbers; (ii) offer IP interconnection to other carriers and providers; and (iii) provide to the Commission a transition plan for migrating its existing customers to its own telephone numbers, with periodic reports.¹⁴

The most critical of the Vonage commitments is the commitment to offer IP interconnection to other providers. But that obligation is not one that should be limited to VoIP providers that obtain access to telephone numbers. Rather, to be competitively balanced, the Commission should require that *all* providers that receive (or already have access to) telephone

¹² *See id.*

¹³ *See id.* at ¶ 32.

¹⁴ *See id.*

numbers (VoIP providers *and* carriers) must, if capable, provide IP interconnection upon reasonable request.¹⁵

Moreover, the Commission should, as Level 3 and others have urged, clarify that, for incumbent LECs, IP interconnection is subject to sections 251 and 252 of the Act.¹⁶ In addition, the Commission should provide that all agreements for IP interconnection with an incumbent LEC or its affiliate should be filed publicly.¹⁷

On the other hand, the Commission should not apply a 65 percent utilization requirement to VoIP providers with direct access to numbers. As an initial matter, to ensure a level playing field, the Commission should provide that any utilization rate it might adopt for VoIP providers also would apply to carriers. But a 65 percent utilization rate, though perhaps appropriate for Vonage's business plan targeted at residential subscribers, would be unrealistic for a provider that offers wholesale VoIP services. Because both the wholesale provider and its customer will necessarily have some numbers not actually in use by end users, a wholesale provider may not be able to achieve a 65 percent utilization rate, even if it manages its numbers appropriately.

4. *Requirements to Enhance State Oversight.* Level 3 agrees that numbers holders should be subject to appropriate state oversight. In addition to obtaining certificates from the state or the Commission as described above, numbers holders should be required to keep current contact information for corporate personnel responsible for regulatory compliance, including porting and numbering issues, 911, and law enforcement issues, on file with the state commission or, for

¹⁵ As Level 3 has explained, whether a request is reasonable could depend on the volume of traffic. *See* Level 3 Communications, LLC Reply Comments on Sections XVII.L-R of the *CAF/ICC Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., at 11-12 (filed Mar. 30, 2012).

¹⁶ *See, e.g., id.* at 8-11.

¹⁷ This last duty should apply to incumbent LECs' affiliates to ensure that the incumbents do not have an incentive to circumvent the provisions of sections 251 and 252 by entering into agreements through their affiliates, rather than the incumbent LEC entities themselves.

those states who decline to exercise jurisdiction over VoIP providers, with the Commission.¹⁸ These obligations are not burdensome, and they serve important policy goals that are directly related to telephone numbers.

The Commission seeks specific comment on the Wisconsin PSC's proposal that interconnected VoIP providers: (1) provide regulatory and numbering contacts to state authorities; (2) consolidate and report all numbers under the provider's own unique OCN; (3) provide customers with the ability to access all N11 numbers in use in a state; and (4) maintain the original rate center designation of all numbers in the providers' inventory. As noted above, Level 3 agrees that providers should be required to provide contact information to state or federal authorities as appropriate. Level 3 further agrees that numbers holders should be required to report their numbers under their own OCN and maintain the original rate center designation for all numbers, just as carrier numbers holders do today.

The Commission should not, however, impose a blanket requirement that VoIP providers with access to numbers also provide access to all state-designated N11 numbers. Any requirement that end users be provided access to N11 services should be imposed on the end user's service provider, and it should be imposed (or not) without regard to whether the provider has obtained numbers directly or indirectly.¹⁹

Notably in this regard, wholesale VoIP providers may or may not directly provide N11 functionality. Level 3 ES, for example, offers a wide variety of VoIP services to wholesale customers, some of which are packaged with various N11 capabilities while others are not. In some cases, a wholesale customer will develop its own end user offering (including N11

¹⁸ See *Access to Numbers NPRM* at ¶¶ 33-34.

¹⁹ Cf. *IP-Enabled Services*, WC Docket No. 04-36, et al., First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (imposing 911 obligations on interconnected VoIP providers). Whether a provider obtains its numbers directly or indirectly has no bearing on the relevant policy question: what N11 functionality an end user should have access to.

components) by combining some services from Level 3 ES and some services from other providers (or itself). Wholesale VoIP providers should not be denied direct access to phone numbers simply because they do not provide all of the required N11 functionality. The key question from the regulator's perspective is: does the end user have access to the N11 functionality that the regulator deems appropriate? That, ultimately, is the responsibility of the provider servicing the end user, and any rule should be so targeted.

D. States Should Have Authority to Resolve Disputes Involving Non-Carriers, and the Commission Should Serve as a Backstop for Such Disputes.

Currently, when a dispute arises between carriers, such as a porting dispute, the carriers can look to the state commission for assistance. State commissions have significant experience handling such issues, are the closest regulatory body to the impacted consumers, and can work quickly to resolve such disputes. Speedy resolution is particularly important in certain kinds of disputes, such as porting disputes, where while a dispute remains unresolved, the customer may have no service at all. The Commission should ensure that state commissions retain this important oversight role with respect both to carriers and to non-carrier numbers holders.

For disputes arising in states where the state commissions might decline to address a dispute involving a non-carrier interconnected VoIP provider, the Commission should serve as a backstop. To ensure that state commissions handle disputes where possible, the Commission should, as a matter of practice, ask the parties, when a dispute is brought, whether the state is involved. If it is, the Commission can simply defer to the state.

E. Additional Issues.

1. *IP Interconnection.* The Commission seeks comment on the status of IP interconnection for VoIP providers today.²⁰ In Level 3's experience, to date, IP interconnection

²⁰ See *Access to Numbers NPRM* at ¶ 53.

with incumbent LECs in the United States remains a necessary goal, not a present reality. Level 3 is hopeful that providing direct access to numbers may facilitate IP interconnection. But what would do far more to promote IP interconnection would be a Commission declaration clarifying, as stated above, that incumbent LECs have a duty to provide IP interconnection.²¹ The Commission should issue such a declaration as soon as possible.

2. *Transition Timing.* Level 3 has previously noted that any rule change to expand access to telephone numbers to non-carriers should be done in a way that permits an orderly transition and timeline for business planning purposes.²² Moreover, as the Commission observes, transferring large volumes of numbers between providers could present logistical challenges.²³ To address these concerns, Level 3 recommends that any new rules adopted in this proceeding be effective no sooner than 90 days following public notice of the order adopting them.

II. CONCLUSION

Numbers holders are stewards of public resources, and partners with the Commission, the states, and each other in helping to advance the Commission's numbering policies. The Commission should ensure that numbers holders, whether carriers or not, have the capability to perform their duties and are subject to appropriate oversight. And, as the Commission considers expanding access to numbers, it must take care to do so in a way that promotes competition and is fair to all providers—treating carriers and non-carrier numbers holders, and wholesale and retail providers, equally.

²¹ See *supra* at 7.

²² See, e.g., Letter from Michael J. Shortley, III, Vice President – Legal, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-200 et al., (filed Nov. 20, 2012).

²³ See *Access to Numbers NPRM* at ¶ 65.

Respectfully submitted,

/s/ Joseph C. Cavender

Joseph C. Cavender

Level 3 Communications, LLC

1220 L Street NW Suite 660

Washington, D.C. 20005

(571) 730-6533

Counsel for Level 3 Communications, LLC

Dated: July 19, 2013