

**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

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

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Level 3 Communications, LLC (“Level 3”), on behalf of itself and its affiliates, replies to certain comments responding to the Commission’s proposal to expand direct access to telephone number resources to non-carriers.¹ Level 3 agrees with commenters suggesting that if the Commission does adopt such rules, it should do so in a competitively neutral manner, ensuring that all numbers holders are treated equally.

As an initial matter, however, Level 3 also agrees with commenters that urge the Commission to focus its limited resources on more urgent priorities, such as reforming its special access rules, resolving outstanding disputes about the ability of LECs to collect intercarrier compensation for VoIP calls under the Commission’s VoIP Symmetry Rule and determining that sections 251 and 252 apply to requests for IP-to-IP interconnection for the exchange of VoIP traffic. Indeed, while the Commission has expressed the hope that amending its rules governing access to numbers will promote VoIP interconnection, promptly clarifying that sections 251 and 252 apply to requests for VoIP interconnection will do more to directly and immediately advance that goal than anything the Commission might do in this proceeding.

1. Setting aside the question whether providing direct access to numbers to non-carriers would, on balance, advance the Commission’s policy goals, the comments in this proceeding demonstrate that doing so would not be a simple, straightforward undertaking. In light of this complexity, the Commission should consider whether overhauling the rules governing access to numbers is the best use of limited Commission resources. Level 3 agrees with commenters who suggest it is not, or at least that it should not be prioritized ahead of things that are more important.² While obtaining access to telephone numbers may further some individual

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 Comments of COMPTTEL, WC Docket No. 13-97, et al., at 2 (filed July 18, 2013).

providers' business plans, the Commission has several more urgent tasks in front of it, both large and small.

In particular, the Commission should focus its resources on reforming its special access rules. Taking action on that issue, which involves a market of tens of billions of dollars annually,³ and which has been pending for more than a decade, will have enormous impacts on consumers as well as small and large businesses across the nation. And the Commission can and should take specific actions now to get started, including immediately eliminating or at a minimum restricting incumbent LECs' exclusionary and anticompetitive demand lock-up practices and issuing the mandatory special access data request.⁴

The Commission should also focus its resources, as Level 3 and others have urged, on the pressing need to clarify that LECs are permitted to collect end office switching charges when the LEC and its over-the-top VoIP partner perform all the functions performed by a TDM end office switch.⁵ Not only is this a clarification the Commission could make with minimal effort on an existing and complete record, but clarifying the ability of LECs to collect intercarrier compensation for VoIP calls under the Commission's VoIP Symmetry Rule would encourage investment in, and movement to, IP switching infrastructures. The Commission's failure to resolve this existing controversy and uncertainty is creating significant difficulties in intercarrier negotiations, engendering compensation disputes between carriers and undermining the

³ In 2010, four incumbent LECs, AT&T, Verizon, CenturyLink, and Fairpoint combined had more than \$12 billion in revenues from just DS1 and DS3 services. *See Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, et al., Report and Order, 27 FCC Rcd 10557, ¶ 2 (2012).

⁴ *See* Comments of Level 3 Communications, LLC, WC Docket No. 05-25, et al. (filed Feb. 11, 2013); Letter from Michael J. Mooney, General Counsel, Regulatory Policy, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, et al. (filed Oct. 31, 2012); Letter from Thomas Jones, Counsel for Cbeyond, Inc., et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, et al. (filed June 7, 2013).

⁵ *See, e.g.*, Letter from John T. Nakahata, Counsel for Level 3 Communications, LLC, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Aug. 6, 2013).

Commission's stated goal to encourage and facilitate carriers' efforts to upgrade to IP-based infrastructure.⁶

2. Even with respect to one of the goals the Commission has specifically identified in its direct numbering access NPRM, the promotion of IP interconnection for VoIP service,⁷ it is clear that adopting new rules governing access to numbers will be more complicated, will take longer, and will ultimately be less effective than simply issuing an order clarifying that incumbent LECs have an enforceable duty to provide VoIP interconnection under sections 251 and 252 of the Act.

As Level 3 and many others have explained, the primary obstacle to widespread VoIP interconnection to date has not been technical, but rather has been the unwillingness on the part of incumbent LECs to cooperate in negotiating agreements.⁸ The most effective way for the Commission to advance IP interconnection would be to clarify that sections 251 and 252 apply to requests for direct IP-to-IP interconnection for the transmission and routing of VoIP traffic.⁹ Such a clarification will jumpstart negotiations, because incumbent LECs' duties under those provisions are clear and state commissions stand ready to arbitrate any disputes that may arise in connection with such negotiations.

Critically, whether sections 251 and 252 apply to VoIP interconnection is a purely legal issue. The Commission can issue an order today clarifying that sections 251 and 252 apply, and doing so will pay immediate dividends in advancing VoIP interconnection and the IP transition. In any event, the Commission should focus its efforts on resolving this question, which the

⁶ See *id.* at 5. The Commission will likely eventually be called upon to decide the issue anyway, in the context of litigation. No public purpose is advanced by putting the decision off any longer.

⁷ See *Access to Numbers NPRM* at ¶ 54.

⁸ See, e.g., Comments of Cbeyond, et al., GN Docket No. 13-5, at 12 (filed July 8, 2013); Comments of COMPTTEL, GN Docket No. 13-5, at 2-3 (filed July 8, 2013).

⁹ IP-to-IP interconnection for the exchange of VoIP traffic would also encompass information services, such as SMS.

Commission’s own Technological Advisory Council identified as critical,¹⁰ before considering wholesale revisions to the rules governing direct access to numbers which will have, at best, only a modest (and indirect) impact on advancing VoIP interconnection, if it has any impact at all.

Verizon, in its comments, agrees that providing access to numbers to non-carriers will not significantly affect the progress of VoIP interconnection,¹¹ yet it rejects the notion that the Commission should clarify that sections 251 and 252 apply.¹² Rather, according to Verizon, the best way to advance IP interconnection is to ignore the fundamental disagreement between carriers about what law governs requests for IP interconnection and to simply hope instead that the parties will come to fair commercial agreements anyway.¹³

Notably, the wait-and-see approach Verizon advocates is precisely the one the Commission has pursued for some time now to no avail. Verizon protests that it is working hard to advance IP interconnection but that others are uninterested in serious negotiations.¹⁴ Verizon may characterize the status of negotiations as it wishes—though note that it has been telling the Commission that it has “one agreement in place covering its FiOS Digital Voice VoIP traffic, and ... [is] negotiating others” for close to a year and a half now.¹⁵ But, the fact remains that many carriers, including Level 3, have IP interconnection agreements with other competitive carriers, but do not yet have one with Verizon.¹⁶ That is a strong indication that it is not a lack of

¹⁰ See Federal Communications Commission Technological Advisory Council, TAC Memo—VoIP Interconnection, at 2-3 (Sept. 24, 2012), available at <http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting92412/VoIP-Interconnection-TAC-Memo-9-24-12.pdf>.

¹¹ See Comments of Verizon and Verizon Wireless, WC Docket No. 13-97, et al., at 13 (filed July 19, 2013).

¹² See *id.* at 15-16.

¹³ See *id.* at 12-16.

¹⁴ See *id.* at 14-15.

¹⁵ See Comments of Verizon, WC Docket No. 10-90, et al., at 14 (filed Feb. 24, 2012).

¹⁶ See, e.g., Comments of Sprint Nextel Corporation, GN Docket No. 13-5, at 6 (filed July 8, 2013) (“Sprint currently has IP interconnection agreements with 12 major carriers, and currently exchanges tens

interest by Level 3 and other carriers to interconnect with Verizon that is holding up agreements, it is a failure of the parties to agree on fair terms.

Sections 251 and 252 are designed to address this precise problem. Sections 251 and 252 provide a framework to encourage commercial negotiation for interconnection, and, where commercial negotiations are unsuccessful, to provide for arbitration before a state commission to assist the parties in reaching fair and reasonable terms. And critically, section 252 provides for specific timeframes for negotiations and arbitration.¹⁷ Together, these provisions ensure that interconnection discussions lead to interconnection agreements. And they will do so in the context of IP interconnection agreements just as they have in the context of TDM agreements. Accordingly, the Commission will more effectively advance its goal of promoting IP interconnection and competition by clarifying that sections 251 and 252 apply first, before taking on the much larger task of revising its rules governing access to numbers.

3. As Level 3 explained in its initial comments, if the Commission does choose to amend its rules and expand direct access to numbers to non-carrier providers, it should do so in a way that treats all numbers holders equally. The Commission should, accordingly, resist calls to give non-carriers access to only *some* numbers,¹⁸ or to impose unrelated or discriminatory conditions on non-carriers that wish to get direct access to numbers.¹⁹ If the Commission offers numbers to non-carriers only on discriminatory terms, it will likely find that all of its efforts were for little benefit, as non-carriers—who already have access to numbers through carrier partners today—will be unlikely to sign up for second-class treatment. Or, worse, the Commission might find

of billions of minutes of voice traffic in IP format annually” but does not have IP interconnection agreements with AT&T, Verizon, or CenturyLink).

¹⁷ See 47 U.S.C. § 252(b).

¹⁸ Cf. Comments of the California Public Utilities Commission, et al., WC Docket No. 13-97, et al., at 15 (filed July 19, 2013).

¹⁹ See, e.g., Comments of Level 3 Communications, LLC, WC Docket No. 13-97, et al., at 8 (filed July 19, 2013); Comments of AT&T, WC Docket No. 13-97, et al., at 11-12 (filed July 19, 2013).

that its new rules unintentionally benefit certain interconnected VoIP providers with one business model but leave others at a disadvantage. One of the key benefits of the current regime is that it is fair to all, because any entity that wishes to obtain numbers can choose either to become a carrier or to get numbers from a carrier partner. The Commission should not discard this benefit, attempting to develop a “compromise” that gives only limited access to numbers to VoIP providers in a way that will distort competition.

Respectfully submitted,

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