

**STATE OF NEW HAMPSHIRE
Inter-Department Communication**

JTD

DATE: March 20, 2008
AT (OFFICE): NHPUC

FROM: Jody O'Marra

SUBJECT: DT 07-099
Level 3 Communications Appeal of the North American Numbering
Plan Administration's Denial of Numbering Resources

TO: Commissioners
Executive Director
Telecommunications Division Director

On September 12, 2007, Level 3 Communications, LLC (Level 3) filed an appeal of the North American Numbering Plan Administration's (NANPA) Denial of Numbering Resources (denial). To clarify Level 3's request Staff submitted a series of questions to Level 3 on November 19, 2007. In addition to this information request, Staff has had many discussions with Level 3 over our concern with Level 3's number utilization. Level 3 most recently met with Staff on February 13, 2008.

Limited research has shown that Level 3 continues to assign New Hampshire telephone numbers to customers outside of New Hampshire. It appears that a percentage, perhaps small, of these customers in turn serve New Hampshire residents; yet Staff remains concerned over the numbers unaccounted for and the veracity of the utilization levels reported by Level 3. Level 3 currently has **[BEGIN PROPRIETARY] XXXXXXXXXXXXX [END PROPRIETARY]** New Hampshire telephone numbers) assigned to it which cover **[BEGIN PROPRIETARY] XXX [END PROPRIETARY]** exchanges out of the 146 exchanges in New Hampshire. Level 3's latest Number Resource Utilization/ Forecast (NRUF) filing, June 2007, indicates that while utilization varies from exchange to exchange Level 3 utilizes only **[BEGIN PROPRIETARY]XX[END PROPRIETARY]** percent of its total numbering resources. Level 3 also continues to report its numbering utilization incorrectly. Level 3 does not report any intermediate numbers¹ although it admits to assigning numbers to other carriers. Level 3 does not serve local exchange end-users. Staff's requests and Level 3's responses are provided below. Staff analysis of each response follows Level 3's response.

¹ Intermediate numbers are numbers that are made available by a telecommunications carrier to another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer.

Request No 1:

When Level 3 files code applications with NANPA, does it provide copies to the Commission of the code application, months to exhaust worksheet, and number utilization data for the specific rate center(s) in which additional numbers are requested, as required by Commission Order No. 23,385? Did Level 3 file such copies in the instance of the request for which it seeks appeal? If so please provide evidence of such filings. If not, please provide those documents.

Response: "When Level 3 files code applications with NANPA, it provides the code application and number utilization data to the Commission. Attached as Confidential Attachment 1 in .zip format are the months to exhaust worksheets for the requests for which Level 3 seeks appeal."

From August 2005 to the February 13, 2008 meeting, Staff had not received any of the required copies of Level 3's applications submitted to NANPA nor had it received the required CLEC Form 40's; thus Staff denied Level 3's numbering requests. In this period of time Level 3 did not contact the designated Staff person to determine the reasoning for the numbering resource denial. Staff notes that the months to exhaust worksheets are incomplete and that the growth history appears to be identical for all the exchanges while the forecasts are similar if not identical in each exchange. Level 3 did submit part of the required information, the CLEC Form 40, at the February 13, 2008 meeting which was also incomplete.

Staff, also notes, that in 2007, Level 3 submitted requests for blocks in [BEGIN PROPRIETARY] XX [END PROPRIETARY] exchanges. Of these requests, [BEGIN PROPRIETARY] XXXXXXXXX [END PROPRIETARY] exchanges did not meet the utilization threshold of 75% at the time of the request and yet a few months later the same [BEGIN PROPRIETARY] XX [END PROPRIETARY] exchanges show utilization greater than 75%. [BEGIN PROPRIETARY] XXXXX [END PROPRIETARY] were for exchanges where IDT also requested numbering resources for MetroCast. [BEGIN PROPRIETARY] XXXXXXXXX [END PROPRIETARY] requests were for exchanges where IDT also requested numbering resources for MetroCast even though they are outside of MetroCast's area; and [BEGIN PROPRIETARY] XXXXXXXXX [END PROPRIETARY] requests were for exchanges bordering MetroCast's area. Level 3's remaining [BEGIN PROPRIETARY] XXXXXXXXX [END PROPRIETARY] requests may have been justifiable growth requests if the Commission decides Level 3 is entitled to numbers as a wholesale provider without end-users. The Level 3 requests that mirror IDT's requests may also have been similarly justifiable if they were not intended for the use of IDT/MetroCast.

Request No.2:

Does Level 3 report numbers as "assigned" or "intermediate," as appropriate, in its utilization report? Please explain how Level 3's reporting complies with the Central

Office Code Assignment Guidelines and the Thousand Block Number Pooling Assignment Guidelines.

Response: “Level 3 reports numbers as “assigned” or “intermediate” as appropriate in its utilization report and consistent with the Central Office Code Assignment Guidelines, the Thousand Block Number Pooling Assignment Guidelines, and the FCC’s rules. Level 3 has provided the Commission detailed descriptions of the services Level 3 provides in New Hampshire and additional information is provided in Level 3’s appeal. Level 3 reports as “assigned” all numbers it provides to its Internet Service Provider (“ISP”) and Enhanced Service Provider (“ESP”) customers when it provides Direct Inward Dial (“DID”) and DID/Direct Outward Dial (“DOD”) services. DID and DID/DOD services along with the telephone numbers associated with them provide local connectivity to the public switched telephone network (“PSTN”) for the exchange of traffic between Level 3’s customers’ customers and other end-users connected to the PSTN. DID and DID/DOD services are ultimately bundled into Level 3’s customers’ dial-up Internet and Voice over Internet Protocol (“VoIP”) services. Numbers that are working in the Level 3 network and the PSTN are reported as assigned numbers. In addition, as the Commission is aware, Level 3 has undertaken extensive reclamation efforts and other internal processes to maximize its current inventory of numbers to the greatest extent possible. As noted in Level 3’s appeal, despite these diligent efforts, Level 3’s current inventory of numbers in its New Hampshire rate centers has exceeded the established utilization thresholds and are at or near complete exhaust.”

The Central Office Code Assignment Guidelines and the Thousands Block Number Pooling Assignment Guidelines² define intermediate numbers as “... numbers that are made available by a telecommunications carrier to another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer.” Since Level 3 ‘assigns’ numbers to ISPs and ESPs, Staff considers Level 3’s number ‘assignment’ practice to be that of making available intermediate numbers and as such Level 3 improperly reports their number utilization. In addition, the customers that receive the numbering resources from Level 3 are required to file utilization reports semi-annually. Level 3 has indicated it has no way to determine the utilization of its customers.

Staff also notes that the Commission has addressed enhanced services previously in Implementation of Number Conservation Methods Authorized by the Federal Communications Commission, Order No. 23,454 (May 1, 2000) finding e-Fax to be an enhanced service and ordering “...the Pooling Administrator shall deny requests for allocation of number resources to Global Naps and other carriers for the purpose

² Industry guidelines developed by the Industry Numbering Committee, a committee of the Alliance For Telecommunications Industry Services (ATIS) available on the NANPA site under www.nanpa.com/number_resource_info/code_admin.html.

of making telephone numbers available to eFax or other such e-mail deliverers.”
Some of Level 3’s customers provide this type service.

Request No. 3:

Does Level 3 report the name and contact information to NANPA of telecommunications carriers to which Level 3 assigns numbers?

Response: “No. Level 3 does not provide numbers to other telecommunications carriers in the ordinary course of its business. As stated above, Level 3’s principle customer base for its DID and DID/DOD services are ISPs and ESPs who in turn sell locally dialed Internet and VoIP services.”

In this answer, Level 3 is suggesting that although it provides telephone numbers to its customers for its customers’ customers, Level 3’s customers are not telecommunications carriers. If Level 3 is not providing telephone numbers to telecommunications carriers then the New Hampshire telephone numbers Level 3 is allocating are not being used for local exchange telephone service.

Request No. 4:

Does Level 3 report utilization and forecast data to NANPA for intermediate numbers controlled by non-carriers?

Response: “Please see response to Request No. 3.”

Level 3 is unable to accurately report numbering utilization when it is unaware of how its customers are administering numbering resources. At the least, Level 3’s customers should be reporting numbering utilization to Level 3, verifiable by end-user name and address.

Request No.5:

Has Level 3 ever filed a CLEC Form 40 pursuant to N.H. Code Admin Rule Puc 434.04(a) (7)? If so, please provide a copy of the most recent CLEC Form 40 filed with the Commission

Response: “Level 3 filed CLEC Form 40 for 2004, 2005. Recently Level 3 submitted an incorrect version of CLEC Form 40 for the year 2006. Level 3 is preparing a revised report for 2006 and will supplement this response when the revised report is filed. A copy of Level 3’s most recent CLEC Form 40 (2005) is attached hereto as Confidential Attachment 2.”

The CLEC Form 40 states “A Competitive Local Exchange Carrier must complete this form annually to provide documentation showing, on an exchange by exchange basis, that the CLEC has a local nexus in each exchange area in which it has number assignments.” Level 3’s annual CLEC Form 40 from 2005, which accompanied its response, does not comply with that statement. Level 3, at its February 13, 2008, meeting with Staff provided an annual CLEC Form 40 from 2006

which was incomplete, lacking information on Level 3's collocation status with Verizon, Level 3's provisioning method as well as number of customers, and information for a representative customer in each of Level 3's exchanges. Staff also notes the numbering resources noted on this 2006 form do not completely match Level's 3 June, 2007 NRUF filing. In addition, since 2005, carriers have been required to provide an updated CLEC Form 40 to verify their local nexus when requesting additional numbering resources. Level 3 did not submit any updated CLEC Form 40 with their numbering requests.

Request No. 6:

Did Level 3 file Lines by Locality data in its 2006 Annual Report, as required by Puc 449.04(f)? If so, please identify the date on which the filing was made.

Response: "As Staff is aware, Level 3 inadvertently did not include complete data for its Lines by Locality in its 2006 Annual Report and is working diligently to provide updated information. Level 3 has included this information in its prior reports."

Level 3 has never demonstrated it has any lines in a New Hampshire exchange. Level 3 does not provide local exchange telephone service to customers in New Hampshire. Its "inadvertent" failure to submit the required reports is likely because Level 3 cannot attest that it provides any lines in any New Hampshire locality. Additionally, Level 3 did not file the required 2006 Quality of Service Report or 2006 Quality of Service Report Card with its 2006 Annual Report.

Request No. 7:

Are any of Level 3's customers certified local exchange carriers? If so, please identify such carriers and the exchanges in which they provide local telephone service.

Response: "Level 3 has, on several occasions, provided the Commission detailed lists of its customers and complied with a Commission audit of the company's number assignments, as well as the company's policies and procedures for managing numbering resources. Some of Level 3's customers in New Hampshire may colloquially be considered local exchange carriers; however as stated above Level 3's services are the underlying components for dial-up Internet and VoIP service that are sold on a retail basis in New Hampshire. These services are not regulated by the Commission. Level 3 is providing local exchange telecommunications services in all of the exchanges in New Hampshire where it possesses numbering resources. Without access to additional numbering resources however, Level 3 is unable to fulfill requests from its customers and potential customers for additional business in New Hampshire. Due to the near complete utilization of Level3's current resources in many rate centers, Level 3 has been forced to deny these customer requests. Additional information regarding Level 3's services in New Hampshire and its efforts to

maximize its current number inventory is provided in Level 3's initial filing in this docket."

Level 3 has not provided information indicating that it currently provides local exchange telecommunications service in any of the New Hampshire exchanges where it holds numbering resources; nor has it indicated at any time to Staff that its requests for numbering resources were for end-users in NH. Level 3 has continually indicated that some of its customers, to whom it has assigned numbering resources, have end-users in New Hampshire. The previous detailed lists provided, as well as the information contained in Level 3's initial petition and the attachments to Level 3's response to staff's request lack any indication of end-users physically located in New Hampshire.

Request No. 8:

Please provide all evidence to support your assertion that NANPA has provided codes to IDT to provide the same type of services in New Hampshire for which Level 3 now seeks growth codes.

Response: "In Order No. 24,272, the Commission granted IDT America Corp.'s ("IDT") expedited request for additional numbering resources in New Hampshire. *See IDT America, Corp. and MetroCast Cablevision of New Hampshire, LLC, Joint Petition for Expedited Relief in the Granting of Numbering Resources, Order Approving Settlement Agreement, Order No. 24,727 (Jan 26, 2007).* As described in the Order, the services that IDT proposed to provide MetroCast Cablevision of New Hampshire, LLC ("MetroCast") included local number port-in and port-out, enhanced 911 interconnection, operator/directory assistance, directory listings, and numbering resources." *ID.* at 2. In addition, in its Petition, IDT described the services for which it requested numbering resources as follows:

Under the proposed business model, which has been successfully deployed in numerous states (*see* para.11) IDT plans to provide MetroCast with connectivity to the Public Switched Telephone Network, local number port-in and port-out, VoIP origination/termination to TDM (time division multiplexing), enhanced 911 interconnection, operator/directory assistance, and directory listings. IDT will provide an end-to-end solution by seamlessly integrating the VoIP platform to deliver a fully automated digital phone and high-speed data provisioning solution including PSTN service activation and interconnection.

IDT America, Corp. and MetroCast Cablevision of New Hampshire, LLC Joint Petition for Expedited Relief in the Granting of Numbering Resources, Order Approving Settlement Agreement, Petition at ¶ 2.

Level 3 is also a certified local exchange carrier in addition to being a wholesale VoIP provider that provides its customers "with connectivity to the Public

Switched Telephone Network, local number port-in and port-out, VoIP origination/termination to TDM (time division multiplexing), enhanced 911 interconnection, operator/directory assistance, and directory listings.” Level 3 also provides its New Hampshire customers with services that are “an end-to-end solution by seamlessly integrating the VoIP platform to deliver a fully automated digital phone and high-speed data provisioning solution including PSTN service activation and interconnection.” Level 3 continues to receive demand for its VoIP services that it cannot meet because unlike IDT, it has been denied access to numbering resources by NANPA and the New Hampshire Commission.”

Staff notes that Level 3 is most likely aware that IDT has not received any numbering resources beyond those necessary for IDT to establish its Local Routing Number (LRN). Staff does not know if Level 3 is aware that IDT’s LRN has since been reclaimed by NeuStar due to IDT’s failure to activate the numbering resource. IDT has encountered difficulties in providing the business plan it proposed for MetroCast in the IDT/MetroCast settlement agreement and has [BEGIN PROPRIETARY] XX XXXXXXXXXXX [END PROPRIETARY] even though Staff voiced apprehensions concerning it. In addition, unlike Level 3’s customers, MetroCast customers are physically located in New Hampshire and MetroCast and IDT stipulated that “IDT agrees that any telephone number assigned to it for the exchanges in which MetroCast has customers will be used only for the IP-based cable telephony end-users of MetroCast; and will only be geographically assigned to New Hampshire end-users, based on the rate center of the end-user’s physical location.”

Request No.9:

Is Level 3 willing to enter a stipulation agreement similar to the agreement between IDT and Metrocast in order to obtain numbering resources?

Response: “As an initial matter, Level 3 is already performing most of the commitments IDT agreed to in the stipulation agreement. For example, IDT committed to following all published requirements for the conservation of numbers, including the reclamation of unused numbers, consistent with the requirements imposed on IDT when its CLEC authority was granted in Commission Order No. 24,124. IDT Order at 4. as stated in Level 3’s petition, Level 3 has already undertaken extensive number reclamation activities and implemented internal procedures to maximize its number utilization. IDT also agreed to file with Staff copies of all number utilization forms submitted to NeuStar, or its successor, in a timely manner as determined by Staff with regard to numbers obtained under the agreement, as noted in the first request above this is already a Commission requirement for all carriers under Order No. 23,385. Finally IDT agreed to follow all published requirements for the obtaining of numbering resources. This is also a requirement of any carrier seeking numbering resources.

Level 3 cannot make all the same representations made by IDT and Metrocast for several reasons. First, the settlement agreement approved by the Commission included commitments from both IDT and Metrocast. In particular, Metrocast agreed to register for CLEC status in New Hampshire. Level 3 has a wide variety of ISP and ESP customers in New Hampshire not just one as appears to be the case with IDT and Metrocast. Level 3 is unable to make commitments on behalf of all of its customers but would speculate that they are not likely to forego their ESP status, particularly when they could always go to another New Hampshire provider if they could not obtain numbers from Level 3. Another distinction between the IDT/Metrocast situation and Level 3's situation is that Level 3 cannot ensure that its customers will only provide VoIP services in the very same manner as Metrocast. In asserting jurisdiction over Interconnected VoIP services, one of the principal findings by the FCC was that VoIP technology was inherently nomadic and therefore inherently interstate. Once Level 3 assigns a number to an ESP customer that provides retail VoIP services, Level 3 can not control where the end-user ultimately utilizes that number. Because of the inherent nomadic capabilities of VoIP technology, an end-user could use his VoIP service in the New Hampshire rate center associated with the telephone number or in another location at any given point in time. Nonetheless, as mandated by the FCC, VoIP providers must have E911 capabilities in place for their services whether nomadic or static in nature. Level 3 does provide and support E911 interconnection and routing for its customers and their end user customers. As Level 3 has demonstrated in prior filing with the Commission, Level 3 does service end-users that are physically located in the rate centers that it has numbering resources. One manner that Level 3 is able to make this showing is through E911 data where an end-user address is needed to support E911 services."

Level 3 continues to press for the ability to obtain numbering resources in the same manner as IDT; yet is unwilling to enter into a similar settlement agreement. Staff notes that in the settlement agreement "IDT agrees that any telephone number assigned to it for the exchanges in which MetroCast has customers will be used only for the IP-based cable telephony end-users of MetroCast, and will only be geographically assigned to New Hampshire end-users, based on the rate center of the end-user's physical location." The Commission found the business arrangement between IDT and MetroCast to be "novel" and an "efficient use of numbering resources". The IDT and MetroCast arrangement provides for a static type of VoIP service not the nomadic type offered by Level 3. Level 3 notes that the service it provides is "...inherently nomadic and therefore inherently interstate." Interstate service is not local exchange service. Telephone numbers for interstate service should be obtained from the FCC. Staff also notes that if Level 3 applied for CLEC certification today, with their current business plan, Level 3 would be designated as a 'carriers' carrier' and would not be certified as a new Hampshire CLEC.

Request No. 10:

Please identify each New Hampshire exchange to which Level 3 provides dial tone for basic local telephone service.

Response: “Level 3 is not certain how Staff defines “basic local telephone service” in this request as that term is not defined in the Commission’s rules. Level 3 is not a provider of retail residential local exchange voice telecommunications services. As stated above however, Level 3 does provide local exchange services to ISP and ESP customers in all of the exchanges in New Hampshire where it has numbering resources. Level 3 is a facilities-based carrier that provides its customers DID and DID/DOD services that allow for local connectivity to the PSTN for the exchange of locally dialed traffic with all other end-users on the PSTN. Level 3 also provides E911/911 services which requires deploying local exchange interconnection infrastructure to route and carry E911 traffic to Public Safety Answering Points (“PSAPS”).”

Commission Order No. 24, 727 states that “...the commission has previously determined that, to receive numbering resources, a local exchange carrier (LEC) must provide local exchange telephone service to customers physically located in the exchange associated with the numbers assigned. N.H. Code Admin. Rules Puc 402.28 defines a “local exchange carrier” as “the company that provides local telephone exchange service, whether directly or indirectly, and renders the telephone bill to the customer.” Level 3 does not render a telephone bill to the customer intended by this rule. Level 3 renders a bill to its customer, the ESP or ISP, who in turn sells and bills voice and or other services over the internet to the ESP/ISP’s customer (who may or may not be physically located in New Hampshire).

Level 3 points out that, in the Time Warner Order released by the FCC March 1, 2007, the FCC established that wholesale providers, like Level 3, are telecommunications carriers for the purposes of Sections 251(a) and (b) of the Act, and as such are entitled to the rights of telecommunications carriers under that provision.³ Sections 251(a) and (b) require all telecommunications carriers to interconnect with Level 3 and require LECS to port numbers to Level 3. Nothing in Sections 251(a) and (b) address whether a wholesale telecommunications carrier is entitled to telephone numbers when it does not provide local exchange service.

Level 3 also requests review of the FCC’s November 2007 Order on number portability.⁴ In that order, the FCC requires LECs to port numbers for customers who

³ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, WC Docket No. 06-55, DA 07-709 (rel. March 1, 2007).

⁴ *Telephone Number Requirements for IP-Enabled Services Providers, Local Number portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Final Regulatory Flexibility analysis, Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice

choose VoIP service and prefer to keep an existing telephone number. The order does not address whether wholesale providers, without local exchange customers, are entitled to numbering resources directly from NANPA. Paragraph 20 of the FCC's November 2007 Order limits access to the NANP numbering resources to applicants that are (1) authorized to provide service in the area for which numbering resources are requested, and (2) will be capable of providing service within 60 days of the numbering resources activation date. Since Level 3 is providing wholesale service rather than local exchange service, Staff is not persuaded Level 3 will be providing the service contemplated within 60 days.

Level 3 does not provide local exchange telephone service in New Hampshire and continues to request numbering resources for ESPs and ISPs. In response to question 9, Level 3 points out that the service for which it is requesting New Hampshire numbering resources is interstate. Given Level 3's inadequate reporting and Staff's understanding of the service for which Level 3 wishes to obtain numbering resources, Staff recommends Level 3's appeal be denied. Level 3 may apply to the FCC for the numbering resources they require to continue their current business practices.

Based on the February 13, 2008 meeting, Staff understands Level 3 would like the Commission to adopt a policy change which would entitle CLEC's, such as Level 3, to receive numbering resources for providers of non-traditional telephone-like service. If the Commission would like to consider such a policy change, Staff recommends an order of notice be issued commencing a new proceeding to determine whether New Hampshire numbering resources should be allocated to carriers for service other than local exchange telephone service.